

RESOLUTION NO. OB-12-08

RESOLUTION OF THE OVERSIGHT BOARD OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY DETERMINING, PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTION 34176(g)(1)(B), THAT THE HOUSING AUTHORITY'S DESIGNATIONS OF THE USE AND COMMITMENT OF CERTAIN PROCEEDS DERIVED FROM HOUSING BONDS ISSUED PRIOR TO JANUARY 1, 2011 FOR PURPOSES OF AFFORDABLE HOUSING ARE CONSISTENT WITH THE HOUSING BONDS COVENANT OBLIGATIONS, INCLUDING REQUIREMENTS RELATING TO TAX STATUS, AND THAT THERE ARE SUFFICIENT HOUSING BONDS PROCEEDS AVAILABLE FOR THE DESIGNATED PURPOSES

WHEREAS, the Imperial Beach Redevelopment Agency ("Redevelopment Agency") was a redevelopment agency in the City of Imperial Beach ("City"), duly created pursuant to the California Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the California Health and Safety Code) ("Redevelopment Law"); and

WHEREAS, the City Council has adopted redevelopment plans for Imperial Beach's redevelopment project areas, and from time to time, the City Council has amended such redevelopment plans; and

WHEREAS, the Redevelopment Agency was responsible for the administration of redevelopment activities within the City; and

WHEREAS, Sections 33334.2 and 33334.3 of the Redevelopment Law required the Redevelopment Agency to deposit into its Low and Moderate Income Housing Fund not less than twenty percent (20%) of taxes allocated to the Redevelopment Agency pursuant to Section 33670 of the Redevelopment Law for the purposes of increasing, improving, and preserving the community's supply of low and moderate income housing; and

WHEREAS, certain Tax Allocation Revenue Bonds, 2003 Series A (Palm Avenue/Commercial Redevelopment Project) ("Housing Bonds") were issued pursuant to an Indenture Trust, dated as of November 1, 2003, by and among the Imperial Beach Public Financing Authority, the Redevelopment Agency and Wells Fargo Bank, National Association, as trustee, backed by the Low and Moderate Income Housing Fund, to provide money for loans by the Redevelopment Agency for the purposes of increasing, improving, and preserving the community's supply of low and moderate income housing; and

WHEREAS, Assembly Bill X1 26 (2011-2012 1st Ex. Sess.) ("AB 26") was signed by the Governor of California on June 28, 2011, making certain changes to the Redevelopment Law and the California Health and Safety Code ("Health and Safety Code"), including adding Part 1.8 (commencing with Section 34161) ("Part 1.8") and Part 1.85 (commencing with Section 34170) ("Part 1.85") to Division 24 of the Health and Safety Code; and

WHEREAS, pursuant to AB 26, as modified by the California Supreme Court on December 29, 2011 by its decision in *California Redevelopment Association v. Matosantos*, all California redevelopment agencies, including the Redevelopment Agency, were dissolved on February 1, 2012, and successor agencies were designated and vested with the responsibility of paying, performing and enforcing the enforceable obligations of the former redevelopment agencies and winding down the business and fiscal affairs of the former redevelopment agencies; and

WHEREAS, the City Council of the City adopted Resolution No. 2012-7136 on January 5, 2012, pursuant to Part 1.85 of AB 26, electing for the City to serve as the successor agency to the Redevelopment Agency upon the dissolution of the Redevelopment Agency under AB 26 (“Successor Agency”); and

WHEREAS, the City Council of the City adopted Resolution No. 2012-7137 on January 5, 2012, pursuant to Part 1.85 of AB 26, designating the City of Imperial Beach Housing Authority (“Housing Authority”) to serve as the successor housing entity (“Successor Housing Entity”) upon the dissolution of the Redevelopment Agency on February 1, 2012 and to receive the dissolved Redevelopment Agency’s housing assets, rights, powers, duties, obligations, liabilities and functions previously performed by the Redevelopment Agency upon its dissolution, including enforcement of affordability covenants and performance of related activities pursuant to applicable provisions of the Community Redevelopment Law (Part 1, commencing with Section 33000), including, but not limited to, Section 33418; and

WHEREAS, the Housing Authority adopted Resolution No. HA-12-06 on January 5, 2012 accepting the transfer of the housing assets, rights, powers, duties, obligations, liabilities and functions previously performed by the Redevelopment Agency upon its dissolution; and

WHEREAS, on February 15, 2012, the Board of Directors of the Successor Agency, adopted Resolution No. SA-12-01 naming itself the “Imperial Beach Redevelopment Agency Successor Agency,” the sole name by which it will exercise its powers and fulfill its duties pursuant to Part 1.85 of AB 26, and establishing itself as a separate legal entity with rules and regulations that will apply to the governance and operations of the Successor Agency; and

WHEREAS, as part of the FY 2012-2013 State budget package, on June 27, 2012, the Legislature passed and the Governor signed Assembly Bill No. 1484 (“AB 1484”, Chapter 26, Statutes 2012). Although the primary purpose of AB 1484 is to make technical and substantive amendments to AB 26 based on issues that have arisen in the implementation of AB 26, AB 1484 imposes additional statutory provisions relating to the activities and obligations of successor agencies and to the wind down process of former redevelopment agencies; and

WHEREAS, Health and Safety Code Section 34179 of AB 26 as amended by AB 1484 establishes a seven (7) member local entity with respect to each successor agency and such entity is titled the “oversight board.” The oversight board has been established for the Successor Agency (hereinafter referred to as the “Oversight Board”) and all seven (7) members have been appointed to the Oversight Board pursuant to Health and Safety Code Section 34179. The duties and responsibilities of the Oversight Board are primarily set forth in Health and Safety Code Sections 34179 through 34181 of AB 26 as amended by AB 1484; and

WHEREAS, there exists \$913,000 of available proceeds derived from the Housing Bonds (“Excess Housing Bonds Proceeds”) to be expended in accordance with the Housing Bonds covenants, including requirements relating to tax status; and

WHEREAS, pursuant to Health and Safety Code Section 34176(g)(1)(A) of AB 26 as amended by AB 1484, the Housing Authority may designate the use of and commit the Excess Housing Bonds Proceeds in a manner that is consistent with the Housing Bonds covenants, including requirements relating to tax status; and

WHEREAS, in accordance with Health and Safety Code Section 34176(g)(1)(B) of AB 26 as amended by AB 1484, the Housing Authority provided written notice to the Successor Agency designating the use of and commitment of the Excess Housing Bonds Proceeds in the amounts set forth below for the following affordable housing projects (collectively, "Affordable Housing Projects"):

- a. Approximately \$380,000 toward that certain Clean & Green Program, including a proportionate amount for project administration costs, which Program provides grants to very low, low and moderate-income single-family homeowners to improve energy and water efficiency and health and safety conditions; and
- b. Approximately \$533,000 in financial assistance to Habitat for Humanity, including a proportionate amount for project administration costs, for the acquisition and development of six (6) semi-detached for-sale houses located at 776 10th Donax in the City of Imperial Beach, California for ownership by low-income households ("Habitat Project"); and

WHEREAS, the Housing Authority's designation of the use and commitment of the Excess Housing Bonds Proceeds toward the Affordable Housing Projects and in the amounts provided above is consistent with Item #44 and Item #45 listed on the Recognized Obligation Payment Schedule for the period January 1, 2012 through June 30, 2012 as previously approved by the Successor Agency and the Oversight Board and not disputed by the Department of Finance, and deemed valid and effective under AB 26 as amended by AB 1484; and

WHEREAS, pursuant to Health and Safety Code Section 34176(g)(1)(B) of AB 26 as amended by AB 1484, review of the Housing Authority's designations of the use and commitment of the Excess Housing Bonds Proceeds by the Successor Agency, the Oversight Board and the Department of Finance shall be limited to a determination that the Housing Authority's designations of the use and commitment of such proceeds are consistent with the Housing Bonds covenant obligations, including requirements relating to tax status, and that there are sufficient Excess Housing Bonds Proceeds available for the designated purposes; and

WHEREAS, on August 1, 2012 by Resolution No. SA-12-11, the Successor Agency determined that the Housing Authority's designations of the use and commitment of the Excess Housing Bonds Proceeds toward the Affordable Housing Projects and in the amounts provided are consistent with the Housing Bonds covenant obligations, including requirements relating to tax status, and that there are sufficient Excess Housing Bonds Proceeds available for the designated purposes; and

WHEREAS, pursuant to Health and Safety Code Section 34176(g)(2) of AB 26 as amended by AB 1484, the Successor Agency shall retain and expend the Excess Housing Bonds Proceeds at the discretion of the Housing Authority provided that the Successor Agency ensures that the proceeds are expended in a manner consistent with the Housing Bonds covenants, including requirements relating to tax status of the Housing Bonds, and within the amount of Excess Housing Bonds Proceeds available for such purposes. The Excess Housing Bonds Proceeds shall be used and committed in a manner consistent with the purposes of the Low and Moderate Income Housing Asset Fund, established by the Housing Authority pursuant to AB 1484, and such expenditures shall be listed separately on the Recognized Obligation Payment Schedule submitted by the Successor Agency; and

WHEREAS, in accordance with Section 34176(g)(2) of AB 26 as amended by AB 1484, the use and commitment of the Excess Housing Bonds Proceeds toward the Affordable Housing Projects are included in the Successor Agency's proposed Third ROPS covering the period from January 1, 2013 through June 30, 2013 as submitted to the Oversight Board for approval on this date; and

WHEREAS, as required by Health and Safety Code Section 34180(j) of AB 26 as amended by AB 1484, the Successor Agency has also submitted a copy of this Resolution to the County Administrative Officer, the County Auditor-Controller, and the Department of Finance at the same time that the Successor Agency has submitted this Resolution to the Oversight Board for approval; and

WHEREAS, as required by Health and Safety Code Section 34179(f) of AB 26 as amended by AB 1484, all notices required by law for proposed actions of the Oversight Board shall be posted on the Successor Agency's internet website or the Oversight Board's internet website; and

WHEREAS, pursuant to Health and Safety Code Section 34179(h) of AB 26 as amended by AB 1484, the Successor Agency is required to provide written notice and information about all actions taken by the Oversight Board, including the proposed determination set forth in this Resolution, to the Department of Finance by electronic means and in the manner of the Department of Finance's choosing; and

WHEREAS, in furtherance of Part 1.85 of AB 26 as amended by AB 1484, a copy of this Resolution as approved by the Oversight Board should be submitted to the County Auditor-Controller and both the State Controller's Office and the Department of Finance and should be posted on the Successor Agency's internet website; and

WHEREAS, the determination proposed to be rendered by this Resolution has been reviewed with respect to applicability of the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 *et seq.*, hereafter the "Guidelines"), and the City's environmental guidelines; and

WHEREAS, the determination proposed to be rendered by this Resolution is not a "project" for purposes of CEQA, as that term is defined by Guidelines Section 15378, because the determination is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per Section 15378(b)(5) of the Guidelines; and

WHEREAS, all of the prerequisites with respect to the approval of this Resolution have been met.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board of the Imperial Beach Redevelopment Agency Successor Agency, as follows:

Section 1. The foregoing recitals are true and correct and are a substantive part of this Resolution.

Section 2. The adoption of this Resolution is not intended to and shall not constitute a waiver by the Successor Agency of any constitutional, legal or equitable rights that the Successor Agency may have to challenge, through any administrative or judicial proceedings, the effectiveness and/or legality of all or any portion of AB 26 or AB 1484, any determinations rendered or actions or omissions to act by any public agency or government entity or

division in the implementation of AB 26 or AB 1484, and any and all related legal and factual issue, and the Successor Agency expressly reserved any and all rights, privileges, and defenses available under law and equity.

- Section 3.** The Oversight Board determines that the Housing Authority's designations of the use and commitment of the Excess Housing Bonds Proceeds toward the Affordable Housing Projects and in the amounts proposed in this Resolution are consistent with the Housing Bonds covenant obligations, including requirements relating to tax status, and that there are sufficient Excess Housing Bonds Proceeds available for the designated purposes.
- Section 4.** The Oversight Board hereby directs the Successor Agency to submit copies of this Resolution as required under AB 26 as amended by AB 1484, in the method and manner required. In this regard, The Executive Director, or designee, of the Successor Agency is hereby authorized and directed to: (i) submit this Resolution and written notice of the Oversight Board's determination pursuant to Health and Safety Code Section 34167(g)(1)(B) of AB 26 as amended by AB 1484 to the Department of Finance (electronically) pursuant to Health and Safety Code Section 34179(h) of AB 26 as amended by AB 1484; (ii) submit a copy of this Resolution to the County Auditor-Controller and the State Controller's Office; and (iii) post this Resolution on the Successor Agency's internet website.
- Section 5.** The Oversight Board hereby authorizes and directs the Executive Director, or designee, of the Successor Agency to take such other actions and execute such other documents as are necessary to effectuate the intent of this Resolution on behalf of the Successor Agency.
- Section 6.** The Oversight Board determines that the determination rendered by this Resolution is not a "project" for purposes of CEQA, as that term is defined by Guidelines Section 15378, because the determination rendered by this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per Section 15378(b)(5) of the CEQA Guidelines.
- Section 7.** If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Oversight Board declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.
- Section 8.** This Resolution shall take effect upon the date of its adoption.

