

LOMA LINDA 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 12, 2014

Diana De Anda, Finance Director
City of Loma Linda/Successor Agency
25541 Barton Road
Loma Linda, CA 92354

Dear Ms. De Anda:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Loma Linda Redevelopment Agency (RDA) to the City of Loma Linda (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 \$47,093,965 in assets after January 1, 2011, including unallowable transfers to the City totaling \$8,654,958, or 18.38% of transferred assets.

However, on February 1, 2012, the City turned over \$6,381,958 in land held for resale to the Successor Agency. Therefore, the remaining \$2,273,000 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/kw

cc: T. Jarb Thaipejr, City Manager
City of Loma Linda
Rhodes Rigsby, Chairman
City of Loma Linda/Successor Agency
Larry Walker, Auditor-Controller
San Bernardino County
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
Division of Audits, State Controller's Office
Kandy Liu, Auditor-in-Charge
Division of Audits, State Controller's Office
Daniel Moreno, Auditor
Division of Audits, State Controller's Office

Contents

Review Report

Summary	1
Background	1
Objective, Scope, and Methodology	2
Conclusion	2
Views of Responsible Officials	2
Restricted Use	3
Finding and Order of the Controller	4
Schedule 1—Unallowable Asset Transfers to the City of Loma Linda	6
Attachment—City of Loma Linda’s Response to Draft Review Report	

Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Loma Linda 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 \$47,093,965 in assets after January 1, 2011, including unallowable transfers to the City of Loma Linda (City) totaling \$8,654,958, or 18.38% of transferred assets.

However, on February 1, 2012, the City turned over \$6,381,958 in land held for resale to the Successor Agency. Therefore, the remaining \$2,273,000 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 Loma Linda Redevelopment Agency transferred \$47,093,965 in assets after January 1, 2011, including unallowable transfers to the City of Loma Linda (City) totaling \$8,654,958, or 18.38% of transferred assets.

However, on February 1, 2012, the City turned over \$6,381,958 in land held for resale to the Successor Agency. Therefore, the remaining \$2,273,000 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 Official

We issued a draft review report on June 30, 2014. Diana De Anda, Finance Director responded by letter dated July 16, 2014. 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 Loma Linda, 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 12, 2014

Finding and Order of the Controller

**FINDING—
Unallowable asset
transfers to the
City of Loma
Linda**

The Loma Linda Redevelopment Agency (RDA) made unallowable asset transfers of \$8,654,958 to the City of Loma Linda (City). The transfers occurred after January 1, 2011, and were not contractually committed to a third party prior to June 28, 2011.

Unallowable asset transfers were as follows:

- On June 30, 2011, the RDA transferred \$6,381,958 in land held for resale to the City for loan principal and interest payments.
- On March 2, 2011 and June 30, 2011, the RDA transferred \$2,273,000 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 agency after January 1, 2011. Those assets should be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177 (d) and (e).

Order of the Controller

Pursuant to H&S Code section 34167.5, the City is ordered to reverse the transfers of \$8,654,958 and return the assets to the Successor Agency. However, the City reversed the transfer of Land Held for Resale in the amount of \$6,381,958 to the Successor Agency on February 1, 2012. Therefore, only the remaining amount of \$2,273,000 must be turned over to the Successor Agency.

City's Response

The City agreed with the State Controller's Office that \$2,273,000 was paid by the Successor Agency to the City but "disagree that it was an unallowable transfer. The payment made was a legitimate loan repayment to the City for monies owed the City by the Agency via a Loan Agreement."

See Attachment for the City's complete response.

SCO's Comment

Pursuant to 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 turned over 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."

Furthermore, pursuant to H&S Code section 34191.4, the Successor Agency may only reinstate RDA/City loans after a Finding of Completion has been granted by the Department of Finance.

The Finding and Order of the Controller remain as stated.

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

Description	Date	Amount
Unallowable transfers of current assets – land ¹	06/30/2011	\$ 6,381,958
Unallowable transfers of current assets – cash	03/02/2011	2,100,000
Unallowable transfers of current assets – cash	06/30/2011	173,000
Total unallowable transfers		<u>8,654,958</u>
Current assets turned over to the Successor Agency		<u>(6,381,958)</u>
Total unallowable transfers subject to H&S Code section 34167.5		<u>\$ 2,273,000</u>

¹ Current Assets – Land Held for Resale as noted below:

- a) 25117 Redlands Blvd – APN 0283-111-11
- b) 25258 Redlands Blvd – APN 0281-162-333
- c) Crawford property – APN 0281-162-34
- d) Kunihara property – APN 0292-461-04, 05, 06, 07, 08, and 292-471-06

**Attachment—
City of Loma Linda's Response to
Draft Review Report**



City of Loma Linda

25541 Barton Road, Loma Linda, California 92354-3160 • (909) 799-2800 • FAX (909) 799-2890

Sister Cities: Manipal, Karnataka, India - Libertador San Martin, Argentina • www.lomalinda-ca.gov

July 16, 2014

Mr. Jeffrey V. Brownfield, CPA
Chief, Division of Audits
Office of the California State Controller
P.O. Box 942850
Sacramento, CA 94250-5874

Attn: Ms. Elizabeth Gonzalez

Dear Ms. Gonzalez

This letter is a response to your letter to the City of Loma Linda dated June 30, 2014 but received by the City on July 7, 2014 in which you state the findings of the audit which was conducted earlier in the year. We agree with the State Controller's office that \$2,273,000 was paid by the Successor Agency to the City but disagree that it was an unallowable transfer. The payment made was a legitimate loan repayment to the City for monies owed the City by the Agency via a Loan Agreement. The reasons this payment is appropriate and should not need to be returned to the Successor Agency are as follows:

- The Loan Agreement (including but not limited to the 1979 Initial Loan/Cooperation Agreement, as amended and restated in 1983, 2005, and 2011) was expressly reapproved, reaffirmed, and reauthorized by the Loma Linda Oversight Board on May 8, 2012, and by the City Council of the City and the Board of Directors of the Successor Agency on May 22, 2012, subject to the addition of loan terms extending the term of repayment under a defined repayment schedule over a term of not to exceed fifteen (15) years and a reduction of the interest rate on a prospective (but not retrospective) basis. The May 2012 re-authorization and re-approval of the City Loan (as revised) was in full accordance with the provisions set forth in Health & Safety Code §§ 34178(a) and 34180(a), as they existed at the time. On June 13, 2012, the City and Successor Agency notified DOF of the foregoing actions re-authorizing and re-approving the Loan Agreement, as so modified. DOF did not request review of these actions within the then-applicable three (3) business day time limit and, accordingly, the actions became final no later than June 18, 2012. The Sacramento County Superior Court has ruled in no fewer than three (3) lawsuits—City of Emeryville v. Matosantos, Sacramento County Superior Court Case No. 34-2012-80001264 (judgment filed June 24, 2013); City of Riverside v. Matosantos, Sacramento County Superior Court Case No. 34-2013-80001421 (ruling on submitted matter filed June 27, 2013); and Successor Agency to the Sonoma County Community Redevelopment Agency v. Matosantos, Sacramento County Superior Court Case No. 34-2013-80001378 (ruling entered on or about August 23, 2013)—that city/redevelopment agency loan agreements that were re-authorized or re-approved by

the applicable oversight board and not timely rejected by DOF prior to the effective date of AB 1484 are valid and enforceable obligations and cannot be disapproved or revoked by DOF based upon the language of AB 1484, which is not retroactive.

- We note that the City was due \$2.8 million in loan repayments from the Successor Agency over the period of July 1, 2012 (after the re-approval of the Oversight Board) through June 30, 2014. The City did not receive these funds because of DOF's disapproval. Should you find that the May 2012 approval does not validate the March 2011 transfers, we maintain that the \$2,273,000 should be retained by the City as partial payment of the amounts that were due but unpaid.
- The Loan Agreement and the Loan Advances were not last-minute attempts by the City or the former Redevelopment Agency (RDA) to commit or transfer RDA funds and assets in anticipation of the enactment of the Redevelopment Dissolution Law. The Loan Agreement and the Loan Advances made pursuant thereto are "enforceable obligations" within the meaning of the Redevelopment Dissolution Law in that the Loan Advances constitute "[l]oans of moneys borrowed by the redevelopment agency for a lawful purpose. . . to the extent they are legally required to be repaid pursuant to a required repayment schedule or other mandatory loan terms" (Health & Safety Code §§ 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" (Health & Safety Code §§ 34167(d) and 34171(d)(1)(E)).
- The City's Loan Advances constitute City funds, not tax increment revenues or funds or assets of the former RDA. The Redevelopment Dissolution Law 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.*, Health & Safety Code §§ 33132, 33133, 33220(e), 33600, 33601, and 33610).
- Portions of the City funds used to make the Loan Advances were development impact fees held by the City in its Water Acquisition Fund. Such funds were never assets of the former RDA or Successor Agency and such funds cannot legally be required to be returned to the Successor Agency for payment to the Auditor-Controller for disbursement to the Taxing Entities. Rather, such funds are enforceable obligations of the former RDA (now, Successor Agency) that must be returned by the Successor Agency to the City pursuant to "obligations imposed by state law" within the meaning of Health & Safety Code § 34171(d)(1)(C) and such funds must be re-deposited in the City's Water Acquisition Fund and expended by the City "solely for the purposes for which the fee was collected" (Government Code §§ 66006, 66008), *i.e.*, improvements to the City's public water system infrastructure. Permanent diversion of Water Acquisition Fund revenues to any purpose other than the restricted purpose for which they were collected

would transform these development impact fees into general or special taxes within the meaning of various provisions of both the California Constitution (including without limitation Article 13A, § 4, and Article 13C, §§ 1 and 2) and statutory law (including without limitation Government Code §§ 53721, 53722, and 53722). Since those constitutional and statutory provisions require that general taxes must be approved by a majority of the City's voters and special taxes must be approved by two-thirds (2/3) of the City's voters and since the City did not seek or obtain voter approval for imposition of the development impact fees deposited into its Water Acquisition Fund and subsequently lent by the City to the RDA, permanent diversion of those funds to non-authorized purposes would be unconstitutional and illegal.

- The City of Loma Linda is a charter city with a freeholder's charter adopted pursuant to Article XI, § 5 of the California Constitution and the City's right to control the investment, expenditure, lending, and borrowing of City funds is "quintessentially a municipal affair" with which the California Legislature has no authority to interfere. (*State Building and Construction Trades Council of California, AFL-CIO v. City of Vista, supra.*) The Redevelopment Dissolution Law must be interpreted to define the RDA's (now, Successor Agency's) obligation to honor the Loan Agreement as an "enforceable obligation" in order to not violate the City's home rule powers over the investment, expenditure, lending, and borrowing of its municipal revenues. To the extent that the Redevelopment Dissolution Law is interpreted to deny the Loan Agreement as an "enforceable obligation," the Redevelopment Dissolution Law, on its face or as applied to Petitioners, violates Article XI, § 5 of the California Constitution.

We hope you will reconsider your findings regarding the unallowable transfer.

Sincerely,



Diana De Anda
Finance Director
City of Loma Linda

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

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