

## **NOTICE OF PUBLIC MEETING**

Notice is hereby given that at 11:00 AM on January 17, 2013, or as soon as practicable thereafter, the Oversight Board for the Successor Agency to the Redevelopment Agency of the City of San Bernardino will consider the adoption of Resolution No. SBOB 2013-01, approving a grant of a real property easement to the San Bernardino County Flood Control District for public use purposes pursuant to California Health and Safety Code § 34181(a) with respect to a portion of Assessor's Parcel Numbers 0281-021-30, 0281-031-51, 0281-031-52 and 0281-041-41 and approving certain related actions.

The public meeting will occur as follows:

**Thursday, January 17, 2013 – 11:00 AM  
Economic Development Agency Board Room  
201 North "E" Street, Suite 301  
San Bernardino, CA 92401**

All interested parties will be provided an opportunity to comment on the proposed action prior to its consideration. Further information with respect to the proposed action is included within Resolution No. SBOB 2013-01 and the staff report that accompanies it. Questions are to be referred to Ms. Lisa Connor at (909) 663-2279.

Posted on: January 7, 2013

By: Lisa Connor, Secretary to the Oversight Board.

SPECIAL MEETING

Oversight Board Meeting  
for the  
City of San Bernardino as Successor Agency  
to the  
Redevelopment Agency of the City of San Bernardino

AGENDA

Thursday, January 17, 2013 – 11:00 a.m.  
Board Room  
Economic Development Agency  
201 North "E" Street, Suite 301  
San Bernardino, CA 92401  
(909) 663-2279

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*The Oversight Board recognizes its obligation to provide equal access to those individuals with disabilities. Please contact us at (909) 663-2279 prior to the meeting for any requests for reasonable accommodation that includes interpreters.*

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CHAIRMAN CALLS MEETING TO ORDER

1. CALL TO ORDER

Jim Morris, City of San Bernardino, Mayor Appointee  
Doug Headrick, San Bernardino Valley Municipal Water District, Largest Special District Appointee  
Carey K. Jenkins, Representing Former RDA Employees, Mayor Appointee  
Mary O'Toole, County of San Bernardino Board of Supervisors Appointee  
Gloria Macias-Harrison, County of San Bernardino Member of the Public Appointee  
John Longville, Chancellor of the California Community Colleges Appointee  
Margaret Hill, County Superintendent of Education Appointee

2. PUBLIC COMMENTS: A three-minute limitation shall apply to each member of the public who wishes to address the Oversight Board with a matter within the jurisdiction of the Oversight Board, whether or not on the agenda. . No member of the public shall be permitted to "share" his/her three minutes with any other member of the public. (Usually, any items heard under this heading are referred to Staff for further study, research, completion and/or future Oversight Board action).

3. SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT REQUEST FOR EASEMENT

Adopt Resolution SBOB 2013-01: A RESOLUTION OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN BERNARDINO APPROVING A GRANT OF A REAL PROPERTY EASEMENT TO THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT FOR PUBLIC USE PURPOSES PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE §34181(a) WITH RESPECT TO A PORTION OF ASSESSOR'S PARCEL NUMBERS 0281-021-30, 0281-031-51, 0281-031-52 AND 0281-041-41 AND APPROVING CERTAIN RELATED ACTIONS

Oversight Board Meeting  
for the  
City of San Bernardino as Successor Agency  
to the  
Redevelopment Agency of the City of San Bernardino

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4. MEETING OF DECEMBER 28, 2012

It is recommended that the Oversight Board consider the information included within this staff report and provide guidance with respect to its actions taken on December 28, 2012.

5. UPCOMING OVERSIGHT BOARD ITEMS/PENDING REQUIREMENTS (NO BACK-UP/NO ACTION REQUIRED):

- Non-housing DDR (Due to DOF by January 15, 2013; Auditor to begin on December 10, 2012);
- ROPS IV (by March 3, 2013); and
- Long-Range Property Management Plan (Due to DOF within 6 months of receipt of a Finding of Completion for both DDRs; presentation to OS Board anticipated during February 2013).
- Cash Flow Analysis
- Supplemental Legal Services

6. ADJOURNMENT

The next meeting will take place on Monday, January 28, 2013, at 11:00 am in the Economic Development Agency Board Room, located at 201 North E Street, Suite 301, San Bernardino, CA.

## OVERSIGHT BOARD

FOR THE CITY OF SAN BERNARDINO AS SUCCESSOR AGENCY  
TO THE  
REDEVELOPMENT AGENCY OF THE CITY OF SAN BERNARDINO

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TO: OVERSIGHT BOARD MEMBERS

DATE: JANUARY 17, 2013

FROM: TERI BAKER, ASSISTANT TO THE CITY MANAGER

ITEM NO: 3

SUBJECT: SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT REQUEST FOR EASEMENT

### **RECOMMENDATION:**

It is recommended that the Oversight Board adopt a resolution approving a grant of a real property easement to the San Bernardino County Flood Control District for public use purposes pursuant to California Health and Safety Code § 34181(a) with respect to a portion of Assessor's Parcel Numbers 0281-021-30, 0281-031-51, 0281-031-52 and 0281-041-41 and approving certain related actions.

### **BACKGROUND:**

The Redevelopment Agency of the City of San Bernardino was dissolved February 1, 2012. The Oversight Board for the Successor Agency ("Successor Agency") to the Redevelopment Agency of the City of San Bernardino ("Oversight Board") has been established pursuant to Health and Safety Code § 34179 to assist in the wind-down of the dissolved redevelopment agency.

Per Health and Safety Code § 34181, the Oversight Board may, among other things, direct the Successor Agency to transfer ownership of those assets that were constructed and used for a governmental purpose, such as roads, school buildings, parks, police and fire stations, libraries, and local agency administrative buildings, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset. Pursuant to Health and Safety Code § 34181(a), the San Bernardino County Flood Control District ("SBCFCD") has:

1. Requested a grant of a real property easement with respect to a portion of Assessor's Parcel Numbers 0281-021-30, 0281-031-51, 0281-031-52 and 0281-041-41 (the "Property"); and
2. Offered to assume any costs associated with the preparation and grant of the prescribed easement as compensation.

Most of the Property is situated on a bluff above and overlooking the Santa Ana River. That portion of the Property to be included within the requested easement is situated below the bluff, is within a flood plain, is physically a portion of the Santa Ana River bed and/or embankment, is depicted on an exhibit to this staff report (the "Easement Area"), is commercially undevelopable and is of negligible value. The Easement Area has on an implied basis historically been in actual and continuous use as a physical portion of the Santa Ana river bed and/or embankment for an indeterminate period of time.

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Meeting Date: January 17, 2013

Item Number: 3

The SBCFCD is responsible for certain flood control and water re-charge activities within the County of San Bernardino which includes management of such matters with respect to portions of the Santa Ana River watershed, inclusive of the Easement Area. The SBCFCD will use the Easement Area for flood control and other public use purposes, inclusive of a portion for the Santa Ana River Trail Project for which the County of San Bernardino is a recipient of a \$559,000 grant from the California Parks Bond Act Program to develop. The County of San Bernardino has indicated that its \$559,000 grant from the California Parks Bond Act Program for the Santa Ana River Trail Project is subject to sanctions if the funding is not committed within the next few months and that the use of said funds is limited to development of improvements on property held in fee or by prescribed easement and that implied easements are unacceptable. Pursuant to the foregoing, the grant of the real property easement for the Easement Area at the earliest possible time is essential to San Bernardino County's conformance with the requirements of the California Parks Bond Act Program with respect to the Santa Ana River Trail Project.

The Property is encumbered with a certain "Lease and Option to Purchase Agreement" dated November 1, 1997 by and between the Community Development Commission of the City of San Bernardino on behalf of the Redevelopment Agency of the City of San Bernardino, as Lessor, and the ABC Rail Products Corporation, as Original Lessee. During 2006, the Original Lessee was acquired by Meridian Rail Acquisition, DBA, Greenbrier Rail Service which included the assumption of the Original Lessee's obligations with respect to the Lease and Option to Purchase Agreement, which was acknowledged by the Lessor. The business operations of Meridian Rail Acquisition, DBA, Greenbrier Rail Service do not include or affect in any way the Easement Area. The Meridian Rail Acquisition, DBA, Greenbrier Rail Service has orally confirmed their concurrence with the granting of a real property easement to the SBCFCD for the Easement Area for the purposes stated herein and will formally confirm such at the time the easement is to be granted in the form required for consummation and recordation of the easement.

Subsequent to the Oversight Board's approval of the attached Resolution, it will be submitted to the California Department of Finance for their review and consideration consistent with the provisions therefor prescribed in the Health and Safety Code. Subsequent to the California Department of Finance review process, it will be necessary for the Successor Agency to take further appropriate actions to consummate and record the requested easement.

**FISCAL IMPACT:**

As noted above, the SBCFCD has offered to assume any costs associated with the preparation and grant of the prescribed easement as compensation. With that in mind, the approval of the attached Resolution will not create a cost to the Successor Agency.

**ATTACHMENTS:** Depiction of Easement Area  
Resolution

**RESOLUTION NO. SBOB 2013-01**

**A RESOLUTION OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN BERNARDINO APPROVING A GRANT OF A REAL PROPERTY EASEMENT TO THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT FOR PUBLIC USE PURPOSES PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE §34181(a) WITH RESPECT TO A PORTION OF ASSESSOR'S PARCEL NUMBERS 0281-021-30, 0281-031-51, 0281-031-52 AND 0281-041-41 AND APPROVING CERTAIN RELATED ACTIONS**

**WHEREAS**, the Redevelopment Agency of the City of San Bernardino was dissolved February 1, 2012; and

**WHEREAS**, the Oversight Board for the Successor Agency ("Successor Agency") to the Redevelopment Agency of the City of San Bernardino ("Oversight Board") has been established pursuant to Health and Safety Code §34179 to assist in the wind-down of the dissolved redevelopment agency; and

**WHEREAS**, per Health and Safety Code §34181, the Oversight Board may, among other things, direct the Successor Agency to transfer ownership of those assets that were constructed and used for a governmental purpose, such as roads, school buildings, parks, police and fire stations, libraries, and local agency administrative buildings, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset; and

**WHEREAS**, pursuant to Health and Safety Code §34181 (a), the San Bernardino County Flood Control District ("SBCFCD") has i) requested a grant of a real property easement with respect to a portion of Assessor's Parcel Numbers 0281-021-30, 0281-031-51, 0281-031-52 and 0281-041-41 (the "Property"); and, ii) offered to assume any costs associated with the preparation and grant of the prescribed easement as compensation; and

**WHEREAS**, most of the Property is situated on a bluff above and overlooking the Santa Ana River; and

**WHEREAS**, that portion of the Property to be included within the requested easement is situated below the bluff, is within a flood plain, is physically a portion of the Santa Ana River bed and/or embankment, is depicted on the exhibits attached to the staff report that accompanies this Resolution (the "Easement Area"), is commercially undevelopable and is of negligible value; and

1           **WHEREAS**, the Easement Area has on an implied basis historically been in actual and  
2 continuous use as a physical portion of the Santa Ana river bed and/or embankment for an  
3 indeterminate period of time; and

4           **WHEREAS**, the SBCFCD is responsible for certain flood control and water re-charge  
5 activities within the County of San Bernardino which includes management of such matters with  
6 respect to portions of the Santa Ana River watershed, inclusive of the Easement Area; and

7           **WHEREAS**, the SBCFCD will use the Easement Area for flood control and other public use  
8 purposes, inclusive of a portion for the Santa Ana River Trail Project for which the County of San  
9 Bernardino is a recipient of a \$559,000 grant from the California Parks Bond Act Program to  
10 develop; and

11           **WHEREAS**, the County of San Bernardino has indicated that its \$559,000 grant from the  
12 California Parks Bond Act Program for the Santa Ana River Trail Project is subject to sanctions if  
13 the funding is not committed within the next few months and that the use of said funds is limited to  
14 development of improvements on property held in fee or by prescribed easement and that implied  
15 easements are unacceptable; and

16           **WHEREAS**, pursuant to the foregoing, the grant of the real property easement for the  
17 Easement Area at the earliest possible time is essential to San Bernardino County's conformance  
18 with the requirements of the California Parks Bond Act Program with respect to the Santa Ana  
19 River Trail Project; and

20           **WHEREAS**, the Property is encumbered with a certain "Lease and Option to Purchase  
21 Agreement" dated November 1, 1997 by and between the Community Development Commission of  
22 the City of San Bernardino on behalf of the Redevelopment Agency of the City of San Bernardino,  
23 as Lessor, and the ABC Rail Products Corporation, as Original Lessee; and

24           **WHEREAS**, during 2006, the Original Lessee was acquired by Meridian Rail Acquisition,  
25 DBA, Greenbrier Rail Service which included the assumption of the Original Lessee's obligations  
26 with respect to the Lease and Option to Purchase Agreement, which was acknowledged by the  
27 Lessor; and

28           **WHEREAS**, the business operations of Meridian Rail Acquisition, DBA, Greenbrier Rail  
Service do not include or affect in any way the Easement Area; and

**WHEREAS**, the Meridian Rail Acquisition, DBA, Greenbrier Rail Service has orally  
confirmed their concurrence with the granting of a real property easement to the SBCFCD for the  
Easement Area for the purposes stated herein and will formally confirm such at the time the

1 easement is to be granted in the form required for consummation and recordation of the easement;  
2 and

3 **WHEREAS**, subsequent to the Oversight Board’s approval of this Resolution, it will be  
4 submitted to the California Department of Finance for their review and consideration consistent with  
5 the provisions therefore prescribed in the Health and Safety Code; and

6 **WHEREAS**, subsequent to the California Department of Finance review process, it will be  
7 necessary for the Successor Agency to take further appropriate actions to consummate and record  
8 the requested easement; and

9 **WHEREAS**, all of the prerequisites with respect to the approval of this Resolution have  
10 been met.

11 **NOW, THEREFORE, BE IT RESOLVED** by the Oversight Board for the Successor  
12 Agency to the Redevelopment Agency of the City of San Bernardino, as follows:

13 **Section 1.** The foregoing recitals are true and correct and are a substantive part of this  
14 Resolution.

15 **Section 2.** Pursuant to Health and Safety Code §34181(a) and consistent with terms  
16 specified within this Resolution, the Successor Agency is authorized and directed to grant a real  
17 property easement to the San Bernardino County Flood Control District with respect to that portion  
18 of Assessor’s Parcel Numbers 0281-021-30, 0281-031-51, 0281-031-52 and 0281-041-41 that  
19 constitutes the Easement Area.

20 **Section 3.** The City Manager, or designee, is hereby authorized to transmit this Resolution  
21 to the California Department of Finance as prescribed by the Health and Safety Code.

22 **Section 4.** Subsequent to the completion of the California Department of Finance review  
23 process, the Successor Agency is authorized to take those necessary and appropriate actions to  
24 consummate and record the requested easement.

25 **Section 5.** This Resolution shall take effect upon the date of its adoption.

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1 **A RESOLUTION OF THE OVERSIGHT BOARD FOR THE SUCCESSOR**  
 2 **AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN**  
 3 **BERNARDINO APPROVING A GRANT OF A REAL PROPERTY**  
 4 **EASEMENT TO THE SAN BERNARDINO COUNTY FLOOD CONTROL**  
 5 **DISTRICT FOR PUBLIC USE PURPOSES PURSUANT TO CALIFORNIA**  
 6 **HEALTH AND SAFETY CODE §34181(a) WITH RESPECT TO A PORTION**  
 7 **OF ASSESSOR'S PARCEL NUMBERS 0281-021-30, 0281-031-51, 0281-031-52**  
 8 **AND 0281-041-41 AND APPROVING CERTAIN RELATED ACTIONS**

9 PASSED, APPROVED AND ADOPTED THIS \_\_\_\_ day of \_\_\_\_\_, 2013, by the  
 10 following vote:

11 Board Members	Ayes	Nays	Abstain	Absent
12 HEADRICK	_____	_____	_____	_____
13 HILL	_____	_____	_____	_____
14 JENKINS	_____	_____	_____	_____
15 LONGVILLE	_____	_____	_____	_____
16 MACIAS-HARRISON	_____	_____	_____	_____
MORRIS	_____	_____	_____	_____
O'TOOLE	_____	_____	_____	_____

17 \_\_\_\_\_  
 18 Secretary

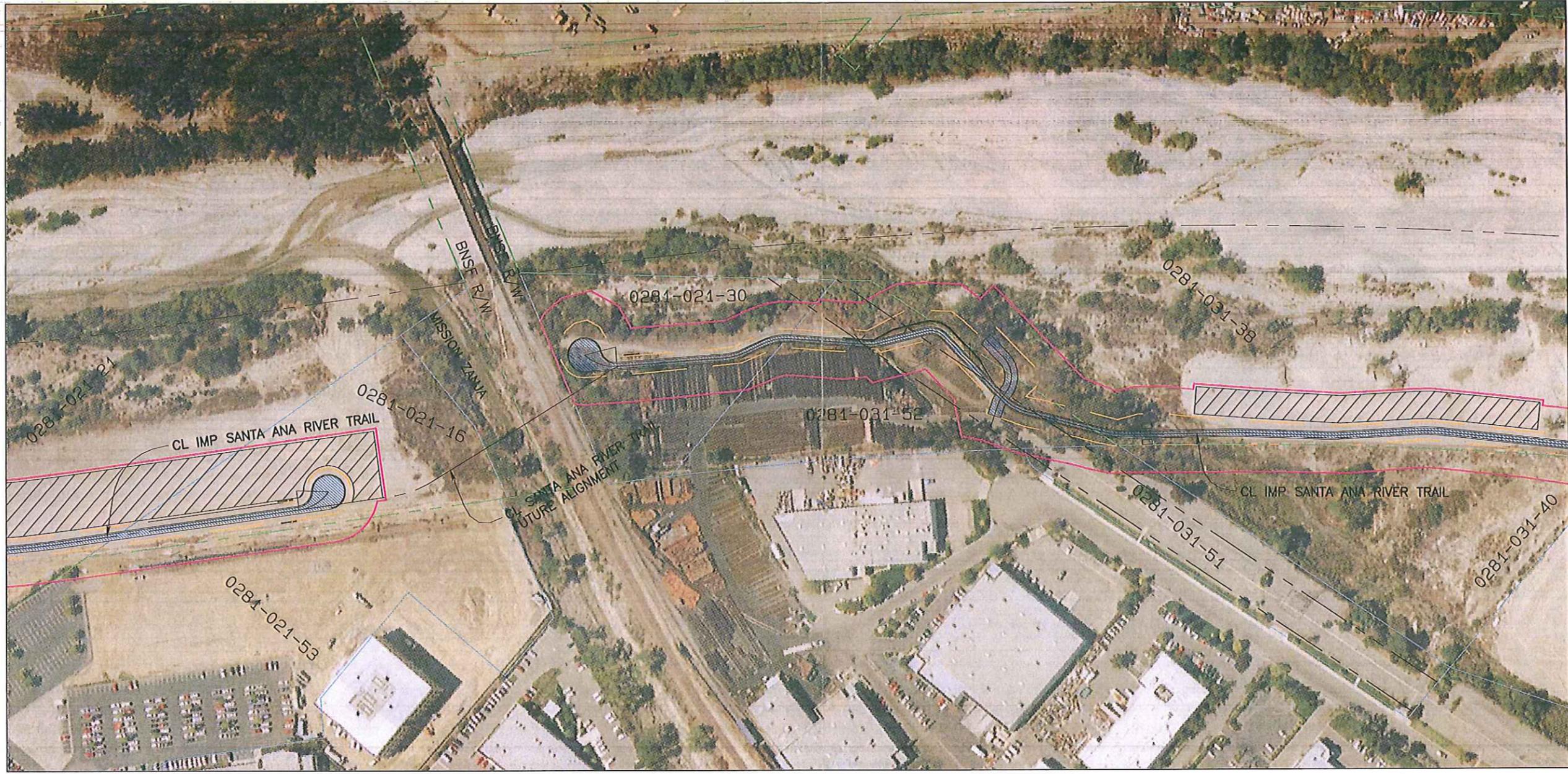
19 The foregoing Resolution is hereby approved this \_\_\_\_ day of \_\_\_\_\_, 2013.  
 20

21 \_\_\_\_\_  
 22 James P. Morris, Chairman  
 23 Oversight Board for the City of San Bernardino  
 24 As Successor Agency to the Redevelopment  
 Agency of the City of San Bernardino

25 Approved as to Form:

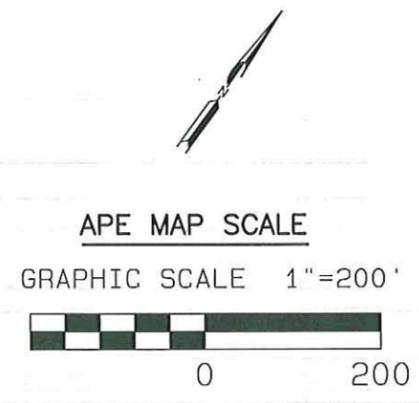
26 By: \_\_\_\_\_  
 27 Counsel





**STUDY MAP LEGEND**

XXXX-XXX-XX	APN
	EXISTING FC PROPERTY LINES
	EXISTING PROPERTY LINES
	CONSTRUCTION LIMITS
	APE BOUNDARY
	AC BIKE TRAIL
	CONCRETE BIKE TRAIL
	CONSTRUCTION STAGING AREA



**APE RATIONALE**

THE AREA OF POTENTIAL EFFECTS (APE) FOR THIS PROJECT WAS DRAWN TO INCLUDE THE EXISTING SAN BERNARDINO ECONOMIC DEVELOPMENT CORP (R/W) AND EXISTING SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT RIGHT-OF-WAY (S.B.C.F.C.D. R/W). ALL PROPOSED CONSTRUCTION IS WITHIN SAN BERNARDINO ECONOMIC DEVELOPMENT CORP AND COUNTY RIGHT-OF-WAY. THE APE INCLUDES ALL AREAS SUBJECT TO DIRECT EFFECTS TO ARCHAEOLOGICAL RESOURCES, AND A 50 FOOT BUFFER AREA SURROUNDING THE MAXIMUM CONSTRUCTION IMPACT AREA.

**R/W & PROPERTY LINES**

THIS MAP HAS BEEN COMPILED FROM RECORD DATA AND OTHER AVAILABLE MATERIAL AND DOES NOT REPRESENT A FIELD SURVEY.

AREA OF POTENTIAL EFFECTS MAP				
COUNTY OF SAN BERNARDINO REGIONAL PARKS/ DEPARTMENT OF PUBLIC WORKS			SANTA ANA RIVER TRAIL PHASE III FROM WATERMAN AVENUE TO CALIFORNIA AVENUE	
DRAWN BY AGS/IRU	DESIGNED BY AGS	PROJ. ENGR. C.N.	APRIL 4, 2012 PROJECT NO. STPLER-5954(083)	
SUBMITTED BY REGIONAL PARKS			J.L. REF. JL10766	W.O. NO. H13463
			PLAN SCALE 1"=200'	SHT. NO. 3
			TOT. SHTS. 8	

4/2/2012 10:45 AM - 10:50 AM - 10:55 AM - 11:00 AM - 11:05 AM - 11:10 AM - 11:15 AM - 11:20 AM - 11:25 AM - 11:30 AM - 11:35 AM - 11:40 AM - 11:45 AM - 11:50 AM - 11:55 AM - 12:00 PM

## OVERSIGHT BOARD

FOR THE CITY OF SAN BERNARDINO AS SUCCESSOR AGENCY  
TO THE  
REDEVELOPMENT AGENCY OF THE CITY OF SAN BERNARDINO

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TO: OVERSIGHT BOARD MEMBERS

DATE: JANUARY 17, 2013

FROM: TERI BAKER, ASSISTANT TO THE CITY MANAGER

ITEM NO: 4

SUBJECT: MEETING OF DECEMBER 28, 2012

### RECOMMENDATION:

It is recommended that the Oversight Board consider the information included within this staff report and provide guidance with respect to its actions taken on December 28, 2012.

### BACKGROUND:

On December 20, 2012, an agenda for an Oversight Board meeting slated for 11:00 AM on December 28, 2012 was posted. One purpose of the December 28, 2012 meeting was to consider adopting Resolution No. SBOB 2012-20 relating to a transfer of an easement for a governmental purpose pursuant to Health and Safety Code (the "HSC") § 34181 (a). However, at 9:53 AM on December 28, 2012, the Oversight Board and others were informed that the notice of December 20, 2012 with respect to the matter of Resolution No. SBOB 2012-20 was deficient in terms of the notice period and, as such, would require re-noticing prior to its consideration for adoption. Specifically, HSC § 34181 (f) requires a minimum of a 10 day notice prior to the Oversight Board considering the adoption of a resolution related to an HSC § 34181 (a) matter. With respect to Resolution No. SBOB 2012-20, only an 8 day noticing period occurred. It appears that the mix-up related to the noticing period was the result of the rush up to the holiday period. Staff requested that the December 28, 2012 Oversight Board meeting be cancelled and that Resolution No. SBOB 2012-20 not be approved. As result, staff, consultants and legal counsel concluded that the meeting would not be held and that the Resolution No. SBOB 2012-20 not be approved.

Notwithstanding the foregoing, four members of the Oversight Board convened a meeting on December 28, 2012 and during the meeting approved a Resolution No. SBOB 2012-20, for which the text of said resolution was materially different than the Special Counsel authorized resolution that was included within the agenda package provided to each member of the Oversight Board. The Oversight Board's action of December 28, 2012 with respect to the adoption of a Resolution No. SBOB 2012-20 has subsequently been reviewed by Special Counsel. In an opinion issued on January 4, 2013, Special Counsel has concluded the following:

"While Health & Safety Code Section 34181(a) provides that the oversight board may direct the successor agency to transfer ownership of assets that were constructed and used for a governmental purpose, that action may only be taken by resolution of the oversight board at a public meeting after at least 10 days' notice to the public of the specific proposed actions in accordance with Health & Safety Code Section 34181(f). Based on prior emails it appears that

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Meeting Date: January 17, 2013

Item Number: 4

such notice was not provided for the action of the oversight board on December 28, 2012. Accordingly, the action of the oversight board on that date is in violation of Health & Safety Code Section 34181(f) and, therefore, invalid.”

Therefore, based on the foregoing staff requests direction from the Oversight Board with respect to:

1. Nullifying its December 28, 2012 action to approve a Resolution No. SBOB 2012-20; and
2. Recommendations regarding the avoidance of any similar actions in the future.

**FISCAL IMPACT:**

None.