

EAST PALO ALTO REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

August 2014



JOHN CHIANG
California State Controller

August 20, 2014

Edmund Suen, Director of Finance
East Palo Alto Redevelopment/Successor Agency
2415 University Avenue
East Palo Alto, CA 94303-1164

Dear Mr. Suen:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the East Palo Alto Redevelopment Agency (RDA) to the City of East Palo Alto (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 \$65,461,419 in assets after January 1, 2011, including unallowable transfers to the City totaling \$27,695,920, or 42.31% of transferred assets.

However, on various dates, the City turned over a total of \$27,695,920 in assets to the Successor Agency. Therefore, no further action is necessary.

If you have any questions, please contact Elizabeth González, 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: Ruben Abrica, Oversight Board Chair
East Palo Alto Redevelopment/Successor Agency
Bob Adler, Auditor-Controller
San Mateo County
Richard J. Chivaro, Chief Legal Counsel
State Controller's Office
Elizabeth González, Bureau Chief
Division of Audits, State Controller's Office
Betty Moya, Audit Manager
Division of Audits, State Controller's Office
Cecilia Michaels, Auditor-in-Charge
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 East Palo Alto 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 \$65,461,419 in assets after January 1, 2011, including unallowable transfers to the City of East Palo Alto (City) totaling \$27,695,920, or 42.31% of transferred assets.

However, on various dates, the City turned over a total of \$27,695,920, in assets to the Successor Agency. Therefore, no further action is necessary.

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 is required to 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 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 RDA, the East Palo Alto City Council, 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 East Palo Alto Redevelopment Agency transferred \$65,461,419 in assets after January 1, 2011, including unallowable transfers to the City of East Palo Alto (City) totaling \$27,695,920, or 42.31% of transferred assets.

However, on various dates, the City turned over a total of \$27,695,920 in assets to the Successor Agency. Therefore, no further action is necessary.

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

Views of Responsible Official

We issued a draft review report on February 20, 2014. Edmund Suen, Finance Director, responded by letter dated March 6, 2014, disagreeing with the findings related to housing assets. This finding was eliminated due to a subsequent court ruling. The City did not comment on the remaining findings. 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 final.

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

August 20, 2014

Findings and Orders of the Controller

**FINDING—
Unallowable asset
transfers to the
City of East Palo
Alto**

The East Palo Alto Redevelopment Agency (RDA) transferred \$27,695,920 in assets to the City of East Palo Alto (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:

- During the first three months of 2011, the RDA made \$23,696,320 in accelerated loan payments to the City. On September 12, 2011, the City returned \$21,357,391 in cash to the RDA, and the RDA reinstated the loan payables to the City. On October 9, 2012, the City turned over the remaining \$2,338,929 in cash, including interest, to the Successor Agency. The Successor Agency reinstated the remaining loan payables to its books.
- In March 2011, the RDA transferred \$3,999,600 in capital assets to the City, including Land Held for Resale in the amount of \$3,141,165; Construction in Progress in the amount of \$614,053; and Land and Fixed Assets in the amount of \$244,382. In January 2012, the City turned over all of the capital assets.

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 should be turned over to the Successor Agency for disposition in accordance with H&S Code section 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, 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 as asset. . . .

Order of the Controller

Pursuant to H&S Code section 34167.5, the City is ordered to reverse the transfers in the amount of \$27,695,920, and turn over the assets to the Successor Agency. However, on various dates, the City turned over the assets to the Successor Agency. Therefore, no further action is necessary.

City's Response

The City did not comment on this finding in the draft report.

SCO's Comment

The Finding and Order of the Controller remain as stated.

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

Current Assets	
Accelerated loan repayments paid to the City of East Palo Alto	\$ 23,696,320
The City returned a portion of the funds on September 12, 2011	(21,357,391)
The City returned the remaining funds, with interest, on October 9, 2012	(2,338,929)
Capital Assets	
Land held for resale transferred to the City	3,141,165
Land and fixed assets transferred to the City	244,382
Construction in progress transferred to the City	614,053
The City returned the capital assets on January 31, 2012	(3,999,600)
Total transfers subject to H&S Code section 34167.5	<u>\$ —</u>

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



CITY OF EAST PALO ALTO

March 6, 2014

Ms. Elizabeth Gonzalez
Chief, Local Government Compliance Bureau
State Controller's Office
Division of Audits
PO Box 942850
Sacramento, CA 94250-5874

Dear Ms. Gonzalez:

We received your draft Asset Transfer Review. The Review included a finding of "unallowable transfers" totaling \$13,341,999 made to the City's Housing Successor.

The City believed that the transfer was allowable since the City had made an election in accordance with Section 34176 of the Redevelopment Law on January 10, 2012 to retain the housing assets and functions performed by City's former Redevelopment Agency (see attached Resolution 4227).

Notwithstanding the difference in our interpretation and in the interest of expeditiously curing the State Controller's finding, it is our understanding that once the City's Successor Agency is able to secure a retroactive Oversight Board approval to 2/1/2012 of the \$13,341,999 transfer of assets to the Housing Successor and provides that to the State Controller, this issue will be addressed satisfactorily. As such, the City's Successor Agency will seek retroactive approval of the transfer of housing assets to the Housing Successor.

Sincerely,

A handwritten signature in black ink, appearing to read "Edmund Suen".

Edmund Suen, Finance Director
City of East Palo Alto

Attachment: Resolution no. 4227

CC: Magda Gonzalez, City Manager
John Nagel, City Attorney
Gary Baum, Oversight Board Counsel

RESOLUTION NO. 4227

RESOLUTION OF THE CITY OF EAST PALO ALTO TO ELECT TO RETAIN THE HOUSING ASSETS AND FUNCTIONS PREVIOUSLY PERFORMED BY THE REDEVELOPMENT AGENCY OF THE CITY OF EAST PALO ALTO, PURSUANT TO HEALTH AND SAFETY CODE SECTION 34176

WHEREAS, Assembly Bill 1X 26 (the "Dissolution Act") and Assembly Bill 1X 27 (the "Alternative Redevelopment Program Act") were enacted on June 28, 2011, to significantly modify the Community Redevelopment Law (Health & Safety Code §33000, et seq.; the "Redevelopment Law"); and

WHEREAS, on August 11, 2011, the California Supreme Court agreed to review the California Redevelopment Association and League of California Cities' petition challenging the constitutionality of the Redevelopment Restructuring Acts; and

WHEREAS, on December 29, 2011, the California Supreme Court ruled that the Dissolution Act is largely constitutional and the Alternative Redevelopment Program Act is unconstitutional; and

WHEREAS, the Court's decision means that all California redevelopment agencies will dissolve on February 1, 2012 pursuant to the Dissolution Act; and

WHEREAS, Section 34176(a) of the Redevelopment Law provides that the city that authorized the creation of a redevelopment agency may elect to retain the housing assets and functions previously performed by the former redevelopment agency; and

WHEREAS, the City desires to elect to retain the housing assets and functions previously performed by the Agency in accordance with Section 34176 of the Redevelopment Law.

NOW, THEREFORE, BE IT RESOLVED, that the City hereby accepts the designation, and hereby declares its intent, to serve as the successor agency for the Agency in accordance with Section 34171(j) and Section 34173 of the Redevelopment Law.

BE IT FURTHER RESOLVED, that the City Manager, or his or her designee, is hereby directed to file a copy of this resolution with the County Auditor-Controller.

BE IT FURTHER RESOLVED, that the City Manager, or his or her designee, is hereby authorized to take such additional actions, and to execute all documents necessary and appropriate, for the City to transfer the assets of the Agency to the City, in its capacity as successor agency to the Agency, pursuant to Sections 34176 of the Redevelopment Law.

I certify that the foregoing is a true and correct copy of the original resolution on file in the office of the City Clerk of the City of East Palo Alto.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official Seal of said City, this 10th day of January, 2012.

The above and foregoing resolution was duly and regularly passed and adopted at a meeting by the City Council of the City of East Palo Alto on the 10th day of January, 2012 by the following vote:

AYES: **WOODS, EVANS, ROMERO, ABRICA, MARTINEZ**
NOES: **0**
ABSTENTIONS: **0**
ABSENT: **0**

SIGNED:

Ruben Abner Vice Mayor
for Laura Martinez,
Mayor

ATTEST:

Stephanie Osorio
M L Gordon,
City Clerk

APPROVED TO FORM:

Kathleen Kane
Kathleen Kane,
City Attorney

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

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