

WHITTIER REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

February 2014



JOHN CHIANG
California State Controller

February 21, 2014

Rob Hill, City Controller
City of Whittier/Successor Agency
13230 Penn Street
Whittier, CA 90602

Dear Mr. Hill:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Whittier Redevelopment Agency (RDA) to the City of Whittier (City) 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 the asset 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 or any other public agencies have been reversed.

Our review found that the RDA transferred \$63,636,073 in assets after January 1, 2011, including unallowable transfers totaling \$1,495,599 to the City, or 2.3% of transferred assets.

However, after the meet and confer process with the Department of Finance regarding the unallowable cash transfers mentioned above, the City remitted \$1,523,513 to the County-Auditor Controller for distribution, and received a Finding of Completion from the Department of Finance on May 24, 2013. Therefore, no further action is necessary.

If you have any questions, please contact Elizabeth Gonzalez, Bureau Chief, Local Government Compliance Bureau, by phone at (916) 324-0622.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/kw

cc: Monica Lo, Assistant City Controller
City of Whittier
Jeffrey W. Collier, City Manager
City of Whittier
Wendy Watanabe, Auditor-Controller
Los Angeles County
Bob Henderson, Chair
Oversight Board
David Botelho, Program Budget Manager
California Department of Finance
Richard J. Chivaro, Chief Legal Counsel
State Controller's Office
Elizabeth Gonzalez, Bureau Chief
Division of Audits, State Controller's Office
Scott Freesmeier, Audit Manager
Division of Audits, State Controller's Office
Kandy Liu, Auditor-in-Charge
Division of Audits, State Controller's Office

Contents

Review Report

| | |
|---|---|
| Summary | 1 |
| Background | 1 |
| Objective, Scope, and Methodology | 2 |
| Conclusion | 2 |
| Views of Responsible Officials | 2 |
| Restricted Use | 3 |
| Findings and Orders of the Controller | 4 |
| Schedule 1—RDA Asset Transfers to the City of Whittier | 8 |
| Attachment—Whittier Redevelopment Successor Agency’s Response to Draft Review Report | |

Asset Transfer Review Report

Summary

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

Our review found that the RDA transferred \$63,636,073 in assets after January 1, 2011, including unallowable transfers totaling \$1,495,599 to the City of Whittier (City), or 2.3% of transferred assets.

However, after the meet and confer process with the Department of Finance regarding the unallowable cash transfers mentioned above, the City remitted \$1,523,513 to the County-Auditor Controller for distribution, and received a Finding of Completion from the Department of Finance on May 24, 2013. Therefore, no further action is necessary.

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 on which the RDA ceases to operate, or January 31, 2012, whichever is earlier.

The SCO has identified asset transfers that occurred after January 1, 2011, between the RDA, the City, 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.

Objective, 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 Whittier City Council, the RDA, and the Successor 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 Whittier Redevelopment Agency transferred \$63,636,073 in assets after January 1, 2011, including unallowable transfers totaling \$1,495,599 to the City of Whittier, or 2.3% of transferred assets.

However, after the meet and confer process with the Department of Finance regarding the unallowable cash transfers mentioned above, the City remitted \$1,523,513 to the County-Auditor Controller for distribution, and received a Finding of Completion from the Department of Finance on May 24, 2013. Therefore, no further action is necessary.

Details of our findings are in the Findings and Orders of the Controller section of this report.

Views of Responsible Officials

We issued a draft review report on April 22, 2013. Jeffrey W. Collier, City Manager, responded by letter dated May 13, 2013, disagreeing with the review results. The Whittier Redevelopment Successor Agency'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, the Successor Agency, the 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

February 21, 2014

Findings and Orders of the Controller

FINDING 1— Unallowable transfer to the City of Whittier

The Whittier Redevelopment Agency (RDA) transferred \$5,300,000 in bond proceeds to the City of Whittier's (City) General Fund for the renovation and expansion of the Whittwood Branch Library. The transfer occurred during the period of January 1, 2011, through January 31, 2012, and these assets were not contractually committed to a third party prior to June 28, 2011.

The City entered into a contract in May 2011 for the renovation and expansion of the Whittwood Branch Library. It was not until June 2011 that the City and the RDA, through the same common council, approved the use of RDA bond proceeds to reimburse the City for the renovation and expansion of the Whittwood Branch Library. The RDA bond documents did not list the Whittwood Branch Library as a specific use of the bond proceeds. On November 22, 2011, the RDA transferred \$5,300,000 in bond proceeds via check number 9791 to the City.

In the absence of any RDA bond documents listing the library as a specific use of the bond proceeds, and given that the City approved the construction contracts months before the City and the RDA, through the same common council, approved the reimbursement agreement, the payments were unallowable transfers to the City.

Pursuant to Health and Safety (H&S) Code section 34167.5, any asset transfers by the RDA to a city, county, city and county, or any other public agency after January 1, 2011, must be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177.

Order of the Controller

Based on H&S Code section 34167.5, the City is ordered to reverse the transfer of the above assets in the amount of \$5,300,000 and turn them over to the Successor Agency. The Successor Agency is directed to properly dispose of the assets in accordance with H&S Code section 34177.

City's Response

The project was designed pursuant to professional services agreements entered into during May 2011 to provide architectural and construction management services for the Project. Those contracts constitute enforceable obligations predating the enactment of AB x1 26 on June 28, 2011. On June 14, 2011, the City of Whittier and the Whittier Redevelopment Agency adopted resolutions pursuant to Health and Safety Code Section 33445 thereby making required findings for and directing the use of redevelopment financing to pay for the Project. Please note that all of the funds for the Project have been utilized to pay for City enforceable obligations owed to architects, construction managers and contractors in order to build a brick and mortar project. This process never was intended to constitute an asset transfer referred

to in Health and Safety Code Section 34167.5. Some of those payments were made subsequent to January 30, 2012.

(Please refer to Attachment for Whittier Redevelopment Successor Agency's full response.)

SCO's Comment

After further review and analysis of the specific project expenditure detail provided by the City, it was verified that the total project cost was \$5.9 million and payments were paid directly to related third parties for the completion of the project by the City. With the previous RDA/City Council resolutions dated on June 14, 2011, authorizing the use of RDA funds for the project and the verification of payments made, the SCO agrees that the assets were committed to a third party prior to June 28, 2011; therefore, this finding is rescinded and no further action is required.

**FINDING 2—
Unallowable loan
repayments to the
City of Whittier**

The Whittier Redevelopment Agency (RDA) made loan payments to the City of Whittier (City) totaling \$1,495,599. The City provided loan agreements between the City and the RDA; however, there was no repayment schedule or other mandatory loan terms. On June 16, 2011, the Whittier Redevelopment Agency made loan payments via check number 9691 to the City of Whittier, as shown in the following journal entry:

| Fund# | Fund Name | Date | Reference | Vendor | Description | Amount |
|---------------|---------------------|-----------|-------------|------------------|-------------------------------|--------------------|
| 953 | EQ Recovery | 6/16/2011 | check# 9691 | City of Whittier | Quad Sales Tax Loan Repayment | \$345,599 |
| 963 | Greenleaf/Uptown | ↓ | ↓ | ↓ | City Loan Principle Repayment | \$200,000 |
| 973 | Whittier Blvd | | | | City Loan Principle Repayment | \$300,000 |
| 993 | Commercial Corridor | | | | City Loan Principle Repayment | \$650,000 |
| Total: | | | | | | \$1,495,599 |

In the absence of any specific repayment schedules or other loan terms, the payments were unallowable transfers to the City.

Pursuant to Health and Safety (H&S) Code section 34167.5, any asset transfers by the RDA to a city, county, city and county, or any other public agency after January 1, 2011, must be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177.

Order of the Controller

Based on H&S Code section 34167.5, the City of Whittier is ordered to reverse the transfer of the above assets in the amount of \$1,495,599 and return them to the Successor Agency. The Successor Agency is directed to properly dispose of the assets in accordance with H&S Code section 34177.

City's Response

As you correctly state, the Whittier Redevelopment Agency made \$1,495,599 in loan payments to the City of Whittier on June 16, 2011 by check number 9691. The payments were itemized as follows: \$345,599 from the Whittier Earthquake Recovery Redevelopment Project Area, \$200,000 from the Greenleaf Avenue/Uptown Whittier Redevelopment Project Area, and \$650,000 from the Whittier Commercial Corridor Redevelopment Project Area.

Each of the above mentioned loans were entered into under certain loan agreements between the City of Whittier and the Whittier Redevelopment Agency over multiple years as shown in the attached schedule. Generally, a portion of the loans (\$880,000) were general operating loans intended to assist in facilitating projects and programs under existing cash flow constraints. Another portion of the total loan repayment (\$615,599) was dedicated directly to payments related to the Quad and Marketplace Disposition and Development Agreements (DDAs). It is important to note that each of the loan repayments took place on June 16, 2011 prior to the effectiveness of AB x1 26 or AB 1484. Therefore, at the time the Agency made these repayments the law clearly allowed the payments.

As mentioned above, a \$615,599 portion of the \$1,495,599 in repayments were made for debts specifically related to third party enforceable obligations (i.e. Recognized Obligation Payment Schedule (ROPS) III items 20 & 45), that even the State Department of Finance, has found valid. Such loans validly made under applicable Cooperation Agreements (Agreement A90-439 approved in 1990 and Agreement A91-251 approved in 1991) should be considered an even higher priority than more routine operating loans between the City and the Agency

As previously provided to your office, the loan repayment of \$345,599 was repaid on the Quad sales tax loan and \$270,000 was a loan repayment related to the Urbatec (Marketplace) construction loan. It is also important to note, that the Marketplace project was previously litigated and is the subject of a Stipulated Judgment by the Court that serves to further enforce the provisions of the executed DDA and direct the actions of the parties.

(Please refer to Attachment for Whittier Redevelopment Successor Agency's full response.)

SCO's Comment

Pursuant to Health and Safety (H&S) Code section 34167.5, any asset transfers by the RDA to a city, county, city and county, or any other public agency after January 1, 2011, must be turned over the Successor Agency for disposition in accordance with H&S Code section 34177.

However, after the meet and confer process with the Department of Finance regarding the unallowable cash transfers mentioned above, the City remitted \$1,523,513 to the County-Auditor Controller for distribution, and received a Finding of Completion from the Department of Finance on May 24, 2013. Therefore, no further action is necessary.

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

| | |
|---|---------------------------------|
| Unallowable transfer of bond proceeds | \$ 5,300,000 |
| SCO adjustment (see Finding 1) ¹ | (5,300,000) |
| Unallowable loan payments | <u>1,495,599</u> |
| Less amount returned to Los Angeles County Auditor-Controller | <u>(1,495,599) ¹</u> |
| Total subject to H&S Code section 34167.5 | <u>\$ —</u> |

¹ See the Findings and Orders of the Controller section.

**Attachment—
Whittier Redevelopment Successor Agency's
Response to Draft Review Report**



**13230 PENN STREET
WHITTIER, CALIFORNIA 90602
(562) 567-9850**

**WHITTIER
REDEVELOPMENT
SUCCESSOR
AGENCY**

BOB HENDERSON
Chair
CATHY WARNER
Vice Chair
FERNANDO DUTRA
Member
JOE VINITIARI
Member
OWEN NEWCOMER
Member
JEFFREY W. COLLIER
Executive Director

May 13, 2013

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

Dear Mr. Mar:

Re: Response of City of Whittier/Successor Agency to Findings 1 and 2 of
Draft Whittier Redevelopment Agency Asset Transfer Review dated April
2013

In accordance with the request in the above-referenced draft report for a written response within 10 days (a timeframe evidently constructed by your department since no formal procedures for the subject function have been provided by AB x1 26 or AB 1484), we hereby provide to you that response. We do so without limiting the Successor Agency's grounds for taking issue with your draft, final report, or any position stated therein should there be remaining disputes between your department and the Successor Agency ("Agency" hereinafter) concerning this issue, including potential litigation. The findings deal with a physical project undertaken by the City of Whittier, validly financed through the use of bond proceeds of the Agency to expand a public library branch known as the Whittwood Branch Library ("Project" hereinafter), and the repayment of loans ("Loans" hereinafter), some of which are related to approved enforceable obligations.

Following are the timelines pertinent to this discussion with references to points contained in the draft report related to the above referenced Project:

A. The project was designed pursuant to professional services agreements entered into during May 2011 to provide architectural and construction management services for the Project. Those contracts constitute enforceable obligations predating the enactment of AB x1 26 on June 28, 2011. When those obligations were entered into, it was known that the Project would

Mr. Mar
Page 2 of 4
May 13, 2013

have at least three discernible phases, a design phase, a demolition phase and a construction phase. The professional services agreements require services to be rendered and payments to be made for those services throughout all three phases. Accordingly, the existing enforceable obligations applied to all three phases of the Project.

B. On June 14, 2011, the City of Whittier and the Whittier Redevelopment Agency adopted resolutions pursuant to Health and Safety Code Section 33445 thereby making required findings for and directing the use of redevelopment financing to pay for the Project. The draft report states that "...It was not until June 2011 that the City and RDA..." so provided for redevelopment financing of the Project, as if some legal invalidity or defect had been turned up. However, that simply is not the case since the actions necessary to support redevelopment financing occurred two weeks before AB x1 26 was adopted.

C. The draft report also states that "{l}n addition, the RDA bond documents do not list the Whitewood (sic) Branch Library as a specific use of the bond proceeds...." As you well know, there is no requirement in public financing law that each individual public improvement project must be listed in bond documents to be validly financed with bond proceeds. In fact, it would be unusual for bond documents to do so.

D. The Project then proceeded to final implementation, including demolition and construction through the use of the bond proceeds as approved by the State of California Department of Finance in reviewing Agency submitted ROPS requests for the following periods and in the following amounts. Documentation of DOF approval has been provided to you.

Please note that all of the funds for the Project have been utilized to pay for City enforceable obligations owed to architects, construction managers and contractors in order to build a brick and mortar project. This process never was intended to constitute an asset transfer referred to in Health and Safety Code Section 34167.5. Some of those payments were made subsequent to January 30, 2012.

And, at the request of your staff, Agency's special counsel emailed legal input on the Project to Ms. Liu of your department. Among other points made, the email stated the following:

a. Health and Safety Code Section 34176.5, the Section containing your charter to review asset transfers, specifically excludes from your purview transfers to any public agency which utilizes funds to pay enforceable obligations. And that is exactly the circumstance presented here in which the bond proceeds were used to pay contractors who designed, supervised and built the Project.

Mr. Mar
Page 3 of 4
May 13, 2013

b. Health and Safety Code Subsection 34177.3 (c) states that the State of California Department of Finance is empowered to make decisions dealing with items on every ROPS submitted and it is only when a decision is made by an agency to make a payment without Department of Finance approval on a submitted ROPS that your department has an assigned audit function. With all due respect, we do not believe your audit jurisdiction includes reviewing DOF decisions which resulted in payments properly made by the Agency.

c. Health and Safety Code Section 34178.8 also restricts your department's audit function to the audit of "transfers" not approved on an ROPS approved by the Department of Finance. This applies to all transfers made subsequent to January 31, 2012, including payments made by the Agency to contractors on the Project noted above.

Finally, the following is information pertinent to this discussion with references to points contained in the draft report related to the above referenced Loans:

As you correctly state, the Whittier Redevelopment Agency made \$1,495,599 in loan payments to the City of Whittier on June 16, 2011 by check number 9691. The payments were itemized as follows: \$345,599 from the Whittier Earthquake Recovery Redevelopment Project Area, \$200,000 from the Greenleaf Avenue/Uptown Whittier Redevelopment Project Area, \$300,000 from the Whittier Boulevard Redevelopment Project Area, and \$650,000 from the Whittier Commercial Corridor Redevelopment Project Area.

Each of the above mentioned loans was entered into under certain loan agreements between the City of Whittier and the Whittier Redevelopment Agency over multiple years as shown in the attached schedule. Generally, a portion of the loans (\$880,000) were general operating loans intended to assist in facilitating projects and programs under existing cash flow constraints. Another portion of the total loan repayment (\$615,599) was dedicated directly to payments related to the Quad and Marketplace Disposition and Development Agreements (DDAs). It is important to note that each of the loan repayments took place on June 16, 2011 prior to the effectiveness of the AB x1 26 or AB 1484. Therefore, at the time the Agency made these repayments the law clearly allowed the payments.

As mentioned above, a \$615,599 portion of the \$1,495,599 in repayments were made for debts specifically related to third party enforceable obligations (i.e. Recognized Obligation Payment Schedule (ROPS) III items 20 & 45), that even the State Department of Finance, has found valid. Such loans validly made under applicable Cooperation Agreements (Agreement A90-439 approved in 1990 and Agreement A91-251 approved in 1991) should be considered an even higher priority than more routine operating loans between the City and the Agency.

Mr. Mar
Page 4 of 4
May 13, 2013

The following is a brief explanation of the Quad and Marketplace Disposition and Development Agreements. The property owners of those two shopping centers remit the Community Facility District (CFD) bond payments with their property tax bills on a semi-annual basis. Under the DDAs, the Whittier Redevelopment Agency semi-annually reimburses a certain portion of the property owner's CFD payment based on fixed calculations of property tax and sales tax. Historically, under the applicable DDAs and related Cooperation Agreements executed between the Whittier redevelopment Agency and City of Whittier, the sales tax portion of the reimbursement was loaned from the City to the Whittier Redevelopment Agency for the reimbursement. Subsequently, the Whittier Redevelopment Agency reimburses the City some or all of the sales tax loan dependent upon the cash flow situation in a particular year. In the case of the Quad, there is a long history of the sales tax loan being repaid the following fiscal year, just as it was repaid under the item in question. In the case of the Marketplace, historically, that redevelopment area had less property tax increment to pay back the sales tax loan and other loans in their entirety on an annual basis, so the Whittier Redevelopment Agency paid only what was available, and the loans accrued.

As previously provided to your office, the loan repayment of \$345,599 was repaid on the Quad sales tax loan and \$270,000 was a loan repayment related to the Urbatec (Marketplace) construction loan. It is also important to note, that the Marketplace project was previously litigated and is the subject of a Stipulated Judgment by the Court that serves to further enforce the provisions of the executed DDA and direct the actions of the parties.

For your convenience and the convenience of any person who reviews your report and this response, a copy of our counsel's email referred to herein is attached.

We hope this response causes you to reach a conclusion on the discussed item different from that stated in the draft report. Please advise if we can provide further information for your use.

Sincerely,



Jeffrey W. Collier
City Manager

From: James L. Markman [JMarkman@rwglaw.com]
Sent: Thursday, April 11, 2013 5:35 PM
To: 'kliu@sco.ca.gov'
Cc: Jeff Collier; Aldo Schindler; Ben Pongetti
Subject: Purported position of the State Controller that the City of Whittier might be required to reimburse Successor Agency bond proceeds for funds expended on the expansion of the Whittwood Branch library

I am informed that you suggested to the City of Whittier staff that legal input on this item would be useful to you. Accordingly, I am providing that input to you and would be pleased to discuss this input with you and your Department's legal counsel at your convenience.

As you know, the project in question resulted in the expenditure of Redevelopment Agency/Successor Agency bond proceeds on a construction project expanding a branch library. The process commenced during 2011 and payments were made during 2012, including payments after Feb. 1, 2012. Even though the contracts for architectural, contract management and contractors were let by the City of Whittier, the Agency/Successor Agency decision to utilize bond proceeds to defray those costs were supported by required findings and resolutions adopted pursuant to the then applicable provisions of the California Health and Safety Code. It was common practice for cities to contract for services with the costs defrayed by Redevelopment bond funding as expressly provided for in the law. Much false emphasis is placed on the identity of the contracting public entity in analyzing these matters. Under then existing law, the validity of redevelopment bond funds paying for public projects clearly was valid. In addition, please note that Health and Safety Code section 34167.5 enacted by AB X1 26 contains language which makes it clear that funding construction projects by transferring money to a city to pay contractors is not a reversible transfer of an asset. Please carefully scrutinize the second sentence of the code section upon which you appear to rely. If this were to be considered a transfer of an Agency asset (bond proceeds) to the City of Whittier, the transfer only is made to the extent that there exists a City of Whittier obligation to pay a third party contractor. The language validates the bond fund transfers made to pay the contractors implementing the library project.

I am sure you realize that there is no definition of "asset transfer" provided in ABX1 26 or in AB 1484. However, there was an avalanche of news and legislative statements making it clear that the Controller's mission was to reverse the many property conveyances and loan payments which simply moved value away from Redevelopment Agencies to Cities in order to evade the redistribution of those existing assets to other public entities. I cannot believe a Court would consider funding payments to contractors to build a library to be one of these attempts at evading the redistribution of assets. Health and Safety Code subsection 34177 (i), as originally enacted by ABX1 26, clearly allowed bond proceeds to be utilized for purposes intended when an enforceable obligation to do so existed. The Department of Finance decided that that was the case in approving those expenditures on Whittier ROPSs. The issue of the validity of the use of bond proceeds and tax increment funds to pay items listed on a ROPS is a function of the Department of Finance, not the Controller's office as most recently made clear in code sections enacted by AB 1484 and discussed below. I believe you have been provided materials showing that the bond proceeds payments for the Whittwood Library expansion were placed on Whittier ROPSs and were approved by the Department of Finance. Those approvals included expenditures made on the project between Jan. 1, 2012 and June 30, 2012. This brings into play two code sections enacted by AB 1484. The first such code section is Health and Safety Code subsection 34177.3 (c). That provision states that the Department of Finance makes decisions on payments requested on ROPS and only when a decision to pay is made without DOF approval through the ROPS process, does the Controller have the authority to audit the payments as a prohibited "asset transfer". The decision of DOF is controlling. In our situation, DOF approved the payments you now purport to subject to audit. With all due respect, we do not believe the Controller has jurisdiction to audit this item.

The second applicable section is Health and Safety Code section 34178.8. This section restricts the Controller's audit function to the audit of "transfers" made which were not approved by DOF on a ROPS. This applies to all transfers which occur subsequent to January 31, 2012. Bond payments for the Whittwood Library Expansion project which were approved on the ROPS covering Jan. through June, 2012, cannot be challenged by the Controller based on the limited jurisdiction provided by section 34178.8.

The core principle involved here is that all payments approved by DOF on ROPS cannot be invalidated by or even audited by the Controller. We hope this information is useful to you and, as stated before, would make ourselves available to discuss this with you and your counsel. Thank you for your anticipated attention.

NOTICE: This communication may contain privileged or other confidential information. If you are not the intended recipient of this communication, or an employee or agent responsible for delivering this communication to the intended recipient, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

**State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874**

<http://www.sco.ca.gov>