

EMERYVILLE 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 7, 2014

Debra Auker, Director of Administrative Services
Emeryville Redevelopment/Successor Agency
1333 Park Avenue
Emeryville, CA 94608-3517

Dear Ms. Auker:

Pursuant to Health and Safety (H&S) Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Emeryville Redevelopment Agency (RDA) to the City of Emeryville (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 it 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 \$222,274,295 in assets after January 1, 2011, including unallowable transfers of assets to the City totaling \$46,719,517, or 21.02% of transferred assets. However, the City and the Successor Agency have taken corrective actions. Therefore, no further action is necessary.

If you have any questions, please contact Elizabeth Gonzalez, 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

Debra Auker
Director of Administrative Services

-2-

February 7, 2014

cc: Kurt Brinkman, Board chair
Oversight Board
Sabrina Landreth, City Manager
City of Emeryville
Patrick O'Connell, Auditor-Controller
County of Alameda
David Botelho, Program Budget Manager
California Department of Finance
Richard J. Chivaro, Chief Legal Counsel
State Controller's Office
Elizabeth Gonzalez, Bureau Chief
Division of Audits, State Controller's Office
Scott Freesmeier, Audit Manager
Division of Audits, State Controller's Office
John Mellas, 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 Emeryville 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 \$222,274,295 in assets after January 1, 2011, including unallowable transfers to the City of Emeryville (City) totaling \$46,719,517, or 21.02% of transferred assets. However, the City and the Successor Agency have taken corrective actions. 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 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 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 Emeryville City Council, 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 Emeryville Redevelopment Agency transferred \$222,274,295 in assets after January 1, 2011, including unallowable transfers to the City of Emeryville (City) totaling \$46,719,517, or 21.02% of transferred assets. However, the City and the Successor Agency have taken corrective actions. Therefore, no further action is necessary.

Details of our finding are in the Finding and Order of the Controller section of this report.

Views of Responsible Official

We issued a draft report on September 23, 2013. Debra Auken, Director of Administrative Services, responded by letter, dated October 3, 2013. The City's response is included in this final report as an attachment.

Restricted Use

This report is solely for the information and use of the City, the Successor Agency, the Oversight Board, the County of Alameda, 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 7, 2014

Finding and Order of the Controller

FINDING— Unallowable asset transfers to the City of Emeryville

The Emeryville Redevelopment Agency (RDA) made unallowable transfers of assets to the City of Emeryville (City) totaling \$46,719,517.

On January 22, 2011, the City Council and RDA approved a Public Improvements and Affordable Housing Reimbursement Agreement, followed by an Amended and Restated Public Improvements Reimbursement Agreement and an Amended and Restated Affordable Housing Reimbursement Agreement on February 15, 2011.

Under the agreements cited above, the RDA transferred capital assets (land, buildings, and improvements) and real estate properties (land held for resale) to the City in March 2011. The combined asset value was \$46,719,517.

Pursuant to Health and Safety (H&S) Code section 34167.5, any asset transfers by the RDA to a city, county, city and county, or any public agency after January 1, 2011 must be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177(e). However, it appears that some of those assets also may be subject to the provisions of H&S Code section 34181(a), which states:

The oversight board shall direct the successor agency to do all of the following:

- (a) Dispose of all assets and properties of the former redevelopment agency; provided, however, that the oversight board may instead direct the successor agency to transfer ownership of those assets that were constructed and used for a governmental purpose, such as roads, school buildings, parks, police and fire stations, libraries, and local agency administrative buildings, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset.

Subsequent to the March 2011 transfers, the City and the Oversight Board took the following actions:

- On June 12, 2012, the Oversight Board retroactively ratified and authorized the RDA's March 2011 transfer to the City for selected properties (Resolution No. OB06-12), based on a governmental purpose designation, under H&S Code section 34181(a). The properties were valued at \$13,423,782.
- Additional property splits and rights-of-way owned by the RDA, but omitted from the March 2011 transfer, were included with the Oversight Board's OB06-12 transfer authorization. Values were unknown at the time, according to City finance staff and records.
- The remaining properties that comprised the March 2011 transfers were deemed not for governmental purpose and were turned over to the Successor Agency. These properties included capital assets valued at \$14,686,773 and land held for resale valued at

\$18,608,962. On October 2, 2012, the City Council (Resolution 12-176) authorized and directed a transfer of the assets to the Successor Agency.

Order of the Controller

Pursuant to H&S Code section 34167.5, the City is ordered to turn over the assets described in Schedule 1 totaling \$46,719,517 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) and 34181(a).

However, on June 12, 2012, the Oversight Board retroactively approved the unallowable transfers totaling \$13,423,782. In addition, on October 2, 2013, the city turned over the remaining unallowable assets valued at \$33,295,735 to the Successor Agency. Therefore, no further action is necessary.

The Department of Finance must approve the Oversight Board's decisions and resolutions. If the DOF approves, then no further action is necessary. However, if the DOF does not approve, then the City is ordered to turn over the assets to the Successor Agency pursuant to H&S Code section 34167.5. The finding and Order of the Controller remain as stated.

City of Emeryville's Response

The City agreed with the results, but provided suggestions for revising the Order of the Controller. See Attachment 1 for the City's full response.

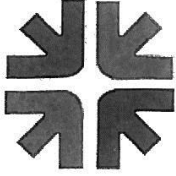
SCO's Response

We have revised the Order of the Controller to accommodate the City's suggestion.

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

| Description | APN(s) | Value |
|---|---|----------------------|
| Capital assets retained by City | | |
| Christie Avenue Park | 49-1493-001; 49-1493-010-04 | \$ 40,870 |
| Doyle Hollis Park | 49-1480-001; 49-1480-002-01 | 5,004,492 |
| Child Development Center | 49-1183-027; 49-1183-028 | 1,958,392 |
| Recreation Center | 49-1079-014-01; 49-1079-017-01 | 907,373 |
| City Hall Parking Lot | 49-618-002-2; 49-618-029 | 4,649,206 |
| Corporation Yard | 49-1552-001 | 863,449 |
| Additional properties: | | |
| Shellmound Street right-of-way | unknown | unknown |
| 40 th Street at Hollis Street right-of-way | unknown | unknown |
| Portion of 40 th Street overcrossing | unknown | unknown |
| Portion of Stanford Avenue | unknown | unknown |
| Sliver along Terraces for Amtrak rail line | unknown | unknown |
| Portion of 59 th Street | unknown | unknown |
| Amtrak Bridge West Tower | unknown | unknown |
| Subtotal — Capital assets retained by the City | | <u>\$ 13,423,782</u> |
| Capital assets turned over to the Successor Agency: | | |
| Horton Landing Park | 49-1041-037-06; 49-1041-026-12 | \$ 480,010 |
| 48 th Street Community Garden | 49-1176-001-01 | 261,757 |
| Greenway at 59 th | 49-1329-005-02; 49-1329-005-03 | 2,609,225 |
| Greenway at Parcel D | 49-1041-026-16 | 7,673,530 |
| Arts and Cultural Center | 49-618-004 | 3,662,251 |
| Subtotal — Capital assets turned over to the Successor Agency | | <u>14,686,773</u> |
| Land held for resale turned over to the Successor Agency: | | |
| Shellmound Street Lot | 19-1516-013 | 539,700 |
| | 49-1321-001-2; 49-1321-001-4; 49-1321-003-2; 49-1321-005; 49-1321-004-4 | |
| South Bayfront Site B Parcels | | <u>18,069,262</u> |
| Subtotal — land held for resale | | <u>18,608,962</u> |
| Total — unallowable transfers | | <u>46,719,517</u> |
| Retroactive Oversight Board approval (OB06-12) on June 12, 2012 | | (13,423,782) |
| City turned over to Successor Agency on October 2, 2012 | | <u>33,295,735</u> |
| Total amount subject to Health and Safety Code section 34167.5 | | <u>\$ —</u> |

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



CITY OF EMERYVILLE

INCORPORATED 1896

1333 PARK AVENUE
EMERYVILLE, CALIFORNIA 94608-3517

TEL: (510) 596-4300 FAX: (510) 450-7831

October 3, 2013

Mr. Steven Mar, Chief
Local Government Audits Bureau
State Controller's Office, Division of Audits
PO Box 942850
Sacramento, CA 94250-5874

**Regarding: Emeryville Redevelopment/Successor Agency Asset Transfer Review
Comments to Draft Report**

Dear Mr. Mar,

We have reviewed the draft report for the Emeryville Redevelopment/Successor Agency related to the Asset Transfer Review and we have the following comments.

The Agency requests that page 5 of the Asset Transfer Review Report regarding Order of the Controller be revised as follows:

Order of the Controller

Pursuant to H&S Code section 34167.5, the City would have been ordered to turn over the assets to the Successor Agency for disposition under H&S Code section 34177(e), with approval of the Oversight Board pursuant to H&S Code section 34181(a). However, pursuant to Resolution No. OB06-12 since the Oversight Board has already approved the transfers retroactively, with respect to the portion of capital assets retained by the City valued at \$13,423,782, A copy of Oversight Board Resolution No. OB06-12 was transmitted to the Department of Finance (DOF) on June 19, 2012. The DOF did not seek to review Resolution No. OB06-12 in accordance with H&S Code section 34179(h), and thus no further action is necessary. Details of the asset transfers are described in Schedule 1.

~~Note that the Department of Finance (DOF) must approve the Oversight Board's decision in the matter. If the DOF does not approve this decision, the City is ordered to turn over the assets to the Successor Agency pursuant to H&S Code section 34167.5.~~

Please let me know if you have any questions related to the above requested changes. I can be reached at 510-596-4352 or dauker@ci.emeryville.ca.us

Very truly yours,

Debra C. Auken
Director of Administrative Services
City of Emeryville

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