

PASADENA COMMUNITY DEVELOPMENT COMMISSION

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



BETTY T. YEE
California State Controller

June 2015



BETTY T. YEE
California State Controller

June 30, 2015

Michael J. Beck, City Manager
City of Pasadena/Successor Agency
1000 N. Garfield Avenue, Room 5228
Pasadena, CA 91109

Dear Mr. Beck:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Pasadena Community Development Commission (RDA) to the City of Pasadena (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 \$54,437,631 in assets after January 1, 2011, including unallowable transfers to the City totaling \$22,228,285, or 40.83% of transferred assets.

However, on various dates, the City turned over \$13,456,123 in cash to the Successor Agency. Also, on November 14, 2012, the City turned over \$8,238,977 in property held for resale to the Successor Agency. Therefore, the remaining \$533,185 in unallowable transfers 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.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/as

cc: John Naimo, Auditor-Controller
Los Angeles County
Donald F. McIntyre, Chairperson
Oversight Board
David Klug, Senior Project Manager
City Manager's Office-Economic Development Division
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
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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 Pasadena 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 \$54,437,631 in assets after January 1, 2011, including unallowable transfers to the City of Pasadena (City) totaling \$22,228,285, or 40.83% of transferred assets.

However, on various dates, the City turned over \$13,456,123 in cash to the Successor Agency. Also, on November 14, 2012, the City turned over \$8,238,977 in property held for resale to the Successor Agency. Therefore, the remaining \$533,185 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 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 Pasadena Community Development Commission transferred \$54,437,631 in assets after January 1, 2011, including unallowable transfers to the City of Pasadena (City) totaling \$22,228,285, or 40.83% of transferred assets.

However, on various dates, the City turned over \$13,456,123 in cash to the Successor Agency. Also, on November 14, 2012, the City turned over \$8,238,977 in property held for resale to the Successor Agency. Therefore, the remaining \$533,185 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 December 24, 2014. Andrew Green, Director of Finance, responded by letter dated January 14, 2015, disagreeing with the review results. The combined City and Successor Agency'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 Pasadena, 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 Pasadena

The Pasadena Community Development Commission (RDA) made unallowable asset transfers totaling \$22,228,285 to the City of Pasadena (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 various dates between January 1, 2011, and January 31, 2012, the RDA transferred \$13,989,308 in cash to the City, per the Promissory Note dated January 18, 2011.
- On March 10, 2011 the RDA transferred \$8,238,977 in property held for resale to the City, per Resolution Nos. 9096 and 9099; Resolution Nos. CDR-272 and CDR-274; and Agreement No. CDC-778.

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 of Pasadena is ordered to reverse the transfers totaling \$22,228,285 and turn over the assets to the Successor Agency.

However, on various dates between January 1, 2011, and January 31, 2012, the City turned over \$13,456,123 in cash to the Successor Agency. Also, on November 14, 2012, the City turned over \$8,238,977 in property held for resale to the Successor Agency. Therefore, the remaining \$533,185 in unallowable transfers must be turned over to the Successor Agency.

City's Response

The City disagreed with the report findings and requested the funds in question be excluded from the final Asset Transfer Review report. The City stated that the payments made under the Reimbursement Agreement to the City had been approved as an enforceable Obligation by the California Department of Finance (DOF) and therefore cannot be ordered returned by the State Controller's Office.

The City believes the payment of funds was not an "asset transfer" under H&S Code section 34167.5. The City's position is that the former Commission paid the City the funds in question because the Commission was required to do so contractually under the terms of redevelopment law, and particularly the Reimbursement Agreement.

Lastly, the City stated that the funds in question were paid from the Commission to the City on, or after the effective date of the Dissolution Law, June 28, 2011, and therefore beyond the time period subject to H&S Code section 34167.5. The City believes the payments are instead subject to review under the jurisdiction of the DOF, which has approved the payments in question.

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. As a result, the cash transfers made by the RDA to the City during the period of January 1, 2011, through January 31, 2012, are unallowable. Furthermore, the asset transfers in question have since been denied as an Enforceable Obligation by the DOF per their letter to the City of Pasadena dated October 5, 2012.

Although there is a reimbursement agreement in place, the assets were transferred from the former RDA to the City of Pasadena and are within the scope of the SCO's review. Specifically, H&S Code section 34167.5 states that "the Controller shall review the activities of redevelopment agencies in the state to determine whether an asset transfer has occurred after January 1, 2011. . . ." There is no deadline imposed on the SCO to artificially end the review as of the dissolution date of June 28, 2011.

Therefore, the Finding and Order of the Controller remain as stated.

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

Cash (various dates)		\$ 13,989,308
Property held for resale (March 10, 2011)		
Heritage Square –(718-722 Fair Oaks CC HS)	613,879	
Heritage Square –(730-790 N. Fair Oaks Ave.)	1,000,000	
Vacant Lot – (136-138 Howard Street)	370,000	
Heritage Square – (19-25 E. Orange Grove)	1,151,300	
Heritage Square – (718-722 Fair Oaks CC HS)	1,636,121	
Condo- (736 N. Garfield # 204)	267,677	
LAND – (YWCA, 78 N. Marengo Ave)	3,200,000	<u>8,238,977</u>
Total property held for resale		22,228,285
Less:		
Cash turned over to the Successor Agency (various dates)		(13,456,123)
Property held for resale turned over to the Successor Agency (November 14, 2012)		<u>(8,238,977)</u>
Total transfers subject to H&S Code section 34167.5		<u><u>\$ 533,185</u></u>

**Attachment—
City of Pasadena and the Successor
Agency’s Response to the Draft Review Report**



DEPARTMENT OF FINANCE

January 14, 2015

Via E-Mail: NNeycheva@sco.ca.gov

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

RE: Comments and Additional Information for Draft Pasadena Asset Transfer Report Health & Safety Code Section 34167.5

Dear Ms. Gonzales:

The City of Pasadena (the "**City**") and the Successor Agency to the Pasadena Community Development Commission (the "**Successor Agency**") would like to take this opportunity to comment on and provide additional information for the Draft Asset Transfer Review Report dated December 24, 2014 prepared pursuant to Health and Safety Code Section 34167.5 relating to the City and the former Pasadena Community Development Commission (the "**Commission**") for the period referred to in the Dissolution Law commencing January 1, 2011 (the "**Report**").

This letter concerns loan repayments in the amount of \$533,185 made by the Commission to the City during the period January 1, 2011 to December 31, 2011 to support contractual promises.

The City and the Successor Agency respectfully request that the funds in question be excluded from any Final Asset Transfer Report given the facts in this case and as further explained below:

1. The payments under the Reimbursement Agreement to the City have been approved as an enforceable obligation by the California Department of Finance; therefore the payments cannot be ordered returned by the State Controller because of limitations on the clear legal authority expressly included in the Dissolution Law:

City of Pasadena – Department of Finance
100 N. Garfield Avenue, Room S348
Pasadena, CA 91109
(626) 744-4355 (626) 396-7654/Fax

A. Section 34167 (f) states that "Nothing in this part shall be construed to interfere with a redevelopment agency's authority, pursuant to enforceable obligations as defined in this chapter, to (1) make payments due, (2) enforce existing covenants and obligations, or (3) perform its obligations." (Emphasis added). It is unequivocal that the Dissolution Law mandated these repayments under section 34167(f).

Both Section 34167(f) and 34167.5 are contained in the same Part 1.8 of the Dissolution Law.

B. Section 34167(h) expressly authorizes former redevelopment agency payments to be made if contained in an adopted enforceable obligation payment schedule. Since the payments in question were contained on a number of adopted and approved payment schedules, they were expressly authorized by this statute and cannot be clawed back under 34167.5.

2. The payment of the funds to the City from the Commission was not an "asset transfer" under Section 34167.5, which is concerned with last minute redevelopment agency asset transfers intended to evade the looming adoption of the Dissolution Act. In this case they were instead used for the payment of a legally required indebtedness and approved enforceable obligation dating back to 1986.

The former Commission paid the City the funds in question because the Commission was required to do so contractually under the terms of redevelopment law, and particularly the Reimbursement Agreement. Because there was an independent duty pursuant to a bargained for exchange under the Reimbursement Agreement, the payment of the Funds were not "transferred," as defined in Section 34179.5(b)(3), to the City. Therefore, the Controller should not characterize the amount as a transfer.

3. The funds in question were paid from the Commission to the City on or after the effective date of the Dissolution Law, June 28, 2011, and so are beyond the time period subject to Section 34167.5. This is because, among other things, they are instead subject to the payment schedule review periods under the jurisdiction of the Department of Financing (which has approved the payments in question).

If you require additional information regarding the matters referenced above or the Successor Agency, please contact David Klug at (626) 744-6748 or dklug@cityofpasadena.net.

Sincerely,



Andrew Green
Director of Finance

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

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