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November 17, 2004

Redevelopment Agency of the
City of Sacramento
Sacramento, California

Honorable Members in Session:

**SUBJECT: AUTHORIZING COURT ACTIONS RELATED TO CONTAMINATION
INVESTIGATION AND REMEDIATION FUNDING**

LOCATION & COUNCIL DISTRICT - Citywide

RECOMMENDATION

Staff recommends adoption of the attached resolution which authorizes the Executive Director or her designee to:

File court actions to obtain rights of entry and assignment of federal and state grant funding for investigation and remediation of contaminated property pursuant to the Agency's authority under the Polanco Act when the funding recipient is not actively pursuing the necessary remediation.

CONTACT PERSONS

Dana Phillips, General Counsel, 440-1330
Sheryl Patterson, Agency Counsel, 440-1330

FOR COUNCIL MEETING OF - January 11, 2005

SUMMARY

Agency staff is generally required to obtain approval from the City Council, acting as the Agency governing board, prior to filing a court action against an owner of property. In order to expedite property contamination investigation and to protect rights to remediation funding, staff is requesting authority to file certain limited types of court actions under the Polanco Act. Any action against a property owner to require that they

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undertake or incur the costs to remediate the contamination would still be subject to prior City Council approval.

COMMISSION ACTION

It is anticipated that at their meeting of November 17, 2004, the Sacramento Housing and Redevelopment Commission will adopt a motion recommending approval of the attached resolutions. In the event they fail to do so, you will be advised prior to your November 30, 2004 meeting.

BACKGROUND

Under the 1990 Polanco Act (Health and Safety Code Section 33459 et seq.), redevelopment agencies were conferred with broad authority to order and undertake the investigation and cleanup of contaminated properties located within redevelopment project areas. In many cases, the presence of soil and groundwater contamination, caused by prior owners and occupants, prevents the private sector from undertaking redevelopment of blighted parcels. Remediation of such contamination is a prerequisite to attracting new development within project areas.

Once there is knowledge or suspicion that property may be contaminated, the Agency may direct the owner to disclose information and undertake an investigation regarding the nature and extent of such contamination. Typically, the owner is unwilling to expend funds to undertake such studies, so the Agency conducts the Phase I (record research and site inspection) and Phase II (soil and groundwater testing) Environmental Site Assessments. However, the Agency needs permission from the owner to enter its property to conduct this work. If an owner is unwilling to grant access, the Agency can obtain a court order that authorizes the Agency the Right of Entry.

After the contamination status of parcel is verified, the Agency or a developer then can assess the time and costs for remediation, if any, as part of a development project planning process. The information is vital to determine the feasibility of redevelopment projects on or near the property. Delays in completing such inspections and testing can impact the costs and feasibility of undertaking the redevelopment project.

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In many cases, contamination was caused by a leaking underground petroleum storage tank that was used as part of the prior business, such as a gas station or car repair shop. In 1989, the State created the Underground Storage Tank Cleanup Fund Act, which provides owners and operators of underground storage tanks with up to \$1.5 million to cover the costs for remediation of soil and groundwater contamination. The rights to such funds is limited to tank owners, which are either the owner of the property where the tank was located at the time it was removed, or to the operator of the business that owned the tank that leaked. In many cases after the rights to this funding has been secured, the owner or operator fails to proceed with remediating the contamination. The rights to these state funds can lapse if remediation is not timely pursued.

In typical situations, an unsuspecting purchaser acquires the property with an abandoned underground tank, or the owner discovers that a prior operator removed the tank in the past but did not also remove the contaminated soil. Under the law, the tank fund rights remains with whomever applied to the state and they do not automatically succeed to the current owner of the contaminated property. Unless the tank fund rights are assigned by the applicant, the costs incurred by another party to remediate the contamination are not eligible for reimbursement. The costs of remediation can sometimes exceed the value of the property after it has been cleaned up. Therefore, this state funding is critical for redevelopment of brownsfield sites.

In redevelopment areas, many properties are acquired through tax default auctions and the prior owner is unavailable or unwilling to cooperate in getting such rights assigned. If the Agency intends to pursue acquisition of property to facilitate redevelopment, an unwilling seller may also be unwilling to cooperate in assigning its tank fund rights. In such cases, the only means to obtain the tank fund rights is through a court action where the court can order the rights assigned to the current property owner or to the Agency.

The EPA and HUD also offer grants to assist in contamination investigation and remediation. To the extent that a property owner obtains federal funding and fails to pursue remediation with such funds, it may also be necessary in the future to obtain a court order to assign those federal funding rights to the Agency.

FINANCIAL CONSIDERATIONS

The costs to file the type of actions referenced above can range from \$5,000 to \$25,000, and the costs would be part of an approved and budgeted project or program. However, under the Polanco Act, the Agency is entitled to recoup its attorney's fees and court costs if an owner is unwilling to comply with the Agency's directives regarding

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contamination investigation and remediation. Therefore, any costs incurred to file court actions for these types of matter will be eligible for reimbursement.

POLICY CONSIDERATIONS

The authority for staff to file actions to obtain rights of entry for contamination investigation and testing and assignment of state (or federal) grant funds for remediation would only minimally impact a property owner. Typically, the owner or responsible party does not challenge these types of actions. If the Agency intends to pursue a lawsuit to require an owner and other responsible parties to undertake remediation of the contamination of property, prior City Council approval to file such actions will still be needed.

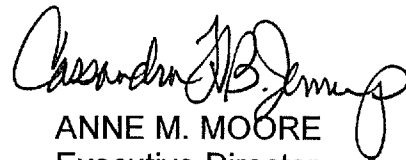
ENVIRONMENTAL REVIEW

This action is not a project subject to environmental review under CEQA or NEPA.

M/WBE CONSIDERATIONS

The items discussed in this report have no M/WBE impact; therefore, M/WBE considerations do not apply.

Respectfully submitted,



ANNE M. MOORE
Executive Director

Transmittal approved,



ROBERT P. THOMAS
City Manager

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RESOLUTION NO. _____

ADOPTED BY THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO

ON DATE OF

**AUTHORIZING COURT ACTIONS RELATED TO CONTAMINATION
INVESTIGATION AND REMEDIATION FUNDING**

BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF THE CITY OF
SACRAMENTO:

Section 1. All of the evidence presented having been duly considered, the findings, including the environmental findings regarding this action, as stated in the staff report that accompanies this resolution, are approved.

Section 2. The Executive Director, or her designee, is authorized to file court actions under the Polanco Act (Health and Safety Code Section 33459 et seq.) to obtain rights of entry and assignment of federal and state grant funding for investigation and remediation of contaminated properties within redevelopment project areas when the named recipient is not diligently acting to carry out such investigation or remediation.

CHAIR

ATTEST:

SECRETARY

FOR CITY CLERK USE ONLY (5)

RESOLUTION NO.: _____

DATE ADOPTED: _____