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

MONDAY, May 4, 2012, 11:00 AM – 1:00 PM

Economic Development Agency Board Room
201 North E Street, Suite 301, San Bernardino, CA 92401
(909) 663-1044

The Economic Development Agency of the City of San Bernardino recognizes its obligation to provide equal access to those individuals with disabilities. Please contact the Economic Development Agency at (909) 663-1044 two working days prior to the meeting for any requests for reasonable accommodation that includes interpreters.

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 on a matter 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. Approval of Minutes of April 23, 2012 – Present: Chairman Morris; Board Members: Headrick, Hill, Jenkins, Longville, and O'Toole

4. Northwest Redevelopment Project Area Committee – Discussion of historical formation documents and disposition for the future.

5. Fair Political Practices Commission (FPPC) Conflict Analysis for Oversight Boards

6. Project and Property Issues
   a. Home Depot
   b. Carousel Mall – New Construction and County Lease
      That the Oversight Board for the City of San Bernardino as Successor Agency to the Redevelopment Agency of the City of San Bernardino discuss and take possible action regarding Carousel Mall New Construction and County Lease
   c. Loma Linda University Project Concept at Rialto and E Intermodal Center

7. Update of Recognized Obligation Payment Schedule ("ROPS") for the Period January-June 2012

8. ROPS for the Period of July 1, 2012 – December 31, 2012 (Continued from April 23, 2012)

9. Upcoming Oversight Board Items/Pending Requirements
   - Successor Agency Administrative Budget
   - Audit of Successor Agency
   - Cash Flow Analysis
   - Glen Aire and Pacific Palms Mobile Home Park: Revised HUD Subordination Review and Approval

10. Additional Supporting Documents
    a. League of California Cities, Subgroup 1: Successor Agencies & Oversight Boards Q & A
    b. FAQs from Department of Finance
    c. Legislative Analyst's Office: Unwinding Redevelopment
    d. Project Area Map

11. Adjournment
    The next meeting will take place on May 14, 2012, 11:00 a.m., in the Economic Development Agency Board Room

ACTION MINUTES

OVERSIGHT BOARD
for the
City of San Bernardino as Successor Agency
to the
Redevelopment Agency of the City of San Bernardino

REGULAR MEETING
APRIL 23, 2012
BOARD ROOM

The Regular Meeting of the Oversight Board was called to order by Board Member Morris at 11:14 a.m., Monday, April 23, 2012, in the Economic Development Agency Board Room, 201 North "E" Street, Suite 301, San Bernardino, California.

ROLL CALL

Roll call was taken by Secretary Wyche with the following being present: Board Members Jenkins, Morris, Hill, Longville, Headrick and O'Toole; Financial Analyst Crosby; Agency Counsel Martyn; Director of Administrative Services Baker; Interim Executive Director Marzullo; Project Manager Trout; Project Manager Connor; and Attorney Brad Kuhn, Nossaman, LLP

1. **CALL TO ORDER – Board Member Jim Morris**

2. **Introduction of County Appointee (if any)**

   Chairman Morris welcomed and introduced Ms. Gloria Macias-Harrison. He indicated that she will be appointed to serve as the Member of the Public Appointee at Tuesday's Board of Supervisor's meeting.

3. **Approval of Minutes of April 9, 2012. Present: Chairman Morris; Board Members: Headrick, Jenkins, O'Toole and Hill**

   Board Member Jenkins made a motion, seconded by Board Member Hill that the minutes for the Oversight Board for the City of San Bernardino as Successor Agency to the Redevelopment Agency of the City of San Bernardino meeting of April 9, 2012 be approved as submitted in typewritten form.

   The motion carried unanimously 5-0; Absent: Longville

4. **Public Comments**

   There were no public comments.

BOARD MEMBER LONGVILLE ARRIVED AT 11:18 AM

5. **Conflicts of Interest Considerations for Oversight Board Members**

Following discussion and without formal motion the Oversight Board for the City of San Bernardino as Successor Agency to the Redevelopment Agency of the City of San Bernardino received and ordered filed the report on the Conflict of Interest Code filing requirement.

6. **Recognized Obligation Payment Schedule ("ROPS") for the period of July 1, 2012 through December 31, 2012 and Discussion on Department of Finance Response to April 9, 2012 approved ROPS**

Following discussion a motion was made by Board Member Longville, seconded by Board Member Jenkins that the Oversight Board for the City of San Bernardino as Successor Agency to the Redevelopment Agency of the City of San Bernardino continue the attached ROPS in accordance with Health and Safety Code Section 34177 to the next meeting.

The motion carried unanimously 6-0.

7. **San Bernardino Associated Governments (SANBAG) *v.* San Bernardino Joint Powers Financing Authority (SBJPFA) Settlement Agreement**

Following discussion, a motion was made by Board Member Longville, seconded by Board Member Headrick that the Oversight Board for the City of San Bernardino as Successor Agency to the Redevelopment Agency of the City of San Bernardino authorizing Interim Executive Director and legal counsel to execute the proposed Stipulation and Proposed Judgment in the pending eminent domain action which would transfer the right of way to SANBAG in exchange for compensation in the amount of $30,600.

The motion carried unanimously 6-0

8. **UPCOMING OVERSIGHT BOARD ITEMS/PENDING REQUIREMENTS**

Chairman Morris indicated that at the next meeting of the Oversight Board items for discussion will be the Cash Flow Analysis, Potential Communication to Auditor Controller/DOF; and map of the Redevelopment Project Areas. Interim Executive Director Marzullo indicated that he would be bringing forth information on the Home Depot, 5th Street Properties, Carousel Mall, and the Downtown Plan

9. **ADJOURNMENT**

At 2:35 p.m., the meeting adjourned. The next regular meeting of the Oversight Board will take place on May 4, 2012 at 11:00 a.m., in the Economic Development Agency Board Room, 201 North "E" Street, Suite 301, San Bernardino, California.

By:_____
Lorraine Wyche, Secretary

OVERSIGHT BOARD

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

TO: OVERSIGHT BOARD MEMBERS DATE: MAY 4, 2012

FROM: EMIL A. MARZULLO, INTERIM EXECUTIVE DIRECTOR ITEM NO: 4

SUBJECT: NORTHWEST REDEVELOPMENT PROJECT AREA COMMITTEE (NWPAC)

Discussion Item

Exhibit A – 1982 Northwest Project Area Committee Judgment

REDEVELOPMENT AGENCY OF THE CITY OF SAN BERNARDINO, CALIF.
RECEIVED
JUN 11 1984

Resolution No. 4630

RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF SAN BERNARDINO ESTABLISHING CONDITIONS FOR THE NORTHWEST REDEVELOPMENT PROJECT AND IN SETTLEMENT OF THAT LITIGATION ENTITLED ARMENTA et al v. REDEVELOPMENT AGENCY, etc., et al S.B.C., S.C. No. 212494

WHEREAS, on July 7, 1982, the Common Council of the City of San Bernardino adopted and approved the Redevelopment Plan for the Northwest Redevelopment Project Area by Ordinance No. MC-189; and

WHEREAS, pursuant to the Community Redevelopment Law of the State of California (Health & Safety Code §§ 33000 et seq.), the Redevelopment Agency of the City of San Bernardino (hereinafter "the Agency") is charged with the responsibility of carrying out the Redevelopment Plan for the Northwest Redevelopment Project Area (hereinafter "the Project Area"); and

WHEREAS, an action entitled Armenta, et al v. Redevelopment Agency etc. et al; San Bernardino County Superior Court No. 212494 has been filed challenging the validity of the Plan; and

WHEREAS, the Agency, on behalf of the Common Council desires to settle and resolve the above entitled litigation; and

WHEREAS the parties to the above-entitled action have agreed to a STIPULATION OF DISMISSAL, a copy of which is attached hereto as Exhibit No. 1; and

WHEREAS, the Redevelopment Agency in enacting the Resolution is acting in reliance on said STIPULATION OF DISMISSAL and carrying out of its terms in good faith by the parties thereto; and

WHEREAS, this Resolution shall be construed in accordance with the following recitals of the Agency's interest:

(a) It is not the intent, and never has been the intent of the Agency to acquire for redevelopment purposes more than nine residential properties in the Northwest Redevelopment Project Area by means of eminent domain.

(b) With respect to the exercise of eminent domain by the Agency, it is the intent of the Agency to waive its right of eminent domain for redevelopment purposes,

(1) as to all presently residential properties in the Project Area with the exception of the nine residential properties mentioned above, and

(2) until March 1, 1988 as to the five (5) presently commercial properties described in Exhibit No. 2, 3, attached hereto

Corrected by Reso 4953

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(c) Nothing in this resolution is meant to prohibit the Agency from using eminent domain in order to carry out the public purposes which the City of San Bernardino could carry out if there were no Redevelopment Plan for the Northwest Redevelopment Project Area.

(d) Nothing in this resolution is meant to prohibit the Agency and any property owner from agreeing to utilize eminent domain proceedings in connection with the acquisition of property by the Agency.

(e) It is a goal of the Agency and of the parties to the above-entitled action, to develop a sense of community identity within the Project Area, and to improve employment opportunities, and econmic stability and productivity within the Project Area.

(f) The Agency confirms its objectives, as stated in the above-described Redevelopment Plan, as follows:

(1) To the greatest extent possible, priority shall be given to residents of the project area for opportunities of training and employment arising from any contract in connection with the redevelopment project.

(2) To the greatest extent possible, contracts within the redevelopment project area shall be awarded to business concerns which are located in, or owned by persons residing in, the redevelopment proejct area.

(g) The Agency confirms that it intends to carry out those objectives as described in said Plan:

(1) "To the greatest extent feasible, opportunities for training and employment arising from any contract for work to be performed in connection with the Project shall be given to the lower-income residents of the Project Area." (Plan, p. 32)

(2) "To the greatest extent feasible, contracts for work to be performed in connection with the Project shall be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the Project Area." (Plan, pp. 31-32).

NOW, THEREFORE, THE REDEVELOPMENT AGENCY OF THE CITY OF SAN BERNARDINO DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Exemption From Eminent Domain

Pursuant to the authority granted to the Agency to exempt properties from its power of eminent domain by Section 33399 of the Health & Safety Code, the Agency does hereby declare:

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(a) (i) That the Agency is authorized to acquire no more than nine (9) residential properties in the Project Area by eminent domain as shown in Exhibit No. 2 attached hereto, as provided in Resolution No. 4350 previously adopted by the Agency on July 19, 1982. All other presently residential properties located within the Project Area are exempt from acquisition by eminent domain under the Redevelopment Plan by the Agency. The Redevelopment Agency of the City of San Bernardino shall have no power of eminent domain as to the residential properties exempted by this Section 1(a)(i) except for those public uses for which the City of San Bernardino would be able to exercise eminent domain if there were no Redevelopment Plan for the Northwest Redevelopment Project Area, for the duration of the Redevelopment Plan for the Northwest Redevelopment Project Area, or any amendments, or extensions thereof. As used in this Resolution, the term "residential properties" means a complete parcel of land together with a structure presently being used for residential purposes whose use is not changed, or all or any part of a structure presently being used for residential purposes whose use is not changed.

(ii) The commercial properties described in Exhibit No. 2 attached to this Resolution and by reference made a part hereof, are exempt from acquisition by means of eminent domain under the Redevelopment Plan until March 1, 1988, and during said period, the Redevelopment Agency of the City of San Bernardino shall have no power of eminent domain as to the commercial properties so described except for those public uses for which the City of San Bernardino would be able to exercise eminent domain if there were no Redevelopment Plan for the Northwest Redevelopment Project Area, for the duration of the Redevelopment Plan for the Northwest Redevelopment Project Area, or any amendments or extensions thereof. As used in this Resolution, the term "commercial properties" means a complete parcel of land together with a structure presently being used for its present commercial purpose as described in Exhibit No. 3, whose use is not substantially changed; or all or any part of a structure presently being used for its present commercial purpose as described in Exhibit No. 3, whose use is not changed.

(b) With respect to the residential properties and the commercial properties exempted from eminent domain pursuant to Section 1 subdivision (a), above, the Agency shall not request or cause the City of San Bernardino to exercise its power of eminent domain in order to take any of the residential properties or the commercial properties exempted herein. As used herein, the term "Agency" means the members of the Redevelopment Agency of the City of San Bernardino acting in such capacity.

(c) During the period of time in which the residential properties and commercial properties are exempt from the Agency's power of eminent domain as described in Section 1,

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subsection (a), above, and to the extent necessary to prevent their being taken by eminent domain by the Agency, the residential properties and commercial properties described in said subsection (a) shall be deemed to be non-conforming uses under the Redevelopment Plan and the Agency shall allow them to remain in their present use and allow any structure so exempted to remain in their present structural form, whether or not the said residential properties and commercial properties comply with the City's General Plan or the zoning or design standards for the Northwest Redevelopment Project Area.

(d) Nothing in this section shall constitute a waiver or restriction on the right of the City or the Agency to take action including condemnation, with respect to violations of City or Agency codes or standards which are found to be a danger to the public health or safety, including those the City could abate in the absence of the Redevelopment Plan for the Northwest Redevelopment Project Area. (Nevertheless, the power of the Agency will not be used to take any exempted property which is rendered contrary to the City's Zoning Ordinance as the result of Agency action). Nothing in this section shall prevent the City or the Agency from utilizing eminent domain with the consent of the property owner, or from paying relocation benefits as required by law.

Section 2. Employment and Job Training

(a) The Agency shall assist the Project Area Committee in obtaining information regarding existing and potential job training programs and shall to the extent reasonable and practical aid in obtaining access to providers of potential job training programs for the residents of the 6th Ward.

(b) The Agency shall use all appropriate and reasonable means to provide employment for project area residents for any activity in the Project Area, which is under the direct control of the Agency.

Section 3. Project Area Committee

(a) (i) The technical procedure for the election of the members of the Project Area Committee shall be established within thirty (30) days from the filing in the Superior Court of the Judgment attached hereto as Exhibit No. 4 by the City Clerk, who shall be advised by the Councilman of the 6th Ward and a representative of the plaintiffs.

(ii) The Agency, on behalf of the Common Council, shall within sixty (60) days of the filing of the Judgment attached hereto as Exhibit No. 4, call upon the residents and existing community organizations of the Northwest Redevelopment Project Area to form a Project Area Committee. The Agency shall so call upon the Project Area residents by notifying them by mail, and such other means as the Agency may determine, of

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the method, place, date and time of the said election and further notifying them that the Project Area Committee shall be representative of the residential owner occupants, residential tenants, businessmen, property owners and members of existing organizations within the Project Area.

The Project Area Committee shall consist of twenty-one members and shall be representative of the residential owner occupants, residential tenants, businessmen and property owners and existing organizations, all in the Project Area. The Project Area Committee may also include representatives who reside or have businesses within the 6th Ward as it is presently constituted, but not in the Project Area. Insofar as feasible, the technical procedures for the election of the members of the Project Area Committee shall be designed to assure the representation as described above and shall not be inconsistent with the procedures and policies set forth herein. Those entitled to vote for the members of the Project Area Committee shall be (1) residential owner occupants residing in the Sixth Ward, as presently constituted, (2) Residential tenants residing in the Sixth Ward, as presently constituted, (3) Businessman with business in the Sixth Ward, as presently constituted, (4) owners of property located in the Sixth Ward, as presently constituted, and (5) representatives of existing organizations in the Sixth Ward, as presently constituted, but only those organizations listed in Exhibit No. 5 attached hereto. Each such organization shall be entitled to one (1) vote.

(iii) The first election of the members of the Project Area Committee shall be conducted by the City Clerk. The election shall be held in one central location in the project area. Thereafter, the Project Area Committee shall establish its own technical election procedures by means of its By-Laws and shall follow those procedures in conducting its election. Those procedures shall not be inconsistent with the procedures and policies set forth herein, and the Project Area Committee shall insure that the representation of its members and electors shall remain as set forth in this Resolution for the life of the project area committee.

(iv) In connection with all elections subsequent to the initial election of the Project Area Committee, the Project Area Committee shall insure that the organizations listed on Exhibit No. 5 are organizations which (A) have addresses (or post office boxes) in the Sixth Ward, as presently constituted, (B) have ten (10) or more members, and (C) are not created for the purpose of voting in the Project Area Committee elections.

Within fifteen (15) days after the Project Area Committee has submitted its additions to or deletions from Exhibit No. 5, the Agency may declare that it believes the change does not conform to this subsection (iv) and may refer the matter to arbitration pursuant to Code of Civil Procedure § 1141.10 et seq., applicable California Rules of Court, and the

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Rules for Judicial Arbitration as promulgated by the Superior Court of San Bernardino County, all as may hereafter be amended. The arbitrator will be as agreed to by the Agency and the Project Area Committee, but must be either a retired judge or a member of the business litigation arbitration panel of the said Superior Court. In the event that the Agency and the Project Area Committee cannot agree on the selection of an arbitrator, they shall agree to an appointment of such an arbitrator by a third party.

If the Agency does not make the declaration referred to above within the fifteen day period, the alterations to Exhibit No. 5 made by the Project Area Committee shall be deemed approved.

(b) Once the initial election has been held, the newly elected members of the Project Area Committee shall select their terms of office by lot. Ten (10) members' terms shall be for two years and eleven (11) members' terms shall be for four years.

(c) If the City Clerk is satisfied that the initial election has been conducted without substantial irregularity, he or she shall indicate to the Common Council that such is the case and recommend its approval of the Project Area Committee. The Agency shall join in such recommendation. The Common Council shall consider its approval of the Project Area Committee pursuant to Health & Safety Code § 33385 and this Resolution after each Committee election, and said Project Area Committee shall be deemed approved if the Common Council does not affirmatively disapprove it by the expiration of fifteen (15) days after the Common Council receives the official results of the election from the Project Area Committee.

(d) Members of the Project Area Committee shall serve without compensation.

(e) The Project Area Committee shall continue to exist up to the end of the twelfth year after the adoption of the Redevelopment Plan for the Project Area and shall continue to be, or caused to be in existence, for any additional period during which the Northwest Redevelopment Plan reflects that the Agency shall have power of eminent domain. Notwithstanding any other provision of this subsection (e), the Project Area Committee shall remain in existence, if the City Council does not, at some time during the eleventh year after the adoption of the said Plan (July 7, 1993 - July 7, 1994), vote to disband said Committee, effective at the end of the twelfth year after said adoption (July 6, 1995). If the Project Area Committee remains, or is in existence pursuant to this resolution beyond July 6, 1995, then the City Council may vote to disband said committee on two (2) years' notice. If the boundaries of the Northwest Redevelopment Project Area are altered, opportunities for membership on the Project Area Committee shall be changed so as to conform to the new boundaries.

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(f) Upon presentation of a complete budget of the Project Area Committee, and upon approval by the Common Council, funds which are necessary for its operation shall be allocated to the Committee by the Common Council. Such allocation may include equivalent resources for a committee office (to be located in the Project Area), equipment and supplies, and with the approval of the Project Area Committee, legal counsel, and adequate staff, all as may be required for the purposes set forth in Health & Safety Code § 33386.

(g) The Agency shall cause a member of its staff to be present at each Project Area Committee meeting of which the Agency is given adequate notice and a request for such presence by the Project Area Committee, so that information regarding new proposals and ongoing projects (including information in the hands of Agency staff regarding: eminent domain proceedings, employment opportunities, Agency plans for residential facilities, Agency plans for replacement housing and other policy matters affecting the residents, businesses and organizations, all in the 6th Ward), may be provided to the Committee (but no more than once per month, unless agreed to by the Director of the Agency or designated representative). The Agency through its staff, consultants and/or Agency members shall, give notice of pending actions affecting the residents of the Project Area by giving the Project Area Committee the same notice as that received by the Agency members, which notice shall be communicated by the same means as provided to Agency members. Such notice shall be made to the address and/or telephone number provided by the Project Area Committee. Said Committee shall also provide an alternate address and telephone number. Notwithstanding any other provision of this subsection (g), the Agency may consider any urgent non-agenda item brought before it so long as no less than two hours before such consideration, the Agency calls the Project Area Committee at the telephone numbers provided by said committee to inform the committee of the item to be considered. If neither of the telephone numbers provided answers, then upon documentation of the fact that the telephone calls were attempted and would continue to be attempted, the Agency may consider and act upon the item at any time after two hours from the first of said attempts. The Agency and its staff will stand ready to consult with the Project Area Committee on the above-described matters.

Whether or not the Project Area Committee has consulted with the Agency regarding the matters set forth herein, the Agency may take such action on said matters as it deems appropriate. The Project Area Committee shall have no veto power over any decision by the Agency or Common Council.

Section 4. Inclusion in By-Laws

The Project Area Committee shall include this Resolution in its By-Laws and it shall be binding on said Committee.

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Section 5. Ambiguity

Any ambiguity which may be found to exist regarding this Resolution including its Recitals shall be interpreted in accordance with the intention set forth in the Recitals, with the intent to permanently resolve and terminate the above-entitled lawsuit and the issues raised therein, and as to matters not specifically treated herein, with the intent to comply with the Community Redevelopment Law.

Section 6. When Resolution Effective

This Resolution is adopted on the date recited below. Nevertheless, it shall be effective only when the Judgment attached hereto as Exhibit No. 4 is filed in the Superior Court of San Bernardino County. Such Judgment shall be a final, non-appealable judgment resolving all of the issues raised therein and determing that the Redevelopment Plan for the Northwest Redevelopment Project Area is in all respects valid and legal, including all actions of the Agency and the City taken in adoption and implementation of the said Redevelopment Plan, and entitling the Agency to the receipt of all taxes to be allocated to the Agency pursuant to the terms of the Plan.

Section 7. Resolution a Part of the Judgment

The Judgment shall not be effective (and this Resolution shall not be effective) unless it contains by reference the provisions of this Resolution, fully agreed to by all of the parties, and all of the parties shall acknowledge as part of the judgment that it is entered into for the purposes of settlement and resolution of the action.

APPROVED and ADOPTED by the Redevelopment Agency of the City of San Bernardino on this 18 day of June, 1984.

Executive Director

Approved:

Chairman

Approved as to Legal Form
AGENCY COUNSEL

By Allen R. Bragg

Weiser, Kane, Ballmer & Berkman

By: James Dexter Clark

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C. Robert Ferguson
Attorney at Law
301 E. Colorado Blvd., Suite 600
Pasadena, CA 91101
(818) 795-4181

Attorney for Plaintiffs

Ralph Prince
City Attorney, City of San Bernardino
City Hall
300 North "D" Street, Room 668
San Bernardino, Calif. 92418

William A. Flory
Furness, Flory & Middlebrook
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San Bernardino, Calif. 92401

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354 S. Spring St., Suite 420
Los Angeles, CA 90013

Attorneys for Defendants

Edward F. Taylor
310 East Citrus Avenue
Redlands, Calif. 92373

Attorney for Interested Persons

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

ENRIQUE ARMENTA, et al, Plaintiffs vs. REDEVELOPMENT AGENCY OF THE CITY OF SAN BERNARDINO, et al, Defendants	No. 212494 STIPULATION RE: JUDGMENT

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WHEREAS,

1. On July 7, 1982, by Ordinance No. MC-189, the COMMON COUNCIL OF THE CITY OF SAN BERNARDINO adopted and approved the Redevelopment Plan for the Northwest Redevelopment Project Area;

2. On September 2, 1982 the Plaintiffs herein, namely ENRIQUE ARMENTA, JUAN MARTINEZ, PAUL SMIT, and the WESTSIDE HOMEOWNERS AND TENANTS ASSOCIATION together with Albert Lumpkin filed the above-entitled action challenging the validity of the said Redevelopment Plan for the Northwest Redevelopment Project Area adopted by said Ordinance No. MC-189;

3. Within the time allowed therefor the Defendants REDEVELOPMENT AGENCY OF THE CITY OF SAN BERNARDINO, CITY OF SAN BERNARDINO, COMMON COUNCIL OF THE CITY OF SAN BERNARDINO, COUNTY OF SAN BERNARDINO, AUDITOR-CONTROLLER OF THE COUNTY OF SAN BERNARDINO appeared herein.

4. On August 11, 1983, defendants CLYDE ALEXANDER, JOHN DUKES, RICHARD GREGG, NORRIS GREGORY, TALMAGE HUGHES, HARRY JACKS, SAMUEL JOHNSON, VALERIE POPE LUDLAM, HERSEL PIERCE, FRANK TILLIE, GERALD WARNER and DR. TITUS WHITE appeared herein as interested persons pursuant to C.C.P. Sections 861-862;

5. The parties and their attorneys have agreed upon mutually acceptable terms for the settlement of the within action;

6. The Interested Parties and Defendants REDEVELOPMENT AGENCY OF THE CITY OF SAN BERNARDINO, CITY OF SAN BERNARDINO and the COMMON COUNCIL OF THE CITY OF SAN BERNARDINO (hereinafter the "City Defendants") desire to obtain a judgment herein validating the Northwest Redevelopment Plan and Ordinance No. MC-189;

7. Plaintiffs desire, pursuant to said judgment, to obligate the City Defendants to carry out and abide by certain terms and conditions as more

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particularly set forth in the Resolution which is attached hereto as Exhibit "A" and incorporated herein by reference as if fully set forth at this point.

NOW THEREFOR, IT IS HEREBY STIPULATED by and between the parties and their attorneys that:

1. ~~The City Defendants shall, within 35 days after executing~~ this Stipulation, bring or cause to be brought the Resolution attached hereto as Exhibit "A" before the Defendant REDEVELOPMENT AGENCY OF THE CITY OF SAN BERNARDINO for its approval or disapproval.

2. If Defendant REDEVELOPMENT AGENCY OF THE CITY OF SAN BERNARDINO adopts said Resolution in the form attached hereto, then the Superior Court of the County of San Bernardino upon being presented with a certified copy of the adopted Resolution, shall, further, file the Stipulated Judgment, the original of which is attached hereto as Exhibit "B."

3. It is stipulated and agreed by all of the parties to this action as follows:

Each of the parties to this action agrees that they will not retaliate against any other party, or its "supporters" because of that other party's involvement in this action. "Supporters" of a party means, as to the Plaintiffs, the individuals listed in Exhibit "C" to this Stipulation, and, as to the Defendants, their officers, officials and employees. In the event that an action is brought by a party to this action, or any supporter, against a party, alleging that an act or acts have been undertaken for the purpose of retaliating against the plaintiff in such action because of the said plaintiff's involvement in this action, and if the said plaintiff proves said allegation, resulting in a final judgment in favor of said plaintiff, then said plaintiff shall be entitled to his reasonable attorneys fees, but only to the extent that they were necessary to prove the said claim. On the other hand if the said plaintiff does not prevail and if the court, pursuant to a motion brought, determines that the said allegation was made without substantial justification, then the defendant(s) in said

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action shall be entitled to reasonable attorneys fees, but only to the extent they were necessary to defend against the claim and to bring the said motion.

4. The parties agree that the plaintiffs shall be awarded attorney fees in the total amount of $26,500.00 and that said amount shall be the entire amount awarded to the plaintiffs as attorney fees, costs and/or expenses.

5. Plaintiffs herein hereby waive any and all rights to their costs and/or expenses on appeal in that appeal in this action entitled Albert Lumpkin et al vs. Redevelopment Agency of the City of San Bernardino et al; Clyde Alexander et al vs. Albert Lumpkin et al 4 Civ. No. 29769.

6. The Parties to this action, and each of them, hereby waive and surrender any and all rights to appeal the judgment attached hereto further agree that the judgment in the form attached shall be final.

This Stipulation may be signed in duplicate originals, the total of such signed duplicate originals constituting the entire agreement.

Dated: May 29, 1984

THE PLAINTIFFS

ENRIQUE ARMENTA

JUAN MARTINEZ

Attorney for Plaintiffs

C. ROBERT FERGUSON

PAUL SMIT

WESTSIDE HOMEOWNERS AND TENANTS ASSOCIATION

BY: Henry Marshall

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THE CITY DEFENDANTS

REDEVELOPMENT AGENCY OF THE CITY OF SAN BERNARDINO

BY: _____
Executive Director

Attorney for the City Defendants
RALPH PRINCE, City Attorney
FURNESS, FLORY & MIDDLEBROOK
WEISER, KANE, BALLMER & BERKMAN

BY: _____
James Dexter Clark

THE CITY OF SAN BERNARDINO AND THE COMMON COUNCIL THEREOF

BY: _____

Approved as to Form:

Allan K. Marks
County Counsel

BY: _____
Deputy County Counsel
7-3-84

THE COUNTY DEFENDANTS

THE COUNTY OF SAN BERNARDINO AND THE AUDITOR THEREOF

BY: _____

THE INTERESTED PARTIES

_____
CLYDE ALEXANDER

_____
JOHN DUKES

_____
SAMUEL JOHNSON

_____
RICHARD GREGG

_____
VALERIE POPE LUDLAM

_____
NORRIS GREGORY

_____
HERSEL PIERCE

_____
TALMAGE HUGHES

_____
FRANK TILLIE

_____
HARRY JACKS

_____
GERALD WARNER

_____
DR. TITUS WHITE

Attorney for the Interested Parties

_____
Edward F. Taylor

150/35-8

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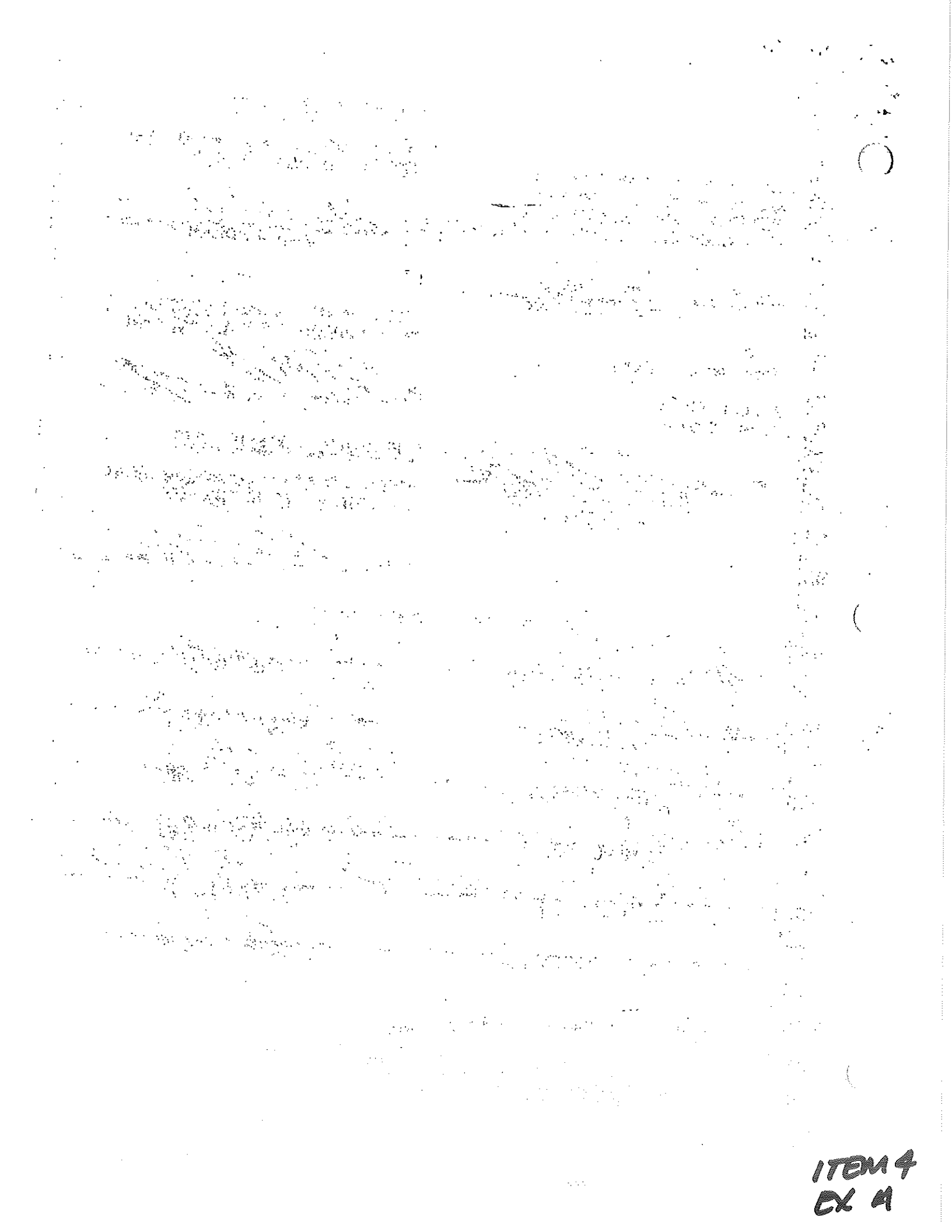

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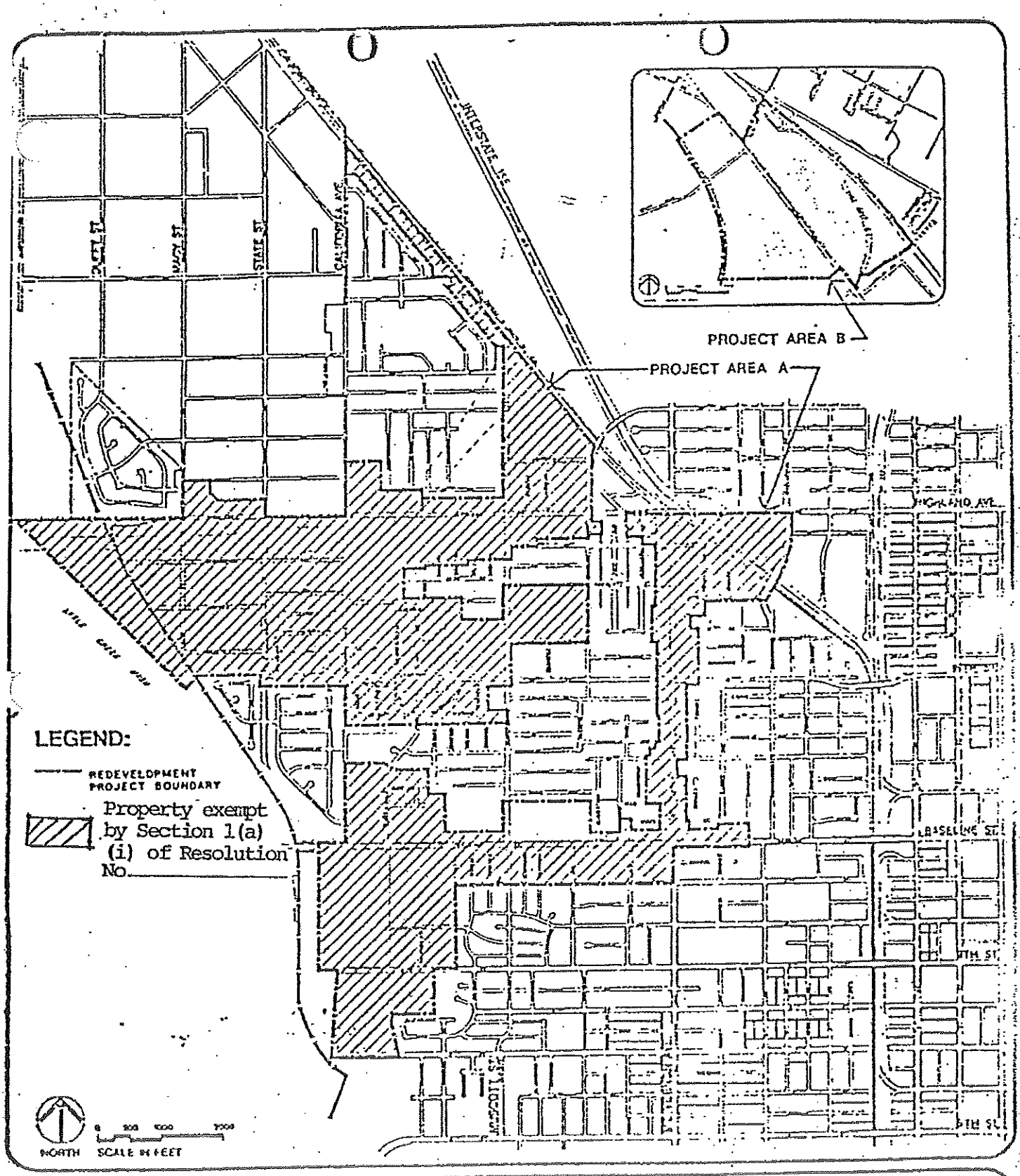

Project Boundaries

NORTHWEST REDEVELOPMENT PROJECT

THE REDEVELOPMENT AGENCY OF THE CITY OF SAN BERNARDINO

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	BUSINESS	OWNER	ADDRESS	PHONE #	USE
1.	Highland Avenue Lumber & Hardware	Ted Binney	1680 W. Highland Ave. San Bndo, CA 92411	887-4615	Lumber & Hardware-Retail
2.	Smits' Lawn Mower & Small Engine	Paul Smit	2101 W. Highland Ave. San Bndo, CA 92411	887-2715 887-2715	Small Motor-Retail & Repair
3.	A.M.C. Music-Alvins' Music Center		1705 W. Baseline Ave. San Bndo, CA 92411	885-5180 885-5180	Music-Retail
4.	Marty's Dugout	Juan Martinez	2105 N. Mt. Vernon Ave.	886-8257 886-8387	Restaurant/Bar
5.	John's Liquor	John Hernandez	1580 N. Mt. Vernon Ave.	885-2101	Package Liquor-Retail

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Judgment

Exhibit 4

ITEM 4
EX. 4

(ENDORSED)
FILED
1982 AUG 2 AM 11:29
COUNTY CLERK
BY DEPUTY HAZEL I. WELCH

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

ENRIQUE ARMENTA, et al,

Plaintiffs

vs.

REDEVELOPMENT AGENCY OF THE CITY OF SAN BERNARDINO, et al,

Defendants

No. 212494

JUDGMENT ON STIPULATION FOR ENTRY OF JUDGMENT

In the above-entitled cause, plaintiffs, Enrique Armenta, Juan Martinez, Paul Smit and Westside Homeowners and Tenants Association, and Defendants, Redevelopment Agency of the City of San Bernardino and City of San Bernardino, Common Council of the City of San Bernardino County of San Bernardino, Auditor of the County of San Bernardino, and Interested Parties having stipulated that Judgment be entered validating the Northwest Redevelopment Project and the Redevelopment Plan adopted for such Project by the Common Council of the City of San Bernardino Ordinance No. MC-189 of July 7, 1982,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. That the City of San Bernardino Ordinance No. MC-189 is lawful and valid in all respects and without qualification.

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2. That the Northwest Redevelopment Project and the Redevelopment Plan for such Project adopted by Ordinance No. MC-189 of the City of San Bernardino are lawful and valid and without qualification.

3. That the implementation of the Northwest Redevelopment Project and the Redevelopment Plan for such Project by the Redevelopment Agency of the City of San Bernardino from the adoption of Ordinance No. MC-189 through and including the adoption of Agency Resolution No. 4630 is lawful and valid, and without qualification.

4. That the allocation and payment of tax revenues and other funds to the Redevelopment Agency of the City of San Bernardino for the Northwest Redevelopment Project, pursuant to the California Community Redevelopment Law, Article XVI, Section 16 of the California Constitution, and such other laws or regulations which specify the powers and authority of the Agency, and the receipt and expenditure of such funds by the Redevelopment Agency for the Northwest Redevelopment Project are lawful and valid, and without qualification.

5. That the plaintiffs and the Redevelopment Agency of the City of San Bernardino are obligated to carry out terms and conditions of Resolution No. 4630 adopted by the Redevelopment Agency of the City of San Bernardino on June 18, 1984 which are included in this Judgment by reference and agreed to by all of the parties herein. The plaintiffs are obligated to take or cooperate in, all actions reasonably necessary on their part to assist the Agency in good faith in carrying out Resolution No. 4630 and to carry out the terms required of them. The Redevelopment Agency and any and all successors thereto are lawfully obligated to carry out and accomplish the terms and conditions of Resolution No. 4630. The obligations of this paragraph shall last for the duration of the Redevelopment Plan for the Northwest Redevelopment Project Area and any amendments, supplements or extensions thereof.

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6. Pursuant to stipulation, attorneys' fees and costs are awarded to plaintiffs in the amount of $26,500.00, which award shall be the only award of costs, fees, and expenses of whatever nature, and no other award of costs, fees, or expenses shall be allowed herein:

7. The judgment is pursuant to stipulation by the parties, final and non-appealable.

Dated: 23 July, 1984.

Aug. 2, 1984.
JOSEPH B. CAMPBELL
Judge of the Superior Court

Approved:

C. Robert Ferguson

Attorney for Plaintiffs

Ralph Prince, City Attorney
Furness Flory & Middlebrook
Weiser, Kane, Ballmer & Berkman

By:
Attorney for Defendants
Agency, City and Common
Council

Edward Taylor

Attorney for Interested Parties

Allan K. Marks
County Counsel

By:
Deputy County Counsel
Attorneys for Defendants
County and Auditor

150/35-9

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NORTHWEST PROJECT

AGENCIES/ORGANIZATIONS

American GI Forum
P.O. Box 408
San Bernardino, CA 92402

American Legion Post 710
2181 W. Highland Ave.
San Bernardino, CA. 92405

A. Phillip Randolph Inst.
1624 W. Baseline St.
San Bernardino, CA 92411

Arrowhead Elks Lodge
1073 N. Mt. Vernon Ave.
San Bernardino, CA 92411

Boy's Club of San Bernardino
1180 W. Ninth Street
San Bernardino, CA 92411

Black History Parade, Inc.
P.O. Box 7376
San Bernardino, CA 92411
Attn: Harry Jacks

Casa Ramona
1524 W. 7th St.
San Bernardino, CA 92411

Cosmo Social Club
456 W. 18th St.
San Bernardino, CA 92405

Delman Heights Homeowners
2902 N. Gardena Ave.
San Bernardino, CA 92405

Friends of the Dorothy Ingram
Branch Library
1505 W. Highland Ave.
San Bernardino, CA 92405

Home of Neighborly Services
839 W. Mt. Vernon Ave.
San Bernardino, CA 92411

Inland Empire Black
Democratic Club
P.O. Box 7288
San Bernardino, CA 92411

Kappa Alpha Psi
1297 W. 24th St.

Kutania People
P.O. Box 416
San Bernardino, CA 92401

Lillies of the Valley #12
1104 W. 8th St.
San Bernardino, CA 92411

Links Incorporated
P.O. Box 6131
San Bernardino, CA 92412

Magic Wheels Club
863 N. Muscott St.
San Bernardino, CA 92411

National Assoc. for the Advancement of Colored People (NAACP)
1321 W. 21st. St.
San Bernardino, CA 92411

National Council of Negro Women Inc.
1117 S. Lincoln
San Bernardino, CA 92408

Operation Second Chance
1505 W. Highland
San Bernardino, CA 92411

Prince Hall Lodge #17
1104 W. 8th St.
San Bernardino, CA 92411

S.B. Westside Community Development
1708 W. Highland
San Bernardino, CA 92411

Sheik's Court #138
1704 W. 20th St.
San Bernardino, CA 92411

Socialite Club
1960 W. Evans
San Bernardino, CA 92411

Sportsmen Athletic Club
2794 W. 7th St.
San Bernardino, CA 92410

Swans Club
P.O. Box 7089

Westside Action Group
2022 N. Riverside
Rialto, CA 92376

Westside Outreach Program
1666 N. Muscott St., Ste. #
San Bernardino, CA 92411

Westside Homeowners Asso
c/o Robert Ferguson
301 East Colorado Blvd.
Suite 600
Pasadena, CA 91101

Business Associates of Northwest
c/o Edward F. Taylor
310 East Citrus Ave.
Redlands, CA 92373

Mexican Chamber of
972 N. Mt. Vernon
San Bernardino, CA.

Neighborhood Housing Services

San Bernardino Housing Authority

EXHIBIT 5

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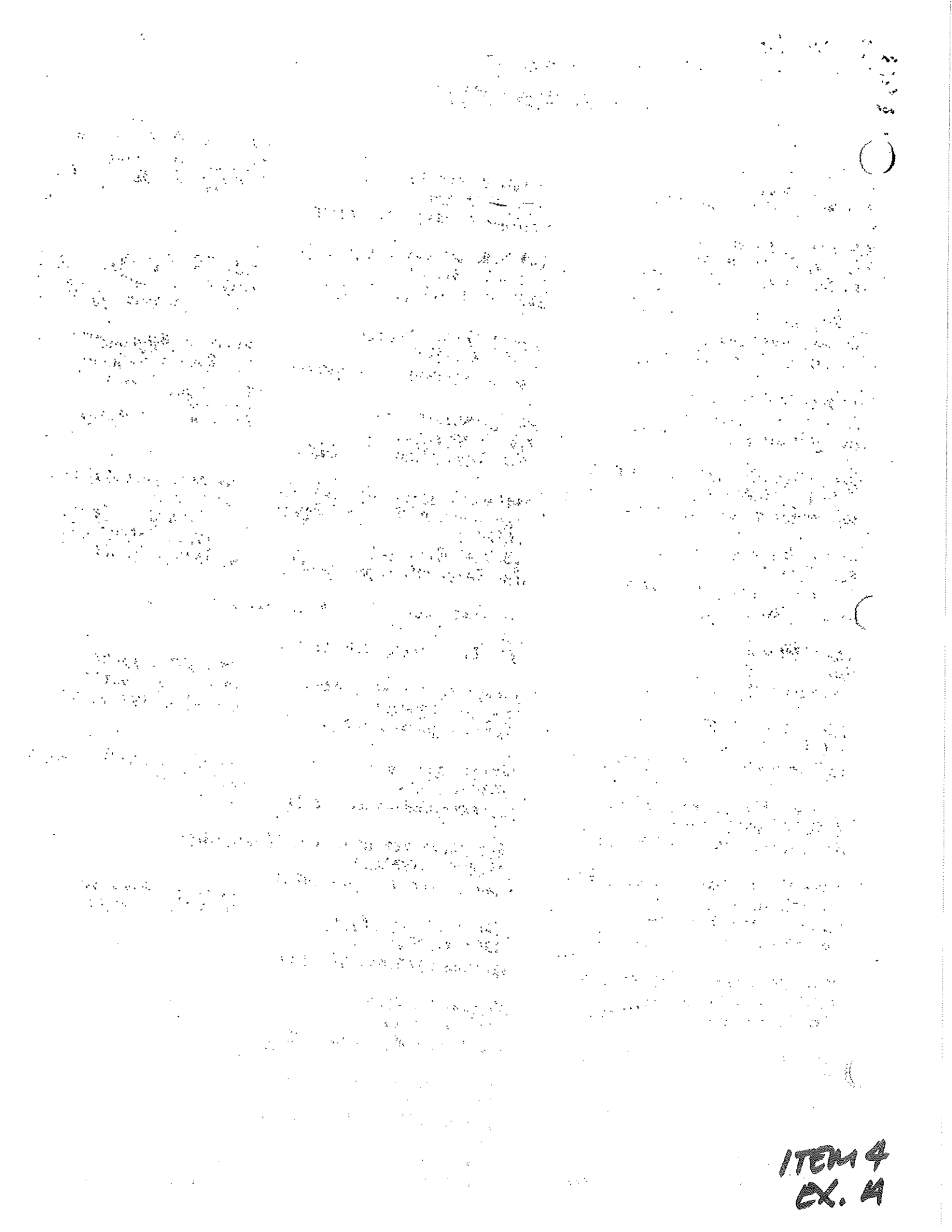

ITEM 4
EX. 4

OVERSIGHT BOARD

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

TO: OVERSIGHT BOARD MEMBERS DATE: MAY 4, 2012

FROM: EMIL A. MARZULLO, INTERIM EXECUTIVE DIRECTOR ITEM NO: 5

SUBJECT: FAIR POLITICAL PRACTICES COMMISSION (FPPC)

Discussion Item

Exhibit A – Fair Political Practices Commission (FPPC) Conflict Analysis for Oversight Boards
Exhibit B – City of San Bernardino Code of Conduct

FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

April 25, 2012

Patrick Whitnell
General Counsel
League of California Cities
1400 K Street, Suite 400
Sacramento, California 95814

Re: Your Request for Advice
Our File No. I-12-060

Dear Mr. Whitnell:

This letter responds to your request for advice on behalf of the California League of Cities regarding applicability of the conflict-of-interest code and financial disclosure provisions of the Political Reform Act (the "Act")[1] to new local government agencies and officials holding positions in those agencies created by Assembly Bill 1X 26 ("AB 1X 26"), that was passed by the Legislature and signed into law in 2011. Because you have sought general guidance not limited to a particular public official or specific set of facts, we are treating your request as one for informal, rather than formal, assistance. (See Regulation 18329(b)(8)(B), (C) and (F).)[2]

FACTS

Since the 1950's, California redevelopment agencies have functioned under the Community Redevelopment Law (Health and Saf. Code § 33000 et seq.). AB 1X 26 (Stats. 2011, 1st Ex. Sess. 2011-2012, ch. 5) made extensive amendments to the Community Redevelopment Law. You have provided a summary of the provisions of the legislation that you think are relevant to your questions and we rely partially on this, as well as our own reading of the legislation, to summarize the pertinent provisions. However, given the length and complexity of the legislation and the possibility of further litigation on its provisions, we caution that our advice could change if there emerges a subsequent alternative interpretation or version of the legislation that affects applicability of the Act.

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[1] The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

[2] Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

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The legislation provides for the dissolution of redevelopment agencies and an administrative process to wind down agency activities and dispose of agency assets, including distribution of all unencumbered redevelopment agency assets to the cities, county and various special districts in the county entitled to receive property tax proceeds. (Health and Saf. Code § 34177(d).) It creates two new public entities: successor agencies and oversight boards.

Successor agencies are designated as the successor entities to the former redevelopment agencies. (Health and Saf. Code §§ 34171(j), 34173(a).) All authority, rights, duties, and obligations previously vested with the former redevelopment agency are now vested in the successor agency. (Health and Saf. Code Secs. 34173(b), 34177.) The entity that serves as the successor agency is determined in one of several ways:

1. The city, county, city and county, or entities forming the joint powers authority that created the redevelopment agency is, in your view, by implication under the statute, designated as the successor agency unless it adopts a resolution electing not to serve as the successor agency. (Health and Saf. Code Sec. 34173(d)(1).)

2. If an agency that created the redevelopment agency elects not to be the successor agency, then the local agency (defined as "any city, county, city and county, or special district in the county of the former redevelopment agency") in the county that first adopts a resolution electing to become the successor agency, and submits the resolution to the county auditor-controller, is deemed the successor agency. (Health and Saf. Code § 34173(d)(2).) Thus, for example and however unlikely, it is possible that a school district or another city in the county of a city that originally formed the redevelopment agency could become the successor agency for that redevelopment agency.

3. If no local agency elects to serve as successor agency, a public body referred to as a "designated local authority" is formed, and has all the powers and duties of a successor agency. The Governor appoints three residents of the county to serve as the governing board of the authority. (Health and Saf. Code § 34173(d)(3).)

Each successor agency has an oversight board composed of seven members. (Health and Saf. Code §§ 34171(f), 34179(a).) The oversight board directs staff of the successor agency to perform work in furtherance of the oversight board's duties and responsibilities. (Health and Saf. Code §§ 34177(e), 34179(c), 34180, 34181.) The board members are selected as follows: 1. One member appointed by the county board of supervisors; 2. One member appointed by the mayor for the city that created the redevelopment agency; 3. One member appointed by the largest special district; 4. One member appointed by the county superintendent of education; 5. One member appointed by the Chancellor of the California Community Colleges; 6. One member of the public appointed by the county board of supervisors; 7. One member representing the employees of the former redevelopment agency appointed by the mayor or the chair of the board of supervisors. (Health and Saf. Code § 34179(a)(1-7).) The Governor may appoint individuals to fill oversight board member seats not filled by May 15, 2012, or that remain

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vacant for more than 60 days. (Health and Saf. Code c 34179(b).) For purposes of the Act, the oversight board is deemed to be a local entity. (Health and Saf. Code §§ 34179(e).) Oversight board members do not receive compensation or reimbursement for expenses. (Health and Saf. Code §§ 34179(c).) Also, under Health and Safety Code, section 34179(j), commencing on and after July 1, 2016, all oversight boards existing in a county are consolidated under one oversight board whose members are appointed by various entities similar to those who appoint members to the original oversight boards.

You state that the relationship of the successor agency to the city or county that created the redevelopment agency is "murky at best." With respect to the successor agency, various sections of AB 1X 26 imply that the city or county that created the redevelopment agency is the successor agency (unless they affirmatively elect not to be). (See, e.g., Health and Saf. Code §§ 34171(j), 34173(a), 34173(d)(1).) But, in your view, other sections of the legislation may indicate that a different interpretation is required. For example, Health and Safety Code section, 34190(c) provides that the successor agency is a public agency for purposes of the Meyers-Milias-Brown Act (MMBA) and Health and Safety Code Section 34190(d) provides that the successor agency shall become the employer of all employees of the redevelopment agency as of the date of the agency's dissolution. In your view, these sections seem to imply that the successor agency is a separate public agency. Further, proposed amendments to AB 1X 26 provide that a successor agency is a public entity separate from the entity or entities that authorized the creation of each redevelopment agency.

In contrast, you state that it appears clear from the legislation that the oversight board is a separate public agency from the city or county that created the redevelopment agency. As noted above, the oversight board is a local entity for purposes of the Act (as well as the Public Records Act (Sec. 6250 et seq. and the Brown Act (Sec. 54950 et seq.)). Further, the oversight board has a fiduciary duty to the taxing entities that benefit from the distributions of property tax, which would include cities and counties. (Health and Saf. Code § 34179(i).) This same section also provides that the provisions of Section 1090 apply to oversight boards. Thus, in your view, the legislation apparently makes clear that the oversight boards are separate legal entities from the cities and counties that created the redevelopment agencies.

GENERAL SUMMARY OF THE ACT'S PROVISIONS APPLICABLE TO FINANCIAL DISCLOSURE BY PUBLIC OFFICIALS AND CONFLICT-OF-INTEREST CODES

The Act requires specified public officials of state and local government agencies to periodically file Statements of Economic Interests (FPPC Form 700) disclosing defined financial interests. These officials fall into two categories: (1) Officials holding positions specified in Section 87200, who are required to disclose the broadest range of financial interests (Sections 87200 – 87210); and (2) Officials holding agency positions that involve participation in government decisions that have financial impacts. These positions are designated in the agency's conflict-of-interest code and disclosure for each position is tailored to the scope of the official's job duties. (Sections 87300 – 87313.)

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Each government agency is required, within certain timelines, to adopt a conflict-of-interest code (Section 87300) and amend it to reflect changes in the decision-making positions in the agency (Section 87306). It is the Act's stated policy that conflict-of-interest codes are formulated at the most decentralized level possible, with issues of what should be deemed an "agency" resolved by the code reviewing body. (Section 87301.) The code reviewing body is the government agency charged with reviewing and approving an agency's conflict-of-interest code. No code is effective unless approved by the code reviewing body. (Section 87303.)

Section 82011 details which agencies are code reviewing bodies. As is pertinent to your questions, the following are the code reviewing bodies for local government agencies: (1) The Fair Political Practices Commission (the "Commission") for any local government agency with jurisdiction in more than one county (Section 82011(a)); (2) The county board of supervisors for any county agency and any other local government agency with jurisdiction wholly within the county, other than the board itself, an agency of the judicial branch or a city agency (Section 82011(b)); and (3), the city council for any city agency except for the council itself (Section 82011(c)).

Section 87500 states where public officials are required to file their Statements of Economic Interests. As is generally pertinent to your question, officials in local government agencies file as follows: (1) With the county clerk, if the person holds the office of chief administrative officer, district attorney, county counsel, county treasurer, or member of the board of supervisors (Section 87500(e)); (2) With the city clerk, if the person holds the office of city manager or chief administrative officer, city councilmember, city treasurer, city attorney, or mayor (Section 87500(f)); (3) With his or her own agency, if the person is a planning commissioner (Section 87500(g), head of a local government agency, or member of a local board or commission for which the Commission is the code reviewing body (Section 87500(l); and (4) With his or her own agency or the agency's code reviewing body as designated by the code reviewing body, if the person is not otherwise covered under (1) – (3) above (Section 87500(p)).

QUESTIONS AND CONCLUSIONS

1. **Who adopts the conflict-of-interest codes for the successor agency and the oversight board?**

Conclusion: Unless determined otherwise by their code reviewing body, the successor agency and the oversight board both adopt their own conflict-of-interest codes.

Analysis: As set forth in Section 87300, each agency is required to adopt its own conflict-of-interest code. Furthermore, the Act, in Section 87301, requires that each conflict-of-interest code be formulated at the most decentralized level possible, which indicates that it is desirable that an autonomous or semi-autonomous governmental entity be classified as an "agency" and adopt its own code because it is most familiar with the job duties of its officers and employees. However, Section 87301 ultimately leaves the determination of what constitutes an "agency," and thus the decision of which entity is obligated to adopt the code, to the code reviewing body.

For example, assume that a city elects to be the successor agency for either its own or another entity's redevelopment agency. Based on the conclusions and analysis in Questions 2 and 3 below, the city council would therefore be the code reviewing body for both the successor agency and its oversight board and, under Section 87301, could: (1) determine that the successor agency or oversight board, or both, are new "agencies" and require them to adopt new conflict-of-interest codes; or (2) determine that the city itself is the "agency" and amend its own conflict-of-interest code to cover designated employees in the successor agency and oversight board.

2. **Who are the code reviewing bodies for the successor agency and the oversight board?**

Conclusion: The code reviewing body for a successor agency and its oversight board (except for consolidated oversight boards formed pursuant to Health and Safety Code Sec. 34179(j), see below) are as follows:

If a city, or subdivision thereof, serves as a successor agency, the code reviewing body of the successor agency and its oversight board is the city council. (Section 82011(c).)

If a county, city and county, "designated local authority" or other local government agency with jurisdiction wholly within a county, or subdivision thereof, serves as a successor agency, the code reviewing body of the successor agency and its oversight board is the county, or city and county, board of supervisors. (Section 82011(b).)

If a "designated local authority" or other local government agency with jurisdiction in more than one county, or subdivision thereof, serves as a successor agency, the code reviewing body of the successor agency and its oversight board is the Commission. (Section 82011(a).)

The code reviewing body of an oversight board formed on or after July 1, 2016 pursuant to Health and Safety Code Section 34179(j) is the county board of supervisors.

Analysis: At the outset, we think that a successor agency and oversight board should have the same code reviewing body. One of the purposes of the Act is to require public officials to disclose information about their financial interests that can be materially affected by their official actions and to disqualify them from acting when they have conflicts of interest. (Section 81002(c).) As the agency with the primary duty of administering and implementing the Act (Section 83111), we are charged to liberally interpret its provisions to accomplish its purposes (Section 81003). While we recognize that under AB 1X 26, successor agencies and their oversight boards are governed by different authorities and may at times have conflicting goals and interests, they also have control and oversight over the same obligations, assets and property. Therefore, it is logical and also serves the Act's desire for accurate financial disclosure that the same code reviewing body assesses how these obligations, assets and property can be affected by decisions in both agencies.

Under AB 1X 26, there appear to be, for purposes of the Act, five general types of entities that can become successor agencies. These are a city, county, city and county, other non-

city local government agency (such as a joint powers authority), and a "designated local authority." (Health and Saf. Code Sec. 34173(d); also see Health and Saf. Code Sec. 34173(c).)

As described above, subdivisions (a), (b) and (c) of Section 82011 are very explicit as to which agency is the code reviewing body for four of these entities, namely, a city, county, city and county, and other non-city local government agency. Thus, in our view, it is clear that if one of these entities becomes a successor agency, the code reviewing body for the successor agency is the code reviewing body for that entity set forth in Section 82011(a), (b), or (c). In addition, as discussed, we think it proper under the Act that the oversight board's code reviewing body be the same.

A slightly more difficult question arises in relation to "designated local authorities." These entities are created pursuant to Health and Safety Code, section 34173(d) when no other local government agency elects to serve as the successor agency. In that case, the "'designated local authority' shall be immediately formed . . . in the county and shall be vested with all the powers and duties of a successor agency . . . ." (Health and Saf. Code § 34173(d).) The "designated local authority," is formed when the Governor appoints three residents of the county to serve as the successor agency. (*Ibid.*) Since this entity is formed in a county and is run by three gubernatorial appointees who are required to be from that county, it seems apparent that a "designated local authority" is a type of local government agency operating in a county that is not under the control of a city. Accordingly, we conclude that the code reviewing body for a "designated local authority," and its oversight board, would be the board of supervisors of that county pursuant to Section 82011(b) or, if the entity operates in more than one county, the Commission pursuant to Section 82011(a).

Finally, as mentioned above, we must craft a special rule for oversight boards formed on or after July 1, 2016 pursuant to Health and Safety Code Section 34179(j). These boards represent a consolidation of all oversight boards existing in a county having more than one oversight board as of that date. These boards are clearly non-city local government agencies operating within a county and thus, under Section 82011(b), their code reviewing body is the county board of supervisors.

3. **Should entities that adopted separate conflict-of-interest codes for their redevelopment agencies repeal those codes?**

Conclusion and Analysis: If an entity that adopted a conflict-of-interest code for its redevelopment agency does not become a successor agency for the redevelopment agency, we suggest that it repeal the code once the redevelopment agency is dissolved. However, if the entity becomes a successor agency for the redevelopment agency and assumes the responsibility of adopting a conflict-of-interest code for the successor agency, it may: (1) repeal the redevelopment agency's code and either adopt a new code or amend its own code to cover designated employees of the successor agency; or (2) amend the redevelopment agency's code to apply, as appropriate, to the activities of the successor agency. (See Sections 82011, 87300, 87301, 87303 and 87306.)

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As for the oversight boards, the code reviewing bodies may either add the oversight board to an existing conflict-of-interest code of the agency or adopt a new conflict-of-interest code for the oversight board. Since Section 87301 states that conflict-of-interest codes shall be formulated at the most decentralized level possible and that questions relating to the formation of a code are resolved by the code reviewing body, each code reviewing body makes this determination, not the Commission. (Also see Regulation 18329.5.)

Please note that, since Section 87302.6 requires members of new boards and commissions to file Statements of Economic Interests in the same manner as individuals who file under Section 87200, members of these boards, subject to certain exceptions (see Section 87202(a), must generally file assuming office Statements of Economic Interests within 30 days of assuming office and continue to file as if 87200 filers until the oversight board's conflict-of-interest code is in place. The timeline for adopting a new code or amending a code to reflect the addition of the oversight board is provided in Sections 87303 and 87306.

Regulation 18732.5 provides direction on the filing, processing and retention of Statements of Economic Interests for agencies that are to be dissolved. Statements filed for designated employees of the redevelopment agencies must be maintained for seven years.

4. **Do 87200 filers appointed to the oversight board have to file an assuming office Statement of Economic Interests with the oversight board? If not, will they be required to file an amendment to their Statement of Economic Interests to include the board position?**

Conclusion and Analysis: If the agency for which the official files a Statement of Economic Interests under Section 87200 shares the same, or is wholly located within the same, geographical jurisdiction as the oversight board, the official does not have to file a Statement of Economic Interests with the oversight board. (Regulation 18754(a)(3)(A).) For example, a city councilmember serving on an oversight board for the city's former redevelopment agency would not have to file a Statement of Economic Interests with the city in connection with her service on the oversight board because the city and the oversight board share the same jurisdiction.

However, if this is not the case, the official must file Statements of Economic Interests with both agencies, although the official can expand his or her statements to cover reportable interests in both jurisdictions and file copies in both jurisdictions (so long as each filed statement is signed and verified by the official as if it were the original statement) if the oversight board adopts a conflict-of-interest code incorporating the provisions of Regulation 18730(b)(3), footnote 1. (See Regulation 18730(a).)

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5. **Do designated employees employed by the successor agency or appointed to the oversight board have to file an assuming office statement? If not, will they be required to file an amendment to include their employment or their board position? What is the timing of any required filing or amendment?**

Conclusion and Analysis:

Successor Agencies:

If the successor agency is the entity that formed the redevelopment agency and the entity adopts a new conflict-of-interest code for the successor agency, the designated employees of the successor agency must file assuming office Statements of Economic Interests because the successor agency would be considered a new agency.[3] (Sections 87300 and 87303.) Pending the effective date of the code, employees who make or participate in making agency decisions that may foreseeably have a material effect on any financial interest must file Statements of Economic Interests pursuant to Regulation 18734, and that regulation also governs treatment of these filings in relation to the filing requirements once the code becomes effective (see Regulation 18734(e)).

If the successor agency is the entity that formed the redevelopment agency and the entity instead amends the code of the former redevelopment agency to apply, as appropriate, to the activities of the successor agency (see Question 3 above), existing designated employees would file Statements of Economic Interests pursuant to the provisions of Regulation 18735 and employees in newly created positions would file pursuant to Regulation 18734.

If the successor agency is not the entity that formed the redevelopment agency, it must adopt a new conflict-of-interest code for that agency or incorporate designated employees in the successor agency into its existing conflict-of-interest code. In that case, until the new code or amendments become effective, employees who make or participate in making agency decisions that may foreseeably have a material effect on any financial interest must file Statements of Economic Interests pursuant to Regulation 18734 and, as mentioned above, that regulation also governs treatment of these filings in relation to the filing requirements once the code becomes effective (see Regulation 18734(e)).

Oversight Boards: As stated above, the oversight boards are new agencies and thus members of the boards must file assuming office and other Statements of Economic Interests pursuant to Section 87302.6 until the board or its code reviewing body adopts or amends a code to reflect addition of the oversight board.

[3] In this instance, since the code reviewing body considers the successor agency a new agency, the designated employees of the former redevelopment agency must file leaving office Statements of Economic Interests in connection with their employment with the former redevelopment agency. (Section 87302(b).)

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6. **Who is the filing officer? If only an amendment is required, is the filing officer the agency in which the board member filed the original statement? Who is the filing officer for statements filed by the governing board of a "designated local authority?"**

Conclusions and Analysis:

Successor Agencies:

The filing officer for the head of a successor agency, including the head of a "designated local authority," and members of the board of a "designated local authority" is the Commission if the Commission is the successor agency's or authority's code reviewing body. (Section 87500(l).)

Otherwise, the filing officer for a successor agency's, including a "designated local authority's," designated employees and board members, if any, is the successor agency or the successor agency's code reviewing body as designated by the code reviewing body. (Section 87500(p).) For example, if a city becomes a successor agency and the city council is the successor agency's code reviewing body, the city council must determine which city official or subdivision is the filing officer for the successor agency. (*Ibid.*)

Oversight Boards:

The filing officer for the head, or board member, of an oversight board is the Commission if the Commission is the oversight board's code reviewing body. (Section 87500(l).)

Otherwise, the filing officer for the oversight board's designated employees, including its board members, is the oversight board or the board's code reviewing body as designated by the code reviewing body. (Section 87500(p).)

See Question 2 above to determine which agency is a successor agency's or oversight board's code reviewing body.

7. **Do members of the public appointed to a "designated local authority" or an oversight board have an obligation to file a Statement of Economic Interests? If so, who is deemed the filing officer?**

Conclusion and Analysis: Since the Act requires that conflict-of-interest codes be formulated at the most decentralized level possible (Section 87301), we normally defer to the judgment of the agency and its code reviewing body in determining which agency officials are required to be included in the code and, thus, file Statements of Economic Interests. Therefore, we decline to answer this question, although we note that, under AB 1X 26, all the board members of "designated local authorities" and oversight boards certainly appear to be making or participating in making agency decisions that may foreseeably affect financial interests.

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8. **What is the assuming office date for oversight board members?**

Conclusion and Analysis: For purposes of this question and pursuant to Regulation 18722, an oversight board member assumes office on the earlier of the date he or she either is authorized to serve in the position, such as by being sworn in (Regulation 18722(a)(1)(A), or begins to perform the duties of the position such as by making, participating in making, or using his or her official position to influence a government decision (Regulation 18722(a)(1)(B).

9. **What is the jurisdiction of a successor agency or oversight board?**

Conclusions:

Except for oversight boards formed pursuant to Health and Safety Code Section 34179(j) (see Question 2 above and discussion below), the jurisdiction of a successor agency and its oversight board is the same.

If the successor agency is any type of local government agency other than a "designated local authority," the jurisdiction of the successor agency and its oversight board is the same as that local government agency and includes any real property owned by the former redevelopment agency.

If the successor agency is a "designated local authority," the jurisdiction of the successor agency and its oversight board is the county in which the successor agency operates and includes any real property owned by the former redevelopment agency.

Analysis: As previously discussed, successor agencies and their oversight boards are local government agencies under the Act. Section 82035 states that the jurisdiction of a local government agency is "the region, county, city, district or other geographical area in which it has jurisdiction" as well as, with respect to real property, any part of the property located within or not more than two miles outside the jurisdiction or within two miles of any land owned or used by the local government agency.

Thus, the jurisdiction of a successor agency is the jurisdiction, including the real property owned by the former redevelopment agency, of any local government agency that becomes the jurisdiction of the successor agency and, logically, the successor agency's oversight board. However, while it is relatively easy to determine the jurisdiction of an existing government agency such as a city or county, more explanation is required for newly formed "designated local authorities." As discussed above, we think a "designated local authority" is a non-city local government agency whose code reviewing body is the county, pursuant to Section 82011(b). Accordingly, for the sake of consistency, we think the proper jurisdiction of a "designated local authority" and its oversight board should be the county in which it is located plus any real property owned by the former redevelopment agency.

Finally, in the case of an oversight board formed on or after July 1, 2016 pursuant to Health and Safety Code Section 34179(j), since its authority extends over any successor agency in a county, we conclude that its jurisdiction is the county in which it is located plus any real

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EX 14

property owned by the successor agencies for which it has oversight (also see discussion under Question 2 above).

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Scott Hallabrin
Counsel, Legal Division

By: Sarah Olson
Political Reform Consultant
Technical Assistance Division

ITEM 5
EX A

RESOLUTION NO. 2010-252

RESOLUTION OF THE MAYOR AND COMMON COUNCIL ADOPTING OPERATIONAL GUIDELINES WHICH INCLUDE A CODE OF CONDUCT FOR THE MAYOR AND COMMON COUNCIL, AGENDA GUIDELINES AND COUNCIL COMMITTEE GUIDELINES

WHEREAS, as part of the Building a Better Community retreat, the Mayor and Common Council were presented with Operational Guidelines ("Operational Guidelines"); and

WHEREAS, the Operational Guidelines have been developed to provide better and more efficient communication between elected officials, staff, and the public; and

WHEREAS, the Code of Conduct for the Mayor and Common Council is intended to provide efficient procedures for elected officials to follow to assure public confidence in the integrity of local government, its effective operations, and fair treatment of people, and

WHEREAS, the Agenda Guidelines and Council Committee Guidelines are intended to provide procedures for staff and elected officials to follow to assure clear direction for agenda preparation, posting requirements and deadlines; and

WHEREAS, the Mayor and Common Council have been given the opportunity to review and make desired modifications to the Operational Guidelines; and

WHEREAS, the Operational Guidelines have been developed pursuant to the applicable provisions of the San Bernardino City Charter and reviewed by the City Attorney.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE CITY OF SAN BERNARDINO AS FOLLOWS:

SECTION 1. The Operational Guidelines, inclusive of the Code of Conduct for the Mayor and Common Council, the Agenda Guidelines, and the Council Committee Guidelines, all as attached hereto as Exhibit A and by this reference made a part hereof, are hereby adopted.

SECTION 2. The Operational Guidelines supersede all inconsistent guidelines of earlier date.

SECTION 3. The Operational Guidelines shall become effective upon adoption of this resolution.

///

ITEM 5
EX B

2010-252

RESOLUTION OF THE MAYOR AND COMMON COUNCIL ADOPTING OPERATIONAL GUIDELINES WHICH INCLUDE A CODE OF CONDUCT FOR THE MAYOR AND COMMON COUNCIL, AGENDA GUIDELINES AND COUNCIL COMMITTEE GUIDELINES.

I HEREBY CERTIFY that the foregoing Resolution was duly adopted by the Mayor and Common Council of the City of San Bernardino at a joint regular meeting thereof, held on the 2nd day of August, 2010 by the following vote, to wit:

Council Members:	AYES	NAYS	ABSTAIN	ABSENT
MARQUEZ	X			
DESJARDINS	X			
BRINKER	X			
SHORETT	X			
KELLEY	X			
JOHNSON	X			
MCCAMMACK	X			

Rachel G. Clark
Rachel G. Clark, City Clerk

The foregoing resolution is hereby approved this 3rd day of August, 2010.

Patrick J. Morris, Mayor
City of San Bernardino

Approved as to form:

By: James F. Penman

JAMES F. PENMAN,
City Attorney

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EXB

"Building a Better Community"

CODE OF CONDUCT/GUIDELINES

1. **General Overview**
The residents and businesses of the City of San Bernardino are entitled to have fair, ethical and accountable local government which has earned the public's full confidence for integrity. The City will operate in an open, honest and transparent manner. To this end, the Mayor and Common Council of the City of San Bernardino have adopted a Code of Conduct for its members to assure public confidence in the integrity of local government, its effective operations, and fair treatment of people

2. **Rules of Decorum**
The professional and personal conduct of the Mayor and Common Council must be above reproach and avoid the appearance of impropriety. The Mayor and members of the Common Council shall refrain from abusive conduct, personal or verbal attacks upon the character or motives of each other, the staff or the public.

3. **Respect for the Process**
The Mayor and members of the Common Council shall perform their duties in accordance with the procedural rules for meetings, established by them, in governing the deliberation of public policy issues, involvement of the public and the implementation of policy decisions of the Mayor and Common Council by City staff.

4. **Conduct of Public Meetings**
The Mayor and Common Council shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers; making personal comments not germane to the business of the body; or otherwise interfering with the orderly conduct of meetings.

5. **Decisions based on Merit**
The Mayor and Common Council shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.

6. **Sharing of Information on Issues under Consideration**
The Mayor and Common Council shall publicly share substantive information that is relevant to the matter under their consideration, which they may have received from sources outside of the public decision-making process.

7. **Conflict of Interest**
In order to assure their independence and impartiality on behalf of the common good, the Mayor and Common Council shall not use their official positions to influence government decisions in which they have a material financial interest; or where they have an organizational responsibility or personal relationship which may give the appearance of a conflict of interest.

8. **Gifts and Favors**
The Mayor and Common Council shall not take any special advantage of services or opportunities for personal gain, by virtue of their public office that is not available to the public in general. They shall refrain from accepting any gifts, favors or promises of future benefits which might compromise their independence of judgment or action, or give the appearance of being compromised.

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9. **Confidential Information**
The Mayor and Common Council shall respect the confidentiality of information concerning the property, personnel or affairs of the City. They shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial or other private interest.

10. **Use of Public Resources**
The Mayor and Common Council shall not use public resources that are not available to the public in general, such as City staff time, equipment, supplies or facilities for private gain or personal purposes.

11. **Independence of Boards and Commissions**
The Mayor and Common Council shall refrain from using their position to unduly influence the deliberations or outcomes of commission proceedings.

12. **Policy Role of Members**
The Mayor and Common Council are responsible for setting clear direction and policies and for holding the City Manager accountable for achieving those policies.

The Mayor and Common Council should respect and adhere to the established procedures of city government whereby the Council determines the policies of the City with the advice, information and analysis provided by the public, commissions and City staff.
The Mayor and Common Council should not interfere with the administrative functions of the City or the professional duties of City staff; nor should they impair the ability of staff to implement Council policy decisions per City Charter Section 104.

The Mayor and Common Council will not divert management from the approved priorities with issues of personal interest or requests for information that may require significant staff resources without the active approval of the majority of the Mayor and Common Council. The Council will come to consensus regarding major issues that need further exploration and analysis so as to judiciously assign tasks to the City Manager and his staff. This language does not prohibit the Mayor, Council Members, City Attorney, City Clerk, or City Treasurer from bringing information forward and discussing it with the City Manager and/or Staff.

13. **Public Relations**
When the Mayor and Common Council have not taken a position on an issue, neither the Mayor nor any Councilmember should speak on behalf of the Mayor and Common Council. When presenting their individual opinions and positions, Councilmembers should explicitly state that they do not represent their body, the City of San Bernardino, nor should they encourage the inference that they do.

After a decision is made, the Mayor serves as the spokesperson for the City's view on policy matters; the Common Council should speak with "one voice."

14. **Positive Work Place Environment**
The Mayor and Common Council shall support the maintenance of a positive and constructive work place environment for City employees and for residents and businesses dealing with the City. The Mayor and Common Council shall recognize their special role in dealings with City employees and in no way create the perception of inappropriate direction to staff.

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EX B

ADDITIONAL SUPPORTING DOCUMENTATION

LEAGUE OF CALIFORNIA CITIES

1400 K Street, Suite 400 • Sacramento, California 95814
Phone: 916.658.8200 Fax: 916.658.8240
www.cacities.org

City Attorneys' Department, Post-Redevelopment Working Group

Subgroup 1: Successor Agencies & Oversight Boards

Questions & Answers

GENERAL DISCLAIMER: This document represents an attempt to interpret the requirements of ABx1 26 as modified by the California Supreme Court in *California Redevelopment Association v. Matosantos*. This document does not constitute legal advice. Given the significant ambiguities of ABx1 26, it is important to consult with legal counsel regarding any issues discussed in this document. Statements in this document reflect the consensus or recommendation of the subgroup that drafted this document in consultation with the members of the entire Working Group. No statement in this document should be attributed to any individual member of the subgroup or the Working Group. Where appropriate, this document discusses the interpretations, recommendations, and advice of other entities, such of the Department of Finance and the county auditor-controllers. These discussions do not necessarily represent an endorsement or agreement with the interpretation, recommendation, or advice, but are being provided solely as further information. This document represents an analysis as of the date set forth in the footer below. This document will be updated as needed to reflect legislative changes, and new information received by the Working Group. If you have questions or comments regarding this document, please direct them to Patrick Whitnell, General Counsel for the League of California Cities, at pwhitnell@cacities.org.

Q&A Number 1:

Q: What is a successor agency?

A: A successor agency is an entity that is designated by ABx1 26 to serve as the successor to the dissolved redevelopment agency. (Health & Safety Code §34173(a).)[1] In that capacity, the successor agency has all authority, rights, powers, duties and obligations previously vested with the former redevelopment agencies that were not repealed by ABx1 26.[2] The successor agency is charged, generally, with carrying out the enforceable obligations of the former redevelopment agency, repaying outstanding debts of the former redevelopment agency, and disposing of the former redevelopment agency's non-housing property and assets. The city, county, or city and county that authorized the creation of the redevelopment agency is the successor agency, unless that entity

[1] Unless otherwise specified, all statutory references in this Q&A are to the Health & Safety Code.
[2] §34173(b)

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affirmatively decided by resolution not to serve as the successor agency. (§34171(j); 34173.) If the creating entity chose not to act as the successor agency, any other city, county or special district within the same county had the option to elect to become the successor agency by submitting a resolution to the county auditor controller. The first agency to submit such a resolution became the successor agency. In those jurisdictions where no local agency elected to serve as a successor agency, a "designated local authority" was formed by operation of law to serve as the successor agency, and the Governor appointed three residents of the county where the redevelopment agency was located to serve as the governing board of the designated local authority.

Q&A Number 2:

Q: What is an oversight board?

A: Each successor agency has an oversight board. The oversight board is a seven member board established by ABx1 26 to oversee the successor agency in its efforts to wind down the former redevelopment agency's operations. Certain successor agency actions are subject to oversight board approval, including the Recognized Obligation Payment Schedule ("ROPS").[3] The oversight board is also required to direct the successor agency to carry out specific tasks, including the disposal of former redevelopment agency assets and properties, the transfer of affordable housing responsibilities to the entity that assumes those responsibilities, and the termination or renegotiation of outstanding agreements, if that would be in the best interests of the taxing entities. Oversight boards have a fiduciary responsibility to holders of enforceable obligations and the taxing entities that benefit from the distribution of property tax and other revenues.[4]

Oversight board members are appointed by governmental entities located in the city, county or city and county which created the former redevelopment agency, including, the county board of supervisors, the mayor of the city, the largest special district (determined by property tax share), the county superintendent of education or county board of education, and the Chancellor of California Community Colleges. The oversight board also includes one member of the public appointed by the county board of supervisors and one member representing the employees of the former redevelopment agency appointed by the mayor from the recognized employee organization representing the largest number of former redevelopment agency employees employed by the successor agency at that time. (Health and Safety Code § 34179(a).) The Governor may appoint an oversight board member to fill any oversight board member position that has not been filled or any oversight board member position that remains vacant for more than 60 days. (Health and Safety Code § 34179(b).) Each oversight board member shall serve at the pleasure of the entity that appointed such member. (Health and Safety Code § 34179(g).)

[3] A complete list of actions subject to oversight board approval is found at §34180.
[4] §34179(i)

The Department of Finance may review any oversight board action. Oversight board actions are not effective for three business days, pending a request for review by Finance.[5]

Q&A Number 3:

Q: Is a successor agency a separate and independent legal entity?

A: There is some difference of opinion amongst attorneys on whether or not, assuming that the city or county that created the redevelopment agency assumes the role of successor agency, the successor agency is a separate legal entity from the city or county. ABx1 26 defines "successor agency" to mean "the county, city, or city and county that authorized the creation of each redevelopment agency or another entity as provided in Section 34173." ABx1 26 does not declare that the successor agency is an independent public entity, or a "public body, corporate and politic," as was the case for redevelopment agencies (*See* §33100.) Given that the definition of "successor agency" means the city or county that authorized the redevelopment agency's creation, many redevelopment and city attorneys have advised that the successor agency is not a separate legal entity, but that the city or county has been designated as the successor agency, and then carries out the responsibilities under ABx1 26 in that capacity.

On the other hand, some attorneys note that other provisions of ABx1 26 do imply that the successor agency is a separate entity. For example, the law declares that the successor agency is a public agency for purposes of the Meyers-Milias-Brown Act, and the successor agency shall become the employer of the employees of the former redevelopment agency. (§34190(c), (e).) Further, the successor agency is permitted to enter into agreements with the city or county that created the redevelopment agency, which would suggest that the successor agency is a legal entity separate and apart from city or county. (§34178(a).) As a result of these conflicting provisions, there is not a definitive answer to this question.[6]

Q&A Number 4:

Q: Which special district should appoint a member to the Oversight Board?

A: Section 34179(a)(3) states that one member of the oversight board is appointed by "the largest special district, by property tax share, with territory in the territorial jurisdiction of the former redevelopment agency, which is of the type of special district that is eligible to receive property tax revenues pursuant to Section 34188." ABx1 26 does not specifically define "special district," but since the special district is selected based on "property tax share," one assumption is that the special districts are as defined in Revenue & Taxation Code §95(m), which defines "special districts" for purposes of determining property tax

[5] §34179(h).

[6] AB 1585 (Perez), pending in the Senate, proposes to amend ABx1 26 to clarify that the successor agency is a separate legal and political entity from the city or county.

allocations.[7] ABx1 26 does not clearly explain how to determine which special district has the largest property tax share. This could be interpreted as the special district that receives the most property tax generally, whether or not that property tax comes from within the jurisdiction of the redevelopment agency. It could also be interpreted to mean the special district with the largest share of property tax within the city where the redevelopment agency is located. However, it appears that in most counties the special district selected has been the one that has received the largest property tax share *from within existing redevelopment project areas*. It makes logical sense to allow the special district that receives the most property tax from the project area to represent the interests of special districts on the oversight board.[8]

Q&A Number 5:

Q: Who may serve as the employee representative to the oversight board if there are (a) no redevelopment agency employees and/or (b) no bargaining unit representing redevelopment agency or city employees?

A: Section 34179(a)(7) requires that one member of the oversight board be appointed by the mayor or chair of the board of supervisors "from the recognized employee organization representing the largest number of former redevelopment agency employees employed by the successor agency at that time" to represent the employees of the former redevelopment agency. Most redevelopment agencies throughout the state did not have their own employees. City employees would, in most cases, spend a portion of their time administering the redevelopment program, and the redevelopment agency would pay the City for the proportionate costs of those employees, based on the amount of time spent by the employees on redevelopment activities. In addition, in some cities the employees that worked on redevelopment matters were not part of a recognized employee organization.

In either of those cases, it will be impossible for the mayor to make an appointment in compliance with the letter of the law. Nonetheless, Section 34179(a) clearly intends to include a member on the oversight board to represent the interests of the employees that worked for the redevelopment agency. In those cases where literal compliance with the appointment requirements will be impossible, the mayor should be given some latitude to

[7] The definition of special districts in Rev. & Tax. Code §95(m) includes a county services area, a maintenance district or area, an improvement district or improvement zone, or any other zone or area formed for the purpose of designating an area within which a property tax will be levied to pay for a service or improvement benefiting that area, and explicitly *excludes* cities, counties, school districts, or community college districts.

[8] Although the statutory language is not entirely clear, the determination of the largest property tax share for special districts should likely be calculated based on property taxes allocated prior to any allocations to the Educational Revenue Augmentation Fund (ERAF). Section 34179(a)(3) specifies that the special district representative must come from a district that is eligible to receive property tax revenues pursuant to Section 34188. Section 34188, in turn, declares that "[p]roperty tax shares of local agencies shall be determined based on property tax allocation laws in effect on the date of distribution, without the revenue exchange amounts allocated pursuant to Section 97.68 and the property taxes allocated pursuant to Section 97.70 of the Revenue and Taxation Code [the sections that provide for ERAF allocations]." If the percentage division of property taxes is calculated without regard to ERAF, then it makes sense to also determine the special district representative based on the same methodology. The relative shares of property taxes can, in some instances, be different before and after allocation to ERAF, so the special district representative may be different based on the manner of calculation.

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make an appointment that is consistent with the intent of the law, and his or her appointment should be given some deference. However, the mayor should make an effort to comply with the appointment requirements as closely as possible. For example, if the redevelopment program was implemented by city employees, and those city employees were part of an employee organization, the appointment should be made from the employees that are members of that employee organization. If the employees that worked on redevelopment matters were not represented by an employee organization, the appointment should be made from those employees that worked on redevelopment matters. Ultimately, however, the mayor is responsible for this appointment and the oversight board should respect his or her decision on how best to fill this position in a manner consistent with the intent of the law.

Q&A Number 6:

Q: Are there any noticing requirements for oversight board meetings?

A: The oversight board is a public entity subject to the Brown Act, and therefore must post its meeting agendas not less than 72 hours in advance of the meeting, (§34179(e).) All notices required for any oversight board actions posted on the website of the successor agency or the oversight board. (§34179(f).) The successor agency must also post a coy of the approved ROPS on its website. (§34177(*l*)(2)(C).)

Q&A Number 7:

Q: Are oversight board members required to take an oath of office, and if so who shall administer the oath?

A: Unless otherwise provided, all public officers filling any offices created by laws for the of each county, city, city and county, district and authority (including departments, divisions, bureaus, boards, commissions, agencies, or instrumentalities) must take the oath of office set forth in Section 3 Article XX of the California Constitution. (Cal. Const. art. XX, §3; Gov't Code §§1001, 1360.) The oversight board members are "officers" within the definition set forth in state law and should take the oath of office. As a practical matter, any local government officer can administer the oath.[9] For example, a member of the City Clerk's office who attends the oversight board meeting, may administer the oath. However, if the clerk or one of his or her deputies is unavailable then any person authorized under State law may administer the oath to the oversight board members.

Q&A Number 8:

Q: Are the oversight board members and/or successor agency members required to receive AB 1234 training?

A: Oversight board members are not required to attend AB 1234 ethics training based on their membership on the oversight board. AB 1234 requires that any local agency official

[9] Gov't Code § 1362.

who receives any type of compensation or reimbursement for performance of official duties must take required ethics training. (Government Code §§53234(c), 53235(a).) However, ABx1 26 explicitly states that oversight board members are not entitled to any compensation or reimbursement for their service on the oversight board. (§34179(c).)

Q&A Number 9:

Q: Are there any potential Government Code section 1090 conflict issues for oversight board members to consider?

A: Government Code section 1090 *et. seq.* ("1090"), which prohibits conflicts of interest resulting from interests involved in contracts, applies to members of the oversight board. (§34179(i).) As a general matter, Government Code section 1090 prohibits any public officer or employee from being financially interested in any contract made by them in their official capacity or by any body of which they are a member. There are exceptions to the broad prohibition in Section 1090 that allow a board to enter into a contract if the interested official has a "remote interest" or a "non-interest." If the official has a "non-interest" the official may participate in and vote on the decision on the contract. If the official has a "remote interest," the board may enter into the contract, but the official must disclose the interest and must refrain from any participation in the discussion on the contract, may not vote on the contract and may not influence the decision in any way. (Gov. Code §1091(a), (c).)

Governmental employees and officials serving as oversight board members would have a "non-interest" even though the board member receives salary, per diem or reimbursement from the governmental entity involved in the contract unless the contract "directly involves the department of the governmental entity that employs the officer or employee, provided that the interest is disclosed to the board.... at the time of consideration of the contract and provided further that the interest is noted in its official record." (1091.5(a)(9).) If the governmental employee or official's department is directly involved in the contract, then the employee or official would have a "remote" interest. (Gov. Code §1091(b)(13).) With a remote interest, the board could still enter into the contract. However, the employee would be barred from participating in the decision or voting on the decision. (*Id.* at 1091(a) see Ops. Atty. Gen No. 00-706, 2000 WL 1606572 [deputy sheriff serving on a city council must disqualify himself from participating on a contract between the city and the county for law enforcement services.].)

In the context of the oversight board, there will be a potential risk that employee representatives to the oversight board in particular may have a remote interest in contracts that come before the oversight board, based on the involvement of the employee's department in certain contracts. Government Code section 1090 requires a very fact-specific analysis, but city attorneys should be cognizant of this potential risk in advising city officials who are members of the oversight board.

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Q&A Number 10:

Q: Who may provide legal representation to the oversight board?

A: There is no specific requirement that the oversight board have its own legal counsel. Most city attorneys are, as part of their services to the city, serving as counsel to the successor agency. In this role they are advising cities in the preparation of their ROPS, how to proceed in implementing existing enforceable obligations, and related issues. As discussed above, the oversight board has approval authority over a variety of successor agency actions, including the ROPS and disposal of former redevelopment agency property. The oversight board may in some cases want to take actions that will possibly benefit the taxing entities, but are directly contrary to the successor agency's interests. If the city attorney chooses to advise both successor agency and oversight board, he or she will be caught in the middle of this conflict. California Rule of Professional Conduct 3-0310 prohibits simultaneous representation of adverse interest in the same matter. This conflict cannot be waived by the clients, even with informed written consent. For this reason, many city attorneys have made clear to the oversight board that they only represent the successor agency, and not the oversight board. In turn, some oversight boards have sought out separate legal counsel to represent them in the dissolution process. If the oversight board chooses to obtain its own legal counsel it should list that expense as a separate line item on the ROPS.

Q&A Number 11:

Q: What happens to the property, contracts and other assets of the former redevelopment agency, and to what extent does the successor agency retain those assets?

A: The assets, property, contracts, leases, books, buildings and equipment of the former redevelopment agency, including all cash or cash equivalents and amounts owed to the former redevelopment agency, except for the agency's "housing assets" are transferred to the control of the successor agency for administration and winding down the affairs of the former redevelopment agency. (§34175(b).) However, unencumbered balances of the redevelopment agency funds are to be transferred to the county auditor-controller for distribution to the taxing entities (§34177(d).) The law does not specify when the transfer of funds to the county auditor-controller will take place, and many successor agencies are currently retaining those funds until after they receive the first distribution under the ROPS, to ensure that the successor agency has sufficient funds to meet the agency's enforceable obligations. The other redevelopment agency assets are retained by the successor agency and sold for the benefit of the taxing entities, or to be used to fulfill the outstanding enforceable obligations of the former redevelopment agency.

Q&A Number 12:

Q: What are the roles of the oversight board and successor agency in implementing existing redevelopment agreements?

A: The successor agency is the successor in interest to the redevelopment agency and assumes responsibility for administering all contracts, leases, and other assets of the redevelopment agency (§34175(b).) In this role, the successor agency is required to continue making payments due for enforceable obligations, and perform obligations required pursuant to enforceable obligations. (§34177(a), (c).) The successor agency also oversees development of properties until contracted work has been completed or those contractual obligations can be transferred to other parties (§34177(i).) ABx1 26 declares that the oversight board, in turn, has the authority to direct the successor agency to cease performance in connection with and terminate all existing agreements that do not qualify as enforceable obligations; terminate agreements with any other public entity in the county if the oversight board thinks it will be in the best interest of the taxing entities; and terminate or renegotiate contracts with third parties if that would be in the best interest of the taxing entities. (§34181(c)-(e).)

The successor agency staff may continue to implement existing agreements of the former redevelopment agency that are not yet completed without going back to the oversight board for approval of those existing contracts. If an existing agreement needs to be amended in a manner that requires any additional financial commitment from property taxes or successor agency assets, oversight board approval will be required. Further, the oversight board may make a request to review existing agreements and direct the successor agency to attempt to negotiate or terminate them. Successor agency staff should work with the oversight board to analyze and fully consider the ramifications of such demands. Lastly, if the agency has existing agreements for the conveyance of property (such as a disposition and development agreement), as a practical matter the successor agency may need to request that the oversight board affirm that the disposal of property pursuant to such agreement is consistent with the property disposal requirements of Section 34181(a). Many title insurance companies are presently uncomfortable issuing policies unless the oversight board affirms the transaction. Therefore oversight board action may be a necessary step to alleviate any title concerns.

Q&A Number 13:

Q: To what extent is the liability of the Successor Agency and the Oversight Board limited by ABx1 26?

A: ABx1 26 declares that the successor agency's liability is limited to the extent of the property tax revenues that it receives through the ROPS process and the value of assets transferred to the successor agency by the former redevelopment agency. (§34173(e).) Further, the oversight board members themselves have personal immunity from suit for actions taken within the scope of their responsibility as board members. (§34179(d).) Notwithstanding the protections set forth in the bill, some cities have expressed concerns that the limitations on liability of the successor agency could be preempted by federal law

if, for example, the successor agency is liable for the clean up of contaminated property under CERCLA. It is unclear whether the limitations on AB x1 26 will protect the successor agency from such liability, and the successor agency should consider this potential risk. Further, while the oversight board members have personal immunity for the actions in furtherance of their responsibilities as oversight board members, the oversight board as an entity has a fiduciary duty to the taxing entities and holders of enforceable obligations, and the individual members are also subject to conflict of interest laws, including the Political Reform Act and Government Code section 1090.

Conflict of Interest Related Questions: Request to FPPC for Advice

In addition to the questions listed above, there are numerous questions that have been asked with respect to ABx1 26 and compliance with the Political Reform Act.. Rather than speculate as to the proper application of the Political Reform Act to the AB x1 26 framework, the League of California Cities submitted a request for advice to the Fair Political Practices Commission on April 11, 2012. The FPPC has committed to issuing a prompt response. The request asked for responses to the following questions:

Conflict of Interest Code

1. Who adopts the conflict of interest codes for the successor agency and the oversight board?

2. Who are the code reviewing bodies for the successor agency and the oversight board?

3. Should the cities and counties that adopted separate conflict of interest codes for their redevelopment agencies repeal those codes?

Statement of Economic Interests (Form 700)

1. Do 87200 filers appointed to the oversight board have to file an assuming office statement? If not, will they be required to file an amendment to their Form 700 to include the board position?

2. Do designated employees employed by the successor agency or appointed to the oversight board have to file an assuming office statement? If not, will they be required to file an amendment to include their employment or their Board position? What is the timing of any required filing or amendment?

3. Who is the filing officer? If only an amendment is required, is the filing officer the agency in which the board member filed the original statement? Who is the filing officer for statements filed by the governing board of a designated local authority?

4. Do members of the public appointed to a designated local authority or an oversight board have an obligation to file a Form 700? If so, who is deemed the filing officer?

5. What is the assuming office date for oversight board members?

Jurisdiction

1. What is the jurisdiction of the oversight board?

* * *

10A

CALIFORNIA
DEPARTMENT OF FINANCE

REDEVELOPMENT AGENCY DISSOLUTION
UNDER ABx1 26
FAQ

10B

Redevelopment Agency Dissolution Under ABx1 26

Frequently Asked Questions

Q. What are the enforceable obligations for projects partially underway?

Many agencies and parties interested in various projects have asked about instances in which a "project" may have been defined very broadly and within it are various actual or potential land acquisitions, site remediation, site improvements, building construction or reconstruction, and other work. Some contracts may exist for portions of this broadly defined project but other components may not yet be fully obligated by contract with other parties. Work components may be completed or in progress. These questions revolve around what, if any, portions of these projects can be considered enforceable obligations under ABx1 26.

A. Generally, Finance believes ABx1 26 provides that written contracts for specific performance with parties that are not the sponsoring agency are what qualify as enforceable obligations. Plans, statements of intent, statements of intent to award, designations of project areas, descriptions or lists of projects, or commitments by the agency without any counter party (other than the local agency that formed the redevelopment agency) will not be considered enforceable obligations. Contracts too vague to be enforceable are also not enforceable obligations. Contracts to develop future proposals or future contracts are limited to the work that is specified sufficiently so that it could be enforced. A contract to design something does not imply or become a contract to construct unless such extension or inclusion is specifically called out in the contract and compensation is specified for it, such as in a design-build contract.

Specific situations involving bonds that have been sold but for which the specific things to be done with the bond proceeds are not obligated through contracts for performance will have to be reviewed to see if obligations to bond holders require such contracts to be made by successor agencies or whether bonds must be defeased.

While this may result in some work being completed that has little apparent current value, ABx1 26 provides that the oversight board may terminate contracts and provide compensation to avoid wastage of funds. Department of Finance encourages successor agencies and oversight boards to review opportunities to do this as they are constructing and approving Recognized Obligation Payment Schedules.

There are many different fact situations that will arise that we cannot anticipate or provide advance guidance on. Finance encourages parties that are concerned about specific situations to bring them to our attention by submitting questions and information regarding the specific situation to the Redevelopment Administration website. While we cannot promise to provide a quick or definitive answer, we will endeavor to do so whenever possible. We will try to provide a fairly early indication that we think the situation requires further information and review. Please provide the name, phone number and e-mail address of a principal contact person with whom we can follow up.

In those cases where Finance and the Controller do not initially come to a conclusion or need further review time, we are prepared to approve the Recognized Obligation Payment Schedule (ROPS) without the questioned item, if that is a practical option. If

timing issues require an earlier decision with regard to a Recognized Obligation Payment Schedule, we may or may not forgo objection at that time but reserve the right to take action under Sec. 34177 or object to the inclusion of the items in a future ROPS. Finance and the Controller are prepared to make commitments with regard to future actions on specific situations once our review is completed.

Q. Can interagency loans be enforceable obligations? Agencies have been the recipients of funds provided by sponsoring agencies. In some instances these have been described as loans. In some instances there have been specified repayment schedules and terms, in other cases no repayment schedule was specified before the operative date of ABx1 26. In some instances the repayment schedules have not been adhered to. ABx1 26provides that until oversight boards are established, no new repayment schedules can be established. Questions have been raised about a variety of these types of situations with regard to whether the repayment is prohibited by Sec. 34171 (d) (2).

A. Except for loan agreements made within the first two years of the life of the agency, or loans that relate to issued securities, the act does not recognize such loans to be enforceable obligations. Instead effectively it treats them as contributions of funds.

Q. Does AB x1 26 or other law require successor agencies to retain all redevelopment agency employees, maintain their current contractual compensation indefinitely, or transfer the employees into city or county jobs unrelated to successor activities?

A. ABx1 26 and labor law generally do not require the retention by the successor of any redevelopment employees. The laying off of represented employees is governed by the applicable memorandum of understanding, if there is one in force. ABx1 26 does require the MOU to pass to the successor agency until it would expire under its own terms and provides some authority to transition employees to jobs within the entity that is also the successor entity.

Q. Does the successor agency merge with or become a part of the city or county that chooses to perform the duties of the successor agency?

A. Finance views the successor agency as separate employer from the city or county for labor law purposes. ABx1 26 is provides that the liability of the successor agency only extend as far as the money available from tax increment and former assets of the agency will fund. Thus redevelopment employees do not become city employees unless they already were or if they are hired to do a city job at the discretion of the city.

Finance expects that successor agencies will promptly release any employees who no longer have work to do, consistent with the terms of their employment contracts, and retain those employees necessary for the wind down activities. The successor agencies are authorized however, to use any employees they wish to use for this work.

Q. Does the 5 percent limitation on administrative expenses in Sec. 34171 (b) force the reduction of staff and related support expenses to this level immediately?

A. No. The limitation applies only to administrative staff and related expenses funded with property tax. Employees funded with bond proceeds or other project funds do not

count against this limit, nor do employees funded from rents or other revenues or grants. Generally employees working on specific project implementation activities such as construction inspection, project management or actual construction would not be viewed by Finance as "administrative." The ability to fund project oversight work from bond funds may be restricted by the terms of each bond.

Additionally we view this as a limit on the amount of property tax that may be retained by the successor from each distribution of property taxes. Thus administrative costs funded from retained balances also will not count against this limitation. It is our expectation that oversight boards will exercise prudence in determining administrative budgets and project budgets and determining what funding sources to use so as to preserve the revenues to taxing agencies.

Q. Are unfunded liabilities for pensions and other employee benefits enforceable obligations that must be paid immediately upon dissolution?

A. Finance is exploring issues related to this with PERS. We hope to have further guidance on this soon. We expect that many of these costs will be determined to be enforceable obligations up to the date the employees are separated. We expect some reasonable payment schedule or reserving schedule can be arranged. The specific requirements of MOUs or other contractual agreements will have to be specifically reviewed. ABx1 26 provides that successor agencies are only liable up to the limit of the total of property tax allocable to the former redevelopment agency.

Q. Are successor agencies responsible for costs of site remediation or environmental damages beyond the funds available to the successor agency from redevelopment revenues and assets?

A. Sec. 34173 (e) states that the liability of a successor agency is limited to the funds transferred to it by ABx1 26.

CALIFORNIA
DEPARTMENT OF FINANCE

ADDITIONAL Q & A
REGARDING COMMON DISSOLUTION ISSUES

10B

Additional Frequently Asked Questions 2-29-2012

Q. In the interim between January 1, 2012 and whenever a Recognized Obligation Payment Schedule (ROPS) is approved, can an Enforceable Obligation Payment Schedule (EOPS) be adopted or extended and obligations paid based on that?

A. ABx1 26 provide for an EOPS to be used to provide public review of obligations qualified to be paid before the ROPS could be established. Under the Supreme Court decision, the deadline for adopting a draft ROPS for the period from January 1, 2012 to June 30 2012 is extended to March 1, 2012 and payments of obligations on and after May 1, 2012 are to be made pursuant to the approved ROPS. We strongly encourage successor agencies and their oversight boards to develop the ROPS for this entire six-month period as soon as practicable and submit it to Department of Finance, the county auditor-controller, and the State Controller for review. Thus the ROPS will overlap any EOPS currently applicable but will cover the full period and clearly identify the funding source(s) for each obligation. We encourage successor agencies to share draft ROPSs with us so we can start our reviews of complex issues. Under the Supreme Court decision, ROPS must be submitted to reviewers by April 15, 2012.

The ROPS must cover this entire period even though it overlaps the EOPS because it will be used to determine the amount of funds that is due to be distributed to taxing agencies under Section 34183 from the first distribution of property taxes (tax increment) for the 2011-12 fiscal year. Successor agencies and oversight boards will also need to adopt administrative budgets for this period and designate the amount that needs to be funded from this distribution of property tax. This is limited to 5 percent of the property tax allocated to the successor agency for recognized obligations as defined in Section 34171 (b).

Q. For redevelopment agencies that received an allocation of tax increment from the fall 2011 property tax payments, how will the distribution of funds pursuant to Section 34183 be accomplished with respect to those funds? For such agencies, the distribution of property taxes included amounts for pass through payments.

A. The Supreme Court postponed the date for this distribution to May 16, 2012. We believe it did not intend that the distribution would be voided by its stay. Had it intended that result, we believe it would have been explicitly done so. As the Supreme Court stated the court action "ought not prevent the Legislature's valid enactment from taking effect. Thus, the court reformed the dates not to eliminate the need for performance of any action but simply to delay that performance.

In order to accomplish the intent of the decision, we have consulted with county auditor-controllers and successor agencies to develop the following recommended procedures.

We assume redevelopment agencies have made the pass through payments associated with this revenue. If these payments have not yet been made, they are enforceable obligations of the successor agency.

We recommend that successor agencies report their Recognized Obligation Payment Schedule and the administrative cost allowance for the entire six month period from January 1, 2012 to June 30, 2012 as soon as practical to the review agencies and the county auditor-controller, and in no case later than April 15, 2012. For those agencies

that received the regular property tax allocation in December, those amounts determined to be due to taxing agencies for the January to June period should be deducted from the June 1 payments due to successor agencies for the July 1, 2012, through December 31, 2012 period. This will effectively recover the entire yearly amount of payments due to taxing agencies from the June 2012 property tax allocations. Successor agencies will retain the unspent balances of funds from the December or allocations. If there are insufficient funds available in the June allocations to pay the full amounts to taxing agencies, an enforceable obligation will exist for the successor agency to pay the difference to the county auditor-controller for subsequent distribution to the taxing agencies.

Q. If the Department of Finance does not approve one or more items on the Recognized Obligation Payment Schedule (ROPS) and the successor agency and its oversight board do not agree to remove the items from the ROPS, how can disputes be resolved without jeopardizing allocations of property tax on the statutorily required dates and without jeopardizing payments for obligations that are not in dispute?

A. Section 34179 (h) provides that the Department of Finance may review any oversight board action, including the adoption of an ROPS. Board actions are deemed approved if Department of Finance does not request more review time within three business days. If the Department desires to review any items in more detail, we must provide specific objections and return the action to the oversight board for reconsideration within 10 days. While we will endeavor to quickly review the ROPS and e-mail questions and requests for more information, we recognize that some items will be complex and require significant time to produce records, and for us to review and make determinations as to what constitute enforceable obligations in our view.

Department of Finance recognizes that a primarily goal of ABx1 26 is to ensure that contractual obligations are performed and payments made in a timely manner. Another primary objective is to allow funds not needed to satisfy enforceable obligations to flow promptly to taxing agencies and successor agencies on statutorily specified dates. In order for funds to flow promptly and be available to successors to pay obligations (especially undisputed ones), a ROPS must be available to the county auditor in sufficient time to determine the amount of property tax to distribute to Recognized Obligation Trust Funds and to taxing agencies.

While we hope that most issues can be resolved before the time that the auditor must make the property tax distribution, we recognize that some may require extensive review and some will simply be matters to be disputed. The most expeditious way for a ROPS to be adopted timely is for a successor agency with a disputed item or items to agree to remove the disputed items from the ROPS, while retaining the right to continue the discussion or resolution of the dispute. If items can be satisfied from retained funds rather than current period property tax revenues, then Finance may agree to the establishment of reserves for such items to be included in the ROPS, with the expressed understanding that no expenditures may be made from those reserves without a subsequent amendment of the ROPS, also subject to Finance review. If a dispute is resolved, the item may be amended into the ROPS and property tax can be allocated for it on a future distribution date, if that is the appropriate funding source.

Based on our discussion with county auditors, we believe it is essential that they receive an approved ROPS no later than five business days before the date property tax must

be distributed to successor agencies and taxing agencies. Department of Finance will deem whatever items that are not disputed at that time to be the valid ROPS for that time period and will transmit that information to the county auditor.

Any taxing agency, Department of Finance, and the State Controller may litigate to enforce any provision under the dissolution provisions of ABx1 26. While we prefer not to take this course, this may be one way of resolving disputes. Successor agencies or other parties may also initiate litigation. Again we do not see this as the best way to resolve most disputes and it will often not be very timely, thus we will endeavor to resolve as many disputes as we can outside of the litigation process.

Q. Should pass through payments made under Section 34183 (a) be limited to the amount of property tax share of net of amounts of redevelopment property tax after payment of obligations and administration as indicated by Section 34188 (a) (2)?

A. Department of Finance believes that the intent of ABx1 26 was to preserve existing property tax allocations for current revenues, including pass through payments. Section 34183 controls those allocations. Finance believes the intent of that paragraph in Sec 34188 is to apply a limitation only to payments of other moneys than those that are distributed through the Redevelopment Property Tax Trust Fund. For the distribution of other money, such as proceeds from asset sales, an agency with a pass through agreement can receive additional money to the extent the amount of funds exceeds its share of the property tax after debt service, administration, and the amount of pass through payments it has already received under Sec. 34183 for that six month fiscal period.

Q. How can successor agencies and oversight boards ensure that variations in obligations payment requirements between the six month periods ABx1 26 sets up can be accommodated and bills paid in a timely fashion?

A. The architecture of AB 26x1 is that current payments due should typically be funded with current revenues or the funds that were previously raised for those purposes. ABx1 26 provides for a priority to use existing balances and dedicated funds before using current tax allocations. We recognize that some future payments may be much higher than typical payments, e.g. bullet payments for bonds, and payments on large construction projects. To the extent bond funds or grant funds are available for such construction payments; they must be used until exhausted. If it is necessary to create reserves to ensure large bond payments can be made, such reserves should be created. However, we recommend that they not be funded all at once or from current balances unless a level contribution approach cannot be made to work. This will preserve current and future stability of revenues to taxing agencies.

Finance suggests that successor agencies develop a long term budget that incorporates estimates of periodic payments and revenues, such as staff compensation, debt service on bonds and payments on projects and a long term asset and liability disposition plan discussed below. This should be revised as assets and liability values are determined and payment dates are firmed up. Such a long term plan will help avoid surprises that could result in payments to taxing agencies being significantly reduced or reserves redirected to purposes other than what they were created for because payments were not anticipated.

In its reviews of oversight board actions, Finance will be endeavoring to both ensure maximum stable revenues to taxing agencies and prudent fiscal management to provide for payment of obligations, both present and future. To assist us in this we would appreciate receiving any long term budgets and asset and liability disposition plans. Deposits to reserves for extraordinary future obligations may be included in an ROPS. Finance is prepared to accept these if there is a demonstration of the need for them such as would be apparent from the long term budget.

Q. Is it permissible to carry or create reserves for contingencies such as potential liability due to current or expected litigation, claims related to construction contracts, unfunded liabilities for employees or other future period obligations?

A. ABx1 26 explicitly recognizes that there will be a need to create reserves for some bond payments. It generally recognizes that the successor and oversight boards have fiduciary duties to obligation holders and should take whatever actions are prudent to ensure payments. The statute does not currently recognize contingent or unknown obligations, thus creation of reserves for such things through a Recognized Obligation Payment Schedule is not permitted. It is expected that bond proceeds will be retained in reserves for future payments including close-out claims.

Q. How should successor agencies deal with the disposition of the many assets and longer term liabilities they have received from the former redevelopment agency and how should those be managed?

A. While ABx1 26 does not specify a time when such work should be done, it does direct that successor agencies conduct this work timely and with the intent to maximize value. Finance recommends that the oversight board direct staff to develop an overall asset and liability disposition plan. Each asset and liability should be cataloged, determinations made as to when payments may be due or received, and a value estimated. Agencies should be able to use the audits required under existing law and ABx1 26 to help in this work. To the extent that outside expertise is needed for valuations, this should be acquired at the direction of the oversight board. It is the intent of the bill that funds and asset values may be retained to the extent they are necessary or are already pledged to retire future liabilities (see Sec. 34177 (c) (e)).

Once a complete catalog of assets and liabilities values exist, the successor agency should develop a plan for retirement of debt that first uses dedicated funds, and secondly spreads the fiscal burden of payments over the remaining years of the liability so that proceeds to taxing agencies do not vary more than necessary. Alternately the oversight board may direct that existing balances or funds to be received from assets be paid or reserved for liabilities, to reduce overall costs. While it is our expectation that some large unencumbered balances may be available for distribution to taxing agencies soon, the oversight board should assure itself that it has a workable plan to retire all known or foreseeable debts before large disbursements are made.

Q. How should unfunded liabilities of pension systems contracted with the Public Employees Retirement System be handled? How should other public employee benefit liabilities, such as retiree health care, be handled?

A. These are liabilities transferred to the successor agency and constitute enforceable obligations when payments will become due. In the next few years, it is Finance's

expectation that the employees of successor agencies that are retaining employees covered by a PERS contract will continue to be active members and the successor agency will continue to pay regular rates. Once the successor agency reaches a stage where there are few employees left or a plan exists to reach that state, PERS will be able to reevaluate the actuarial liability. At that point, since tax proceeds can continue to pay liabilities until the agency would have ceased existence under prior law, there are options for how to deal with remaining employees and liabilities. The transfer of employees to the successor agency does not trigger an automatic termination of the PERS plan. No successor agency should terminate its retirement plan with PERS without consulting with them about the options. It will likely be more financially favorable to continue as an active system, an inactive system, or shift to sunset status for some period of time. Successor agencies should also estimate the value of other employee benefit obligations as part of their overall long-term asset and liability plan and establish a reserving plan to fund them.

Successor agencies whose employees are members of non-PERS plans should consult with the administrator of the plan regarding liabilities and payment options. To the extent that city, county, or JPA employees were doing work on contract with the redevelopment agency, and continue to so function, Finance believes no unfunded liability obligation exists to the city, county or JPA retirement system unless it was explicitly set forth and monetized in the contract.

CALIFORNIA
DEPARTMENT OF FINANCE

REDEVELOPMENT AGENCY BONDS
Q & A

10B

Department of Finance

AB x1 26—Expectations and understandings regarding bond payments

Various interested parties have raised questions about how AB x1 26 may affect various types of debt instruments that have been issued by redevelopment agencies. The Department of Finance will endeavor to administer its responsibilities under the act and provide guidance as questions arise so as to achieve the intent of the law that bond holders and other obligors be protected. The Department of Finance believes that while AB x1 26 does not specifically recite every possible requirement, it does place affirmative duty to perform obligations required pursuant to bond covenants and agreements. It is the Department's expectation that redevelopment agencies, successor agencies, oversight boards, and county auditors will take appropriate actions to comply with obligations as they have in the past.

Q. What Should Happen to Bond Payments due on February 1, 2012?

Abx1 26 requires compliance with all obligations contained in enforceable obligations. Bond payments due on February 1, 2012, should be paid in accordance with the bond covenants, which likely require payments be made to a trustee prior to the February 1st due date. In general, bond documents require the payment of funds a couple of days prior to the due date so that the trustee can make the debt service payment on time. Further, even if the early payment to the trustee is not required by the bond documents, nothing in ABx1 26 prevents a redevelopment agency from making the payment to the trustee early.

Additionally, the redevelopment agency and future successor can work with the county auditor to determine how best to get the payments and make certain that the bond payments will be seamless. ABx1 26 provides tools to help this occur. For example, ABx1 26 requires that redevelopment agencies provide documents and information to the future successor (§34169, subd. (e)) and requires that redevelopment agencies have set aside and maintained reserves required by section §34169, subd. (c). Finally, ABx1 26 explicitly requires that the successor to make bond payments. The Department of Finance has no reason to believe that any successor will fail in this task.

The Department of Finance believes that ABx1 26 requires successor agencies to perform all obligations with respect to debt including any special accounting, reserving, or payment priorities. The Department of Finance believes that AB x1 26 does not prevent compliance and it is the Department's expectation that successor agencies, oversight boards, and county auditors will take appropriate actions to comply with obligations as they have in the past.

Q. What about bonds with uneven payment schedules where one semi-annual payment is much larger than the other?

ABx1 26 requires successor agencies to perform all obligations with respect to enforceable debt obligations. The Department of Finance believes this includes requirements for any special accounting, reserving, or annual set-aside payment priorities. With respect to uneven payment schedules, ABx1 26 clearly allows successor agencies to create reserves for future bond payments that may be needed, and so that bond covenants can be met as required by ABx1 26. Further, many bond indentures

require set-asides at the beginning of a fiscal year an amount to cover payments for the entire year, if not more. In order to comply with the bond covenants, this type of annual set-aside should be included on the Recognized Obligation Payment Schedule, thereby ensuring that enough revenues will be available when each semi-annual payment comes due. It is the Department's expectation that any needed reserves or required annual set-asides will be included in Recognized Obligation Payment Schedules.

Q. Does ABx1 26 require bond funds to be comingled or pooled?

No.

The Department of Finance believes that ABx1 26 requires successor agencies to perform all obligations with respect to debt including any special accounting, reserving, or payment priorities. The Department believes that AB x1 26 places an affirmative duty to perform obligations required pursuant to bond covenants and agreements. Additionally, county auditor-controllers also have an affirmative duty to administer the Trust Fund for the benefit of RDA bond holders. Thus, it is the Department's expectation that successor agencies, oversight boards, and county auditors will take appropriate actions to comply with obligations as they have in the past.

Q. Does ABx1 26 eliminate revenue pledges?

No.

ABx1 26 specifically states that revenue pledges are to be honored. In order to maintain the pledges, it may be necessary to continue to segregate the revenues received attributable to each project area as has been done in the past. It is recommended that the county auditor-controller and the successor agency coordinate efforts to create subaccounts in order to comply with bond covenants applicable to each project area. Maintaining subaccounts (in the similar fashion as done under the prior law) will facilitate a successor agency's ability to set aside the required specific revenues for each bond and make payments from those specific revenues first, if and as required by the bond obligations.

It is further the Department's expectation that certain credits may be strengthened in comparison to what they would be under prior law in that they will have access to more of the tax increment for servicing of debt. Specifically, the 20-percent housing set-aside is no longer made and only those funds necessary to service housing bond debt and other enforceable housing obligations will be designated for housing purposes. The remainder will be available for debt service on other bonds.

Q. Does ABx1 26 eliminate the ability of counties to do cash-flow loans if needed?

No. Department of Finance believes county treasurers have authority under both existing law and ABx1 26 to make cash flow loans to successor agencies. If there is insufficient cash to make payments, we urge county treasurers to make such loans from the funds held for each successor agency. These loans could be recovered by future distributions, if necessary.

We call attention to the following specific provisions in ABx1 26 (Health and Safety Code Sections):

Sec. 34169 Until successor agencies are authorized...redevelopment agencies shall do all of the following:

. . .

(c). Set aside or maintain reserves in the amount required by indentures, trust indentures, or similar documents governing the issuance of outstanding redevelopment agency bonds.

(e) Cooperate with successors agencies, and provide all documents necessary or desirable for ... making of payments required by enforceable obligations, and performance of enforceable obligations by successor agencies.

(f) Take all reasonable measures to avoid triggering an event of default under any enforceable obligations as defined in subdivision (d) of Section 34167.

Sec. 34171 (d) (1) "Enforceable obligation" means any of the following: (A) Bonds, as defined by Section 33602 and bonds issued pursuant to Section 58383 of the Government Code, including the required debt service, reserve set-asides, and any other payments required under the indenture or similar documents governing the issuance of the outstanding bonds of the former redevelopment agency.

35167 (h) After the enforceable obligation payment schedule is adopted pursuant to Section 34169, or after 60 days from the effective date of this part, whichever is sooner, the [redevelopment] agency shall not make a payment unless it is listed in an adopted enforceable obligation payment schedule, **other than payments required to meet obligations with respect to bonded indebtedness.**

34177. Successor agencies are required to do all of the following: (a) Continue to make payments due for enforceable obligations. (1) On and after October 1, 2011, and until a Recognized Obligation Payment Schedule becomes operative, only payments required pursuant to an enforceable obligations payment schedule shall be made.

> Under the Court's order, while the due date for adopting a Recognized Obligation Payment Schedule is extended to May 1, 2012, the successor agency can adopt and have an operational Schedule by February 4, if the Oversight Board is appointed and adopts a Schedule on February 1, and if Finance does not object. This would require notice of the meeting to occur in January. We recognize this is very difficult timing but some agencies have already adopted draft Recognized Obligation Payment Schedules and this may be possible for many agencies.

34173. (a) Successor agencies, as defined in this part, are hereby designated as successor entities to the former redevelopment agencies. (b) Except for those provisions of the Community Redevelopment Law that are repealed, restricted, or revised pursuant to the act adding this part, all authority, rights, powers, duties, and obligations previously vested with the former redevelopment agencies, under the Community Redevelopment Law, are hereby vested in the successor agencies.

34174(a) ..... nothing herein is intended to absolve the successor agency of payment or other obligations due or imposed pursuant to the enforceable obligations; and provided further, that nothing in the act adding this part is intended to be construed as an action or circumstance that may give rise to an event of default under any of the documents governing enforceable obligations.

34175. (a) It is the intent of this part that pledges of revenues associated with enforceable obligations of the former redevelopment agencies are to be honored. It is intended that the cessation of any redevelopment agency shall not affect either the pledge, the legal existence of that pledge, or the stream of revenues available to meet the requirements of the pledge.

34177. Successor agencies are required to do all of the following: (b) Maintain reserves in the amount required by indentures, trust indentures, or similar documents governing the issuance of outstanding redevelopment agency bonds. (c) Perform obligations required pursuant to any enforceable obligation.

> The Department views this language and 34173 (a) and 34175 (a) above as including any responsibilities with respect to bond obligations, including segregation of funds or separate priority of payments. This also would include requirements with respect to tax exempt status or other federal bond laws.

Section 34183 (c) The county treasurer may loan any funds from the county treasury that are necessary to ensure prompt payments of redevelopment agency debts.

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February 17, 2012

The 2012-13 Budget: Unwinding Redevelopment

Executive Summary

On February 1, 2012, all redevelopment agencies in California were dissolved and the process for unwinding their financial affairs began. Given the scope of these agencies' funds, assets, and financial obligations, the unwinding process will take time. Prior to their dissolution, redevelopment agencies (RDAs) received over $5 billion in property tax revenues annually and had tens of billions of dollars of outstanding bonds, contracts, and loans.

This report reviews the history of RDAs, the events that led to their dissolution, and the process communities are using to resolve their financial obligations. Over time, as these obligations are paid off, schools and other local agencies will receive the property tax revenues formerly distributed to RDAs.

The report discusses these major findings:

- Although ending redevelopment was not the Legislature's objective, the state had few practical alternatives.
- Ending redevelopment changes the distribution of property tax revenues among local agencies, but not the amount of tax revenues raised.
- Decisions about redevelopment replacement programs merit careful review.
- The decentralized process for unwinding redevelopment promotes a needed local debate over the use of the property tax.
- Key state and local choices will drive the state fiscal effect.

The report recommends the Legislature amend the redevelopment dissolution legislation to address timing issues, clarify the treatment of pass-through payments, and address key concerns of redevelopment bond investors.

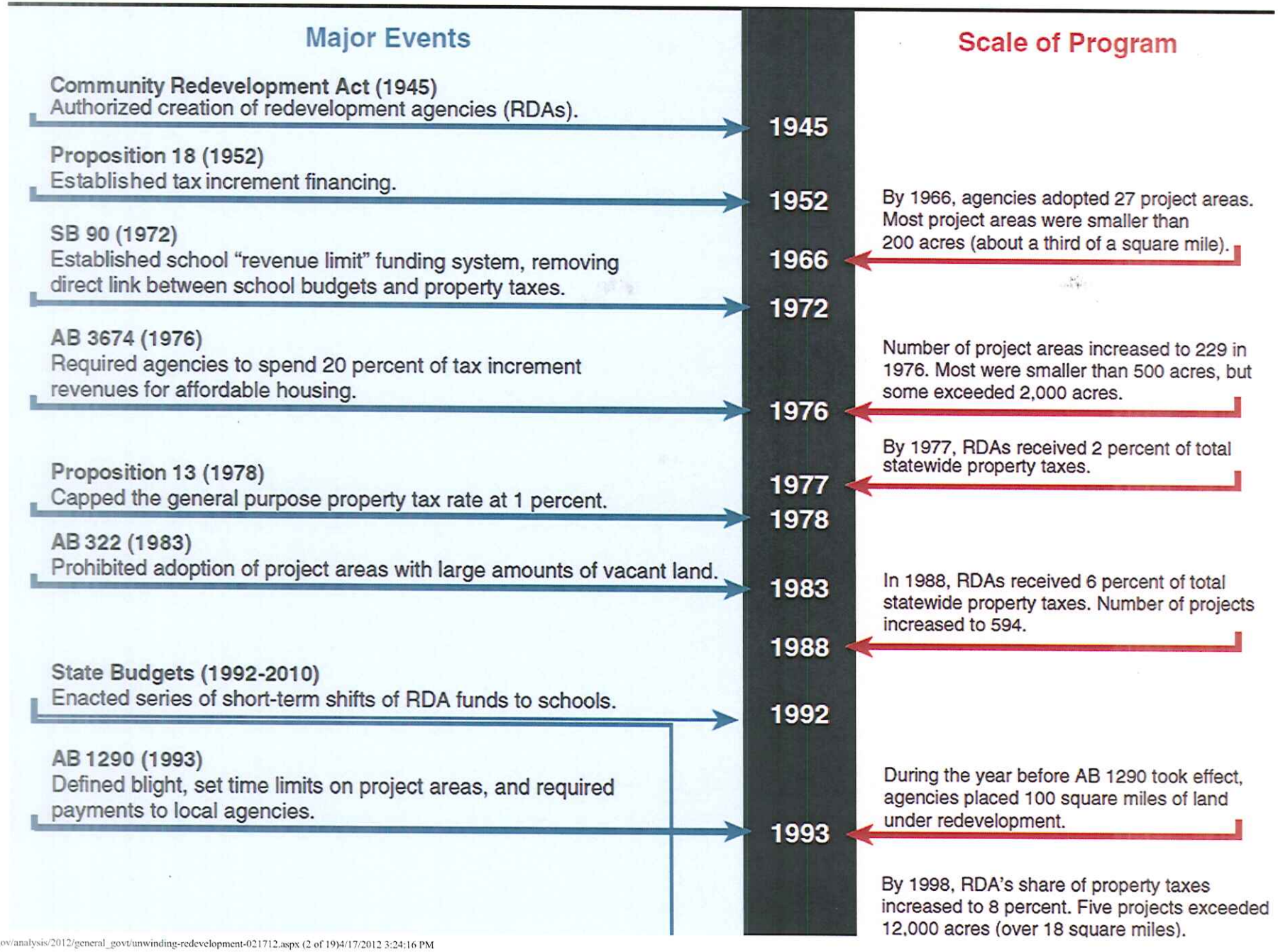
History of Redevelopment in California

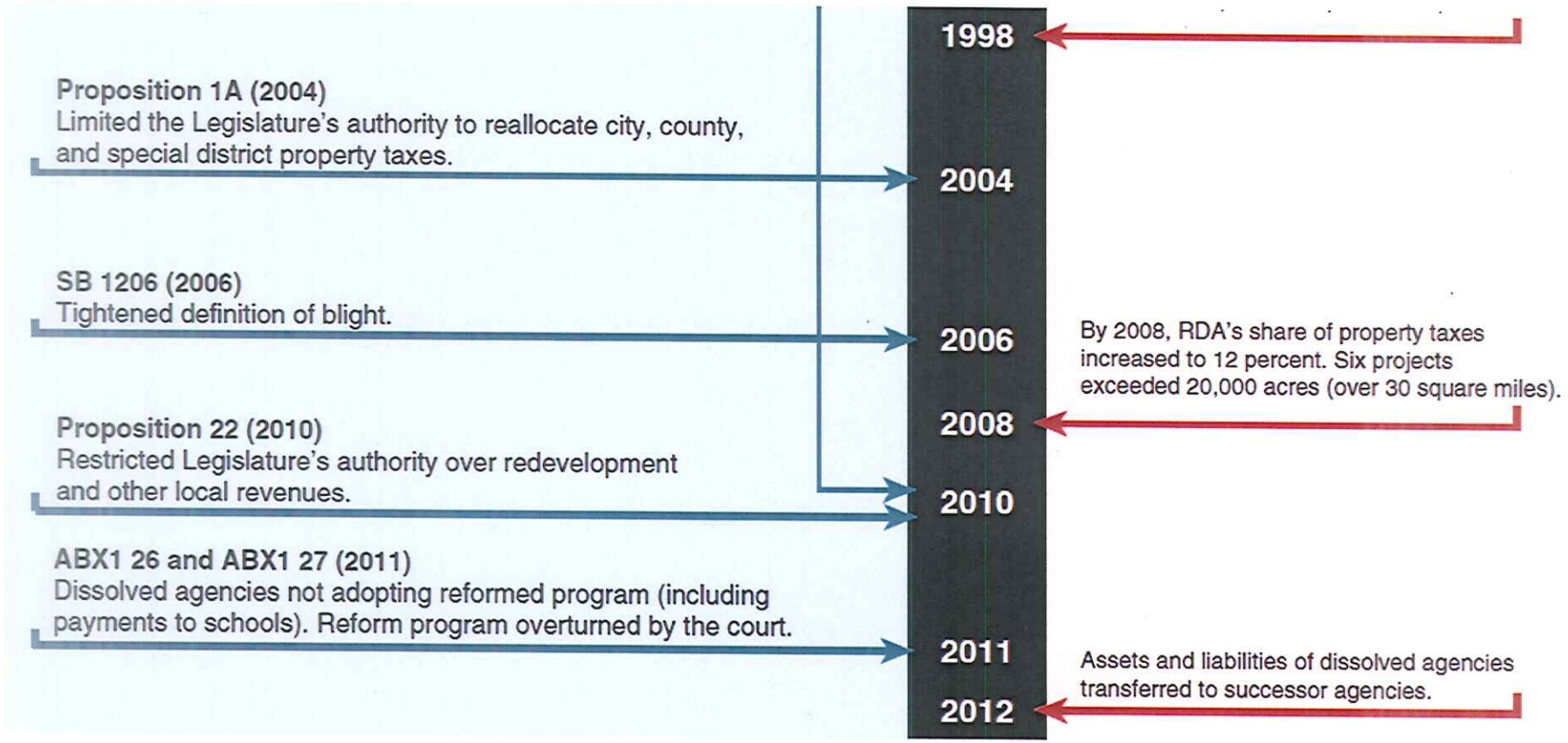
Californians pay over $45 billion in property taxes annually. County auditors distribute these revenues to local agencies—schools, community colleges, counties, cities, and special districts—pursuant to state law. Property tax revenues typically represent the largest source of local general purpose revenues for these local agencies.

In 1945, the Legislature authorized local agencies to create RDAs. Several years later, as shown in Figure 1, voters approved a redevelopment financing program referred to as "tax increment financing." Under this process, a city or county could declare an area to be blighted and in need of urban renewal. After this declaration, most of the growth in property tax revenue from the "project area" was distributed to the city or county's RDA as "tax increment revenues" instead of being distributed as general purpose revenues to other local agencies serving the area. Under law, tax increment revenues could be used only to address urban blight in the community that established the RDA.

Figure 1

History of Redevelopment





During Its Early Years, Redevelopment Was a Small Program

During the 1950s and 1960s, few communities established redevelopment project areas and most project areas were small—typically 10 acres (about six square city blocks) to 100 acres (an area about one-fifth of a square mile). The small size of the early project areas reflected, in part, competing community interests in property tax revenues, particularly from school and community college districts that otherwise would receive about half of any growth in property tax revenues. (Under the state school financing system of the time, the state did not backfill K–14 districts if some of their property tax revenues were redirected to RDAs.) Community interest in education and other local programs, therefore, served as a fiscal check on redevelopment expansion.

The limited size of redevelopment project areas during this period also reflected the fiscal authority local governments had to raise funds from other sources to pay for local priorities. During this era, for example, the State Constitution allowed local governments to raise property and other tax rates upon a vote of their governing body and without local voter approval. Cities and counties also had wide authority to impose fees and assessments.

Use of Redevelopment Expanded After SB 90 and Proposition 13

After its modest beginnings, use of redevelopment expanded significantly in the 1970s and 1980s due to two major state policy changes. First, passage of Chapter 1406, Statutes of 1972 (SB 90, Dills) created a system of school "revenue limits," whereby the state guarantees each school district an overall level of funding from local property taxes and state resources combined. Thus, if a district's local property tax revenues do not grow—due to redevelopment or for other reasons—the state provides additional state funds to ensure that the district has sufficient funds to meet its revenue limit. Second, Proposition 13 in 1978 (and later Proposition 218 in 1996) significantly constrained local authority over the property tax and most other local revenues sources. These measures did not, however, reduce local authority over redevelopment.

With fewer fiscal checks and less revenue authority, cities (joined by a small number of counties) no longer limited their project areas to small sections of communities, but often adopted projects spanning hundreds or thousands of acres and frequently including large tracts of vacant land. Some jurisdictions placed farmland under redevelopment. At least two cities placed all privately owned land in the city under redevelopment.

Legislature Took Steps to Constrain Redevelopment

Over time, the expanded use of redevelopment led to these agencies receiving an increasing share of property taxes collected under the 1 percent rate. This, in turn, spawned concern that redevelopment—a program established as a tool to address defined pockets of urban blight—was decreasing funds needed for other local programs and increasing state costs to support K–14 education.

Beginning in the 1980s and increasingly through 2011, state lawmakers took actions to constrain local governments' use of redevelopment, including tightening the definition of blight, imposing timelines on project areas, and prohibiting new projects on bare land. Concerned that RDAs were not using their authority to develop affordable housing, the Legislature enacted laws strengthening the statutory requirement that RDAs spend 20 percent of their tax increment revenues developing housing for low and moderate income households. The Legislature also began restricting the amount of "pass-through" payments RDAs provided other local agencies in the hope that these other local agencies might provide more active oversight. (Two nearby boxes provide information on a major reform measure enacted in 1993 and pass-through payments.)

Redevelopment Reform: AB 1290

Sponsored by the statewide redevelopment association, Chapter 942, Statutes of 1993 (AB 1290, Isenberg), sought to address long-standing concerns about the misuse of redevelopment and to refocus the program on eradicating urban blight.

This measure:

- Defined a "blighted" area as one that is predominately urbanized and where certain problems are so substantial that they constitute a serious physical and economic burden to a community that cannot be reversed by private or government actions, absent redevelopment.
- Replaced the process whereby local agencies and redevelopment agencies (RDAs) negotiated the amount of pass-through revenues on a case-by-case basis with a statutory formula for sharing tax increment revenues.
- Limited RDA ability to provide subsidies and assistance to auto dealerships, large volume retailers, and other sales tax generators.

One year after AB 1290 took effect, this office reviewed the new project areas adopted pursuant to the law. We found no evidence that redevelopment projects established in 1994 were smaller in size or more focused on eliminating urban blight than project areas adopted in earlier years. (See *Redevelopment After Reform: A Preliminary Look* on our website.)

Because most of these new statutory restrictions applied only to new redevelopment project areas and existing projects could last for over 50 years, many redevelopment projects were not affected substantially by the changes. The RDAs also continued to find ways of establishing large new project areas despite the increasingly narrow statutory definitions of blight and developed land.

By 2009–10, RDAs were receiving over $5 billion in property taxes annually—a redirection of 12 percent of property tax revenues from general purpose local government use for redevelopment purposes. The state's costs to backfill K–14 districts for the property taxes redirected to redevelopment exceeded $2 billion annually.

Pass-Through Payments

Many redevelopment agencies (RDAs) made "pass-through payments" to local agencies to partly offset these agencies' property tax losses associated with redevelopment. State laws regulating these payments changed over the years.

Pre-1994 Law Allowed Amount of Payments to Be Negotiated. Before 1994, the terms of pass-through payments were negotiated between the RDA and a local agency. Most negotiations occurred between a city RDA and the county and special districts. (The K–14 districts typically were not active in these negotiations—in part because, after 1972, the state backfilled them for any property tax losses.) Pass-through agreements sometimes were negotiated as part of a settlement of a dispute over the legality of a proposed project area. Occasionally, RDAs agreed to provide 100 percent pass-through payments to the county and special districts, meaning that these agencies received their entire share of the property tax in pass-through payments. In these cases, the only property tax revenue that the RDA retained was the K–14 districts' and city's share.

Assembly Bill 1290 Replaced Negotiated Agreements With a Schedule of Payments. Seeking to encourage greater local oversight of RDA activities while still requiring RDAs to mitigate their fiscal effects on other local agencies, Chapter 942, Statutes of 1993 (AB 1290, Isenberg) eliminated RDA authority to negotiate pass-through payments and established a statutory formula for pass-through payment amounts. In contrast to the earlier negotiated agreements, post-1993 pass-through payments are distributed to all local agencies and the amount each agency receives is based on its proportionate share of the 1 percent property tax rate in the project area.

Budget Acts Shifted Funds From Redevelopment

Beginning in the 1990s, the state began taking actions in its annual state budget to require RDAs to shift some of their revenues to schools to offset the state's increased costs associated with redevelopment. The shifted funds typically were deposited into countywide accounts referred to as ERAF (Educational Revenue Augmentation Fund) or SERAF (Supplemental Educational Revenue Augmentation Fund). These state budgetary actions occurred nine times between 1992 and 2011.

Concerned about the magnitude and frequency of these budget shifts, redevelopment advocates (along with groups interested in transportation and other elements of local finance) sponsored Proposition 22. Among other things, this initiative measure (approved by the state's voters in November 2010), limits the Legislature's authority over redevelopment and prohibits the state from enacting new laws that require RDAs to shift funds to schools or other agencies.

Redevelopment in 2011

Governor's Budget Proposed Ending Redevelopment

Citing a need to preserve public resources that support core government programs, the Governor's 2011-12 budget proposed dissolving RDAs. Under the Governor's plan, property taxes that otherwise would have been allocated to RDAs in 2011-12 would be used to (1) pay existing redevelopment debts (such as bonds an agency sold to finance a retail or housing development), (2) make pass-through payments to other local governments, and (3) offset $1.7 billion of state General Funds costs. Any remaining redevelopment funds would be allocated to the other local agencies that serve the former project area, with the allocations based largely on each agency's share of property tax revenues in the project area.

In subsequent years under the Governor's plan, all remaining redevelopment funds (after payment of redevelopment debts and pass-throughs) would be allocated to local agencies based on their property tax shares, except that some funds were redirected from special districts to counties. The Governor's plan further specified that, beginning in 2012-13, the additional K-14 property tax revenues would be provided to schools to supplement any funds they would have received under the state's Proposition 98 guarantee.

Legislature Rejected Governor's Proposal

The administration's 2011 proposal—SB 77 (Committee on Budget and Fiscal Review) and AB 101 (J. Pérez)—launched a major debate within the Legislature regarding the role of redevelopment and the importance and costs of the program. Because the Governor's proposal distributed redevelopment property tax revenues in a manner that differed somewhat from existing property tax allocation laws (that is, it paid pass-through payments and shifted some special district property taxes to counties), the measures to implement it required approval by a two-thirds vote of the Legislature pursuant to the provisions of Proposition 1A (2004).

In March, SB 77 failed by one vote in the Assembly to secure the two-thirds vote it required to pass. Assembly Bill 101 was not taken up on the floor of the Senate. After March, legislative debate regarding redevelopment focused on proposals that (1) allowed RDAs to continue, albeit with modifications and with ongoing funding provided to schools, and (2) followed the existing statutory formulas related to property tax allocations, thereby avoiding Proposition 1A's two-thirds vote requirement.

Measures Enacted to Reform or End Redevelopment

In June 2011, the Legislature approved and the Governor signed two pieces of legislation:

- Chapter 5, Statutes of 2011 (ABX1 26, Blumenfield), imposed an immediate freeze on RDA authority to engage in most of their previous functions, including incurring new debt, making loans or grants, entering into new contracts or amending existing contracts, acquiring or disposing of assets, or altering redevelopment plans. The bill also dissolved RDAs, effective October 1, 2011 and created a process for winding down redevelopment financial affairs and distributing any net funds from assets or property taxes to other local taxing agencies.
- Chapter 6, Statutes of 2011 (ABX1 27, Blumenfield) allowed RDAs to opt into a voluntary alternative program to avoid the dissolution included in ABX1 26. The program included annual payments to K-12 districts ($1.7 billion in 2011-12 and about $400 million in future years) to offset the fiscal effect of redevelopment.

Recognizing the considerable legal uncertainties pertaining to both measures, the Legislature specified its policy preferences in the legislation. Specifically, if any major element of ABX1 27 (such as the required payments to schools) was determined to be unconstitutional, ABX1 27 specified that all of its provisions would be null and void. In addition, ABX1 26 specified that if ABX1 27 were rendered inoperative, this would have no effect on the provisions of ABX1 26. Thus, if the redevelopment reform measure were overturned, all RDAs would be subject to the dissolution provisions in ABX1 26.

One-Time State Fiscal Relief; Long-Term Funding for Schools

The budget assumed that the increased school funding from these two bills would raise $1.7 billion in 2011-12 (with most of the funds related to payments made by RDAs opting into the ABX1 27 program and a smaller amount resulting from increased school property taxes resulting from ABX1 26). Legislation adopted in March 2011 related to education directed the Department of Finance (DOF) to adjust the Proposition 98 calculations so that these increased funds would offset 2011-12 state General Fund spending obligations for schools. In 2012-13 and future years, ABX1 26 and ABX1 27 were estimated to generate a lower sum for K-12 school districts, potentially about $400 million initially. The March 2011 education bill directed DOF *not* to adjust the Proposition 98 calculations to reflect these increased funds in 2012-13 and later. As a result, going forward, any funds that K-12 districts received from ABX1 26 and ABX1 27 would be in addition to amounts required under Proposition 98.

RDAs Expedited Activities

During the legislative debate over redevelopment, many RDAs took actions to transfer or encumber assets and future tax increment revenues in case the Governor's proposal, or something similar, was enacted.

Rush to Issue Debt. Tax allocation bonds, which pledge future tax increment revenues to make principal and interest payments, are RDAs' primary borrowing mechanism. In the first six months of 2011, RDAs issued about $1.5 billion in tax allocation bonds, a level of debt issuance greater than during all 12 months of 2010 ($1.3 billion). The increase in bond issuance from 2010 to 2011 was even more notable because it occurred despite RDAs being required to pay higher borrowing costs. Specifically, about two-thirds of the bond issuances in 2011 had interest rates greater than 7 percent—compared with less than one-quarter of bond issuances in 2010. In fact, RDAs issued more tax allocation bonds with interest rates exceeding 8 percent during the first six months of 2011 than they had in the previous ten years.

Rush to Transfer Assets. Many RDAs also took actions to transfer redevelopment assets—land, buildings, parking facilities—to other local agencies, typically the city or county that created the RDA. One common approach was for the RDA and city council to hold a joint hearing in which the RDA transferred (and the city accepted) ownership of all RDA property and interests. After one city council called a special meeting in March to approve such a transfer, the mayor was reported in newspapers as saying, "We have no funds now in our redevelopment coffers that can be taken." In addition to transferring existing assets, many RDAs entered into "cooperation agreements" with their city, county, or another local agency. Under these agreements, the city, county, or other local agency would carry out existing and future redevelopment projects. Local agency staff and officials assumed that—if the Governor's proposal were enacted—the cooperation agreements would be an enforceable contract, requiring the allocation of future tax increment revenues as payment for performing the agreement. For example, the RDA of the City of San Bernardino entered into a project funding agreement that pledged $525 million in future tax increment revenue to a local non-profit corporation. The corporation—controlled by local elected officials including the mayor and two city council members—was given the responsibility of carrying out a list of projects from the RDA's capital improvement plan. Local cooperation agreements typically were not arm's length transactions, but rather, were between closely related governmental bodies with no third party involved.

Court Found Redevelopment Reform Measure Unconstitutional

Within three weeks of the Governor signing the redevelopment legislation, the California Redevelopment Association (CRA) and the League of California Cities filed petitions with the California Supreme Court challenging ABX1 26 and ABX1 27 on constitutional grounds. The CRA/League's argument focused on sections of the Constitution (1) establishing a special fund for tax increment revenues (Article XVI, Section 16, added by Proposition 18 of 1952) and (2) restricting the Legislature's authority to shift funds from RDAs (Article XIII, Section 25.5, added by Proposition 22).

On December 29, 2011, the court upheld ABX1 26, saying that the Legislature had authority to dissolve entities that it created and that neither Article XVI, Section 16 (the tax increment financing provision), nor Article XIII, Section 25.5 (Proposition 22) limited the Legislature's power to dissolve RDAs.

In reviewing ABX1 27, in contrast, the court found the measure unconstitutional because it required RDAs to make payments to schools as a condition of these agencies' continuation. The court found this violated Proposition 22's prohibition against the state "directly or indirectly" requiring an RDA to transfer funds to schools or to any other agency. Finally, in order to address the delays associated with litigation and an earlier court stay, the court extended a variety of dates and deadlines in ABX1 26 by four months, including the date RDAs were required to shut down.

The Unwinding Process

The Supreme Court's ruling meant all RDAs were subject to ABX1 26 and set in motion the process laid out in ABX1 26 for shutting down and disbursing their assets. The process focuses on two goals: (1) ensuring existing financial obligations are honored and paid and (2) minimizing any additional RDA obligations so that more funds are available to transfer for other governmental purposes.

The dissolution process contains four key elements:

- ***Local Management and Oversight.*** In most cases, the city or county that created the agency is managing its dissolution as its successor agency. An oversight board, with representatives from the affected local taxing agencies—K-14 districts, the county, the city, and special districts—supervises the successor agency's work. (We describe the work of the successor agency and oversight board further below.) All financial transactions associated with redevelopment dissolution are handled by the successor agency and the county auditor-controller.
- ***List of Future Redevelopment Expenditures.*** Various local parties are tasked with developing and reviewing lists of redevelopment "enforceable obligations." This term includes payments for redevelopment bonds and loans with required repayment terms, but typically excludes payments for projects not currently under contract. Only those financial obligations included on these lists may be paid with revenues of the former RDA. The first list of redevelopment obligations is called the Enforceable Obligation Payment Schedule (EOPS); later versions of this list are called the Recognized Obligation Payment Schedule (ROPS). Each ROPS is forward looking for six months. Most local agency cooperation agreements may be included on the EOPS, but not the ROPS.
- ***Local Distribution of Funds.*** Funds that formerly would have been distributed to the RDA as tax increment are deposited into a redevelopment trust fund and used to pay obligations listed on the EOPS/ROPS. Any remaining funds in the trust fund—plus any unencumbered redevelopment cash and funds from asset sales—are distributed to the local agencies in the project area.
- ***State Review.*** Actions of local oversight boards are subject to review by DOF. Actions by the county auditor-controller are subject to review by the State Controller's Office (SCO). The SCO also reviews redevelopment asset transfers completed during the first half of 2011 to determine whether any of them were improper and should be reversed.

Below, we provide more information about the responsibilities of the state and local entities that play a role in winding down redevelopment.

Final Actions of the RDA and Its City or County

Before its dissolution, a key responsibility of an RDA was preparing an EOPS delineating the payments it must make through December 31, 2011. Assembly Bill X1 26 required the agency to post the EOPS to its website and to transmit copies to DOF, SCO, and its county auditor-controller by late August 2011. Under ABX1 26, payments or actions of an RDA pursuant to its EOPS do not take effect for three business days. During this time, DOF is authorized to request a review of the RDA action and DOF has ten days to approve the action or return it to the RDA for reconsideration.

In part due to confusion regarding a partial stay of ABX1 26 while the State Supreme Court reviewed this legislation, this initial oversight function was not implemented fully. The DOF advises us that many EOPS were delayed and that about two dozen of the state's approximately 400 agencies still have not provided an EOPS. Very few of these payment schedules were reviewed in detail by DOF and, in those cases in which it raised concerns, the department is uncertain whether local agencies corrected their EOPS.

Successor Agency

Unless it voted not to, each city or county that created an RDA became its successor agency on February 1, 2012. The successor agency manages redevelopment projects currently underway, makes payments identified on the EOPS (and later, the ROPS), and disposes of redevelopment assets and properties as directed by the oversight board. A separate agency (discussed later in the report)

manages the RDA's housing assets. The work of the successor agency is funded from the former tax increment revenues. (A nearby box discusses the limitations on the agency's administrative spending.) The agency's liability for any legal claims is limited to the funds and assets it receives to perform its functions.

Successor Agency Administration Costs

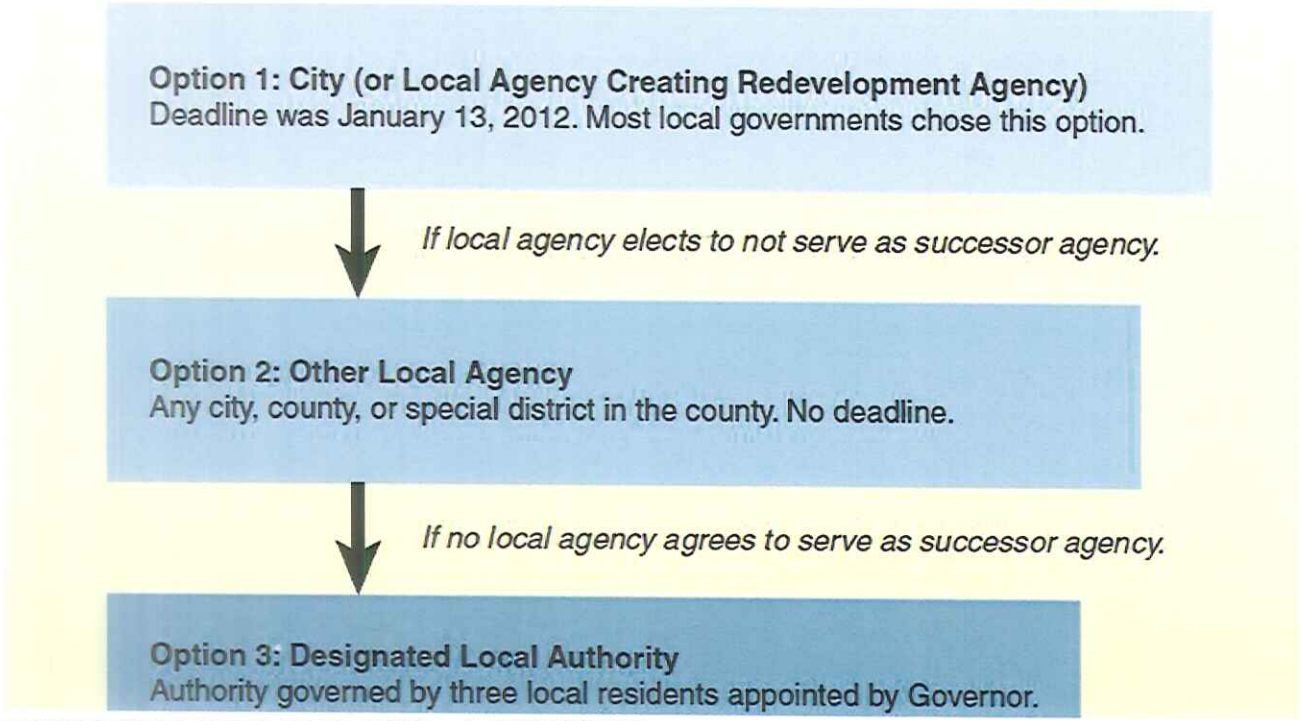
Subject to the approval of the oversight board, Chapter 5, Statutes of 2011 (ABX1 26, Blumenfield) specifies that successor agencies may spend $250,000 or up to 5 percent of the former tax increment revenues for administrative expenses in 2011–12 and $250,000 or up to 3 percent in future years. The county auditor–controller may reduce these amounts, however, if there are insufficient funds to pay enforceable obligations and the administrative costs of the county auditor–controller and State Controller. Funds for successor agency administration may be supplemented with money from other revenue sources, such as funds reserved for project administration.

Decision Whether to Serve as Successor Agency. Based on information available at this time, it appears that all cities and counties with RDAs became successor agencies with the exception of the Cities of Bishop, Los Angeles, Los Banos, Merced, Pismo Beach, Riverbank, and Santa Paula. In hearings to discuss this matter, local elected representatives and staff typically indicated that they thought that serving as a successor agency would put their community in a better position to advocate for continuing their projects and maintaining redevelopment properties. Cities electing not to serve as successor agencies, however, voiced offsetting concerns related to (1) the limitation on funds to pay successor agency administration expenses and (2) potential liabilities associated with terminated projects.

When a City or County Elects Not to Serve as a Successor Agency. Figure 2 summarizes how a successor agency is designated in cases when a local agency that created an RDA declines the role. In the case of the City of Los Angeles and the cities in Merced, Ventura, and Stanislaus Counties, no other local agency in the county agreed to serve as their successor agency and the Governor appointed county residents to serve on three–member governing boards of the "designated local authorities." Each authority will serve as the successor agency until a local agency elects to serve in this capacity.

Figure 2

Successor Agency Formation



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Operates until a local agency elects to become a successor agency.

Develops Key Document: ROPS. The successor agency is responsible for drafting a ROPS delineating the enforceable obligations payable through June 30, 2012 and their source of payment, and then additional ROPS every six months thereafter. There are two major differences between the ROPS and the earlier EOPS. First, ROPS are subject to the approval of an oversight board (see next page) and certification by the county auditor–controller. Second, most debts owed to a city or county that created the RDA are no longer considered to be enforceable obligations and thus may not be listed on the ROPS. This includes most of the cooperation agreements established in 2011 and many other types of financial obligations between an RDA and the government that created it.

Frequently, RDA–city or RDA–county financial agreements were established for the purpose of reducing the sponsoring government's costs or increasing its revenues. For example, many RDAs paid a significant share of their sponsoring local government's administrative costs (such as part of the salaries for the city council and city manager). Doing so freed up city or county funds so that they could be used for other purposes. Some RDAs also lent money to their city or county without charging interest on the loans, allowing the city or county to invest the funds and keep the earnings. Other sponsoring governments charged their RDAs above market interest rates for loans, thereby allowing the city or county to benefit from unusually high interest earnings. Under ABX1 26, many of these obligations would not be eligible to be placed on the ROPS.

Oversight Board

Each successor agency has an oversight board that supervises it. The oversight board is comprised of representatives of the local agencies that serve the redevelopment project area: the city, county, special districts, and K–14 educational agencies. Oversight board members have a fiduciary responsibility to holders of enforceable obligations, as well as to the local agencies that would benefit from property tax distributions from the former redevelopment project area. As discussed in a nearby box, the seven–member board is designed so that no local agency has dominant control.

Oversight Board Will Make Major Decisions. Assembly Bill X1 26 gives the oversight board considerable authority over the former RDA's financial affairs. In addition to approving the successor agency's administrative budget, the oversight board adopts the ROPS—the central document that identifies the financial obligations of the former RDA that the successor agency may pay over the next six months.

The oversight board may determine that a contract between the dissolved RDA and others should be terminated or renegotiated to increase property tax revenues to the affected local agencies. For example, the oversight board may cancel subsequent stages of a project if it finds that early termination would be in the best interest of the local agencies. Similarly, it may (1) direct the successor agency to dispose of assets and properties of the former RDA or transfer them to a local government and (2) terminate existing agreements that do not qualify as enforceable obligations.

Actions of an oversight board do not go into effect for three business days. During this time, DOF may request a review of the oversight board's action. The DOF, in turn, has ten days to approve the oversight board's action or return it to the oversight board for reconsideration.

Successor Housing Agency

Under ABX1 26, the former RDA's housing functions and most of its housing assets are transferred to a successor housing agency. Housing assets that transfer to the successor housing agency include property, rental payments, bond proceeds, lines of credit, certain loan repayments, and other small revenue sources. The unencumbered balance in the former RDA's Low and Moderate Income Housing Fund, however, does not transfer to the successor housing agency. Assembly Bill X1 26 directs the county auditor–controller to distribute the unencumbered balance in the housing fund as property tax proceeds to the affected local taxing entities. (The box below this one provides more information on the Low and Moderate Income Housing Fund.)

Local Agencies Select Oversight Board Members

Most oversight boards are made up of the following:

- Two members appointed by the county board of supervisors, including one member representing the public.
- Two members appointed by the mayor, including one member representing the recognized employee organization with the largest number of former redevelopment agency (RDA) employees.
- One member appointed by the largest special district, by property tax share, within the boundaries of the dissolved RDA.
- One member appointed by the county superintendent of education or county board of education.
- One member appointed by the Chancellor of the California Community Colleges.

The Governor may appoint a representative for any position that has not been filled as of May 15, 2012. The oversight board may begin working as soon as it has a four–member quorum.

Board Member Compensation. Oversight board members do not receive compensation or reimbursement for expenses. No oversight board member may serve on more than five oversight boards simultaneously.

Open Government Requirement. The oversight board is a local entity for purposes of the Ralph M. Brown Act, the California Public Records Act, and the Political Reform Act of 1974. Members are responsible for giving the public access to its hearings and deliberations, disclosing any private economic interests, and disqualifying themselves from participating in decisions in which they have a

financial interest.

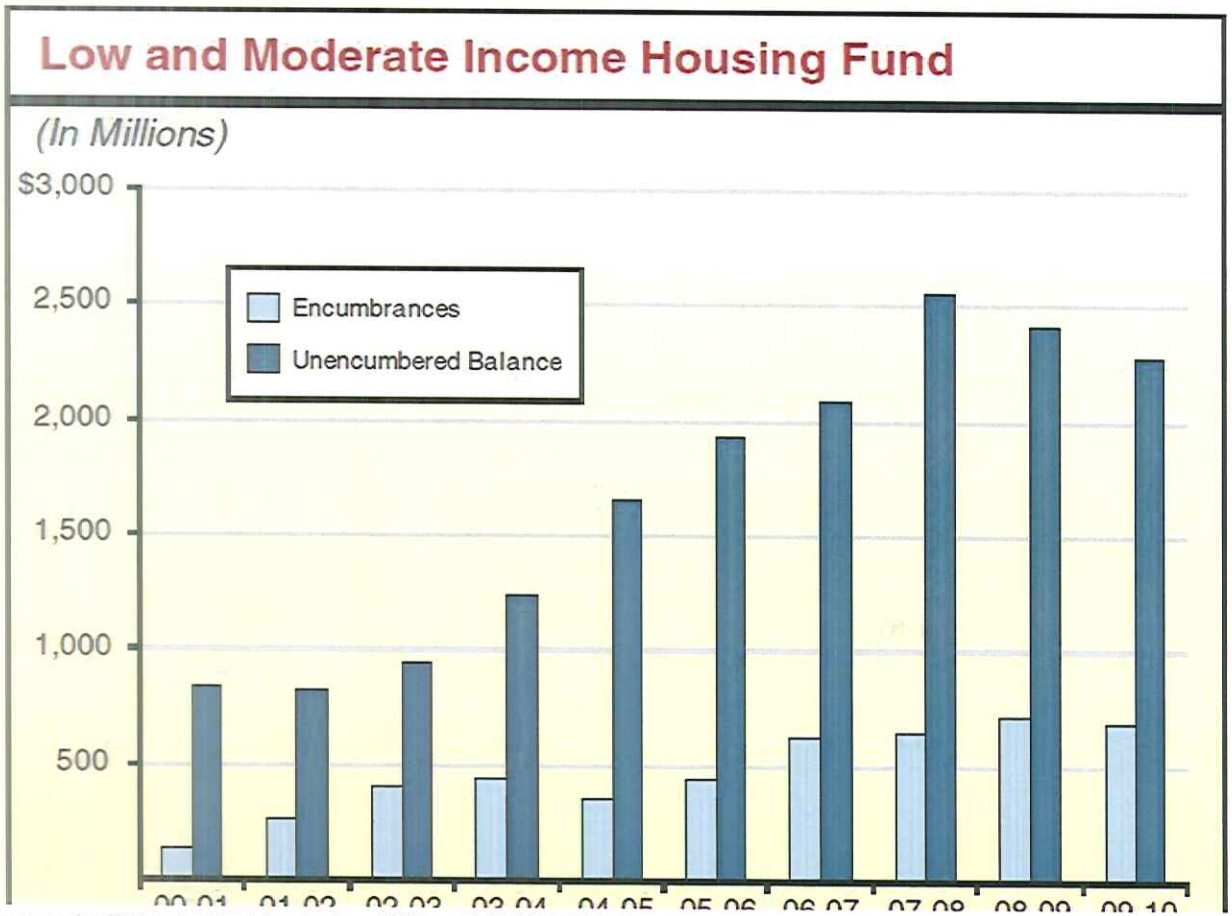
Future Consolidation of Oversight Boards. All oversight boards within a county are consolidated by July 1, 2016. The membership on the consolidated oversight board is similar to the membership of the initial oversight board, except that the city and special district members are appointed by countywide selection committees.

The Low and Moderate Income Housing Fund

Prior to their dissolution, state law required redevelopment agencies (RDAs) to deposit 20 percent of their annual tax increment revenues into the Low and Moderate Income Housing Fund to provide affordable housing. These housing funds were intended to maintain and increase affordable housing by acquiring property, rehabilitating or constructing buildings, providing subsidies for low– and moderate–income households, or preserving public subsidized housing units at risk of conversion to market rates.

For a variety of reasons, some RDAs retained large balances in their housing fund. As shown in the figure, RDAs' annual reports to the Department of Housing and Community Development (HCD) show that the unencumbered balances have grown over time to $2.2 billion in 2009–10. We would note, however, that there is some uncertainty about this figure. Redevelopment agencies provide a separate annual report to the State Controller's Office (SCO) that showed an unencumbered balance in the housing fund of about $1.3 billion. This difference occurs because HCD and SCO have separate criteria for distinguishing between encumbered and unencumbered funds. Also, the reports reflect balances for the 2009–10 fiscal year, balances that likely have changed. Some agencies may have accumulated additional balances, while others made large expenditures or transfers for affordable housing purposes or to shield assets from the proposed dissolution process.

Under Chapter 5, Statutes of 2011 (ABX1 26, Blumenfield), the unencumbered balance is distributed as local property tax revenue. (The Legislature recently considered legislation that would require unencumbered balances in the housing fund to remain with the successor housing agency for affordable housing activities.) Based on the HCD and SCO reports, the unencumbered balance available for distribution likely is between $1 billion and $2 billon, but the actual balance will depend upon the spending of former RDAs since 2009–10 as well as how successor agencies and oversight boards distinguish between encumbered and unencumbered balances.

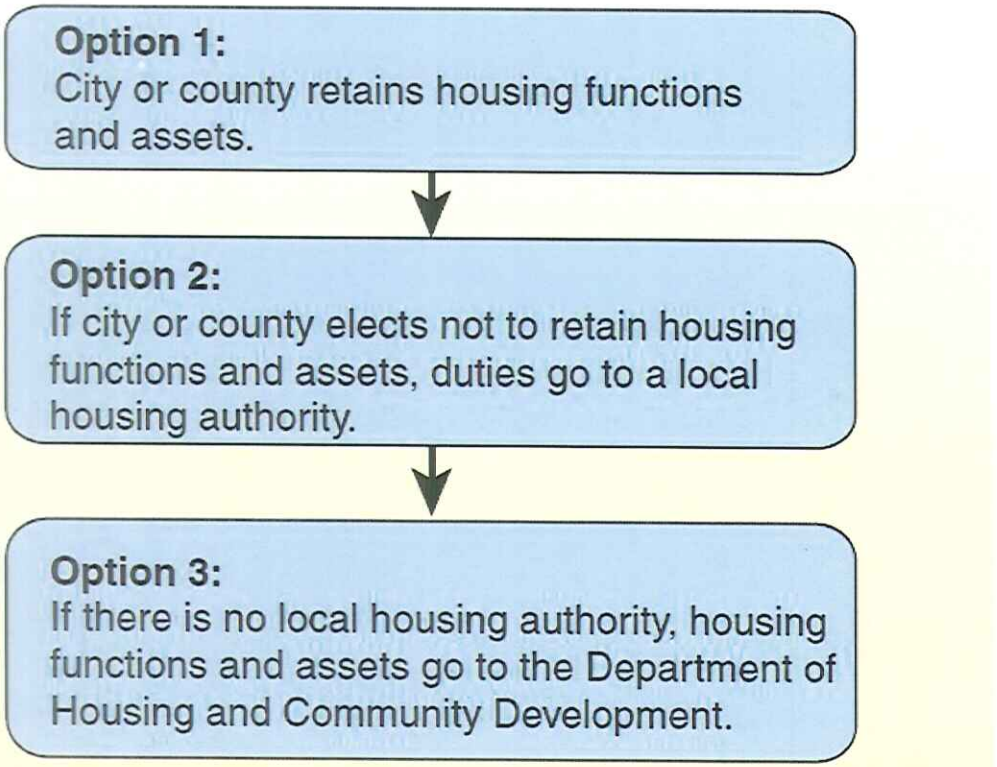


Data Source: California Department of Housing and Community Development.

As shown in Figure 3, the sponsoring city or county may elect to become the successor housing entity. If the sponsoring community declines this role, then the former redevelopment agency's housing functions and assets are transferred to the local housing authority, or to the state Department of Housing and Community Development if no local housing authority exists. Although ABX1 26 does not specify when sponsoring communities must elect to serve as the successor housing agency, it appears that most cities and counties elected to serve as the successor housing agency at the same time they considered becoming the successor agency. Unlike the successor agency, the successor housing agency's actions related to transferred redevelopment assets are not subject to the review of the oversight board or DOF.

Figure 3

Options for Creating a Successor Housing Agency



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County Auditor–Controller

The county auditor-controller administers each former RDA's Redevelopment Property Tax Trust Fund ("trust fund"). Revenues equal to the amounts that would have been allocated as tax increment are placed into the trust fund for servicing the former RDA's debt obligations, making pass-through payments, and paying certain administrative costs. The auditor then distributes any trust funds not needed for these purposes—as well as any remaining redevelopment cash balances and the proceeds of asset sales—to the local governments in the area as property taxes.

The auditor also is responsible for certifying the successor agency's draft ROPS and auditing each dissolved RDA's assets and liabilities. Assembly Bill X1 26 authorizes county auditor-controllers to recoup their administrative costs associated with these requirements from the trust fund.

State Controller

Assembly Bill X1 26 assigns the SCO responsibility for recouping redevelopment assets inappropriately transferred during the first half of 2011. Specifically, SCO is directed to determine whether the RDA transferred an asset to the city or county that created it (or to another public agency). If the asset has not been contractually committed to a third party, "the Controller shall order the available asset to be returned" to the successor agency. Under this authority, for example, the Controller could order the return of land or buildings transferred from RDA ownership to city ownership during the first half of 2011. For example, many RDAs during 2011 transferred all of their buildings and land to the city. The SCO could order the city to return these assets.

The SCO also plays an oversight role with regard to activities of the county auditor-controller that is similar to the role DOF plays in regard to the oversight board. Specifically, actions of a county auditor-controller do not take effect for three business days. During this time, the SCO may request a review of the county auditor-controller's action. The SCO has ten days to approve the county auditor-controller's action or return it to the auditor-controller for reconsideration.

Assembly Bill X1 26 specifies that SCO may recoup its costs related to these activities from tax increment revenues that previously would have been allocated to the RDA.

Redistributing Redevelopment Funds

Over time, the dissolution of RDAs will increase the amount of general purpose property tax revenues that schools, community colleges, cities, counties, and special districts receive by more than $5 billion annually. In the near term, however, there is uncertainty regarding the amount of property tax revenues that will be available, which local governments will receive the revenues, and the extent to which these increased funds will offset state General Fund education expenses.

This section begins with an example showing—for one fictional RDA—how the county auditor-controller would (1) determine the amount of redevelopment trust funds to distribute to affected taxing agencies and (2) how much additional property taxes each agency would receive. The section then examines these questions from a statewide perspective.

Example: Determining the Amount of Funds to Be Distributed

As shown in Figure 4, the county auditor-controller determined that the former RDA would have received $5 million in tax increment. The RDA had an agreement to pay other local governments $1 million in pass-through payments. The ROPS—prepared by the successor agency and approved by the oversight board—indicates that the former RDA had $20 million in bonded indebtedness and other enforceable obligations, $700,000 of which is due and payable from tax increment.

Figure 4

Example: Funds to Distribute

(In Thousands)

Trust Fund	
Property taxes formerly called tax increment	$5,000
Pass-through payments	–1,000
Enforceable obligations payable that year	–700
Successor agency administration	–250
County auditor–controller and State Controller administration	–50
Trust Funds to Distribute	**$3,000**
Cash and Assets	
Unencumbered agency cash	$200
Total Funds to Distribute	**$3,200**

The successor agency's administrative costs total $250,000 and its cost for reimbursing the county auditor–controller and SCO for their work related to ABX1 26 totals $50,000. The successor agency reports that the dissolved RDA had assets of $200,000 in unencumbered cash (available for distribution immediately) and some land holdings (that will be sold over time).

In the example, the county auditor–controller would have a net of $3 million of residual trust funds and $200,000 in cash to distribute to the local agencies serving the redevelopment project area. This process for calculating the trust fund amount would continue every six months as long as the former RDA has enforceable obligations. After all of the enforceable obligations are paid, the project area will be closed and the property taxes formerly considered tax increment will be distributed to local agencies. These agencies also will receive funds from the liquidation of assets of the former RDA.

What if Trust Fund Costs Are Greater Than Revenues? In the example, there is $3 million to distribute because revenues deposited into the trust fund are greater than its expenses. What would happen if expenses exceeded revenues? In general, this should not be the case because ABX1 26 eliminates a major redevelopment expense—the requirement to set aside 20 percent of tax increment revenues for affordable housing. In addition, the maximum allowable expenditure for successor agency administration is lower than the amount most RDAs spent from tax increment on administration in previous years.

Given these two cost reductions, most trust funds likely will have ample resources to pay their enforceable obligations and administrative costs for the county auditor–controller and SCO. Should the trust fund's resources be insufficient, however, ABX1 26 directs the county auditor–controller to reduce the successor agency's funding for administration and, if necessary, reduce funding for some pass–through payments. (Some pass–through payments—those that must be paid *before* debt obligations—would not be reduced.) Assembly Bill X1 26 also specifies that the county treasurer may loan funds from the county treasury to ensure prompt payment of enforceable obligations.

Example: Allocating Redevelopment Residual Funds

In our example, $3.2 million is available for distribution to the other local agencies. Assembly Bill X1 26 directs the county auditor–controller to allocate the $200,000 to local agencies proportionately based on each agency's tax shares in the project area. In our fictional example, K–14 districts receive 50 percent of the property tax, counties receive 25 percent, cities receive 15 percent, and special districts receive 10 percent. Figure 5 displays how the $200,000 in cash would be distributed among local agencies.

Figure 5

Example: Distribution of Funds From Cash and Assets

(In Thousands)

	Tax Share	Cash and Assets
K–14 districts	50%	$100
County	25	50
City	15	30
Special districts	10	20
Totals	**100%**	**$200**

Assembly Bill X1 26 is less clear, however, about the distribution of the $3 million of residual trust funds. The administration and some counties interpret the measure's provisions as requiring these funds to be distributed the same way that cash and funds from redevelopment asset sales are distributed: by tax shares.

In our view, however, the stronger interpretation is that these funds are distributed in a way that takes into account the payments each local agency received from pass–through payments (which, in our example, total $1 million). That is, the $3 million is distributed in a way that ensures that no agency receives more from the trust fund and pass–through payments *combined* than it would have if funds from both sources ($4 million) were distributed based on tax shares.

Our understanding is that this unusual section of the legislation was drafted in an effort to avoid reallocating property taxes and thus requiring approval by two–thirds of the Legislature under Proposition 1A. While technical in nature, this matter has significant implications for the distribution of revenues—particularly for schools and cities (which receive fairly low pass–through payments) and counties and special districts (which receive comparatively high pass–through payments).

Figure 6 illustrates the fiscal effect of "netting out" pass–through payments. In our example, the county and special districts received pass–through payments of $750,000 and $250,000, respectively. If these payments are *excluded* from the calculation of distribution from the trust fund, counties and special districts receive $750,000 and $300,000, respectively, from the trust fund. Conversely, if these payments are *included* in the distribution of the $3 million of trust funds, the county and special district's distribution falls to $250,000 and $150,000, respectively, and the school's and city's distribution increases. In certain cases, it is possible that the county or special district might receive *lower* total funds under ABX1 26 than it did previously. This would be the case in our fictional RDA, for example, if there were only $1 million of trust funds to distribute. In that case, the county would get 25 percent (its property tax share) of $2 million ($1 million of trust fund revenues and $1 million of pass–through revenues), or $500,000. Using the same approach, the special district would receive 10 percent of $2 million, or $200,000. In effect, some of the funds that otherwise would have been distributed as pass–through payments to the county and special districts are instead distributed to other local agencies. Over time, however, as the enforceable obligations are paid off, trust fund distributions will increase for all local governments.

A nearby box provides additional information about this provision of ABX1 26.

Figure 6

Example: Alternative Calculations for Distributing Redevelopment Trust Fund

(In Thousands)

	Treatment of Pass–Through Payments					
	Excluded			Included		
	Pass–Through	Trust Fund	Totals	Pass–Through	Trust Fund	Totals
K–14 districts	—	$1,500	$1,500	—	$2,000	$2,000
County	$750	750	1,500	$750	250	1,000
City	—	450	450	—	600	600
Special districts	250	300	550	250	150	400
Totals	**$1,000**	**$3,000**	**$4,000**	**$1,000**	**$3,000**	**$4,000**

The Pass–Through Netting Out Provision

What Is the Purpose? Chapter 5, Statutes of 2011 (ABX1 26, Blumenfield), allocates the property tax revenues of former redevelopment agencies (RDAs) to K–14 districts, cities, counties, and special districts. Proposition 1A (2004) requires a two–thirds vote of the Legislature whenever it passes a law that alters the share of property tax revenues that cities, counties, and special districts receive.

Our understanding is that ABX1 26, a measure approved by a majority vote of the Legislature, took the approach of allocating all former tax increment funds (except funds pledged to enforceable obligations or required for administration) in a manner that was consistent with the state's existing property tax allocation laws. Under this approach, therefore, agencies that received a higher share of pass–through agreement funds would receive lower allocations from the trust fund.

Why Does Netting Out Affect Some Local Agencies More Than Others? Nearly two–thirds of all pass–through payments stem from pre–1994 negotiations between RDAs and local agencies. For various reasons, counties and special districts were particularly active in this negotiation process. As a result, counties and special districts receive about two–thirds of all pass–through payments. This share of pass–through payments is almost double the share that counties and special districts would receive if pass–through payments were distributed based on tax shares.

Because counties and special districts get a disproportionately large share of pass–through payments, they would get less money from trust fund distributions if these pass–through payments were included in the trust fund calculations. The K–14 districts and cities, in contrast, would get a higher share of redevelopment trust fund distributions.

Statewide Redevelopment Funds Available for Redistribution

Statewide, the amount of residual trust funds available to distribute to local governments will depend on the outcome of calculations—similar to Figure 4—undertaken for each former RDA in the state. These calculations will reflect the unique financial obligations, revenues, and assets of each RDA.

As shown in Figure 7, the administration estimates that $1.8 billion of trust funds will be distributed to local governments annually in 2011–12 and 2012–13. While this estimate is subject to considerable uncertainty, it may be high because the administration understates some significant costs.

Figure 7

Governor's Estimate of Funds Available for Distribution

(In Billions)

Trust Fund	2011–12	2012–13
Property taxes formerly called tax increment	$5.4	$5.4
Pass–through payments	–1.2	–1.2
Enforceable obligations payable during year	–2.4	–2.4
Successor agency administration	—	—

County auditor–controller and State Controller administration	—	—
Trust Funds to Distribute	**$1.8**	**$1.8**
Cash and Assets		
Unencumbered agency cash	—	—
Total Funds to Distribute	**$1.8**	**$1.8**

- ***Understates Costs to Pay Enforceable Obligations.*** The administration's estimate assumes enforceable obligations will be paid over 20 years at a 4.6 percent interest rate. Our review of enforceable obligations indicates that some are short–term contracts and loans and others are bonds issued years ago. Amortizing all these obligations over 20 years understates their costs in the near term. We also note that the average interest rate on redevelopment bonds is higher than 4.6 percent. If we adjust the estimate to assume that these debts are paid over 15 years at a 5.6 percent interest rate (the average rate for bonds issued between 2006 and 2010), annual debt costs would increase by $600 million and local governments' distributions would fall by the same amount.
- ***Assumes a Full Year of Implementation in Current Year.*** The administration's estimate of 2011–12 savings assumes that RDAs reduced their spending in the first half of the fiscal year. While ABX1 26 prohibited RDAs from paying during this time any obligation not listed on their EOPS, the EOPS that we reviewed appeared to authorize spending that was the same—or higher—than RDA spending in previous years. In addition, county auditor–controllers transferred half of total annual tax increment to RDAs in December or early January and did not reserve funds for deposit to the redevelopment trust fund. Due to these factors, the full fiscal effect of ABX1 26 may not begin until 2012–13. If we adjust the administration's estimate to reflect the half–year implementation of ABX1 26 in the current year, local governments' distributions would fall by at least several hundred millions of dollars.
- ***Overlooks Administrative Costs.*** Three parties may fund their dissolution–related administrative costs from property tax revenues that previously were tax increment: the successor agency, the county auditor–controller, and the SCO. While not known, these costs could be in the range of $200 million to $300 million in 2011–12 and 2012–13 and would reduce the funding distributions to local governments.
- ***Assumes Cooperation Agreements Are Not Paid.*** The administration's debt cost estimate implicitly assumes that the adopted ROPS will not include cooperation agreements and other non–arm's length transactions between an RDA and its city or county government. Many successor agencies, however, are listing these agreements on their draft ROPS and the statewide redevelopment association is encouraging them to do so to safeguard their right to "challenge the invalidation of these agreements." Under ABX1 26, the oversight boards can remove these costs from a ROPS before adopting it. In addition, DOF has authority over oversight board actions. We note, however, that (1) the court–revised schedule provides little time for the oversight board or DOF to complete the analyses needed to determine whether debts are appropriate for the ROPS and (2) DOF has limited staff working on dissolution matters and oversight boards have no independent staff. Given these factors, it is possible that some adopted ROPS will show higher costs than the administration estimates, reducing the amount of trust fund revenues that will be distributed to local governments in 2011–12 by potentially hundreds of millions of dollars. (This problem could be corrected going forward by removing inappropriate debts from the next adopted ROPS.)

Other elements of the administration's estimate, however, could result in gains that could more than offset the costs identified above. Specifically:

- The administration's estimate does not account for distributions of unencumbered cash transferred from the successor agency. This is notable because many RDAs were planning to participate in the revised redevelopment program authorized by ABX1 27 and reserved significant funds to make the required payments ($1.7 billion) to schools.
- The administration's estimate also does not account for distributions of other redevelopment assets, including the assets that were transferred during the first half of 2011 that the SCO may order returned to the successor agency and the up to $2 billion of unencumbered funds in the affordable housing account. (As mentioned earlier, however, legislation to eliminate the distribution of housing funds is pending in the Legislature.)
- Finally, the administration's estimate does not adjust the distribution of trust funds to account for netting out pass–through payments. While this factor does not affect the administration's estimate of total funds to be distributed, it would provide more funds for K–14 districts and cities and, conversely, less to counties and special districts.

On balance, we think the administration's estimate of the amount of funds to be distributed to local governments in 2011–12 and 2012–13 could be low, possibly by hundreds of millions of dollars. We note, however, that this assessment assumes that the unencumbered RDA cash and assets are available for distribution and that successor agencies reduce their spending to comply with ABX1 26's provision. If some or all of the assets are not distributed or successor agencies do not reduce their spending, the administration's estimate might be overstated by several hundred million to over $2 billion. We expect to have a more refined estimate late this spring after the oversight boards begin their work and we get initial reports from county auditor–controllers.

K–14 District Share of Distribution. Under the administration's interpretation of the funding distribution process, slightly more than half of all net trust funds (about $1 billion of the $1.8 billion) would be distributed to K–14 districts. Under our interpretation, the schools receive more funds, because the trust fund distribution would reflect each agency's property tax share *and* its pass–through payments. If we modify the administration's estimate to reflect the netting out of pass–through payments, the schools would receive about 80 percent of the distributed funds. This percentage would decline over time (as more funds are distributed outside of the pass–through process) and eventually the K–14 district share would be in the range of 45 percent to 60 percent (the K–14 district share of property taxes in most parts of the state).

Interaction With State K–14 Education Funding

As the local agencies that receive the largest share of revenues raised from the 1 percent property tax rate, K–14 districts will receive the largest share of property tax revenues from the dissolution of RDAs. These funds will grow over time as enforceable obligations are retired and property tax revenues increase. Whether these additional property tax revenues provide additional resources to K–14 education, however, depends on their interaction with the state's education finance system. As noted earlier in the report, K–14 education funding is a shared state–local responsibility. Proposition 98 establishes a guaranteed funding level through a combination of state General Fund appropriations and local property tax revenues. The extent to which the dissolution of redevelopment provides additional resources to K–14 districts or offsets state General Fund costs is uncertain and will depend on three key issues.

- ***How Much Redevelopment Trust Funds Will Be Distributed and When?*** As discussed above, the administration's estimate that a total of $1.8 billion will be available to distribute to local governments in 2011–12 and 2012–13 could be off by hundreds of millions to billions of dollars. It is also possible that the administration's estimate will be correct, but that more funds will be distributed in 2011–12 and less in the following year—or the other way around. (This could be the case, for example, if county auditor–controllers need to delay trust fund distributions to local agencies because decisions regarding the payment of some redevelopment obligations are still outstanding at the end of the fiscal year—or if all of the agency's unencumbered cash reserves are distributed in 2011–12 and no cash reserves remain available for distribution in 2012–13.) Finally, the decision regarding whether to take pass–through payments into account in the distribution of redevelopment trust proceeds will affect the share of total trust proceeds that are provided to K–14 districts.
- ***How Much of These Funds Will Be Distributed to Basic Aid Districts?*** In a few districts, local property tax revenues exceed these districts' general fund amounts provided through Proposition 98. These districts, commonly referred to as "basic aid" districts, keep the excess local revenue and use it for educational programs and services at their discretion. Any trust funds distributed to these basic aid districts therefore would give them additional revenues to use for educational purposes, but would not offset state General Fund education costs. At this point, we are not able to estimate the amount of trust funds that could be allocated to basic aid districts, but—based on the distribution of tax increment revenues across the state and other factors—do not expect that they would receive more than about 10 percent of the total trust fund revenues provided to K–14 districts.
- ***Will Proposition 98 Be Rebenched to Reflect These Additional Funds?*** The state has taken action many times to "rebench" the Proposition 98 guarantee when it made policy changes that shifted local property tax revenues to or away from schools. The net effect of these actions is that the amount of the Proposition 98 minimum guarantee is not affected by the shifts in local property taxes. The 2011–12 budget assumed that the state would rebench Proposition 98 so that the funds shifted from redevelopment would, in turn, reduce the state's education costs under Proposition 98. Going forward, however, Chapter 7, Statutes of 2011 (SB 70, Committee on Budget and Fiscal Review) directed the state not to rebench Proposition 98. As a result, the property taxes shifted from redevelopment would not reduce state education funding going forward. The 2012–13 budget plan, however, proposes to change this policy and rebench the minimum guarantee to account for the redevelopment revenues on an ongoing basis. If the Legislature adopts this proposal, therefore, the state would realize education cost savings from the amount of trust funds and assets provided to K–14 districts.

Findings and Recommendations

Over the coming months, the Legislature and administration will need to make many decisions regarding implementing redevelopment dissolution. Figure 8 summarizes our major findings and near–term recommendations.

Figure 8

Summary of Major Findings and Near–Term Recommendations

— Although ending redevelopment was not the Legislature's goal, the state had few practical alternatives.

— Ending redevelopment changes the distribution of property tax revenues, not the amount collected.

— Design of replacement program merits careful consideration.

— The redevelopment agency unwinding process could yield important civic benefits.

- Hold hearings to promote local review over use of the property tax.
- Provide funding to train K–14 oversight board members.

— Alternative use of redevelopment assets raises difficult policy and fiscal issues.

— Key state and local choices will drive state fiscal effect.

— Clarifying amendments would help implementation of ABX1 26 (Blumenfield).

- Clarify treatment of pass–through payments.
- Address timing issues.
- Clarify authority to take actions to ensure that funds are available to pay bonded indebtedness.

Few Practical Alternatives to Ending Redevelopment

Redevelopment in 2011 bore little resemblance to the small, locally financed program the Legislature authorized in 1945. Statewide, the RDAs received more property taxes in 2011 than all of the state's fire, parks, and other special districts combined and, in some areas of the state, more property taxes than the city or county received. Redevelopment also imposed considerable costs on the state's General Fund because the state backfilled K–14 districts for property tax revenues distributed to RDAs. Overall, redevelopment cost the state's General Fund about as much as the University of California or California State University systems, but did not appear to yield commensurate statewide benefits.

The last two decades were marked by considerable tension between RDAs and the state, with the state frequently requiring RDAs to shift money to schools and RDAs challenging these fund shifts in

court. For a while, RDAs assumed that Proposition 1A (2004)—a measure that reduced the state's authority over the property tax—would insulate them from future funding shifts. After the courts found that Proposition 1A did not safeguard them from a $1.7 billion 2009 shift and a $350 million 2010 shift, however, RDA advocates (along with other parties) sponsored Proposition 22 to eliminate all state authority over property tax increment.

From the state's standpoint, Proposition 22's restrictions on the state's ability to control redevelopment costs and the ongoing nature of its fiscal difficulties left it with few options. The Governor proposed eliminating redevelopment. The Legislature attempted to offer RDAs an alternative: continue redevelopment, but with significant changes to reduce its state costs. A lawsuit filed by redevelopment program advocates overturned the Legislature's alternative, however, setting in motion dissolution of the redevelopment program statewide.

Over the coming months, the magnitude of administrative, policy, and legal issues associated with unwinding redevelopment inevitably will prompt proposals to slow down or stop the redevelopment dissolution process. Notwithstanding the considerable difficulties associated with ending redevelopment, the state has few practical alternatives. Simply put, the state does not have the ongoing resources to support redevelopment's continuation and the Constitution's many complex provisions prohibit the Legislature from taking actions that could revamp the program into something that the state could afford. For these reasons, we recommend that the Legislature not take actions that slow or stop the dissolution process.

Ending Redevelopment Does Not Change Total State-Local Resources

Redevelopment dissolution does not change the amount of taxes property owners pay or the amount of funds local governments receive from this source. Contrary to some reports, ending redevelopment does not "lose" any funds. Instead, the key fiscal effects of redevelopment dissolution are that:

- ***More property tax revenues will be distributed to K-14 districts, counties, cities, and special districts—and less to agencies for redevelopment activities.*** This shift in property tax distributions will be modest in 2011-12, but will increase significantly over time. Within about 20 years, most redevelopment enforceable obligations will be paid and property tax revenues for K-14 districts, counties, cities, and special districts will be about 10 percent to 15 percent higher than they otherwise would have been. These property tax revenues may be used for any local program or local priority.
- ***The increased K-14 district property taxes will offset state costs for education.*** Under California law, education is a shared state-local funding responsibility. The increased property taxes for K-14 districts, therefore, will decrease the amount of state resources needed to pay for education.
- ***There is no requirement that the increased property tax revenues be used for economic development and affordable housing.*** Under prior law, RDAs annually reserved over $3 billion of tax increment revenues for economic development programs and over $1 billion for affordable housing. (The RDAs spent their remaining funds providing pass-through payments to other local governments.) Although the manner in which some RDAs spent these funds was controversial, economic development and affordable housing programs had a major, dedicated revenue source. Assembly Bill X1 26 does not impose requirements on how local governments spend property taxes that they receive. As a result, it is very likely that the amount of future spending on economic development and affordable housing will be lower than it was previously.

Design of Replacement Program Merits Careful Consideration

As described in this report, the redevelopment program of the 1950s and 1960s changed over the years. During its final decades, in addition to its use for "bricks and mortar" projects, redevelopment funds were used for projects more tangentially related to economic development (such as improving flood control for the region) and to free up local general fund revenues (for example, by paying part of the city manager's salary and other administrative costs). Redevelopment also was a major funding source for affordable housing, often providing money to start a project and additional resources to make it pencil out. Finally, redevelopment helped pay for many other local priorities, including subsidies for sport stadiums, businesses, and the arts.

The end of the redevelopment has prompted interest in developing a replacement program. This interest, in turn, prompts the question: Which elements of the redevelopment program should be replaced? If, for example, the goal is for local governments to have a focused tool for economic development and affordable housing, then five approaches (summarized below) merit consideration. In reviewing the three approaches that provide local financing tools, we note that none has all of the elements that made redevelopment so attractive and valuable to California cities and counties. Specifically, redevelopment provided the sponsoring government with considerable resources and did so without: requiring the approval of local voters or business owners, directly imposing increased costs on local residents or business owners, or requiring additional voter approval prior to issuing debt. As a result, many communities may not be able to raise funds using these tools that are comparable in magnitude to the funds that they raised using redevelopment.

Business Improvement Districts (BIDs). Local governments could rely more extensively on existing law authorizing BID assessments. State law allows local governments to use these assessments for many targeted economic development projects and activities, such as rehabilitating existing structures, providing street improvements and lighting, building parking facilities, marketing, and sponsoring public events. The BID assessments do not require local voter approval, but may not be imposed if a majority of the affected business owners object.

Infrastructure Financing Districts (IFDs). Current law allows cities and counties to form IFDs to receive tax increment financing, provided that (1) every local agency that contributes property tax increment revenue to the IFD consents and (2) two-thirds of local voters approve their formation and any future bond issuances. In recent years, the Legislature has considered measures that would make it easier for local agencies to form these districts and issue debt. In reviewing proposals to revise IFD law, we would urge the Legislature to preserve one key component—the prohibition against redirecting another local agency's property tax revenues without their consent. Maintaining this provision reduces the likelihood that IFD funds are used for projects that do not benefit the broad local community.

Property Tax Debt Override. The Constitution limits property taxes to 1 percent of the value of property. Property taxes may exceed or "override" this limit only to pay for (1) local government debts approved by the voters prior to July 1, 1978 or (2) bonds to buy or improve real property that receive voter approval after July 1, 1978. The Constitution establishes a two-thirds voter approval requirement for local government bonds, but provides a lower voter-approval threshold (55 percent) for local school facility bonds that meet certain conditions. The Legislature could propose an amendment to the Constitution to extend the lower vote threshold to local property tax overrides for economic development and affordable housing purposes. Alternatively, the authority to propose overrides using the lower voter-approval threshold could be limited to local governments that satisfy certain affordable housing objectives.

Regulatory Changes. Local governments interested in promoting economic development and affordable housing could explore regulatory approaches to achieving their goals. For example, local

government actions to relax on-sight parking requirements or modify zoning policies can significantly reduce the cost of constructing housing in urban areas. Similarly streamlining project approvals can help promote economic development by reducing developer uncertainty and the costs associated with time delays.

State Housing Assistance. The state administers a variety of programs aimed at reducing the cost that low- and moderate-income individuals and families pay to live in safe and adequate housing. Most notably, (1) the California Tax Credit Allocation Committee administers the federal and state Low-Income Housing Tax Credit Programs that provide hundreds of millions of dollars of tax credits to developers annually to encourage private investment in affordable rental housing, (2) the Department of Housing and Community Development administers state general obligation bond financed programs that provide grants and low interest loans to developers of affordable housing, and (3) the California Housing Finance Agency assists first-time homebuyers and developers of affordable housing by offering them low interest loans financed through the sale of tax-exempt bonds. In considering new housing programs to replace redevelopment, the Legislature may wish to consider whether relying on the state's traditional approach (subsidizing development to increase the supply of affordable housing) or trying a different approach—such as providing housing vouchers to low-income households—might be more effective in providing aid to needy households.

The Unwinding Process Could Yield Important Civic Benefits

While criticized by some as complicated and lacking statewide uniformity, the decentralized oversight board process created by ABX1 26 could be a significant learning experience for everyone in the state. Currently, California's local governments and their residents do not have a forum to discuss and make decisions regarding the use of the local property tax by different local agencies. Instead, property taxes are allocated to each local government pursuant to a statewide formula.

Members of oversight boards will have significant authority and responsibility to compare the merits of continuing a specific redevelopment project against alternative uses for its resources by other local agencies. Oversight board members might decide that a redevelopment project meets local community priorities and continue it, or that the project's funds could be put to better use by the other local agencies in the area and terminate the contract. In many ways, the oversight board process allows local communities to have the first local debate regarding the use of property tax revenues that California has had in decades.

Given the importance of the oversight board, the amount of funds it controls, and its highly expedited schedule, we recommend the Legislature monitor its development and progress closely. Beginning in March, we recommend the Legislature hold hearings regarding the role and operations of oversight boards with the goal of promoting best practices, encouraging information sharing across boards, highlighting public accountability, and learning about unforeseen problems.

One area where we recommend that the Legislature pay particular attention is K-14 districts' participation on oversight boards. While representatives from the County Superintendents of Schools and the community colleges indicate that they plan to participate actively on the oversight boards, we note that the K-14 district representatives may have somewhat less familiarity with the types of projects and financial matters to be discussed. Moreover, absent action by the oversight board to retain separate staff, members of the oversight board will be reliant upon the staff support provided by the successor agency.

Given the significant financial link between the actions of the oversight board and state K-14 education costs, it would be beneficial for the state to offer some training for K-14 oversight board members. The Fiscal Crisis and Management Assistance Team (FCMAT) has significant experience helping California's local educational agencies fulfill their financial and management responsibilities and has previously assisted K-14 districts on redevelopment matters. Given their expertise and relationship with K-14 districts, we recommend the Legislature appropriate funding of up to $1 million to FCMAT to develop this training for interested K-14 oversight board members.

Alternative Use of Assets Raises Difficult Policy and Fiscal Issues

Prior to their dissolution, many RDAs owned considerable assets: land, buildings, and cash reserves. Some RDAs also had large unencumbered balances in their affordable housing funds. Under ABX1 26, successor agencies transfer all RDA assets used for a governmental purpose (such as a park or library) to the local government that provides the service. All other assets (except housing assets) are to be sold on the open market or to a local government "expeditiously and in a manner aimed at maximizing value." Proceeds from asset sales, along with all of the unencumbered cash, are to be distributed to the local agencies as property taxes.

Shortly after passage of ABX1 26, proposals began to surface to separate some of redevelopment assets for use for statewide objectives, such as affordable housing, economic development, and environmental programs. These proposals in turn, raise difficult policy and fiscal questions for the Legislature to consider. Specifically, which level of government should make the decisions over these assets? Should it be a local decision (because RDAs were local agencies) or partly a state decision (because the state indirectly helped pay for these assets through its backfill of K-14 district property taxes)? Should the housing funds remain with agencies that failed to spend them in previous years?

The proposals pose equally difficult fiscal issues. Specifically, ending redevelopment shifts some funds that formerly would have been allocated to RDAs to other local agencies. Many cities relied on RDA funds to pay city expenses and now are experiencing fiscal stress due to the redirection of these resources. Under ABX1 26, some of this fiscal stress would be offset by the city receiving its share of the distributed cash and assets. Reserving some of this cash and assets for statewide objectives, in contrast, would reduce the funds the city would receive from the dissolution of redevelopment.

The state General Fund also has a fiscal interest in the distribution of assets. Specifically, the budget assumes ending redevelopment will provide $1 billion (2011-12) and $1.1 billion (2012-13) in increased property taxes for K-14 districts and offset a comparable amount of state General Fund education expenses. While the administration's estimate does not directly reflect revenues from asset sales and cash, their estimate is subject to a wide range of error. The asset sales and cash, therefore, effectively serve as a reserve in case other elements of the administration's estimate do not materialize as expected.

Key State and Local Choices Will Drive State Fiscal Effect

While ending redevelopment will reduce state General Fund costs for K-14 education over the long term, many state and local decisions will affect the amount of these savings in the near term. These

include:

- ***State policy decisions to use RDA cash and assets for purposes other than distribution to local agencies.*** Assembly Bill X1 26 assumes that all unencumbered RDA cash and many assets are liquidated and distributed to local agencies as property tax revenues. Reserving some of this cash and assets for use for other purposes might advance important statewide objectives, but reduces the revenues that K-14 districts receive and decreases the state's near term General Fund savings.
- ***Local oversight board decisions to limit the range of projects and obligations included on the ROPS.*** Oversight boards that decide not to continue multistage projects and that narrowly interpret the range of obligations to be included on their ROPS (and thus eligible for payment) will retire their former RDA's enforceable obligations quicker. This, in turn, will result in more property tax revenues being allocated to all local agencies, including K-14 districts.
- ***State and local decisions regarding treatment of pass-through payments in distributing money from the redevelopment trust fund.*** Because K-14 districts received low pass-through payments, a policy of offsetting these low pass-through payments with greater sums from the redevelopment trust fund would increase K-14 revenues and decrease state costs.

Clarifying Amendments Would Help Implementation

The major elements of ABX1 26 are unambiguous. The legislation ends redevelopment and safeguards the repayment of debt. The roles of the parties are clearly delineated and focused on preserving the revenues and assets of RDAs "so that those assets and revenues that are not needed to pay for enforceable obligations may be used by local governments to fund core governmental services."

That said, as with any major legislation, some elements of the measure would benefit from clarification. Below, we address three areas where prompt legislative action would aid the implementation process. We recommend the Legislature adopt these changes so that they take effect immediately, either in legislation with an urgency clause or as an amendment to last year's trailer bill.

Clarify Treatment of Pass-Through Payments in Distribution of Trust Fund Revenues. County auditor-controllers will begin distributing funds from the trust fund on May 16, 2012. (Due to the court's schedule changes, county auditor-controllers will distribute the revenues formerly considered tax increment twice this spring: a small distribution on May 16 and a larger distribution on June 1. In future years, all revenues will be distributed on June 1 and January 16.) The Legislature should clarify its intent as to whether pass-through payments should be counted in the calculations to distribute trust funds. As discussed earlier in this report, we think that there is a strong legal argument that ABX1 26 requires pass-through payments to be included in the distribution formula, but all parties do not agree. Equally important, however, we think that including pass-through payments in the trust fund calculation makes sense from a policy standpoint. Under this approach, all local agencies get property tax revenues (from pass-through payments and the trust fund) in proportion to their tax shares.

Address Timing Issues Associated With Court Modifications. Due to the court's postponement of certain dates in ABX1 26, there is no formal payment schedule for enforceable obligations due between January 1, 2012 (the end of the EOPS period) and the date the oversight board approves the ROPS (presumably in the late spring). Absent a payment schedule, (1) successor agencies are not authorized to pay enforceable obligations other than bonded indebtedness and (2) county auditor-controllers will not know how much former tax increment to provide to the successor agency for payment of enforceable obligations or to distribute to local agencies.

To address this ambiguity, many successor agencies are amending their EOPS to add enforceable obligation payments due through June 30, 2012. While this approach is not specifically authorized in ABX1 26, it may be a reasonable interpretation of ABX1 26's requirement that successor agencies take actions to avoid impairment of contracts. We note, however, that EOPS are lists of enforceable obligations identified by the communities that created the RDAs and received minimal review by DOF. The ROPS, in contrast, are to be reviewed and approved by an oversight board and certified by the county auditor-controller.

Successor agency actions to extend their EOPS, therefore, prolong the period in which the successor agency may make payments based off of self-generated lists of enforceable obligations. The extension also poses questions about further extensions of the EOPS. For example, could a successor agency extend their EOPS for another six months if its oversight board did not reach agreement on its ROPS? To address these issues, we recommend the following:

- ***Expedite the establishment of oversight boards.*** We recommend the Legislature advance the date that the Governor may make appointments to unfilled oversight board positions from May 15, 2012 to April 15, 2012. This one month change will increase the likelihood that the oversight board will complete its review and adopt a ROPS before the first spring property tax distribution date—May 16.
- ***Delay the May 16th payment if ROPS not adopted.*** If an oversight board has not adopted a ROPS by May 15, 2012, direct the county auditor-controller to notify DOF and to delay the distribution of redevelopment property taxes until the second payment date—June 1, 2012. This short delay would give the oversight board additional time to complete its work and avoid the need for the county auditor-controller to distribute property taxes based on an EOPS.
- ***Limit extension of EOPS.*** We further recommend the Legislature specify that no agency's EOPS shall be effective after May 15, 2012 unless DOF approves the extension and identifies the successor agency on its website. This change would clarify that EOPS extensions are to be effective only for a short period, unless DOF agrees that there are extenuating circumstances.
- ***Authorize oversight boards to adopt ROPS before county auditor-controller certification.*** Under ABX1 26, county auditor-controllers play a key role auditing successor agency finances and reviewing draft ROPS before these drafts are considered by the oversight board. Notably, oversight boards are not authorized to adopt a ROPS unless the county auditor-controller has certified its accuracy. Under the court-revised time line, however, the time line of events is out of order: the county auditor-controller's audits (the basis for their determination as to whether a draft ROPS is accurate) are not due until July 2012—several weeks *after* the auditors distribute property taxes based on the ROPS. For some counties with few RDAs, the cure to this timing problem is simple: the county auditor-controller can complete the audits this spring and use them as the bases for reviewing successor agencies' draft ROPS. For counties with many RDAs, however, this may not be possible. In these cases, we recommend that the Legislature amend ABX1 26 to specify that, if a county auditor-controller's audit has not been completed by May 1, 2012, the oversight board may adopt an uncertified ROPS provided that the oversight board amends the ROPS later in response to the county auditor-controller's findings. While this approach has its limitations, it reconciles the awkward sequence of events that result from the court's revisions to the time lines.

Clarify That Successor Agencies May Create Reserves for Future Bond Payments and County Auditor-Controllers May Reserve Property Tax Revenues for Future Bond Payments. After passage of ABX1 26, various parties expressed concerns that (1) successor agencies would not be authorized to compile the reserves necessary to pay bonds that have one semiannual payment that is larger than the other or that have payments that increase over time and (2) county auditors might be required to distribute as property tax revenues to local agencies certain revenues that are needed to pay increased bond payments. While our reading of ABX1 26 is that it requires successor agencies and auditors to perform all obligations necessary to safeguard enforceable debt obligations, uncertainty regarding these matters continue to elicit concern. For this reason, we recommend that the Legislature amend ABX1 26 to (1) explicitly allow the oversight board to include on the ROPS any amounts

necessary to create reserves for future bond payments and (2) clarify that county auditor–controllers shall not distribute as property taxes any funds needed to pay enforceable obligations.

Conclusion

The end of RDAs earlier this year represented a major change in California finance. Over time, schools and other local governments will receive significantly more property tax revenues—and fewer funds will be reserved for redevelopment purposes. While the process for unwinding these complex agencies' financial affairs will be lengthy, it likely will launch important civic debates about the use of local property tax revenues and the role of government in promoting economic development and providing affordable housing.

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City of San Bernardino
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City of San Bernardino EDA

Legend

- A-CENTRAL CITY-MEADOWBROOK
- B-CENTRAL CITY-NORTH
- BB-CENTRAL CITY-SOUTH
- C-SOUTHEAST
- D-CENTRAL CITY-WEST
- DD-CENTRAL CITY-EAST
- E-STATE COLLEGE
- F-NORTHWEST
- G-TRI-CITY
- H-SOUTH VALLE
- J-UPTOWN
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