

LEMON GROVE COMMUNITY DEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

December 2014



JOHN CHIANG
California State Controller

December 31, 2014

Graham Mitchell, City Manager
Lemon Grove Community Development/
Successor Agency
3232 Main Street
Lemon Grove, CA 91945

Dear Mr. Mitchell:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Lemon Grove Community Development Agency (RDA) to the City of Lemon Grove (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 agency have been reversed.

Our review found that the RDA transferred \$22,924,833 in assets after January 1, 2011, including unallowable transfers to the City totaling \$1,146,726, or 5% of transferred assets. These assets must be turned over to the Successor Agency.

If you have any questions, please contact Elizabeth González, Chief, Local Government Compliance Bureau, by telephone at (916) 324-0622 or by email at egonzalez@sco.ca.gov.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/sk

cc: Tracy Sandoval, Auditor-Controller
San Diego County
Gerard Selby, Oversight Board Chair
Lemon Grove Redevelopment/Successor Agency
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Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Lemon Grove Community Development 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 \$22,924,833 in assets after January 1, 2011, including unallowable transfers to the City of Lemon Grove (City) totaling \$1,146,726, or 5.00% of transferred assets. These assets must be turned over to the Successor Agency.

Background

In January of 2011, the Governor of the State of California proposed statewide elimination of redevelopment agencies (RDAs) beginning with the fiscal year (FY) 2011-12 State budget. The Governor's proposal was incorporated into Assembly Bill 26 (ABX1 26, Chapter 5, Statutes of 2011, First Extraordinary Session), which was passed by the Legislature, and signed into law by the Governor on June 28, 2011.

ABX1 26 prohibited RDAs from engaging in new business, established mechanisms and timelines for dissolution of the RDAs, and created RDA successor agencies and oversight boards 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.

H&S Code section 34167.5 states in part, ". . . the Controller shall review the activities of redevelopment agencies in the state to determine whether an asset transfer has occurred after January 1, 2011, between the city or county, or city and county that created a redevelopment agency or any other public agency, and the redevelopment agency."

The SCO identified asset transfers that occurred after January 1, 2011, between the RDA, the City and/or any other public agency. 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 action 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's operations and procedures.
- Reviewed meeting minutes, resolutions, and ordinances of the City, the RDA, the Successor Agency, and the Oversight Board.
- 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 Lemon Grove Community Development Agency transferred \$22,924,833 in assets after January 1, 2011, including unallowable transfers to the City of Lemon Grove totaling \$1,146,726, or 5.00% of transferred assets. These assets must be turned over to the Successor Agency.

Details of our finding are described in the Finding and Order of the Controller section of this report.

Views of Responsible Officials

We issued a draft review report on October 2, 2014. Graham Mitchell, City Manager, responded on October 15, 2014. 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 Lemon Grove, 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

December 31, 2014

Finding and Order of the Controller

**FINDING—
Unallowable asset
transfers to the
City of Lemon
Grove**

The Lemon Grove Community Development Agency (RDA) made unallowable transfers of \$1,146,726 in assets to the City of Lemon Grove (City). All of the transfers occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

Unallowable asset transfers were as follows:

- On June 16, 2011, the RDA transferred a total of \$558,726 in cash to the City for loan payments. This transfer was accomplished in accordance with Resolution No. 276, dated February 15, 2011.
- On December 31, 2011, the RDA transferred a total of \$588,000 in cash to the City for loan payments. This transfer was accomplished in accordance with Resolution No. 276, dated February 15, 2011.

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. The assets must be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177(d).

Order of the Controller

Pursuant to H&S Code section 34167.5, the City is ordered to reverse the transfer of the above assets in the amount of \$1,146,726 and turn over the assets to the Successor Agency.

City’s Response

The City objects to the continued refusal to recognize previously approved loans from the City of Lemon Grove to the Lemon Grove Community Development Agency. These loans were recognized as Enforceable Obligations by the California Department of Finance prior to the retroactive application of Assembly Bill No. 1484 (2012).

See Attachment for the City’s complete response

SCO’s Comment

The SCO’s authority under H&S Code section 34167.5 extends to all assets transferred after January 1, 2011, by the RDA to the city or county, or city and county that created the RDA or any other public agency. This responsibility is not limited by the other provisions of the RDA dissolution legislation.

When the Successor Agency receives its Finding of Completion from the Department of Finance, it may place the loan agreements between the RDA and the City on the Recognized Obligation Payment Schedule as an enforceable obligation, provided the Oversight Board finds that the loans were for a legitimate redevelopment purpose.

The Finding and Order of the Controller remain as stated.

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

Cash transfer for principal payment (June 16, 2011)	\$ 357,000
Cash transfer for interest payment (June 16, 2011)	201,726
Cash transfer for principal payment (December 31, 2011)	400,000
Cash transfer for interest payment (December 31, 2011)	<u>188,000</u>
Total unallowable transfers	<u>\$ 1,146,726</u>

**Attachment—
Lemon Grove Community Development
Agency's Response to Draft Review Report**



CITY OF LEMON GROVE

"Best Climate On Earth"

Office of the City Manager

October 15, 2014

Ms. Elizabeth González
Chief
Local Government Compliance Bureau
State Controller's Office
Division of Audits
P.O. Box 942850
Sacramento, CA 94250-5874

SUBJECT: Asset Transfer Review Report – Lemon Grove Community Development Agency

Dear Ms. González:

The City received the Draft Asset Transfer Review Report for the former Lemon Grove Community Development Agency on Thursday, October 9, 2014. The City has been granted ten days to submit comments regarding the draft report. The purpose of this correspondence is to formally provide comments regarding the findings of the draft report.

The City objects to the continued refusal to recognize previously approved loans from the City of Lemon Grove to the Lemon Grove Community Development Agency. These loans were recognized as Enforceable Obligations by the California Department of Finance prior to the retroactive application of Assembly Bill No. 1484 (2012). The City of Lemon Grove and the Lemon Grove Successor Agency have filed a writ of mandate against the State Department of Finance for its improper retroactive denial of these preexisting Enforceable Obligations. (Sacramento Superior Court Case No. 34-2013-80001480-CU-WM-GDS.)

In a similar case brought by the League of California Cities on the issue of retroactive application of AB 1484, a trial court judgment was entered against the Department of Finance. The State of California is collaterally estopped from enforcing AB 1484 retroactively. On these grounds, the City of Lemon Grove continues to object to the failure to recognize the loans made by the City of Lemon Grove to the Lemon Grove Community Development Agency that had been previously recognized by the California Department of Finance.

Sincerely,

Graham Mitchell
City Manager

cc: James P. Lough, City Attorney
Cathy Till, Finance Director

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