MINUTES OF A REGULAR MEETING OF THE
COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE
OF THE CITY AND COUNTY OF SAN FRANCISCO HELD ON THE
18TH DAY OF JUNE 2013

The members of the Commission on Community Investment and Infrastructure of the City and County of San Francisco met in a regular meeting at City Hall, 1 Dr. Carlton B. Goodlett Place, Room 416, in the City of San Francisco, California, at 1:00 p.m. on the 18th day of June 2013, at the place and date duly established for holding of such a meeting.

REGULAR MEETING AGENDA

1. Recognition of a Quorum

Meeting was called to order at 1:06 p.m. Roll call was taken.

Commissioner Ellington – present
Commissioner Mondejar - present
Vice-Chair Rosales – present
Commissioner Singh – present
Chair Johnson - present

2. Announcements

A. The next regularly scheduled Commission meeting will be held on Tuesday, July 2, 2013 at 1:00 pm (City Hall, Room 416).

B. Announcement of Prohibition of Sound Producing Electronic Devices during the Meeting

Please be advised that the ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing of or use of a cell phone, pager, or other similar sound-producing electronic device.

C. Announcement of Time Allotment for Public Comments

3. Report on actions taken at previous Closed Session meeting, if any – None.


ITEM 4 (a) IS MATTER OF UNFINISHED BUSINESS CONTINUED FROM THE JUNE 4, 2013 COMMISSION MEETING

a) Update on Low & Moderate Income Housing Fund Due Diligence Review (LMIHF DDR), All Other Funds Due Diligence Review (AOF DDR), the Recognized Obligation Payment Schedule for July to December 2013 (ROPS 13-14A), and the Finding of Completion. (Discussion)
Chair Johnson thanked staff for the update. Ms. Johnson stated that the long-range property management plans are the biggest question mark for the Commission concerning their completed assets as far as what will be on the books and what will not and what the negative impacts will be to having certain funds disallowed. Ms. Johnson inquired about the process of going through the Oversight Board to approve bond issuance. She stated that generally speaking the Oversight Board is looking for what would be in the best interest of the taxing entity but inquired as to whether there would be any roadblocks by going through the Oversight Board that might not otherwise be there.

Ms. Oerth responded that they will need to make sure they have all the documentation because now the Department of Finance wants to see everything at once and they must be prepared in advance with answers regarding why they are sizing the bonds in a certain way, what the costs are for, etc. Ms. Oerth added that they already have a good sense of the level of detail that the Department of Finance is looking for and will work to have all that done in advance so that it will either all be part of the package or they will be ready to hand it over. Ms. Oerth reminded the Commission that this was the first time issuing these kinds of bonds which makes it difficult to predict what might happen.

Executive Director Bohee responded that anything that involves tax increment, either on ROPS, the retention of balances, or money that flows through this new property tax trust fund, will create a great deal of scrutiny at all levels. However, she added the scrutiny becomes easier if there is a final and conclusive determination because the state will have done its thorough vetting of the underlying obligations or statutes that would justify the call for continuing activities or use of tax increment. Ms. Bohee stated that they have already filed for the Mission Bay final and conclusive but there were so many things that the Department of Finance was looking at over the last nine months that it was difficult for them to get to it. Ms. Bohee stated that they issued one for Hunters Point in December and one for Transbay in April, and now it is time for them to issue their determination on Mission Bay, which they hope to receive by summer. When the bond issuance comes the Department of Finance, hopefully they will have already vetted the Pledge Agreement and OPA and only be looking at sizing and requirements details.

Commissioner Mondejar asked for an explanation as to why the Bayview Opera House was disallowed in ROPS 13-14A.

Ms. Oerth responded that dissolution law invalidated contracts between successor agencies and the sponsoring city. She explained that they tried to make the argument that a portion of the MTA contract was being used as a match for federal grants, but the Department of Finance did not agree and invalidated it because it was a city agency contract. Ms. Oerth stated that because OCII used bond proceeds to fund that contract, the Department of Finance indicated that even though invalidated, OCII could just redo it once the Finding of Completion was received, so OCII could start over with a new contract with the same bond proceeds. She added that a new letter agreement with the MTA for improvements outside the Bayview Opera House would be brought before the Commission, which would then be submitted to the Oversight Board and the Department of Finance and presumably they would approve it.

Commissioner Ellington inquired as to what specifically the Department of Finance is looking for in the long-range property management plan.
Ms. Oerth responded that "property management plan" was probably not the right name for this because it really is a disposition plan which includes the details of what the successor agency currently owns and how it will get to owning nothing when fully wound down. She stated that the Department of Finance is looking at some properties the Commission is holding to fulfill enforceable obligations, at some properties that may need to be transferred for governmental purpose and then at other properties that need to be disposed of. Ms. Oerth explained that there are different categories within the plan that looks at each of those factors and they are trying to figure out what they need to do. She added that they hope to be able to start the workshops in October so they are not running up against the November 29 deadline.

Executive Director Bohee added that state dissolution law has certain criteria for the property management plan, which is basically a laundry list of required items, such as the date of acquisition, estimated value, remediation issues, etc. She explained that the Department of Finance provides an excel spreadsheet form for successor agencies to use but they do not have to use that form as long as they fulfill the terms of what is in the dissolution law, which is basically a three-step process: approval of the property management plan, consideration by the Commission & the Oversight Board and then transfer, when dispositions are ready, either to another governmental agency, to the City pursuant to some community development plan or retain for future disposition, etc. Then the Department of Finance will check the property management plan to see if OCII has followed the plan and if not, they will want to know why. Ms. Bohee added that another thing that Department of Finance checks for is that the proceeds, unless restricted, are distributed to taxing entities, which is why they want to know the estimated value of the property and whether an appraisal has been done, as an appraisal would help justify the sale price.

5. Matters of New Business:

CONSENT AGENDA

a) Approval of Minutes: Regular Meeting of May 21, 2013

PUBLIC COMMENT – None.

Commissioner Singh inquired as to whether the meetings are taped and stated that he would like to have the tapes available to compare the minutes with what was said in the meetings. Mr. Singh also stated that he would like to receive the agenda at least 10 days before the meeting so Commissioners do not have to spend the weekend before the meeting reviewing the agenda and documentation therein.

Chair Johnson responded that the audio is available within 24 hours of the meeting and that the tapes could be made available to him.

Vice Chair Ellington motioned to move Item 5(a) and Commissioner Singh seconded that motion.

Secretary Jones called for a voice vote on Item 5(a).

Commissioner Ellington – yes
Commissioner Mondejar - yes
Commissioner Singh – yes
Vice Chair Rosales – yes
Chair Johnson – yes
ADOPTION: IT WAS VOTED BY 5 COMMISSIONERS AND UNANIMOUSLY CARRIED THAT APPROVAL OF MINUTES FOR THE REGULAR MEETING OF MAY 21, 2013, BE ADOPTED.

REGULAR AGENDA

b) Authorizing the Office of Community Investment and Infrastructure to become a member of the Employment Risk Management Authority and a member of the Bay Cities Joint Powers Insurance Authority and authorizing the Executive Director to Execute Joint Powers Agreements with each authority to obtain insurance coverage for the Office of Community Investment and Infrastructure. (Discussion and Action) (Resolution No. 29-2013)

Presenters: Tiffany Bohee, Executive Director; Leo Levenson, Deputy Director - Finance and Administration

PUBLIC COMMENT — None.

Commissioner Singh inquired as to the cost of the insurance coverage and about whether this covers unemployment benefits as well. He then inquired as to whether they needed the approval of the Board of Supervisors to obtain this insurance.

Mr. Levenson responded that they had received a preliminary quote of $93,907 for liability coverage, $26,882 for employment practices coverage, and $187,000 for property coverage, which he believed will change because they asked the Commission to update the valuations on their property list, which will change the dollar amount. Mr. Levenson responded that this liability insurance covers several types of liability, such as when employees are injured on properties that the Commission owns. He explained that the employment practices liability insurance is separate and would cover claims filed against the Commission over a workplace-related grievance that is validated and approved. Mr. Levenson stated that there are also certain applicable deductibles. He pointed out that Worker’s Compensation coverage is not a part of this insurance, because this pool includes cities and counties that have more expensive Worker’s Compensation because they have police and firefighters. He added that they have a separate Worker’s Compensation policy with another company. Mr. Levenson clarified that the Board of the Bay Cities Joint Powers Insurance Authority has to approve the admittance of any new member but has not yet approved the OCII entry. Mr. Levenson added that the San Francisco Redevelopment Agency was a founding member of this entity, but that coverage did not extend to the Commission.

Mr. Levenson requested a minor amendment in the Whereas clause on the second page to change the June 17 date for the Board meeting to June 6. To continue, Mr. Levenson stated that on June 6, he had attended a Bay Cities Board meeting, hoping to get approval for re-entry at that time. However, the Board asked for additional terms for Commission re-entry and Mr. Levenson stated that he had received a draft of those terms but had not had time to add it to this agenda. In summary, Mr. Levenson stated that the Board of Bay Cities was asking for an additional $44,000 for their rate stabilization funds as well as repayment for time staff spent on negotiations of about $18,000. Mr. Levenson added that there may be some additional negotiations, which is why this Resolution would allow the Executive Director to negotiate the final terms, subject to it being within budget for next year. Mr. Levenson felt strongly that it would be advantageous for the OCII to be part of this risk pool because overall it will be less expensive when compared to the cost of getting liability insurance through the City.
Chair Johnson responded to Commissioner Singh’s question that approval by the Board of Supervisors was not necessary, because the Commission is a separate legal entity.

Executive Director Bohee explained that the former Redevelopment Agency was a founding member of this risk pool but the City and County of San Francisco was not a member of this risk pool because the City self-insures. Therefore, from February to June during the period of AB26, the new Commission was not covered by these risk pools. Ms. Bohee added that now there is an opportunity to rejoin for these favorable rates. The former Agency had over 112 FTE’s and Ms. Bohee stated that perhaps this issue was something that was in the forefront of the former director’s activities.

Commissioner Singh suggested that they continue this item until the exact amounts and coverages are clarified before they approve this item.

Mr. Levenson responded that even though the premium amounts are estimated and not final, and even though property values are in the process of being adjusted, he believed the amounts would be within the ranges listed in the report. Mr. Levenson stated that if they were to continue the item, they would not have liability insurance in place and if something were to happen, they would be completely uninsured. He added that the Board is calling a special meeting on June 27 on the Commission re-entry and stressed that it would be difficult to explain to them the Commission’s concern if this item were continued past the date of that meeting.

Commissioner Mondejar asked Mr. Levenson to confirm that they currently do not have liability insurance and asked since when.

Mr. Levenson confirmed and responded that they have not had liability insurance since February 2012. He added that if the Commission were to have a claim filed against it for the period of February through June 30, there is some question as to whether the City would need to step in and cover for them since they thought they were part of the City. For the period after July 1, 2012, it would be a legal issue as to whether the City had any responsibility but the Commission had no liability coverage of their own. Mr. Levenson stated that this has been a matter of great concern to him since he started with the Commission but it has not been concluded. One of the reasons Mr. Levenson wanted to join this particular pool was that he did not feel discussions with the City would not be concluded in a timely and beneficial way. Mr. Levenson stressed that this was also an issue of service and this risk pool has a very high quality claims servicing. He stated that the risk management of this pool will review OCII contracts to make sure they have appropriate insurance language in them, they will review their personnel policies, they have been audited with high marks from auditing bodies as well as underscoring their history with this risk pool and their efforts to facilitate the Commission’s re-entry. Mr. Levenson strongly recommended going forward with this to ensure having coverage in place as of July 1.

Chair Johnson clarified that the special meeting on June 27 would be to approve the Commission’s re-entry. Ms. Johnson inquired as to what the timeline was for subsequent actions to actually define what liability insurance the Commission will be getting and what actual premiums the Commission will be paying.

Mr. Levenson responded that the Bay Cities Insurance Authority would be providing the Commission with a final premium amount any time between this date and June 30. He added that the property insurance will change but the liability amount will most likely not change. Mr. Levenson said that they currently have the ballpark amount and they will know precisely by June
30. He added that they have a rate that a member gets as part of the pool and that pool rate cannot be negotiated except for the deductible choice.

Chair Johnson stated that she does not want to continue with item if they will not be learning anything additional within the next two weeks that would impact this decision. Ms. Johnson stressed that they should try to negotiate around the $18,000 staff time and stated, furthermore, that even if the Executive Director is empowered to negotiate with ERMA and with Bay Cities through this Resolution, Ms. Johnson stated she thought it would also be beneficial for Commissioners to have the actual insurance documents to review.

Commissioner Singh noted that several cities in the Bay Area were listed as members of Bay Cities and inquired why the Commission had to get their own separate coverage and why the Commission could not be part of the City of San Francisco insurance coverage.

Mr. Levenson responded that the OCII is a separate agency and not part of the City of San Francisco.

Commissioner Singh stated that everything has to be approved by the City and inquired about the Board of Supervisors and health insurance.

Chair Johnson explained to Commissioner Singh that the Commission was reintegrated into the City because the Agency was dissolved and all of the responsibilities went back to the City. So now some of the separate links that they used to have must be re-established and that is not a Board of Supervisors question. Ms. Johnson explained that the City has the responsibility to make sure that redevelopment activities in approved redevelopment areas get done. They have delegated that responsibility to the OCII which is a separate legal entity which actually does the work. She added that as part of the creation of this Commission to run this legal entity, the City has stipulated that the Commission can’t be paid and they can’t get health insurance or other insurance not covered by the Board of Supervisors.

Vice Chair Rosales added clarification that even though the City was self-insured, there were other entities, like the Airport Commission, an enterprise that has a similar role as the CCII in that it is self-sustaining and using its own funds, that did purchase their own insurance.

Mr. Levenson added that in most cases, obtaining insurance would not be something a Commission would have to deal with, but rather would be part of the normal administrative functions of the staff managing the department, much of which would be through the City’s Risk Management Office. He explained that the City is self-insured for some pieces but does purchase insurance as well for other pieces so it is not entirely self-insured and is a very complex mix of risk management. He added that the only reason this has come before the Commission is because they are asking to join a pool and that pool requires that the governing body of the Commission make the request to join.

General Counsel Bryan clarified that for the delegation of authority, Commissioner Singh would be correct that the Board of Supervisors by law is the governing body. However the Board of Supervisors as the successor agency has delegated the authority in terms of these types of agreements to the OCII and that is why the Commission does not have to go to the Board of Supervisors for these two agreements.
Commissioner Mondejar motioned to move Item 5(b) with the request to staff that the documentation with costs and coverages be submitted to the Commission. Vice Chair Rosales seconded that motion.

Secretary Jones called for a voice vote on Item 5(b).

Commissioner Ellington — yes
Commissioner Mondejar — yes
Commissioner Singh — no
Vice Chair Rosales — yes
Chair Johnson — yes

ADOPTION: IT WAS VOTED BY 4 COMMISSIONERS WITH ONE ABSTENTION THAT RESOLUTION NO. 29-2013, AUTHORIZING THE OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE TO BECOME A MEMBER OF THE EMPLOYMENT RISK MANAGEMENT AUTHORITY AND A MEMBER OF THE BAY CITIES JOINT POWERS INSURANCE AUTHORITY AND AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE JOINT POWERS AGREEMENTS WITH EACH AUTHORITY TO OBTAIN INSURANCE COVERAGE FOR THE OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE, BE ADOPTED.

c) Conditionally authorizing a Predevelopment Loan Agreement with Mission Bay Block 7 Housing Partners, LP, a California limited partnership (consisting of The Related Companies of California, LLC, a California limited liability company, and Chinatown Community Development Center, a California nonprofit public benefit corporation), in an initial amount not to exceed $2,000,000, for predevelopment work associated with the development of 200 affordable rental housing units at Mission Bay South, Block 7 West, subject to the California Department of Finance’s approval or non-objection to the Fourth Amendment to the Mission Bay South Owner Participation Agreement, and adopting environmental findings pursuant to the California Environmental Quality Act; Mission Bay South Redevelopment Project Area. (Discussion and Action) (Resolution No. 30-2013)

Presenters: Tiffany Bohee, Executive Director; Pamela Sims, Project Manager, Mayor’s Office of Housing and Community Development; Lydia Tan, Exec. VP, Related California; Sally Oerth, Deputy Director

PUBLIC COMMENT

Speakers: Rev. Norman Fong; Lydia Tan, Executive Vice President, Related California

Rev. Fong expressed his support for this project. He explained that he was evicted from Chinatown in the 70's as a child and became a minister because his church joined forces with the San Francisco Redevelopment Agency (SFRA) to create the first redevelopment housing project in Chinatown in 1982. Rev. Fong stated that he has carried on the mission of fighting for the poor and getting affordable housing in Chinatown to this day and is very proud to be a product of that work. Rev. Fong also stated that he was there today to support Related California because they had worked on another Mission Bay project with that organization, which resulted in 236 affordable housing units at Press and Cove.
Ms. Tan expressed her support for this project. She stated that they had made a proposal back in 2011 and at that time there was some momentum and excitement going on between Family House, UCSF, Related and their partner CCDC and then dissolution happened. Ms. Tan explained that now they are trying to relearn how to redevelop under a new paradigm but are very grateful that the Commission supported the Family House project. She added that this is the second part of the project; they have gotten approval from the CAC of the design proposal which the Commission will see soon and then have to work on due diligence in terms of their geotechnical and other work.

Commissioner Singh recommended this development company, stating that he has known them for a long time, they work all over the City and do very good work.

Commissioner Ellington noted that the citywide affordable housing loan committee report was prepared in 2011 and yet it seemed to already account for the Family House land transfer and inquired as to how that could be possible. Mr. Ellington also inquired about one of the Whereas clauses in the Resolution that says that the Mayor's Office of Housing and Community Development (MOH) will oversee the loan and other references to oversight by the Mayor's Office and inquired as to where the Commission fits into that hierarchy since the Commission is issuing the loan. Commissioner Ellington stated that the way he reads this resolution, they are handing this project over to the MOH and wanted clarification on this.

Ms. Sims responded that the idea of Family House developing on one portion and Related California developing on another portion has been considered since late 2010 and that is why there was a brief summary about Family House and about that transaction in the loan evaluation in 2011.

Executive Director Bohee responded that a Memorandum of Understanding (MOU) is being contemplated between the Commission and the MOH to implement the affordable housing work program. She explained that certain projects were already in process that must move forward prior to the MOU being executed, which will not happen until July. Ms. Bohee added that the Commission has the oversight and review authority; however, they will partner with other city departments for services that the Commission needs in order to augment work. She reminded Commissioners that because of dissolution, OCII cannot retain assets, so the Board of Supervisors already designated the MOH as the Successor Housing Agency, meaning MOH will be the owner of completed housing assets and those actions were taken back in January 2012. Ms. Bohee explained that through due diligence review processes where the state rejected the full transfer of funds to the MOH, it is through the property tax trust fund, because of these continuing obligations and contracts in place, that ultimately the property will still transfer to the MOH once complete.

Chair Johnson added that since they are limited in resources, that particular WHEREAS clause signifies that the Commission is, during the construction phase while the asset is actually being created, engaging the MOH to actually to do the day-to-day work on managing the predevelopment loan, managing the permanent financing, managing the actual construction, monitoring contracts, etc. However, Ms. Johnson explained, the schematic design review and the policy issues related to building affordable housing on that lot still reside with the Commission until the asset is finished and then permanently transfers to the MOH. She explained that the first part is more of a delegation of the day-to-day responsibility but the Commission is still responsible for the policy objectives taking place. For example, even though the Commission is giving the MOH the ability to monitor contracts, construction monitoring, design review and making sure things happen, if the Commission does not like the criteria they use for who gets that affordable housing, such as Certificate of Preference or people who work at UCSF, the Commission has the...
right to be a part of how that affordable housing is constructed and operated. However, once completed, it goes the MOH.

Executive Director Bohee suggested adding to the end of the very first sentence of the WHEREAS clause, “in consultation with OCII”.

Commissioner Ellington inquired about how they intend to secure the other $1.6 million that is not accounted for in the $2 million that the Commission is considering herein. Mr. Ellington also inquired about whether the performance schedule was still correct considering the dissolution of the Agency.

Ms. Sims responded that for the next six months the developer will proceed with redevelopment activities. She stated that the timing is very tight because they plan on submitting for tax credits in February and the funding has to all be in place by January. Ms. Sims explained that the Commission will revisit this project in January for gap financing, at which time staff may recommend that a portion of that gap financing be used for additional predevelopment funding that the developer may need between January and the start of construction in July. Then staff would come to the Commission for final approval if the developer found it necessary. With regard to the performance schedule, Ms. Sims responded that it was not correct, but that an updated schedule was available.

Vice Chair Rosales inquired about how liquidated damages are calculated. She stated that it seemed to her from reading all the material that they have struck deals that include an affordable housing obligation at a much heavier rate from a money standpoint on the shoulders of the developer. But then at the same time, UCSF has been given an easy out on the liquidated damages clause. Ms. Rosales stated that $7 million or $4 million seems a very small damages award to the Commission in light of the bargain that the Commission struck, which is much higher than that. Ms. Rosales inquired as to whether this was negotiated, based on law, past practice, or something else.

Executive Director Bohee responded that the liquidated damages provision that UCSF agreed to pay in 2005 and 2010 was a negotiated number. At that time, the policymakers looked at the property tax that the Agency would not be getting as a result of UCSF building its hospital, UCSF paid for the land, which the Agency used for other development in Mission Bay South, but since they UCSF can only build medical facilities, they decided to pay the liquidated damages payment instead of affordable housing. Ms. Bohee explained that even though this does cost the Commission funds that they otherwise would not have paid under that arrangement with UCSF, they cannot go back and renegotiate with UCSF. She added that this proposal is trying to make the best of what they have at this point to minimize the impact on the Commission.

Vice Chair Rosales pointed out that as early as 2010 there was already conversations with Family House, Related and CCDC about this deal. Ms. Rosales read the Executive Summary that says, “On November 1, 2005 and March 2, 2010, UCSF entered into a DDA with the SFRA, etc.” Ms. Rosales pointed out that shortly after one of those DDAs was entered into, there was already some thought by UCSF that they would not comply with their affordable housing obligation.

Executive Director Bohee agreed and responded that most of the parties who struck that deal, however, are no longer available.

Ms. Sims responded that in spring of 2011 when UCSF talked to several affordable housing developers about taking on the requirements of the 7E 2005 agreement, they realized they were not
going to be able to take that on. Eventually they decided to combine both the 2005 and the 2010 requirements to relieve UCSF of their requirements and bring forward the 2010 housing and get those units built in a way that would have minimal impact on the Agency. Ms. Sims added that this would also provide a home for Family House, who had been looking for a home near the hospital. She explained that this all came together in spring 2011 as a way to solve many of the issues still outstanding and deemed to be a good solution by Agency staff, because in addition to the housing coming online earlier than planned, it was also more affordable.

Vice Chair Rosales continued to inquire if the conversations that were taking place and were vetted in June 2011, given how the loan committee acted, and it was assumed then that the SFRA would have approved the loan in that timeframe, whether there was reliance on that action for moving forward with some of the expenditures that the Commission is now being asked to retroactively approve. Ms. Rosales asked if this was correct even though there was a risk that the SFRA might not approve it later.

Ms. Sims responded in the affirmative. She explained that the parties still in place after the loan committee approval believed that this project would be approved by the Commission. She added that, more importantly, it was deemed necessary that the developer stay on track so they could take advantage of lower interest rates and the competitive construction bidding. Ms. Sims explained that the market had dipped at about that time and there wasn’t a lot of construction taking place, so everybody involved knew that it would be much competitively priced if they did that sooner rather than later.

Executive Director Bohee added that there was a complete suspension of all activities and the Agency could not enter into new contracts from June on. She explained that there is a loan evaluation showing that it went to the Loan Underwriting Committee in June 2011. Ms. Bohee pointed out that everyone believed the Agency would be able to pay their way back into business, an event which did not happen. During that year and a half lag, there came a point where the development partnership stopped spending its own money because it was deemed unwise to continue spending in that time of uncertainty.

Vice Chair Rosales stated that she was trying to figure out the timeline between loan approval and Commission action and what happened in between.

Chair Johnson stated that she was aware that certain practices had become common related to affordable housing development. Ms. Johnson stated that one of her concerns is that site control is not given over until the DDA is amended, which will not happen until after the potential approval of a predevelopment loan and inquired as to how that makes sense and what the risks involved are.

Ms. Sims responded that it is very typical in the affordable housing world for predevelopment activities to be completed on an unsecured site. Nevertheless, she explained that the collateral is the work product generated by the architect, so predevelopment is the riskiest portion of the development process.

Chair Johnson inquired if the DDA has issues with approval for whatever reason, the housing partners LLP falls apart, and the work product already completed under the predevelopment reverts back to the Agency, whether it then becomes the Commission’s responsibility to find somebody else to complete the affordable housing. Ms. Johnson asked for confirmation that, if that were to happen, it would only be on 7W because they have already approved Family House or a similar usage as the land disposition on 7E.
Ms. Sims responded in the affirmative to both statements.

Despite knowing that it is common practice to have predevelopment costs on an unsecured site, Chair Johnson stated that she would prefer the amended DDA to be complete before they start talking about reimbursing predevelopment costs and permanent financing. She stated the reason for this is because there has been so much shifting around of responsibilities in terms of affordable housing. Ms. Johnson requested clarification regarding the predevelopment/permanent financing and inquired about the repayment stream for the permanent loan.

Ms. Sims responded that the repayment stream would be in two pieces: there will be a ground lease and a base rent and residual rent from the ground lease. In addition to that, there will be any cash flow received from the development after the operating expenses have been paid. Ms. Sims explained that any debt service that has been paid will be split 2/3 to the City and 1/3 to the developer and that 2/3 amount will go to pay down the loan.

Chair Johnson indicated that there is residential and commercial on 7W and inquired whether the rents from the ground and operating lease from commercial and residential will go towards paying obligations of loans or obligations of debt service.

Ms. Sims responded that it will go for both - the ground lease payment and paying down of the debt.

Chair Johnson clarified that whatever is left after that is split 2/3 between the City and 1/3 to the developer.

Ms. Sims explained that rent payments are paid on the ground lease and then the operating expenses for the residential piece are all paid, debt service is paid and after that, it is cash flow. The cash flow is split 2/3 – 1/3.

Chair Johnson concurred with that explanation. She clarified that the ground lease payments and all of the repayment stream come from the rents paid by tenants, either commercial or residential.

Ms. Sims responded in the affirmative.

Chair Johnson stated that it was her understanding that there are low income housing tax credits that will also be used to finance the property and there will be some type of tax credit application to the money that is coming into the project.

Ms. Sims responded in the affirmative and explained that because all funding has to be in place before the tax credit application can be submitted to make it competitive, staff will come back in January prior to the submission of the tax credit application to receive the gap financing approval by the Commission.

Chair Johnson echoed Commissioner Ellington’s request to have an updated performance schedule. She stated that her understanding was that they just tacked on the loan package that was submitted in 2011 but that it needs to be updated because the AMI tables would have changed. Ms. Johnson stated that she would like to receive those updates sometime before the DDA itself is considered by the Commission. Ms. Johnson asked for clarification on what is the CTCAC.

Ms. Sims responded that CTCAC stands for California Tax Credit Allocation Committee.
In terms of occupancy preferences, Ms. Johnson pointed out that preferences for priority for the affordable housing read as if UCSF has paid liquidated damages but yet they still want affordable housing for UCSF employees. Ms. Johnson stated that priority one is people with Certificates of Preferences and noted that this program has its own set of issues with tracking people down, getting them on the roles and so this may or may not be a limited amount of people. The second priority reads “applicant is an employee of a public higher education institution in San Francisco (UCSF-Ms. Johnson’s addition), applicant is an employee of a health care institution in San Francisco (UCSF Medical Center – Ms. Johnson’s addition), and applicant currently lives and works in San Francisco”. Ms. Johnson pointed out that this is part of a loan application that has already been approved and inquired as to what is the possibility of changing those priorities. She explained that if UCSF cannot proceed with the affordable housing, then they should not have the right to specify priorities.

Ms. Sims responded that in the same evaluation it was stated that those preferences would be reconsidered, re-evaluated and be in compliance with fair housing law. Ms. Sims explained that at the time a big part of the discussion was having a preference for a specific entity in compliance with fair housing law, so that piece has to continue to be vetted.

Chair Johnson responded that there are all different ways to write something like this into a priority listing and still be in compliance with fair housing law, because there are other preference priorities, such as general affordability and people with Certificate of Preference. Ms. Johnson stated that this policy decision did not make sense to her, so whether it complied with fair housing law was irrelevant and she would want to make sure that that was not part of a final package that the Commission would be approving. Ms. Johnson reiterated that if UCSF is not building the affordable housing, and if it is the responsibility of the Commission to put in more money and to make this happen, then first priority would have to be general affordable housing.

Chair Johnson stated that it is the policy of the Commission to try to get non-chain, local serving retail business that would not otherwise be there and inquired as to who would be managing the commercial space, in terms of getting tenants, etc.

Ms. Sims responded that it would be the property management arm of Related Company.

Chair Johnson inquired if Related Company’s property management arm ever delegates to companies that specialize in commercial real estate or does Related do that.

Ms. Tan responded that they likely would hire a local leasing broker to help reach out to local businesses to fill the space. The ultimate leasing decision would be between Related and CCDC as the partnership. She stated that they have been talking with a local broker called Retail West, based in San Francisco, which represents many local businesses, including La Cochina and other socially-minded businesses.

Chair Johnson inquired as to what role the Commission or the MOH would play in that, if the final decision would be between Related and CCDC as the master developer of the property.

Ms. Tan responded that they would be following the standards for sizes and types of uses in the retail space as specified in the Mission Bay development standards.

Executive Director Bohee added that the standards and guidelines in the design for development require certain retail standards that must be followed for all Mission Bay development, whether a
Chair Johnson stated that she understood they are doing 109 units per acre, which, at 1.85 acres, works out to about 200 units. She inquired about the type of podium housing that they are building and specifically, as to what density they see in other parts of Mission Bay South and whether there was anything comparable.

Executive Director Bohee responded that the Mission Bay planning documents were quite generous and projected about 100 units/acre as a plug number in the Mission Bay owner participation agreement documents, which is very low density. Ms. Bohee deferred to Catherine Reilly for more detail on this question.

Ms. Reilly responded that the project with the 200 units will be within the standard five-story wood stick over single concrete podium at 55-65'. She stated that they are running between 90-110 at density for the affordable housing which is what was originally anticipated as part of the plan and which is what is actually being built.

Chair Johnson inquired as to whether they have an amended map of where the affordable housing units will go, especially since 7F will be given over to Family House, which is not strictly affordable housing.

Ms. Reilly responded that the map will be exactly the same except for taking out the Family House portion and that there is still plenty of room to relocate the 37 units that would have fit onto the Family House land.

Chair Johnson inquired as to whether this project had been adjusted for the change of having to reshuffle units around Mission Bay South.

Ms. Reilly responded in the negative. She explained that UCSF was originally going to build 237 units on the entire Block 7, but now Related will build 200 and the overall project was reduced by 37 units to reflect the Family House portion. She added that they have made sure they can relocate the 37 units on the remaining site within the affordable density construction type.

Chair Johnson clarified that this will be possible because they have not applied for the RFP for the other blocks yet and they can simply indicate that this many units need to be put into another block which accounts for having to move 37 units around.

Ms. Reilly responded that if you kept all the land and put the density in the number of units, there is fairly low density for the amount of land the Commission is getting in Mission Bay South. She added that, in fact, getting the money from Family House to put into affordable housing helps them better be able to use the site and be more consistent with density.

Chair Johnson clarified that what Ms. Reilly meant is that they will have the units and the money. She explained that Block 7W will not be adjusted for that change but other blocks will be in the future. It will be treated as if there were never a lower number, but they will increase the number of units required for other lots and other developers will have to figure out how to do that.

Ms. Reilly responded in the affirmative.
Chair Johnson noted that there are no three-bedroom units and inquired where three-bedroom units will be located across Mission Bay South and how other product types will be providing larger units.

Ms. Sims responded that 1180 Fourth Street is a family housing 150-unit structure and is a combo of 1-, 2-, and 3-bedroom units, of which 44 are three-bedroom units. She explained that the reason is that there is ample room for open space for families with children. In addition, there will also be space for younger children and teenagers, so in effect they are creating a real community there.

Chair Johnson stated that on page 2 of the resolution itself, the second from the bottom WHEREAS clause reads, “due to current availability funds, staff recommends funding the predevelopment loan in two tranches. The first tranche is $2 million...” Ms. Johnson pointed out that there is no mention of the second tranche and it actually seems as if the other WHEREAS clause is missing. Ms. Johnson suggested adding a WHEREAS clause stating that the $1.6 million remaining authorization will be considered during the permanent construction phase or some other phrasing.

General Counsel Bryan responded that he thought it would be appropriate to add a WHEREAS clause stating that the remaining $1.6 million is subject to future Commission approval.

Chair Johnson stated that this wording will be added as an amended clause in the resolution.

Vice Chair Rosales announced that Ms. Reilly would like to explain the occupancy preferences because they were part of the financing for this project.

Ms. Reilly clarified that the reason the preferences were built in by UCSF is because UCSF does not actually have to pay the liquidated damages on the 7W parcel until they start construction of Phase 2 of the hospital, which could be anywhere from 10-20 years in the future. Ms. Reilly explained that UCSF is agreeing to prepay the liquidated damages as part of their “in-lieu fee”, and that they requested to be allowed to assign the DDA to Related and CCDC, but then also that the Agency build in, to the extent allowed by fair housing law, the preferences that are stated therein. Ms. Reilly pointed out that those preferences were negotiated with UCSF as part of the original deal. Nevertheless, Ms. Reilly stated she will take back Commissioners’ concerns to UCSF and have UCSF available at the next meeting to defend their request.

Chair Johnson inquired as to where that negotiation is exactly in terms of documentation.

Ms. Reilly responded that with dissolution they were not able to move forward beyond the initial discussions, so this is the original language discussed with UCSF. Ms. Reilly explained that the intent was to incorporate those preferences into the Assignment of Assumption in the DDA, so when staff comes back to the Commission in the next two months with that document, the language would be included therein.

Chair Johnson reiterated that there must be something else they can do with this as a policy decision, because if UCSF is not able to build the housing, this needs to be part of the affordable housing stock for the rest of Mission Bay South.

Ms. Reilly responded that one of the reasons they have liquidated damages in the document is that under state rules, UCSF is unable to give cash for non-UCSF based activities. She explained that they will need to go to the regents for permission to prepay the liquidated damages and they may need to have something showing they are getting something in exchange for that payment so that they are not outside of state jurisdiction for what expenditures are. Ms. Reilly stated that they will
work with UCSF on this item, but if for legal reasons they are not able to prepay without having something in exchange stated in the agreement, then UCSF will come to the Commission to explain that themselves.

Chair Johnson stated that given all that, they are now in a different period of time than they were in 2011 in terms of affordable housing. She stated that she would like the Commission to consider options that says that all of the units could potentially be used for UCSF people or none of them could be used. Ms. Johnson pointed out that one way to do that would be for UCSF to pay the Commission liquidated damages but stipulate that only 25% of the apartments can be first-choice UCSF and everything else has to be affordable housing. Ms. Johnson stated that she would be looking for this type of language in the DDA.

Vice Chair Rosales asked for clarification as to whether the existing DDA does or does not contain language regarding the preferences.

Ms. Reilly stated that it does and that the language is stronger because the original DDA actually had all the units going to UCSF employees. She explained that UCSF employees with Certificates got first priority, then UCSF employees and then if they were not able to fill the spaces, it would be opened up to everybody else.

Chair Johnson clarified that because UCSF is paying liquidated damages instead of maintaining the responsibility of building affordable housing, there is opportunity to make it affordable housing but she insisted that they need something so that the Commission still gets the liquidated damages from UCSF.

Vice Chair Rosales added that she would like to see the language in the original DDA and how UCSF preliminarily agreed to surrender the liquidated damages in the event they chose not to build the affordable housing.

Ms. Reilly responded that much of what is in the existing DDA is specific to UCSF being a state agency, so they will need to update and amend the DDA. She added that the liquidated damages fee was tied to a scheduled performance (7E is tied to Phase 1 of the Hospital) and the hospital was already under construction and they were not able to identify a developer at the time. Ms. Reilly explained that the second DDA is tied to the start of Phase 2 planning and construction, which has not started and could be out as far as 10-20 years.

Executive Director Bohee clarified that for 7W, the $2.4 million is not really a liquidated damages payment, which is why it is being called an “in-lieu of fee”, meaning in lieu of liquidated damages, because in reality UCSF does not have to do anything for 10-20 years.

Ms. Reilly stated that UCSF has confirmed that they can do this but she was not sure how they are spinning it internally. She stated that she believed it was tied to the preferences that they are negotiating, since it was not a liquidated damages payment.

Vice Chair Rosales clarified that they are calling this “in lieu” because calling the fee liquidated damages, as in the contract, could be problematic because that obligation does not arise until well into the future, so they are coming up with a different way of essentially making this deal and satisfying their internal requirements.

Ms. Reilly responded that she would need to get clarification from UCSF as to how they are describing this item so that legally they can prepay this amount.
Chair Johnson inquired about whether there was a typo on page 18-22 of the loan package, where Mercy requests an additional $500,000. Ms. Johnson also referred to pgs. 15-22, the permanent sources table, sources and uses for the permanent financing, and inquired as to whether the $22.4 million for a tax exempt bond is still happening or whether it is still on the table, and who would be issuing that.

Ms. Sims responded that they are still anticipating a tax exempt bond issuance in the amount of $24 million. Ms. Sims responded that the City is the issuer.

Executive Director Bohee clarified that, in this particular case, that bond would be issued via the Board of Supervisors.

Chair Johnson stated that she heard during the presentation that the remaining $1.6 million would be requested if needed, but the budget had all of the $3.6 million accounted for. Ms. Johnson inquired as to what the difference would be from that budget to this one to account for the unneeded $1.6 million.

Ms. Sims responded that they will need the full funding but the difference would relate to the timing. It may be predevelopment or it may be early gap financing.

Chair Johnson inquired about parking and whether there is a one-for-one requirement in the DDA.

Executive Director Bohee responded that it is a maximum one per unit.

Commissioner Singh inquired as to who the members of the citywide affordable housing loan committee were.

Ms. Sims responded that it was Olson Lee as the Executive Director for the Mayor's Office of Housing & Community Development; Executive Director Bohee for OCII; Margot Antonetty representing the Department of Public Health and Joyce Crum representing the Human Services Agency.

Commissioner Singh motioned to move Item 5(c) and Commissioner Ellington seconded that motion.

Commissioner Mondejar inquired about the issue that Vice Chair Rosales had raised and stated that it was not resolved.

Vice Chair Rosales responded that there was nothing they could do about these liquidated damages because they are already set forth in contract.

Executive Director Bohee responded that this was correct and that it was already previously approved and negotiated by the former Agency back in 2005 and 2010.

Commissioner Mondejar inquired as to whether they are still bound to that since the old Agency was dissolved and also inquired whether they can revisit this matter since they are a new Commission now.
General Counsel Bryan responded that the new Commission is still bound to the prior Agency’s contracts and they would have to be honored. He stated these contracts could be renegotiated but the other party would have to agree to any changes.

Vice Chair Rosales stated that there may be more conversations with UCSF over this item and thus an opportunity for renegotiation.

Commissioner Mondejar inquired as to whether they should approve this at all or put that language in as a condition.

Chair Johnson responded that they cannot do that because this is an approval of an authorized predevelopment costs loan. She explained that the liquidated damages would be part of the amended DDA, which is a different document. Ms. Johnson pointed out that they don’t need to add anything about the liquidated damages to this resolution. She stated that, instead, they will have to go back to some of the already negotiated items, especially the affordable housing priority piece, which has to be reconsidered. Ms. Johnson explained that they can go back to other items as well but they will all get resolved as part of the DDA, not this loan, which will go to reimbursing costs that the developer has already taken on to look at the site.

Vice Chair Rosales inquired as to whether the two things could be aligned, so that instead of having this action go first before further negotiations are finalized and presented, could they not impose their negotiating position by approving this.

Chair Johnson stated that this was possible and what they could do is to delay the item until the DDA is considered.

Vice Chair Rosales recommended delay of the item.

Chair Johnson stated that if they were to do that, they would just not approve the item.

Ms. Oerth reminded Commissioners that if this item were delayed, they would not have ROPS coverage with the Department of Finance to have the expenditure authority to make the loan commitment, because they only have through June 30, which is the end of the ROPS period, to make the loan commitment. She explained that the $2 million loan is on ROPS 3 but it is not on ROPS 1314A, so the next opportunity to have it on the ROPS would be ROPS 1314B, which wouldn’t go into effect until January 1.

Vice Chair Rosales inquired as to whether they could issue an approval on a “not to exceed”, meaning approve the $2 million but have shorter disbursements or authorize fewer disbursements rather than the entire amount, so in effect grant the authority to loan but not necessarily the granting of the entire loan.

Ms. Oerth responded that there can always be disbursements conditions.
Vice Chair Rosales stated that she had a concern authorizing $300,000 in retroactive expenses which are unclear. She suggested that given the schedule, they could move the item so that they do not miss the timeline window and then place proper milestones in terms of the disbursement.

Chair Johnson inquired as to whether they could base the disbursement milestones on the execution of the DDA, which would entail a lag of a few months for the developer.

Commissioner Ellington inquired about the timing in aligning these two items.

Chair Johnson responded that they are on schedule to review the amended DDA in August/September so if they were to conditionally approve the loan authorization but make disbursements contingent on the amended DDA approval by the Commission, that action would not happen until September.

Commissioner Ellington inquired as to what the consequences would be in waiting until January 1 to put this on the next ROPS.

Ms. Oerth responded that that would delay the project because in order for the project to apply for tax credits in February, the project has to be at a certain point and there is still predevelopment and design work, construction drawings, etc. and the project needs funds to accomplish that.

Commissioner Ellington clarified that the costs prior to this had been fronted by the developer and inquired if the developer has run out of money.

Ms. Tan agreed that it has been an unsettled last two years but stressed that right now they have no site control, no predevelopment loan, and that they have fronted these dollars in good faith based on months of negotiation with UCSF and the former Agency. Ms. Tan stated that even though it was not the Commission's obligation, if the predevelopment loan were not approved at this meeting, they would not be able to front any more money because they have no standing in the project.

Chair Johnson responded to Commissioner Ellington in terms of his question regarding the January 1 date and stated that this was the date they would be looking at if the Commission did not approve the loan authorization and therefore had to come back to it after June 30, which means that the $2 million on the ROPS right now would have to move to another period and they would not get it until January. Ms. Johnson suggested approving the loan, but making the actual transfer of dollars disbursement contingent upon the amended DDA being approved. She stated that this action would get to the heart of maintaining their negotiating leverage for some of these core issues still floating out there for the DDA. Ms. Johnson stated that she did not want to go the route of not approving this loan because she believed that work should continue to be funded but believed the two things could be tied together. In order to do this, Commissioner Singh would need to rescind the motion on the table and amend the resolution and put the motion back on the table.
Commissioner Singh agreed to rescind his motion.

Chair Johnson then clarified that they would be approving the loan for $2 million with a clause that states that the $1.6 million would be subject to future CCII approval and also adding another WHEREAS clause about the disbursements of funds being contingent upon the accepted execution of the DDA.

General Counsel Bryan suggested the Commission approve the agreement provided that the disbursements of funds is subject to approval of an amended DDA and the approval of the Assignment of Assumption agreement and putting all of that in the Resolve clause.

Ms. Tan informed the Commission that tying the disbursement to the approval of the assigned DDA would delay the project and that there was a real chance that this would increase project costs.

Chair Johnson stated that the project has already been delayed and that they are coming up against deadlines but this is what happens when things get done last minute. She stated that they needed to try to put things back in the proper perspective and order.

General Counsel Bryan read the Resolved Clause: “Subject to the Department of Finance’s non-objection to, or approval of, the Fourth Amendment to the Mission Bay South Owner Participation Agreement, the OCII Commission authorizes the Executive Director to enter into a Predevelopment Loan Agreement, substantially in the form of the agreement on file with the Secretary of the Commission and approved as to form by the City Attorney, with Mission Bay Block 7 Housing Partners, L.P., a California limited partnership, in an amount not to exceed $2,000,000, for predevelopment work for the Project, to make expenditures consistent with Redevelopment Dissolution Law, provided the disbursement of these funds is subject to Commission approval of the Amended Housing Project DDA, to make such changes to the agreement that are in the best interest of OCII and do not materially increase the obligations or liability of OCII, and to enter into any and all ancillary documents or take any additional actions necessary to consummate the transaction.” Mr. Bryan clarified that basically the Commission is requiring an amendment to the agreement that the disbursement of the $2 million be subject to the approval of the DDA.

Commissioner Mondejar motioned to move Item 5(c) and Vice Chair Rosales seconded that motion.

Secretary Jones called for a voice vote on Item 5(c).

Commissioner Ellington – yes
Commissioner Mondejar - yes
Commissioner Singh – yes
Vice Chair Rosales – yes
Chair Johnson – yes
The meeting was adjourned by Madame Chair Johnson at 3:53 p.m.

Respectfully submitted,

Natasha Jones  
Interim Commission Secretary

ADOPTED: