

SAN DIMAS REDEVELOPMENT AGENCY

Review Report

ASSET TRANSFER REVIEW

January 1, 2011, through January 31, 2012



BETTY T. YEE
California State Controller

June 2015



BETTY T. YEE
California State Controller

June 30, 2015

Blaine Michaelis, City Manager
City of San Dimas/Successor Agency
245 East Bonita Avenue
San Dimas, CA 91773

Dear Mr. Michaelis:

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

Our review found that the RDA transferred \$16,992,753 in assets after January 1, 2011, including unallowable transfers to the City totaling \$4,566,183, or 26.87% of the transferred assets.

However, the following corrective actions have been taken:

- On July 8, 2013, the Oversight Board approved the transfer of various properties to the City totaling \$629,803 through Oversight Board Resolution 17. However, on October 2, 2013, the Department of Finance (DOF) considered two of those properties, valued at \$49,857, ineligible for transfer as governmental purpose, and indicated that those properties should be included in the Successor Agency's Long-Range Property Management Plan (LRPMP).
- On November 13, 2014, the Oversight Board amended the LRPMP under Resolution No. 29, adding the two properties, the portion of Parking Lot #1 (Bonnet Parcel) and the portion of Parking Lot #2 adjacent to San Dimas Avenue. On February 2, 2015, the DOF approved all of the properties listed on the LRPMP.

- On December 31, 2013, the City turned over land held for resale totaling \$2,678,799 to the Successor Agency.

Therefore, the remaining \$1,257,581 in unallowable transfers must be turned over to the Successor Agency.

If you have any questions, please contact Ms. González by telephone at (916) 324-0622 or by email at egonzalez@sco.ca.gov.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/lis

Attachment

cc: Curt Morris, Oversight Board Chairperson
San Dimas Redevelopment/Successor Agency
John Naimo, Auditor-Controller
Los Angeles County
Barbara Bishop, Finance Manager
City of San Dimas/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

Contents

Review Report

Summary	1
Background	1
Objective, Scope, and Methodology	2
Conclusion	2
Views of Responsible Officials	3
Restricted Use	3
Finding and Order of the Controller	4
Schedule 1—Unallowable Asset Transfers to the City of San Dimas	6
Attachment—City’s Response to Draft Review Report	

Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the San Dimas 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 \$16,992,753 in assets after January 1, 2011, including unallowable transfers to the City of San Dimas (City) totaling \$4,566,183, or 26.87% of the transferred assets.

However, the following corrective actions have been taken:

- On July 8, 2013, the Oversight Board approved the transfer of various properties to the City totaling \$629,803 through Oversight Board Resolution 17. However, on October 2, 2013, the Department of Finance (DOF) considered two of those properties, valued at \$49,857, ineligible for transfer as governmental purpose, and indicated that those properties should be included in the Successor Agency's Long-Range Property Management Plan (LRPMP).
- On November 13, 2014, the Oversight Board amended the LRPMP under Resolution No. 29, adding the two properties, the portion of Parking Lot #1 (Bonnet Parcel) and the portion of Parking Lot #2 adjacent to San Dimas Avenue. On February 2, 2015, the DOF approved all of the properties listed on the LRPMP.
- On December 31, 2013, the City turned over land held for resale totaling \$2,678,799 to the Successor Agency.

Therefore, the remaining \$1,257,581 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 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 of San Dimas, 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 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’s 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 Dimas Redevelopment Agency transferred \$16,992,753 in assets after January 1, 2011, including unallowable transfers to the City of San Dimas (City) totaling \$4,566,183, or 26.87% of the transferred assets.

However, the following corrective actions have been taken:

- On July 8, 2013, the Oversight Board approved the transfer of various properties to the City totaling \$629,803 through Oversight Board Resolution 17. However, on October 2, 2013, the Department of Finance (DOF) considered two of those properties, valued at \$49,857, ineligible for transfer as governmental purpose, and indicated that those properties should be included in the Successor Agency’s Long-Range Property Management Plan (LRPMP).

- On November 13, 2014, the Oversight Board amended the LRPMP under Resolution No. 29, adding the two properties, the portion of Parking Lot #1 (Bonnet Parcel) and the portion of Parking Lot #2 adjacent to San Dimas Avenue. On February 2, 2015, the DOF approved all of the properties listed on the LRPMP.
- On December 31, 2013, the City turned over land held for resale totaling \$2,678,799 to the Successor Agency.

Therefore, the remaining \$1,257,581 in unallowable transfers must be turned over to the Successor Agency.

Details of our finding 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 February 23, 2015. Mark W. Steres, City Attorney for the City of San Dimas and Agency Counsel for San Dimas Successor Agency, responded by letter dated March 11, 2015. 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 of San Dimas, 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

June 30, 2015

Finding and Order of the Controller

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

The San Dimas Redevelopment Agency (RDA) made unallowable asset transfers of \$4,566,183 to the City of San Dimas (City). The 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 June 30, 2011, the RDA transferred \$1,257,581 in cash to the City to pay the principal and interest on advances from the City and the New Walker House Loan.
- On January 31, 2012, the RDA transferred \$366,700 in property to the City.
- On January 31, 2012, the RDA transferred \$2,941,902 in Land Held for Resale to 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. The assets must 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 is ordered to reverse the transfers, totaling \$4,566,183, and turn over the assets to the Successor Agency.

However, the following corrective actions have been taken:

- On July 8, 2013, the Oversight Board approved the transfer of various properties to the City totaling \$629,803 through Oversight Board Resolution 17. However, on October 2, 2013, the Department of Finance (DOF) considered two of those properties, valued at \$49,857, ineligible for transfer as governmental purpose, and indicated that those properties should be included in the Successor Agency's Long-Range Property Management Plan (LRPMP).
- On November 13, 2014, the Oversight Board amended the LRPMP under Resolution No. 29, adding the two properties, the portion of Parking Lot #1 (Bonnet Parcel) and the portion of Parking Lot #2 adjacent to San Dimas Avenue. On February 2, 2015, the DOF approved all of the properties listed on the LRPMP.
- On December 31, 2013, the City turned over land held for resale totaling \$2,678,799 to the Successor Agency.

Therefore, the remaining \$1,257,581 in unallowable transfers must be turned over to the Successor Agency.

City's Response

The Successor Agency and the City object to the finding that the “transfer” of \$1,257,581 for payment of principal and interest on prior loans is an unallowable transfer. The Successor Agency and the City stated that the subject loans fell within the definition of “enforceable obligation” at the time of payment, and added that H&S Code section 34167(f) mandated that the Agency continue to make payments due for enforceable obligations. Under AB 26, the loans between the Agency and the City continued to be an enforceable obligation of the Agency [see H&S Code section 34167 (d)(2) and (d)(5)]. By making the payments on the loans, the Agency was simply complying with AB 26 as required by H&S Code section 34167(f) The redevelopment agency shall make payment due, and shall perform its obligations.

In addition, the loan payments made in June 2011 were actually due and payable on July 1, 2010. The Successor Agency historically processed the debt payment at the end of the fiscal year, when total annual revenues had been received. Thus, the debt payment obligation was prior to January 1, 2011, and outside the jurisdiction and authority of the State Controller under H&S Code section 34167.5.

See Attachment for the City's complete response.

SCO's Comment

The SCO's authority under H&S Code section 34167.5 extends to all assets transferred after January 1, 2011, by the RDA to the city or county, or city and county that created the RDA, or any other public agency. This responsibility is not limited by the other provisions of the RDA dissolution legislation, including H&S Code sections 34167(d) and 34167(f), which allow the RDA to continue to make payments under enforceable obligations.

On April 26, 2013, the Successor Agency received a Finding of Completion from the Department of Finance. The Successor Agency may place loan agreements between the RDA and the City on the Recognized Obligation Payment Schedule as an enforceable obligation, provided that the Oversight Board finds that the loan was for legitimate redevelopment purposes.

The Finding and Order of the Controller remain as stated.

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

Cash transferred for loan repayments (June 30, 2011)		\$ 1,257,581
Property transfers (January 31, 2012):		
Puddingstone Center Park	149,673	
Settlers Court Park	167,170	
Walker House Park and Historic Walker House	—	
Fox Project Right of Way (Grove Station)	—	
Portion of Parking Lot #1 (Bonnet Parcel)	49,857	
Portion of Parking Lot #2 (Adjacent to San Dimas Avenue)	<u>—</u>	366,700
Land held for resale transfers (January 31, 2012):		
Freedom Park	258,590	
Hernandez Property	186,612	
Mesa Property	238,493	
Croppers	592,995	
C & G	474,215	
Texaco	245,828	
Steuber Properties	604,826	
Geraci	335,830	
Crocker Bank (part of Settlers Court Park)	<u>4,513</u>	<u>2,941,902</u>
Total assets transferred to the City		4,566,183
Less:		
Property transfers approved by Oversight Board Resolution No. 17 (July 8, 2013)		
Puddingstone Center Park	(149,673)	
Settlers Court Park	(167,170)	
Walker House Park and Historic Walker House	—	
Fox Project Right of Way (Grove Station)	—	
Freedom Park	(258,590)	
Crocker Bank (part of Settlers Court Park)	<u>(4,513)</u>	(579,946)
DOF-Approved LRPMP (February 2, 2015):		
Portion of Parking Lot #1 (Bonnet Parcel)	(49,857)	
Portion of Parking Lot #2 (Adjacent to San Dimas Avenue)	<u>—</u>	(49,857)
Land held for resale turned over to the Successor Agency (December 31, 2013)		
Hernandez Property	(186,612)	
Mesa Property	(238,493)	
Croppers	(592,995)	
C & G	(474,215)	
Texaco	(245,828)	
Steuber Properties	(604,826)	
Geraci	<u>(335,830)</u>	<u>(2,678,799)</u>
Total transfers subject to H&S Code section 34167.5		<u>\$ 1,257,581</u>

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



**ALESHIRE &
WYNDER LLP**
ATTORNEYS AT LAW

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March 11, 2015

VIA E-MAIL AND U.S. MAIL

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

Re: **San Dimas Redevelopment Agency Asset Transfer Review Report (the
"Transfer Review Report")**

Dear Ms. Gonzalez:

The San Dimas Successor Agency and the City of San Dimas have reviewed the Transfer Review Report, including the findings and order. Both the Successor Agency and the City of San Dimas appreciate and thank you for the opportunity to comment and respond to the draft Transfer Review Report. The Transfer Review Report provided a finding that the RDA transferred \$1,257,581 in cash to the City to pay the principal and interest on RDA/City loans and that this transfer is an unallowable transfer. This is the Successor Agency's and the City's response to the Transfer Review Report.

The Successor Agency and City object to the Finding that the "transfer" of \$1,257,581 for payment of principal and interest on prior loans is an unallowable transfer. All of these loan payments represent proper payments for enforceable obligations of the Agency to the City at the time of payment. All of these loan payments represent payment of principal and interest due and owing from the Agency to the City pursuant to valid and legal loans between the Agency and the City. The subject loans fell within the definition of "enforceable obligation" at the time of payment. Health & Safety Code section 34167(f) mandated that the Agency continue to make payments due for enforceable obligations. The loans between the Agency and the City were enforceable obligations under the express terms of AB 26 and AB 1484 at the time of the payments made on June 30, 2011, and the payments made were due under the terms of the loans. Although the State Controller has authority under Health & Safety Code section 34167.5 to review asset transfers made between January 1, 2011 and January 31, 2012, and to order the unwinding of asset transfers in the proper case, the State Controller has no authority nor jurisdiction to order the unwinding of an agency's performance of its enforceable obligations, such as the loan payments made in the Finding of the Transfer Review Report.

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Ms. Elizabeth Gonzalez
March 11, 2015
Page 2

The former Agency and City had three separate loans between the two parties. The first loan for the Creative Growth Project Area was established in 1980 and refinanced in 2001, the second loan for the Rancho San Dimas Project Area was established in 1997 and the third loan for the Walker House Restoration Project was established in 2008. The payments made by the Agency to the City on June 30, 2011 were all consistent with payments made by the Agency to the City over the past years and reflect a long-standing course of conduct between the Agency and City with respect to the administration and implementation of the loans.

The adoption of AB 26 did not change the authority nor the obligation of the Agency to make such payments. Under AB 26 the loans between the Agency and the City continued to be an enforceable obligation of the Agency. See Health & Safety Code section 34167(d)(2) and (d)(5). By making the payments on the loans, the Agency was simply complying with AB 26 as required by Health & Safety Code section 34167(f) [redevelopment agency shall make payments due, and shall perform its obligations].

In addition, the loan payments made in June 2011 were actually due and payable on July 1, 2010. The Agency historically processed the debt payment at the end of the fiscal year when total annual revenues had been received. Therefore, the Agency acted to complete the principal and interest loan payments of \$647,387.82, \$64,015.26 and \$546,177.88 totaling \$1,257,581 in June 2011 with our customary schedule and practice. Thus, the debt payment obligation was prior to January 1, 2011, and outside the jurisdiction and authority of the State Controller under section 34167.5 of the Health & Safety Code.

For all the reasons above, the Successor Agency and City respectfully request that the State Controller revise its finding and order to reflect that the payment of \$1,257,581 for principle and interest on an enforceable obligation was a proper transfer.

The response provided herein does not waive the right of the Successor Agency and the City to later provide additional information or statements as part of the review process. The Successor Agency and the City retain the right to raise new material or positions as required. These responses and objections are made without prejudice to, and are not a waiver of the City's and the Successor Agency's right to rely on other facts, documents, responses or information in the State Controller review process or at a later proceeding. By making the accompanying responses and objections, the City and the Successor Agency do not waive, and hereby expressly reserve, its right to assert any and all objections as to the State Controller findings and statements in this review, or in any other proceedings, on any and all grounds including, but not limited to, jurisdiction, scope, competency, relevancy, and materiality. Further, the City and the Successor Agency make the responses herein without in any way implying that they consider all of the State Controller findings and statements to be legally valid or within the scope of AB 26, or relevant or material to the subject matter of this action. The City and the Successor Agency reserve the right to supplement, clarify, revise, or correct any and all of the responses and

Ms. Elizabeth Gonzalez
March 11, 2015
Page 3

statements herein, and to assert additional information or arguments, in one or more subsequent supplemental responses.

Sincerely,

ALESHIRE & WYNDER, LLP



Mark W. Steres
City Attorney for the City of San Dimas
Agency Counsel for San Dimas Successor Agency

rst:MWS

cc: Mr. Blaine Michaelis, City Manager
Mr. Ken Duran, Assistant City Manager

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

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