

# **UNION CITY COMMUNITY REDEVELOPMENT AGENCY**

## **ASSET TRANSFER REVIEW**

### Review Report

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



**JOHN CHIANG**  
California State Controller

November 2014



**JOHN CHIANG**  
*California State Controller*

November 21, 2014

Larry Cheeves, City Manager  
Union City Community  
Redevelopment/Successor Agency  
34009 Alvarado Niles Road  
Union City, CA 94587

Dear Mr. Cheeves:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Union City Community Redevelopment Agency (RDA) to the City of Union City (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 Union City Community 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 rights to payment of any kind. We also reviewed and determined whether any unallowable transfers of assets to the City of Union City or any other public agencies have been reversed.

Our review found that the RDA transferred \$202,976,744 in assets after January 1, 2011, including unallowable transfers to the City totaling \$67,736,171, or 33.37% of transferred assets.

However, the following corrective actions have been taken:

- On June 30, 2012, the City turned over \$62,722,518 in fund balance to the Successor Agency.
- As of June 30, 2012, \$2,081,484 was expended in accordance with the bond indenture.
- On February 3, 2014, the Successor Agency effectuated the transfer of housing bonds proceeds of \$2,932,169 to the City, as the Housing Successor, pursuant to Oversight Board Resolution No. 16-2014.

Therefore, no further action is necessary.

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

Sincerely,

*Original signed by*

JEFFREY V. BROWNFIELD, CPA  
Chief, Division of Audits

JVB/kw

cc: Joan Malloy, Economic and Community Development Director  
    Union City Community Redevelopment/Successor  
Mark Evanoff, Redevelopment Manager  
    Union City Community Redevelopment/Successor  
Patrick O'Connell, Auditor-Controller  
    Alameda County  
Carol Dutra-Vernaci, Oversight Board Chair  
    City of Union City  
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  
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 Review Report

## Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Union City 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 \$202,976,744 in assets after January 1, 2011, including unallowable transfers to the City of Union City (City) totaling \$67,736,171, or 33.37% of transferred assets.

However, the following corrective actions have been taken:

- On June 30, 2012, the City turned over \$62,722,518 in fund balance to the Successor Agency.
- As of June 30, 2012, \$2,081,484 was expended in accordance with the bond indenture.
- On February 3, 2014, the Successor Agency effectuated the transfer of housing bonds proceeds of \$2,932,169 to the City, as the Housing Successor, pursuant to Oversight Board Resolution No. 16-2014.

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.

H&S Code section 34167.5 states in part “. . . the Controller is required to 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 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 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 operations and procedures.
- Reviewed meeting minutes, resolutions, and ordinances of the Union City Council, the City, 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 Union City Redevelopment Agency transferred \$202,976,744 in assets after January 1, 2011, including unallowable transfers to the City of Union City (City) totaling \$67,736,171 or 33.37% of transferred assets.

However, the following corrective actions have been taken:

- On June 30, 2012, the City turned over \$62,722,518 in fund balance to the Successor Agency.
- As of June 30, 2012, \$2,081,484 was expended in accordance with the bond indenture.

- On February 3, 2014, the Successor Agency effectuated the transfer of housing bonds proceeds of \$2,932,169 to the City, as the Housing Successor, pursuant to Oversight Board Resolution No. 16-2014.

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  
Officials**

We issued a draft review report on October 17, 2013. Larry Cheeves, City Manager, responded by letter dated October 24, 2013, 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 of Union 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

November 21, 2014

# Finding and Order of the Controller

## **FINDING— Unallowable asset transfers to the City of Union City**

The Union City Community Redevelopment Agency (RDA) made unallowable asset transfers of \$67,736,171 to the City of Union City (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 February 22, 2011, the RDA transferred \$33,993,669 in land held for resale to the City. To accomplish the transfer, the City and the RDA entered into a Disposition and Development Agreement under RDA Resolution No. 432-11.
- On March 8, 2011, the RDA transferred \$43,280,838 (\$34,280,838 in cash and \$9,000,000 in Low- and Moderate-Income Housing [Low/Mod] cash) to the City. The \$34,280,838 was pursuant to the Public Improvement Agreement under RDA Resolution No. 482-22. On June 30, 2011, the City returned \$4,423,577 in cash to the RDA. In addition, \$8,401,519 expended on capital improvement projects was contractually committed to a third party prior to June 28, 2011. The remaining \$30,455,742 is unallowable.
- On March 8, 2011, the RDA transferred of \$354,591 in cash to the City pursuant to the assignment of a lease agreement between the City and the RDA under RDA Resolution No. 435-11.
- As of June 30, 2011, the RDA transferred bond proceeds totaling \$2,932,169 in Low/Mod cash to the City.

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. The 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 is ordered to reverse the transfer of \$67,736,171 in assets and turn over the assets to the Successor Agency. However, on June 30, 2012, the City turned over the fund balance of \$62,722,518 to the Successor Agency. Also, on February 3, 2014, the Successor Agency effectuated the transfer of housing bonds proceeds of \$2,932,169 to the City, as the Housing Successor, pursuant to Oversight Board Resolution No. 16-2014. Therefore, the remaining \$2,081,484 in unallowable transfers must be turned over to the Successor Agency.

### City's Response to Draft

The City and the Successor Agency disagreed with the findings. (See Attachment for the City's complete response.)



SCO's Comment

The tentative court ruling does not prevent the SCO from ordering the unallowable transferred assets turned over to the Successor Agency.

However, after reviewing additional documentation, the SCO agrees that \$2,081,484 in 2011 tax allocation bond proceeds were subsequently spent for RDA projects in accordance with the bond indenture. The final report has been modified accordingly. Therefore, no further action is necessary.

**Schedule 1—  
Unallowable RDA Assets  
Transferred to the City of Union City  
January 1, 2011, through January 31, 2012**

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Unallowable asset transfers to the City of Union City

Land held for resale transferred to the City (February 22, 2011)	\$ 33,993,669
Cash transferred to the City (March 8, 2011)	30,455,742
Lease revenue transferred to the City (March 8, 2011)	354,591
Low/Mod cash transferred to the City (June 30, 2011)	<u>2,932,169</u>
Total unallowable asset transfers to the City	67,736,171
City turned over fund balance to Successor Agency (June 30, 2012)	(62,722,518)
Expenditure in accordance with bond indenture (as of June 30, 2012)	(2,081,484)
Low/Mod assets retained as Housing Successor	<u>(2,932,169)</u>
Total transfers subject to H&S Code section 34167.5	<u>\$ —</u>

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

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34009 ALVARADO-NILES ROAD  
UNION CITY, CALIFORNIA 94587  
(510) 471-3232

HAND DELIVERED ON OCTOBER 25, 2013

October 24, 2013

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

Dear Mr. Mar:

This letter is provided in response to the draft State Controller's Office (SCO) Report ("Draft Report") on the Asset Transfer Review for the Community Redevelopment Agency of the City of Union City ("Redevelopment Agency") dated October 17, 2013 and the cover letter thereto (signed by Jeffrey Brownfield, Chief, Division of Audits). In the Draft Report, the SCO has indicated that the Redevelopment Agency made unallowable transfers of \$2,081,484 in assets to the City of Union City ("City"), and is ordering that the City transfer the assets back to the Successor Agency to the Redevelopment Agency ("Successor Agency").

The City and the Successor Agency disagree with the findings of the SCO. As referenced in the report, the amount of \$2,081,484 was transferred to the City by the Redevelopment Agency. On March 5, 2013, the Department of Finance ("DOF") issued a determination letter (copy enclosed) in connection with the Successor Agency's Other Funds Due Diligence Review. In that letter, DOF asserted that the sum of \$2,081,484 in 2011 tax allocation bond proceeds had been spent for projects that were not supported by enforceable obligations and should be returned to the Successor Agency. The DOF letter identifies the following expenditures:

\$1,048,594	Construction of East Plaza and Loop Road
\$ 930,339	Construction of Promenade and Playground
\$ 95,888	Construction of East West Connector
<u>\$ 6,663</u>	Survey Work for BART Phase 2
\$2,081,484	Total

This figure precisely matches the amount that the Draft Report concludes should be returned to the Successor Agency; although, the Draft Report provides no guidance as to how this figure was derived.

On May 8, 2012, the City and the Successor Agency entered into an *Amended and Restated Cooperative Agreement and Public Improvement Agreement* (the "Cooperative Agreement"), which approved, among

other things, funding for the projects identified above. In late June of this year, SCO auditors from your office reviewed asset transfer records maintained here in City Hall. At the exit interview for this audit, the SCO auditors determined that the expenditure of \$2,081,484 was undertaken pursuant to enforceable obligations in accordance with the terms of the Cooperative Agreement.

The October 17, 2013 SCO letter appears to conclude that these line item expenditures are not enforceable obligations and therefore the City must return \$2,081,484 to the Successor Agency.

Earlier this year, the City and the Successor Agency filed suit against the California Department of Finance and the State Controller's office on this issue (see, *City of Union City and Successor Agency of the Community Redevelopment Agency of the City of Union City vs. Ana Matosantos, et al.* Case No. 2013-80001377). On October 10, 2013, the Court issued a tentative ruling on the City and Successor Agency lawsuit. The Court determined that the Cooperative Agreement was a binding agreement and enforceable obligation under AB x1 26 and AB 1484. The tentative ruling is consistent with final judicial determinations upholding the validity of restated agreements that were executed pursuant to Health and Safety Code Section 34178(a) prior to the enactment of Assembly Bill 1484.<sup>1</sup> The Successor Agency will forward a copy of the final ruling to your office as soon as it becomes available.

The City and the Successor Agency believe that the tentative court ruling prevents the SCO from requiring that the assets set forth in the Draft Report be returned to the Successor Agency, and respectfully request that the State Controller revise the Draft Report accordingly.

The City and the Successor Agency reserve all rights to raise other legal arguments with respect to the Draft Report as may be necessary. If you have any questions, please contact Dave Glasser, Administrative Services Director, at (510) 675-5338 or Mark Evanoff, Redevelopment Manager, at (510) 675-5345.

Sincerely,

  
LARRY CHEEVES  
City Manager

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<sup>1</sup> See *City of Emeryville v. Matosantos et al.*, Case No. 2012-80001264 and *City of Riverside v. Matosantos et al.*, Case No. 2013-80001421.

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

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