WATSONVILLE REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG California State Controller

July 2014



JOHN CHIANG California State Controller

July 29, 2014

Carlos J. Palacios, City Manager Watsonville Redevelopment/Successor Agency 275 Main Street, Suite 400 Watsonville, CA 95076

Dear Mr. Palacios:

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

Our review found that the RDA transferred \$ 26,307,764 in assets after January 1, 2011, including unallowable transfers to the City totaling \$631,897 or 2.4% of transferred assets.

However, on February 18, 2014, the City turned over \$163,608 to the Santa Cruz County Auditor-Controller for distribution to the taxing entities. Therefore, the remaining \$468,289 in unallowable transfers must be turned over to the Successor Agency.

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

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA Chief, Division of Audits

JVB/sk

cc: William P. Hays, CPA, Assistant Finance Officer
City of Watsonville
Ezequiel Vega, Administrative Services Director
City of Watsonville
Jan Davison, Redevelopment and Housing Director
City of Watsonville
Eduardo Montesino, Oversight Board Chair
City of Watsonville
Mary Jo Walker, CPA, Auditor-Controller
County of Santa Cruz
David Botelho, Program Budget Manager
California Department of Finance
Richard J. Chivaro, Chief Legal Counsel
State Controller's Office
Elizabeth González, Bureau Chief
Division of Audits, State Controller's Office
Betty Moya, Audit Manager
Division of Audits, State Controller's Office
Anita Bjelobrk, 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 Official	2
Restricted Use	3
Finding and Order of the Controller	4
Schedule 1—Unallowable Asset Transfers to the City of Watsonville	6
Attachment—City of Watsonville's Response to Draft Review Report	

Asset Transfer Review Report

Summary	The State Controller's Office (SCO) reviewed the asset transfers made by the Watsonville 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.				
	January 1, 2011, including unallowable transfers to the City of Watsonville (City), totaling \$631,897, or 2.4% of transferred assets.However, on February 18, 2014, the City turned over \$163,608 to the Santa Cruz County Auditor-Controller for distribution to the taxing				
De ala arra d	entities. Therefore, the remaining \$468,289 in unallowable transfers must be turned over to the Successor Agency. In January of 2011, the Governor of the State of California proposed				
Background	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 (<i>California Redevelopment Association et al. v. Matosantos</i>), 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 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 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 operations and procedures.
- Reviewed meeting minutes, resolutions, and ordinances of the RDA, the Successor Agency, the Oversight Board, and the City.
- 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 Watsonville Redevelopment Agency transferred \$ 26,307,764 in assets after January 1, 2011, including unallowable transfers to the City of Watsonville totaling \$631,897, or 2.4% of transferred assets.

However, on February 18, 2014, the City turned over \$163,608 to the Santa Cruz County Auditor-Controller for distribution to the taxing entities. Therefore, the remaining \$468,289 in unallowable transfers must be turned over to the Successor Agency.

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

Views of
ResponsibleWe issued a draft review report on February 21, 2014. Carlos J. Palacios,
City Manager, responded by letter dated March 13, 2014. The City's
response is included with this final review report as an attachment.

Restricted Use

This report is solely for the information and use of the City of Watsonville, 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

July 29, 2014

Finding and Order of the Controller

FINDING— Unallowable asset transfers to the City of Watsonville The Watsonville Redevelopment Agency (RDA) made unallowable asset transfers of \$631,897, described in Schedule 1, to the City of Watsonville (City). The asset transfers occurred during the period of January 1, 2011, through February 1, 2012.

Health and Safety (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." Pursuant to H&S Code section 34175(b) the RDA was required to transfer all assets, including housing assets, to the Successor Agency.

Pursuant to Health and Safety (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. Those assets should be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177 (d) and (e).

Pursuant to H&S Code section 34177(e) the "Successor Agency is to dispose of all former RDA assets"...as directed by the oversight board..."

Pursuant to H&S Code section 34177(d) the Successor Agency is to, "Remit unencumbered balances of redevelopment agency funds to the county auditor-controller for distribution to the taxing entities, including, but not limited to, the unencumbered balance of the Low and Moderate Income Housing Fund of a former redevelopment agency...for allocation and distribution...[in accordance with]...Section 34188."

Order of the Controller

Pursuant to H&S Code section 34167.5, the City of Watsonville is ordered to reverse the transfer of assets, described in Schedule 1, in the amount of \$631,897

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

City's Response

Of the \$631,897, \$468,289 represented payments to the City for prior year administrative services [described on Schedule 1 of the SCO Audit as Payroll Advance (80% Fund) in the amount of \$240,314 and Payroll Advance (Low/Moderate Fund) in the amount of \$227,975] provided by the City to the former Redevelopment Agency and incorrectly categorized in the SCO Audit as payroll advances. To the contrary, these payments were for administrative services and, pursuant to H&S Code Section 34179.5(b)(3), are not transfers subject to recapture.

Beginning in FY 2003-04, the City provided administrative services to all Departments and Agencies of the City, including the former Redevelopment Agency. In FY 2007-08, the City discovered that the Redevelopment Agency (along with other City Departments) was being undercharged for the administrative services that the City provided. Accordingly, the City began to recover for these undercharged services rendered on behalf of the Redevelopment Agency beginning in FY 2008-09 and continuing until FY 2010-11.

The State Controller's position appears to be that the funds in question represented the repayment of a loan between the Redevelopment Agency and the City and thus were an impermissible transfer. However, Health and Safety Code Section 34167.5(b)(3)'s [*sic*] exclusion is explicit and unqualified: any payment from the Redevelopment Agency to the City for services is not subject to recapture. The statute creates no exception to the exclusion for the payments tied to administrative services loans and there is no legal authority for the State Controller's position to the contrary.

See Attachment for full response to draft report.

SCO's Comments

Although the \$468,289 may be for administrative charges, the SCO does not agree with these charges being paid in advance. According to the paperwork (Cost Allocation Review for June 30, 2008) that the City provided to the SCO as supporting documentation for these charges, the RDA was supposed to pay off the balance of the administrative charge error from FY 2009-10 through FY 2017-18. For three years, the City charged the RDA \$63,140 (\$32,402 from RDA Fund 201 and \$30,738 from RDA Fund 203). According to the paperwork, the RDA paid the City for FY 2008-09, FY 2009-10, and FY 2010-11. However, on March 7, 2011, the RDA paid a lump sum of \$468,289 (\$240,314 from fund 201 and \$227,975 from fund 203) to the City, which is a prepayment of the balance. Therefore, the transfer of the balance is an advancement of the administrative error.

The Finding and Order of the Controller remains as stated.

City's Response

The remaining balance of the \$631,897 of disallowed transfers is \$163,608 (representing Impact Fees for the Civic Center as identified on Schedule 1). Although the Successor agency and City continue to assert that the recapture and tax offset provision of AB 1484 are unconstitutional, as several courts have now found, the City nonetheless previously returned these funds to the Successor Agency which, in turn, remitted, under protest, these funds to the County of Santa Cruz for distribution to the taxing entities. Enclosure A to this response is our verification that this payment has already been made.

SCO's Response

No further action is necessary.

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

Asset	Transfer Date	Amount
Payroll Advance (80% Fund)	3/7/2011	240,314
Payroll Advance (Low/Moderate Fund)	3/7/2011	227,975
Impact Fees for Civic Center	3/31/2011	32,804
Impact Fees for Civic Center	6/28/2011	45,190
Impact Fees for Civic Center	6/28/2011	32,804
Impact Fees for Civic Center	9/30/2011	26,405
Impact Fees for Civic Center	12/31/2011	26,405
Total RDA assets transferred to the City of Watsonville		631,897
Less the amount remitted to the Santa Cruz County Auditor-Controller		(163,608)
Total assets subject to Health and Safety Code section 34167.5		\$ 468,289

Attachment— City of Watsonville's Response to Draft Review Report

CITY OF WATSONVILLE



March 13, 2014

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

Re: Asset Transfer Review, Watsonville Redevelopment Agency/Successor Agency (H&S 34167.5)

Dear Ms. Gonzalez:

This letter is in response to the letter and attached draft audit report ("SCO Audit") dated February 21, 2014, from Jeffrey V. Brownfield, Chief Division of Audits. The State Controller has demanded that the City return an aggregate of \$631,897, which the SCO asserts were impermissible transfers. The Successor Agency of the Redevelopment Agency of the City of Watsonville respectfully disagrees with this finding for the following reasons:

Of the \$631,897, \$468,289 represented payments to the City for prior year administrative services [described on Schedule 1 of the SCO Audit as Payroll Advance (80% Fund) in the amount of \$240,314 and Payroll Advance (Low/Moderate Fund) in the amount of \$227,975] provided by the City to the former Redevelopment Agency are incorrectly categorized in the SCO Audit as payroll advances. To the contrary, these payments were for administrative services and, pursuant to H&S Code Section 34179.5(b)(3), are not transfers subject to recapture.

Beginning in FY 2003-04, the City provided administrative services to all Departments and Agencies of the City, including the former Redevelopment Agency. In FY 2007-08, the City discovered that the Redevelopment Agency (along with other City Departments) was being undercharged for the administrative services that the City provided. Accordingly, the City began to recover for these undercharged services rendered on behalf of the Redevelopment Agency, beginning in FY 2008-09 and continuing until FY 2010-11.

The State Controller's position appears to be that the funds in question represented the repayment of a loan between the Redevelopment Agency and the City and thus were an impermissible transfer. However, Health and Safety Code Section 34167.5(b)(3)'s exclusion is explicit and unqualified: any payment from the Redevelopment Agency to the City for services is not a transfer subject to recapture. The statute creates no exception to the exclusion for

Page 2 of 2

SCO Audit Response

payments tied to administrative services loans and there is no legal authority for the State Controller's position to the contrary.

The remaining balance of the \$631,897 of disallowed transfers is \$163,608 (representing Impact Fees for the Civic Center as identified on Schedule 1). Although the Successor Agency and City continue to assert that the recapture and tax offset provisions of AB 1484 are unconstitutional, as several courts have now found, the City nonetheless previously returned these funds to the Successor Agency which, in turn, remitted, under protest, these funds to the County of Santa Cruz for distribution to the taxing entities. Enclosure A to this response is our verification that this payment has already been made.

In tendering this response, the City and Successor Agency reserve all legal and equitable rights, claims, and defenses which may be available to them as regards the Findings and Order and other factual and legal issues addressed by or referred to in the SCO Asset Transfer Review. No part of this response is a complete or partial waiver or modification of the City's and Successor Agency's legal and equitable rights, claims, and defenses with respect to the matters set forth in the Asset Transfer Review or with respect to any other similar or dissimilar matter. The City and the Successor Agency reserve the right to assert additional, different, or conflicting facts and legal theories than those set forth in this response or in any other prior or subsequent communications to the SCO, the Department of Finance, or any other party concerning the same.

Please contact Ezequiel Vega, our Administrative Services Director, with any questions you may have via phone at 831-768-3470 or via email at <u>ezequiel.vega@citvofwatsonville.org</u>.

Sincerely,

12AP20

Carlos J. Palacios, City Manager

Enclosures:

A. Payment of Impact Fees and City loans

cc: Bill Hays, Assistant Finance Officer
 Ezequiel Vega, Administrative Services Director
 Jan Davison, Consultant
 Jeffrey V. Brownfield, Chief Division of Audits
 Richard J Chivaro, Chief Legal Counsel State Controller's Office
 Elizabeth Gonzalez, Bureau Chief Division of Audits, State Controller's Office
 Betty Moya, Audit Manager, Division of Audits, State Controller's Office
 Anita Bjelobrk, Auditor in Charge, Division of Audits State Controller's Office

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City of Watsonville City Manager's Office

Memorandum

Date:	February 13, 2014	
То:	Ezequiel Vega, Administrative Services Director	
From:	Carlos J. Palacios, City Manager	U
Subject:	Direction to Execute Loan Authorized by Resolution 147-13 and Make Payment Demanded by the Department of Finance to the Auditor-Controller	

On October 22, 2013, the City Council approved Resolution 147-13 which authorized the City Manager to execute an inter-fund loan from the Water Enterprise Fund to the General Fund of \$4,611,017 at the prevalent LAIF rate should the State Department of Finance be successful in its demand for payment as part of the Redevelopment Agency's dissolution process.

On January 23, 2014 Sacramento County Superior Court Judge Timothy M. Frawley issued a decision denying the City's petition to reverse the actions of the State Department of Finance in the dissolution of the City's Redevelopment Agency. Among the issues before the Court was a decision by the Department of Finance regarding the \$4.6 million in redevelopment funds which had been used to repay the City for a loan from the City to the former Redevelopment Agency to construct the downtown Civic Plaza Building. The Court said this loan was subject to the so-called "claw back" provisions of the State's recent Redevelopment Dissolution Law.

Given the Court's decision and the next Recognized Obligation Payments Schedule (ROPS) submission due on March 1, 2014 to the Department of Finance, I have decided that it is prudent and in the City's best interests at this time to make the loan called for in Resolution 147-13 and pay the County Auditor-Controller so that the State will begin making the ROPS payments.

I am attaching a copy of a letter to the Auditor – Controller to accompany the payment which states that we are making the payment under protest and with full reservation of rights and a copy of Resolution 147-13 to this memo.

CITY OF WATSONVILLE

"Opportunity through diversity; unity through cooperation"



February 18, 2014

Mary Jo Walker, Auditor-Controller Office of the Auditor Controller of the County of Santa Cruz County Government Center 701 Ocean Street, Room 100 Santa Cruz, CA 95060

Re: Payment Under Protest of Funds Demanded by Department of Finance – Health and Safety Code Section 34179.6

Dear Ms. Walker:

This letter is in response to the letters dated May 2, 2013 and October 9, 2013, transmitted by the State Department of Finance ("Department") to the Watsonville Successor Agency ("Successor Agency") ordering the Successor Agency to remit to the County Auditor-Controller the sum of \$4,611,017 as the amount that the Department has determined to be due as a result of the Other Funds and Accounts Due Diligence Review.

As we have previously communicated to you and to the Department, the City of Watsonville ("City") and the Successor Agency disagree with the Department's determinations regarding the demanded funds. The City and the Successor Agency filed a petition for writ of mandate in Sacramento Superior Court seeking a court order that the determination is erroneous, and are currently considering the filing of a notice of appeal of the trial court's determination in that matter with the Third District Court of Appeal.

We continue to dispute the Department's determination regarding the demanded funds. However, in order to avoid the imposition of sanctions that the Department has threatened in its previous correspondence, we are transmitting the enclosed payment voucher/check in the amount of \$4,611,017 to your office under protest, with a reservation of all rights to pursue remedies under law and equity.

By remitting these funds, neither the Successor Agency nor the City waive any constitutional, statutory, legal, or equitable rights, and each such entity expressly reserves any and all rights, privileges and defenses available under law and equity.

275 Main Street, Suite 400 • Watsonville • California • 95076 • (831) 768-3010 www.cityofwatsonville.org Please contact me if you have any questions regarding these matters.

Sincerely, Ante

Carlos J. Palacios, City Manager

cc: Ezequiel Vega, Administrative Service Director, City of Watsonville Marianne Ellis, Property Tax Account Manager, Santa Cruz County Justyn Howard, Assistant Program Budget Manager, Department of Finance

Jennifer Rockwell, General Counsel, Department of Finance

RESOLUTION NO. 147-13 (CM)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WATSONVILLE AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTINGENT INTER-FUND LOAN FROM THE CITY'S WATER ENTERPRISE FUND TO THE GENERAL FUND AND IMPACT FEE FUNDS IN THE NET AMOUNT OWED TO THE STATE AFTER RESIDUAL REPAYMENTS FROM THE STATE PLUS INTEREST AT THE PREVALENT LAIF RATE SHOULD THE STATE BE SUCCESSFUL IN ITS DEMAND FOR PAYMENT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WATSONVILLE,

CALIFORNIA, AS FOLLOWS:

That the City Manager is hereby authorized to execute a contingent inter-fund loan from the City's Water Enterprise Fund to the General Fund and Impact Fee Funds in the net amount owed to the State after residual repayments from the State plus interest at the prevalent LAIF rate should the State be successful in its demand for payment.

Reso No. <u>147-13</u> (CM) P:XCOUNCII.32013/102213/Inter-Fund Loan DOF Demand for Payment docx ri 10/23/2013 9:02:02 AM

1

The foregoing resolution was introduced at a regular meeting of the Council of the City of Watsonville, held on the <u>22nd</u> day of <u>October</u>, 2013, by Member <u>Coffman-Gomez</u>, who moved its adoption, which motion being duly seconded by Member

_____Dodge_, was upon roll call carried and the resolution adopted by the following vote:

 AYES:
 COUNCIL MEMBERS:
 Cervantez, Coffman-Gomez, Dodge, Hernandez, Montesino, Hurst

 NOES:
 COUNCIL MEMBERS:
 Bilicich

 ABSENT:
 COUNCIL MEMBERS:
 None

Lowell Hurst, Mayor

ATTEST: TURE City-Clerk

APPROVED AS TO FORM:

City Attorney

Reso No. <u>147-13</u> (CM) PACOUNCILI2013(102213)Inter-Fund Loan DOF Demand for Payment docx ri 10/23/2013 9:02:02 AM

2

Repay Successor Agency for Transfers

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		Repay Successor	Agency				

ASSET TRANSFER ASSESSMENT STATE CONTROLLER'S OFFICE **ASSEMBLY BILL X1 26**

Watsonville Redevelopment Agency of the City of Watsonville

FORMER REDEVELOPMENT AGANCY NAME

11-DIGIT ID #

reversed? Yes / No Was the transfer No No No No (ES encumbered to a third party after June 29, 2011? Was the asset contractually committed or If yes, list date N/A N/A N/A N/A 0 DATE PREPARED E-MAIL ADDRESS Yes / No ON 0N 0N N NO NO If the assessment was transferred to a city, county, or other public agency between January 1, 2011, and January 31, 2012 (exclude City of Watsonville (Manabe-Ow City of Watsonville (Downtown Successor Agency of the Watsonville In Davison PHONE Redevelopment Agency of the City of Watsonville City of Watsonville (Admin 3/9/2011 Repayment - Impact Fees) 3/9/2011 Repayment - Impact Fees) City of Watsonville (Loan Public Agency City of Watsonville (Loan housing assets), complete the following. 3/9/2011 City of Watsonville 3/9/2011 OPA Agreement) Business Parking) Reimbursement) 6/28/2011 9,929 Not Transferred 410,000 Not Transferred 423 Not Transferred 0 Not Transferred Trasfer Date 19,025 Not Transferred 31,439 Not Transferred 912,886 3/9 0 Not Transferred Monthly 753,333 January 31, 2012 Carrying Value as of ന 18,671 0 10,706 33,423 37,500 263,504 (1,277,284) 851,757 December 31, 2010 AP# 017-18-304 AP# 017-781-07 - 150 -150 AP# 018-291-18 Asset Description Cash - (\$3,236,651) -- / ら C AP# 017-02-245 AP# 017-11-142 AP# 018-291-45 AP# 017-113-05 AP# 017-302-24 Short Term Notes Receivable Due From Other Governments Taxes Receivable Interest Receivable On Notes 4 Land and Improvements SUCCESSOR AGENCY Cash - (\$1,192,579) Accounts Receivable Cash (\$1,625,543) Notes Receivable CONTACT NAME Cash - (\$12,180) Cash (\$750,000) Land Set Aside **RDA 80%** Cash

YES

NO

3/9/2011 City of Watsonville

753,334

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

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S13-RDA-997