

SAN RAFAEL SUCCESSOR AGENCY

AGENDA ITEM NO.: 8 a.

MEETING DATE: July 16, 2012

REPORT TO BOARD OF THE SUCCESSOR AGENCY

SUBJECT: RESOLUTION OF THE SAN RAFAEL SUCCESSOR AGENCY APPROVING A PAYMENT TO THE MARIN COUNTY AUDITOR-CONTROLLER TO SATISFY DEMAND FOR REIMBURSEMENT OF PROPERTY TAX FUNDS PURSUANT TO ASSEMBLY BILL 1484

SUBMITTED BY: Stephanie Lovette
Stephanie Lovette
Economic Development Director

APPROVED BY: Nancy Mackle
Nancy Mackle, City Manager

RECOMMENDATION: Staff recommends that the Successor Agency Board adopt the attached resolution approving the July 12, 2012 payment of \$148,589 to the Marin County Auditor-Controller to satisfy the County's demand for reimbursement of property tax funds pursuant to Assembly Bill 1484.

BACKGROUND: On December 29, 2011, the California Supreme Court delivered its decision in the *California Redevelopment Association v. Matosantos* case, finding Assembly Bill x1 26 (the "Dissolution Act") largely constitutional. The Court's decision means that all California redevelopment agencies, including the Redevelopment Agency of the City of San Rafael (the "Redevelopment Agency") were dissolved on February 1, 2012.

On January 3, 2012, the San Rafael City Council elected to act as Successor Agency ("Successor Agency") for the former San Rafael Redevelopment Agency. The Successor Agency now holds the former Redevelopment Agency's non-housing funds and assets and is charged with the responsibility of paying off the former Redevelopment Agency's existing debts, disposing of the former Redevelopment Agency's properties and assets to help pay off debts and return revenues to the local government entities that receive property taxes (the "Taxing Entities"), and winding up the affairs of the former Redevelopment Agency. An Oversight Board, consisting of members representing the County, the city, and various education and special districts, was formed to approve and direct certain actions of the City as Successor Agency. The actions of the Oversight Board must subsequently be approved by the California Department of Finance ("DOF").

FOR CITY CLERK ONLY

File No.: _____

City Council Meeting: _____

Disposition: _____

During the winding-up process, Health and Safety Code Section 34177(1)(2)(A) requires the Successor Agency to prepare a recognized obligation payment schedule (the "ROPS") for each succeeding six-month period starting with January 2012 through June 2012. This is a schedule of payments that the Successor Agency is obligated to make and that is ultimately approved by the DOF. In recent months, the Successor Agency has approved and amended a ROPS for the periods January 2012 through June 2012 and July 2012 through December 2012. These ROPS are currently under review by the Oversight Board.

Recently, the Legislature enacted Assembly Bill 1484, which makes clean-up amendments to the Dissolution Act, including a clarification that all 2011-2012 tax increment that was distributed to redevelopment agencies, including amounts distributed to agencies in December 2011, are subject to the Dissolution Act. The legislation required the County Auditor-Controller, by July 9, 2012, to notify successor agencies of any "residual amounts" still owed to the Taxing Entities based upon the January 2012-June 2012 ROPS, and required successor agencies to pay such residual amounts to the County no later than July 12, 2012. The successor agency's penalty for failure to comply with this deadline is 10% of the amount owing, plus 1.5% of the amount owing for each additional month until it complies. In addition, a failure to pay may result in the State's withholding of sales and use tax distributions scheduled for July 18, and continuing until the full amount owed the Taxing Entities has been paid.

ANALYSIS: Due to the very specific way in which the DOF has required the County Auditor-Controller to calculate the "residual amounts," the Marin County Auditor-Controller was required to make the calculation of the residual amounts owing by the San Rafael Successor Agency without taking account of the fact that all the tax increment moneys distributed to the Redevelopment Agency in December 2011 were (properly) used in December to make payments on the Redevelopment Agency's bonded indebtedness.

In short, the Auditor-Controller has determined that the Successor Agency is still in possession of tax increment money that was distributed to it in December 2011 and therefore should reimburse those funds pursuant to AB 1484. This is, of course, not the case. Nevertheless, at 6:00 p.m. on July 9, 2012, the Auditor-Controller sent the attached "Demand Notice" to the City demanding payment of \$1,731,446 by the end of business on July 12, 2012.

The DOF formula for calculating the residual amounts, and thus the Auditor-Controller's calculation, is clearly improper in that it fails to credit the Successor Agency with proper expenditures of tax increment moneys distributed by the County in December 2011. Nevertheless, the three-day turnaround period provided by the Legislature for payment of the residual amounts did not allow Staff time to obtain relief from this determination from the DOF.

Staff has learned that many other California cities are facing similar immediate and inaccurate demands as a result of AB 1484.

FISCAL IMPACT: As noted above, AB 1484 authorizes very substantial monetary penalties for the Successor Agency's failure to pay the demand amount, and additionally authorizes withholding of upcoming sales and use tax distributions. In view of these dire consequences, and after consultation with the Successor Agency's expert outside legal counsel, Staff initially concluded that the City would be best protected by making the full payment, under protest, in a timely manner.

Staff subsequently learned, however, that of the Successor Agency funds on hand, most may not be used to satisfy the County's demand. On July 12, the DOF advised Staff that the Successor Agency's unencumbered housing funds (approximately \$1.4 million) may not be used for this purpose. At the same time, the City's bond counsel advised that bond proceeds on account also may not be used. As a result, the Successor Agency does not in fact have the necessary funds to pay the full demand amount.

The latest information provided by the League of California Cities after meeting with the DOF staff is that due to the difficulties AB 1484 has created for California cities, the DOF has indicated it may not vigorously be pursuing penalties. Therefore, in view of all the circumstances, on July 12 the Successor Agency Chair and Manager authorized Staff to submit an appeal letter to the DOF explaining the Agency's contention that no "residual amounts" are actually owing, and to submit a "payment under protest" letter to the County Auditor-Controller with a good-faith payment in the sum of \$148,589. (Note: The new State law does not allow for nor anticipate prior Oversight Board or Successor Agency Board approval for the residual payment required by the DOF.) Copies of Staff's letters to the DOF and County Auditor-Controller are attached to this report.

Staff will continue to work with the DOF and the County Auditor-Controller to resolve this complex problem. In the meantime, the County Auditor-Controller will be releasing all funds to all the Taxing Entities, including the City, based on current tax allocation formulas for property taxes. Based on those formulas, the City will receive \$22,288 (15% of what we pay) into the General Fund.

ACTION REQUIRED: For the reasons set forth above, staff recommends that the Successor Agency Board adopt the attached resolution approving the Successor Agency's July 12, 2012 good-faith payment, under protest, of \$148,589 to the County Auditor-Controller.

ATTACHMENTS:

Resolution
July 6, 2012 Request for Determination of amount owed
July 9, 2012 County demand letter
July 12, 2012 Staff letter to DOF

RESOLUTION NO. _____

**RESOLUTION OF THE SAN RAFAEL SUCCESSOR AGENCY
APPROVING A PAYMENT TO THE MARIN COUNTY AUDITOR-
CONTROLLER TO SATISFY DEMAND FOR REIMBURSEMENT OF
PROPERTY TAX FUNDS PURSUANT TO ASSEMBLY BILL 1484**

WHEREAS, the California State Legislature enacted Assembly Bill x1 26 (the "Dissolution Act") to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code Section 33000 et seq.); and

WHEREAS, on December 29, 2011, the California Supreme Court delivered its decision in the *California Redevelopment Association v. Matosantos* case, finding AB x1 26 (the "Dissolution Act") largely constitutional, with the result that all California redevelopment agencies, including the Redevelopment Agency of the City of San Rafael (the "Redevelopment Agency") would be dissolved on February 1, 2012; and

WHEREAS, on January 3, 2012 and pursuant to Health and Safety Code Section 34173, the City Council of the City of San Rafael (the "City Council") declared that the City of San Rafael, a municipal corporation, would act as successor agency (the "Successor Agency") for the dissolved Redevelopment Agency effective February 1, 2012; and

WHEREAS, on February 1, 2012, the Redevelopment Agency was dissolved pursuant to Health and Safety Code Section 34172; and

WHEREAS, the Successor Agency now holds the former Redevelopment Agency's non-housing funds and assets and is charged with the responsibility of paying off the former Redevelopment Agency's existing debts, disposing of the former Redevelopment Agency's properties and assets to help pay off debts and return revenues to the local government entities that receive property taxes (the "Taxing Entities"), and winding up the affairs of the former Redevelopment Agency; and

WHEREAS, pursuant to the Dissolution Act an oversight board (the "Oversight Board") has been established with specific duties to approve certain Successor Agency actions pursuant to Health and Safety Code Section 34180 and to direct the Successor Agency in certain other actions pursuant to Health and Safety Code Section 34181, all subject to final approval by the California Department of Finance ("DOF"); and

WHEREAS, on June 27, 2012, the State Legislature passed, and the Governor signed, Assembly Bill 1484 ("AB 1484"), which makes clean-up amendments to the Dissolution Act, including a clarification that all 2011-2012 tax increment that was distributed to redevelopment agencies, including amounts distributed to agencies in December 2011, are subject to the Dissolution Act; and

WHEREAS, pursuant to AB 1484 the Marin County Auditor-Controller was required, by July 9, 2012, to notify all Marin County successor agencies of any “residual amounts” still owed to the Taxing Entities from FY 2011-2012 tax increment distributions, and the Successor Agency was required to pay the stated residual amounts to the County no later than July 12, 2012; and

WHEREAS, AB 1484 authorizes the assessment of penalties against a successor agency for failure to comply with the July 12 deadline, in a sum equal to 10% of the amount owing, plus 1.5% of the amount owing for each additional month until it complies. In addition, a failure to pay may result in the State’s withholding of future sales and use tax distributions to the Successor Agency scheduled for July 18, 2012 and continuing until the full amount owed the Taxing Entities has been paid; and

WHEREAS, due to the very specific way in which the DOF has required the County Auditor-Controller to calculate the “residual amounts,” the Marin County Auditor-Controller was required to make the calculation of the residual amounts owing by the Successor Agency without taking account of the fact that all the tax increment moneys distributed to the Redevelopment Agency in December 2011 were (properly) used at that time to make payments on the Redevelopment Agency’s bonded indebtedness; and

WHEREAS, as a result of this omission, the Marin County Auditor-Controller has erroneously determined that the Successor Agency is still in possession of tax increment money that was distributed to it in December 2011, and therefore in possession of “residual amounts” to be reimbursed pursuant to AB 1484; and

WHEREAS, on July 9, 2012, the Marin County Auditor-Controller sent a “Demand Notice” to the City demanding payment of \$1,731,446 by the end of business on July 12, 2012; and

WHEREAS, the Successor Agency does not in fact have funds available with which to pay the full demand amount; and

WHEREAS, due to the three-day turnaround period provided by the Legislature for payment of the residual amounts, the Successor Agency Staff was unable to obtain relief from this demand prior to the July 12 deadline for payment and determined to pay, under protest, such funds as were available as a good-faith payment; and

WHEREAS, the Successor Agency will continue to work with the DOF and the Marin County Auditor-Controller to clarify that the Successor Agency does not in fact owe any residual amounts;

NOW, THEREFORE, BE IT RESOLVED that the Board of the Successor Agency hereby affirms and approves the payment of \$148,589 to the Marin County Auditor-Controller on July 12, 2012 as a good-faith payment of the demand for reimbursement of property tax funds pursuant to AB 1484.

I, **Esther C. Beirne**, Secretary of the San Rafael Successor Agency, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the San Rafael Successor Agency, held on Monday, the sixteenth day of July, 2012, by the following vote, to wit:

AYES: Members:

NOES: Members:

ABSENT: Members:

Esther C. Beirne, Secretary
San Rafael Successor Agency



CITY OF
San Rafael

MAYOR GARY O. PHILLIPS
VICE MAYOR MARC LEVINE
COUNCILMEMBER DAMON CONNOLLY
COUNCILMEMBER BARBARA HELLER
COUNCILMEMBER ANDREW CUYUGAN MCCULLOUGH

REDEVELOPMENT AGENCY
PHONE: 415-485-3383
FAX: 415-485-3175

July 6, 2012

Via Electronic Mail and U.S. Mail

Roy Given
Finance Director
Auditor-Controller, County of Marin
Marin County Civic Center
3501 Civic Center Drive
Room 225
San Rafael, CA 94903

Subject: San Rafael Redevelopment Agency Allocation of Property Tax-
Distributions to taxing entities pursuant to HSC 34183 (a) (4)

Dear Mr. Given:

This letter addresses the new requirements contained in AB 1484. Health & Safety Code ("HSC") Section 34183.5 (b) (2) (A) now requires the County Auditor to provide each Successor Agency a determination of the amounts owed to other taxing entities pursuant to HSC 34813(a)(4).

This letter will confirm that the County distributes all tax revenues within the Redevelopment Project Area. The 1984 Fiscal Agreement limits the Agency's receipt of tax increment. The County pays the Agency for the amounts allowed under the Fiscal Agreement and all remaining property tax funds are distributed by the County to the taxing entities. Accordingly, there is no residual as calculated under HSC 34183(b).

Should you have any questions, please contact me at (415) 485-3460 or email me at stephanie.lovette@cityofsanrafael.org.

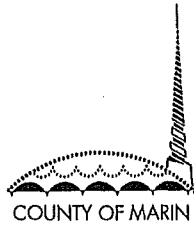
Sincerely,


Stephanie Lovette
Economic Development Manager

Received & acknowledged on July __, 2012

Roy Given
Marin County Auditor Controller

cc: Nancy Mackle, City Manager
Dana Proctor, County of Marin Finance Department Property Tax Division
Matthew Hymel, County Administrator



DEPARTMENT OF FINANCE

Excellent and responsive fiscal leadership.

Roy Given, CPA
DIRECTOR

DEMAND NOTICE

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July 9, 2012

San Rafael Successor Agency:

On June 27, 2012 the Governor signed AB 1484, which imposes new tasks on county auditor-controllers and successor agencies. Health and Safety Code (HSC) §34183 and §34183.5 clarify that all 2011-12 tax increment distributed to redevelopment agencies, including amounts distributed in December 2011, should have been subject to the ABx1 26 mechanism.

No later than July 9, 2012, the county auditor-controller is required to notify successor agencies of the residual amount still owed to affected taxing entities (ATEs) related to 2011-12 tax increment distributions. Residual amounts are determined after the payment of pass through obligations, and property tax-funded enforceable obligations and agency administrative costs that were approved by the California Department of Finance (DOF).

In accordance with HSC §34183.5(b)(2)(A), the County of Marin Department of Finance hereby provides a demand for payment for the residual amount still owed to ATE's. The residual amount due for the January 2012 through June 2012 period is as follows:

January 2012 – June 2012 ROPS Period	\$1,731,446
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This residual amount must be remitted to the county auditor-controller no later than July 12, 2012. Please note that HSC §34183.5 provides for significant penalties if a successor agency fails to comply with this demand notice. Please find the enclosed RPTTF Summary and wire instructions.

Please contact Dana Proctor at 415-473-6154 or DProctor@marincounty.org with questions. Additional information is available on the DOF website at http://www.dof.ca.gov/assembly_bills_26-27/.

Sincerely,

Roy Given, CPA
Director of Finance

enclosures



CITY OF
San Rafael

MAYOR GARY O. PHILLIPS
VICE MAYOR MARC LEVINE
COUNCILMEMBER DAMON CONNOLLY
COUNCILMEMBER BARBARA HELLER
COUNCILMEMBER ANDREW CUYUGAN MCCULLOUGH

CITY MANAGER'S OFFICE

PHONE: 415-485-3070

FAX: 415-459-2242

July 12, 2012

Chris Hill
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Evelyn Suess
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Subject: Appeal and Notification for Assistance regarding HSC 34183.5(b) (2) (A) payment and Notification of funding shortfall under 34183 (b)

To Whom It May Concern:

The Successor Agency to the former San Rafael Redevelopment Agency has received a demand from the County of Marin in an amount of \$1,731,446 with a required remittance date of July 12, 2012. We disagree with the remittance calculation because it does not take into consideration the existing tax sharing agreement and the County's role in holding and distributing funds to the tax entities. Due to the tax sharing agreement, the San Rafael Successor Agency does not have sufficient legally available funds to pay the demand.

Our records indicate that, as of June 30, 2012, the Agency cash consisted of a total \$1,142,087 in affordable housing funds, \$393,467 project administration funds, and \$2,033,470 of tax exempt bond proceeds. The fund balances shown do not take into account encumbrances approved by the Oversight Board and the DOF during the ROPS process. We understand that your office has taken the position that housing funds may not be used for this obligation. We have been advised by bond counsel that tax exempt bond proceeds may be used to make the HSC 34183 payment. Therefore, the Successor Agency does not have sufficient legally available funds for the payment.

We have remitted \$148,589 to the County of Marin. This amount is the \$ 393,467 balance in the project administration account less the \$244,878 Agency administration cost shown on the ROPS approved by the DOF in Exhibit 12. The County of Marin has not yet released any of the funds listed on Exhibit 12.

One of the reasons for this situation is that the San Rafael Redevelopment Agency has a tax sharing agreement with the other taxing agencies that limits the amount of tax increment allocated to the Agency to an amount equal to annual bond debt service and the corresponding housing set aside. The Project Area generates approximately \$22 Million in tax increment and the Agency receives about \$4 Million for bond payments and \$900,000 for housing. The remainder of the funds are distributed by the County directly to the taxing agencies. If there is a residual amount in the RPTTF, it is held by the County. The Agency never received \$1.7 Million in unencumbered tax increment so we cannot pay it back. Please see the attached worksheet RPTTF "waterfall" worksheet prepared by the County of Marin for more information.

The second reason for the lack of Agency funds is the timing on the bond payments. Agency bonds are paid on December 1 and June 1. The Agency received \$2.9 Million at the end of November and immediately used those funds to pay the bond payment due on December 1. Due to the tax sharing agreement there were no other funds allocated to or received by the Successor Agency since that date. The County did not allocate any housing funds to the Agency in 2011-2012.

Successor Agency staff and the County Auditor recognized that the 6 month ROPS process would create some problems due to the uneven debt service payments, with principal and interest due on December 1 and interest due on June 1. Therefore, we listed the full year debt service for the June and December payment on the first ROPS for January-June 2012.

We were instructed to remove the principal payment from the January-June 2012 ROPS by Mindy Patterson at the DOF pursuant to a DOF recommended procedure. See the attached letter. AB 1484 added HSC 34171 (d) (1) (A) which allows successor agencies to hold reserves when the 6 month RPTTF will be insufficient to pay all bond obligations due in the next period. Due to this updated definition, we have updated the first ROPS, attached hereto.

We respectfully request the DOF to:

1. Allow the County Auditor to list the actual amount of \$ 2,972,581 paid to the Agency in November 2011 as the deposit total for the RPTTF beginning balance.
2. Approve the attached amended January-June ROPS that lists the payment made in November for the December 1, 2011 bond payment. This amount would be shown in the ROPS line of the RPTTF calculation.

I am available to discuss this issue, please contact me by telephone at 415-485-3383 or via email at stephanie.lovette@cityofsanrafael.org.

Sincerely,



Stephanie Lovette
Economic Development Manager

Cc: Roy Given, Director of Finance, Auditor-Controller, County of Marin