

CUDAHY REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

April 2014



JOHN CHIANG
California State Controller

April 15, 2014

Henry Garcia, Interim City Manager
Cudahy Redevelopment Successor Agency
5220 Santa Ana Street
Cudahy, CA 90201

Dear Mr. Garcia:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Cudahy Community Development Commission/Cudahy Redevelopment Agency (RDA) to the City of Cudahy (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 \$26,505,820 in assets after January 1, 2011, including unallowable transfers totaling \$22,744,864, or 85.81% of transferred assets. The unallowable transfers included \$20,978,178 to the Cudahy Economic Development Corporation and \$1,766,686 to the Entity Assuming the Housing Functions. These assets 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

Attachment

cc: Frank Gurule, Chairman of Oversight Board
City of Cudahy Redevelopment/Successor Agency
Wendy L. Watanabe, Auditor-Controller
Los Angeles County
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
Michael Mock, 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 Cudahy Redevelopment Agency/Cudahy Community Development Commission (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 \$26,505,820 in assets after January 1, 2011, including unallowable transfers totaling \$22,744,864, or 85.81% of transferred assets. The unallowable transfers included \$20,978,178 to the Cudahy Economic Development Corporation (EDC) and \$1,766,686 to the Entity Assuming the Housing Functions. 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 and oversight boards 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.

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 any other public agency. 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 Cudahy 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 Cudahy Redevelopment Agency/Cudahy Community Development Commission transferred \$26,505,820 in assets after January 1, 2011, including unallowable transfers totaling \$22,744,864 (\$20,978,178 to the EDC and \$1,766,686 to the Entity Assuming the Housing Functions), or 85.81% of transferred assets. These assets must be turned over to the Successor Agency.

Details of our findings are described in the Findings and Orders of the Controller section of this report.

Views of Responsible Officials

We issued a draft review report on January 10, 2014. Henry Garcia, Interim City Manager and Steven Dobrenen, Finance Director, responded by letter dated January 28, 2014. However, the City withdrew this letter and replaced it with a letter dated April 7, 2014. The City's response is included as an attachment to this final review report.

Restricted Use

This report is solely for the information and use of the City, the Successor Agency, the Oversight Board, 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

April 15, 2014

Findings and Orders of the Controller

FINDING 1— Unallowable asset transfers to the Economic Development Corporation

On April 1, 2011, the Cudahy Redevelopment Agency/Cudahy Community Development Commission (RDA) made unallowable asset transfers of \$20,978,178 to the Cudahy Economic Development Corporation (EDC). The asset transfers to the EDC 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 and capital assets.

Pursuant to 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(e).

Order of the Controller

Based on H&S Code section 34167.5, the EDC is ordered to reverse the transfer of the above assets in the amount of \$20,978,178 and to turn over the assets to the Successor Agency (see Schedule 1).

City's Response

The City, as Successor Agency, responded by letter dated January 28, 2014. However, the City withdrew this letter and replaced it with a letter dated April 7, 2014 (attached).

SCO's Comments

The City has developed a plan to address this issue. The Finding and Order of the Controller remains as stated.

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

On January 31, 2012, the RDA transferred a total of \$1,766,686 in housing assets to the Entity Assuming the Housing Functions. Pursuant to 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.

Pursuant to 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). However, it appears that some of those assets also may be subject to the provisions of H&S Code section 34181(a).

H&S Code section 34181(a) states, “The oversight board shall direct the successor agency to do all of the following:

- (a) Dispose of all assets and properties of the former redevelopment agency that were funded by tax increment revenues of the dissolved redevelopment agency; provided however, that the oversight board may instead direct the successor agency to transfer ownership of those assets that were constructed and used for a government purpose, such as roads, school buildings, parks, police and fire stations, libraries, and local agency administrative buildings, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset. . . .

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 above assets in the amount of \$1,766,686, and turn them over to the Successor Agency.

City’s Response

The City, as Successor Agency, responded by letter dated January 28, 2014. However, the City withdrew this letter and replaced it with a letter dated April 7, 2014 (attached).

SCO’s Comments

The City agrees with the issue and will address it by requesting the Oversight Board to approve the transfers. The Finding and Order of the Controller remains as stated.

**Schedule 1—
Unallowable RDA Asset Transfers to
the City of Cudahy and Other Public Agencies
January 1, 2011, through January 31, 2012**

Transfers of assets to the Cudahy Economic Development Corporation (EDC):

Per the April 1, 2011 Project Implementation Agreement:

4854/4848 Oak Street	\$ 1,208,895	
7638/7644 Atlantic Avenue	1,009,070	
8100 Atlantic Avenue	1,323,297	
8110 Atlantic Avenue	1,127,027	
4720 Santa Ana Street	399,889	
Total land transferred to the EDC		\$ 5,068,178
2011 bond issuance	9,410,000	
2003 bond issuance	3,915,256	
Available cash balances	2,584,744	
Total cash transferred to the EDC		15,910,000
Total cash and assets transferred to the EDC		20,978,178
Assets transferred to Entity Assuming the Housing Functions:		
Assets available on January 31, 2012		1,766,686
Total asset transfers subject to Health and Safety Code section 34167.5		\$ 22,744,864

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



CITY OF CUDAHY CALIFORNIA

Incorporated November 10, 1960

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(323) 773-6143
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April 7, 2014

Jeffrey Brownfield, CPA
Chief, Division of Audit
Steven Mar, CPA
Bureau Chief, Local Government Audits Bureau
Betty Moya
Audit Manager, Division of Audit
California State Controller's Office
P.O. Box 942350
Sacramento, CA 94250-5874

Re: City of Cudahy and City of Cudahy as Successor Agency to the former Cudahy Community Development Commission

Ladies and Gentlemen:

INTRODUCTION

The City of Cudahy (the "City") and the City of Cudahy as Successor Agency to the former Cudahy Community Development Commission (the "Successor Agency") hereby acknowledge receipt of the draft "Cudahy Redevelopment Agency Asset Transfer Review Report (January 1, 2011 through January 31, 2012)" dated January 2014 (the "Draft Report"). The Draft Report was prepared by the Office of the State Controller.

This correspondence is submitted to the Office of State Controller following a telephone conference call on April 4, 2014, among officials with the Office of the State Controller and representatives of the City and the Successor Agency regarding the Draft Report and certain actions proposed by the Successor Agency in response to the two (2) findings set forth in the Draft Report.

The Successor Agency hereby respectfully withdraws its letter, dated January 28, 2014, and in its place substitutes this correspondence, dated April 7, 2014, in response to the Draft Report.

PART TWO

Response of the Successor Agency to the Draft Report Finding 1 and Finding 2

With respect to Draft Report Finding 1, the Successor Agency respectfully informs the Office of the State Controller that the transfer of \$20,978,178 in assets to the Cudahy Economic Development Corporation, a California non-profit public benefit corporation (the "Cudahy EDC") does not violate the provisions of Health and Safety Code Section 34167.5. The City and the

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Steven Mar, CPA
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Betty Moya
Audit Manager, Division of Audit
April 7, 2014
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Successor Agency are informed and believe that the Cudahy EDC is a separate legal entity from the City of Cudahy. Nevertheless, and without any admission against their interests to the contrary, and with a full reservation of rights, the City and the Successor Agency intend to undertake the actions as set forth in Part Three, below in response to Finding 1 in the Draft Report and recover the assets transferred to the Cudahy EDC for disposition by the Successor Agency.

With respect to Draft Report Finding 2, the Successor Agency acknowledges that \$1,766,686 of low and moderate income housing assets have been transferred to the City as Successor Housing Agency without the prior approval of the Cudahy Oversight Board. The City and the Successor Agency hereby confirm to the Office of State Controller that in response to Finding 2 in the Draft Report, the Successor Agency shall promptly seek the concurrence and ratification of the Cudahy Oversight Board for the transfer of these low and moderate housing income assets to the City of Cudahy as Successor Housing Agency.

PART THREE

Recovery of Assets Included Under Finding 1 By Successor Agency and Preparation of Long Range Asset Management Plan, Consultations with State DOF and Taxing Entities

The former Cudahy Community Development Commission /Cudahy redevelopment agency transferred \$20,978,178 in redevelopment agency assets to the Cudahy EDC after January 1, 2011, as set forth in the Draft Report. The Successor Agency is informed and believes that the Cudahy EDC is currently under contract with third parties to transfer most of these assets at market value (including lands transferred from the former Cudahy Community Development Commission as well other lands acquired by the Cudahy EDC using bond proceeds and former Cudahy Community Commission cash balances) as follows:

Grapevine Advisors ("Site No. 1")	\$2,850,213
Grapevine Advisors ("Site No. 2")	\$2,920,792
BlueGreen ("Site No. 3")	\$6,603,223
BlueGreen ("Site No. 4")	\$3,315,995

In addition, the Successor Agency is further informed that in 2013, the Cudahy EDC transferred certain land to Melia Homes, for affordable housing development. The asset value of the Melia Homes lands ("Site No. 5") is reported by the Cudahy EDC to be \$1,000,050. Furthermore, the Successor Agency is informed that the Cudahy EDC is currently engaged in quiet title legal proceedings in Los Angeles County Superior Court Case No. VC063068 to recover certain land previously transferred by the Cudahy EDC in 2012 to Paramount Villas

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April 7, 2014
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(owner Alvaro Banegas). The asset value of these Banegas lands ("Site No. 6") is reported by the Cudahy EDC to be \$1,208,895.

The Cudahy EDC also has informed the Successor Agency that it has approximately \$657,000 in cash and other assets on hand as of March 31, 2014. The Cudahy EDC has been requested by the Successor Agency to prepare and deliver an independent auditor's report of its operations since the time of its formation to the Successor Agency at the earliest feasible time.

The Successor Agency shall undertake all reasonable effort to cause the Cudahy EDC to: (i) diligently pursue the recovery of Site No. 5 from Melia Homes or pursue the cash value of the transferred asset from Melia Homes; (ii) diligently pursue the recovery of the Site No. 6 lands to a conclusion which is satisfactory to the Successor Agency, the Cudahy Oversight Board and the State Department of Finance ("State DOF"); (iii) suspend the closing dates for the dispositions to third parties of the lands included in Site Nos. 1-4 inclusive, pending the preparation by the Successor Agency of a long range asset management plan (a "PMP") for the disposition of Site Nos. 1-4, inclusive and Site Nos. 5 and 6, and the approval of such PMP by the Oversight Board and State DOF and (iv) account for and recover from the Cudahy EDC all other former redevelopment agency assets not described in (i), (ii) and (iii) of this paragraph. The Successor Agency further proposes that the final terms of any disposition of the lands included in Site Nos. 1-4, inclusive, and Site Nos. 5 and 6, shall be subject to the terms and conditions set forth in the PMP, as finally approved by the Oversight Board and State DOF.

For the reason as briefly discussed with the Office of the State Controller during the telephone conference on April 4, 2014, the Successor Agency respectfully requests that it be given an opportunity to confer with each of the taxing entities regarding the use of revenues generated from the liquidation of Site Nos. 1-4, inclusive and Site No. 5 and 6 under the PMP as relates to the preservation of the tax exempt status of various bond issues of the former Cudahy Community Development Commission/ redevelopment agency. Nevertheless, in all cases, the cash realized by the Successor Agency from the recovery of the assets of the former Cudahy Community Development Commission/redevelopment agency as previously transferred to the Cudahy EDC, including the liquidation of the property in accordance with the PMP, shall be remitted to the Los Angeles County Auditor-Controller by the Successor Agency for distribution to the taxing entities as promptly as is feasible.

Jeffrey Brownfield, CPA
Chief, Division of Audit
Steven Mar, CPA
Bureau Chief, Local Government Audits Bureau
Betty Mcya
Audit Manager, Division of Audit
April 7, 2014
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CONCLUSION

If you have any questions regarding this response of the Successor Agency, please contact Ricardo Olivarez, City Attorney and Successor Agency counsel (Olivarez Madruga PC) at (213) 744-0099. If you have a question that is directed to the Cudahy EDC, regarding Draft Report Finding 1, please contact Alexis Crump, legal counsel to the Cudahy EDC (Lewis Brisbois Bisgaard & Smith) at (213) 599-7769.

Very truly yours,



Henry Garcia
Interim City Manager

cc: Mayor and City Council, City of Cudahy
Ricardo Olivarez, Olivarez Madruga
Alexis Crump, Lewis Brisbois
Isabel Birtueta, Olivarez Madruga
David F. Gondek, Olivarez Madruga

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