

# **SAN CLEMENTE REDEVELOPMENT AGENCY**

## **ASSET TRANSFER REVIEW**

### Review Report

*January 1, 2011, through January 31, 2012*



**JOHN CHIANG**  
California State Controller

January 2014



**JOHN CHIANG**  
**California State Controller**

January 16, 2014

Pall Gudgeirsson, City Manager  
City of San Clemente/Successor Agency  
100 Avenida Presidio  
San Clemente, CA 92672

Dear Mr. Gudgeirsson:

Pursuant to Health and Safety (H&S) Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the San Clemente Redevelopment Agency (RDA) to the City of San Clemente (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 \$18,534,303 in assets after January 1, 2011, including unallowable transfers totaling \$7,362,525 to the City, or 39.72% of the transferred assets.

However, on April 4, 2012, the Oversight Board retroactively approved the transfer of property and improvements totaling \$7,070,209 to the City. In addition, the remaining unallowable transfers totaling \$292,316 were reversed by the City and remitted to the Orange County Auditor-Controller on June 5, 2013. Therefore, no further action is necessary.

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

Sincerely,

*Original signed by*

JEFFREY V. BROWNFIELD, CPA  
Chief, Division of Audits

JVB/kw

cc: Jake Rahn, Financial Services Officer  
City of San Clemente  
Joe Anderson, Chairperson  
Oversight Board  
San Clemente Redevelopment Successor Agency  
Jan E. Grimes, Auditor-Controller  
Orange County  
David Botelho, Program Budget Manager  
California 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  
Michael Mock, Auditor-in-Charge  
Division of Audits, State Controller's Office  
Margaux Clark, Auditor  
Division of Audits, State Controller's Office

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# Asset Transfer Review Report

## Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the San Clemente 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 \$18,534,303 in assets after January 1, 2011, including unallowable transfers totaling \$7,362,525 to the City of San Clemente (City), or 39.72% of the transferred assets.

However, on April 4, 2012, the Oversight Board retroactively approved the transfer of property and improvements totaling \$7,070,209 to the City. In addition, the remaining unallowable transfers totaling \$292,316 were reversed by the City and remitted to the Orange County Auditor-Controller on June 5, 2013. Therefore, no further action is necessary.

## 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, 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 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 San Clemente Redevelopment Agency transferred \$18,534,303 in assets after January 1, 2011, including unallowable transfers totaling \$7,362,525 to the City of San Clemente, or 39.72% of the transferred assets.

However, on April 4, 2012, the Oversight Board retroactively approved the transfer of property and improvements totaling \$7,070,209 to the City. In addition, the remaining unallowable transfers totaling \$292,316 were reversed by the City and remitted to the Orange County Auditor-Controller on June 5, 2013. Therefore, no further action is necessary.

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

**Views of  
Responsible  
Officials**

We issued a draft review report on September 25, 2013. Jake Rahn, Financial Services Officer, responded by email dated October 7, 2013, neither agreeing nor disagreeing with the review results. The City of San Clemente'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 Successor Agency, the Oversight Board, the City, 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

January 16, 2014

# Finding and Order of the Controller

**FINDING —  
Unallowable asset  
transfers to the  
City of San  
Clemente**

The San Clemente Redevelopment Agency (RDA) transferred \$7,362,525, described in Schedule 1, in capital assets and cash to the City. The asset transfers occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011. Those assets consisted of cash, land, building and construction in progress.

Unallowable asset transfers were as follows:

- On March 1, 2011, the RDA transferred the Casa Romantica cultural center property valued at \$4,470,498 to the City. The transfer was made in accordance with the City Council Meeting Agenda Report in which the City accepted the property transfer from the RDA, and authorized the City Clerk to execute, record, accept the quitclaim deeds, and transfer the title.
- A Notice of Completion certificate was issued April 5, 2011, and on June 30, 2011, the RDA transferred capitalized improvements totaling \$2,599,711 to the City. The transfer was made in accordance with a Cooperation Agreement between the City and the RDA for the funding of capital improvement projects and professional services.
- During the period of January 1, 2011, through January 31, 2012, the RDA transferred cash totaling \$292,316 to the City. The transfer was made in accordance with an agreement entered into on July 1, 2002 between the RDA and the City.

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).

## Order of the Controller

Pursuant to H&S Code section 34167.5, the City San Clemente is ordered to reverse the transfer of the above assets in the amount of \$7,362,525. However, on April 4, 2012, the Oversight Board retroactively approved the transfer of the Casa Romantica cultural center and capitalized improvements to the City. In addition, the cash transfer of \$292,316 to the City was reversed and remitted to the Orange County Auditor-Controller. Therefore, no further action is necessary.

Please note that the Department of Finance (DOF) must approve the Oversight Board's decision in this matter with regard to the Casa Romantica asset. 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.



### City's Response

The Redevelopment Agency transferred the Casa Romantica and the pier improvements to the City in March 2011, at a time when the transfers were legal and valid. The Oversight Board subsequently approved the transfers in April 2012. The Casa Romantica is operated as a historic/cultural arts facility through an operating agreement with a non-profit entity, which is a well-recognized public governmental use. (See Public Resources Code Sections 5120-5132 and 5135-5138 and Government Code Sections 2531, 37361, and 37540, relating to public museums, art galleries, cultural facilities, and historical sites.) The property generates no rent, operates at a substantial deficit (with operating losses having to be offset with other contributions) and is supported by the Successor Agency through an Operating Agreement to pay maintenance and repair costs annually. Therefore, the property is considered to have a negative current value. The Municipal Pier is a City-owned asset and the RDA-funded pier repairs and lighting project are part of that asset, so there is no way to separate the work from the real property already owned by the City.

The payments on the City advance (loan) were based on a prior existing payment schedule and were made until the dissolution date. Once the repayments were disallowed by the Department of Finance the funds were returned and the approved loan obligation amount was added to the Recognized Obligation Payment Schedule.

### SCO's Comment

SCO acknowledges the City's response. The finding and the Order of the Controller remain as stated.

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

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Unallowable asset transfers to the City:

Capital Assets	Description	Value
Land	Casa Romantica APN 692—012-38 and 6952-012-39	\$ 2,867,763
Buildings	Casa Romantica Cultural Arts and Education Center	1,602,735
Construction in progress	Pier repair and lighting project	2,599,711
Cash	Repayment of City advance	292,316
Total unallowable asset transfers		7,362,525
City received Oversight Board approval for the transfer on April 4, 2012		(7,070,209)
City reversed transfer and remitted unencumbered cash to County on June 5, 2013		(292,316)
Total asset transfers subject to H&S Code section 34167.5		\$ —

**Attachment—  
City's Response to  
Draft Review Report**

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**Clark, Margaux**

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**Subject:** FW: San Clemente Redevelopment Agency Asset Transfer Review Report

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**From:** Rahn, Jake [<mailto:RahnJ@san-clemente.org>]  
**Sent:** Monday, October 07, 2013 2:50 PM  
**To:** Mock, Michael  
**Subject:** San Clemente Redevelopment Agency Asset Transfer Review Report

We would like to include the following as a Response in the report, if possible:

City Response

The Redevelopment Agency transferred the Casa Romantica and the pier improvements to the City in March 2011, at a time when the transfers were legal and valid. The Oversight Board subsequently approved the transfers in April 2012. The Casa Romantica is operated as a historic/cultural arts facility through an operating agreement with a non-profit entity, which is a well-recognized public governmental use. (See Public Resources Code Sections 5120-5132 and 5135-5138 and Government Code Sections 2531, 37361, and 37540, relating to public museums, art galleries, cultural facilities, and historical sites.) The property generates no rent, operates at a substantial deficit (with operating losses having to be offset with other contributions) and is supported by the Successor Agency through an Operating Agreement to pay maintenance and repair costs annually. Therefore, the property is considered to have a negative current value. The Municipal Pier is a City-owned asset and the RDA-funded pier repairs and lighting project are part of that asset, so there is no way to separate the work from the real property already owned by the City.

The payments on the City advance (loan) were based on a prior existing payment schedule and were made until the dissolution date. Once the repayments were disallowed by the Department of Finance the funds were returned and the approved loan obligation amount was added to the Recognized Obligation Payment Schedule.

Let me know if you need any other questions answered.

Thank you,

Jake Rahn  
Financial Services Officer  
City of San Clemente  
100 Avenida President

**State Controller's Office  
Division of Audits  
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