



## Legislation Details (With Text)

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**Title:** CONSIDER RESOLUTION 18-044, "A RESOLUTION OF THE CITY OF CARSON APPROVING A COOPERATION AGREEMENT WITH THE CARSON RECLAMATION AUTHORITY FOR THE REIMBURSEMENT OF SALES TAXES TO FUND PUBLIC INFRASTRUCTURE AND SITE DEVELOPMENT COSTS OF THE CELL 2 SURFACE LOT OF A 157-ACRE PARCEL OWNED BY THE CARSON RECLAMATION AUTHORITY, THE FORMER CAL-COMPACT LANDFILL"

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## Report to Mayor and City Council

Tuesday, April 03, 2018

Discussion

### SUBJECT:

**CONSIDER RESOLUTION 18-044, "A RESOLUTION OF THE CITY OF CARSON APPROVING A COOPERATION AGREEMENT WITH THE CARSON RECLAMATION AUTHORITY FOR THE REIMBURSEMENT OF SALES TAXES TO FUND PUBLIC INFRASTRUCTURE AND SITE DEVELOPMENT COSTS OF THE CELL 2 SURFACE LOT OF A 157-ACRE PARCEL OWNED BY THE CARSON RECLAMATION AUTHORITY, THE FORMER CAL-COMPACT LANDFILL"**

### I. SUMMARY

The Cooperation is one of a series of agreements between the City, the Authority and the Developer to help effectuate the development of the Cell 2 Surface Lot on the Former Cal Compact Landfill into a high end fashion outlet retail mall. It describes the purposes for which the City shall the Authority sales tax to reimburse the Authority and Developer for Site Work and Public Infrastructure through sales tax generated from the Project.

### II. RECOMMENDATION

1. Make the following findings under CEQA: The City Council of the City of Carson

previously prepared and certified a SEIR for the District at South Bay Specific Plan. The SEIR identified that implementation of the proposed modified Project would require certain approvals, including approval of the Cooperation Agreement and the Conveyancing Agreement by the Carson Reclamation Authority as a responsible agency under the California Environmental Quality Act (CEQA). The Cooperation Agreement and Conveyancing Agreement were expressly included within the scope of the project, and were environmentally assessed in the SEIR. Neither the Cooperation Agreement nor the Conveyancing Agreement changes the environmental assessment of the SEIR. Further, the SEIR was certified on April 3, 2018. The Carson Reclamation Authority further finds that no subsequent review is required under CEQA Guidelines section 15162 as since that time no substantial changes have been proposed in the project which will require major revisions of the previously certified SEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. Likewise, no substantial changes have occurred since that time with respect to the circumstances under which the project is undertaken which will require major revisions of the SEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. There is also no new information, which was not known and could not have been known at the time of the SEIR that the project will have significant effect not discussed in the SEIR. As such, the Carson Reclamation Authority finds the Cooperation Agreement and the Conveyancing Agreement have already been fully assessed in accordance with CEQA, no subsequent review is required under CEQA Guidelines section 15162, and no further action or review is required under CEQA.

2. Waive further reading and APPROVE RESOLUTION 18-04-CRJPA, "A RESOLUTION OF THE CARSON RECLAMATION AUTHORITY APPROVING A COOPERATION AGREEMENT WITH THE CITY OF CARSON FOR THE REIMBURSEMENT OF SALES TAXES TO FUND PUBLIC INFRASTRUCTURE AND SITE DEVELOPMENT COSTS OF THE CELL 2 SURFACE LOT OF A 157-ACRE PARCEL OWNED BY THE CARSON RECLAMATION AUTHORITY, THE FORMER CAL-COMPACT LANDFILL"
3. Authorize the Mayor to execute all documents related to this agreement subject to the approval of the City Attorney.

### **III. ALTERNATIVES**

### **IV. BACKGROUND**

By separate action, the Authority is being asked to consider entering into a Conveyancing Agreement by and between the Carson Reclamation Authority ("Authority") and CAM-CARSON, LLC, a Delaware limited liability company ("Developer"), an affiliate of The Macerich Company of Santa Monica, California for the development of a high end fashion outlet mall.

Under the terms of the Conveyancing Agreement, the Authority will convey to Developer

approximately 41 net acres of the Surface Lot of Cell 2 and certain easement areas ("Cell 2 Surface Lot"), and will retain approximately 5.3 acres lying along the I-405 Freeway and between the freeway and the Cell 2 Surface Lot ("Embankment Lot"). The property and easement rights to be conveyed by the Authority to Developer are referred to as the "Developer Property."

The Authority was created to cause the remediation of properties within Carson and the Project Agreements will serve as a model for establishment of private/public partnerships to carry out development of such properties with, in this case, specifically defined roles for the Parties. As neither Macerich nor the City want to incur liability for the preexisting soil and groundwater contamination on the 157 Acre Site, all work done in the contaminated soil is the responsibility of its owner, Authority, under the terms of its Conveyance Agreement with Macerich, and of a Development Agreement between Macerich and the City.

### Fundamental Assumptions

Because the 157 Acre Site, including the Cell 2 Subsurface Lot, is a contaminated and poorly-compacted landfill subject to the RAP, the Parties acknowledge that development of the Project on the Cell 2 Site would be financially infeasible unless the Cell 2 Site itself were very substantially remediated and improved to address both its environmental and compaction issues. Additionally, Authority has a responsibility under the RAP to remediate the 157 Acre Site and has substantial funds to do so. Authority believes that the sales tax revenues to be generated by the Project, as well as the secondary benefits of economic development in this area of the City spurred by development of the Project, justify the expenditure of substantial funds to address those issues so as to permit such development.

The need for the Sales Tax Assistance is based upon the fact that a developer would not proceed with the Project without a reasonable assurance that it can achieve a market rate of return on its costs to build the Project, i.e., net operating income from the Project representing at least the "Required Return." Inability to achieve the Required Return for the Project would produce a financial "Feasibility Gap." Macerich has estimated that it will achieve the Required Return only if Authority pays the cost of the Site Development Improvements, defined below. Authority does not currently have funds to pay for the Site Development Improvements, and therefore Macerich has agreed to make the Site Development Advances as described in the Conveyancing Agreement and this Agreement. To reimburse the Site Development Advances (and Offsite Advances), the Parties have negotiated the Sales Tax Assistance Payments described herein. The Sales Tax Assistance Payments are intended to bridge the financial Feasibility Gap. The Cooperation Agreement between the City and the Authority defines the roles of the three parties, which are generally described as follows:

### Authority Responsibilities

Authority is the Seller of the Cell 2 Surface Lot to Macerich and performs specified remediation of hazardous materials on site, develops certain offsite improvements pursuant to this Agreement and the Conveyancing Agreement, and installs various subsurface improvements in order to make the site developable, described in the Conveyancing Agreement as the Site Development Improvements. Authority retains

ongoing responsibility for operation and maintenance of the Remedial Systems and BPS required by DTSC. The Authority is performing certain work and improvements (i) due to its obligations to DTSC to deal with the hazardous materials on the site; (ii) due to its obligations to Developer to prepare the Cell 2 Site so that it can be developed, and so that Macerich does not work within the Cell 2 Subsurface Lot; and (iii) due to its obligations to City to construct certain public infrastructure as described below:

1. **DTSC Remediation Systems and BPS Costs.** The RAP requires that Remedial Systems be constructed and operated for many years to cap the landfill and remove landfill gas and groundwater contaminants. Pursuant to the Conveyancing Agreement, Authority is responsible for the full cost of constructing the Remedial Systems, and the cost of constructing the additional required Building Protection Systems (described and defined in the Conveyancing Agreement as the “BPS”) up to a cap of \$9 per square foot of foundation slab, with any additional costs of BPS subject to negotiation by the Parties. Authority’s costs for constructing Remedial Systems and BPS shall be paid from Authority funds held for such purpose. The costs of operating, maintaining, repairing and replacing the Remedial Systems to be constructed and retained by Authority shall be paid through the Community Facilities District (“CFD”) as provided in the Development Agreement. Authority will retain ownership of and responsibility for construction, maintenance, repair and replacement of above-ground BPS improvements (e.g., venting systems and gas monitoring systems), but operating and maintenance expenses can be recovered through the CFD described in the Development Agreement.
2. **Site Development Improvements.** The Authority shall perform work necessary to prepare the site for development, given its current poor state of compaction and environmental contamination. This work includes (i) the Stormwater Work, (ii) the Sub-Foundation Systems, (iii) the Utility Work upon Cell 2, and (iv) the Foundation Systems, all as further described in the Conveyancing Agreement (the “Site Development Improvements”). The Site Development Improvements are described in Section 3.2 and are being constructed and maintained by Authority, but all Site Development Costs, including for future maintenance and repair will be advanced or reimbursed by Macerich (the “Site Development Advances”) in accordance with Section 6 of the Conveyancing Agreement, subject to reimbursement through the Sales Tax Financing Assistance pursuant to Section 7 of the Conveyancing Agreement.
3. **Construction of Public Infrastructure.** City has the responsibility to provide public infrastructure and services on, over and in the 157 Acre Site, including streets, sidewalks, parkways, sewer, water, drainage, lighting, and other utilities, and must assure accessibility to the 157 Acre Site. The Infrastructure Obligations are described in Recital M to the Development Agreement. Under this Agreement, the City contracts with Authority to construct such improvements to avoid any City liability for the remediation of the 157 Acre Site by working on the site. By this Agreement with the City, Authority will construct all such improvements outside Cell 2 and such other public offsite infrastructure, further described in the Conveyancing Agreement as the Offsite Improvements. The total estimated cost of such Offsite Improvements is approximately \$23,350,000. Macerich is making advances (the “Offsite Advances”) to pay a portion of the costs of the Offsite Improvements pursuant to this Agreement. Authority is paying for the construction of the remaining portion of the Offsite Improvements with its own

funding, but the Authority's resources are insufficient to undertake all costs of the Offsite Improvements, so Macerich is advancing up to \$10,000,000 for this purpose. Additionally, except for Stamps Road south of Lenardo Drive, all roads and Offsite Improvements built by Authority on the 157 Acre Site and after formal acceptance by City will be maintained by the City as public streets and improvements. City agrees to accept such improvements if properly constructed in accordance with all City standards and will (i) be responsible for all liability claims for public use not resulting from the contamination, and (ii) accept ownership of the improvements. City will maintain such roadway systems in a finished and attractive manner conducive to the success of the Project.

### City Responsibilities

The City may exercise its land use authority providing approval to Macerich of Entitlements through a Development Agreement. Through that agreement, City has the obligation to install, own and maintain certain public improvements serving the 157 Acre Site, defined and described in the Conveyancing Agreement as the Offsite Improvements. The City by this Agreement is contracting with Authority to construct the Offsite Improvements, which are being funded with monies from City, Authority, and funds advanced by Macerich. The advances from Macerich are repaid through the Sales Tax Assistance Payments. City, by this Agreement, is agreeing to provide to Authority the funds required to make the Sales Tax Assistance Payments to reimburse the cost of the Offsite Improvements and Site Development Improvements.

The City will derive sales tax revenues from the development of the Project and agrees to pay Authority 1/2 of the sales tax revenue City receives from operation of the completed Project on the Cell 2 Surface Lot, in exchange for Authority undertaking the Offsite Improvements and Site Development Improvements. Those sales tax proceeds shall be paid by City to Authority and Authority to Macerich to reimburse Macerich for advances made by Macerich to fund the cost of certain Offsite Improvements and Site Development Improvements.

### Developer Responsibilities

Macerich shall develop the Project on the Cell 2 Surface Lot and make advances to Authority for a portion of the Site Development Improvements, subject to being reimbursed by the Sales Tax Assistance described below. Macerich is also advancing up to \$10,000,000 to the Authority/City to assist in the payment of the costs of the offsite improvements. The Offsite Advances and Site Development Advances (collectively the "Advances") made by Macerich, together with interest, are to be repaid to Macerich over time via the Sales Tax Assistance Payments, subject to certain limitations.

City acknowledges that Authority's ability to make these payments will depend on City's making payments to Authority in the amounts payable by Authority to Macerich pursuant to Section 7 of the Conveyancing Agreement (the "Sales Tax Assistance Payments"), and thus Authority is relying on this Agreement in entering into the Conveyancing Agreement. In the event of any conflict between the terms of Article IV of this Agreement and Section 7 of the Conveyancing Agreement, the terms of the Conveyancing Agreement shall govern.

### CEQA Findings

The City Council of the City of Carson previously prepared and certified a SEIR for the District at South Bay Specific Plan. The SEIR identified that implementation of the proposed modified Project would require certain approvals, including approval of the Cooperation Agreement and the Conveyancing Agreement by the Carson Reclamation Authority as a responsible agency under the California Environmental Quality Act (CEQA). The Cooperation Agreement and Conveyancing Agreement were expressly included within the scope of the project, and were environmentally assessed in the SEIR. Neither the Cooperation Agreement nor the Conveyancing Agreement changes the environmental assessment of the SEIR. Further, the SEIR was certified on April 3, 2018. The Carson Reclamation Authority further finds that no subsequent review is required under CEQA Guidelines section 15162 as since that time no substantial changes have been proposed in the project which will require major revisions of the previously certified SEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. Likewise, no substantial changes have occurred since that time with respect to the circumstances under which the project is undertaken which will require major revisions of the SEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. There is also no new information, which was not known and could not have been known at the time of the SEIR that the project will have significant effect not discussed in the SEIR. As such, the Carson Reclamation Authority finds the Cooperation Agreement and the Conveyancing Agreement have already been fully assessed in accordance with CEQA, no subsequent review is required under CEQA Guidelines section 15162, and no further action or review is required under CEQA.

## **V. FISCAL IMPACT**

Depending on the performance of the Project over its life, as measured against the Allowable Development Cost, the sales tax sharing agreement could pay the Developer as much as \$70,000,000 over the span of the 25-year Development Agreement. Limitations to this amount could be due to: (i) the “look back” provision of the Conveyancing Agreement, where at the review 3-5 years after the completion of construction the Allowable Construction Cost (based on the capitalization of the Net Operating Income) exceeds the Aggregate Construction Cost and the sales tax payments to Macerich end; (ii) it could be that the project never performs well enough to generate the full amount owed after 25 years, and the Agreement terminates and the remaining balance is cancelled; or, (iii) conversely, the sales tax payments continue after the initial review but the project performs extraordinarily well and the full amount is paid in a shorter period; and (iv) the final limitation is on the total dollar amount of the Authority Work itself, if it came in less than the projected amount, the Recovery Amount would be set at the Actual Cost.

On the other hand, as a 50% share of sales tax, it means that the City would make the same amount over the same period of time. Furthermore, the Macerich Project is the catalyst for the development of the Remainder Parcels, and it is possible that these parcels produce as much or more revenue to the City as Cell 2.VI. **EXHIBITS**

1. Cooperation Agreement

Prepared by: John S. Raymond,