

CHOWCHILLA REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



BETTY T. YEE
California State Controller

March 2015



BETTY T. YEE California State Controller

March 30, 2015

Carolyn Lehr, City Administrator
City of Chowchilla
130 S. Second Street
Chowchilla, CA 93610

Dear Ms. Lehr:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Chowchilla Redevelopment Agency (RDA) to the City of Chowchilla (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 \$7,999,613 in assets after January 1, 2011, including unallowable transfers to the City totaling \$4,630,444, or 57.89% of transferred assets.

However, on June 30, 2013, the City turned over \$1,647,270 in cash to the Successor Agency. Therefore, the remaining \$2,983,174 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/mh

Attachment

cc: Todd Miller, Auditor
Madera County
John Chavez, Oversight Board Chair
City of Chowchilla
Laura Crane, City Attorney
City of Chowchilla
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Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Chowchilla 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 \$7,999,613 in assets after January 1, 2011, including unallowable transfers to the City of Chowchilla (City) totaling \$4,630,444, or 57.89% of transferred assets.

However, on June 30, 2013, the City turned over \$1,647,270 in cash to the Successor Agency. Therefore, the remaining \$2,983,174 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 Chowchilla Redevelopment Agency transferred \$7,999,613 in assets after January 1, 2011, including unallowable transfers to the City totaling \$4,630,444, or 57.89% of transferred assets.

However, on June 30, 2013, the City turned over \$1,647,270 in cash to the Successor Agency. Therefore, the remaining \$2,983,174 in unallowable transfers must be turned over to the Successor Agency.

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

Views of Responsible Officials

We issued a draft report on January 16, 2015. Carolyn Lehr, City Administrator, responded by letter dated January 29, 2015, 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 Chowchilla, 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

March 30, 2015

Finding and Order of the Controller

FINDING— Unallowable asset transfers to the City of Chowchilla

The Chowchilla Redevelopment Agency (RDA) made unallowable transfers of \$4,630,444 to the City of Chowchilla (City). The transfers occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

- On February 28, 2011, the RDA Board approved Resolution 02-11, re-characterizing restrictions on unspent and uncommitted 2005 Series Tax Allocation Bond proceeds to raise working capital for the City. From this action, the RDA Board transferred:
 - \$1,099,999 to the City as reimbursement for proceeds the RDA received in a 2006 land sale to a private developer. The land sale involved 80 acres, of which 40 were purchased by the RDA and 40 were donated to the RDA by the City. City records indicated that no agreement or terms were created for the land transfer between the City and RDA.
 - \$1,647,270 to the City's Water Enterprise Fund, to finance its water meter expansion project costs.
- On March 8, 2011, the RDA transferred \$743,750 to the City's Developmental Impact Fees Program to pay off the balance remaining from a construction loan executed in the 2008-2009 fiscal year. In June of 2008, the City's Developmental Impact Fee Program advanced \$850,000 to the RDA to subsidize construction for the Shasta Villa Apartment Project. The principal amount reported as of June 30, 2010, was \$743,750, with no interest due.
- On March 8, 2011, the RDA passed Resolution 04-11 naming three properties and 05-11 naming 15 properties for transfer, valued at \$1,139,425, which is the cumulative value assigned to the 18 properties reported in the Successor Agency's Due Diligence Report of Other Funds.

Subsequently, on October 24, 2013, the RDA Successor Agency Oversight Board passed:

- Resolution 07-13, ratifying the RDA disposition of properties conveyed to the City; and
- Resolution 06-13, approving a draft Long-Range Property Management Plan (LRPMP) for submission to the Department of Finance (DOF).

The Oversight Board, however, does not have legal authority over the former RDA and cannot retroactively approve former RDA property transfers. While the DOF approval of the City's LRPMP will correct the unallowable transfer to the City under applicable Health and Safety (H&S) Code sections beginning with 34191.1, until such time, the properties belong with the Successor Agency.

Pursuant to H&S Code section 34167.5 the RDA may not transfer assets to a city, county, city and county or any other public agency after January 1, 2011. Those assets must 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 totaling \$4,630,444 and turn over the assets to the Successor Agency. However, on June 30, 2013, the City turned over \$1,647,270 in cash to the Successor Agency.

In addition, the Successor Agency is currently awaiting DOF approval of the LRPMP. Upon approval, no further action on the \$1,139,425 in unallowable property transfers will be necessary. If the LRPMP is not approved, the Finding and Order of the Controller will remain as stated.

City's Response:

The City disagrees with the SCO's determinations in the Draft Review Report. See Attachment for the City's complete response.

SCO's Comment:

Redevelopment Agencies (RDA) and their Successor Agencies are separate legal entities from the City. All former RDA assets may only be disposed of through due process by the Successor Agency and its Oversight Board. Accordingly, the City may not dispose of former RDA assets. 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 has 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.

With regard to ratifying former RDA actions, the Oversight Board does not have legal authority to retroactively approve RDA transfers.

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, including H&S Code section 34167(d) and 34167(f), which allow the RDA to continue to make payments under enforceable obligations.

On April 26, 2013, the Successor Agency received a Finding of Completion from the Department of Finance. The Successor Agency may place loan agreements between the RDA and the City on the Recognized Obligation Payment Schedule, as an enforceable obligation, provided that the Oversight Board finds that the loan was for legitimate redevelopment purposes.

Although the Successor Agency and its Oversight Board have taken measures to transfer properties to the City through designation as governmental-purpose properties in the Long-Range Property Management Plan (LRPMP), until such time as the DOF approves the LRPMP, the properties belong with the Successor Agency.

The Finding and the Order of the Controller remains as stated.

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

Cash (Bond) transfer to City (February 28, 2011)	\$ 1,099,999
Cash (Bond) transfer to City (February 28, 2011)	1,647,270
Cash (Bond) transfer to City General Fund (March 8, 2011)	<u>743,750</u>
Total unallowable cash transfers	<u>3,491,019</u>
Storm drain properties (south of Mariposa), 6.33 acres: (APN's: 002-310-011, 002-310-013, 002-310-015, 002-310-017, 002-310-019, 002-310-021, 002-310-023)	63,300
Land for waste treatment plant expansion, 3.84 acres (APNs: 002-240-005 and 002-240-006)	38,400
South Chowchilla Blvd. right-of-way near undeveloped lots (APN: 002-280-027)	6,861
Railroad right-of-way, Front Ave./Colusa (288,000 sq. ft.) (APN: 002-175-002)	309,668
Parking lot at 4th/Orange (APN: 002-046-006)	17,670
Old library building, 621 West Robertson Blvd. (APN: 002-041-007)	225,000
Vacant parcel, S. Chowchilla Blvd., 26.28 acres (APN: 002-250-053)	262,800
Vacant parcel, S. Chowchilla Blvd., 3.58 acres (APN: 002-250-067)	35,800
Three parcels of land located at 26 West Robertson Ave. (APNs: 001-136-011, 002-136-012, and 002-136-013)	<u>179,926</u>
Total unallowable land asset transfers	<u>1,139,425</u>
Total unallowable asset transfers	<u>4,630,444</u>
Less cash turned over to Successor Agency (June 30, 2013)	<u>(1,647,270)</u>
Total transfers subject to H&S Code section 34167.5	<u>\$ 2,983,174</u>

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

CITY OF CHOWCHILLA

CALIFORNIA



January 29, 2015

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

Elizabeth González
Local Government Compliance Bureau
State Controller's Office
P.O. Box 942850
Sacramento, CA 94250-5874

Re: Chowchilla Successor Agency Draft Asset Transfer Review Report

Dear Mr. Brownfield and Mrs. González:

The Chowchilla Successor Agency (the "Successor Agency"), successor in interest to the dissolved Redevelopment Agency of the City of Chowchilla (the "Dissolved RDA"), is in receipt of the draft "Chowchilla Redevelopment Agency Asset Transfer Review Report", which the Successor Agency received January 21, 2015, prepared by the State Controller's Office (the "SCO") in connection with the requirements set forth in Health and Safety Code Section 34167.5 (the "Draft Report").

In the letter transmitting the Draft Report, the SCO provides the Successor Agency an opportunity to submit any comments concerning the draft report within 10 calendar days after receipt of the letter (or by January 30, 2015). The Successor Agency respectfully submits this letter as the Successor Agency's written comments on the specified findings of the Draft Report.

I. SUMMARY OF DISPUTED ASSETS

As referenced in the transmittal letter, the SCO is required, under Health and Safety Code Section 34167.5, to review the activities of the Dissolved RDA to determine whether an asset transfer occurred after January 1, 2011 between the Dissolved RDA and the City of Chowchilla

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(the “City”). Under the requirements of Section 34167.5, if such an asset transfer did occur during that period and the City 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 SCO may order the available assets to be returned to the Successor Agency.

In the Draft Report the SCO asserts that the Dissolved RDA made “unallowable transfers of assets totaling \$2,983,174” and that such assets must be returned to the Successor Agency. Specifically, the SCO has questioned the following transactions:

- \$1,139,425 for properties formerly owned by the Dissolved RDA (the “RDA Properties”);
- City Impact Fee payment in the amount of \$743,750 (the “Impact Fee Loan Repayment”); and
- \$1,099,999 reimbursement for a land sale in 2006 to pay the City for a contribution of 40 acres of land the City transferred to the RDA (the “Land Repayment”).

For the reasons explained in Section II of this Letter, the Successor Agency disagrees with the SCO’s determinations and contests the SCO’s proposed order requiring that the RDA Properties, the Loan Repayment, and the Land Repayment be returned to the Successor Agency.

II. BACKGROUND AND JUSTIFICATION

A. RDA Properties. On March 8, 2011, the Dissolved RDA transferred the RDA Properties to the City, pursuant to and in accordance with duly authorized resolutions of both the City Council and the governing board of the Dissolved RDA, and prior to the adoption of any legislation making such transfers invalid. Because the City is the public jurisdiction generally responsible for the ownership, operation, and maintenance of City public facilities in the City, the City is the appropriate public jurisdiction for the ultimate disposition of the RDA Properties. The Successor Agency is taking steps to ratify these transfers as allowed under the specified laws cited below which would negate the need for the City to return the RDA Properties to the Successor Agency.

Health and Safety Code Section 34191.3 and Health and Safety Code Section 34181(a) authorize the Oversight Board to direct and approve disposition by the Successor Agency to the appropriate public jurisdiction of the Dissolved RDA’s governmental purpose properties constructed and used for, among others, roads, school buildings, parks and open space, police and fire stations, libraries, and local agency administrative buildings. Health and Safety Code Section 34177(e) further authorizes the Oversight Board to direct the transfer of ownership of assets and properties used for governmental purposes pursuant to Health and Safety Code Section 34181(a).

The RDA Properties were acquired for governmental purposes and are generally located in the City within the Former Agency’s redevelopment project areas. Because the City is the public jurisdiction generally responsible for the ownership, operation, and maintenance of public

facilities (like the RDA Properties) in the City, the City is the appropriate public jurisdiction for the ultimate disposition of the RDA Properties.

As allowed pursuant to Health and Safety Code Sections 34191.3, 34177(e), and 34181(a), the Oversight Board will, consider a resolution to ratify the disposition of the Public Use Parcels to the City in consideration of the City's continued use, operation, and maintenance of the RDA Properties. In the alternative, the City will pursuant to Health and Safety Code Section 34191.1 adopt and submit for the DOF's approval a Long Range Property Management Plan that will allow for the transfer/ratification of transfer of the RDA Properties to the City for continued public use, subject to a negotiated compensation agreement. The Oversight Board's ratification of the transfer of the RDA Properties to the City or alternative approval of the LRPMP would negate the need for the RDA Properties to be transferred back to the Successor Agency pursuant to the SCO's proposed order in the Draft Report.

B. Loan Repayment. The Former RDA committed to assist AMCAL (the housing developer) with payment of up to \$750,000 to offset the costs of the City development impact fees for the Shasta Village Apartment Project, an affordable housing project located in the City. The Dissolved RDA entered into a loan agreement with the City to pay the City \$750,000 from future deposits of the Former RDA's low and moderate income housing set aside fund. On March 8, 2011 the Dissolved RDA made repayment to the City in the amount of \$743,750. The Loan Repayment was made pursuant to a valid enforceable contract at the time that it was made—and as such should be allowed. Staff has provided the SCO with copies of the resolution approving the loan and the repayment ledgers. The Successor Agency received Finding of Completion making the Loan Repayment an enforceable obligation and subject to repayment pending Oversight Board approval, pursuant to Health and Safety Code §34191.4. The SCO's order requiring the City to return the Loan Repayment to the Successor Agency, increases the outstanding obligations of the Successor Agency and only prolongs the timely wind-down of the Dissolved RDA's affairs.

C. Land Repayments. On March 8, 2011 the Dissolved RDA made repayment to the City in the amount of \$1,099,999 to reimburse the City the value of approximately 40 acres of property that the City transferred to the Dissolved RDA in 2006 which the Dissolved RDA subsequently sold to a private developer. The Land Repayment was documented through various resolutions adopted by the City Council and the Dissolved RDA's governing board. The Land Repayment was a valid obligation of the Dissolved RDA at the time that it was made—and as such should be allowed. The Successor Agency received Finding of Completion making the Land Repayment an enforceable obligation and subject to repayment pending Oversight Board approval, pursuant to Health and Safety Code §34191.4. The SCO's order requiring the City to return the Loan Repayment to the Successor Agency, increases the outstanding obligations of the Successor Agency and only prolongs the timely wind-down of the Dissolved RDA's affairs.

Thank you in advance for your assistance in this matter. As you may know Jay Varney was elected Sheriff of Madera County and is no longer with the City, all future correspondence to the City should be made directly to Carolyn Lehr the City Administrator.

Sincerely,



Carolyn Lehr
City Administrator

cc:

Richard J. Chivaro, Chief Legal Counsel
Steven Mar, Bureau Chief

Scott Freesmeier, Audit Manager
John Mellas, Auditor-in-Charge ✓
Laura Crane, City Attorney

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