

# City of Capitola Agenda

Chair Stephanie Harlan  
Vice Chair Sam Storey  
Members: Ed Bottorff  
Dennis Norton  
Michael Termini



## CITY OF CAPITOLA, AS SUCCESSOR AGENCY TO THE FORMER CAPITOLA REDEVELOPMENT AGENCY

THURSDAY, AUGUST 8, 2013

CITY HALL COUNCIL CHAMBERS  
420 CAPITOLA AVENUE, CAPITOLA, CA 95010

### AFTER THE ADJOURNMENT OF THE CITY COUNCIL MEETING

*All matters listed on the Regular Meeting of the City of Capitola Successor Agency Agenda shall be considered as Public Hearings.*

1. **ROLL CALL**

Members Dennis Norton, Sam Storey, Ed Bottorff, Michael Termini and Chair Stephanie Harlan

2. **ORAL COMMUNICATIONS**

A. Additions and Deletions to Agenda

B. Public Comments

*Oral Communications allows time for members of the Public to address the Successor Agency on any item not on the Agenda. Presentations will be limited to three minutes per speaker. Individuals may not speak more than once during Oral Communications. All speakers must address the entire legislative body and will not be permitted to engage in dialogue. All speakers are requested to print their name on the sign-in sheet located at the podium so that their name may be accurately recorded in the minutes. A MAXIMUM of 30 MINUTES is set aside for Oral Communications at this time.*

C. Staff Comments

## CAPITOLA SUCCESSOR AGENCY - August 8, 2013

### 3. CONSENT CALENDAR

*All items listed in the "Consent Calendar" will be enacted by one motion in the form listed below. There will be no separate discussion on these items prior to the time the Successor Agency votes on the action unless members of the public or the Successor Agency request specific items to be discussed for separate review. Items pulled for separate discussion will be considered following General Government.*

- A. Consideration of approval of the City of Capitola, as Successor Agency to the former Capitola Redevelopment Agency regular meeting minutes of the October 11, 2012; January 10, 2013; and February 21, 2013. In addition, the minutes of the May 22, 2013; May 30, 2013; June 6, 2013; and the June 13, 2013 Special Joint City Council/Successor Agency.

**RECOMMENDED ACTION:**

Approve Minutes.

- B. Approval of the Successor Agency Check Register Report dated March 1, 2013 to July 31, 2013.

**RECOMMENDED ACTION:**

Approve the Check Register Report.

### 4. GENERAL GOVERNMENT/PUBLIC HEARINGS

*General Government items are intended to provide an opportunity for public discussion of each item listed. The following procedure is followed for each General Government item: 1) Staff explanation; 2) Council questions; 3) Public comment; 4) Council deliberation; 5) Decision.*

- A. Consider approving the Recognized Obligation Payment Schedule for January 1 to June 30, 2014 (ROPS 13-14B).

**RECOMMENDED ACTION:**

Approve ROPS 13-14B.

### 5. ADJOURNMENT

Adjourn to the next regular meeting of the City of Capitola, as Successor Agency to the former Capitola Redevelopment Agency, is to be determined.

**Note:** Any person seeking to challenge a Successor Agency decision made as a result of a proceeding in which, by law, a hearing is required to be given, evidence is required to be taken, and the discretion in the determination of facts is vested in the City Council, shall be required to commence that court action within ninety (90) days following the date on which the decision becomes final as provided in Code of Civil Procedure §1094.6. Please refer to code of Civil Procedure §1094.6 to determine how to calculate when a decision becomes "final." Please be advised that in most instances the decision become "final" upon the Successor Agency's announcement of its decision at the completion of the public hearing. Failure to comply with this 90-day rule will preclude any person from challenging the Successor Agency decision in court.

**Notice regarding Successor Agency:** The Capitola Successor Agency meets as determined at adjournment of the Regular City Council Meeting, in the City Hall Council Chambers located at 420 Capitola Avenue, Capitola.

## **CAPITOLA SUCCESSOR AGENCY - August 8, 2013**

**Agenda and Agenda Packet Materials:** The Successor Agency Agenda and the complete agenda packet are available on the Internet at the City's website: [www.ci.capitola.ca.us](http://www.ci.capitola.ca.us). Agendas are also available at the Capitola Post Office located at 826 Bay Avenue, Capitola.

**Agenda Document Review:** The complete agenda packet is available at City Hall and at the Capitola Branch Library, 2005 Wharf Road, Capitola, on the Monday prior to the Thursday meeting. Need more information? Contact the City Clerk's office at 831-475-7300.

**Agenda Materials Distributed after Distribution of the Agenda Packet:** Pursuant to Government Code §54957.5, materials related to an agenda item submitted after distribution of the agenda packet are available for public inspection at the Reception Office at City Hall, 420 Capitola Avenue, Capitola, California, during normal business hours.

**Americans with Disabilities Act:** Disability-related aids or services are available to enable persons with a disability to participate in this meeting consistent with the Federal Americans with Disabilities Act of 1990. Assisted listening devices are available for individuals with hearing impairments at the meeting in the City Council Chambers. Should you require special accommodations to participate in the meeting due to a disability, please contact the City Clerk's office at least 24-hours in advance of the meeting at 831-475-7300. In an effort to accommodate individuals with environmental sensitivities, attendees are requested to refrain from wearing perfumes and other scented products.

**Televised Meetings:** Successor Agency meetings are cablecast "Live" on Charter Communications Cable TV Channel 8 and are recorded to be replayed at 12:00 Noon on the Saturday following the meetings on Community Television of Santa Cruz County (Charter Channel 71 and Comcast Channel 25). Meetings are streamed "Live" on the City's website at [www.ci.capitola.ca.us](http://www.ci.capitola.ca.us) by clicking on the Home Page link "**View Capitola Meeting Live On-Line.**" Archived meetings can be viewed from the website at anytime.

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# CITY OF CAPITOLA AS SUCCESSOR AGENCY to the former CAPITOLA REDEVELOPMENT AGENCY

MEETING OF AUGUST 8, 2012

FROM: OFFICE OF THE SUCCESSOR AGENCY SECRETARY

SUBJECT: MINUTES OF REGULAR MEETINGS OF THE CAPITOLA SUCCESSOR AGENCY TO THE FORMER CAPITOLA REDEVELOPMENT AGENCY OF OCTOBER 11, 2012; JANUARY 10, 2013; AND FEBRUARY 21, 2013. IN ADDITION, THE MINUTES OF THE SPECIAL JOINT CITY COUNCIL/SUCCESSOR AGENCY OF MAY 22, 2013; MAY 30, 2013; JUNE 6, 2013; AND THE JUNE 13, 2013

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**RECOMMENDED ACTION:** Approve the subject minutes as submitted.

**DISCUSSION:** Attached for review and approval are the minutes to the subject meeting.

**ATTACHMENTS:**

1. October 11, 2012, Capitola Successor Agency Regular Meeting Minutes;
2. January 10, 2013, Capitola Successor Agency Regular Meeting Minutes;
3. February 21, 2013, Capitola Successor Agency Regular Meeting Minutes;
4. May 22, 2013, City Council/Successor Agency Special Joint Budget Study Session Minutes;
5. May 30, 2013, City Council/Successor Agency Special Joint Budget Study Session Minutes;
6. June 6, 2013, City Council/Successor Agency Special Joint Budget Study Session Minutes;
7. June 13, 2013, City Council/Successor Agency Special Joint Budget Study Session Minutes.

Report Prepared By: Susan Sneddon  
Secretary

Reviewed and Forwarded  
By City Manager/Executive Director

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CITY OF CAPITOLA

October 11, 2012  
Capitola, California

**MINUTES OF A MEETING OF THE CITY OF CAPITOLA, AS  
SUCCESSOR AGENCY TO THE FORMER CAPITOLA  
REDEVELOPMENT AGENCY**

**CALL TO ORDER**

At 8:45 p.m. in the City Hall Council Chambers, **Chairman Termini** noted that all Board Members were present.

**1. ROLL CALL**

**PRESENT:** Board Members Stephanie Harlan, Dennis Norton, Kirby Nicol, Sam Storey, and Chairman Michael Termini

**ABSENT:** None

**STAFF:** Executive Director Jamie Goldstein, Finance Director Tori Hannah, and Secretary Susan Sneddon

**2. ORAL COMMUNICATIONS**

**A. Additions and Deletions to Agenda** (none provided)

**B. Public Comments** (none provided)

**C. Staff Comments** (none provided)

**ALL MATTERS LISTED ON THE REGULAR MEETING OF THE CAPITOLA CITY COUNCIL AS SUCCESSOR AGENCY AGENDA SHALL BE CONSIDERED AS PUBLIC HEARINGS.**

**3. CONSENT CALENDAR**

A. Consideration of approval of the City of Capitola, as Successor Agency to the former Capitola Redevelopment Agency regular meeting minutes of the September 13, 2012 Successor Agency.

***ACTION: Motion by Board Member Storey seconded by Board Member Harlan, to approve Item # 3.A. on the Consent Calendar. The motion carried unanimously with the following vote: AYES: Board Members Harlan, Norton, Nicol, Storey, and Chairman Termini. NOES: None. ABSENT: None. ABSTAIN: None.***

**4. GENERAL GOVERNMENT/PUBLIC HEARINGS**

A. Receive the Capitola Housing Successor due Diligence Audit of the Low and Moderate Income Housing Fund required by Health and Safety Code Section 34179.5.

31 OCTOBER 11, 2012 MINUTES – CITY OF CAPITOLA, AS SUCCESSOR AGENCY TO THE FORMER CAPITOLA REDEVELOPMENT AGENCY

***ACTION: Motion by Board Member Norton, seconded by Board Member Harlan, to receive the Capitola Housing Successor due Diligence Audit of the Low and Moderate Income Housing Fund required by Health and Safety Code Section 34179.5. The motion carried unanimously with the following vote: AYES: Board Members Harlan, Norton, Nicol, Storey and Chairman Termini. NOES: None. ABSENT: None. ABSTAIN: None.***

**ADJOURNMENT**

At 9:00 p.m. **Chairman Termini** adjourned to the next regular meeting of the City of Capitola, as Successor Agency to the former Capitola Redevelopment Agency. Date, time, and location are to be determined.

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Michael Termini, Chairman

ATTEST:

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Susan Sneddon, Secretary



## CITY OF CAPITOLA

January 10, 2013  
Capitola, California**MINUTES OF A MEETING OF THE CITY OF CAPITOLA, AS  
SUCCESSOR AGENCY TO THE FORMER CAPITOLA  
REDEVELOPMENT AGENCY****CALL TO ORDER**

At 9:00 p.m. in the City Hall Council Chambers, Chairman Termini noted that all Board Members were present.

**1. ROLL CALL**

**PRESENT:** Board Members Edward Bottorff, Dennis Norton, Sam Storey, Michael Termini, and Chairman Stephanie Harlan

**ABSENT:** None

**STAFF:** Executive Director Jamie Goldstein, Finance Director Tori Hannah, and Secretary Susan Sneddon

**2. ORAL COMMUNICATIONS**

**A. Additions and Deletions to Agenda** (none provided)

**B. Public Comments** (none provided)

**C. Staff Comments** (none provided)

**ALL MATTERS LISTED ON THE REGULAR MEETING OF THE CAPITOLA CITY COUNCIL AS SUCCESSOR AGENCY AGENDA SHALL BE CONSIDERED AS PUBLIC HEARINGS.**

**3. GENERAL GOVERNMENT/PUBLIC HEARINGS**

**A. Receive the Capitola Housing Successor Due Diligence Audit of the Non-Housing Redevelopment Agency Fund required by Health and Safety Code Section 34179.5.**

**Finance Director Hannah** stated that this is the second audit for all Non-Housing Redevelopment Agency funds required by Assembly Bill 1484. The primary goal was to determine if there was any cash or cash equivalents available for distribution to the taxing entities. Due to the Department of Finance's disapproval of the City/RDA obligations, the City will be required to return to the Successor Agency the annual interest of \$152,520 that was paid in January 2012. These funds will be needed to pay for approved items on the Third Recognized Obligation Payment Schedule (ROPS). The Oversight Board met earlier this week to approve this report to be submitted to the Department of Finance and the County Auditor-Controller.

**33 JANUARY 10, 2013 MINUTES – CITY OF CAPITOLA, AS SUCCESSOR AGENCY TO THE FORMER CAPITOLA REDEVELOPMENT AGENCY**

3. GENERAL GOVERNMENT/PUBLIC HEARINGS (continued)

Executive Director Goldstein stated that due to the Department of Finance's disapproval of the City/RDA obligations, the City will be required to return to the Successor Agency the annual interest of \$152,520. The only opportunity would be for the City to attempt to seek the interest money which would require the City to litigate with the Department of Finance (DOF), or to go through the Finding of Completion with the DOF. Upon the issuance of a Finding of Completion by the DOF the statute states that former loans between redevelopment agencies and cities can be reinstated.

**There was Successor Agency consensus to receive the Capitola Housing Successor Due Diligence Audit of the Non-Housing Redevelopment Agency Fund required by Health and Safety Code Section 34179.5.**

**ADJOURNMENT**

At 10:15 p.m. **Chairman Harlan** adjourned to the next Regular Meeting of the City of Capitola, as Successor Agency to the former Capitola Redevelopment Agency. Date, time, and location are to be determined.

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Stephanie Harlan, Chairman

ATTEST:

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Susan Sneddon, Secretary

CITY OF CAPITOLA

February 21, 2013  
Capitola, California

**MINUTES OF THE SPECIAL JOINT BUDGET STUDY SESSION  
OF THE CITY OF CAPITOLA, AS SUCCESSOR AGENCY TO THE  
FORMER CAPITOLA REDEVELOPMENT AGENCY AND  
THE CAPITOLA CITY COUNCIL**

**THURSDAY, FEBRUARY 21, 2013 - 6:00 PM**

**CALL TO ORDER**

At 6:00 p.m. in the City Hall Council Chambers, Chairperson Harlan noted that all Board Members were present.

**1. ROLL CALL**

**PRESENT:** Board Members Edward Bottorff, Dennis Norton, Sam Storey, Michael Termini, and Chairperson Stephanie Harlan

**ABSENT:** None

**STAFF:** Executive Director Jamie Goldstein, Finance Director Tori Hannah, and Secretary Susan Sneddon

**2. ORAL COMMUNICATIONS**

**A. Additions and Deletions to Agenda** (none provided)

**B. Public Comments** (none provided)

**C. Staff Comments** (none provided)

**ALL MATTERS LISTED ON THE REGULAR MEETING OF THE CAPITOLA CITY COUNCIL AS SUCCESSOR AGENCY AGENDA SHALL BE CONSIDERED AS PUBLIC HEARINGS.**

**3. GENERAL GOVERNMENT/PUBLIC HEARINGS**

**A. Consideration of approving the Recognized Obligation Payment Schedule (ROPS 13-14A) for July 1, 2013 to December 31, 2013.**

**ACTION:** Motion by Board Member Termini, seconded by Board Member Storey, to approve the Recognized Obligation Payment Schedule (ROPS 13-14A) for July 1, 2013 to December 31, 2013. . The motion carried unanimously with the following vote: **AYES:** Board Members Bottorff, Norton, Storey, Termini, and Chairperson Harlan. **NOES:** None. **ABSENT:** None. **ABSTAIN:** None.

**ADJOURNMENT**

At 7:38 p.m. **Chairperson Harlan** adjourned to the next Regular Meeting of the City of Capitola, as Successor Agency to the former Capitola Redevelopment Agency. Date, time, and location are to be determined.

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Stephanie Harlan, Chairman

ATTEST:

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Susan Sneddon, Secretary

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CITY OF CAPITOLA

May 22, 2013  
Capitola, California

**MINUTES OF THE SPECIAL JOINT BUDGET STUDY SESSION  
OF THE CITY OF CAPITOLA, AS SUCCESSOR AGENCY TO THE  
FORMER CAPITOLA REDEVELOPMENT AGENCY AND  
THE CAPITOLA CITY COUNCIL**

**THURSDAY, MAY 22, 2013 - 6:00 PM**

**CALL TO ORDER**

At 6:00 p.m. in the City Hall Council Chambers, Chairman Harlan noted that all Board Members were present.

**1. ROLL CALL**

**PRESENT:** Board Members Edward Bottorff, Dennis Norton, Sam Storey, Michael Termini, and Chairperson Stephanie Harlan

**ABSENT:** None

**STAFF:** Executive Director Jamie Goldstein, Finance Director Tori Hannah, and Secretary Susan Sneddon

City Treasurer DeWitt was absent

**2. GENERAL GOVERNMENT/PUBLIC HEARINGS**

- A. Presentation of the proposed 2013/2014 Fiscal Year Budget for the City of Capitola General Fund, the Capitola Successor Agency, and an overview of the Capital Improvement Program. [330-05/780-30]

Finance Director Hannah provided an overview of the Fiscal Year 2013/2014 Budget which included an update on the City's Reserves and General Fund finances, and a summary of key revenues/expenditures. She reviewed the following: (1) Measure O revenues; (2) sales tax revenues; (3) estimated revenue from Lower Pacific Cover Parking Lot; (4) salary expenditures; (5) post employment benefit contributions; and (6) additional contributions to Information Systems and Equipment Funds. She also reviewed proposed projects for Fiscal Years 2012/2013, 2013/2014 and 2014/2015. Ms. Hannah presented estimated personnel changes for Fiscal Year 2012/2013 and proposed personnel changes for Fiscal Year 2013/2014.

Executive Director Goldstein stated that as a result of the City's settlement with Lexington Insurance Company (in relation to the March 2011 pipe failure claim) staff is suggesting allocation of \$1.145 million in settlement funds to the following: (1) Long-term obligation reduction (\$500,000); (2) Capital Improvement Projects (\$145,000); and (3) Reserves (\$500,000). He reviewed options to reduce the City's following long-term obligations: (1) Pay down Santa Cruz County Bank or IBank debt; (2) adjust Miscellaneous Employees' Memorandum of Understanding; and (3) establish a PERS prepayment Fund. Mr. Goldstein reviewed various financial risks and assumptions.

Board Member Storey requested that staff look into maintaining the grant-funded police officer position. He asked about the long-term justification for the proposed Environmental Services Manager; he requested that Council be provided with a job description. He also requested a report on the City's debt service obligation over the long-term (e.g. pension obligation and Measure D

**36 MAY 22, 2013 MINUTES – JOINT BUDGET STUDY SESSION OF THE CITY OF CAPITOLA, AS SUCCESSOR AGENCY TO THE FORMER CAPITOLA REDEVELOPMENT AGENCY**

funds), and that staff provide recommendations for allocating funds for Capital Improvement Projects using the City's settlement funds.

Public Works Jesberg stated that beginning July 1, 2013, the City is charged with implementing Phase II of the Storm Water Management Program requiring significant reporting/monitoring/implementation; therefore staff is recommending the Environmental Services Manager position.

Board Member Termini stated that the City's goal is to maintain clean and safe streets; therefore the next three years should focus on public safety and public works staffing.

Public Works Jesberg provided a list of the following proposed Fiscal Year 2013/2014 Capital Improvement Projects utilizing the City's settlement funds: (1) Improvements at the intersection of Monterey Avenue/Park Avenue; (2) Hill Street pedestrian improvements; and (3) Rispin Park improvements.

Chairperson Harlan suggested regular sidewalk cleaning in the Village be added to the proposed Fiscal Year 2013/2014 Budget.

Board Member Norton requested that a Council discussion occur regarding Stockton Avenue/Esplanade intersection due to a public safety issue.

Board Member Termini requested that City Council receive a benchmark debt ratio between the City's long-term debt and revenues.

Council Member Bottorff asked for clarification regarding City staffing levels.

Executive Director Goldstein responded that there exists strategic opportunities to increase the staffing level to maximize benefits to the City to support service demands and state/federal requirements.

Chairperson Harlan asked when revisions to the City's zoning code will be agendized for Council approval.

Community Development Director Grunow responded that DC&E is drafting new zoning ordinances which will be provided to the City Council in the Spring of 2014.

TJ Welch, local resident, provided suggestions regarding personnel benefits, Community Based Health and Human Service Providers Grants, and activities for children in the community (e.g. skate park).

Board Member Termini requested that the Chair and one Council Member review the Community Based Health and Human Service Providers Grant applications. (Chairperson Harlan asked for a Council Member to assist her in reviewing the applications; Council Member Termini accepted).

Administrative Services Director Murphy stated that presentations from the various grant applicants are scheduled for the May 30, 2013, Special Budget Study Session; she will provide the applications to Chairperson Harlan and Council Member Termini for review.

No Successor Agency action required for this item.

MAY 22, 2013 MINUTES – JOINT BUDGET STUDY SESSION OF 37  
THE CITY OF CAPITOLA, AS SUCCESSOR AGENCY TO THE FORMER CAPITOLA  
REDEVELOPMENT AGENCY

3. ADJOURNMENT

Chairperson Harlan adjourned the meeting at 7:30 p.m. to the next Regular Meeting of the City Council to be held on Thursday, May 23, 2013, at 7:00 p.m., in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

Chairperson Harlan adjourned the meeting at 7:30 p.m. to the next Special Budget Study Session of the City Council and the Successor Agency on Thursday, June 6, 2013 at 6:00 PM, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

ATTEST:

Stephanie Harlan, Chairperson

Susan Sneddon, Secretary

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CITY OF CAPITOLA

May 30, 2013  
Capitola, California

**MINUTES OF THE SPECIAL JOINT BUDGET STUDY SESSION  
OF THE CITY OF CAPITOLA, AS SUCCESSOR AGENCY TO THE  
FORMER CAPITOLA REDEVELOPMENT AGENCY AND  
THE CAPITOLA CITY COUNCIL**

**THURSDAY, MAY 30, 2013 - 6:00 PM**

**CALL TO ORDER**

At 6:00 p.m. in the City Hall Council Chambers, Chairman Harlan noted that all Board Members were present with the exception of Board Member Bottorff.

**1. ROLL CALL**

**PRESENT:** Board Members Dennis Norton, Sam Storey, Michael Termini, and Chairperson Stephanie Harlan

**ABSENT:** Board Member Edward Bottorff

**STAFF:** Executive Director Jamie Goldstein, Finance Director Tori Hannah, and Secretary Susan Sneddon

City Treasurer DeWitt was present

**2. COUNCIL/CITY TREASURER/STAFF ANNOUNCEMENTS**

Chairperson Harlan stated that additional material was received from the Capitola/Soquel Chamber of Commerce requesting a renewal of the contract between the City and the Chamber. In addition, a letter was received from a Soquel High School student about too much trash on the beach.

City Treasurer DeWitt stated that at the May 28, 2013, Financial Advisory Committee (FAC) meeting there was a discussion regarding allocating the \$1.145 million from the settlement funds (March 2011 pipe failure claim). As Treasurer she recommended using the funds to pay off the Santa Cruz County Bank loan.

**3. GENERAL GOVERNMENT/PUBLIC HEARINGS**

- A. Continued Budget Study Session on the proposed 2013/2014 Fiscal Year Budget for the City of Capitola General Fund, the Capitola Successor Agency, and the Capital Improvement Program. [330-05/780-30]

Nathan Cross, FAC Vice Chair, provided the following FAC recommendations regarding allocating the \$1.145 million in settlement funds: 30.4% for the City's Capital Improvement Projects, 26.1% towards the City's reserve, and 43.5% towards the Santa Cruz County Bank loan.

Board Member Storey announced that he will retire from Community Bridges in four months, and stated that he enjoyed working with the Human Care Alliance members and organizations. He stated that due to a conflict of interest he will recuse himself from participating in the

**39 MAY 30, 2013 MINUTES – JOINT BUDGET STUDY SESSION OF THE CITY OF CAPITOLA, AS SUCCESSOR AGENCY TO THE FORMER CAPITOLA REDEVELOPMENT AGENCY**

community grant portion of the meeting because he is Community Bridges CEO, and voting on this item would be a conflict of interest. He left the dias.

Finance Director Hannah invited the Community Based Health and Human Service providers to comment on the proposed funding provided to their organizations.

Will O'Sullivan, Human Care Alliance representative, requested the restoration of the City's previous funding level for the Human Care Alliance. He requested web links to the various non-profit agencies be added to the City's website.

The following Community Based Health and Human Service providers presented their non-profit financial requests:

Shauna Mora, Conflict Resolution Center of Santa Cruz  
Executive Director

Rachel Goodman, Dientes Community Dental Care

Sarah Brother, Cultural Council of Santa Cruz County

Sharon Papo, Executive Director of the Diversity Center/GLBT  
(Gay, Lesbian, Bisexual, & Transgender)

Jane Schwickerath, GLBT 60+ Seniors Program Volunteer  
Coordinator

Clay Kempf, Executive Director of the Seniors Council of Santa  
Cruz and San Benito Counties

David Denik and Karen Eddy, Meals-on-Wheels volunteer  
drivers

Adam Stecley, O'Neill Sea Odyssey representative

David Bionchi, Director of Family Service Agency of the Central  
Coast

Norma Sanchez, Shelter Project Rental Assistance Division of  
Community Action Board of Santa Cruz County Inc.

Tim Brattan, Director of Grey Bears

Amy Bosso, Campus Kids Connection

Brooke Johnson, Second Harvest Food Bank

Brad Hunt, Save Our Shores

Kathleen Johnson, Advocacy, Inc.

The Successor Agency took a 5 minutes break

Board Member Storey returned to the dias.

**MAY 30, 2013 MINUTES – JOINT BUDGET STUDY SESSION OF THE CITY OF 40  
CAPITOLA, AS SUCCESSOR AGENCY TO THE FORMER CAPITOLA  
REDEVELOPMENT AGENCY**

Finance Director Hannah reviewed the City's debt ratios and benchmarks, multi-year projections, including debt service and reserve levels.

Board Member Termini requested that steps be taken to prepare for any financial shortfalls that may occur so that the City's reserves are fully funded by 2015 should the City go into a negative balance.

Public Works Director Jesberg provided the draft job description regarding the proposed Environmental Project Manager position. This proposed position would be charged with insuring the City's compliance with the state mandated Clean Water Act including renewing the 2013 Waste Discharge Permit, on-going annual program implementation of Zone 5 storm water permitting. In addition, this position would be involved in completing the following related environmental programs: (1) Soquel Creek Management Plan; (2) Riparian Restoration Projects; (3) Beach and Creek Enhancement Projects; and (4) Storm water permitting for private projects.

Board Member Storey suggested language be added to the draft Environmental Project Manager job description to include the focus on the overall goal of cleaner water and beaches.

Public Works Director Jesberg stated that he will include additional language in the job description regarding improving the natural environmental around the City to promote cleaner water and beaches. In addition, he provided a cost range for the following various unfunded project: (1) Pedestrian crossing improvements at Stockton Avenue and Esplanade; (2) Hill Street pedestrian improvements from Capitola Avenue to Rosedale Avenue; (3) street frontage and landscaping improvements to historic Depot site at Monterey Avenue and Park Avenue; and (4) complete conversion of the Rispin property to a park; the most urgent need is the Rispin-Peery pathways and ADA accessibility.

Board Member Termini stated that the conversion of the Rispin property is a low priority since the City does not know if they own the property. It is important to address the ADA accessibility of the trails.

Board Member Norton stated that the pedestrian crossing improvements at Stockton and Esplanade are a high priority due to safety concerns.

City Treasurer DeWitt stated concerns regarding making improvements to the Rispin property with the potential of the California State Department of Finance clawing back the property. She asked if staff will be seeking matching funds for various City project. (Public Works Director Jesberg stated that the City is always on the look-out for possible grant funds).

**Item #: 3.A. Attach 5.pdf**

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Board Member Norton suggested within the next four month to have a community discussion to explore future options for the Rispin property.

Executive Director Goldstein stated that the FAC has recommended that \$350,000 be put into the unfunded CIP projects. It appears that the Stockton Avenue and the Hill Street pedestrian improvements have a lot of support. He stated that maintaining the existing Rispin pathways could be addressed in the near future. He stated that it may be a good time to bring the Rispin project back this fall after the state controller provides the results of the City audit. Public hearings could be scheduled and then the City could proceed with obtaining the necessary permits, environmental review, and an overall park plan. In addition, this would increase the City's ability to apply for grants.

Police Chief Escalante presented the Police Department's proposed Fiscal Year 2013/2014 budget including police staff levels. He reported on crime data over the past 5-6 years the service calls for Part I crimes. In addition, he reviewed costs/benefits associated with one additional Police Officer.

Board Member Storey asked what impacts would occur if the Police Department maintained the grant-funded police officer position.

Executive Director Goldstein stated that since the City has contracted with the City of Santa Cruz to perform lifeguard services the City was able to keep an additional Community Service Officer on the street during summer months. The City's police staffing levels are adequate as compared to the last couple of years. He stated that the Police Chief is looking into an annuitant patrol in the Village on the busiest eight weekends in the summer.

Board Member Norton suggested arriving at a formula to determine the annual funds granted to the Community Based Health and Human Service providers. He suggested that staff set up community service links on the City's website.

Board Member Termini requested that staff review discretionary funding to the Capitola/Soquel Chamber of Commerce and the Community Based Health and Human Service providers at the next special budget study session.

Marge Hanson, local resident, stated that a traffic problem exists at Beverly Avenue and Capitola Avenue intersection.

Peter Pethoe, Santa Cruz Hostel, requested that the City Council continue considering a youth hostel at the Rispin property.

**MAY 30, 2013 MINUTES – JOINT BUDGET STUDY SESSION OF THE CITY OF 42  
CAPITOLA, AS SUCCESSOR AGENCY TO THE FORMER CAPITOLA  
REDEVELOPMENT AGENCY**

**4. ADJOURNMENT**

Mayor Harlan adjourned the meeting at 8:30 p.m. to the next Special Budget Study Session of the City Council on Thursday, June 6, 2013 at 6:00 PM, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California

Chairperson Harlan adjourned the meeting at 8:30 p.m. to the next Special Budget Study Session of the City Council on Thursday, June 6, 2013 at 6:00 PM, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California

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Stephanie Harlan, Chairperson

ATTEST:

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Susan Sneddon, Secretary

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CITY OF CAPITOLA

June 6, 2013  
Capitola, California

**MINUTES OF THE SPECIAL JOINT BUDGET STUDY SESSION  
OF THE CITY OF CAPITOLA, AS SUCCESSOR AGENCY TO THE  
FORMER CAPITOLA REDEVELOPMENT AGENCY AND  
THE CAPITOLA CITY COUNCIL  
THURSDAY, JUNE 6, 2013 - 6:00 PM**

**CALL TO ORDER**

At 6:00 p.m. in the City Hall Council Chambers, Chairman Harlan noted that all Board Members were present.

**1. ROLL CALL**

**PRESENT:** Board Members Dennis Norton, Sam Storey, Michael Termini, and Chairperson Stephanie Harlan

**ABSENT:** Board Members Edward Bottorff

**STAFF:** Executive Director Jamie Goldstein, Finance Director Tori Hannah, and Secretary Susan Sneddon

City Treasurer DeWitt was absent

**2. COUNCIL/CITY TREASURER/STAFF ANNOUNCEMENTS**

Chairperson Harlan announced the following events: (1) Rod & Custom Class Car Show on June 8<sup>th</sup> and 9<sup>th</sup> in Esplanade Park; (2) City's Wednesday Twilight Concerts beginning June 12<sup>th</sup>; Carolyn Swift, City's historian, will be speaking at the Chamber luncheon on June 11<sup>th</sup> at the Shadowbrook.

**3. GENERAL GOVERNMENT/PUBLIC HEARINGS**

A. Continued Budget Study Session on the proposed 2013/2014 Fiscal Year Budget for the City of Capitola General Fund, the Capitola Successor Agency, and the Capital Improvement Program (CIP). [330-05/780-30]

Public Works Director Jesberg reviewed City vehicles to be purchased in Fiscal Year 2013/2014. Also, he stated that later this year a request for proposals will be brought to the City Council to lease/purchase a street sweeper.

Police Chief Escalante stated that staff is recommending replacing the City's two used Harley Davison motorcycles with Honda motorcycles. He stated that the proceeds from the motorcycles sold will cover the costs for new motorcycles; therefore this expenditure does not impact to General or Equipment Funds.

Finance Director Hannah presented the proposed purchase of the New World Systems Payroll/Human Resources Software. She stated that this item was not included in the proposed Fiscal Year 2013/2014 budge, but funding was available in the IT Fund. The New World Systems software would replace the current ADP contract. This purchase would result in long-term savings as much as \$19,000 per year.

**44 JUNE 6, 2013 MINUTES — JOINT BUDGET STUDY SESSION OF THE CITY OF CAPITOLA, AS SUCCESSOR AGENCY TO THE FORMER CAPITOLA REDEVELOPMENT AGENCY**

Executive Director Goldstein stated that the funding for the proposed software would come out of the Information Technology Fund therefore no new appropriation of funds is needed. He reviewed the multi-year milestones regarding expiring revenue, debt, and various known changes over the next five years.

Finance Director Hannah reviewed options to create a “stabilization fund” for projected operating deficits in Fiscal Years 2015/2016 and 2016/2017. She stated that a potential source for such a fund is \$500,000 in insurance settlement proceeds currently programmed for debt reduction and/or reducing the CIP in the current year.

Executive Director Goldstein stated that creating a stabilization fund for projected operating deficits could be one approach. As an alternative staff and Council could closely monitor the City’s budget, keeping a close eye on revenues/expenditures over the coming years. He does not recommend cutting the CIP in the current year because in future years the City may need to cut the CIP to make it through any the cash flow issues.

Board Member Termini asked what amount of funding in the City’s reserve would be needed to have a fully funded reserve in Fiscal Year 2014/2015.

Executive Director Goldstein stated that to get the City to a fully funded reserve by FY 14/15, two years ahead of schedule, it would take an additional allocation of approximately \$1 million beyond the amounts the current budget/projections assume.

Public Works Director Jesberg reviewed the proposed CIP for Fiscal Year 2013/2014: (1) Pedestrian crossing improvements at Stockton and Esplanade; (2) Hill Street pedestrian improvements from Capitola Avenue to Rosedale Avenue; (3) complete conversion of the Rispin property to a park (most urgent need is the Rispin-Peery pathways and ADA accessibility); (4) street frontage and landscaping improvements to historic Depot site at Monterey Avenues and Park Avenue. The total estimates cost is \$3,337,000.

Board Member Storey suggested not funding the Rispin since the City does not know if they own the property. He stated that it was his understanding that Monterey Park was the place for a future skateboard park however he is open to look at different location.

Executive Director Goldstein suggested renaming the Rispin Project the “Rispin/General Park Improvement Projects” by combining the Rispin and Monterey and Park Avenues Historic Depot Improvement (\$130,000) projects. This would enable staff to identify funds for the Rispin if it becomes City property in addition there may be additional park improvement projects.



**JUNE 6, 2013 MINUTES – JOINT BUDGET STUDY SESSION OF THE CITY OF CAPITOLA, AS SUCCESSOR AGENCY TO THE FORMER CAPITOLA REDEVELOPMENT AGENCY** 45

Board Member Bottorff suggested obtaining input from the community on a skate park location and the Rispin property and increasing the CIP contribution this FY from the settlement proceeds.

Executive Director Goldstein stated that the FAC recommended \$300,000 be earmarked for reserves from the settlement. He stated that based on the Measure O ballot language staff is recommending a three part allocation of the settlement proceeds; putting money into the CIP, debt reduction, and the reserves. In next year's budget there is programmed \$500,000 coming in from Measure O funds into the CIP. An option would be to establish a "Parks Fund" in the amount of \$130,000. He suggested those funds could be used on any of the three projects if they come to fruition this next year.

There was Successor Agency consensus to form a "Park Fund" to include a potential skate park, Rispin Park, and Monterey and Park Avenues Historic Depot improvements. To combine the \$130,000 towards a "Parks Fund".

Executive Director Goldstein asked if the City Council would like to see Monterey and Park Avenues Historic Depot improvements done this year if we are able to bring it forward for consideration.

Board Member Storey suggested looking into matching grant park funds as a guiding principle.

Public Works Director Jesberg discussed the Village sidewalk cleaning and garbage removal budget; the City is currently working with the Business Improvement Area Advisory Committee to develop a new cleaning schedule and funding program. The City Manager has proposed a potential plan to develop an annual business fee for take-out establishments to augment this budget.

Executive Director Goldstein stated that the City received a request from Capitola/Soquel Chamber of Commerce to increase their funding back to \$30,000 per year. In the proposed Fiscal Year 2013/2014 budget they are programmed for \$23,500. He stated that the Equipment Fund amount could be reduced to restore the Chamber's funding back to the historic level.

Sandy Erickson, local resident, stated concerns regarding the allocation of the settlement funds. In addition, she stated that the City should cover the entire cost of street cleaning and garbage pickup.

Board Member Storey stated that due to a conflict of interest he will recuse himself from participating on the portion of this item regarding the community grants because he is Community Bridges CEO, and voting on this item would be a conflict of interest. He left the dias for the evening.

**46 JUNE 6, 2013 MINUTES – JOINT BUDGET STUDY SESSION OF THE CITY OF CAPITOLA, AS SUCCESSOR AGENCY TO THE FORMER CAPITOLA REDEVELOPMENT AGENCY**

Administrative Services Director Murphy presented the Community Based Health and Human Service Providers Grant process. She stated that the City Council appointed Chairperson Harlan and Board Member Termini to a subcommittee to develop a recommended list for allocating the \$250,000. The subcommittee met on June 4th where they reviewed the applications and have prepared a recommendation for Council consideration. She stated that all funding amounts remain at the Fiscal Year 2012/2013 level with the exception of five providers who are recommended for an increase in funding. The subcommittee is not recommending funding any new applicants this year. The recommendation is an overall increase in the budget of \$3,270, for a new total budget of \$253,270. She stated that the following five providers are recommended for small increases: (1) CASA of Santa Cruz County; (2) Conflict Resolution Center; (3) Hospice of Santa Cruz County; (4) Save our Shores; and (5) Volunteer Center.

The following provided support to fund the GLBT program.

Kathleen Johnson, Advocacy Inc.

Jane Schwickerath, GLBT 60+ Seniors Program Volunteer Coordinator

Scott Winslow, Central Coast for Independent Living

The following thanked the City Council for the proposed Fiscal Year 2013/2014 funding:

Laura Segura , Women's Crisis Support Life Support

Shauna Mora, Conflict Resolution Center for Santa Cruz County

Brook Johnson, Second Harvest Food Bank.

There was Successor Agency consensus to add the Diversity Center/GLBT (Gay, Lesbian, Bisexual, & Transgender).

Chairperson Harlan requested that the five-year CIP list be discussed at a future City Council meeting. (Public Works Director Jesberg responded that he plans to bring the five-year CIP plan to the August City Council meeting).

**ACTION Motion made by Board Member Termini, seconded by Chairperson Harlan, to fund The Diversity Center/GLBT (Gay, Lesbian, Bisexual, & Transgender) from the Equipment Fund in the amount of \$1,000 for Fiscal Year 2013/2014. The motion was passed unanimously.**

**ACTION Motion made by Board Member Termini, seconded by Board Member Norton, to continue the adoption of a Resolution approving the proposed 2013/2014 Fiscal Year Budget for the City of Capitola General Fund, the Capitola Successor Agency, and the Capital Improvement Budgets to the June 13, 2013, Special Joint Meeting. The motion was passed unanimously.**

**JUNE 6, 2013 MINUTES – JOINT BUDGET STUDY SESSION OF THE CITY OF CAPITOLA, AS SUCCESSOR AGENCY TO THE FORMER CAPITOLA REDEVELOPMENT AGENCY** 47

**4. ADJOURNMENT**

Mayor Harlan adjourned the meeting at 7:45 p.m. to the next Special Budget Study Session of the City Council and the Successor Agency on Thursday, June 13, 2013 at 6:00 PM, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

Chairperson Harlan adjourned the meeting at 7:45 p.m. to the next Special Budget Study Session of the City Council and the Successor Agency on Thursday, June 13, 2013 at 6:00 PM, in the City Hall Council Chambers, 420 Capitola Avenue, Capitola, California.

\_\_\_\_\_  
Stephanie Harlan, Chairperson

ATTEST:

\_\_\_\_\_  
Susan Sneddon, Secretary

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## CAPITOLA SUCCESSOR AGENCY AGENDA REPORT

**MEETING OF AUGUST 8, 2013**

FROM: FINANCE DEPARTMENT

SUBJECT: APPROVAL OF SUCCESSOR AGENCY CHECK REGISTER REPORT

**RECOMMENDED ACTION:** Approve the attached Check Register Report for Mar 1, 2013 to Jul 31, 2013

**DISCUSSION:** Checks numbered 4013 through 4019 were written during the period March 1, 2013 through July 31, 2013. Checks were reviewed and authorized for distribution by the Finance Director. Registers were generated for:

Date	Starting Check #	Ending Check #	Total Checks	Amount
3/29/13	4013	4013	1	\$27,800.00
4/23/13	4014	4015	2	\$137,431.00
7/26/13	4016	4019	4	\$581,199.00

The prior Successor Agency check register report of Feb 2, 2013 ended with check number 4012.

The following checks were issued for more than \$10,000.00:

Check	Issued to:	Dept.	Purpose	Amount
4013	Castle Mobile Estates	CDD	ROPS III Infrastructure	\$27,800.00
4015	SCC Auditor-Controller	CDD	DOF Determination	\$137,431.00
4016	Capitola City Treasurer	FIN	Admin Allowance	\$125,000.00
4017	Castle Mobile Estates	CDD	Rent Subsidy & Infrastructure	\$45,187.00
4018	Housing Auth of SCC	CDD	ROPS13-14A Rent Subsidy	\$51,012.00
4019	SCC Auditor-Controller	CDD	Capitola Library Trust	\$360,000.00

As of 7/31/13 the unaudited cash balance in the Successor Agency account is \$8,142.18

**ATTACHMENT:**

1. Check Register for Mar 1 through Jul 31, 2013

Report Prepared By: Linda Benko  
AP Clerk

Reviewed and Forwarded  
By Executive Director:

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**Successor Agency Payment Register**

From Payment Date: 3/1/2013 - To Payment Date: 7/31/2013

Check Number	Invoice Number	Status	Invoice Date	Description	Payee Name	Transaction Amount
4013	03/29/2013 Invoice CASTLE20130312	Reconciled	Date 03/12/2013	04/30/2013 Description ROPS III Infrastructure	CASTLE MOBILE ESTATES	\$27,800.00 Amount \$27,800.00
4014	04/05/2013 Invoice CBF-3-2013-E	Voided	Date 03/29/2013	04/05/2013 Description Professional Services 3/1-3/29/13 E	FLYNN, CAROLYN	\$0.00 Amount \$0.00
4015	04/23/2013 Invoice OFA4-20-13	Reconciled	Date 04/23/2013	04/30/2013 Description DOF Determination, OFA Balance	SCC AUDITOR-CONTROLLER	\$137,431.00 Amount \$137,431.00
4016	07/26/2013 Invoice ROPS13-14A	Open	Date 07/23/2013	Description Admin Allowance, RDA Business Services	CAPITOLA CITY TREASURER	\$125,000.00 Amount \$125,000.00
4017	07/26/2013 Invoice ROPS13-14A Castl	Open	Date 07/23/2013	Description Rent Subsidy & Infrastructure Pmt	CASTLE MOBILE ESTATES	\$45,187.00 Amount \$45,187.00
4018	07/26/2013 Invoice ROPS13-14AHous	Open	Date 07/23/2013	Description ROPS13-14A Rent Subsidy, SCC Housing	HOUSING AUTHORITY OF SCC	\$51,012.00 Amount \$51,012.00
4019	07/26/2013 Invoice 76-126-2014Libr	Open	Date 07/23/2013	Description Capitola Library Trust, ROPS13-14A	SCC AUDITOR-CONTROLLER	\$360,000.00 Amount \$360,000.00
Check Totals:				Count	7	TOTAL \$746,430.00

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# CITY OF CAPITOLA AS SUCCESSOR AGENCY TO THE FORMER CAPITOLA REDEVELOPMENT AGENCY AGENDA REPORT

## MEETING OF AUGUST 8, 2013

FROM: CITY MANGER AND FINANCE DEPARTMENTS

SUBJECT: PUBLIC HEARING TO CONSIDER APPROVAL OF THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE FOR JANUARY 1 TO JUNE 30, 2014 (ROPS 13-14B)

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### RECOMMENDED ACTION:

- (1) Approve the Recognized Obligation Payment Schedule for the period from January 1 to June 30, 2014 (ROPS 13-14B);
- (2) Receive communications from the Department of Finance (DOF) [Attachments 2 and 3].

**BACKGROUND:** On January 12, 2012, the City Council voted to become Successor Agency for the Redevelopment Agency. Under ABX1 26, the *City of Capitola, as Successor Agency to the former Capitola Redevelopment Agency* (Successor Agency), is required to adopt a ROPS for each six-month period, which is then subject to approval by the Oversight Board. AB 1484 requires that the Fifth ROPS – “ROPS 13-14B” be submitted no later than October 1, 2013. Staff recommends the Successor Agency approve this ROPS 13-14B for presentation at an Oversight Board Meeting to be scheduled for September, 2013.

### DISCUSSION:

The attached ROPS (13-14B) includes the fourth accelerated payment on the library obligation in the amount of \$325,000. This ROPS also includes the reinstatement of the City/RDA Cooperative Agreement in the amount of \$618,028, and includes an annual interest payment of \$47,896. Staff has included the Cooperative Agreement’s annual interest payment on the ROPS based on two recent Superior Court cases involving the cities of Emeryville and Riverside. In those cases, the court ruled that City/RDA obligations were valid if the Oversight Board approved reentering the agreements prior to the passage of AB 1484. Staff suggests these cases could be applicable to the City’s Cooperative Agreement loan because the Capitola Oversight Board approved reentering into the agreement [Attachments 4 and 5]. The DOF is appealing the court’s decision in both the Emeryville and Riverside cases.

This ROPS also includes the complete Administrative Allowance in the amount of \$125,000. While Successor Agency activities have declined, costs associated with the litigation appear likely to increase in the next ROPS period.

## Item #: 4.A. Staff Report.pdf

### 8-8-13 AGENDA REPORT: RECOGNIZED OBLIGATION PAYMENT SCHEDULE

Cash flow projections will be updated once the status of the Cooperative Agreement loan is finalized; however the library obligation could still be paid off as early as Fiscal Year 2015/2016. ROPS 13-14B also includes regular payments of \$51,012 to the Housing Authority Rental Subsidy, \$50,000 for the Castle/Millennium Housing Project.

**FISCAL IMPACT:** Adoption of this ROPS allows the Successor Agency to make payments on listed obligations during the next six month time period. The full financial impact of current commitments and programs of the City and former Redevelopment Agency will not be known until after the Oversight Board makes its determinations, the State Department of Finance completes its activity under AB1x 26, and relevant litigation is resolved.


#### **ATTACHMENT:**

1. ROPS 13-14B - Fifth Recognized Obligations Payment Schedule
2. Department of Finance Letter, related to ROPS 13-14A – April 13, 2013
3. Department of Finance Finding of Completion – May 24, 2013
4. Superior Court – Riverside Ruling
5. Superior Court – Emeryville Ruling

**Report Prepared By:** Tori Hannah  
Finance Director

Jamie Goldstein  
City Manager

**Reviewed and Forwarded  
By City Manager/Executive Director**



**CITY OF CAPITOLA, as SUCCESSOR AGENCY to the former CAPITOLA REDEVELOPMENT AGENCY**  
**PROPOSED RECOGNIZED OBLIGATION PAYMENT SCHEDULE 13-14B (a)**  
**January 1, 2014 - June 30, 2014**  
8-1-13

Project Name / Debt Obligation	Contract/Agreement Execution Date	Contract/Agreement Termination Date	Payee	Description	Project Area	Total Outstanding Debt or Obligation	Total Due During Fiscal Year 2013-14	Funding Source					Six-Month Total
								Bond Proceeds	Reserve Balance	Admin. Allowance	RPTTF	Other	
						4,875,500	1,184,919	\$ -	\$ -	\$ 125,000	\$ 473,907	\$ -	\$ 598,907
1) 2006 Tax Allocation Note	03/01/2006	09/29/2014	JP Morgan Chase	\$1,000,000 Tax Allocation Note	Capitola Project Area	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2) Rispin Purchase Loan	06/22/2006	10/05/2021	Capitola City Treasurer	\$1,350,000 Rispin Purchase Loan	Capitola Project Area	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
3) Loan and Repayment Agreement - Principal only	09/10/1981	10/05/2021	Capitola City Treasurer	\$618,028 Loan and Repayment Agreement	Capitola Project Area	\$ 618,028	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
3a) Loan and Repayment Agreement - Accrued interest	09/10/1981	10/05/2021	Capitola City Treasurer	\$618,028 Loan and Repayment Agreement	Capitola Project Area	\$ 431,055	\$ 47,895	\$ -	\$ -	\$ -	\$ 47,895	\$ -	\$ 47,895
4) 76-126 Capitola Library Trust	08/17/2004	02/01/2018	Santa Cruz County Auditor-Controller	\$2,640,000 76-126 Capitola Library Trust	Capitola Project Area	\$ 1,180,225	\$ 685,000	\$ -	\$ -	\$ -	\$ 325,000	\$ -	\$ 325,000
5) Capitola Branch Library Construction	04/12/2011		Anderson Brule Architects, Inc.	\$550,000 Library Project Planning and Architectural Design Services	Capitola Project Area	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
6) Library District Section 3	11/30/1984	06/30/2012	Santa Cruz County Auditor-Controller	\$459,100 County Library Fund, Section 3	Capitola Project Area	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
7) Special District Section 4	11/30/1984	06/30/2012	Santa Cruz County Auditor-Controller	\$201,160 Special District Fund, Section 4	Capitola Project Area	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
8) Housing Rental Assistance Program	05/12/2011	03/31/2021	Santa Cruz	\$2,627,100 Housing Rental Assistance Program Agreement	Capitola Project Area	\$ 816,192	\$ 102,024	\$ -	\$ -	\$ -	\$ 51,012	\$ -	\$ 51,012
9) Millennium Housing	03/18/2011	03/18/2021	Millennium Housing of California, Inc.	\$2,000,000 Housing Loan Agreement	Capitola Project Area	\$ 800,000	\$ 100,000	\$ -	\$ -	\$ -	\$ 50,000	\$ -	\$ 50,000
10) Administrative Allowance			Capitola City Treasurer	\$250,000 Annual Administrative Allowance	Capitola Project Area	n/a	\$ 250,000	\$ -	\$ -	\$ 125,000	\$ -	\$ -	\$ 125,000
11) 41st Avenue Mall Economic Dev Project	04/06/2011	04/06/2017	Macerich	\$1,030,000 Mall Economic Development Project	Capitola Project Area	\$ 1,030,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

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DEPARTMENT OF  
**FINANCE**

EDMUND G. BROWN JR. • GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

April 13, 2013

Ms. Tori Hannah, Finance Director  
City of Capitola Successor Agency  
420 Capitola Avenue  
Capitola, CA 95010

Dear Ms. Hannah:

Subject: Recognized Obligation Payment Schedule

Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Capitola Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS 13-14A) to the California Department of Finance (Finance) on February 28, 2013 for the period of July through December 2013. Finance has completed its review of your ROPS 13-14A, which may have included obtaining clarification for various items.

Based on our review, we are approving all of the items listed on your ROPS 13-14A at this time. The administrative costs claimed are within the fiscal year administrative cap pursuant to HSC section 34171 (d). However, Finance notes the oversight board has approved an amount that appears excessive, given the number and nature of the other obligations listed in the ROPS. HSC section 34179 (i) requires the oversight board to exercise a fiduciary duty to the taxing entities. Therefore, Finance encourages the oversight board to apply adequate "oversight" when evaluating the administrative resources required to successfully wind-down the Agency.

The Agency's maximum approved Redevelopment Property Tax Trust Fund (RPTTF) distribution for the reporting period is \$586,012 as summarized below:

<b>Approved RPTTF Distribution Amount</b>	
<b>For the period of July through December 2013</b>	
Total RPTTF funding requested for obligations	\$ 461,012
Minus: Six-month total for items denied or reclassified as administrative cost	-
Total approved RPTTF for enforceable obligations	\$ 461,012
Plus: Allowable RPTTF distribution for ROPS 13-14A administrative cost	125,000
Minus: ROPS II prior period adjustment	-
<b>Total RPTTF approved for distribution:</b>	<b>\$ 586,012</b>

Pursuant to HSC Section 34186 (a), successor agencies were required to report on the ROPS 13-14A form the estimated obligations and actual payments (prior period adjustments) associated with the July through December 2012 period. HSC Section 34186 (a) also specifies that the prior period adjustments self-reported by successor agencies are subject to audit by the county auditor-controller (CAC) and the State Controller. The amount of RPTTF approved in

**Item #: 4.A. Attach 2.pdf**

Ms. Tori Hannah  
April 12, 2013  
Page 2

the above table includes the prior period adjustment resulting from the CAC's audit of the Agency's self-reported prior period adjustment.

Please refer to the ROPS 13-14A schedule that was used to calculate the approved RPTTF amount:

[http://www.dof.ca.gov/redevelopment/ROPS/ROPS 13-14A Forms by Successor Agency/](http://www.dof.ca.gov/redevelopment/ROPS/ROPS%2013-14A%20Forms%20by%20Successor%20Agency/).

This is Finance's final determination related to the enforceable obligations reported on your ROPS for July 1 through December 31, 2013. Finance's determination is effective for this time period only and should not be conclusively relied upon for future periods. All items listed on a future ROPS are subject to a subsequent review and may be denied even if it was or was not denied on this ROPS or a preceding ROPS. The only exception is for those items that have received a Final and Conclusive determination from Finance pursuant to HSC 34177.5 (i). Finance's review of items that have received a Final and Conclusive determination is limited to confirming the scheduled payments as required by the obligation.

The amount available from the RPTTF is the same as the amount of property tax increment that was available prior to enactment of ABx1 26 and AB 1484. This amount is not and never was an unlimited funding source. Therefore, as a practical matter, the ability to fund the items on the ROPS with property tax is limited to the amount of funding available to the successor agency in the RPTTF.

To the extent proceeds from bonds issued after December 31, 2010 exist and are not encumbered by an enforceable obligation pursuant to 34171 (d), HSC section 34191.4 (c)(2)(B) requires these proceeds be used to defease the bonds or to purchase those same outstanding bonds on the open market for cancellation.

Please direct inquiries to Wendy Griffe, Supervisor or Jenny DeAngelis, Lead Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY  
Local Government Consultant

cc: Ms. Lonnie Wagner, Accountant II, City of Capitola  
Ms. Mary Jo Walker, Auditor-Controller, County of Santa Cruz  
California State Controller's Office



EDMUND G. BROWN JR. ■ GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

May 24, 2013

Ms. Tori Hannah, Finance Director  
City of Capitola  
420 Capitola Avenue  
Capitola, CA 95010

Dear Ms. Hannah:

Subject: Request for a Finding of Completion

The California Department of Finance (Finance) has completed the Finding of Completion for the City of Capitola Successor Agency.

Finance has completed its review of your documentation, which may have included reviewing supporting documentation submitted to substantiate payment or obtaining confirmation from the county auditor-controller. Pursuant to Health and Safety Code (HSC) section 34179.7, we are pleased to inform you that Finance has verified that the Agency has made full payment of the amounts determined under HSC section 34179.6, subdivisions (d) or (e) and HSC section 34183.5.

This letter serves as notification that a Finding of Completion has been granted. The Agency may now do the following:

- Place loan agreements between the former redevelopment agency and sponsoring entity on the ROPS, as an enforceable obligation, provided the oversight board makes a finding that the loan was for legitimate redevelopment purposes per HSC section 34191.4 (b) (1). Loan repayments will be governed by criteria in HSC section 34191.4 (a) (2).
- Utilize proceeds derived from bonds issued prior to January 1, 2011 in a manner consistent with the original bond covenants per HSC section 34191.4 (c).

Additionally, the Agency is required to submit a Long-Range Property Management Plan to Finance for review and approval, per HSC section 34191.5 (b), within six months from the date of this letter.

Please direct inquiries to Andrea Scharffer, Staff Finance Budget Analyst, or Chris Hill, Principal Program Budget Analyst, at (916) 445-1546.

Sincerely,

  
STEVE SZALAY  
Local Government Consultant

cc: Ms. Lonnie Wagner, Accountant II, City of Capitola  
Ms. Mary Jo Walker, Auditor-Controller, County of Santa Cruz  
Ms. Marianne Ellis, Property Tax Accounting Manager, County of Santa Cruz  
California State Controller's Office

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SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF SACRAMENTO

**FILED/ENDORSED**  
 JUN 27 2013  
*Tony Brown*  
 By P. Mercado, Deputy Clerk

<b>HEARING:</b>	10:00 a.m. June 21, 2013	<b>DEPT. NO.:</b>	14
<b>JUDGE:</b>	HON. EUGENE L. BALONON	<b>CLERK:</b>	A. BROWN
<b>CITY OF RIVERSIDE; SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF RIVERSIDE; SCOTT C. BARBER; BELINDA J. GRAHAM; EMILIO RAMIREZ,</b>  Petitioners and Plaintiffs,  v.  <b>ANA J. MATOSANTOS, Director of the Department of Finance; PAUL ANGULO, Auditor-Controller of the County of Riverside; and DOES 1-30,</b>  Respondents and Defendants,  <b>ALVORD UNIFIED SCHOOL DISTRICT, et al.,</b>  Real Parties in Interest.		Case No.: 34-2013-80001421	
<b>Nature of Proceedings:</b>		<b>RULING ON SUBMITTED MATTER</b>	

The Court issued a Tentative Ruling granting Petitioner's writ of mandate in part. The parties appeared for argument on June 21, 2013, and were represented by counsel as stated on the record.

At the conclusion of oral argument the Court took the matter under submission. The Court affirms the tentative ruling, with modifications, as set forth below.

**RULING ON SUBMITTED MATTER**

Petitioners/Plaintiffs (Petitioners), which include City of Riverside (City) and the Successor Agency to the former Redevelopment Agency of the City of Riverside (Successor Agency), have filed a petition for writ of mandate and related complaint for declaratory and injunctive relief (Petition).

The Petition centers on two actions of Respondent Department of Finance (DOF) in response to the Successor Agency's submission of its Recognized Obligation Payment Schedule (ROPS) for the period of January 1, 2013 to June 30, 2013 (ROPS III). Petitioners contend that DOF: (1) denied that numerous agreements between the City and former Redevelopment Agency (RDA) were enforceable obligations, and (2) erroneously reclassified agreements for services to the Successor Agency as "administrative expenses."

## BACKGROUND

Between 2007 and 2011, the City and the RDA entered into numerous loan or reimbursement agreements for redevelopment projects. Petitioners refer to these agreements as the Reimbursement Agreements and the Loan Agreements. These agreements generally involved the RDA's commitment to pay construction, acquisition or other project costs. The RDA obtained funding from bond proceeds or loans from City funds.

The City and RDA also entered a Cooperation Agreement on March 8, 2011 to provide funding to complete previously approved projects and activities, including the Reimbursement Agreements and the Loan Agreements.

On June 28, 2011, the first component of the Dissolution Law, AB X1 26, which provided for the dissolution of redevelopment agencies, took effect. Among other things, AB X1 26 invalidated the Reimbursement Agreements, Loan Agreements and Cooperation Agreement. This is because newly-enacted Health and Safety Code<sup>1</sup> sections 34171(d)(2) and 34178(a) generally provided that contracts between a city or county and former RDA were invalid and not "enforceable obligations."

In early 2012, the RDA dissolved. The City assumed status as the RDA's Successor Agency and was charged with winding down the RDA's affairs. As required by law, the Successor Agency began to submit to DOF for approval ROPS for upcoming six-month periods. These ROPS submissions listed putative enforceable obligations of the former RDA, for which the Successor Agency must now make payments.

The effect of DOF's review and approval of ROPS items as enforceable obligations is that a successor agency may receive funding to pay for those items from the Redevelopment Property Tax Trust Fund (RPTTTF).<sup>2</sup> (Health & Saf. Code, § 34183.)

On June 14, 2012, the oversight board for the Successor Agency (Oversight Board) passed numerous resolutions that acknowledged the existence of the various Loan Agreements and Reimbursement Agreements between the City and RDA, and authorized

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<sup>1</sup> Unless otherwise specified, all references shall be to the Health and Safety Code.

<sup>2</sup> As of this date, there have been four ROPS "cycles" during which successor agencies have submitted ROPS, DOF has approved or disapproved the items listed therein as enforceable obligations, and allowed successor agencies to receive funding to make payments due.

the Successor Agency to “recenter” those agreements with the City pursuant to then-existing Section 34179(h). (*See*, AR III, tabs 54-65; AR III, tabs 66-77.)

That same day, the Oversight Board e-mailed DOF staff a June 14, 2012 Oversight Board meeting agenda and copies of all resolutions that were adopted by the Oversight Board. DOF did not timely seek review or respond to this notification of the Oversight Board’s action, pursuant to Section 34179(h)

On June 27, 2012, AB 1484, the second component of the Dissolution Law, took effect. AB 1484 revised many previously-enacted Dissolution Law statutes and added others.

On July 23, 2012, Petitioners submitted another letter to DOF notifying them that “[o]n June 14, 2012, the Successor Agency submitted to [DOF] by e-mail the Oversight Board agenda and all approved resolutions. To date there has been no request for review, nor any response by [DOF] regarding these actions.” (AR IV, tab 94:1140.)

On August 30, 2012, the Successor Agency submitted ROPS III to DOF for review. (*See*, AR VI, tab 87.) The ROPS III submission listed numerous items approved by the Cooperation Agreement, Reimbursement Agreements, and Loan Agreements as putative enforceable obligations. The ROPS III submission also included three agreements for legal and accounting services as enforceable obligations.

DOF denied many of the ROPS III items as enforceable obligations in a letter to the Successor Agency dated October 14, 2012. On November 20, 2012, the parties met and conferred. DOF issued a final determination letter on December 18, 2012, which forms the basis for the Petition. (*See*, Decl. of Justyn Howard, (Howard Decl.) Exh. 2.)

DOF’s December 18, 2012 letter concludes that the following items are not “currently” enforceable obligations: (1) 11 items totaling \$13,646,062 in bond funds, which the Successor Agency contends were authorized by the 2011 Cooperation Agreement; and (2) six “City loan” Loan Agreement items, totaling \$18,566,971. DOF concluded that these items were not enforceable obligations because Section 34171(d)(2) generally provides that agreements between the City and former RDA are not enforceable obligations.

DOF’s December 18, 2012 letter also classified three contracts for Successor Agency services as administrative expenses, and not enforceable obligations.

The Petition was filed on February 27, 2013.

On April 17, 2013, DOF issued a Finding of Completion to the Successor Agency, pursuant to Section 34191.4(c). On March 1, 2013, the Successor Agency submitted its fourth ROPS submission (ROPS 13-14A) to DOF. On May 15, 2013, DOF issued a final determination on the ROPS 13-14A submission. (Howard Decl., Exhs. 4, 5.)

## DISCUSSION

### Evidentiary Objections and Requests for Judicial Notice

Accompanying its Opposition Brief are numerous objections from DOF to the evidence submitted by Petitioners—namely, the “administrative record” and the Declaration of Scott Catlett pertaining to the origination of the funds for the Loan Agreements. Objections 1-4, and 6-8 are **OVERRULED**. Objections 5 and 9 are **SUSTAINED**.

DOF argues in detail that Petitioners have not met their burden of pleading by providing a complete and accurate administrative record. The Court concludes that Petitioners furnished copies of documents that were relevant to the claims, and that the City of Riverside City Clerk’s attestation was sufficient to introduce these documents into evidence.

In this case, there is no “administrative record” as the term is used in proceedings pursuant to Code of Civil Procedure section 1094.5. In proceedings under Code of Civil Procedure section 1085, such as this one, the rules governing the submission of documents sufficient to support writ petitions are less clear. Certainly, Petitioners should submit all documents presented to DOF that are relevant to Petitioners’ challenge to the underlying decision.

Petitioners contend that their challenge is to DOF’s determinations as to the ROPS III submission, which DOF argues is now moot. DOF argues that Petitioners should have included in the administrative record DOF documents following the ROPS III denial. In response, Petitioners have explained why DOF actions following the ROPS III determination do not moot their claims.

DOF has also submitted copies of documentation of the events following the ROPS III submission, attached to declarations, and the Court finds that it is appropriate to consider them, as they are relevant to DOF’s affirmative defenses. (*See, Western States Petroleum Association v. Superior Court* (1995) 9 Cal.4<sup>th</sup> 559, 575, n.5.) However, the Court does not conclude that Petitioners failed to meet their burden of pleading by omitting this documentation. The Court qualifies that its ruling is limited to this case only.

The Court also accepts Petitioners’ statement that Petitioners mistakenly omitted the December 18, 2012 ROPS III denial letter from the Administrative Record. Petitioners’ index to the administrative record lists this letter, and Petitioners admit that this letter forms the basis for the Petition, and DOF has introduced this letter into evidence.

On June 19, 2013, DOF filed additional objections to evidence furnished by Petitioners in support of their reply brief.

The Court **OVERRULES** DOF’s objections to Petitioners’ request for judicial notice and **GRANTS** Petitioners’ request for judicial notice. As to DOF’s objections regarding judicial notice of a trial court’s decision, the Court notes that the Rule of Court cited by

DOF applies to unpublished "opinion[s] of a California Court of Appeal or superior court appellate division." (Cal. Rules Ct., Rule 8.1115(a).) The Court recognizes that trial court decisions are not controlling or precedential, but may be relevant in certain cases.

Objections 1-13 to the declaration and exhibits of Jason Al-Imam are **SUSTAINED**. Underpinning this evidence is the assertion that the Loan Agreement items were issued from Special or Enterprise Funds. However, no admissible evidence in the administrative record reveals that the loans originated from Enterprise or Special Funds.

At oral argument, Petitioners argued that evidence in the administrative record *does* show the origin of the loans. Petitioners cited to numerous June 14, 2012 Oversight Board resolutions. These resolutions provide that the project was funded by loans originating from City Enterprise or Special Funds, or make similar statements. However, the resolutions are statements by the Oversight Board about the nature of funds provided by another entity and are hearsay. Petitioners also cited to letters from the City Manager and City Development Director to DOF stating the origin of the loans.<sup>3</sup> First, Petitioners have not shown that these City employees are qualified to opine about the origin of the loans. Nor have Petitioners explained (1) why other documentation regarding the loans origination is unavailable, and (2) the Court should rely on the contents of the letters as proof of the loans' origination.

DOF Objections 14-15 and 19 are **SUSTAINED**. Objections 16-18, and 20-21 are **OVERRULED**.

### Standard of Review

Petitioners seek a writ of mandate pursuant to Code of Civil Procedure section 1085 to review DOF's determinations. The applicable standard of review is whether DOF abused its discretion. (*See Ridgecrest Charter Sch. v. Sierra Sands Unif. Sch. Distr.* (2005) 130 Cal.App.4<sup>th</sup> 986, 1003.)

When the agency's action depends solely upon the correct interpretation of a statute, it is a question of law, upon which the Court exercises independent judgment. (*California Correctional Peace Officers' Assn. v. State* (2010) 181 Cal.App.4<sup>th</sup> 1454, 1460.) The weight to be given an agency's interpretation of law depends upon the thoroughness of its consideration, the validity of its reasoning, and its consistency with earlier and later pronouncements. (*Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4<sup>th</sup> 1, 14.) However, final responsibility for interpreting the law rests with the Court. (*Id.* at p.7.)

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<sup>3</sup> The administrative record only reflects part of a third letter cited by the City, and the administrative record does not show the letter's author.

**Mootness**

DOF argues that Petitioners' claims are moot regarding DOF's denial of the Loan Agreement and Reimbursement Agreement items on the ROPS III submission. The Court disagrees. In support for its argument, DOF cites a Finding of Completion that it issued to the Successor Agency on April 17, 2013. The effect of the Finding of Completion is that:

“[n]otwithstanding subdivision (d) of Section 34171, upon application by the successor agency and approval by the oversight board, loan agreements entered into between the redevelopment agency and the city, county, or city and county that created by the redevelopment agency shall be deemed to be enforceable obligations provided that the oversight board makes a finding that the loan was for legitimate redevelopment purposes.” (Section 34191.4.)

Thus, as to loan agreements that DOF previously rejected as enforceable obligations pursuant to Section 34171(d), DOF may no longer make this determination, once the Successor Agency's Oversight Board has found that the loans were for legitimate redevelopment purposes. DOF contemplates that Petitioners will submit these items on future ROPS and that DOF will approve them as enforceable obligations.

Petitioners counter that DOF's Finding of Completion does not moot whether DOF previously abused its discretion in denying the items as enforceable obligations in the ROPS III submission. This is because a Finding of Completion imposes certain limitations on the City's ability to receive repayment on loans. (*See* Section 34191.4(b).) Section 34191.4 suggests that the financial effect of receiving payment on an item found to be an enforceable obligation could differ from receiving payment on an item after a Finding of Completion issues.

Petitioners' arguments are well taken. The Court concludes that Petitioners' challenges to the DOF's denial of the Reimbursement Agreement and Loan Agreement items on the ROPS III submission are not moot.

Petitioners also challenge DOF's determination that three agreements for Successor Agency services were “administrative costs” rather than enforceable obligations on the ROPS III submission. However, it appears that DOF has now recognized these agreements as enforceable obligations in the subsequent ROPS 13-14 submission. (Howard Decl., Exh. 5.) Thus, the Successor Agency is entitled to receive reimbursement for those agreements. Petitioners have not contended otherwise. Accordingly, the Court concludes that Petitioner's claims as to these items are moot and does not address them.

**DOF Abused its Discretion in Determining that Section 34171(d)(2) Prohibited the Successor Agency from Reviving Agreements Between the City and RDA**

DOF found that the Reimbursement Agreement and Loan Agreement items were not enforceable obligations, because they were agreements between the City and the RDA. (Sections 34171(d)(2).) DOF concluded that because it had not yet issued the Successor Agency a Finding of Completion, “the provisions of Section 34171 appl[ied].” DOF asserted no other statutory basis to conclude that the items were not enforceable obligations.

Enforceable obligations include bonds, loans, payments required by law, judgments or settlements, and agreements or contracts. (Section 34171(d)(1).) Section 34171(d)(2) expressly excludes from an enforceable obligation “any agreements, contracts, or arrangements between the city, county...that created the redevelopment agency and the former redevelopment agency.” (Section 34171(d)(2).) Section 34178 also states that such agreements are invalid. However, Section 34178, as effective on June 14, 2011, also provided:

(a) Commencing on the operative date of this part, agreements, contracts, or arrangements between the city or county...that created the redevelopment agency and the redevelopment agency are invalid and shall not be binding on the successor agency; provided, however, that a *successor entity wishing to enter or reenter into agreements with the city [or] county... that formed the redevelopment agency that it is succeeding may do so upon obtaining the approval of its oversight board.*

(Section 34178(a) (emphasis added).) Here, the Oversight Board authorized the Successor Agency to “reenter” the agreements with the City on June 14, 2011.

Despite the Oversight Board’s action and subsequent notification to DOF, DOF concluded that the Reimbursement Agreement and Loan Agreement items were not enforceable obligations because they were agreements between the City and RDA.

DOF argues that Section 34178 must be read in the context of the entire Dissolution Law, and should not be interpreted as to improperly expand the Successor Agency’s power by allowing it to reenter contracts that would otherwise not be enforceable obligations.

“The court's role in construing a statute is to ‘ascertain the intent of the Legislature so as to effectuate the purpose of the law.’ [Citation] In determining the Legislature's intent, a court looks first to the words of the statute. [Citation.]... When looking to the words of the statute, a court gives the language its usual, ordinary meaning. [Citation.] If there is no ambiguity in the language, we presume the Legislature meant what it said and the plain meaning of the statute governs. [Citation.]” (*People v. Snook* (1997) 16 Cal.4<sup>th</sup> 1210, 1215.)

The Court rejects DOF’s argument. It is true that provisions of the Dissolution Law invalidate agreements between a city and former redevelopment agency. (*See*, Section

34171(d), 34178.) However, Section 34178(a), as it was written at the time the Oversight Board acted, plainly permitted a city and successor agency to “enter or reenter” an otherwise invalidated agreement, if the oversight board so approved. DOF’s argument would render this statutory language surplusage, which contradicts the rule that a court should give effect to every word of a statute. (*See, Reno v. Baird* (1988) 18 Cal.4<sup>th</sup> 640, 568.)

The Court also finds that an interpretation of former Section 34178, allowing “revival” of otherwise invalidated agreements is not inconsistent with the Dissolution Law’s purpose of winding down the affairs of redevelopment agencies. The Legislature could have determined that some redevelopment projects, if abandoned now, would cause properties to be under-used or devalued to the detriment of taxing entities. The Court also notes that the Legislature has now provided that such loan agreements may be deemed enforceable obligations, notwithstanding Section 34171(d), if the Successor Agency receives a Finding of Completion.

Petitioners argue that DOF should not have interpreted Section 34178(a) so as to operate retroactively upon the Successor Agency. However, it is not clear from DOF’s December 18, 2012 letter that it made this determination. Nevertheless, the Court concludes that DOF may not apply the changes to Section 34178 retroactively.

AB 1484 subsequently changed Section 34178(a) to add “[a] successor agency or an oversight board shall not exercise the powers granted by this subdivision to restore funding for an enforceable obligation that was deleted or reduced by the Department of Finance pursuant to subdivision (h) of Section 34179 unless it reflects the decisions made during the meet and confer process with the Department of Finance or pursuant to a court order.” Petitioner appears to concede that if this version of the statute were in effect on June 14, 2012, the Oversight Board would not have been able to approve reentry into the various agreements. However, AB 1484 did not take effect until June 28, 2012. The Court agrees that AB 1484 did not make the revisions to Section 34178 retroactive. (*See, McClung v. Employment Development Department* (2004) 34 Cal.4<sup>th</sup> 467, 475.)

DOF for the first time at oral argument raised the issue of AB 1484’s retroactivity and that the case of *McClung*, cited by Petitioners in their opening brief and by the court in its tentative ruling, is inapplicable. Petitioner did not object to Respondent advancing these new arguments at the hearing.

The Court has considered Respondent’s retroactivity arguments and does not find that further briefing, as requested by Respondent, is necessary. The Court finds *McClung* is applicable in this matter. In the Court’s view, the revisions made by AB 1484 are clearly not retroactive. Had the Legislature intended that the statute be retroactive, it would have expressed that intent in the legislation. The provisions of Section 34178 as amended by AB 1484 provide for limitations in the entry or reentry of agreements which former Section 34178 did not contain. The Legislature would have recognized the changes it was making and its impact to successor entities wishing to enter or reenter into agreements. If the Legislature had concerns about successor entities entering or



reentering into agreements under the former provisions, it could have precluded this by making the new provisions retroactive – it did not. Additionally, the Legislature’s pronouncement in Section 34177.3(e) that the limitations on successor agencies are “declaratory of existing law” does not make the provisions of Section 34178 retroactive. (*McClung, supra*, 34 Cal.4<sup>th</sup> at pp. 473-476.)

The Oversight Board approved the Successor Agency’s reentry into the Reimbursement Agreements and Loan Agreements, pursuant to Section 34178. Further, the Oversight Board was authorized to do so, when it made the approvals on June 14, 2012. Thus, these agreements were no longer invalid under Section 34178. Additionally, DOF did not conclude that the agreements were invalid for any other reason, or make other related findings as to why the agreements were not enforceable obligations.

Thus, DOF abused its discretion in concluding that the Reimbursement Agreement and Loan Agreement Items listed on the ROPS III submissions were not enforceable obligations under Section 34171(d)(2).

### **Estoppel**

Petitioners also argue that DOF was estopped from objecting to the Reimbursement Agreement and Loan Agreement items on the ROPS III submission. Petitioners contend that DOF did not first timely advise the Successor Agency whether it intended to review the Oversight Board’s actions allowing the City and Successor Agency to reenter the Reimbursement Agreements and Loan Agreements.

Section 34179(h) governs DOF’s review of oversight board actions. It provides:

(h) [DOF] may review an oversight board action taken pursuant to this part. Written notice and information about all actions taken by an oversight board shall be provided to [DOF] by electronic means and in a manner of [DOF’s] choosing. *An action shall become effective five<sup>4</sup> business days after notice in the manner specified by [DOF] is provided unless [DOF] requests a review...* Except as otherwise provided in this part, in the event that [DOF] requests a review of a given oversight board action, it shall have 40 days from the date of its request to approve the oversight board action or return it to the oversight board for reconsideration and the oversight board action shall not be effective until approved by [DOF]. In the event that [DOF] returns the oversight board action to the oversight board for reconsideration, the oversight board shall resubmit the modified action for [DOF] approval and the modified oversight board action shall not become effective until approved by [DOF]. If [DOF] reviews a Recognized Obligation Payment Schedule, [DOF] may eliminate or modify any item on that schedule prior to its approval...[DOF] shall provide notice to the successor agency...as to the

<sup>4</sup> The former version of the statute, in effect June 14, 2012 possessed only minor differences. For example, it provided that DOF had three business days after receiving notice, in which to respond.

reasons for its actions. To the extent that an oversight board continues to dispute a determination with [DOF], one or more future recognized obligation schedules may reflect any resolution of that dispute. [DOF] may also agree to an amendment to a Recognized Obligation Payment Schedule to reflect a resolution of a disputed item; however, this shall not affect a past allocation of property tax or create a liability for any affected taxing entity.

(Section 34179(h) (emphasis added).)

The statute provides that DOF “may” review oversight board actions. However, it also states that oversight board actions are “effective” within five days after proper notice to DOF, unless DOF requests review. The parties do not dispute that Petitioners timely and properly notified DOF of the Oversight Board’s June 14, 2012 approvals of the reentered agreements pursuant to Section 34179(h). Petitioners also advised DOF on July 23, 2012, of its notification and DOF’s failure to respond. DOF admits that it did not respond. Thus, the Oversight Board’s approvals became “effective” on June 19, 2012.

The Court must resolve whether DOF may review the Oversight Board’s actions in a later ROPS submission, despite its failure to timely review the Oversight Board’s actions per Section 34179(h).

DOF’s December 18, 2012 letter concluded that the Oversight Board’s actions had no legal effect. DOF acknowledged that oversight boards could allow successor agencies to reenter agreements, but that “the Oversight Board had no legal basis to approve an action that directly conflicted with and violated the definition of an enforceable obligation.” Thus, DOF effectively reviewed the Oversight Board’s actions. It rejected the Reimbursement Agreement and Loan Agreement items as enforceable obligations on the ROPS III schedule, because they were contracts entered into between the City and former RDA, notwithstanding the Oversight Board’s approvals.

Estoppel may be applied against a government agency in limited circumstances. The government may be bound by estoppel in the same manner as a private party when the requisite elements are present and the injustice that would result from failure to uphold the estoppel justifies any effect upon public interest. (*Long Beach v. Mansell* (1970) 3 Cal.3d 462, 496-497.) The elements for estoppel are that: (1) the party to be estopped is apprised of the facts; (2) intends that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party is ignorant of the true state of facts; and (4) he relies upon the conduct to his injury. (*Id.*, at p. 469.)

DOF argues that it is not estopped from denying the items as enforceable obligations. It argues, as it did in the December 18, 2012 ROPS III denial that it retains the ability to review and deny items on future ROPS submissions. Citing Petitioners’ July 23, 2012 letter to DOF, it also argues that Petitioners were on notice that the agreements were still

“in controversy in late July 2012.” However, DOF created the “controversy” by not responding to Petitioners’ notices and inquiries.

The Legislature clearly provided a mechanism by which DOF could review Oversight Board actions. It is undisputed that Petitioners notified DOF pursuant to the statute, and that DOF did not timely seek review or respond. Petitioners could reasonably conclude that DOF’s inaction rendered the Oversight Board’s actions “effective” and Petitioners were not obliged to assume that DOF would use the Oversight Board’s actions as a basis to deny items listed in later ROPS determinations, when DOF had not sought review. (Section 34179(h).)

Further, Petitioners were unaware that DOF did not intend to be bound by Section 34178(h). DOF asserts that its responses to Petitioners’ earlier ROPS submissions notified Petitioners that it retained authority to review and deny items listed in future ROPS. However, this does not inform a successor agency that DOF may opine on the validity of an oversight board’s action, if DOF were properly notified and failed to request review under Section 34178(h).

Here, DOF purported to review the Oversight Board’s actions in the ROPS III submission, declared them to be without “legal basis” and cited this as a ground on which to conclude that the agreements were not enforceable obligations. If the notification requirements of Section 34179(h) are to have any meaning, then DOF could not later opine on the effectiveness of the Oversight Board’s action and use this as a basis to deny items as enforceable obligations in a ROPS submission.

Petitioners make a general argument that they relied to their detriment on DOF’s failure to timely review the Oversight Board’s actions. DOF’s decisions unquestionably affect City planning and budgeting actions. However, Petitioners have not presented evidence of a specific decision by the Successor Agency, between the June 14, 2012 Oversight Board Approval, and December 18, 2012, that was based on DOF’s failure to review the Reimbursement Agreements and Loan Agreements. Although the Court is sympathetic to Petitioners, it cannot conclude that Petitioners met this requirement for their estoppel claim.

### **Constitutional Claims**

Petitioners argue that because DOF denied Loan Agreement items as enforceable obligations, the Successor Agency will not receive the full amount of funding from RPTTF funds allowing the loans to be repaid, and that this will violate the United States and California Constitutions.

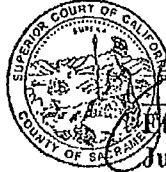
As the Court has determined that DOF abused its discretion in concluding that the Loan Agreement items were not enforceable obligations on the ROPS III submission, the Court does not consider these arguments.

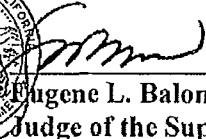
**DISPOSITION**

The Petition for peremptory writ of mandate is **GRANTED**, in that the Court finds that DOF abused its discretion in concluding that the Reimbursement Agreement and Loan Agreement items were not enforceable obligations, pursuant to Section 34171(d), in its ROPS III final determination. Petitioners are entitled to a writ of mandate requiring DOF to recognize these items as valid enforceable obligations for the purposes of the Dissolution Law. In all other respects, the causes of action in the petition and complaint are **DENIED** or **DISMISSED**.

The petition for writ of mandate is granted, in part. Counsel for Petitioners is directed to prepare the judgment and writ of mandate, submit them to opposing counsel for approval as to form, and thereafter submit them to the Court for approval in accordance with Rule of Court 3.1312.

Date: June 27, 2013



  
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Eugene L. Balonon  
Judge of the Superior Court of California  
County of Sacramento

Case Number: 34-2013-80001421 Department: 14  
Case Title: CITY OF RIVERSIDE v ANA J. MATASANTOS  
ALVORD UNIFIED SCHOOL DISTRICT REAL PARTY IN INTEREST

CERTIFICATE OF SERVICE BY MAILING  
(C.C.P. Sec. 1013a(4))

I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown below I served the foregoing RULING ON SUBMITTED MATTERS by depositing true copies thereof, enclosed in separate, sealed envelopes with the postage fully prepaid, in the United States Mail at Sacramento, California, each of which envelopes was addressed respectively to the persons and addresses shown below:

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I, the undersigned deputy clerk, declare under penalty of perjury that the foregoing is true and correct.

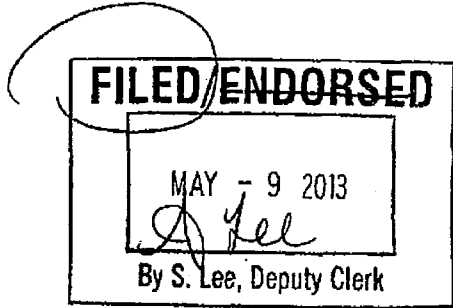
Dated: July 1, 2013

Superior Court of California,  
County of Sacramento

By: T. BROWN,  
Deputy Clerk

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

**CITY OF EMERYVILLE, a municipal corporation; SUCCESSOR AGENCY TO THE EMERYVILLE REDEVELOPMENT AGENCY, a public entity,**

**Petitioners and Plaintiffs,**

**v.**

**ANA J. MATOSANTOS, in her official capacity as Director of the State of California Department of Finance,**

**Respondents and Defendants.**

**Case No. 34-2012-80001264-CU-WM-GDS**

**RULING ON SUBMITTED MATTER:  
PETITION FOR WRIT OF MANDATE  
AND COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

**Introduction**

The present case arises out of the efforts to wind down the affairs of former redevelopment agencies after their dissolution under AB 1X 26 and AB 1484 (referred to generally in this ruling as "the redevelopment dissolution laws"). Plaintiffs/petitioners The City of Emeryville and the Successor Agency to the Emeryville Redevelopment Agency have filed a petition for writ of mandate under Code of Civil Procedure section 1085, along with a complaint for declaratory and injunctive relief. The petition and complaint challenges the action of respondent Matosantos, acting as the Director of the Department of Finance ("DOF"), rejecting several agreements that the Successor Agency requested to be placed on its

1 Recognized Obligation Payment Schedules ("ROPS").

2 The critical issue before the Court is whether the Emeryville Successor Agency, with the approval  
3 of its Oversight Board, had legal authority under the redevelopment dissolution laws to re-enter into  
4 contracts that previously had been entered into between the (now dissolved) Emeryville Redevelopment  
5 Agency and the City of Emeryville, after those original contracts were invalidated by the redevelopment  
6 dissolution laws. If the Successor Agency had such authority, then DOF's action disapproving the  
7 contracts at issue in this case was not valid, and plaintiffs/petitioners are entitled to relief.

8 The Court heard oral argument on the petition and complaint on March 8, 2013, without  
9 previously posting a tentative ruling. At the close of the hearing, the Court took the matter under  
10 submission for issuance of a written ruling. The following shall constitute the Court's ruling on the  
11 petition and complaint.<sup>1</sup>

12 **Factual and Procedural Background**

13 The relevant facts are essentially undisputed, and may be summarized as follows.

14 On February 15, 2011, prior to the passage of the redevelopment dissolution laws, the City of  
15 Emeryville and the Emeryville Redevelopment Agency entered into a contract entitled the "Amended and  
16 Restated Public Improvements Reimbursement Agreement", under which the Redevelopment Agency  
17 pledged funds to the City for the redevelopment of 27 projects within the city limits. The parties entered  
18 into the contract with knowledge that the Legislature was deliberating changes to the Community  
19 Redevelopment Law that might limit the ability of redevelopment agencies to devote tax increment  
20 revenues to redevelopment projects.

21 On June 26, 2011, the Legislature enacted AB 1X 26, which provided for the dissolution of all  
22 redevelopment agencies in California and established a complex procedure for winding down their affairs.  
23 Although the legislation was challenged on a number of constitutional grounds, the California Supreme  
24 Court ultimately upheld it on December 29, 2011 in *California Redevelopment Association v. Matosantos*  
25 (2011) 53 Cal. 4<sup>th</sup> 231. As part of its decision, the Supreme Court reformed certain deadlines contained in  
26

27 <sup>1</sup> Petitioner filed requests for judicial notice on January 22, 2013 and February 21, 2013. The requests, which were  
28 not objected to, are granted.



1 AB 1X 26, with the effect that redevelopment agencies such as the Emeryville Redevelopment Agency  
2 were dissolved as of February 1, 2012, and their affairs taken over by successor agencies as of that date.

3 One provision of AB 1X 26, codified as Health and Safety Code section 34178(a), provided, in its  
4 first clause, that “[c]ommencing on the operative date of this part, agreements, contracts, or arrangements  
5 between the city, county or city and county that created the redevelopment agency and the former  
6 redevelopment agency are invalid and shall not be binding on the successor agency.” Health and Safety  
7 Code section 34171(d)(2) also provided that such agreements were not considered to be “enforceable  
8 obligations” of successor agencies. The City and the Successor Agency recognized that these provisions  
9 rendered the Amended and Restated Public Improvements Reimbursement Agreement invalid.

10 The second clause of Section 34178(a), however, provided that “a successor agency wishing to  
11 enter or reenter into agreements with the city, county, or city and county that formed the redevelopment  
12 agency that it is succeeding may do so upon obtaining approval of its oversight board.”

13 Pursuant to that provision, on June 19, 2012 the Successor Agency and the City resolved to re-  
14 execute the Amended and Restated Public Improvements Reimbursement Agreement as to five obligations  
15 in the form of five “Re-Executed Reimbursement Agreements”, contingent on approval from the  
16 Oversight Board of the Successor Agency. The Re-Executed Reimbursement Agreements were intended  
17 to restore funding for four of the projects covered by the original reimbursement agreement, including the  
18 following: (1) Emeryville Center of Community Life; (2) South Bayfront Pedestrian/Bicycle Bridge and  
19 Horton Landing Park Funding and Transfer Agreement (the Horton Landing Project); (3) Transit Center  
20 Public Parking Funding and Sublease Assignment Agreement (the Transit Center Project); and (4) Art and  
21 Cultural Center Funding and Property Transfer Agreement. The Re-Executed Reimbursement  
22 Agreements also were intended to restore funding for repayment of the Capital Incentives for Emeryville’s  
23 Redevelopment and Remediation loans for the environmental cleanup of certain polluted “brownfield”  
24 sites within the city (the CIERRA loans).  
25

26 One week later, on June 26, 2012, the Oversight Board approved three of the five Re-Executed  
27 Reimbursement Agreements, specifically, those related to the Horton Landing Project, the Transit Center  
28

1 Project and the CIERRA loans. The three agreements involve projects that had been started under the  
2 authority of the former Redevelopment Agency, two of which were on-going but not completed. As  
3 alleged in the petition and complaint, the Horton Landing Project and the Transit Center Project had their  
4 roots in the 1990s, and involved components of larger redevelopment projects that had been planned but  
5 not yet built. The CIERRA loans repayment agreement was related to the environmental remediation of  
6 two "brownfield" sites in the City. The City had loaned the former Redevelopment Agency the funds for  
7 the work from a revolving loan fund the City administered based on grants from the U.S. Environmental  
8 Protection Agency. The remediation work had been completed, but the Redevelopment Agency had not  
9 yet repaid the loans.

10 After approving these three agreements, the Oversight Board directed that the obligations in the  
11 agreements should be added to the Successor Agency's Recognized Obligation Payment Schedule  
12 ("ROPS") for the period July-December 2012. The ROPS previously prepared was amended to include  
13 these items and the Amended July-December ROPS was submitted to DOF for review and approval on  
14 June 28, 2012.

15 On June 27, 2012, one day after the Oversight Board acted, the Governor signed AB 1484, which  
16 was urgency legislation amending AB 1X 26. One of the provisions of AB 1484 was codified as Health  
17 and Safety Code section 34177.3, entitled "Limitations of authority of successor agencies". The statute  
18 became effective on the day the Governor signed it.

19 Subdivision (a) of the statute states: "Successor agencies shall lack the authority to, and shall not,  
20 create new enforceable obligations under the authority of the Community Redevelopment Law (Part 1  
21 (commencing with Section 33000)) or begin new redevelopment work, except in compliance with an  
22 enforceable obligation that existed prior to June 28, 2011."

23 Subdivision (e) of the statute states: "The Legislature finds and declares that the provisions of this  
24 section are declaratory of existing law."

25 On July 3, 2012, DOF notified the Successor Agency that it was initiating a review of the three  
26 Re-Executed Reimbursement Agreements listed on the amended ROPS. Nine days later, on July 12, 2012,  
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1 DOF notified the Successor Agency that it already had completed its review of 2012 ROPS and that it was  
2 not accepting revised ROPS or requests to reconsider denied items, or making any revisions to existing  
3 requests. All revised ROPS submitted for previous ROPS periods therefore were rejected, including the  
4 petitioners' amended July-December 2012 ROPS.

5 The legal effect of DOF's July 12, 2012 letter as to petitioners was to disapprove the three Re-  
6 Executed Reimbursement Agreements for the Horton Landing Project, the Transit Center Project, and the  
7 CIERRA loans. Petitioners filed the Petition for Writ of Mandate and Complaint for Declaratory and  
8 Injunctive Relief on September 11, 2012.

#### 9 Summary of the Contentions of the Parties

10 The legal contentions of the parties are relatively straightforward, at least in summary.

11 Petitioner contends, and respondent denies, that the three Re-Executed Reimbursement  
12 Agreements for the Horton Landing Project, the Transit Center Project, and the CIERRA loans are valid  
13 and enforceable agreements because the Successor Agency entered into them with the approval of the  
14 Oversight Board under Health and Safety Code 34178(a). Thus, petitioner contends, the agreements were  
15 "enforceable agreements" under Health and Safety Code section 34171(d)(1)(E), which applies to "[a]ny  
16 legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit  
17 or public policy", and DOF should have treated them as such for purposes of the redevelopment  
18 dissolution laws.

19 Respondent contends, and petitioner denies, that the three agreements are invalid under Health and  
20 Safety Code section 34177.3(a). Thus, respondent contends, the agreements were not "enforceable  
21 agreements" for purposes of the redevelopment dissolution laws.

#### 22 Standard of Review

23 As presented by the parties, this case focuses on the application of statutes to undisputed facts.  
24 The interpretation of statutes in such a case is an issue of law on which the court exercises its independent  
25 judgment. (See, *Sacks v. City of Oakland* (2010) 190 Cal. App. 4<sup>th</sup> 1070, 1082.)

26 In exercising its independent judgment, the Court is guided by certain established principles of  
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1 statutory construction, which may be summarized as follows. The primary task of the court in interpreting  
2 a statute is to ascertain and effectuate the intent of the Legislature. (See, *Hsu v. Abbata* (1995) 9 Cal. 4<sup>th</sup>  
3 863, 871.) The starting point for the task of interpretation is the words of the statute itself, because they  
4 generally provide the most reliable indicator of legislative intent. (See, *Murphy v. Kenneth Cole*  
5 *Productions* (2007) 40 Cal. 4<sup>th</sup> 1094, 1103.) The language used in a statute is to be interpreted in  
6 accordance with its usual, ordinary meaning, and if there is no ambiguity in the statute, the plain meaning  
7 prevails. (See, *People v. Snook* (1997) 16 Cal. 4<sup>th</sup> 1210, 1215.) The court should give meaning to every  
8 word of a statute if possible, avoiding constructions that render any words surplusage or a nullity. (See,  
9 *Reno v. Baird* (1998) 18 Cal. 4<sup>th</sup> 640, 658.) Statutes should be interpreted so as to give each word some  
10 operative effect. (See, *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal. 4<sup>th</sup> 381, 390.)

11 Beyond that, the court must consider particular statutory language in the context of the entire  
12 statutory scheme in which it appears, construing words in context, keeping in mind the nature and obvious  
13 purpose of the statute where the language appears, and harmonizing the various parts of the statutory  
14 enactment by considering particular clauses or sections in the context of the whole. (See, *People v. Whaley*  
15 (2008) 160 Cal. App. 4<sup>th</sup> 779, 793.)

17 The Court notes that no reported appellate decision has construed the statutory language at issue in  
18 this case, which appears to present an issue of first impression.

19 **Discussion**

20 **Application of Health and Safety Code Section 34178(a):**

21 The issue of whether the three Re-Executed Reimbursement Agreements are valid and enforceable  
22 agreements depends in the first instance on whether the Successor Agency had authority to enter into them  
23 with the approval of the Oversight Board under Health and Safety Code section 34178(a). The Court  
24 concludes that petitioners have the better argument on this issue.

25 Analysis begins with the language of the statute itself. Health and Safety Code section 34178  
26 indisputably invalidated the original reimbursement agreements between the City and the former  
27 Redevelopment Agency, and petitioners do not contend otherwise. But the statute also unambiguously  
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1 provided that the Successor Agency could "enter or reenter" into agreements with the City upon approval  
2 of the Oversight Board. In this case, the Successor Agency entered, or reentered, into three agreements  
3 with the City that previously had been entered into between the former Redevelopment Agency and the  
4 City. The Oversight Board approved the agreements. The action taken falls squarely within the plain  
5 meaning of the terms of the statute.

6 In essence, respondent argues that agreements between a former redevelopment agency and the  
7 city that created it are invalid and under no circumstances may be revived through an agreement between  
8 the successor agency and the city. This argument ignores the use of the term "reenter" in Health and  
9 Safety Code section 34178(a). The concept of "reentering" into an agreement presupposes the existence of  
10 a prior agreement, in this case an agreement between the former Redevelopment Agency and the City.  
11 Indeed, by first declaring that agreements between the former redevelopment agency and its city sponsor  
12 are invalid, and then providing that the successor agency may "reenter" into an agreement with the city  
13 with oversight board approval, the statute plainly permits the revival of an invalidated agreement if the  
14 oversight board approves. Respondent's interpretation of the statute essentially would read the word  
15 "reenter" out of it altogether, in violation of the principle that the court should give meaning to every word  
16 of a statute.  
17

18 More generally, respondent contends that the statute should not be read as permitting a successor  
19 agency to enter into the types of agreements at issue in this case, at least two of which involve the  
20 continuation of on-going redevelopment projects, because the intent of the redevelopment dissolution  
21 statutes, seen as a whole, was immediately to wind down all redevelopment activities and marshal  
22 redevelopment assets and revenues for the benefit of taxing entities.

23 Respondent cites various provisions of the redevelopment dissolution laws that it contends  
24 demonstrate this purpose, with particular reliance on Health and Safety Code section 34167(a), which  
25 provides that restrictions on the powers of former redevelopment agencies are "...intended to preserve, to  
26 the maximum extent possible, the revenues and assets of redevelopment agencies so that those assets and  
27 revenues that are not needed to pay for enforceable obligations may be used by local governments to fund  
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1 core governmental services including police and fire protection services and schools...”, and which further  
2 states that the provisions of the law “...shall be construed as broadly as possible to support this intent and  
3 to restrict the expenditure of funds to the fullest extent possible”.

4 Based on these principles, respondent argues that Health and Safety Code section 34178(a) may  
5 not be interpreted as permitting a successor agency to enter or reenter into an agreement that involves the  
6 completion of on-going redevelopment work, because such an agreement is inconsistent with the purpose  
7 of a rapid wind-down of redevelopment activities and the immediate application of redevelopment assets  
8 and revenues for the benefit of taxing entities.

9 Respondent’s arguments are not persuasive. As petitioner demonstrates, the redevelopment  
10 dissolution laws enacted in AB 1X 26 do not preclude, and in fact show an intent to permit, a wind-down  
11 of redevelopment activities that includes the completion of on-going projects so as to maximize the  
12 ultimate benefit to taxing entities over the longer term. For example, various provisions of the  
13 redevelopment dissolution laws provide that oversight boards, which consist of representatives of taxing  
14 entities, have a fiduciary responsibility to taxing entities, and must direct successor agencies to dispose of  
15 assets of former redevelopment agencies in a manner aimed at maximizing value. (See, Health and Safety  
16 Code sections 34179(j), 34181.) Similarly, successor agencies are directed to enforce all former  
17 redevelopment agency rights for the benefit of the taxing entities. (See, Health and Safety Code section  
18 34177(e).) Depending upon the circumstances, completing on-going projects may be entirely compatible  
19 with the goal of disposing of the assets of former redevelopment agencies in a manner aimed a maximizing  
20 their value for taxing entities or with enforcing former redevelopment agency rights for their benefit. The  
21 same could be said for authorizing the repayment of money into a revolving loan fund used to support the  
22 remediation of polluted sites on or near redevelopment project sites.

24 Indeed, Health and Safety Code section 34173(g) strongly indicates that the Legislature  
25 recognized that the completion of certain projects was compatible with the goal of maximizing value for  
26 taxing entities. The statute provides that a successor agency succeeds to the organizational status of the  
27 former redevelopment agency, but without any legal authority to participate in redevelopment activities,  
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1 “...except to complete any work related to an approved enforceable obligation”. This statute indicates that  
 2 the completion of on-going redevelopment projects is not necessarily precluded, and is a clear recognition  
 3 of the common-sense concept that leaving partially-built or even planned projects uncompleted may not  
 4 provide the maximum possible benefit to taxing entities.<sup>2</sup>

5 In this case, the record shows that the Oversight Board thoroughly debated the proposed  
 6 agreements, which originally were five in number, and in the end approved only the three at issue in this  
 7 case. The record thus suggests that the Oversight Board carefully exercised its fiduciary responsibility to  
 8 taxing entities and approved the three agreements at issue here because it determined that allowing the  
 9 completion of those projects maximized ultimate value and thus was in the long-term best interests of  
 10 those taxing entities.<sup>3</sup>

11 The Court therefore concludes that Health and Safety Code section 34178(a) explicitly permitted  
 12 the Successor Agency in this case to enter, or reenter, into the three contracts with the City that are at issue  
 13 in this case with approval of the Oversight Board, and that interpreting the statute in this manner is in  
 14 harmony with the purposes of the redevelopment dissolution laws.

15 **Application of Health and Safety Code Section 34177.3:**

16 Even if Health and Safety Code section 34178(a) authorized the Successor Agency to enter, or  
 17 reenter, into the three agreements at issue in this case with the approval of the Oversight Board, respondent  
 18 nonetheless contends that the agreements were invalidated retroactively by the passage of Health and  
 19 Safety Code section 34177.3 one day after the Oversight Board approved the agreements.  
 20

21 <sup>2</sup> The Court also notes petitioners’ argument, made in the reply brief, that the statutes and declarations of legislative  
 22 intent regarding immediate wind-down of redevelopment agencies and the marshalling of assets for taxing entities  
 23 appear in a separate part of the redevelopment dissolution laws than the statutes and declarations of legislative intent  
 24 regarding the authority of successor agencies and the fiduciary responsibility of oversight boards to taxing entities.  
 This division into two parts supports petitioners’ contention that the redevelopment dissolution laws, at least as  
 originally enacted, were intended to further more than one purpose.

25 <sup>3</sup> See, Administrative Record (“A.R.”), Vol. 28, Tab 172, pages EMER 0732-07134 (transcript of Oversight Board  
 26 hearing on June 26, 2012. An example drawn from one of the staff reports provided to the Oversight Board  
 27 explaining the benefits of completing the Transit Center project is illustrative. The report stated that if the project  
 28 were to be completed, “...the taxing entities will receive a sum of property tax revenues significantly in excess of  
 their share of the sum they would otherwise receive on an annual basis from the Mound Parcel if it remained as a  
 surface parking lot over an engineered hazardous waste dump, in addition to their one-time share of the amount of  
 money pledged pursuant to this Agreement if it were distributed to the taxing entities in accordance with the  
 Dissolution Act.” (See, A.R., Vol. 26, Tab 170, page EMER 06621.)

1           Petitioners do not appear to dispute the proposition that Health and Safety Code section 34177.3  
2 would apply to, and invalidate, the agreements at issue in this case if those agreements had been entered  
3 into and approved after the enactment of the section on June 27, 2012, because the agreements were not in  
4 compliance with an enforceable obligation that existed prior to June 28, 2011. The only issue presented by  
5 this case is whether Health and Safety Code section 34177.3 operates retroactively to invalidate  
6 agreements that were entered into and approved prior to the effective date of the statute.

7           A fundamental principle of statutory interpretation is that statutes generally operate prospectively  
8 only, and will not be given a retrospective operation that interferes with antecedent rights unless such is  
9 the unequivocal and inflexible import of the terms of the statute and the manifest intention of the  
10 Legislature. (See, *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal. 4<sup>th</sup> 828, 840.) Thus, a statute  
11 that interferes with antecedent rights may be applied retroactively only if it contains express language of  
12 retroactivity or if other sources provide a clear and unavoidable implication that the Legislature intended  
13 retroactive application. (See, *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal. App. 4<sup>th</sup>  
14 1112, 1140.) There is a strong presumption against retroactivity. (See, *McClung v. Employment*  
15 *Development Department* (2004) 34 Cal. 4<sup>th</sup> 467, 475.)

16           In this case, Health and Safety Code section 34177.3 unquestionably interferes with an antecedent  
17 right, specifically, the right the Successor Agency in this case exercised to enter, or reenter, into  
18 agreements with the City subject to approval by the Oversight Board. To demonstrate that this retroactive  
19 application is legitimate, respondent relies heavily on subdivision (e) of the statute, which states: "The  
20 Legislature finds and declares that the provisions of this section are declaratory of existing law."

21           By itself, this statement is not sufficient to overcome the strong presumption against retroactivity,  
22 because it does not show a "clear and unavoidable intent to have the statute operate retroactively", and  
23 because it does not demonstrate that the Legislature "affirmatively considered the potential unfairness of  
24 retroactive application and determined that it was an acceptable price to pay for the countervailing  
25 benefits". (See, *McClung v. Employment Development Department, supra*, 34 Cal. 4<sup>th</sup> at 476.)

26           Indeed, subdivision (e) is not really a statement of retroactivity, but rather an attempt by the  
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1 Legislature to interpret pre-existing provisions of the redevelopment dissolution laws as already including  
2 the limitations set forth in the new statute.

3 As such, this statement is not entitled to deference, because the Legislature has no authority to  
4 interpret a statute. It may define the meaning of statutory language by present legislative enactment,  
5 which it may deem retroactive, but it has no legislative authority to say what it did mean. Accordingly, the  
6 court cannot accept a legislative statement that an unmistakable change in the law is nothing more than a  
7 clarification or restatement of its terms. (See, *McClung v. Employment Development Department, supra*,  
8 34 Cal. 4<sup>th</sup> at 473.) As the California Supreme Court has stated, quoting from first principles of judicial  
9 review: "It is, emphatically, the province and duty of the judicial department to say what the law is. Those  
10 who apply the rule to particular cases, must of necessity expound and interpret that rule. (*Marbury v.*  
11 *Madison* (1803) 5 U.S. 137, 177 L. Ed. 2<sup>nd</sup> 60.)" (See, *McClung v. Employment Development Department,*  
12 *supra*, 34 Cal. 4<sup>th</sup> at 469-470.)

13  
14 To the extent that the Legislature purported to declare, as respondent contends here, that the  
15 redevelopment dissolution laws as they existed prior to the enactment of AB 1484 prohibited successor  
16 agencies from entering into contracts with cities that had the effect of reviving contracts between former  
17 redevelopment agencies and their sponsor cities that had been invalidated by the redevelopment  
18 dissolution laws, that declaration was simply incorrect. As the Court concluded in its analysis of Health  
19 and Safety Code section 34178(a), above, the redevelopment dissolution laws as enacted in AB 1X 26  
20 explicitly authorized such action. The Legislature may well have changed its collective mind about the  
21 wisdom of permitting such action, and certainly had the authority to forbid it on a prospective basis.  
22 Indeed, the Legislature had the authority to invalidate actions already taken on a retroactive basis by  
23 making a proper declaration of its intent to do so. However, the Legislature could not do what it did –  
24 interpret the law by asserting that it was only restating the law as originally enacted.

25 The Court accordingly concludes that Health and Safety Code section 34177.3 does not have  
26 retroactive effect, and therefore does not invalidate the agreements at issue in this case.  
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1 mandate, and to a judicial declaration, requiring DOF to recognize these agreements as valid enforceable  
2 obligations for purposes of the redevelopment dissolution laws.

3 In reaching this conclusion, the Court has considered DOF's contentions that this matter is not ripe  
4 for adjudication, that petitioners fail to state claim against DOF for writ relief, that petitioners' non-writ  
5 causes of action are not cognizable, and that petitioners failed to join indispensable parties (affected taxing  
6 entities), and finds those contentions to be without merit.

7 The petition for writ of mandate is granted, and a declaratory judgment shall be entered in favor of  
8 petitioners. In accordance with Local Rule 2.15, counsel for petitioners is directed to prepare the judgment  
9 and writ of mandate; submit them to opposing counsel for approval as to form in accordance with Rule of  
10 Court 3.1312(a); and thereafter submit them to the Court for signature and entry of judgment in  
11 accordance with Rule of Court 3.1312(b).  
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13  
14 DATED: May 9, 2013

  
\_\_\_\_\_  
Judge MICHAEL P. KENNY  
Superior Court of California,  
County of Sacramento

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**CERTIFICATE OF SERVICE BY MAILING**  
**(C.C.P. Sec. 1013a(4))**

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above-entitled **RULING ON SUBMITTED MATTER** in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at 720 9<sup>th</sup> Street, Sacramento, California.

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Superior Court of California,  
County of Sacramento

Dated: May 9, 2013

By: S. LEE *A Lee*  
Deputy Clerk