

CITY OF BRENTWOOD REDEVELOPMENT AGENCY

Review Report

ASSET TRANSFER REVIEW

January 1, 2011, through January 31, 2012



BETTY T. YEE
California State Controller

July 2015



BETTY T. YEE
California State Controller

July 10, 2015

Kerry Breen, Assistant Finance Director
City of Brentwood Redevelopment/
Successor Agency
150 City Park Way
Brentwood, CA 94513-1164

Dear Mr. Breen:

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

Our review found that the RDA transferred \$28,445,915 in assets after January 1, 2011, including unallowable transfers to the City totaling \$16,319,919, or 57.37%, of the transferred assets. These assets must be turned over to the Successor Agency.

If you have any questions, please contact Elizabeth González, Chief, Local Government Compliance Bureau by telephone at (916) 324-0622 or by email at egonzalez@sco.ca.gov.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/as

Attachment

cc: Pamela Ehler, Finance Director
City of Brentwood
Bill Hill, Oversight Board Chair
City of Brentwood Redevelopment/Successor Agency
Robert Campbell, Auditor-Controller
Contra Costa County
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
Reginald Nidoy, Audit Manager
Division of Audits, State Controller's Office
Shadi Ahmadi, 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 City of Brentwood 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 \$28,445,915 in assets after January 1, 2011, including unallowable transfers to the City of Brentwood (City) totaling \$16,319,919, or 57.37%, of the transferred assets. These assets 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 and oversight boards 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 identified asset transfers that occurred after January 1, 2011, between the RDA, the City and/or any other public agency. 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's operations and procedures.
- Reviewed meeting minutes, resolutions, and ordinances of the City, 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 Brentwood Redevelopment Agency transferred \$28,445,915 in assets after January 1, 2011, including unallowable transfers to the City of Brentwood totaling \$16,319,919, or 57.37%, of the transferred assets. These assets 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 February 23, 2015. Kerry Breen, Assistant Director of Administrative Services, responded by email dated March 13, 2015, 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 Brentwood, 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

July 10, 2015

Finding and Order of the Controller

**FINDING—
Unallowable asset
transfers to the
City of Brentwood**

The City of Brentwood Redevelopment Agency (RDA) made unallowable asset transfers of \$16,319,919 to the City of Brentwood (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 March 4, 2011, the RDA transferred \$1,327,129 in land to the City, which consisted of 9 parcels.
- On various dates, the RDA transferred a total of \$14,978,790 in cash to the City for the Civic Center Project.
- On various dates, the RDA transferred a total of \$14,000 in lease revenue to the City. The lease revenue was generated from the capital assets the RDA transferred on March 4, 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. The assets must be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177(d) and (e).

Some of these 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. . . .

Order of the Controller

Pursuant to H&S Code section 34167.5, the City is ordered to reverse the transfers totaling \$16,319,919 and turn over the assets to the Successor Agency.

City's Response

The City argues that the SCO's attempt to reverse the RDA's cash payments and property transfers directly violates Proposition 22.

The City objects to the finding regarding cash payments the RDA made to the City because the City was contractually committed to third-party construction contractors.

The City disagrees with the findings regarding transfers from the RDA to the City prior to dissolution, because the transfers were confirmed by the Oversight Board.

See Attachment for the City's complete response

SCO's Comment

The SCO's authority under H&S Code section 34167.5 extends to all assets transferred after December 31, 2010, by the RDA to the city or county, or city and county that created the RDA, or any other public agency.

On April 2, 2014, the Sacramento County Superior Court issued its ruling in *City of Brentwood, et al. v. California Department of Finance, et al.* Excerpts from that ruling state:

The clawback is directed only at the successor agency -- not the RDA. Proposition 22 only prohibits the Legislature from requiring a "redevelopment agency" to transfer funds...

Because Proposition 22 only restricts the Legislature's power over redevelopment agencies, the court will not interpret that language to additionally restrict the Legislature's powers over their successors. . . .

Pursuant to AB 1484, City-RDA agreements were no longer considered enforceable obligations after January 1, 2011. Accordingly, payments made under such agreements were subject to the clawback to be redistributed to other local entities...

The Public Improvement Agreements (PIA) make no reference to contractors. Rather, the PIAs provide that the RDA will pay the City for costs the City incurs in connection with planning, developing, administering, and managing the Downtown Infrastructure Project. The PIAs are thus to reimburse the City for its costs. There is no suggestion the PIAs are to benefit the contractors.

On June 8, 2015, the California Third Appellate District Court (*City of Brentwood v. Robert R. Campbell*) upheld and affirmed the court's original ruling in the *City of Brentwood, et. al. v. California Department of Finance, et. al.*

In addition, the Superior Court ruling in *Successor Agency to the Brea Redevelopment Agency, et al. v. Matosantos, et al.* states:

The redevelopment dissolution laws established oversight boards to supervise the actions of successor agencies, but not to supervise or ratify (after the fact) the actions of former redevelopment agencies. Conversely, the Court has not located any provision of the redevelopment laws that requires or authorizes an oversight board retrospectively to review or ratify an action of a redevelopment agency taken before its dissolution. The Oversight Board thus appears to have no legal authority or mandate to review actions of the RDA.

As such, the Oversight Board did not have legal authority to retroactively approve the transfers.

The Finding and Order of the Controller remain as stated.

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

Cash transferred for Civic Center projects (various dates):	
Community Center - March 8, 2011	\$ 1,466,509
Parking structure - March 8, 2011	5,500,000
Downtown infrastructure - March 8, 2011	1,005,063
City Park - March 8, 2011	246,715
Downtown Streetscape - March 8, 2011	5,296,649
Parking structure project - June 25, 2011	1,180,357
Community Center project - June 30, 2011	198,370
City Park project - January 30, 2012	85,127
Total cash transfers	<u>14,978,790</u>
Land transferred March 4, 2011:	
SE corner Oak St. & Walnut Blvd. and 10-foot parcel South (APN 013-232-006)	219,948
SE corner Oak St. & Walnut Blvd. and 10-foot parcel South (no APN)	—
604 First Street (APN 013-110-010)	—
8436 Brentwood Blvd (APN 013-100-009)	—
7030 Brentwood Blvd (APN 016-010-016)	1,107,181
1000 Central Blvd & Country Road #8 (APN 017-160-004)	—
1000 Central Blvd & Country Road #8 (no APN)	—
400 Guthrie Lane (APN 010-160-035)	—
NE corner of Second Street & Central Blvd (no APN)	—
Total land transfers	<u>1,327,129</u>
Lease revenue accrued from January 1, 2011 - January 31, 2012 (APN 016-010-016)	<u>14,000</u>
Total transfers subject to H&S Code section 34167.5	<u><u>\$ 16,319,919</u></u>

**Attachment—
City of Brentwood’s Response to
Draft Review Report**

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

RE: Comments on Draft Brentwood Redevelopment Agency Asset Transfer Review Report

Dear Ms. Gonzalez:

This letter is in response to Jeffrey V. Brownfield's letter dated February 23, 2015 enclosing the State Controller's Office ("SCO") Draft Asset Transfer Review Report ("Draft Report"), which was received by the Successor Agency to the Brentwood Redevelopment Agency ("Successor Agency") on March 2, 2015. In the letter, the SCO concluded that the Brentwood Redevelopment Agency ("RDA") made \$16,319,919 in unallowable transfers to the City of Brentwood ("City") and demanded that the assets be turned over to the Successor Agency. The demanded assets include \$14,992,790 in cash and \$1,327,129 in land transfers. The Successor Agency and City provide the following comments and response to the SCO's Draft Report.

1. General Comments on and Objections to Draft Report:

At the outset, we would like to emphasize that all of the transfers described in the Draft Report were undertaken lawfully and in full compliance with all legal requirements in effect at the time the actions were taken. The cash payments were made months before the enactment of AB x1 26 pursuant to Public Improvement Agreements between the City and the RDA that restated and memorialized the RDA's longstanding commitments to fund five public improvement projects. Such funding arrangements were expressly authorized by Health & Safety ("H&S") Code section 33445 and common practice throughout California. Likewise, the property transfers were made pursuant to a valid Option Agreement between the City and the RDA executed prior to dissolution in compliance with the Community Redevelopment Law.

The SCO's attempt to reverse the RDA's legal, pre-dissolution cash payments and property transfers directly violates Proposition 22, which unequivocally prohibits the Legislature from "seizing, diverting, shifting, borrowing, transferring, suspending, or otherwise taking or interfering with" revenue dedicated to local governments, including tax increment allocated to redevelopment agencies. (Prop. 22 § 2.5.) To accomplish this objective, Proposition 22 prohibited the Legislature from requiring a "community redevelopment agency... to pay, remit, loan, or otherwise transfer, directly or indirectly, taxes on ad valorem real property... allocated to the agency... to or for the benefit of the State, any agency of the State, or any jurisdiction." The California Supreme Court affirmed in *California Redevelopment Assoc. v. Matosantos* (2011) 53 Cal.4th 231 that Proposition 22 remains good law and that it continues to prohibit the Legislature from restricting operational redevelopment agencies' use of their tax increment funds. (Id. at 260, 264-270.)

Proposition 22 prohibits the SCO from ordering the reversal of legal payments made by the RDA while it was still operational. Since all of the asset transfers invalidated in the SCO's Draft

Report were legal and completed prior to dissolution, the Draft Report, if finalized and implemented, would clearly violate Proposition 22. As the SCO is probably aware, a demand by the Department of Finance ("DOF") for a return of roughly the same asset transfers is currently being challenged by the Successor Agency and the City in the Third District Court of Appeal on the grounds that it violates Proposition 22, and if the Court determines that DOF's demand is unconstitutional, then that decision would likewise invalidate the SCO's Draft Report. Thus, given Proposition 22's unequivocal mandates and the possible impacts of the Court's decision on the pending litigation, the SCO should not adopt the unconstitutional demand in its Draft Report.

2. Cash Payments

The plain language of H&S Code section 34167.5 exempts asset transfers made to a government agency that is "contractually committed to a third party for the expenditure or encumbrance of those assets" from the SCO's review and reversal. Despite acknowledging this clear limit to its authority, the SCO's Draft Report simply invalidates all of the RDA's cash payments to the City without providing any analysis of whether the payments were made to satisfy the City's contractual obligations to third parties. This failure is a fundamental flaw because, in fact, the City was contractually obligated to third party construction contractors for the expenditure of all of the cash payments and all of the payments were conveyed to the construction vendors pursuant to those contractual obligations.

The Draft Report also wrongly asserts that H&S Code section 34167.5's exemption only applies to funds transfers where the recipient was contractually committed to a third party prior to June 28, 2011, despite the fact that the statute does not contain any limitations regarding the date of contractual commitment. While we disagree with this statement of the law, the cash payments even satisfy the SCO's more restrictive interpretation. The City used all of the cash payments made by the RDA to satisfy its contractual obligations to third parties, which the City incurred prior to June 28, 2011 in reliance on the RDA's longstanding commitments to fund the five public improvement projects. The details concerning the cash payments disallowed in the Draft Report are presented below:

- The RDA paid the City \$1,061,640 for the Downtown Infrastructure Project. The City first became contractually obligated to third parties for the construction of the Downtown Infrastructure Project in 2007, and by September of 2010, its contractual obligations exceeded \$1,400,000.
- The RDA paid the City \$5,570,898 for the Streetscape Project. The City first became contractually obligated to third parties for the construction of the Streetscape Project in 2007, and by September 2010, its contractual obligations exceeded \$5,650,000.
- The RDA paid the City \$424,968 for the City Park Project, and by January 13, 2011, the City was contractually committed to third parties for construction of the project for over \$1,800,000.

- The RDA paid the City \$421,285 for the Community Center Project, and by October of 2009, the City was contractually committed to third parties for the construction of the project for over \$10,100,000.
- The RDA paid the City \$7,500,000 for the Parking Project, and by June of 2010, the City first was contractually obligated to third parties for construction of the project for over \$8,100,000.

The facts as set forth above, which are supported by numerous contracts and documents provided to the SCO during the course of its review, clearly establish that, prior to June 28, 2011, the City was contractually committed to third parties for the expenditure of over \$ 27 million – an amount that far exceeds the cash payments.

Moreover, while it is not required to qualify for the exemption in H&S Code section 34167.5, the City had also made payments to the third party construction contractors in excess of \$20,000,000 prior to June 28, 2011, pursuant to the contractual obligations it executed in reliance on the RDA's longstanding funding commitments. These contract payments consisted of \$11,182,231 in funds paid between December 12, 2007 and January 1, 2011 and \$9,154,463 in funds paid between January 1, 2011 and June 28, 2011. The RDA only paid the City \$17,381,891 in cash prior to June 28, 2011. Therefore, the City was not only contractually committed to spend all of the cash payments made by the RDA by the time AB 26 was enacted, but, as of June 28, 2011, it had actually used all of the cash payments to satisfy its obligations under its third party construction contracts.

The cash payments are clearly exempt from reversal under the plain language of H&S Code section 34167.5 and the SCO's interpretation of its review and reversal authority. As such, we respectfully request that the SCO conduct the necessary analysis and modify its Draft Report to exclude the cash payments.

3. Property Transfers

The SCO's Draft Report also demands the return of \$1,327,129, which represents the general ledger value of 9 parcels of land transferred from the RDA to the City prior to dissolution. These parcels were all legally transferred prior to dissolution pursuant to the Community Redevelopment Law and an option exercised by the City that was secured by an Option Agreement executed by the RDA and the City in February of 2011. Thus, as legal pre-dissolution transfers, Proposition 22 prohibits the SCO from ordering their return.

Three of the property transfers are further exempt from reversal because the parcels were validly conveyed to the City pursuant to H&S Code section 34181(a). As the Draft Report acknowledges, H&S Code section 34181 gives the Brentwood Oversight Board ("Oversight Board") the authority to direct the Successor Agency to transfer ownership of those properties that were "constructed or used for a government purpose" to the City pursuant to any existing agreements relating to the "construction or use" of the property. The RDA transferred three parcels that were being used for a government purpose to the City prior to dissolution: 1) 604 First Street (APN 013-110-010); 2) 8436 Brentwood Boulevard (APN 013-100-009); and 3)

Walnut Boulevard (APN 013-232-006). (See Oversight Board Resolutions Nos. 2012-06, 2012-07, 2012-15.) The Oversight Board found that these parcels were being used by the City for a government purpose and were transferred pursuant to a pre-existing agreement relating to the parcels (the Option Agreement), and pursuant to its authority under H&S Code section 34181(a), the Oversight Board confirmed the transfers. (Id.) The SCO cannot reverse the Oversight Board's action pursuant to H&S Code section 34181(a) in the context of its section 34167.5 review. (See H&S Code, §§ 34191.3, 34181(a).) And even if the SCO did have that authority, Oversight Board Resolutions Nos. 2012-06 and 2012-07 cannot be reversed because they became final and effective after the Oversight Board submitted the resolutions to DOF on June 4, 2012 and DOF failed to object. (H&S Code, §§ 34181(f), 34179(h).)

In addition, three more of the property transfers are exempt from the SCO's review under H&S Code section 34167.5 because they were not assets of the RDA. H&S Code section 34167.5 only applies to transfers of RDA assets, but three of the properties at issue in the Draft Report were purchased by the City with City funds and transferred to the RDA in name only for no consideration: 1) 1000 Central Boulevard (APN 017-160-004); County Road # 8; and 3) 400 Guthrie Lane (AP010-160-033). Indeed, the City and the RDA always intended that the City would be paid in the event the properties were leased or sold. Since these properties were never truly owned by the RDA, and in any event, were transferred to the City prior to dissolution, the Successor Agency has no authority to dispose of these parcels. Recognizing that the three City-properties were not RDA or Successor Agency assets, the Oversight Board adopted Resolution Nos. 2012-08, 2012-09, and 2012-10, which confirmed that title to the properties was held by the City and that the properties were not purchased with tax increment revenues. The Oversight Board resolutions became final and effective after the Oversight Board submitted the resolutions to DOF on June 4, 2012 and DOF failed to object. (H&S Code, §§ 34181(f), 34179(h).) As such, the SCO has no authority to reverse those actions in the context of its review.

Even if H&S Code section 34167.5 permitted the SCO to demand the return of City-owned properties, such action would be barred by Propositions 1A and 22 as a diversion of the City's tax revenues to other taxing entities. The properties were purchased with City tax revenues and were transferred in name only to the RDA for no consideration to be used for redevelopment purposes. As such, Propositions 1A and 22, which protect City tax revenues from redistribution, prohibit the SCO from forcing the City to return the property assets so that they can be sold and their value redistributed to the taxing entities.

4. Conclusion

The SCO's Draft Report is invalid because it violates Propositions 1A and 22, ignores that the cash payments were made to satisfy the City's contractual commitments to third parties, and requires the reversal of property transfers that were approved by the Oversight Board and authorized by H&S Code section 34181(a). As such, the amount stated in the Draft Report as being owed by the City to the Successor Agency must be eliminated or at the very least reevaluated and reduced.

The City and the Successor Agency reserve all rights to raise other legal and factual arguments with respect to the Draft Report as may be necessary. We provided you with substantial documents, including evidence of contractual commitments during your review; however, if you have any questions or would require additional information, please contact me. Thank you for your consideration.

Kerry Breen
Assistant Director of Administrative Services
City of Brentwood
kbreen@brentwoodca.gov
925-516-5436

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

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