

## **RDA SUCCESSOR AGENCIES FROM A-Z, STARTING WITH THE LETTER "U" (UKIAH)**

**May 2, 2012**

### ***Summary***

The 2011-2012 Mendocino County Grand Jury (GJ), following up on several citizen complaints, chose to investigate the City of Ukiah (City) Redevelopment Authority (RDA). This followed a similar investigation by the 2010-2011 Grand Jury, which resulted in a report.

The 2010-2011 report found that the City used RDA funds to pay significant portions of the salaries and benefits of 18 employees, many of them executive employees. The report also found that some of RDA project time lacked documentation by a code system intended to track staff hours on RDA projects.

The report further found that some RDA projects failed to improve the tax basis of the area. Stated another way, the projects could not be justified on a return on investment basis. Projected tax increment revenue did not materialize over time.

Another major finding of the report was that the City did not sufficiently seek public input and oversight on RDA projects. A general perception of arrogance by the City and a disconnect with the community was noted. The City did not ensure that projects reflected community needs and priorities, and failed to keep community members informed about the progress of projects.

The report also found that the potential for abuse existed in the interpretation of the word "blight" by the City's RDA staff. The concept of blight can be subject to wide interpretation; despite the fact, the word is clearly defined in Health and Safety Code Section 33030 (b). By law, RDAs could only undertake economic development in blighted areas.

Finally, the report found that the City used its RDA to "issue millions of dollars in debt without a vote by the people, thereby bypassing the restrictions created by Proposition 13." Ukiah was not alone. RDAs all across California effectively bypassed Prop 13.

The 2010-2011 Grand Jury report made several notable recommendations to correct these deficiencies.

However, the citizens who filed the new complaints considered the City's response to recommendations made in the report inadequate. The Full Panel of the 2011-2012 GJ agreed.

Subsequent to the start of the investigation, the whole ballgame changed. Specifically what changed? Essentially everything changed - Governor Brown, two new laws (AB1X 26, AB1X 27), and a California State Supreme Court decision, which upheld the new laws, changed everything.

What was the bottom line? The result was the mandated dissolution of RDAs throughout California by the State of California (State).

Taking the place of the old RDAs is a new entity called Successor Agencies. Overseeing the Successor Agencies was something called Oversight Boards.

Here in Mendocino County, that meant that the three RDAs in the cities of Ukiah, Willits, and Fort Bragg would dissolve. It also meant that the County's small RDA would also dissolve.

In early 2012, the City of Ukiah began its compliance with the new law.

### ***Methods***

The GJ interviewed many witnesses, including City staff, past and present City Council members, Ukiah Planning Commission staff, Board of Supervisor members, County staff and members of the public. The GJ also reviewed the California statutes, codes, and court decisions relevant to the dissolution of RDAs. The GJ fact checked and researched the changes of the code using available law library resources. <sup>1</sup>

Additionally, the GJ reviewed policies and procedures, and other direction, from various State agencies, and the League of California Cities and the California Redevelopment Association.<sup>2</sup>

### ***Background***

The California Community Redevelopment Law (CRL), enacted in 1945 and expanded in 1951, allowed cities and counties to establish RDAs to address blight. In 1952, voters approved a constitutional amendment to allow tax increment to fund redevelopment projects and for repayment of bonds.

Although redevelopment may help revive localized blight and equalize economic activity, in the post Proposition 13 era, this diverts resources from schools, counties, special districts and core city services. These services are items such as law enforcement, fire protection, road maintenance, parks, libraries and other local services. With the difficult economic times in California, the State had been re-evaluating the use of tax increment financing for redevelopment activities.

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<sup>1</sup> See attached Appendix A for a glossary of terms.

<sup>2</sup> See attached Appendices B through D for analysis of law and discussion of effects of law changes.

Shortly after taking office in January 2011, Governor Brown, as part of budget development, targeted the dissolution of RDAs as a way to provide more resources to local governments in the long term, as well as, to help with the state budget in the short term.

This action resulted in draft bill language circulating in February 2011, which included these key provisions:

- The cessation of all RDAs with Successor Agencies being established to wind down RDA affairs
- Oversight Boards to oversee the Successor Agencies
- Required repayment of all recognized obligations of the RDA including the continuation of pass-through payments to Affected Taxing Entities
- Requirement that county auditors audit RDAs and Successor Agencies
- Requirement that county auditors perform the calculations and administration of the redistribution of the tax increment due the former RDAs to all affected taxing entities except enterprise districts and, in the first year only, to the State as a grant to help fund public health and safety (courts).

As the budget process continued through the spring, mirror bills AB101/SB77 introduced counterproposals for “reform” as SB 286 /AB 1250.

When the current legislative session ended, neither AB101/SB77 passed the State Assembly or the Senate. During the first extended session, the legislature passed by simple majority vote, only one day before the State Budget deadline, a two-bill package affecting RDAs: AB 1X26 & AB 1X27.

Because the Governor vetoed the original budget bill submitted by legislature on June 14, 2011, the two-bill package, along with other trailer bills, was not submitted. When the new budget bill passed, AB 1X26 & AB 1X27 went to the Governor who signed them on June 28. The law was effective as of June 29.

AB 1X26, AB 1X27, and a decisive California Supreme Court Decision followed. The Court upheld the new laws and ordered the dissolution of RDAs.

### ***Findings***

1. On December 29, 2011, the California Supreme Court released its decision in the California Redevelopment Association vs. Matosantos. The Court found that AB 1X26 (the "Dissolution Act") to be constitutional. The Court's decision meant that each redevelopment agency within California must be dissolved and no longer exist as of February 1, 2012. This included all city and county redevelopment agencies.
2. In accordance with Health and Safety Code Section 34173, the City of Ukiah - along with the City of Willits, the City of Fort Bragg, and the County of

Mendocino – each designated a Successor Agency to supersede their respective Redevelopment Agencies.

3. The intent of the Successor Agency is to wind down the business of the Redevelopment Agency.
4. Under the Dissolution Act, authority, rights, powers, duties, and obligations of the Redevelopment Agency vest in the Successor Agency subject to approval of the State Department of Finance (DOF).
5. The Successor Agency has the responsibility of paying off the former Redevelopment Agency's existing debts. The Successor Agency also has the responsibility for disposing of the Redevelopment Agency's properties and assets in a manner prescribed by law. Lastly, the Successor Agency has the responsibility with winding down all remaining business of the former Redevelopment Agency.
6. The Successor Agency's activities are subject to review by the Oversight Board. This newly formed board is composed of seven representatives, as prescribed by Health and Safety Code Section 34179.
7. Per Health and Safety Code Section 34180, the Oversight Board must first approve important actions proposed by the Successor Agency. The Oversight Board may choose to approve, reject, or amend those actions.
8. The Oversight Board must approve any proposed new repayment terms for outstanding loans where the terms have not been specified prior to the date of the formation of the Successor Agency.
9. The Oversight Board must approve any proposed refunding by the Successor Agency of outstanding bonds or other debt of the former RDA. This is to provide cost savings or to finance debt service spikes. However, no additional debt can be created and debt service cannot be accelerated.
10. The Oversight Board must approve any proposed setting aside amounts in reserves as required by indentures, trust indentures, or similar documents governing the issuance of outstanding RDA bonds.
11. The Oversight Board must approve any proposed merging of project area.
12. The Oversight Board must approve any proposed continuing the acceptance of federal or state grants, or other forms of financial assistance from either public or private sources, where assistance is conditioned upon the provision of matching funds by the Successor Agency in amounts greater than 5 per cent of the total liabilities of the Successor Agency.
13. If the City of Ukiah wishes to retain any properties or other assets of its former RDA for future development activities, funded from the City's own funds and under the City's own auspices, the City must reach a compensation agreement with the other taxing entities. These payments must be in proportion to their respective shares of the base property tax, as pursuant to Section 34188, for the value of the property retained by the City. The Oversight Board must also approve this action.
14. If no agreement is reached on the valuation of the retained assets, the value will be the fair market value as of the 2011 property tax lien date as determined by the County Assessor. The Oversight Board must also approve this action.

15. The Oversight Board must approve any proposed establishment of the Recognized Obligation Payment Schedule (ROPS).
16. The Oversight Board must approve any request by the Successor Agency to enter into an agreement with the City of Ukiah.
17. The Oversight Board must approve any request by the Successor Agency to pledge, or to enter into any agreement for the pledge of, property tax revenues pursuant to subdivision (b) of Section 34178.
18. The Oversight Board may direct the staff of the Successor Agency to perform work in the furtherance of the Oversight Board's duties and responsibilities.
19. The Oversight Board shall have fiduciary responsibilities to the holders of enforceable obligations and the taxing entities that benefit from distributions of property tax and other revenues. The Enforceable Obligation Schedule adopted by the Successor Agency and approved by the Oversight Board must be published on the City's website or Successor Agency website.
20. On February 29, 2012, at a regular meeting of the City Council of the City of Ukiah, the Council passed, approved, and adopted a resolution that dissolved the City's RDA, and submitted an initial draft of the ROPS to the Successor Agency. The transmittal of the initial draft of the ROPS also copied the Mendocino County Auditor, the California State Controller, and the California State Department of Finance. The resolution was effective immediately.
21. The former RDA for the City of Ukiah was involved in significant projects, including the Redwood Business Park infrastructure on Airport Blvd (the "Costco Project"), the County Courthouse Relocation Project on Perkins Street, the Downtown Beautification Project, the Alex Rorabaugh Gymnasium and Activity Center, the Orchard Street Bridge, and 322 units of affordable housing created during the period of 1990-2007.
22. The City's former RDA issued bonds. Millions of dollars are still outstanding. They are included in the ROPS.
23. The former RDA has outstanding loans and other liabilities. They are included in the ROPS.
24. The ROPS for Ukiah's Successor Agency totals approximately \$118 million for the period of January 1, 2012 through June 30, 2012 and approximately \$59 million for the period of July 1, 2012 through December 31, 2012.
25. The former RDA used its funds to pay significant portions of the salaries of 18 City employees, totaling \$808,288 in 2010-2011.
26. The first meeting of the Successor Agency's Oversight Board took place on April 3, 2012. The Oversight Board met with a quorum of six members present of its required seven-member Board. The Oversight Board convened its first meeting before the Mendocino County Board of Supervisors appointed a representative from the public.
27. The six members of the Oversight Board that were present at the April 3 meeting included; Deputy CEO, Mendocino County; Vice Mayor, City of Ukiah, Board Member, Russian River Cemetery District; Associate Superintendent Mendocino County Office of Education; Vice President of

- Administrative Services, Mendocino Community College District, and Assistant Finance Director, City of Ukiah.
28. The principal staff to the Oversight Board is the City Manager, the Assistant City Manager, and the City Finance Director.
  29. Legal counsel represented the City and its Successor Agency. The Oversight Board was not represented by counsel, despite the fact that they were acting in the capacity as sworn fiduciaries.
  30. At the April 3 meeting, the Oversight Board adopted a conflict of interest code. In addition, the Oversight Board elected its Chairperson and other officers. The Board also approved the City Clerk to act on its behalf as Secretary to the Oversight Board.
  31. The date, time, and location of future regular meetings of the Oversight Board were resolved as follows: the 2nd Wednesday of every month, at 4 PM, at the Ukiah Conference Center. In addition, it was resolved that Special Meetings could be called with 24 hours notice whenever necessary.
  32. The Oversight Board approved an administrative budget for the Successor Agency. Pursuant to Health and Safety Code 34177(j), the Successor Agency could be allocated up to 5 per cent of the property tax for 2011-12, and up to 3 per cent of the property tax allocated to the Redevelopment Obligation Trust Fund for 2012-2013 and each year thereafter. The Administrative Cost Allowance cannot be less than \$250,000 or 5% of the property tax whichever is greater.
  33. The Oversight Board reviewed and considered, but did not approve the ROPS at the first meeting. Several members of the Board voiced their concern that the ROPS was not sufficiently documented, nor did the County Auditor certify the ROPS. The ROPS was certified at the second meeting.
  34. The City Manager and Assistant City Manager stressed at the April 3 meeting that there was an April 15 deadline for the Oversight Board to approve the ROPS and to provide a copy of the approved ROPS to the State Controller and the State Department of Finance.
  35. On April 10, the Mendocino County Board of Supervisors appointed a member of the public to the Successor Agency of the Ukiah's Redevelopment Agency.
  36. On April 11, a Special Meeting was held by the Oversight Board. The only key item on the agenda was the Board's approval of the ROPS list.
  37. At the April 11 meeting, the Board approved the ROPS following a heated discussion. Only five of the seven members of the Board voted yes. The dissenting members again expressed their concern that the ROPS was not fully documented nor certified by the County Auditor.
  38. The City Manager expressed her impatience with the Board's process, noting, "This whole process has been extremely difficult and has disrupted two major projects." The City Manager was referring to the Redwood Business Park (the "Costco Project") and the \$1 million environmental cleanup at the old Ukiah Railroad Depot for the relocation of the proposed Mendocino County courthouse.

39. Even some of the Board members who voted yes to approve the ROPS list said they preferred to vote for a "conditional approval" of the ROPS. Some Board members expressed concern if the State Controller or State Department of Finance disallowed the ROPS list from Ukiah Successor Agency. The Assistant City Manager assured the Board that they were not taking an "undue risk".
40. The Oversight Board had no way to assess the personal legal liability associated with risk. There was no legal counsel to advise them. Yet, the Board was acting as sworn fiduciaries at the April 3 and April 11 meetings. It was later determined that no liability was attached.
41. At the April 3 and April 11 meetings, legal counsel advised the City. In fact, counsel for the City was present at the Ukiah Conference Center during the April 11 meeting.
42. The dissolution of RDAs is a complicated business involving billions of dollars, and hundreds of agencies and tax entities, all across California. The process is fraught with almost unlimited possibilities for error. In fact, it is often remarked, that there is no "playbook" for the dissolution of RDAs. There is no body of case law that can easily resolve disputes.
43. The dissolution of RDAs represents potentially expensive legal liabilities for all parties involved in the process of dissolution.
44. On its website, the California League of Cities has identified key areas of what it calls Post Redevelopment Legal Issues:
  - ROPS,
  - Cash Flow,
  - Pass-through Agreements,
  - Asset Transfer Assessments,
  - "Clawbacks" by the State Controller,
  - Agency-City Asset Transfers,
  - Third-Party Assessments,
  - Property Acquisition and Eminent Domain.
45. Complicating the picture even further, there is the SB 659 Coalition. The Coalition (comprised of a growing list of labor, business, housing, public safety, community, and local government agencies) is seeking to postpone the scheduled dissolution of RDAs with the intent to allow time for new job creation and community renewal programs.
46. The January 5, 2012 edition of the *California Cities Advocate* also called for a "legislative fix" for the dissolution of Redevelopment Agencies. A potential "fix" begs an important question: as Successor Agencies "wind down" the activities of the former RDAs, will this "fix" imply that Successor Agencies must also "rewind"?
47. Two members of the Oversight Board noted that the City appears to be minimizing the role of the County Auditor during the first few weeks of the dissolution process. The proposed County Auditor Implementation Guidelines call for the County Auditor to certify all financial actions taken by the Successor Agency.

48. County Auditor Implementation Guidelines for the dissolution of Redevelopment Agencies exist only in draft form at the time of this report.
49. The interests of the Successor Agency and its Tax Entities are not the same as the interests of the City. Furthermore, the members of the Oversight Board are acting in the capacity of sworn fiduciaries. As such, there are both legal liabilities and financial consequences for errors made by the Oversight Board.
50. Some elements of the "wind down" of the RDAs are open to legal interpretation, including elements of affordable housing, employment, environmental regulation, and bond financing.
51. Ukiah's Successor Agency is experiencing dissent on its Oversight Board. Part of the problem is that some Board members feel "rushed" by City staff. They commented that City staff needs to "slow down" the process of dissolution and to more fully explain all their actions. They also stated that City staff needs to document actions, whenever possible.
52. Some Oversight Board members stated the County Auditor must certify the ROPS list and other actions of the Successor Agency.
53. It is not clear at this point in time, what projects started by Ukiah's RDA will be continued by the Successor Agency. Although it appears that the Redwood Business Park Revitalization Project (the "Costco Project") and the Courthouse Relocation Project will both proceed, the future of other projects has not been sufficiently addressed. The future of housing projects, especially student housing projects for the college, is in doubt to the consternation of many community leaders.
54. In a letter dated April 27, 2012, the State Department of Finance informed the City that \$12,529,535 of the \$118 million ROPS submitted to the State Department of Finance do not meet the requirements of Health and Safety Code sections 34171 et seq. and were not approved. The letter went on to state that, "Furthermore, items listed on future ROPS will be subject to review and may be denied as EOs." <sup>3</sup> The letter was not clear whether the State was approving the balance of the ROPS list or if the list was still under review.

### ***Recommendations***

The 2011-2012 Grand Jury recommends that:

1. City staff assigned to the Ukiah's Successor Agency continues to develop the "blueprint" for the dissolution of the Redevelopment Agency as direction continues to come from the State Controller's Office and the State Department of Finance. (Findings 1-20, 28, 30, 34, 38, 42, 49-50, 54)
2. City staff assigned to the Successor Agency should continue to solicit interpretation of this direction from the City Attorney, the California

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<sup>3</sup> The letter defined EO as enforceable obligation.



Redevelopment Association and the California League of Cities. (Findings 44-45)

3. City staff assigned to the Successor Agency should comply and present to the Oversight Board a written timeline of milestones and deadlines. (Findings 26-27, 33-34, 48, 51)
4. City staff assigned to the Successor Agency should immediately invite the County Auditor to participate in all future meetings of the Oversight Board. (Findings 26-29, 46-47, 52)
5. City staff assigned to the Successor Agency should adequately explain their presentations to the Oversight Board, so that all members of the Board can fully understand aspects of the dissolution process about which they are uncertain. (Findings 28-29, 32-34, 36-43, 48-51, 54)
6. City staff assigned to the Successor Agency should present the Oversight Board with a work plan for economic development projects they intend to continue, i.e., the Costco Project and the Courthouse Relocation Project. (Findings 21-23, 38-39, 51-54)
7. City staff assigned to the Successor Agency should carefully keep track of hours in a code system that tracks City business, Successor Agency business, Oversight Board business, and project management business, so as to avoid the perception of "double dipping". (Findings 24-25, 54)
8. The Oversight Board should immediately retain legal counsel. (Findings 29, 40-43, 49)
9. Regarding any legal questions about housing programs, ongoing economic development projects, environmental issues, and bond financings and other debt, the Oversight Board and their legal counsel should (when retained) consult with the California League of Cities. (Findings 44-46)
10. A meeting of all Tax Entities affected by the elimination of the RDA be convened by the Oversight Board to ensure outreach, inclusiveness, transparency, and accountability by the Board. (Findings 13-14, 19)
11. The Oversight Board ensure that all important board business be posted on the City website so all stakeholders and media are notified in a timely manner to ensure transparency. (Findings 26-27, 47, 51, 54)
12. The Oversight Board stay apprised of all developments at the SB 659 Coalition. (Finding 45)

## ***Discussion***

It is clear why the Governor and the State Legislature wanted to abolish the RDAs.

To their critics (and there were many), RDAs, particularly RDAs in larger cities, were perceived to be corrupt. Waste and fraud were considered to be engrained in RDA culture. The allegations were numerous:

- RDAs padded the payroll of city and county government
- RDAs diverted desperately needed funds from tax entities, especially tax entities providing essential services
- RDAs diverted property tax revenues
- RDAs subverted Proposition 13
- RDAs indebted cities and counties without voter approval
- Political insiders controlled RDAs.
- RDAs gave away money and favors to developers
- Some RDA projects, like stadiums and arenas for professional sports teams, were political "giveaways" costing taxpayers billions of dollars.

Again, these were allegations. However, an examination of Grand Jury reports, criminal investigations, and civil litigation across California seem to suggest that the allegations were not entirely unfounded.

Therefore, we got a law, AB 1X26, and a California Supreme Court decision that upheld the law. The Court's decision was effective immediately.

Now, the dissolution of RDAs is a nightmare. A real nightmare - It is a rush job. There is no blueprint for dissolution. Billions of dollars are at stake, during a recession. With dissolution, many good projects go down the drain.

This is particularly the case for small cities, like Ukiah. It is harder to get away with a lot in a small city. Everybody seems to know your business - too many watchdogs. Here in Mendocino County, there are many community activists as well. In Mendocino County, condescension is poorly accepted and unfortunately, that is the perception of the attitudes of the City regarding the RDA.

The 2011-2012 GJ is acutely aware that the dissolution of the Ukiah RDA will hurt us. The goal of the Ukiah RDA was much needed job creation, environmentally sustainable growth, affordable housing, and the elimination of blight and economic disparity.

Nevertheless, dissolution is here. Once dissolution starts, the California League of Cities says it may lead to "lawsuits, endless delays, and ongoing conflict, making it more difficult to develop job creation and community revitalization programs in California." The California League of Cities continues, "The

dissolution process could take years. Thousands of jobs, and vital economic development and affordable housing programs, will be lost in the meantime."

The end result of the conflicting instructions from the State, along with the problems of understanding the provisions of the Supreme Court case, are making the dissolution process for Ukiah very difficult and problematic. We cannot end this Grand Jury report on a more somber note.

***Required Responses***

City Council of Ukiah (All Findings, All Recommendations)

Oversight Board (All Findings, All Recommendations)

County Auditor (Findings 20, 33, 37, 48, 52, 54)