

RESOLUTION NO. OB-13-17

RESOLUTION OF THE OVERSIGHT BOARD OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY SUCCESSOR AGENCY DISPUTING THE FINDINGS OF THE COUNTY AUDITOR-CONTROLLER IN ITS REVIEW OF THE RECOGNIZED OBLIGATION PAYMENT SCHEDULE (ROPS) FOR THE PERIOD OF JULY 1, 2013 THROUGH DECEMBER 31, 2013 (ROPS 13-14A AND SECOND ROPS RECONCILIATION)

WHEREAS, the Imperial Beach Redevelopment Agency (“Redevelopment Agency”) was a redevelopment agency in the City of Imperial Beach (“City”), duly created pursuant to the California Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the California Health and Safety Code) (“Redevelopment Law”); and

WHEREAS, the City Council has adopted redevelopment plans for Imperial Beach’s redevelopment project areas, and from time to time, the City Council has amended such redevelopment plans; and

WHEREAS, the Redevelopment Agency was responsible for the administration of redevelopment activities within the City; and

WHEREAS, Assembly Bill No. X1 26 (2011-2012 1st Ex. Sess.) (“AB 26”) was signed by the Governor of California on June 28, 2011, making certain changes to the Redevelopment Law and to the California Health and Safety Code (“Health and Safety Code”), including adding Part 1.8 (commencing with Section 34161) (“Part 1.8”) and Part 1.85 (commencing with Section 34170) (“Part 1.85”) to Division 24 of the Health and Safety Code; and

WHEREAS, pursuant to AB 26, as modified by the California Supreme Court on December 29, 2011 by its decision in *California Redevelopment Association v. Matosantos*, all California redevelopment agencies, including the Redevelopment Agency, were dissolved on February 1, 2012, and successor agencies were designated and vested with the responsibility of paying, performing and enforcing the enforceable obligations of the former redevelopment agencies and expeditiously winding down the business and fiscal affairs of the former redevelopment agencies; and

WHEREAS, the City Council of the City adopted Resolution No. 2012-7136 on January 5, 2012, pursuant to Part 1.85 of AB 26, electing for the City to serve as the successor agency to the Redevelopment Agency upon the dissolution of the Redevelopment Agency under AB 26 (“Successor Agency”); and

WHEREAS, on February 15, 2012, the Board of Directors of the Successor Agency, adopted Resolution No. SA-12-01 naming itself the “Imperial Beach Redevelopment Agency Successor Agency,” the sole name by which it will exercise its powers and fulfill its duties pursuant to Part 1.85 of AB 26, and establishing itself as a separate legal entity with rules and regulations that will apply to the governance and operations of the Successor Agency; and

WHEREAS, as part of the FY 2012-2013 State budget package, on June 27, 2012, the Legislature passed and the Governor signed Assembly Bill No. 1484 (“AB 1484”, Chapter 26, Statutes 2012). Although the primary purpose of AB 1484 was to make technical and substantive amendments to AB 26 based on issues that have arisen in the implementation of AB 26, AB 1484 imposes additional statutory provisions relating to the activities and obligations of successor agencies and to the wind down process of former redevelopment agencies (AB 26 as amended by AB 1484 is hereinafter referred to as the “Dissolution Act”); and

WHEREAS, Health and Safety Code Section 34179 of the Dissolution Act establishes a seven (7) member local entity with respect to each successor agency and such entity is titled the “oversight board.” The oversight board has been established for the Successor Agency (hereinafter referred to as the “Oversight Board”) and all seven (7) members have been appointed to the Oversight Board pursuant to Health and Safety Code Section 34179. The duties and responsibilities of the Oversight Board are primarily set forth in Health and Safety Code Sections 34179 through 34181 of the Dissolution Act; and

WHEREAS, pursuant to Health and Safety Code Section 34177 of AB 26, the Successor Agency (i) prepared its draft Recognized Obligation Payment Schedule (“ROPS”) by March 1, 2012, (ii) adopted the draft ROPS on February 15, 2012 for the period ending June 30, 2012, as modified administratively by the Executive Director, (iii) submitted the draft ROPS to the State of California Controller’s Office and the State of California Department of Finance (“Department of Finance”) by April 15, 2012 for the period of January 1, 2012 through June 30, 2012, (iv) amended the draft ROPS as the first ROPS for submission to the State Controller’s Office and the Department of Finance by April 15, 2012 and revised the ROPS to reflect the time period of January 1, 2012 through June 30, 2012 (“First ROPS”), and (v) adopted the second ROPS covering the period from July 1, 2012 through December 31, 2012 (“Second ROPS”); and

WHEREAS, in accordance with Health and Safety Code Sections 34177(l)(2)(B) and 34180(g) of AB 26, on April 11, 2012, the Oversight Board approved the First ROPS pursuant to Resolution No. OB-12-03 as proposed by the Successor Agency, and on April 11, 2012, the Oversight Board approved the Second ROPS pursuant to Resolution OB-12-04 as proposed by the Successor Agency. By letter dated May 29, 2012, the Department of Finance did not object to any obligations listed on the First ROPS or the Second ROPS or the funding sources for said obligations; and

WHEREAS, pursuant to Health and Safety Code Section 34177 of the Dissolution Act, the Successor Agency adopted the third ROPS covering the period from January 1, 2013 through June 30, 2013 (“Third ROPS”) on August 1, 2012 pursuant to Resolution No. SA-12-13. In accordance with Health and Safety Code Sections 34177(l)(2)(B) and 34180(g), on August 22, 2012, the Oversight Board approved the Third ROPS pursuant to Resolution No. OB-12-09 as proposed by the Successor Agency. By letter dated October 6, 2012, the Department of Finance approved certain obligations and their funding source and rejected other obligations and their funding source as listed on the Third ROPS, including the First ROPS Reconciliation. After a meet and confer meeting among the Department of Finance and the Successor Agency on the rejected obligations, the Department of Finance issued a letter dated December 18, 2012 that superseded the letter dated October 6, 2012, approving most and rejecting some of the disputed obligations listed in the Third ROPS, including the First ROPS Reconciliation; and

WHEREAS, pursuant to Health and Safety Code Section 34177 of the Dissolution Act, the Successor Agency adopted the fourth ROPS covering the period from July 1, 2013 through December 31, 2013 (“ROPS 13-14A”) on February 6, 2013 pursuant to Resolution No. SA-13-20; and

WHEREAS, in accordance with Health and Safety Code Sections 34177(l)(2)(B) and 34180(g) of the Dissolution Act, the ROPS 13-14A was submitted to the Oversight Board for review and approval. In this regard, as required by Health and Safety Code Section 34177(l)(2)(B), the Successor Agency also submitted a copy of the ROPS 13-14A to the County Administrative Officer, the County Auditor-Controller, and the Department of Finance at the same time that the Successor Agency submitted the ROPS 13-14A to the Oversight Board for approval; and

WHEREAS, on February, 13, 2013, by Resolution No. OB-13-15, the Oversight Board reviewed and approved the ROPS 13-14A as proposed by the Successor Agency; and

WHEREAS, pursuant to Health and Safety Code Section 34177(m) of the Dissolution Act, the Successor Agency submitted the ROPS 13-14A for the period of July 1, 2013 through December 31, 2013, after its approval by the Oversight Board, to the Department of Finance and the County Auditor-Controller on February 14, 2013; and

WHEREAS, pursuant to Health and Safety Code Section 34177(l)(2)(C) of the Dissolution Act, a copy of the ROPS 13-14A as approved by the Oversight Board was submitted to the County Auditor-Controller and both the State Controller's Office and the Department of Finance on February 14, 2013 and was posted on the Successor Agency's internet website; and

WHEREAS, pursuant to Health and Safety Code Section 34177(m)(1) of the Dissolution Act, the Successor Agency submitted a copy of the ROPS 13-14A to the Department of Finance electronically on February 14, 2013, the Successor Agency having completed the ROPS 13-14A in the manner provided by the Department of Finance; and

WHEREAS, pursuant to Health and Safety Code Section 34183(a)(2) of the Dissolution Act, the County is required to make a payment of property tax revenues (i.e. former tax increment funds) to the Successor Agency by June 1, 2013 for payments to be made toward recognized obligations listed on the ROPS 13-14A for the period of July 1, 2013 through December 31, 2013; and

WHEREAS, pursuant to Health and Safety Code Section 34177(l)(3) of the Dissolution Act, the ROPS shall be forward looking to the next six (6) months; and

WHEREAS, according to Health and Safety Code Section 34177(l)(1) of the Dissolution Act, for each recognized obligation, the ROPS shall identify one or more of the following sources of payment: (i) Low and Moderate Income Housing Funds, (ii) bond proceeds, (iii) reserve balances, (iv) administrative cost allowance, (v) the Redevelopment Property Tax Trust Fund but only to the extent no other funding source is available or when payment from property tax revenues is required by an enforceable obligation or by the provisions of Part 1.85 of the Dissolution Act, and (vi) other revenue sources, including rents, concessions, asset sale proceeds, interest earnings, and any other revenues derived from the former Redevelopment Agency as approved by the Oversight Board in accordance with Part 1.85 of the Dissolution Act; and

WHEREAS, it is the intent of the Dissolution Act that the ROPS serve as the designated reporting mechanism for disclosing the Successor Agency's bi-annual payment obligations by amount and source and that the County Auditor-Controller will be responsible for ensuring that the Successor Agency receives revenues sufficient to meet the requirements of the ROPS during each bi-annual period; and

WHEREAS, on March 20, 2013, the Successor Agency received a copy of an Excel File and email from the County Auditor-Controller to the Department of Finance regarding its review of the ROPS 13-14A covering the period of July 1, 2013 through December 31, 2013, including the Second ROPS Reconciliation, as approved by the Oversight Board (the "County Letter"); and

WHEREAS, the County Letter noted issues regarding items identified on the ROPS 13-14A and the Second ROPS Reconciliation; and

WHEREAS, in connection with the issues raised by the County Auditor-Controller in the County Letter, Health and Safety Code Section 34182.5 of the Dissolution Act provides that, if the Oversight Board disputes the County Auditor-Controller's findings, the Oversight Board may refer the matter to the Department of Finance for a determination of what will be approved for inclusion in the ROPS 13-14A; and

WHEREAS, all of the prerequisites with respect to the approval of this Resolution have been met.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board of the Imperial Beach Redevelopment Agency Successor Agency, as follows:

- Section 1.** The foregoing recitals are true and correct and are a substantive part of this Resolution.
- Section 2.** The adoption of this Resolution is not intended to and shall not constitute a waiver by the Successor Agency of any constitutional, legal or equitable rights that the Successor Agency may have to challenge, through any administrative or judicial proceedings, the effectiveness and/or legality of all or any portion of AB 26 or AB 1484, any determinations rendered or actions or omissions to act by any public agency or government entity or division in the implementation of AB 26 or AB 1484, and any and all related legal and factual issue, and the Successor Agency expressly reserved any and all rights, privileges, and defenses available under law and equity.
- Section 3.** The Oversight Board hereby disputes the issues noted and the findings made by the County Auditor-Controller in their Excel File and email ("County Letter") to the Department of Finance dated March 20, 2013.
- Section 4.** The Oversight Board hereby refers those matters to the Department of Finance for a determination of what will be approved for inclusion in the ROPS 13-14A, including the Second ROPS Reconciliation.
- Section 5.** The Executive Director, or designee, of the Successor Agency is hereby authorized and directed to take such other actions and execute such other documents as are necessary to effectuate the intent of this Resolution on behalf of the Successor Agency.
- Section 6.** The Oversight Board determines that the activity proposed by this Resolution is not a "project" for purposes of CEQA, as that term is defined by Guidelines section 15378, because such activity is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per section 15378(b)(5) of the Guidelines.
- Section 7.** If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Oversight Board declares that its board would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.
- Section 8.** This Resolution shall take effect upon the date of its adoption.

