

BREA REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

April 2013



JOHN CHIANG
California State Controller

April 4, 2013

Tim O' Donnell, City Manager
City of Brea/Successor Agency
1 Civic Center Circle
Brea, CA 92821

Dear Mr. O' Donnell:

Pursuant to Health and Safety (H&S) Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Brea Redevelopment Agency to the City of Brea 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 Brea or any other public agencies have been reversed.

Our review found that the Brea Redevelopment Agency made unallowable asset transfers of abandoned railroad right-of-way properties pertaining to "The Tracks at Brea" trail project, with book value totaling \$9,556,267 to the City of Brea, after January 1, 2011. These transfers are to be reversed and the assets are to be returned to the Successor Agency.

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

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/kw

cc: Jan Grimes, Chief Deputy Auditor-Controller
Orange County Auditor-Controller's Office
Steve Szalay, Local Government Consultant
Department of Finance
Don Schweitzer, Chair, Oversight Board
City of Brea/Successor Agency
Scott Freesmeier, Audit Manager
Division of Audits, State Controller's Office
Kandy Liu, Auditor-in-Charge
Division of Audits, State Controller's Office
Richard J. Chivaro, Chief Legal Counsel
State Controller's Office

Contents

Review Report

Summary	1
Background	1
Objectives, Scope, and Methodology	2
Conclusion	2
Views of Responsible Officials	2
Restricted Use	2
Finding and Order of the Controller	3
Schedule 1—RDA Assets Transferred to the City of Brea	5
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 Brea Redevelopment 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 that the Brea Redevelopment Agency made unallowable asset transfers of abandoned railroad right-of-way properties pertaining to "The Tracks at Brea" trail project, with book value totaling \$9,556,267 to the City of Brea, after January 1, 2011. These transfers are to be reversed and the assets are to be returned 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 Brea Redevelopment Agency, the City of Brea, 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 Brea City Council, Brea Redevelopment Agency, and the City of Brea Housing Authority.
- 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 that the Brea Redevelopment Agency made unallowable asset transfers of abandoned railroad right-of-way properties pertaining to “The Tracks at Brea” trail project, with book value totaling \$9,556,267 to the City of Brea, after January 1, 2011. These transfers are to be reversed and the assets are to be returned to the Successor Agency.

Details of our findings are in the Findings and Orders of the Controller section of this report. We also have included a detailed schedule of assets to be turned over to, or transferred to, the Successor Agency.

Views of Responsible Official

We issued a draft review report on February 28, 2013. Lee Squire, Financial Services Manager, responded by email on March 12, 2013, and the 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 Brea, the Successor Agency, and the Oversight Board; 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 4, 2013

Finding and Order of the Controller

FINDING— Unallowable asset transfers to the City of Brea

The Brea Redevelopment Agency (RDA) transferred abandoned railroad right-of-way properties pertaining to “The Tracks at Brea” trail project, with book value totaling \$9,556,267 to the City of Brea (City). Brea Economic Development officials stated that if they did not transfer the properties, they would jeopardize an Environmental Protection Agency grant that was awarded for remediation purposes. The transfers occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

- On January 17, 2012, the Brea RDA directed its staff to transfer to the City certain properties acquired for a transportation corridor referred to as “The Tracks at Brea” trail project with resolution No. 01(2012).
- On January 17, 2012, the City Council accepted the transfer to the City certain properties acquired for a transportation corridor referred to as “The Tracks at Brea” trail project with resolution No. 2012-001.

Pursuant to Health and Safety (H&S) Code section 34163(d)(2):

An agency shall not have the authority to, and shall not, . . . dispose of assets by sale, long-term lease, gift, grant, exchanged, transfer, assignment, or otherwise, for any purpose, including, but not limited to . . . real property, including, but not limited to, land, land under water, and waterfront property, buildings, structures, fixtures, and improvements on the land, any property appurtenant to, or used in connection with, the land, every estate, interest, privilege, easement, franchise, and right in land, including rights-of-way, terms for years, and liens, charges or encumbrances by way of judgment, mortgage, or otherwise, and the indebtedness secured by the liens.

Pursuant to H&S Code section 34167.5, any asset transfers by the RDA to a city, county, city and county or any other public agency after January 1, 2011 must be returned to the Successor Agency for disposition in accordance with H&S Code sections 34177(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 that the oversight board shall direct the successor agency to:

- (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. Any compensation to be provided to the successor agency for the transfer of the asset shall be governed by the agreements related to the construction or use of that asset. Disposal shall be done expeditiously and in a manner

aimed at maximizing value. Asset disposition may be accomplished by a distribution of income to taxing entities proportionate to their property tax share from one or more properties that may be transferred to a public or private agency for management pursuant to the direction of the oversight board.

Order of the Controller

Based on H&S Code section 34167.5, the City would have been ordered to reverse the transfer of the above assets, described in Schedule 1, in the amount of \$9,556,267 and turn them over to the Successor Agency. The Successor Agency would have been directed to properly dispose of those assets in accordance with H&S Code sections 34177(d) and (e). However, the Successor Agency Oversight Board ratified the transfer of these assets on February 19, 2013, pursuant to H&S Code section 34181(a) as the properties related to “The Tracks at Brea” trail project were for governmental purposes.

City’s Response

On February 19, 2013, the Successor Agency’s Oversight Board adopted resolution number OB 2013-02 ratifying the adoption of resolution number 01(2012) on January 17, 2012 by the Brea RDA and resolution number 2012-001 on January 17, 2012 by the City Council, which transferred properties acquired for the Tracks at Brea trail project to the City of Brea.

SCO Comment

We agree with the City’s response that the Successor Agency Oversight Board has ratified the transfer of properties to the City on February 19, 2013. No further action is required.

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

Unallowable asset transfers of abandoned railroad right of way properties (please refer to Attachment 1, exhibit A for detailed descriptions)	\$ 9,556,267
Total	<u>\$ 9,556,267</u> ¹

¹ See the Finding and Order of the Controller section.

**Attachment 1—
City's Response to
Draft Review Report**

To: Liu, Kandy
Subject: RE: Tracks at Brea Transfer of Property

From: Squire, Lee [LEESQ@ci.brea.ca.us]
Sent: Wednesday, February 20, 2013 11:33 AM
To: Freesmeier, Scott; Liu, Kandy
Subject: FW: Tracks at Brea Transfer of Property

Resolution by the Oversight Board ratifying the transfer of the property for the Track At Brea Trails Project.

From: James, Jamie
Sent: Wednesday, February 20, 2013 11:25 AM
To: Squire, Lee
Subject: Tracks at Brea Transfer of Property

Thank you.

sincerely,

Jamie James

Administrative Clerk II
City of Brea
Administrative Services
1 Civic Center Circle
Brea, CA 92821
PH 714-990-7135
[Active - Healthy BREa.png]

RESOLUTION NO. OB 2013-02

A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE BREA REDEVELOPMENT AGENCY RATIFYING THE TRANSFER TO THE CITY OF BREA OF CERTAIN PROPERTY ACQUIRED FOR A TRANSPORTATION CORRIDOR REFERRED TO AS "THE TRACKS AT BREA"

A. RECITALS

(i) The Brea Redevelopment Agency acquired the property described in Exhibit A hereto ("the Property" hereinafter) for the purpose of establishing a Transportation Corridor to be owned and operated by the City of Brea.

(ii) The Property requires soil remediation and said Agency successfully applied for a grant of \$1,000,000 from the United States Environmental Protection Agency Revolving Loan Fund to accomplish that remediation.

(iii) As a prerequisite for the above-referenced loan funds to be made available without further, costly and repetitive environmental analysis, title to the Property was transferred to the City of Brea.

B. RESOLUTION

NOW, THEREFORE, the Oversight Board to the Successor Agency of the Brea Redevelopment Agency hereby finds, determines and resolves as follows:


1. The above recitals are true and correct and are a substantive part of this Resolution.

2. The Oversight Board ratifies the transfer of title to the Property to the City of Brea.

APPROVED AND ADOPTED this 19th day of February, 2013.



Vice Chair

ATTEST: 

City Clerk


I, Cheryl Balz, City Clerk of the City of Brea, do hereby certify that the foregoing Resolution was adopted at a regular meeting of the Oversight Board to the Successor Agency to the Brea Redevelopment Agency held on the 19th day of February, 2013 by the following vote:

AYES: BOARD MEMBERS: Cave, Forde, Parker, Roland

NOES: BOARD MEMBERS: None

ABSENT: BOARD MEMBERS: Dain, O'Donnell, Schweitzer

ABSTAIN: BOARD MEMBERS: None

Dated: February 19, 2013


City Clerk

EXHIBIT A

LEGAL DESCRIPTION

All that certain real property situated in the County of Orange, State of California, described as follows:

Parcel 1:

That portion of Section 12, Township 3 South, Range 10 West, San Bernardino Base and Meridian, in the Rancho San Juan Cajon de Santa Ana, in the City of Brea, County of Orange, State of California, being more particularly described as follows:

All that land described as "Fifth" in the deed to the Pacific Electric Land Company recorded February 7, 1910 in Book 177, Page 61 of Deeds of said Orange County.

Parcel 2:

That portion of Section 12, Township 3 South, Range 10 West, San Bernardino Meridian, in the Rancho San Juan Cajon de Santa Ana, in the City of Brea, County of Orange, State of California, as shown on a map filed in Book 51 Page 7 of Miscellaneous Maps, in the office of the County Recorder of said County, also being a portion of the land described as "Fourth" in the deed to Pacific Electric Land Company recorded February 7, 1910 in Book 177, Page 61 of Deeds in the office of said County Recorder, together with a portion of that land described in the deed to Collier Carbon and Chemical Corporation recorded April 4, 1975 in Book 11371 Page 1060 of Official Records, in the office of the County Recorder of said County, also together with all of that land described as "Second" in the Superior Court Judgment entered in Case No. 36369, a copy of which was recorded September 6, 1939 in Book 1009 Page 329 of said Official Records, described as follows:

Beginning at the Southwest corner of Lot 61 of Tract No. 5447, as shown on a map filed in Book 206 Pages 11 through 13 inclusive, of Miscellaneous Maps, in the office of said County Recorder, said corner also being on the Northerly line of said land described as "Fourth", said corner also being the Northeast corner of the land described in the Indenture between Southern Pacific Railroad and the City of Brea recorded February 13, 1969 in Book 8873 Page 469 of said Official Records; thence along the Easterly line of said land described in said Indenture the following two courses: South 1° 00' 46" West 83.29 feet and South 4° 33' 29" West 41.93 feet to the Southerly line of said land described as "Fourth", said line also being the North line of the South half of the Southwest Quarter of said Section 12; thence along said lines North 89° 14' 50" East 47.22 feet to the Southerly line of said land described as "Second"; thence along said Southerly line South 85° 53' 32" East 573.29 feet to the East line of the Southwest Quarter of said Section 12, said East line also being the Easterly line of said land described as "Second"; thence along said East line North 2° 11' 07" East 69.03 feet to the Southeast corner of that land described in the deed to the State of California recorded July 6, 1971 in Book 9707 Page 95 of said Official Records, said corner being on a non-tangent curve concave Southerly having a radius of 1959.86 feet, a radial line to said corner bears North 16° 59' 40" East; thence Westerly 23.26 feet along said curve and along the Southerly line of said last mentioned land through a central angle of 0° 40' 40" to the Westerly line of said land; thence non-tangent from said curve North 1° 23' 02" West 97.68 feet along said Westerly line to a line parallel with and 125.00 feet North of said North line of said South half, said parallel line also being the Northerly line of said land described in the deed recorded April 4, 1975 in Book 11371 Page 1060 of said Official Records; thence along said parallel line and along said Northerly line South 89° 14' 50" West 592.26 feet to the point of beginning, per Lot Line Adjustment No. LLA 2008-01, recorded October 9, 2008 as Instrument No. 2008000471338 of Official Records.

Said land is also described and shown as Parcel 2 per Lot Line Adjustment LLA 2008-01, a certified copy of which is recorded October 9, 2008 as Instrument No. 2008000471338 of Official Records.

ALTA Owner's Policy (6-17-06)

Copyright American Land Title Association. All rights reserved. The use of this form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.

EXHIBIT "A"

All that certain real property situated in the County of Orange, State of California, described as follows:

Parcel A: Intentionally deleted.

Parcel B:

A portion of said land described as "Third" of that Deed to Pacific Electric Land Company, Trustee, recorded February 7, 1910, in Book 177, Page 61, of Deeds, Orange County Records, more particularly described as follows:

A strip of land of irregular width, situate in the County of Orange, State of California, and being all that portion of the Northeast Quarter of the Southwest Quarter and the North one-half of the Southeast Quarter of Section 11, Township 3 South, Range 10 West, San Bernardino Base and Meridian, lying southerly of a line that is 60.00 feet northerly from and parallel to the following described surveyed center line of the Los Angeles Intersection-Urban Railway, to-wit:

Beginning at Railway Survey Station 1082+25.22 of the surveyed center line of the Los Angeles Intersection-Urban Railway, said railway survey station being in the West line of the Northeast Quarter of the Southwest Quarter of above mentioned Section 11, and northerly, 60.52 feet, more or less, from the Southwest corner of the Northeast Quarter of the Southwest Quarter of said Section 11;
Thence from said point of beginning, North 88°20' East 3968.73 feet to Railway Survey Station 1121+93.95 of the surveyed center line of the Los Angeles Intersection-Urban Railway, said last mentioned railway survey station being in the East line of above mentioned Section 11, and northerly 65.12 feet, more or less, from the Southeast corner of the North one-half of the Southeast Quarter of said Section 11.

Excepting therefrom all of the above described land lying to the West of the centerline of Brea Boulevard.

Parcel C:

Parcel 1 per Lot Line Adjustment LLA 2008-01, a certified copy of which is recorded October 9, 2008 as Instrument No. 2008000471338 of Official Records, described as follows:

File No: 11828108

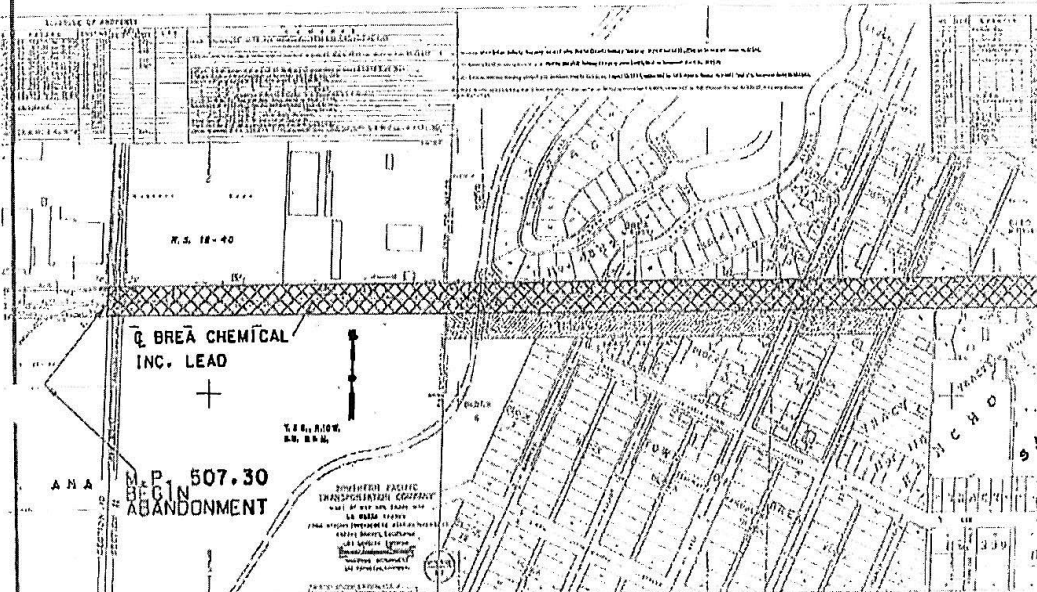
That portion of Section 12, Township 3 South, Range 10 West, San Bernardino Meridian, in the Rancho San Juan Cajon de Santa Ana, in the City of Brea, County of Orange, State of California, as shown on a map filed in Book 51 Page 7 of Miscellaneous Maps, in the Office of the County Recorder of said County, also being a portion of the land described as "Fourth" in the deed to Pacific Electric Land Company recorded February 7, 1910 in Book 177, Page 61 of Deeds in the office of said County Recorder, together with a portion of that land described in the deed to Collier Carbon and Chemical Corporation recorded April 4, 1975 in Book 11371 Page 1060 of Official Records, in the office of the County Recorder of said County, described as follows:

Beginning at the Southwest corner of Lot 61 of Tract 5447, as shown on a map filed in Book 206 Pages 11 through 13 inclusive, of Miscellaneous Maps, in the office of said County Recorder, said corner also being on the Northerly line of said land described as "Fourth", said corner also being the Northeast corner of the land described in the Indenture between Southern Pacific Railroad and the City of Brea recorded February 13, 1969 in Book 8873 Page 469 of said Official Records;
Thence along the Easterly line of said land described in said Indenture the following two courses: South 1° 00' 46" West 83.29 feet and South 4° 33' 29" West 41.93 feet to the Southerly line of said land described as "Fourth", said line also being the North line of the South half of the Southwest Quarter of said Section 12;
Thence along said lines South 89° 14' 50" West 2023.41 feet to the Northwest corner of said South half;
Thence along the West line of said Section 12 North 2° 09' 48" East 125.16 feet to a line parallel with and 125.00 feet North of said North line, said parallel line also being the Northerly line of said land described as "Fourth";
Thence along said parallel line and along said Northerly line North 89° 14' 50" East 2023.49 feet to the point of beginning.

Said land is also described and shown as

Also excepting therefrom all coal, lignite, coal oil, petroleum, naphtha, asphaltum, brea, bitumen, natural gas and all other hydrocarbon and like substances in or under said land and certain rights, covenants and easements, in connection with said substances, as excepted and reserved by Jared Sidney Torrance in Deed recorded October 8, 1907 in Book 156, Page 377 of Deeds, records of said Orange County.

Assessor's Parcel Number: **None (Rail Road)**



V124-12
25

V124-12
26

V124-12
27

SOUTHERN PACIFIC TRANSPORTATION COMPANY		
VALUATION SECTION	MAP NUMBER	PARCEL NUMBER(S)
124-12	25	5

SOUTHERN PACIFIC TRANSPORTATION COMPANY		
VALUATION SECTION	MAP NUMBER	PARCEL NUMBER(S)
124-12	26	1,2

SOUTHERN PACIFIC TRANSPORTATION COMPANY		
VALUATION SECTION	MAP NUMBER	PARCE NUMBER
124-12	27	2

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

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