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CRA File No. 5246
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Honorable Council of the City of Los Angeles
John Ferraro Council Chamber
200 N. Spring Street
Room 340, City Hall
Los Angeles, CA 90012

Attention: Alan Alietti, Office of the City Clerk

COUNCIL TRANSMITTAL:

Transmitted herewith, is a Board Memorandum, adopted by the Agency Board on (April 3, 2008 for City Council review and approval in accordance with the "Community Redevelopment Agency Oversight Ordinance" entitled:

VARIOUS ACTIONS RELATED TO:

APPROVAL OF SETTLEMENT AGREEMENT FOR PAYMENT OF \$107,615 PLUS INTEREST TO THE ASSIGNEES OF ERNANI BERNARDI, HOWARD JARVIS TAXPAYERS ASSOCIATION AND JON COUPAL TO RESOLVE THE CITY CENTER REDEVELOPMENT PLAN VALIDATION ACTION.
CITY CENTER REDEVELOPMENT PROJECT AREA
DOWNTOWN REGION (CD 9 AND 14)

RECOMMENDATIONS

That City Council approves recommendations on the attached Board Memorandum.

ENVIRONMENTAL REVIEW

The settlement does not constitute a "project" as defined by the California Environmental Quality Act.

FISCAL IMPACT STATEMENT

There is no fiscal impact to the City's General Fund, as a result of this action.

Cecilia V. Estolano, Chief Executive Officer

APR 07 2008
HOUSING, COMMUNITY &
ECONOMIC DEVELOPMENT



CRA/LA

Building communities with jobs & housing



Council Transmittal
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- cc. Alan Alietti, Office of the City Clerk (Original and 3 Copies on 3-hole punch)
- Lisa Johnson Smith, Office of the CAO
- Ivania Sobalvarro, Office of the CLA
- Helmi Hisserich, Office of the Mayor
- Noreen Vincent, Office of the City Attorney
- Jan Perry, Council District 9
- Jose Huizar, Council District 14

THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF LOS ANGELES, CA

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MEMORANDUM

DATE: APRIL 3, 2008 CT9990

TO: CRA/LA BOARD OF COMMISSIONERS

FROM: CECILIA V. ESTOLANO, CHIEF EXECUTIVE OFFICER

RESPONSIBLE PARTIES: DAVID RICCITIELLO, REGIONAL ADMINISTRATOR
LILLIAN BURKENHEIM, PROJECT MANAGER
JENNY SCANLIN, PROJECT MANAGER

SUBJECT: APPROVAL OF SETTLEMENT AGREEMENT FOR PAYMENT OF \$107,615 PLUS INTEREST TO THE ASSIGNEES OF ERNANI BERNARDI, HOWARD JARVIS TAXPAYERS ASSOCIATION AND JON COUPAL TO RESOLVE THE CITY CENTER REDEVELOPMENT PLAN VALIDATION ACTION
CITY CENTER REDEVELOPMENT PROJECT AREA
DOWNTOWN REGION (CD 9 AND 14)

RECOMMENDATIONS

That the CRA/LA Board of Commissioners, subject to City Council review and approval:

1. Approve the Settlement Agreement in the matter of *County of Los Angeles v. Board of Directors of the Community Redevelopment Agency of the City of Los Angeles*, (Los Angeles Superior Court Nos. BC 276472 and BC 277539 and First District Court of Appeal Nos. B201600 and B203889) providing for the payment of \$107,615, plus interest, to the assignees of Ernani Bernardi, Howard Jarvis Taxpayers Association and Jon Coupal upon the Court of Appeal's approval of the parties' request for a stipulated reversal of the Superior Court's judgment and authorize the Chief Executive Officer, or designee, to execute the Settlement Agreement and to take such other actions as may be needed to resolve the litigation.
2. Amend the FY08 budget to transfer \$107,615 (plus interest required) from budgeted Bunker Hill line item "Public Improvement" to budgeted City Center line item "Project General" and authorize the reimbursement of CRA/LA Special Revenue funds upon the release of tax increment revenue being withheld by the Los Angeles County Auditors Controller's Office.

SUMMARY

The settlement agreement and related actions are intended to resolve the litigation filed by the County of Los Angeles challenging the 2002 adoption of the City Center Redevelopment Plan. The County also challenged the adoption of the Central Industrial Plan and that litigation has

already been resolved. Ernani Bernardi joined the County's challenge as an interested party in both matters.

In July 2003, the Los Angeles Superior Court ruled that the adoption of the City Center Plan was invalid and awarded Bernardi \$115,000 in attorney's fees. In October 2003, the Superior Court held that the adoption of the Central Industrial Plan was invalid and awarded Bernardi \$15,000 in attorney's fees. The CRA/LA and City appealed both rulings.

In April 2005, the Court of Appeal issued its decision reversing the ruling of the Superior Court in each matter and determined that (i) the adoption of the two plans could be valid, (ii) the CRA/LA could not collect tax increment from certain portions of the land in each project area, (iii) the Superior Court was to decide other challenges to the validity of the plans, and (iv) the attorney's fees award in each matter was reversed. (The "2005 Court of Appeal decision".)

In April 2007, the Superior Court rejected the County's second challenge to the adoption of the Central Industrial Plan. The County appealed that decision. However, in July 2007, the Superior Court ruled in favor of the County and determined that the City Center Plan was invalid because it was not financially feasible in light of the 2005 Court of Appeal decision. CRA/LA appealed the judgment entered in the trial court action. In October 2007, the Superior Court awarded Bernardi \$107,615 for attorney's fees as a prevailing party in the 2005 Court of Appeal decision and the 2007 Superior Court ruling. CRA/LA filed an appeal of that ruling.

In September 2007, the Court of Appeal upheld the decision of the Superior Court validating the Central Industrial Plan and stated that issue of financial feasibility had already been addressed in the 2005 Court of Appeal decision. CRA/LA's appeal of the two City Center rulings are pending; however, the parties have agreed, based on the decision in the Central Industrial Plan appeal, to request the Court of Appeal to approve a stipulated reversal of the Superior Court judgment in the City Center litigation and validate the City Center Plan subject to the conditions of the 2005 Court of Appeal decision.

The Bernardi plaintiffs agreed to participate in the request for a stipulated reversal of the City Center judgment if CRA/LA withdraws its appeal of the award of attorney's fees and pays them the \$107,615 plus interest. However, CRA/LA's payment of the fees is conditioned on the Court of Appeal approving the stipulated reversal. It is in the best interests of CRA/LA to pay the Bernardi plaintiffs their attorney's fees so that request for a stipulated reversal may be presented to Court of Appeal and the litigation resolved in an expedited manner.

RE

Initial Action

SOURCE OF FUNDS

CRA/LA Special Revenue

PROGRAM AND BUDGET IMPACT

Approval of this action will amend the FY08 budget to transfer \$107,615 (plus interest required) from budgeted Bunker Hill line item "Public Improvement" to budgeted City Center line item "Project General." City Center will reimburse CRA/LA Special Revenue upon release of tax increment revenues being withheld by the Los Angeles County Auditors Controller's office.

ENVIRONMENTAL REVIEW

The settlement does not constitute a "project" as defined by the California Environmental Quality Act.

BACKGROUND

In mid-2002, the City Council and CRA/LA Board of Commissioners took various actions to amend the Central Business District (CBD) Redevelopment Plan to remove approximately 1,000 acres from the CBD Project Area. Concurrently, the City Council and CRA/LA Board adopted the City Center Redevelopment Project Area containing approximately 684 acres of the former CBD Project Area as well as adding new area that had previously not been in a redevelopment project. When the CBD was originally adopted in 1975, the CBD project area was validated after the City and CRA/LA and Ernani Bernardi, in 1977, entered into a Stipulated Judgment capping the amount of tax increment that the CRA/LA could receive from the CBD project area at \$750 million ("Bernardi Cap"), and establishing other conditions for Plan implementation.

Shortly after amendment of the CBD and adoption of the City Center project area, the County of Los Angeles (County) filed a validation action against the City and CRA/LA alleging (i) violation of the Bernardi Cap and (ii) lack of blight in the project area. In July 2002, Jerome Wiggins, the Los Angeles Coalition to End Hunger & Homelessness, Joy Pearson and Figueroa Corridor Coalition for Economic Justice (Wiggins Plaintiffs) also filed a validation action challenging the City's and CRA/LA's actions. Bernardi joined both cases as an interested person on the side of the County and Wiggins Plaintiffs. The cases challenging the City Center plan were consolidated for trial as related cases.

An initial court trial was held in the Summer of 2003 and the Superior Court ruled that the City Council and CRA/LA Board actions to amend the CBD Redevelopment Plan and adopt the City Center plan were invalid and awarded \$115,000 in attorney fees to Ernani Bernardi. The CRA/LA and City appealed the ruling (along with the ruling on the Central Industrial plan validation action) to the California State Court of Appeal. After an extensive briefing, hearing and supplemental briefing period, the Court of Appeal, in April 2005, ruled that the adoption of the City Center and Central Industrial project areas (containing portions of the old CBD Project Area) was invalid to the extent that they allowed the CRA/LA to receive more tax increment from portions of the old CBD Project Area than was permitted by the Bernardi Cap. The Court of Appeal, however, also found that the City Center and Central Industrial project areas could be valid (subject to the Bernardi Cap) depending on other procedural and substantive challenges raised by the County and Wiggins plaintiffs. The Court of Appeal then remanded both the City Center and Central Industrial cases back to the trial court to determine the remaining procedural and substantive issues. The City and CRA/LA settled with the Wiggins plaintiffs prior to the trial on remand.

The remanded trial in the Central Industrial Case took place in December 2006 and judgment was entered in April 2006. The CRA/LA and City prevailed and the County and Bernardi appealed. Prior to the resolution of the appeal in Central Industrial litigation, the remanded trial in the City Center case took place in October 2006 and judgment in favor of the County and Bernardi was entered in July 2007. In September 2007, the Court of Appeal affirmed the judgment in favor of the City and CRA/LA in the Central Industrial case. Given the reasoning by the Court of Appeal in the Central Industrial case, the parties pursued settlement of the City Center case. The County is cooperating in resolving the City Center case and the Bernardi plaintiffs have also offered to enter into a settlement to stipulate to the reversal of the judgment against the City and CRA/LA in the

settlement is entered, CRA/LA will withdraw its appeal of the award of attorney's fees to the Bernardi plaintiffs.

Cecilia V. Estolano
Chief Executive Officer

By:



Glenn F. Wasserman
Chief Operating Officer

There is no conflict of interest known to me, which exists with regard to any CRA/LA officer or employee concerning this action.