

**SUCCESSOR AGENCY  
CITY OF BRISBANE**

**Item 5c**

**OVERSIGHT BOARD MEETING DATE: March 27, 2012**

**ITEM TITLE: Report on Successor Agency Timeline of Actions**

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RECOMMENDATION:

Accept this report on the Successor Agency's timeline for actions.

FISCAL IMPLICATIONS:

The review, audit, certification and approval of the Successor Agency's Recognized Obligations Payment Schedules ("ROPS") and related Successor Agency administrative budgets will determine on a going forward basis what amounts are paid to the Successor Agency from the Redevelopment Property Tax Trust Fund and what amounts will be disbursed to the various taxing entities as additional property tax.

BACKGROUND:

Pursuant to Section 34172 of the Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*; "CRL"), as modified by the California Supreme Court decision entered December 29, 2011, in *California Redevelopment Assn. v. Matosantos* (Case No. S194861), on February 1, 2012, all redevelopment agencies in the State of California were dissolved. On that date, by operation of law pursuant to CRL Section 34175, all assets, properties, contracts, leases, books and records, buildings and equipment of redevelopment agencies were transferred to successor agencies. On January 9, 2012, the City Council of the City of Brisbane adopted Resolution No. 2012-1, affirming that the City would serve as the Successor Agency to the former Brisbane Redevelopment Agency ("Redevelopment Agency"), in which capacity the City will wind down the affairs of the former Redevelopment Agency at the direction of an oversight board. In addition, the City elected to retain the housing assets and functions of the former Redevelopment Agency pursuant to H&S Code Section 34176 and designated the City's Housing Authority to be the "successor housing agency".

On February 21, 2012, the Successor Agency adopted an Enforceable Obligation Schedule ("EOPS") and draft Recognized Obligation Payment Schedules ("ROPS") which was provided to the County Controller for review, audit and certification.

On March 13, 2012, external auditors engaged by the County Controller began an audit of the former Redevelopment Agency's assets, liabilities, debt obligations, pass-throughs and all other obligations provided in the ROPS. It is anticipated that their work will be complete and ready for the Oversight Committee on either April 2<sup>nd</sup> or April 3<sup>rd</sup>. By April 15<sup>th</sup>, the Successor Agency is due to submit a ROPS that has been certified by an external audit of the County Controller and approved by the Oversight Board. As of May 1, 2012, only the obligations on a certified and approved ROPS may be paid by the Successor Agency. A more detailed discussion of these administrative timelines for dissolution is provided in Attachment 1.

In addition to these immediate administrative functions, there are a number of Successor

Agency actions that will need approval by the Oversight Board, as provided in H&S Code Sections 34180 and 34181, as follows:

34180. All of the following successor agency actions shall first be approved by the oversight board:

(a) The establishment of new repayment terms for outstanding loans where the terms have not been specified prior to the date of this part.

(b) Refunding of outstanding bonds or other debt of the former redevelopment agency by successor agencies in order to provide for savings or to finance debt service spikes; provided, however, that no additional debt is created and debt service is not accelerated.

(c) Setting aside of amounts in reserves as required by indentures, trust indentures, or similar documents governing the issuance of outstanding redevelopment agency bonds.

(d) Merging of project areas.

(e) Continuing the acceptance of federal or state grants, or other forms of financial assistance from either public or private sources, where assistance is conditioned upon the provision of matching funds, by the successor entity as successor to the former redevelopment agency, in an amount greater than 5 percent.

(f) (1) If a city, county, or city and county wishes to retain any properties or other assets for future redevelopment activities, funded from its own funds and under its own auspices, it must reach a compensation agreement with the other taxing entities to provide payments to them in proportion to their shares of the base property tax, as determined pursuant to Section 34188, for the value of the property retained.

(2) If no other agreement is reached on valuation of the retained assets, the value will be the fair market value as of the 2011 property tax lien date as determined by the county assessor.

(g) Establishment of the Recognized Obligation Payment Schedule.

(h) A request by the successor agency to enter into an agreement with the city, county, or city and county that formed the redevelopment agency that it is succeeding.

(i) A request by a successor agency or taxing entity to pledge, or to enter into an agreement for the pledge of, property tax revenues pursuant to subdivision (b) of Section 34178.

34181. The oversight board shall direct the successor agency to do all of the following:

(a) Dispose of all assets and properties of the former redevelopment agency that were funded by tax increment revenues of the dissolved redevelopment agency; provided, however, that the oversight board may instead 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, and fire stations, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset. Any compensation to be provided to the successor agency for the transfer of the asset shall be governed by the agreements relating to the construction or use of that asset. Disposal shall be done expeditiously and in a manner aimed at maximizing value.

(b) Cease performance in connection with and terminate all existing agreements that do not qualify as enforceable obligations.

(c) Transfer housing responsibilities and all rights, powers, duties, and obligations along with any amounts on deposit in the Low and Moderate Income Housing Fund to the appropriate entity pursuant to Section 34176.

(d) Terminate any agreement, between the dissolved redevelopment agency and any public entity located in the same county, obligating the redevelopment agency to provide funding for any debt service obligations of the public entity or for the construction, or operation of facilities owned or operated by such public entity, in any instance where the oversight board has found that early termination would be in the best interests of the taxing entities.

(e) Determine whether any contracts, agreements, or other arrangements between the

dissolved redevelopment agency and any private parties should be terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities, and present proposed termination or amendment agreements to the oversight board for its approval. The board may approve any amendments to or early termination of such agreements where it finds that amendments or early termination would be in the best interests of the taxing entities.

NEXT STEPS:

The Successor Agency will seek the review and approval of certain actions from the Oversight Board at its next and subsequent meetings including actions related to:

1. Approval of the Recognized Obligation Payment Schedules ("ROPS") for the periods January to June 2012 and July to December 2012.
2. Approval of Successor Agency administrative budget.
3. Consideration of retention of properties and assets necessary to complete mutually beneficial redevelopment activities.

Attachments:

"Redevelopment Dissolution: Successor Agency Next Steps for March – May 2012"  
prepared by Goldfarb & Lipman LLP



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Stuart Schillinger  
Administrative Services Director

**REDEVELOPMENT DISSOLUTION:  
SUCCESSOR AGENCY NEXT STEPS FOR MARCH – MAY 2012**

M David Kroat  
John T. Nagle  
Polly V. Marshall  
Lynn Hutchins  
Karen M. Tiedemann  
Thomas H. Webber  
John T. Haygood  
Dianne Jackson McLean  
Michelle D. Brewer  
Jennifer K. Bell  
Robert C. Mills  
Isabel L. Brown  
James T. Diamond, Jr.  
Margaret F. Jung  
Heather J. Gould  
Juliet E. Cox  
William F. DiCamillo  
Amy DeVaudreuil  
Barbara E. Kautz  
Erica Williams Orcharton  
Luis A. Rodriguez  
Xochitl Carrion  
Rafael Yacquán  
Josh Mukhopadhyay  
Vincent L. Brown

By now, the successor agency ("Successor Agency") for each former redevelopment agency ("Former RDA") has likely prepared, obtained its governing board's (typically the city council or board of supervisors) approval, and posted on its website the draft first recognized obligation payment schedule ("First ROPS") providing specified information about the Former RDA's enforceable obligations for the period of January through June 2012 (and over the duration of such obligations), in accordance with the provisions of ABx1 26 ("Dissolution Act").

This alert provides information about actions to be taken by the Successor Agency during the balance of March through May to complete the certification and approval process for the First ROPS and related Successor Agency administrative budget ("Administrative Budget") and to prepare and process the second recognized obligation payment schedule ("Second ROPS") and related Administrative Budget covering the period of July through December 2012. This alert also describes actions to be taken by the county auditor-controller ("Auditor-Controller") in connection with making payments to the Successor Agency from the Redevelopment Property Tax Trust Fund ("Trust Fund") established by the Auditor-Controller for each Former RDA to provide the Successor Agency with funds to pay enforceable obligations of the Former RDA for the periods covered by the First and Second ROPS.

This alert is based on interpretations of the somewhat murky and inconsistent provisions of the Dissolution Act by our office and other legal counsel, the Department of Finance ("DOF"), particularly in the March 2, 2012 letter from Finance Director Ana J. Matosantos ("DOF Letter"), and various county auditor-controllers' offices.

See previous law alerts on the processing and contents of the First ROPS, Second ROPS, and Administrative Budget at our website: <http://goldfarblipman.com/>.

First ROPS

*Mid-March Through Mid-April.* During this period, the Successor Agency should take actions to:

- Prepare and obtain approval from the Successor Agency governing board of the Administrative Budget for the January through June 2012 period, if not already accomplished in connection with preparation of the First ROPS;
- If possible, facilitate the formation and initial meeting(s) of the Successor Agency's oversight board ("Oversight Board") (although the Dissolution Act

Facsimile  
510 836-1035  
San Francisco  
415 788-6336  
Los Angeles  
213 627-6336  
San Diego  
619 239-6336  
Goldfarb & Lipman LLP

does not require Oversight Board formation until May 1, the DOF Letter encourages Successor Agencies to work expeditiously with the appointing authorities for the seven Oversight Board members to cause earlier formation in order to accomplish other steps described below and to overcome some timing errors in the Dissolution Act as reformed by the California Supreme Court in the *Matosantos* decision (the decision upholding the constitutionality of the Dissolution Act));

- Confer with the Auditor-Controller about whether the First ROPS can be certified for accuracy by the external auditor being appointed by the Auditor-Controller to prepare an "agreed upon procedures" review of the Former RDA independently and prior to completion of such review, so that the First ROPS certification can occur by April 15 (this approach to overcome additional Dissolution Act timing problems is suggested in the DOF Letter, although the actual text of ABx1 26 does not require completion of the external audit upon which First ROPS certification will presumably be based until July 1);
- If Oversight Board formation and meeting can be sufficiently expedited, seek Oversight Board approval of the First ROPS and Administrative Budget;
- Post the approved First ROPS and Administrative Budget on the Successor Agency website promptly following Oversight Board approval.

*By April 1.* A Successor Agency should inform the Auditor-Controller by April 1 if the Successor Agency expects that the funds available to it from amounts inherited from the Former RDA upon the Former RDA's February 1 dissolution and from the expected distribution from the Auditor-Controller out of the Trust Fund on May 16 (see further discussion below) will be insufficient to pay all the enforceable obligations and other specified payments for the January through June 2012 period. Such notification will trigger a funding shortfall verification process by the Auditor-Controller and the State Controller that could lead to a specified revision in the priority of payments out of the Trust Fund to assure sufficient amounts are available to pay approved enforceable obligation payments.

*Mid-April.* Overlooking certain internal timing conflicts related to the formation deadline for the Oversight Board (May 1) and the date for completion of the external audit of the Former RDA (July 1), ABx1 26 calls for the Successor Agency to submit the certified and approved First ROPS by April 15 to the Auditor-Controller, the DOF, and the State Controller. The DOF likewise cites April 15 as the deadline for submittal of the certified and approved First ROPS, although the DOF Letter adds the interpretation that if certification by the external auditor is not possible by then, the approved First ROPS, without such certification, should be submitted. The DOF Letter is silent about what should occur if the Oversight Board has not been formed or has not had time to approve the First ROPS by April 15. In that case, presumably the Successor Agency should inform the County Auditor-Controller, the DOF, and the State Controller by April 15 of the status and next steps for Oversight Board approval, and then should submit the approved First ROPS as soon as such approval can subsequently be obtained from the Oversight Board.

At the time that the Successor Agency submits the approved First ROPS, it is recommended that the Successor Agency provide the Auditor-Controller with the cost estimates from its approved Administrative Budget regarding the amount of such costs that are to be paid to the Successor Agency by the Auditor-Controller from the Trust Fund.

The Dissolution Act grants the DOF certain limited review periods to question and disapprove items on a ROPS approved by the Oversight Board. In general, actions of an Oversight Board (such as a ROPS approval) do not become effective for three business days to give the DOF a limited time to request review of such approval. If the DOF requests a review, it then has ten days to approve the Oversight Board action or to return the action to the Oversight Board for reconsideration. If the DOF returns the action unapproved, then the Oversight Board is required to resubmit a modified action for DOF approval and any such modified action does not become effective until approved by the DOF.

*As of May 1.* As of May 1, only those enforceable obligation payments shown on the First ROPS may be paid by the Successor Agency. The DOF interprets this provision of ABx1 26 to mean the First ROPS as approved by the Oversight Board. If the First ROPS prepared by the Successor Agency is not approved and certified by May 1, it is recommended that the Successor Agency confer with legal counsel regarding the potential risks of paying (or not paying) enforceable obligations—particularly in the case of enforceable obligations that may be controversial or problematic under competing interpretations of ABx1 26.

*May 16.* The Dissolution Act calls for the Auditor-Controller to make a distribution from the Trust Fund to the Successor Agency on May 16 in an amount needed to allow the Successor Agency to meet the enforceable obligation payments shown on the approved First ROPS and to cover specified administrative costs of the Successor Agency for the period January through June 2012. Some Auditor-Controllers have indicated that they do not intend to make such a distribution on May 16 because the money that they would have had in the Trust Fund to make such distribution would have come from the December 2011/January 2012 installment of property taxes which, due to the timing of the *Matasantos* decision, instead was made to the Former RDAs prior to their dissolution and has resided with the Successor Agencies since the transfer of such funds from the Former RDAs on February 1. In effect, those Auditor-Controllers are indicating that a Successor Agency must rely on the fund balances inherited from its Former RDA to make the enforceable obligation payments and pay the Successor Agency administrative costs for the January through June period. Each Successor Agency should confer with its Auditor-Controller regarding the Auditor-Controller's plans on this matter, and should carefully monitor its cash flow situation to determine if the lack of a May 16 distribution from the Auditor-Controller might lead to problems in paying all approved enforceable obligation payments for this period.

Second ROPS

As noted, the approved Second ROPS will cover enforceable obligation payments for the period of July through December 2012. The Auditor-Controller is required to make payments to the Successor Agency from the Trust Fund for this period by June 1, 2012, and must provide estimates of the amount of such payments to the State and Successor Agencies by May 1. In turn, these statutory deadlines in the Dissolution Act have caused the DOF and certain Auditor-Controllers to request that the following non-statutory timeline (though not authorized or required by ABx1 26 itself) be applied for submitting an approved Second ROPS and related administrative cost estimates from the corresponding Administrative Budget.

*April.* Some Auditor-Controllers are requesting that the draft Second ROPS (not necessarily yet approved by the Oversight Board) and the estimated administrative costs to be paid from the Trust Fund be submitted by each Successor Agency by April 15. To meet such a requested timeline, a Successor Agency would prepare the draft Second ROPS and accompanying Administrative Budget and, if possible, have them approved by its governing board (city council or board of supervisors), but not the Oversight Board, by that time. Regardless of any Auditor-Controller timeline requests, such preparatory actions toward eventual Oversight Board approval of the Second ROPS and accompanying Administrative Budget will likely need to be completed sometime in April in order to proceed in a timely basis with the following Second ROPS processing steps.

*By May 1.* By May 1, the Auditor-Controller is required to provide the Successor Agency and others with information about the estimated amount of Trust Fund distributions it will make on June 1.

Also by May 1, the Successor Agency is supposed to inform the Auditor-Controller if the Successor Agency expects that the remaining funds (if any) inherited from the Former RDA and the expected distribution from the Auditor-Controller out of the Trust Fund on June 1 (see further discussion below) will be insufficient to pay all the enforceable obligations and other specified payments for the July through December 2012 period. This requirement seems infeasible to accomplish, since it calls for the Successor Agency to provide information that is, in turn, dependent on information it may only receive from the Auditor-Controller the very same day. It is recommended that a Successor Agency that believes it might have to provide a funding shortfall notice for this period arrange with its Auditor-Controller to receive practical relief from this impractical deadline in the Dissolution Act.

*By Mid-May.* The DOF Letter requests that the Second ROPS as approved by the Oversight Board be submitted to the DOF and the Auditor-Controller (and presumably the State Controller as called for in the Dissolution Act) by May 11, so that the DOF is given its statutory periods to review, question and, if it deems appropriate, disapprove items on the Second ROPS prior to the statutorily prescribed June 1 distribution of

funds from the Trust Fund by the Auditor-Controller to the Successor Agency. To comply with this DOF request, a Successor Agency would seek to obtain Oversight Board approval of the Second ROPS (and accompanying Administrative Budget) prior to May 11.

*June 1.* The Dissolution Act calls for the Auditor-Controller to make a distribution from the Trust Fund to the Successor Agency on June 1 in an amount needed to allow the Successor Agency to meet the enforceable obligation payments shown on the approved Second ROPS and to cover specified administrative costs of the Successor Agency for the period July through December 2012.