

MILLBRAE REDEVELOPMENT AGENCY

Review Report

ASSET TRANSFER REVIEW

January 1, 2011, through January 31, 2012



Betty T. Yee
California State Controller

April 2015



BETTY T. YEE
California State Controller

April 10, 2015

Marcia Raines, City Manager
City of Millbrae/Successor Agency
621 Magnolia Avenue
Millbrae, CA 94030

Dear Ms. Raines:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Millbrae Redevelopment Agency (RDA) to the City of Millbrae (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 \$21,143,496 in assets after January 1, 2011, including unallowable transfers to the City totaling \$2,334,666, or 11.04% of transferred assets. These assets must be turned over to the Successor Agency.

If you have any questions, please contact Ms. Elizabeth González, Chief, Local Government Compliance Bureau 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/kw

Attachment

cc: Manuel Sandoval, Financial Services Manager
City of Millbrae
Joe Turner, Finance Director
City of Millbrae
Juan Raigoza, Controller
County of San Mateo
Jim Fox, Chair
Oversight Board, City of Millbrae
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
Steven Noguchi, Auditor-in-Charge
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	2
Restricted Use	2
Finding and Order of the Controller	3
Schedule 1—Unallowable Asset Transfers to the City of Millbrae	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 Millbrae 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 \$21,143,496 in assets after January 1, 2011, including unallowable transfers to the City of Millbrae (City) totaling \$2,334,666, or 11.04% 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 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 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 Millbrae Redevelopment Agency transferred \$21,143,496 in assets after January 1, 2011, including unallowable transfers to the City of Millbrae totaling \$2,334,666, or 11.04% of transferred assets. These assets 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 December 16, 2014. Marcia Raines, City Manager, responded by letter, dated January 16, 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 Millbrae, 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

April 10, 2015

Finding and Order of the Controller

FINDING— Unallowable asset transfers to the City of Millbrae

The Millbrae Redevelopment Agency (RDA) made unallowable asset transfers of \$2,334,666 to the City of Millbrae (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:

- Between January 1, 2011, and January 31, 2012, the RDA transferred \$1,791,506 in cash to the City. The transfers were for the repayment of advances from the City's General Fund and Water Fund. The advances from the City were made per Resolution 97-51 signed on May 13, 1997. The amount includes a total of \$1,690,100 in principal payments and \$101,406 in interest payments.
- On July 1, 2011, the RDA transferred \$543,160 in cash to the City, per journal entry no. 1201.48.

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 \$2,334,666 and turn over the assets to the Successor Agency.

City's Response

The City offers the following specific responses to the Finding as indicated on page 3 and in Schedule 1 on page 4 of your report.

1. With regard to the transfer, dated June 30, 2011, from the former Agency to the City in the amount of \$113,241, the Report fails to recognize that the transfer was made to cover normal payroll liabilities related to compensated absences by employees that performed work on behalf of the redevelopment agency up through that date.
2. With regard to the transfer of principal payments on January 31, 2012 in the amounts of \$1,040,100 and \$650,000, these amounts were repayments of loan funds advanced by the City of Millbrae from its General Fund and Water System Enterprise fund respectively. These loans were listed in the Enforceable Obligation Payment Schedule and the Recognized Obligation Payment Schedule and were confirmed in the July 29, 2013

“Finding of Completion,” issued by the Department of Finance as an “enforceable obligation, provided the oversight board makes a finding that the loan was for legitimate redevelopment purposes” per Health and Safety Code section 34191.4. The oversight board has made the required finding. Thus, the position stated in the report is contrary to the finding by DOF and ignores the statutory measures that were taken to confirm the propriety of this repayment.

3. With regard to the transfer of \$543,160 on 7/1/11, as best the City can determine at this point, this payment to the Developer Fund was made out of an account designated for bond proceeds. The City would request additional time to confirm that these funds were indeed bond proceeds, the disbursement of which could violate applicable bond covenants and impact the tax-exempt status of those bonds. The City has had substantial turnover in its Finance Director position over the last several years, which has complicated its efforts to determine the source of these funds. It would like additional time to contact former staff to see if it can confirm the precise origin of these funds.

See Attachment for the City’s complete response.

SCO’s Comment

1. After reviewing additional documents provided by the City, the State Controller’s Office (SCO) agrees with the City. This item has been removed from the Finding and Order of the Controller.
2. The SCO’s authority under Health & Safety (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. The responsibility is not limited by the other provisions of the RDA dissolution legislation. The Oversight Board has found that the loan was for legitimate redevelopment purposes; therefore, the Successor Agency can place the loan on the Recognized Obligation Payment Schedule for repayment. The Finding and Order of the Controller remains as stated for this item.
3. The SCO has not received additional documentation from the City confirming that the \$543,160 in bond proceeds were contractually committed to a third party. If the bond proceeds were contractually committed to a third party, the \$543,160 in cash transfers will not be subject to H&S Code Section 34167.5. However, at the current time the Finding and Order of the Controller remains as stated for this item.

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

<u>Date</u>	<u>Description</u>	
01/27/11	Interest payment for City advance	\$ 25,352
06/01/11	Interest payment for City advance	25,352
07/01/11	Transfer of cash to the City	543,160
09/30/11	Interest payment for City advance	25,351
12/31/11	Interest payment for City advance	25,351
01/31/12	Principal payment for City advance	1,040,100
01/31/12	Principal payment for City advance	<u>650,000</u>
Total unallowable asset transfers subject to H&S Code section 34167.5		<u>\$ 2,334,666</u>

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



City of Millbrae
621 Magnolia Avenue, Millbrae, CA 94030

ROBERT G. GOTTSCHALK
Mayor

ANNE OLIVA
Vice Mayor

REUBEN D. HOLOBER
Councilman

MARGE COLAPIETRO
Councilwoman

WAYNE J. LEE
Councilman

January 16, 2015

CERTIFIED AND ELECTRONIC MAIL

State Controller's Office
Division of Audits
PO Box 942850
Sacramento, CA 94520-5874

Attention: Elizabeth Gonzalez, Chief – Local Government Compliance Bureau

Dear Ms. Gonzalez:

Subject: Comments on Draft Asset Transfer Review Report – January 1, 2011 to January 31, 2012 – Millbrae Redevelopment Agency

We are in receipt of your letter dated December 16, 2014 in regards to the Draft Asset Transfer Review Report – January 1, 2011 to January 31, 2012 for the Millbrae Redevelopment Agency ("Report"). We offer the following comments concerning the Report.

In general, we disagree with the findings in the report that the City must transfer \$2,447,907 to the Successor Agency for disposition in accordance with California Health & Safety Code ("H&S Code") §34177(d) and (e). Many of these transfers in question were disclosed as part of the City's Other Funds and Accounts Due Diligence Review ("DDR") as conducted by Maze & Associates and reviewed by the California Department of Finance ("DOF"). In its review of the DDR, the DOF issued its review letter on July 18, 2013 and their findings did not reject the transfers that comprised the total you are claiming must be remitted to the Successor Agency. Furthermore, the DOF issued their Finding of Completion on July 29, 2013, indicating that the DOF "has verified that the Agency has made full payment of the amounts determined under HSC section 34179.6, subdivisions (d) or (e) and HSC section 34183.5." The City has relied upon their ruling in winding down the affairs of the Successor Agency in compliance with state law and the findings in the draft audit would create a tremendous hardship on the City and seriously affect its financial condition.

The City offers the following specific responses to the Finding as indicated on page 3 and in Schedule 1 on page 4 of your Report.

- 1. With regard to the transfer, dated June 30, 2011, from the former Agency to the City in the amount of \$113,241, the Report fails to recognize that the transfer made was to cover normal payroll liabilities related to compensated absences by employees that performed work on behalf of the redevelopment agency up through that date. The balances for their accrued compensated absences (e.g., vacation leave, sick leave, etc.) were set aside as a pre-funded liability based on the pro-rata share of work they performed on behalf of the former Agency in order to ensure that those compensated absences were fully funded. This transfer was performed in the normal course of year-

Table with 4 columns: City Council/City Manager/City Clerk, Building Division/Permits, Community Development, Finance, Fire, Police, Public Works/Engineering, Recreation. Includes phone numbers for each department.

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end payroll liability accruals and in accordance with the past practice of the former Agency and the City. The recognition of those liabilities are no different than the accruals set aside for other payroll-related liabilities. Accordingly, we believe that the Report is mistaken in disallowing the transfer of funds to the City's Leave Accruals Internal Services Fund in order to ensure that those liabilities were funded in accordance with the work performed by those employees for the former Agency.

2. With regard to the transfer of principal payments on January 31, 2012 in the amounts of \$1,040,100 and \$650,000, these amounts were repayments of loan funds advanced by the City of Millbrae from its General Fund and Water System Enterprise Fund respectively. (Interest payments on this loan, in the amount of \$25,352 on 1/27/11 and 6/01/11 and \$25,351 on 9/30/11 and 12/31/11, were also listed on Schedule 1 of the Report.) These loans were listed in the Enforceable Obligation Payment Schedule and the Recognized Obligation Payment Schedule and were confirmed in the July 29, 2013 "Finding of Completion," issued by the Department of Finance, as an "enforceable obligation, provided the oversight board makes a finding that the loan was for legitimate redevelopment purposes" per Health and Safety Code section 34191.4. The oversight board has made the required finding. Thus, the position stated in the Report is contrary to the finding by DOF and ignores the statutory measures that were taken to confirm the propriety of this repayment.
3. With regard to the transfer of \$543,160 on 7/01/11, as best the City can determine at this point, this payment to the Developer Fund was made out of an account designated for bond proceeds. The City would request additional time to confirm that these funds were indeed bond proceeds, the disbursement of which could violate applicable bond covenants and impact the tax-exempt status of those bonds. The City has had substantial turnover in its Finance Director position over the last several years, which has complicated its efforts to determine the source of these funds. It would like additional time to contact former staff to see if it can confirm the precise origin of these funds.

We urge SCO to consider these comments and to alter your findings accordingly in the issuance of your final report on this matter. Thank you for the opportunity to comment.

Sincerely,



Marcia L. Raines
City Manager

cc: Joan Cassman, Hanson Bridgett

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

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