

# **HURON REDEVELOPMENT AGENCY**

## **ASSET TRANSFER REVIEW**

### Review Report

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



**JOHN CHIANG**  
California State Controller

December 2014



**JOHN CHIANG**  
California State Controller

December 29, 2014

Jack Castro, Finance Director  
City of Huron Redevelopment/Successor Agency  
36311 S. Lassen Avenue  
P.O. Box 339  
Huron, CA 93234

Dear Mr. Castro:

Pursuant to Health and Safety (H&S) Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Huron Redevelopment Agency (RDA) to the City of Huron (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 \$2,848,515 in assets after January 1, 2011, including unallowable transfers to the City totaling \$70,000, or 2.46% of transferred assets. The assets must be turned over the Successor Agency.

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: Chair of Oversight Board  
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# Asset Transfer Review Report

## Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Huron 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 \$2,848,515 in assets after January 1, 2011, including unallowable transfers to the City of Huron totaling \$70,000, or 2.46% of transferred assets. The assets must be turned over 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 Code (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 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 Huron 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 Huron Redevelopment Agency transferred \$2,848,515 in assets after January 1, 2011, including unallowable transfers to the City of Huron totaling \$70,000, or 2.46% of transferred assets that must be turned over the Successor Agency.

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 November 14, 2013. Neal E. Costanzo, Law Offices of Costanzo & Associates, responded on behalf of the City by letter dated December 3, 2013. The City's response is included in this final review report. The response refers to a finding that was subsequently removed due to additional information provided.

## **Restricted Use**

This report is solely for the information and use of the City of Huron, 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

December 29, 2014

# Finding and Order of the Controller

**FINDING—  
Property deeded to  
the RDA was not  
recorded in the  
RDA books**

Our review identified a property valued at \$70,000 (APN 075-330-02t) that was deeded to the Huron Redevelopment Agency (RDA) but not recorded in the RDA books as of January 31, 2012.

Pursuant to H&S Code sections 34167.5, the RDA may not transfer assets to a city, county, city and county, or any other public agency after January 1, 2011. However these assets were never turned over to the Successor Agency for disposition in accordance with H&S Code sections 34175(b) and 34177(d) and (e). The assets must be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177(e).

## Order of the Controller

Pursuant to H&S Code sections 34167.5 and 34175(b), the City is ordered to turn over the asset, valued at \$70,000, to the Successor Agency.

## City's Response

Again, there is no transfer identified. It appears that what the Controller is ordering is that the City remove the \$70,000 book value of whatever property the report refers to from its records and reflect this on the Successor Agency's records. We cannot determine, however, from the report whether this is what is being demanded. We also cannot determine from the report what property is being referred to.

## SCO's Response

The report has been revised to identify the specific property. During the course of our review, this property was identified by a title search by the City. The Order of the Controller has been modified to state that the City must turn over the property, valued at \$70,000, to the Successor Agency.

The Finding and Order of the Controller remain as stated.

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

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NEAL E. COSTANZO  
MICHAEL G. SLATER

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December 3, 2013

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**Re: City of Huron's Response and Comments to Draft Asset Transfer  
Review Report, Undated, and Your November 14, 2013 Letter**

Dear Ms. Gonzales:

This office represents the City of Huron as its City Attorney. We are also General Counsel to the Successor. Your letter and report are literally impossible to decipher. The letter and report are purportedly issued pursuant to the authority of Health & Safety Code §34167.5 which is cited repeatedly both in the letter and the asset transfer review report. As you are undoubtedly aware, the law which dissolved redevelopment agencies in the State of California, whether in the form of ABX126 or AB1484 which replaced it did not become operative until February 1, 2012. (See H&SC §34170(a); *California Redevelopment Association v. Matasantos* (2011) 53 Cal.4th 231). As stated in the Asset Transfer Review Report (the "Report"), 34167.5 provides that the Controller is to review the activities of an RDA to determine whether an asset transfer occurred between January 1, 2011, and the date on which the RDA ceased to operate, January 31, 2012. The asset transfers that section directs the Controller to review are those between a city that created the RDA and the RDA. The report states that the provisions of this statute require your office to "order that such [transferred assets], except those that already had been committed to a third party prior to June 28, 2011, the effective date of ABX126, be turned over to the Successor Agency". (See Report at p. 1). June 28, 2011 was the date on which ABX126 was enacted by the legislature and signed by the Governor. June 28, 2011 is not the effective date of that enactment. The effective date of that enactment is as stated in the Supreme Court's decision in *Matasantos, supra*, February 1, 2012. Your letter points out that the provisions of 34167.5 include a legislative finding 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 development law and is thereby unauthorized".

The statute does not define a transfer. Plainly, under the former community development law there were transfers between a city and RDA that were expressly allowed by the former law. By making all such transfers that occurred under the former law and prior to the operative date of the law dissolving RDA's in California "unauthorized", the statute is one that has a retroactive effect, to the extent it applies to transfers that were permissible under the former law because it substantially changes the legal effect of past events. (*Plotkin v. Sajahtera* (2003) 106 Cal.App.4th 953, 960; *20<sup>th</sup> Century Insurance Company v. Garamendi* (1994) 8 Cal.4th 216, 281). Statutes are presumed to not operate retroactively, unless the legislative body enacting the measure clearly indicates its intent that they do so. (*Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243). This statute does not clearly indicate an intent that it have retroactive effect. The enactments dissolving RDA's are plainly substantive in nature rather than procedural, and the legislature here did not state that this particular enactment, or this provision was to be given retroactive application or was to be retroactive in effect. As a result, its provisions cannot be applied to conduct that occurred prior to the effective date of the statute, which in this case is February 1, 2012. (See *Das v. Bank of America* (2010) 186 Cal.App.4th 727, 736).

Even if the legislature had declared that the dissolution act in general, or this provision in particular, were to be given retroactive application, doing so would violate Constitutional requirements of due process. Here, your report states, without specifically identifying the property, that the Huron RDA made "unallowable asset transfers of \$527,958 to the City of Huron". The report states that the asset transfers "consisted of cash and capital assets". However, no cash is identified and the report appears to be referring solely and only to certain real property which is designated as the City of Huron's Industrial Park and seems to make clear that this is what the identified transfer consists of because it states:

"On January 31, 2011, the RDA transferred properties to the City valued at \$527,958 because the original deeds were determined to be in the name of the City and not the RDA".

Report at p. 3

The "Findings and Orders of the Controller" included in the report make clear that you are attempting to give retroactive application to §34167.5 because it states:

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"Pursuant to Health & Safety Code §34167.5, the RDA may not transfer assets to a city . . . after January 1, 2011".

Id.

This of course is not possible. 34167.5 did not exist on January 1, 2011 and it is not possible for that provision to have prohibited the RDA from making the transfer it made on January 31, 2011.

The findings and orders of the Controller included in the report purport to require or order the City to reverse the transfer and turn over the unidentified property valued at \$527,958 to the Successor. Consistent with the statute, the order disregards entirely the reason for the transfer. This particular transfer was of property, consisting of the City of Huron Industrial Park, developed to the extent that infrastructure, streets, curb, gutter, street lights, sewer lines, water lines and associated connections and meters were installed on this property using the proceeds of a bond issuance in 2011 payable from former tax increment and repeatedly determined by the Department of Finance to be a legitimate, enforceable obligation of the prior RDA. Because the property has been developed with installation of infrastructure, it is necessary and it was contemplated by the bond issuance that the City had to be the owner of this property so that the infrastructure could be maintained.

Your findings and order actually indicate that the property was in fact at all times owned by the City and that any transfer occurred simply to correct what appears to be a clerical error in recording the asset on the internal books of either the City or the RDA. At p. 3, the Order states that the RDA transferred these properties to the City "because the original deeds were determined to be in the name of the City and not the RDA". Schedule I indicates that the property in question was in fact "deeded to City but on RDA books as of January 31, 2012". Accordingly, it appears from your report that the only transfer identified here is the correction of an incorrect entry on the RDA books reflecting it as the owner of property that was in fact deeded to the City. Accordingly, there is no transfer. Even if there were, the statute is not permitted to apply retroactively and doing so would violate Constitutional requirements prohibiting such ex post facto laws and guaranteeing due process prior to the deprivation of any vested right. (See *Ploutkin v. Sajahtera* (2003) 106 Cal.App.4th 953, 962). Obviously, if the City held title to the property, it had a vested right to the property and that vested right cannot be altered by retroactive application of a statute.

Consequently, even if there were a prohibited transfer, the City would be forced to initiate litigation for a declaration that the statute cannot be applied to it in this manner. It cannot comply with the directive that the property be conveyed to the Successor because

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that would leave the property without anyone to maintain the infrastructure that has been installed and as to which an enforceable obligation of the former RDA has been created. More importantly, it appears from your report that you are attempting to have the City transfer property which the original deed vested title in the City to the Successor based upon a mistaken assumption that the property must have been the RDA's property since it was shown on the RDA's books. This is not a rational conclusion. The rational conclusion, given the fact that the property is held by the City is that the entry on the internal books is in error, not the deed conveying the property to the City. Accordingly, the Controller is requested to reevaluate its determination and revise its report accordingly to exclude entirely any reference to any such transfer, because it appears no such transfer ever occurred.

The letter transmitting the report identifies only the order to transfer the property valued at \$527,958 to the Successor. The report, however, identifies an additional "transfer" that is, of "property valued at \$70,000 that was deeded to the RDA but not recorded in the RDA's books as of January 31, 2012". The order of the Controller is for the City to transfer that asset to the Successor Agency. It appears from the report, however, that the title to the property is still held by the RDA. Again, there is no transfer identified. It appears that what the Controller is ordering is that the City remove the \$70,000 book value of whatever property the report refers to from its records and reflect this on the Successor Agency's records. We cannot determine, however, from the report whether this is what is being demanded. We also cannot determine from the report what property is being referred to. Without these details, we cannot address or comment on the report or findings or order relating to this purported "transfer". Accordingly, the Controller is requested to provide that detail and its basis for determining that there is any prohibited transfer. The City and Successor trust that they will be permitted provide further comment on any new draft report which corrects these deficiencies before the report becomes final.

Very truly yours,

**COSTANZO & ASSOCIATES**



Neal E. Costanzo

NEC/js

December 3, 2013  
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