

**OVERSIGHT BOARD TO THE SUCCESSOR AGENCY OF THE
REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 12-2014
Adopted November 12, 2014

AUTHORIZING (1) THE SUCCESSOR AGENCY TO TRANSFER THE NORTHERN SECTION OF THE GEORGE R. MOSCONE CONVENTION CENTER (PORTIONS OF APN NOS. 3723-115 AND 3734-091) TO THE CITY AND COUNTY OF SAN FRANCISCO (THE "CITY"), PURSUANT TO THE LEASE AGREEMENT BETWEEN THE FORMER SAN FRANCISCO REDEVELOPMENT AGENCY AND THE CITY, DATED MARCH 1, 1988, THAT LEASES PORTIONS OF YERBA BUENA CENTER TO THE CITY (THE "1988 PROJECT LEASE"), AN ENFORCEABLE OBLIGATION UNDER SECTION 34171(D)(1)(E) OF THE CALIFORNIA HEALTH AND SAFETY CODE, UPON PAYMENT OF THE OUTSTANDING BONDS AND DEFERRED RENTAL PAYMENTS AS REQUIRED BY THE 1988 PROJECT LEASE, AND (2) THE EXECUTIVE DIRECTOR TO EXECUTE ALL RELATED DOCUMENTS NECESSARY FOR THE TRANSFER; FORMER YERBA BUENA CENTER APPROVED REDEVELOPMENT PROJECT AREA D-1

BASIS FOR RESOLUTION

WHEREAS, The Successor Agency became the successor to the Redevelopment Agency of the City and County of San Francisco (the "SFRA"), a public body, corporate and politic, exercising its functions and powers, and organized and existing under the Community Redevelopment Law of the State of California (the "Successor Agency"), when the SFRA was dissolved on February 1, 2012, pursuant to California Assembly Bill 26 ("AB 26") and the California Supreme Court's decision, *California Redevelopment Association et al. v. Ana Matosantos* (2011) 53 Cal.4th 231; and

WHEREAS, In June 2012, the California State Legislature passed Assembly Bill 1484 ("AB 1484") further amending the Community Redevelopment Law (together with AB 26, and as amended from time to time, the "Redevelopment Dissolution Law"). Under AB 1484, the Successor Agency (now known as the Office of Community Investment and Infrastructure, or OCII) became a separate legal entity, separate from the City and County of San Francisco (the "City"). Under Redevelopment Dissolution Law, the Successor Agency assumed all of the SFRA's enforceable obligations, including ownership of the SFRA's real property. The Successor Agency is charged with winding-down the SFRA's enforceable obligations and disposing of all real property, subject to the oversight of the State Department of Finance ("DOF"), the lead implementing agency under Redevelopment Dissolution Law; and

WHEREAS, Under Redevelopment Dissolution Law, the Successor Agency owns all of that certain real property identified as a portion of Lot 115, Assessor's Block 3723 and

a portion of Lot 091, Assessor's Block 3734, located at 747 Howard Street, as more specifically described in the 1988 Project Lease (defined below) ("Moscone North"); and

WHEREAS, Moscone North is located within the boundaries of the former Yerba Buena Center Approved Redevelopment Project Area D-1 (the "YBC Project Area D-1") and was subject to the redevelopment plan for the YBC Project Area D-1, which was duly adopted in accordance with Community Redevelopment Law, and which expired by its own terms on January 1, 2011 (the "Redevelopment Plan"); and

WHEREAS, In 1988, the SFRA leased Moscone North to the City and issued lease revenue bonds to finance the construction and improvements associated with Moscone North (the "Bonds"). The Bonds were secured by a long-term ground lease dated March 1, 1988, as amended by (1) the First Amendment to the ground lease dated February 1, 1992 (the "First Amendment"), (2) the Second Amendment to the ground lease dated July 1, 2000 (the "Second Amendment"), and (3) the Third Amendment to the ground lease dated December 1, 2002 (the "Third Amendment," and together with the ground lease, the First Amendment and the Second Amendment, the "1988 Project Lease"); and

WHEREAS, Under the 1988 Project Lease, the SFRA (and now the Successor Agency) is required to transfer Moscone North to the City after the City has paid the Bonds in full and has paid all required deferred lease payments to the Successor Agency. The City paid the Bonds in full in August 2014. The City will make a lump-sum payment to the Successor Agency of \$3.48 million in November 2014, which represents all remaining required deferred lease payments due under the 1988 Project Lease. The City has until November 2018 to make these payments, but has chosen to pay the Successor Agency early in order to facilitate a major expansion of the Moscone Center later this year; and

WHEREAS, The \$3.48 million payment to the Successor Agency is restricted money that can only be used for the operation, maintenance and security of Yerba Buena Gardens, as more fully explained below. The SFRA originally acquired the land associated with Moscone North with urban renewal funds provided through a federal Contract for Loan and Capital Grant dated December 2, 1966 (Contract No. Calif. R-59) and approved by the U.S. Department of Housing and Urban Renewal ("HUD") (the "HUD Contract"). Under the HUD Contract, the SFRA was required to use the federal funds to carry out redevelopment activities in accordance with the Redevelopment Plan and the federal standards for urban renewal under Title I of the Housing Act of 1949; and

WHEREAS, Upon the demise of the federal urban renewal grant program, HUD required that the SFRA, and now the Successor Agency, treat all future proceeds from the sale or lease of the properties acquired with federal funds as program income under the federal Community Development Block Grant ("CDBG") program. The City's Mayor's Office of Housing and Community Development ("MOHCD")

administers the CDBG program for the City and is ultimately responsible for the timely and accurate tracking, reporting and administration of “CDBG Program Income,” as defined by Title 24 in the Code of Federal Regulations § 570.500; and

WHEREAS, In 1983, the SFRA and the City executed, with HUD concurrence, the Yerba Buena Center Redevelopment Project Closeout Agreement (“YBC Closeout Agreement”) whereby the SFRA agreed to retain certain property (including Moscone North) for disposition, subject to applicable federal law and subject further to restrictions on the use of any proceeds received from the sale or lease of properties subject to the YBC Closeout Agreement. Under the YBC Closeout Agreement, HUD required the SFRA to use income generated from leases within the project area for “necessary and/or appropriate economic development activities,” which included the “operation, maintenance, and security” of all the publicly owned spaces on Yerba Buena Gardens, including Moscone North. Therefore, the Successor Agency is allowed to continue to use CDBG Program Income generated in Yerba Buena Gardens for the operation, maintenance and security of Yerba Buena Gardens, in compliance with the YBC Closeout Agreement; and

WHEREAS, Furthermore, in 2014, HUD conducted a monitoring review of certain Successor Agency-owned properties acquired with federal funds and determined that federal obligations continue to apply to these properties. Upon completing its review, the Director of HUD’s Community Planning and Development Division issued a letter to the Director of MOHCD, dated September 26, 2014, summarizing HUD’s conclusions (the “HUD Letter”). [A copy of the HUD Letter is attached to this Resolution as Appendix A] The HUD Letter confirms that income generated from Project Area properties, which includes the Moscone North property, is considered restricted CDBG Program Income. The HUD Letter also confirms that the “operation, maintenance, and security of open space, plazas, walkways, landscaping, parks gardens, fountains...” of Yerba Buena Gardens is an allowable use of restricted CDBG Program Income; and

WHEREAS, Given the foregoing, the \$3.48 million payment to the Successor Agency is restricted revenue that is not available for redistribution to the taxing entities under Redevelopment Dissolution Law. The Successor Agency is required to use the \$3.48 million for the operation, maintenance and security of Yerba Buena Gardens and will deposit this money into a restricted account dedicated for this purpose; and

WHEREAS, In November 2013, OCII submitted its Long-Range Property Management Plan (“PMP”) to DOF for approval, as required by Redevelopment Dissolution Law. The PMP indicates that a transfer of Moscone North to the City, pursuant to an enforceable obligation (i.e., the 1988 Project Lease), is likely in 2014. The action contemplated by this Resolution, if adopted, will therefore be consistent with the PMP; and

WHEREAS, The Successor Agency has met and exceeded the 10-day public notice requirement of California Health and Safety Code §34181(f) for the Oversight Board's approval of the transfer of property by publishing notice of this Board's hearing on this proposed transfer of Moscone North in the San Francisco Chronicle on October 31, 2014, mailing the notice to property owners within 300 feet of 747 Howard Street and publishing the notice on OCII's website on October 29, 2014; and

WHEREAS, Authorization of the proposed transfer of Moscone North to the City is exempt from the California Environmental Quality Act ("CEQA") on the following grounds: (1) it can be seen with certainty that there is no possibility that the transfer may have a significant effect on the environment (CEQA Guidelines § 15061(b)(3)), (2) the transfer will result in a continuation of existing facilities involving no expansion of use, and any future development for the real property will require separate environmental review (CEQA Guidelines § 15301), and (3) transfer of ownership is a ministerial act required under Redevelopment Dissolution Law (CEQA Guidelines § 15268); and

WHEREAS, Because the Moscone North site was purchased with federal CDBG grant funds, the proposed transfer must also comply with the National Environmental Policy Act ("NEPA"). The City, through the Mayor's Office of Housing and Community Development, as a "Responsible Entity" under NEPA, has determined that the proposed transfer of Moscone North to the City is categorically excluded from further environmental review under NEPA because the land and buildings associated with Moscone North will be retained for the same use (Title 24 of the Code of Federal Regulations § 58.35(a)(5)). As such, the transfer, by its scope and nature, requires no mitigation or formal consultation in order to be in compliance with the related laws and regulations, and is therefore considered an exempt project under NEPA (Title 24 of the Code of Federal Regulations § 58.34(a)(12)); and

WHEREAS, The Successor Agency, given all of the foregoing, now seeks to transfer Moscone North to the City in compliance with the 1988 Project Lease, an enforceable obligation under Section 34171(d)(1)(E) of the California Health and Safety Code, and consistent with the PMP; now, therefore, be it

RESOLVED, That this Oversight Board authorizes the Successor Agency to transfer Moscone North to the City upon payment of the outstanding bonds and deferred rental payments as required by the 1988 Project Lease, and be it further

RESOLVED, That this Oversight Board authorizes the Executive Director to execute all related documents necessary for the transfer of Moscone North that are in substantially the forms of documents on file with the Interim Secretary of the Oversight Board; and be it further,

RESOLVED, That this Oversight Board authorizes the Successor Agency to take such actions as may be necessary or appropriate to effectuate the purpose and intent of this Resolution.

Appendix A: HUD Letter

I hereby certify that the forgoing resolution was adopted by the Oversight Board at its meeting of November 12, 2014.


Interim Oversight Board Secretary

Appendix A

HUD Letter



U.S. Department of Housing and Urban Development
San Francisco Regional Office - Region IX
600 Harrison Street
San Francisco, California 94107-1387
www.hud.gov
espanol.hud.gov

SEP 26 2014

Mr. Olson Lee
Director
Mayor's Office of Housing and Community Development
City and County of San Francisco
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

Dear Mr. Lee:

Subject: Results of Project-Specific Monitoring of HUD-assisted
San Francisco Redevelopment Agency (SFRDA) Projects
Subject to Compliance with Binding and Enforceable Obligations and Conditions
Under the Community Development Block Grant (CDBG) Program:
- Yerba Buena Center – Marriott, Metreon and Howard Street Projects
- Bayview Hunters Point – Food Co-op Project

As a follow-up to a recent OIG audit of the San Francisco HUD Regional Office and Los Angeles Field Office pertaining to the oversight of local Redevelopment Agency projects assisted with funding under HUD programs, our office conducted a project-specific monitoring review of the above four projects at the Mayor's Office of Housing and Community Development on August 7th and 8th, 2014. The review was completed by Rafael Cedillos, Sr. Community Planning and Development Representative. Also participating in the review was the Office of Community Investment & Infrastructure (OCII), the successor agency to the San Francisco Redevelopment Agency (SFRDA) following the State's legislative mandate requiring the dissolution of Redevelopment agencies in February 2012.

The purpose of HUD's visit was to review pertinent documents and information pertaining to the above four projects covered in the OIG's audit, which were administered by the former SFRDA and are currently administered by OCII. More specifically, we wanted to ensure that binding and enforceable obligations and conditions placed on these projects as a result of HUD funding—have been and/or are currently being adhered to in compliance with applicable Community Development Block Grant (CDBG) Program requirements.

Yerba Buena Center Projects

The Yerba Buena Center projects received \$79 Million in HUD Urban Renewal funding in 1967 directly from the Department for site acquisition purposes and the projects were completed successfully and eventually closed-out in 1983. The SFRDA retained ownership of all of the HUD-assisted acquired YBC properties until these were assumed by OCII, including the administration of all leasehold interests and generated program income.

We reviewed the HUD Urban Renewal Program Loan and Capital Grant Contract executed by HUD and SFRDA executed in December 1966 covering the Yerba Buena Center projects. In addition, we reviewed the project close-out and financial settlement Agreement executed in July 1983 by HUD and SFRDA, which allowed the proceeds received from the sale and/or lease of project property to be used for necessary and/or appropriate economic development activities in the project—defined by HUD as the operation, maintenance and security of open space, plazas, walkways, landscaping, parks, gardens, fountains, retail, hotel, office building, housing and related parking integrated with the development and Moscone Convention Center, ARE (amusement, recreation and entertainment) and cultural facilities, as applicable within each of the three segments comprising the YBC Redevelopment Project Area.

Project close-out letters from HUD Region IX Area Manager, Henry Dishroom, to Wilbur Hamilton, SFRDA Executive Director, and Mayor Dianne Feinstein, further stated that the sale or lease of project land must be treated as program income under the CDBG program and accounted for accordingly. According to MOHCD, in their discussion with the OIG in September 2013, the OIG's review of public records confirmed the SFRDA as the owner of record of the YBC project properties. These SFRDA assets have now been assumed by OCII, with the exception of APN3734/091-Moscone Convention Center South, which was transferred to the City of San Francisco in 2011.

Therefore, we focused on the review of documentation which would show the tracking of the receipt and expenditure of revenue generated by YBC project property leases, i.e., enforceable obligations. COII staff provided us with SFRDA annual general ledger reports documenting leasing income generated by YBC properties, including underground facilities, from 1992 (when leasing income was first generated) through 2013, as well as expenditures for the operation, maintenance and security of such items permitted by HUD under the Urban Renewal close-out Agreement.

We determined that the SFRDA and OCII were properly collecting, tracking and expending YBC program income generated from leasing enforceable obligations and in compliance with CDBG program income accountability requirements. Furthermore, MOHCD required program income information to be provided by OCII and formerly by SFRDA, in order to include it in the City's Annual Action Plan and annual reporting documents submitted to HUD.

Bayview Hunter's Point Food Co-op Project

The Bayview Hunter's Point Food Co-op project received \$4 Million of CDBG program income funding administered by the SFRDA in 1990, which was utilized for site acquisition by the SFRDA. Ownership of the BHPFC project site and the oversight of the lease and generated program income remained under the SFRDA since 1990, but have been assumed by OCII.

A memorandum from Edward Helfeld, SFRDA Executive Director, to the Mayor's Hunters Point Economic Development Planning Taskforce, acknowledged that \$4M in CDBG funds were approved for the BHP Food Co-op by the Mayor and Board of Supervisors in the

agency's 1990/1991 budget and on September 1990, the Redevelopment Commission approved acquisition of the site for this project.

A Memorandum of Agreement executed on January 1, 1992, between the SFRDA and MOCD officially gave the responsibility to the SFRDA for administering SFRDA generated CDBG program income. Prior to this MOA, the SFRDA as a CDBG sub-recipient, determined which projects to fund with CDBG program income, but subject to the approval from the Mayor and Board of Supervisors.

SFRDA records pertaining to the BHP Food Co-op are approximately 25 years old and have been stored in microfiche by the City. OCII researched existing records, but an agreement executed between the SFRDA and the BHP Food Co-op owner was not available. However, it's not certain that such an agreement did not exist. Given that HUD-CPD senior staff did review the BHP Food Co-op project as part of its multi-program monitoring from mid-August to mid-October 1992 (although with an emphasis on the environmental review process), the non-availability of such an agreement would likely have been flagged by HUD-CPD at the time. It's pertinent to note that HUD-CPD concluded at the time that the SFRDA's financial systems and controls were adequate to ensure accountability for continuing Urban Renewal activities and activities funded with program income that continued to be generated from Urban Renewal and CDBG funded projects. No weaknesses or deficiencies were found in accounting for program income.

OCII staff provided us with copies of SFRDA financial records, specifically, annual general ledger reports from 1990 through 2013 reflecting program income generated from the BHP Food Co-op lease of SFRDA land acquired with CDBG funds, as well as general ledger reports for two sample years, i.e., 1996 and 2008, showing expenses of CDBG program income for CDBG eligible activities. We determined that the SFRDA and OCII were properly collecting, tracking and expending BHP Food Co-op CDBG program income generated from the leasing enforceable obligation and in compliance with CDBG program income requirements.

At the monitoring exit conference held with you, members of your staff and OCII staff on August 8, 2014 at MOHCD offices—we stated that no Findings or Concerns were determined as a result of our review of the subject SFRDA projects assisted with HUD program funds. We concluded that the SFRDA retained ownership (and eventually OCII in its role as "Successor Agency") of the Yerba Buena Center properties (excluding Moscone Convention Center South) and the Bayview Hunter's Point Food Co-op property; the SFRDA and OCII have carried out leasing enforceable obligations pertaining to each of the properties to-date; and have collected, tracked and expended CDBG program income in compliance with CDBG program requirements.

Furthermore, OCII is in the process of preparing a long-range property management plan to be submitted to the State Department of Finance in November. The management plan will include any properties which are bound by enforceable obligations and should therefore be exempt from the State's disposition actions. These will include the YBC and BHPC properties which are required to comply with CDBG program income requirements.

We offered the following recommendations which were agreed to by MOHCD and OCII:

Recommendation No. 1:

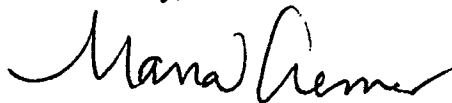
- Execute an updated Memorandum of Agreement which covers the roles of responsibility of MOHCD and OCII pertaining to the administration and disposition of any and all CDBG program income generated from non-housing CDBG-assisted projects originally administered by the SFRDA (and now under OCII's oversight), including program income generated from the YBC HUD Urban Renewal projects. A listing of all such SFRDA/OCII projects which generate CDBG program income should be referenced in the MOA. A draft of the MOA has since been prepared by MOHCD and OCII and is acceptable to HUD. The MOA will need to be reviewed by the legal teams from MOHCD and OCII, before being submitted to the OCII Commission for final approval, as well as the Oversight Board.

Recommendation No. 2:

- A certification from MOHCD confirming its evaluation (based on historical records available and reasonable assumptions) that the BHP Food Co-op initially met CDBG eligibility and National Objective requirements and has continued to meet such requirements beyond the period to which the CDBG regulations' "reversion of assets" standard applies, i.e., five years after the end of the contract between SFRDA and the project owner (i.e., project completion and meeting of economic development low/mod job creation goals). The certification has been prepared by MOHCD and is acceptable to HUD.

Thank you and respective staff members from MOHCD and OCII for your cooperation and assistance during this project monitoring review. If you have any questions, please contact me at (415) 489-6572 or maria.f.cremer@hud.gov, or Rafael Cedillos, at (415) 489-6585, or rafael.a.cedillos@hud.gov.

Sincerely,



Maria Cremer
Director, Community Planning
and Development Division

cc: Benjamin McCloskey, Chief Financial Officer, MOHCD
Brian Cheu, Director of Community Development, MOHCD
Gloria Woo, Director of Compliance and Data Analysis, MOHCD
Tiffany Bohee, Executive Director, OCII
Tracie Reynolds, Development Services Manager, OCII
Denise Zermani, Senior Development Specialist, OCII
Rosa Torres, Accounting Supervisor