

CALIFORNIA INDUSTRIAL DEVELOPMENT FINANCING ADVISORY COMMISSION

Request to Approve the Refunding of \$8,775,000 (tax-exempt) and \$15,000 (taxable) of California Infrastructure and Economic Development Bank Variable Rate Demand Industrial Development Bonds (IDBs) Series 2011A and Series 2011B; New Money Allocation of \$1,225,000; and \$1,985,000 in Taxable IDBs and Transfer Industrial Development Tax-Exempt IDB Allocation

Bay Photo, Inc.
Application No. 16-0002

September 20, 2016

SUMMARY

Borrower/Project Sponsor – Sammie Rae Abitbol, LLC, Bay Photo, Inc. and/or a related entity

User – Bay Photo, Inc. dba Bay Photo Lab and/or related entity

Issuer – California Enterprise Development Authority (CEDA)

Location – City of Scott Valley, Santa Cruz County

Requested IDB Approval – \$10,000,000 TE (\$1,225,000 in new money allocation and \$8,775,000 REF¹)
\$2,000,000 TX²

Requested IDB Allocation – \$1,225,000

Public Benefit Points Awarded – 31 points out of 147 possible

Staff Recommendation – Approval

THE COMPANY

Bay Photo, Inc. (the Company or Bay Photo) was incorporated in California in June 1981, and it is owned 100 percent by its President, Larry Abitol. Sammie Rae Abitbol, LLC (Project Sponsor) is a California Limited Liability Company organized in July 2011, and it is owned and controlled 100 percent by its member, the trustees of the Larry S. Abitol Family Trust.

¹ The Refunding amount includes prior IBank Variable Rate Demand IDBs Series 2011A

² Taxable Portion includes \$15,000 Refinancing prior California Infrastructure and Economic Development (IBank) Variable Rate Demand Industrial Development Bonds (IDBs) Series 2011B and \$1,985,000 New Money.

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The Company is a professional quality photographic printing and finishing laboratory, primarily serving professional photographers that specialize in wedding, portrait, sport, school, and landscape photography. While the Company does provide high quality photo processing services to professional photographers and sophisticated amateur photographers, the Company's other services involve the use of customer photographs to create a variety of products, including albums (design and binding), canvas prints, metal prints, and other products. The Company also manufactures the various products into which the photographs are integrated.

Major customers of the Company include a variety of professional photographers and online photography sites such as SmugMug, Redbubble, Fotomoto, and Blue Canvas.

THE PROJECT

The California Enterprise Development Authority (CEDA) on behalf of Bay Photo, Inc. is seeking approval of Initial and Final Resolution number 16-0002 for \$12,000,000, consisting of \$1,225,000 in new money tax-exempt bonds, \$1,985,000 in new money taxable bonds and \$8,790,000 to refund prior California IBank Series 2011A and B IDBs.

Bond proceeds from the Series 2011A and B bonds were used in order to finance a portion of the cost of the acquisition of approximately 17 acres of land in Scotts Valley, the purchase of three existing, vacant buildings (900, 915, and 920 Disc Drive) totaling approximately 140,000 square feet situated on the land, and related improvements to these structures. Bond proceeds were also used to cover most of the cost of building renovations, which included the demolition of interior walls to accommodate open, flexible production/workspaces, the installation of electrical and ventilation systems to support operations, and the construction of a central core to provide access between adjoining buildings. Remaining bond proceeds were used for the cost of the acquisition and installation of new equipment for the Company's printing and production operations.

The current request also includes approval of Allocation Resolution number 16-02-002 to issue \$1,225,000 in tax-exempt IDBs. Bond proceeds will be utilized to finance the construction of improvements to the existing property in Scotts Valley and the acquisition and installation of new equipment. The building improvements consist of approximately 2,400 square feet of new space on two floors of approximately 1,200 square feet each at the 900 Disc Drive location. The new equipment includes a Xerox iFen, Noritsu printers, Duplo Cutter and Standard Binder.

Anticipated Project and Issuance Costs

	<u>To be paid from bond proceeds</u>	<u>To be paid from all other sources</u>
Acquisition and Installation of New Equipment	\$1,225,000	\$1,835,000
Bond Issuance Expenses	0	150,000
Refinance of Series 2011 Bonds	<u>8,775,000</u>	<u>15,000</u>
Totals	<u>\$10,000,000</u>	<u>\$2,000,000</u>

Timeline

The Company anticipates completing the project within 12 months. This includes the production and warehouse expansion, as well as the acquisition and installation of new equipment.

Financing Details

The tax-exempt IDB will be sold on a private placement basis in accordance with CIDFAC's private placement policy³ to Wells Fargo Bank, N.A., which is a qualified institutional buyer (QIB) as defined by the U.S. Securities and Exchange Commission (SEC) Rule 144A. Wells Fargo Bank, N.A. will purchase the bond for its own investment portfolio. The bonds will be secured by the equipment as well as the existing real estate.

Financing Team

- Issuer: CEDA
- Private Placement Provider: Wells Fargo Bank, N.A.
- Bond Counsel: Kutak Rock, LLP

PROJECT EVALUATION

PUBLIC BENEFITS: The Project received 31 points out of a possible 142 pursuant to the California Debt Limit Allocation Committee (CDLAC) scoring system for IDB Projects. The award of points is detailed below:

A. Community Economic Need (0 of 20 points).

1. Unemployment Rate of the Project Area (0 of 10 points). In accordance with CDLAC Regulations, points are awarded in this category if the 2015 unemployment rate of the county sub-area in which the Project is located is at least 125 percent of the 2015 statewide rate. The unemployment rate of this Project area is 109.68 percent of the statewide rate. Therefore, the Project does not receive points in this subcategory.

2. Poverty Rate of Project Area (0 of 5 points). In accordance with CDLAC Regulations, the most recent data from the U.S. Bureau of the Census, which in

³ The bonds will be issued in accordance with CIDFAC's private placement policy, which has the following requirements:

- The bond purchaser must be a sophisticated investor as defined under SEC Rule 144A.
- The sophisticated investor must sign a sophisticated investor letter, which will outline the requirements and restrictions related to sophisticated investors.
- The security for the private placement debt must be collateral provided by the Borrower.
- The bond will be issued in a minimum denomination of \$250,000.

this case is Census 2010 data, is used to determine if the Project qualifies for points in this category. Points are awarded in this category if the poverty rate is at least 110 percent or more of the statewide rate. The average poverty rate for the Project area and the census tracts within 1 mile radius of the project is 7 percent, which is 42.68 percent of the Census 2010 statewide rate of 16.4 percent. Therefore, the Project does not receive points in this subcategory.

3. Median Family Income (0 of 5 points). In accordance with CDLAC Regulations, the most recent data from the U.S. Bureau of the Census, which in this case is from Census 2010, is used to determine if the Project qualifies for points in this category. Points are awarded if the Project is located in an area with a median family income of less than 80 percent of the statewide average. The Project is located in the City of Scotts Valley where the average median family income is \$115,880. The median family income for the State of California is \$70,187. So, the median family income for the Project area is 165.1 percent of the statewide average. Therefore, the Project does not receive points in this subcategory.

B. Job Creation (10 of 35 points). Points are awarded in this category based on the borrower and/or user's representation that it will use its best efforts to increase the number of direct, full-time employees at the Project site within two years of Project completion. The Company represents that it currently employs 277 direct, full-time employees at the Project site. The Company represents that it anticipates hiring an additional 54 direct, full-time employees, which equates to a 19.49 percent increase, within two years of completion of the Project. Therefore, the Project received 10 points in this subcategory.

C. Job Retention (0 of 10 points). Points are awarded in this category based on the Borrower's or User's representation that it has considered moving operations out of state. There was no such representation in the application materials received, and therefore the Project received no points in this category.

D. Average Hourly Wage (3 of 10 points). In accordance with CDLAC Regulations, the most recent data from the Bureau of Labor Statistics, which in this case is May 2015, is used to determine if the Project qualifies for points in this category. Points are awarded if the Company's average hourly wage is at least 105 percent of the nearest Metropolitan Statistical Area (MSA) average hourly wage. The Company's average hourly wage is \$20.28, while the MSA for Santa Cruz-Watsonville area had an average 2015 manufacturing wage of \$17.80. Therefore, the Company's average hourly wage is 113.92 percent of the average manufacturing wage for the Santa Cruz-Watsonville area. Therefore, the Project received 3 points in this subcategory.

E. Workforce and Economic Development (0 of 15 points).

1. Welfare-to-Work Plan (0 of 5 points). The Company did not provide any information indicating participation in a welfare-to-work program.

2. Workforce Training (0 of 5 points). The Company did not provide information indicating participation in a workforce training program.

3. Exports Outside California (0 of 5 points). The Company did not provide information indicating that they export products outside of California.

F. Health Care Benefits (15 of 15 points). The Company provided documentation that it contributes to medical, dental and vision insurance for 140 of its 277 employees. This contribution translates into an average of \$405 per month toward the health care benefits for each covered employee. The uncovered employees opted out of the plan for personal reasons. The Company represents that it will offer the same health benefits to new employees. Therefore, the Project received 15 points in this subcategory.

G. Payment of Retirement Benefits (0 of 5 points). The Company did not provide information indicating the contribution to payment of retirement benefits for its employees.

H. Environmental Stewardship (0 of 27 points).

1. Land Use (0 of 3 points). This Project does not involve the reuse of vacant or abandoned land or buildings.

2. Public Transit Corridor (0 of 4 points). The Company did not provide verification that the Project site is located within a public transit corridor.

3. Energy Efficiency and Renewable Energy (0 of 15 points). The Company did not provide information regarding the Project's energy efficiency.

4. Manufacturer of Certified Environmentally Preferable Products (0 of 5 points). The Company did not provide information indicating that the Project produces or will produce environmentally preferable products.

I. Leveraging (3 of 5 points). The total Project cost is \$12,000,000. The Company will borrow \$1,225,000 of the Project costs in the form of tax-exempt IDB financing, which will cover approximately 83.33% of the Project costs. The remaining 16.67% of the Project costs will be covered by the Borrower's equity or other funds. In accordance with CDLAC Regulations, points are awarded in this category if the taxable debt of the project is 10% or greater of the bond amount. Therefore, the Project receives 3 points in this subcategory.

RELOCATION OF COMPANY OPERATIONS

The Company will remain at its current location in the city of Scotts Valley.

QUALIFICATION OF BOND ISSUANCE

Based on the proposed financial structure, and the application and other materials submitted to CIDFAC for this Project, staff believes the bonds (a) will be adequately secured; (b) will be fair, just and equitable to a purchaser of the bonds; and (c) will not defraud the bond purchaser. Final determination of qualification of the bonds will be subject to staff’s review of final bond documents prior to the issuance of the bonds.

STATUS OF PERMITS/OTHER REQUIRED APPROVALS

- The California Enterprise Development Authority approved the Inducement Resolution in an aggregate amount not to exceed \$12,000,000 in tax-exempt IDBs for the Project on August 4, 2016. CEDA is scheduled to adopt a final resolution for the project on September 22, 2016.
- The TEFRA notice was published at least 14 days prior to August 17, 2016, specifically on August 3, 2016, in the Santa Cruz Sentinel, a newspaper of general circulation within Santa Cruz County. A TEFRA hearing was held by the City Council of the City of Scotts Valley on August 17, 2016.
- The Project involves the acquisition of equipment and construction of improvements to the existing building. The current building is zoned for manufacturing uses. The Company represents its operations will require standard building permits but will not require additional land use or zoning approvals.

LEGAL QUESTIONNAIRE

Staff reviewed the Borrower’s/User’s responses to the questions contained in the Legal Status portion of the application. The responses did not disclose any information that raises questions concerning the financial viability or legal integrity of the company.

PRIOR ACTIONS AND FINANCINGS

Description	Issuer	Date of Bond Issue	Original Amount	Outstanding Amount
Borrower: Sammie Rae Abitbol, LLC, Bay Photo, Inc. and/or a related entity	IBank	9/01/2011	\$8,775,000 TE \$1,050,000 TX	\$8,775,000 TE \$15,000 TX

CIDFAC FEES

In accordance with CIDFAC regulations, the Company has paid CIDFAC an application fee of \$1,250⁴ and will pay a closing fee of up to \$25,000.

⁴ California Code of Regulations Title 10, Chapter 8, Article 3, §6070

RECOMMENDATION

Staff recommends approval of Initial and Final Resolution No. 16-0002 for \$10,000,000 in tax-exempt bonds (\$8,775,000 Refinancing and \$1,225,000 New Allocation) and \$2,000,000 in taxable bonds (\$15,000 Refinancing and \$1,985,000 New Money) and Allocation Resolution No. 16-02-002 for \$1,225,000 in tax-exempt IDB allocation for the California Enterprise Development Authority for the Bay Photo, Inc. Project.

Staff's recommendation is subject to staff analysis and approval of final bond documents and receipt of bond counsel's opinion as set forth in Initial and Final Resolution No.16-0002.

Staff report by: Andrea Gonzalez

**INITIAL AND FINAL RESOLUTION OF THE
CALIFORNIA INDUSTRIAL DEVELOPMENT FINANCING
ADVISORY COMMISSION (CIDFAC)
INDUSTRIAL DEVELOPMENT BONDS
IR/FR #: 16-0002**

WHEREAS, the California Enterprise Development Authority (the “Applicant”) has transmitted the application of Sammie Rae Abitbol, LLC, Bay Photo, Inc. and/or a related entity (the “Project Sponsor”) for the issuance of \$10,000,000 in tax-exempt bonds, which includes refunding up to \$8,775,000 and \$1,225,000 in new money allocation; and \$2,000,000 in taxable bonds under the provisions of the California Industrial Development Financing Act, and has transmitted said application to the California Industrial Development Financing Advisory Commission (the “Commission”) and the information necessary to permit review of said application by the Commission, and has informed the Commission that it has adopted a resolution declaring its intention to issue such bonds and that the City of Scotts Valley held a public hearing regarding the issuance of the bonds and has approved the issuance of the bonds by the Applicant; and

WHEREAS, the Commission has reviewed the application and the materials submitted with the application.

NOW, THEREFORE, the Commission resolves as follows;

Section 1. The Commission, based on its review of the application and the information submitted therewith, does determine that:

(a) the public benefits described in the application likely will substantially exceed any public detriment from the issuance of the bonds in the total principal amount of \$12,000,000; and

Section 2. The Commission conditionally finds that the proposed issuance of the bonds qualifies under the provisions of Article 5 of Title 10 of the Government Code, and further finds that:

(a) the bonds will be adequately secured and the funds available to the Applicant will be sufficient to pay the principal of and interest on the bonds to be issued; and

(b) based on its review of the preliminary material submitted to it and as provided for under Government Code Section 91571, the proposed issuance will be fair, just and equitable to a purchaser of the bonds, and that the bonds proposed to be issued and the methods to be used by the Authority in issuing them will not be such as will work a fraud upon the purchaser thereof.

Section 3. The Commission determines that it is appropriate to the proposed transaction that the qualification of the proposed issuance be subject to the following conditions:

(a) the Bond Counsel Opinion, when ready for execution, shall be submitted to Commission staff;

(b) the final legal documents, when ready for execution, shall be submitted to Commission staff for its review. Submitted documents shall include:

(i) Loan Agreement,

(ii) Tax Certificate and Agreement, and;

(iii) Other documents which, in the opinion of Commission staff, are necessary to the review of the transaction;

(c) the Commission staff shall determine that the final documents associated with the transaction have been developed in form and content substantially similar to the representations in the application on which are based the findings under Section 2. above;

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(d) the bonds, when issued, are within the maximum limitation of bonds authorized in the California Industrial Development Financing Act (Section 91573(a) of California Government Code);

(e) the Commission shall receive all applicable fees prior to the issuance of the bonds, unless the bond documents indicate that such fees are to be paid from the proceeds of the bonds; and

(f) the Project Sponsor agrees to comply with Section 91533(l) of the Government Code relating to the payment of prevailing wages.

Section 4. This Resolution shall cease to be effective if the above-described bonds have not been issued within six months after the date of adoption of this Resolution.

Section 5. In compliance with the provision of the California Industrial Development Financing Act (Section 91754 California Government Code), the qualification of the proposed bond issue by this resolution is permissive only, and does not constitute a recommendation or endorsement of the bonds so qualified by the Commission.

**THE CALIFORNIA INDUSTRIAL DEVELOPMENT
FINANCING ADVISORY COMMISSION
RESOLUTION NO. 16-02-002
RESOLUTION TRANSFERRING A PORTION OF THE 2016 STATE CEILING
FOR QUALIFIED PRIVATE ACTIVITY BONDS FOR A
SMALL-ISSUE INDUSTRIAL DEVELOPMENT PROJECT**

WHEREAS, the California Debt Limit Allocation Committee (“CDLAC”) awarded allocation to the California Industrial Development Financing Advisory Commission (the “Commission) for the purpose of awarding a portion of the allocation to local and State issuers; and

WHEREAS, the Commission has the authority to transfer a portion of its allocation to local and State issuers; and

WHEREAS, the Commission has received an application (“Application”) from the California Enterprise Development Authority (“Applicant”) requesting a transfer to the Applicant of a portion of the 2016 State Ceiling on Qualified Private Activity Bonds (the “State Ceiling”) under Section 146 of the Internal Revenue Code of 1986, as amended, for use by the Applicant to issue bonds or other obligations (“Bonds”) for a Project as specifically described in Exhibit A (“Project”) (capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Procedures of the CDLAC Implementing the Allocation of the State Ceiling on Qualified Private Activity Bonds (“CDLAC’s Regulations”)); and

WHEREAS, the Project Sponsor (as defined in Exhibit A) has represented certain facts and information concerning the Project in the Application, which the Applicant has confirmed; and

WHEREAS, in evaluating the Project and potential allocation of a portion of the State Ceiling to the Applicant for the benefit of the Project, the Commission has relied upon the

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written facts and information provided in the Application and otherwise by the Project Sponsor and the Applicant; and

WHEREAS, it is appropriate for the Commission to approve a transfer of a portion of the State Ceiling (“Allocation”) in order to benefit the Project described in the Application.

NOW, THEREFORE, the California Industrial Development Financing Advisory Commission resolves as follows:

Section 1. An amount of the State Ceiling equal to \$1,225,000 shall be deemed to be transferred by the Commission to the Applicant. Such Allocation may be used only by the Applicant and only for the issuance of Bonds for the Project, as specifically described in Exhibit A. All of the terms and conditions of Exhibit A are incorporated as though fully set forth herein (this resolution, together with Exhibit A, hereinafter referred to as the “Resolution”).

Section 2. The terms and conditions of this Resolution shall be incorporated in appropriate documents relating to the Bonds, and the Project Sponsor, the Applicant and their respective successors and assigns will be bound by such terms and conditions.

Section 3. Any modification to the Project made prior to the issuance of the Bonds must be reported to the Executive Director or Deputy Executive Director and, if the Executive Director or Deputy Executive Director determines such modification to be material in light of the Commission’s Procedures, such modification shall require reconsideration by the Commission before the Allocation may be used for the Project. Once the Bonds are issued, the terms and conditions set forth in this Resolution shall be enforceable by the Commission through an action for specific performance or any other available remedy, provided however, that the Commission agrees not to take such action or enforce any such remedy that would be materially adverse to the interests of the Bondholders. The Commission may, as circumstances warrant, consent to

changes in the terms and conditions set forth in this Resolution in the event the Commission is advised of changes in the Project.

Section 4. Prior to the issuance of the Bonds, any material changes in the structure of the credit enhancement and not previously approved by the Commission shall require approval of the Commission Chair or the Executive Director.

Section 5. The Applicant is not authorized to use the Allocation transferred hereby to make a carryforward election with respect to the Project. The Applicant is not authorized to transfer the Allocation to any governmental unit in the State other than this Commission.

Section 6. The Allocation transferred herein shall automatically revert to this Commission unless the Applicant has issued Bonds for the Project by the close of business within 90 days of the award of Allocation. In the case of extreme hardship, the Executive Director may extend this date by up to five (5) business days.

Section 7. Within twenty-four (24) hours of using the Allocation to issue the Bonds, the Applicant shall notify the Commission's staff and CDLAC's staff in writing (which may be by electronic or facsimile communication) that the Allocation has been used. Each notification to the Commission and to CDLAC shall identify the Applicant, the Project or program, the date the Allocation was used, and the amount of the Allocation used.

Section 8. Within fifteen (15) calendar days of the issuance of the Bonds, the Applicant or its counsel shall formally transmit to CDLAC information regarding the issuance of the Bonds by submitting, in a form prescribed by and made available by CDLAC, a completed Report of Action Taken.

Section 9. Any differences between the amount of Bonds issued and the amount of the Allocation granted in Section 1 of this Resolution shall automatically revert to the

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Commission. If at any time prior to the expiration date set forth in Section 6 of this Resolution the Applicant determines that part or all of the Allocation will not be used to issue Bonds by that date, the Applicant shall take prompt action by resolution of its governing board or by action of its authorized officer to return such unused Allocation to the Commission.

Section 10. The staff of the Commission is authorized and directed to transmit a copy of this Resolution to the Applicant together with a request that the Applicant retain, for the term of the Bonds, a copy of this Resolution in the Applicant's official records. The Commission staff is further directed to retain a copy of this Resolution in the files of the Commission (or any successor thereto) for the same period of time.

Section 11. The Applicant and the Project Sponsor shall comply with all of the terms and conditions contained in this Resolution and ensure that these terms and conditions are included in the documents related to the Bonds. Further, the Applicant and the Project Sponsor expressly agree that the terms and conditions of this Resolution may be enforced by the Commission through an action for specific performance or any other available remedy, provided however, that the Commission expressly agrees not to take such action or enforce any such remedy that would be materially adverse to the interests of the Bondholders. In addition, the Applicant and the Project Sponsor shall ensure that the Bond documents, as appropriate, expressly provide that the Commission is a third party beneficiary of the terms and conditions set forth in this Resolution.

Section 12. The Project Sponsor or its successor-in-interest shall provide certifications of compliance with the terms and conditions set forth in this Resolution when reasonably requested by the Commission.

Section 13. This Resolution shall take effect upon its adoption.

EXHIBIT A

**RESOLUTION NO: 16-02-002
(A SMALL-ISSUE INDUSTRIAL DEVELOPMENT PROJECT)**

1. Applicant: California Enterprise Development Authority
2. Application No.: 16-0002
3. Borrower, Project Sponsor: Sammie Rae Abitbol, LLC, Bay Photo, Inc., and/or a related entity
4. Project User: Bay Photo, Inc. dba Bay Photo Lab and/or related entity
5. Project Name: Bay Photo, Inc.
6. Project Description: Acquisition of Equipment and Construction of Building Improvements
7. Address: 900, 915, and 920 Disc Drive
Location: Scotts Valley, CA 95066
County: Santa Cruz
8. Amount of Allocation: \$1,225,000
9. The Borrower has represented that it reasonably expects to use its best efforts to achieve the following within two years of the completion of the Project :
 - Creation of 54 additional direct, full-time positions.