# AGENDA

## Oversight Board of the Successor Agency to the former Capitola Redevelopment Agency

Capitola City Hall Council Chambers
420 Capitola Avenue, Capitola, CA 95010

**Friday, September 20, 2013**
**3:00 PM**

**1. CALL TO ORDER/ROLL CALL**

Zach Friend – Santa Cruz County Board of Supervisors
Mary Hart – Santa Cruz County Office of Education
Jeff Maxwell – Central Fire Protection District
Gayle Ortiz – Santa Cruz County Board of Supervisors' Appointment
Gary Reece – Cabrillo College Appointment
Michael Termini – Mayor's Appointment
Danielle Uharriet – Employee Representative of the Former Capitola Redevelopment Agency

**2. CONSENT CALENDAR**

A. Approve Minutes – June 28, 2013.

**3. 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) Board questions; 3) Public comment; 4) Board deliberation; 5) Decision.*

A. Consider approving the Successor Agency Recognized Obligation Payment Schedule for the period from January 1, 2014 to June 30, 2014 (ROPS 13-14B) and associated Resolution 2013-04.
RECOMMENDED ACTION: Approve ROPS 13-14B and adopt Resolution 2013-04.

**4. PUBLIC COMMENT**

*Oral Communications allows time for members of the Public to address the City Council 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.*

**5. ADJOURNMENT**

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

**ATTACHMENTS:**

1. Draft June 28, 2013 Oversight Board minutes
2. Staff Report with Resolutions and Attachments

Oversight Board of the Capitola Successor Agency Agenda
September 20, 2013

**Agenda and Agenda Packet Materials:** The Oversight Board for the Capitola Successor Agency Agenda and the complete agenda packet are available on the Internet at the City's website: www.ci.capitola.ca.us. Agendas are also available at the City Hall located at 420 Capitola Avenue, Capitola.

**Agenda Document Review:** The complete agenda packet is available at City Hall prior to the meeting. If you need more information, contact the Finance Department 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.

NOT OFFICIAL UNTIL APPROVED BY THE OVERSIGHT BOARD

# MINUTES

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

## June 28, 2013

### 1. CALL TO ORDER/ROLL CALL

PRESENT: Chairperson Michael Termini
Board Members: Gayle Ortiz, Danielle Uharriet, Zach Friend

ABSENT: Vice Chairperson Mary Hart
Board Members: Jeff Maxwell, Gary Reece

### 2. CONSENT CALENDAR

**A. Approval of Minutes – February 26, 2013 and March 1, 2013**

***ACTION: The minutes for both meetings were approved. The motion was approved unanimously.***

### 3. GENERAL GOVERNMENT/PUBLIC HEARINGS

**A.** Approval of the Capitola Successor Agency Resolution to direct transfer of housing assets to the City of Capitola pursuant to Health and Safety Code Section 34181. Major assets being transferred are the following:

1. Loan to, and agreement with, Millennium Housing Corporation
2. Loan to Bay Avenue Senior Housing
3. First Time Homebuyer, Rehabilitation, and Mobile Home Assistance loans to individual homeowners;
4. Deed restrictions associated with the above.

***ACTION: The resolution was approved. The motion was approved unanimously.***

### 4. PUBLIC COMMENT

None

### 5. ADJOURNMENT

Next meeting date to be determined.

_____
Michael Termini, Chair

**Item #: 3.A .**

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

## SEPTEMBER 20, 2013

FROM: FINANCE DEPARTMENT

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:**

Approve the Recognized Obligation Payment Schedule for the period from January1 to June 30, 2014 (ROPS 13-14B).

**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 the submission of the Fifth ROPS – "ROPS 13-14B", no later than October 1, 2013. The City of Capitola Successor Agency approved ROPS 13-14B on August 8, 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.

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 ROPS 13-14B 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 RDA 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.

**ATTACHMENTS:**

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
6. Draft Oversight Board Resolution 2013-04 ROPS 13-14B

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

**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 | $ - | $ - | $ - | $ - | $ - | $ - | $ - |

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:

| **Approved RPTTF Distribution Amount** | | |
|---|---|---|
| **For the period of July through December 2013** | | |
| 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 | | - |
| **Total RPTTF approved for distribution:** | **$** | **586,012** |

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

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/.

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

DEPARTMENT OF FINANCE

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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

| | | | |
|---|---|---|---|
| HEARING:<br>JUDGE: | 10:00 a.m. June 21, 2013<br>HON. EUGENE L. BALONON | DEPT. NO.:<br>CLERK: | 14<br>A. BROWN |

| | |
|---|---|
| **CITY OF RIVERSIDE; SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY OF THE CITY OF RIVERSIDE; SCOTT C. BARBER; BELINDA J. GRAHAM; EMILIO RAMIREZ,**<br><br>**Petitioners and Plaintiffs,**<br><br>**v.**<br><br>**ANA J. MATOSANTOS, Director of the Department of Finance; PAUL ANGULO, Auditor-Controller of the County of Riverside; and DOES 1-30,**<br><br>**Respondents and Defendants,**<br><br>**ALVORD UNIFIED SCHOOL DISTRICT, et al.,**<br><br>**Real Parties in Interest.** | **Case No.: 34-2013-80001421** |

| | |
|---|---|
| **Nature of Proceedings:** | **RULING ON SUBMITTED MATTER** |

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[1] 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).[2] (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

[1] Unless otherwise specified, all references shall be to the Health and Safety Code.

[2] 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 "reenter" 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.4th 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.[3] 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$^{th}$ 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.4th 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.4th 1, 14.) However, final responsibility for interpreting the law rests with the Court. (*Id.* at p.7.)

[3] 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.4th 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.4th 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.4th 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.4th 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*[4] *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

[4] 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

**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

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

Recognized Obligation Payment Schedules ("ROPS").

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

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

**Factual and Procedural Background**

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

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

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

[1] Petitioner filed requests for judicial notice on January 22, 2013 and February 21, 2013. The requests, which were not objected to, are granted.

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

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

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

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

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

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

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

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

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

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

On July 3, 2012, DOF notified the Successor Agency that it was initiating a review of the three Re-Executed Reimbursement Agreements listed on the amended ROPS. Nine days later, on July 12, 2012,

DOF notified the Successor Agency that it already had completed its review of 2012 ROPS and that it was not accepting revised ROPS or requests to reconsider denied items, or making any revisions to existing requests. All revised ROPS submitted for previous ROPS periods therefore were rejected, including the petitioners' amended July-December 2012 ROPS.

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

**Summary of the Contentions of the Parties**

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

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

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

**Standard of Review**

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

In exercising its independent judgment, the Court is guided by certain established principles of

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

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

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

**Discussion**

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

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

Analysis begins with the language of the statute itself. Health and Safety Code section 34178 indisputably invalidated the original reimbursement agreements between the City and the former Redevelopment Agency, and petitioners do not contend otherwise. But the statute also unambiguously

provided that the Successor Agency could "enter or reenter" into agreements with the City upon approval of the Oversight Board. In this case, the Successor Agency entered, or reentered, into three agreements with the City that previously had been entered into between the former Redevelopment Agency and the City. The Oversight Board approved the agreements. The action taken falls squarely within the plain meaning of the terms of the statute.

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

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

Respondent cites various provisions of the redevelopment dissolution laws that it contends demonstrate this purpose, with particular reliance on Health and Safety Code section 34167(a), which provides that restrictions on the powers of former redevelopment agencies are "...intended to preserve, to the maximum extent possible, the revenues and assets of redevelopment agencies so that those assets and revenues that are not needed to pay for enforceable obligations may be used by local governments to fund

core governmental services including police and fire protection services and schools...", and which further states that the provisions of the law "...shall be construed as broadly as possible to support this intent and to restrict the expenditure of funds to the fullest extent possible".

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

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

Indeed, Health and Safety Code section 34173(g) strongly indicates that the Legislature recognized that the completion of certain projects was compatible with the goal of maximizing value for taxing entities. The statute provides that a successor agency succeeds to the organizational status of the former redevelopment agency, but without any legal authority to participate in redevelopment activities,

"...except to complete any work related to an approved enforceable obligation". This statute indicates that the completion of on-going redevelopment projects is not necessarily precluded, and is a clear recognition of the common-sense concept that leaving partially-built or even planned projects uncompleted may not provide the maximum possible benefit to taxing entities.[2]

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

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

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

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

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[2] The Court also notes petitioners' argument, made in the reply brief, that the statutes and declarations of legislative intent regarding immediate wind-down of redevelopment agencies and the marshalling of assets for taxing entities appear in a separate part of the redevelopment dissolution laws than the statutes and declarations of legislative intent 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.

[3] See, Administrative Record ("A.R."), Vol. 28, Tab 172, pages EMER 0732-07134 (transcript of Oversight Board hearing on June 26, 2012. An example drawn from one of the staff reports provided to the Oversight Board explaining the benefits of completing the Transit Center project is illustrative. The report stated that if the project 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.)

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

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

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

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

Indeed, subdivision (e) is not really a statement of retroactivity, but rather an attempt by the

Legislature to interpret pre-existing provisions of the redevelopment dissolution laws as already including the limitations set forth in the new statute.

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

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

The Court accordingly concludes that Health and Safety Code section 34177.3 does not have retroactive effect, and therefore does not invalidate the agreements at issue in this case.

**Issues Regarding Other Agreements:**

The briefing in this case also addresses three other agreements involving the former Redevelopment Agency: (1) the so-called "Second Amendment to First Implementation Agreement" between the former Redevelopment Agency and the Chiron Corporation, which involves the construction of a park in the Horton Landing Project; (2) the so-called "Doyle-Hollis Loan Agreement", which is an agreement between the former Redevelopment Agency and the City representing one of the CIERRA loans; and (3) the so-called "Parcel D Loan Agreement", which is another agreement between the former Redevelopment Agency and the City representing the other CIERRA loan. Petitioners listed these agreements on the January-June 2012 ROPS, and DOF rejected them.

The Court finds it unnecessary to address the issue of whether DOF erred in rejecting these three agreements, because the subject matter of those agreements was subsumed into the three Re-Executed Reimbursement Agreements for the Horton Landing Project, the Transit Center Project, and the CIERRA loans, which the Court has found to be valid.[4] The issue of whether the prior agreements were valid is now essentially moot.

**Conclusion**

The Court finds that the Re-Executed Reimbursement Agreements for the Horton Landing Project, the Transit Center Project, and the CIERRA loans were valid agreements under Health and Safety Code section 34178(a), and were not retroactively invalidated by Health and Safety Code section 34177.3. On the basis of this finding, the Court further concludes that these three agreements were "enforceable obligations" within the meaning of Health and Safety Code section 34171(d)(1)(E), and that respondent DOF erred when it failed to approve them as such.[5] Petitioners are entitled to issuance of a writ of

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[4] As the Successor Agency's special counsel, Leah Castella, explained at the Oversight Board's hearing on June 26, 2012, the reason for proposing the three new funding agreements was to allow the disapproved contracts to become enforceable obligations under a different legal theory involving Health and Safety Code 34178. (See, A.R., Vol. 28, Tab 172, pages EMER 0755-0756.)

[5] DOF does not contend that the three agreements at issue in this case, if valid under Health and Safety Code section 34178(a), would not be "enforceable agreements" within the meaning of Health and Safety Code section 34171(d)(1)(E). It did raise the argument that the superseded Second Amendment to First Implementation Agreement, Doyle-Hollis Loan Agreement, and Parcel D Loan Agreement, were not enforceable as a matter of law. For the reasons stated above, the Court finds that argument to be moot.

mandate, and to a judicial declaration, requiring DOF to recognize these agreements as valid enforceable obligations for purposes of the redevelopment dissolution laws.

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

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

DATED: May 9, 2013

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

**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 9th Street, Sacramento, California.

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Superior Court of California,
County of Sacramento

Dated: May 9, 2013

By: S. LEE
Deputy Clerk

**DRAFT**

**CAPITOLA SUCCESSOR AGENCY OVERSIGHT BOARD**

**RESOLUTION NO. 2013-04**

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**A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY FOR THE REDEVELOPMENT AGENCY OF THE CITY OF CAPITOLA APPROVING THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE FOR THE PERIOD BEGINNING JANUARY 1, 2014 AND ENDING JUNE 30, 2014, AND MAKING RELATED FINDINGS AND DECLARATIONS AND TAKING RELATED ACTIONS IN CONNECTION THEREWITH.**

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WHEREAS, on December 29, 2011, the California Supreme Court delivered its decision in *California Redevelopment Association v. Matosantos*, finding ABx1 26 (the "Dissolution Act") largely constitutional; and

WHEREAS, on June 27, 2012, the California State Legislature enacted Assembly Bill AB 1484 ("AB 1484"), modifying many of the provisions of ABx1 26 and establishing several new procedural deadlines; and

WHEREAS, under the Dissolution Act, the Successor Agency to the Redevelopment Agency of the City of Capitola (the "Successor Agency") must prepare a "Recognized Obligation Payment Schedule" ("ROPS") that enumerates the enforceable obligations and expenses of the Successor Agency for specified six-month intervals; and

WHEREAS, Health and Safety Code Section 34177(*l*)((1) and (2)) was amended by AB1484, adding 34177(*l*)(3)(m), to require the Successor Agency to submit a Fifth Recognized Obligation Payment Schedule ("ROPS 13-14B") for the period beginning January 1, 2014 and ending June 30, 2014 to the State of California Department of Finance, and to make associated notifications and distributions after approval by the Oversight Board, no later than October 1, 2013; and

WHEREAS, on August 8, 2013, the Capitola City Council, in its capacity as the governing board of the Successor Agency, approved ROPS 13-14B for the six-month period ending June 30, 2014 (a copy of which is on file with the City Clerk); and

WHEREAS, under the Dissolution Act, ROPS 13-14B must be submitted to the Successor Agency's oversight board (the "Oversight Board") for Oversight Board approval; and

# CAPITOLA SUCCESSOR AGENCY OVERSIGHT BOARD
# RESOLUTION NO. 2013-4

WHEREAS, pursuant to the Dissolution Act, the duly constituted Oversight Board met at a duly noticed public meeting on August 8, 2013 to consider approval of the ROPS 13-14B, among other approvals; and

WHEREAS, in accordance with Health & Safety Code Sections 34177(*l*)(2)(B) and 34179(f), the Successor Agency submitted the proposed ROPS 13-14B to the Santa Cruz County Chief Administrative Officer, the Santa Cruz County Auditor-Controller, and the State Department of Finance and posted the proposed ROPS 13-14B on its web site; and

WHEREAS, the accompanying staff report provides supporting information upon which the actions set forth in this Resolution are based.

NOW, THEREFORE, BE IT RESOLVED that the Oversight Board hereby finds, resolves, and determines as follows:

SECTION 1. The foregoing recitals are true and correct, and, together with information provided by the Successor Agency staff and the public, form the basis for the approvals, findings, resolutions, and determinations set forth below.

SECTION 2. The Oversight Board hereby approves ROPS 13-14B for the period beginning January 1, 2014 and ending June 30, 2014 in the form presented to the Oversight Board and attached hereto as Exhibit A, including the agreements and obligations described in ROPS 13-14B, and hereby determines that such agreements and obligations constitute "enforceable obligations" and "recognized obligations" for all purposes of the Dissolution Act.

SECTION 3. The Oversight Board has examined the items contained on ROPS 13-14B and finds that each of them is necessary for the continued maintenance and preservation of property owned by the Successor Agency until disposition and liquidation, the continued administration of the enforceable obligations herein approved by the Oversight Board, or the expeditious wind-down of the affairs of the Dissolved RDA by the Successor Agency.

SECTION 4. The Successor Agency is authorized and directed to enter into any agreements and amendments to agreements necessary to memorialize and implement the agreements and obligations in ROPS 13-14B and herein approved by the Oversight Board.

SECTION 5. The Oversight Board authorizes and directs the Successor Agency staff to take all actions necessary under the Dissolution Act to post the ROPS 13-14B on the Successor Agency website, transmit the ROPS13-14B to the Santa Cruz County Auditor-Controller, the State Controller, and the State Department of Finance, and to take any other administrative actions to ensure the validity of the ROPS 13-14B and the validity of any enforceable obligations approved by the Oversight Board in this Resolution.

SECTION 6. This Resolution shall take effect at the time and in the manner prescribed in Health and Safety Code Section 34177(m).

ADOPTED on September 20, 2013 by the Members of the Oversight Board of the Successor Agency for the Redevelopment Agency of the City of Capitola with the following vote, to wit:

AYES:

NOES: None

ABSENT: None

ABSTAIN: None

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Michael Termini Chair

**Exhibit A**

**[Insert ROPS #5]**