

LIVINGSTON REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

June 2014



JOHN CHIANG
California State Controller

June 9, 2014

José A. Ramirez, City Manager/Oversight Board Chair
Livingston Redevelopment/Successor Agency
1416 C Street
Livingston, CA 95334

Dear Mr. Ramirez:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office reviewed all asset transfers made by the Livingston Redevelopment Agency (RDA) to the City of Livingston (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 \$1,613,114 in assets after January 1, 2011, including unallowable transfers totaling \$700,000 to the City, or 43.39% of the transferred assets, that must be turned over to the Successor Agency.

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

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/sk

cc: Odi Ortiz, Assistant City Manager/Finance Director
City of Livingston
Jasmin Bains, Senior Accountant
City of Livingston
Lisa Cardell-Presto, Auditor-Controller
County of Merced
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
Betty Moya, Audit Manager
Division of Audits, State Controller's Office
Nicole Baker, 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 Livingston Redevelopment Agency 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 \$1,613,114 in assets after January 1, 2011, including unallowable transfers totaling \$700,000 to the City of Livingston (City), or 43.39% of the transferred assets, that must be turned over 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.

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

H&S Code section 34167.5, states in part, ". . .the Controller shall 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 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, 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 Livingston Redevelopment Agency transferred \$1,613,114 in assets after January 1, 2011, including unallowable transfers totaling \$700,000 to the City of Livingston, or 43.39% of transferred assets, that must be turned over to the Successor Agency.

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

Views of Responsible Officials

We issued a draft review report on November 20, 2013. José Antonio Ramirez, City Manager, responded by letter dated November 27, 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, 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 as final.

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

June 9, 2014

Finding and Order of the Controller

FINDING— Unallowable asset transfers to the City of Livingston

The Livingston Redevelopment Agency (RDA) made unallowable asset transfers of \$700,000 to the City of Livingston (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.

Unallowable asset transfers were as follows:

- On April 4, 2011, the RDA made an unallowable loan repayment of \$300,000 in cash to the City.
- On June 22, 2011, the RDA made an unallowable loan repayment of \$200,000 in cash to the City.
- On January 31, 2012, the RDA made an unallowable loan repayment of \$200,000 in cash to the City.

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).

Order of the Controller

Based on H&S Code section 34167.5, the City of Livingston is ordered to reverse the above transfer of assets in the amount of \$700,000, 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 section 34177(d) and (e).

City's Response to Draft

The City and the Successor Agency disagree with the findings of the SCO. As referenced in the Draft Report, the amount of \$700,000 in cash was transferred to the City by the Redevelopment Agency as loan repayments. Long before the enactment of AB x1 26 (the "Dissolution Law"), the City and the Redevelopment Agency entered into a loan and cooperation agreement to assist the Redevelopment Agency in funding the redevelopment ("Agency Loan Agreement"). The Agency loan agreement was entered into in 1985, within the first two years of the establishment of the Redevelopment Agency and constitutes a redevelopment indebtedness as defined under former Health & Safety Code § 33670. The City and the Successor Agency disagree with the SCO's characterization of these loan repayments as "transferred assets" because they are required payments under contract law.

...the Agency made three loan repayments to the City in 2011 and 2012. The first payment, a \$300,000 payment, was made on April 4, 2011, a second payment in the amount of \$200,000 was made on June 22, 2011, and a third payment was made on January 31, 2012 in the amount of \$200,000. Under Health and Safety Code § 34178(b)(2) of the Dissolution Law, loan agreements entered into within the first two

years of the creation of the Redevelopment Agency are enforceable obligations. . . . the third repayment of \$200,000 was specifically made in accordance with the Dissolution Law and an approved Redevelopment Obligation Payment Schedule (as defined in Section 34178(h) of the Dissolution Law).

Please note that the validity of the Agency Loan Agreement is also the subject of litigation filed by the City and the Successor Agency in Sacramento Superior Court. (See, City of Livingston, et al. v. Ana Matasantos, Case No. 34-2013-80001460.)

The City and the Successor Agency believe that both former redevelopment law and the current Dissolution Law prevents the SCO from requiring that \$700,000 in loan repayments, assets set forth in the Draft Report be returned to the Successor Agency....

SCO's Comment

The City stated that the loan repayment totaling \$700,000 was pursuant to the loan agreement entered into within the first two years of the agency's existence. However, the City cannot provide a loan agreement showing a detail of the money borrowed.

The City states that the third repayment of \$200,000 on January 31, 2012, was made in accordance with the dissolution law. This payment was not approved on the Recognizable Obligation Schedule by the Oversight Board or the Department of Finance. Under Health and Safety Code section 34178(a), Oversight Board approval must be obtained.

The finding and Order of the Controller remains as stated.

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



City of Livingston

1416 C Street
Livingston, CA 95334

November 27, 2013

Ms. Elizabeth Gonzalez, Chief
Local Government Compliance Bureau
State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874

Dear Ms. Gonzalez:

This letter is provided in response to the draft State Controller's Office (SCO) Report ("Draft Report") on the Asset Transfer Review for the Redevelopment Agency of the City of Livingston ("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 \$700,000 in assets to the City of Livingston ("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 Draft Report, the amount of \$700,000 in cash was transferred to the City by the Redevelopment Agency as loan repayments. Long before the enactment of AB x1 26 (the "Dissolution Law"), the City and the Redevelopment Agency entered into a loan and cooperation agreement to assist the Redevelopment Agency in funding the redevelopment ("Agency Loan Agreement"). The Agency Loan Agreement was entered into in 1985, within the first two years of the establishment of the Redevelopment Agency and constitutes a redevelopment indebtedness as defined under former Health & Safety Code § 33670. The City and the Successor Agency disagree with the SCO's characterization of these loan repayments as "transferred assets" because they are required payments under contract law.

As set forth in the Draft Report, the Agency made three loan repayments to the City in 2011 and 2012. The first payment, a \$300,000 payment, was made on April 4, 2011, a second payment in the amount of \$200,000 was made on June 22, 2011, and a third payment was made on January 31, 2012 in the amount of \$200,000. Under Health and Safety Code § 34178(b)(2) of the Dissolution Law, loan agreements entered into within the first two years of the creation of the Redevelopment Agency are enforceable obligations. While the first two payments were made prior to enactment of the Dissolution Law, the third repayment of \$200,000 was specifically made in accordance with the Dissolution Law and an approved Redevelopment Obligation Payment Schedule (as defined in Section 34178(h) of the Dissolution Law).

CITY OF LIVINGSTON

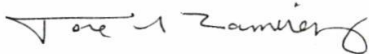
1416 "C" Street LIVINGSTON, CALIFORNIA 95334 PHONE: (209)394-8041 FAX: (209) 394-4190
www.livingstoncity.com

Please note that the validity of the Agency Loan Agreement is also the subject of litigation filed by the City and the Successor Agency in Sacramento Superior Court. (See, *City of Livingston, et al. v. Ana Matasantos*, Case No. 34-2013-80001460.)

The City and the Successor Agency believe that both former redevelopment law and the current Dissolution Law prevents the SCO from requiring that \$700,000 in loan repayments, as 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 Odi Ortiz, Assistant City Manager, at (209) 394-5520.

Sincerely,

A handwritten signature in cursive script that reads "Jose Antonio Ramirez".

Jose Antonio Ramirez
City Manager

2204559.1

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

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