

RESOLUTION NO. OB-13-13

RESOLUTION OF THE OVERSIGHT BOARD OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY TAKING CERTAIN ACTIONS PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTION 34179.6 IN CONNECTION WITH THE DUE DILIGENCE REVIEW FOR ALL FUND AND ACCOUNT BALANCES OTHER THAN THE LOW AND MODERATE INCOME HOUSING FUND PREPARED PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTION 34179.5.

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 of the City 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, Assembly Bill No. X1 26 (2011-2012 1st Ex. Sess.) (“AB 26” or “Dissolution Act”) 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 the Dissolution Act, 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 expeditiously 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 the Dissolution Act, electing for the City to serve as the successor agency to the Redevelopment Agency upon the dissolution of the Redevelopment Agency under the Dissolution Act (“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 the Dissolution Act based on issues that have arisen in the implementation of the Dissolution Act, 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 (including the required preparation of a due diligence review) (reference hereinafter to the Dissolution Act means AB 26 as amended by AB 1484); and

WHEREAS, the Dissolution Act at Health and Safety Code Section 34179 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 the Dissolution Act; and

WHEREAS, pursuant to the Dissolution Act at Health and Safety Code Section 34179.5, the Successor Agency retained Lance Soll & Lunghard, LLP, a licensed accountant approved by the San Diego County Auditor-Controller (“Auditor-Controller”) and with experience and expertise in local government accounting, to conduct a due diligence review (“Due Diligence Review”) to determine the unobligated balances of the Low and Moderate Income Housing Fund (“LMIHF”) and all other funds and accounts available for transfer to taxing entities, in furtherance of the Successor Agency’s obligations under Health and Safety Code Section 34177(d); and

WHEREAS, in accordance with the Dissolution Act at Health and Safety Code Section 34179.6(a), by October 1, 2012, the Successor Agency provided to the Oversight Board, the Auditor-Controller, the State Controller, and the State Department of Finance (“DOF”) the results of the Due Diligence Review for the LMIHF conducted pursuant to Health and Safety Code Section 34179.5 and specifically the amount of cash and cash equivalents determined to be available for allocation to taxing entities; and

WHEREAS, in accordance with the Dissolution Act at Health and Safety Code Section 34179.6(b), upon its receipt of the Due Diligence Review for the LMIHF, the Oversight Board convened a public comment session on October 2, 2012. The Oversight Board agreed to continue this public comment session to its meeting scheduled for October 11, 2012 in order to receive any public comment on the Due Diligence Review for the LMIHF before taking certain actions pursuant to Health and Safety Code Section 34179.6(c); and

WHEREAS, in accordance with the Dissolution Act at Health and Safety Code Section 34179.6(c), on October 11, 2012 (before the October 15, 2012 deadline), the Oversight Board reviewed, approved, and transmitted to the DOF and the Auditor-Controller the determination of the amount of cash and cash equivalents available for disbursement to taxing entities as determined according to the method provided in Health and Safety Code Section 34179.5 for the LMIHF. In this regard, the Oversight Board approved the determination that the amount of cash and cash equivalents available for allocation to taxing entities according to the method provided in Health and Safety Code Section 34179.5 for the LMIHF was zero, consistent with the results of the Due Diligence Review for the LMIHF prepared by Lance Soll & Lunghard, LLP. Further, the Oversight Board authorized the Successor Agency to retain certain assets or funds identified in Procedure 6 of the Due Diligence Review for the LMIHF pursuant to Health and Safety Code Section 34179.5(c)(5)(B); and

WHEREAS, in accordance with the Dissolution Act at Health and Safety Code Section 34179.6(a), on December 7, 2012 (before the December 15, 2012 statutory deadline), the Successor Agency provided to the Oversight Board, the Auditor-Controller, the State Controller, and the DOF the results of the Due Diligence Review for all fund and account balances other than the LMIHF (the “Non-Housing Due Diligence Review”) conducted pursuant to Health and Safety Code Section 34179.5 and specifically the amount of cash and cash equivalents determined to be available for allocation to taxing entities; and

WHEREAS, in accordance with the Dissolution Act at Health and Safety Code Section 34179.6(b), upon its receipt of the Non-Housing Due Diligence Review, the Oversight Board convened a public comment session on December 12, 2012. The Oversight Board agreed to continue this public comment session to its meeting scheduled for January 2, 2013 in order to receive any public comment on the Non-Housing Due Diligence Review before taking certain actions pursuant to Health and Safety Code Section 34179.6(c); and

WHEREAS, pursuant to the Dissolution Act at Health and Safety Code Section 34179.6(c), by January 15, 2013, the Oversight Board shall review, approve, and transmit to the DOF and the Auditor-Controller the determination of the amount of cash and cash equivalents available for disbursement to taxing entities as determined according to the method provided in Health and Safety Code Section 34179.5 for all fund and account balances other than the LMIHF. In connection with this determination, the Oversight Board may adjust any amount provided in the Non-Housing Due Diligence Review to reflect additional information and analysis. In addition, the Oversight Board shall consider any opinions offered by the Auditor-Controller on the Non-Housing Due Diligence Review results submitted to the Successor Agency. The Oversight Board may request from the Successor Agency any materials it deems necessary to assist in its review and approval of the determination; and

WHEREAS, pursuant to the Dissolution Act at Health and Safety Code Section 34179.6(c), the Oversight Board may authorize the Successor Agency to retain certain assets or funds identified in Procedures 6 through 9 of the Non-Housing Due Diligence Review pursuant to Health and Safety Code Section 34179.5(c)(5)(B)-(E), provided that the Oversight Board identifies to the DOF (i) the amount of funds authorized for retention, (ii) the source of those funds, and (iii) the purposes for which those funds are being retained. Such Oversight Board authorization for the Successor Agency's retention of certain funds and assets shall be subject to the review and approval of the DOF; and

WHEREAS, Attachment B10 on Page 18 of the Non-Housing Due Diligence Review identifies, pursuant to Procedure 10 in accordance with Health and Safety Code Section 34179.5, that the amount of cash and cash equivalents determined available for allocation to taxing entities in connection with all fund and account balances other than the LMIHF is zero; and

WHEREAS, based on the information and results set forth in the Non-Housing Due Diligence Review, the Agenda Report for the proposed Oversight Board's actions, any additional information provided by Successor Agency staff, and any comments and other information received by the Oversight Board during the public meetings on this matter, the Successor Agency staff proposes that the Oversight Board review, approve, and transmit to the DOF and the Auditor-Controller the determination that the amount of cash and cash equivalents available for allocation to taxing entities according to the method provided in Health and Safety Code Section 34179.5 for all fund and account balances other than the LMIHF is zero, consistent with the results of the Non-Housing Due Diligence Review; and

WHEREAS, Attachment B6 of the Non-Housing Due Diligence Review identifies, pursuant to Procedure 6 in accordance with Health and Safety Code Section 34179.5(c)(5)(B), legally restricted assets that cannot be provided to taxing entities in the total amount of \$16,704,301, which consist of funds relating to a 2010 tax-exempt tax allocation bond issuance and includes bond proceeds totaling \$11,400,000 and bond reserves, capitalized interest and other related funds held by the bond trustee totaling \$5,304,301 (the "2010 Tax Allocation Bond Funds"); and

WHEREAS, Attachment B7 of the Non-Housing Due Diligence Review identifies, pursuant to Procedure 7 in accordance with Health and Safety Code Section 34179.5(c)(5)(C), assets that are not cash or cash equivalents and not otherwise available for distribution to taxing entities valued at the total amount of \$17,048,281, which consist of real property (land) and includes the real property commonly known as the Seacoast Inn property (\$5,760,000) and the real property located at 9th Street and Palm Avenue (\$9,679,454 and \$1,608,827) (the “Real Property Assets”); and

WHEREAS, in accordance with Health and Safety Code Section 34179.6(c), the Successor Agency staff proposes that the Oversight Board authorize the Successor Agency’s retention of (i) the 2010 Tax Allocation Bond Funds in the total amount of \$16,704,301, identified in Attachment B6 of the Non-Housing Due Diligence Review, and (ii) the Real Property Assets valued at the total amount of \$17,048,281, identified in Attachment B7 of the Non-Housing Due Diligence Review; and

WHEREAS, in connection with the 2010 Tax Allocation Bond Funds, Successor Agency staff has advised the Oversight Board that, as required by Health and Safety Code Section 34179.6(c):

(i) the amount of the 2010 Tax Allocation Bond Funds to be authorized for retention totals \$16,704,301, which includes bond proceeds totaling \$11,400,000 and bond reserves, capitalized interest and other related funds held by the bond trustee totaling \$5,304,301;

(ii) the source of the 2010 Tax Allocation Bond Funds is the 2010 Tax Allocation Bonds (Palm Avenue/Commercial Redevelopment Project) issued pursuant to an Indenture Trust, dated as of November 1, 2010, between the Redevelopment Agency and Wells Fargo Bank, National Association, as trustee, backed by tax increment revenues, and bond reserves, capitalized interest and other related funds held by the bond trustee; and

(iii) the purposes for which the 2010 Tax Allocation Bond Funds are to be retained by the Successor Agency are for said funds to be used and expended by the Successor Agency and the City, as applicable, for and consistent with the purposes set forth in the Indenture Trust and related bond documents including the “Certificate Regarding Use of Proceeds” and consistent with the first Recognized Obligation Payment Schedule for the period January 1, 2012 through June 30, 2012 approved by the Oversight Board and the DOF, and including the following projects: (a) Streets Phase 3 Improvements in the approximate amount of \$2 Million; (b) Street Improvements in the approximate amount of \$4 Million; (c) Highway 75 Improvements in the approximate amount of \$2 Million; (d) Property Acquisition (Airfield Property Improvements/Bikeway Village Project) in the approximate amount of \$1.8 Million; (e) Storm Drain Intercept Improvements in the approximate amount of \$200,000; (f) Elm Avenue Undergrounding Improvements in the approximate amount of \$200,000; (g) Sand Replenishment Improvements in the approximate amount of \$200,000; (h) Bikeway Village Project Improvements in the approximate amount of \$300,000; (i) Bayshore Bikeway Access Improvements in the approximate amount of \$300,000; (j) Skatepark Fence Improvements in the approximate amount of \$100,000; (k) Commercial Zoning Improvements in the approximate amount of \$300,000; and (l) potential other projects involving street, alley, signage, and planning improvements in the approximate of \$4.5 Million to the extent any such funds remain; and

WHEREAS, in connection with the Real Property Assets, Successor Agency staff has advised the Oversight Board that, as required by Health and Safety Code Section 34179.6(c):

(i) the amount of the value of the Real Property Assets to be authorized for retention totals \$17,048,281, which includes the real property commonly known as the Seacoast Inn property (\$5,760,000) and the real property located at 9th Street and Palm Avenue (\$9,679,454 and \$1,608,827);

(ii) the source of acquisition of the Real Property Assets is the Redevelopment Agency and funds, including tax increment funds, of the Redevelopment Agency; and

(iii) the purposes for which the Real Property Assets are to be retained by the Successor Agency are: (a) the real property commonly known as the Seacoast Inn property (\$5,760,000) is currently ground leased to Seacoast Inn, L.P., a California limited partnership, pursuant to a Ground Lease dated March 15, 2011, and entered into by and between the Redevelopment Agency and Seacoast Inn, L.P., for the development and operation of the Seacoast Inn, a full-service hotel and related parking facilities, pursuant to a Disposition and Development Agreement dated December 16, 2010, and entered into by and between the Redevelopment Agency and Imperial Coast, L.P., a California limited partnership, and said real property will be managed and disposed of in accordance with the terms of the Disposition and Development Agreement and authority of the Successor Agency; and (b) the real property located at 9th Street and Palm Avenue (\$9,679,454 and \$1,608,827) is currently held for the anticipated sale and disposition to Sudberry-Palm Avenue LLC, a California limited liability company, pursuant to a Disposition and Development Agreement dated December 14, 2011 and entered into by and between Sudberry-Palm Avenue LLC and the City of Imperial Beach to be assigned to and assumed by the Successor Agency, for the development of a “town center” of new construction combining retail with commercial space, and related parking and off-site public improvements, as approved by the Oversight Board and not objected to by the DOF; and

WHEREAS, the activity proposed of the Oversight Board in connection with the Non-Housing Due Diligence Review has been reviewed with respect to applicability of the California Environmental Quality Act (“CEQA”), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 *et seq.*, hereafter the “Guidelines”), and the City’s environmental guidelines. Such activity is not a “project” for purposes of CEQA, as that term is defined by Guidelines Section 15378, because the activity 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.

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 Oversight Board’s approvals, authorizations and determinations as set forth in this Resolution are based upon the foregoing recitals, the Non-Housing Due Diligence Review prepared by Lance Soll & Lunghard, LLP,

information and documents provided by the Successor Agency staff, and any comments and other information received by the Oversight Board during the public meetings on this matter held on December 12, 2012 and January 2, 2013.

Section 3. The Oversight Board has reviewed and hereby approves the determination that the amount of cash and cash equivalents available for allocation to taxing entities according to the method provided in Health and Safety Code Section 34179.5 for all fund and account balances other than the LMIHF is zero, consistent with the results of the Non-Housing Due Diligence Review prepared by Lance Soll & Lunghard, LLP.

Section 4. The Oversight Board hereby authorizes the Successor Agency's retention of the 2010 Tax Allocation Bond Funds in the total amount of \$16,704,301, identified in Attachment B6 of the Non-Housing Due Diligence Review, pursuant to Procedure 6 in accordance with Health and Safety Code Section 34179.5(c)(5)(B).

Based on information provided by Successor Agency staff, and as required by Health and Safety Code Section 34179.6(c), the Oversight Board hereby directs the Executive Director, or designee, of the Successor Agency to provide to the DOF the following information:

- (i) the amount of the 2010 Tax Allocation Bond Funds authorized for retention by the Successor Agency totals \$16,704,301, which includes bond proceeds totaling \$11,400,000 and bond reserves, capitalized interest and other related funds held by the bond trustee totaling \$5,304,301;
- (ii) the source of the 2010 Tax Allocation Bond Funds is the 2010 Tax Allocation Bonds (Palm Avenue/Commercial Redevelopment Project) issued pursuant to an Indenture Trust, dated as of November 1, 2010, between the Redevelopment Agency and Wells Fargo Bank, National Association, as trustee, backed by tax increment revenues, and bond reserves, capitalized interest and other related funds held by the bond trustee; and
- (iii) the purposes for which the 2010 Tax Allocation Bond Funds are to be retained by the Successor Agency are for said funds to be used and expended by the Successor Agency and the City, as applicable, for and consistent with the purposes set forth in the Indenture Trust and related bond documents including the "Certificate Regarding Use of Proceeds" and consistent with the first Recognized Obligation Payment Schedule for the period January 1, 2012 through June 30, 2012 approved by the Oversight Board and the DOF, and including the following projects: (a) Streets Phase 3 Improvements in the approximate amount of \$2 Million; (b) Street Improvements in the approximate amount of \$4 Million; (c) Highway 75 Improvements in the approximate amount of \$2 Million; (d) Property Acquisition (Airfield Property Improvements/Bikeway Village Project) in the

approximate amount of \$1.8 Million; (e) Storm Drain Intercept Improvements in the approximate amount of \$200,000; (f) Elm Avenue Undergrounding Improvements in the approximate amount of \$200,000; (g) Sand Replenishment Project in the approximate amount of \$200,000; (h) Bikeway Village Project Improvements in the approximate amount of \$300,000; (i) Bayshore Bikeway Access Improvements in the approximate amount of \$300,000; (j) Skatepark Fence Improvements in the approximate amount of \$100,000; (k) Commercial Zoning Review project in the approximate amount of \$300,000; and (l) potential other projects involving street, alley, signage, and planning projects and improvements in the approximate of \$4.5 Million to the extent any such funds remain.

Section 5. The Oversight Board hereby authorizes the Successor Agency's retention of the Real Property Assets valued at the total amount of \$17,048,281, identified in Attachment B7 of the Non-Housing Due Diligence Review, pursuant to Procedure 7 in accordance with Health and Safety Code Section 34179.5(c)(5)(C).

Based on information provided by Successor Agency staff, and as required by Health and Safety Code Section 34179.6(c), the Oversight Board hereby directs the Executive Director, or designee, of the Successor Agency to provide to the DOF the following information:

- (i) the amount of the value of the Real Property Assets authorized for retention by the Successor Agency totals \$17,048,281, which includes the real property commonly known as the Seacoast Inn property (\$5,760,000) and the real property located at 9th Street and Palm Avenue (\$9,679,454 and \$1,608,827);
- (ii) the source of acquisition of the Real Property Assets is the Redevelopment Agency and funds, including tax increment funds, of the Redevelopment Agency; and
- (iii) the purposes for which the Real Property Assets are to be retained by the Successor Agency are: (a) the real property commonly known as the Seacoast Inn property (\$5,760,000) is currently ground leased to Seacoast Inn, L.P., a California limited partnership, pursuant to a Ground Lease dated March 15, 2011, and entered into by and between the Redevelopment Agency and Seacoast Inn, L.P., for the development and operation of the Seacoast Inn, a full-service hotel and related parking facilities, pursuant to a Disposition and Development Agreement dated December 16, 2010, and entered into by and between the Redevelopment Agency and Imperial Coast, L.P., a California limited partnership, and said real property will be managed and disposed of in accordance with the terms of the Disposition and Development Agreement and authority of the Successor Agency; and (b) the real property located at 9th Street and Palm Avenue (\$9,679,454 and \$1,608,827) is currently held for the anticipated

sale and disposition to Sudberry-Palm Avenue LLC, a California limited liability company, pursuant to a Disposition and Development Agreement dated December 14, 2011 and entered into by and between Sudberry-Palm Avenue LLC and the City of Imperial Beach to be assigned to and assumed by the Successor Agency, for the development of a "town center" of new construction combining retail with commercial space, and related parking and off-site public improvements, as approved by the Oversight Board and not objected to by the DOF.

- Section 6.** The Oversight Board hereby authorizes and directs the Executive Director, or designee, of the Successor Agency to (i) submit copies of this Resolution and actions taken herein, as approved and fully executed by the Oversight Board, to the DOF (electronically) and the Auditor-Controller no later than January 15, 2013; (ii) post a copy of this Resolution and actions taken herein, as approved and fully executed by the Oversight Board, on the Successor Agency's internet website; and (iii) take all other actions necessary pursuant to the Dissolution Act to file, post, mail, or otherwise deliver by electronic mail, internet posting, and/or hardcopy all notices and transmittals necessary or convenient in connection with the actions taken by this Resolution and related to the Non-Housing Due Diligence Review.
- Section 7.** The Oversight Board hereby authorizes the Executive Director, or designee, of the Successor Agency to take such other actions and execute such other documents on behalf of the Successor Agency as are necessary to effectuate the intent of this Resolution, including, without limitation, submitting a meet and confer request with the DOF pursuant to Health and Safety Code Section 34179.6(e) to resolve any disputes regarding the amounts or sources of funds determined by the DOF in connection with the Non-Housing Due Diligence Review.
- Section 8.** The Oversight Board determines that the activity proposed of the Oversight Board in connection with the Non-Housing Due Diligence Review is not a "project" for purposes of CEQA, as that term is defined by Guidelines Section 15378, because the activity 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 9.** This Resolution shall take effect upon the date of its adoption, subject to the DOF's review pursuant to Health and Safety Code Sections 34179.6(d) and 34179(h).

PASSED, APPROVED, AND ADOPTED by the Oversight Board of the Imperial Beach Redevelopment Agency Successor Agency at its meeting held on the 2nd day of January 2013, by the following vote:

AYES:	BOARD MEMBERS:	WINTER, HENTSCHE GOODWIN-COLBERT, FOLTZ, FERNANDEZ
NOES:	BOARD MEMBERS:	NONE
ABSENT:	BOARD MEMBERS:	WEST, SAADAT

/s/
**MAYDA C. WINTER,
CHAIRPERSON**

ATTEST:

/s/
**JACQUELINE M. HALD, MMC
SECRETARY**