

RIVERBANK 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 16, 2014

Jill Anderson, City Manager
City of Riverbank
6707 Third Street
Riverbank, CA 95367

Dear Ms. Anderson:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Riverbank Redevelopment Agency (RDA) to the City of Riverbank (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 \$6,370,414 in assets after January 1, 2011, including unallowable transfers to the City totaling \$1,939,328, or 30.44% 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/sk

cc: Marisela H. Garcia, Finance Director
City of Riverbank
Wendell Naraghi, Chair
Riverbank Designated Local Authority
William O'Brien, Oversight Board Chair
Designated Local Authority for the City of Riverbank
Lauren Klein, CPA, Auditor-Controller
Stanislaus County
David Botelho, Program Budget Manager
California Department of Finance
Richard J. Chivaro, Chief Legal Counsel
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Elizabeth González, Bureau Chief
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Nesha Neycheva, 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 Riverbank 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 \$6,370,414 in assets after January 1, 2011, including unallowable transfers to the City of Riverbank (City) totaling \$1,939,328, or 30.44% 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 Riverbank Redevelopment Agency transferred \$6,370,414 in assets after January 1, 2011, including unallowable transfers to the City of Riverbank totaling \$1,939,328, or 30.44% of transferred assets. These assets must be turned over to the Successor Agency.

Views of Responsible Officials

We issued a draft review report on June 30, 2014. Marisela Garcia, Director of Finance, responded by letter dated July 15, 2014. The City's response is included in the final report as an attachment.

Restricted Use

This report is solely for the information and use of the City of Riverbank, 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 16, 2014

Finding and Order of the Controller

**FINDING—
Unallowable asset
transfers to the
City of Riverbank**

The Riverbank Redevelopment Agency (RDA) made unallowable asset transfers of \$1,939,328 to the City of Riverbank (City). The asset transfers 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 March 18, 2011, the RDA transferred \$1,939,328 in capital assets to the City. The properties with book values are as follows;

- 6800 Third Street: Reed's Garage \$441,489
- 3300 Atchison Road: Del Rio Theater \$1,108,401
- 3324 Atchison Road: Del Rio Theater Parking Lot \$389,438

These transfers were accomplished based on RDA Resolution No. 2011-002, dated March 14, 2011, approving the transfer of certain agency-owned real properties to the City.

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(e).

Per information from Jill Anderson, City Manager and Marisela Garcia, Finance Director, the City is in the process of selling the properties discussed above and turning over the proceeds to the Successor Agency.

Order of the Controller

Pursuant to Health and Safety (H&S) Code section 34167.5, the City is ordered to reverse the transfer of the assets in the amount of \$1,939,328 and turn over the assets to the Successor Agency.

The Successor Agency is directed to properly dispose of the assets in accordance with H&S Code section 34177(d) and (e).

City's Response

The City explained that the Designated Local Authority (DLA) was unable to obtain real property liability insurance for the properties identified. The DLA asked the City to hold the property for the DLA under the legal doctrine of a "constructive trust," so that the properties may be covered under the City's umbrella liability insurance.

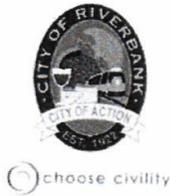
It is the City's full intent to transfer the properties in question to the DLA upon the sale of the properties, as authorized by the California Department of Finance (DOF) through the approved Long-Range Property Management Plan (LRPMP).

See attachment for the City's full response.

SCO's Comment

The SCO recognizes the City's intent to transfer the assets to the DLA upon sale of the properties. Furthermore, on June 9, 2014, the DOF approved the LRPMP for the \$1,939,328 in property transfers to the City. Therefore, the Order of the Controller is modified; no further action is necessary.

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



**City of Riverbank
Finance Department**

6617 Third Street
Riverbank, CA 95367
(209) 869-7101 Ph.
(209) 869-7126 Fax

July 15, 2014

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

RE: Riverbank Redevelopment Agency Asset Transfer Review Report

Ms. Gonzalez,

This letter is in response to the Draft Asset Transfer Review Report received by the City of Riverbank on July 7, 2014. The Review Report noted a Finding which reflected an *Unallowable asset transfer to the City of Riverbank*. The following is our response to such finding:

On January 9, 2012 the City Council of the City of Riverbank (the agency that created the former RDA) elected not to become the Successor Agency through the adoption of a resolution.

Per the legislation written as part of ABx1 26 should the City or any local taxing entity choose not to become the Successor Agency, a three-member board is to be appointed by the Governor. On February 2, 2012 we were informed that the following individuals were appointed to serve as the Designated Local Authority (DLA), Successor Agency to the Riverbank Redevelopment Agency:

- Mr. Wendell Naraghi, Chair
- Mr. Walter Schmidt, Vice Chair
- Mr. Paul Baxter, Treasurer

It was the City of Riverbank's full intent to transfer all real property to the newly appointed DLA as per the Order to Reverse RDA Asset Transfer Pursuant to Health & Safety Code Section 34167.5 which was issued by the State Controller's Office on April 20, 2012.

In July 2012, the Designated Local Authority (with the assistance of Kosmont Companies, agency assigned by the Department of Finance to provide administrative assistance to the DLA) attempted to obtain real property liability insurance for the following real property:

1. 6800 Third Street: Reed's Garage

2. 3300 Atchison Rd: Del Rio Theater
3. 3324 Atchison Rd: Del Rio Theater Parking Lot

Unfortunately, due to the fact that Reed's Garage and the Del Rio Theater buildings are currently vacant buildings and have been condemned due to unsafe conditions, the DLA was unsuccessful in obtaining property liability insurance to cover any loss or liability suffered on the property.

With the DLA's inability to obtain property insurance, the City of Riverbank was asked by the DLA to continue to hold title to these properties so that the properties may be covered under the City of Riverbank's umbrella liability insurance.

It is the full intent of the City of Riverbank to transfer the properties to the Designated Local Authority upon the sale of the properties as authorized by the State of California Department of Finance through the approval of the Long Range Property Management Plan.

In essence, the City was asked to become a defacto trustee, holding the property in trust for the DLA, under the legal doctrine of a "constructive trust". This fact was stated by Mr. Paul Baxter, Treasurer of the Designated Local Authority to your representative, Neshia Neycheva at the entrance conference held on May 20, 2014. Ms. Neycheva was asked to include said conversation in the report, an item which in fact does not appear in the draft report.

As previously noted, it is the full intention of the City to hold title to these properties in constructive trust until such time that the properties are sold. To transfer them prematurely to the Designated Local Authority would place the buildings in a position of being uninsured and could result in the members of the DLA to be held personally liable for any incident that occurs on the properties.

Should you have any questions, please feel free to contact me at (209) 863-7110. Thank you.

Sincerely,



Marisela H. Garcia
Director of Finance

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

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