THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Planning and Community Development **BOARD AGENDA #** B-9

Urgent ☐ **Routine** ■ **AGENDA DATE** January 10, 2012

CEO Concurs with Recommendation YES ☒ **NO** ☐ **(Information Attached)** **4/5 Vote Required YES** ☐ **NO** ■

SUBJECT:

Approval to Authorize Stanislaus County to Serve as the Successor Agency to the Stanislaus County Redevelopment Agency and Other Related Actions

STAFF RECOMMENDATIONS:

1. Authorize Stanislaus County to serve as the Successor Agency to the Stanislaus County Redevelopment Agency.

2. Direct the Chief Executive Officer, County Counsel, Director of Planning and Community Development, and Auditor-Controller to take all steps necessary to serve as the Successor Agency staff pursuant to the Redevelopment Agency Dissolution Act (AB x1 26) and the California Supreme Court decision in the California Redevelopment Association v. Matosantos case issued on December 29, 2011.

3. Direct the Clerk of the Board to forward a copy of this Board Resolution to the Auditor-Controller.

FISCAL IMPACT:

Pursuant to the Redevelopment Agency Dissolution Act (AB x1 26) and the California Supreme Court decision in the California Redevelopment Association v. Matosantos case, a Successor Agency will be responsible for paying all Enforceable Obligations as defined of the Redevelopment Agency (RDA) it succeeds and taking other actions to dispose of the former RDA assets and properties and to wind down all other affairs of the former RDA. As defined in the RDA adopted Enforceable Obligation Payment Schedule, the Stanislaus County RDA has existing Enforceable Obligations totaling approximately $19,314,171 with annual payments of approximately $2,237,989. (Continued on page 2)

BOARD ACTION AS FOLLOWS:

No. 2012-018

On motion of Supervisor Chiesa, **Seconded by Supervisor** Withrow
and approved by the following vote,
Ayes: Supervisors: Chiesa, Withrow, Monteith, De Martini, and Chairman O'Brien
Noes: Supervisors: None
Excused or Absent: Supervisors: None
Abstaining: Supervisor: None

1) X **Approved as recommended**
2) ___ **Denied**
3) ___ **Approved as amended**
4) ___ **Other:**

MOTION:

Christine Ferraro

ATTEST: **CHRISTINE FERRARO TALLMAN, Clerk** **File No.**

FISCAL IMPACT: (Continued)

These obligations will continue for another 20 years and will be the responsibility of the Successor Agency for the duration of that time.

The County, if it becomes a Successor Agency, will receive adequate funding from the former RDA tax increment for administrative expenses and payments of all obligations. Subject to the approval of the Oversight Board, reimbursement of annual administrative costs will be up to five percent of the property tax allocated to the Successor Agency for Fiscal Year 2011-2012 and up to three percent of the property tax allocated to the Successor Agency each succeeding fiscal year; provided, however, that the annual amount shall not be less than $250,000 for any fiscal year (or such lesser amount as agreed to by the Successor Agency). There will be no direct cost to the County General Fund.

The Auditor-Controller is required to set up specific accounts, prepare and/or review audits and take several other actions related to the dissolution of all Redevelopment Agencies within the County. It is unknown at this time what the total cost to the Auditor-Controller's Office may be in relation to implementation of the Redevelopment Agency Dissolution Act. Costs to the Auditor-Controller's Office will be offset through separate accounting and billing to the former RDA's tax increment account. There will be no direct cost to the County General Fund.

Regardless of whether the County chooses to become the Successor Agency or not, dissolution of the Stanislaus County RDA should result in an increased amount of property tax revenue coming into the County's General Fund. The County currently receives "passthrough" payments from the RDA in the amount of $635,971.30 (Fiscal Year 2010-2011).

DISCUSSION:

On December 29, 2011, the California Supreme Court (Court) issued its decision in the *California Redevelopment Association v. Matosantos* case, finding the "Redevelopment Agency Dissolution Act" (AB1x 26) constitutional and the "Alternative Redevelopment Program Act" (AB1x 27) unconstitutional. The attached assessment of the decision and related implementation actions (Attachment 1) was prepared by the law firm of Goldfarb and Lipman, LLP and is summarized below.

The Court's decision means that all Redevelopment Agencies in the State, including the Stanislaus County Redevelopment Agency (RDA) will be dissolved under the Dissolution Act as of February 1, 2012, and none will have the opportunity to opt into continued existence under the Alternative Redevelopment Program Act (The County and the Stanislaus County RDA both passed resolutions to "opt into" the alternative in 2011, but that action is no longer valid).

The Court also pushed back the deadlines as described in the original Dissolution Act by four months. For instance, all RDAs will be dissolved and their Successor Agencies will begin to function on February 1, 2012 under the Court's decision (as opposed to the October 1, 2011 deadline specified in the Dissolution Act itself).

Following the Supreme Court's decision, the Dissolution Act:

- Continues the suspension and prohibition of most redevelopment activities in effect since late June, 2011;

- Dissolves RDAs as of February 1, 2012 (the new dissolution date established by the Supreme Court);
- Creates Successor Agencies and Oversight Boards to continue to satisfy Enforceable Obligations of each former RDA, and administer the dissolution and wind down of each dissolved RDA; and
- Establishes roles for the County Auditor-Controller, the Department of Finance and the State Controller's Office in the dissolution process and satisfaction of Enforceable Obligations of former RDAs.

Dissolution of the Stanislaus County RDA and Creation of Successor Agency
As of February 1, 2012, every RDA, including the Stanislaus County RDA, will be dissolved, and a Successor Agency will be created for each RDA.

The Successor Agency will be the Sponsoring Community of the RDA unless it elects not to serve in that capacity. Should the County elect not to serve as Successor Agency, the Successor Agency will be the first taxing entity (such as a School or Fire District) that submits to the County Auditor-Controller a duly adopted resolution electing to become the Successor Agency.

Transfer of Housing Functions of Former RDA
The County of Stanislaus may also elect to assume the housing functions and take over the housing assets of the RDA, excluding amounts in the RDA's Housing Fund, along with related rights, powers, liabilities, duties and obligations thereby becoming a Successor Housing Agency to the former RDA.

If the County does not elect to become the Successor Housing Agency and assume the RDA's housing functions, all housing functions and all related assets will be transferred to the Stanislaus County Housing Authority.

If the County becomes the Successor Housing Agency, and assumes the housing functions of the RDA, it will be able to use its inherent powers (not limited by the Dissolution Act's restrictions on Successor Agencies) to fulfill housing obligations and will be able to exercise Redevelopment Law housing powers to fulfill such obligations.

There is no specific date set forth in the Dissolution Act for the County to make this decision, and staff is recommending that no action be taken by the Board at this time to declare that the County either does or does not wish to become the Successor Housing Agency to allow staff the opportunity to examine the pros and cons of electing to take on the RDA's housing functions. Staff will complete an evaluation in the next month. Further, it should be noted that regardless of who becomes the Housing Successor Agency, all unencumbered funds currently in the Stanislaus County RDA Housing Set Aside account, will be forwarded to the State and will not be available to the successor.

Role of the County if it becomes the Successor Agency
Should the County decide to become the Successor Agency, all assets, properties, contracts, leases, books and records, buildings, equipment and the existing Housing Fund balance of the Stanislaus County RDA will be transferred to the County's control on February 1, 2012.

The County would then be required to make payments and perform other obligations due for Enforceable Obligations of the former RDA, which include:

- Bonds;

- Loans borrowed by the RDA (including amounts borrowed in past years from the Housing Fund);
- Payments required by Federal or State government or for employee pension obligations;
- Judgments or settlements; and
- Legally binding and enforceable agreements or contracts that are "not otherwise void as violating the debt limit or public policy" (at Oversight Board direction, a Successor Agency may terminate existing agreements and pay required compensation or remediation for such termination).

The County would also be required to dispose of the former RDA's assets or properties expeditiously and in a manner aimed at maximizing value (proceeds to be distributed similar to normal property tax proceeds).

The County would be required to effectuate the transfer of housing functions of the former RDA to its Successor Housing Agency (i.e. the Sponsoring Community or applicable Housing Authority or the Department of Housing and Community Development).

A Successor Agency is required to wind down all other affairs of the former RDA and to prepare administrative budgets for Oversight Board approval and pay administrative costs.

With limited exceptions, the Dissolution Act expressly states that Enforceable Obligations to be paid by Successor Agencies do not include agreements, contracts or arrangements between a RDA and its Sponsoring Community, and that such agreements, contracts or arrangements are invalid and not binding on Successor Agencies upon dissolution of the RDA. This means that the existing 2011 Public Works infrastructure agreement between the County and the RDA for construction of the remaining Empire storm drain project and the Parklawn and Airport neighborhood sewer projects are invalid and cannot be included as an Enforceable Obligation.

Oversight Boards

An Oversight Board is required by AB x1 26 and is generally intended to supervise the activities of the Successor Agency. The Oversight Board has a fiduciary responsibility to holders of Enforceable Obligations and the taxing entities that benefit from distributions of property tax and other revenues.

The Oversight Board for the County would consist of 7 members appointed by and representing:

- County Board of Supervisors (two members – one from the Public at-large);
- Either the largest City within the territorial jurisdiction of the former RDA or the Superintendent of Schools (one member). Because the RDA has a few parcels within its project area boundaries that are within the City of Modesto, it is likely that this member would be appointed by the City of Modesto.
- County Superintendent of Education (one member);
- Chancellor of California Community Colleges (one member);
- Largest special district taxing entity (one member). Based on current tax increment passthrough payments, it appears as if this entity will be the Modesto City School District.; and
- A former RDA employee appointed by Board of Supervisors (one member). This can be any former RDA employee that is currently employed by the County or not.

Under the Court's decision, the Oversight Board membership must be completed by May 1, 2012.

Role of County Auditor-Controller

Regardless of whether the County becomes the Successor Agency or not, the Dissolution Act, as modified by the Court's decision, requires the County Auditor-Controller to:

- By July 1, 2012, conduct an audit of each former RDA's assets and liabilities, including pass-through payment obligations and the amount and terms of any RDA indebtedness, and provide the State Controller's Office with a copy of such audit by July 15, 2012;
- Annually determine the amount of property tax increment that would have been allocated to a RDA and deposit that amount in a Redevelopment Property Tax Trust Fund (the "Trust Fund");
- Administer the Trust Fund for the benefit of holders of former RDA debt, taxing entities that receive pass-through payments and distributions of property taxes;
- Pay pass-through payments to affected taxing entities in the amounts that would have been owed had the former RDA not been dissolved;
- Enable the Successor Agency to pay Enforceable Obligations of the former RDA, including bonds;
- Reimburse the Successor Agency for administrative costs under the administrative budget approved by the Oversight Board; and
- Pay any remaining balance in the Trust Fund, to school entities and other local taxing entities as property taxes.

Summary of Existing Stanislaus County Redevelopment Agency Projects

The Stanislaus County Redevelopment Agency has completed most active projects and has not begun any new projects that the County would be required to take over. When the State initially began discussions regarding dissolving RDA's, the County RDA put the activation of new projects on hold. Additionally, with the payment to the State of over $3.39 million in SERAF funds in the last two years, the Agency had very little capital project funding to begin new projects.

In Fiscal Years 2010-2011 and 2011-2012, the Agency completely finished the Empire Phase I project and never began the Empire Phase II project. The Keyes storm drain project was completed as well. Funding was provided to the Monterey Park Tract for their water study and no additional funding was approved. The RDA also approved a contract with the County Department of Public Works to construct the Airport and Parklawn sewer projects. Based on the Supreme Court decision, this contract is invalid and construction costs for these projects will need to come from some other source than the RDA or the Successor Agency.

The RDA has existing contracts with the Housing Authority for a small housing rehabilitation program. Those contracts will be honored and will become the responsibility of the Housing Program Successor Agency. Some Program Income is anticipated from existing RDA loans for housing rehabilitation and down payment assistance. It is expected that the Housing Program Successor Agency would retain this Program Income.

STAFFING IMPACTS:

The Dissolution Act provides that a former RDA's obligations to its employees pursuant to a collective bargaining agreement become Enforceable Obligations of the Successor Agency. An employee's civil service status and classification remain the same for a minimum of two years. All employees of the Stanislaus County Redevelopment Agency Budget were transferred into the Department of Planning and Community Development Budget Unit as of July 1, 2011.

Existing staff from the Chief Executive Office, County Counsel, and Planning and Community Development Department will implement the succession actions as required. No additional staffing is required.

At this time it is the intention of the Auditor-Controller, with the information known at this time, to implement the succession actions as required by the Dissolution Act with existing staff. However, if suitable funds are not available from the Stanislaus RDA tax increment (or the other ten RDA's in the County) to contract with a public accounting firm or Certified Public Accountant to perform the audit requirement, there may be potential staffing impacts in the implementation process. The need for additional staff may be required for compliance purposes with the legislative mandate. Suitable funding for either contract accounting work or Departmental staff will only be available if the individual former Redevelopment Agencies have sufficient tax increment to cover the costs of their dissolution actions. Otherwise, the responsibilities mandated to the Auditor-Controller could result in a direct impact to the General Fund and current staff work load priorities.

POLICY ISSUES:

Staff's recommendations are a direct result of Redevelopment Agency Dissolution Act (AB x1 26) and the California Supreme Court decision in the *California Redevelopment Association v. Matosantos* case issued on December 29, 2011. The Stanislaus County Redevelopment Agency historically has supported the Board priorities of striving for A Health Community, Well Planned Infrastructure System and Effective Partnerships. The State's recent actions have eliminated local governments' ability to use redevelopment as a tool in eliminating blight from a designated area, and to achieve desired development, reconstruction and rehabilitation including but not limited to: residential, commercial, industrial and retail.

CONTACT PERSONS:

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Lauren Klein, Auditor-Controller, Telephone: (209) 525-6398

ATTACHMENTS:

1. CALIFORNIA SUPREME COURT DECISION IN CALIFORNIA REDEVELOPMENT ASSOCIATION V. MATOSANTOS AND RELATED IMPLEMENTATION ACTIONS, UPDATED JANUARY 4, 2012, Goldfarb & Lipman LLP

goldfarb
lipman
attorneys

Oakland Los Angeles San Diego

CALIFORNIA SUPREME COURT DECISION IN *CALIFORNIA REDEVELOPMENT ASSOCIATION V. MATOSANTOS* AND RELATED IMPLEMENTATION ACTIONS

UPDATED
JANUARY 4, 2012

Goldfarb & Lipman LLP
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ATTACHMENT 1

Table of Contents

This analysis summarizes the California Supreme Court's (the "Court") decision announced on December 29, 2011, in the *California Redevelopment Association v. Matosantos* case (Part A), outlines the key provisions of AB x1 26 (the "Dissolution Act) that the Court found constitutional and that will now control the dissolution and winding down of every California redevelopment agency (Part B), and provides upcoming milestones for implementation of the Dissolution Act (Part C).

As emphasized in Part B and Part C, there are certain decisions and actions that each city or county (the "Sponsoring Community") that established an existing redevelopment agency (a "RDA") must make in January 2012 to determine whether it intends to become the "Successor Agency" and/or "Successor Housing Agency" to its soon to be dissolved RDA. See particularly, Part B, Sections IV and V for a discussion of these decisions and actions.

PART A. SUMMARY OF COURT DECISION AND REASONING

I. The Decision

On December 29, 2011, the California Supreme Court delivered its decision in the *California Redevelopment Association v. Matosantos* case, finding the Dissolution Act constitutional and AB1x 27 (the "Alternative Redevelopment Program Act") unconstitutional.

The Court's bifurcated decision means that all RDAs will be dissolved under the constitutional Dissolution Act, and none will have the opportunity to opt into continued existence under the unconstitutional Alternative Redevelopment Program Act.

The Court also determined to push back the deadlines in the Dissolution Act arising prior to May 1, 2012 by four months. For instance, all RDAs will be dissolved and their successor agencies will begin to function on February 1, 2012 under the Court's decision (as opposed to the October 1, 2011 deadline specified in the Dissolution Act itself).

The Court's decision is final effective immediately.

II. The Court's Reasoning

The Court found the Dissolution Act constitutional because the Legislature has the broad power to establish or dissolve local agencies as it sees fit. The Court held that nothing in the text of Article XVI, Section 16 of the California Constitution (the tax increment financing provision) or any constitutional mandates added under Proposition 22 in November 2010 withdraws from the Legislature the power to dissolve RDAs for the benefit of the State.

The Court found the Alternative Redevelopment Program Act unconstitutional concluding that the continuation payments required under the Alternative Redevelopment Program Act were not in fact "voluntary" and thus violate the prohibitions in Article XIII, Section 25.5 of the California Constitution (Proposition 22) related to the enactment of any laws that require RDAs to shift funds to schools or other agencies.

The Court held that the Dissolution Act and the Alternative Redevelopment Program Act are severable from one another because of the differences in the application of the severability clauses of each bill and because large parts of the Dissolution Act are independently enforceable despite the Court's finding that the Voluntary Program Act is unconstitutional. Thus, the Court held that all but one minor portion of the Dissolution Act can survive despite the Court's ruling to overturn the Alternative Redevelopment Program Act.[1]

Finally, the Court reformed and revised the effective dates or deadlines for performance under the Dissolution Act arising before May 1, 2012, calling instead for those dates and deadlines to be advanced four months from the dates specified in the Dissolution Act.

III. Possible Future Legislation

The California Redevelopment Association and various housing and infill development advocacy groups have indicated their intent to seek legislative modifications or proposals for continuing economic development and affordable housing activities in California. It is premature to speculate on the nature or likely outcome of such proposals. Goldfarb & Lipman will continue to carefully monitor and provide timely information regarding the progress of any future legislative actions.

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[1] Only those provisions of the Dissolution Act allowing communities to establish new RDAs and requiring them to make the continuation payments are unconstitutional.

PART B. DISSOLUTION ACT

I. Introduction

As detailed in this Part B, the Dissolution Act, as now found constitutional by the Supreme Court:

- Continues the suspension and prohibition of most redevelopment activities in effect since late June, 2011;
- Dissolves RDAs as of February 1, 2012 (the new dissolution date established by the Supreme Court);
- Creates successor agencies ("Successor Agency" or "Successor Agencies") and oversight boards ("Oversight Board" or "Oversight Boards") to continue to satisfy enforceable obligations of each former RDA, and administer the dissolution and wind down of each dissolved RDA; and
- Establishes roles for the County-Auditor Controller, the Department of Finance and the State Controller's Office in the dissolution process and satisfaction of enforceable obligations of former RDAs.

II. Suspension of RDA Activities and Preservation of RDA Assets and Revenues

As has been the case since the enactment of the Dissolution Act in late June 2011, a RDA continues to be unauthorized to do any of the following pending its dissolution:

- Incur new indebtedness or other obligations or restructure existing indebtedness and other obligations;
- Make loans or grants;
- Enter into contracts;
- Amend existing agreements, obligations or commitments;
- Renew or extend leases or other agreements;

- Transfer funds out of the Low and Moderate Income Housing Fund (the "Housing Fund");
- Dispose of or transfer assets;
- Acquire real property in most circumstances;
- Prepare, adopt, amend or merge redevelopment plans;
- Approve any program, project or expenditure;
- Prepare or amend implementation plans, relocation plans or other planning documents;
- Cause development or rehabilitation of housing units;
- Join a joint powers authority;
- Form or join a separate legal entity;
- Bring a validation action in connection with issuance of revenue bonds;
- Commence an eminent domain proceeding;
- Prepare a draft EIR;
- Undertake various affordable housing activities;
- Accept financial assistance; or
- Increase employee compensation, bonuses or number of RDA employees and officials.

According to the Dissolution Act, this suspension and prohibition of most redevelopment activities is intended, to the maximum extent possible, to preserve the revenues and assets of RDAs so that those assets and revenues that are not needed to pay for enforceable obligations may be used by local governments to fund core governmental services including police and fire protection services and schools.

III. Permitted and Required RDA Activities Prior to Dissolution

Until February 1, 2012 (when RDAs are dissolved), a RDA is authorized to:

- Make scheduled payments on and perform obligations required under its "Enforceable Obligations,"[2] which include:

  - Bonds;
  - Loans borrowed by a RDA;
  - Payments required by federal or state government or for employee pension obligations;
  - Judgments or settlements;
  - Legally binding and enforceable agreements or contracts that are "not otherwise void as violating the debt limit or public policy"; and
  - Contracts for administration or operation of the RDA.

- Set aside reserves as required for bonds;

- Preserve all assets and records and minimize RDA obligations and liabilities;

- Cooperate with its Successor Agency and auditing entities (as described below); and

- Avoid triggering defaults under Enforceable Obligations.

In addition, by now the Dissolution Act has required each RDA to:

- Prepare an Enforceable Obligation Payment Schedule no later than late August, 2011, setting forth specified information about the RDA's Enforceable Obligations;

- Adopt the Enforceable Obligation Payment Schedule at a public meeting;

[2] With one exception, "Enforceable Obligations" are defined in the same way during the suspension period and the post-dissolution period. During the suspension period, the definition of "Enforceable Obligations" does not exclude agreements between a RDA and its Sponsoring Community (although asset transfers under such agreements may be subject to unwinding), while following dissolution most types of agreements between a RDA and its Sponsoring Community are excluded from the definition of "Enforceable Obligations" (see further discussion in Section VII below).

- Post the Enforceable Obligation Payment Schedule on the RDA's or its Sponsoring Community's website;

- Transmit the Enforceable Obligation Payment Schedule by mail or electronic means to the County Auditor-Controller, the State Controller and the Department of Finance;[3]

- Designate a RDA official to whom the department may make information requests;

- Prepare a preliminary draft of the initial Recognized Obligation Payment Schedule and deliver such schedule to the Successor Agency; and

- Produce documents associated with Enforceable Obligations upon request of the State Controller or Department of Finance.

The Department of Finance may review a RDA action or Successor Agency action pursuant to an Enforceable Obligation Payment Schedule or a Recognized Obligation Payment Schedule, and such actions will not be effective for three business days, pending a request for review by the department. If the department requests a review of a given RDA action, the department shall have ten days from the date of its request to approve the RDA action or return it to the RDA for reconsideration.

IV. Dissolution of RDAs/Creation of Successor Agencies

As of February 1, 2012:

- Every RDA will be dissolved; and

- A Successor Agency will be created for each RDA.

The Successor Agency will be the Sponsoring Community of the RDA unless it elects not to serve in that capacity. In that case, the Successor Agency will be the first taxing entity submitting to the County Auditor-Controller a duly adopted resolution electing to become the Successor Agency.

[3] Notification providing the website location of the Enforceable Obligation Payment Schedule will suffice to meet this requirement.

Technically, a Sponsoring Community needs to adopt a resolution and deliver it to the County Auditor-Controller no later than **January 13, 2012** only if it elects not to act as the Successor Agency for its former RDA. We advise that a Sponsoring Community electing to serve as Successor Agency adopt a resolution as well to indicate a clear statement of intent.

The actions of the Successor Agency will be monitored, and in some cases approved, by the Oversight Board as described in Section VIII below.

All assets, properties, contracts, leases, records, buildings and equipment of former RDAs would be transferred to the control of the Successor Agency, except as described in Section V below for affordable housing assets.

V. Transfer of Housing Functions of Former RDA

The Sponsoring Community may elect to assume the housing functions and take over the housing assets of the former RDA, excluding amounts in the former RDA's Housing Fund, along with related rights, powers, liabilities, duties and obligations thereby becoming a "Successor Housing Agency" to the former RDA.[4] While no specific date for such action is set forth in the Dissolution Act, we recommend that a Sponsoring Community desiring to serve as a Successor Housing Agency adopt a resolution to that effect by January 13, 2012.

If the Sponsoring Community does not elect to become the Successor Housing Agency and assume the former RDA's housing functions, such housing functions and all related assets will be transferred to the local Housing Authority (or Department of Housing and Community Development, if there is no local Housing Authority).

The entity that becomes the Successor Housing Agency and assumes the housing functions of a former RDA will be able to use its inherent powers (not limited by the Dissolution Act's restrictions on Successor Agencies) to fulfill housing obligations and will be able to exercise Redevelopment Law housing powers to fulfill such obligations.

The Dissolution Act requires Successor Agencies to repay amounts previously borrowed from the Housing Fund (i.e. to make SERAF payments in prior years),

[4] However, in what is believed to be inadvertent drafting, the Dissolution Act makes it less clear how the former RDA's housing assets, such as property, will be transferred.

repayment of which had been deferred as of the effective date of the Dissolution Act. These repaid funds would presumably be paid to the entity that becomes the Successor Housing Agency and assumes the housing functions of the former RDA.

The Dissolution Act requires Oversight Boards to direct Successor Agencies to list amounts owed to the Housing Fund on the Recognized Obligation Payment Schedule.

VI. Role of Successor Agencies

All assets, properties, contracts, leases, books and records, buildings, equipment and the existing Housing Fund balance of a former RDA will be transferred to the control of the Successor Agency on February 1, 2012, according to the Supreme Court's modified timeline.

A Successor Agency is required to make payments and perform other obligations due for Enforceable Obligations[5] of the former RDA, which include:

- Bonds;
- Loans borrowed by the RDA (including amounts borrowed in past years from the Housing Fund);
- Payments required by federal or state government or for employee pension obligations;
- Judgments or settlements; and
- Legally binding and enforceable agreements or contracts[6] that are "not otherwise void as violating the debt limit or public policy" (at Oversight Board direction, a Successor Agency may terminate existing agreements and pay required compensation or remediation for such termination).

To facilitate this payment of Enforceable Obligations, a Successor Agency is required to prepare a Recognized Obligation Payment Schedule for each six month period of each fiscal year, including identifying the funding source for all

[5] With one exception described in footnote 2 above, "Enforceable Obligations" are defined in the same way during the post-dissolution period and during the suspension period.
[6] See Section VII below, regarding the exception that most contracts between a former RDA and its Sponsoring Community will be void and will not constitute an Enforceable Obligation upon dissolution of the RDA.

Enforceable Obligations of the former RDA. The first draft of the Recognized Obligation Payment Schedule is now due by March 1, 2012, and should cover the balance of the current fiscal year through June 30, 2012. Presumably, the Successor Agency's draft of the initial Recognized Obligation Payment Schedule should be based on the draft Recognized Obligation Payment Schedule prepared by the former RDA during the suspension period (See discussion in Part B, Section III).

A Successor Agency is required to dispose of the former RDA's assets or properties expeditiously and in a manner aimed at maximizing value (proceeds to be distributed similar to normal property tax proceeds).[7]

A Successor Agency is required to effectuate the transfer of housing functions of the former RDA to its Successor Housing Agency (i.e. the Sponsoring Community or applicable Housing Authority or the Department of Housing and Community Development).

A Successor Agency is required to wind down all other affairs of the former RDA.

A Successor Agency is required to prepare administrative budgets for Oversight Board approval and pay administrative costs.

Subject to the approval of the Oversight Board, the Successor Agency's annual administrative costs will be an amount up to five percent of the property tax allocated to the Successor Agency for FY 2011-12 and up to three percent of the property tax allocated to the Successor Agency each succeeding fiscal year; provided, however, that the annual amount shall not be less than $250,000 for any fiscal year (or such lesser amount as agreed to by the Successor Agency).

VII. Treatment of Agreements between a RDA and its Sponsoring Community or Other Public Agency/Public Entity

With limited exceptions, the Dissolution Act expressly states that Enforceable Obligations to be paid by Successor Agencies do not include agreements, contracts or arrangements between a RDA and its Sponsoring Community, and that such agreements, contracts or arrangements are invalid and not binding on Successor Agencies upon dissolution of the RDA. These provisions do not apply to the

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[7] The Oversight Board may direct the Successor Agency to transfer ownership of those assets that were constructed and used for a governmental purpose to the appropriate public jurisdiction pursuant to any existing agreements related to the construction or use of such asset.

following agreements, which may be deemed Enforceable Obligations and binding upon Successor Agencies:

- A duly authorized written agreement entered into at the time of issuance, but in no event later than December 31, 2010, of bonds, notes, certificates of participation or other similar indebtedness, and solely for the purpose of securing or repaying such indebtedness;

- A written agreement between a RDA and its Sponsoring Community that provided loans or other startup funds for the RDA that was entered into within two years of the formation of the RDA; or

- A joint exercise of powers agreement in which the RDA is a member of the joint powers authority.[8]

Beginning upon effectiveness of the Dissolution Act in late June 2011, the State Controller has been directed to review RDA activities and determine whether an asset transfer has occurred after January 1, 2011 between the RDA and its Sponsoring Community or other public agency. If the State Controller determines that such an asset transfer did occur and the recipient has not contractually committed such assets to a third party to expend or otherwise encumber those assets, such assets will be ordered returned to the RDA or Successor Agency for payment of recognized obligations or distribution as property taxes.

In any instance where the Oversight Board finds that early termination would be in the best interest of the taxing entities, the Dissolution Act directs Oversight Boards to ensure that Successor Agencies terminate any agreement between the former RDA and any local public entity within the same county that obligates the former RDA to provide funding for debt service obligations of such local public entity or for the construction or operation of facilities owned or operated by such local public entity.

VIII. Oversight Boards

An Oversight Board is generally intended to supervise the activities of the Successor Agency. The Oversight Board has a fiduciary responsibility to holders

[8] However, upon assignment to the Successor Agency by operation of the Dissolution Act, the Successor Agency's rights, duties and performance obligations under that joint exercise of powers agreement will be limited by the constraints imposed on Successor Agencies by the Dissolution Act.

of Enforceable Obligations and the taxing entities that benefit from distributions of property tax and other revenues as described in Section X below.

The Oversight Board of the Successor Agency will consist of 7 members appointed by/representing:[9] [10]

- County Board of Supervisors (two members);
- Mayor (one member);
- County Superintendent of Education (one member);
- Chancellor of California Community Colleges (one member);
- Largest special district taxing entity (one member); and
- A former RDA employee appointed by Mayor/Board of Supervisors (one member).

Under the Court's decision, the Oversight Board membership must be completed by May 1, 2012.

The Dissolution Act requires the Oversight Board to direct the Successor Agency to determine whether contracts, agreements or other arrangements between the former RDA and private parties should be terminated or renegotiated to reduce the Successor Agency's liabilities and to increase net revenues to the taxing entities.

The actions of the Oversight Board of each Successor Agency will in turn be overseen by the Director of the Department of Finance and may be subject to disapproval or modification.

Oversight Board actions will not be effective for three business days pending a request for review by the Department of Finance. If the department requests a review of a given Oversight Board action, the department shall have ten days from the date of its request to approve the Oversight Board action or return it to the Oversight Board for reconsideration. The Oversight Board has specified

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[9] Different rules apply for the composition of the Oversight Board for the former RDA of a city and county (i.e., the City and County of San Francisco).

[10] Commencing July 1, 2016, all of the Oversight Boards for the various former RDAs in a particular county will be consolidated into a single county-wide Oversight Board of specified composition.

obligations with respect to maintaining a website and providing specified notification to various state officials.

IX. Role of County Auditor-Controller

The Dissolution Act, as modified by the Court's decision, requires the County Auditor-Controller to:

- By July 1, 2012, conduct an audit of each former RDA's assets and liabilities, including pass-through payment obligations and the amount and terms of any RDA indebtedness, and provide the State Controller's Office with a copy of such audit by July 15, 2012;

- Annually determine the amount of property tax increment that would have been allocated to a RDA and deposit that amount in a Redevelopment Property Tax Trust Fund (the "Trust Fund"); and

- Administer the Trust Fund for the benefit of holders of former RDA debt, taxing entities that receive pass-through payments and distributions of property taxes, as described in Section X below.

Actions of the County Auditor-Controller will not be effective for three business days pending a request for review by the State Controller. If the department requests a review of a given County Auditor-Controller action, the department will have ten days from the date of its request to approve the County Auditor-Controller action or return it to the County Auditor-Controller for reconsideration.

X. Payments from Trust Fund

The Dissolution Act requires the County Auditor-Controller to allocate moneys in the Trust Fund established for each former RDA as follows:

- To pay pass-through payments to affected taxing entities in the amounts that would have been owed had the former RDA not been dissolved;

- To the Successor Agency to enable the Successor Agency to pay Enforceable Obligations of the former RDA, including bonds;

- To the Successor Agency to pay for administrative costs under the administrative budget approved by the Oversight Board; and

- Any remaining balance in the Trust Fund, to school entities and other local taxing entities as property taxes.

If a Successor Agency determines, and the County Auditor-Controller and the State Controller verify, that the Successor Agency will not have sufficient funds to pay all amounts above, then the deficiencies shall be deducted in the following order from the Trust Fund payments to:

- School entities and local agencies (as normal property taxes);

- Administrative costs of the Successor Agency;

- Pass-through payments to school entities and local entities that have been subordinated to the payment of Enforceable Obligations;

- Enforceable Obligations payable by the Successor Agency; and

- Non-subordinated pass-through payments to school entities and local entities.

The Dissolution Act allows statutory pass-through payments received by school districts, community college districts and offices of education between FY 2011-2012 and FY 2015-2016 to be used for land acquisition, construction, reconstruction, remodeling, maintenance or deferred maintenance of educational facilities.

No later than May 16, 2012 and June 1, 2012 and each January 16 and June 1 thereafter, the County Auditor-Controller must transfer the amount of property tax revenues equal to that specified in the Recognized Obligation Payment Schedule from the Trust Fund of each Successor Agency into a Redevelopment Obligation Retirement Fund to be administered by each Successor Agency. The Successor Agency must then make payments on listed Recognized Obligation Payment Schedule from that fund.

XI. Miscellaneous

The Dissolution Act clarifies that community development commissions may continue their housing authority and other local community development functions (other than redevelopment) unaffected by the Dissolution Act.

The Dissolution Act provides that a former RDA's obligations to its employees pursuant to a collective bargaining agreement become Enforceable Obligations of the Successor Agency. An employee's civil service status and classification remain the same for a minimum of two years.

The Dissolution Act includes a provision lengthening the period to challenge RDA actions taken after January 1, 2011 from ninety days to two years.

The Dissolution Act requires that any action contesting the validity of portions of the Dissolution Act or challenging acts taken pursuant to the Dissolution Act be brought in the Sacramento County Superior Court.

The Dissolution Act appropriates $500,000 to the Department of Finance for allocation to the State Controller, State Treasurer and Director of Finance to undertake the duties listed above.

PART C. KEY MILESTONES FOR IMPLEMENTATION OF THE DISSOLUTION ACT

The Supreme Court promulgated simple reformation rules calling for a four month extension of those dates and deadlines contained in the Dissolution Act that were prior to May 1, 2012. The milestone schedule outlined below honors those rules, although some anomalies and inconsistencies may be caused by those rules that may merit further clarification.

- Upon effectiveness of the Dissolution Act: State Controller may commence review of RDA asset transfers after January 1, 2011.

- No specified date: State Controller may order the assets improperly transferred by a RDA to its Sponsoring Community after January 1, 2011 to be returned to the RDA (or to its Successor Agency).

- After Court decision: Redevelopment activities continue to remain suspended except for limited specified activities pending dissolution of RDAs.

- No later than January 13, 2012: Sponsoring Community decides whether to serve as a Successor Agency or Successor Housing Agency by resolution.

- No later than January 13, 2012: Sponsoring Community that elects not to serve as a Successor Agency files a copy of resolution to that effect with the County Auditor-Controller.

- No later than January 31, 2012: A RDA should consider any appropriate amendments to its previously adopted Enforceable Obligation Payment Schedule to reflect payments due after December 31, 2011.

- No later than January 31, 2012: A RDA that has not prepared a preliminary draft of the initial Recognized Obligation Payment Schedule should do so and provide it to the Successor Agency. Those RDAs that have prepared such preliminary drafts should forward it to the Successor Agency.

- January 30, 2012: The existing terms of any memorandum of understanding with an employee organization expires, unless a new agreement is reached with a recognized employee organization prior to that date.

- February 1, 2012: RDA is dissolved.

- February 1, 2012: RDA agreements with Sponsoring Community void (with limited exceptions).

- February 1, 2012: All dissolved RDA assets (including properties, contracts, leases, books and records, buildings and equipment, and existing Housing Fund balance), except other housing assets, transferred to Successor Agency. RDA delivers Enforceable Obligation Payment Schedule to Successor Agency. Transfer of RDA housing assets (excluding existing Housing Fund balances) to Successor Housing Agency.

- On and after February 1, 2012: Successor Agency permitted to make payments only as listed on Enforceable Obligation Payment Schedule.

- From February 1, 2012 to July 1, 2012: Successor Agency prohibited from accelerating payments or making any lump sum payments that are intended to prepay loans unless such accelerated repayments were required prior to February 1, 2012.

- By March 1, 2012: Successor Agency prepares initial draft of Recognized Obligation Payment Schedule for the Enforceable Obligations of the former RDA, subject to review and certification by external auditor as to accuracy and approval by Oversight Board.

- No later than April 1, 2012 and May 1, 2012, and each December 1 and May 1 thereafter: Successor Agency reports to the County Auditor-Controller if the total amount available to the Successor Agency is insufficient to fund the specified payments in the next six-month fiscal period. County Auditor-Controller notifies State Controller and DOF no later than 10 days from the date of that notification from the Successor Agency.

- April 15, 2012: Successor Agency submits first Recognized Obligation Payment Schedule to State Controller and DOF for the period of January 1, 2012 to June 30, 2012. Successor Agency prepares new Recognized Obligation Payment Schedule for each six month period thereafter for approval by Oversight Board. Approved Recognized Obligation Payment Schedules are posted on Successor Agency website and submitted to DOF, Controller and County Auditor-Controller.

- Commencing on May 1, 2012: Successor Agency may pay only those payments listed in the approved Recognized Obligation Payment Schedule. Statements of Indebtedness are no longer recognized for dissolved RDAs.

- By May 1, 2012: Oversight Board elects and reports name of chairperson and other members to DOF.

- No specified date but after formation of Oversight Board: Each Oversight Board informs DOF of a designated contact person and related contact information for the purpose of communicating with DOF.

- May 15, 2012: Governor appoints persons to unfilled positions on Oversight Board (or any member position that remains vacant for more than 60 days).

- No later than May 16, 2012 and June 1, 2012, and each January 16 and June 1 thereafter: County Auditor-Controller transfers an amount of property tax revenues equal to that specified in the Recognized Obligation Payment Schedule from the Trust Fund of each Successor Agency into the Redevelopment Obligation Retirement Fund of that Successor Agency. Successor Agency makes payments on listed Recognized Obligation Payment Schedule from that fund.

- By July 1, 2012: County Auditor-Controller completes audit of each dissolved RDA.

- By July 15, 2012: County Auditor-Controller provides the State Controller copy of all audits performed on dissolved RDAs.

- By October 1, 2012: County Auditor-Controller reports specified financial information to the Controller and DOF.

- January 1, 2013: California Law Revision Commission drafts a Community Redevelopment Law cleanup bill for consideration by the Legislature.

- July 1, 2016: Consolidation of all Oversight Boards into one county-wide Oversight board in each county where more than one Oversight Board was created.

- After July 15, 2016: Governor appoints persons to unfilled positions on county-wide Oversight Board (or any member position that remains vacant for more than 60 days).

Approve Stanislaus County to serve as the Successor Agency to the Stanislaus County Redevelopment Agency and other related actions.

December 29, 2011

California Supreme Court Ruling

AB x1 26 – The RDA Dissolution Act – Valid

AB x1 27 - Alternative RDA Program Act - Invalid

The RDA Dissolution Act (and Supreme Ct. Decision):

- Suspends and Prohibits most RDA activities;
- Dissolves RDAs as of February 1, 2012
- Creates successor agencies and oversight boards; and
- Establishes roles for the County-Auditor Controller, the Department of Finance and the State Controller's Office

The RDA Dissolution Act:

Requires the County Auditor-Controller to:

- Annually determine the amount of Property Tax increment that would have been allocated to the RDA and deposit that amount in a special Redevelopment Property Tax Trust Fund (Including Housing Set-Aside Funds)

The RDA Dissolution Act:

Requires the County Auditor-Controller to:

- Pay pass-through payments to taxing entities just as the RDA previously did;
- Provide the Successor Agency sufficient funds to pay all enforceable obligations of the RDA;

The RDA Dissolution Act:

Requires the County Auditor-Controller to:

- Pay the Successor Agency Administrative costs approved by the Oversight Board; and
- Pay any remaining balance in the Trust Fund to schools and other taxing entities as property taxes

(The Auditor-Controller will need to this for all 11 RDA's in the County)

SUMMARY

As of February 1, 2012, the Stanislaus County Redevelopment Agency will cease to exist and the Board of Supervisors should decide whether it desires for the County of Stanislaus to become the “Successor Agency” as defined in the RDA Dissolution Act.

SUCCESSOR AGENCY …

… will be the Sponsoring Community of the RDA unless it elects not to serve in that capacity.

SUCCESSOR AGENCY …

Should the County elect not to serve as Successor Agency, the Successor Agency will be the first taxing entity (Special District) that submits to the County Auditor-Controller a duly adopted resolution electing to become the Successor Agency

SUCCESSOR AGENCY …

- Should no one step forward … a public body (“designated local authority”) shall be immediately formed … The Governor appoints three residents of the county to serve as the governing board of the authority.

ROLE OF THE SUCCESSOR AGENCY …

1. Make payments due for Enforceable Obligations of the former RDA (less Housing)

Obligations = ~$19 Million

Annual Payments of ~ $2.2 Million

Annual TI Revenue of ~ $2.7 Million

ROLE OF THE SUCCESSOR AGENCY …

2. Dispose of RDA assets and properties
3. Transfer Housing Functions of the RDA to a Successor Housing Agency
4. Wind down all affairs of the RDA
5. Pay Administrative Costs

HOW DOES THE SUCCESSOR AGENCY COVER ITS COSTS?

The Dissolution Act allows the Successor Agency (& Auditor) to recover costs through use of the former RDA Tax Increment prior to the Auditor-Controller transferring any remainder to the taxing entities. (~$500,000/yr available to Successor Agency & Auditor – with approval of Oversight Board)

OVERSIGHT BOARD?

The Dissolution Act requires an Oversight Board review and in some cases approve actions by the Successor Agency.

OVERSIGHT BOARD?

APPOINTED BY AND REPRESENTING	
Board of Supervisors (1 required to be a Public Member)	2
Largest City in RDA Project Area (Modesto)	1
County Superintendent of Education	1
Chancellor of Calif. Community Colleges	1
Largest Special District in RDA Project Area (Modesto City Schools)	1
Former RDA Employee (Board of Supervisors)	1
TOTAL	7

HOUSING SUCCESSOR AGENCY?

To be Determined …

Stanislaus County

Or

Stanislaus County Housing Authority

HOUSING SUCCESSOR AGENCY?

Unencumbered Housing Funds in Account:
~$8 Million

(Goes Directly to Auditor to pay Taxing Entities)

HOUSING SUCCESSOR AGENCY?

$1,830,000 (25% Each Year)

HOUSING SET-ASIDE (20%)	$ 1,465,000
HOUSING SET-ASIDE (5%)	$ 366,000

PLUS

Monterey Park Tract Lot Asset

goldfarb lipman attorneys

Oakland Los Angeles San Diego

CALIFORNIA SUPREME COURT DECISION IN *CALIFORNIA REDEVELOPMENT ASSOCIATION V. MATOSANTOS* AND RELATED IMPLEMENTATION ACTIONS

UPDATED
JANUARY 4, 2012

Goldfarb & Lipman LLP
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510 836 6336
213 627 6336
619 239 6336

RECOMMENDATIONS

1. Authorize Stanislaus County to serve as the Successor Agency to the Stanislaus County Redevelopment Agency.

2. Direct the CEO, County Counsel, Planning Director and Auditor-Controller to take all steps necessary to serve as the Successor Agency staff

RECOMMENDATIONS

3. Direct the Clerk of the Board to forward a copy of this Board Resolution to the Auditor-Controller.

QUESTIONS?