

SAN MARCOS REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

August 2014



JOHN CHIANG
California State Controller

August 29, 2014

Laura Rocha, Finance Director
City of San Marcos/Successor Agency
1 Civic Center Drive
San Marcos, CA 92069

Dear Ms. Rocha:

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

Our review found that the RDA transferred \$329,552,255 in assets after January 1, 2011, including unallowable transfers to the City totaling \$367,665, or less than 1% 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.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/sk

cc: Tracy Sandoval, Auditor-Controller
County of San Diego
Gary Hamels, Board Chair
Oversight Board
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
Scott Freesmeier, Audit Manager
Division of Audits, State Controller's Office
Steve Noguchi, Auditor-in-Charge
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 Marcos 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 \$329,552,255 in assets after January 1, 2011, including unallowable transfers to the City of San Marcos (City) totaling \$367,665, or less than 1% 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 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.

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 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 City Council, 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 Marcos Redevelopment Agency transferred \$329,552,255 in assets after January 1, 2011, including unallowable transfers to the City of San Marcos totaling \$367,665, or less than 1% of transferred assets. These assets must be turned over to the Successor Agency.

Details of our findings 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 March 10, 2014. Laura Rocha, Finance Director, responded by letter dated March 27, 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, 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

August 29, 2014

Finding and Order of the Controller

**FINDING—
Unallowable
transfers to the
City of San Marcos**

The San Marcos Redevelopment Agency (RDA) made an unallowable asset transfer of \$367,665 to the City of San Marcos (City). The transfer occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

On February 8, 2011, the City transferred land to the RDA in order to facilitate an affordable housing project in the San Marcos Creek Specific Plan area that was located in RDA Project Area 1. The City purchased one particular parcel, the Paulus property (APN 219-270-34), in 2002. The City transferred title of the Paulus property to the RDA, and the RDA's Low and Moderate Income Housing Fund reimbursed the City \$367,665 for the purchase of the land.

Pursuant to Health and Safety (H&S) Code section 34167.5, any asset transfers by the RDA to a city, county, city and county or any other public agency after January 1, 2011, that were not contractually committed to a third party prior to June 28, 2011, 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 of San Marcos is ordered to turn over the assets in the amount of \$367,665 to the Successor Agency. The Successor Agency is directed to properly dispose of the assets in accordance with H&S Code section 34177(d).

City's Response

We agree with the accuracy of the findings as stated in the Asset Transfer Review Report. In regards to the unallowable transfer of cash in the amount of \$367,665 to the City of San Marcos on February 8, 2011, the State Controller audit representative stated in the audit debriefing that as long as the Oversight Board approved the transfer of the use of 2010 Bond Proceeds for an allowable affordable housing project under the bond covenants, the State Controller's Office would consider removing this item in the final report.

On September 26, 2013, the Oversight Board of the Successor Agency to the Former San Marcos Redevelopment Agency approved the disposition of this property. . . .

See attachment for the City's complete response.

SCO's Comment

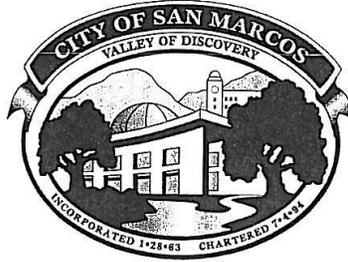
Although the SCO stated that we would consider Oversight Board actions, a recent Superior Court ruling, *Successor Agency to the Brea Redevelopment Agency, et al. v. Matosantos, et al.* states:

The redevelopment dissolution laws established oversight boards to supervise the actions of *successor agencies*, but not to supervise or ratify (after the fact) the actions of former redevelopment agencies. For example, Health and Safety Code section 34180 sets out a list of actions of the *successor agency* that must be approved by the oversight board, and Health and Safety Code section 34181 sets out a list of acts the oversight board shall direct the *successor agency* to take. Conversely, the Court has not located any provision of the redevelopment laws that requires or authorizes an oversight board retrospectively to review or ratify an action of a redevelopment agency taken before its dissolution. The Oversight Board thus appears to have had no legal authority or mandate to review actions of the RDA.

The Finding and Order of the Controller remain as stated.

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

1 Civic Center Drive
San Marcos, CA 92069-2918



Telephone
760.744.1050
FAX: 760.744.9520

March 27, 2014

Elizabeth Gonzalez
Chief, Local Government Compliance Bureau, Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874

Dear Ms. Gonzalez,

In connection with the State Controller's Office review of all asset transfers made by the San Marcos Redevelopment Agency to the City of San Marcos or any other public agency after January 1, 2011, we hereby submit the following comments.

We agree with the accuracy of the findings as stated in the Asset Transfer Review Report. In regards to the unallowable transfer of cash in the amount of \$367,665 to the City of San Marcos on February 8, 2011, the State Controller audit representative stated in the audit debriefing that as long as the Oversight Board approved the transfer of the use of 2010 Bond Proceeds for an allowable affordable housing project under the bond covenants, the State Controller's Office would consider removing this item in the final report.

On September 26, 2013, the Oversight Board of the Successor Agency to the former San Marcos Redevelopment Agency approved this disposition of property originally acquired with Housing Set Aside Tax Allocation Bonds, Series 2010 bond proceeds for which the purpose was consistent with the bond covenants.

We have included copies of the staff report and the adopted resolution in regards to this matter for your consideration.

Please call me direct at 760-744-1050 ext. 3131 should you require additional information and/or clarification.

Sincerely,

A handwritten signature in cursive script, appearing to read "Laura Rocha".

Laura Rocha, CPA
Finance Director



OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE FORMER SAN MARCOS REDEVELOPMENT AGENCY

STAFF REPORT

MEETING DATE: September 26, 2013

SUBJECT: Disposition of Former Redevelopment Agency Asset: Paulus Property

Recommendation

Adopt the attached resolution approving the transfer of funds in the amount totaling \$367,665 from the former Redevelopment Agency (RDA) Low-Moderate Income Housing Fund to the City for the purchase of a parcel of land (APN 219-270-13), known as the "Paulus" Property.

Background

On December 16, 2001 the City purchased a parcel in the Creek District (APN 219-270-13) from Larry Paulus and Donna Bellinger for right-of-way purposes for the future Grand Avenue Bridge and Discovery Street Extension Project (Capital Improvement Project #199). The cost to the City for the acquisition was \$368,145.48.

On June 8, 2010 the RDA Board approved an Exclusive Negotiating Agreement and predevelopment loan with Developer, Opportune Companies, for the development of an affordable housing project, to be known as the Residences at Creekside (RAC), on four parcels in the Creek District, one of which was the Paulus property. On February 8, 2011 the City Council/RDA Board authorized the transfer of the Paulus property and one other parcel, from the City to the RDA in preparation for the construction of the RAC project. The RDA purchased the Paulus property from the City using Housing Set Aside Tax Allocation Bonds, Series 2010 (Series 2010 Bonds) funds in the amount of \$367,664.83 (see attached staff report and resolutions). The use of the Series 2010 Bond proceeds for this purpose is consistent with the bond covenants.

Discussion

During the summer of 2013 the City was audited by the State of California Controllers office. The objective of the audit was to determine if the City's legislative body and the dissolved RDA were in compliance with Assembly Bill X1 26 regarding the disposition of the former RDAs assets. A copy of the Controllers preliminary audit results is attached. The scope of the audit was to determine the validity of any asset transfers during the period January 1, 2011, through January 31, 2012. The Controller's office preliminary audit found that the RDA performed an

"unallowable" transfer of cash in the amount of \$367,665 to the City on February 8, 2011 for the purchase of the Paulus property. However, because this transfer of cash came from Series 2010 Bond proceeds, and the purchase was to be used for affordable housing, the Controller's representative at the audit debriefing stated that as long as the Oversight Board approves of the transfer, the Controller's office would remove it as a finding in their final report.

The Oversight Board will be considering an item for approval on same meeting agenda for the use of the Paulus and three other properties for the development of a new affordable housing project, the Promenade at Creekside (PAC). The Paulus property, as well as the other three properties involved in the Promenade at Creekside project has been approved by the Oversight Board and the Department of Finance as housing assets on the Housing Asset Transfer report.

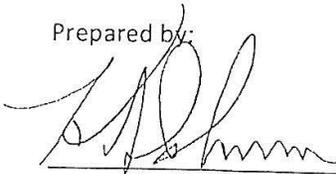
Fiscal Impact

There are no fiscal impacts with the approval of the recommended action. However, if the Board was not to approve the transfer of funds, and the Controller's office lists the transfer as a finding in their final report, the City would have to pay to the Successor Housing Agency the amount of \$367,665.

Attachment(s)

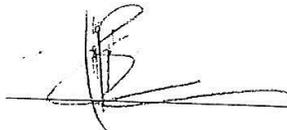
OSB Resolution No. 2013-XXXX Approval of Transfer of Funds
February 8 2011 City/RDA staff report and resolutions No. 2011-7439 & RDA 2011-410
State Controller's office preliminary audit report

Prepared by:



Karl Schwarm, Director
Housing & Neighborhood Services

Approved by:



Lydia Romero, Deputy City Manager

RESOLUTION NO. OBRDA 2013-014

A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY OF THE FORMER SAN MARCOS REDEVELOPMENT AGENCY AFFIRMING THE TRANSFER OF FUNDS IN THE AMOUNT OF \$367,655 TO THE CITY FOR THE PURCHASE OF THE "PAULUS" PROPERTY

WHEREAS, the City Council of the City of San Marcos ("City") adopted the Redevelopment Plan for Project Area No. 1 of the San Marcos Redevelopment Agency ("Agency") on or about July 12, 1983, the Redevelopment Plan for Project Area No. 2 on or about July 19, 1985, and the Redevelopment Plan for Project Area No. 3 on or about July 11, 1989, for the purpose of considering and pursuing redevelopment activities in the community pursuant to the Community Redevelopment Law, California Health & Safety Code Sections 33000, et. seq. ("CRL"); and

WHEREAS, pursuant to Assembly Bill X1 26 ("AB X1 26"), as supplemented in the decision of the California Supreme Court entitled *California Redevelopment Association, et al. v. Ana Matosantos, et al*, Supreme Court matter S194861, which decision was issued on December 29, 2011, redevelopment agencies have been dissolved by the State as of February 1, 2012 and no longer exist as public bodies, corporate or politic, successor agencies were designated to provide for the payment of enforceable obligations of each redevelopment agency and the administration of the wind-down of each such redevelopment agency; and

WHEREAS, pursuant to Resolution No. 2012-7607, approved and adopted by the City on January 10, 2012, the City elected to serve as the Successor Agency to the Agency following its dissolution; and

WHEREAS, pursuant to Health and Safety Code section 34191.4(c), the San Marcos Successor Agency received "Finding of Completion" from the Department of Finance; and

WHEREAS, under HSC section 34191.4(c), when a "Finding of Completion" is issued to a successor agency, the agency may use any remaining bond funds that were issued prior to January 1, 2011, in a manner consistent with the original bond covenants; and

WHEREAS, the San Marcos Successor Agency has bond proceeds from the Housing Set Aside Tax Allocation Bonds, Series 2010 (Series 2010 Bonds) bonds for various affordable housing projects; and

WHEREAS, on February 8, 2011 the City Council and Agency Board approved the purchase of the Paulus property (APN 219-270-13) by the Agency using \$367,655 in Series 2010 Bond proceeds, and

WHEREAS, on February 8, 2011 there were sufficient remaining Series 2010 Bond funds to address the purchase of the Paulus property (APN 219-270-13).

NOW, THEREFORE, the Oversight Board of the Successor Agency to the former San Marcos Redevelopment Agency (also referred to as the Redevelopment Agency of the City of San Marcos), finds that the transfer of funds in the amount of \$367,655 from the Agency to the City for the purchase of the Paulus property (APN 219-270-13) is consistent with the Series 2010 Bond covenants and affirms the use of these funds for an affordable housing project.

PASSED, APPROVED AND ADOPTED by the Oversight Board of the Successor Agency to the former San Marcos Redevelopment Agency at a meeting held on the 26th day of September, 2013, by the following roll call vote:

AYES:	BOARD MEMBERS:	JONES, HAMELS, NEWMAN, PEREZ, SIMMONS
NOES:	BOARD MEMBERS:	NONE
ABSTAIN:	BOARD MEMBERS:	GITTINGS
ABSENT:	BOARD MEMBERS:	MALONE



Gary Hamels, Oversight Board Chair

ATTEST:



Phillip Scollick, Clerk of the Board

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

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