

CLEARLAKE 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 3, 2014

David Spilman, Interim Finance Director
City of Clearlake Redevelopment/Successor Agency
14050 Olympic Drive
Clearlake, CA 95422

Dear Mr. Spilman:

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

Our review found that the RDA transferred \$17,234,310 in assets after January 1, 2011, including unallowable transfers totaling \$3,074,689 (\$887,519 to the City and \$2,187,170 to the Entity Assuming the Housing Functions), or 17.84% of transferred assets, that must be turned over to the Successor Agency.

In addition, a parcel of land valued at \$646,029 was not recorded on the books of the RDA. This parcel should be added to the books of the Successor Agency.

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

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/kw

MAILING ADDRESS P.O. Box 942850, Sacramento, CA 94250-5874
SACRAMENTO 3301 C Street, Suite 700, Sacramento, CA 95816 (916) 324-8907
LOS ANGELES 901 Corporate Center Drive, Suite 200, Monterey Park, CA 91754 (323) 981-6802

Attachment

cc: Joan Phillipe, Executive Manager
City of Clearlake
David Spilman, Interim Finance Director
City of Clearlake Redevelopment/Successor Agency
Cathy Saderlund – Auditor-Controller
County of Lake
Joey Luis, Chair
Clearlake Successor Agency Oversight Board
David Botelho, Program Budget Manager
California State Department of Finance
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
Cecilia Michaels, Auditor-in-Charge
Division of Audits, State Controller’s Office

Contents

Review Report

Summary	1
Background	1
Objective, Scope, and Methodology	2
Conclusion	2
View of Responsible Official	2
Restricted Use	3
Findings and Orders of the Controller	4
Schedule 1—Unallowable RDA Asset Transfers to the City of Clearlake	7
Schedule 2—Unallowable RDA Asset Transfers to the Housing Agency	8
Attachment—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 Clearlake 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 \$17,234,310 in assets after January 1, 2011, including unallowable transfers totaling \$3,074,689 (\$887,519 to the City of Clearlake [City] and \$2,187,170 to the Entity Assuming the Housing Functions), or 17.84% of transferred assets, that must be turned over to the Successor Agency.

In addition, a parcel of land valued at \$646,029 was not recorded on the books of the RDA. This parcel should be added to the books of 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 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 transfers of assets 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 City, the Successor Agency, the Oversight Board, the Entity Assuming the Housing Functions, and the SCO.
- 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 Clearlake Redevelopment Agency transferred \$17,234,310 in assets after January 1, 2011, including unallowable transfers totaling \$3,074,689 (\$887,519 to the City of Clearlake and \$2,187,170 to the Entity Assuming the Housing Functions), or 17.84% of transferred assets, that must be turned over to the Successor Agency.

In addition, a parcel of land valued at \$646,029 was not recorded on the books of the RDA. This parcel should be added to the books of the Successor Agency.

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

Views of Responsible Official

We issued a draft report on October 17, 2013. Joan Phillippe, Executive Director, responded by letter dated November 1, 2013, acknowledging the review results and adding clarification regarding certain housing assets that were incorrectly labeled as unencumbered cash in the body of the report but clearly listed as notes receivable in Schedule 2. 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, the Successor Agency, the Oversight Board, the Entity Assuming the Housing Functions, 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 3, 2014

Findings and Orders of the Controller

FINDING 1— Unallowable asset transfers to the City of Clearlake and unrecorded assets

The Clearlake Redevelopment Agency (RDA) transferred \$887,519 in assets to the City of Clearlake (City). All of the asset transfers to the City 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 December 31, 2011, the RDA transferred \$241,490 in cash to pay interest on a loan from the City to the RDA.
- A parcel of land owned by the RDA was not transferred to the Successor Agency. Specifically, in 1997, the RDA purchased a 7.36-acre parcel for \$1,044,000 (parcel number 039-530-39). In 2001, the RDA portioned off the land, creating two parcels, 039-530-49 and 039-530-50. The RDA sold 2.6 acres, parcel number 039-530-49, to the City for \$397,971. The remaining parcel, number 039-530-50, with a cost basis of \$646,029, remained with the RDA. As this parcel was not included on the books and records of the RDA, it was not transferred 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). However, it appears that some of those assets also may be subject to the provisions of H&S Code section 34181(a).

H&S Code section 34181(a) states:

The oversight board shall direct the successor agency to do all of the following:

- (a) Dispose of all assets and properties of the former redevelopment agency that were funded by tax increment revenues of the dissolved redevelopment agency; provided however, that the oversight board may instead direct the successor agency to transfer ownership of those assets that were constructed and used for a government purpose, such as roads, school buildings, parks, and fire stations, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such as asset.

Order of the Controller

Based on H&S Code section 34167.5, the City is ordered to return the above assets, described in Schedule 1, in the amount of \$887,519, and turn them over to the Successor Agency.

The above assets in the amount of \$887,519, includes the parcel of land valued at \$646,029 that was not recorded on the books of the RDA. The Successor Agency should ensure that parcel number 039-530-50 is added to the books of the RDA and then transferred to the books of the Successor Agency.

The Successor Agency is directed to properly dispose of those assets in accordance with H&S Code sections 34177(d) and (e) and 34181(c).

Successor Agency's Response

The Successor Agency agrees with the SCO's determination that the repayment of loans to the City in the amount of \$241,490 is to be reversed and the cash returned to the Successor Agency.

The City of Clearlake has very limited general fund reserves available to repay the \$241,490. It is requested that the State Controller's Office allow the Oversight Board to consider the payment in 2011 be recorded as a receivable to the Successor Agency and offset by the ROPS authorized loan payments allowed under HSC section 34191.4. Based on conservative estimates of projected available residual revenues the receivable could be paid in three years. In addition, the City and Successor Agency could enter into a separate agreement for this receivable to accrue interest until fully paid. The payment receivable on the Successor Agency general ledger for \$241,490 will be officially recorded as directed by the State Controller's Office.

SCO's Comment

The City's request to have the Order of the Controller state that the return of assets be added to the Successor Agency's books as a receivable, rather than ordering the return of the cash, is beyond the scope of the order. It is the SCO's position that the method of repayment of the loans is the Oversight Board's decision.

The finding and Order of the Controller remains as stated.

Successor Agency's Response

The Successor Agency agrees with the SCO's determination that the unrecorded parcel of land should have been added to the books of the RDA and transferred to the Successor Agency. The Successor Agency further states that the parcel of land has been added to the books of the Successor Agency and added to the Long-Range Property Management Plan.

SCO's Comment

The finding and Order of the Controller remains as stated.

**FINDING 2—
Unallowable assets
transferred to the
Entity Assuming
the Housing
Functions**

The RDA made an unallowable asset transfer of \$2,187,170 to the Entity Assuming the Housing Functions. The asset transfer to the Entity Assuming the Housing Functions occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

The RDA transferred 2,187,170 in assets to the Entity Assuming the Housing Functions on February 1, 2012. Those assets consisted of \$602,400 in land held for resale and \$1,584,770 in loans receivable.

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

H&S Code section 34175(b) states that 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.

Additionally, H&S Code section 34181(c) requires the Oversight Board to direct the Successor Agency to transfer housing assets pursuant to section 34176.

Also, 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

Based on H&S Code section 34167.5, the Entity Assuming the Housing Functions is ordered to reverse the transfer of the above assets, described in Schedule 2, in the amount of \$2,187,170, and turn them over to the Successor Agency.

The Successor Agency is directed to properly dispose of those assets in accordance with H&S Code sections 34177(d) and (e) and 34181(c).

Successor Agency's Response

The Successor Agency agrees with the SCO's determination that the housing assets, in the amount of \$602,400, should have been transferred to the Successor Agency, then with Oversight Board approval, transferred to the Entity Assuming the Housing Functions.

SCO's Comment

The finding and Order of the Controller remains as stated.

Successor Agency's Response

The Successor Agency disagrees with the SCO's identification of housing assets rightly claiming a mis-representation of notes receivable as unencumbered cash. The Successor Agency correctly stated that notes receivables were identified in the body of the draft report as unencumbered cash. However the housing assets were correctly listed as notes receivable in Schedule 2.

SCO's Comment

The inadvertent typing error with regards to the notes receivable being identified as unencumbered cash has been corrected to accurately identify the housing assets to be returned to the Successor Agency. The finding and Order of the Controller remains as stated.

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

Current assets	
Cash	\$ 241,490
Capital assets	
Land held for resale APN 039-530-500-000	<u>646,029</u>
Total unallowable transfers	<u>\$ 887,519</u>

**Schedule 2—
Unallowable RDA Asset Transfers to
the Entity Assuming the Housing Functions
January 1, 2011, through January 31, 2012**

Current assets	
Notes receivable	\$ 1,584,770
Capital assets	
Land held for resale	<u>602,400</u>
Total unallowable transfers	<u>\$ 2,187,170</u>

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



Clearlake Successor Agency

14050 Olympic Drive, Clearlake, California 95422
(707) 994-8201 Fax (707) 995-2653

November 1, 2013

Mr. Steve Mar, Chief
Local Government Audits Bureau
State Controller's Office
Division of Audits
PO Box 942850
Sacramento, CA 94250-5874

Re: Response to Draft Report of Asset Transfer Review of Clearlake Redevelopment Agency
January 1, 2011 through January 31, 2012

Dear Mr. Mar,

The Clearlake Successor Agency wishes to respond to the findings in the above referenced report.

Finding #1 – Unallowable transfers of \$887,519 of assets to the City of Clearlake and unrecorded assets

Loan payment to City - \$241,490

This finding includes a \$241,490 interest payment in December 2011 from the former redevelopment agency to the City on loans made by the City to the redevelopment agency prior to January 27, 2011. These loans were for legitimate redevelopment purposes to provide funding to the redevelopment administrative costs and property acquisition opportunities. The terms of the interest accrual and repayment of the loans were authorized by resolutions and agreements. At the time, the agency and City believed that such payments were allowed for legitimate enforceable obligations of the redevelopment agency.

Subsequently, the Successor Agency was issued a notice of completion on April 26, 2013 authorizing the above city loans to be deemed enforceable obligations by the Oversight Board and eligible for repayment subject to provisions in the Health and Safety Code. In October, the City and Successor Agency amended the original loan agreements to meet the requirements of the Health and Safety Code and have been approved by the Oversight Board and submitted to the State Department of Finance for approval. Please see attachments one through four.

The City of Clearlake has very limited general fund reserves available to repay the \$241,490. It is requested that the State Controller's Office allow the Oversight Board to consider the payment in 2011 be recorded as a receivable of the Successor Agency and offset by the ROPS authorized loan payments allowed under HSC section 34191.4 Based on conservative estimates of projected available residual revenues the receivable could be paid in three years. In addition, The City and Successor Agency could enter into a separate agreement for this receivable to accrue interest until fully paid. The payment receivable on the Successor Agency general ledger for \$241,490 will be officially recorded as directed by the State Controller's Office.

We suggest that the \$241, 490 be re labeled as a "payment receivable" on the schedule on page 6 and the Order of the Controller is amended to direct the Oversight Board to require a repayment agreement between the Successor Agency and City to repay the \$241,490 from authorized ROPS payments to the City for City loans as enforceable obligations.

Redevelopment parcel - \$646,029

In 1997, the former redevelopment agency purchased a 7.36 ac parcel (039-530-39) with redevelopment funds. In 2001, the parcel was split and 2.6 ac were sold to the City of Clearlake for park expansion and access to the lakefront (\$397,971 039-530-49). The remaining 4.76 ac parcel (\$646,029 039-530-50) was retained by the redevelopment agency for future development. The official recording of this transaction with the County was delayed for several years and, due to staff turnover, the history of the transaction and proper recording of the asset was muddled. Subsequently, the parcels were correctly recorded with the County recorder. However, the original parcel and value of \$1,044,000 was misreported as a City parcel on the City general ledger and asset list.

This misreporting of City and Successor Agency asset was subsequently discovered in early 2013 from a search of the County assessor parcel database to gather information on other Successor Agency parcels.

During the State Controller's Office field review, this error was reported and documentation provided. Please see attachment five.

The Successor Agency believes that we have complied with the Order of the Controller to transfer parcel 039-530-50 valued at \$646,029 and properly recorded as a Successor Agency parcel as of June 30, 2013 and is included in the Successor Agency Long Range Property Management Plan for subsequent disposition.

Finding #2 – Unallowable assets transferred to Housing Agency - \$2,187,170

Nine parcels with 24 residential lots held for resale - \$602,400

These parcels were initially purchased with redevelopment funds and then subsequently transferred to the former redevelopment Low and Moderate Income Housing fund several years prior January 2011.

Due to agency staff and auditor changes and the understanding of the reporting requirements at the time, the allocation of the parcels to either the Successor Agency or the Housing Successor Agency was confused and the reports to the State Department of Finance were not consistent.

In the July 31, 2012 report to the Department of Finance Housing Assets Transfer form, the parcels were not listed as housing assets (attachment six). The parcels were noted in a footnote as Successor Agency assets. This report was approved by the State Department of Finance on August 30, 2012 (attachment seven). In the Due Diligence Review for Low and Moderate Income Housing, these parcels were inadvertently reported as Housing Agency assets as of June 30, 2012 and approved by the Department of Finance. In the subsequent Due Diligence Review of All other Funds, the parcels were also included in the assets of the Successor Agency as of June 30, 2012 and approved by the State Department of Finance. Please see attachment eight.

It was clear in the Due Diligence Review of All Other Funds that the nine parcels should be reported as assets of the Successor Agency and the general ledger and asset list reflect that allocation of assets.

The Successor Agency believes that we have complied with the Order of the Controller to transfer the nine parcels valued at \$602,400 from the successor Housing Agency to the Successor Agency and included in the Successor Agency Long Range Property Management Plan for subsequent disposition.

\$1,584,770 in nine Low and Moderate Income Housing development and rehabilitation loans receivable

In the statement on page 4, the \$1,584,770 is mischaracterized as "unencumbered cash" which is incorrect and misleading. This should be termed as "loans receivable". In the schedule on page 6, the \$1,584,770 is correctly labeled as "Loans receivable".

These loans were originally made with redevelopment Low and Moderate Income Housing funds and have always been an asset of that fund. It is our understanding that Health and Safety Code Section 34176 (a) (2) (e) lists the type of assets that are to be transferred including real property and loans receivable. In the report to the Department of Finance Housing Assets Transfer form, the loans were identified as housing assets. This report was approved by the State Department of Finance on August 30, 2012. In the Due-Diligence Review for Low and Moderate Income Housing, these loans were reported as Housing Agency assets as of June 30, 2012 and approved by the Department of Finance. Please see attachment nine.

We disagree with the finding that the loans receivable of \$1,584,770 is a Successor Agency asset and not a Successor Agency Housing Asset. If the issue is an unclear paper trail of the transfer from the former redevelopment agency to the Successor Agency and then to the Successor Housing Agency, then we suggest that is a matter that can be rectified by amending the Order of the Controller to the Successor Agency and Oversight Board to make the appropriate findings to reflect what has already been correctly reported as assets of the Successor Agency and Successor Housing Agency.

Thank you for the opportunity to respond to the Draft Asset Transfer Review. If you have any questions, please contact David Spilman, special consultant at 707-975-5062 or davidspilman@wildblue.net or me at the above number.

Sincerely,



Joan Phillippe,
Executive Director
Clearlake Successor Agency

Attachments

1. Oversight Board 09-26-13 Staff Report on prior City / Redevelopment Agency Loans and draft loan agreement and findings to comply with Health and Safety Code 34191.4
2. Oversight Board Resolution OB-2013-07
3. Oversight Board 10-16-13 Staff Report on executed City / Successor Agency loan agreement to comply with Health and Safety Code 34191.4
4. Oversight Board Resolution OB-2013-09
5. Successor Agency Asset list
6. Department of Finance Housing Assets List submitted 07-31-2012
7. Department of Finance Housing Assets List approval dated 08-30-12
8. Excerpt of Due Diligence Review for All Other Funds and Accounts – Exhibit E
9. Excerpt of Due Diligence Review for Low and Moderate Income Housing – Exhibit A

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

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