

# **BANNING COMMUNITY REDEVELOPMENT AGENCY**

## **ASSET TRANSFER REVIEW**

Review Report

*January 1, 2011, through January 31, 2012*



**BETTY T. YEE**  
California State Controller

June 2015



**BETTY T. YEE**  
California State Controller

June 30, 2015

James E. Smith, Interim City Manager  
City of Banning Community Redevelopment Agency  
99 E. Ramsey Street  
P.O. Box 998  
Banning, CA 92220-0998

Dear Mr. Smith:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Banning Community Redevelopment Agency (RDA) to the City of Banning (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 \$53,319,989 in assets after January 1, 2011, including unallowable transfers totaling \$15,841,019, or 29.71% of transferred assets. The unallowable transfers included \$15,841,019 to the City.

However, on January 31, 2012, the City turned over assets totaling \$15,742,519 to the Successor Agency. Therefore, the remaining \$98,500 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](mailto:egonzalez@sco.ca.gov).

Sincerely,

*Original signed by*

JEFFREY V. BROWNFIELD, CPA  
Chief, Division of Audits

JVB/ljs

cc: Michelle M. Green, Deputy Finance Director  
City of Banning  
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  
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 Banning Community 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 \$53,319,989 in assets after January 1, 2011, including unallowable transfers totaling \$15,841,019, or 29.71% of transferred assets. The unallowable transfers included \$15,841,019 to the City of Banning (City).

However, on January 31, 2012, the City turned over assets totaling \$15,742,519 to the Successor Agency. Therefore, the remaining \$98,500 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 Banning Community Redevelopment Agency transferred \$53,319,989 in assets after January 1, 2011, including unallowable transfers totaling \$15,841,019, or 29.71% of transferred assets. The unallowable transfers included \$15,841,019 to the City of Banning (City).

However, on January 31, 2012, the City turned over assets totaling \$15,742,519 to the Successor Agency. Therefore, the remaining \$98,500 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 Officials**

We issued a draft review report on December 30, 2014. James E. Smith, Interim City Manager, responded by letter dated January 26, 2015. The City presented information regarding \$1,500 in transfers to the Banning Housing Authority. The SCO reviewed and agreed with the information, and subsequently removed it from the findings. In response to the City's request to discuss the finding and Order of the Controller, we emailed the City on February 23, 2015, to schedule a conference call with the City Manager. However, we did not receive a response. The City's and the Successor Agency'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 Banning, 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

June 30, 2015

# Findings and Orders of the Controller

## **FINDING 1— Unallowable asset transfers to the City of Banning**

The Banning Community Redevelopment Agency (RDA) made unallowable asset transfers of \$15,841,019 to the City of Banning (City). The transfers occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

Unallowable asset transfers were as follows:

- On March 8, 2011, the RDA transferred \$6,206,511 in land held for development to the City per the RDA Resolution No.2011-09.
- On June 30, 2011, the RDA transferred \$9,536,008 in capital assets to the City per the RDA Resolution No.2011-09.
- On January 31, 2012, RDA transferred \$98,500 in cash to the City. The City entered into a Settlement Agreement with the Banning Airport Associates (BAA), dated January 24, 2012. The City used the RDA funds to reimburse the BAA. The Settlement agreement states that the City, and not the RDA, shall pay the full amount to reimburse the BAA.

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. These 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 of Banning is ordered to reverse the transfers totaling \$15,841,019 and turn over the assets to the Successor Agency.

However, on January 31, 2012, the City turned over \$15,742,519 in assets to the Successor Agency. Therefore, the remaining \$98,500 in unallowable transfers must be turned over to the Successor Agency.

### City's Response

The City requested to be contacted via conference call in order to discuss the findings and Order of the Controller. Additionally, the City proposed the following alternative language for the stated transfers made by the former RDA.

#### **In the Summary Section, the second and third paragraphs, reads as follows:**

“Our review found that the RDA transferred \$53,321,489 in assets after January 1, 2011, including unallowable transfers totaling \$15,842,519, or 29.71% of transferred assets. The unallowable transfers included \$15,841,019 to the City of Banning (City) and \$1,500 to the Banning Housing Authority.



However, on January 31, 2012, the City turned over assets totaling \$15,742,519 to the Successor Agency. Therefore, the remaining \$100,000 in unallowable transfers must be turned over to the Successor Agency.”

**Proposed alternative language:**

“Our review found that the RDA transferred \$53,321,489 in assets after January 1, 2011, including unallowable transfers totaling \$15,842,519, or 29.71% of transferred assets to the City of Banning (City).

However, as of January 31, 2012, the City turned over assets totaling \$15,742,519 to the Successor Agency. Therefore, the remaining \$98,500 in unallowable transfers must be turned over to the Successor Agency.”

See attachment for details of the City of Banning’s comments for the Asset Transfer Report.

SCO’s Comment

In response to the City’s request to discuss the finding and Order of the Controller, we emailed the City on February 23, 2015, to schedule a conference call with the City Manager. However, we did not receive a response.

The Order of the Controller remains as stated for the unallowable transfers of \$98,500 to the City. Once the assets are turned over to the Successor Agency, no further action will be required.

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

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March 2011	Land held for development	\$ 6,206,511
June 30, 2011	Capital assets	9,536,008
January 31, 2012	Cash	<u>98,500</u>
Total unallowable transfers to the City		15,841,019
January 31, 2012	Less: Assets turned over to the Successor Agency	<u>(15,742,519)</u>
Transfers Subject to Health and Safety Code section 34167.5		<u><u>\$ 98,500</u></u>

**Attachment—  
City of Banning and the Successor  
Agency's Response to Draft Review Report**

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## City of Banning Finance Department

January 26, 2015

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

**Attn: Elizabeth Gonzalez, Chief, Local Government Compliance Bureau**

**Re: Comments on Draft Banning Community Redevelopment Agency Asset Transfer Review**

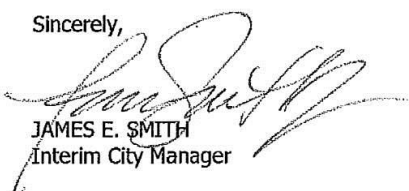
Dear Mr. Brownfield:

This letter is a follow-up to the December 30, 2014 draft Banning Community Redevelopment Agency Asset Transfer Review ("ATR"). Pursuant to your invitation to provide comments, this letter provides the Successor Agency's comments with respect to the ATR, which are included within the attachment to this letter. They follow the format of the ATR. I trust that you will find them easy to follow.

Once you have reviewed the Successor Agency's comments, I would like to discuss them with the appropriate SCO staff via a conference call. Please ask the appropriate SCO staff person to let me know a convenient time for a conference call meeting for that purpose.

In the interim, if you have any questions, please contact Ms. Michelle Green, Deputy Finance Director at (951) 922-3118.

Sincerely,



JAMES E. SMITH  
Interim City Manager

JES:ds

Attachment

cc: Richard J. Chivaro, Chief Legal Counsel, SCO  
Elizabeth Gonzales, Chief Division of Audits, SCO  
Reginald Nido, Audit Manager, SCO  
Nesha Neycheva, Auditor-in-Charge, SCO

**ATTACHMENT**

**FORMAL COMMENTS ON THE SCO'S DRAFT DECEMBER 30, 2014  
BANNING COMMUNITY REDEVELOPMENT AGENCY  
ASSET TRANSFER REVIEW**

**ASSET TRANSFER REVIEW REPORT**

**In the Summary section, the second and third paragraphs, reads as follows:**

"Our review found that the RDA transferred \$53,321,489 in assets after January 1, 2011, including unallowable transfers totaling \$15,842,519, or 29.71% of transferred assets. Unallowable transfers included \$15,841,019 to the City of Banning (City) and \$1,500 to the Banning Housing Authority.

However, as of January 31, 2012, the City turned over assets totaling \$15,742,519 to the Successor Agency. Therefore, the remaining \$100,000 in unallowable transfers must be turned over to the Successor Agency."

**Proposed alternative language:**

"Our review found that the RDA transferred \$53,321,489 in assets after January 1, 2011, including unallowable transfers totaling \$15,841,519, or 29.71% of transferred assets to the City of Banning (City).

However, as of January 31, 2012, the City turned over assets totaling \$15,742,519 to the Successor Agency. Therefore, the remaining \$98,500 in unallowable transfers must be turned over to the Successor Agency."

**In the Conclusion section, the first and second paragraphs reads as follows:**

"Our review found that the Banning Community Redevelopment Agency transferred \$53,321,489 in assets after January 1, 2011, including unallowable transfers totaling \$15,842,519, or 29.71% of transferred assets. Unallowable transfers included \$15,841,019 to the City of Banning (City) and \$1,500 to the Banning Housing Authority.

However, as of January 31, 2012, the City turned over assets totaling \$15,742,519 to the Successor Agency. Therefore, the remaining \$100,000 in unallowable transfers must be turned over to the Successor Agency."

**Proposed alternative language:**

"Our review found that the RDA transferred \$53,321,489 in assets after January 1, 2011, including unallowable transfers totaling \$15,841,519, or 29.71% of transferred assets to the City of Banning (City).

However, as of January 31, 2012, the City turned over assets totaling \$15,742,519 to the Successor Agency. Therefore, the remaining \$98,500 in unallowable transfers must be turned over to the Successor Agency."

## **FINDINGS AND ORDERS OF THE CONTROLLER**

### **FINDING 2 – Unallowable asset transfers to the Banning Housing Authority**

#### **The first, second and third paragraphs in this section reads as follows:**

"The RDA made unallowable asset transfers of \$1,500 to the Banning Housing Authority. The transfer occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

On April 26, 2011, the RDA transferred \$1,500 in land (APN No. 541-055-001) to the Housing Authority. This transfer was accomplished per RDA Resolution No. 2011-15.

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. The asset should be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177 (e)."

#### **Proposed alternative language:**

"Pursuant to RDA Resolution No. 2011-15, the RDA authorized an unallowable asset transfers of \$1,500 to the Banning Housing Authority (i.e., for 790 N. Allen Street – APN 541-055-001). The purpose of the transfer was to enable the Banning Housing Authority to pursue an affordable housing project on the site consistent with the low- to moderate-income housing fund rules of the H&S Code. Although the financial records of the RDA and the Housing Authority reflect the transfer of the asset, upon further review of the record it was concluded that a deed that would have legally transferred the asset between the parties was never recorded. As such the subject real property is an asset of 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. In this instance, an asset transfer was authorized, but never legally consummated. Therefore, the Successor Agency cannot consummate the asset transfer authorized by RDA Resolution No. 2011-15. The Successor Agency may transfer the asset to the Successor Housing Agency, which is the Banning Housing Authority, but only after full compliance with the provision of H&S Code sections 34176 and 34181, which includes a review and consideration of the transaction by the Banning Oversight Board and the Department of Finance."

#### **Order of the Controller**

#### **The first sentence of the Order of the Controller reads as follows:**

"Pursuant to H&S Code section 34167.5, the Housing Authority is ordered to reverse the transfer of the property with a book value of \$1,500, and turn over the asset to the Successor Agency."

#### **Proposed alternative language:**

"Pursuant to H&S Code section 34167.5, the Successor Agency cannot legally consummate the asset transfer authorized by RDA Resolution No. 2011-15. The Successor Agency may transfer the asset to the Successor Housing Agency, which is the Banning Housing Authority, but only after full compliance with the provisions of H&S Code sections 34176 and 34181, which includes a review and consideration of the transaction by the Banning Oversight Board and the Department of Finance.

Further, the Successor Agency and the Banning Housing Authority are ordered to amend their appropriate financial records to indicate that property is an asset of the Successor Agency and not the Banning Housing Authority."

**CONCLUSION**

The attached property detail report confirms that title to 790 N. Allen Street (APN 541-055-001) is held in the name of the RDA. Therefore, it is requested that the SCO review and give consideration to the above described proposed amendments to the ATR. The proposed amendments will ensure that the ATR is accurate, complete and clear. Given these desired traits, the amended ATR will benefit the SCO, the Successor Agency, the Oversight Board, the citizens of Banning and the California Department of Finance.

Attachment: Property Detail Report for 790 N. Allen Street (APN 541-055-001)

NDCdata.com

Last Updated: 01/15/2015

<b>Property Location</b>		Address: 790 N ALLEN ST		City: BANNING	Zip: 92220-2740
APNH: 541-055-001		Use Code: Residential		County: Riverside	
Tract: 0		Census Tract: 142.00		Zone: R1	
Map Page/Grid: /		Legal Desc: LOT 21 MB 0161075 BROOK SUB			
Total Assessed Value: 0		Tax Amount: 0.00			
Percent Improvement: 0.00		Tax Year: 2014			
<b>Current Owner Information</b>					
Current Owner: REDEVELOPMENT AGENCY		Owner Address: PO BOX 998			
City, State: BANNING, CA		Zip: 92220-7			
Last Transaction: 09/07/2005		Deed Type: Document: 0000740013			
<b>Last sale Information</b>					
Transferred From: CITY		Seller Address:			
Sale Date: 09/07/2005		Prior Sale Date: 06/21/2003			
Most Recent Sale Price:		Prior Sale Price: 10,500			
Document Number: 0000740013		Prior Document No.: 0000367252			
Document Type: grant deed/deed of trust		Prior Document Type: grant deed/deed of trust			
<b>Lender Information</b>					
Lender:		Full/Partial: F			
Loan Amount / 2nd Trust Deed: 0 / 0		Loan Type: conventional			
<b>Physical Information</b>					
Building Area: 780		# of Bedrooms: 2		Lot Size: 7,841	
Additional: 0		# of Bathrooms: 1,00		Year Built / Effective: 1936 / 0	
Garage: 0		# of Stories: 1		Heating: yes	
First Floor: 0		Total Rooms: 0		Cooling: none	
Second Floor: 0		# of Units: 2		Roof Type: roll	
Third Floor: 0		Garage/Carport: yes		Construction/Quality: composition	
Basement Finished: 0		Fireplaces: 0		Building Status: Building	
Basement Unfinished: 0		Pool/Spa: 0		View:	



NDCdata.com

Deed History		Sale Transaction Date	Document	Amount	Loan	From	To	Type
X	resale	09/07/2005	0000740013	0	1	HABITAT OF HUMANITY 0 SAN GORGONIO AGCY COMMUNITY HABITAT FOR REDEV	CITY OF BANNING REDEV	grant deed/deed of trust
X	resale	05/21/2003	0000367252	10,500	0	BANNING CITY	HUMANITY SAN GORGO COMMUNITY REDEV	grant deed/deed of trust
X	resale	08/04/2000	0000303092	500	0	HUD	REDEV AGENCY BANNING	

**State Controller's Office  
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**<http://www.sco.ca.gov>**