

FOUNTAIN VALLEY AGENCY FOR COMMUNITY DEVELOPMENT

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

October 2013



JOHN CHIANG
California State Controller

October 2, 2013

Robert Hall, City Manager
City of Fountain Valley Redevelopment
Successor Agency
10200 Slater Avenue
Fountain Valley, CA 92708

Dear Mr. Hall:

Pursuant to Health and Safety (H&S) Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Fountain Valley Agency for Community Development to the City of Fountain Valley 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 Fountain Valley 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 Fountain Valley or any other public agencies have been reversed.

Our review found that the Fountain Valley Agency for Community Development (RDA) transferred \$78,178,155 in assets after January 1, 2011, to the City of Fountain Valley (City), the Successor Agency, and the entity assuming the housing functions. Unallowable transfers included assets totaling \$36,822,240, or 47.10%, which should have turned over to the Successor Agency.

However, the City and the entity assuming the housing functions turned over \$12,656,944 (\$6,331,944 and \$6,325,000, respectively) in current assets to the Successor Agency; these assets were subsequently remitted to the Orange County Auditor-Controller for distribution to the taxing entities. In addition, April 9, 2012, the Oversight Board retroactively approved the transfer of \$20,313,379 in current assets to the entity assuming the housing functions. Furthermore, on September 16, 2013, the Oversight Board retroactively approved the transfer of \$3,851,917 in land held for resale to the entity assuming the housing functions. No further action is necessary.

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

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/sk

cc: Jan E. Grimes, Auditor-Controller
County of Orange
Cheryl Brothers, Successor Agency Oversight Board Chair
City of Fountain Valley
Sherri Holman, Finance Director/Treasurer
City of Fountain Valley Redevelopment Successor Agency
Steven Szalay, Local Government Consultant
Department of Finance
Richard J. Chivaro, Chief Legal Counsel
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Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Fountain Valley Agency for Community Development (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 \$78,178,155 in assets after January 1, 2011, to the City of Fountain Valley (City), the Successor Agency, and the entity assuming the housing functions. Unallowable transfers included assets totaling \$36,822,240, or 47.10%, which should have turned over to the Successor Agency.

However, the City and the entity assuming the housing functions turned over \$12,656,944 (\$6,331,944 and \$6,325,000, respectively) in current assets to the Successor Agency; these assets were subsequently remitted to the Orange County Auditor-Controller for distribution to the taxing entities. In addition, April 9, 2012, the Oversight Board retroactively approved the transfer of \$20,313,379 in current assets to the entity assuming the housing functions. Furthermore, on September 16, 2013, the Oversight Board retroactively approved the transfer of \$3,851,917 in land held for resale to the entity assuming the housing functions. 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 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 Fountain Valley Agency for Community Development, the City of Fountain Valley, 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 Fountain Valley Agency for Community Development, the City of Fountain Valley, and the Successor Agency.
- 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 RDA transferred \$78,178,155 in assets after January 1, 2011, to the City, the Successor Agency, and the entity assuming the housing functions. Unallowable transfers included assets totaling \$36,822,240, or 47.10%, which should have turned over to the Successor Agency.

However, the City and the entity assuming the housing functions turned over \$12,656,944 (\$6,331,944 and \$6,325,000, respectively) in current assets to the Successor Agency; these assets were subsequently remitted to the Orange County Auditor-Controller for distribution to the taxing entities. In addition, April 9, 2012, the Oversight Board retroactively

approved the transfer of \$20,313,379 in current assets to the entity assuming the housing functions. Furthermore, on September 16, 2013, the Oversight Board retroactively approved the transfer of \$3,851,917 in land held for resale to the entity assuming the housing functions. 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 Officials

At the exit conference held on August 22, 2013, we discussed the review results with Robert Hall, City Manager; Sherri Holman, Finance Director; and Teresa Gonzalez, Accounting Manager; they agreed with the review results. They further agreed that a draft review report was not necessary and that we could issue the review report as final.

Restricted Use

This report is solely for the information and use of the Fountain Valley Agency of Community Development, 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

October 2, 2013

Findings and Orders of the Controller

FINDING 1— Unallowable asset transfers to the City of Fountain Valley

The Fountain Valley Agency for Community Development (RDA) made unallowable asset transfers of \$6,331,944 to the City of Fountain Valley (City). The asset transfers to the City occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

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. Those assets should be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177(d) and (e). However, it appears that some of those assets also may be subject to the provisions of H&S Code section 34181(a). H&S Code section 34181(a) 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 government purpose, such as roads, school buildings, parks, 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.

Order of the Controller

Based on H&S Code section 34167.5, the City would have been ordered to reverse the transfer of the above assets, in the amount of \$6,331,944. However, the City turned over the current assets to the Successor Agency; on April 12, 2013, the Successor Agency remitted the \$6,331,944 to the Orange County Auditor-Controller for distribution to the taxing entities. No further action is necessary.

FINDING 2— Unallowable asset transfers to the entity assuming the housing functions

The RDA made unallowable asset transfers of \$30,490,296 to the entity assuming the housing functions. The asset transfers to the entity assuming the housing functions occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011. Those assets consisted of current assets.

- On March 8, 2011, the RDA transferred \$3,851,917 in land held for resale to the entity assuming the housing functions to continue ongoing housing projects.
- On various dates, the RDA transferred \$6,325,000 in current assets to the entity assuming the housing functions for future housing activities and an advance.

- On February 1, 2012, the RDA transferred \$20,313,379 in current and capital assets to the entity assuming the housing functions.

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.

Pursuant to H&S Code section 34175(b), the RDA was required to transfer all assets, including housing assets, to the Successor Agency.

Pursuant to H&S Code section 34177(e) the “Successor Agency is to dispose of all former RDA assets . . . as directed by the oversight board. . . .” Also, pursuant to H&S Code section 34177(g) the Successor Agency is to “[e]ffectuate transfer of housing functions and assets to the appropriate entity designated pursuant to Section 34176.” However, H&S Code section 34181(c) requires the Oversight Board to direct the Successor Agency to transfer housing assets to the appropriate entity pursuant to Section 34176.

Order of the Controller

Based on H&S Code section 34167.5, the entity assuming the housing functions would have been ordered to reverse the transfer of the above assets, described in Schedule 2, in the amount of \$30,490,296.

However, the entity assuming the housing functions turned over \$6,325,000 in current assets to the Successor Agency; these assets were subsequently remitted to the Orange County Auditor-Controller for distribution to the taxing entities. In addition, on April 9, 2012, the Oversight Board retroactively approved the transfer of \$20,313,379 in current assets to the entity assuming the housing functions. Furthermore, on September 16, 2013, the Oversight Board retroactively approved the transfer of \$3,851,917 in land held for resale to the entity assuming the housing functions. No further action is necessary.

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

Unallowable transfers to the City of Fountain Valley	
Asset transfers	
Cash transfer to the City of Fountain Valley (March 8, 2011)	\$ 6,331,944
Total unallowable transfers	<u>\$ 6,331,944</u>
City of Fountain Valley transferred to the Successor Agency; Successor Agency remitted to County Auditor-Controller on April 12, 2013	\$ (6,331,944)
Total transfers subject to Health and Safety Code section 34167.5	<u>\$ —</u>

**Schedule 2—
RDA Assets Transferred to the Entity
Assuming the Housing Functions
January 1, 2011, through January 31, 2012**

Unallowable transfers to the entity assuming the housing functions	
Asset transfers	
Land held for resale transfer	\$ 3,851,917
Current asset transfers	6,325,000
Current and capital assets transferred to the entity assuming the housing functions	<u>20,313,379</u>
Total unallowable transfers	<u>\$ 30,490,296</u>
Turned over to the Successor Agency	
April 9, 2012, Oversight Board approval of housing transfer	\$ (6,325,000)
September 16, 2013, Oversight Board approval of land held for resale transfer	<u>(20,313,379)</u>
Total transfers subject to Health and Safety Code section 34167.5	<u>\$ —</u>

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