MEMORANDUM

TO: Oversight Board

FROM: Tiffany Bohee, Executive Director

SUBJECT: Directing the Successor Agency to transfer, pursuant to Section 34181(a) of the California Health & Safety Code, an airspace parcel located above the San Francisco Museum of Modern Art at 151 Third Street for the appraised value as museum space of $1.00 to the City and County of San Francisco as an asset used for a governmental purpose; authorizing a Transfer Agreement between the Successor Agency and the City and County of San Francisco for the sale of that asset (the “Transfer Agreement”), and adopting environmental findings pursuant to the California Environmental Quality Act (“CEQA”)

EXECUTIVE SUMMARY

The Successor Agency to the San Francisco Redevelopment Agency (the "Successor Agency") owns an airspace parcel above the San Francisco Museum of Modern Art (“SFMOMA” or “Museum”) located at 151 Third Street in the former Yerba Buena Center Approved Redevelopment Project Area D-1 (the “Airspace Parcel”). See Attachment 1 for a Map of the Airspace Parcel. In the 1960’s, the San Francisco Redevelopment Agency (“Redevelopment Agency”) originally acquired the site on which SFMOMA is located with federal urban renewal funds. As a result, the Redevelopment Agency’s interests in the site, including the Airspace Parcel, have been subject to federal contractual and regulatory obligations under the Community Development Block Grant (“CDBG”) program, which specified the uses for the site and for the proceeds from any sale or other disposition of the site.

In 1991, the Redevelopment Agency transferred to SFMOMA the property below the Airspace Parcel, but retained ownership of the Airspace Parcel, which continued to be subject to federal restrictions. The Successor Agency now desires to transfer the Airspace Parcel to the City and County of San Francisco (the “City”) as property used for governmental purposes established by the federal obligations and the governmental purpose of constructing and using a new fire station of the City. The City will subsequently transfer the Airspace Parcel to the Museum to facilitate the Museum’s $555 million expansion. This proposed transfer complies with the provisions governing the transfer of assets used for a governmental purpose in Assembly Bill No. 1X 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session), as amended by Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12, Regular Session) (“AB 1484”) (collectively the “Redevelopment Dissolution Law”).

Staff recommends directing the Successor Agency to transfer, pursuant to Section 34181(a) of the California Health & Safety Code, the Airspace Parcel to the City for the governmental purpose described above, authorizing a Transfer Agreement with the City the sale of the Airspace Parcel, and adopting environmental findings pursuant to CEQA.
DISCUSSION

Site Background

The Redevelopment Agency originally acquired the Airspace Parcel as well as the land and airspace beneath it (collectively “Parcel 3722-B”) over time during the 1960s with urban renewal grant funds provided through a 1966 federal contract approved by the U.S. Department of Housing and Urban Renewal (the “HUD Contract”). In 1974, urban renewal funding was phased out and replaced with the CDBG program. As a result, properties purchased under the former urban renewal program were subject to CDBG program requirements defined later in this memorandum.

The Redevelopment Agency held Parcel 3722-B until 1991, when it sold everything below the Airspace Parcel to the Museum under a Disposition and Development Agreement dated January 15, 1991 (the “DDA”). The DDA was amended once in 1992 and again in 1996. The DDA required the Museum to develop a first-class museum on the site – an economic development use consistent with the CDBG program requirements. SFMOMA opened in 1995.

The Museum is now embarking on a major expansion of SFMOMA to better display to the public its growing collections of modern and contemporary art that involves the construction of a new high-rise building that will extend into the Airspace Parcel and onto three adjacent parcels (the “Museum Expansion Project”). The 230,000 square foot expansion will include additional space for galleries and public spaces, enhanced and expanded curatorial, conservation, and library programs, and consolidation of the Museum’s support functions – and will effectively double the size of the existing SFMOMA building. The Museum needs to acquire the Successor Agency’s Airspace Parcel to build the proposed Museum Expansion Project.

Compliance with Redevelopment Dissolution Law

AB 1484 governs the Successor Agency’s disposition of property and requires the Oversight Board to

direct the successor agency to . . . [d]ispose of all assets and properties of the former redevelopment agency; provided, however, that the oversight board may instead direct the successor agency to transfer ownership of those assets that were constructed and used for a governmental purpose, such as roads, school buildings, parks, police and fire stations, libraries, and local agency administrative buildings to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of that asset. Cal. Health & Safety Code § 34181 (a).

AB 1484, however, also suspends—with few exceptions—all dispositions by the successor agency until it prepares a long-range property management plan that the Oversight Board and the State of California’s Department of Finance (“DOF”), have approved. (The statutory process for preparing and approving the long-range property management plan is expected to be complete in early 2013.) Significantly, AB 1484 exempts transfers of property used for a governmental
purpose from the suspension of property dispositions. Cal. Health & Safety Code § 34191.3. The transfer being contemplated under the proposed Transfer Agreement complies with AB 1484 because it fulfills the following governmental purposes:

(1) **Economic Development Use.** In 1983, the Redevelopment Agency and the City executed, with the concurrence of the U.S. Department of Housing and Urban Development ("HUD"), the Yerba Buena Center Redevelopment Project Closeout Agreement ("YBC Closeout Agreement") whereby the Redevelopment Agency agreed to retain certain properties, including Parcel 3722-B, for disposition. The YBC Closeout Agreement also required that proceeds from the disposition of these properties must be treated as program income under the CDBG program and that the proceeds be used for "economic development activities," as well as other permitted uses ("CDBG Program Requirements"). Accordingly, the Redevelopment Agency has held the Airspace Parcel for the governmental purposes described in the YBC Closeout Agreement and the CDBG Program Requirements. The disposition of the Airspace Parcel is subject to the terms of the YBC Closeout Agreement and the CDBG Program Requirements and serves the governmental purposes applicable to completion of urban renewal projects (i.e., disposition for economic development purposes). The proposed Museum Expansion Project serves a critical economic development purpose because it will improve the City's cultural landscape, enhance City revenues, and constitute a valuable public addition to the City's civic well-being.

(2) **A New Fire Station.** The disposition of the Airspace Parcel facilitates the construction and use of a new City fire station, a governmental purpose described in AB 1484, which is part of the Museum Expansion Project. One of the adjacent parcels needed for the Museum Expansion Project is 676 Howard Street, a City-owned parcel that is improved with an obsolete City fire station. The City has agreed to sell the Howard Street property to the Museum, and allow the Museum to demolish the obsolete fire station, to facilitate construction of the Museum Expansion Project. In exchange, the Museum has agreed to build and convey to the City a new $10.0 million fire station at 935 Folsom Street, a parcel of land owned by a Museum affiliate (the "Replacement Fire Station"). This "land swap" was formalized in the Conditional Land Disposition and Acquisition Agreement dated October 15, 2010 between the City, the Museum, and the Museum affiliate (the "Land Swap Agreement"). The Replacement Fire Station is expected to improve response times and streamline operations and will eliminate the need for the City to seismically upgrade the obsolete fire station at 676 Howard Street, at considerable governmental expense. Under the Land Swap Agreement, conveyance to the City of the Replacement Fire Station is contingent upon the Museum obtaining a building permit for the Museum Expansion Project, which the Museum will not do unless and until it has the right to acquire the Air Space Parcel.

The Successor Agency now seeks to transfer the Airspace Parcel to the City for the governmental purposes described above in compliance with AB 1484.
Proposed Transfer Agreement

The key terms of the proposed Transfer Agreement with the City include:

- **Purchase Price.** The Successor Agency is transferring the Airspace Parcel to the City at its appraised value as museum space (according to a March 1, 2012 appraisal by Clifford Advisory, LLC, that valued the Airspace Parcel at $1.00, assuming the Property was encumbered with a deed restriction that limited its use to museum space) (the “Transaction”). Any proceeds from the disposition of the Airspace Parcel are not available for distribution to the taxing entities identified in AB 26 and AB 1484 because the federal restrictions on the use of the proceeds described in the YBC Closeout Agreement and the CDBG Program Requirements supersede the state law.

- **Use Restrictions.** The Successor Agency is transferring the Airspace Parcel to the City with the requirement that the City will then transfer the Airspace Parcel to the Museum under the use restrictions contained in the Transfer Agreement, and subject to the Museum’s covenant to restrict use of the Airspace Parcel to museum, cultural, educational, and ancillary uses in accordance with the use restrictions and covenants set forth in the grant deed from the City to the Museum, which will conform to the grant deed from the Successor Agency to the City.

California Environmental Quality Act

The City has completed its environmental review for the Museum Expansion Project and the transactions contemplated under the Land Swap Agreement pursuant to the California Environmental Quality Act (“CEQA”) (California Public Resources Code Sections 21000 et seq.), the CEQA Guidelines (California Code of Regulations, title 14, Sections 15000 et seq.), and Chapter 31 of the San Francisco Administrative Code (collectively, the “Environmental Review”). On November 10, 2011, the City Planning Commission certified, by Motion No. 18485, the Final Environmental Impact Report for the Museum Expansion Project (Final EIR), and by Motion No. 18486, adopted CEQA Findings including a Statement of Overriding Consideration, and adopted a Mitigation Monitoring and Reporting Program (MMRP) for the Museum Expansion Project. On January 10, 2012, the City Board of Supervisors affirmed, by Motion No. M12-007, certification of the Final Environmental Impact Report for the Museum Expansion Project. The San Francisco Planning Department is the custodian of record for the Museum Expansion Project’s environmental review, located in the File for Case Nos. 2009.0291E and 2010.0275E, at 1650 Mission Street, Fourth Floor, San Francisco, California. “The Final EIR, entitled "SFMOMA Expansion/Fire Station Relocation and Housing Project," can be found on the San Francisco Planning Department's webpage at http://www.sfplanning.org/index.aspx?page=1828."

National Environmental Policy Act

The City, through the Mayor’s Office of Housing, as a Responsible Entity under the National Environmental Policy Act (“NEPA”), 42 U.S.C. Section 4321 et seq., has determined that
transference and sale of the Airspace Parcel to the City is categorically excluded from further environmental review under NEPA.

Public Noticing

AB 1484 requires at least 10 days public notice of the proposed action of the Oversight Board directing the Successor Agency to transfer the Airspace Parcel. On October 2, 2012, a Notice of Public Hearing was (1) mailed to property owners located within 300-foot radius of SFMOMA, (2) placed in the San Francisco Examiner, and (3) posted on the Oversight Board’s website.

Additionally, CEQA Guidelines and the City’s Planning Department required extensive public outreach during the lengthy environmental review process. As noted above, the CEQA process for the Museum Expansion Project has been completed. The process included many public hearings and provided multiple opportunities for the public to review and comment on the project.

NEXT STEPS

Under AB 1484, DOF has five days to request a review of the Oversight Board’s actions related to the transfer of the Airspace Parcel. If it does not request a review, the Oversight Board’s actions become final. If DOF requests a review, it then has 60 days to review the matter.

In November, the City will seek approval from the Board of Supervisors of a purchase and sale agreement with the Museum for the Airspace Parcel.

After the Oversight Board’s action becomes final, the closing of the proposed Transaction, the City’s Airspace Parcel closing, and the Museum’s closing of the exchange transactions contemplated by the Land Swap Agreement will happen concurrently and are scheduled for January 2013. Groundbreaking for the Museum Expansion Project is scheduled for summer 2013 and completion is projected in early 2016.

(Originated by Tracie Reynolds, Manager, Real Estate and Development Services, and Denise Zermani, Development Specialist)

Attachment:

1. Map of Airspace Parcel