

SOUTH LAKE TAHOE REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

October 2014



JOHN CHIANG
California State Controller

October 29, 2014

Nancy Kerry, City Manager
South Lake Tahoe Redevelopment/Successor Agency
1901 Airport Road
South Lake Tahoe, CA 96150

Dear Ms. Kerry:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the South Lake Tahoe Redevelopment Agency (RDA) to the City of South Lake Tahoe (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 \$69,524,212 in assets after January 1, 2011, including unallowable transfers to the City totaling \$500,000, or 0.72% of transferred assets. These assets 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: Hal Cole, Oversight Board Chair
South Lake Tahoe Redevelopment/Successor Agency
Joe Harn, Auditor-Controller
County of El Dorado
Debbie McIntyre, Accounting Manager
City of South Lake Tahoe
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
Michael Mock, Auditor-in-Charge
Division of Audits, State Controller's Office

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Attachment—City’s Response to Draft Review Report

Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the South Lake Tahoe 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 \$69,524,212 in assets after January 1, 2011, including unallowable transfers to the City of South Lake Tahoe (City) totaling \$500,000, or 0.72% of transferred assets. These assets 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 South Lake Tahoe Redevelopment Agency transferred \$69,524,212 in assets after January 1, 2011, including unallowable transfers to the City of South Lake Tahoe (City) totaling \$500,000, or 0.72% of transferred assets. The unallowable transfers included \$500,000 to the City. These assets 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 July 30, 2014. Nancy Kerry, City Manager, responded by letter dated August 14, 2014, disagreeing with the review results. The City's response is included in this final review as an attachment.

Restricted Use

This report is solely for the information and use of the City of South Lake Tahoe, 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

October 29, 2014

Finding and Order of the Controller

**FINDING—
Unallowable asset
transfer to the City
of South Lake
Tahoe**

The South Lake Tahoe Redevelopment Agency (RDA) made an unallowable asset transfer totaling \$500,000 to the City of South Lake Tahoe (City). The transfer to the City occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

On September 30, 2011 the RDA transferred \$500,000 in cash to the City as payment against a 2004 City/Former RDA Loan Agreement.

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. Those assets should be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177(d).

Order of the Controller

Pursuant to H&S Code section 34167.5, the City is ordered to reverse the transfer in the amount of \$500,000 and turn over the assets to the Successor Agency.

City's Response

The City disagrees with the finding, stating that the payment was legitimate and that the finding does not accurately reflect the facts.

See Attachment for the City's complete response.

SCO's Comment

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 to 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.

The Finding and Order of the Controller remain as stated.

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



City of South Lake Tahoe

"making a positive difference now"

August 14, 2014

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

Via Electronic Mail and U.S. Mail
jbrownfield@sco.ca.gov

Re: Asset Transfer Review Report and SCO letter dated July 30, 2014
(Received August 4, 2014)

Dear Mr. Brownfield,

We are in receipt of the referenced letter finding "*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. Those assets should be turned over to the Successor Agency for disposition in accordance with H & S Code section 34177(d).*" And, "*On September 30, 2011 the RDA transferred \$500,000 in cash to the City as payment against long-term advances from the City.*" We respectfully disagree with the finding and description of the 'transfer' of assets by the State Controller's Office.

Between 1999 and 2003, the City of South Lake Tahoe loaned in excess of \$7M to the Former Redevelopment Agency to pay for public improvements in Redevelopment Project Area No. 1 ("Project Area"), which included but are not limited to, the realignment of Park Avenue, the construction of a right turn land between Pioneer Trail and Park Avenue, the reconstruction of Van Sickle Avenue, construction of Drainage Basins, improvements to Fern Avenue, the Intermodal Transit Center, the Stream Environment Zone ("SEZ") Restoration area, Transit Way and other streetscape improvements in the Project Area. These project activities improved or eliminated conditions of physical blight in the Project Area. On March 16, 2004, the City and the Former Redevelopment Agency entered into a Loan and Repayment Agreement (see attached) establishing a repayment plan for the return of those funds to the City of South Lake Tahoe. In years where funds were available, a \$500,000 payment by the Former Redevelopment Agency to the City of South Lake Tahoe was made. The September 30, 2011 payment to the City from the Former Redevelopment Agency was a legitimate payment against the loan.

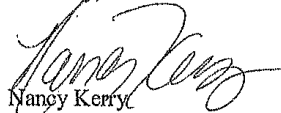
On page 3 of the referenced letter from the State Controller's Office, the payment is described as "*The South Lake Tahoe Redevelopment Agency (RDA) made [an] unallowable asset transfer totaling \$500,000 to the City of [South] Lake Tahoe. The asset transfer to the City occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.*" The finding does not accurately reflect the facts. If the issue about the Redevelopment Agency transferring \$500,000 for the payment against the loan is that the payment was made before the City/Former RDA loan was re-established as an Enforceable Obligation, **then the finding should**

read, "The South Lake Tahoe Redevelopment Agency (RDA) made an unallowable asset transfer totaling \$500,000 to the City of South Lake Tahoe as payment against a 2004 City / Former RDA Loan Agreement. The asset transfer to the City occurred after January 1, 2011 and prior to the re-establishment of the loan as an enforceable obligation of the Successor Agency in accordance with H&S Code Section 34191.4(b), thus making the payment against the loan unallowable at that time."

The Successor Agency recognizes the utilization of tax increment revenues or other assets belonging to the Former Redevelopment Agency as revenue sources for payment against the loan required the process as outlined in the Dissolution Act, specifically H&S Code Section 34191.4, which requires a Department of Finance Finding of Completion, the approval of the Long Range Property Management Plan and the re-establishment of the Loan as approved by the Successor Agency, Oversight Board and Department of Finance. The approved Oversight Board Resolution re-establishing the City/Former RDA Loan is currently with the Department of Finance for review.

As noted previously, we respectfully disagree with the findings. We will continue review of the report and take appropriate action to comply or further object.

Sincerely,



Nancy Kerry
City Manager, City of South Lake Tahoe
Executive Director, South Tahoe Redevelopment Successor Agency

Attachment: 2004 Loan and Repayment Agreement

**LOAN AND REPAYMENT AGREEMENT BETWEEN
SOUTH TAHOE REDEVELOPMENT AGENCY AND
THE CITY OF SOUTH LAKE TAHOE
FOR FISCAL YEARS 1999-2003**

This Loan and Repayment Agreement is entered into this 16th day of March, 2004, by and between the South Tahoe Redevelopment Agency ("Agency") and the City of South Lake Tahoe ("City").

RECITALS

A. Pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code Section 33000 *e seq.*), the City Council of the City of South Lake Tahoe activated the Agency on February 3, 1981, and adopted the Redevelopment Plan (the "Redevelopment Plan") for the South Tahoe Redevelopment Project (the "Project") on June 28, 1988.

B. Pursuant to the Community Redevelopment Law, the Agency is performing a public function of the City and has access to services and facilities of the City.

C. Since the establishment of the Project, it has been the practice of the Agency and the City that the City has agreed to undertake public improvements and activities and to provide services and facilities to the Agency, and the Agency has repaid or has agreed to repay City, with interest, for such public improvements, activities, services, and facilities which are of benefit to the Project and the project area thereof (the "Project Area").

D. The Agency adopted an Implementation Plan, which applies to the Project Area on December 3, 1994, and updated the Implementation Plan on December 14, 1999.

E. Pursuant to the Master Disposition and Development Agreement for the Redevelopment Project the Agency has constructed public improvements including, but not limited to, the realignment of Park Avenue and the relocation of utilities located under Park Avenue, the construction of a right turn lane between Pioneer Trail and park Avenue, the reconstruction of

Van Sickle Avenue, the Drainage Basins, improvements to Fern Avenue to create a cul-de-sac, the Intermodal Transit Center, the SEZ Restoration and Transit Way, and other streetscape improvements.

F. The relationship and undertakings by the City on behalf of the Agency and by the Agency on behalf of the City have been set forth in agreements between the Agency and the City, including the Cooperation Agreement dated December 15, 1981.

G. Without amending, limiting, or modifying the Prior Agreements and the ongoing effectiveness of such Prior Agreements, which shall remain in effect according to their terms for the greatest time legally allowable, the Agency and the City desire to memorialize in this Agreement certain matters relating to the financial relationship between the Agency and the City as it relates to the Redevelopment Plan and its implementation.

AGREEMENT

For and in consideration of the mutual promises and agreements herein contained, Agency and City agree as follows:

1. PURPOSES

The purposes of this Agreement are:

- a. To provide for reimbursement by the Agency to the City of costs and expenses related to the implementation of the South Tahoe Redevelopment Plan.
- b. To provide a mechanism for reimbursement of specified administrative costs incurred by the City in furtherance of the redevelopment program for the Redevelopment Project Area ("Project Area"), as more fully set forth in Section 3.
- c. To provide a mechanism for reimbursement of specified public works improvement costs incurred by the City in furtherance of the redevelopment program for the Project Area, as more fully set forth in Section 4.

2. TERMS OF AGREEMENT

This Agreement shall be in full force and effect commencing as of October 1, 2003, and continuing until all repayment and reimbursement obligations of the Agency to the City are satisfied in full accordance with the terms of this Agreement.

3. REIMBURSEMENT OF ADMINISTRATIVE AND PROGRAM COSTS

The Agency agrees to reimburse the City for all administrative and program costs incurred by the City prior to and after the execution of this Agreement for Fiscal Years 1999-2003 in furtherance of the redevelopment programs for the Project Area. Agency administrative costs may include, but are not limited to, costs to the City for consulting services, legal services, City staff time and other related administrative expenses. Program costs include programs outlined in the Redevelopment Plan. The Agency shall become indebted to reimburse the City for such City Administrative Costs. The debt shall bear interest at the Applicable Interest Rate (defined in Section 5) beginning on October 1 of the applicable fiscal year, and shall be repayable as provided in Section 5. Administrative and Program costs incurred through September 30, 2003, total \$3,178,000.

4. REIMBURSEMENT OF PUBLIC IMPROVEMENTS

The Agency agrees to reimburse the City for all costs incurred for public improvements in the Project Area on behalf of the Agency, which costs shall become a debt of the Agency. These costs shall bear interest at the Applicable Interest Rate (defined in Section 5), and shall be repayable as provided in Section 5. Public improvement costs incurred through September 30, 2003, total \$3,829,000.

5. REPAYMENT TERMS: SUBORDINATION

Each repayment or reimbursement obligation of the Agency pursuant to this Agreement shall bear interest at the lesser of (a) the applicable LAIF rate, or (b) ten percent (10%) per annum. Interest shall begin to accrue on November 3, 2003, and shall be calculated at simple interest. Each such repayment or reimbursement obligation of the Agency and interest thereon shall be repayable from tax increment or transient occupancy funds, if any, generated within the

Project Area during the life of the Redevelopment Plan. It is understood that if the tax funds from the Project Area fail to yield sufficient revenue to pay the repayment or reimbursement obligations of the Agency under this Agreement and interest thereon, the Agency is under no obligation to make such repayment or reimbursement to the extent tax increment and transient occupancy funds are insufficient. It is anticipated that principle payments will be made from bond issuances. To the extent funds borrowed pursuant to this agreement are used for purposes in accordance with Section 33334.2E, funds from the low- and moderate-income fund may be used to repay funds borrowed. The Finance Director shall report annually to the Agency the status of the principle and interest owed by the Agency to the City. Agency Staff shall report annually, through the budget process, to the Agency Board of Directors the status of the principal and interest owed by the Agency to the City. Staff will make recommendations on the interest rate to be charged and availability to make payments to the City.

It is agreed by the parties hereto that all repayments and reimbursement to the City pursuant to this Agreement are hereby subordinated to any and all payment necessary to satisfy the Agency's obligations in connection with any existing or future bonded indebtedness or obligation which may be incurred by the Agency for the benefit of the redevelopment program or to the extent necessary to pay bonded indebtedness for which the Agency has pledged as a security or source of repayment tax increment or transient occupancy tax generated within the Project Area.

6. VALIDITY OF AGREEMENT

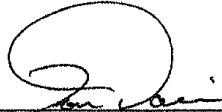
If any provisions of this Agreement, or the application thereof to any person, party transaction, or circumstances, is held invalid, the remainder of this Agreement, or the application of such provision to other persons, parties, transactions or circumstances, shall not be affected thereby.

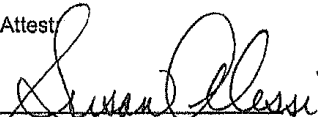
7. MODIFICATION OF AGREEMENT

This Agreement may be modified with the consent of both parties in writing.


Executed at the City of South Lake Tahoe, County of El Dorado, California.


SOUTH TAHOE REDEVELOPMENT AGENCY

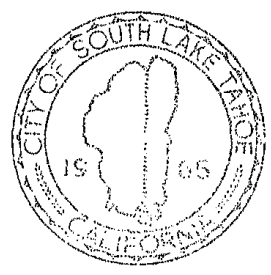
BY: 
CHAIR, Tom Davis

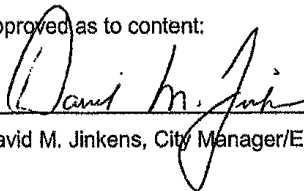
Attest: 
Agency Secretary

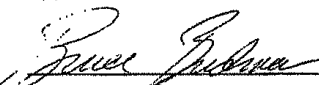
CITY OF SOUTH LAKE TAHOE


BY: 
Mayor, Tom Davis

Attest: 
Susan Alessi, City Clerk



Approved as to content:

David M. Jinkens, City Manager/Executive Director

Approved as to content:

Bruce Budman, Finance Director

Approved as to form:

Catherine L. DiCamillo, City Attorney

**State Controller's Office
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Sacramento, CA 94250-5874**

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