

**CALENDAR ITEM
C114**

A 66

12/02/13

G05-07

S 28

S. Scheiber

**CONSIDER AMENDING AN AGREEMENT ENTERED INTO BY AND BETWEEN THE
CITY OF REDONDO BEACH AND THE CALIFORNIA STATE LANDS COMMISSION
REGARDING THE HARBOR CENTER PROJECT AND KINCAID'S RESTAURANT
LEASE**

TRUSTEE:

City of Redondo Beach
415 Diamond Street, P.O. Box 270
Redondo Beach, CA 90277-0270

The Legislature first granted certain tide and submerged lands to the City of Redondo Beach (City) in 1915 pursuant to Chapter 57. The grant was subsequently amended by Chapter 1555, Statutes of 1971.

INTRODUCTION:

In 2009, the California State Lands Commission (CSLC) and the City entered into an agreement entitled the "Agreement Regarding the Harbor Center Project and Kincaid's Restaurant Lease" (Agreement). The Agreement stemmed from findings of an earlier financial audit of the City's granted lands trust fund accounts (6/26/06 Calendar Item 86). The Agreement provided that, whenever the City had Harbor Center area tax increment revenues in excess of what was required for bond payments and general operating expenses, that money would be used to repay the City's tidelands debt. Other provisions of the Agreement involve a requirement that the City resolve an inconsistent trust use through a land exchange and a requirement to submit to the CSLC annual Kincaid Restaurant Lease financial information. Due to dissolution of the Redevelopment Agencies and difficulties in finding a suitable property to bring into the trust, the City and CSLC now both desire to amend the Agreement (Amendment).

PROPOSED AMENDMENT:

There are three provisions that are part of the proposed Amendment. The first provision would be to remove the requirement that the City repay the City's Tidelands Fund with excess revenues from the Harbor Center area tax increment revenues because those revenues have been reappropriated by the State. The second provision provides that

CALENDAR ITEM NO. **C114** (CONT'D)

the City must exchange or sell the property that contains the Gold's Gym, a non-trust use. The third provision of the Amendment changes the date when the City must submit annual Kincaid Restaurant Lease financial information to October 1, which is consistent with other financial information submitted annually by the City.

BACKGROUND:

Tideland Trust Repayment for Redevelopment Cost

In 1983, the CSLC authorized the City to use \$3.5 million of the City's Tideland Trust revenue to finance the public portion of the Harbor Center Redevelopment Project. In 1984, the City and the Redevelopment Agency of the City of Redondo Beach (RDA) entered into an agreement where the RDA agreed to pay \$800,000, plus any future unappropriated revenues as may be available, to fund the cost of the public portion of the section of the Harbor Center Redevelopment Project. In exchange, the City agreed to also contribute uncommitted Tideland Trust revenue as was available to contribute to the costs of the public portion of the Project. In June 1990, the City and RDA entered into another agreement in which the RDA agreed to use available tax increments to reimburse the City for costs previously paid with Tideland Trust revenue. In 2009, as part of the Agreement between the City and CSLC, the City was required to repay this tidelands debt through annual payments from the Harbor Center area tax increment revenues in excess of those needed for debt service of existing bonded indebtedness and regular operating expenses, unless otherwise provided by the CSLC.

In February 2012, all redevelopment agencies in the State were dissolved pursuant to ABX1 26 (Chapter 5, Statutes of 2011) and AB 1484 (Chapter 26, Statutes of 2012). As part of the wind down process of the RDAs, the City became the Successor Agency and was required to submit to the Department of Finance (DOF) a list of current obligations, including the June 1990 agreement between the City and the RDA. Successor Agencies are only allowed to pay obligations that have been approved by DOF.

On October 10, 2012, the City received a letter from DOF rejecting the previous obligations to the City, stating that they were unenforceable. DOF made this determination pursuant to the Health and Safety Code section 34171(d)(2), which provides that loan agreements entered into between the RDA and City are, except in limited circumstances not applicable here, unenforceable. The City attended meet and confer sessions with DOF to debate the enforceability of the obligation, but DOF rejected the arguments and upheld its prior determination. After consideration of the likelihood of prevailing through litigation to compel DOF to accept the obligation and secure funding, the City has decided not to pursue litigation. Due to the dissolution and the unenforceable debt repayments, there are no longer any Harbor Center area tax

CALENDAR ITEM NO. **C114** (CONT'D)

increment revenues and therefore, the relevant provision in the Agreement became impossible to perform as those monies went back to the State.

Harbor Center Project Land Exchange

Pursuant to Chapter 1555, Statutes of 1971, the CSLC has previously reviewed and approved expenditures of Tideland Trust revenues by the City for projects involving proposed capital expenditures in excess of \$250,000 in tidelands funds. On February 28, 1983, the CSLC approved the City's proposed expenditure of \$3.5 million to acquire an additional nearby property (a portion of the Harbor Center Project) for additional parking and landscaped areas for King Harbor (Calendar Item 17). The approval of this expenditure was based on the fact that the parcel would be used for a public parking structure and open landscaped areas, both trust consistent uses. This property became known as the "public" portion of the Harbor Center Project. The "public" portion of the Harbor Center Project also includes a commercial/retail space that was later constructed on the parking facility and was never approved by the CSLC. The retail space is currently occupied by Gold's Gym, which is not a trust consistent use.

CSLC staff became aware of the Gold's Gym in 2001, many years after its construction. The CSLC determined that the Gold's Gym is not an appropriate public trust use nor is it necessary or in support of a Public Trust use. The CSLC and the City entered into the Agreement, in part, to resolve the dispute regarding the Gold's Gym through a land exchange. The City agreed to exchange the Harbor Center Trust parcel for a more appropriate parcel of City owned uplands. The land exchange has not occurred, partly due to difficulties in finding suitable lands to bring into the trust.

STAFF ANALYSIS:

The first provision of the proposed Amendment removes the requirement that the City use tax increment money from the former RDA to repay the City's Tideland Fund. With the dissolution of all Redevelopment Agencies, only enforceable obligations would be repaid. Chapter 5, Statutes of 2011, states that an enforceable obligation does not include any agreements, contracts, or arrangements between the city, county, or city and county that created the redevelopment agency and the former redevelopment agency. The obligation between the City and the RDA was determined by the DOF on October 10, 2012, to be unenforceable. Since the obligation is unenforceable and there are no longer any Harbor Center area tax increment revenues, this element of the Agreement is impossible to perform. Those monies have been returned to the State's General Fund and redistributed according to statewide needs. It is CSLC staff's opinion that because the provision is impossible to perform, it should be removed from the Agreement.

CALENDAR ITEM NO. **C114** (CONT'D)

The second provision of the Amendment allows the City to exchange or sell the Harbor Center Trust parcel in order to remove the inconsistent trust use. It provides more flexibility to remove a use which is inconsistent with the public trust from after-acquired upland which is held as a trust asset. The parcel was acquired by the City with trust monies but is not historically or currently tide and submerged lands. Because the City acquired the land with trust monies, they hold the land as an asset of and subject to the public trust, but the restrictions on alienation of tide and submerged lands are not applicable. It is CSLC staff's opinion that directing the City to sell or exchange the Harbor Center Trust parcel would resolve the long standing dispute over the parcel and would be in furtherance of the needs of the Public Trust. The provision still requires the City to obtain CSLC approval prior to the sale or exchange of the parcel and requires that any proceeds will be placed within the City's Tidelands Fund for future trust consistent purposes.

The third provision of the Amendment is a simple housekeeping measure which changes the due date for the Kincaid Restaurant Lease annual financial information to October 1. CSLC staff believes that it makes sense to have the City submit annual financial information regarding Kincaid's Restaurant Lease at the same time as the City submits its other annual financial information pursuant to Public Resources Code section 6306.

OTHER PERTINENT INFORMATION:

The subject authorization for the amendment of an agreement does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the subject authorization for the amendment of an agreement is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

CALENDAR ITEM NO. **C114** (CONT'D)

AUTHORIZATION:

Approve and authorize the execution of the Amendment of the Agreement Regarding the Harbor Center Project and Kincaid's Restaurant Lease, in substantially the form of the Amendment which is on file in the Sacramento Office of the CSLC, containing the following provisions:

- a. Removal of the requirement that the City shall make annual repayments of tideland debt from the Harbor Center area tax increment revenues;
- b. Require of the City to sell or exchange the after-acquired Harbor Center Trust parcel for no less than fair market value and upon approval of the CSLC, and specifies that any proceeds from said sale will be subject to the provisions of the Trust and be placed within the Tidelands Fund for future Trust consistent purposes;
- c. Require of the City to annually submit to the CSLC a detailed accounting of the income and expenditures relating to the Kincaid's Restaurant Lease on or before October 1.