



THE CITY OF SAN DIEGO

REPORT NO. 12-096

DATE ISSUED: July 17, 2012

ATTENTION: Honorable Chair and Members of the Successor Agency  
Docket of July 23, 2012

SUBJECT: Report regarding Analysis of Assembly Bill 1484 and Its Effect on the Roles and Responsibilities of the Successor Agency and Oversight Board; and Ratifying the Prior Payment of a "true-up" amount of \$89,644,450.71 from the Successor Agency to the San Diego County Auditor-Controller.

STAFF CONTACT: David Graham, Office of the Mayor

\*\*The informational report and the requested action below are being presented to the City Council in its capacity as the board of the local redevelopment successor agency, officially known as the City of San Diego, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and politic ("Successor Agency").

REQUESTED ACTIONS

That the Successor Agency:

1. Receives an informational report from Successor Agency staff summarizing the key aspects of California Assembly Bill 1484 and its impacts to the roles and responsibilities of the Successor Agency and Oversight Board; and
2. Ratifies and authorizes all actions taken by the Mayor, the Chief Financial Officer or designee to appropriate and expend funds, utilizing uncommitted tax increment reserve balances of the Successor Agency, to make the "true-up" payment of \$89,644,450.71 to the San Diego County Auditor-Controller on July 12, 2012, in compliance with the statutory deadline imposed by AB 1484.

STAFF RECOMMENDATION

Receive the informational report and approve the requested action.

BACKGROUND:

On June 27, 2012, Governor Brown signed new legislation, Assembly Bill 1484 ("AB 1484"), that significantly changes and clarifies certain provisions of ABx1 26 ("the Dissolution Act"). AB 1484 has added significant new provisions and modified actions and deadlines, with major compliance consequences, that need to be implemented in the very near future and throughout the Summer and Fall of 2012.



DISCUSSION:

This report summarizes some, but not all, of the significant provisions of AB 1484 and their impact on the schedule of future Successor Agency actions as discussed in the Goldfarb & Lipman report (Attachment 1). The actual statutory language in AB 1484 (Attachment 2) will need to be evaluated closely before the Successor Agency makes decisions or takes actions pursuant to AB 1484.

*Affordable Housing*

AB 1484 expands the list of assets that are considered “housing assets” to include any real property, interest in, or restriction on the use of real property acquired for affordable housing purposes regardless of source of funds, whether improved or not, and personal property within the residences. Housing assets also include funds encumbered for housing-related enforceable obligations, loans and grants receivable, rents and payments from operations, amounts owed to the Low and Moderate Income Housing Fund (LMIHF), and housing bond proceeds. The legislation allows the Oversight Board to determine whether the benefit to the community by preserving mixed use properties intact outweigh the benefit to the taxing entities from dividing and disposing of the affordable and non-affordable components of the properties.

A list of all housing assets previously transferred to the Successor Housing Entity (in this instance, the City) must be submitted to the Department of Finance (DOF) by August 1, 2012. It is uncertain whether this deadline applies in this instance, given that the Successor has not yet received direction from the Oversight Board to transfer any housing assets to the Successor Housing Entity. Nonetheless, staff intends to submit a list of housing assets to the DOF by August 1 and, at the earliest available opportunity in August 2012, to request the Oversight Board’s direction to transfer the housing assets. The Oversight Board’s decision will be subject to review and approval by the DOF. All assets transferred to the Successor Housing Entity shall be maintained in a separate Low and Moderate Income Housing Asset Fund. All revenues generated from the housing assets are to be used for the purposes of producing, preserving or improving affordable housing.

AB 1484 clarifies the Excess Housing Bond proceeds provisions of the Dissolution Act and now allows the Successor Housing Entity to retain such proceeds by notifying the Successor Agency of their intended use at least twenty days before the deadline to submit the Recognized Obligation Payment Schedule (ROPS) to the Oversight Board. The proposed expenditure of the Excess Housing Bond proceeds must be listed as a separate line on the ROPS. The Oversight Board, the County Auditor-Controller, the State Controller, and the DOF must approve of the use of proceeds on the ROPS, although their review is limited to a determination that the use is consistent with the bond covenants and that sufficient funds are available.

Unencumbered housing funds, excluding the Excess Housing Bond proceeds on the approved ROPS, are to be transferred by the Successor Agency to the County Auditor-Controller in late 2012 pursuant to new audit procedures and then distributed to the local taxing entities.

*Polanco Redevelopment Act*

The new legislation clarifies that the Successor Agency may assume existing cleanup plans and liability limits under the Polanco Redevelopment Act.

*Authority to Create Enforceable Obligations*

AB 1484 clearly provides the Successor Agency with authority to create enforceable obligations to conduct wind-down activities, such as retaining staff, engaging consultants or legal counsel, or obtaining insurance. However, it provides that the Successor Agency lacks the authority to enter into new enforceable obligations to begin new redevelopment work, except for obligations that existed prior to June 28, 2011.

*Administrative Costs*

AB 1484 clarifies that the administrative cost allowance excludes litigation costs related to assets or obligations, settlements, judgments, and predisposition carrying costs for property transferred to a Successor Agency. Also excluded are project-specific staffing costs for project management, monitoring, and inspection.

*Oversight Board Support*

The Oversight Board, pursuant to AB 1484, can direct a Successor Agency to provide additional legal or financial advice and can enter into a contract with the County or any other public or private agencies for administrative support.

*Recognized Obligation Payment Schedules*

AB 1484 makes several changes to the process and timing for preparation and approval of the Third ROPS for the period of January 1 through June 30, 2013. The date by which the Third ROPS must be approved by the Oversight Board and submitted to the DOF is accelerated to September 1 from October 1, 2012. The Fourth and all subsequent approved ROPS must be submitted to the DOF no fewer than 90 days in advance of the County Auditor-Controller's semi-annual distribution of funds from the Redevelopment Property Tax Trust Fund (RPTTF).

*DOF Review of ROPS*

The amount of time by which the DOF has to request review and make its determination on enforceable obligations has been significantly extended by AB 1484. The DOF now has five business days to request review following its receipt of a ROPS and up to an additional 45 days to make a determination on the amount of an enforceable obligation and its proposed funding source, if it chooses to request a review. If the DOF does not request a review within the five business days, the ROPS is deemed approved.

Failure by a Successor Agency to submit an Oversight Board-approved ROPS within five business days of the deadlines may result in civil penalties in the amount of \$10,000 per day for each day the ROPS is delinquent.

*Residual Distributions for FY 2011-12*

Section 34183.5(b) of AB 1484 attempts to expeditiously collect funds from Successor Agencies by requiring the County Auditor-Controller to issue a demand for a “residual balance” or “true-up” payment from Successor Agencies for a portion or all of the property tax increment distribution paid to the former RDAs in late 2011 to early 2012. That distribution would have been paid to the RPTTF if the Supreme Court had not issued a stay in August 2011.

On or before March 28, 2012 the San Diego County Auditor-Controller provided information to local successor agencies about the process for the wind-down of former Redevelopment Agency activities. At the time, local successor agencies were told that there would be no distribution from the RPTTF for the initial ROPS period of January 1 through June 30, 2012 (ROPS 1). Instead, local successor agencies were to use a combination of the late 2011 to early 2012 property tax increment distribution and any reserve funds on hand to pay for ROPS 1. Local successor agencies, including the San Diego Successor Agency, complied with this direction, which resulted in the majority of obligations being paid from available revenues other than anticipated funding from the RPTTF.

AB 1484 did not specify how the amount of the “residual balance” payment is to be determined, however, the intent was to ensure the taxing entities receive their full amount owed pursuant to Section 34183(a)(4). The legislation directed each county auditor-controller to determine the amount, if any, that was owed by each successor agency. Rather than develop a county-driven process, the DOF directed all counties to use a specific methodology to calculate the “residual balance” payment, called the July true-up process, which was posted to the DOF website. Some counties complied, and at least one other county did not.

The Successor Agency received a letter on July 9, 2012 from the County Auditor-Controller, demanding a “true-up” payment in the amount of approximately \$89.6 million. Although the Successor Agency had used the entirety of the late 2011 to early 2012 property tax increment distribution in lieu of an RPTTF distribution to partially pay for enforceable obligations on ROPS 1 which greatly exceeded the distribution, the methodology specified by the DOF did not recognize those obligations as being funded by an RPTTF distribution. Despite good faith objection to this demanded payment, the Successor Agency made the payment under protest in the amount of \$89,644,450.71 by its due date of July 12, 2012. Under AB 1484, the Successor Agency’s failure to make a full, timely payment of the true-up amount could have resulted in severe penalties, including the assessment of late payment penalties on both the Successor Agency and the City, as well as the withholding of sales and use tax from the City. The portion of the true-up payment that the County Auditor then distributed to the City as part of the City’s pro rata distribution to local taxing entities is \$18,712,936.39.

At least two prior resolutions adopted by the City Council delegated authority to the Mayor or designee to take various actions and to implement various steps required in accordance with State law related to the winding down of the former RDA’s affairs. To remove any potential doubt concerning Successor Agency staff’s authorization to make the payment, however, the City Council

is requested to approve the resolution ratifying all actions taken by the Mayor, the Chief Financial Officer or designee to appropriate and expend funds, utilizing uncommitted tax increment reserve balances of the Successor Agency, to make the true-up payment to the County Auditor-Controller on July 12, 2012, in compliance with the statutory deadline imposed by AB 1484. The immediate deadline for the true-up payment effectively prevented Successor Agency staff from presenting this action item to the Council before the payment deadline.

*Review of Cash Assets and Finding of Completion*

AB 1484 provides new procedures for conducting a review by an independent licensed accountant of available cash assets of the Successor Agencies. Upon completion of the review, the DOF will issue a finding of completion for the Successor Agency once the Successor Agency remits the unencumbered cash assets to the County Auditor-Controller. The legislation does not indicate how the costs of the review are to be paid, but staff will be seeking clarification from the Oversight Board and the DOF on this point. The review of the Low and Moderate Income Housing Funds ("LMIHF") by the Oversight Board must be complete by October 1, 2012. The review of all other funds by the Oversight Board must be complete by December 15, 2012.

The purpose of the non-housing review is to identify the value of all assets transferred from the former RDA to the Successor Agency, those assets, if any, transferred to the City of San Diego, those assets transferred to any other public agency or private party associated with enforceable obligations, and a reconciliation of revenues, expenditures, assets and liabilities through June 30, 2012.

A similar review of the LMIHF is required to identify the value of all assets as of June 30, 2012, including those funds that are legally restricted such as bond proceeds or grant funds, physical assets, properties, amounts owed for enforceable obligations, and a determination on the availability of funds to pay all enforceable obligations.

Upon completion of each review, the Oversight Board is to schedule a public comment session to take place at least five business days prior to the Oversight Board's vote on the approval of the reviews. The review of the LMIHF must be transmitted to the DOF by October 15, 2012, and the review of other assets by January 15, 2013. The DOF must complete its review of the LMIHF by November 9, 2012 and the review of the other assets by April 1, 2013 for the remaining funds.

Significant penalties to the sponsoring community (i.e., the City) are contained in the legislation if assets transferred to the sponsoring community are not recovered to the satisfaction of the DOF.

*County Auditor-Controller Responsibilities*

The Agreed-Upon Procedures Audit deadline has been delayed from July 1 to October 1, 2012. The County Auditor-Controller is now only required to object to the inclusion of any items on the ROPS that are not demonstrated to be enforceable obligations rather than the prior "certification" that was required under the Dissolution Act. Debt service payments have been provided with priority over

pass-through payments in the case where insufficient funds are available from the RPTTF.

#### *Property Disposition*

AB 1484 apparently suspends the urgency provisions contained in the Dissolution Act for the disposition of each former RDA's properties and provides more flexibility and consideration of local benefits. Within six months after receipt of a Finding of Completion, the Successor Agency must submit a long-range property management plan for approval by the Oversight Board and the DOF. The property management plan must include an inventory of all properties held by the Successor Agency and site-specific characteristics and estimated values. Properties are to fall within four general categories:

- retention of the property for governmental use;
- retention of the property for future development;
- sale of the property; and
- use of the property to fulfill an enforceable obligation.

Upon approval of the property management plan, the properties are to be placed in a Community Redevelopment Property Trust Fund administered by the Successor Agency in accordance with the approved plan. If the approved plan calls for use or liquidation of a property for a project identified in an approved redevelopment plan, that property is to be transferred to the sponsoring community for that purpose, in a manner similar to that implemented by the former RDA. Any sales proceeds are to be distributed as property taxes on a pro rata basis to the taxing entities.

#### *Sponsoring Community Loans*

AB 1484 allows loans made by the sponsoring community to the former RDA to be reinstated on modified terms and deemed enforceable obligations (even those that were not deemed enforceable under the Dissolution Act) if the Oversight Board and the DOF find the original loan to be for legitimate redevelopment purposes. New conditions are placed on the repayment of the loans, such as a maximum limitation on the amount of annual payments, changes in the interest rate and its calculation, a suspension of payments until FY 2013-14, priority to repayments owed to the LMIHF, and 20% of repayments placed in the Housing Asset Fund maintained by the Successor Housing Entity.

#### *Bond Proceeds*

Following receipt of a Finding of Completion, a Successor Agency is permitted, under AB 1484, to spend non-housing excess proceeds from bonds issued prior to 2011 in a manner consistent with the original bond covenants. As discussed above, use of the Excess Housing Bond proceeds is not contingent upon the issuance of a Finding of Completion.

#### *Extended Review Period for DOF*

AB 1484 extends the period in which the DOF has to review all actions approved by the Oversight Board from three to five business days. If the DOF does not request a review, the action of the Oversight Board is deemed approved. If the DOF requests a review, the period in which it must

return the item to the Oversight Board for reconsideration has been extended from 10 days to 40 days. Certain decisions related to the disposition of assets and the transfer of housing assets to the Successor Housing Entity are provided an even longer period for such direction.

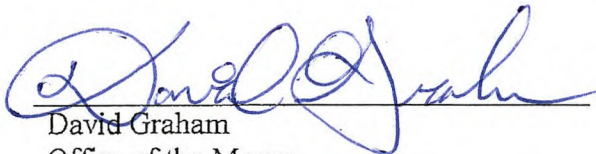
FISCAL CONSIDERATIONS:

AB 1484 imposes significant changes to the Dissolution Act that impact numerous financial components related to the Successor Agency's responsibilities in the wind down of redevelopment including, but not limited to, affordable housing, enforceable obligations, payments to taxing entities, RPTTF distribution, bonds, transactions between the Successor Agency and the sponsoring community, and property disposition. Additionally, the procurement of an independent accountant by the Successor Agency to conduct the required reviews is a new requirement and not covered by existing ROPS or the Successor Agency Administrative Budget.

The Successor Agency's payment of the true-up amount of approximately \$89.6 million to the County Auditor on July 12, 2012 was derived from the Successor Agency's uncommitted tax increment reserve balance. Although staff is still evaluating the fiscal impact to the Successor Agency, the Successor Agency's distribution of the true-up payment is not anticipated to create any cash flow problems during the ROPS 2 time period or to cause the Successor Agency to default on any enforceable obligations. If the true-up payment had not been demanded in July 2012, it is anticipated that that Successor Agency would have been compelled to pay the true-up amount to the County Auditor-Controller as part of the two installment payments of excess cash reserves for housing funds and non-housing funds to be owed in late 2012 and early 2013. In addition, the City's General Fund benefitted indirectly from the true-up payment because the City received its pro rata distribution of approximately \$18.7 million from the County Auditor-Controller.

CONCLUSION:

It is recommended that the Successor Agency review the staff presentation on the key aspects of AB 1484, review the Goldfarb & Lipman summary report, review the actual language of AB 1484 that impacts the wind down of redevelopment, and ratify the prior payment of the "true-up" amount of \$89,644,450.71 from the Successor Agency to the San Diego County Auditor-Controller.

  
\_\_\_\_\_  
David Graham  
Office of the Mayor

  
\_\_\_\_\_  
Jay Goldstone  
Chief Operating Officer

Attachments: 1 – Goldfarb & Lipman Summary of AB 1484, dated June 29, 2012  
2 – Assembly Bill 1484