

**CITY OF BRENTWOOD**  
**Oversight Board**  
*Terrace View Room – 2<sup>nd</sup> floor*  
**Brentwood City Hall**  
**150 City Park Way**  
**Brentwood, CA 94513**

A regular meeting of the Brentwood Oversight Board is hereby called for:  
**Wednesday, August 15, 2012**  
**4:00 p.m.**

***Oversight Board Members:***

Bill Hill, Chair  
Steve Barr  
Bob Brockman  
Paul Eldredge

Brian Swisher, Vice Chair  
Kevin Horan  
Eric Volta

**MEETING AGENDA**

1. Call to Order
2. Public Comment – *At this time the public is permitted to address the Board on items that are **not** on the agenda. Persons addressing the Board are required to limit their remarks to five (5) minutes unless an extension of time is granted by the Board.*
3. Approval of minutes from July 18, 2012 meeting
4. Consideration of the Administrative Budget and Recognized Obligation Payment Schedule (ROPS) for January 1, 2013 to June 30, 2013
5. Consideration of a Resolution approving and authorizing the Brentwood City Manager to enter into a contract not to exceed \$50,000 with a licensed accountant approved by the County Auditor-Controller to perform the due diligence reviews pursuant to Health and Safety Code Section 34179.5
6. Consideration of a Resolution confirming title with the City of Brentwood in and to the Public Right-of-Way on Walnut Boulevard
7. Approval of Legal Services Agreement with Wendel Rosen Black & Dean
8. Suggestions for future agenda items
9. Adjournment

**Dated: August 10, 2012**

**NOTICE**

In compliance with the Americans with Disabilities Act, the meeting room is wheelchair accessible and disabled parking is available. If you are a person with a disability and you need disability-related modifications or accommodations to participate in this meeting, please contact the City Clerk's Office at (925) 516-5440 or fax (925) 516-5441. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. {28 CFR 35.102-35, 104 ADA Title II}

**POSTING STATEMENT**

On **August 10, 2012** a true and correct copy of this agenda was posted on the City Hall Bulletin Board, outside City Hall, 150 City Park Way, Brentwood, CA 94513.



## BRENTWOOD OVERSIGHT BOARD ITEM NO. 4

**Meeting Date:** August 15, 2012

**Subject/Title:** Consideration of the Administrative Budget and Recognized Obligation Payment Schedule (ROPS) for January 1, 2013 to June 30, 2013 and authorizing the City Manager and/or Finance Director, in consultation with the City Attorney, to make minor adjustments thereto, and/or adjustments necessary to secure approval of the ROPS and Administrative Budget by the State Department of Finance

**Submitted by:** Kerry Breen, Assistant Finance Director

**Approved by:** Pamela Ehler, Director of Finance and Information Systems

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### RECOMMENDATION

Adopt a Resolution approving the Administrative Budget and Recognized Obligation Payment Schedule (ROPS) for January 1, 2013 to June 30, 2013 and authorizing the City Manager and/or Finance Director, in consultation with the City Attorney, to make minor adjustments thereto, and/or adjustments necessary to secure approval of the ROPS and Administrative Budget by the State Department of Finance.

### PREVIOUS ACTION

On May 8, 2012, the Brentwood Oversight Board adopted Resolution 2012-04 approving amended Recognized Obligation Payment Schedules ("ROPS") for the periods January – June 2012 and July – December 2012.

On May 8, 2012, the Brentwood Oversight Board adopted Resolution 2012-05 approving the Administrative Budgets for the Successor Agency for the periods of February 1- June 30 and July 1-December 31, 2012.

On June 20, 2012, the Brentwood Oversight Board adopted Resolution 2012-11 approving an assignment from the Successor Agency of the Redevelopment Agency of the City of Brentwood, to the City of Brentwood, of the rights and obligations under the Loan Agreement with Grove Sunset, L.P., with respect to the Meta Housing project; and approving and authorizing the City Manager to execute an Assignment and Contingent Repayment Agreement.

### BACKGROUND

By law, a Successor Agency is required to prepare a forward looking Recognized Obligation Payment Schedule (ROPS) which covers six months of Successor Agency financial obligations, commonly referred to as "Enforceable Obligations". A Successor Agency may expend funds only for items on an approved ROPS. The ROPS presented for consideration this afternoon covers the January – June 2013 time period.

Recently adopted Assembly Bill 1484 (AB 1484) establishes strict deadlines and severe and punitive damages for agencies who do not provide the State Department of Finance (DOF) with an approved January – June 2013 ROPS by September 1, 2012. If the ROPS is approved by the Oversight Board this afternoon it will then be submitted to the DOF for final approval. The DOF then has 45 days to make a determination regarding the ROPS. In the event of a dispute between the Successor Agency and the DOF regarding a line item on the ROPS the Successor

Agency may request an additional review by the DOF and has the opportunity to meet and confer on disputed items.

As described above, the ROPS contains the enforceable obligation commitments of the Successor Agency for the January – June 2013 timeframe. Exclusive of fiscal year 2012/13 pass through payments which are to be paid by the Contra Costa County Auditor-Controller's Office, the ROPS includes a total of \$2,355,837 in expenses funded by the Redevelopment Property Tax Trust Fund (RPTTF), with \$152,741 in expenses funded through existing reserves. RPTTF funds are derived from property tax revenues which would have been received by the former Redevelopment Agency. Notable expenditures include \$869,159 for debt service, \$35,000 for special State mandated audit costs, \$76,000 in repayment of subordinated pass through payments from FY 2011/12, and reimbursement of \$1,200,455 in contractual costs associated with the construction of the New Community Center and City Park.

Additional obligations listed on the ROPS which do not request funding during the January – June 2013 time period but will seek funding at a later date include contractual costs associated with the City Park, Downtown Streetscape and Downtown Infrastructure projects, along with a portion of the contractual costs associated with the New Community Center and City Park. The ROPS also documents an estimated pension liability owed to the City of Brentwood, along with the potential borrowing of funds from the City of Brentwood to pay enforceable obligations should the State determine that the Successor Agency owes additional funds under AB 1484. The potential loan from the City is listed on the ROPS in the amount of \$1,546,045. This amount represents the difference between the AB 1484 amount remitted by the Successor Agency and the amount calculated by the County Auditor-Controller. Staff believes that a calculation error by the County Auditor-Controller has caused this discrepancy and is in communication with the DOF to determine if any additional amounts are owed. Any additional amounts owed would require a borrowing of funds. Should a borrowing take place, it would be first brought to the City of Brentwood City Council, Successor Agency Board, and Oversight Board for approval and would occur in late 2012. This loan would not be eligible for repayment until FY 2013/14.

The ROPS also includes funding commitments of \$4,094,140 to be paid from existing Low/Mod Fund Balances. No funds from the RPTTF would be necessary to pay for these obligations. The primary obligation listed is \$3,950,000 to reimburse the City of Brentwood's Affordable Housing Fund for the funding of the Grove at Sunset Court (Meta) Project. Although the DOF has previously rejected this item, an additional attempt at securing these funds may prove successful. Staff is requesting that authority be given to the City Manager of the Successor Agency to remove this line item from the ROPS in the event the State requires its removal in order to certify this ROPS. Excluding funding for this project, the ROPS seeks funding for \$144,140 of enforceable obligations. Personnel costs associated with performing the requisite monitoring and compliance requirements of the City's affordable housing units represent \$111,711 of this total. \$15,000 has been requested for special State mandated audits, and \$17,429 is for professional/legal expenses.

AB X1 26 and AB 1484 provide for an "Administrative Cost Allowance" to annually be paid to the Successor Agency of not less than \$250,000 a year. The Successor Agency is also required to prepare an administrative budget which supports the amount requested for administrative reimbursement. The Successor Agency is required to submit the proposed administrative budget to the Oversight Board for its approval. The ROPS includes payment of \$250,000 for FY 2012/13 administrative cost reimbursement. The Administrative Budget was prepared pursuant to Health and Safety Code Section 34177(j) for the period January through June 2013.

The Administrative Budgets were prepared and are presented in a manner to correspond to the three elements described for the Administrative Budget in Health and Safety Code Section

34177(j)(1), (2), and (3). The Administrative Budgets document that the Successor Agency's "administrative cost allowance", as defined and authorized pursuant to Health and Safety Code Section 24171(b), is the minimum authorized amount of \$250,000. As called for in Health and Safety Code Section 34177(k), and as documented in the Administrative Budgets and the ROPS, the Successor Agency will report to the County Auditor-Controller that its administrative cost allowance to be paid from property taxes deposited in the Redevelopment Property Tax Trust Fund (as further described in Part B below) pursuant to Health and Safety Code Section 34183(a)(3) is the amount of \$250,000 for the January – June 2013 timeframe. No payment for administrative costs was made during the July – December 2012 timeframe, although an administrative budget documenting costs of \$142,217 over this timeframe was previously approved by the Successor Agency and Oversight Board. As such, only \$107,783 in January – June 2013 documented costs are necessary to reach the \$250,000 administrative cost allowance requested on the ROPS. The new reporting requirements established in AB 1484 have resulted in a significant increase in staff time necessary to fulfill the obligations of the Successor Agency, and actual administrative costs exceed the \$250,000 reimbursement amount.

**A. Estimated Amounts For Successor Agency Administrative Costs For January – June 2013 (Health and Safety Code Section 34177(j)(1)**

<b>January - June 2013 Administrative Costs</b>	<b>Cost</b>
Prepare Recognized Obligation Payment Schedule (ROPS)	\$ 11,596.07
Oversight Board staff support (e.g. research, education, staffing, meeting costs)	\$ 24,769.85
Prepare Admin Budgets	\$ 1,061.46
Staff education and training	\$ 9,200.10
Correspondence with County re: inquiries/requests	\$ 9,452.62
Correspondence with State re: inquiries/requests	\$ 16,994.63
Correspondence with external auditors (annual audit, State special audits)	\$ 14,342.88
Preparation of special reports under State Law as required	\$ 27,673.15
Annual Reporting	\$ 5,398.31
Outside Consultant Costs (legal/professional)	\$ 24,583.00
General Fund Overhead & internal services (IT/insurance/contract mgmt/accts pbl/office space/legal)	\$ 58,358.80
<b>Total Administrative costs January 2013 - June 2013</b>	<b>\$ 203,430.87</b>
<b>Total approved Administrative costs July 2012 - December 2012</b>	<b>\$ 142,217.36</b>
<b>Total Administrative costs FY 2012/13</b>	<b>\$ 345,648.23</b>
<b>Administrative cost reimbursement FY 2012/13 (on January - June 2013 ROPS)</b>	<b>\$ 250,000.00</b>

Activities may be added, revised, or deleted from this listing as necessary and appropriate during the course of the former Redevelopment Agency wind-down process. Costs shown for each activity are estimates only. Actual costs required for each activity may be higher or lower than the amount shown.

**B. Proposed Source of Payment for Above-Identified Administrative Costs (Health and Safety Code Section 34177(j)(2)**

As authorized pursuant to Health and Safety Code Section 34183(a)(3), the proposed source of payment for the administrative costs identified in Part A above is the Redevelopment Property

Tax Trust Fund established and maintained by the County Auditor- Controller pursuant to Health and Safety Code Section 34170.5(b).

C. Proposals for Arrangements for Administration and Operations Services (Health and Safety Code Section 34177(i)(3)).

The Successor Agency has arranged with the City of Brentwood to provide the staff services and office materials and equipment to administer the responsibilities of the Successor Agency, and will draw upon services of outside legal and financial consultants to provide special services for the wind-down of the former Brentwood Redevelopment Agency to the extent City staff lacks the necessary expertise or capacity.

**FISCAL IMPACT**

The adoption of the ROPS allows the Successor Agency to pay the former Agency's obligations in an orderly manner as Redevelopment continues the process of dissolving. We expect the next receipt of the Redevelopment Property Tax Trust Fund payment to be received in January 2013. The Administrative Budget allows for reimbursement of \$250,000 for administrative costs incurred by the Successor Agency during the 2012/13 fiscal year. Approval of the ROPS and Administrative Budget does not require a budget amendment.

Attachments

Resolution

Exhibit "A" – Recognized Obligation Payment Schedule January - June 2013

Exhibit "B" – Successor Agency Administrative Budget January - June 2013

**OVERSIGHT BOARD RESOLUTION NO.**

**A RESOLUTION OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY CITY OF BRENTWOOD APPROVING THE ADMINISTRATIVE BUDGET AND THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE OF THE SUCCESSOR AGENCY CITY OF BRENTWOOD FOR JANUARY 1, 2013 – JUNE 30, 2013 AND AUTHORIZING THE CITY MANAGER AND/OR FINANCE DIRECTOR, IN CONSULTATION WITH THE CITY ATTORNEY, TO MAKE MINOR ADJUSTMENTS THERETO AND/OR ADJUSTMENTS NECESSARY TO SECURE APPROVAL OF THE ROPS AND ADMINISTRATIVE BUDGET BY THE STATE DEPARTMENT OF FINANCE.**

**WHEREAS**, Section 34177 (l)(2) of the Health and Safety Code requires the City of Brentwood as the successor agency to the former City of Brentwood Redevelopment Agency ("Successor Agency") to submit to the State Department of Finance ("DOF"), the State Controller, and the Contra Costa County Auditor-Controller ("County Auditor") for review, by September 1, 2012, a Recognized Obligation Payment Schedule ("ROPS") for the period January 1, 2013 through June 30, 2013; and

**WHEREAS**, Assembly Bill 1484 (AB 1484) establishes strict deadlines and severe and punitive damages for agencies who do not provide the DOF with an approved January – June 2013 ROPS by September 1, 2012; and

**WHEREAS**, the ROPS contains the enforceable obligation commitments of the Successor Agency for the January – June 2013 timeframe; and

**WHEREAS**, the ROPS documents the potential borrowing of funds from the City of Brentwood to pay enforceable obligations should the State determine that the Successor Agency owes additional funds under AB 1484; and

**WHEREAS**, On June 20, 2012 City of Brentwood Oversight Board adopted Resolution 2012-11 approving an assignment from the Successor Agency of the Redevelopment Agency of the City of Brentwood, to the City of Brentwood, of the rights and obligations under the Loan Agreement with Grove Sunset, L.P., with respect to the Meta Housing project; and approving and authorizing the City Manager to execute an Assignment and Contingent Repayment Agreement; and

**WHEREAS**, the ROPS seeks reimbursement of \$3,950,000 in funds provided by the City of Brentwood's Affordable Housing In-Lieu Fund for the Grove at Sunset Court project as approved by the Oversight Board; and

**WHEREAS**, the City Manager of the Successor Agency, in consultation with the City Attorney, shall be authorized to remove the reimbursement of \$3,950,000 for the Grove at Sunset Court project in the event the State requires this item to be removed prior to approving the ROPS; and

**WHEREAS**, Health and Safety Code §34171 (a), (b) and §34177(j) require the Oversight Board to approve an Administrative Budget for administrative costs of the Successor Agency; and

**WHEREAS**, the Administrative Budgets have been prepared and is being presented in three parts to correspond to the three elements described for the Administrative Budget in Health and Safety Code Section 34177(j)(1), (2), and (3); and

**WHEREAS**, the Administrative Budgets document that the Successor Agency's "administrative cost allowance", as defined and authorized pursuant to Health and Safety Code Section 24171(b), is the minimum authorized amount of \$250,000 for both Administrative Budgets being presented; and

**WHEREAS**, the Successor Agency will report to the County Auditor-Controller that its administrative cost allowance to be paid from property taxes deposited in the Redevelopment Property Tax Trust Fund pursuant to Health and Safety Code Section 34183(a)(3) is the amount of \$250,000 for the 2012/13 Fiscal Year and is payable during the January – June 2013 timeframe; and

**WHEREAS**, as authorized pursuant to Health and Safety Code Section 34183(a)(3), the proposed source of payment for the administrative costs is the Redevelopment Property Tax Trust Fund established and maintained by the County Auditor- Controller pursuant to Health and Safety Code Section 34170.5(b); and

**WHEREAS**, the Successor Agency has arranged with the City of Brentwood to provide the staff services and office materials and equipment to administer the responsibilities of the Successor Agency.

**NOW, THEREFORE BE IT RESOLVED AS FOLLOWS:**

1. The Recognized Obligation Payment Schedule for the period January 1 – June 30, 2013, in the forms attached to this resolution and incorporated herein by reference, is hereby approved.

2. The staff of the Successor Agency is hereby directed to submit the ROPS to the State Department of Finance, the State Controller and the Contra Costa County Auditor-Controller and post the ROPS on the Successor Agency's website in accordance with Health and Safety Code Section 34177(l)(2)(C), and to cooperate with DOF to the extent necessary to obtain DOF's acceptance of the each ROPS, including, if necessary, making modifications to the ROPS determined by the Successor Agency's Finance Director, in consultation with the Successor Agency's counsel, to be reasonable and financially feasible to meet its legally required financial obligations and for the City Manager, in consultation with the City Attorney, to remove the line item requesting reimbursement for the Grove at Sunset Court in the event the State requires the removal of this line item in order to approve the ROPS.

3. Upon the Successor Agency's receipt of the certified ROPS from the County Auditor, and provided the certified ROPS did not require substantial changes from the ROPS approved by this resolution, the Board deems the certified ROPS approved by the Board and the Successor Agency is hereby authorized and directed to submit the certified ROPS to DOF, the State Controller and the County Auditor for review. If the certified ROPS is substantially different from the ROPS approved by this resolution, the Successor Agency is hereby directed to submit the certified ROPS to the Board for review and approval prior to its submittal to DOF, the State Controller and the County Auditor for review.

4. The Oversight Board hereby approves the Administrative Budget for January – June 2013, in substantially the form attached to the Resolution as Exhibit "B", as required by Health and Safety Code §34171 (a), (b) and §34177(j).

5. The City Manager or his designee, on behalf of the Successor Agency, is hereby authorized and directed to undertake any actions as are necessary to carry out the purposes of this Resolution including, without limitation, the execution of documents and all other actions, subject to any minor conforming, technical or clarifying changes approved to form by legal

counsel. Such actions may include, but are not limited to (1) submitting the approved Administrative Budget as part of an approved ROPS to the Contra Costa County Auditor-Controller for certification by an external auditor, either the county auditor-controller or its designee; and (2) submitting the Administrative Budget as part of the approved ROPS and to the Contra Costa County Auditor-Controller; and (3) submitting the Administrative Budget as part of the approved ROPS to the California State Controller and the State of California Department of Finance, and posting the approved Administrative Budget as part of the approved ROPS on the successor agency's website.

6. This Resolution shall take effect immediately upon its adoption.

**PASSED, APPROVED AND ADOPTED** by the Oversight Board for the Successor Agency City of Brentwood at a regular meeting held on August 15, 2012, by the following vote:

**Successor Agency Contact Information**

Name of Successor Agency:  
County:

City of Brentwood  
Contra Costa County

Primary Contact Name:  
Primary Contact Title:  
Address  
Contact Phone Number:  
Contact E-Mail Address:

Kerry Breen  
Assistant Finance Director  
150 City Park Way  
(925) 516-5436  
kbreen@brentwoodca.gov

Secondary Contact Name:  
Secondary Contact Title:  
Secondary Contact Phone Number:  
Secondary Contact E-Mail Address:

Michelle Hamblin  
Business Services Manager  
(925) 516-5107  
mhamblin@brentwoodca.gov

**SUMMARY OF RECOGNIZED OBLIGATION PAYMENT SCHEDULE**

Filed for the January 1, 2013 to June 30, 2013 Period

**Name of Successor Agency:** City of Brentwood

		Total Outstanding Debt or Obligation
<b>Outstanding Debt or Obligation</b>		<b>\$ 77,789,792</b>
<b>Current Period Outstanding Debt or Obligation</b>		<b>Six-Month Total</b>
A	Available Revenues Other Than Anticipated RPTTF Funding	4,246,881.00
B	Anticipated Enforceable Obligations Funded with RPTTF	2,105,837.00
C	Anticipated Administrative Allowance Funded with RPTTF	250,000.00
D	Total RPTTF Requested (B + C = D)	2,355,837.00
Total Current Period Outstanding Debt or Obligation (A + B + C = E) <i>Should be the same amount as ROPS form six-month total</i>		6,602,718.00
E	Enter Total Six-Month Anticipated RPTTF Funding <i>(Obtain from county auditor-controller)</i>	2,355,837.00
F	Variance (E - D = F) <i>Maximum RPTTF Allowable should not exceed Total Anticipated RPTTF Funding</i>	-
<b>Prior Period (January 1, 2012 through June 30, 2012) Estimated vs. Actual Payments (as required in HSC section 34186 (a))</b>		
G	Enter Estimated Obligations Funded by RPTTF <i>(Should be the lesser of Finance's approved RPTTF amount including admin allowance or the actual amount distributed)</i>	2,810,878.00
H	Enter Actual Obligations Paid with RPTTF	2,560,878.00
I	Enter Actual Administrative Expenses Paid with RPTTF	250,000.00
J	Adjustment to Redevelopment Obligation Retirement Fund (G - (H + I) = J)	-
K	<b>Adjusted RPTTF</b> <i>(The total RPTTF requested shall be adjusted if actual obligations paid with RPTTF are less than the estimated obligation amount)</i>	<b>2,355,837.00</b>

Certification of Oversight Board Chairman:  
Pursuant to Section 34177(m) of the Health and Safety code,  
I hereby certify that the above is a true and accurate Recognized  
Obligation Payment Schedule for the above named agency.

Name

Title

Signature

Date



RECOGNIZED OBLIGATION PAYMENT SCHEDULE (ROPS III) -- Notes (Optional)  
 January 1, 2013 through June 30, 2013

Item #	Notes/Comments
1	The Bond Reserve funds are required by the bond covenants but not required to be distributed at this time. The amount funded from "Reserves" represents the projected cash balance as of 12/31/12. Should this amount be taken by DOF the funding source would need to come from the RPTTF instead.
3	We have estimated the agency will have a cash balance of \$152,741 as of December 31, 2012. If these funds are allocated to other taxing entities or somehow removed from the Successor Agency or if there is an adjustment to our January 2013 RPTTF allocation as indicated on the "Summary" tab to account for prior period estimates, the funding source for this debt payment would have to come from RPTTF.
5	The Successor Agency documented \$142,217 in administrative costs for the July - December 2012 timeframe and an additional \$203,431 for the January - June 2013 timeframe and is requesting the annual allocation of \$250,000 be made during the January - June 2013 time frame.
12	The Agency has not yet entered into an agreement with a "licensed accountant" for the audit requirements identified in AB 1484 but will shortly.
13	The Agency appropriated funding for this Project prior to the effective date of AB 1X 26 and multiple third party contracts with private party vendors were signed prior to the effective date of AB 1X 26. These obligations and payments constitute valid enforceable obligations under Health and Safety Code Section 34171(d)(1)(E) as they are being made pursuant to legally binding and enforceable agreements and third parties. The contractors, have been acting in reliance on those payments
14	The Agency appropriated funding for this Project prior to the effective date of AB 1X 26 and multiple third party contracts with private party vendors were signed prior to the effective date of AB 1X 26. These obligations and payments constitute valid enforceable obligations under Health and Safety Code Section 34171(d)(1)(E) as they are being made pursuant to legally binding and enforceable agreements and third parties. The contractors, have been acting in reliance on those payments
15	The Agency appropriated funding for this Project prior to the effective date of AB 1X 26 and multiple third party contracts with private party vendors were signed prior to the effective date of AB 1X 26. These obligations and payments constitute valid enforceable obligations under Health and Safety Code Section 34171(d)(1)(E) as they are being made pursuant to legally binding and enforceable agreements and third parties. The contractors, have been acting in reliance on those payments
16	The Agency appropriated funding for this Project prior to the effective date of AB 1X 26 and multiple third party contracts with private party vendors were signed prior to the effective date of AB 1X 26. These obligations and payments constitute valid enforceable obligations under Health and Safety Code Section 34171(d)(1)(E) as they are being made pursuant to legally binding and enforceable agreements and third parties. The contractors, have been acting in reliance on those payments
17	The Successor Agency instructed the County Auditor/Controller to subordinate the pass through payment to this agency for the 11/12 Fiscal Year due to a shortfall of funds which were needed to pay enforceable obligations. This was a cash flow issue and these payments are still due. This was a cash flow issue and these payments are still due.
18	The Successor Agency instructed the County Auditor/Controller to subordinate the pass through payment to this agency for the 11/12 Fiscal Year due to a shortfall of funds which were needed to pay enforceable obligations. This was a cash flow issue and these payments are still due.
19	This represents the potential amount the Agency may need to borrow from the City for cash flow purposes to meet its enforceable obligations including bond payments and reserve funds for future bond payments should the Agency need to remit additional funds to the County pursuant to AB 1484 for the July 2012 payment.
20	The Pension Obligations are the estimated dollar amounts of underfunding attributable to former employees working in the Redevelopment Agency. Amounts include Low/Mod funds owed also.
23	The Loan Agreement between Meta Housing and the former Redevelopment Agency was disapproved as an enforceable obligation on the Successor Agency's ROPS. The City of Brentwood and the Successor Agency entered into an Assignment and Contingent Repayment Agreement to provide for the City's funding of the loan and for repayment to the Successor Agency. We have attached documentation illustrating why we believe this is an enforceable obligation.
24	The Oversight Board requested separate legal counsel, however, their selection of the firm is scheduled to occur the same night as the adoption of the ROPS so we are unable to definitively indicate the dollar amount or firm name.
Prior Pd	Note the Administrative Allowance of \$250,000 was listed on the January - June 2012 ROPS but not inadvertently not allocated to a particular month and not included in the total on the DOF webpage - this amount has been included on this form, both in the prior period payments and in the summary tab which includes the DOF approved amount and the \$250,000.

Pursuant to Health and Safety Code section 34186 (a)  
PRIOR PERIOD ESTIMATED OBLIGATIONS vs. ACTUAL PAYMENTS  
RECOGNIZED OBLIGATION PAYMENT SCHEDULE (ROPS I)  
January 1, 2012 through June 30, 2012

Page/Form	Line	Project Name / Debt Obligation	Payee	Description/Project Scope	Project Area	LMHF		Bond Proceeds		Reserve Balance		Admin Allowance		RPTTF		Other	
						Estimate	Actual	Estimate	Actual	Estimate	Actual	Estimate	Actual	Estimate	Actual	Estimate	Actual
	1	2001/2012 Tax Allocation Bonds	US Bank	Refund 1900 TAB and Fund Reserve	Merged	\$ 4,159,494	\$ 151,857	\$ -	\$ -	\$ -	\$ -	\$ 250,000	\$ 250,000	\$ 2,560,678	\$ 2,560,678	\$ -	\$ -
	2	2009 Revenue Bonds	US Bank	2009 Bonds Debt Service	Merged												
	4	Professional/Spacial/Legal	Various	Legal/Auditor/Prop Tax Admin/Proj Serv	Merged												
	9	Housing Monitoring/Compliance	Various	Professional/Legal/Office Expense	Merged												
	13	Other Supplies and Services	Various	Office/Utilities/Advertising/Comm	Merged		22,307										
	14	The Grove at Sunset Court	Grove Sunset, L.P. (Meta)	Low/Med Admnl Loan/Proj Mgmt	Merged												
	15	Personnel Services	City of Brentwood	Payroll/PEBU/Unemployment/Comp Abs	Merged		3,989,500										
	16	Personnel Services	City of Brentwood	Low/Med Compliance/Monitoring Staff	Merged		130,279										
	17	Grants/Contributors to Others	Local Businesses	Fairfax Improvement/Bus Incentive/H&S	Merged												
	23	Administrative Cost Allowance	City of Brentwood	Admin Cost Allowance (see notes)	Merged							250,000	250,000				
		<b>Grand Total</b>				<b>\$ 4,159,494</b>	<b>\$ 151,857</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 250,000</b>	<b>\$ 250,000</b>	<b>\$ 2,560,678</b>	<b>\$ 2,560,678</b>	<b>\$ -</b>	<b>\$ -</b>

**BRENTWOOD SUCCESSOR AGENCY  
ADMINISTRATIVE BUDGET  
JANUARY 1, 2013 - JUNE 30, 2013**

January - June 2013 Administrative Costs	Cost
Prepare Recognized Obligation Payment Schedule (ROPS)	\$ 11,596.07
Oversight Board staff support (e.g. research, education, staffing, meeting costs)	\$ 24,769.85
Prepare Admin Budgets	\$ 1,061.46
Staff education and training	\$ 9,200.10
Correspondence with County re: inquiries/requests	\$ 9,452.62
Correspondence with State re: inquiries/requests	\$ 16,994.63
Correspondence with external auditors (annual audit, State special audits)	\$ 14,342.88
Preparation of special reports under State Law as required	\$ 27,673.15
Annual Reporting	\$ 5,398.31
Outside Consultant Costs (legal/professional)	\$ 24,583.00
General Fund Overhead & internal services (IT/insurance/contract mgmt/accts pbl/office space/legal)	<u>\$ 58,358.80</u>
<b>Total Administrative costs January 2013 - June 2013</b>	<b>\$ 203,430.87</b>
<b>Total approved Administrative costs July 2012 - December 2012</b>	<b>\$ 142,217.36</b>
<b>Total Administrative costs FY 2012/13</b>	<b>\$ 345,648.23</b>
<b>Administrative cost reimbursement FY 2012/13 (on January - June 2013 ROPS)</b>	<b>\$ 250,000.00</b>

## BRENTWOOD OVERSIGHT BOARD ITEM NO. 5

**Meeting Date:** August 15, 2012

**Subject/Title:** Consideration of a Resolution authorizing the City Manager to enter into a contract, not to exceed \$50,000, with a licensed accountant or accounting firm approved by the County Auditor-Controller to perform the due diligence reviews required pursuant to Health and Safety Code Section 34179.5

**Submitted by:** Kerry Breen, Assistant Finance Director

**Approved by:** Pamela Ehler, Director of Finance and Information Systems

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### RECOMMENDATION

Adopt a Resolution authorizing the City Manager to enter into a contract, not to exceed \$50,000, with a licensed accountant or accounting firm approved by the County Auditor-Controller to perform the due diligence reviews required pursuant to Health and Safety Code Section 34179.5.

### PREVIOUS ACTION

None

### BACKGROUND

Section 34179.5 of recently adopted Assembly Bill 1484 (AB 1484) requires all successor agencies to hire a licensed accountant, approved by the county auditor-controller and with experience and expertise in local government accounting, to conduct a due diligence review to determine the unobligated balances available for transfer to taxing entities.

AB 1484 requires two separate due diligence reviews. The first will focus on the Low/Mod Income Housing Fund, with the results due to the Oversight Board, the County Auditor-Controller, the State Department of Finance and the State Controller's Office by October 1, 2012. The Oversight Board must then review, approve, and transmit the results of the Low Mod due diligence review to the County Auditor-Controller and the State Department of Finance by October 15, 2012. Prior to approving the review, however, the Oversight Board must hold a public session at least five business days prior to allow for public comment and input regarding the review. Excess funds identified during the review process will be remitted to the County Auditor-Controller by November 28, 2012, and distributed to taxing entities by the end of the first week of December.

The second due diligence review will focus on the remaining former redevelopment agency funds. This review is due to the Oversight Board, the County Auditor-Controller, the State Department of Finance and the State Controller's Office by December 15, 2012. The Oversight Board must then review, approve, and transmit the results of the Low Mod due diligence review to the County Auditor-Controller and the State Department of Finance by January 15, 2013. Prior to approving the review, however, the Oversight Board must hold a public session at least five business days prior to allow for public comment and input regarding the review. Excess funds identified during the review process will be remitted to the County Auditor-Controller by April 10, 2013, and distributed to taxing entities by April 17, 2013.

The combination of an extremely short timeframe in which to complete these due diligence reviews; the seasonal workload of audit firms, that are typically booked months in advance for year-end audits which take place during the August – November timeframe; and a general lack of clear guidance from the State as to specific procedures to be conducted during the due diligence reviews, has resulted in a shortage of firms willing to perform these reviews. As such, the Successor Agency has yet to locate a qualified “licensed accountant” or qualified firm willing to perform these reviews.

Since the due diligence reviews are required as a matter of law, staff is recommending that authority be given to the City Manager to enter into an agreement, not to exceed \$50,000 in total, with a qualified firm or accountant in order to comply with the requirements of AB 1484. Staff is concerned that delaying the commencement of the reviews until after a contract with a recommended firm can be brought to the Successor Agency and Oversight Board for approval is likely to result in delays which could impact the timing of the completion of the reviews. With only 1 ½ months remaining until the first due diligence review is required to be completed this could put the Successor Agency at risk of violating the statutory deadlines.

#### **FISCAL IMPACT**

The cost of the due diligence reviews was included on the January – June 2013 ROPS which is being presented this afternoon as a separate agenda item. A total of \$50,000 was included in the ROPS to cover the costs of the due diligence reviews.

Attachments  
Resolution

**OVERSIGHT BOARD RESOLUTION NO.**

**A RESOLUTION OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY CITY OF BRENTWOOD AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT NOT TO EXCEED \$50,000 WITH A LICENSED ACCOUNTANT OR ACCOUNTING FIRM APPROVED BY THE COUNTY AUDITOR-CONTROLLER TO PERFORM THE DUE DILIGENCE REVIEWS REQUIRED PURUANT TO HEALTH AND SAFETY CODE SECTION 34179.5**

**WHEREAS**, Section 34179.5 of recently adopted Assembly Bill 1484 (AB 1484) requires all successor agencies to hire a licensed accountant, approved by the county auditor-controller and with experience and expertise in local government accounting, to conduct a due diligence review to determine the unobligated balances available for transfer to taxing entities; and

**WHEREAS**, Assembly Bill 1484 (AB 1484) requires two separate due diligence reviews; and

**WHEREAS**, the Low/Mod Income Housing Fund due diligence review is due to the Oversight Board, the County Auditor-Controller, the State Department of Finance and the State Controller's Office by October 1, 2012; and

**WHEREAS**, the remaining former redevelopment funds due diligence review is due to the Oversight Board, the County Auditor-Controller, the State Department of Finance and the State Controller's Office by December 15, 2012; and

**WHEREAS**, the combination of an extremely short timeframe in which to complete these due diligence reviews; the seasonal workload of audit firms, who are typically booked months in advance for year-end audits which take place during the August – November timeframe; and a general lack of clear guidance from the State as to specific procedures to be conducted during the due diligence reviews has resulted in a shortage of firms willing to perform due diligence reviews; and

**WHEREAS**, staff is concerned that delaying the commencement of the due diligence reviews until after a contract with a recommended firm can be brought to the Successor Agency and Oversight Board for approval is likely to result in delays which could impact the timing of the completion of the reviews; and

**WHEREAS**, with only 1 ½ months remaining until the first due diligence review is required to be completed, any delay in the commencement of the due diligence reviews could put the Successor Agency at risk of violating the statutory deadlines; and

**WHEREAS**, the cost of the due diligence reviews was included on the January – June 2013 ROPS which is being presented this afternoon as a separate agenda item; and

**WHEREAS**, a total of \$50,000 was included in the ROPS to cover the cost of the due diligence reviews.

**NOW, THEREFORE BE IT RESOLVED AS FOLLOWS:**

1. The City Manager is authorized to enter into a contract in an amount not to exceed \$50,000 with a licensed accountant or accounting firm approved by the County Auditor-Controller to perform the due diligence reviews required pursuant to health and safety code section 34179.5.
2. This Resolution shall take effect immediately upon its adoption.

**PASSED, APPROVED AND ADOPTED** by the Oversight Board for the Successor Agency City of Brentwood at a regular meeting held on August 15, 2012, by the following vote:

## BRENTWOOD OVERSIGHT BOARD ITEM NO. 6

**Meeting Date:** August 15, 2012

**Subject/Title:** Consideration of a Resolution Confirming Title with the City of Brentwood in and to the Public Right-of-Way on Walnut Boulevard, which is a Portion of APN 013-232-006, Pursuant to Health and Safety Code Section 34181

**Submitted by:** Miki Tsubota, Assistant Director of Public Works/Engineering

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### RECOMMENDATION

Adopt Resolution Confirming Title with the City of Brentwood in and to the Public Right-of-Way on Walnut Boulevard, which is a Portion of APN 013-232-006, Pursuant to Health and Safety Code Section 34181

### PREVIOUS ACTION

On May 8, 2012, the Oversight Board reviewed the list of properties transferred to the City from the Redevelopment Agency and adopted resolutions confirming title to three properties used for public purposes.

### BACKGROUND

One of the properties transferred to the City that was reviewed at the May 8, meeting was a vacant parcel located at the southeast corner of Oak Street and Walnut Boulevard (approximately 1.68 acres). As was noted during the discussion, a portion of this property is currently part of the Walnut Boulevard Roadway, which portion is shown in the attached roadway plan. That portion is used as roadway and for utilities, landscaping and other appurtenant roadway features.

Health & Safety Code section 34181 provides that the Oversight Board may direct the transfer of properties used for a governmental purpose to the appropriate jurisdiction. In this case, the property at issue was already transferred to the City. Therefore, the City desires to confirm that it holds title to the roadway portion of APN 013-232-006. The remaining portion of APN 013-232-006 is not being addressed, but will be considered at a later time.

There are no existing agreements regarding the right-of-way and no compensation is paid for such use.

If the attached resolution is approved by the Oversight Board, the City will process title documents to confirm that the portion of APN 013-232-006 used for roadway purposes is public right-of-way and the remaining portion of APN 013-232-006 will be addressed later.

### FISCAL IMPACT

There is no fiscal impact to the Oversight Board associated with this item.

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY CITY OF BRENTWOOD CONFIRMING TITLE WITH THE CITY OF BRENTWOOD IN AND TO THE PUBLIC RIGHT-OF-WAY ON WALNUT BOULEVARD, WHICH IS A PORTION OF APN 013-232-006, PURSUANT TO HEALTH AND SAFETY CODE SECTION 34181**

**WHEREAS**, California Health and Safety Code section 34181 (“section 34181”) requires the Oversight Board to direct the Successor Agency to dispose of all assets and properties that were funded by tax increment revenues of the former Redevelopment Agency expeditiously and in a manner aimed at maximizing value; and

**WHEREAS**, section 34181 also provides that the Oversight Board may direct that the Successor Agency transfer ownership of those assets that were constructed and used for a governmental purpose to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such assets, with any compensation to be provided to the Successor Agency for such transfer of the assets governed by the agreements relating to the construction or use of those assets; and

**WHEREAS**, recent amendments to state law in Health Safety Code section 34191.3 suspended section 34181 except for those provisions that apply to transfers for governmental use; and

**WHEREAS**, the public right-of-way located at Walnut Boulevard in the City of Brentwood, which constitutes that portion of APN 013-232-006 depicted on Exhibit A (the “Public ROW”) was constructed and is currently being used for a governmental purpose as a public right-of-way; and

**WHEREAS**, title to APN 013-232-006, which included the Public ROW, was transferred from the former redevelopment agency to the City; and

**WHEREAS**, there are no existing agreements governing use of the Public ROW or its construction; and

**WHEREAS**, the Oversight Board desires to confirm, pursuant to section 34181, that title the Public ROW shall be held by the City of Brentwood.

**NOW THEREFORE, THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY CITY OF BRENTWOOD HEREBY RESOLVES AS FOLLOWS:**

The Oversight Board hereby confirms that title to the Public ROW shall be held by the City of Brentwood without the requirement for any payment of compensation to the Successor Agency.

**PASSED, APPROVED AND ADOPTED** by the Oversight Board for the Successor Agency City of Brentwood at a regular meeting held on August 15, 2012, by the following vote:



## **BRENTWOOD OVERSIGHT BOARD ITEM NO. 7**

**Meeting Date:** August 15, 2012  
**Subject/Title:** Legal Services Agreement with Wendel Rosen Black & Dean  
**Submitted by:** Karen Chew, Oversight Board Secretary

### **RECOMMENDATION**

Approve the legal services with Wendel Rosen Black & Dean for Oversight Board legal services

### **DISCUSSION**

At the May meeting, the Oversight Board discussed the need for Legal Services and appointed Board Members Volta and Eldredge to serve as a sub-committee to oversee the development of a RFQ for legal services. With the assistance of the City Attorney, staff developed an RFQ which was approved by the Board in June and then sent to qualified individuals and firms to serve as legal counsel to the Oversight Board.

The deadline for responses was July 12, 2012 and two proposals were received. Staff recommended that the sub-committee interview the two respondents and return to the Board in August with a recommendation of who should be appointed to serve as the legal counsel.

The sub-committee interviewed the two respondents on July 26, 2012 and recommends that the Oversight Board enter into an agreement for legal services with Wendel Rosen Black & Dean.

The funding for these legal services will be paid by the Successor Agency.

Attachments:

Legal Service Agreement  
RFQ for Oversight Board Legal Services

**AGREEMENT FOR LEGAL SERVICES**  
**Wendel Rosen Black & Dean, LLP**

THIS AGREEMENT is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2012 by and between the Oversight Board for the Successor Agency of the Redevelopment Agency of the City of Brentwood ("Oversight Board"), and Wendel Rosen Black & Dean, a Limited Liability Partnership ("Legal Counsel") (each a "Party" and collectively, the "Parties").

**RECITALS**

A. Oversight Board requires the professional services of an attorney that is experienced in redevelopment issues.

B. Legal Counsel has the necessary professional skills and experience necessary to perform the services described in this Agreement.

C. Legal Counsel has submitted a proposal to Oversight Board and has affirmed its willingness and ability to perform such work on the terms and manner set forth in this Agreement.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, the Parties agree as follows:

1. Scope of Work. Oversight Board retains Legal Counsel to represent the Oversight Board in connection with its oversight of the Successor Agency of the Redevelopment Agency of the City, including, but not limited to providing advice, consultation, legal research and opinions regarding redevelopment activities and Oversight Board responsibilities as further detailed in Exhibit "A" (the "Services") and in accordance with this Agreement's terms and conditions.

2. Standard of Performance. While performing the Services, Legal Counsel will exercise the reasonable professional care and skill customarily exercised by reputable members of the California State Bar practicing in the Metropolitan Northern California Area, and will use reasonable diligence and best judgment while exercising its professional skill and expertise.

3. Term. Unless earlier terminated or extended, the term of this Agreement will be effective for a period of one year from the date first above written. The Agreement may be extended by mutual agreement annually thereafter.

4. Time is of the Essence. Time is of the essence for each and every provision of this Agreement.

5. Compensation. Legal Counsel's current rates are specified in the attached Exhibit "A". No other compensation for Services will be allowed except for items covered by subsequent amendments to this Agreement.

6. Payment for Services. Legal Counsel shall submit itemized monthly invoices to the Oversight Board for the Services provided and costs incurred pursuant to the terms of this Agreement. Oversight Board shall make payment to legal counsel within thirty (30) days of receipt of the invoice, except for those specific items on the invoice which are contested or questioned by the Oversight Board, with written explanation, within thirty (30) days of receipt of the invoice. Legal Counsel shall provide to Oversight Board, a written response to any statement contested or questioned and further, upon request of Oversight Board, provide Oversight Board with any and all documents related to the services or costs. No charge shall be made for time expended in providing this information to the Oversight Board.

7. Status of Legal Counsel. Legal Counsel will perform the Services in Legal Counsel's own way and pursuant to this Agreement as an independent contractor and in pursuit of Legal Counsel's independent calling, and not as an employee of Oversight Board. The persons used by Legal Counsel to

provide the Services under this Agreement will not be considered employees of Oversight Board for any purposes.

The payment made to Legal Counsel pursuant to the Agreement will be the full and complete compensation to which Legal Counsel is entitled. Oversight Board will not make any federal or state tax withholdings on behalf of Legal Counsel or its agents, employees or subcontractors. Oversight Board will not pay any workers' compensation insurance, retirement contributions or unemployment contributions on behalf of Legal Counsel or its employees or subcontractors. Legal Counsel agrees to indemnify and pay Oversight Board within thirty (30) days for any tax, retirement contribution, social security, overtime payment, unemployment payment or workers' compensation payment which Oversight Board may be required to make on behalf of Legal Counsel or any agent, employee, or contractor of Legal Counsel for work done under this Agreement. At the Oversight Board's election, Oversight Board may deduct the amounts paid pursuant to this Section, from any balance owing to Legal Counsel.

8. Subcontracting. Legal Counsel will not subcontract any portion of the Services without prior written approval of Oversight Board. If Legal Counsel subcontracts any of the Services, Legal Counsel will be fully responsible to the Oversight Board for the acts, errors and omissions of Legal Counsel's subcontractor and of the persons either directly or indirectly employed by the subcontractor, as Legal Counsel is for the acts and omissions of persons directly employed by Legal Counsel. Nothing contained in this Agreement will create any contractual relationship between any subcontractor of Legal Counsel and Oversight Board. Legal Counsel will be responsible for payment of subcontractors. Legal Counsel will bind every subcontractor and every subcontractor of a subcontractor by the terms of this Agreement applicable to Legal Counsel's work unless specifically noted to the contrary in the subcontract and approved in writing by Oversight Board.

9. Other Consultants. The Oversight Board reserves the right to employ other consultants in connection with the Services.

10. Indemnification. Legal Counsel will indemnify and hold harmless Oversight Board and its and their officers, agents, employees and volunteers from and against all claims, damages, losses and expenses including attorney fees arising out of the performance of the Services to the extent they are adjudicated to be the result of the willful misconduct or negligent act or omission of the Legal Counsel, any subcontractor, anyone employed by any of them or anyone for whose acts any of them may be liable, except to the extent caused by the negligence, or willful misconduct of Oversight Board and/or the other indemnified parties.

11. Insurance. Legal Counsel will obtain and maintain, at its cost and expense, for the duration of the Agreement and any and all amendments, insurance against claims for injuries to persons or damage to property which may arise out of or in connection with performance of the Services by Legal Counsel or Legal Counsel's agents, representatives, employees or subcontractors. The insurance will be obtained from an insurance carrier admitted and authorized to do business in the State of California. The insurance carrier is required to have a current Best's Key Rating of not less than "A:VII."

11.1 Coverages and Limits. Legal Counsel will maintain the types of coverages and minimum limits indicated below. These minimum amounts of coverage will not constitute any limitations or cap on Legal Counsel's indemnification obligations under this Agreement. Oversight Board, its officers, agents, volunteers and employees make no representation that the limits of the insurance specified to be carried by Legal Counsel pursuant to this Agreement are adequate to protect Legal Counsel. The coverage will contain no special limitations on the scope of its protection to the above-designated insureds except for Workers Compensation and errors and omissions insurance. Legal Counsel will obtain occurrence coverage, excluding Professional Liability, which will be written as claims-made coverage.

11.1.1 Commercial General Liability Insurance. \$1,000,000 combined single-limit per occurrence for bodily injury, personal injury and property damage. If the submitted policies contain

aggregate limits, general aggregate limits will apply separately to the work under this Agreement or the general aggregate will be twice the required per occurrence limit.

11.1.2 Automobile Liability. \$1,000,000 combined single-limit per accident for bodily injury and property damage.

11.1.3 Workers' Compensation and Employer's Liability. Workers' Compensation limits as required by the California Labor Code and Employer's Liability limits of \$1,000,000 per accident for bodily injury. Workers' Compensation and Employer's Liability insurance will not be required if Legal Counsel has no employees and provides, to Oversight Board's satisfaction, a declaration stating this.

11.1.4 Professional Liability. Errors and omissions liability appropriate to Legal Counsel's profession with limits of not less than \$1,000,000 per claim.

11.2 Endorsements. For Commercial General Liability Insurance and Automobile Liability Insurance, Legal Counsel will ensure that the policies are endorsed to name the Oversight Board, its officers, agents, volunteers and employees as additional insureds. Prior to Oversight Board's execution of this Agreement, Legal Counsel will furnish certificates of insurance and endorsements to Oversight Board.

11.3 Cancellation. Insurance will be in force during the life of the Agreement and any extensions of it and will not be canceled without thirty (30) days prior written notice to Oversight Board sent pursuant to the notice provisions of this Agreement.

11.4 Failure to Maintain Coverage. If Legal Counsel fails to maintain any of these insurance coverages, then Oversight Board will have the option to declare Legal Counsel in breach of this Agreement, or may purchase replacement insurance or pay the premiums that are due on existing policies in order to maintain the required coverages. Legal Counsel is responsible for any payments made by Oversight Board to obtain or maintain insurance and Oversight Board may collect these payments from Legal Counsel or deduct the amount paid from any sums due Legal Counsel under this Agreement.

11.5 Submission of Insurance Policies. Oversight Board reserves the right to require, at any time, complete and certified copies of any or all required insurance policies and endorsements.

11.6 Primary Coverage. For any claims related to the Services and this Agreement, the Legal Counsel's insurance coverage will be primary insurance with respect to Oversight Board, its officers, agents, volunteers and employees. Any insurance or self-insurance maintained by Oversight Board, its officers, agents, volunteers and employees, will be in excess of Legal Counsel's insurance and not contributory with it.

11.7 Reduction in Coverage/Material Changes. Legal Counsel will notify Oversight Board in writing pursuant to the notice provisions of this Agreement thirty (30) days prior to any reduction in any of the insurance coverage required pursuant to this Agreement or any material changes to the respective insurance policies.

12. Business License. Legal Counsel will obtain and maintain a City of Brentwood Business License for the term of the Agreement, as it may be amended from time-to-time.

13. Maintenance of Records. Legal Counsel will maintain complete and accurate records with respect to costs incurred under this Agreement. All records will be clearly identifiable. Legal Counsel will allow a representative of Oversight Board during normal business hours to examine, audit, and make transcripts or copies of records and any other documents created pursuant to this Agreement. Legal Counsel will allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

14. Ownership of Documents. All product produced by Legal Counsel or its agents, employees, and subcontractors pursuant to this Agreement (the "Work Product") is the property of Oversight Board. In the event this Agreement is terminated, all Work Product produced by Legal Counsel or its agents, employees and subcontractors pursuant to this Agreement will be delivered to Oversight Board pursuant to the termination clause of this Agreement. Legal Counsel will have the right to make one (1) copy of the Work Product for Legal Counsel's records.

15. Copyrights. Legal Counsel agrees that all copyrights that arise from the Services will be vested in Oversight Board and Legal Counsel relinquishes all claims to the copyrights in favor of Oversight Board.

16. Notices. Any notices relating to this Agreement shall be given in writing and shall be deemed sufficiently given and served for all purposes when delivered personally, by facsimile or by generally recognized overnight courier service, or five (5) days after deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, addressed as follows:

For Oversight Board:

Brentwood Oversight Board  
c/o City of Brentwood  
150 City Park Way  
Brentwood, CA 94513  
Phone No. (925) 516-5191  
Facsimile No. (925) 516-5443  
Attn: Karen Chew, Secretary

For Legal Counsel:

Wendel Rosen  
Attn: Patricia Curtin  
1111 Broadway, 24<sup>th</sup> floor  
Oakland, CA 94607-4036  
Phone No.: (510) 834-6600  
Facsimile No.: (510) 808-4729

Either Party may change its address for purposes of this section by giving the other Party written notice of the new address in the manner set forth above.

17. Conflicts of Interest.

17.1 Oversight Board will evaluate Legal Counsel's duties pursuant to this Agreement to determine whether disclosure under the Political Reform Act and Oversight Board's Conflict of Interest Code is required of Legal Counsel or any of Legal Counsel's employees, agents, or subcontractors. Should it be determined that disclosure is required, Legal Counsel or Legal Counsel's affected employees, agents, or subcontractors will complete and file with the Oversight Board Secretary those schedules specified by Oversight Board and contained in the Statement of Economic Interests Form 700.

17.2 Legal Counsel understands that its professional responsibility is solely to Oversight Board. Legal Counsel warrants that it presently has no interest, present or contemplated, and will not acquire any direct or indirect interest, that would conflict with its performance of this Agreement. Legal Counsel further warrants that neither Legal Counsel, nor Legal Counsel's agents, employees, subcontractors and consultants have any ancillary real property, business interests or income that will be affected by this Agreement or, alternatively, that Legal Counsel will file with the Oversight Board an affidavit disclosing this interest. Legal Counsel will not knowingly, and will take reasonable steps to ensure that it does not, employ a person having such an interest in the performance of this Agreement. If

after employment of a person, Legal Counsel discovers that it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Legal Counsel will promptly disclose the relationship to the Oversight Board and take such action as the Oversight Board may direct to remedy the conflict.

18. General Compliance with Laws. Legal Counsel will keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by Legal Counsel, or in any way affect the performance of the Services by Legal Counsel. Legal Counsel will at all times observe and comply with these laws, ordinances, and regulations and will be responsible for the compliance of the Services with all applicable laws, ordinances and regulations.

19. Discrimination and Harassment Prohibited. Legal Counsel will comply with all applicable local, state and federal laws and regulations prohibiting discrimination and harassment.

20. Termination. Oversight Board may terminate Agreement at any time by written notice. After receiving such notice, Legal Counsel will cease providing the Services. Legal Counsel will cooperate with Oversight Board in the orderly transfer of all related files and records to Oversight Board's new counsel.

Legal Counsel may terminate the Agreement at any time with Oversight Board's consent or for good cause. Good causes exists if (a) any statement is not paid within sixty (60) days of its due date; (b) Oversight Board fails to meet any other obligation under this Agreement and continue in that failure for fifteen (15) days after Legal Counsel send written notice to Oversight Board; (c) Oversight Board has misrepresented or failed to disclose material facts to Legal Counsel, refused to cooperate with Legal Counsel, refused to follow Legal Counsel's advise on a material matter, or otherwise made Legal Counsel's representation unreasonable difficult; or (d) any other circumstance exists in which ethical rules of the legal profession mandate or permit termination, including situations where a conflict of interest arises. If Legal Counsel terminates the Agreement, Oversight Board agrees to execute a substitution of attorneys promptly and otherwise cooperate in effecting that termination.

Termination of the Agreement, whether by Oversight Board or by Legal Counsel, will not relieve the obligation to pay for the Services rendered and costs incurred before the Services formally ceased.

21. Covenants Against Contingent Fees. Legal Counsel warrants that Legal Counsel has not employed or retained any company or person, other than a bona fide employee working for Legal Counsel, to solicit or secure this Agreement, and that Legal Counsel has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this warranty, Oversight Board will have the right to terminate this Agreement for nonperformance, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of the fee, commission, percentage, brokerage fees, gift, or contingent fee.

22. Claims And Lawsuits. By signing this Agreement, Legal Counsel agrees that any Agreement claim submitted to Oversight Board must be asserted as part of the Agreement process as set forth in this Agreement and not in anticipation of litigation or in conjunction with litigation. Legal Counsel acknowledges that if a false claim is submitted to Oversight Board by Legal Counsel, it may be considered fraud and Legal Counsel may be subject to criminal prosecution. Legal Counsel acknowledges that California Government Code sections 12650 *et seq.*, the False Claims Act, applies to this Agreement and, provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of information. If Oversight Board seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorney's fees. Legal Counsel acknowledges that the filing of a false claim may subject Legal Counsel to an administrative debarment proceeding as the result of which Legal Counsel may be prevented to act as a Consultant on any public work or improvement for a period of up to five (5) years. Legal Counsel

acknowledges debarment by another jurisdiction is grounds for Oversight Board to terminate this Agreement.

23. Jurisdiction, Venue and Governing Law. Any action at law or in equity brought by either of the Parties for the purpose of enforcing a right or rights provided for by this Agreement will be tried in a court of competent jurisdiction in the County of Contra Costa, State of California, and the Parties waive all provisions of law providing for a change of venue in these proceedings to any other county. This agreement will be governed by the laws of the State of California.

24. Testimony. Legal Counsel will testify at Oversight Board's request if litigation is brought against Oversight Board in connection with Legal Counsel's services under this agreement. Unless the action is brought by Legal Counsel, or is based upon Legal Counsel's actual or alleged negligence or other wrongdoing, Oversight Board, upon prior written agreement with Legal Counsel will compensate Legal Counsel for time spent in preparation for testimony, testimony, and travel at Legal Counsel's standard hourly rates at the time of actual testimony.

25. Successors and Assigns. It is mutually understood and agreed that this Agreement will be binding upon the Parties and their respective successors. Neither this Agreement nor any part of it nor any monies due or to become due under it may be assigned by Legal Counsel without the prior written consent of Oversight Board, which will not be unreasonably withheld.

26. Paragraph Headings. Paragraph headings as used in this Agreement are for convenience only and will not be deemed to be a part of such paragraphs and will not be construed to change the meaning of the section.

27. Waivers. The waiver by either Party of any breach or violation of any term, covenant, or condition of this Agreement or of any applicable law will not be deemed to be a waiver of such term, covenant, condition or law or of any subsequent breach or violation of same or of any other term, covenant, condition or law. The acceptance by either Party of any fee or other payment which may become due under this Agreement will not be deemed to be a waiver of any preceding breach or violation by the other Party of any term, covenant, or condition of this Agreement or any applicable law.

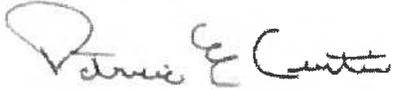
28. Entire Agreement. This Agreement, together with any other written document referred to or contemplated by it embody the entire Agreement and understanding between the parties relating to the subject matter of it. Neither this Agreement nor any of its provisions may be amended, modified, waived or discharged except in a writing signed by both parties.

29. Authority. The individuals executing this Agreement and the instruments referenced in it on behalf of Legal Counsel each represent and warrant that they have the legal power, right and actual authority to bind Legal Counsel to the terms and conditions of this Agreement.

30. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

LEGAL COUNSEL:

WENDEL, ROSEN, BLACK & DEAN, LLP



By: \_\_\_\_\_

Printed Name: Patricia E. Curtin

Title: Partner

OVERSIGHT BOARD:

By: \_\_\_\_\_  
William Hill, Chair

ATTEST:

By: \_\_\_\_\_  
Karen Chew, Secretary

If required by Oversight Board, proper notarial acknowledgment of execution by Consultant must be attached. If a Corporation, Agreement must be signed by one corporate officer from each of the following two groups.

**\*Group A.**  
Chairman,  
President, or  
Vice-President

**\*\*Group B.**  
Secretary,  
Assistant Secretary,  
CFO or Assistant Treasurer

**Otherwise**, the corporation **must** attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.

EXHIBIT "A"

# City of Brentwood

**Response to Request for Legal Services:**  
*Oversight Board to the Successor  
Agency to the former Redevelopment Agency  
of the City of Brentwood*

July 12, 2012



**Contact: Patricia E. Curtin, Esq.**  
**[PCurtin@wendel.com](mailto:PCurtin@wendel.com)**

Wendel, Rosen, Black & Dean LLP  
1111 Broadway, 24<sup>th</sup> Floor  
Oakland, CA 94607  
510.834.6600 T  
510.834.1928 F  
[wendel.com](http://wendel.com)

**1. Description of the qualifications and experience of the proposed lead attorney and other attorneys**

**About Wendel Rosen**

Wendel, Rosen, Black & Dean LLP (“Wendel Rosen”) was founded 103 years ago in Oakland. Today it is a firm of 58 lawyers with a broad transaction and litigation practice serving clients throughout California. The core of the firm’s practice is real estate and public agency law. It has a rich history representing public agencies in areas of law including redevelopment and real estate; land use and development matters, CEQA and NEPA documentation and litigation; general agency issues; eminent domain; public works construction; transportation funding and planning; hazardous materials compliance, regulation and litigation; employment law; contracts, leases and licenses; and other matters. Wendel Rosen lawyers have served as general counsel for two of the major transportation agencies in Alameda County for the past twenty years – the Alameda County Transportation Improvement Authority and the Alameda County Congestion Management Agency – which recently merged into the newly created Alameda County Transportation Commission.

We can provide the depth of experience that will be required by the Oversight Board. We are versed in changes made to the redevelopment law by ABx1 26 and AB 1484, a budget bill that makes substantial changes to the redevelopment agency dissolution process set forth in ABx1 26. Shortly after ABx1 26 passed, the lawyers at Wendel Rosen prepared a white paper, “What Are Redevelopment Oversight Boards and How Will They Function?” Some of the aspects of ABx1 26 discussed in the paper have been addressed by AB 1424, but many challenges and uncertainties still remain. We have attached a copy of this paper at the end of this proposal.

**Approach**

As noted in the cover letter, our team would be led by Patricia Curtin with primary back up from Robert Shantz. Other team members would provide assistance on an as needed basis, depending on the nature of the Board’s needs and the time urgency of the particular project. Other Wendel Rosen lawyers could provide specialized services, such as advice on bankruptcy and secured creditor issues and environmental/hazardous material issues, should the need arise.

We believe the work for the Board falls into three main categories:

- General representation of the Board, which includes providing counsel at its meetings and advice in the Brown Act, Public Records Act, Political Reform Act, and general liability issues.
- Specialized services regarding redevelopment law, the affects of ABx1 26 and AB 1484, and the interactions between the Oversight Board, the Successor Agency and the various state agencies with responsibilities under the state legislation, including audit and reporting issues. This area also includes keeping the Board members informed about legislative changes affecting their responsibilities.

- Services regarding specific assets and liabilities, including analysis of bond and other obligations, issues affecting the valuation of the assets, and lawful and most valuable methods of disposition of assets.

For the first two areas, most of the work would be performed by Patricia Curtin and Rob Shantz. Services for the third area may be performed by other members of our team depending on the particular skills needed to efficiently solve the problems involved with the Successor Agency's assets and liabilities.

### **Core Team**

Following are brief descriptions of the core team members. This core team and other Wendel Rosen lawyers, as may be needed, have experience in all of the areas described in the RFQ. Full bios for the six core team members appear at the end of this proposal.

**Patricia E. Curtin** will serve as the team lead. She has 25 years of focused experience in land use matters and representing public agencies. She assists public agencies, landowners and developers in all aspects of land use planning. She has experience in redevelopment law and has represented cities in formulating and implementing redevelopment plans and projects. Ms. Curtin represents several public agencies as special land use counsel and is general counsel to twelve Geologic Hazard Abatement Districts. She has worked with landowners and developers of commercial, industrial, residential and agricultural property, including wine growers, wineries and related businesses; shopping center owners; hotel/resort owners; educational institutions; public agencies; and hospitals and other medical facilities. Ms. Curtin presents and writes extensively on public agency law and land use-related topics. She is one of the authors of a national publication, "State & Local Government Land Use Liability" (*Thomson West*), which is updated annually. In 2011, the *Daily Journal* recognized her as one of the top 25 land use lawyers in California.

**Education:** McGeorge School of Law, University of the Pacific, Sacramento; J.D. (1987); California State University, Chico, Political Science; B.A. (1984).

**Full profile:** [www.wendel.com/pcurtin](http://www.wendel.com/pcurtin).

**Todd A. Williams** represents clients in the broad spectrum of land use, real estate and environmental issues in both litigation and administrative proceedings. Mr. Williams works with public and private clients, including landowners and developers of residential, commercial and industrial property, as well as local agencies, providing property entitlement processing and local government approvals; CEQA litigation and compliance; planning and zoning law advice; and real property litigation. He also has experience with redevelopment and affordable housing, historic preservation projects and advising on the Subdivision Map Act, Williamson Act, and easement and boundary dispute matters. He is a contributing editor on the 2010 – 2011 Edition of *State and Local Government Land Use Liability*, and he has spoken throughout the state on land use law, with particular emphasis on CEQA issues.

**Education:** University of California, Hastings College of Law; J.D. (1998); University of California, Los Angeles; B.A. (1989).

**Full profile:** [www.wendel.com/tawilliams](http://www.wendel.com/tawilliams).

**R. Zachary Wasserman** has focused on real estate development, redevelopment and public private partnerships for the past 35 years. He has represented redevelopment agencies and developers working with redevelopment agencies in a variety of transactions and developments, including bond financing. Mr. Wasserman serves as general counsel to the Alameda County Transportation Commission. Working frequently with state and local regulatory and permitting agencies, he represents clients before a variety of administrative bodies to enable clients to complete some of the region's most intriguing projects, including: development of a mixed-use project in San Francisco's Fillmore District featuring Yoshi's Jazz Club and Restaurant and 80 condominiums; entitling a 14-story, 220-unit residential building in Jack London Square; and the creative vertical subdivision of the Oakland YWCA, rescuing the "Y" from bankruptcy and saving a Julia Morgan building. He is currently representing the Planning and Development Team hired by the City of Oakland, exploring how to create Coliseum City of Oakland and save the Raiders, the Warriors and the A's for Oakland. In 2012, Mr. Wasserman was appointed by Governor Jerry Brown as Chair of the San Francisco Bay Conservation and Development Commission.

**Education:** Stanford Law School; J.D. (1972); University of California, Santa Cruz, B.A. (1969).

**Full profile:** [www.wendel.com/zwasserman](http://www.wendel.com/zwasserman).

**Neal A. Parish** started his career as a land use consultant and economist. With several years of experience under his belt, Mr. Parish decided to obtain a law degree and has been assisting clients with real estate and land use matters since. He has worked on a range of complex redevelopment projects for both agencies and private developers, including representing the Oakland Redevelopment Agency on the development of the UC President's Office in downtown Oakland. For private and individual clients, Mr. Parish regularly negotiates, drafts and analyzes agreements in real estate transactions, including leases, purchase and sale contracts, CC&Rs, easements and related agreements. He also assists a variety of clients with land use and related permitting issues. His education in city planning and transportation engineering gives him additional insight to assist public agency clients on matters related to construction, design and other professional service contracts. In addition, he regularly reviews existing and pending legislation for our public clients in order to ensure statutory and regulatory compliance.

**Education:** University of California, Berkeley, Boalt Hall School of Law; J.D., (1997); University of California, Berkeley; M.C.P. (Master of City Planning); M.S., Transportation Engineering (1986); University of California, Los Angeles; B.A., Economics (1984).

**Full profile:** [www.wendel.com/nparish](http://www.wendel.com/nparish).

**Anagha Dandekar Clifford's** litigation practice includes representing clients in a variety of complex matters in both trial and appellate courts. Her cases span a wide range of subjects, including eminent domain, land use/real estate, intellectual property (trademark, copyright, patent, licensing), construction, and complex commercial litigation. In addition to her litigation work, Ms. Clifford counsels clients on intellectual property issues, green practices, and advertising and promotional matters. She works with the Wendel Rosen transportation team and has advised the Alameda Transportation Agencies in its efforts to develop a Vehicle Registration Fee Expenditure Plan and Ballot Measure, and a new sales tax-funded expenditure plan.

**Education:** UC Davis School of Law, King Hall; J.D. (2004); UC Berkeley; B.A. (1998).

**Full profile:** [www.wendel.com/aclifford](http://www.wendel.com/aclifford).

**Robert D. Shantz** assists clients in connection with all types of real estate transactions and land use issues related to the acquisition, option, disposition and development of commercial, residential and mixed use property. In addition, he has represented commercial landlords and tenants in leasing matters. His land use experience includes representing clients in connection with local and Department of Real Estate subdivision approvals, condominium approvals, CEQA matters, and permit issues. Mr. Shantz is a licensed California real estate broker. Previously, he served as assistant general counsel to a Napa, California construction and development company and to a Bay Area Major League Baseball sports franchise.

**Education:** Santa Clara University School of Law, Santa Clara, CA; J.D. (2003); Cal Poly, San Luis Obispo, San Luis Obispo, CA; B.S., cum laude (1999).

**Full profile:** [www.wendel.com/rshantz](http://www.wendel.com/rshantz).

### **Representative Public Agency Clients**

Over the years, firm attorneys have worked with many public and quasi-public entities on specific matters or as general counsel. Here is a representative list:

- Alameda County Congestion Management Agency
- Alameda County Transportation Improvement Authority
- Alameda County Transportation Commission
- City of Hayward
- City of Hercules
- City of Fairfield
- City of Fremont
- City of Livermore
- City of Oakland
- City of San Leandro
- City of Vallejo
- City of Walnut Creek
- Contra Costa County
- County of Alameda
- County of Alameda Surplus Property Authority
- County of Humboldt
- East Bay Municipal Utility District
- East Bay Regional Parks
- Leona Quarry, GHAD
- Oakland Area, GHAD
- Blackhawk, GHAD
- Canyon Lakes, GHAD
- Wendt Ranch, GHAD
- Hillcrest Heights, GHAD
- California Tradewinds, GHAD
- Broad Beach, GHAD
- Oceanus, GHAD
- Orinda, GHAD

- Port of Oakland
- San Francisco Public Utilities Commission
- Santa Clara Valley Transportation Authority

**2. Three client references**

1. Bryan Wenter, City Attorney of Walnut Creek  
1666 N. Main Street, Walnut Creek, CA 94596  
wenter@walnut-creek.org  
Phone Number: (925) 943-5813
2. Rob Ewing, Town Attorney of Danville  
510 La Gonda Way, Danville, CA 94526  
REwing@danville.ca.gov  
Phone Number: (510) 620-5439
3. John Russo, City Manager of Alameda County (previously City Attorney of Oakland)  
2263 Santa Clara Avenue, Room 320, Alameda, CA 94501  
jrusso@ci.alameda.ca.us  
Phone Number: (510) 747-4700

**3. List of current hourly rates for each attorney and support staff**

We proposed to provide general legal services to the Oversight Board for all attorneys (partners and associates) at a discounted blended rate of \$295 per hour. Paralegals will be billed out at \$160. If specialized services are needed (i.e., bankruptcy, bond counsel, complex litigation), we may charge different rates, but we will discuss those rates with the Board before providing such services.

**4. Availability**

We understand that the term of engagement would be for the fiscal year 2012/2013 and that the contract would likely be extended from year to year until the Board completes its work and is either dissolved or merged with the other Oversight Boards in the County. We are available to represent the Board at its earliest direction, and we will serve the Board as long as needed.

**5. Disclosure of known or potential conflicts of interest**

We do not have any current conflicts of interest in representing the Board. As called out in the RFQ, we are not currently and will not put ourselves in an adversarial position with the agencies that appointed the Board members. We do not represent private developers under existing contracts with the prior dissolved Redevelopment Agency of Brentwood for redevelopment

projects that have not yet been completed. In addition, we are not employed by Brentwood Successor Agency, any of the entities with appointments to the Board, or any of the affected taxing entities that may receive funding pursuant to ABx1 26.

Thank you for the opportunity to respond to this Request for Qualifications. We look forward to meeting with you to answer any questions and further discuss how we might best serve the Board's legal needs.



**Patricia E. Curtin**  
Attorney

Phone: 510.834.6600  
Fax: 510.808.4729  
Email: pcurtin@wendel.com

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## Practice Areas

- Land Use
- Public Agency
- Environmental
- Real Estate

## Education

- University of the Pacific, Sacramento, McGeorge School of the Law; J.D. (1987)
- California State University, Chico; B.A., Political Science (1984)

## Experience

With 25 years of focused experience, Patricia's practice emphasizes local government and land use law representing both private and public sector clients. She assists public agencies, landowners and developers in all aspects of land use processing.

Patricia represents several public agencies as special land use counsel and is general counsel to twelve Geologic Hazard Abatement Districts.

In addition to representing public agencies, she has worked with landowners and developers of commercial, industrial, residential and agricultural property, including wine growers, wineries and related businesses; shopping center owners; hotel/resort owners; educational institutions; and hospitals and other medical facilities.

Patricia has presented and written extensively on local government and land use-related topics. She is a co-author of a national Thomson West publication, "State & Local Government Land Use Liability."

## Admissions

**State Bar of California**  
**United States Court of Appeals, Ninth Circuit**  
**United States District Court, Northern District of California**  
**United States Supreme Court**

## Affiliations

**California Association of Geologic Hazard Abatement Districts (GHAD)**  
• Founding Member and Secretary  
**City of Lafayette**  
• Planning Commissioner  
**League of California Cities**  
• Member  
**American Planning Association**  
• Member  
**John Muir Health**  
• Board Member

## Publications

- “State and Local Government Land Use Liability,” co-author – *Publisher West Group* – updated annually
- “Local Agency Control of Personal Wireless Service Facilities,” Author (September 12, 2005)

## Speaking and Teaching

- “Climate Change and Land Use Law in California” *USF Law School* (July 2012)
- “Simple Approach to CEQA – is that Possible?” *Planners Institute & Mini Expo 2012, League of California Cities* (March 20, 2012)
- “Policy Role in Land Use Planning,” *New Mayors and Council Members, League of California Cities* (January 18, 2012)
- “Overview of Geologic Hazard Abatement Districts,” June 2011
- “Frequently asked Questions on Geologic Hazard Abatement Districts,” June 2011
- “Fundamentals of Local Land Use Planning, Leadership,” San Ramon, CA (April 14, 2011)
- “California Environmental Quality Act Overview and Update,” City of Hercules (October 6, 2010)
- “How to Run a Planning Commission Meeting,” *League of California Cities, Planners Institute* (March 24, 2010)
- “BAAQMD Proposed CEQA Guidelines” (February 2010)
- “Subdivision Map Act,” *Tri-Valley Planners* (November 4, 2009)
- “Preparation of Findings,” *Tri-Valley Attorneys and Planners* (January 21, 2009)
- “California Climate Change Regulatory Update,” *Contra Costa County Bar Association – Real Estate Section* (October 17, 2008)
- “Overview of Land Use Regulations,” *University of San Francisco Law School* (September 30, 2008)
- “4th Annual Land Use Update,” *Contra Costa County Planning Directors* (April 11, 2008)
- “Land Use and Climate Change,” *University of San Francisco Law School* (October 23, 2007)
- “Land Use Law and California Environmental Quality Act,” City of San Ramon (May 23, 2007)
- “3rd Annual Land Use Update,” *Contra Costa County Planning Directors* (March 9, 2007)
- “Zoning, Subdivision and Land Development Law,” (presented specifically on California Environmental Quality Act, Geologic Hazard Abatement Districts and Update on Land Use Law), *Lorman Education Service* (November 3, 2006)
- “Zoning, Subdivision and Land Development Law in California,” (specifically presented on Geologic Hazard Abatement Districts, Overview of Land Use Regulation), *Lorman Education Service* (September 21, 2006)
- “Zoning, Subdivision and Development Requirements, Including Ethical Concerns in California,” *Lorman Education Service* (December 17, 2004)
- “Alternative Dispute Resolution,” *American Bar Association Annual Conference* (April 2, 1997)
- “Legal and Ethical Obligations in Land Use Planning,” *University of California, Davis – Extension* (July 22, 1996)
- “Legal Strategies for Dealing with Local Governments,” *University of California, Davis – Extension* (January 13, 1995)
- “Protocol for Land Use Attorneys,” *University of California, Davis – Extension* (March 18, 1994)
- “How to Reform California Environmental Quality Act,” *Contra Costa County* (February 24, 1993)

## Awards/Recognition

- *Daily Journal* Top 25 California Land Use Lawyers, 2011
- Selected for inclusion in Northern California *Super Lawyers* magazine, 2005 – 2011
- Selected for inclusion in *California Real Estate Journal's* Top Women in Real Estate, 2009



## Todd A. Williams

Attorney

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Email: [tawilliams@wendel.com](mailto:tawilliams@wendel.com)

---

### Practice Areas

- Litigation
- Environmental
- Land Use
- Public Agency
- Real Estate

### Education

- University of California, San Francisco, Hastings School of Law; J.D. (1998)
- University of California, Los Angeles; B.A. (1989)

### Experience

Todd represents both public and private sector clients in the broad spectrum of land use, real estate and environmental issues in both litigation and administrative proceedings.

Todd's practice focuses on property entitlement processing and local government approvals; CEQA litigation and compliance; planning and zoning law advice; and real property litigation. He also has experience with redevelopment and affordable housing, historic preservation projects and advising on the Subdivision Map Act, Williamson Act, and easement and boundary dispute matters.

A contributing editor on the 2010 – 2011 Edition of State and Local Government Land Use Liability, Todd also has spoken throughout the state on land use law, with particular emphasis on CEQA.

### Admissions

**State Bar of California**  
**United States Court of Appeals, Ninth Circuit**  
**United States District Court, All California Districts**

### Affiliations

**Contra Costa Council Land Use Task Force**  
• Member  
**State Bar Real Property Section Land Use Subsection**  
• Vice Chair

## Publications

- “Air Quality District’s CEQA Thresholds Invalidated,” co-author, *Wendel Rosen Client Update*, April 6, 2012
- “Court Weakens Use of CEQA’s Categorical Exemptions,” *Wendel Rosen Client Update*, March 28, 2012

## Speaking and Teaching

- California State Bar Real Property Law Section Retreat, Presenter, May 2010 & 2011
- Annual Land Use Law Update (Marin, Contra Costa, Tri-Valley Planning Directors), Presenter, Spring 2010
- How SB375 is Changing California Land Use Law (California Cyber Education Institute), Presenter, March 2010
- BAAQMD Proposed CEQA Guidelines, Presenter, February 2010
- CEQA Update (Northern California Section, American Planning Association), Presenter, October 2009
- Curtin’s California Land Use and Planning Law, (Solano Press) Editor, 2007 Edition

## Awards & Recognition

- Selected for inclusion in Northern California *Super Lawyers* magazine, 2010 and 2011
- Extern, Hon. Marilyn Hall Patel, U.S. District Court, Northern District of California



## R. Zachary Wasserman

Attorney

Phone: 510.834.6600  
Fax: 510.808.4691  
Email: [zwasserman@wendel.com](mailto:zwasserman@wendel.com)

### Practice Areas

- Business
- Land Use
- Real Estate

### Industries

- Nonprofits and Trade Organizations
- Public Agency

### Education

- Stanford University School of Law; J.D. (1972)
- University of California, Santa Cruz; B.A. in Politics, with honors (1969)

### Experience

Zack works with private businesses and public agencies to negotiate and draft complex real estate and financial structures. Working frequently with state and local regulatory and permitting agencies, he represents clients before a variety of administrative bodies to enable clients to complete some of the region's most intriguing projects, including: development of a mixed-use project in San Francisco's Fillmore District featuring Yoshi's Jazz Club and Restaurant and 80 condominiums, entitling a 14-story, 220-unit residential building in Jack London Square, and the creative vertical subdivision of the Oakland YWCA, rescuing the "Y" from bankruptcy and saving a Julia Morgan building. He is currently representing the Planning and Development Team hired by the City of Oakland, exploring how to create Coliseum City of Oakland and save the Raiders, the Warriors and the A's for Oakland.

In 2012, Zack was appointed by Governor Jerry Brown as Chair of the San Francisco Bay Conservation and Development Commission. As General Counsel to the East Bay Economic Development Alliance, Zack played an integral role negotiating with BCDC on the Bay Plan Amendment to address rising sea levels. In addition, Zack serves as general counsel to the Alameda County Transportation Authority. He serves as general counsel to the Alameda County Congestion Management Agency as well as to several non-profit corporations and foundations engaged in technology transfer and scientific development.

An active member of the East Bay community, Zack has donated hundreds of hours of his time to committees and programs designed to enhance the economic development of Oakland and surrounding communities.

### Admissions

**State Bar of California, 1972**

### Affiliations

#### **S.F. Bay Conservation and Development Commission**

- Chair, 2012 to present

#### **Oakland Chamber of Commerce**

- General Counsel, 2003 to present
- Leadership Oakland; chair, 1998 to present

### Affiliations (continued)

#### **East Bay Economic Development Alliance**

- General Counsel, Executive Committee, 1994 to present

#### **Oakland Charter Review Committee**

- Chair, 2003

#### **Bay Area Transportation Lawyers, 1998 to present**

- Member

#### **Oakland Workforce Investment Board**

- Executive Committee; member, 2000 to 2007

#### **Corporation for Manufacturing Excellence**

- General Counsel, 1995 to present
- Chairman, 1995 to 1998

#### **Port of Oakland**

- Board of Commissioners, 1987 to 1990

#### **State Bar of California**

- California State Bar Real Property Journal, Managing Editor, 1995

### Publications

- “Landowner, Developer Must Forge Partnership That is a Marriage,” *East Bay Business Times*, June 13, 2008
- “Clients Receive Top Honors,” *The Wendel Report*, Fall 2006
- Land Use Law Update Roundtable, participant, *California Lawyer*, May 2005 and July 2003

### Speaking and Teaching

- Bay Conservation and Development Commission, Workshop on Bay Plan Amendment Addressing Climate Change and Rising Sea Levels, panel member, May 19, 2011
- “Forming and Managing Commercial TICs,” Urban Land Institute, May 20, 2008

### Awards/Recognition

- AV® Preeminent™ rated by Martindale-Hubbell\*
- Selected for inclusion in Northern California *Super Lawyers* magazine, 2004-2011
- Inaugural recipient of the “East Bay Vision Award,” East Bay Economic Development Alliance, January 2003
- Volunteer of the Year Award, Oakland Chamber of Commerce, 1998

\*AV is a registered certification mark of Reed Elsevier Properties Inc., used in accordance with the Martindale-Hubbell certification procedure's standards and policies.



## Neal A. Parish Attorney

Phone: 510.834.6600  
Fax: 510.808.4681  
Email: nparish@wendel.com

### Practice Areas

- Real Estate
- Public Agency
- Land Use

### Education

- University of California, Berkeley, Boalt Hall School of Law; J.D. (1997)
- University of California, Berkeley; M.C.P. (Master of City Planning); M.S., Transportation Engineering (1986)
- University of California, Los Angeles; B.A., Economics (1984)

### Experience

Neal started his career as a land use consultant and economist. With several years of experience under his belt, Neal decided to obtain a law degree and has been assisting clients with real estate and land use matters since. For private industry and individual clients, Neal regularly negotiates drafts and analyzes agreements in real estate transactions, including leases, purchase and sale contracts, CC&Rs, easements and related agreements. Neal also assists a variety of clients with land use and related permitting issues.

Neal's education in city planning and transportation engineering gives him additional insight to assist public agency clients on matters related to construction, design and other professional service contracts. In addition, he has reviewed existing and pending legislation in order to ensure statutory and regulatory compliance.

### Admissions

#### State Bar of California

- Real Property Section, member
- Public Law Section, member

### Affiliations

#### Oakland Unified School District

- Facilities Advisory Committee; member, 2000 to 2001; chair, 2001 to 2002

#### Alameda County Bar Association

#### Landmarks Preservation Advisory Board, City of Oakland

- Chair, 2006-2008
- Member, 2004-2008

### Publications

- "Governor Extends Relief for Developers (Again)," *Wendel Rosen Client Update*, co-authored with Robert Shantz, July 18, 2011
- "General Plans and Specific Plans: How Business Owners Should Respond to Proposed Changes," *The Wendel Report: Environmental and Real Estate Update*, Winter 2010
- "Second Subdivision Map Extension Measure Affords Developers Additional Relief," *Wendel Rosen Client Update*, co-author with David Preiss and Robert Shantz, July 22, 2009

### Publications *(continued)*

- “Building Downturn Leads Governor to Sign Legislative Relief for Developers,” *Wendel Rosen Client Update*, co-author with David Preiss and Robert Shantz, August 8, 2008
- *California Easements and Boundaries: Law and Litigation*, California Continuing Education of the Bar, contributing author, 2008, update author, 2010, 2011
- *Office Leasing: Drafting and Negotiating the Lease*, California Continuing Education of the Bar, update author, 2002, 2008, 2010
- *Retail Leasing: Drafting and Negotiating the Lease*, California Continuing Education of the Bar, contributing author, 2007, update author, 2008, 2010

### Speaking and Teaching

- “The City Giveth and the City Taketh Away,” co-presenter, Alameda County Bar Association



## Robert D. Shantz

Attorney

Phone: 510.834.6600  
Fax: 510.808.4714  
Email: rshantz@wendel.com

### Practice Areas

- Real Estate
- Land Use

### Education

- Santa Clara University School of Law, Santa Clara, CA; J.D. (2003)
- Cal Poly, San Luis Obispo, San Luis Obispo, CA; B.S., *cum laude* (1999)

### Experience

Robert Shantz is a member of the firm's real estate and land use practices. He works with real estate developers and others to negotiate and document all aspects of real estate transactions. Robert assists in the procurement of entitlements related to commercial condominium conversions and subdivisions and drafts project operational documents, such as CC&Rs, bylaws and operating agreements. He drafts DRE-approved home and lot sale contracts, reviews insurance policies and endorsements that are received from subcontractors, and advises in general business, insurance and employment matters related to the real estate companies that he represents.

Robert is a licensed California real estate broker. Previously, he served as assistant general counsel to a Napa, California construction and development company and to a Bay Area Major League Baseball sports franchise.

### Admissions

**State Bar of California**  
**U.S. District Court, Northern District of California**  
**Ninth Circuit Court of Appeal**  
**California Real Estate Broker's License**

### Publications

- "Second Subdivision Map Extension Measure Affords Developers Additional Relief," co-author with David Preiss and Neal Parish, *Wendel Rosen Client Update*, July 22, 2009
- "Getting Your Project Approved: The Importance of Programmatic Approaches to Greenhouse Gas Emissions Analysis Under the California Environmental Quality Act," co-author with Jonathan W. Redding, *Wendel Rosen Client Update*, June 9, 2009
- "When a Tentative Map Falls In Your Lap," *The Wendel Report: Real Estate and Environmental*, Spring 2009
- "CEQA and Climate Change: The Uncertainty Continues," *The Wendel Report: Environmental*, Winter 2008
- "Building Downturn Leads Governor to Sign Legislative Relief for Developers," co-author with David Preiss and Neal Parish, *Wendel Rosen Client Update*, August 8, 2008
- "Services Propose Raising the Bar for Endangered Species Act Consultations," co-author with Bruce S. Flushman, *Wendel Rosen Client Update*, August 22, 2008



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## **WHAT ARE REDEVELOPMENT OVERSIGHT BOARDS AND HOW WILL THEY FUNCTION?**

*By R. Zachary Wasserman, Esq.  
Robert D. Shantz, Esq.  
Thiele Robin Dunaway, Esq.  
Anagha Dandekar Clifford, Esq.  
Neal A. Parish, Esq.*

## **TABLE OF CONTENTS**

INTRODUCTION	3
HOW ARE OVERSIGHT BOARD MEMBERS APPOINTED?	3
WHO SERVES AS THE STAFF OF THE SUCCESSOR AGENCY, AND HOW ARE THEIR COSTS COVERED?	4
HOW DOES A BOARD TAKE ACTION?	5
AUTHORITY OF THE OVERSIGHT BOARDS – REAL OR ILLUSORY?	5
WHAT IS THE PROCESS FOR STATE REVIEW OF OVERSIGHT BOARD ACTIONS?	6
HOW LONG WILL THE OVERSIGHT BOARDS LAST?	7
CLOSING THOUGHTS	7

### **ATTACHMENT:**

AUTHORITY OF THE OVERSIGHT BOARDS UNDER ABIX 26

## Introduction

Effective February 1, 2012, pursuant to AB1X26, all of the redevelopment agencies in the State of California ceased to exist. Successor Agencies will be required to oversee and manage the wind-down of the former redevelopment agency obligations and assets. Regardless of whether the city or county that formed the redevelopment agency chose to become the Successor Agency or they declined and the Governor appointed a Successor Agency, an Oversight Board will be appointed to review and, to some significant extent, control the actions of each Successor Agency.

A seven-member Oversight Board for each Successor Agency must be appointed by May 1, 2012.<sup>1</sup> These Oversight Boards have strong, although not perfectly clear, rights to review and control the decisions of the Successor Agencies. To add to the confusion, the decisions of the Oversight Board may be subject to review by the State of California Department of Finance. In the remainder of this paper, we examine the formation, operation and duties of these Oversight Boards.

## How Are Oversight Board Members Appointed?

The names of each member appointed to an Oversight Board must be reported to the Department of Finance by May 1, 2012.<sup>2</sup> Subject to certain exceptions, the members of the Oversight Board are selected as follows:

- The county board of supervisors appoints two members, one of whom is a “member of the public”<sup>3</sup>;
- The mayor of the city that formed the redevelopment agency appoints one member<sup>4</sup>;
- The largest special district by property tax share having territory within the jurisdiction of the former redevelopment agency appoints one member<sup>5</sup>;
- If the county superintendent of schools is elected, then the superintendent appoints one member to represent schools. If the superintendent is appointed, then the county board of education appoints the member instead<sup>6</sup>;

- The Chancellor of the California Community Colleges appoints one member to represent community college districts in the county<sup>7</sup>; and
- Either the mayor of the city that formed the redevelopment agency or the chair of the board of supervisors, as the case may be, appoints one member representing the employees of the former redevelopment agency<sup>8</sup>.

The Governor has the opportunity to appoint individuals to fill any vacant board member position not filled by May 15, 2012, or that remains vacant for more than 60 days.<sup>9</sup> Oversight Board members serve at the pleasure of the entity that appointed them, meaning they can likely only be removed by the entity that appointed them, and not by the Successor Agency.<sup>10</sup> Oversight Board members serve without being compensated or reimbursed for expenses.<sup>11</sup>

ABIX 26 permits individuals to simultaneously serve on up to five Oversight Boards and to also hold office in a city, county, city and county, special district, school district, or community college district.<sup>12</sup> In addition, Government Code Section 1099, which generally prohibits public officials from concurrently holding “incompatible” offices, does not apply in the context of Oversight Boards.<sup>13</sup> Consequently, an officeholder in a Successor Agency (a city council member or board of supervisor member) can be appointed to sit on that agency’s Oversight Board.

Unlike elected officials, Oversight Board members are not required to reside within the jurisdiction of either the former redevelopment agency or the Successor Agency. Given that ABIX 26 permits individuals to serve on five Oversight Boards concurrently, it follows that there is no residency requirement.

### **Who Serves As The Staff Of The Oversight Board, And How Are Their Costs Covered?**

ABIX26 provides that that an Oversight Board may direct the staff of the Successor Agency to perform work in furtherance of the Board’s duties and responsibilities.<sup>14</sup> Thus, the staff serving the Oversight Board is likely to be the staff of the Successor Agency. All of the costs of the Oversight Board meetings are to be paid for by the Successor Agency, however the legislation is silent on additional costs such as staff salaries and the costs of outside consultants.<sup>15</sup> Presumably, an Oversight Board could direct staff of the Successor Agency to retain consultants where necessary. Any such direction would have to be tailored to specific needs related to the disposition of assets or meeting continuing obligations.

To cover administrative costs, ABIX 26 allows Successor Agencies to spend (subject to the approval of the Oversight Board) \$250,000 or up to five percent of the former tax increment revenues in 2011-2012, and thereafter \$250,000 or up to three percent of the former tax increment revenues in succeeding years.<sup>16</sup> However, these amounts may be reduced by the county auditor-controller if there are insufficient funds to pay enforceable obligations and the administrative costs of the State Controller and the county auditor-controller.<sup>17</sup> Additional funds for Successor Agency administrative costs

may be derived from other revenue sources (e.g., funds reserved for project administration).<sup>18</sup>

### **How Does The Oversight Board Take Action?**

The Oversight Board functions for purposes of the Ralph M. Brown Act, the Public Records Act, and the Political Reform Act of 1974 as a local entity.<sup>19</sup> A majority vote of the total membership of the Board is required to take action.<sup>20</sup> A majority of the total membership of the Board constitutes a quorum for the transaction of business.<sup>21</sup>

### **Authority Of Oversight Boards – Real Or Illusory?**

Although Oversight Boards have been given a “watchdog” role over the Successor Agencies, both the Successor Agencies and the Oversight Boards have to be mindful of the “big dog” — the Director of the Department of Finance, who has the final say over actions by each Oversight Board, as further discussed below.<sup>22</sup> So, although the new law appears to vest substantial authority in the Oversight Boards, it remains to be seen whether the specter of the Department of Finance veto power will have a chilling effect on decisions by the Boards. The most likely result is that the Oversight Boards will be able to exercise their powers until and unless the Department of Finance issues guidelines or acts to overrule specific Board actions.

The statutes provide little guidance as to how an Oversight Board is to exercise its broad powers. The guidance that is given, however, is, not surprisingly, weighted toward maximizing revenue for the taxing entities (i.e., the cities, counties, special districts and school entities that receive pass-through payments and distributions of property taxes).<sup>23</sup> Section 34179(i) expressly states that Oversight Boards “shall have fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distributions of property tax and other revenues pursuant to Section 34188.”<sup>24</sup> Even the fiduciary obligation owed to the holders of enforceable obligations may be viewed as another way of carrying out the fiduciary duty owed to the taxing entities, since any litigation that might be engendered by a breach of an enforceable obligation could drain revenue that would otherwise be available for distribution to the taxing entities.

Similarly, the interests of the taxing entities are the standard by which an Oversight Board is to determine (1) whether to terminate an agreement between the former redevelopment agency and any public entity obligating the agency to provide funding for any debt service obligations or for the construction or operation of facilities owned or operated by the public entity, and (2) whether to amend or terminate agreements between the redevelopment agency and private parties.<sup>25</sup> An Oversight Board may terminate or amend those agreements where it finds that early termination would be in the “best interests of the taxing entities.”<sup>26</sup> After giving that broad directive, the statutes essentially leave determination of the “best interests” of the taxing entities to the discretion of the Oversight Board (and, ultimately, to the Department of Finance). The statutes are intended to preserve revenues and assets of former redevelopment agencies to the maximum extent possible so that they can be used to fund core

government services (police, fire protection, schools), and the statutes are to be construed as broadly as possible to carry out this intent.<sup>27</sup>

While AB1X 26 expressly directs Oversight Boards to dispose of redevelopment assets “expeditiously and in a manner aimed at maximizing value,” it provides no specific guidance as to whether a Board is to give priority to maximizing value over expeditious disposal if, in a particular instance, the two are mutually exclusive.<sup>28</sup> An Oversight Board also has the power to direct staff of the Successor Agency to perform work in furtherance of the Board’s duties and responsibilities, but no guidance on the extent of or limitations to that power are set forth in the statutes.<sup>29</sup> Since the Oversight Board has express authority to approve the administrative budget of the Successor Agency<sup>30</sup>, that power of the “purse strings,” together with the broad authority to control and direct the actions of the Successor Agency, gives the Oversight Board significant power to control the operations of the Successor Agency staff.

In sum, on paper, the Oversight Boards have broad authority and control over the winding down of the redevelopment agencies. Determinations regarding winding down redevelopment would be influenced by the composition of the Oversight Board. In light of the veto power given to the Department of Finance, actions by the Oversight Boards, as a practical matter, may have to be taken with an eye toward what the Department of Finance views as the “best interests” of the taxing entities. If, however, the Department of Finance does not have the resources or otherwise fails to exercise regularly its right to seek review of Oversight Boards’ decisions, the Oversight Boards may, in the end, exercise substantial power over the assets, contracts and other obligations of the former redevelopment agencies. To put it another way, one of the yet-to-be answered questions is whether the Department of Finance will put the Oversight Boards on a short leash in carrying out their duties under AB1X 26.

### **What Is The Process For State Review Of Oversight Board Actions?**

AB1X 26 provides that the Department of Finance may review any action taken by an Oversight Board.<sup>31</sup> To allow time for such review by the Department, the effectiveness of all actions by an Oversight Board are delayed for three business days, pending a request for review by the Department.<sup>32</sup> If the Department decides to review a given Oversight Board action, the Department has 10 days to either approve the action or return it to the Oversight Board for reconsideration.<sup>33</sup> If an Oversight Board is required to reconsider an action, the modified Oversight Board action only becomes effective after approval by the Department.<sup>34</sup>

To date, the Department has not given any specific direction regarding the procedures for such review. However, the following sentence from one of the FAQs posted on the Department’s website may provide a clue as to how the Department will treat this obligation: “It is our expectation that Oversight Boards will exercise prudence in determining administrative budgets and project budgets and determining what funding sources to use so as to preserve the revenues to taxing agencies.”<sup>35</sup>

## How Long Will Oversight Boards Last?

Although separate Oversight Boards will be formed to each Successor Agency, the term of these individual Boards is limited. For some former redevelopment agencies, the Oversight Board will cease to exist as soon as all of the outstanding debt has been repaid.<sup>36</sup> As of July 1, 2016 (note that this date was not delayed by the *Matosantos* decision), all individual Oversight Boards will be subsumed into a single Oversight Board for each county, the seven members of which shall consist of:

- Two members appointed by the county board of supervisors, one of which is supposed to be a “member of the public”<sup>37</sup>;
- One member appointed by the county’s mayors, acting as the county’s city selection committee pursuant to Government Code §50270<sup>38</sup>;
- One member appointed by the presiding officers of each independent special district in the county, acting as the county’s independent special district selection committee pursuant to Government Code Section 56332<sup>39</sup>;
- One member appointed by the county superintendent of schools (if this is an elected position) or by the county board of education<sup>40</sup>;
- One member appointed by the Chancellor of the California Community Colleges to represent community college districts in the county<sup>41</sup>; and
- One member appointed by the “recognized employee organization representing the largest number of Successor Agency employees in the county.”<sup>42</sup>

In any county where only a single Oversight Board was created (e.g., San Francisco), that Board continues in place after July 1, 2016 without change.<sup>43</sup>

The Governor has the opportunity to appoint individuals to fill any vacant Board member position not filled by July 15, 2016, or that remains vacant for more than 60 days.<sup>44</sup>

## Closing Thoughts

Localities are required to continue to implement ABIX 26 notwithstanding some additional recent legislative activity and court challenges. Prior to February 1, 2012, there was legislation (SB 659) pending in the legislature that would have extended certain ABIX 26 deadlines and otherwise cleaned up some of ABIX 26’s language. That legislation has since died. In late January, a Sacramento Superior Court judge rejected a request brought by 12 cities to stave off dissolution of redevelopment agencies.

Prior to the February 24<sup>th</sup> bill introduction legislative deadline, three bills have been introduced containing “clean-up” language to ABIX 26. SB 654 modifies

provisions relating to the transfer of Low- and Moderate-Income Housing Funds (LMIHF) of a dissolved redevelopment agency in that any unencumbered amounts on deposit be transferred to specific entities. SB 654 would also revise the scope of the term “enforceable obligation.” Running parallel is AB 1585 which includes the LMIHF related provisions in SB 654 along with an urgency clause. It also expands the definition of “enforceable obligation” to include any loans between the former redevelopment agency and the host city or county within two years of the date of creation of the agency or within two years of the date of the creation of a project area if the loan is specific to that project area. Other loans may also be deemed enforceable obligations provided that the Oversight Board makes a finding that the loan was for legitimate redevelopment purposes. There are other provisions clarifying the functions of Successor Agencies and Oversight Boards. Lastly, SB 986 has been introduced to clarify bond proceeds and ensure they are expended on the projects for which they were issued pursuant to an enforceable obligation entered into by the former redevelopment agency or its Successor Agency by December 14, 2014. SB 986 provides that all bond proceeds that were generated by the former redevelopment agency shall be deemed to be encumbered and would prohibit a Successor Agency from remitting these proceeds to the county auditor-controller.

For more information, please contact our firm at (510) 834-6600, or please visit our website at [www.wendel.com](http://www.wendel.com).

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<sup>1</sup> Health & Safety Code §34179(a), as modified by the California Supreme Court in the *California Redevelopment Association v. Matosantos* decision. In its decision, the Supreme Court extended all deadlines in AB1X 26 arising before May 1, 2012 by four months.

<sup>2</sup> Health & Safety Code §34179(a).

<sup>3</sup> Health & Safety Code §34179(a)(1); Health & Safety Code §34179(a)(6).

<sup>4</sup> Health & Safety Code §34179(a)(2). If the county or a joint powers agency formed the redevelopment agency, then the largest city by acreage in the territorial jurisdiction of the former redevelopment agency selects a member. If there are no cities with territory in a project area of the redevelopment agency, then the county superintendent of education may appoint an additional member to represent the public (Health & Safety Code §34179(a)(8)).

<sup>5</sup> Health & Safety Code §34179(a)(3). If there are no special districts of the type eligible to receive property tax pursuant to Section 34188 within the territorial jurisdiction of the former redevelopment agency, then the county may appoint an additional member to represent the public (Health & Safety Code §34179(a)(9)).

<sup>6</sup> Health & Safety Code §34179(a)(4).

<sup>7</sup> Health & Safety Code §34179(a)(5).

<sup>8</sup> Health & Safety Code §34179(a)(7).

<sup>9</sup> Health & Safety Code §34179(b).

<sup>10</sup> Health & Safety Code §34179(g).

<sup>11</sup> Health & Safety Code §34179(c).

<sup>12</sup> Health & Safety Code §34179(i).

<sup>13</sup> Health & Safety Code §34179(i).

<sup>14</sup> Health & Safety Code §34179(c).

<sup>15</sup> Health & Safety Code §34179(c).

<sup>16</sup> Health & Safety Code §34171(b); The 2012-2013 Budget: Unwinding Redevelopment, Legislative Analyst's Office; February 17, 2012.

<sup>17</sup> The 2012-2013 Budget: Unwinding Redevelopment, Legislative Analyst's Office; February 17, 2012.

<sup>18</sup> The 2012-2013 Budget: Unwinding Redevelopment, Legislative Analyst's Office; February 17, 2012.

<sup>19</sup> Health & Safety Code §34179(e).

<sup>20</sup> Health & Safety Code §34179(e).

<sup>21</sup> Health & Safety Code §34179(e).

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- <sup>22</sup> Health & Safety Code §34179(h).  
<sup>23</sup> Health & Safety Code §34171(k).  
<sup>24</sup> Health & Safety Code §34179(i).  
<sup>25</sup> Health & Safety Code §34181(d), (e).  
<sup>26</sup> Health & Safety Code §34181(d)(e).  
<sup>27</sup> Health & Safety Code §34167(a).  
<sup>28</sup> Health & Safety Code §34181(a).  
<sup>29</sup> Health & Safety Code §34179(c).  
<sup>30</sup> Health & Safety Code §34177(j).  
<sup>31</sup> Health & Safety Code §34179(h).  
<sup>32</sup> Health & Safety Code §34179(h).  
<sup>33</sup> Health & Safety Code §34179(h).  
<sup>34</sup> Health & Safety Code §34179(h).  
<sup>35</sup> Redevelopment Agency Dissolution Under ABx1 26 – Frequently Asked Questions.  
[http://www.dof.ca.gov/assembly\\_bills\\_26-27/documents/  
RDA%20Web%20Page\\_%20Non%20Bond%20FAQs\\_Exhibit4.pdf](http://www.dof.ca.gov/assembly_bills_26-27/documents/RDA%20Web%20Page_%20Non%20Bond%20FAQs_Exhibit4.pdf)  
<sup>36</sup> Health & Safety Code §34179(m).  
<sup>37</sup> Health & Safety Code §34179(j)(1); Health & Safety Code §34179(j)(6).  
<sup>38</sup> Health & Safety Code §34179(j)(2).  
<sup>39</sup> Health & Safety Code §34179(j)(3).  
<sup>40</sup> Health & Safety Code §34179(j)(4).  
<sup>41</sup> Health & Safety Code §34179(j)(5).  
<sup>42</sup> Health & Safety Code §34179(j)(7).  
<sup>43</sup> Health & Safety Code §34179(l).  
<sup>44</sup> Health & Safety Code §34179(k).

## ATTACHMENT

### Authority of the Oversight Boards under AB1X 26 includes:

- Approval of amendments to the Enforceable Obligation Payment Schedule adopted by the Successor Agency (Health & Safety Code §34177(a)(1))
- Approval of decision by the Successor Agency to make payments for enforceable obligations from sources other than those listed in the Recognized Obligation Payment Schedule (Health & Safety Code §34177(a)(4))
- Direct the Successor Agency in the disposal of assets and properties of the former redevelopment agency, including, but not limited to, directing the agency to transfer ownership of certain assets constructed and used for a governmental purpose pursuant to Section 34181(a) (Health & Safety Code §§34177(e), 34181(a))
- Direct the Successor Agency to cease performance of and terminate all existing agreements that do not qualify as enforceable obligations (Health & Safety Code §§34171(d)(1), 34181(b))
- Direct the Successor Agency to transfer housing responsibilities and all related rights, powers and duties, along with any amounts on deposit in the Low and Moderate Income Housing Fund to the appropriate entity pursuant to Section 34176 (Health & Safety Code §34181(c))
- Direct the Successor Agency to terminate any agreement between the redevelopment agency and any public entity in the same county, which obligated the redevelopment agency to provide funding for any debt service obligations or for the construction or operation of facilities owned or operated by the public entity, where the Oversight Board finds that early termination would be in the best interests of the taxing entities (Health & Safety Code §34181(d))
- Direct the Successor Agency to determine whether any contracts or agreements between the redevelopment agency and any private parties should be terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities and present the proposed termination or amendment agreement to the Oversight Board for its approval (Health & Safety Code §34181(e))
- Approval of any amendments to or early termination of contracts or agreements between the redevelopment agency and any private parties where the Oversight Board finds that such amendments or early termination would be in the best interests of the taxing entities (Health & Safety Code §34181(e))
- Direct the Successor Agency in the expeditious winding down of the affairs of the redevelopment agency (Health & Safety Code §34177(h))

- Approval of the administrative budget of the Successor Agency (Health & Safety Code §34177(j))
- May direct the staff of the Successor Agency to perform work in furtherance of the Oversight Board's duties and responsibilities (Health & Safety Code §34179(c))
- Prior approval of Successor Agency's establishment of new repayment terms for outstanding loans (where the terms were not specified prior to the date of enactment of the statute) (Health & Safety Code §34180(a))
- Prior approval of Successor Agency's action refunding outstanding bonds or other debt of the redevelopment agency (Health & Safety Code §34180(b))
- Prior approval of Successor Agency's action setting aside of amounts in reserves required by indentures (Health & Safety Code §34180(c))
- Prior approval of Successor Agency's action to merge project areas (Health & Safety Code §34180(d))
- Prior approval of Successor Agency's action to continue the acceptance of federal or state grants and other financial assistance, where the assistance is conditioned upon matching funds greater than 5% by the Successor Agency (Health & Safety Code §34180(e))
- Prior approval of Successor Agency's action to negotiate a compensation agreement with other taxing entities for payments proportionate to their share of base property tax when a city or county wishes to retain any property or assets for future redevelopment funded by its own resources (Health & Safety Code §34180(f))
- Prior approval of Successor Agency's action establishing the Recognized Obligation Payment Schedule (Health & Safety Code §34180(g))
- Prior approval of Successor Agency's request to enter into an agreement with the city or county that formed the redevelopment agency it is succeeding (Health & Safety Code §34180(h))
- Prior approval of Successor Agency's or taxing entity's request to pledge or agree to pledge property tax revenues pursuant to Section 34178(b) (Health & Safety Code §34180(i))

**Request for Qualifications (RFQ) for  
Legal Services for the Oversight Board to the Successor Agency  
to the former Redevelopment Agency of the City of Brentwood**

Under AB X1 26 (Chapter 5, Statutes of 2011), an Oversight Board ("Board") was established to oversee the actions of the Successor Agency for the dissolved Redevelopment Agency of the City of Brentwood. The Board is seeking the services of an attorney with a professional law firm or an experienced sole practitioner to serve as Legal Counsel to the Board.

The Board Legal Counsel may not be employed by: (i) the Brentwood Successor Agency; (ii) any of the entities with appointments to the Board; or (iii) any of the affected taxing entities which may receive funding pursuant to AB X1 26.

The selected Legal Counsel will advise the Board and will be expected to work closely with counsel from the various taxing entities with appointments to the Board or who receive property tax revenues. Due to conflicts of interest, the Legal Counsel and/or its firm could not be in an adversarial position with the agencies that appointed the Board members, nor could it represent private developers under existing contracts with the prior dissolved Redevelopment Agency of the City of Brentwood for redevelopment projects which have not yet been completed.

Interested firms or individuals should be versed in California Redevelopment Law and AB X1 26, and have experience advising public bodies on Brown Act, Political Reform Act and the Public Records Act. The firm or individual should also have experience with public contracting, public finance (bonds) and redevelopment projects and activities, as well as experience with real estate transactions including financing and disposition of properties.

The term of engagement would be for fiscal year 2012-2013, and the contract would likely be extended from year to year until the Board completes its work and is dissolved or is merged with the other Oversight Boards in Contra Costa County in 2016 as required by AB X1 26.

The Board may terminate Services at any time by written notice. After receiving such notice, Legal Counsel will cease providing the Services. Legal Counsel will cooperate with the Board in the orderly transfer of all related files and records to the Board's new counsel.

Legal Counsel may terminate the Services at any time with Board's consent or for good cause. Good cause exists if (a) any statement is not paid within sixty (60) days of its date; (b) Board fails to meet any other obligation under this Agreement and continue in that failure for fifteen (15) days after Legal Counsel sends written notice to Board; (c) Board has misrepresented or failed to disclose material facts to Legal Counsel, refused to cooperate with Legal Counsel,

refused to follow Legal Counsel's advice on a material matter, or otherwise made Legal Counsel's representation unreasonably difficult; or (d) any other circumstance exists in which ethical rules of the legal profession mandate or permit termination, including situations where a conflict of interest arises. If Legal Counsel terminates the Services, the Board agrees to execute a substitution of attorneys promptly and otherwise cooperate in effecting that termination.

The Brentwood Oversight Board members are as follows:

1. Steve Barr, Vice Mayor of Brentwood, appointed by the East Contra Costa County Fire District
2. Bob Brockman, Brentwood Council Member, appointed by the Mayor with the concurrence of the Brentwood City Council
3. Paul Eldredge, Brentwood City Manager, appointed by the Mayor with the concurrence of the Brentwood City Council
4. Eric Volta, Superintendent of Liberty Union High School District, appointed by the Superintendent of Schools
5. Kevin Horan, Executive Dean of Los Medanos College, appointed by the College District
6. William Hill, former Brentwood Mayor and Council Member, appointed by the Board of Supervisors
7. Brian Swisher, former Brentwood Mayor, appointed by the Board of Supervisors

**Scope of Services:** The Scope of Services of the Legal Counsel would include, but not be limited to, the following:

- Provide legal advice regarding Oversight Board member duties, responsibilities and obligations;
- Provide legal advice regarding its relationship to and role with the Successor Agency;
- Advise the Board on legal authority and liability for actions taken in the ordinary course of business;
- Advise the Board on actions necessary to protect the Board Members from personal liability and protect the assets of the dissolved agency from liability and attachment;
- Review and advise the Board on the recommendations from the City/Successor Agency staff regarding contracting issues;
- Review and advise the Board on recommendations from the City/Successor Agency on financing matters, overseeing completion of redevelopment projects, and disposition of property and other assets;
- Provide advice on legislative matters which may affect the Board (exclusive of lobbying);

- Represent the Board in connection with any inquiry, investigation, audit or other proceedings of state regulatory agencies;
- Represent the Board in any litigation brought by or against or otherwise involving the Board;
- Engage in any other legal matter reasonably requested by the Board.

**Experience/Qualifications:** The Legal Counsel should have knowledge and experience in the following areas of law: California Redevelopment Law, AB X1 26, Brown Act, Political Reform Act, Public Records Act, contracts, and bond financing and lending. It would also be beneficial if the firm or individual has experience with real property development and disposition. Knowledge and experience in other areas of public law would also be desirable and may be considered.

**Submittal Content:**

- 1) A one-page cover letter with the name and contact information for the lead attorney.
- 2) Description of the qualifications and experience of the proposed lead attorney and any associate(s) to be assigned to work for the Board in the areas of law listed above.
- 3) Three client references.
- 4) List of current hourly rates for each attorney and support staff proposed to be assigned to work for the Board.
- 5) Availability
- 6) Disclosure of known or potential conflicts of interest

**Submittal Procedures:**

Please submit your proposal no later than 5:00 on Thursday, July 12, 2012 to Karen Chew, Secretary to the Oversight Board.

The Board reserves the right to accept or deny any or all proposals.

By Email: to [Kchew@brentwoodca.gov](mailto:Kchew@brentwoodca.gov)

By US Mail: to Karen Chew, Assistant City Manager, City of Brentwood, 150 City Park Way, Brentwood, CA 94513