

# MURRIETA 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 14, 2014

Joy Canfield, Finance Director  
City of Murrieta Redevelopment/Successor Agency  
24601 Jefferson Avenue  
Murrieta, CA 92562

Dear Ms. Canfield:

Pursuant to Health and Safety (H&S) Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Murrieta Redevelopment Agency (RDA) to the City of Murrieta (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 \$53,549,039 in assets after January 1, 2011, including unallowable transfers totaling \$18,891,843, (\$5,315,894 to the City and \$13,575,949 to the Entity Assuming the Housing Functions), or 35.28% of transferred assets.

However, on December 19, 2012, the City turned over \$450,160 in cash to the Riverside County Auditor-Controller's Office for distribution to the taxing entities. In addition, the Oversight Board retroactively approved the transfer of \$13,033,980 in housing assets to the Entity Assuming the Housing Functions on September 11, 2013. Also, \$91,809 was removed from Finding 2 because the expenditure occurred after February 1, 2012. Therefore, the remaining amount of unallowable transfers, totaling \$5,315,894, must be turned over to the Successor Agency.

If you have any questions, please contact Elizabeth Gonzalez, 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: Rick Dudley, City Manager  
City of Murrieta  
Ruthanne Taylor Berger, Chair of Oversight Board  
City of Murrieta  
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City of Murrieta  
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# Asset Transfer Review Report

## Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Murrieta 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 \$53,549,039 in assets after January 1, 2011, including unallowable transfers totaling \$18,891,843 (\$5,315,894 to the City and \$13,575,949 to the Entity Assuming the Housing Functions), or 35.28% of transferred assets.

However, on December 19, 2012, the City turned over \$450,160 in cash to the Riverside County Auditor-Controller's Office for distribution to the taxing entities. In addition, the Oversight Board retroactively approved the transfer of \$13,033,980 in housing assets to the Entity Assuming the Housing Functions on September 11, 2013. Also, \$91,809 was removed from Finding 2 because the expenditure occurred after February 1, 2012. Therefore, the remaining amount of unallowable transfers, totaling \$5,315,894, 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 (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 RDA and the City.
- 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 Murrieta Redevelopment Agency transferred \$53,549,039 in assets after January 1, 2011, including unallowable transfers totaling \$18,891,843 (\$5,315,894 to the City of Murrieta [City] and \$13,575,949 to the Entity Assuming the Housing Functions), or 35.28% of transferred assets.

However, on December 19, 2012, the City turned over \$450,160 in cash to the Riverside County Auditor-Controller's Office for distribution to the taxing entities. In addition, the Oversight Board retroactively approved the transfer of \$13,033,980 in housing assets to the Entity Assuming the Housing Functions on September 11, 2013. Also, \$91,809 was removed from Finding 2 because the expenditure occurred after February 1, 2012. Therefore, the remaining amount of unallowable transfers, totaling \$5,315,894, must be turned over to 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 review report on November 14, 2013. Jeffery Morris, City Attorney, responded by letter dated November 27, 2013, disagreeing with Finding 1. The City of Murrieta'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, 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 14, 2014

# Findings and Orders of the Controller

## **FINDING 1— Unallowable asset transfers to the City of Murrieta**

The Murrieta Redevelopment Agency (RDA) made unallowable asset transfers of \$5,315,894 to the City of Murrieta (City) during the period of January 1, 2011, through January 31, 2012.

Unallowable asset transfers were as follows:

- On June 30, 2011, the RDA transferred cash assets to the City in the amount of \$788,913 to repay loans established between the City and the former RDA during 2004 and 2005.
- On December 30, 2011, the RDA transferred \$4,526,981 in cash for loan repayments to the City. The cash transfers were accelerated payments for the loans established between the City and the former RDA during 2004 and 2005.

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. Any assets should be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177(e).

### Order of the Controller

Pursuant to H&S Code section 34167.5, the City is ordered to reverse the transfer of the above assets, described in Schedule 1, in the amount of \$5,315,894 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 section 34177(e).

### City's Response

The City disagrees with the finding regarding the loan repayments of \$5,315,894 to the City and is currently involved in litigation with the Department of Finance (DOF).

The City states that it cannot return the disputed funds to the Successor Agency, as required by the Draft Report, because doing so would render the City's appeals moot. The City further states that if it were to return the \$5,315,894 to the Successor Agency in accordance with Health & Safety Code section 34167.5, the appeals would be dismissed as moot because the disputed funds would no longer be in the City's possession. (See attachment for the complete City response.)

### SCO's Comment

The City's pending litigation with the DOF over this issue does not preclude the SCO from ordering the claw back of unallowable asset transfers pursuant to H&S Code section 34167.5.

The finding and Order of the Controller remain as stated.

**FINDING 2—  
Unallowable asset  
transfers to the  
Entity Assuming  
the Housing  
Functions**

The RDA made an unallowable asset transfer of \$13,575,949, described in Schedule 2, to the Entity Assuming the Housing Functions. The asset transfer occurred during the period of January 1, 2011, through January 31, 2012.

This transfer included a February 1, 2012 expenditure of \$91,809 to the city for a California Public Employees' Retirement System (CalPERS) liability that was accumulating for the period starting in July 2011, including CalPERS medical insurance liabilities and minor payroll-related liabilities.

In addition, based on the findings in the DOF's Due Diligence Review, the Successor Agency agreed to transfer \$450,160 to the County Auditor-Controller as part of the amount of cash and cash equivalents available for distribution to the affected taxing entities.

On December 19, 2012, the City transferred the balance of \$13,033,980 for distribution to the Riverside County Auditor-Controller's Office.

On September 11, 2013, the Oversight Board approved Resolution No. OB-2013-6, which retroactively approved the transfer of remaining Low and Moderate Income Housing Fund assets from the Successor Agency to the Entity Assuming the Housing Functions.

Order of the Controller

Pursuant to 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 adjusted amount of \$13,033,980, and turn them over to the Successor Agency for disposition in accordance with H&S Code section 34177(d) and (e), and 34181(c). However, the Oversight Board retroactively approved the transfer on September 11, 2013. Therefore, no further action is necessary.

The DOF must approve the Oversight Board's decision in this matter. If the DOF does not approve this decision, then the Entity Assuming the Housing Functions is ordered to transfer the assets to the Successor Agency pursuant to H&S Code section 34167.5.

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

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Unallowable asset transfers to the City of Murrieta:	
Loan repayment – June 30, 2011	\$ 788,913
Loan repayment – December 30, 2011	<u>4,526,981</u>
Total unallowable asset transfers	<u>\$ 5,315,894</u>

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

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Unallowable asset transfers to the Entity Assuming the Housing Functions:

Low and moderate income housing current assets:

Claim on cash	\$ 1,784,191
Interest receivable	117,858
Deferred loans receivable	1,715,094
Land held for resale	<u>9,958,806</u>

Total unallowable asset transfers 13,575,949

Subsequent events

CalPERS and payroll liabilities expenditures after February 1, 2012. (91,809)

Department of Finance's Due Diligence Report determination of Low and Moderate Income Housing Fund balance available for taxing entities funds transmitted to the Riverside County Auditor-Controller on December 19, 2012. (450,160)

On September 11, 2013, Resolution No. OB-2013-6 retroactively approved the transfer of Low and Moderate Income Housing Fund assets from the Successor Agency to the Entity Assuming the Housing Functions as of February 1, 2012. (13,033,980)

Total transfers subject to Health and Safety Code section 34167.5 \$ —

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

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Jeffery A. Morris  
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November 27, 2013

Elizabeth Gonzalez  
Chief, Division of Audits  
California State Controller's Office  
Local Government Compliance Bureau  
P.O. Box 942850  
Sacramento, CA 94250-5874

**Re: *City of Murrieta - Comment Letter to State Controller's November 2013 Asset Transfer Review Report***

Dear Ms. Gonzalez:

Our firm is City Attorney for the City of Murrieta. Please let this letter serve as the City of Murrieta ["City"]'s formal comment letter to the State Controller's November 2013 draft Asset Transfer Review Report ["Draft Report"], attached to a cover letter from Jeffrey V. Brownfield dated November 14, 2013. The City received the letter on November 21, 2013.

Accuracy of Findings

Health & Safety Code section 34167.5 ["Section 34167.5"] requires the State Controller to review all assets transferred after January 1, 2011 between former redevelopment agencies and the cities or counties that created them. The Draft Report ultimately concludes that the amount of unallowable transfers subject to Section 34167.5 is \$5,315,894. This total amount is comprised of four payments made in 2011 by the now-dissolved Redevelopment Agency for the City of Murrieta ["the RDA"].

Finding 1 of the Draft Report describes the alleged unallowable asset transfers as follows:

- On June 30, 2011, the RDA transferred cash assets to the City of Murrieta in the amount of \$788,913 to repay loans established between the City of Murrieta and the former RDA during 2004 and 2005.
- On December 30, 2011, the RDA transferred \$4,526,981 in cash for loan repayments to the City of Murrieta. The cash transfers were accelerated payments for the loans established between the City of Murrieta and the former RDA during 2004 and 2005.

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*City of Murrieta - Comment Letter to State Controller's November 2013  
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The facts supporting these findings are accurate, but the Draft Report's findings omit crucial details of these payments which legitimize the RDA's actions. A summary of the factual history behind these loan repayments is necessary to understand them within the context of ABx1 26.

On October 5, 2004, the City loaned the RDA \$3,870,000 from its general fund to purchase land for redevelopment ["the RDA Loan"]. On March 15, 2005, the City loaned the RDA \$1,500,000 for a right-of-way acquisition needed for a City road widening project ["CIP Loan"]. These loans were made pursuant to the lending terms of the City's 1992 cooperation agreement between the City and the RDA, which establishes the interest rates and repayment terms for City loans to the RDA. After not initially repaying the loans, the RDA approved a repayment schedule on November 3, 2009 whereby the RDA would begin making annual repayments of \$500,000 on the RDA Loan, and \$288,912.50 to the CIP Loan. On June 30, 2011, the RDA made its annual repayments to the City for the RDA and CIP Loans for fiscal year 2010/2011, totaling \$788,913. (These payment are noted in the first bullet point under Finding 1.)

On June 21, 2011, prior to ABx1 26's adoption, the RDA adopted its fiscal year 2011/2012 operating budget, which included year-end, accelerated repayments of the respective \$3,157,419 and \$1,369,563 balances of the RDA and CIP Loans. Those repayments were made on December 30, 2011. (They are noted in the second bullet point under Finding 2.)

The four payments at issue in Finding 1 were made pursuant to repayment schedules that were adopted before ABx1 26's adoption. These are important facts that should be noted in the findings of the final version of the November 2013 Asset Transfer Review Report.

Also, these same loan payments are the subject of the Department of Finance ["DOF"]'s challenge to the City's due diligence review pursuant to Health & Safety Code section 34179.5, discussed below. In DOF's first of two due diligence review determination letters, it should be noted that the City's June 30, 2011 annual \$500,000 repayment of the RDA Loan was upheld by DOF as an enforceable obligation. This is another fact which should be included in the findings of the final version of the November 2013 Asset Transfer Review Report.

Department of Finance Litigation

The City is currently involved in litigation with DOF regarding the \$5,315,894 in funds which this Draft Report has deemed owed. On December 15, 2012 and April 2, 2013, DOF issued

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determination letters regarding the RDA's transfers of housing funds and all other funds since January 1, 2011. At issue in both letters were the RDA's repayment of the RDA and CIP Loans.

The City filed separate petitions for writ of mandate challenging DOF's determination letters on December 20, 2012 and April 9, 2013. Both actions were later consolidated for all purposes. Judge Michael P. Kenny issued an order denying both petitions on October 4, 2013. The City filed a notice of appeal on October 28, 2013, and intends to file a writ of supersedeas requesting injunctive relief from the court of appeal very soon. Where an injunction has been denied at the trial court level, and the respondent threatens to perform the act in question, the matter is not automatically stayed upon the filing of a notice of appeal. (Code Civ. Proc. §1094.5(g).) Instead, the appellate court has authority to issue a stay or supersedeas enjoining the respondent from doing the action in question pending the appeal. (See Code Civ. Proc. § 923.)

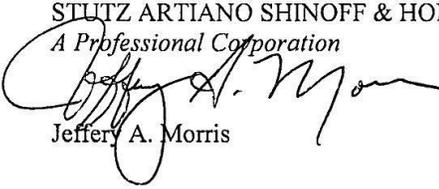
The City cannot return the disputed funds to the Successor Agency, as required by the Draft Report, because it would render the City's appeals moot. This is because the appellate court only decides active cases and controversies. (*Ebensteiner Co., Inc. v. Chadmar Group* (2006) 143 Cal.App.4th 1174, 1178-1179.) If the City were to return the \$5,315,894 to the Successor Agency in accordance with Health & Safety Code §34167.5, the appeals would be dismissed as moot because the disputed funds would no longer be in the City's possession.

Conclusion

The City appreciates this opportunity to comment on the Draft Report. We hope these comments persuade you to reverse your order directing the return of the disputed \$5,315,894 when the November 2013 Asset Transfer Review Report is finalized. We would be happy to provide you with any additional documentation or clarification to assist you in finalizing the report.

Very truly yours,

STUTZ ARTIANO SHINOFF & HOLTZ  
A Professional Corporation

  
Jeffery A. Morris

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Elizabeth Gonzalez  
Chief, Division of Audits  
California State Controller's Office  
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cc: Rick Dudley, City Manager  
City of Murrieta

Joy Canfield, Finance Director  
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