

CITY OF SAN BERNARDINO ECONOMIC DEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

March 2013



JOHN CHIANG
California State Controller

March 6, 2013

Allen J. Parker, City Manager
City of San Bernardino/Redevelopment Successor Agency
200 North D Street, 6th Floor
San Bernardino, CA 92418

Dear Mr. Parker:

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 San Bernardino Economic Development Agency (RDA) 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 found that the San Bernardino RDA made an unallowable transfer of \$108,372,060.20 in assets, or 100%, to the San Bernardino Economic Development Corporation.

Additionally, our review identified \$420,512,906.15 in San Bernardino RDA assets that have not yet been transferred to any agency. The City of San Bernardino is ordered to transfer these assets to the San Bernardino Redevelopment Successor Agency.

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

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/vb

Attachment

cc: Richard J. Chivaro, Chief Legal Counsel
State Controller's Office
Scott Freesmeier, Audit Manager
Division of Audits, State Controller's Office
Si Lau, Auditor-in-Charge
Division of Audits, State Controller's Office

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Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the City of San Bernardino Economic Development Agency (RDA) 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 found that the San Bernardino RDA made an unallowable transfer of \$108,372,060.20 in assets, or 100%, to the San Bernardino Economic Development Corporation.

Additionally, our review identified \$420,512,906.15 in San Bernardino RDA assets that have not yet been transferred to any agency. The City of San Bernardino is ordered to transfer these assets to the San Bernardino Redevelopment 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 (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 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 City of San Bernardino RDA, the City of San Bernardino, 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 San Bernardino City Council, the Community Development Commission, and the San Bernardino Economic Development Agency.
- 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 found that the San Bernardino RDA made an unallowable transfer of \$108,372,060.20 in assets, or 100%, to the San Bernardino Economic Development Corporation.

Additionally, our review identified \$420,512,906.15 in San Bernardino RDA assets that have not yet been transferred to any agency. The City of San Bernardino is ordered to transfer these assets to the San Bernardino RDA Successor Agency.

Details of our findings and Orders of the Controller are in the Findings and Orders of the Controller section of this report. We also have included a detailed schedule of assets to be turned over to, or transferred to, the Successor Agency.

**Views of
Responsible
Officials**

At an exit conference on September 19, 2012, we discussed the review results with Teri Baker, Assistant to the City Manager, and Jason Simpson, Director of Finance. At the exit conference, we stated that the final report will include the views of responsible officials. On November 21, 2012, the City responded to our draft report. The City's response is included as an attachment to this report.

Restricted Use

This report is solely for the information and use of the San Bernardino RDA Successor Agency, the 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, CPA
Chief, Division of Audits

March 6, 2013

Findings and Orders of the Controller

FINDING 1— Unallowable transfers to the San Bernardino Economic Development Corporation

The San Bernardino Economic Development Agency (RDA) transferred \$108,372,060.20 in assets to the San Bernardino Economic Development Corporation (SBEDC) on March 17, 2011. The purpose of the asset transfers was to protect the RDA resources from elimination. All of the asset transfers to the SBEDC occurred during the period of January 1, 2011, through January 31, 2012, and the assets were not contractually committed to a third party prior to June 28, 2011.

On March 17, 2011, the mayor, Common Council, and Community Development Commission of the City of San Bernardino approved the transfer of real property assets to the SBEDC. This transfer was unallowable under Health and Safety (H&S) Code section 34167.5 and Assembly Bill (AB) 1484.

Pursuant to the provisions of H&S Code 34167.5 and AB 1484, the RDA may not transfer assets to a city, county, city and county, or any other public agency after January 1, 2011.

The City of San Bernardino contended that the SBEDC is a public nonprofit corporation created to provide charitable or other public purposes and that transfers from the RDA to the SBEDC are not prohibited under H&S Code section 34167.5. However, H&S Code section 34167.10 states the following:

- (a) Notwithstanding any other law, for purposes of this part and Part 1.85 (commencing with Section 34170), the definition of a city, county, or city and county includes, but is not limited to, the following entities:
 - (1) Any reporting entity of the city, county, or city and county for purposes of its comprehensive annual financial report or similar report.
 - (2) Any component unit of the city, county, or city and county.
 - (3) Any entity which is controlled by the city, county, or city and county, or for which the city, county, or city and county is financially responsible or accountable.
- (b) The following factors shall be considered in determining that an entity is controlled by the city, county, or city and county, and are therefore included in the definition of a city, county, or city and county for purposes of this part and Part 1.85 (commencing with section 34170):
 - (1) The city, county, or city and county exercises substantial municipal control over the entity's operations, revenues, or expenditures.
 - (2) The city, county, or city and county have ownership or control over the entity's property or facilities.
 - (3) The city, county, or city and county and the entity share common or overlapping governing boards, or coterminous boundaries.

- (4) The city, county, or city and county was involved in the creation or formation of the entity.
 - (5) The entity performs functions customarily or historically performed by municipalities and financed through levies of property taxes.
 - (6) The city, county, or city and county provides administrative and related business support for the entity, or assumes the expenses incurred in the normal daily operations of the entity.
- (c) For purposes of this section, it shall not be relevant that the entity is formed as a separate legal entity, nonprofit corporation, or otherwise or is not subject to the constitution debt limitation otherwise applicable to a city, county, or city and county. The provisions in this section are declarative of existing law as the entities described herein are and were intended to be included within the requirements of this part and Part 1.85 (commencing with section 34170) and any attempt to determine otherwise would thwart the intent of these two parts.

The current relationship between the City of San Bernardino and the SBEDC is as follows:

- The Board of Directors for the SBEDC is made up of City of San Bernardino council members, who previously acted as the Board of the RDA (H&S Code section 34167.10 (a)(3)).
- The City of San Bernardino and the SBEDC share common governing boards and have coterminous boundaries (H&S Code section 34167.10 (b)(3)).
- The City of San Bernardino provides administrative and related business support for the SBEDC (H&S Code section 34167.10 (b)(6)).

However, it appears that some of the assets also may be subject to the provisions of H&S Code section 34181(a). H&S Code section 34181(a) states:

The oversight board shall direct the successor agency to do all of the following:

- (a) Dispose of all assets and properties of the former redevelopment agency; provided however, that the oversight board may instead direct the successor agency to transfer ownership of those assets that were constructed and used for a governmental purpose, such as roads, school buildings, parks, police and fire stations, libraries, and local agency administrative buildings, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset. [Emphasis added.] . . .

Order of the Controller

Based on H&S Code sections 34167.5 and 34167.10, the City of San Bernardino is ordered to direct the SBEDC and the SBEDC is ordered to reverse the transfers of assets (described in Schedule 1) in the amount of \$108,372,060.20 and turn over the assets with any outstanding related liabilities to the Successor Agency. The Successor Agency is directed to properly dispose of these assets in accordance with H&S Code sections 34177(d) and (e) and 34181(a).

City's Response to Draft

SBEDC ASSETS VALUED AT \$108,372,060.20

Introduction

As noted in several places, the Draft ATR indicates that the SCO's review "disclosed that the San Bernardino RDA made an unallowable transfer of \$108,372,060.20 in assets, or 100%, to the San Bernardino Economic Development Corporation (SBEDC)." It further indicates that "the City of San Bernardino is ordered to transfer these assets to the San Bernardino Redevelopment Successor Agency." The assertion is factually inaccurate and the proposed order is legally impossible to perform. As further described below, former Redevelopment Agency of the City of San Bernardino (RDA) transferred the assets in question to the SBEDC pursuant to a transaction that at the time was allowable, legally authorized, enforceable, binding and valid. Further, the City of San Bernardino (City) does not control the SBEDC. Therefore, SCO does not have the authority to direct the City to require SBEDC to return these assets to the Successor Agency and the City does not have the legal authority to order or cause SBEDC to take this action, or for that matter to do anything.

Analysis

By way of background, on March 3, 2011, the former RDA and the SBEDC entered into a Project Funding Agreement ("Funding Agreement") pursuant to which the SBEDC assumed all of the RDA's obligations and the responsibility to undertake the RDA's governmental functions. On March 17, 2011, in implementation of the Funding Agreement, the RDA Board of Directors directed RDA staff to transfer all of the RDA's assets to SBEDC (such assets are referred to herein as the "SBEDC Assets"). The Funding Agreement, the RDA's conveyance of its assets to SBEDC, the "restructuring of the manner in which the RDA conducts its governmental functions" and "all matters related thereto" were validated in accordance with Code of Civil Procedure Section 860, et seq., and Government Code Section 63611, as stated in that certain Judgment issued on July 27, 2011, by the Superior Court of the State of California, County of San Bernardino, Case No. CIVDS 1103893 ("Validation Judgment").

The Funding Agreement and the transfer of RDA Assets to SBEDC occurred during March 2011, prior to the effective date of ABX1 26 or AB 1484; these actions were therefore valid, effective and binding on the RDA (and therefore the Successor Agency), as confirmed in the Validation Judgment. Notwithstanding the foregoing, the SCO's Draft ATR asserts that the transfer by the RDA to SBEDC of assets cumulatively valued at \$108,372,060.20 was "unallowable" and directs the City to transfer these assets to the Successor Agency.

In the Draft ATR, the SCO asserts that Health & Safety Code (HSC) section 34167.5 applies to the RDA's transfer of its assets to SBEDC and authorizes the SCO to direct the reversal of such transfer. SCO further asserts that HSC section 34167.10, as applied to SBEDC, results in the conclusion that the SBEDC is controlled by the City and therefore HSC section 34167.5 applies to SBEDC in the same manner as such statute would apply to the City. As discussed below, SCO misunderstands the relationship among the RDA, City and SBEDC and therefore mistakenly applies HSC section 34167.5 to the SBEDC Assets.

The City does not control SBEDC. The City and SBEDC had no relationship at the time SBEDC was formed, at the time the RDA and SBEDC entered into the Funding Agreement, and at the time the RDA transferred its assets to SBEDC. As recited in Section 1.4.B of the Bylaws of the San Bernardino Economic Development Corporation, Inc., SBEDC was formed by the RDA for the purpose of assisting the RDA with its governmental functions and responsibilities. Three of the six members of the Board of Directors of SBEDC are appointed by the Community Development Commission of the City of San Bernardino ("CDC"). Even now, these three SBEDC Board members are appointed by the CDC and the City does not have the right to appoint (or remove) any SBEDC Board members. Although the RDA and City had common governing boards, the RDA and City were at all times separate and distinct legal entities (see *Pacific States Enterprises, Inc. v. The City of Coachella et al.* (1993) 13 Cal. App. 4th 1414; *Long Beach Community Redevelopment Agency v. David Morgan* (1993) 14 Cal. App. 4th. 1047).

HSC section 34167.5 directs SCO to "review the activities of redevelopment agencies in the state 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." If SCO determines that such a transfer occurred, HSC section 34167.5 directs SCO to "order the available assets to be returned... to the successor agency." Because SBEDC is not a city, county, city and county, or any other public agency, HSC section 34167.5 is inapplicable to SBEDC and inapplicable to any transfers made by the RDA to SBEDC.

In the Draft ATR, SCO treats SBEDC as the City for purposes of applying HSC section 34167.5, relying on HSC section 34167.10. HSC section 34167.10 provides as follows:

- (a) Notwithstanding any other law, for purposes of this part and Part 1.85 (commencing with Section 34170), the definition of a city, county, or city and county includes, but is not limited to, the following entities:
 - (1) Any reporting entity of the city, county, or city and county for purposes of its comprehensive annual financial report or similar report.
 - (2) Any component unit of the city, county, or city and county.
 - (3) Any entity which is controlled by the city, county, or city and county, or for which the city, county, or city and county is financially responsible or accountable.
- (b) The following factors shall be considered in determining that an entity is controlled by the city, county, or city and county, and are therefore included in the definition of a city, county, or city and county for purposes of this part and Part 1.85 (commencing with section 34170):
 - (1) The city, county, or city and county exercises substantial municipal control over the entity's operations, revenues, or expenditures.
 - (2) The city, county, or city and county has ownership or control over the entity's property or facilities.
 - (3) The city, county, or city and county and the entity share common or overlapping governing boards, or coterminous boundaries.
 - (4) The city, county, or city and county was involved in the creation or formation of the entity.
 - (5) The entity performs functions customarily or historically performed by municipalities and financed through levies of property taxes.
 - (6) The city, county, or city and county provides administrative and related business support for the entity, or assumes the expenses incurred in the normal daily operations of the entity.

- (c) For purposes of this section, it shall not be relevant that the entity is formed as a separate legal entity, nonprofit corporation, or otherwise, or is not subject to the constitution debt limitation otherwise applicable to a city, county, or city and county. The provisions in this section are declarative of existing law as the entities described herein are and were intended to be included within the requirements of this part and Part 1.85 (commencing with section 34170) and any attempt to determine otherwise would thwart the intent of these two parts. In the Draft ATR, SCO asserts that: (1) the Board of Directors of SBEDC is made up of City Council members; (2) the City shares a common governing board and has coterminous boundaries with SBEDC; and (3) the City provides administrative and related business support to SBEDC. By implication, the Draft ATR concludes that SBEDC is controlled by the City within the meaning of HSC section 34167.10(b).

Contrary to SCO's assertion, SBEDC is not controlled by the City. The City does not have the authority to appoint SBEDC Board members. Further, the SCO's assertion that the City and SBEDC have coterminous boundaries is patently false. SBEDC does not have boundaries; it is a nonprofit corporation formed pursuant to the laws of the State of California, not a public entity. SBEDC has the legal authority to conduct business outside the boundaries of the City. Finally, prior to its dissolution, the RDA provided administrative support to SBEDC; however, at the time of the transfers and at the time ABX1 26 was enacted, the City provided no support, financial or otherwise, to SBEDC. Only now that SBEDC owns property and has contractual obligations entered into in reliance on RDA support does the City provide any administrative support to SBEDC and this support should, frankly, be provided by the Successor Agency pursuant to the validated Funding Agreement.

Because SBEDC is not controlled by the City within the meaning of HSC section 34167.10(b), SCO does not have the authority to direct the City to return SBEDC Assets to the Successor Agency pursuant to section 34167.5. Even if the SCO refuses to revise the Draft ATR and continues to order the City to return SBEDC Assets to the Successor Agency (notwithstanding SCO's lack of legal authority to do so), the City does not control SBEDC and would be unable to legally require SBEDC to take such an action.

SCO does not allege that the RDA was not authorized in March 2011 (prior to the enactment of AB1x 26) to convey its assets to a nonprofit corporation created by the CDC/RDA, or whose governing board overlapped with the RDA's governing board, because nothing in HSC section 34167.10 or elsewhere in ABX1 26 or AB 1484 prohibits such actions. The California legislature could have included entities formed by the CDC or RDA within the scope of HSC section 34167.10, but elected not to do so. Given that section 34167.10 is specifically crafted to address asset transfers to entities created and/or controlled by cities and counties and does not refer even once to entities created and/or controlled by redevelopment agencies or successor agencies, it is clear that the legislature knew how to, but chose not to, require transfers to such entities to be unwound.

SCO's Comment

The Validation Judgment cited by the City does not override the provisions in ABX1 26 and AB 1484, which prohibit transfers of property such as the ones made to the SBEDC; nor does the Validation Judgment prevent the SCO from requiring that such assets be turned over to the Successor Agency for disposition in accordance with the provisions of these two bills. Furthermore, this Validation Judgment was issued prior to the California Supreme Court ruling that upheld the provisions in ABX1 26 and the subsequent passage of AB 1484.

Contrary to the City's assertion, the SBEDC is controlled by the City, and H&S Code section 34167.10 applies to the SBEDC. The City believes strongly that H&S Code section 34167.10 does not apply, as the former RDA, not the City, created the SBEDC. The creator of the entity is only one of six factors that must be considered to determine if an entity is controlled by the City.

Specifically, 34167.10(b) states that the following factors shall be considered in determining that an entity is controlled by the city, county, or city and county, and are therefore included in the definition of a city, county, or city and county:

- (1) The city, county, or city and county exercises substantial municipal control over the entity's operations, revenues, or expenditures.
- (2) The city, county, or city and county has ownership or control over the entity's property or facilities.
- (3) The city, county, or city and county and the entity share common or overlapping governing boards, or coterminous boundaries.
- (4) The city, county, or city and county was involved in the creation or formation of the entity.
- (5) The entity performs functions customarily or historically performed by municipalities and financed through levies of property taxes.
- (6) The city, county, or city and county provides administrative and related business support for the entity, or assumes the expenses incurred in the normal daily operations of the entity.

The City control is achieved by items (1), (3) and (5) above.

For Item 1, the City exercises substantial municipal control over the entity's operations, revenues, or expenditures. Resolution No. CDC 2011-8 states:

The SBEDC's board is comprised of six voting directors: three to be appointed by the Commission and the remaining three to be appointed by the official actions of the following for one board member each by 1) the Board of education of the San Bernardino Unified School District . . . 2) the Board of Supervisors of the County of San Bernardino . . . 3) Board of Directors of the San Bernardino Chamber of Commerce . . .

The Community Development Commission is the City Council for the City of San Bernardino and it appoints three, or 50%, of the voting members of the SBEDC.

For Item 3, the City and the entity (SBEDC) share common or overlapping governing boards. As stated above under (1) the SBEDC governing boards members comprise half of the City's councilmembers.

For Item 5, the SBEDC performs functions customarily or historically performed by municipalities and financed through levies of property taxes, specifically, redevelopment activities.

The Finding and Order of the Controller remain as stated.

**FINDING 2—
Did not transfer assets
to the Successor
Agency**

The RDA had not yet transferred \$420,512,906.15 in assets as of January 31, 2012. These assets are recorded on the RDA's ledgers and should have been transferred to the Successor Agency by January 31, 2012.

H&S Code section 34175(b) states:

All assets, properties, contracts, leases, books and records, buildings, and equipment of the former redevelopment agency are transferred on February 1, 2012, to the control of the successor agency, for administration pursuant to the provisions of this part. This includes all cash or cash equivalents and amounts owed to the redevelopment agency as of February 1, 2012. . . .

H&S Code section 34177(d) states:

Remit unencumbered balances of redevelopment agency funds to the county auditor-controller for distribution to the taxing entities, including, but not limited to, the unencumbered balance of the Low and Moderate Income Housing Fund of a former redevelopment agency. In making the distribution, the county auditor-controller shall utilize the same methodology for allocation and distribution of property tax revenues provided in Section 34188.

H&S Code section 34177(e) states:

Dispose of assets and properties of the former redevelopment agency as directed by the oversight board; provided, however, that the oversight board may instead direct the successor agency to transfer ownership of certain assets pursuant to subdivision (a) of Section 34181. . . .

H&S Code section 34181(a) states:

The oversight board shall direct the successor agency to do all of the following:

- (a) Dispose of all assets and properties of the former redevelopment agency; provided however, that the oversight board may instead direct the successor agency to transfer ownership of those assets that were constructed and used for a governmental purpose, such as roads, school buildings, parks, police and fire stations, libraries, and local agency administrative buildings, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset. [Emphasis added.] . . .

H&S Code section 34181(c) states that the oversight board shall direct the successor agency to: (c) Transfer housing assets pursuant to section 34176.

Order of the Controller

Based on H&S Code section 34175 (b), the City of San Bernardino and/or the SBEDC is ordered to transfer the remaining RDA assets (described in Schedule 2), in the amount of \$420,512,906.15, to the Successor Agency. The Successor Agency is directed to properly dispose of these assets in accordance with H&S Code sections 34177(d), (e), and (l); and 34181(a). In addition, in accordance with H&S Code section 34177 (d), the Successor Agency is directed to transmit the balance of Low and Moderate Income Housing funds to the San Bernardino County Auditor-Controller for distribution in accordance with H&S Code section 34188.

City's Response to Draft

SUCCESSOR AGENCY ASSETS VALUED AT \$420,512,906.15

Introduction

As noted in several places, the Draft ATR indicates that the SCO's review "identified \$420,512,906.15 in San Bernardino RDA assets that have not yet been transferred to any agency." It further indicates that "the City of San Bernardino is ordered to transfer these assets to the San Bernardino Redevelopment Successor Agency." The assertion is factually inaccurate, the proposed order is legally impossible to perform and the amount indicated includes \$258,676,796-worth of non-tangible assets, which are either offsets to bonds payable or are inter-fund accounts receivable (i.e., between redevelopment project areas) and therefore should not be included as tangible assets within the ATR. As further described below, the assets in question were transferred to the Successor Agency by operation of law; no affirmative action to transfer these assets is needed. Further, the Successor Agency Assets do not belong to the City and never have (within relevant time periods) belonged to the City. The City is unable to transfer these assets or cause these assets to be transferred to the Successor Agency, as the assets are already held by the Successor Agency.

Analysis

The SCO's audit staff were previously advised that a portion of the \$420,512,906.15 they identified as San Bernardino RDA assets included amounts which are non-tangible assets and are only accounting entries, not assets. Specifically, they were informed that \$193,955,410 represented an accounting entry of an "Amount to be Provided for Long Term Debt," which is an off-set to bonds payable and is not a tangible asset. For example, as bonds payable reduces so does the "Amount to be Provided for Long Term Debt." Further, SCO audit staff was informed that an additional \$64,721,386 represents inter-fund redevelopment project area accounts receivables, which are off-set by an accounts payable, which is also non-tangible since these funds will never be repaid between

redevelopment project areas. Once the accounts receivable and the accounts payable are combined, the result will be zero. With respect to the SCO's assertion that the RDA, Successor Agency or City has somehow failed to comply with a statutory duty because certain assets have not been transferred by the RDA to the Successor Agency, the SCO apparently misunderstands the structure of ABX1 26 and AB 1484. HSC section 34175(b) provides that "[a]ll assets, properties, contracts, leases, books and records, buildings, and equipment of the former redevelopment agency are transferred on February 1, 2012, to the control of the successor agency, for administration pursuant to the provisions of this part. This includes all cash or cash equivalents and amounts owed to the redevelopment agency as of February 1, 2012." HSC section 34175(b) states that the assets "are transferred" to the Successor Agency on February 1, 2012, not that redevelopment agencies "shall transfer" assets to successor agencies as of that date. Nothing in ABX1 26 or AB 1484 requires any affirmative action to be taken to effectuate this transfer. Had an affirmative transfer been required, it would have created legal turmoil as some agencies would, invariably, have failed to make the required transfers before being dissolved and ceasing to exist on February 1, 2012; those assets not transferred on time would have no clear ownership or any statutorily authorized way to resolve such ownership dilemma.

Thus, in accordance with HSC section 34175(b), any and all assets owned by the RDA as of February 1, 2012 (collectively referred to herein as "Successor Agency Assets") were transferred to the Successor Agency by operation of law; no affirmative action to transfer these assets is needed. Additionally, it is irrelevant what books, ledgers or accounts may say regarding the ownership of these Successor Agency Assets, as they are legally owned by the Successor Agency regardless of any such designation.

Further, the Successor Agency Assets do not belong to the City and never have (within relevant time periods) belonged to the City. The City is unable to transfer these assets or cause these assets to be transferred to the Successor Agency, as the assets are already held by the Successor Agency.

SCO's Comment

The City is incorrect in its interpretation of H&S Code section 34175(b), which states "all assets, properties, contracts, leases, books, and records, buildings and equipment of the former redevelopment agency are transferred . . ." Nowhere does it state "tangible assets," as the City suggests. The SCO is to ensure that all assets are to be transferred to the control of the Successor Agency, and the Successor Agency oversight has the authority to dispose of the assets in accordance with the ABX1 26 and AB 1484. The Successor Agency, with Oversight Board approval, must determine which assets are tangible or not.

The City contends that the assets transfer automatically by operation of law so that no action is needed. However, this does not address the fact that some of the assets cannot be transferred without a change in the ownership documents that are still in the name of the former RDA. The City also contends that even if an action is needed, the City has no responsibility for the action as the RDA was a separate agency. However, because the members of the City council also sat as the Board of the former RDA, the council was, and is responsible for ensuring that the former RDA complied with all ABX1 26 and AB 1484 requirements, including the proper and complete transfer of all assets.

Revised Finding and Order

The Successor Agency is directed to review the list of assets in Attachment 4 and make the necessary accounting changes to reflect them on its records. 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 transfers.

**Schedule 1—
Summary of Unallowable Transfers to the San Bernardino
Economic Development Corporation**

Capital Assets	<u>\$ 108,372,060.20</u>
Total unallowable transfers	<u>\$ 108,372,060.20</u>

Note: See Schedule 3 for details.

**Schedule 2—
RDA Assets that should have been Transferred
to the Successor Agency as of January 31, 2012**

RDA Administrative	\$ 698.54
RDA State College	63,209,230.55
RDA Central City North	18,739,389.97
RDA Central City West	3,058.01
RDA Southeast Industrial Park	55,326,414.73
RDA Northwest	30,939,774.62
RDA Tri City	21,370,495.81
RDA Uptown	3,896,304.76
RDA South Valle	6,701,748.30
RDA Central City Projects	77,574,326.03
RDA Low and Moderate Income Housing Fund	61,389,467.42
RDA Mount Vernon Business Corridor	5,179,634.44
RDA Main Street, Inc.	475.00
RDA Telecommunications	327,077.87
RDA Fortieth Street Project	891,208.62
RDA Affordable Housing Solutions	11,939,812.75
San Bernardino Economic Development Corporation	8,077,308.41
CMB-EB5	54,045,381.90
Carousel Mall	901,098.42
Total of all Current Assets	<u>\$ 420,512,906.15</u>

Note: See Schedule 4 for details.

**Schedule 3—
Detail of Unallowable Transfers to the San Bernardino
Economic Development Corporation**

State College	\$ 6,745,091.90
Central City North	13,992,688.70
Southeast Industrial Park	3,034,927.85
Parking District I and II	757,930.00
Northwest	47,200.00
Uptown	418,000.00
Central City Projects	47,203,541.26
Low-Moderate 20%	33,744,679.13
Mount Vernon Corridor	1,067,987.51
AHS – Low Moderate Funded	1,360,013.85
Total of all Capital Assets	<u>\$ 108,372,060.20</u>

Fund Name	Property Name	Value
State College	Land NW of Little League/I215, 1999 T	2,027,209.39
	Land Inv Golf Course	4,712,432.51
	LHR APN 0146241070000, 1256 Wall S	5,450.00
	Total	<u>6,745,091.90</u>
Central City North	NR Sturges Center for Arts	29,290.00
	Land - 478 & 480 North D	87,180.39
	Land APN 134-131-06/15, SS Bldg	770,581.66
	Land - 5th & E (from LM)	500,000.00
	Land Cinema Complex	11,964,000.00
	Land - 450 North F	150,000.00
	Cal Theatre 562 W 4th	301,003.82
	Sturges SWC E & 8th	30,632.83
	Miller 4th and E NW Corn 134-131-2	160,000.00
Total	<u>13,992,688.70</u>	
Southeast Industrial Park	LHR Water Dept Prop, 014125204&014	2,506,800.00
	LHR APN0136 461 09 0000 882 Washin	21,030.35
	SBIP Pioneer and Emmet Way SEC	69,760.69
	Wade Rockwell Parking	437,336.81
Total	<u>3,034,927.85</u>	
Parking District I & II	LAND INVESTMENT	757,930.00
	Total	<u>757,930.00</u>
Northwest	LHR APN 0139231340000, 1348 W Union	20,550.00
	LHR APN 0148173070000, 2355 Ramona	21,500.00
	LHR APN 0280062070000, 686 Santa Fe	5,150.00
	Total	<u>47,200.00</u>

Schedule 3 (continued)

Fund Name	Property Name	Value
Uptown	LHR 1108 W 2nd St apn0138-301-07 B	385,000.00
	Sutherland Behind Fun Corner	33,000.00
	Total	418,000.00
Central City Projects	LAND INVESTMENT	25,646,711.71
	LHR 567 N Sierra Way (YWCA Bldgs)	604,755.74
	LHR Woolworth Bldg	706,994.88
	LHR APN 0280131230000, 904 Foisy S	9,845.13
	LHR 3rd St/Waterman Ave, APN 0135-	500,000.00
	LHR 170-174 SOUTH E STREET BLDG, 0	441,102.95
	LHR 385 N E St, APN 0134-241-64, 0	74,417.07
	LHR Convention Center/Exhibit Hall	2,451,570.00
	LHR - 333 North H St, APN 134-182-	318,143.78
	LHR Carrousel Mall	16,450,000.00
Total	47,203,541.26	
Low-Moderate 20%	LHR Fook Sung 0134-054-24	409,020.90
	LHR Penshun/Expo 0134-093-19	2,908,092.52
	LHR Abitante 0134-093-05	1,147,887.13
	LHR 0134-093-45 (708&720 4th St)	1,022,263.88
	LHR 0134-101-04, 05, 06 (Garner)	351,824.32
	LHR 163 N Allen (Meadowbrook Park	444,933.07
	LHR 251 E 49th St	502,427.88
	LHR 495 N G, 0134-101-28 (Allied)	1,750,000.00
	LHR 167 E 2nd St (Meadowbrook)	553,669.41
	LHR 796 W 5th 0134-054-25 (Bland)	143,000.00
	LHR 631 N G	90,447.68
	LHR 696 w 5TH APN0134-061-21, 22,	900,000.00
	LHR 770 W 5th, Apn 0134-054-26(Naj	885,000.00
	LHR 723-739 W5th, Aon 0134-093-07	1,089,000.00
	LHR 673 W5th, Apn 0134-101-02, 03	617,875.00
	LHR 255 E 49th	503,017.00
	LHR 701 N 5th St, APN 0134-093-08	640,486.47
	LHR 299 E 49th St (LM Infill)	1,042,749.30
	LHR 288 E 49th	5,000.00
	LHR 2656 W 5th St (5th/Meridian)	170,953.10
	LHR 288 E 49th, SB 92408	515,162.67
	LHR 2695 W 5th ST (5th/Meridian)	170,406.05
	LHR 2682 W 5th #A,B,C,D (5th/Meri	54,182.89
LHR 2624 W 5th (5th/Meridian)	170,385.34	
LHR 2639 W 5th (5th/Meridian)	149,765.50	
LHR 2633 W 5th (5th/Meridian)	150,140.07	
LHR 2625 W 5th 92410 (5th/Meridia	158,052.00	
LHR 2657 W 5th 92410 (5th/Meridian)	138,797.57	

Schedule 3 (continued)

Fund Name	Property Name	Value
	LHR 2643 W 5th (5th/Meridian)	154,650.64
	LHR 2082 e 19TH (lm)	193,591.30
	LHR - 2120 Medical Center Drive	1,064,476.12
	LHR - 2196 Medical Center Drive	5,064,352.57
	LHR - apn 0143-191-46 Highland & M	551,887.91
	LHR 2120 Medical Center Dr (Meta)	270,000.00
	LHR - 2642 West 5th Street #1-4	157,411.24
	LHR - 2670 West 5th Street #1-4	149,835.27
	LHR - lm 2295 E Sunrise Lane	200,968.24
	LHR - 2632/2638 West 5th Street	498,282.52
	LHR - 2619 W 5th St, Units 1-4	236,578.64
	LHR - APN 0134-014-24,25,26,27	145,492.00
	LHR - 2683 WEST 5TH STREET (LM)	226,518.97
	LHR - 2164 East 19th Street (LM)	154,324.39
	LHR - 2043 E. 19th St (AHS/LM)	212,805.29
	LHR - 2694 West 5th Street (LM)	243,201.01
	LHR - 2225 E. Sunrise Lane (LM)	240,600.34
	LHR - 839-867 N Lugo/185-187 E 9th	3,955,023.52
	LHR 746 W 5th St/Spruce St Lots	2,678,819.45
	LHR - 2068 E. 19th St. MECH/LM	278,239.73
	LHR - 2056 E. 19th St. MECH/LM	269,419.56
	2557 Victoria	(53.15)
	1146 N Sierra Way	(23.20)
	1265 Kendall	70,819.02
	2044 E Sunrise	21,459.00
	2055 E Sunrise	21,459.00
	Total	33,744,679.13
Mt Vernon Corridor	LHR 542 N Mt Vernon	49,907.30
	LHR, APN 0138-114-09 (MtV)	60,822.28
	552 N Mt Vernon	47,000.00
	LHR 540 N Mt Vernon (0138-115-04/0	270,436.71
	LHR 1307 W SPRUCE (5TH&MTV) ARRIOL	35,521.75
	Virgilio 0138-115-06	309,486.93
	LHR APN 0138-115-07 (ALLEN-MTV)	103,028.00
	LHR Apn 0139-291-60 (757 N MtVerno	32,162.27
	LHR Apn 0139-291-61 (761 N MtVerno	52,722.27
	578 N Mt Vernon	106,900.00
	Total	1,067,987.51
AHS - Low Mod Funded	LHR AHS/nsp 1888 Argyle	155,788.39
	LHR AHS/nsp 202 E 19th	6,404.26
	LHR AHS/nsp 1058 N. Sierra	45,773.22
	LHR AHS/nsp 2091 Sepulveda	72,633.03

Schedule 3 (continued)

<u>Fund Name</u>	<u>Property Name</u>	<u>Value</u>
	LHR AHS/nsp 1725 N Mt View	37,885.45
	LHR AHS/nsp 2044 E Sunrise Ln	134,090.63
	LHR AHS/nsp 2165 E 19th	149,233.03
	LHR AHS/home 1356 Hillside Drive	152,923.83
	LHR AHS/home 1394 Hillside Drive	200,020.77
	LHR AHS/home 1853 Fairfax Drive	205,262.48
	LHR AHS/home 1384 Hillside Drive	199,998.76
	Total	<u>1,360,013.85</u>
	Total of all Funds Capital Assets	<u><u>108,372,060.20</u></u>

Schedule 4— Ledger Detail of the Assets that should have been Transferred to the Successor Agency

This schedule is a copy of the agency’s ledgers as provided by the agency. All of the agency’s assets are included in the SCO’s finding #1 – Unallowable transfers to the San Bernardino Economic Development Corporation and/or finding #2 – Assets that should have been transferred to the successor agency. For each agency fund that has assets the SCO has noted which assets that were included in finding #1 or #2.

Fund: Administrative

1	RDA Administrative				
2	BALANCE SHEET				
3		1/31/2012			
4					
5		01 TI	34 ESGP	66 AHS	Total
6	ASSETS:				
7	PETTY CASH	400			400
8	WELLS FARGO BANK	368,534.35			368,534.35
9	FIRST INT/WELLS FARGO - STAFF/SEC	48,104.85			48,104.85
10	CITIZENS BUSINESS BANK - STAFF/SEC	24,961.63			24,961.63
11	CITIZENS BUSINESS BANK	4,596,339.13			4,596,339.13
12	TAX INCREMENT/OTHER INVESTMENTS	-6,280,093.82			-6,280,093.82
13	A/R I RDA Emergency Shelter Grant		956.94		956.94
14	A/R I RDA Affordable Housing Solu			-956.94	-956.94
15	RDA Mall Transfer	500			500
16	EDC Transfer	590,363.73			590,363.73
17	Mall LLC Transfer	650,000.00			650,000.00
18	EMPLOYEE COMPUTER PURCHASE PROGRAM	1,588.67			1,588.67
19	TOTAL ASSETS	698.54	956.94	-956.94	698.54
20		=====	=====	=====	=====

Finding 1

The Administrative fund does not contain any capital assets; therefore, Finding 1 does not apply to this fund.

Finding 2

The sum of the line items outlined tie to the total of the Administrative fund current assets:

$$400 + 368,534.35 + 48,104.85 + 24,961.63 + 4,596,339.13 + (6,280,093.82) + 956.94 + (956.94) + 500 + 590,363.73 + 650,000.00 + 1,588.67 = \mathbf{698.54}$$

Schedule 4 (continued)

Fund: State College

90	RDA State College			
91	BALANCE SHEET			
92				
				1/31/2012
93				
94		60 GLTDAG	70 GFAAG	Total
95	ASSETS:			
96	Current Bond Issues - 2002A Ref TA			937,568.48
97	Current Bond Issues - 2005A			507,559.67
98	Current Bond Issues - 2005B			326,158.13
99	TAX INCREMENT/OTHER INVESTMENTS			170,123.35
100	A/R TRADE			34,209.15
101	A/R I RDA Central City North			15,000,292.78
102	A/R I RDA Central City Security			1,833,919.84
103	A/R I RDA Operation Second Chance			876,304.05
104	A/R I RDA Central City Projects			9,493,262.15
105	A/R I RDA Collateralized Mortgage			904.42
106	A/R I RDA Main Street, Inc.			874,535.55
107	A/R I RDA Telecommunications			1,535,483.76
108	A/R I RDA Neighborhood Stabilizat			2,014,554.72
109	A/R I San Bdno Economic Dev Corp			653,118.10
110	A/R I Carousel Mall			-314,919.05
111	A/R I Enterprise Zone			51,846.61
112	NR Finance-\$1310000 (09-10 Budget)			1,332,925.00
113	Land NW of Lil League/I215, 1999 T			2,027,209.39
114	Land Inv Golf Course		4,712,432.51	4,712,432.51
115	LHR APN 0146241070000, 1256 Wall S			5,450.00
116	AMOUNT TO BE PROVIDED FOR LTD	24,846,655.39		24,846,655.39
117	Salaries and Vacation Leave Payabl	494,448.08		494,448.08
118	AMOUNT AVAILABLE FOR DEBT SERVICE	2,540,280.37		2,540,280.37
119	TOTAL ASSETS	27,881,383.84	4,712,432.51	69,954,322.45
120				

Finding 1

The sum of the line items outlined tie to the total of the State College fund capital assets:

2,027,209.39 + 4,712,432.51 + 5,450.00 = **6,745,091.90**

Finding 2

The State College current asset total is less the total of the capital assets noted above:

69,954,322.45 - 6,745,091.90 = **63,209,230.55**

Schedule 4 (continued)

Fund: Central City North

197	RDA Central City North				
198	BALANCE SHEET				
199		1/31/2012			
200					
201		50 DSF	60 GLTDAG	70 GFAAG	Total
202	ASSETS:				
203	CURRENT BOND ISSUES - 1999 COP, SV	63,146.50			63,146.50
204	CURRENT BOND ISSUES - 1999 COP, PO	502,268.42			502,268.42
205	Current Bond Issues - 2002A Ref TA	115,340.32			115,340.32
206	Current Bond Issues - 2005A	438,243.93			438,243.93
207	Current Bond Issues - 2005B	105,706.26			105,706.26
208	A/R TRADE				2,397.25
209	A/R I RDA Parking District Expans				652,095.97
210	A/R I RDA Main Street, Inc.				3,188,877.28
211	A/R I San Bdno Economic Dev Corp				2,805.25
212	Sturges Center				11,012.24
213	State Phase1, Land swap with State				462,993.06
214	NR Sturges Center for Arts				29,290.00
215	Land-478&480 North D				87,180.39
216	Land APN 134-131-06/15, SS Bldg				770,581.66
217	Land - 5th & E (from LM)				500,000.00
218	Land Cinema Complex				11,964,000.00
219	Land - 450 North F				150,000.00
220	Cal Theatre 562 W 4th				301,003.82
221	Sturges SWC E & 8th			30,632.83	30,632.83
222	Miller 4th and E NW Corn 134-131-2				160,000.00
223	AMOUNT TO BE PROVIDED FOR LTD		11,985,562.38		11,985,562.38
224	AMOUNT AVAILABLE FOR DEBT SERVICE		1,208,941.11		1,208,941.11
225	TOTAL ASSETS	1,224,705.43	13,194,503.49	30,632.83	32,732,078.67
226		=====	=====	=====	=====

Finding 1

The sum of the line items outlined tie to the total of the Central City North fund capital assets:

$$29,290.00 + 87,180.39 + 770,581.66 + 500,000.00 + 11,964,000.00 + 150,000.00 + 301,003.82 + 30,632.83 = \underline{\underline{13,992,688.70}}$$

Finding 2

The Central City North current asset total is less the total of the capital assets noted above:

$$32,732,078.67 - 13,992,688.70 = \underline{\underline{18,739,389.97}}$$

Schedule 4 (continued)

Fund: Central City West

312	RDA Central City West				
313	BALANCE SHEET				
314		1/31/2012			
315					
316		01 TI	02 BP	20 LM TI	Total
317	ASSETS:				
318	TAX INCREMENT/OTHER INVESTMENTS	3,058.01			3,058.01
319	TOTAL ASSETS	3,058.01			3,058.01
320		=====	=====	=====	=====



Finding 1

The Central City West fund does not contain any capital assets; therefore, Finding 1 does not apply to this fund.

Finding 2

As the fund does not contain any capital assets, the current asset total was **3,058.01**

Schedule 4 (continued)

Fund: Southeast Industrial Park

398	RDA Southeast Industrial Park	
399	BALANCE SHEET	
400		1/31/2012
401		
402		Total
403	ASSETS:	
404	Current Bond Issues - 2002A Ref TA	526,852.68
405	Current Bond Issues - 2005A	2,523,484.92
406	Current Bond Issues - 2005B	614,814.32
407	TAX INCREMENT/OTHER INVESTMENTS	1,169,233.59
408	A/R TRADE	2,900.00
409	A/R I RDA State College	2,000,000.00
410	A/R I RDA Central City North	5,772,047.47
411	A/R I RDA Northwest	3,278,549.82
412	A/R I RDA Central City Projects	12,969,508.82
413	A/R I RDA Main Street, Inc.	552,078.40
414	CITY OF SAN BERNARDINO	270,000.00
415	Auto Plaza Reader Board	850,000.00
416	NR SB Auto Center Prop PBID	974,698.00
417	LHR Water Dept Prop, 014125204&014	2,506,800.00
418	LHR APN0136 461 09 0000 882 Washin	21,030.35
419	SBIP Pioneer and Emmet Way SEC	69,760.69
420	Wade Rockwell Parking	437,336.81
421	AMOUNT TO BE PROVIDED FOR LTD	20,572,171.64
422	AMOUNT AVAILABLE FOR DEBT SERVICE	3,250,075.07
423	TOTAL ASSETS	58,361,342.58
424		

Finding 1

The sum of the line items outlined tie to the total of the Southeast Industrial Park fund capital assets:

$$2,506,800.00 + 21,030.35 + 69,760.69 + 437,336.81 = \mathbf{3,034,927.85}$$

Finding 2

The Southeast Industrial Park current asset total is less the total of the capital assets noted above:

$$58,361,342.58 - 3,034,927.85 = \mathbf{55,326,414.73}$$

Schedule 4 (continued)

Fund: Parking District I & II

454	RDA Parking District							
455	BALANCE SHEET							
456		1/31/2012						
457								
458			04 PD	05 PDII	50 DSF	60 GLTDAG	70 GFAAG	Total
459	ASSETS:							
460	LAND INVESTMENT						757,930.00	757,930.00
461	TOTAL ASSETS						757,930.00	757,930.00
462			=====	=====	=====	=====	=====	=====
463								
464	LIABILITIES:							
465	A/P I RDA Central City North			652,095.97				652,095.97
466	PARKING FACILITIES LEASE REVENUE					1,950,000.00		1,950,000.00
467	REDEMPTION PARKING DISTRICT					-1,950,000.00		-1,950,000.00
468	TOTAL LIABILITIES			652,095.97				652,095.97
469								
470								
471	FUND BALANCE:							
472	INVESTMENT IN FIXED ASSETS						757,930.00	757,930.00
473	Reserved for Unclaimed Bonds Stat		6,286.58					6,286.58
474	RETAINED EARNINGS		-6,286.58	-652,095.97				-658,382.55
475	TOTAL FUND BALANCE			-652,095.97			757,930.00	105,834.03
476								
477								
478	TOTAL LIAB. & FUND BALANCE						757,930.00	757,930.00
479			=====	=====	=====	=====	=====	=====

Finding 1

The LAND INVESTMENT line item is the total capital assets for the Parking District fund. **757,930.00**

Finding 2

Finding 2 does not apply to the Parking District fund, as the LAND INVESTMENT account is included as part of capital assets.

Schedule 4 (continued)

Fund: Northwest

538	RDA Northwest	
539	BALANCE SHEET	
540		1/31/2012
541		
542		Total
543	ASSETS:	
544	Current Bond Issues - 2002A Ref TA	444,711.38
545	Current Bond Issues - 2005A	388,089.62
546	Current Bond Issues - 2005B	228,173.61
547	Current Bond Issues - 2010B	3,013,286.29
548	Current Bond Issues - 2010A	6,730,950.48
549	TAX INCREMENT/OTHER INVESTMENTS	1,319,809.90
550	A/R I RDA Operation Second Chance	2,097,191.42
551	NR Fakhoury, 09/19/07	251,772.75
552	LHR APN 0139231340000, 1348 W Unio	20,550.00
553	LHR APN 0148173070000, 2355 Ramona	21,500.00
554	LHR APN 0280062070000, 686 Santa F	5,150.00
555	AMOUNT TO BE PROVIDED FOR LTD	14,617,963.34
556	AMOUNT AVAILABLE FOR DEBT SERVICE	1,847,825.83
557	TOTAL ASSETS	30,986,974.62
558		=====

Finding 1

The sum of the line items outlined tie to the total of the Northwest fund capital assets:

20,550.00 + 21,500.00 + 5,150.00 = **47,200.00**

Finding 2

The Northwest current asset total is less the total of the capital assets noted above:

30,986,974.62 – 47,200.00 = **30,939,774.62**

Schedule 4 (continued)

Fund: Tri City

589	RDA Tri City						
590	BALANCE SHEET						
591		1/31/2012					
592							
593			01 TI	02 BP	20 LM TI	50 DSF	60 GLTDAG
594	ASSETS:						Total
595	Current Bond Issues - 2002A Ref TA					5,459,029.90	5,459,029.90
596	Current Bond Issues - 2005A					761,965.14	761,965.14
597	Current Bond Issues - 2005B					407,408.44	407,408.44
598	TAX INCREMENT/OTHER INVESTMENTS	2,494,358.95					2,494,358.95
599	Finance-HUB \$900K	900,000.00					900,000.00
600	AMOUNT TO BE PROVIDED FOR LTD					4,879,246.73	4,879,246.73
601	AMOUNT AVAILABLE FOR DEBT SERVICE					6,468,486.65	6,468,486.65
602	TOTAL ASSETS	3,394,358.95				6,628,403.48	11,347,733.38
603							21,370,495.81

Finding 1

The Tri City fund does not contain any capital assets; therefore, Finding 1 does not apply to this fund.

Finding 2

As the fund does not contain any capital assets, the current asset total was **21,370,495.81.**

Schedule 4 (continued)

Fund: Uptown

630	RDA Uptown						
631	BALANCE SHEET						
632		1/31/2012					
633							
634			01 TI	02 BP	20 LM TI	50 DSF	60 GLTDAG
635	ASSETS:						Total
636	Current Bond Issues - 2002A Ref TA					80,855.44	80,855.44
637	Current Bond Issues - 2005A					186,935.35	186,935.35
638	Current Bond Issues - 2005B					148,572.99	148,572.99
639	TAX INCREMENT/OTHER INVESTMENTS	746,325.55					746,325.55
640	A/R I Enterprise Zone	-2,506.02					-2,506.02
641	LHR 1108 W 2nd St apn0138-301-07 B	385,000.00					385,000.00
642	Sutherland Behind Fun Corner	33,000.00					33,000.00
643	AMOUNT TO BE PROVIDED FOR LTD					2,365,477.87	2,365,477.87
644	AMOUNT AVAILABLE FOR DEBT SERVICE					370,643.58	370,643.58
645	TOTAL ASSETS	1,161,819.53			416,363.78	2,736,121.45	4,314,304.76
646							

↓

Finding 1

The sum of the line items outlined tie to the total of the Uptown fund capital assets:

$385,000.00 + 33,000.00 =$
418,000.00

↓

Finding 2

The Uptown current asset total is less the total of the capital assets noted above:

$4,314,304.76 - 418,000.00 =$
3,896,304.76

Schedule 4 (continued)

Fund: South Valle

672	RDA South Valle						
673	BALANCE SHEET						
674		1/31/2012					
675							
676			01 TI	02 BP	20 LM TI	50 DSF	60 GLTDAG
677	ASSETS:						Total
678	CURRENT BOND ISSUES - 1999 COP, SV					188,084.86	188,084.86
679	Current Bond Issues - 2002A Ref TA					124,852.93	124,852.93
680	Current Bond Issues - 2005A					362,506.45	362,506.45
681	Current Bond Issues - 2005B					111,930.81	111,930.81
682	TAX INCREMENT/OTHER INVESTMENTS	333,209.81					333,209.81
683	A/R TRADE	892					892
684	A/R I Enterprise Zone	2,506.02					2,506.02
685	AMOUNT TO BE PROVIDED FOR LTD					4,876,257.34	4,876,257.34
686	AMOUNT AVAILABLE FOR DEBT SERVICE					701,508.08	701,508.08
687	TOTAL ASSETS	336,607.83				787,375.05	5,577,765.42
688							6,701,748.30

Finding 1

The South Valle fund does not contain any capital assets; therefore, Finding 1 does not apply to this fund.

Finding 2

As the fund does not contain any capital assets, the current asset total was **21,370,495.81.**

Schedule 4 (continued)

Fund: Central City Projects

798	RDA Central City Projects		
799	BALANCE SHEET		
800		1/31/2012	
801			
802		70 GFAAG	Total
803	ASSETS:		
804	Current Bond Issues Cash w/Fiscal		2,531,354.38
805	CURREND BOND ISSUES - COP ISSUES		1,838,319.86
806	CURRENT BOND ISSUES - LEASE REVENU		945,184.90
807	CURRENT BOND ISSUES - 1999 COP, SV		4,485,396.21
808	TAX INCREMENT/OTHER INVESTMENTS		353,723.44
809	A/R TRADE		100,024.96
810	A/R I RDA Central City North		5,215,827.95
811	A/R I RDA Central City Security		8,635,473.70
812	A/R I RDA Central City West		446,825.35
813	A/R I RDA Main Street, Inc.		175,198.35
814	A/R I San Bdno Economic Dev Corp		8,635.00
815	A/R I Carousel Mall		455,591.45
816	A/R I Sustainable Communities Scr		311,083.85
817	Carousel Mall Acquisition Fee Escr		300,000.00
818	LEASE PAYMENT RECEIVABLE		16,921,490.34
819	LAND INVESTMENT	22,569,480.59	25,646,711.71
820	LHR 567 N Sierra Way (YWCA Bldgs)		604,755.74
821	LHR Woolworth Bldg		706,994.88
822	LHR APN 0280131230000, 904 Foisy S		9,845.13
823	LHR 3rd St/Waterman Ave, APN 0135-		500,000.00
824	LHR 170-174 SOUTH E STREET BLDG, 0		441,102.95
825	LHR 385 N E St, APN 0134-241-64, 0		74,417.07
826	LHR Convention Center/Exhibit Hall		2,451,570.00
827	LHR - 333 North H St, APN 134-182-		318,143.78
828	LHR Carrousel Mall		16,450,000.00
829	INVESTMENT IN FIXED ASSETS E	758,559.29	758,559.29
830	AMOUNT TO BE PROVIDED FOR LTD		20,062,919.16
831	AMOUNT AVAILABLE FOR DEBT SERVICE		10,508,717.84
832	AMOUNT AVAILABLE FOR DS - DEFEASED		3,520,000.00
833	TOTAL ASSETS	23,328,039.88	124,777,867.29
834			

Finding 1

The sum of the line items outlined tie to the total of the Central City Projects fund capital assets:

$$\begin{aligned}
 &25,646,711.71 + \\
 &604,755.74 + 706,994.88 + \\
 &9,845.13 + 500,000.00 + \\
 &441,102.95 + 74,417.07 + \\
 &2451,570.00 + 318,143.78 \\
 &+ 16,450,000.00 = \\
 &\underline{\underline{47,203,541.26}}
 \end{aligned}$$

Finding 2

The Central City Projects current asset total is less the total of the capital assets noted above:

$$\begin{aligned}
 &124,777,867.29 - \\
 &47,203,541.26 = \\
 &\underline{\underline{77,574,326.03}}
 \end{aligned}$$

Schedule 4 (continued)

Fund: Low-Moderate 20%

1015	RDA Low & Moderate Income Housing Fund					
1016	BALANCE SHEET					
1017		1/31/2012				
1018						
1019		46 IMPOUND	50 DSF	60 GLTDAG	66 AHS	Total
1020	ASSETS:					
1050	LHR Fook Sung 0134-054-24					409,020.90
1051	LHR Peshun/Expo 0134-093-19					2,908,092.52
1052	LHR Abitante 0134-093-05					1,147,887.13
1053	LHR 0134-093-45 (708&720 4th St)					1,022,263.88
1054	LHR 0134-101-04, 05, 06 (Garner)					351,824.32
1055	LHR 163 N Allen (Meadowbrook Park					444,933.07
1056	LHR 251 E 49th St					502,427.88
1057	LHR 495 N G, 0134-101-28 (Allied)					1,750,000.00
1058	LHR 167 E 2nd St (Meadowbrook)					553,669.41
1059	LHR 796 W 5th 0134-054-25 (Bland)					143,000.00
1060	LHR 631 N G					90,447.68
1061	LHR 696 w 5TH APN0134-061-21, 22,					900,000.00
1062	LHR 770 W 5th, Apn 0134-054-26(Naj					885,000.00
1063	LHR 723-739 W5th, Aon 0134-093-07					1,089,000.00
1064	LHR 673 W5th, Apn 0134-101-02, 03					617,875.00
1065	LHR 255 E 49th					503,017.00
1066	LHR 701 N 5th St, APN 0134-093-08					640,486.47
1067	LHR 299 E 49th St (LM Infill)					1,042,749.30
1068	LHR 288 E 49th					5,000.00
1069	LHR 2656 W 5th St (5th/Meridian)					170,953.10
1080	LHR 288 E 49th, SB 92408					515,162.67
1081	LHR 2695 W 5th ST (5th/Meridian)					170,406.05
1082	LHR 2682 W 5th #A,B,C,D (5th/Meri					54,182.89
1083	LHR 2624 W 5th (5th/Meridian)					170,385.34
1084	LHR 2639 W 5th (5th/Meridian)					149,765.50
1085	LHR 2633 W 5th (5th/Meridian)					150,140.07
1086	LHR 2625 W 5th 92410 (5th/Meridia					158,052.00



Finding 1

The sum of the line items outlined tie to the total of the Low & Moderate Income Housing fund capital assets.
(1 of 2)

Schedule 4 (continued)

Fund: Low-Moderate 20%

1086	LHR 2625 W 5th 92410 (5th/Meridia				158,052.00
1087	LHR 2657 W 5th 92410 (5th/Meridian				138,797.57
1088	LHR 2643 W 5th (5th/Meridian)				154,650.64
1089	LHR 2082 e 19TH (Im)				193,591.30
1090	LHR - 2120 Medical Center Drive				1,064,476.12
1091	LHR - 2196 Medical Center Drive				5,064,352.57
1092	LHR - apn 0143-191-46 Highland & M				551,887.91
1093	LHR 2120 Medical Center Dr (Meta)				270,000.00
1094	LHR - 2642 West 5th Street #1-4				157,411.24
1095	LHR - 2670 West 5th Street #1-4				149,835.27
1096	LHR - Im 2295 E Sunrise Lane				200,968.24
1097	LHR - 2632/2638 West 5th Street				498,282.52
1098	LHR - 2619 W 5th St, Units 1-4				236,578.64
1099	LHR - APN 0134-014-24,25,26,27				145,492.00
1100	LHR - 2683 WEST 5TH STREET (LM)				226,518.97
1101	LHR - 2164 East 19th Street (LM)				154,324.39
1102	LHR - 2043 E. 19th St (AHS/LM)				212,805.29
1103	LHR - 2694 West 5th Street (LM)				243,201.01
1104	LHR - 2225 E. Sunrise Lane (LM)				240,600.34
1105	LHR - 839-867 N Lugo/185-187 E 9th				3,955,023.52
1106	LHR 746 W 5th St/Spruce St Lots				2,678,819.45
1107	LHR - 2068 E. 19th St. MECH/LM				278,239.73
1108	LHR - 2056 E. 19th St. MECH/LM				269,419.56
1109	2557 Victoria				-53.15
1110	1146 N Sierra Way				-23.2
1111	1265 Kendall				70,819.02
1112	2044 E Sunrise				21,459.00
1113	2055 E Sunrise				21,459.00
1114	AMOUNT TO BE PROVIDED FOR LTD		20,334,219.60		20,334,219.60
1115	AMOUNT AVAILABLE FOR DEBT SERVICE		265,780.40		265,780.40
1116	AMOUNT AVAILABLE FOR DS - DEFEASED		2,435,000.00		2,435,000.00
1117	TOTAL ASSETS	2,699,924.09	23,035,000.00		95,134,146.55
1118					

Finding 1

The sum of the line items outlined tie to the total of the Low & Moderate Income Housing fund capital assets

Total: 33,744,679.13
(2 of 2)

Finding 2

The Low & Moderate Income Housing current asset total is less the total of the capital assets noted above:

95,134,146.55 –
33,744,679.13 =
61,389,467.42

Schedule 4 (continued)

Fund: Mt. Vernon Corridor

1154	RDA Mt Vernon Business Corridor					
1155	BALANCE SHEET					
1156		1/31/2012				
1157						
1158		01 TI	02 BP	50 DSF	60 GLTDAG	Total
1159	ASSETS:					
1160	Current Bond Issues Cash w/Fiscal			263,639.86		263,639.86
1161	TAX INCREMENT/OTHER INVESTMENTS	1,573,223.22				1,573,223.22
1162	Bond proceeds 2002A Mt Vernon		45,084.21			45,084.21
1163	LHR 542 N Mt Vernon		49,907.30			49,907.30
1164	LHR, APN 0138-114-09 (Mtv)		60,822.28			60,822.28
1165	552 N Mt Vernon		47,000.00			47,000.00
1166	LHR 540 N Mt Vernon (0138-115-04/0		270,436.71			270,436.71
1167	LHR 1307 W SPRUCE (STH&MTV) ARRIOL		35,521.75			35,521.75
1168	Virgilio 0138-115-06		309,486.93			309,486.93
1169	LHR APN 0138-115-07 (ALLEN-MTV)		103,028.00			103,028.00
1170	LHR Aprn 0139-291-60 (757 N MtVerno	32,162.27				32,162.27
1171	LHR Aprn 0139-291-61 (761 N MtVerno	52,722.27				52,722.27
1172	578 N Mt Vernon	106,900.00				106,900.00
1173	AMOUNT TO BE PROVIDED FOR LTD				3,033,998.05	3,033,998.05
1174	AMOUNT AVAILABLE FOR DEBT SERVICE				263,689.10	263,689.10
1175	TOTAL ASSETS	1,765,007.76	921,287.18	263,639.86	3,297,687.15	6,247,621.95
1176						

Finding 1

The Mt. Vernon Corridor current asset total is less the total of the capital assets noted above:

$$49,907.30 + 60,822.28 + 47,000.00 + 270,436.71 + 35,521.95 + 309,486.93 + 103,028.00 + 32,162.27 + 52,722.27 + 106,900.00 = \underline{\underline{1,067,987.51}}$$

Finding 2

The sum of the line items outlined tie to the total of the Mt. Vernon Corridor fund capital assets:

$$6,247,621.95 - 1,067,987.51 = \underline{\underline{5,179,634.44}}$$

Schedule 4 (continued)

Fund: Main Street

1202	RDA Main Street, Inc.						
1203	BALANCE SHEET						
1204		1/31/2012					
1205							
1206		01 TI	02 BP	25 FRF	47 MS	Total	
1207	ASSETS:						
1208	A/R I San Bdno Economic Dev Corp				475		475
1209	TOTAL ASSETS				475		475
1210		=====	=====	=====	=====		=====

Finding 1

The Main Street fund does not contain any capital assets; therefore, Finding 1 does not apply to this fund.

Finding 2

As the fund does not contain any capital assets, the current asset total was **475.**

Schedule 4 (continued)

Fund: Telecommunications

1234	RDA Telecommunications					
1235	BALANCE SHEET					
1236		1/31/2012				
1237						
1238		01 TI	02 BP	12 Tel-F	70 GFAAG	Total
1239	ASSETS:					
1240	TAX INCREMENT/OTHER INVESTMENTS			266,166.26		266,166.26
1241	INVESTMENT IN FIXED ASSETS E				60,911.61	60,911.61
1242	TOTAL ASSETS			266,166.26	60,911.61	327,077.87
1243		=====	=====	=====	=====	=====

Finding 1

The Main Street fund does not contain any capital assets; therefore, Finding 1 does not apply to this fund.

Finding 2

As the fund does not contain any capital assets, the current asset total was **327,077.87.**

Schedule 4 (continued)

Fund: Fortieth Street Projects

1265	RDA Fortieth Street Project		
1266	BALANCE SHEET		
1267		1/31/2012	
1268			
1269		01 TI	Total
1270	ASSETS:		
1271	TAX INCREMENT/OTHER INVESTMENTS	891,208.62	891,208.62
1272	TOTAL ASSETS	891,208.62	891,208.62
1273		=====	=====

Finding 1

The Fortieth Street Projects fund does not contain any capital assets; therefore, Finding 1 does not apply to this fund.

Finding 2

As the fund does not contain any capital assets, the current asset total was **891,208.62.**

Schedule 4 (continued)

Fund: AHS – Low Mod Funded

1293	RDA Affordable Housing Solutions			
1294	BALANCE SHEET			
1295		1/31/2012		
1296				
1297		66 AHS	67 AHS-P	Total
1298	ASSETS:			
1299	TAX INCREMENT/OTHER INVESTMENTS		100,958.79	100,958.79
1300	LHR AHS/nsp 1888 Argyle	155,788.39		155,788.39
1301	LHR AHS/nsp 202 E 19th	6,404.26		6,404.26
1302	LHR AHS/nsp 1058 n sierra	45,773.22		45,773.22
1303	LHR AHS/nsp 2091 Sepulveda	72,633.03		72,633.03
1304	LHR AHS/nsp 1725 N Mt View	37,885.45		37,885.45
1305	LHR AHS/nsp 2044 E Sunrise Ln	134,090.63		134,090.63
1306	LHR AHS/nsp 2165 E 19th	149,233.03		149,233.03
1307	LHR AHS/home 1356 Hillside Drive	152,923.83		152,923.83
1308	LHR AHS/home 1394 Hillside Drive	200,020.77		200,020.77
1309	LHR AHS/home 1853 Fairfax Drive	205,262.48		205,262.48
1310	LHR AHS/home 1384 Hillside Drive	199,998.76		199,998.76
1311	LHR Transfer from Low Mod Housing	11,838,853.96		11,838,853.96
1312	TOTAL ASSETS	13,198,867.81	100,958.79	13,299,826.60
1313		=====	=====	=====

Finding 1

The sum of the line items outlined in red tie to the total of the AHS – Low Mod Funded fund capital assets:

$$155,788.39 + 6,404.26 + 45,773.22 + 72,633.03 + 37,885.45 + 134,090.63 + 149,233.03 + 152,928.83 + 200,020.77 + 205,262.48 + 199,998.76 = \underline{\underline{1,360,013.85}}$$

Finding 2

The AHS - Low Mod Funded current asset total is less the total of the capital assets noted above:

$$13,299,826.60 - 1,360,013.85 = \underline{\underline{11,939,812.75}}$$

Schedule 4 (continued)

Fund: San Bernardino Economic Development Corporation

1337	San Bdno Economic Dev Corp			
1338	BALANCE SHEET			
1339		1/31/2012		
1340				
1341		01 TI	14 SBEDC	Total
1342	ASSETS:			
1343	Cash in Bank SCRIP		29,348.49	29,348.49
1344	CBB SBEDC		7,609,638.77	7,609,638.77
1345	A/R I RDA Northwest		70,087.00	70,087.00
1346	A/R I CMB-EB5		368,234.15	368,234.15
1347	TOTAL ASSETS		8,077,308.41	8,077,308.41
1348		=====	=====	=====

Finding 1

The San Bernardino Economic Development Corporation fund does not contain any capital assets; therefore, Finding 1 does not apply to this fund.

Finding 2

As the fund does not contain any capital assets, the current asset total was **8,077,308.41**

Schedule 4 (continued)

Fund: CMB-EB5

1373	CMB-EB5					
1374	BALANCE SHEET					
1375		1/31/2012				
1376						
1377		13 CMB \$15M	16 \$10M CMB	17 \$8M CMB	60 GLTDAG	Total
1378	ASSETS:					
1379	CMB \$15 M	6,561,985.99				6,561,985.99
1380	CMB \$8 M			8,000,000.00		8,000,000.00
1381	CMB \$10 M		6,468,127.28			6,468,127.28
1382	LA Engineering Comm Bank Retention		15,268.63			15,268.63
1383	AMOUNT TO BE PROVIDED FOR LTD				33,000,000.00	33,000,000.00
1384	TOTAL ASSETS	6,561,985.99	6,483,395.91	8,000,000.00	33,000,000.00	54,045,381.90
1385		=====	=====	=====	=====	=====

Finding 1

The CMB-EB5 fund does not contain any capital assets; therefore, Finding 1 does not apply to this fund.

Finding 2

As the fund does not contain any capital assets, the current asset total was **54,045,381.90**

Schedule 4 (continued)

Fund: Carousel Mall

1411	Carousel Mall			
1412	BALANCE SHEET			
1413		1/31/2012		
1414				
1415		15 Mall LLC	31 CC Mall	Total
1416	ASSETS:			
1417	PETTY CASH		500	500
1418	CBB Carousel Mall 245122652		248,623.42	248,623.42
1419	CBB Carousel Mall LLC 245122702	650,000.00		650,000.00
1420	A/R I San Bdno Economic Dev Corp	1,975.00		1,975.00
1421	TOTAL ASSETS	651,975.00	249,123.42	901,098.42
1422		=====	=====	=====

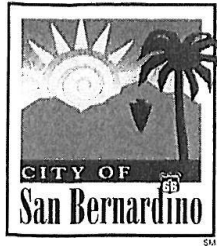
Finding 1

The Carousel Mall fund does not contain any capital assets; therefore, Finding 1 does not apply to this fund.

Finding 2

As the fund does not contain any capital assets, the current asset total was **901,098.42**

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



OFFICE OF THE CITY MANAGER

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November 21, 2012

Mr. Jeffrey V. Brownfield, Chief
Division of Audits
California State Controller
P. O. Box 942850
Sacramento, California 94250-5874

Attn: Mr. Steven Mar, Chief, Local Government Audits Bureau

Re: Response to State Controller Draft Asset Transfer Review for the Successor Agency to the Redevelopment Agency of the City of San Bernardino

Dear Mr. Brownfield:

This letter is in response to your November 6, 2012 letter, which transmitted a Draft Asset Transfer Review ("Draft ATR") for the Successor Agency to the Redevelopment Agency of the City of San Bernardino ("Successor Agency") that was prepared by staff of the State Controller's Office ("SCO"). In your letter you invited the Successor Agency to submit its comments on the Draft ATR to the SCO. In that regard, the Successor Agency's comments on the Draft ATR, as follows:

SBEDC ASSETS VALUED AT \$108,372,060.20

Introduction

As noted in several places, the Draft ATR indicates that the SCO's review "disclosed that the San Bernardino RDA made an unallowable transfer of \$108,372,060.20 in assets, or 100%, to the San Bernardino Economic Development Corporation ("SBEDC"). It further indicates that "the City of San Bernardino is ordered to transfer these assets to the San Bernardino Redevelopment Successor Agency." The assertion is factually inaccurate and the proposed order is legally impossible to perform. As further described below, former Redevelopment Agency of the City of San Bernardino ("RDA") transferred the assets in question to the SBEDC pursuant to a transaction that at the time was allowable, legally authorized, enforceable, binding and valid. Further, the City of San Bernardino ("City") does not control the SBEDC. Therefore, SCO does not have the authority to direct the City to require SBEDC to return these assets to the Successor Agency and the City does not have the legal authority to order or cause SBEDC to take this action, or for that matter to do anything.

CITY OF SAN BERNARDINO

ADOPTED SHARED VALUES: Integrity • Accountability • Respect for Human Dignity • Honesty

Analysis

By way of background, on March 3, 2011, the former RDA and the SBEDC entered into a Project Funding Agreement (“Funding Agreement”) pursuant to which the SBEDC assumed all of the RDA’s obligations and the responsibility to undertake the RDA’s governmental functions. On March 17, 2011, in implementation of the Funding Agreement, the RDA Board of Directors directed RDA staff to transfer all of the RDA’s assets to SBEDC (such assets are referred to herein as the “SBEDC Assets”). The Funding Agreement, the RDA’s conveyance of its assets to SBEDC, the “restructuring of the manner in which the RDA conducts its governmental functions” and “all matters related thereto” were validated in accordance with Code of Civil Procedure Section 860, *et seq.*, and Government Code Section 63611, as stated in that certain Judgment issued on July 27, 2011, by the Superior Court of the State of California, County of San Bernardino, Case No. CIVDS 11 03893 (“Validation Judgment”).

The Funding Agreement and the transfer of RDA Assets to SBEDC occurred during March 2011, prior to the effective date of AB1x 26 or AB 1484; these actions were therefore valid, effective and binding on the RDA (and therefore the Successor Agency), as confirmed in the Validation Judgment. Notwithstanding the foregoing, the SCO’s Draft ATR asserts that the transfer by the RDA to SBEDC of assets cumulatively valued at \$108,372,060.20 was “unallowable” and directs the City to transfer these assets to the Successor Agency.

In the Draft ATR, the SCO asserts that Health & Safety Code (“HSC”) Section 34167.5 applies to the RDA’s transfer of its assets to SBEDC and authorizes the SCO to direct the reversal of such transfer. SCO further asserts that HSC Section 34167.10, as applied to SBEDC, results in the conclusion that the SBEDC is controlled by the City and therefore HSC Section 34167.5 applies to SBEDC in the same manner as such statute would apply to the City. As discussed below, SCO misunderstands the relationship among the RDA, City and SBEDC and therefore mistakenly applies HSC Section 34167.5 to the SBEDC Assets.

The City does not control SBEDC. The City and SBEDC had no relationship at the time SBEDC was formed, at the time the RDA and SBEDC entered into the Funding Agreement, and at the time the RDA transferred its assets to SBEDC. As recited in Section 1.4.B of the Bylaws of the San Bernardino Economic Development Corporation, Inc., SBEDC was formed by the RDA for the purpose of assisting the RDA with its governmental functions and responsibilities. Three of the six members of the Board of Directors of SBEDC are appointed by the Community Development Commission of the City of San Bernardino (“CDC”). Even now, these three SBEDC Board members are appointed by the CDC and the City does not have the right to appoint (or remove) any SBEDC Board members. Although the RDA and City had common governing boards, the RDA and City were at all times separate and distinct legal entities (see *Pacific States Enterprises, Inc. v. The City of Coachella et al.* (1993) 13 Cal. App. 4th 1414; *Long Beach Community Redevelopment Agency v. David Morgan* (1993) 14 Cal. App. 4th. 1047).

HSC Section 34167.5 directs SCO to “review the activities of redevelopment agencies in the state 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.” If SCO determines that such a transfer occurred, HSC Section 34167.5 directs SCO to “order the available assets to be returned ... to the successor agency.” Because SBEDC is not a city, county, city and county, or any other public agency, HSC Section 34167.5 is inapplicable to SBEDC and inapplicable to any transfers made by the RDA to SBEDC.

In the Draft ATR, SCO treats SBEDC as the City for purposes of applying HSC Section 34167.5, relying on HSC Section 34167.10. HSC Section 34167.10 provides as follows:

“(a) Notwithstanding any other law, for purposes of this part and Part 1.85 (commencing with Section 34170), the definition of a city, county, or city and county includes, but is not limited to, the following entities:

(1) Any reporting entity of the city, county, or city and county for purposes of its comprehensive annual financial report or similar report.

(2) Any component unit of the city, county, or city and county.

(3) Any entity which is controlled by the city, county, or city and county, or for which the city, county, or city and county is financially responsible or accountable.

(b) The following factors shall be considered in determining that an entity is controlled by the city, county, or city and county, and are therefore included in the definition of a city, county, or city and county for purposes of this part and Part 1.85 (commencing with Section 34170):

(1) The city, county, or city and county exercises substantial municipal control over the entity's operations, revenues, or expenditures.

(2) The city, county, or city and county has ownership or control over the entity's property or facilities.

(3) The city, county, or city and county and the entity share common or overlapping governing boards, or coterminous boundaries.

(4) The city, county, or city and county was involved in the creation or formation of the entity.

(5) The entity performs functions customarily or historically performed by municipalities and financed through levies of property taxes.

(6) The city, county, or city and county provides administrative and related business support for the entity, or assumes the expenses incurred in the normal daily operations of the entity.

(c) For purposes of this section, it shall not be relevant that the entity is formed as a separate legal entity, nonprofit corporation, or otherwise, or is not subject to the constitution debt limitation otherwise applicable to a city, county, or city and county. The provisions in this section are declarative of existing law as the entities described herein are and were intended to be included within the requirements of this part and Part 1.85 (commencing with Section 34170) and any attempt to determine otherwise would thwart the intent of these two parts.”

In the Draft ATR, SCO asserts that: (1) the Board of Directors of SBEDC is made up of City Council members; (2) the City shares a common governing board and has coterminous boundaries with SBEDC; and (3) the City provides administrative and related business support to SBEDC. By implication, the Draft ATR concludes that SBEDC is controlled by the City within the meaning of HSC Section 34167.10(b).

Contrary to SCO's assertion, SBEDC is not controlled by the City. The City does not have the authority to appoint SBEDC Board members. Further, the SCO's assertion that the City and SBEDC have coterminous boundaries is patently false. SBEDC does not have boundaries; it is a nonprofit corporation formed pursuant to the laws of the State of California, not a public entity. SBEDC has the legal authority to conduct business outside the boundaries of the City. Finally, prior to its dissolution, the RDA provided administrative support to SBEDC; however, at the time of the transfers and at the time AB1x 26 was enacted, the City provided no support, financial or otherwise, to SBEDC. Only now that SBEDC owns property and has contractual obligations entered into in reliance on RDA support does the City provide any administrative support to SBEDC and this support should, frankly, be provided by the Successor Agency pursuant to the validated Funding Agreement.

Because SBEDC is not controlled by the City within the meaning of HSC Section 34167.10(b), SCO does not have the authority to direct the City to return SBEDC Assets to the Successor Agency pursuant to Section 34167.5. Even if the SCO refuses to revise the Draft ATR and continues to order the City to return SBEDC Assets to the Successor Agency (notwithstanding SCO's lack of legal authority to do so), the City does not control SBEDC and would be unable to legally require SBEDC to take such an action.

SCO does not allege that the RDA was not authorized in March 2011 (prior to the enactment of AB1x 26) to convey its assets to a nonprofit corporation created by the CDC/RDA, or whose governing board overlapped with the RDA's governing board, because nothing in HSC Section 34167.10 or elsewhere in AB1x 26 or AB 1484 prohibits such actions. The California legislature could have included entities formed by the CDC or RDA within the scope of HSC Section 34167.10, but elected not to do so. Given that Section 34167.10 is specifically crafted to address asset transfers to entities created and/or controlled by cities and counties and does not refer even once to entities created and/or controlled by redevelopment agencies or successor agencies, it is clear that the legislature knew how to, but chose not to, require transfers to such entities to be unwound.

SUCCESSOR AGENCY ASSETS VALUED AT \$420,512,906.15

Introduction

As noted in several places, the Draft ATR indicates that the SCO's review "identified \$420,512,906.15 in San Bernardino RDA assets that have not yet been transferred to any agency." It further indicates that "the City of San Bernardino is ordered to transfer these assets to the San Bernardino Redevelopment Successor Agency." The assertion is factually inaccurate, the proposed order is legally impossible to perform and the amount indicated includes

\$258,676,796-worth of non-tangible assets, which are either offsets to bonds payable or are inter-fund accounts receivable (i.e., between redevelopment project areas) and therefore should not be included as tangible assets within the ATR. As further described below, the assets in question were transferred to the Successor Agency by operation of law; no affirmative action to transfer these assets is needed. Further, the Successor Agency Assets do not belong to the City and never have (within relevant time periods) belonged to the City. The City is unable to transfer these assets or cause these assets to be transferred to the Successor Agency, as the assets are already held by the Successor Agency.

Analysis

The SCO's audit staff were previously advised that a portion of the \$420,512,906.15 they identified as San Bernardino RDA assets included amounts which are non-tangible assets and are only accounting entries, not assets. Specifically, they were informed that \$193,955,410 represented an accounting entry of an "Amount to be Provided for Long Term Debt", which is an off-set to bonds payable and is not a tangible asset. For example, as bonds payable reduces so does the "Amount to be Provided for Long Term Debt". Further, SCO audit staff was informed that an additional \$64,721,386 represents inter-fund redevelopment project area accounts receivables, which are off-set by an accounts payable, which is also non-tangible since these funds will never be repaid between redevelopment project areas. Once the accounts receivable and the accounts payable are combined, the result will be zero.

With respect to the SCO's assertion that the RDA, Successor Agency or City has somehow failed to comply with a statutory duty because certain assets have not been transferred by the RDA to the Successor Agency, the SCO apparently misunderstands the structure of AB1x 26 and AB 1484. HSC Section 34175(b) provides that "[a]ll assets, properties, contracts, leases, books and records, buildings, and equipment of the former redevelopment agency are transferred on February 1, 2012, to the control of the successor agency, for administration pursuant to the provisions of this part. This includes all cash or cash equivalents and amounts owed to the redevelopment agency as of February 1, 2012." HSC Section 34175(b) states that the assets "are transferred" to the Successor Agency on February 1, 2012, not that redevelopment agencies "shall transfer" assets to successor agencies as of that date. Nothing in AB1x 26 or AB 1484 requires any affirmative action to be taken to effectuate this transfer. Had an affirmative transfer been required, it would have created legal turmoil as some agencies would, invariably, have failed to make the required transfers before being dissolved and ceasing to exist on February 1, 2012; those assets not transferred on time would have no clear ownership or any statutorily authorized way to resolve such ownership dilemma.

Thus, in accordance with HSC Section 34175(b), any and all assets owned by the RDA as of February 1, 2012 (collectively referred to herein as "Successor Agency Assets") were transferred to the Successor Agency by operation of law; no affirmative action to transfer these assets is needed. Additionally, it is irrelevant what books, ledgers or accounts may say regarding the ownership of these Successor Agency Assets, as they are legally owned by the Successor Agency regardless of any such designation.

Further, the Successor Agency Assets do not belong to the City and never have (within relevant time periods) belonged to the City. The City is unable to transfer these assets or cause these assets to be transferred to the Successor Agency, as the assets are already held by the Successor Agency.

General Comments

In addition to the foregoing, we have found several mistakes within the report, as follows:

Draft ATR, Page 2, first paragraph, reads, “The SCO has identified transfers of assets that occurred during that period between the City of San Bernardino RDA, the City of San Bernardino, and/or other public agencies.” The record does not reflect any transfers of assets by the former RDA to the City or other public agencies. We have no idea what the SCO is referring to in this paragraph.

Draft ATR, Page 2, second bullet in the Objectives, Scope and Methodology section, reads, “Reviewed meeting minutes, resolutions and ordinances of the San Bernardino City Council, the Community Development Commission, and the San Bernardino Economic Development Agency.” This narrative is erroneous as the San Bernardino Economic Development Agency has never had any meeting minutes, resolutions or ordinances.

Draft ATR, Page 3, first paragraph, makes a reference to James P. Simpson, Director of Finance. The City’s Director of Finance is Mr. Jason Simpson.

Draft ATR, Page 5, in the narrative immediately preceding the final paragraph, there is a reference to the “overnight board”. This erroneous reference to what should be the “oversight board” appears in several places in the report. We recommend that the SCO use the find and replace function in Word to globally correct this error.

Draft ATR, Schedule 2, the reference to RDA South Valley should be to RDA South Valle.

Draft ATR, Schedule 4, page 24, the reference to “Fund: South Valley” should be to “Fund: South Valle”.

Draft ATR, Schedules 3 and 4, there are a multitude of capitalization errors. The report needs more careful proofreading prior to release.

General Comment, given that the SCO staff spent several weeks in the City of San Bernardino pursuing discovery, the Successor Agency does not understand why there are so many errors within the Draft ATR. The Successor Agency requests that the SCO carefully proofread the final ATR before releasing it.

Proposed Settlement Agreement with Department of Finance

In addition to the above, during its October 30, 2012 meeting with Department of Finance ("DOF"), Successor Agency representatives explained the history and dire nature of its approximately \$15 million immediate cash flow deficiency and offered solution options to the problem as a means of avoiding bankruptcy proceedings on behalf of the Successor Agency. Successor Agency staff explained to the DOF that SBEDC is not a public agency, nor is SBEDC a corporation created by the City of San Bernardino. Rather, SBEDC is a nonprofit corporation formed by the former RDA (through the CDC) to assist the former RDA in the performance of its governmental functions. During that meeting, it was ultimately suggested that the DOF, Successor Agency and SBEDC enter into a settlement agreement that provides for: i) the SBEDC to immediately pursue the sale of four properties previously owned by the RDA to raise moneys to solve the Successor Agency's current cash flow deficiency/insolvency; ii) SBEDC would agree to transfer the balance of the SBEDC Assets to the Successor Agency for disposition pursuant to the Successor Agency's Long-Range Property Management Plan in accordance with the provision of AB1x 26 and AB 1484; and iii) upon sale of the four identified sites, the SBEDC would transfer the net sale proceeds to the Successor Agency and thereafter those funds would be used to pay for Successor Agency enforceable obligations that would otherwise be (or currently are) in default.

As of the date of this letter, the proposed settlement remains under review by the DOF. The Successor Agency anticipates receiving DOF's response to the proposed settlement by December 15, 2012. Anticipating a positive response, the Successor Agency recommends that the SCO revise the Draft ATR to include a reference to the proposed settlement agreement and provide that the Draft ATR will be finalized following execution of the settlement agreement.

The Successor Agency recommends that the SCO revise the Draft ATR in a manner consistent with the suggestions in this letter and provide the Successor Agency with the revised draft for further review and comment. If you have any questions, please contact me at (909) 384-5122.

Sincerely,



CITY OF SAN BERNARDINO
Andrea Travis-Miller
Interim City Manager

TB:lc

Cc: Teri Baker, City of San Bernardino Assistant to the City Manager
Jason Simpson, City of San Bernardino Finance Director
Scott Freesmeier, Audit Manager, SCO Division of Audits
Si Lau, Auditor-in-Charge, SCO Division of Audits

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