

Specifically, in directing the Successor Agency and Oversight Board to “reconsider” their prior adjudications, DOF maintains, among other things, the ROPS Items are not Enforceable Obligations because performance of various terms therein requires the Successor Agency’s execution of future “agreements” to carry out the Successor Agency’s assigned/inherited duty to, among other things, acquire and transfer parcels of real property. The DOF further argues that a subpart of the Dissolution Act freezing the Original Agency’s ability to conduct further business categorically prohibits a Successor Agency from executing new agreements, even where necessary to carry out pre-existing contractual commitments.

A letter was received by Successor Agency staff regarding the Waterpark Hotel project on June 7, 2012, summarizing why the Disposition and Development Agreement with Garden Grove MXD, LLC is an enforceable obligation. The projects/items that are part of this request for reconsideration, meet the same criteria as outlined in that letter.

In summary, DOF’s counter-adjudicatory finding is contrary to law because settled law holds:

- Simply because future arrangements may be necessary to carry out the stated intent of two or more contracting parties does not make their agreement speculative, uncertain or otherwise unenforceable.
- Simply because performance may be conditioned on the occurrence of one or more future events including, for example, the availability of third party financing or one party’s “reasonable” satisfaction with the other’s performance, an otherwise reasonably definite agreement will still be enforced.
- An “agreement to agree” – *i.e.*, an agreement to negotiate and execute future agreements or documents needed to accomplish a previously stated contractual duty in good faith, including the future transfer of real property, does not make the underlying contract mandating such performance less binding or enforceable.
- DOF’s reference to an arguably irrelevant subpart of the Dissolution Act notwithstanding, the Dissolution Act contemplates the ability of both Original and Successor Agencies to transfer title to “assets” after the Dissolution Act’s effective date when appropriate to “perform”.

FINANCIAL IMPACT

The financial impact of these projects represents well over \$100 million dollars over the next 20 twenty years in Agency investment and in excess of \$10 million dollars of annual income to the city once these projects are constructed and in operation as well as increased tax revenue to various taxing entities and the state.

RECOMMENDATION

Staff recommends that The Oversight Board to The City of Garden Grove as Successor Agency to the Garden Grove Agency for Community Development:

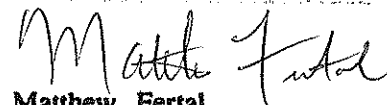
- Adopt the attached Resolution confirming the determination that the Disposition and Development Agreement with New Age Brookhurst, LLC (Brookhurst Triangle project), the Disposition and Development Agreement with Land and Design LLC (Site C project), the Disposition and Development Agreement with New Age Garden Grove, LLC (Site B2 project), and the Purchase and Sale Agreement/Promissory Note with Richard and Yon Kil (Property Acquisition for the Site C project) are enforceable obligations properly included on the recognized obligation payments schedule.



JIM DELLALONGA
Senior Project Manager

Attachment 1: Resolution – Oversight Board

Recommended for Approval



Matthew Fertal
Director

OVERSIGHT BOARD

RESOLUTION NO.

A RESOLUTION OF THE OVERSIGHT BOARD TO THE CITY OF GARDEN GROVE AS SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT CONFIRMING THE DETERMINATION THAT CERTAIN AGREEMENTS ARE ENFORCEABLE OBLIGATIONS PROPERLY INCLUDED ON THE RECOGNIZED OBLIGATION PAYMENTS SCHEDULE

WHEREAS, The City of Garden Grove as Successor Agency to the Garden Grove Agency for Community Development ("Successor Agency") is acting as Successor Agency to the Garden Grove Agency for Community Development ("Former Agency") pursuant to ABx1 26; and

WHEREAS, the Former Agency entered into an Assignment and Assumption of Disposition and Development Agreement (DDA) with Newage Garden Grove, LLC, dated as of June 30, 2006 (prior to the effective date of ABx1 26); and

WHEREAS, the Former Agency entered into a Purchase and Sale Agreement and Joint Escrow Instructions with Richard Kil and Yong Hui Kil, dated as of August 24, 2010 (prior to the effective date of ABx1 26); and

WHEREAS, the Former Agency entered into a Disposition and Development Agreement with New Age Brookhurst, LLC, dated as of November 24, 2010 (prior to the effective date of ABx1 26); and

WHEREAS, the Former Agency entered into a Disposition and Development Agreement with Land & Design, Inc., dated as of June 14, 2011 (prior to the effective date of ABx1 26); and

WHEREAS, the Former Agency and the Successor Agency included the aforementioned agreements ("Agreements") as enforceable obligations on the Enforceable Obligation Payment Schedules ("EOPS") and as current obligations in the Recognized Obligation Payment Schedule ("ROPS") for the period of January 1, 2012 to June 30, 2012 and for the period July 1, 2012 to December 31, 2012 (the "Applicable ROPS") prepared pursuant to ABx1 26; and

WHEREAS, the Oversight Board for the Successor Agency approved the Applicable ROPS; and

WHEREAS, the State of California Department of Finance ("DOF") objected to inclusion of the Agreements as enforceable obligations pursuant to the Applicable ROPS; and

WHEREAS, the DOF asserts that the Agreements are not enforceable obligations because (1) the DDA requires the Successor Agency to enter into future

agreements, including, among other things, to acquire and/or convey real property, (2) Health & Safety Code Section 34163 prohibited the Former Agency from entering into new agreements; and

WHEREAS, Health & Safety Code Section 34189, added by ABx1 26, provides that, “[c]ommencing on the effective date of ABx1 26, all provisions of the Community Redevelopment Law that depend on the allocation of tax increment to redevelopment agencies, including, but not limited to, Sections 33445, 33640, 33641, 33645, and subdivision (b) of Section 33670, shall be inoperative”; and

WHEREAS, Health & Safety Code Section 34173(b), added by ABx1 26, provides that, “[e]xcept for those provisions of the Community Redevelopment Law that are repealed, restricted, or revised pursuant to the act adding this part, *all authority, rights, powers, duties, and obligations previously vested with the former redevelopment agencies, under the Community Redevelopment Law, are hereby vested in the successor agencies*” (emphasis added); and

WHEREAS, Health & Safety Code Sections 34167(d)(5) and 34171(d)(1)(E), added by ABx1 26, define “enforceable obligation” to include “[a]ny legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy”; and

WHEREAS, Health & Safety Code Section 34177(c), added by ABx1 26, requires the Successor Agency to “[p]erform obligations required pursuant to any enforceable obligation”; and

WHEREAS, the Successor Agency has the authority to enter into agreements under the California Community Redevelopment Law and is required to perform obligations, including obligations that require the Successor Agency to enter into future agreements, as required by enforceable obligations such as the Agreements; and

WHEREAS, by Resolution No. _____ adopted on June 12, 2012, the Successor Agency re-affirmed that the Agreements are “enforceable obligations” within the meaning of Health & Safety Code Sections 34167(d)(5) and 34171(d)(1)(E) and re-affirmed its approval of the Applicable ROPS, including the Agreements as enforceable obligations of the Former Agency and the Successor Agency; and

WHEREAS, by this Resolution, the Oversight Board desires to re-affirm that the Agreements are “enforceable obligations” within the meaning of Health & Safety Code Sections 34167(d)(5) and 34171(d)(1)(E) and to re-affirm its approval of the Applicable ROPS, including the Agreements as enforceable obligations of the Former Agency and the Successor Agency.

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD TO THE CITY OF GARDEN GROVE AS SUCCESSOR AGENCY TO THE GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT:

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

Section 2. The Oversight Board hereby re-affirms that the Agreements are "enforceable obligations" within the meaning of Health & Safety Code Sections 34167(d)(5) and 34171(d)(1)(E) and re-affirms its approval of the Applicable ROPS.

Section 3. This Resolution shall be effective immediately upon adoption.

Section 4. The Secretary to the Oversight Board shall certify to the adoption of this Resolution.