

# **SAN DIEGO REDEVELOPMENT AGENCY**

## **ASSET TRANSFER REVIEW**

### Review Report

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



**JOHN CHIANG**  
California State Controller

February 2014



**JOHN CHIANG**  
*California State Controller*

February 27, 2014

David Graham, Deputy Policy Director  
Oversight Board  
City of San Diego Redevelopment Successor Agency  
202 C Street, 11<sup>th</sup> Floor  
San Diego, CA 92101

Dear Mr. Graham:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the City of San Diego Redevelopment Agency (RDA) to the City of San Diego (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 of assets to the City or any other public agencies have been reversed.

Our review found that the RDA transferred \$1,343,747,697 in assets after January 1, 2011, including unallowable transfers totaling \$361,248,277 to the City, or 26.88% of transferred assets. However, the following corrective actions have been taken:

- On June 30, 2012, the City turned over a total of \$137,432,312 in cash to the Successor Agency.
- On July 31, 2012, the City turned over \$120,580,417 (\$81,690,880 and \$38,889,537 in land and land held for resale, respectively) and any related revenue earned to the Successor Agency.
- On April 10, 2013, the City turned over the remaining cash of \$103,235,548 plus interest and revenue to the Successor Agency.

Therefore, no further action is necessary.

David Graham  
Deputy Policy Director

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February 27, 2014

If you have any questions, please contact Elizabeth Gonzalez, Bureau Chief, Local Government Compliance Bureau, by phone at (916) 324-0622.

Sincerely,

*Original signed by*

JEFFREY V. BROWNFIELD, CPA  
Chief, Division of Audits

JVB/kw

cc: Mark Nelson, Chair  
Redevelopment Successor Agency Oversight Board  
Tracy Sandoval, Auditor-Controller  
County of San Diego  
Sarah Mayen, Financial Operations Manager  
City of San Diego, Redevelopment Successor Agency  
David Botelho, Program Budget Manager  
California Department of Finance  
Richard J. Chivaro, Chief Legal Counsel  
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Venus Sharifi, 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 San Diego 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 \$1,343,747,697 in assets after January 1, 2011, including unallowable transfers totaling \$361,248,277 to the City of San Diego (City), or 26.88% of transferred assets. However, the City has taken the following corrective actions:

- On June 30, 2012, the City turned over a total of \$137,432,312 in cash to the Successor Agency.
- On July 31, 2012, the City turned over \$120,580,417 (\$81,690,880 and \$38,889,537 in land and land held for resale, respectively) and any related revenue earned to the Successor Agency.
- On April 10, 2013, the City turned over the remaining cash of \$103,235,548 plus interest and revenue to the Successor Agency.

Therefore, no further action is necessary.

## 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.

ABX1 26 was codified in the Health and Safety (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 on which the RDA ceases to operate, or January 31, 2012, whichever is earlier.

The SCO has identified transfers of assets that occurred after January 1, 2011, between the RDA, the City, 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.

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

## **Conclusion**

Our review found that the San Diego Redevelopment Agency transferred \$1,343,747,697 in assets after January 1, 2011, including unallowable transfers totaling \$361,248,277 to the City of San Diego (City), or 26.88% of transferred assets. However, the City has taken the following corrective actions:

- On June 30, 2012, the City turned over a total of \$137,432,312 in cash to the Successor Agency.
- On July 31, 2012, the City turned over \$120,580,417 (\$81,690,880 and \$38,889,537 in land and land held for resale, respectively) and any related revenue earned to the Successor Agency.
- On April 10, 2013, the City turned over the remaining cash of \$103,235,548 plus interest and revenue to the Successor Agency.

Therefore, no further action is necessary.

Details of our findings are in the Findings and Orders of the Controller section of this report.

**Views of  
Responsible  
Official**

We issued a draft report on October 17, 2013. Bill Fulton, Planning and Economic Development Director, responded by letter dated October 30, 2013, agreeing with Finding 1 but requesting a few minor clarifications and corrections. We discussed these corrections with Sarah Mayen and Scott Clark from the City of San Diego in a telephone conversation on January 17, 2012. The City's response is included in the 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

February 27, 2014

# Findings and Orders of the Controller

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

The San Diego Redevelopment Agency (RDA) made unallowable asset transfers in the amount of \$240,667,860 to the City of San Diego (City). The asset transfers occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

- On March 10, 2011, and June 30, 2011, the RDA transferred a total of \$289,345,071 (\$215,251,725 and \$74,093,346 in RDA cash and Low-Moderate Income Housing Fund cash, respectively) to the City in anticipation of work to be performed in future years under the Schedule of Projects. To accomplish those transfers, the City and the RDA entered into agreements under RDA Resolution No. R-4618.
- On August 24, 2011, the RDA transferred \$857,407 in cash to the City for payments on long-term debt.
- On October 13, 2011, the RDA transferred \$2,000,000 in cash to the City pursuant to a cooperation agreement between the RDA and the City, dated April 1, 2011, under RDA Resolution No. R-04661. Under the agreement, the RDA is to reimburse costs to the City for lease payments for the Convention Center Expansion Financing Authority, a joint powers authority formed by the City and the San Diego Unified Port District. The lease payments are used for debt service on the Lease Revenue Bonds, Series 1998A, which is not an obligation of the RDA.
- Between August 25, 2011, and January 31, 2012, the City returned a total of \$51,534,618 (\$48,934,602 and \$2,600,015 in RDA cash and Low-Moderate Income Housing Fund cash, respectively) to the RDA.
- As of January 31, 2012, the City still held the remaining RDA cash in the amount of \$240,667,860.

Pursuant to Health and Safety Code (H&S Code) section 34167.5, any cash asset transfers by the RDA to the City after January 1, 2011, that were not contractually committed to a third party prior to June 28, 2011, the effective date of ABX1 26, must be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177(d) and (e).

On June 30, 2012, the City turned over a total of \$137,432,312 (\$105,800,450 and \$31,631,863 of RDA cash and Low and Moderate Income Housing Fund cash, respectively) to the Successor Agency. On April 10, 2013, the City turned over the remaining cash of \$103,235,548 plus interest and revenue, to the Successor Agency.

### Order of the Controller

Based on H&S Code Section 34167.5, the City of San Diego is ordered to reverse the transfer of \$240,667,860. However, as the City turned over the cash including interest and revenue, described in Schedule 1, to the Successor Agency as of April 10, 2013, no further action is necessary.



City's Response

Regarding the cumulative total of \$1,352,611,098 in assets transferred to the City, the City stated, "The SCO did not take into account Capital Asset Accumulated Depreciation of <\$9,247,275> or another asset valued at \$4,400,000 on the supporting material provided during the asset transfer review. Therefore, the restated asset figure should read as \$1,347,763,860 in the respective paragraphs."

SCO's Comment

The SCO agrees that the cumulative total needs to be updated; however, the SCO disagrees with the restated figure. The Summary and Conclusion paragraphs have been modified in the final report. See table below:

	SCO Draft Report	City Response Suggestion	SCO Final Report
Unallowable Transfer to City:			
Finding 1	244,683,986	244,683,986	240,667,860
Finding 2	120,580,417	120,580,417	120,580,417
Transfer to City for Bonds Payment:			
Cash	11,322,000	11,322,000	11,322,000
Transfer to Successor			
Current Asset	845,966,907	845,966,907	845,966,907
Capital Asset	130,057,787	125,210,512	125,210,512
Total	1,352,611,097	1,347,763,822	1,343,747,696

The SCO agrees and the Finding and Order paragraph has been modified to the correct amount.

City's Response

Regarding the unallowable payment of the \$857,407 made by the former RDA to the City under the Long-Term Debt Agreement dated March 1, 2011, the City stated "The San Diego Entities dispute this aspect of the SCO's finding and reserve all right and arguments that have asserted or will assert in pending litigation designated as Sacramento County Superior Court Case No. 2013-80001410."

SCO's Comment

The pending litigation does not affect the SCO's Finding and Order pursuant to Health and Safety Code section 34167.5.

City's Response

Regarding the reversal of asset transfers, except those that already have been committed to a third party prior to June 28, 2011, the City stated "The San Diego Entities disagree, in the sense that nothing in the redevelopment dissolution laws require the third party commitments to have been in place by the date of enactment of ABX1 26 in order to avoid the SCO's claw-back function."

SCO’s Comment

H&S Code section 34167.5 specifically exempts from claw-back any transfer that has been encumbered to a third party by the City prior to the effective date of enactment of ABx1 26, which is June 28, 2011.

The finding and Order of the Controller remains as stated.

City’s Response

Regarding the amount ordered to be reversed, the City stated “Under the “Order of the Controller” heading, the SCO has ordered the City to reverse the transfer of \$244,683,986. However, for clarity and consistency, this figure should reflect the remaining RDA cash of \$240,667,860 as noted in the final bullet point of the first finding, and should retain the phrase “plus interest and revenue” from that bullet point.”

SCO’s Comment

SCO agrees and the Finding and Order paragraph has been modified to the correct amount.

**FINDING 2—  
Unallowable  
property transfers  
to the City of San  
Diego**

On March 15, 2011, the RDA transferred current and capital assets of land, land held for resale, improvements, and leases to the City. According to the Fixed Asset and Land Held for Resale lists for the period ending June 30, 2011, these assets were valued at \$120,580,417 (\$81,690,880 and \$38,889,537 in capital assets and land held for resale, respectively), excluding the value of the related lease, as follows:

Land	\$ 71,369,173
Structure and improvemnet	10,321,707
Land held for resale	<u>38,889,537</u>
Total	<u>\$ 120,580,417</u>

To accomplish these transfers, the City and RDA entered into an Assignment and Assumption Agreement under RDA Resolution No. 04654. Under the agreement, the City is to take control of the assets above and continue in accordance or consistent with the Redevelopment Plans adopted for the Project Areas.

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

On July 31, 2012, the City reversed the agreement and turned over the above assets to the Successor Agency along with any related net revenue. To accomplish the transfer, the Successor Agency and the City entered into an Assignment and Assumption agreement in July 26, 2012, under Successor Agency Resolution No. 307600.

Order of the Controller

Based on H&S Code section 34167.5, the City of San Diego is ordered to reverse the transfer of \$120,580,417 in assets. However, as the assets were turned over to the Successor Agency on July 31, 2012, along with related revenue, no further action is necessary.

City's Response

Regarding the SCO's second finding which states the RDA made unallowable transfer of capital assets valued at \$120,580,419 in March 2011, the City states "The San Diego Entities agree with the SCO's determination that credits the City with having reversed all transfers of capital assets deemed unallowable by the SCO. The San Diego Entities have no specific clarifications or corrections with respect to the second finding or the related order at this time."

SCO's Comment

The finding and Order of the Controller remain as stated.

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

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Cash transferred to the City (March 10, 2011, to June 30, 2011)	\$ 289,345,071
Cash transferred to the City (August 24, 2011)	857,407
Cash transferred to the City (October 13, 2011)	2,000,000
Cash returned from the City (January 31, 2012)	<u>(51,534,618)</u>
Total unallowable transfers to the City	240,667,860
City turned over cash (June 30, 2012)	(137,432,312)
City turned over cash (April 10, 2013)	<u>(103,235,548)*</u>
Total transfers subject to H&S Code section 34167.5	<u>\$ —</u>

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\* Additional interest amount of \$4,709,184 in cash was also turned over to the Successor Agency.

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

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THE CITY OF SAN DIEGO

October 30, 2013

**Transmitted via e-mail and first-class mail**

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

**RE: Draft Report for Asset Transfer Review of San Diego**

Dear Mr. Brownfield:

The State Controller's Office ("SCO") issued a draft report dated October 17, 2013 ("Draft Report"), related to the asset transfer review of the former Redevelopment Agency of the City of San Diego ("Former RDA") covering the 13-month period from January 1, 2011 through January 31, 2012. The City of San Diego, a municipal corporation ("City"), and the City of San Diego, solely in its capacity as the designated successor agency to the Former RDA ("Successor Agency"), appreciate the opportunity to respond to the Draft Report before the SCO issues a final report.

In the Draft Report, the SCO concludes that the City has taken corrective actions to reverse all "unallowable transfers of assets" from the Former RDA to the City that occurred during the relevant 13-month period, and further concludes that no further corrective action is necessary. The City and the Successor Agency (collectively, the "San Diego Entities") agree with the SCO's conclusion that no further corrective action is necessary, but wish to make several clarifications and corrections and to reserve their legal rights in connection with the Draft Report.

In the Summary and Conclusion paragraphs in the Draft Report, the SCO states that the Former RDA transferred a cumulative total of \$1,352,611,098 in assets to the City. In arriving at this cumulative total, however, the SCO did not take into account Capital Asset Accumulated Depreciation of <\$9,247,275> or another asset valued at \$4,400,000 on the supporting materials provided during the asset transfer review. Therefore, the restated asset figure should read as \$1,347,763,823 in the respective paragraphs.

The SCO's first finding in the Draft Report is that the Former RDA made unallowable transfers of cash in the aggregate amount of \$240,667,860 during the relevant 13-month period, but that the City subsequently reversed those transfers by turning over cash plus



interest to the Successor Agency as of April 10, 2013. While the San Diego Entities agree with the SCO's determination that credits the City with having reversed all transfers of cash deemed unallowable by the SCO, the San Diego Entities wish to make the following clarifications and corrections:

- Among other things, the SCO takes the position that the unallowable transfers include the Former RDA's payment of \$857,407 to the City under the Long-Term Debt Agreement dated March 1, 2011. The San Diego Entities dispute this aspect of the SCO's finding and reserve all rights and arguments that they have asserted or will assert in pending litigation designated as Sacramento County Superior Court Case No. 2013-80001410. *et SCO OK*
- The SCO asserts that it is required to order the reversal of asset transfers, except those that already had been committed to a third party prior to June 28, 2011 (i.e., the date of enactment of AB x1 26). The San Diego Entities disagree, in the sense that nothing in the redevelopment dissolution laws requires the third party commitments to have been in place by the date of enactment of AB x1 26 in order to avoid the SCO's claw-back function. To the contrary, California Health and Safety Code section 34167.5 exempts any third party commitments from the SCO's claw-back function so long as such commitments are in place at the time of the SCO's order to reverse unallowable asset transfers. *34165*
- Under the "Order of the Controller" heading, the SCO has ordered the City to reverse the transfer of \$244,683,986. However, for clarity and consistency, this figure should reflect the remaining RDA cash of \$240,667,860 as noted in the final bullet point of the first finding, and should retain the phrase "plus interest and revenue" from that bullet point.

The SCO's second finding in the Draft Report is that the Former RDA made unallowable transfers of capital assets valued at \$120,580,417 in March 2011 during the relevant 13-month period, but that the City subsequently reversed those transfers by turning returning the capital assets to the Successor Agency as of July 31, 2013. The San Diego Entities agree with the SCO's determination that credits the City with having reversed all transfers of capital assets deemed unallowable by the SCO. The San Diego Entities have no specific clarifications or corrections with respect to the second finding or the related order at this time.

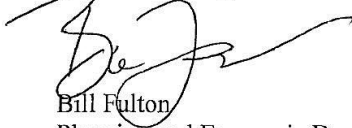
More generally, the San Diego Entities reserve all rights and arguments that they have asserted or will assert in (a) any meet-and-confer process with the California Department of Finance related to each Recognized Obligation Payment Schedule as well as the two-part due diligence review of the Former RDA's uncommitted housing and non-housing assets and (b) any pending or future lawsuits related to any aspects of the winding down of the Former RDA. The San Diego Entities further reserve the right to provide the SCO with additional information or statements concerning the asset transfer review at a later date, as circumstances may warrant.

Jeffrey V. Brownfield, CPA  
California State Controller's Office  
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Again, the San Diego Entities wish to express their gratitude for the SCO's completion of the asset transfer review and for the opportunity to respond to the Draft Report before it is issued in final form. If you have any questions regarding this letter or the asset transfer review, please contact Sarah Mayen at (619) 236-6852.

Sincerely,

City of San Diego

A handwritten signature in black ink, appearing to read "Bill Fulton", with a long, sweeping horizontal stroke extending to the right.

Bill Fulton  
Planning and Economic Development Director

cc: Steve Szalay, California Department of Finance  
Tracy Sandoval, San Diego County Auditor-Controller's Office



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