

FORTUNA REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

June 2014



JOHN CHIANG
California State Controller

June 19, 2014

Regan Candelario, City Manager
City of Fortuna/Successor Agency
621 11th Street
Fortuna, CA 95540

Dear Mr. Candelario:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Fortuna Redevelopment Agency (RDA) to the City of Fortuna (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 agencies have been reversed.

Our review found that the RDA transferred \$16,038,766 in assets after January 1, 2011, including unallowable transfers totaling \$5,627,008 to the City, or 35.08% of transferred assets.

However, on June 30, 2012, the City turned over \$2,279,262 to the Successor Agency. Subsequently, on October 21, 2013, the City remitted \$411,614 to the Humboldt County Auditor. Therefore, the remaining \$2,936,132 in unallowable transfers must be turned over to the Successor Agency.

If you have any questions, please contact Elizabeth González, Bureau Chief, Local Government Compliance Bureau, by telephone at (916) 324-0622.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/kw

cc: Marie Essig, Finance Director
City of Fortuna
Joseph Mellet, Auditor
County of Humboldt
Sue Long, Chair
Oversight Board
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
Scott Freesmeier, Audit Manager
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Kandy Liu, Audit Staff
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Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Fortuna Redevelopment Agency (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 \$16,038,766 in assets after January 1, 2011, including unallowable transfers totaling \$5,627,008 to the City of Fortuna (City), or 35.08% of transferred assets.

However, on June 30, 2012, the City turned over \$2,279,262 to the Successor Agency. Subsequently, on October 21, 2013, the City remitted \$411,614 to the Humboldt County Auditor. Therefore, the remaining \$2,936,132 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 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 has identified an asset transfer that occurred after January 1, 2011, between the RDA, the City, 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 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 operations and procedures.
- Reviewed meeting minutes, resolutions, and ordinances of the Fortuna City Council, 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 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 Fortuna Redevelopment Agency transferred \$16,038,766 in assets after January 1, 2011, including unallowable transfers totaling \$5,627,008 to the City of Fortuna, or 35.08% of transferred assets.

However, on June 30, 2012, the City turned over \$2,279,262 to the Successor Agency. Subsequently, on October 21, 2013, the City remitted \$411,614 to the Humboldt County Auditor. Therefore, the remaining \$2,936,132 unallowable transfers must be turned over to the Successor Agency.

Views of Responsible Official

We issued a draft review report on March 27, 2014, Marie Essig, Finance Director, responded by email dated May 5, 2014, disagreeing with the review results. 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, 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 as final.

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

June 19, 2014

Finding and Order of the Controller

FINDING— Unallowable asset transfers to the City of Fortuna

The Fortuna Redevelopment Agency (RDA) made unallowable asset transfers of \$5,627,008 to the City of Fortuna (City). All of the asset transfers occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011. The unallowable transfers consist of loan principal and interest payments (see Schedule 1).

However, on June 30, 2012, the City reversed the transfer of \$2,279,262 and turned the assets over to the Successor Agency as noted in Journal Entry #2012 85-01. Therefore, the total amount that is required to be reversed and turned over to the Successor Agency is \$3,347,746.

Pursuant to 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, that were not contractually committed to a third party prior to June 28, 2011.

Order of the Controller

Pursuant to 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 transfers in the amount of \$3,347,746 must be reversed and the assets turned over to the Successor Agency for disposition in accordance with H&S Code section 34177(d) and (e).

City's Response

The City of Fortuna and its former Redevelopment Agency appreciate the State Controller's review and assistance in the implementation of the State's redevelopment dissolution legislation.

We understand that the State Controller has identified a series of Agency payments made to the City during 2011 and 2012 and consider some of these payments to be unallowable transfers.

These transactions have been subject to review by a number of third parties during the past two years, including the County Auditor-Controller (through its independent audit); an independent CPA, Oversight Board and state Department of Finance (through the Due Diligence Reviews), and the DOF through its review of the initial Recognized Obligation Payment Schedules. We believe, therefore, that the State Controller's conclusions are inconsistent with the findings from these prior reviews. Through the DDR processes, the City has returned \$2,279,262 and an additional \$411,614 to the Successor Agency, and the Successor Agency has completed the required DDR remittances to the County Auditor-Controller.

We would note that based on these payments, the Successor Agency has received a "Finding of Completion" from the Department of Finance and continues to "wind down" its activities through the retirement of its remaining bond obligations.

SCO's Comment

The SCO's asset transfer review is independent of Department of Finance's determination of the DDR and ROPS. Per the Department of Finance's statement, "Pursuant to HSC section 34167.5 and 34178.8, the California State Controller's Office (Controller) has the authority to claw back assets that were inappropriately transferred to the city, county, or any other public agency. Determinations outlined in this letter do not in any way eliminate the Controller's Authority."

Pursuant to Health and Safety (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 which was not contractually committed to a third party must be returned to the Successor Agency. It further 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 the furtherance of the Community Redevelopment Law and is thereby unauthorized."

After the meet-and-confer process with the Department of Finance regarding the unallowable cash transfers mentioned above, the City remitted an additional \$411,614 to the County Auditor for distribution, and received a Finding of Completion from the Department of Finance on November 1, 2013.

With the adjustment mentioned above, the remaining \$2,936,132 must be turned over to the Successor Agency (see Schedule 1).

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

| <u>Description</u> | <u>Date</u> | <u>Amount</u> |
|---|-------------|------------------------------|
| Unallowable loan principal and interest payments: | | |
| RDA GF loan principal expense JE# 2011 74-00 | 6/30/2011 | \$ 172,626 |
| RDA GF loan interest expense JE# 2011 74-00 | 6/30/2011 | 480,171 |
| RDA Drainage Fund principal expense JE# 2011 74-01 | 6/30/2011 | 32,037 |
| RDA Drainage Fund interest expense JE# 2011 74-01 | 6/30/2011 | 89,115 |
| Pay off general econ development loan JE# 2012 74-00 | 1/31/2012 | 1,575,595 |
| Pay most of general development loan JE# 2012 74-00 | 1/31/2012 | 2,279,262 |
| Pay off general admin loan JE# 2012-74-00 | 1/31/2012 | 137,616 |
| Pay off Drainage Fund loan JE# 2012 74-01 | 1/31/2012 | <u>860,586</u> |
| Total unallowable transfers | | 5,627,008 |
| City returned assets to the Successor Agency | 6/30/12 | <u>(2,279,262)</u> |
| Total adjusted unallowable transfers | | 3,347,746 |
| City remitted to Humboldt County Auditor | 10/21/13 | <u>(411,614)¹</u> |
| Total unallowable transfers subject to H&S Code section 34167.5 | | <u>\$ 2,936,132</u> |

¹ See the Finding and Order of the Controller section.

**Attachment—
City of Fortuna’s Response to
Draft Review Report**

City of Fortuna
Response to the State Controller
Asset Transfer Review
Draft Review Report (March 27, 2014)

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These transactions have been subject to review by a number of third parties during the past two years, including the County Auditor-Controller (through its independent audit); an independent CPA, Oversight Board and state Department of Finance (through the Due Diligence Reviews), and the DOF through its review of the initial Recognized Obligation Payment Schedules. We believe, therefore, that the State Controller's conclusions are inconsistent with the findings from these prior reviews. Through the DDR processes, the City has returned \$2,279,262 and an additional \$411,614 to the Successor Agency, and the Successor Agency has completed the required DDR remittances to the County Auditor-Controller.

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**State Controller's Office
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