



# OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE FORMER SAN MARCOS REDEVELOPMENT AGENCY

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## AGENDA SPECIAL MEETING

Friday, December 7, 2012, 9:00 am  
City of San Marcos – City Council Chamber  
1 Civic Center Drive, San Marcos, CA 92069

**Cell Phones:** As a courtesy to others, please silence your cell phone or pager during the meeting and engage in conversations outside the building.

**Americans with Disabilities Act:** If you need special assistance to participate in this meeting, please contact the City Clerk at (760) 744-1050, ext. 3145.

**Public Comment:** If you wish to address the Board, please complete a "Request to Speak" form. Comments are limited to THREE minutes. The Oral Communication segment of the agenda is for the purpose of allowing the public to address the Board on any matter NOT listed on the agenda. The Board is prohibited by state law from taking action on items NOT listed on the Agenda. However, they may refer the matter to staff for a future report and recommendation.

**Agendas:** State law requires that the agenda for regular meetings be posted a minimum of 72 hours prior to the meeting and for special meetings a minimum of 24 hours prior to the meeting. The agenda and supporting material (agenda packet) will be available at the City Clerk Department located on the second floor of City Hall, 1 Civic Center Drive, San Marcos, during normal business hours and an electronic version will also be posted online at [www.san-marcos.net](http://www.san-marcos.net).

Agenda-related writings or documents provided to a majority of the Board will be available for public inspection at the time of distribution in the City Clerk Department located on the second floor of City Hall, 1 Civic Center Drive, San Marcos, CA during normal business hours. The same materials are also posted online at [www.san-marcos.net](http://www.san-marcos.net) as time permits.

### CALL TO ORDER

### PLEDGE OF ALLEGIANCE

### ROLL CALL

### ORAL COMMUNICATIONS

<u>ITEM</u>	<u>ACTION</u>
1. <b>APPROVAL OF MINUTES</b> – October 12, 2012 Special Meeting.	APPROVE
2. <b>LOW AND MODERATE INCOME HOUSING BOND FUNDS-DESIGNATIONS AND COMMITMENTS.</b> Consider resolution confirming that sufficient Low and Moderate Income Housing Bond Funds remain to satisfy applicable items on previously approved Recognized Obligation Payment Schedules, and that such purpose is consistent with bond covenants.	ADOPT

**STAFF COMMENTARY**

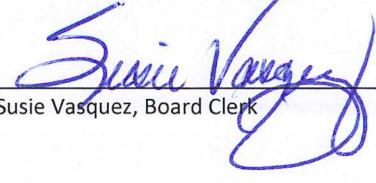
**BOARD MEMBER COMMENTARY**

**ADJOURNMENT**

AFFIDAVIT OF POSTING

STATE OF CALIFORNIA )  
COUNTY OF SAN DIEGO ) ss.  
CITY OF SAN MARCOS )

I, Susie Vasquez, Clerk of the Oversight Board of the Successor Agency to the Former San Marcos Redevelopment Agency, hereby certify that I caused the posting of this agenda in the glass display case at the north entrance of City Hall on Tuesday, December 4, 2012, at 3:00 p.m.

  
Susie Vasquez, Board Clerk

**MINUTES  
SPECIAL OVERSIGHT BOARD  
OF THE SUCCESSOR AGENCY TO THE  
FORMER SAN MARCOS REDEVELOPMENT AGENCY MEETING  
CITY COUNCIL CHAMBER  
1 CIVIC CENTER DRIVE SAN MARCOS, CALIFORNIA 92069**

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FRIDAY, OCTOBER 12, 2012 – 9:00 AM

**CALL TO ORDER:** Chair Hamels called the meeting to order at 9:04 a.m.

**PLEDGE OF ALLEGIANCE.** Led by Chair Hamels.

**ROLL CALL:**

PRESENT: BOARD MEMBERS: GITTINGS, JONES, McMULLEN, NEWMAN,  
SIMMONS, HAMELS

ABSENT: BOARD MEMBERS: MALONE

**ALSO PRESENT:** City Manager Griffin, Deputy City Manager Romero, Finance Director Rocha,  
Oversight Board Legal Counsel Eiser, Successor Agency Legal Counsel Peak and Board Clerk  
Vasquez.

**ORAL COMMUNICATIONS**

No members of the public requested to speak.

**ACTION ITEMS**

1. **APPROVAL OF MINUTES – October 5, 2012 Regular Meeting.**

**MOVED BY GITTINGS SECONDED BY SIMMONS AND CARRIED TO ACCEPT MINUTES OF  
OCTOBER 5, 2012 OVERSIGHT BOARD MEETING AS PRESENTED.**

2. **LOW/MOD INCOME HOUSING FUND DUE DILIGENCE REVIEW** – Consider approving conclusion  
reached by the due diligence review report.

ROCHA presented staff report dated 10/12/12 and recommended the Board adopt the  
resolution regarding its consideration of the due diligence review.

No members of the public commented on this item.

Discussion followed with clarification provided regarding various line items depicted in Exhibits  
"A" through "E" of independent accountant's report. Rocha advised that all low and moderate  
income housing funds have been obligated and there is no excess available for distribution to  
the taxing entities.

Further clarification was provided by staff regarding the amounts currently under appeal to the Department of Finance.

**MOVED BY GITTINGS, SECONDED BY McMULLEN TO ADOPT RESOLUTION NO. OBRDA 2012-007 REGARDING ITS CONSIDERATION OF THE DUE DILIGENCE REVIEW OF THE LOW AND MODERATE INCOME HOUSING FUNDS FOR UNOBLIGATED BALANCES AND FINDING THAT ALL FUNDS ARE OBLIGATED AND NOT AVAILABLE FOR TRANSFER TO THE TAXING ENTITIES**

AYES: BOARD MEMBERS: GITTINGS, JONES, McMULLEN, NEWMAN,  
SIMMONS, HAMELS

NOES: BOARD MEMBERS: NONE

ABSENT: BOARD MEMBERS: MALONE

3. **SAN DIEGO COUNTY AUDITOR AND CONTROLLER LETTER**– Consider response to October 1, 2012 letter regarding Recognized Obligation Payment Schedule for January through June 2013.

ROCHA presented staff report dated 10/12/2012 and provided an overview of the issues raised in the San Diego County Auditor and Controller's October 1, 2012 letter relating to ROPS III for January through June 2013.

No members of the public provided comments.

Discussion followed with clarification provided regarding administrative costs. Staff further clarified responsibilities of the San Marcos Successor Agency are through FY 13/14. After that time the responsibilities would shift to a regional successor agency.

Hamels requested staff provide information at a future meeting outlining projections for completion dates on outstanding projects and if possible, projections for how long staff/administrative costs are anticipated to continue.

**MOVED BY JONES, SECONDED BY SIMMONS TO ADOPT RESOLUTION NO. OBRDA 2012-008 RESPONDING TO THE SAN DIEGO COUNTY AUDITOR AND CONTROLLER'S LETTER OF OCTOBER 1, 2012, REVIEWING RECOGNIZED OBLIGATION SCHEDULE FOR JANUARY THROUGH JUNE 2013.**

AYES: BOARD MEMBERS: GITTINGS, JONES, McMULLEN, NEWMAN,  
SIMMONS, HAMELS

NOES: BOARD MEMBERS: NONE

ABSENT: BOARD MEMBERS: MALONE

#### STAFF COMMENTARY

STAFF advised there are no action items for consideration in November, but another due diligence report for non-housing funds requiring two meetings in December.

**THE BOARD CONCURRED TO CANCEL THE NOVEMBER 2, 2012 REGULAR MEETING AND CONFIRMED THE NEED TO HOLD THE DECEMBER 7, 2012 REGULAR MEETING, FOLLOWED BY A SPECIAL MEETING ON DECEMBER 14, 2012 AT 9:00 A.M.**

#### BOARD MEMBER COMMENTARY

No commentary was provided.

#### ADJOURNMENT:

HAMELS adjourned the meeting at 9:26 a.m.

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GARY HAMELS, CHAIR  
OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO  
THE FORMER SAN MARCOS REDEVELOPMENT AGENCY

#### ATTEST:

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SUSIE VASQUEZ, BOARD CLERK  
OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO  
THE FORMER SAN MARCOS REDEVELOPMENT AGENCY



# OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE FORMER SAN MARCOS REDEVELOPMENT AGENCY

## STAFF REPORT

**MEETING DATE:** December 7, 2012

**SUBJECT:** Housing Bond Funds Designations and Commitments

### Recommendation

As the Oversight Board to the former San Marcos Redevelopment Agency ("OSB"), take formal action confirming that sufficient Low and Moderate Income Housing Bond Funds remain to satisfy applicable items on the approved Recognized Obligation Payment Schedule (ROPS) and that such commitment and designation are consistent with bond covenants.

### Discussion

California Health and Safety Code (H&SC) Section 34176(g) permits the agency assuming housing functions to designate the use of and to commit indebtedness obligation proceeds that remain after the satisfaction of enforceable obligations on an ROPS, which proceeds are derived from indebtedness obligations that were issued for the purposes of affordable housing prior to January 1, 2011, and which were backed by the Low and Moderate Income Housing Fund. The review of such designation and commitment by the Successor Agency, Oversight Board and the Department of Finance is limited under H&SC Section 34176(g)(1)(B) to a determination that the designations and commitments are consistent with bond covenants and that there are sufficient funds available.

From and after January 10, 2012, pursuant to Resolution No. 2012-7607, the City of San Marcos serves as both the Successor Agency to the Former San Marcos Redevelopment Agency and as the entity that assumed the housing functions pursuant to successor housing entity (collectively referenced herein as "Successor Agency"). The Successor Agency provided the Oversight Board with ROPS approved by the Successor Agency for the periods January through June 2012, July through December 2012, and January through June 2013 that committed funds for the following ROPS line items on April 12, 2012, May 4, 2012, and August 23, 2012:

- Acquisition of property for low and moderate income housing purposes and related consultant and expert costs (Chu and Kumar sites, offers issued and obligations incurred prior to the dissolution date);

- Westlake Village, Residences at Creekside, ParkView and El Dorado affordable housing projects (property acquisition, and construction loan and related consultant and expert costs, incurred and/or obligated prior to the dissolution date);

The funding source for the above items was identified as indebtedness obligation proceeds issued for the purposes of affordable housing ("L/M Housing Bond Funds").

Attached is a letter dated November 29, 2012 from Lorraine McIntire of Union Bank, the trustee for such Bond Funds. This letter confirms that there are sufficient L/M Housing Bond Funds remaining to satisfy the obligations listed in the ROPS for the period January through June 2013.

Also attached is a letter dated December 4, 2012, from bond counsel Warren Diven of Best Best & Krieger. This letter confirms that designations and commitments are consistent with the L/M Housing Bond covenants.

Although the Successor Agency has previously presented these items as being paid with L/M Housing Bond Funds and the Oversight Board has approved each ROPS schedule, a specific determination regarding the availability of funds and the ability to use such funds for this purpose has not yet been made by the Oversight Board.

#### **Fiscal Impact**

There is no fiscal impact from adopting the resolution as this action is intended to determine that sufficient Low and Moderate Income Housing Bond Funds remain to satisfy applicable items on the approved Recognized Obligation Payment Schedule (ROPS) and that such commitment and designation are consistent with bond covenants.

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#### **Attachment(s)**

Letter from Union Bank dated November 29, 2012  
Letter from Best Best & Krieger dated December 4, 2012  
Resolution 2012-XXXX

Prepared by:



Laura Rocha, Finance Director



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**Warren B. Diven**

(619) 525-1337

[warren.diven@bbklaw.com](mailto:warren.diven@bbklaw.com)

December 4, 2012

Justyn Howard  
State of California Department of Finance  
Office of State Audits and Evaluations  
300 Capital Mall, Suite 801  
Sacramento, CA 95814

Re: City of San Marcos as Successor Agency to the San Marcos  
Redevelopment Agency -  
Request for Meet & Confer on DOF October 10, 2012 Determination on  
ROPS III  
Use of Bond Proceeds

Dear Mr. Howard:

This letter is written in our capacity as bond counsel for the \$52,805,000 San Marcos Redevelopment Agency Housing Set-Aside Tax Allocation Bonds, Series 2010 (Taxable) (the "Bonds") at the request of the City of San Marcos, as Successor Agency to the San Marcos Redevelopment Agency ("Agency"). The Successor Agency has requested that we review certain designated uses of the proceeds of the Series 2001 Bonds, determine if such uses are consistent with the covenants of the Agency related to the use of such proceeds and report the results of our review to you.

The uses of the proceeds of the Bonds (the "Specified Uses") that we were asked to review and have reviewed were described to us as follow:

- Acquisition of property for low and moderate income housing purposes and related consultant and expert costs (Chu and Kumar sites, offers issued and obligations incurred prior to the dissolution date); and
- Westlake Village, Residences at Creekside, ParkView and El Dorado affordable housing projects (property acquisition, and construction loan and related consultant and expert costs, incurred and/or obligated prior to the dissolution date).

The Bonds were issued by the Agency pursuant to a Trust Indenture, dated as of December 1, 2010 (the "Trust Indenture"), by and between the Agency and Union Bank, N.A., as trustee. Section 6.11 of the Trust Indenture, entitled "Use of Proceeds" provides that:

**BB&K**  
**BEST BEST & KRIEGER**   
**ATTORNEYS AT LAW**

Justyn Howard  
December 4, 2012  
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“The Agency covenants and agrees that the proceeds of the sale of the Bonds will be deposited and used as provided in this Indenture and the Law.”<sup>1</sup>

Section 3.06 of the Trust Indenture provides for the establishment of the San Marcos Redevelopment Agency 2010 Housing Projects Fund (“Housing Projects Fund”). Proceeds of the 2010 Bonds in the amount of \$45,291,893.00 were deposited in the 2010 Housing Projects Fund pursuant to Section 3.01 of the Trust Indenture. Section 3.06 of the Trust Indenture provides in pertinent part that:

“The moneys deposited in the Housing Projects Fund shall remain therein until requisitioned from time to time by one or more Written Requests of the Agency to the Trustee, which requisitions shall state the amount being requisitioned and that it will be used by the Agency in accordance with the provisions of this Section 3.06. All moneys so requisitioned by the Agency shall be expended from time to time for the purpose of paying any portion of the costs of low and moderate income housing projects within or of benefit to the Redevelopment Projects<sup>2</sup> and permitted by Section 33334.2 and following of the Law, and other costs related thereto.” (Underlining added.)

Based upon our review of the Specified Uses, the pertinent provisions of the Trust Indenture and the applicable provisions of the Law, it is our conclusion that the Specified Uses of the proceeds of the Bonds is consistent and in compliance with the covenant of the Agency pertaining to the use of the Bond proceeds contained in Section 6.11 of the Trust Indenture.

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<sup>1</sup> “Law” is defined in Section 1.01 of the Trust Indenture to mean “the Community Redevelopment Law of the State of California, constituting Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code of the State of California, and the acts amendatory thereof and supplemental thereto.”

<sup>2</sup> “Redevelopment Projects” is defined in Section 1.01 of the Trust Indenture to mean the undertaking of the Agency pursuant to the Redevelopment Plans, as amended, and the Law for the redevelopment of the Redevelopment Project Areas.

“Redevelopment Project Areas” is defined in Section 1.01 to mean the Redevelopment Project Areas described in the Redevelopment Plans.

“Redevelopment Plans” is defined in Section 1.01 to mean, individually, (a) the Redevelopment Plan for the San Marcos Redevelopment Project Area No. 1 approved and adopted by the City by Ordinance No. 83-604 on July 12, 1983, together with any amendments thereof hereafter duly enacted pursuant to the Law; (b) Redevelopment Plan for the San Marcos Redevelopment Project Area No. 2 approved and adopted by the City by Ordinance No. 85-662 on July 19, 1985, together with any amendments thereof hereafter duly enacted pursuant to the Law; or (c) Redevelopment Plan for the San Marcos Redevelopment Project Area No. 3 approved and adopted by the City by Ordinance No. 89-820 on July 11, 1989, together with any amendments thereof hereafter duly enacted pursuant to the Law. “Redevelopment Plans” or “Plans” is defined in Section 1.01 to mean, collectively, each of the foregoing Redevelopment Plans.



Justyn Howard  
December 4, 2012  
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Please feel free to call should you have any questions regarding this letter.

Respectfully submitted,

A handwritten signature in black ink that reads "Warren Diven". The signature is fluid and cursive, with "Warren" on the top line and "Diven" on the bottom line.

Warren B. Diven  
Partner  
of BEST BEST & KRIEGER LLP



November 29, 2012

Mr. Justyn Howard  
State of California Department of Finance  
Office of State Audits and Evaluations  
300 Capital Mall, Suite 801  
Sacramento, CA 95814

Re: San Marcos Redevelopment Agency Housing Set-Aside  
Tax Allocation Bonds, Series 2010 (Taxable)  
Housing Projects Fund

Dear Mr. Howard:

Union Bank, N.A., as Trustee for the above noted bonds, certifies that as of November 29, 2012 the Housing Projects Fund, which we hold, has a balance of \$12,570,993.76.

If you have any questions please don't hesitate to call me at (213) 972-5675.

Sincerely,

A handwritten signature in black ink that appears to read "Lorraine McIntire".

Lorraine McIntire  
Vice President

Corporate Trust Division  
120 South San Pedro Street, 4th Floor  
Los Angeles, CA 90012

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AGENDA ITEM #2

RESOLUTION NO. OBRDA 2012-009

A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY OF THE FORMER SAN MARCOS REDEVELOPMENT AGENCY DETERMINING THAT SUFFICIENT LOW AND MODERATE INCOME HOUSING BOND FUNDS REMAIN TO SATISFY APPLICABLE ITEMS ON APPROVED EOPS AND ROPS PREPARED BY CITY OF SAN MARCOS IN ITS CAPACITIES AS SUCCESSOR HOUSING ENTITY AND SUCCESSOR AGENCY AND THAT SUCH COMMITMENT AND DESIGNATION ARE CONSISTENT WITH BOND COVENANTS

WHEREAS, California Health and Safety Code (H&SC) Section 34176(g) permits the agency assuming housing functions to designate the use of and to commit indebtedness obligation proceeds that remain after the satisfaction of enforceable obligations on an approved Recognized Obligation Payment Schedule ("ROPS"), which proceeds are derived from indebtedness obligations that were issued for the purposes of affordable housing prior to January 1, 2011, and which were backed by the Low and Moderate Income Housing Fund; and

WHEREAS, review of such designation and commitment by the successor agency, Oversight Board and the Department of Finance is limited under H&SC Section 34176(g)(1)(B) to a determination that the designations and commitments are consistent with bond covenants and that there are sufficient funds available; and

WHEREAS, from and after January 10, 2012, pursuant to Resolution No. 2012-7607, the City of San Marcos serves as both the successor agency to the former San Marcos Redevelopment Agency and as the entity that assumed the housing functions (collectively referenced herein as "Successor Agency"), and pursuant to H&SC section 34167.10(b), in its dual capacities the Successor Agency prepared ROPS that included items which were designated as being satisfied with proceeds of low and moderate income housing bonds; and

WHEREAS, the Successor Agency provided the Oversight Board with ROPS approved by the Successor Agency for the periods January through June 2012, July through December 2012 and January through June 2013 that committed funds for the following ROPS line items on April 12, 2012, May 4, 2012, and August 23, 2012:

- Acquisition of property for low and moderate income housing purposes and related consultant and expert costs (Chu and Kumar sites, offers issued and obligations incurred prior to the dissolution date);
- Westlake Village, Residences at Creekside, ParkView and El Dorado affordable housing projects (property acquisition, and construction loan and related consultant and expert costs, incurred and/or obligated prior to the dissolution date);

WHEREAS, the funding source for the above items was identified as indebtedness obligation proceeds issued for the purposes of affordable housing ("L/M Housing Bond Funds"); and

WHEREAS, in correspondence dated November 29, 2012, provided to this Oversight Board by the Successor Agency, Lorraine McIntire of Union Bank, the trustee for such Bond Funds, confirmed that there were sufficient L/M Housing Bond Funds remaining to satisfy the obligations in question; and

WHEREAS, in correspondence dated December 4, 2012, provided to this Oversight Board by the Successor Agency, bond counsel Warren Diven of Best Best & Krieger has confirmed that designations and commitments are consistent with the L/M Housing Bond covenants.

NOW, THEREFORE RESOLVED that the Oversight Board has previously reviewed and has approved the designation of L/M Housing Bond Funds for the ROPS line items specified above on each of the previous three approved ROPS on the dates noted in the fourth Recital, above ; and

FURTHER BE IT RESOLVED, that the Oversight Board has reviewed the correspondence from Union Bank confirming that sufficient L/M Housing Bond Funds remain to satisfy the ROPS line items specified above, as well as the correspondence confirming that the use of such funds for said purposes is consistent with the L/M Housing Bond covenants, and hereby confirms that the provisions of H&SC Section 34176(g) have been satisfied.

Staff is directed to transmit this resolution to the California State Department of Finance and all other applicable entities as prescribed by law.

PASSED, APPROVED AND ADOPTED by the Oversight Board of the Successor Agency to the former San Marcos Redevelopment Agency at a meeting held on the 7th day of December, 2012, by the following roll call vote:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

ATTEST:

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TODD NEWMAN, VICE CHAIR  
Oversight Board to the Successor Agency of the  
former San Marcos Redevelopment Agency

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SUSIE VASQUEZ, CLERK  
Oversight Board to the Successor Agency of the  
former San Marcos Redevelopment Agency