

WINTERS COMMUNITY DEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

May 2013



JOHN CHIANG
California State Controller

May 13, 2013

John W. Donlevy, Jr., City Manager
Winters Community Development/
Successor Agency
318 First Street
Winters, CA 95694

Dear Mr. Donlevy:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office reviewed all asset transfers made by the Winters Community Development Agency to the City of Winters 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 it 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 of Winters or any other public agencies have been reversed.

Our review found that the Winters Community Development Agency transferred \$17,896,328 in assets, which included unallowable transfers of assets totaling \$3,470,411, or 19.39%, that must be turned over to the Successor Agency.

If you have any questions, please contact Steven Mar, Chief, Local Government Audits Bureau, at (916) 324-7226.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/nh

Attachment

cc: Shelly Gunby, Director of Financial Management
City of Winters
Richard J. Chivaro, Chief Legal Counsel
State Controller's Office
Steven Szalay, Local Government Consultant
California Department of Finance
Betty Moya, Audit Manager
Division of Audits, State Controller's Office
Mathew Rios, Auditor-in-Charge
Division of Audits, State Controller's Office
Kevin Kanemasu, Auditor
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 Winters Community Development Agency 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 Winters Community Development Agency (RDA) transferred \$17,896,328 in assets, which included unallowable transfers of assets totaling \$3,470,411 or 19.39%, that 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 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.

In accordance with the requirements of H&S Code section 34167.5, the State Controller is required to review the activities of RDAs, "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," and the date on which the RDA ceases to operate, or January 31, 2012, whichever is earlier.

The SCO has identified transfers of assets that occurred after January 1, 2011, between the Winters Community Redevelopment Agency, the City of Winters, and/or other public agencies. 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 order to ensure compliance with this order.

Objectives, 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 operations and procedures.
- Reviewed meeting minutes, resolutions, and ordinances of the RDA, the Winters City Council, and the Successor Agency.
- 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 Winters Community Development Agency transferred \$17,896,328 in assets, which included unallowable transfers of assets totaling \$3,470,411, or 19.39%, that must be turned over to the Successor Agency.

Details of our findings are in the Findings and Orders of the Controller section of this report.

Views of Responsible Official

We issued a draft review report on March 15, 2012. John W. Donlevy, Jr., City Manager, responded by letter received April 4, 2013. The City's response is included in this final review report.

Restricted Use

This report is solely for the information and use of the Winters Community Development Agency, the City of Winters, the Successor Agency Oversight Board, the entity assuming housing functions, 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

May 13, 2013

Findings and Orders of the Controller

FINDING 1— Unallowable asset transfer to the City of Winters

The Winters Community Development Agency (RDA) made an unallowable asset transfer of \$1,954,533, to the City of Winters. The asset transfer 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 16, 2011 the RDA transferred \$1,954,533 in capital assets to the City. To accomplish the transfer, on March 1, 2011 the City and the RDA entered into a purchase and sale agreement under Resolution 2011-16.

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. Those assets should be turned over to the Successor Agency for disposition in accordance with H&S Code sections 34177 (d) and (e). However, it appears that some of those assets also may be subject to the provisions of H&S Code section 34181(a). H&S Code section 34181(a) 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 that were funded by tax increment revenues of the dissolved 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 government purpose, such as roads, school buildings, parks, and fire stations, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such as asset . . .

Order of the Controller

Based on H&S Code section 34167.5, the City of Winters is ordered to reverse the transfer of the above assets, as described in Schedule 1, in the amount of \$1,954,533 plus any interest earned, and return the assets to the Successor Agency.

The Successor Agency is directed to properly dispose of those assets in accordance with H&S Code sections 34177(d) and (e) and 34181(a).

City's Response

The City will transfer the six (6) properties identified on Schedule 1 to the Successor Agency.

SCO's Comment

The SCO agrees with the statement made by the City of Winters Community Development Successor Agency. The order remains the same.

FINDING 2— Unallowable asset transfer to entity assuming housing functions

The Winters Community Development Agency (RDA) made an unallowable asset transfer of \$1,515,878 described in Schedule 2, to the entity assuming housing functions. The asset transfers occurred during the period of January 1, 2011, through February 1, 2012, and the assets were not contractually committed to a third party prior to June 28, 2011.

Unallowable asset transfers were as follows:

On January 31, 2012, the RDA transferred a total of \$1,515,878 in loan receivables to the entity assuming housing functions. Based on Health and Safety (H&S) Code section 34177(e), the Successor Agency, not the entity assuming the housing functions, is responsible for the disposition of assets and properties of the former RDA.

H&S Code section 34175(b) states, "All assets, properties, contracts, leases, books and records, buildings, and equipment of the former redevelopment agency are transferred on February 1, 2012, to the control of the successor agency, for administration pursuant to the provisions of this part. This includes all cash or cash equivalents and amounts owed to the redevelopment agency as of February 1, 2012." Pursuant to H&S Code section 34175(b) the RDA was required to transfer all assets, including housing assets, to the Successor Agency.

H&S Code section 34177(d) states, "Remit unencumbered balances of redevelopment agency funds to the county auditor-controller for distribution to the taxing entities, including, but not limited to, the unencumbered balance of the Low and Moderate Income Housing Fund of a former redevelopment agency . . . for allocation and distribution...[in accordance with] . . . Section 34188."

Pursuant to H&S Code section 34177(e) the "Successor Agency is to dispose of all former RDA assets . . . as directed by the oversight board . . ." Also, pursuant to H&S Code section 34177(g) the Successor Agency is to "[e]ffectuate transfer of housing functions and assets to the appropriate entity designated pursuant to Section 34176." However, H&S Code section 34181(c) requires the Oversight Board to direct the Successor Agency to transfer housing assets to the appropriate entity pursuant to Section 34176.

Order of the Controller

Based on H&S Code section 34167.5, the entity assuming the housing functions is ordered to reverse the transfer of assets in the amount of \$1,515,878, and to turn over the assets to the Successor Agency. The Successor Agency is directed to properly dispose of those assets in accordance with H&S Code sections 34177(d) and (e) and 34181(c).

City's Response

The City is in disagreement with part of finding 2. Attachment 2 contains a copy of the City's response.

SCO's Comment

The SCO is in agreement that the City will transfer the remaining bond proceeds in the amount of \$1,144,009.80 to the Successor Agency.

In addition, the SCO is in agreement with H&S Code section 34176, that the City may become the housing entity and take over the housing assets. However, pursuant to H&S Code section 34175(b), the assets of the former RDA were to be transferred to the Successor Agency first. Also, according to H&S Code section 34181(c), the Oversight Board is to direct the Successor Agency to transfer housing assets to the appropriate entity pursuant to H&S Code section 34176.

Although the Department of Finance (DOF) did not object to the transfer of the housing loans and receivables by the RDA in the amount of \$371,845.78 that was included on the Housing Asset Transfer (HAT) form, the transfer was not completed in accordance with H&S Code section 34181(c), which clearly states that the Oversight Board, not the RDA, is to direct the transfer of housing assets to the designed housing agency. The information that was required to be on the HAT report related solely to transfers made after February 1, 2012, by the Successor Agency with the approval of the Oversight Board. In discussions with DOF, they concurred that their lack of "objection" to housing asset transfers by the RDA on the HAT report does not mean they do not have to be approved by the Oversight Board.

Therefore, this part of the finding and order of the Controller remains the same.

**Schedule 1—
RDA Assets Transferred to the City of Winters
January 1, 2011, through January 31, 2012**

Unallowable Transfers to the City of Winters

<u>Capital Assets</u>	<u>Assessor Parcel Number</u>	<u>Value</u>
23 Main Street	003-204-006	\$ 173,691
East Grant Avenue	003-370-028, 003-370-029, 003-370-030	681,823
311 First Street	003-204-002	458,141
314 Railroad Avenue	003-204-006	351,399
318 Railroad Avenue	003-204-005	<u>289,479</u>
Total Unallowable Assets Transferred		<u>\$ 1,954,533</u>

**Schedule 2—
RDA Assets Transferred to the
Entity Assuming Housing Functions
January 1, 2011, through January 31, 2012**

Unallowable Transfers to the Entity Assuming Housing Functions:

Loans/Grants Receivables	<u>\$ 1,515,878</u>
Total Unallowable Assets Transferred	<u>\$ 1,515,878</u>

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



VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Steven Mar
Local Government Audits Bureau
State Controller's Office
Division of Audits,
P. O. Box 942850
Sacramento, CA 94250-5874

Re: SCO Draft report re Transfers by Winters Community Development Agency

Dear Mr. Mar:

I am writing in response to the SCO's Draft Asset Transfer Review Report, received by the City of Winters on March 22, 2013, to the Winters Successor Agency regarding asset transfers made by the former Winters Community Development Agency to the City of Winters after January 1, 2011. The following are the Successor Agency's comments to the Draft Report.

Summary (p. 1) and Conclusion (p. 2)

For the reasons more fully set forth in the response to Finding 2, we dispute the finding that there was an unallowable transfer of assets totaling \$3,470,411, or 19.39% that must be turned over the City of Winters Redevelopment Successor Agency. Specifically, we dispute Finding 2 as to the loans and receivables in the amount of \$371,845.78. Those assets were properly transferred to the City of Winters as the Housing Successor.

It is difficult to know exactly what assets were the Controller identified as having been transferred since Schedule 1 – RDA Assets Transferred to the Entity Assuming Housing Functions simply states an amount attributable to "Loans/Grants/Receivables" of \$1,515,878. There is no breakdown as to what loans, grants or receivables are at issue. The bulk of the asset transfer to the Housing Successor was bond proceeds of approximately \$1.14 million; bond proceeds are not loans, grants or receivables. Nevertheless, we are not challenging the finding that the remaining housing bond proceeds should be transferred to the Successor Agency.

Finding 1

The City will transfer the six (6) properties identified on Schedule 1 to the Successor Agency.

318 First Street Winters, CA 95694 Phone: 530.795.4930 Fax: 530.795.4935	COUNCIL MEMBERS Harold Anderson Wade Cowan Michael Martin	MAYOR Cecilia Aguiar-Curry MAYOR PRO TEM Woody Fridae	CITY CLERK Nanci Mills TREASURER Michael Sebastian	CITY MANAGER John W. Donlevy, Jr.
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Finding 2

The City disputes a portion of Finding 2 and believes that the loans and receivables in the amount of \$371,845.78 should not be transferred to the Successor Agency. The SCO report cites Health and Safety Code sections 34175(b) and 34177(d) and (e) as authority for ordering the transfer of the “loan receivables” to the Successor Agency. It ignores the clear language of Health and Safety Code section 34176, which provides, in relevant part, as follows:

“(a)

(1) The city, county, or city and county that authorized the creation of a redevelopment agency may elect to retain the housing assets and functions previously performed by the redevelopment agency. If a city, county, or city and county elects to retain the authority to perform housing functions previously performed by a redevelopment agency, all rights, powers, duties, obligations, and housing assets, as defined in subdivision (e), excluding any amounts on deposit in the Low and Moderate Income Housing Fund and enforceable obligations retained by the successor agency, shall be transferred to the city, county, or city and county.

(2) The entity assuming the housing functions of the former redevelopment agency shall submit to the Department of Finance by August 1, 2012, a list of all housing assets that contains an explanation of how the assets meet the criteria specified in subdivision (e). The Department of Finance shall prescribe the format for the submission of the list. The list shall include assets transferred between February 1, 2012, and the date upon which the list is created. The department shall have up to 30 days from the date of receipt of the list to object to any of the assets or transfers of assets identified on the list. If the Department of Finance objects to assets on the list, the entity assuming the housing functions of the former redevelopment agency may request a meet and confer process within five business days of receiving the department objection. If the transferred asset is deemed not to be a housing asset as defined in subdivision (e), it shall be returned to the successor agency and the provision of Section 34178.8 may apply. If a housing asset has been previously pledged to pay for bonded indebtedness, the successor agency shall maintain control of the asset in order to pay for the bond debt.....

(c) Commencing on the operative date of this part, the entity that assumes the housing functions formerly performed by the redevelopment agency and receives the transferred housing assets may enforce affordability covenants and perform related activities pursuant to applicable provisions of the Community Redevelopment Law (Part 1 (commencing with Section 33000)), including, but not limited to, Section 33418.

(d) Except as specifically provided in Section 34191.4, any funds transferred to the city, county, or city and county or designated entity pursuant to this section, together with any funds generated from housing assets, as defined in subdivision (e), shall be maintained in a separate Low and Moderate Income Housing Asset

Fund which is hereby created in the accounts of the entity assuming the housing functions pursuant to this section. Funds in this account shall be used in accordance with applicable housing-related provisions of the Community Redevelopment Law (Part 1 (commencing with Section 33000)).

(e) For purposes of this part, "housing asset" includes all of the following:

(1) Any real property, interest in, or restriction on the use of real property, whether improved or not, and any personal property provided in residences, including furniture and appliances, all housing-related files and loan documents, office supplies, software licenses, and mapping programs, that were acquired for low- and moderate-income housing purposes, either by purchase or through a loan, in whole or in part, with any source of funds.

(2) Any funds that are encumbered by an enforceable obligation to build or acquire low- and moderate-income housing, as defined by the Community Redevelopment Law (Part 1 (commencing with Section 33000)) unless required in the bond covenants to be used for repayment purposes of the bond.

(3) Any loan or grant receivable, funded from the Low and Moderate Income Housing Fund, from homebuyers, homeowners, nonprofit or for-profit developers, and other parties that require occupancy by persons of low or moderate income as defined by the Community Redevelopment Law (Part 1 (commencing with Section 33000)).

(4) Any funds derived from rents or operation of properties acquired for low- and moderate-income housing purposes by other parties that were financed with any source of funds, including residual receipt payments from developers, conditional grant repayments, cost savings and proceeds from refinancing, and principal and interest payments from homebuyers subject to enforceable income limits.

(5) A stream of rents or other payments from housing tenants or operators of low- and moderate-income housing financed with any source of funds that are used to maintain, operate, and enforce the affordability of housing or for enforceable obligations associated with low- and moderate-income housing.

(6)

(A) Repayments of loans or deferrals owed to the Low and Moderate Income Housing Fund pursuant to subparagraph (G) of paragraph (1) of subdivision (d) of Section 34171, which shall be used consistent with the affordable housing requirements in the Community Redevelopment Law (Part 1 (commencing with Section 33000)).

(B) Loan or deferral repayments shall not be made prior to the 2013-14 fiscal year. Beginning in the 2013-14 fiscal year, the maximum repayment amount authorized each fiscal year for repayments made pursuant to this paragraph and subdivision (b) of Section 34191.4 combined shall be equal to one-half of the

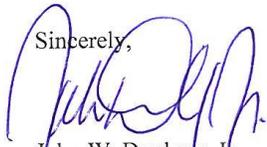
increase between the amount distributed to taxing entities pursuant to paragraph (4) of subdivision (a) of Section 34183 in that fiscal year and the amount distributed to taxing entities pursuant to that paragraph in the 2012-13 base year. Loan or deferral repayments made pursuant to this paragraph shall take priority over amounts to be repaid pursuant to subdivision (b) of Section 34191.4.

(f) If a development includes both low- and moderate-income housing that meets the definition of a housing asset under subdivision (e) and other types of property use, including, but not limited to, commercial use, governmental use, open space, and parks, the oversight board shall consider the overall value to the community as well as the benefit to taxing entities of keeping the entire development intact or dividing the title and control over the property between the housing successor and the successor agency or other public or private agencies. The disposition of those assets may be accomplished by a revenue-sharing arrangement as approved by the oversight board on behalf of the affected taxing entities....” (underlining added.)

In accordance with subsection (a)(2), above, the City, as the housing successor, completed the Housing Asset Transfer form issued by the state Department of Finance (“DOF”), and received approval of the transfer of all of the loans and receivables. A copy of DOF March 2, 2013 letter is enclosed. The outstanding loans and receivables that were transferred to the Housing Successor fall within the definition of “housing asset,” above, and are properly being held by the City as the Housing Successor. The loans were all made to first-time homebuyers or to assist with the construction or rehabilitation of affordable housing. Therefore, the City will not transfer these housing assets to the Successor Agency. It will transfer the remaining housing bond proceeds in the amount of \$1,144,009.80 to the Successor Agency.

Please let me know if you have any questions.

Sincerely,



John W. Donlevy, Jr.
City Manager

Enc.

cc: Shelly Gunby
Dan Maguire
Iris P. Yang, Best Best & Krieger LLP



EDMUND G. BROWN JR. ■ GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

August 30, 2012

Ms. Shelly Gunby, Director of Financial Management
City of Winters
318 First Street
Winters, CA 95694

Dear Ms. Gunby:

Subject: Housing Assets Transfer Form

Pursuant to Health and Safety Code (HSC) section 34176 (a) (2), the City of Winters submitted a Housing Assets Transfer Form (Form) to the California Department of Finance (Finance) on July 31, 2012 for the period February 1, 2012 through July 31, 2012.

HSC section 34176 (e) defines a housing asset. Assets transferred deemed not to be a housing asset shall be returned to the successor agency. Finance has completed its review of your Form, which may have included obtaining clarification for various items. Based on a sample of line items reviewed and the application of law, Finance is objecting to Exhibit C, Item 1, an Indenture of Trust for \$1,144,000. HSC section 34176 (e) (2) states funds that are encumbered by an enforceable obligation to build or acquire low and moderate income housing are considered to be housing assets. However, there are no contracts to build or acquire property. Therefore, this item is not a transferable housing asset.

Except for the item disallowed as noted above, Finance is not objecting to the remaining items, if any, listed on your Form. If you disagree with our determination with respect to any items on the Form, you may request a Meet and Confer within five business days of receiving this letter.

Please direct inquiries to Robert Scott, Supervisor or Jenny DeAngelis, Lead Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Mr. Dan Maguire, Housing and Economic Development Manager, City of Winters
Mr. Howard Newens, CPA, Auditor-Controller, Yolo County
California State Controller's Office

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

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