

**BELL GARDENS  
COMMUNITY DEVELOPMENT  
COMMISSION**

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 8, 2015

Will Kaholokula, Finance Director  
Bell Gardens Community Development Commission/Successor Agency  
7100 Garfield Avenue  
Bell Gardens, CA 90201

Dear Mr. Kaholokula:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Bell Gardens Community Development Commission (RDA) to the City of Bell Gardens (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 agency have been reversed.

Our review found that the RDA transferred \$74,945,343 in assets after January 1, 2011, including unallowable transfers to the City totaling \$21,119,993, or 28.18% 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, or by email at [egonzalez@sco.ca.gov](mailto:egonzalez@sco.ca.gov).

Sincerely,

*Original signed by*

JEFFREY V. BROWNFIELD, CPA  
Chief, Division of Audits

JVB/lis

cc: John Naimo, Auditor-Controller

Los Angeles County

Donald LaPlante, Oversight Board Chair

Bell Gardens Community Development Commission/Successor Agency

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# Asset Transfer Review Report

## Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Bell Gardens 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 \$74,945,343 in assets after January 1, 2011, including unallowable transfers to the City of Bell Gardens (City) totaling \$21,119,993, or 28.18% 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 Bell Gardens Community Development Commission transferred \$74,945,343 in assets after January 1, 2011, including unallowable transfers to the City totaling \$21,119,993, or 28.18% 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 26, 2014. Will Kaholokula, Finance Director, responded by letter dated January 20, 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 Bell Gardens, 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 8, 2015

# Finding and Order of the Controller

**FINDING—  
Unallowable asset  
transfer to the City  
of Bell Gardens**

The Bell Gardens Community Development Commission (RDA) made unallowable asset transfers of \$21,119,993 to the City of Bell Gardens (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 March 22, 2011, the RDA transferred \$19,867,449 in capital assets to the City.
- On June 30, 2011, the RDA transferred \$1,133,085 in cash from the RDA Capital Projects Fund—Central Area (Fund 930) to the City General Fund (Fund 110), as repayment on an advance.
- On January 31, 2012, the RDA transferred \$119,459 in cash from the RDA Capital Projects Fund—Central Area (Fund 930) to the City General Fund (Fund 110), for reclassification of lease revenue.

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).

Some of these assets also may be subject to the provisions of H&S Code section 34181(a), which 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; 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 governmental 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

Pursuant to H&S Code section 34167.5, the City is ordered to reverse the transfers totaling \$21,119,993 and turn over the assets to the Successor Agency.

### City's Response

...H&S Code section 34167.5 authorizes the SCO to demand the return of transferred assets only "to the extent not prohibited by state or federal law." The SCO's order to reverse the Challenged Transfers violates this limitation. Set forth above, applicable law authorized the RDA to make the Challenged Payments and the City to deposit such amounts into its general fund. The SCO's order violates AB 1x26's mandate that "enforceable obligations" be performed, violates Proposition 22, and violates Article XVI, section 6 of California's Constitution.

To the extent the SCO's findings suggest the RDA and City engaged in fiscal impropriety and/or considered unallowable financial transactions by way of the Challenged Transfers, such findings are not supported and should be revised. That the Challenged Payments were lawful when made should be highlighted in the SCO report, so as to avoid confusion by members of the public and third-party investors interested in Successor Agency / City business.

In addition, the SCO's determination that the City is not contractually committed to a third party for the expenditure or encumbrance of the Challenged Transfers is incorrect. The City's 2013-14 fiscal year budget (and financial projections moving forward) was developed in justified reliance on the retention of the value of the Challenged Payments, and such funds were assumed by the City in making its budgetary and financial commitments, including those to public health and safety service providers, employee salaries, and City contractors. Reversal of the Challenged Payments undermines these financial commitments to third parties, and exceeds the SCO's authority under H&S Code section 34167.5

See Attachment for the City's complete response.

### SCO's Comment

The SCO acknowledges that the payments were valid when made. However, 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.

The inclusion of the transferred assets in the City's 2013-2014 fiscal year budget is not a contractual commitment to a third party.

On October 16, 2013, the Successor Agency received a Finding of Completion from the Department of Finance. Pursuant to H&S Code section 34191.4, the Successor Agency may place payments for 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 loans were for legitimate redevelopment purpose.

The Finding and Order of the Controller remain as stated.

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

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Capital Assets (March 22, 2011)	
Village Square (APN No. 6227-004-024)	\$ 6,484,424
Vacant Lot (APN No. 6328-007-900)	60,000
AT&T Cell Tower (APN No. 6227-004-800)	—
Neighborhood Youth Center (APN No. 6328-016-900)	—
Public Parking (APN No. 6328-006-900)	65,000
Los Jardines (APN Nos. 6328-012-047, 6328-012-049 through 6328-012-064, and 6328-012-066)	6,321,025
Vacant Lot (APN No. 6227-008-900)	412,000
Ace Hardware Store (APN Nos. 6227-013-907 and 6227-013-908)	525,000
Ciara St. - Priory St. (APN Nos. 6227-012-900 through 6227-012-918, and 6227-013-900 through 6227-013-909)	<u>6,000,000</u>
Subtotal	<u>19,867,449</u>
Cash Transfers	
Loan Repayment to City (June 30, 2011)	1,133,085
Lease Revenue Reclassification (January 31, 2011)	<u>119,459</u>
Subtotal	<u>1,252,544</u>
Total unallowable transfers subject to H&S Code section 34167.5	<u>\$ 21,119,993</u>

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

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# City of BELL GARDENS

7100 Garfield Avenue • Bell Gardens, CA 90201 • 562-806-7700 • www.bellgardens.org

January 20, 2015

Re: State Controller's Draft Asset Transfer Review – Bell Gardens Community Development Commission

Dear Mr. Brownfield:

The Successor Agency to the Former Bell Gardens Community Development Commission ("Successor Agency") and City of Bell Gardens ("City") are in receipt of the State Controller's ("SCO") Draft Asset Transfer Review ("Draft Audit") concerning the Bell Gardens Community Development Commission ("Agency").<sup>1</sup> The Successor Agency and City respond as follows to the finding and order presented in the Draft Audit, set forth fully below for ease of reference.

## Findings and Order of the Controller

### **FINDING— Unallowable asset transfers to the City of Bell Gardens**

The Bell Gardens Community Development Commission (RDA) made unallowable transfers of \$21,119,993 in assets to the City of Bell Gardens (City). The asset transfers to the City 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 March 22, 2011, the RDA transferred \$19,867,449 in capital assets to the City.
- On June 30, 2011, the RDA transferred \$1,133,085 in cash from the RDA Capital Projects Fund – Central Area (Fund 930) to the City General Fund (Fund 110), as repayment on an advance.
- On January 31, 2012, the RDA transferred \$119,459 in cash from the RDA Capital Projects Fund – Central Area (Fund 930) to the City General Fund (Fund 110), for reclassification of lease revenue.

Pursuant to H&S Code section 34167.5, the RDA may not transfer

<sup>1</sup> The Draft Audit is dated December 26, 2014, but was not received by the City until January 6, 2015. This correspondence is submitted within the SCO's ten (10) day response deadline as interpreted under the California Code of Civil Procedure.

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 of Bell Gardens is ordered to reverse the transfer of the above assets in the amount of \$21,119,993 and turn over the assets to the Successor Agency.

Response by Successor Agency and City

**RESPONSE—Asset Transfer to the City were lawful when made, and SCO's findings/order exceed its authority under H&S Code section 34167.5**

The SCO relies on H&S Code section 34167.5 as authority to reverse the capital transfers referenced in the Controller's findings (herein referred to as the "Challenged Transfers"). This section provides in pertinent part:

"If such an asset transfer [between a RDA and a city] did occur during that period and the government agency is not contractually committed to a third party for the expenditure or encumbrance of those assets, *to the extent not prohibited by state or federal law*, the Controller shall order the available assets to be returned to the redevelopment agency or...the successor agency..." (italics added).

As evidenced by the italicized text, H&S Code section 34167.5 authorizes the SCO to demand the return of transferred assets only "to the extent not prohibited by state or federal law." The SCO's order to reverse the Challenged Transfers violates this limitation. Set forth above, applicable law authorized the RDA to make the Challenged Payments and the City to deposit such amounts into its general fund. The SCO's order violates AB 1x26's mandate that "enforceable obligations" be performed, violates Proposition 22 by reallocating / recapturing tax increment revenues allocated to and spent by the RDA, and violates Article XVI, section 6 of California's Constitution by compelling the transfer of City general fund monies to the Successor Agency. Because the SCO's order reversing the Challenged Payments violates state law in these respects, and others, it exceeds the SCO's authority under H&S Code section 34167.5, and should be rescinded and is otherwise void.

To the extent the SCO's findings suggest the RDA and City engaged in fiscal impropriety and/or considered unallowable financial transactions by way of the Challenged Transfers, such findings are not supported and should be revised. That the Challenged Payments

were lawful when made should be highlighted in the SCO report, so as to avoid confusion by members of the public and third-party investors interested in Successor Agency / City business.

In addition, the SCO's determination that the City is not contractually committed to a third party for the expenditure or encumbrance of the Challenged Transfers is incorrect. The City's 2013-2014 fiscal year budget (and financial projections moving forward) was developed in justified reliance on the retention of the value of the Challenged Payments, and such funds were assumed by the City in making its budgetary and financial commitments, including those to public health and safety service providers, employee salaries, and City contractors. Reversal of the Challenged Payments undermines these financial commitments to third parties, and exceeds the SCO's authority under H&S Code section 34167.5.

In closing, the Successor Agency and City appreciate the opportunity to respond to the SCO's Draft Audit, and are available to provide additional and/or clarifying information as needed. We request the SCO reconsider its Draft Audit finding and order in light of the foregoing. Notwithstanding the above, the City does hereby reserves any and all rights to raise additional legal arguments with respect to this Report as may be necessary. Should you have any further questions or concerns, please contact the undersigned.

Sincerely,



Will Kaholokula  
Director of Finance and Administrative Services

cc: John Lam, Assistant City Attorney  
City of Bell Gardens  
John Oropeza, Assistant City Manger  
City of Bell Gardens  
Phil Wagner, City Manger  
City of Bell Gardens  
Richard J. Chivaro, Chief Legal Counsel  
State Controller's Office  
Elizabeth Gonzalez, Bureau Chief  
Division of Audits, State Controller's Office  
Scott Freesmeier, Audit Manager  
Division of Audits, State Controller's Office  
Keith DeAnda, Auditor-in-Charge  
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