

BEAUMONT 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 24, 2015

Alan C. Kapanicas, City Manager
City of Beaumont/Redevelopment Successor Agency
550 E. Sixth Street
Beaumont, CA 92223

Dear Mr. Kapanicas:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Beaumont Redevelopment Agency (RDA) to the City of Beaumont (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 \$9,925,325 in assets after January 1, 2011, including unallowable transfers to the City totaling \$6,517,519, or 65.67% 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 or by email at egonzalez@sco.ca.gov.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/sk

cc: Paul Angulo, Auditor-Controller
County of Riverside
Jeff Davis, Oversight Board Chair
City of Beaumont
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
Reginald Nidoy, Audit Manager
Division of Audits, State Controller's Office
Matthew Rios, Auditor-in-Charge
Division of Audits, State Controller's Office
Nesha Neycheva, Auditor
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 Beaumont 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 \$9,925,325 in assets after January 1, 2011, including unallowable transfers to the City of Beaumont (City) totaling \$6,517,519, or 65.67% 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 Beaumont Redevelopment Agency transferred \$9,925,325 in assets after January 1, 2011, including unallowable transfers to the City of Beaumont totaling \$6,517,519, or 65.67% of transferred assets. 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 15, 2014. Kyle Warsinski, Development Services Director, responded by letter dated December 17, 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, 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 24, 2015

Finding and Order of the Controller

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

The Beaumont Redevelopment Agency (RDA) made unallowable asset transfers of \$6,517,519 to the City of Beaumont (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 various dates between January 1, 2011, and January 31, 2012, the RDA transferred \$6,517,519 in cash to the City. The transfers were for interest payments on advances and loans pursuant to the Master Loan Agreement between the RDA and the City of Beaumont, dated September 12, 1994.

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. These assets must 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 of Beaumont is ordered to reverse the transfers totaling \$6,517,519 and turn over the assets to the Successor Agency.

City's Response to the Draft Report:

- 1) The City claims that the finding is inconsistent with the transmittal letter, the summary, and the conclusion, and even within the finding in the report. The report states that the City made unallowable asset transfers of \$9,925,325.
- 2) The City does not agree that the City of Beaumont is not a third party under the definition of the Health and Safety Code. The City asserts that it has been treated as a third party since the inception of the RDA in 1993.
- 3) The City does not agree with the amounts included in the findings; that the payments were not "asset transfers" but interest payments on pre-existing loans and advances made pursuant to a Master Loan Agreement.
- 4) Finally, the City claims that an impairment of the Master Loan Agreement by the findings in the draft report constitute an unlawful taking of the City's lawful receipt of loan repayments by the RDA to the City.

SCO's comments:

The State Controller's Office (SCO) agrees with the City that unallowable transfers total \$6,517,519. The report has been modified accordingly.

The City is not a third party. H&S Code section 34167.10 states the following:

- (a) Notwithstanding any other law, for purposes of this part and Part 1.85 (commencing with Section 34170), the definition of a city, county, or city and county includes, but is not limited to, the following entities:
 - (1) Any reporting entity of the city, county, or city and county for purposes of its comprehensive annual financial report or similar report.
 - (2) Any component unit of the city, county, or city and county.
 - (3) Any entity which is controlled by the city, county, or city and county, or for which the city, county, or city and county is financially responsible or accountable.
- (b) The following factors shall be considered in determining that an entity is controlled by the city, county, or city and county, and are therefore included in the definition of a city, county, or city and county for purposes of this part and Part 1.85 (commencing with Section 34170):
 - (1) The city, county, or city and county exercises substantial municipal control over the entity's operations, revenues, or expenditures.
 - (2) The city, county, or city and county has ownership or control over the entity's property or facilities.
 - (3) The city, county, or city and county and the entity share common or overlapping governing boards, or coterminous boundaries.
 - (4) The city, county, or city and county was involved in the creation or formation of the entity.
 - (5) The entity performs functions customarily or historically performed by municipalities and financed through levies of property taxes.
 - (6) The city, county or city and county provides administrative and related business support for the entity, or assumes the expenses incurred in the normal daily operations of the entity.
- (c) For purposes of this section, it shall not be relevant that the entity if formed as a separate legal entity, nonprofit corporation, or otherwise, or is not subject to the constitution debt limitation otherwise applicable to a city, county, or city and county. The provision in this section are declarative of existing law as the entities described herein are and were intended to be included within the requirements of this part and Part 1.85 (commencing with Section 34170) and any attempt to determine otherwise would thwart the intent of these two parts.

The SCO disagrees that loan repayments are not asset transfers. An asset, in this case cash, was transferred from the RDA to the City.

The fact that the cash was transferred for interest and advance loan repayment does not exclude such a transfer from H&S Code section 34167.5. Furthermore, the disclosure of interest payments on the June 2011 and June 2012 audited financial statements does not exclude such payments from the authority of the SCO.

Pursuant to H&S Code section 34167.5, the SCO has the authority to order that assets be turned over to the Successor Agency if such assets are deemed unallowable.

With the exception of the correction to the total findings amount, the Finding and Order of the Controller remain as stated.

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



CITY OF BEAUMONT

December 17, 2014

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

RE: Beaumont Redevelopment Agency asset transfer review dated December 2014

Dear. Mrs. Gonzalez,

The City is in receipt of the Draft report concerning the State Controller's Office asset transfer review pursuant to health and Safety Code section 34167.5. Upon review of the Draft, the City has drafted the attached comments in response to the SCO draft report for your review and consideration.

The City appreciates the opportunity to respond to the report.

If you have any questions, please contact Bill Aylward Assistant City Manager/Finance Director at 951-769-8520.

Thank you,

Kyle Warsinski

Development Services Director

City of Beaumont

The City of Beaumont does not agree with your findings, conclusion or interpretations of law.

- 1) The finding is inconsistent with your transmittal letter, the summary, the conclusion and even within your own finding in the report. You state in the finding that "...made unallowable asset transfers of \$9,925,325." Yet only \$6,517,519 is the amount to be turned over to the successor agency. All references throughout the report effectively say that \$9,925,325 was transferred and 65.67% was unallowable (an assumption that \$3,407,806 was allowable). The finding says 100% of the transfers were unallowable yet there is no substantiation why only a portion is required to be turned over to the successor agency.
- 2) We do not agree that the City of Beaumont is not a third party under the definition of the Health and Safety Code. The City of Beaumont has been treated as a third party since the inception of the Beaumont Redevelopment Agency in 1993. All redevelopment agencies were required to file annual audited financial statements along with an annual Statement of Indebtedness. Both annual reports have consistently reported that loans from the City were used to finance agency activities. You refer to the Master Loan Agreement between the RDA and the City of Beaumont, dated September 12, 1994 in your own finding. The supposed "asset transfers" in your report was not to avoid remitting assets to the Successor Agency, but made pursuant to a loan agreement that has been accepted by your agency since 1994.
- 3) We do not agree with the amounts included in your findings. The second paragraph of the findings indicate "...transferred \$6,517,519 in cash to the City. The transfers were for interest payments on advances and loans..." Those payments were not "asset transfers" but interest payments on pre-existing loans and advances pursuant to a Master Loan Agreement. The June 30, 2011 Beaumont Redevelopment Agency audit report submitted to the SCO, shows \$1,725,248.00 in cash interest payments made to the City. The June 30, 2012 City audit showed \$1,421,847.16 in cash interest payment made to the City. These records totaling \$3,147,095.16 in allowable interest payments made to the City were provided to your audit staff.
- 4) Finally, the impairment of the Master Loan Agreement by the findings in your draft report constitute an unlawful taking of the City's lawful receipt of loan repayments by the RDA to the City.

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

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