

## ITEM 5

### OVERSIGHT BOARD FOR CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY

**DATE ISSUED:** 09/11/2012

**SUBJECT:** Report from the Successor Agency regarding request for authorization to consent to or approve proposed grants of access rights to and possessory interests in Successor Agency properties and properties subject to use restrictions under a Successor Agency agreement.

**CONTACT/PHONE NUMBER:** David Graham/236-6980

#### **DESCRIPTIVE SUMMARY OF ITEM:**

Adoption of a resolution:

Authorizing the Successor Agency to consent to or approve proposed grants of access rights to and possessory interests in Successor Agency properties and properties subject to use restrictions under a Successor Agency agreement, and to execute all related documents, provided that the consent or approval is consistent with the terms of a related agreement that is an enforceable obligation and will not have any substantial adverse impact on the Successor Agency's financial interests.

#### **STAFF RECOMMENDATION:**

Approve proposed action.

#### **DISCUSSION:**

##### Background

The Successor Agency is in the process of winding down the operations of the former Redevelopment Agency of the City of San Diego ("Former RDA") in accordance with Assembly Bill xl 26 (the "Dissolution Act"), enacted on June 28, 2011, and Assembly Bill 1484 ("AB 1484"), enacted on June 27, 2012 (collectively, the "Dissolution Laws"). On January 10, 2012, the City Council designated the City of San Diego ("City") to serve as the Successor Agency to the Former RDA for purposes of winding down the Former RDA's operations.

At the Oversight Board meeting of May 31, 2012, the Oversight Board approved the Second Recognized Obligation Payment Schedule covering the period from July 2012 to December 2012 (ROPS 2). On August 28, 2012, the Third Recognized Obligation Payment Schedule (ROPS 3), covering the period from January 1 through June 30, 2013, was approved by the Oversight Board.

As part of the state budget package, on June 27, 2012, the Legislature passed and the Governor signed AB 1484, the primary purpose of which was to make technical and substantive amendments to the Dissolution Act based on experience to date at the state and local level implementing the Dissolution Act. AB 1484 in several ways clarifies the role of a Successor Agency in conducting certain activities and also authorizes a Successor Agency to perform activities not expressly stated in the Dissolution Act.

One such clarification, Health and Safety Code Section 34177(c), provides clear authority for the Successor Agency to perform obligations required pursuant to any enforceable obligation. However, there are situations that arise where the Successor Agency is requested to exercise some limited discretion as to whether to grant an additional approval or consent for certain actions pursuant to the terms of an enforceable obligation.

While Section 34177(c) requires that the Successor Agency perform obligations required pursuant to any enforceable obligation, the Dissolution Laws are generally unclear as to whether the Successor Agency can grant discretionary consent to or approval of proposed actions under enforceable obligations, and execute related documents, without Oversight Board authorization. For that reason, the Successor Agency is requesting, in an abundance of caution, that the Oversight Board confirm that the Successor Agency is authorized to grant these limited discretionary consents or approvals.

The circumstances of this particular request are related to the performance of obligations under existing enforceable obligations related to Successor Agency real property assets and properties subject to use restrictions under Successor Agency financial assistance agreements, such as disposition and development agreements, owner participation agreements, and loan agreements. The Successor Agency regularly receives requests pursuant to the terms of enforceable obligations for approval of or consent to grants of access rights to or possessory interests in these properties. In many cases, the terms of the underlying enforceable obligations state that the Successor Agency's approval or consent may not be unreasonably withheld or delayed.

An example of this situation is a recent request for consent to a sublease of a portion of a property to Verizon Wireless for installation of cellular telecommunication facilities. The property is currently leased to McMillin-NTC, LLC by the Successor Agency pursuant to the terms of a Ground Lease. The proposed sublease is consistent with the terms of the Ground Lease, and the Ground Lease provides that the Successor Agency cannot unreasonably withhold its consent to the proposed sublease. As part of its consent to the sublease, the Successor Agency would execute a Nondisturbance and Lease Recognition Agreement. The sublease would not adversely impact the Successor Agency's financial interests.

Another example of this situation is a recent request for consent to a lease of a portion of a property owned by AMCAL Los Vientos, L.P (AMCAL). The property is subject to use restrictions under an Owner Participation Agreement (OPA) between the Successor Agency and AMCAL. The proposed lease is consistent with the terms of the OPA, and the OPA provides that the Successor Agency cannot unreasonably withhold its consent to the proposed lease. The lease would not adversely impact the Successor Agency's financial interests, and may provide a financial benefit by allowing for accelerated repayment of the loan provided to AMCAL under the OPA by allowing for an increase in residual receipts by AMCAL.

The Successor Agency anticipates it will receive several more of this type of request in the near future. Therefore, the Successor Agency is requesting a "confirmation of authority" to grant approval or consent in response to this type of request, rather than returning to the Oversight Board for authorization for each specific request. This streamlined approach would allow the Successor Agency to operate in an efficient manner and to fulfill obligations without delay and within more reasonable timelines and budgets, while minimizing the Successor Agency's exposure to new claims and liabilities. This is to the benefit all local taxing entities and to the communities impacted by the wind down of redevelopment.

This request is one of several that will streamline the implementation of approved ROPS projects and help avoid an overly burdensome, costly and time-consuming approval process for each individual request of this nature.

Conclusion

The Oversight Board is respectfully requested to authorize the Successor Agency to consent to or approve proposed grants of access rights to and possessory interests in Successor Agency properties and properties subject to use restrictions under a Successor Agency agreement, and to execute all related documents, provided that the consent or approval is consistent with the terms of a related agreement that is an enforceable obligation and will not have any substantial adverse impact on the Successor Agency's financial interests.

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David Graham  
Office of the Mayor

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Jay Goldstone  
Chief Operating Officer

OVERSIGHT BOARD RESOLUTION NUMBER OB-2012-27

A RESOLUTION OF THE OVERSIGHT BOARD FOR THE CITY OF SAN DIEGO REDEVELOPMENT SUCCESSOR AGENCY AUTHORIZING THE SUCCESSOR AGENCY TO CONSENT TO OR APPROVE PROPOSED GRANTS OF ACCESS RIGHTS OR POSSESSORY INTERESTS PURSUANT TO ENFORCEABLE OBLIGATIONS

WHEREAS, the former Redevelopment Agency of the City of San Diego (Former RDA) administered the implementation of various redevelopment projects, programs, and activities within designated redevelopment project areas throughout the City of San Diego (City); and

WHEREAS, in accordance with Assembly Bill x1 26 (AB 26), the Former RDA dissolved as of February 1, 2012, at which time the City of San Diego, solely in its capacity as the designated successor agency to the Former RDA (Successor Agency), assumed the Former RDA's assets and obligations; and

WHEREAS, the Successor Agency is winding down the Former RDA's affairs in accordance with AB 26, as amended by Assembly Bill 1484 (AB 1484), enacted on June 27, 2012 (collectively the Dissolution Laws); and

WHEREAS, the Oversight Board has been formed to oversee certain actions and decisions of the Successor Agency in accordance with the Dissolution Laws; and

WHEREAS, California Health and Safety Code section 34177(c) requires the Successor Agency to perform obligations required pursuant to any enforceable obligation; and

WHEREAS, certain enforceable obligations of the Successor Agency allow for grants of access rights to or possessory interests in Successor Agency properties or properties subject to use restrictions under Successor Agency agreements, subject to the consent or approval of the Successor Agency;

WHEREAS, the Dissolution Laws are unclear as to whether the Successor Agency can consent to or approve such grants of access rights or possessory interests without the approval of

the Oversight Board when the terms of the enforceable obligation give the Successor Agency some limited discretion in granting the consent or approval; and

WHEREAS, given the lack of clarity in the Dissolution Laws, the Successor Agency has, in an abundance of caution, requested that the Oversight Board authorize the Successor Agency to consent to grants of access or possessory rights under these circumstances.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board that the Successor Agency is authorized to consent to or approve proposed grants of access rights to and possessory interests in Successor Agency properties and properties subject to use restrictions under Successor Agency agreements, and to execute all related documents, provided that the consent or approval is consistent with the terms of a related agreement that is an enforceable obligation and will not have any substantial adverse impact on the Successor Agency's financial interests.

**PASSED AND ADOPTED** by the Oversight Board at a duly noticed meeting of the Oversight Board held on September \_\_\_\_, 2012.

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Chair, Oversight Board