

SANTA CLARITA REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



BETTY T. YEE
California State Controller

February 2015



BETTY T. YEE
California State Controller

February 24, 2015

Darren Hernandez, Deputy City Manager
23920 Valencia Boulevard, Suite 300
Santa Clarita, CA 91355-2196

Dear Mr. Hernandez:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Santa Clarita Redevelopment Agency (RDA) to the City of Santa Clarita (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 \$58,715,413 in assets after January 1, 2011, including unallowable transfers to the City totaling \$14,628,194, or 24.91% of transferred assets.

However, in subsequent actions the City turned over property valued at \$763,436 to the Successor Agency. Therefore, the remaining \$13,864,758 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.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/mh

Attachment

cc: John Naimo, Auditor-Controller
Los Angeles County
Ken Striplin, City Manager
City of Santa Clarita
Carmen Magana, Finance Manager
City of Santa Clarita/Successor Agency
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
Betty Moya, Audit Manager
Division of Audits, State Controller's Office
Margaux Clark, 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 Santa Clarita 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 \$58,715,413 in assets after January 1, 2011, including unallowable transfers to the City of Santa Clarita (City) totaling \$14,628,194, or 24.91% of transferred assets.

However, in subsequent actions the City turned over property valued at \$763,436 to the Successor Agency. Therefore, the remaining \$13,864,758 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, 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 Santa Clarita Redevelopment Agency transferred \$58,715,413 in assets after January 1, 2011, including unallowable transfers to the City of Santa Clarita (City) totaling \$14,628,194, or 24.91% of transferred assets.

However, in subsequent actions the City turned over property valued at \$763,436 to the Successor Agency. Therefore, the remaining \$13,864,758 in unallowable transfers must be turned over to the Successor Agency.

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

Views of Responsible Officials

We issued a draft review report on August 22, 2014. Darren Hernandez, Deputy City Manager, responded by letter dated September 18, 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 of Santa Clarita, 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

February 24, 2015

Finding and Order of the Controller

**FINDING—
Unallowable asset
transfers to the
City of Santa
Clarita**

The Santa Clarita Redevelopment Agency (RDA) made unallowable asset transfers of \$14,761,995 to the City of Santa Clarita (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 8, 2011, the RDA transferred \$7,700,000 in cash to the City per RDA Resolution 11-2. The transfer included the prepayment of principal (\$4,340,071) and accrued interest (\$3,359,929) for the 2008 Loan Agreement between the City and the RDA.
- On March 15, 2011, the RDA transferred an Assignment and Assumption of Leases associated with four properties to the City. As of January 25, 2012, the City collected rent revenue totaling \$60,490 from the property known as “Insurance Auto Collision Center.”
- On March 15, 2011, the RDA transferred cash consisting of bond proceeds totaling \$6,104,268 to the City per RDA Resolution 11-5. The proceeds were transferred for the purpose of constructing and completing the Newhall Library Project; however, the funds were not contractually committed to a third party prior to June 28, 2011.
- On March 15, 2011, the RDA transferred a land parcel valued at \$763,436 per RDA Resolution 11-2. The parcel was sub-divided and included in the Successor Agency’s Long Range Property Management Plan (LRPMP).

On October 1, 2012, the City returned one of the two parcels to the Successor Agency. The journal entry recorded value at \$532,878.

The second parcel was retained by the City. Its residual value is \$230,558 (\$763,436 less \$532,878). The Successor Agency described the parcel in its LRPMP as being transferred to the City for installation of a roundabout traffic circle and city gateway (public roadway). The Department of Finance (DOF) approved the LRPMP on June 27, 2014. Therefore, both parcels were effectively turned over to the Successor Agency for disposition and no further action is necessary.

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 must be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177(d) and (e). 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, and fire stations, 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 transfer of assets, in the amount of \$14,628,194 and turn over the assets to the Successor Agency. However, in subsequent actions the City turned over property valued at \$763,436 to the Successor Agency. Therefore, the remaining \$13,864,758 of unallowable transfers must be turned over to the Successor Agency.

City’s Response

The City disputes the Finding and Order of the Controller, citing reasons detailed in its response. The City claims that the amount(s) stated in the Report as being owed to the Successor Agency must be eliminated or reduced.

See Attachment for the City’s complete response.

SCO’s Comment

1. Department of Finance Directed or Approved Actions

A. Rent Revenues

The SCO agrees that the properties were allowably transferred to the City as Housing Successor. However, the City’s revenue ledger records of the respective leased properties, obtained during the SCO asset review, show that \$60,490 was received for the period of May 2011 through January 2012. This is the period in which rents were collected under RDA ownership prior to adoption of Resolution 12-3 on January 24, 2012.

Therefore, the City must turn over \$60,490 to the Successor Agency for disposition in accordance with H&S Code section 34177(d). The Finding and Order of the Controller have been modified for the rent revenues.

B. Bond Proceeds

The City responds that the Oversight Board ratified the transfer of the bonds proceeds to the City on March 18, 2014, via Resolution 14-02, as if the bonds transferred were considered excess bonds proceeds, governed by H&S Code section 34191.4(c)(2)(A).

However, a recent Superior court ruling (*Successor Agency to the Brea Redevelopment Agency, et al. v. Matosantos, et al.*) states:

The redevelopment dissolution laws established oversight boards to supervise the actions of *successor agencies*, but not to supervise or ratify (after the fact) the actions of former redevelopment agencies. Conversely, the Court had not located any provision of the redevelopment laws that requires or authorizes an oversight board retrospectively to review or ratify an action of a redevelopment agency taken before its dissolution. The Oversight Board thus appears to have no legal authority or mandate to review actions of the RDA.

As such, the Oversight Board did not have legal authority to retroactively approve the transfers.

Further, H&S Code section 34191.4(c)(2)(A) requires that excess bond proceeds shall be listed separately on the Recognized Obligation Payment Schedule (ROPS) submitted by the Successor Agency. Accordingly, disposition of the bond proceeds remain subject to DOF approval as enforceable obligations through an ROPS.

The Finding and Order of the Controller remain as stated for the bond proceeds.

C. Land Values

In its response, the City states that the property and disposition was included in the Successor Agency's LRPMP. The LRPMP has been approved by the DOF; therefore, no further action is necessary. The Finding and Order of the Controller have been modified accordingly for the land.

2. Return of Loan Proceeds via Amended and Restated Loan Agreement

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 provisions cited by one city.

The Successor Agency received a DOF Finding of Completion; therefore, the Successor Agency may place loan agreements between the RDA and the City on the ROPS, as an enforceable obligation, provided that the Oversight Board finds that the loan was for legitimate redevelopment purposes.

The Finding and Order of the Controller remain as stated for the loan payment.

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

Unallowable asset transfers to the City of Santa Clarita:

Cash transfer for loan repayment (March 8, 2011)	\$ 7,700,000
Rent revenue transfer	60,490
Bond proceeds transfer (March 15, 2011)	6,104,268
Land held for resale transfer (March 15, 2011)	<u>763,436</u>
Total transfers	14,628,194
City turned over assets to Successor Agency	(532,878)
Land held for resale approved by DOF on the Long-Range Property Management Plan (June 27, 2014)	<u>(230,558)</u>
Total transfers subject to H&S Code section 34167.5	<u><u>\$ 13,864,758</u></u>

Attachment— City’s Response to Draft Review Report

In addition to the attached letter, the City provided additional documents. Due to the volume of material, they are not included in this attachment. Please contact the City of Santa Clarita for copies of the following exhibits:

- Exhibit A - Department of Finance Determination Letter for Subject: Housing Assets Transfer Form, dated August 31, 2012.
- Exhibit B1 - City of Santa Clarita Inventory of Assets Received Pursuant to Health and Safety Code section 34176 (a) (2).
- Exhibit B2 - Legal Property Description, describing properties included in Grant Deed associated with housing assets in Housing Asset Transfer form submitted to the Department of Finance.
- Exhibit C - Resolution No. 12-3, A Resolution of the City Council of the City of Santa Clarita, California, Designating the City of Santa Clarita as the Successor Housing Agency of the Redevelopment Agency of the City of Santa Clarita.
- Exhibit D - Department of Finance Determination Letter for Subject: Request for a Finding of Completion, dated June 20, 2013.
- Exhibit E - Resolution No. 14-02, Resolution of the Oversight Board of the Successor Agency to the City of Santa Clarita Redevelopment Agency Ratifying Expenditure of Bond Proceeds and Determining a Portion as Determined By the State Controller’s Office as “Excess Bond Proceeds.”
- Exhibit F - Resolution 12-05, A Resolution of the Oversight Board of the Successor Agency to the Former Redevelopment Agency of the City of Santa Clarita, California, Approving the Transfer of Property Located at 24158 Newhall Avenue.
- Exhibit G - Long-Range Property Management Plan, City of Santa Clarita Successor Agency, dated December 17, 2013.
- Exhibit H - Oversight Board Resolution No. 13-06, A resolution of the Oversight Board to the Successor Agency of the Santa Clarita Redevelopment Agency Approving the Long Range Property Management Plan Pursuant to Health and Safety Code Section 34191.5.
- Exhibit I - Resolution of the City Council of the City of Santa Clarita Accepting Repayment of a Portion of the 2008 Note.
- Exhibit J - A Resolution of the City Council of the City of Santa Clarita, California, Authorizing Modifications to a Loan Agreement with the Redevelopment Agency of the City of Santa Clarita and Approving the Execution of an Amended and Restated Loan Agreement.
- Exhibit K - Resolution of the Redevelopment Agency of the City of Santa Clarita Authorizing Repayment of a Portion of its 2008 Note to the City of Santa Clarita.
- Exhibit L - Resolution No RDA 11-3, A Resolution of the Redevelopment Agency of the City of Santa Clarita Authorizing Modifications to a Loan Agreement with the City of Santa Clarita and Approving the Execution of an Amended and Restated Loan Agreement and 2008 Note Related Thereto.



City of
SANTA CLARITA

23920 Valencia Boulevard • Suite 300 • Santa Clarita, California 91355-2196
Phone: (661) 259-2489 • FAX: (661) 259-8125
www.santa-clarita.com

September 18, 2014

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

Subject: City of Santa Clarita Draft Asset Transfer Review

Dear Ms. Gonzalez:

We have reviewed the draft Asset Transfer Review report for the period January 1, 2011, through January 31, 2012, relating to the Santa Clarita Redevelopment Agency ("RDA"). On Tuesday, September 2, 2014, you granted our request to respond to the report by September 19, 2014. This letter is therefore timely notwithstanding the receipt of the report on August 29, 2014, and we offer the following responses to your conclusion that \$14,229,117 in unallowable transfers must be turned over to the Successor Agency.

1. Department of Finance-Directed or -Approved Actions
 - A. Rent Revenues

The draft Asset Transfer Review report (hereafter the "Report") identifies the sum of \$194,291 in rent revenue that it states has been received by the City, and it directs the return of that sum. In actual fact, the property from which the rent revenue is generated and the rent revenue itself were both deemed by the Oversight Board to the Successor Agency and by the California Department of Finance ("DOF") to be *housing assets* and, as such, were transferred to the City not in its role as a general law city and municipal corporation but in its statutory role as Housing Successor to the former RDA. Please see DOF's letter of August 31, 2012 (attached as Exhibit "A") and the Housing Asset Transfer Form submitted by the City to DOF (attached as Exhibit "B1" and "B2") as confirmation of DOF's determination. Pursuant to AB 26, Section 34176, the City elected to retain the housing assets and obligations of the former redevelopment agency by resolution 12-3, adopted January 24, 2012 (resolution attached as Exhibit "C"). Pursuant to Section 34176, all housing assets excluding amounts on deposit in the Low/Mod fund were transferred *by operation of law* to the City. This action was affirmed by DOF in its approval of the Housing Asset Transfer Form which listed all housing assets transferred to the City. Section 34176(e) explicitly includes within the definition of "housing asset" rents and other funds



derived from low- and moderate-income housing projects. The City, in its statutory role as Housing Successor, has maintained the rent revenues for housing purposes as set forth in Health and Safety Code sections 34176 and 34176.1, and we dispute that they should be returned to the Successor Agency because of DOF's determination regarding the status of the underlying parcel and the rent revenue itself.

B. Bond Proceeds

On June 30, 2013, the Department of Finance issued the City a Finding of Completion (attached as Exhibit "D") after having conducted a Housing Due Diligence Review and an Other Assets Due Diligence Review and after the City having shown compliance with the requirements of the two Reviews. While the \$6,104,268 in bond funds transferred from the RDA to the City pursuant to Resolution 11-5 were committed to the governmental purpose of constructing the Newhall Library, in an exercise of caution and to avoid the very conclusion that you reached regarding commitment of those funds, the Successor Agency asked the Oversight Board to ratify the use of the bond proceeds as if they had been "excess bond proceeds" as governed by Health and Safety Code section 34191.4(c)(2)(A). The Oversight Board ratified the transfer of the bond proceeds to the City and their use in constructing the library and on other public improvements via Resolution 14-02 (attached as Exhibit "E") on March 18, 2014. The DOF subsequently did not challenge the ratification of this transfer.

Any return of a sum equal to the amount of the bond proceeds, as anticipated by the Report, would only cause the sum to thereafter immediately be transferred back to the City pursuant to section 4 of Resolution 14-02, which states that it is the Oversight Board's position that any amounts returned to the Successor Agency will then be re-transferred to the City to effectuate the purposes of the Resolution. We dispute the need to return these funds given this re-transfer provision and given the Oversight Board's underlying ratification of the original transfer and DOF's tacit approval of the same as shown by its failure to challenge or modify Resolution 14-02.

C. Land Value

With respect to the property identified as 24158 Newhall Avenue and the \$230,558 in value for the portion of the property utilized for a street improvement project, we challenge both the need to transfer any funds to the Successor Agency and the amount of funds that your office claims is owed. With respect to the property as a whole, the Oversight Board consented to the transfer of the property from the City to the Successor Agency, while allowing the City to maintain the portion needed for public improvements *at no cost to the City* on October 1, 2012, via Resolution 12-05 (attached as Exhibit "F"). The Department of Finance did not challenge this action by the Oversight Board. Furthermore, the transfer was included as part of the Long Range Property Management Plan (attached as Exhibit "G"), which was approved by the Oversight Board on December 17, 2013, via Resolution 13-06 (attached as Exhibit "H"), and which DOF did not challenge. The Long Range Property Management Plan also provides for transfer of the disputed portion of the property to the City for governmental purposes *without compensation*. This plan

was reviewed and approved by the OSB and by DOF. DOF has therefore consented to the transfer of the parcel for street improvement purposes and to the holding for resale of the remainder of the parcel. Given the inclusion of the parcel on the Long Range Property Management Plan and DOF's consent to the disposition of the property as identified therein, your office should not order the return of any portion of the parcel's value. In addition, given the public improvement project that caused the transfer of the portion of the parcel to the City, it is clear that such portion would have been a required dedication when the parcel was developed, meaning that there is no market value to the parcel, because it could not have been used for any development or private activity.

Even if the DOF-approved transfer and the concept of the required dedication are not accepted by your office, as a general law city, payment by the City in excess of the appraised then-market value could constitute a gift of public funds. Your Report, however, orders a percentage of the *purchase price* paid for the 24158 Newhall Avenue parcel to be returned to the Successor Agency. This is legally unsupportable, and given the change in the real estate market and land values in the neighborhood of the parcel, there is no basis to require \$230,558 to be returned to the Successor Agency. We therefore contest both the transfer of value in general and the amount you have identified.

2. Return of Loan Proceeds via Amended and Restated Loan Agreement

On March 8, 2011, the City and RDA amended and restated the existing loan relationship between the parties by adopting Resolution No. 11-6 (attached as Exhibit "P"), Resolution No. 11-7 (attached as Exhibit "J"), Resolution No. RDA 11-2 (attached as Exhibit "K"), and Resolution No. RDA 11-3 (attached as Exhibit "L"). These resolutions served to legally authorize the repayment of portions of loans made by the City to the RDA. As normal course of business and in accordance with Community Redevelopment Law, prior to this loan amendment and restatement, on May 13, 2008, the Agency and the City amended existing loan agreements by entering into a new loan for the amount of \$5,135,000, refinancing the prior notes, and consolidating the new loan with the prior notes into one single note to the City.

In accordance with Community Redevelopment Law, the City of Santa Clarita previously loaned funds to the RDA from 1994 through 2008 for administrative purposes and to fund redevelopment projects of the RDA, evidenced by thirteen (13) promissory notes with an outstanding aggregate balance due of \$11,943,000 as of May 31, 2008. On May 13, 2008, the City made an additional loan of \$5,135,000 to the RDA and consolidated the 13 prior loans with the new loan into one note in the principal amount of \$17,078,000 (the "2008 Note") pursuant to a loan agreement (the "Loan Agreement") which was approved and entered into by the City and the RDA. Pursuant to Section 2.03 of the Loan Agreement, the RDA had the option to prepay and make a payment on the Note on any date. On March 8, 2011, the RDA exercised this option and prepaid a portion of the principal and all of the interest accrued to date on the 2008 Note in the total amount of \$7,700,000 from available funds of the RDA, and the City accepted the payment as set forth in the three resolutions. At the time the payment was made and the loan

amended and restated, the action was a legal exercise of the rights of the parties, and as such it should not be disturbed.

As you are aware, ABx1 26 prohibited a RDA from restructuring debt during the "freeze period" between adoption of that act in June 2011 and the dissolution of the RDA. (See Health & Safety Code section 34162.) But prior to the "freeze period," nothing prohibited the RDA and City from acting pursuant to existing agreements and indeed, the law *required* contractual payments to be made on existing City debt. In this case, the RDA and City exercised the right to prepay debt under the existing agreement and to then amend and restate the loan to reflect the prepayment. If your audit process under ABx1 26 was interpreted to permit retroactive invalidation of payments made under City-RDA agreements prior to dissolution, then the Legislature must have intended to both mandate those pre-dissolution payments via the Part 1.8 definition of enforceable obligation and then *simultaneously invalidate* those same pre-dissolution payments through the Controller's Audit. (See Health & Safety Code sections 34167.5, 34167, 34171(d), 34167(f), 34169(a).) This construction is untenable. Therefore, the ability of the RDA and City to exercise rights under the existing, pre-"freeze period" agreement and the payment made in furtherance of those rights must not be disturbed.

In addition, we know the voters of the State of California enacted Proposition 22 in November 2010, designed "to conclusively and completely prohibit State politicians in Sacramento from seizing, diverting, shifting, borrowing, transferring, suspending, or otherwise taking or interfering with" revenue dedicated to local governments, including tax increment allocated to redevelopment agencies. (Prop. 22, § 2.5.) Proposition 22's unqualified prohibition on State raids of local; tax revenue was crafted to ensure "local control over local taxpayer funds and protect vital services." (Prop. 22 § 1(a).) And Proposition 22's clear mandate was buttressed with a command that its provisions be "liberally construed in order to effectuate its purposes." (Prop. 22, § 11.). Therefore, under the redevelopment dissolution act (ABx1 26), the amended and restated loan agreement and the payment made thereunder were legal, and the SCO attempt to claw back these funds is a violation of Prop 22.

As your office is aware from conversations with City staff during the audit process, the final loan made to the RDA for \$5,135,000 on May 13, 2008, as part of the note refinancing and consolidation was never expended by the RDA. As explained to your office during the review process, accounting records for the former RDA describing income received and expenses made during the 2008-2011 period show that the \$5,135,000 was never expended on any project, in large part because projects were stalled due to the downturn in the economy at that time. The funds returned to the City as part of the amendment and restatement on March 8, 2011, were therefore not tax increment received by the RDA, but *the loan proceeds themselves*.

Therefore, even if claw back or forced-return of the payments was allowed by Proposition 22 and the dissolution acts, at the very least the amount of \$5,135,000 should not be returned to the Successor Agency, because that amount reflects *actual City property tax* that was loaned, not utilized for any project, and then returned. This was not simply a case where City funds were used by an RDA and then repaid with RDA tax increment revenues. In the City's situation *actual City funds* were returned to the City through payment authorized by the amended and

Elizabeth Gonzalez
September 18, 2014
Page 5

restated loan agreement and any diversion of that amount of City funds would violate Proposition 1A and Proposition 22 by diverting the City's tax revenues to other taxing entities.

In addition, and as your office is no doubt aware, the City of Coronado and its Successor Agency were recently successful in litigation against the DOF (Case No. 34-2013-80001694, Sacramento County Superior Court) where DOF sought to take from the City certain City funds that had been placed in a revolving loan fund for draw-down by the former Coronado RDA. In that matter, the RDA transferred to the city funds that had been held in the revolving fund. The court noted that DOF could not invalidate the transfer, as the money in the revolving fund is the property of the city. In the case of the City of Santa Clarita, the loan proceeds were actually held by the RDA. But distinguishing the Coronado matter from this case is an elevation of form over substance – in both cases, actual tax revenues of a city were held available to its redevelopment agency, and in both cases the redevelopment agency cancelled its right to use the funds, because it accepted that with dissolution coming, no further projects could be undertaken, and the funds should return to the City.

Because the transfer of \$7,700,000 from the RDA to the City was legal at the time it was done via an amended and restated loan agreement, because the funds that constituted at least \$5,135,000 of that transfer were clearly City tax funds that were never utilized by the former RDA for RDA projects, and because a result contrary to the Coronado decision would elevate form over substance and lead to inconsistent results for similar situations, we contest both the entirety of the required transfer to the Successor Agency and the amount of the transfer.

3. Conclusion

For the foregoing reasons, the amount stated in the Report as being owed by the City to the Successor Agency must be eliminated or at the very least reduced. The DOF's approval and direction mandate elimination of the rent revenue and bond proceeds items and elimination or reduction of the land value item. Proposition 1A, Proposition 22, and the dissolution acts themselves demand elimination or reduction of the loan proceeds item.

Sincerely,



Darren Hernández
Deputy City Manager

DH:CM:hds
DarrenGonzalez.doc

Enclosures

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

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