

COMMUNITY DEVELOPMENT COMMISSION AS THE NATIONAL CITY REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

November 2013



JOHN CHIANG
California State Controller

November 12, 2013

Leslie Deese, City Manager
National City Redevelopment/Successor Agency
City Hall, 1243 National City Boulevard
National City, CA 91950

Dear Ms. Deese:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Community Development Commission, as the National City Redevelopment Agency (RDA), to the City of National City (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 \$70,736,106 in assets after January 1, 2011, including unallowable transfer of assets to the housing entity totaling \$8,166,792, or 11.55%, that must be turned over to the Successor Agency.

However, on September 25, 2013, the Oversight Board approved the transfer of housing assets to the entity assuming the housing functions. Therefore no further action is needed.

If you have any questions, please contact Steven Mar, Bureau Chief, Local Government Audits Bureau by phone at (916) 324-7226.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/kw

Attachment

cc: Ron Morrison, Oversight Board Chair
National City Redevelopment/Successor Agency
Tracy M. Sandoval, Auditor-Controller
County of San Diego
David Botelho, Program Budget Manager
California Department of Finance
Richard J. Chivaro, Chief Legal Counsel
State Controller's Office
Steven Mar, Bureau Chief
Division of Audits, State Controller's Office
Betty Moya, Audit Manager
Division of Audits, State Controller's Office
Matthew Rios, Auditor-in-Charge
Division of Audits, State Controller's Office
Nesha Neycheva, Auditor
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 RDA Asset Transfers to the Entity Assuming the Housing Functions	6
Attachment—National City’s Response to Draft Review Report	

Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Community Development Commission, as the National City 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 \$70,736,106 in assets after January 1, 2011, including unallowable transfer of assets to the housing entity totaling \$8,166,792, or 11.55%, that must be turned over to the Successor Agency.

However, on September 25, 2013, the Oversight Board approved the transfer of housing assets to the entity assuming the housing functions. Therefore no further action is needed.

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 Code (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 of National 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 RDA, the City, City Council of National City, and the entity assuming the housing functions.
- 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 RDA transferred \$70,736,106 in assets after January 1, 2011, including unallowable transfer of assets to the housing entity totaling \$8,166,792, or 11.55%, that must be turned over to the Successor Agency.

However, on September 25, 2013, the Oversight Board approved the transfer of housing assets to the entity assuming the housing functions. Therefore, no further action is needed.

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

Views of Responsible Official

We issued a draft review report on August 27, 2013. Leslie Deese, City Manager, responded by letter dated September 12, 2013, disagreeing with the review results. The City's response is included in this final review report.

Restricted Use

This report is solely for the information and use of the Community Development Commission as the National City Redevelopment Agency, the City of National City, 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

November 12, 2013

Finding and Order of the Controller

**FINDING—
Unallowable asset
transfers to the
entity assuming the
housing functions**

The Community Development Commission, as the National City Redevelopment Agency (RDA), made unallowable transfers of housing assets totaling \$8,166,792, to the entity assuming the housing functions. The asset transfers occurred during the period of January 1, 2011, through January 31, 2012, and the assets were not contractually committed to a third party prior to June 28, 2011.

On February 1, 2012, the RDA transferred housing assets of \$39,142 in accounts receivable, \$7,767,650 in loans receivable, and \$360,000 in land held for resale to the entity assuming the housing functions.

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).

H&S Code section 34175(b) states that all assets, properties, contracts, leases, books and records, buildings, and equipment of the former RDA 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 RDA 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.

H&S Code section 34177(e) states that the “Successor Agency is to dispose of all former RDA assets “. . . as directed by the oversight board. . .” Also, pursuant to H&S Code section 34177(g) the Successor Agency is to “effectuate transfer of housing functions and assets to the appropriate entity designated pursuant to Section 34176.” However, H&S Code section 34181(c) requires the Oversight Board to direct the Successor Agency to transfer housing assets to the appropriate entity pursuant to Section 34176.

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 assets in the amount of \$8,166,792, and turn over the assets 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).

City’s Response

The National City Successor Agency contends that no unallowable transfers were made during the January 1, 2011 to January 31, 2012 time period, and in fact, the reference transfers shown on February 1, 2012 were in compliance with the RDA dissolution legislation.

Further, the Successor Agency states that it “inadvertently overlooked the requirements of Health & Safety Code Section 34181(c). . . .”

In addition, after the Successor Agency submitted the Housing Asset Transfer List to the Department of Finance, it states that “the DOF did not object to any of the asset transfers identified on the form.”

The Successor Agency describes how transferring the assets to a separate fund associated with the Housing Authority would be simpler and cleaner in its general ledger than doing a two-step process of moving assets into a Successor Agency fund and then to the Housing Authority fund. In addition, the Successor Agency intends to bring this matter to the Oversight Board and request ratification of the transfer to the Housing Authority.

See Attachment for details of the City’s response.

SCO’s Response

The SCO disagrees with the City that no unallowable transfers were made during January 1, 2011, to January 31, 2012. However, subsequent to the City’s response, the Oversight Board approved the transfer of housing assets to the entity assuming the housing functions.

The City sent a copy of Resolution 2013-09, dated September 25, 2013, whereby the Successor Agency Oversight Board approved and ratified the transfer of the housing functions, assets, and obligations from the Successor Agency to the entity assuming the housing functions.

Note that the Department of Finance (DOF) must approve the Oversight Board’s decision in this matter. If the DOF does not approve this decision, then the City is ordered to transfer the assets to the Successor Agency pursuant to H&S Code section 34167.5.

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

Unallowable transfers to the entity assuming housing functions:	
Accounts receivable	\$ 39,142
Loans receivable	7,767,650
Land held for resale	<u>360,000</u>
Total unallowable transfers to the entity assuming housing functions	8,166,792
Less Oversight Board approval on September 25, 2013	<u>(8,166,792)</u>
Total Transfers Subject to Health and Safety Code section 34167.5	<u><u>\$ —</u></u>

**Attachment—
National City’s Response to
Draft Review Report**



September 12, 2013

Steven Mar, Chief
Local Government Audits Bureau
State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874

Dear Mr. Mar,

This letter is in response to your request for comments on the letter and accompanying "Asset Transfer Review" dated August 27, 2013 and received by our office on September 3, 2013.

The Asset Transfer Review concluded that the National City Redevelopment Agency made unallowable transfers of assets to the entity assuming the housing functions totaling \$8,166,792 between January 1, 2011 and January 31, 2012. The report goes on to say that these transfers occurred on February 1, 2012, which is one day after the time period cited and the first day of existence for the Successor Agency. The National City Successor Agency contends that no unallowable transfers were made during the January 1, 2011 to January 31, 2012 time period, and in fact, the referenced transfers shown on February 1, 2012 were in compliance with the RDA dissolution legislation. Further, it appears that the Controller's Office relied solely on reports from the Agency's general ledger to reach the conclusion that an unallowable transfer occurred. Unfortunately, the general ledger does not tell the complete story and appears instead to have caused unintentional confusion.

The National City Successor Agency took action pursuant to HSC sections 34176(a) (1) and (2) and 34177(g), but inadvertently overlooked the requirements of Health & Safety Code section 34181(c), which calls for the Oversight Board to direct the Successor Agency to transfer housing assets to the appropriate entity. On June 19, 2012 the Successor Agency approved actions to effectuate the transfer of housing functions, assets and obligations of the Successor Agency to the Housing Authority of the City of National City. The Housing Asset Transfer List was prepared using the form prescribed by the Department of Finance (DOF) and submitted to the DOF on July 31, 2012. In a letter dated September 11, 2012, the DOF did not object to any of the asset transfers identified on the form. Thereafter, the assets were deemed to be transferred.

Both of these documents were provided to the Controller's Office as part of the Asset Transfer Review.

As the City worked through the complexities of the mid-fiscal year dissolution of the RDA, decisions were made upon the advice of the City's outside auditor about how to transition the assets and liabilities as shown in the general ledger from the RDA to the Successor Agency and the Housing Authority. New funds and accounts had to be created and old ones closed out, which could not happen overnight, and many ledger entries had to be reviewed and reclassified to the new funds in the process. It was determined that even though the transfer of the housing assets was completed in September 2012 (as described above), it would be simpler and cleaner in the general ledger to reflect the housing assets in a separate fund associated with the Housing Authority as of February 1, 2012 to coincide with the commencement date of the Successor Agency rather than doing a two-step process of moving them into a Successor Agency fund and then to the Housing Authority fund. Further, the language in HSC section 34176 (a) (1) seemed to support that decision: the City had elected to retain and perform the housing functions of the RDA and therefore the housing assets "shall be transferred to the city."

The National City Successor Agency believes that the intent of the RDA dissolution legislation has been met, and therefore no reversal of the transfer is required. The Successor Agency will, however, bring this matter to the Oversight Board's attention and request ratification of the transfer of the specified housing assets to the Housing Authority.

Sincerely,



Leslie Deese
City Manager

cc: Mayor/City Councilmembers
Claudia Silva, City Attorney
Brad Raulston, Executive Director
Janel Pehau

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

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