

WATERFORD REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

October 2014



JOHN CHIANG
California State Controller

October 22, 2014

Tim Ogden, City Manager
City of Waterford Redevelopment/
Successor Agency
101 E Street
Waterford, CA 95386

Dear Mr. Ogden:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Waterford Redevelopment Agency (RDA) to the City of Waterford (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 \$844,578 in assets after January 1, 2011, including unallowable transfers to the City totaling \$137,640, or 16.30% of transferred assets. These assets must be turned over to the Successor Agency.

If you have any questions, please contact Elizabeth González, Chief, Local Government Compliance Bureau, by telephone at (916) 324-0622.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/sk

cc: Tina Envia, Finance Manager
City of Waterford Redevelopment/Successor Agency
Lauren Klein, Auditor-Controller
Stanislaus County
Jose Aldaco, Oversight Board Chair
City of Waterford
David Botelho, Program Budget Manager
California Department of Finance
Richard J. Chivaro, Chief Legal Counsel
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Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Waterford 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 \$844,578 in assets after January 1, 2011, including unallowable transfers to the City of Waterford (City) totaling \$137,640, or 16.30% 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 Waterford Redevelopment Agency transferred \$844,578 in assets after January 1, 2011, including unallowable transfers to the City of Waterford totaling \$137,640, or 16.30% 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 June 20, 2014. Tim Ogden, City Manager, responded by letter dated July 1, 2014, disagreeing with the review results. The city's response is included in this final report as an attachment.

Restricted Use

This report is solely for the information and use of the City of Waterford, 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

October 22, 2014

Finding and Order of the Controller

FINDING— Unallowable asset transfer to the City of Waterford

The Waterford Redevelopment Agency (RDA) made an unallowable transfer of \$137,640 in current assets to the City of Waterford (City). The transfer occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

On March 1, 2011, the RDA transferred \$137,640 in cash to the City's Public Ways and Facilities Projects Capital Projects Fund.

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).

Order of the Controller

Pursuant to H&S Code section 34167.5, the City is ordered to reverse the transfer in the amount of \$137,640 and turn over the assets to the Successor Agency. The Successor Agency is directed to properly dispose of the assets in accordance with H&S Code section 34177(d).

City's Response

The City disagrees with the Finding and Order of the Controller. The transfer was used as matching funds for a federal grant. The City believes the former RDA entered into a legally binding agreement with the Stanislaus Council of Governments (StanCOG), the county organization coordinating for federal transportation grants, on August 5, 2010, by way of budget allocation.

See attachment for the City's complete response.

SCO's Comment

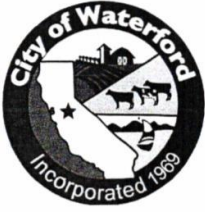
The SCO's review of the City's documents did not show that the former RDA entered into a legally binding agreement with the StanCOG before June 28 2011. Documents were provided indicating the budget amounts; however, no legal agreements were made between the former RDA and the StanCOG indicating the former RDA's responsibility for providing the matching funds.

The Finding and Order of the Controller remain as stated.

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

In addition to the attached letter, the City provided six additional documents. Due to their size, we are not including them as an attachment to this report. Please contact the City of Waterford for copies of the following documents, as identified in the attached letter:

- FY11 Federal Grant Match Approvals
- Federal Grant E-76 Grant Agreements
- CMAQ Target FY11 & FY12
- CMAQ Competitive FY11
- StanCOG FTIP Amendment
- CMAQ Competitive FY13



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Charlie Goeken
Mayor

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Ken Krause
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Josh Whitfield
Council Member

July 1, 2014

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

RE: Waterford Redevelopment Agency Asset Transfer Review Response

Thank you sharing the draft Asset Transfer Review and for the invitation to respond with comments. We appreciate the opportunity to clarify our Agency's position related to the transfer in question of \$137,640. Based on evidence presented to the auditors who made the findings found in the report, we request your consideration to reassess your findings related to our enforceable obligation transfer of \$137,640.

The Redevelopment Agency federal grant match transfer to the City of Waterford was authorized on August 5, 2010 and obligated to StanCOG, the Metropolitan Planning Organization for Stanislaus County who handles our city's federal transportation grants. The funding agreement was for a total federal \$1.2 million CMAQ grant requiring a local match of 11.47% (\$137,640) and is an enforceable obligation supported by 34171 (d)(1)(E) as a legally binding agreement, and 34171 (d)(1)(C) as a federal obligation. Although not in perhaps a desirable format, careful review of the documentation will reflect that the transfer is an enforceable obligation and therefore allowable.


Please accept the following documents that exhibit the approved agreements, and federal local match grant obligations as funds were granted. Attached hereto are the following document exhibits for your files:

1. FY11 Federal Grant Match Approvals – Includes budget and resolution approvals, detailed budget documents, and engineer's estimate of project.
2. Federal Grant E-76 Grant Agreements – Shows progress of grant awards where local match of 11.47% is required. CalTrans uses these forms as grant agreements.
3. CMAQ Target FY11 & FY12 – Federal grant submittal of \$451,824 to StanCOG including the local RDA match for the anticipated allocation. Also shows the anticipated project cost of \$1,150,000 at the top of the fifth page based on the Downtown Improvement's Engineer's Estimate.
4. CMAQ Competitive FY11 – Federal grant submittal of \$85,000 to StanCOG including the RDA local match highlighted on the second page for the competitive application of funds.
5. StanCOG FTIP Amendment – StanCOG amended their Federal Transportation Improvement Plan to reflect \$600,000 that was "awarded" in 2010 with surplus funds, and subsequently amended formally into the FTIP in FY11. There was no grant submittal or agreement other than their FTIP document.
6. CMAQ Competitive FY13 - Federal grant submittal of \$85,000 to StanCOG including the RDA local match for funds submitted in April 2010 obligating future competitive allocations.

Additional funds were received in FY12, and the downtown renovation project was bid, constructed, and completed in early FY13. The RDA local match contribution was made as agreed upon between the City and RDA in 2010, and the following grant awards and allocations were eligible because of the federal obligation local match agreement.

Please let me know if you have any questions. I look forward to seeing a revised review based on this evidence of the enforceable obligation.

Sincerely,


Tim Ogden
City Manager

**State Controller's Office
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