

BAKERSFIELD REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



BETTY T. YEE
California State Controller

June 2015



BETTY T. YEE
California State Controller

June 11, 2015

Nelson K. Smith, Finance Director
City of Bakersfield/Successor Agency
1600 Truxton Avenue
Bakersfield, CA 93301

Dear Mr. Smith:

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

Our review found that the RDA transferred \$53,175,340 in assets after January 1, 2012, including unallowable transfers to the City totaling \$1,589,593, or 2.99% of transferred assets.

However, on July 1, 2012, the City turned over \$60,895 in capital assets to the Successor Agency. Therefore, the remaining \$1,528,698 in unallowable transfers must be turned over to the Successor Agency.

If you have any questions, please contact Elizabeth González, Chief, Local Government Compliance Bureau, by telephone at (916) 324-0622 or by email at egonzalez@sco.ca.gov.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/ljs

cc: Mary B. Bedard, Auditor-Controller
Kern County
J. Philip Bentley, Chairman
Successor Agency Oversight Board
Joshua H. Rudnick, Deputy City Attorney
City of Bakersfield
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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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 Bakersfield 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 \$53,175,340 in assets after January 1, 2012, including unallowable transfers to the City of Bakersfield (City) totaling \$1,589,593, or 2.99% of transferred assets.

However, on July 1, 2012, the City turned over \$60,895 in capital assets to the Successor Agency. Therefore, the remaining \$1,528,698 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 and oversight boards 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 identified asset transfers that occurred after January 1, 2011, between the RDA, the City and/or any other public agency. 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's operations and procedures.
- Reviewed meeting minutes, resolutions, and ordinances of the 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 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 Bakersfield Redevelopment Agency transferred \$53,175,340 in assets after January 1, 2012, including unallowable transfers to the City of Bakersfield (City) totaling \$1,589,593, or 2.99% of transferred assets.

However, on July 1, 2012, the City turned over \$60,895 in capital assets to the Successor Agency. Therefore, the remaining \$1,528,698 in unallowable transfers must be turned over to the Successor Agency.

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

Views of Responsible Officials

We issued a draft review report on August 26, 2014. Joshua H. Rudnick, Deputy City Attorney, responded by letter dated September 10, 2014. The City's response provided additional information regarding capital assets known as South Mill Creek Commercial properties. After further review, the SCO subsequently removed the South Mill Creek Commercial properties from its findings. The SCO's comment to the City's response addresses only the remaining transfers the Controller finds unallowable. 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 of Bakersfield, 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

June 11, 2015

Finding and Order of the Controller

FINDING— Unallowable asset transfers to the City of Bakersfield

The Bakersfield Redevelopment Agency (RDA) made unallowable asset transfers of \$1,589,593 to the City of Bakersfield (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:

- On March 9, 2011, the RDA transferred \$414,093 in capital assets to the City. The transfer was completed by the City/RDA passage of Resolution #RA006-11/029-11 which approved the City/RDA Cooperation Agreement #RA11-006/11-027.
- Between January 1, 2011, and January 31, 2012, the RDA transferred \$1,175,500 in cash assets to the City. The transfers were for principal and interest payments on several inter-agency loans.

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, that were not contractually committed to a third party prior to June 28, 2011. The assets must be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177(d) and (e).

The assets also may be subject to the provisions of H&S Code section 34181(a), which 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; 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...

However, on July 1, 2012, the City turned over \$60,895 in capital assets to the Successor Agency. Therefore, the remaining \$1,528,698 in unallowable transfers must be turned over to the Successor Agency.

Order of the Controller

Pursuant to H&S Code section 34167.5, the City of Bakersfield is ordered to reverse the transfers in the amount of \$1,528,698 and turn them over to the Successor Agency.

City's Response

1. The City agrees that the East California/SEC Owens Street (APN 018-040-70) property should be reversed and turned over to the Successor Agency.
2. The City disagrees that the transfer of \$1,175,500 in cash was an unallowable transfer. The transfers were for principal and interest payments on three inter-agency loans made before January 1, 2011, and prior to the dissolution of the RDA. The City asserts the SCO cannot order by statutory enactment the return of the payments, because to do so would violate various provisions of the California Constitution. The inter-agency loans are "enforceable obligations." The loans consisted of City funds used to fund the RDA's acquisition of property, and the RDA made normal payments as part of the loan payment terms. The Successor Agency received its Finding of Completion (FOC), and the Oversight Board and Department of Finance (DOF) approved the reinstatement of the City's intra-agency loan; therefore, the Successor Agency will request that the \$1,175,500 loan be placed on a future Recognized Obligation Payment Schedule (ROPS) for repayment to the City, should the SCO order that the cash transfer be turned over the Successor Agency.

SCO's Comment

1. The City agreed to the East California/SEC Owens Street (APN 018-040-70) property, but did not discuss the 1500 S Street (APN 006-540-02) property. These two properties remain as unallowable capital asset transfers.
2. H&S code section 34167.5 prohibits transfers between the RDA and the City that created the RDA. The SCO's authority under H&S Code section 34167.5 extends to all assets transferred after January 1, 2011, by the RDA to the city or county, or city and county that created the RDA, or any other public agency. This responsibility is not limited by the other provisions of the RDA dissolution legislation. As a result, the cash transfers made by the RDA to the City during the period of January 1, 2011, through January 31, 2012, are unallowable.

On March 25, 2013, the Successor Agency received a FOC from the DOF. Pursuant to H&S Code section 34191.4, the Successor Agency may place payments for loan agreements between the RDA and the City on the ROPS as an enforceable obligation, provided that the Oversight Board finds that the loans were for legitimate redevelopment purpose.

The Finding and Order of the Controller remain as stated.

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

<u>Description</u>	<u>Date</u>	<u>Amount</u>
Unallowable transfers of capital assets:		
East California/SEC Owens Street – APN 018-040-70	March 9, 2011	\$ 353,198
1500 S Street – APN 006-540-02	March 9, 2011	<u>60,895</u>
Subtotal		<u>414,093</u>
Unallowable transfers of cash:	Various	
Inter-Agency Loan – Chelsea Housing		218,500
Inter-Agency Loan – Courtyard		257,000
Inter-Agency Loan – 19 th Street Service Plaza		<u>700,000</u>
Subtotal		<u>1,175,500</u>
Total unallowable transfers		<u>1,589,593</u>
Capital assets turned over to Successor Agency via JE #5806	July 1, 2012	<u>(60,895)</u>
Total transfers subject to H&S Code section 34167.5		<u>\$ 1,528,698</u>

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



CITY ATTORNEY
VIRGINIA GENNARO

DEPUTY CITY ATTORNEY
Joshua H. Rudnick
Andrew Heglund

ASSOCIATE ATTORNEY
Richard Iger
Thomas Geddes

CITY OF BAKERSFIELD
OFFICE OF THE CITY ATTORNEY

1600 TRUXTUN AVENUE
FOURTH FLOOR
BAKERSFIELD, CA 93301

TELEPHONE: 661-326-3721
FACSIMILE: 661-852-2020

September 10, 2014

Via Federal Express

Elizabeth Gonzalez, Chief
Local Government Compliance Bureau
State Controllers' Office, Division of Audits
P.O. Box 942850
Sacramento, CA 94250-5874

RE: Bakersfield Asset Transfer Review
Agency Response to Draft Findings

Dear Ms. Gonzalez:

This letter is in response to the draft report referenced above, which we received on Tuesday, September 2, 2014. In accordance with your instructions we are providing our written response to the draft finding detailed in the draft report.

SCO Finding: The Bakersfield Redevelopment Agency (RDA) made unallowable asset transfers of \$8,548,274 to the City of Bakersfield (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 transfers of \$7,372,774 in capital assets; and
- Unallowable transfers of \$1,175,500 in cash assets

1. City Response to SCO Finding - Unallowable Transfer of Capital Assets:

Regarding the transfers of capital assets, the City disagrees in part with the SCO's finding that the transfer of the \$7,372,774 in capital assets was an unallowable transfer. The former RDA transferred the capital assets in question to the City on March 9, 2011 by Resolution No. RA006-11/029-11 and Agreement No. RA11-006/11-027. The City agrees with the SCO's finding that the East California/SEC Owens Street – APN 018-040-70 property transfer should be reversed and returned to the Successor Agency. However, the City disagrees with the SCO's finding regarding

the other properties. The reasons that the transfer of the properties to the City is appropriate and should not need to be returned to the Successor Agency are as follows:

- South Mill Creek Commercial – APN 006-510-04, APN 006-510-11, and APN 006-510-12 ("HUD-Funded Properties") were acquired with Federal Section 108 Guaranteed Loan Funds and Brownfields Economic Development Initiative (BEDI) grant funds pursuant to agreements executed by the U.S. Department of Housing and Urban Development (HUD) programs, the RDA, and the City in 2007.¹

California Health and Safety Code Section 34167.5 states in relevant part that if an asset transfer occurred after January 1, 2011 between a RDA and a city that created it, "and the government agency that received the assets is not contractually committed to a third party for the expenditure or encumbrance of those assets, **to the extent not prohibited by state and federal law**, the Controller shall order the available assets to be returned" to the Successor Agency.

In this case, the City is obligated to follow the federal requirements and contractual commitments governing the HUD assistance. In fact, the City and HUD both believe that the SCO's draft findings conflicts with the federal statutory and regulatory requirements governing this assistance, as well as the contractual commitments the City made to HUD prior to June 28, 2011. See attached hereto and incorporated by reference herein as **Exhibit B** the HUD Letter dated April 11, 2014 ("HUD Letter"), in which HUD supports the City's request to retain the HUD-funded properties rather than transferring the properties to the Successor Agency.

In summary, the HUD-Funded Properties are encumbered by HUD requirements, and the proceeds from the disposition of the real property purchased with Section 108 or BEDI funds is considered federal "program income" and constitutes security for the repayment of the Section 108 Guarantee. Forcing the City to return the HUD-Funded properties to the Successor Agency for disposition and subsequent distribution of proceeds to other taxing entities ignores the prior contractual commitments the RDA and the City made to HUD, frustrates the statutory purpose of Section 108 loans and BEDI grant funds, and violates the U.S. Constitution (Article VI - Supremacy Clause),

¹ See the attached map showing the location of the properties attached hereto as **Exhibit A**.

federal statutory and regulatory requirements governing the provision and use of this assistance.

- South Mill Creek Commercial – APN 006-480-11, APN 006-380-18, and APN 006-380-23 ("Cal HFA-Funded Properties") were acquired with a California Housing Finance Agency Loan in 2007 for the purposes of constructing a mixed-use project to complement the adjacent HUD-funded properties.² The housing portion of the project was completed in 2012. However, the remaining Cal HFA-Funded Properties have not been developed.

California Health and Safety Code Section 34167.5 states in relevant part that if an asset transfer occurred after January 1, 2011 between a RDA and a city that created it, "and the government agency that received the assets is not contractually committed to a third party for the expenditure or encumbrance of those assets, **to the extent not prohibited by state and federal law**, the Controller shall order the available assets to be returned" to the Successor Agency.

In this case, the Cal HFA-Funded Properties are encumbered with Cal-HFA requirements and the City is obligated to complete the commercial part of the project. In addition, these properties are part of the South Mill Creek Project, which includes the HUD-funded properties. Forcing the City to return the Cal-HFA-Funded properties to the Successor Agency for disposition and subsequent distribution of proceeds to other taxing entities ignores the prior contractual commitments the RDA made to Cal HFA, frustrates the statutory purpose of Cal-HFA loan, and violates state statutory and regulatory requirements governing the provision and use of this assistance.

2. **Unallowable Transfers of Cash Assets:** Regarding the transfers of cash, the City disagrees with the finding that the transfer of the \$1,175,500, in cash was an unallowable transfer. Between January 1, 2011, and January 31, 2012, the RDA transferred \$1,175,500 in cash assets to the City. The transfers were for principal and interest payments on three Inter-Agency Loans. The reasons that the transfer of the cash assets to the City is appropriate and should not need to be returned to the Successor Agency as follows:

² See attached map (Exhibit A).

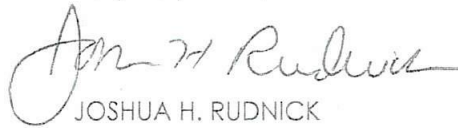
- Constitutionally, the SCO cannot order the \$1,175,500 to be taken away from the City. This amount is comprised of principal and interest on loans of City general funds made to the RDA pursuant to loan agreements made well before January 1, 2011. This amount was repaid to the City prior to the dissolution of the redevelopment operations of the RDA. The Legislature cannot enact by statute, and the SCO cannot order by statutory enactment such as HSC Section 34167.5, the return of this repaid principal and interest because to do so would violate various provisions in the California Constitution, including:
 - Article XIII, Sections 24 and 25.5 (enacted under Proposition 1A (Nov. 2004) and Proposition 22 (Nov. 2010));
 - Article XVI, Section 16 (indebtedness for redevelopment agencies);
 - Article XI, Section 5 (charter city constitutional authority applicable to expenditure of charter city funds)
- At the time of the \$1,175,500 repayment, applicable provisions in the RDL included the Inter-Agency loan agreements and the loan advances within the definition of "enforceable obligations." The Inter-Agency loan agreements constitute "loans of moneys borrowed by the RDA for a lawful purpose...to the extent they are legally required to be repaid pursuant to a required payment schedule or other mandatory loan terms" (HSC Sections 34167(d)(2) and 34171(d)(1)(B)), and they were made pursuant to a "legally binding and enforceable agreement that is not otherwise void as violating the debt limit or public policy" (HSC section 34167(d) and 34171(d)(1)(E). Because the SCO asset transfer review is governed under those same provisions, the repayments should be honored.
- The City's Inter-Agency Loans consisted of City funds that were used to fund the RDA's acquisition of property that is part of the South Mill Creek Mixed Use Project. The Redevelopment Dissolution Law (RDL) was not intended to seize city funds or assets or to require cities or counties to forfeit those city funds or assets simply because they entered into statutorily-authorized loan agreements with their redevelopment agencies in order to assist them to redevelop their communities and eliminate blight (e.g. HSC Sections 33132, 33133, 33220(e), 33600, 33601, and 33610).

Elizabeth Gonzalez, Chief
Local Government Compliance Bureau
State Controllers' Office, Division of Audits
September 10, 2014
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- In addition, the Inter-Agency loan agreements and the loan payments at issue were not last-minute attempts by the City or the former RDA to commit or transfer RDA funds and assets in anticipation of the enactment of the RDL. In addition, the RDA made normal principal and interest payments to the City as part of the loan payment terms.
- As a practical matter, the intent of the redevelopment dissolution would be better served if the City was able to keep the \$1,175,500 in funds rather than transfer them back to the Successor Agency for distribution to the other taxing entities because as a result of the Successor Agency's Finding of Completion and the subsequent Oversight Board's and Department of Finance's approval of the reinstatement of the City's Intra-Agency Loans, the Successor Agency will request that the same \$1,175,500 be placed on a future Recognized Obligation Payment Schedule to repay the City loan if the SCO orders the transfer of the cash assets to the Successor Agency.

We hope that you will reconsider your findings regarding the unallowable transfers.

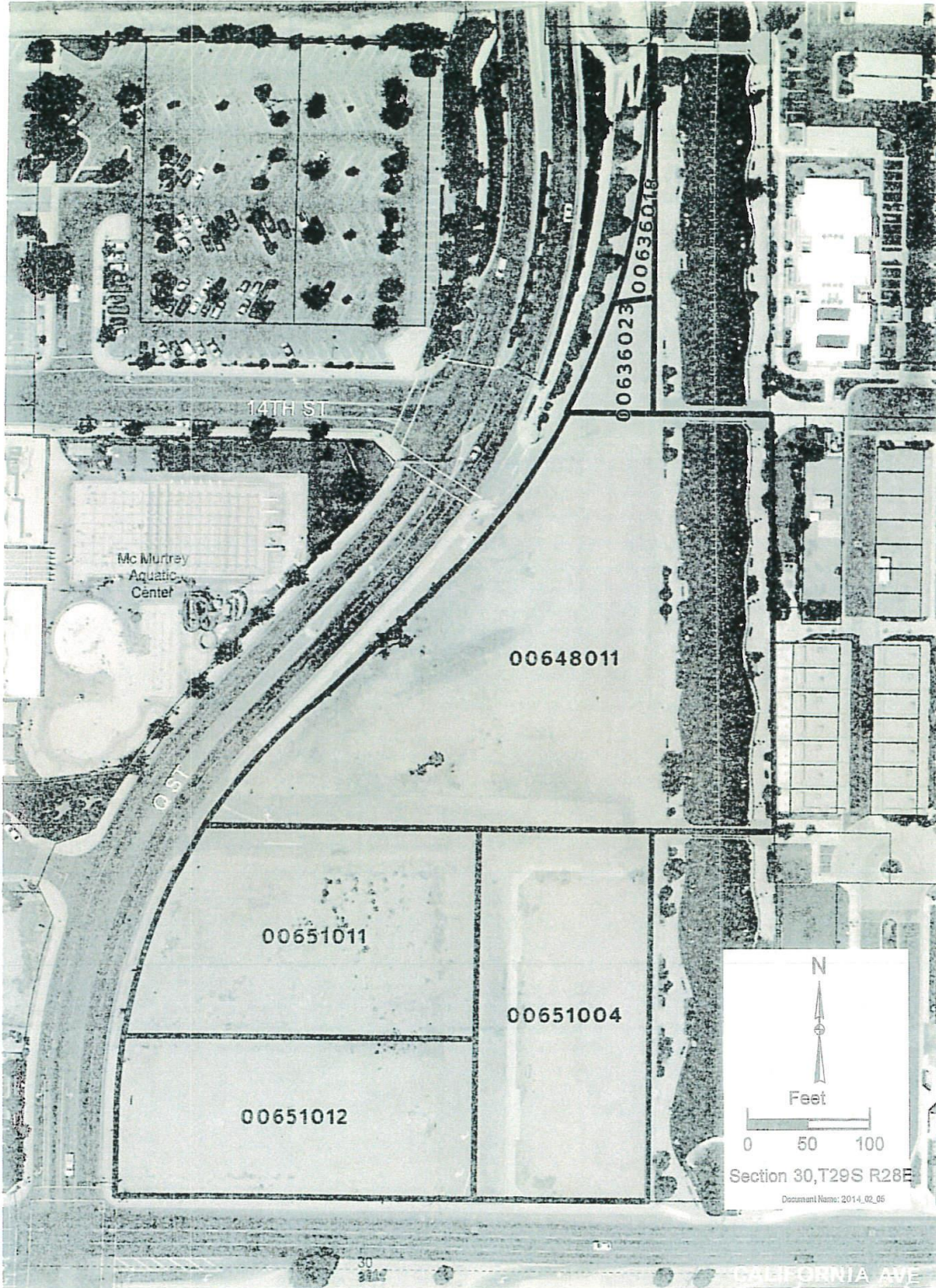
Very Truly Yours,



JOSHUA H. RUDNICK
Deputy City Attorney

JHR:dll

SOUTH MILL CREEK COMMERCIAL SITE



EVUIDIT: A



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

OFFICE OF COMMUNITY PLANNING AND DEVELOPMENT

APR 11 2014

Joshua H. Rudnick, Esq.
Deputy City Attorney
City of Bakersfield
1600 Truxtun Avenue, 4th Floor
Bakersfield, CA 93301

Dear Mr. Rudnick,

This letter responds to your e-mail dated February 18, 2014, seeking assistance on behalf of the City of Bakersfield, California ("City"), as it prepares its response in opposition to findings made in a draft Asset Transfer Review Report issued by the California State Controller's Office ("SCO"). The SCO's draft findings seek to reverse various asset transfers made by the former Bakersfield Redevelopment Agency ("RDA") to the City, and have these assets sent to the RDA's Successor Agency as soon as practicable for disposition with the proceeds of the sale to be shared among taxing entities. The SCO's draft findings implicate the transfer of six properties which were acquired with Section 108 Guaranteed Loan Funds and Brownfields Economic Development Initiative ("BEDI") grant funds pursuant to agreements executed by the U.S. Department of Housing and Urban Development ("HUD"), the RDA, and the City. Based on HUD's review of information provided by the City, federal statutory and regulatory requirements, and documents governing HUD assistance, HUD supports the City's goal of retaining these transferred properties to ensure compliance with federal requirements and contractual commitments. HUD believes that reversing the transfer of these HUD-assisted properties, as is called for by the SCO's draft findings, conflicts with the federal statutory and regulatory requirements governing this assistance, as well as the contractual commitments the City made to HUD prior to June 28, 2011.

The SCO is conducting asset transfer reviews pursuant to California Health and Safety Code Section 34167.5. This section requires the Controller 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. Further, this section provides that if such an asset transfer did occur, "and the government agency that received the assets is not contractually committed to a third party for the expenditure or encumbrance of those assets, to the extent not prohibited by state and federal law, the Controller shall order the available assets to be returned" to the successor agency.

In 2007, HUD provided assistance to the City in the form of a Section 108 Loan Guarantee of a note in the amount of \$3,750,000 (Note Number B-05-MC-06-0510) and a BEDI grant in the amount of \$750,000 (BEDI Grant Agreement B-05-BD-06-0010) for a mixed-use project known as the Mill Creek South Mixed-Use Project (the "Project"). HUD provided this assistance to finance site acquisition as part of the Project.

EXHIBIT " B "

The City identified the RDA as its Designated Public Agency for the Section 108 assistance, and the RDA issued a guaranteed Note dated August 20, 2007, for the maximum commitment amount of \$3,750,000 (the "Note"). This Note was issued pursuant to Section 108 of title I of the Housing and Community Development Act of 1974, as amended (43 USC 5308) ("Act"), and a Contract for Loan Guarantee Assistance ("Contract") entered into by the City, the RDA, and HUD on August 20, 2007. The City's BEDI grant was conditioned upon the City's receipt of this Section 108 assistance, and use of the BEDI grant funds was limited to the Project. These BEDI grant conditions were part of the BEDI Grant Agreement entered into by the City and HUD on August 20, 2007.

The Contract executed by the City, the RDA, and HUD, incorporated both the Note and the BEDI Grant Agreement. Under the terms of the Contract, the RDA agreed to comply with the Act and 24 CFR Part 570, Subpart M. The Contract further provided that any agreement or obligation of the RDA under the Contract is deemed "a joint and several agreement or obligation of [the City]" for purposes of the Contract, the regulations governing the Section 108 program, and the Act. As a result, the terms of these agreements committed, both the City and the RDA to comply with the Act and HUD regulations at 24 CFR Part 570, Subpart M.

As provided in section 101(c) of the Act (42 USC 5301(c)), the primary objective of title I of the Act and of the community development program of each grantee under title I "is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income." The Act requires that "not less than 70 percent of the aggregate" of Community Development Block Grant and Section 108 assistance "shall be used for the support of activities that benefit persons of low and moderate income." Further, the Act provides that Section 108 and BEDI assistance is provided "for the support of community development activities" that are directed toward meeting statutorily identified national objectives. Accordingly, the acquisition activity undertaken by the City and the RDA with HUD assistance must meet one of several national objectives by demonstrating compliance with the criteria at 24 CFR 570.208.

HUD approved assistance to support eligible activities for the Project based on the City's commitment to meet two national objectives. The Project's housing portion would meet the national objective of benefit to low- and moderate-income persons for housing activities. The Project's commercial portion would meet the national objective of benefitting low- and moderate-income persons through job creation and retention. The national objectives requirements cannot be achieved until the mixed-use project or similar replacement project is completed, and a forced asset transfer and disposition will prevent the Project from ever meeting statutory and regulatory national objective requirements.

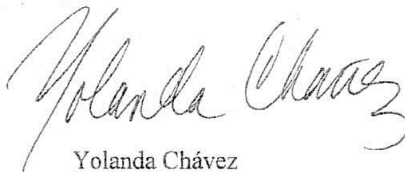
The SCO's determination that the City should return the HUD assisted assets back to the successor agency for disposition, as soon as practicable, with the proceeds of the sale to be shared among taxing entities is also inconsistent with the RDA's, and the City's, contractual commitment to HUD prior to June 28, 2011, regarding the use of program income, as defined by 24 CFR 570.500(a). Under the terms of the Contract and the BEDI Grant Agreement, program income, which includes proceeds from the disposition of real property purchased with Section 108 or BEDI funds, constitutes security for the repayment of the Section 108 Guarantee, and shall be

initially deposited in the Loan Repayment Account in accordance with paragraph 6 of the Contract. Upon full and complete payment of the Section 108 Guarantee, all such program income must be used in accordance with 24 CFR 570.504.

HUD believes that SCO's draft finding regarding the six properties acquired with HUD assistance frustrates the statutory purpose of Section 108 loans and BEDI grant funds and violates federal statutory and regulatory requirements governing the provision and use of this assistance. Moreover, forcing the return of these properties to the Successor Agency for disposition and subsequent distribution of proceeds to other taxing entities ignores the prior contractual commitments the RDA and the City made to HUD with respect to the use of the Section 108 assistance and the BEDI grant. HUD supports the City's efforts to exercise its responsibility under 24 CFR 570.501(b) for ensuring that BEDI grant funds and Section 108 guaranteed loan funds are used in accordance with program requirements through its initial acceptance of the transferred assets and its current effort to reverse the SCO's findings and retain the properties for use in a manner consistent with HUD's program statutes and regulations.

If HUD can be of additional assistance, please do not hesitate to contact Paul Webster (202402-4563) or Hugh Allen (202-402-4654) in the Financial Management Division, or Carey Whitehead (202-402-3106) in HUD's Office of General Counsel.

Sincerely,

A handwritten signature in cursive script that reads "Yolanda Chávez". The signature is written in black ink and is positioned above the typed name and title.

Yolanda Chávez
Deputy Assistant Secretary
for Grant Programs

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

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