

LOS GATOS REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

July 2013



JOHN CHIANG
California State Controller

July 9, 2013

Greg Larson, Town Manager
Town of Los Gatos
100 E. Main Street
Los Gatos, CA 95030

Dear Mr. Larson:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office reviewed all asset transfers made by the Los Gatos Redevelopment Agency to the Town of Los Gatos 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 Town of Los Gatos or any other public agencies have been reversed.

Our review found that the Los Gatos Redevelopment Agency transferred \$ 25,920,770 in assets, which included unallowable transfers of assets totaling \$11,456,550, or 44.20% in current assets that should have been turned over to the Successor Agency.

However, on February 28, 2012, the Town of Los Gatos approved and turned over the current assets to the Successor Agency. No further action is needed.

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/vb

cc: Stephen D. Conway, Director of Finance
Town of Los Gatos
Stephen Rice, Chair
Redevelopment Successor Agency Oversight Board
Steven Szalay, Local Government Consultant
Department of Finance
Richard J. Chivaro, Chief Legal Counsel
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Attachment—Town’s Response to Draft Review Report

Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Los Gatos 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 the Los Gatos Redevelopment Agency (RDA) transferred \$ 25,920,770 in assets, which included unallowable transfers of assets totaling \$11,456,550, or 44.20%, that should have been turned over to the Successor Agency.

However, on February 28, 2012, the Town of Los Gatos approved and turned over the assets to the Successor Agency. No further action is needed.

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 Los Gatos Redevelopment Agency, the Town of Los Gatos, 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.

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 operations and procedures.
- Reviewed meeting minutes, resolutions, and ordinances of 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 Los Gatos Redevelopment Agency transferred \$ 25,920,770 in assets, which included unallowable transfers of assets totaling \$11,456,550, or 44.20%, that should have been turned over to the Successor Agency.

However, on February 28, 2012, the Town of Los Gatos approved and turned over the current assets to the Successor Agency. No further action is needed.

Details of our finding are in the Finding and Order of the Controller section of this report.

Views of Responsible Official

We issued a draft review report on April 29, 2013. Greg Larson, Town Manager, responded by letter dated May 6, 2013, agreeing with the review results. The Town of Los Gatos' response is included in this final review report as an attachment.

Restricted Use

This report is solely for the information and use of the Los Gatos Redevelopment Agency, the Successor Agency, the Town of Los Gatos, 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

July 9, 2013

Finding and Order of the Controller

**FINDING—
Unallowable asset
transfers to the
Town of Los Gatos**

The Los Gatos Redevelopment Agency (RDA) transferred \$11,456,550 in assets to the Town of Los Gatos (Town). The asset transfers to the Town occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

- On January 19, 2011, the RDA transferred \$6,356,550 in cash to the Town per the Public Improvement Grant and Cooperation Agreement. (Resolution No. 2011-003)
- On March 11, 2011, the RDA transferred \$5,100,000 in cash to the Town for the Affordable Housing Cooperation Agreement. (Resolution No 2011-013)

Pursuant to Health and Safety (H&S) Code section 34167.5, a redevelopment agency may not transfer assets to a city, county, city and county, or any other public agency after January 1, 2011. Those assets must be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177(d) and (e).

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. . .”

Order of the Controller

Based on H&S Code section 34167.5, the Town would have been ordered to reverse the transfer of the above assets, in the amount of \$11,456,550, and turn the assets over to the Successor Agency. The Successor Agency would have been directed to properly dispose of those assets in accordance with H&S Code section 34177(d) and (e).

However, on February 28, 2012, the Town returned the \$11,456,550 in cash to the Successor Agency. No further action is needed.

Town of Los Gatos' Response

The Town of Los Gatos agrees with the State Controller's Office. See Attachment for the response.

SCO's Comment

The finding remains as stated.

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



TOWN OF LOS GATOS

CIVIC CENTER
110 E. MAIN STREET
P.O. BOX 697
LOS GATOS, CA 95031

May 6, 2013

Mr. Steven Mar, Chief
Local Government Audits Bureau
California State Controller's Office
Division of Audits
PO Box 942850
Sacramento, CA 95250-5874

Dear Mr. Mar:

The Town of Los Gatos is in receipt of the California State Controller's Office April 2013 "Asset Transfer Review" of the Los Gatos Redevelopment Agency dated April 29, 2013.

The Town of Los Gatos concurs with the results of your review and wishes to extend our appreciation to your audit team for being professional, thorough, timely, and responsive to our questions and concerns.

As former California Chief Deputy Controller and Chief of Staff, I well understand the challenging work that often confronts you and your staff in the face of ambiguous and/or controversial State mandates and requirements.

We know that your audit team will be conducting subsequent reviews here in Los Gatos consistent with the State legislation concerning former Redevelopment Agencies and we look forward to an on-going cooperative working relationship on these matters.

Sincerely,

Greg Larson
Town Manager

Cc: California State Controller's Office
Hon. John Chiang, California State Controller
Rick Chivaro, Chief Legal Counsel
Jeffrey Brownfield, Chief of Audits
Betty Moya, Audit Manager
Nesha Neycheva, Auditor-in-Charge
Mathew Rios, Audit Staff
Town of Los Gatos
Judith Propp, Town Attorney
Steve Conway, Los Gatos Director of Finance
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