

SAN LEANDRO REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

June 2014



JOHN CHIANG
California State Controller

June 13, 2014

Chris Zapata, City Manager
City of San Leandro
Redevelopment Successor Agency
835 E. 14th Street
San Leandro, CA 94577

Dear Mr. Zapata:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office reviewed all asset transfers made by the San Leandro Redevelopment Agency (RDA) to the City of San Leandro (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 \$47,610,732 in assets after January 1, 2011, including unallowable transfers to the City totaling \$12,888,790, or 27.07% of transferred assets. However, on March 18, 2013, the City turned over \$10,578,040 in capital assets to the Successor Agency. Therefore, the remaining \$2,310,750 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/mh

cc: Patrick O'Connell, Auditor-Controller
Alameda County
Wilma Chan, Chair of the Oversight Board
City of San Leandro
San Leandro Redevelopment/Successor Agency
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
Nicole Baker, 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 Leandro 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 \$47,610,732 in assets after January 1, 2011, including unallowable transfers to the City of San Leandro (City) totaling \$12,888,790, or 27.07% of transferred assets. However, on March 18, 2013, the City turned over \$10,578,040 in capital assets to the Successor Agency. Therefore, the remaining \$2,310,750 in unallowable transfers 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 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 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 City of San Leandro, 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 Leandro Redevelopment Agency transferred \$47,610,732 in assets after January 1, 2011, including unallowable transfers to the City of San Leandro (City) totaling \$12,888,790, or 27.07% of transferred assets. However, on March 18, 2013, the City turned over \$10,578,040 in capital assets to the Successor Agency. Therefore, the remaining \$2,310,750 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
Responsible
Officials**

We issued a draft review report on October 17, 2013. Chris Zapata, City Manager, responded by letter dated October 24, 2013, disagreeing with the review results. The City of San Leandro'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

June 13, 2014

Finding and Order of the Controller

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

The San Leandro Redevelopment Agency (RDA) made unallowable asset transfers totaling \$12,888,790, described in Schedule 1, to the City of San Leandro (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.

Unallowable asset transfers were as follows:

- On January 21, 2011, the RDA transferred \$473,447 in cash to the City for a loan repayment. The transfer was pursuant to the Plaza Project City Loan Agreement and the Joint Project City Loan Agreement under RDA Resolution No. 2004-011. This cash transfer was reversed on the same day.
- On March 7, 2011, the RDA transferred \$2,137,273 in cash to the City for early repayment on the Plaza Project City Loan Agreement. To accomplish the transfer, the City and the RDA entered into an agreement under RDA Resolution No. 2011-006.
- On March 7, 2011, the RDA transferred \$10,578,040 in capital assets to the City. To accomplish the transfer, the City and the RDA entered into a Disposition and Development Agreement under RDA Resolution No. 2011-004.
- On January 23, 2012, the RDA transferred \$173,477 in cash to the City for a loan repayment. The transfer was pursuant to the Joint Project City Loan Agreement under RDA Resolution No. 2004-011.

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).

On March 18, 2013, the City turned over \$10,578,040 in capital assets to the Successor Agency under Resolution No. 2013-003.

Order of the Controller

Pursuant to H&S Code section 34167.5, the City is ordered to reverse the transfer of the above assets in the amount of \$12,888,790. However, because the City turned over the capital assets to the Successor Agency in the amount of \$10,578,040, the remaining amount of \$2,310,750 in cash must be turned 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).

City's Response to Draft

The City and the Successor Agency disagree with the findings of the SCO. As referenced in the Draft Report, the amount of \$2,310,750 in cash was transferred to the City by the Redevelopment Agency. Long before the enactment of AB x1 26 (the "Dissolution Law"), the City made two loans. . . . Both loans were valid and binding redevelopment indebtedness as defined under former Health & Safety Code § 33670.

...The City and the Successor Agency disagree with the SCO's characterization of these loan repayments as "transferred assets" because they are required payments under contract law.

In May of 2012, the Oversight Board to the Successor Agency adopted resolution no. 2012-002, which authorized the Successor Agency to reenter into the Joint Project Area Loan pursuant to Health & Safety Code § 34178(a), and the City and the Successor Agency entered into *Amended and Restated Promissory Note* (the "Restated Note"), to ensure future payment of the loan balance on the Joint Project Area Loan. There have been recent judicial determinations upholding the validity of restated agreements that were executed pursuant to Health and Safety Code Section 34178(a) prior to the enactment of Assembly Bill 1484.

The City and the Successor Agency believe that both former redevelopment law and the current Dissolution Law prevents the SCO from requiring that the assets set forth in the Draft Report be returned to the Successor Agency. . . .

SCO's Comment

AB 1484 amended ABX1 26, and per H&S Code section 34178(a), states in part: "A successor agency or an oversight board shall not exercise the powers granted by this subdivision to restore funding for an enforceable obligation that was deleted or reduced by the Department of Finance. . . ." The SCO acknowledges the Oversight Board to the Successor Agency's approval of Resolution No. 2012-002 pursuant to H&S Code section 34178(a) under ABX1 26; however, the State Department of Finance (DOF) objected to the January 23, 2012 payment of \$173,477. H&S Code section 34180(h), states in part: "An oversight board shall not have the authority to reestablish loan agreements between the successor agency and the city, county, or city and county that formed the redevelopment agency except as provided in Chapter 9 (commencing with Section 34191.1)." At the time of the Oversight Board approval, the Successor Agency had not received a Finding of Completion issued by the DOF.

The judicial determination for the validity of the restated agreement that was executed pursuant to H&S Code section 34178(a), prior to the enactment of Assembly Bill 1484, does not prevent the SCO from ordering the transferred assets to be returned pursuant to H&S Code section 34167.5.

The Finding and Order of the Controller remain as stated.

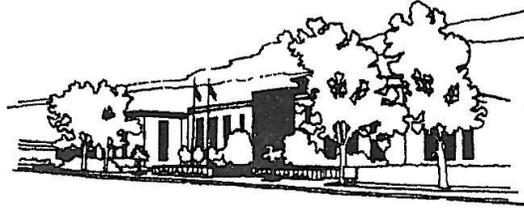
**Schedule 1—
Unallowable RDA Asset Transfers to
the City of San Leandro
January 1, 2011, through January 31, 2012**

Cash transferred to the City (January 21, 2011)	\$ 473,447
Cash reversed from the City (January 21, 2011)	(473,447)
Cash transferred to the City (March 7, 2011)	2,137,273
Capital asset transferred to the City (March 7, 2011)	10,578,040
Cash transferred to the City (March 7, 2011)	<u>173,477</u>
Total unallowable transfers to the City	12,888,790
City returned capital asset	<u>(10,578,040)</u>
Total asset transfers subject to H&S Code section 34167.5	<u>\$ 2,310,750</u>

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

City of San Leandro

Civic Center, 835 E. 14th Street
San Leandro, California 94577
www.sanleandro.org



October 24, 2013

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

Dear Mr. Mar:

This letter is provided in response to the draft State Controller's Office (SCO) Report ("Draft Report") on the Asset Transfer Review for the Redevelopment Agency of the City of San Leandro ("Redevelopment Agency") dated October 17, 2013 and the cover letter thereto (signed by Jeffrey Brownfield, Chief, Division of Audits). In the Draft Report, the SCO has indicated that the Redevelopment Agency made unallowable transfers of \$2,310,750 in assets to the City of San Leandro ("City"), and is ordering that the City transfer the assets back to the Successor Agency to the Redevelopment Agency ("Successor Agency").

The City and the Successor Agency disagree with the findings of the SCO. As referenced in the Draft Report, the amount of \$2,310,750 in cash was transferred to the City by the Redevelopment Agency. Long before the enactment of AB x1 26 (the "Dissolution Law"), the City made two loans in the amounts of \$2,887,617 (the "Plaza Project Area Loan") and \$4,372,774 (the "Joint Project Area Loan") to the Redevelopment Agency to assist the Redevelopment Agency in funding the redevelopment of two key project areas. Both loans were valid and binding redevelopment indebtedness as defined under former Health & Safety Code § 33670.

In March of 2011, the Redevelopment Agency adopted resolution no. 2011-006, authorizing the Redevelopment Agency to repay to the City the remaining \$2,137,273 due under the Plaza Project Area Loan, as permitted under the Plaza Project Area Loan. In January 2012, the Successor Agency made its regularly scheduled payment of \$173,477 to the City for the Joint

Stephen H. Cassidy, Mayor

City Council:

Pauline Russo Cutter
Jim Proia

Michael J. Gregory
Ursula Reed

Benny Lee
Diana M. Souza



Project Area Loan. The October 17, 2013 SCO letter appears to conclude that the two loan repayments totaling \$2,310,750 are “transferred assets” that must be returned to the Successor Agency. The City and the Successor Agency disagree with the SCO’s characterization of these loan repayments as “transferred assets” because they are required payments under contract law.

In May of 2012, the Oversight Board to the Successor Agency adopted resolution no. 2012-002, which authorized the Successor Agency to reenter into the Joint Project Area Loan pursuant to Health & Safety Code § 3178(a), and the City and the Successor Agency entered into an *Amended and Restated Promissory Note* (the “Restated Note”), to ensure future payment of the loan balance on the Joint Project Area Loan. There have been recent judicial determinations upholding the validity of restated agreements that were executed pursuant to Health and Safety Code Section 34178(a) prior to the enactment of Assembly Bill 1484.¹

The City and the Successor Agency believe that both former redevelopment law and the current Dissolution Law prevents the SCO from requiring that the assets set forth in the Draft Report be returned to the Successor Agency, and respectfully request that the State Controller revise the Draft Report accordingly.

The City and the Successor Agency reserve all rights to raise other legal arguments with respect to the Draft Report as may be necessary. If you have any questions, please contact Jeff Kay, Interim Business Development Manager, at (510) 577-3319.

Sincerely,



Chris Zapata
City Manager

2189858.1

¹ See *City of Emeryville v. Matosantos et al.*, Case No. 2012-80001264 and *City of Riverside v. Matosantos et al.*, Case No. 2013-80001421.

**State Controller's Office
Division of Audits
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<http://www.sco.ca.gov>