

IMPERIAL BEACH REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

April 2013



JOHN CHIANG
California State Controller

April 17, 2013

Gregory Wade, Deputy Director
Imperial Beach Redevelopment/Successor Agency
825 Imperial Beach Boulevard
Imperial Beach, CA 91932

Dear Mr. Wade:

Pursuant to Assembly Bill 26 (ABX1 26, Chapter 5, Statutes of 2011, First Extraordinary Session), the State Controller's Office reviewed the asset transfers made by the Imperial Beach Redevelopment Agency for the period of January 1, 2011, through January 31, 2012. Our review included, but was not limited to, real and personal property, cash funds, accounts receivable, deeds of trust and mortgages, contract rights, and any rights to payments of any kind from any source.

Our review disclosed that the Imperial Beach Redevelopment Agency transferred unallowable assets totaling \$22,688,281; however, the City subsequently transferred \$11,400,000 in assets to the Successor Agency on April 30, 2012. In addition, the remaining assets identified in this report have been documented as Successor Agency assets as of June 30, 2012, and the City intends to work with the Successor Agency to fully implement changes in ownership documents of these assets.

If you have any questions, please contact Steven Mar, Bureau Chief, Local Government Audits Bureau, at (916) 324-7226.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/vb

cc: Gary Brown, City Manager
City of Imperial Beach
Steven Szalay, Local Government Consultant
California Department of Finance
Tracy M. Sandoval, Auditor-Controller/Assistant Chief Financial Officer
San Diego County
Mayda C. Winter, Chairman Oversight Board
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Richard J. Chivaro, Chief Legal Counsel
State Controller's Office
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Asset Transfer Assessment Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Imperial Beach Redevelopment Agency for the period of January 1, 2011, through January 31, 2012. Our review included, but was not limited to, real and personal property, cash funds, accounts receivable, deeds of trust and mortgages, contract rights, and any rights to payments of any kind from any source.

Our review disclosed that the Imperial Beach Redevelopment Agency transferred unallowable assets totaling \$22,688,281. Those assets must be returned to the Successor Agency.

Background

In January of 2011, the Governor of the State of California proposed statewide elimination of redevelopment agencies (RDAs) beginning with the fiscal year (FY) 2011-12 State budget. The Governor's proposal was incorporated into Assembly Bill 26 (ABX1 26, Chapter 5, Statutes of 2011, First Extraordinary Session), which was passed by the Legislature, and signed into law by the Governor on June 28, 2011.

ABX1 26 prohibited RDAs from engaging in new business, established mechanisms and timelines for dissolution of the RDAs, and created RDA Successor Agencies to oversee dissolution of the RDAs and redistribution of RDA assets.

A California Supreme Court decision on December 28, 2011 (*California Redevelopment Association et al. v. Matosantos*), upheld ABX1 26 and the Legislature's constitutional authority to dissolve the RDAs.

ABX1 26 was codified in the Health and Safety Code (H&S Code) beginning with section 34161.

In accordance with the requirements of H&S Code section 34167.5, the State Controller is required to review the activities of redevelopment agencies (RDAs), "to determine whether an asset transfer has occurred after January 1, 2011, between the city or county, or city and county that created a redevelopment agency, or any other public agency, and the redevelopment agency," and the date at which the RDA ceases to operate, or January 31, 2012, whichever is earlier.

The SCO has identified transfers of assets that occurred during that period between the Imperial Beach RDA, the City of Imperial Beach, and/or other public agencies. By law, the SCO is required to order that such assets, except those that already had been committed to a third party prior to June 28, 2011, the effective date of ABX1 26, be turned over to the Successor Agency. In addition, the SCO may file a legal order to ensure compliance with this order.

Objectives, Scope, and Methodology

Our review objective was to determine whether asset transfers that occurred after January 1, 2011, and the date upon which the RDA ceased to operate, or January 31, 2012, whichever was earlier, between the city or county, or city and county that created an RDA, or any other public agency, and the RDA, were appropriate.

We performed the following procedures:

- Interviewed Successor Agency personnel to gain an understanding of the Successor Agency operations and procedures.
- Reviewed meeting minutes, resolutions, and ordinances of the Imperial Beach City Council and the Imperial Beach RDA.
- Reviewed accounting records relating to the recording of assets.
- Verified the accuracy of the Asset Transfer Assessment Form. This form was sent to all former RDAs to provide a list of all assets transferred between January 1, 2011, and January 31, 2012.
- Reviewed applicable financial reports to verify assets (capital, cash, property, etc.).

Conclusion

Our review disclosed that the Imperial Beach Redevelopment Agency transferred unallowable assets totaling \$22,688,281; however, the City subsequently transferred \$11,400,000 in assets to the Successor Agency on April 30, 2012. In addition, the remaining assets identified in this report have been documented as Successor Agency assets as of June 30, 2012, and the City intends to work with the Successor Agency to fully implement changes in ownership documents of these assets.

Views of Responsible Official

We issued a draft review report on December 6, 2012. Gary Brown, Executive Director, responded by letter dated December 17, 2012, disagreeing with the review results, and subsequently submitted a response via email on March 19, 2013. The city's responses are included in this final review report as attachments.

Restricted Use

This report is solely for the information and use of the City of Imperial Beach, the Imperial Beach Redevelopment Successor Agency, the Imperial Beach Redevelopment Successor Agency Oversight Board, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record when issued final.

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

April 17, 2013

Finding and Order of the Controller

**FINDING—
Asset transfer to
the City of
Imperial Beach**

On September 2, 2009, the Imperial Beach Redevelopment Agency (RDA) entered into an agreement with Sudberry Development, Inc. for redevelopment of the former Miracle Shopping Center and North Island Credit Union located at the southwest corner of 9th Street and Palm Avenue (the Property). The agreement was amended twice: on January 4, 2011, when the RDA desired to extend the negotiation period by 120 days, and again on June 1, 2011, when the agency desired to extend the negotiation period by 132 days. The amendments state that “If the Disposition and Development Agreement (DDA) had not yet been executed, upon the termination of the Extended Negotiation Period, then this Agreement shall automatically terminate, unless the Agency (RDA), in its sole discretion, agrees in writing to an extension.” This agreement has not been officially canceled; however, there were no other amendments added after June 1, 2011.

On February 16, 2011, the City of Imperial Beach (the City) and the RDA entered into a Cooperation Agreement within which were identified several projects to be carried out by the City on behalf of the RDA. Following this agreement, on March 9, 2011, the RDA authorized the transfer of portions of the Property constituting approximately 3.9 acres and referenced by Assessor Parcel Numbers 626-250-03 and 626-250-04 through 626-250-06 from the RDA to the City, and the RDA also authorized the transfer of certain tax-exempt bond proceeds of the RDA to the City for the development of a shopping center on the Property, including the construction of certain public improvements.

The transfer of the Property and the bond proceeds were recorded in the RDA General Ledger as follows:

GM 04346 AJ			
June 30, 2011	Record sale held for resale at 9 th and Palm	\$	3,330,582
GM 04346 AJ			
June 30, 2011	Record sale held for resale at 9 th and Palm		7,957,699
GM 02792 AJ			
March 1, 2011	Transfer from fiscal agent		<u>11,400,000</u>
Total		\$	<u><u>22,688,281</u></u>

Health & Safety (H&S) Code section 34167.5 states that transfers of RDA assets to “...a city or county or city and county... or any other public agency after January 1, 2011 that are not contractually obligated to a third party for the expenditure or encumbrance of those assets” shall be returned to the RDA or the Successor Agency.

The Successor Agency has informed us that the City is in the process of finalizing documents to transfer the real property back to the Successor Agency. In addition, on September 12, 2012, the Oversight Board of the Successor Agency approved the transfer of the property and bond funding to the City to implement the February 16, 2011 Cooperation Agreement.

Order of the Controller

Based on H&S Code Section 34167.5, the City is ordered to complete its transfer of the real property as planned. Any future actions taken should be subject to Successor Agency, Successor Agency Oversight Board, and Department of Finance approval in accordance with H&S Code Section 34181.

In addition, the City would have been ordered to return the bond funding to the Successor Agency; however, the City provided supporting documentation in a follow-up response received on March 19, 2013, indicating that the bond funding has been transferred back to the Successor Agency as required. The City of Imperial Beach is not required to take further action for this transfer, which has been approved by the Department of Finance.

City's Response to Draft Review Report

Attachment 1 contains a copy of the City's response.

SCO's Comments

Property Transfer

We agree with the City's response that the property referenced by Assessor Parcel Numbers 626-250-03, and 626-250-04 through 626-250-06, has already been documented as a Successor Agency asset as of June 30, 2012. Also, while we agree that the process for transferring the title and ownership rights of this property has been initiated by the City, until the ownership documents reflect the change, the City is ordered to work with the Successor Agency to implement changes in ownership documents or other actions that the Successor Agency identifies as necessary to fully implement the transfer. Any future actions taken should be subject to the Successor Agency, the Successor Agency Oversight Board, and the Department of Finance (DOF) in accordance to ABX1 26.

In addition, the City has responded with a list of legal justifications for the validity and authority of the Former RDA's transfer of the bond proceeds to the City. These do not override the provisions in ABX1 26 that prohibit asset transfers, such as the ones described in this report. Of the justifications provided, the following items have been addressed:

Transfer of Bond Proceeds

1. Validity of Cooperation Agreement and Transfer of the Bond Proceeds
2. Bond Proceeds are Contractually Committed to Third Parties
3. Authority to Spend Bond Proceeds under the Dissolution Act
4. Approvals by the Successor Agency, Oversight Board, and the State Department of Finance should be recognized by the SCO (See Attachment 1 for City's full response to the draft)

Response: While the SCO acknowledges the factual background provided in the City's response, the validation judgment does not prevent the SCO from requiring that such assets described in this report be turned over to the Successor Agency for disposition in accordance with the provisions of ABX1 26.

Further, the SCO does not agree with the City's interpretation of H&S Code 34167.5. While the review period was identified in the draft report as January 1, 2011 to January 31, 2012, unallowable asset transfers by the RDA are those that occur after January 1, 2011. Therefore, the transfer of the Bond Proceeds to the City is subject to the provisions of this section. In addition, the effective date of all asset transfer reviews performed by the SCO, starts on January 1, 2011.

The City initially responded in a letter dated December 17, 2012; however, the City subsequently submitted a second response via email dated March 19, 2013 (Attachment 2), stating that the transfer of \$11,400,000 of tax bond proceeds has been made, and the assets have been transferred to the Successor Agency on April 30, 2012, pursuant to the order of the State Controller dated April 20, 2012.

Further, the City of Imperial Beach provided supporting documentation of the reversed transfer and documents supporting the approval by the Department of Finance.

In summary, the SCO agrees with the corrective action taken by the City. In addition, we agree that the bond funding was an approved transfer by the Department of Finance and that no further action is required for this transfer. We will adjust our Finding and Order of the Controller accordingly.

**Schedule 1—
Summary of Asset Transfers
January 1, 2011, through January 31, 2012**

GM 04346 AJ June 30, 2011	Record sale held for resale at 9 th and Palm	\$ 3,330,582
GM 04346 AJ June 30, 2011	Record sale held for resale at 9 th and Palm	7,957,699
GM 02792 AJ March 1, 2011	Transfer from fiscal agent	<u>11,400,000</u>
Total		<u>\$ 22,688,281</u>

¹ See the Finding and Order of the Controller section.

**Attachment 1—
City's Response to
Draft Review Report**



City of Imperial Beach, California

OFFICE OF THE CITY MANAGER

825 Imperial Beach Blvd., Imperial Beach, CA 91932 Tel: (619) 423-8303 Fax: (619) 628-1395

December 17, 2012

Steven Mar, Chief
Local Government Audits Bureau
California State Controller's Office
Post Office Box 942850
Sacramento, CA 94250-5874

SUBJECT: RESPONSE TO DRAFT ASSET TRANSFER REVIEW – IMPERIAL BEACH REDEVELOPMENT AGENCY

Dear Mr. Mar:

The Imperial Beach Redevelopment Agency Successor Agency (the "Successor Agency") has received and reviewed the Draft Asset Transfer Review ("DATR") prepared by the California State Controller ("SCO") for the Imperial Beach Redevelopment Agency (the "Former RDA") pursuant to California Health and Safety Code (HSC) Section 34167.5. The Successor Agency respectfully disagrees with the conclusion reached by the SCO and his determination that the Former RDA transferred "unallowable" assets totaling \$22,688,281 to the City of Imperial Beach (the "City"). Indeed, it is both the City's and the Successor Agency's firm belief that any and all assets of the Former RDA have been lawfully handled and provided for under applicable law, including without limitation the HSC as it existed when said assets were transferred to the City and as the HSC was amended by Assembly Bill No. X1 26 ("AB 26") and further amended by Assembly Bill No. 1484 ("AB 1484") (AB 26 as amended by AB 1484 is referred to herein as the "Dissolution Act").

Specifically, the assets identified in the DATR and totaling \$22,688,281 consist of real property valued at \$3,330,582 and 7,957,699 (the "Real Property") and tax exempt bond proceeds from a November 4, 2010 bond issuance of the Former RDA in the amount of \$11,400,000 (the "Bond Proceeds"). The transfers of these assets from the Former RDA to the City in March 2011 were, in fact, lawful and protected transfers as specifically provided for under HSC Section 34167.5 as well as other provisions of State and Federal law.

The DATR identifies the Property as Assessor Parcel Numbers 626-250-03 and 626-250-04 through 06, valued at \$3,330,582 and 7,957,699, respectively. Please be advised that the Property has already been documented as a Successor Agency asset as of June 30, 2012 and the

transfer of title of this Property from the City to the Successor Agency is being completed. This transfer, however, is being made with all reservation of rights of the Successor Agency and the City pertaining thereto and does not, in and of itself, constitute agreement or concurrence with the SCO's findings and determinations listed in the DATR and other correspondence from the SCO with respect to the Property and its transfer from the Former RDA to the City. In addition, although the City and the Successor Agency have approved that the Property be transferred from the City to the Successor Agency, the City and the Successor Agency, each and individually, (i) does not agree or acknowledge that the transfer of the Property by the Former RDA to the City was not in furtherance of the California Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the HSC) (the "Redevelopment Law"), (ii) does not agree or acknowledge the effectiveness of the Legislature's purported attempt by the Dissolution Act at deeming as not in furtherance of the Redevelopment Law the transfer of assets by the Former RDA that was accomplished at the time in accordance with the Redevelopment Law and was not challenged within the applicable statute of limitations, (iii) does not agree or acknowledge the effectiveness of the correspondence received from the SCO in connection with the Property, including the DATR. The City and the Successor Agency, each and individually, has limited financial resources. Thus, in order to avoid the costs of litigation and other costs at this time, the City and the Successor Agency each desires to take action in a manner consistent with the SCO's correspondence by effectuating the City's transfer of its ownership interest in the Property to the Successor Agency, without acknowledging and expressly disclaiming the effectiveness of the correspondence in connection with the Property and with a reservation of all constitutional, legal or equitable rights, privileges, and defenses in connection with these actions.

Notwithstanding the transfer of the Property to the Successor Agency, the Successor Agency and the City believe that the transfers of the Property and the Bond Proceeds from the Former RDA to the City in March 2011 were, in fact, lawful and protected transfers as specifically provided for under HSC Section 34167.5 as well as other provisions of State law.

On February 16, 2011, various actions in accordance with the Redevelopment Law were taken by the City Council of the City and the Former RDA to assist the Former RDA in implementing and carrying out the Redevelopment Plan and the Implementation Plan. Specifically, the City and the Former RDA entered into the Cooperation Agreement, whereby the City agreed to cooperate with the Former RDA with respect to the implementation and completion of certain redevelopment activities under the Redevelopment Plan and Implementation Plan, and the Former RDA agreed to pay the City the funds needed to carry out such activities. On March 10, 2011 (before the enactment of AB 26), the Former RDA transferred the Bond Proceeds to the City, and the City accepted the Bond Proceeds, to allow the City to appropriately complete the redevelopment projects and perform the RDA's obligations with respect to such assets and other related activities as set forth in the Cooperation Agreement and for other municipal purposes. These actions were taken in accordance with HSC Sections 33220, 33126(b), 33205, 33445, and 33445.1 and were lawful at the time taken by the City Council and the Former RDA on February 16, 2011 and March 10, 2011.

Set forth below is a non-exclusive list of the legal justifications for the validity and authority of the Former RDA's transfer of the Bond Proceeds to the City for implementation of Former RDA

obligations and commitments. These justifications are not exclusive and the Successor Agency and the City reserves all rights to raise additional justifications at any time.

1. Validity of Cooperation Agreement and Transfer of the Bond Proceeds

The Cooperation Agreement and related transfer of the Bond Proceeds have been validated by the absence of a timely challenge under Government Code Section 53511 and Code of Civil Procedure (the “CCP”) Sections 860-870 (the “Validation Statutes”). The case of *Graydon v. Pasadena Redevelopment Agency* (1980) 164 Cal. Rptr. 56, 104 Cal.App.3d 631, establishes the applicability of the Validation Statutes to redevelopment contracts and the applicability of the sixty (60) day statute of limitations under CCP 860-870. Please note that the Dissolution Act did not amend any of those Government Code or CCP provisions. Further, see, *Redevelopment Agency of the City and County of San Francisco v. Del-Camp Investments, Inc.* (1974) 113 Cal. Rptr. 762, 38 Cal.App. 3d 836, as to the automatic validation of a matter which is subject to the Validation Statutes in the absence of a timely challenge.

In light of the above statutory provisions, since sixty (60) days have passed long ago from the actions of the Former RDA and the City in connection with their respective approvals of the Cooperation Agreement and asset transfers, the validity of the Cooperation Agreement, the transfer of the Bond Proceeds may not be challenged and are deemed valid and final under the law.

2. Bond Proceeds are Contractually Committed to Third Parties.

The bond indenture and related bond documents entered into by the Former RDA and third parties on or about November 4, 2010 (before the enactment of AB 26), contractually commit all of the \$11.4 million of Bond Proceeds for expenditure toward specific projects and public improvements in accordance with the applicable bond documents. Pursuant to this legal commitment of the Former RDA, including the “Certificate of Use of Proceeds” signed by the Former RDA (and now an obligation of the Successor Agency per the Dissolution Act), the Bond Proceeds shall be expended within three (3) years of issuance of the bonds – which expires on November 4, 2013. Given this third party contractual obligation with the bond holders and bond insurers, the Bond Proceeds were then moved to the Capital Projects Fund to assure compliance with the requirements of the bond indenture and related bond documents, including the “Certificate of Use of Bond Proceeds”, as well as federal regulations relating to the tax exempt nature of the bond proceeds. In addition, the transfer and expenditure of the Bond Proceeds is consistent with associated tax exempt bond covenants which specifically identify the projects for which the Bond Proceeds were to be used in accordance with assurances provided to institutional investors, rating agencies and prospective bond holders during bond conferences prior to the bond issuance.

HSC Section 34167.5 states that, “*Commencing on the effective date of the act adding this part, the Controller shall review the activities of redevelopment agencies in the state to determine whether an asset transfer has occurred after January 1, 2011*” between a redevelopment agency and its sponsoring city or county. HSC Section 34167.5 further provides that, “*If such an asset transfer did occur during that period and the government agency that received the assets is not*

contractually committed to a third party for the expenditure or encumbrance of those assets (emphasis added), to the extent not prohibited by state and federal law, the Controller shall order the available assets to be returned to the redevelopment agency or, on or after October 1, 2011 [presumably now February 1, 2012], to the successor agency . . . Upon receiving such an order from the Controller, an affected local agency shall, as soon as practicable, reverse the transfer and return the applicable assets to the redevelopment agency or on or after October 1, 2011 [presumably now February 1, 2012], to the successor agency”

We believe that a plain reading of HSC Section 34167.5 would conclude that, beginning on June 28, 2011 (the effective date of Part 1.8 of AB 26 within which HSC Section 34167.5 exists and by which Section 34167.5 was enacted), the SCO shall review the activities of the Former RDA and determine whether any asset transferred has occurred after January 1, 2011, and that any assets that are contractually committed to a third party at the time that the SCO reviews the transfers and issues an order for their transfer to the Successor Agency are covered by the exception and not subject to the SCO order. However, according to the DATR, it appears the SCO has taken the position that this exception applies only to property or assets that were contractually committed prior to June 28, 2011¹, despite the use of the present tense in the pertinent portion of Section 34167.5 (e.g., “. . . and the government agency that received the assets *is not contractually committed*”) combine with the past tense used to refer to the time when the subject asset transfer occurred (e.g., “. . . . [I]f such an asset transfer *did occur during that period*”). That is, the statute does not say “and the government agency that received the assets was not [on the effective date] contractually committed” and, therefore, is not limited to assets committed to a third party prior to June 28, 2011. Assets transferred and contractually committed prior to an order by the SCO, therefore, should be considered allowable.

In light of above, the Bond Proceeds in question are excluded from the assets that might be subject to an order given by the SCO because they were committed for expenditure and disposition pursuant to contractual obligations with third parties prior to the SCO’s review of the asset transfers and issuance of an order for their transfer to the Successor Agency.

3. Authority to Spend Bond Proceeds Under the Dissolution Act.

The Bond Proceeds committed by the Former RDA under the Cooperation Agreement and the bond indenture and related bond documents, and by the City under the DDA, constitute the proceeds of a tax exempt tax allocation bond. HSC Section 34177(i) of the Dissolution Act specifically states that, “*Bond proceeds shall be used for the purposes for which bonds were sold unless the purposes can no longer be achieved, in which case, the proceeds may be used to defease the bonds.*” The City’s use of the Bond Proceeds to pay for the construction of specified public improvement projects are specifically listed in the bond indenture and related bond

¹ HSC Section 34167.5 does not state that this exception applies only to contracts entered into before the effective date of AB 26. Moreover, there are numerous provisions elsewhere in AB 26 demonstrating that when the Legislature intended to refer to the “effective date,” it said so expressly rather than leaving it to implication. See, for example, HSC Sections 34161, 34162, 34163, 34164 and 34165, all of which provide that after the effective date of the act or applicable part of the act, no redevelopment agency shall take certain actions. While HSC Section 34167.5 begins with the phrase “Commencing on the effective date of the act adding this part,” we read that to mean it is the date on which the SCO is to commence to review the activities of former redevelopment agencies.

documents and, therefore, are consistent with the specific statutory authority set forth in HSC Section 34177(i).

Further, the transfer and use of the Bond Proceeds by the City complies with HSC Sections 34169(b) and (d) of the Dissolution Act which require the Former RDA to take all actions necessary to preserve the tax exempt status of these bonds and to minimize all liabilities. Failure to utilize these Bond Proceeds for their intended purposes as specified in the bond covenants and within the timeframes established by the Internal Revenue Service (the "IRS") could have and may result in a violation of HSC Sections 34169(b) and (d). Specifically, HSC Section 34169(b) of the Dissolution Act requires that actions be taken by the Former RDA and the Successor Agency to assure the tax exempt status of the bonds. Failure to comply with IRS federal regulations to expend the Bond Proceeds expeditiously may result in the loss of their tax exempt status in violation of HSC Section 34169(b). Moreover, HSC Section 34169(d) requires that all actions to minimize liabilities be taken by the Former RDA and Successor Agency. Specific projects were listed in the bond indenture and related bond documents to assure investors that these projects would turn around the falling assessed value experienced in the redevelopment project area in the three (3) years prior to the issuance of these bonds. A marked increase in liabilities would result from cancellation or prolonged delay in the timing of projects which are necessary to ensure the stability and increase in property tax revenues. Additionally, the loss of the tax exempt status by failing to comply with IRS federal regulations would almost certainly result in increased liability exposure to the Successor Agency in direct violation of HSC Section 34169.5(d) of the Dissolution Act.

In addition, the transfer and use of the Bond Proceeds will ensure compliance with federal regulations of the IRS, which require the expenditure of the Bond Proceeds within three (3) years of their date of issuance (November 4, 2010). Their transfer and expenditure for their intended and specified purposes was carried out in order to comply with applicable State and Federal law. Pursuant to HSC Section 34167.5, therefore, the Bond Proceeds should not be subject to the SCO order and returned to the Successor Agency. Further, the recently enacted process pursuant to AB 1484 for expenditure of bond proceeds as set forth in HSC Section 34191 et seq. was operative and effective on June 27, 2012, long after the Bond Proceeds were transferred to the City and approved for expenditure pursuant to a DOF approved Recognized Obligation Payment Schedule (the "ROPS") under the provisions of AB 26, as further discussed below.

As stated above, the transfer and expenditure of the Bond Proceeds is consistent with associated tax exempt bond covenants which specifically identify the projects for which the Bond Proceeds were to be used in accordance with assurances provided to institutional investors, rating agencies and prospective bond holders during bond conferences.

4. Approvals by the Successor Agency, Oversight Board, and the State Department of Finance Should Be Recognized by the SCO.

After the California Supreme Court ruling on AB 26, Imperial Beach staff placed the projects to be funded with the Bond Proceeds on the amended Enforceable Obligation Payment Schedule and on the draft Initial ROPS required to be prepared pursuant to the Dissolution Act. In addition, the Successor Agency included on its first ROPS for the period January 1, 2012

through June 30, 2012 (the "First ROPS") the expenditure of all of the Bond Proceeds toward projects consistent with the bond indenture and related bond documents. The Successor Agency and its Oversight Board approved the First ROPS and submitted the First ROPS to the State Department of Finance (the "DOF") for its review and approval pursuant to the Dissolution Act. The bond indenture and related bond documents were each requested and reviewed by the DOF. The DOF did not object to any obligation listed on the First ROPS or to the source of funding for any such obligations listed on the First ROPS. Therefore, in accordance with the Dissolution Act, such non-objection by the DOF renders the First ROPS effective. In addition, in a Court action related to the June 1, 2012 distribution payment of property taxes, the DOF submitted pleadings in which the DOF Director Ana Matosantos reiterated the DOF's non-objection to items included on the First ROPS, in addition to the Successor Agency's second ROPS for the period July 1, 2012 through December 31, 2012. Further, the DOF issued a letter to the Successor Agency providing its non-objection to, and approval of, the First ROPS and second ROPS. As such, the expenditure and use of the Bond Proceeds were and are considered by the DOF as "enforceable obligations" pursuant to the Dissolution Act and have been relied upon as such by the Successor Agency, the City, and third parties since the DOF's approval.

As noted above, HSC Section 34169(b) requires that actions be taken by the Former RDA and the Successor Agency to assure the tax exempt status of the bonds. Failure to comply with IRS federal regulations to expend the Bond Proceeds expeditiously may result in the loss of their tax exempt status in violation of HSC Section 34169(b). Moreover, as also noted above, HSC Section 34169(d) requires that all actions to minimize liabilities be taken by the Former RDA and the Successor Agency. Specific projects were listed in the bond documents to assure investors that these projects would turn around the falling assessed value experienced in the redevelopment project area in the three (3) years prior to the issuance of the bonds. Therefore, by including the expenditure of the Bond Proceeds on the ROPS for approval by the DOF, the Successor Agency complied with the Dissolution Act provisions relating to minimizing liabilities and complying with applicable State and Federal law.

In light of the above, the SCO should recognize the approvals of the DOF, its sister state agency, in connection with enforceable obligations and winding down the fiscal and business affairs of the Former RDA. Based on the approvals of the DOF of the First ROPS and based on the third party commitments to the bond holders and bond insurers, the Bond Proceeds are committed for projects consistent with such approvals and commitments.

Based upon the non-exclusive list of legal justifications set forth above for the lawful transfer of assets to the City by the Former RDA, the Successor Agency respectfully disagrees with the determination made by the SCO and summarized in the DATR that the Property and the Bond Proceeds totaling \$22,688,281 constitute a transfer of "unallowable" assets and requests, therefore, that the Final Report of the SCO remove this finding and determination. The transfer of these assets were not only legal at the time of their transfer in March 2011, but were approved as lawful dispositions and expenditures as enforceable obligations under the provisions of the Dissolution Act.

In addition to the foregoing, we respectfully request that the following factual corrections to DATR also be made:

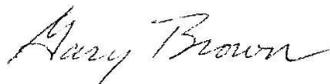
First, at the bottom of page 1 under "Background", the DATR states that, by law, "the SCO is required to order that such assets, except those that already had been committed to a third party prior to June 28, 2011, the effective date of AB 26, be turned over to the Successor Agency." We would note that HSC Section 34167.5 does not contain a specified date by which third party commitments must have been made, but rather uses the present tense in stating that "if such an asset transfer did occur during that period and the government agency that received the assets *is not* [emphasis added] contractually committed to a third party for expenditure or encumbrance of those assets, the Controller shall order those available assets to be returned." Since the use of the words "is not" as opposed to "was not" clearly indicates that this statute is not retroactive to any specific date, we request that the DATR be modified to accurately cite this provision of HSC Section 34167.5.

Second, in the second paragraph on page 4 under "FINDING – Asset transfer to the City of Imperial Beach", the DATR states that "the RDA also authorized the transfer of certain tax-exempt bond proceeds of the RDA to the City for the development of a shopping center on the Property, including the construction of certain public improvements." In fact, none of the Bond Proceeds were transferred for development of the private improvements related to the shopping center; however, a portion of the Bond Proceeds has been obligated for the construction of certain public improvements to be developed as a part of the Project. Such use and expenditure of these Bond Proceeds are consistent with and specifically identified in the bond indenture and related bond documents and are, therefore, contractually obligated under terms of the bond issuance to a third party.

Third, on Page 5, under the "Order of the Controller", in addition to HSC Section 34181 referenced under this section of the DATR, bond proceeds and real estate dispositions may also occur according to the procedures set forth in HSC Section 34191 et seq. Therefore, HSC Section 34181 is not the only process for disposition of former redevelopment agency assets pursuant to the Dissolution Act.

We greatly appreciate the opportunity to comment on the DATR. If you have any questions or would like any additional information, please contact us.

Sincerely,



Gary Brown
Executive Director

C: Honorable State Assembly Member Toni Atkins
Jeffrey V. Brownfield, Chief, Division of Audits, California State Controller

**Attachment 2—
City's Subsequent Response
to Draft Review Report**

From: Greg Wade [mailto:gwade@cityofib.org]

Sent: Tuesday, March 19, 2013 8:28 PM

To: Moya, Betty; Corona, Claudia

Cc: Gary Brown; Kathleen VonAchen; Mike McGrane; kendall@kbblaw.com; Mar, Steven; Brownfield, Jeff; Freesmeier, Scott

Subject: RE: Comments on Draft Asset Transfer Review for the Imperial Beach Redevelopment Agency

Betty ~

In addition to the comments that we previously provided on the Draft Asset Transfer Review, attached are journal showing the transfer of the \$11.4 million of tax exempt bond proceeds to the Successor Agency on April 30, 2012, pursuant to the order of the State Controller dated April 20, 2012. These bond proceeds were later transferred to the Capital Projects Fund on June 5, 2012, for expenditure in reliance upon and pursuant to the approval of our First ROPS by the DOF (approved on May 29, 2012). These funds were expended during the First ROPS period in reliance upon the DOF's approval of all items on our First ROPS as indicated in the attached DOF approval letter and as further supported by the attached Supplemental Request for Judicial Notice submitted to the California Superior Court by DOF Director Ana Matosantos. These expenditures were also detailed in our First ROPS Reconciliation that was included in our Third ROPS which was approved by the DOF in their Meet and Confer Determination Letter dated December 18, 2012 (also attached).

Please include this information with our comments to the Draft Asset Transfer Review. If you have any questions regarding this additional information, please let me know.

Thank you.

Gregory Wade

Deputy Director

Imperial Beach Redevelopment Agency Successor Agency

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Imperial Beach, CA 91932

619-628-1354

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