

MARINA REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

February 2013



JOHN CHIANG
California State Controller

February 28, 2013

Douglas A. Yount, Interim City Manager
Marina Redevelopment/Successor Agency
211 Hillcrest Avenue
Marina, CA 93933

Dear Mr. Yount:

Pursuant to Health and Safety (H&S) Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the City of Marina Redevelopment Agency (RDA) to the City of Marina or any other public agency after January 1, 2011. This statutory provision states, "The Legislature hereby finds that a transfer of assets by a redevelopment agency during the period covered in this section is deemed not to be in furtherance of the Community Redevelopment Law and is thereby unauthorized." Therefore, our review included an assessment of whether each asset transfer was allowable and whether it should be turned over to the Successor Agency.

Our review applied to all assets including, but not limited to, real and personal property, cash funds, accounts receivable, deeds of trust and mortgages, contract rights, and rights to payment of any kind. We also reviewed and determined whether any unallowable transfers of assets to the City of Marina or any other public agencies have been reversed.

Our review found that the City of Marina Redevelopment Agency transferred \$3,344,612 in assets. These included unallowable transfers of assets totaling \$900,000, or 26.91% that must be turned over to the Successor Agency.

After reviewing the City's response to the draft report, the SCO agrees that the City does not need to turn over to the Successor Agency the \$51,160 of assets identified in Finding 1 of the draft report.

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/sk

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Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the City of Marina Redevelopment 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 RDA transferred \$3,344,612 in assets. These included unallowable transfers of assets totaling \$900,000, or 26.91%, that must be turned over to the Successor Agency.

After reviewing the City's response to the draft report, the SCO agrees that the City does not need to turn over to the Successor Agency the \$51,160 of assets identified in Finding 1 of the draft report.

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 City of Marina Redevelopment Agency, the City of Marina, 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 Marina City Council and the 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 found that the City of Marina Redevelopment Agency transferred \$3,344,612 in assets after January 1, 2011, including unallowable transfers of assets totaling \$900,000, or 26.91% of the transferred assets. Those assets must be turned over to the Successor Agency for disposition in accordance with ABX1 26.

Unallowable Assets Transferred:

Unallowable Assets Transferred to Housing Successor Agency	<u>\$ 900,000</u>
Total Unallowable Transfers	<u><u>\$ 900,000</u></u>

The agencies named above as recipients of the unallowable asset transfers are ordered to immediately reverse the transfers, and turn over the assets identified in this report to the RDA Successor Agency (see Schedules 1 and 2, and Attachments 1 and 2).

Details of our findings 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.

The SCO agrees in part after reviewing the City's response to the Draft Report and the approval of the Oversight Board for the transfer of all of the housing assets to the Housing Successor Agency. The unallowable transfers of assets total are reduced. The City does not need to turn over the assets to the Successor Agency.

**Views of
Responsible
Official**

We issued a draft review report on January 8, 2013. Douglas A. Yount, Interim City Manager, responded by letter dated January 25, 2013, disagreeing with the review results. The City's response is included in this final review report as an attachment.

Restricted Use

This report is solely for the information and use of the City of Marina, the City of Marina Redevelopment Successor Agency, the City of Marina Successor Agency Oversight Board, the City of Marina Successor Housing Agency, 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

February 28, 2013

Findings and Orders of the Controller

FINDING 1— Unallowable asset transfers to the City of Marina

The Redevelopment Agency of the City of Marina (RDA) made unallowable asset transfers of \$51,160 to the City of Marina (City). The asset transfers to the City occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011. Those assets consisted of cash and capital assets. Unallowable asset transfers were as follows:

- On March 10, 2011, the RDA transferred capital assets in land (valued at \$0) to the City. To accomplish the transfer, the City and the RDA entered into an agreement under Resolution No. 2011-10.

However, per information obtained from the City's Management Analyst, the actual capital asset transfers to the City were made pursuant to the revised property list that was developed on a later date, after the Resolution was passed. Thus, the SCO will order return of the properties transferred pursuant to the revised list, not the Resolution.

- On June 9, 2011, the RDA transferred a loan repayment of \$51,160 in cash to the City pursuant to the 2003 North and West University Village Outreach and the 2nd Avenue Telecommunication Conduit loan agreements, between the City and the RDA, under RDA Resolution No. 2003-18, and City Resolution No. 2003-47. Based on Health and Safety Code (H&S Code) section 34171(d)(2), the RDA was not allowed to repay loan agreements entered into between the RDA and the city after the first two years of the creation of the RDA.

Pursuant to H&S Code section 34167.5, the RDA may not transfer assets to a city, county, city and county, or any other public agency after January 1, 2011. Assets transferred after January 1, 2011 should be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177(d) and (e). However, it appears that some of those assets transferred 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 that were funded by tax increment revenues of the dissolved 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 government purpose, such as roads, school buildings, parks, and fire stations, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset...

Order of the Controller

Based on H&S Code section 34167.5, the City of Marina is ordered to reverse the transfer of assets described in Schedule 1 and Attachment 1, in the amount of \$51,160 plus any interest earned, and turn them over to the Successor Agency.

The Successor Agency is directed to properly dispose of those assets in accordance with H&S Code sections 34177(d) and (e) and 34181(a).

City's Response (transfer of land)

. . .AB x1 26 prohibits former redevelopment agencies from taking certain actions as of June 28, 2011 but does not contain any prohibition on actions taken by other public agencies.

The City of Marina, after receipt of the property transfers, did contractually commit certain properties to third parties and the State cannot impair those contractual commitments.

. . . .All of the property transferred by the RDA to the City in March of 2011 was property located at the former Fort Ord. . . .

It should be noted that none of the property listed in the Controller's Report was acquired with tax increment funds.

A return of the properties to the Successor Agency could result in a reallocation of substantial amounts in property tax revenues from the City to other taxing entities by arbitrarily invalidating the Implementation Agreement resulting in an illegal redistribution of ad valorem property taxes. . . .

SCO's Comment

The SCO agrees in part with the statement made by the City of Marina that the properties transferred by the RDA to the City were not acquired with tax increment funds and all sales proceeds would be transferred to the City under the Implementation Agreement; therefore, the City does not need to return the properties to the Successor Agency.

City's Response (transfer of loan repayment of \$51,160)

Pursuant to Section 34170 the provisions of Part 1.85 limiting repayment of loans between an RDA and a City did not become operative until February 1, 2012. . . . The definition of enforceable obligation applicable from the date of adoption of AB x126 and the operative date of Part 1.85, located at Section 34167(d)(1) did not contain any prohibition on the repayment of loans between a redevelopment agency and its sponsoring community. Moreover, it should be pointed that the repayment made in this instance was made prior to the effective date of AB x1 26 and pursuant to a valid loan agreement in accordance with the Community Redevelopment Law as it existed at that time.

SCO's Comment

The SCO agrees in part with the statement made by the City of Marina. After further reviewing the loan repayment, we determined that this repayment was made on an annual basis. Thus, no further action is needed from the City.

**FINDING 2—
Unallowable asset
transfer to the City
of Marina Housing
Successor Agency**

On January 31, 2012, the RDA transferred capital assets of \$900,000 to the Housing Successor Agency. Based on H&S Code section 34177(e), the RDA Successor Agency, not the Housing Successor Agency, is responsible for the disposition of assets and properties of the former RDA.

Per information obtained from the City Manager and the Management Analyst at the exit conference, the Successor Agency agreed to obtain approval from the Oversight Board for the capital assets transferred to the Housing Successor Agency at the next regular meeting in December 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 34181(c) states, "The oversight board shall direct the successor agency to do the following: (c) Transfer housing responsibilities and all rights, powers, duties, and obligations along with any amounts on deposit in the Low and Moderate Income Housing Fund to the appropriate entity pursuant to Section 34176."

H&S Code section 34167.5 states, "the Controller shall...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...the Controller shall order the available assets to be returned to...the successor agency..."

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."

Order of the Controller

Based on H&S Code section 34177(e), the City of Marina is ordered to direct the Housing Successor Agency to reverse the transfer assets described in Schedule 2 and Attachment 2, in the amount of \$900,000, plus interest earned, and turn them over to the Successor Agency for disposition as directed by the Redevelopment Successor Agency Oversight Board.

City's Response

...the Oversight Board for the Successor Agency, pursuant to Resolution No. 2013-02(OB), adopted on January 14, 2013, did direct the Successor Agency to transfer all of the housing assets, including the properties subject to the Controller's Report to the City as the Housing Successor.

SCO's Comment

As the Successor Agency obtained the Oversight Board's approval to transfer all of the housing assets to the Housing Successor Agency, no further action is needed by the City.

**Schedule 1—
Unallowable Asset Transfers to the City of Marina
January 1, 2011, through January 31, 2012**

<u>Unallowable Transfers to the City of Marina</u>	<u>Amount</u>
<u>Capital Assets</u>	
Land ¹	\$ —
<u>Current Assets</u>	
Cash Transfer to City	51,160
Adjustment	<u>(51,160)</u>
Total Unallowable Transfers - City	<u>\$ —</u>

¹ Detail listing of assets on Attachment 1.

**Schedule 2—
Unallowable Asset Transfers to the
City of Marina Housing Successor Agency
January 1, 2011, through January 31, 2012**

<u>Unallowable Transfers to the Housing Successor Agency</u>	<u>Amount</u>
<u>Capital Assets</u>	
Land ¹	<u>\$ 900,000</u>
Total Unallowable Transfers – Housing Successor Agency	<u>\$ 900,000</u>

¹ Detail listing of assets on Attachment 2.

Attachment 1— Properties Transferred to the City of Marina on March 10, 2011

COE PARCEL	APN	Primary Project Name (includes Lease, AKA, Rdevel Infill)	ACREAGE	Quit Claim Doc # FOR A to RDA
L5.1.1 Pcl A	031-111-035, 031-111-036	Surplus Airport Property (12 acres	12	2004031638
E2c.1	031-251-018	Cypress Knolls	13.323	2005091639
E2c.4.2.1	031-201-016	Stockade, owned by RDA	13.393	2005091639
E2d.2	031-251-022, 031-251-021	ROW/ Road	5.414	2005091639
E2e.1	031-101-049	ROW / 6 th Avenue/ 8 th Street Road	6.092	2005091639
L20.17.1	031-101-051	Maintenance Center Building 4900	8.024	2005091639
L5.8.1	031-101-038	RDA-City Corporation Yard Maintenance Center Building 4885 Phase I	7.053	2005091639
L5.8.2	031-101-052	SE corner 5 th and 8 th – Maintenance Center Building 4885 Phase II	4.866	2005091639
E4.1.1	031-201-005	Cypress Knolls-Patton Housing – lower	153.764	2005091641
E5b	031-121-004	Blanco Rd and Preston Park	3.214	2005129404
L20.17.2	031-101-050	SE Imjin and 8 th - Maintenance Center Park	8.299	2009057441
E2c.4.1.2, E2c.4.2.2, E2c.4.4, E2d.3.2, L5.9.2	031-101-055	ICS Ground Lease	26.410	2009057441
E4.7.1	Road	ROW / Imjin Road – northeast	5.399	2011003551
E5a.1	031-081-023	SE corner Salinas Ave/Reservation-Old High School	30.586	2011003551
L5.10.1	Road	Reservation Road NW	8.507	2011003551
E2c.4.1.1	n/a	ROW / Road	10.463	2005091639
E4.1.2.1	031-021-043, 031-021-044, 031-021-048	Cypress Knolls-Patton Housing - lower	9.972	2006022050
E2a, E4.1.2.3	031-021-049	Open Area south and west of Marina HS and Cypress Knolls	11 (119.55)	2006022050
E4.1.2.2	031-021-048, 031-021-043, 031-021-044	Cypress Knolls	26.243	2006022050
E4.6.1	Road	ROW/ middle Imjin Road Northeast	25.491	2006022050
L5.6.1	031-271-009	Abrams Park	22.640	2006022050
E4.6.2	Road	ROW/ Imjin Road	16.872	2006022050
E4.7.2	Road	ROW/ Imjin Road	3.561	2006022050
L20.11.1	n/a	Right of Way Blanco Rd.	31.190	2005129404
L5.10.2	n/a	Row/ Road	12.550	2005129404

Source: Revised Marina RDA Property Transfers per March 2011 Property Conveyance Agreement

Attachment 2— Properties Transferred to the Housing Successor Agency on January 31, 2012

Marina Redevelopment Agency

Fixed/Capital Assets Report at June 30, 2010

Category: Land

Table 1

LOT#	APN	OBJECTID	GIS_ACRES	AREA (sq/ft)	ZONING	COST
5	033-062-016	20397	0.5	21,670.78	R-1	178,429
10	033-076-091	21359	0.2	7322.85	ST	274,938
11	033-076-094	21339	0.6	24,626.46	ST	-
19	032-431-003	23822	0.3	17,738.52	R-1	70,698
21	032-042-014	24344	0.3	11,744.57	R-1	86,409
52	032-222-010		0.2	9,489.69	R-1	68,454
59	032-232-046	33948	0.1	2,616.56	R-1	221,072
60	032-241-012	33910	0.9	37,035.90	R-1	-
	Totals		3.1			\$900,000

Property Acquired in June 2009 with LMIHF funds pursuant to Resolution No. 2009-08 (MRA)

**Attachment 3—
City of Marina’s Response to
Draft Review Report**



CITY OF MARINA
The Successor Agency
of the Former Redevelopment Agency
of the City of Marina

January 25, 2013

Steven Mar
Chief, Local Government Audits Bureau
State Controller's Office
Division of Audits
Post office Box 942850
Sacramento, California

The City of Marina Acting as the Successor Agency ("Successor Agency") to the former Marina Redevelopment Agency ("RDA") appreciates and welcomes the opportunity to comment on and provide corrections to the Draft Marina Redevelopment Agency Asset Transfer Review Report (January 1, 2011 Through January 31, 2012), dated January 2013. (See Attachment 1.) These comments are respectfully submitted to ensure that a proper review and report is prepared that complies with ABx1 26 and other applicable law.

The response provided herein does not waive the right of the Successor Agency and the City to later provide additional information or statements as part of the review process. The Successor Agency and the City retain the right to raise new materials or positions as required.

GENERAL RESPONSE

1. The City's and the Successor Agency's review of the State Controller preliminary findings is ongoing. These responses and objections are made without prejudice to, and are not a waiver of, the City's and the Successor Agency's right to rely on other facts, documents, responses or information in the State Controller review process or at a later proceeding.
2. By making the accompanying responses and objections, the City and the Successor Agency do not waive, and hereby expressly reserve, their right to assert any and all objections as to the State Controller findings and statements in this review, or in any other proceedings, on any and all grounds including, but not limited to, jurisdiction, scope, competency, relevancy, and materiality. Further, the City and the Successor Agency make the responses herein without in any way implying that they consider all of the State Controller findings and statements, to be legally valid or within the scope of ABx1 26 relevant or material to the subject matter of this action.
3. The City and the Successor Agency reserve the right to supplement, clarify, revise, or correct any or all of the responses and statements herein, and to assert additional information, in one or more subsequent supplemental response(s).

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Economic Development Division
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SPECIFIC RESPONSE

1. Finding 1- Unallowable asset transfers to the City of Marina

As a preliminary matter, the Report states that the RDA made unallowable asset transfers to the City and that the assets were not committed to a third party by the City prior to June 28, 2011. The statement attempts to read into Health and Safety Code Section 34167.5 and AB x1 26 as a whole a prohibition on the activities of the City after passage of AB x1 26 that does not exist. AB x1 26 prohibits former redevelopment agencies from taking certain actions as of June 28, 2011 but does not contain any prohibition on actions taken by other public agencies.

The City of Marina, after receipt of the property transfers, did contractually commit certain properties to third parties and the State cannot impair those contractual commitments. The City of Marina entered into an Exclusive Negotiating Rights Agreement with AMCAL Equities, LLC on April 23, 2012 providing for a process for the City and AMCAL to negotiate the disposition of a portion of the former Fort Ord property to AMCAL for the development of student housing serving CSUMB. In reliance on the Exclusive Negotiating Rights Agreement, AMCAL has performed certain due diligence obligations related to the property and the parties have negotiated the terms of a Disposition & Development Agreement for the property. These obligations have been performed pursuant to a valid and enforceable agreement entered into between the City and AMCAL. AB x1 26 as amended by AB 1484 in no way prohibited the City from entering into the Exclusive Negotiating Rights Agreement and undertaking to perform its obligations pursuant to that agreement as the owner of the property that is the subject of that agreement and AMCAL was justified in relying upon that agreement in performing its obligations.

The Report provides no explanation for the requirement to return the transferred property and fails to address the information provided by the City and the Successor Agency regarding the transferred property. All of the property transferred by the RDA to the City in March of 2011 was property located at the former Fort Ord. The property was conveyed by the U.S. Army to the Fort Ord Reuse Authority pursuant to either economic development conveyances or public benefit conveyances in accordance with the "Pryor Amendment". The Fort Ord Reuse Authority ("FORA") was established by the State of California pursuant to Government Code Section 67650 et seq. to facilitate the transfer and reuse of the real and other property located at the former Fort Ord. The FORA authorizing statutes find that the planning, financing and management of the reuse of Fort Ord is a matter of statewide importance and that the powers of FORA prevail over the powers of any local entity.

The Fort Ord Reuse Authority Act sets forth requirements for the disposition of property located at the former Fort Ord at Section 67678. Pursuant to these provisions, FORA is authorized to sell, lease or dispose of all property located at the former Fort Ord. Disposition of the property must be in accordance with the provisions of the Community Redevelopment Law. Section 67678 also requires that all proceeds of sale or lease of property at the former Fort Ord be split equally between FORA and the jurisdiction in which the property is located.

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FORA and the City of Marina entered into an Implementation Agreement dated May 1, 2001 whereby FORA agreed to convey the former Fort Ord property located within Marina's jurisdiction to the City in return for Marina ensuring that the property was disposed of in accordance with the Army's requirements pursuant to the Economic Development Conveyances or Public Benefit Conveyances and the requirements of the Fort Ord Reuse Authority Act. The Implementation Agreement requires that the City split the sales proceeds received from any property disposition with FORA equally. The terms of the Implementation Agreement run with the Property and are recorded against the property. Essentially, the Implementation Agreement, by contract, imposes on the City the disposition requirements imposed on FORA by statute and requires that the City act as FORA's agent in implementing the statutory obligations. Subsequent to the City entering into the Implementation Agreement, the City assigned its rights and obligations under the Implementation Agreement to the RDA. In March 2011, pursuant to the conveyance agreements between the City and the Agency, that assignment was reversed and the property was returned to the City along with the obligations of the Implementation Agreement.

The FORA Act sets forth a defined method for the long range use and disposition of property located within the former Fort Ord base. The purpose of these provisions was to ensure the orderly disposition of the thousands of acres of former military property and ensure that the long term use of these properties benefitted the entire region by appointing FORA to oversee the disposition of the property. FORA has served as the central entity negotiating the property conveyance with the Army and all disposition, both by contract and statute, must adhere to the requirements imposed by the Army on the conveyances as well as the statutory requirements of the Fort Ord Reuse Authority Act. The jurisdictions with property located within the former Fort Ord have been abiding by these procedures since the adoption of the Fort Ord Reuse Authority Act. The recent adoption of the Redevelopment Dissolution Act does not and cannot replace the provisions of the FORA Act and the federal requirements placed on property disposition by the Army. The former Marina Redevelopment Agency took actions in early 2011 to ensure the continued compliance with the FORA Act, the Implementation Agreement and the federal requirements regarding former military property, all of which have precedence over the Redevelopment Dissolution Statutes. These actions conformed to State law and cannot be overturned by the provisions of the Dissolution Act, a later adopted statute.

It should be noted that none of the property listed in the Controller's Report was acquired with tax increment funds. The Controller's Report cites Health and Safety Code Section 34181(a), prior to the amendments to the Section adopted by AB 1484. That section requires that the Oversight Board direct the Successor Agency to dispose of all property funded with tax increment. AB 1484 removed the language limiting property dispositions to properties funded with tax increment, but the language of the statute prior to AB 1484 is important to note. The purpose of the Dissolution Act is to dissolve all redevelopment agencies and distribute to the taxing entities the property taxes that previously were tax increment. AB x1 26 at Section 1 provides that the intent of the Legislature in enacting AB x1 26 is to allocate property tax revenues that previously were considered tax increment to the taxing entities. The property located at the former Fort Ord was not acquired with tax increment and to require the disposition of this property in accordance with the provisions of the Dissolution Act that could result in the

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sales proceeds being distributed to the taxing entities would not only violate the Fort Ord Reuse Authority Act but would also result in windfall distributions to the taxing entities of funds that were never tax increment and were never intended to be tax increment funds.

Reversal of the property transfers would also result in a violation of the State Constitution. Under Section 25.5(a)(3) of Article XIII of the California Constitution, the Legislature is prohibited from enacting any statute to change for any fiscal year the pro rata shares in which ad valorem property tax revenues are allocated among local agencies in a county other than pursuant to a bill passed in each house of the Legislature by roll call vote entered in the journal, two-thirds of the membership concurring. An unwinding of the March 2011 conveyance would result in a violation of Section 25.5 (a)(3) of Article XIII of the California Constitution because it would result in an illegal windfall to other taxing agencies to the detriment of the City.

The Fort Ord Reuse Authority Act provides for the equal division of sales and lease proceeds from the former Fort Ord property in recognition of the costs incurred by the jurisdictions responsible for Fort Ord property related to the development and servicing the former military base. The Implementation Agreement and its subsequent assignment to the RDA recognized the increased general fund costs incurred by the City by requiring that the RDA transfer all land sales proceeds to the City where to date the proceeds have been deposited in the City's general fund to fund core government services. A return of the properties to the Successor Agency could result in a reallocation of substantial amounts in property tax revenues from the City to other taxing entities by arbitrarily invalidating the Implementation Agreement resulting in an illegal redistribution of ad valorem property taxes because AB x1 26 was not passed by roll call vote entered in the journal with at least two-thirds of the members concurring.

The report also finds that a loan repayment of \$51,160 made by the RDA to the City on June 9, 2011 pursuant to the 2003 North and West University Village Outreach and the 2nd Avenue Telecommunications conduit loan agreement was not allowed based on Health and Safety Code Section 34171(d)(2). Health and Safety Code Section 34171(d)(2) is located in Part 1.85 of AB x1 26. Pursuant to Section 34170 the provisions of Part 1.85 limiting repayment of loans between an RDA and a City did not become operative until February 1, 2012 (as the dates of Part 1.85 were reformed by the *Supreme Court in CRA vs. Matosantos.*) Prior to Part 1.85 becoming operative Part 1.8 applied to the former RDA activities. The definition of enforceable obligation applicable from the date of adoption of ABx1 26 and the operative date of Part 1.85, located at Section 34167(d)(1) did not contain any prohibition on the repayment of loans between a redevelopment agency and its sponsoring community. Moreover, it should be pointed out that the repayment made in this instance was made prior to the effective date of AB x1 26 and pursuant to a valid loan agreement in accordance with the Community Redevelopment Law as it existed at that time.

34167(d)(2)

2. Finding 2- Unallowable asset transfer to the City of Marina Housing Successor

The Controller's Report finds that the RDA transferred capital assets of \$900,000 to the Housing Successor Agency. The assets consist of property acquired for the former RDA with Low and Moderate Income Housing Funds for purposes of developing affordable housing. The City of Marina, pursuant to Resolution No. 2012-01, adopted on January 10, 2012, elected to retain the

housing assets and functions of the former RDA pursuant to Health and Safety Code Section 34176 (a)(1). In accordance with that section, the housing assets were transferred to the City, including the property subject to the Controller's report. The Controller's Report provides that the property was to initially be transferred to the Successor Agency and pursuant to Section 34181 (c) transferred from the Successor Agency to the City at the direction of the Oversight Board. Although Health and Safety Code Section 34176 appears to be self executing with regards to the transfer of housing assets, the Oversight Board for the Successor Agency, pursuant to Resolution No. 2013-02 (OB), adopted on January 14, 2013, did direct the Successor Agency to transfer all of the housing assets, including the properties subject to the Controller's Report to the City as the Housing Successor. That resolution has been sent to the Department of Finance and will become effective five days after receipt of the resolution by the DOF unless the DOF requests review of the Oversight Board action.

CONCLUSION

For these reasons, we respectfully request that the Office of the State Controller revise its findings expressed in the Draft Report for the wind down of the former Marina Redevelopment Agency.

Regards,



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Interim City Manager
City of Marina

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