

# **HERCULES REDEVELOPMENT AGENCY**

## **ASSET TRANSFER REVIEW**

### Review Report

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



**JOHN CHIANG**  
California State Controller

November 2012



**JOHN CHIANG**  
*California State Controller*

November 8, 2012

Steven Duran, City Manager  
City of Hercules  
Hercules Redevelopment/Successor Agency  
111 Civic Drive  
Hercules, CA 94547

Dear Mr. Duran:

Pursuant to Health and Safety (H&S) code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Hercules Redevelopment Agency to the City of Hercules or any other public agency during the period of January 1, 2011, through January 31, 2012. This statutory provision explicitly states that, "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 assets should be returned to the Hercules Redevelopment 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 any rights to payment of any kind. We also reviewed and determined whether any unallowable transfers of assets to the City of Hercules or any other public agencies have been reversed.

Our review disclosed that the Hercules Redevelopment Agency transferred \$124,062,897 in assets. These transfers included unallowable transfers of assets to the City of Hercules totaling \$35,489,750, or 28.61% of total assets transferred. Pursuant to H&S Code section 34167.5, the City of Hercules will be ordered to reverse all unallowable transfers identified in the final report and transfer them to the Hercules Redevelopment Successor Agency.

Additionally, our review identified \$15,638,313 in Hercules Redevelopment Agency assets that have not yet been transferred to any agency. The City of Hercules will be ordered to transfer these assets to the Hercules Redevelopment Successor Agency in the final report.

Assembly Bill 1484 (AB 1484) was passed on June 27, 2012, adding H&S Code section 34178.8, which states, ". . . the Controller shall review the activities of successor agencies in the state to determine if an asset transfer has occurred after January 31, 2012. . . ." The SCO has initiated the review associated with AB 1484, and will complete that at a later date.

If you have any questions, please contact Steven Mar, Bureau Chief, Local Government Audits Bureau, at (916) 324-7226.

Sincerely,

*Original signed by*

**JEFFREY V. BROWNFIELD**

Chief, Division of Audits

JVB/sk

cc: Nickie Mastay, Finance Director  
City of Hercules  
The Honorable Robert Campbell, Auditor-Controller  
County of Contra Costa  
Steve Szalay, Local Government Consultant  
Department of Finance  
The Honorable Dan Romero, Chairman  
Oversight Board, Hercules RDA Successor Agency  
Betty Moya, Audit Manager  
Division of Audits, State Controller's Office  
Tuan Tran, Auditor-in-Charge  
Division of Audits, State Controller's Office

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# Asset Transfer Assessment Review Report

## Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Hercules Redevelopment Agency for the period of January 1, 2011, through January 31, 2012. Our review included, but was not limited to, real and personal property, cash funds, accounts receivable, deeds of trust and mortgages, contract rights, and any rights to payments of any kind from any source.

Our review disclosed that the Hercules Redevelopment Agency transferred \$124,062,897 in assets. These transfers included unallowable transfers of assets totaling \$35,489,750, or 28.61%, that must be turned over to the Successor Agency. Additionally, \$15,638,313 in Hercules Redevelopment Agency housing assets have not yet been transferred, and must be transferred 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 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.

On June 27, 2012, the Governor signed a trailer bill, Assembly Bill 1484 (AB 1484), which clarified provisions of ABX1 26, and imposed new tasks on county auditor-controllers and successor agencies related to RDA dissolution.

ABX1 26 and AB 1484 were codified in the Health and Safety Code (H&S Code) beginning with section 34161.

In accordance with the requirements of H&S Code section 34167.5, the State Controller is required to review the activities of RDAs, "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," and the date at which the RDA ceases to operate, or January 31, 2012, whichever is earlier.

The SCO has identified transfers of assets that occurred during that period between the Hercules Redevelopment Agency, the City of Hercules, and/or other public agencies. 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 order to ensure compliance with this order.

## **Objectives, 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 operations and procedures.
- Reviewed meeting minutes, resolutions, and ordinances of the City Council and the RDA.
- 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.).

AB 1484 was passed on June 27, 2012, adding H&S Code section 34178.8, which states “. . . the Controller shall review the activities of successor agencies in the state to determine if an asset transfer has occurred after January 31, 2012. . . .”

The SCO has initiated the review associated with AB 1484, and will complete that at a later date.

## **Conclusion**

Our review disclosed that the Hercules Redevelopment Agency transferred \$124,062,897 in assets. These included unallowable transfers of assets totaling \$35,489,750, or 28.61%, that must be turned over to the Successor Agency. Additionally, \$15,638,313 in Hercules Redevelopment Agency housing assets have not yet been transferred, and must be transferred to the Successor Agency.

Unallowable Assets Transferred:

Unallowable assets transferred to City of Hercules (See Schedule 1 and Attachment 1)	\$ 35,489,750
Total Unallowable Transfers	<u>\$ 35,489,750</u>

Assets That Have Not Yet Been Transferred:

Hercules Redevelopment Agency housing assets that have not been transferred to the Successor Agency from the Low and Moderate Income Housing Fund (Low Mod Fund) (See Schedule 2)	\$ 15,638,313
Total Assets to Be Transferred to Successor Agency	<u>\$ 51,128,063</u>

The City of Hercules is ordered to immediately reverse the unallowable transfers and turn over the assets identified in this report to the Successor Agency (see Schedule 1 and Attachment 1). Additionally, housing assets that have not been transferred from the Low Mod Fund must be transferred to the Successor Agency (see schedule 2).

Details of our findings and Orders of the Controller are in the Findings and Orders of the Controller section of this report. We also have included a detailed schedule of assets to be turned over to, or transferred to, the Successor Agency.

**Views of  
Responsible  
Officials**

At an exit conference on August 23, 2012, we discussed the review results with Nickie Mastay, Finance Director; Doreen Mathews, City Clerk; and Thanh Nguyen, Interim Accountant. At the exit conference, we stated that the final report will include the views of responsible officials.

**Restricted Use**

This report is solely for the information and use of the City of Hercules, the Redevelopment Successor Agency, the Hercules Successor Agency 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  
Chief, Division of Audits

November 8, 2012

# Findings and Orders of the Controller

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

The Hercules Redevelopment Agency (RDA) transferred \$ 35,489,750 in assets to the City of Hercules (City). All of the asset transfers to the City occurred during the period of January 1, 2011, through January 31, 2012, and the assets were not contractually committed to a third party prior to June 28, 2011. Those assets consisted of cash and capital assets.

### **Unallowable Asset Transfers, Capital Assets:**

On March 8, 2011, the RDA transferred capital assets of \$31,440,522 in land to the City. To accomplish those transfers, the City and the RDA entered into an agreement under RDA Resolution No. 11-012. Based on Health and Safety Code (H&S Code) sections 34163(b) and (d), the RDA was not allowed to enter into such an agreement or transfer physical assets or cash after January 1, 2011.

### City's Response

The State Controller's Office, based on H&S Code section 34167.5, is ordering the City of Hercules to reverse the transfer of these assets. On February 9, 1983, the City adopted Resolution 83-18, which was within two years of formation of the Agency, that created a loan repayment agreement between the City of Hercules Redevelopment Agency and the City of Hercules. The current Recognized Obligation Payment Schedule shows the amount owed to the City of Hercules is \$10,384,363. Upon reversal of the transfer, the Recognized Obligation Payment Schedule will show the amount owed to the City of Hercules as \$41,824,885.

### SCO's Comment

The State Controller's Office (SCO) is in agreement with the City. Once the assets are transferred to the Successor Agency, the City can change the amount on the recognized Obligation Payment Schedule to \$41,824,885.

The SCO finding remains as stated.

### **Unallowable Asset Transfers, Cash:**

On December 31, 2011, the RDA transferred tax increment revenue in the amount of \$4,049,228 to the City. This transfer was made for repayment of an advance in August 2011 from the City to the RDA to allow the RDA to pay various obligations. Based on H&S Code section 34162(a)(2), the RDA was prohibited from incurring debt payables from prohibited sources of incoming revenue, including taxes allocated to the RDA.

### City's Response

The City of Hercules does not agree that the December 31, 2011 tax increment is an unallowable asset transfer because the tax increment



revenue was used to pay for the City of Hercules Redevelopment Agency debt service which was initially paid by the City of Hercules Development Impact Fee Fund and Vehicle Replacement Fund. In August 2011, the City of Hercules Development Impact Fee Funds and Vehicle Replacement Fund paid the City of Hercules Redevelopment Agency debt service. Since the City of Hercules Redevelopment Agency was going to receive Tax Increment in December 2011, this transaction was booked as a short term loan (Due To/Due From on the Balance Sheet). The non-housing debt service paid in August 2011 by the City of Hercules Development Impact Fee Funds and Vehicle Replacement Fund was \$5,380,441.88 (2005 Bond \$2,819,762.50 plus 2007A Bond \$2,560,679.38). The non-housing Tax Increment received in December 2011 from the City of Hercules Redevelopment Agency was \$4,029,228.83. As you can see, there is not enough non-housing Tax Increment for the City of Hercules Redevelopment Agency to pay back the City of Hercules Development Impact Fee Funds and Vehicle Replacement Fund. The shortfall is \$1,331,214.05. The sale of the Yellow Freight property reduced the shortfall by \$1,248,875.62. Even with the sale of property, the shortfall is \$82,338.43. This shortfall amount will be added to the Recognized Obligation Payment Schedule.

#### SCO's Comment

The SCO determined that the December 31, 2011 tax increment was used to pay back a loan to the City, not the debt service payment. Although the SCO recognizes that the loan was created to cover a cash shortfall required for debt service, AB X1 26 does not allow this payment to be treated as a debt service payment.

From June 28, 2011, through January 31, 2012, the RDA was not allowed to repay loan(s) not listed on the enforceable obligations schedule under H&S Code section 34167(d). Therefore, the December 31, 2011 tax increment must be turned over to the Successor Agency.

Pursuant to H&S Code section 34167.5, any asset transfers by the RDA to a city, county, city and county, or any other public agency after January 1, 2011 should be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177(d) and (e).

The SCO finding remains as stated.

#### Order of the Controller

Based on H&S Code section 34167.5, the City of Hercules is ordered to reverse the transfer of the above assets, described in Schedule 1 and Attachment 1, in the amount of \$35,489,750 plus interest earned, and turn them over to the Successor Agency.

The Successor Agency is directed to properly dispose of those assets in accordance with H&S Code sections 34177(d) and (e). The 5,380,441.88 short term loan should be added to the Recognized Obligation Payment Schedule and must be approved by the Department of Finance. In addition, any payments of the short-term loan should be added to the Successor Agency's ROPS.

The Successor Agency is directed to properly dispose of those assets in accordance with H&S Code sections 34177(d) and (3).

**FINDING 2—  
The RDA failed to  
transfer assets to  
Successor Agency**

The Hercules Redevelopment Agency failed to transfer \$15,638,313 in housing assets to the Successor Agency by January 31, 2012.

City's Response

The City of Hercules does not agree that the City of Hercules Redevelopment Agency failed to transfer assets to the Successor Agency. In January 2012, the City of Hercules elected not to become the Housing Successor Agency and contacted the Contra Costa County Housing Authority to try to develop a plan to turn over the housing assets. At the end of April 2012 and May 2012 the City of Hercules had a citizen volunteer organized the housing asset files. On June 4, 2012, the City of Hercules Manager contacted the Contra Costa County Housing Authority Executive Director via e-mail asking whether or not the Contra Costa County Housing Authority will be the Housing Successor Agency for the housing portion of the City of Hercules Redevelopment Agency. On June 6, 2012, the Contra Costa Housing Authority Executive Director replied via e-mail that they were declining. On September 17, 2012 via e-mail the State Department of Finance sent a letter to the Contra Costa County Housing Authority Executive Director stating that they had no legal basis for refusing to perform the duties required by Health and Safety Code 34176(b)(2). The letter also states that the State Department of Finance reserves the right to pursue any and all means legally available to compel the Housing Authority to perform its statutory duty. On September 27, 2012 the City of Hercules City Manager contacted the State Department of Finance via e-mail on the status of the Contra Costa Housing Authority taking on the responsibility of the Housing Successor Agency for Hercules. The State Department of Finance responded that the matter has not yet been resolved and that the Contra Costa County Housing Authority responded with a statement that they are working to identify funding with which to perform these responsibilities. Since January 2012 when the City of Hercules elected not to become the Housing Successor Agency, the City of Hercules has worked with Contra Costa County and the State of California to transition the housing assets to the appropriate Housing Successor Agency, but neither party has elected to become the Housing Successor Agency. The citizens of the City of Hercules that have housing related loans with the City of Hercules former Redevelopment Agency have not been able to refinance, pay off their loans, etc. because of the unclear legislation in AB1x 26 and AB 1484. When a Housing Successor Agency is named, the City of Hercules will work with them to transition the housing asset.

SCO's Comment

The SCO is in agreement, in part, with the City of Hercules. We understand the situation regarding housing assets and the lack of a Housing Successor Agency. However, the housing assets still must be transferred to the Redevelopment Successor Agency per H&S Code 34175(b).

The Successor Agency will temporarily hold the assets until the Housing Authority of Contra Costa is established. Once the Housing Authority is established, any encumbered funds related to the Low and Moderate Income Housing Fund will be transferred to the Housing Authority.

H&S Code section 34175(b) states, "All assets, properties, contracts, leases, books and records, buildings, and equipment of the former redevelopment agency are transferred on February 1, 2012, to the control of the successor agency, for administration pursuant to the provisions of this part. This includes all cash or cash equivalents and amounts owed to the redevelopment agency as of February 1, 2012."

The SCO finding remains as stated.

Order of the Controller

Based on H&S Code section 34167.5, the City of Hercules is ordered to transfer all Hercules Redevelopment Agency assets in the Low and Moderate Income Housing Fund, described in Schedule 2, in the amount of \$15,638,313, to the Successor Agency.

The Successor Agency is directed to dispose of these assets and transfer the proceeds to the County Auditor-Controller for distribution to taxing entities pursuant to H&S Code section 34177(d).

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**Schedule 1—  
Unallowable Transfers to the City of Hercules**

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	<u>Amount</u>
Capital Assets	
Land and Improvements <sup>1</sup>	\$ 31,440,522
Current Assets	
Cash Transfer to City	<u>4,049,228</u>
Total Unallowable Transfers - City	<u>\$ 35,489,750</u>

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<sup>1</sup> Detail listing of assets on Attachment 1.

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**Schedule 2—  
Assets that should have been  
Transferred to the Successor Agency**

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Total Housing Assets to be Transferred to the Successor Agency

\$ 15,638,313

## Attachment 1— Land Transferred to the City of Hercules On March 8, 2011

FORMER REDEVELOPMENT AGENCY NAME Hercules Redevelopment Agency  
 SUCCESSOR AGENCY City of Hercules  
 CONTACT NAME Nickie Mastay PHONE 510-799-8222 TITLE Finance Director

A  ASSET DESCRIPTION	B  CARRYING VALUE AS OF		C  IF THE ASSET WAS TRANSFERRED TO A CITY, COUNTY, OR OTHER PUBLIC AGENCY BETWEEN JANUARY 1, 2011 AND JANUARY 31, 2012 (EXCLUDE HOUSING ASSETS):	
	UNAUDITED JUNE 30, 2011	ESTIMATE JANUARY 31, 2012	TRANSFER DATE	PUBLIC AGENCY
	Parcel C (APN: 404-020-076-0)	13,916,084	0	8-Mar-11
Victoria Crescent (APN: 404-040-062-6)	3,418,193	0	8-Mar-11	to City
Sycamore Crossing (APN: 404-020-057-58)	12,245,938	0	8-Mar-11	to City
Yellow Freight (APN: 358-030-027-9)	1,860,307	0	8-Mar-11	to City
Corridor BART Development	217,040	217,040		
Civic Center Facility	1,926,336	1,911,998		
City Hall Annex Improvements	1,976	1,963		
City Hall Sunroom	30,092	29,953		
Historic Clubhouse Facility Improvements	570,437	566,629		
Refugio Valley Flood Control	155,389	154,352		
Childcare Materials	102,888	101,756		
Sycamore/Palm Inter Realignment 2006	793,561	783,633		
Sycamore Avenue 2006	989,804	977,420		
Sycamore/Palm Inter Realignment 2007	70,734	69,854		
Sycamore Ave Extension 2007	1,263,093	1,247,374		
Reconstruct Willow Median	69,081	68,793		
North Shore Medians	26,318	26,205		
2008-09 Swimming Pool Rehab	130,571	130,039		
CIP	159,557	159,557		
Sycamore Downtown Project	38,017,556	38,017,556		
Hercules Rail Station	13,311,066	13,311,066		
Corridor BART Development	9,400,247	9,400,247		

Source – Asset Transfer Form prepared by the City of Hercules

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

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