

FAIRFIELD REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

October 2014



JOHN CHIANG
California State Controller

October 6, 2014

David White, Assistant City Manager
Fairfield Redevelopment Successor Agency
1000 Webster Street
Fairfield, CA 94533

Dear Mr. White:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office reviewed all asset transfers made by the Fairfield Redevelopment Agency (RDA) to the City of Fairfield (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 \$139,832,402 in assets after January 1, 2011, including unallowable transfers to the City totaling \$14,416,095, or 10.31% of transferred assets. These assets must be turned over to the Successor Agency.

However, on June 11, 2012, various properties in the amount of \$3,532,037 were approved for governmental-purpose use. Therefore, the remaining \$10,884,058 in unallowable transfers 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.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/mh

cc: Harry T. Price, Oversight Board Chairman
City of Fairfield Successor Agency
Simona Padilla-Scholtens, CPA, Auditor-Controller
Solano County
David Botelho, Program Budget Manager
California Department of Finance
Richard J. Chivaro, Chief Legal Counsel
State Controller's Office
Elizabeth González, Bureau Chief
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Daniela Anechitoaie, Auditor-in-Charge
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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 Fairfield 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 \$139,832,402 in assets after January 1, 2011, including unallowable transfers to the City of Fairfield (City) totaling \$14,416,095, or 10.31% of transferred assets.

However, on June 11, 2012, various properties in the amount of \$3,532,037 were approved for governmental-purpose use. Therefore, the remaining \$10,884,058 in unallowable transfers 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 asset transfers 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 RDA and the City.
- 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 Fairfield Redevelopment Agency transferred \$139,832,402 in assets after January 1, 2011, including unallowable transfers to the City of Fairfield totaling \$14,416,095, or 10.31% of transferred assets.

However, on June 11, 2012, various properties in the amount of \$3,532,037 were approved for governmental-purpose use. Therefore, the remaining \$10,884,058 in unallowable transfers must be turned over to the Successor Agency.

Details of our findings 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 August 4, 2014. David A. White, City Manager, responded by letter dated August 18, 2014, 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 Successor Agency, the City of Fairfield, 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 6, 2014

Finding and Order of the Controller

FINDING— Unallowable asset transfers to the City of Fairfield

The Fairfield Redevelopment Agency (RDA) made unallowable asset transfers of \$14,416,095 to the City of Fairfield (City). The transfers 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 cash and various properties.

Unallowable asset transfers were as follows:

- On January 17, 2011, the RDA transferred \$3,245,220 in cash to the City (Resolution No. 2011-21) to purchase a property consisting of 29 acres of land (APN 0168-010-010, 0168-041-150, and 0167-141-210).
- On June 30, 2011, the RDA transferred \$7,638,838 to repay a loan advance from the City (IGS Loan) consisting of the following: \$4,487,000 (interest) paid out of Cordelia Fund 814, using tax increment money; \$265,000 (\$67,233 in principal and \$197,767 in interest) paid out of City Center Fund 813, using tax increment money; and \$2,886,838 (\$2,400,000 in principal and \$486,838 in interest) paid out of North Texas Fund 817, using the proceeds generated by a bond issuance.
- In March and July of 2011, the RDA transferred properties to the City with values of \$3,532,037 (see Schedule 1 for details).
- The RDA had two additional properties that were not recorded in the RDA's records as of January 31, 2012: the Oakbrook Elementary School property located at 700 Oakbrook Drive, APN 0180-253-010 and the Suisun Valley Road at I-80, APN 0027-260-230 (Truck Stop).

On March 7, 2011, the RDA transferred the Oakbrook Elementary School property at no cost to the City per Resolution No. RA2011-15. The purpose of this transfer was to enable the City to fully transfer the property to the Fairfield Suisun Unified School District.

The Suisun Valley Road at I-80, APN 0027-260-230 (Truck Stop) property was not recorded in the RDA's records. However, additional support documents we received show that this property was listed at \$0 value in the Successor Agency's Property Report as of February 1, 2012.

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 sections 34177(d) and (e).

Order of the Controller

Pursuant to H&S Code section 34167.5, the City is ordered to return the assets, in the amount of \$14,416,095, and turn over the assets to the Successor Agency.

The Successor Agency is directed to properly dispose of the assets in accordance with H&S Code sections 34177(d) and (e).

City's Response

As stated in the Draft Report on January 17, 2011, the former RDA transferred \$3,245,220 in cash to the City to purchase certain property (the "Property"). The transaction was recorded in the City's general ledger on March 3, 2011. Regardless, the Agency and the City object to the order to transfer \$3,245,220 from the City to the Agency. The sale of the Property was a valid and legal transaction, which was completed before the adoption of AB x 1 26 on June 28, 2011, and prior to the Former RDA's dissolution on February 1, 2012.

SCO's Comments

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. As this \$3,245,220 transfer to the City occurred on January 17, 2011, it is considered invalid. Therefore, the Finding and Order of the Controller remain as stated.

City's Response

As also stated in the Draft Report, on June 30, 2011, the Former RDA transferred \$7,638,838 to repay a loan advance from the City. The amounts transferred on June 30, 2011 are incorrect. The Former RDA repaid a loan in the amount of \$2,886,838 on February 10, 2011, and repaid other loans totaling \$4,752,000 on June 30, 2011. Regardless of this inaccuracy, the Agency and the City object to the order to transfer the \$7,638,838 in loan repayments. The Former RDA's repayment of the City's loan was required pursuant to the Former RDA's obligation to the City, which existed long before the adoption of AB x 1 26 on June 28, 2011 and prior to the Former RDA's dissolution on February 1, 2012. The order to return to the Agency, for purpose of distribution to taxing entities, the loan repayments from the Former RDA to the City is an unconstitutional "transfer" of tax increment allocated to the Former RDA pursuant to Section 16 of Article XVI of the California Constitution.

SCO's Comment

Based on the documentation provided to the SCO auditors (i.e. *the Fairfield RDA, Schedule of Interfund Agency Loans, Extensions and Repayments, including Unpaid Interest*) the RDA transferred, during the fiscal year 2011, a total of \$7,638,838 for the repayment of the IGS loan, consisting of the following:

- \$4,487,000 transfer in interest out of the RDA's Cordelia Debt Service, Fund 814 on June 30, 2011.
- \$67,233 transfer in principal and \$197,767 transfer in interest out of the RDA's City Center Debt Service, Fund 813 on June 30, 2011.
- \$2,400,000 transfer in principal and \$486,838 transfer in interest out of the RDA's North Texas Fund 817 on February 10, 2011.

As previously mentioned, 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. As a result, loan repayments made by the RDA to the City during the period of January 1, 2011 through January 31, 2012 are invalid.

Additionally, H&S Code section 34167.5 states that if such an unallowable transfer occur, the Controller shall order the return of those assets to the Successor Agency. Therefore, the Finding and Order of the Controller remain as stated.

City's Response

The Draft Report also identifies property transfers in March and July 2011 at a value of \$3,352,037 (...) which were described as being "Government Use Properties". Accordingly, the Oversight Board adopted its Resolution No. OB2012-08 on July 11, 2014, to transfer the Government Use Properties from the Agency to the City. . . .

SCO's Comment

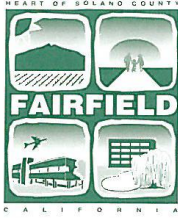
The SCO acknowledges the City's response and will adjust this finding.

**Schedule 1—
Unallowable Asset
Transfers to the City of Fairfield
after January 1, 2011**

Cash transfers:	
Cash transferred on January 17, 2011, for purchase of 29 acre property	\$ 3,245,220
Cash transferred on June 30, 2011, for repayment of IGS loan	<u>7,638,838</u>
Total cash transfers:	10,884,058
Various property transfers in March and July 2011	
Fairfield Center for creative arts	1,090,531
Green Valley Corporate Park (Planned Employment Center)	85,141
Police Investigation Unit headquarters	855,198
Police parking lot (Pruneyard)	1,102,432
Police local operations/community center	<u>398,735</u>
Total property transfers:	3,532,037
Unrecorded assets with \$0 values deeded to the RDA, paid for by the RDA	
Oakbrook Elementary School property transferred on March 7, 2011	—
Suisun Valley Road at I-80 (Truck Stop)	<u>—</u>
Total unrecorded assets	—
Total unallowable transfers to the City of Fairfield: Subject to Health and Safety Code section 34167.5	<u>14,416,095</u>
Adjustments:	
Various property transfers in March and July 2011 approved for governmental purpose:	
Fairfield Center for creative arts	(1,090,531)
Green Valley Corporate Park (Planned Employment Center)	(85,141)
Police Investigation Unit headquarters	(855,198)
Police parking lot (Pruneyard)	(1,102,432)
Police local operations/community center	(398,735)
Oakbrook Elementary School	<u>—</u>
	(3,532,037)
Unrecorded asset with \$0 value transferred to the Successor Agency	
Suisun Valley Road at I-80 (Truck Stop)	<u>—</u>
Total unallowable transfers subject to H&S Code section 34167.5	<u>\$ 10,884,058</u>

See the Finding and Order of the Controller section.

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



CITY OF FAIRFIELD

Founded 1856

Incorporated December 12, 1903

CITY MANAGER'S OFFICE

August 18, 2014

COUNCIL

Mayor

Harry T. Price
707 428 7395

Vice-Mayor

Rick Vaccaro
707 429 6298

Councilmembers

707 429 6298

Pam Bertani

Catherine Moy

John Mraz

City Manager

David White
707 428 7400

City Attorney

Gregory W. Stepanich
707 428 7419

City Clerk

Karen L. Rees
707 428 7384

City Treasurer

Oscar G. Reyes Jr.
707 428 7496

DEPARTMENTS

City Manager's Office

707 428 7400

Community Development

707 428 7461

Community Resources

707 428 7465

Finance

707 428 7496

Fire

707 428 7375

Police

707 428 7362

Public Works

707 428 7485

Elizabeth González

Chief

Local Government Compliance Bureau

State Controller's Office, Division of Audits

P.O. Box 942850

Sacramento, CA 942850

Dear Ms. González:

The Successor Agency (the "Agency") to the Fairfield Redevelopment Agency (the "Former RDA") and the City of Fairfield (the "City") reviewed the draft Asset Transfer Review, Review Report, dated March 2014 (the "March Report"), conducted by the State Controller's Office. By its letter dated April 28, 2014, the City responded to the March Report. The City and Agency are now in receipt of the draft Asset Transfer Review, Review Report, dated August 2014 (the "Draft Report").

The Agency and the City appreciate the opportunity to comment and respond to the Draft Report. The March Report concluded that the Former RDA made unallowable asset transfers to the City in the amount of \$10,884,058 and orders the City to transfer such amount to the Agency. The Draft Report identifies additional unallowable asset transfers in the amount of \$3,532,037 and orders the City to transfer a total amount of \$14,416,095 in assets to the Agency. In summary, as stated in the City's April 28, 2014, letter to the State Controller's Office, the City and Agency believe that the State Controller does not have the authority to order the City to return the assets identified in the Draft Report for the reasons described below.

As stated in the Draft Report, on January 17, 2011, the former RDA transferred \$3,245,220 in cash to the City to purchase certain property (the "Property"). The transaction was recorded in the City's general ledger on March 3, 2011. Regardless, the Agency and the City object to the order to transfer \$3,245,220 from the City to the Agency. The sale of the Property was a valid and legal transaction, which was completed before the adoption of AB x1 26 on June 28, 2011, and prior to the Former RDA's dissolution on February 1, 2012. In 2010, the California Voters approved Proposition 22 amending the California Constitution to provide "the Legislature shall not ... [r]equire a community redevelopment agency . . . to pay, remit, loan, or otherwise transfer, directly or indirectly, [tax increment] allocated to the agency pursuant to Section 16 of Article XVI [of the California Constitution] to or for the benefit of the State, any agency of the State, or any jurisdiction." The order to return to the Agency, for purposes of distribution to taxing entities, the sale price paid by the Former RDA to the City is an unconstitutional "transfer" of tax increment allocated to the Former RDA pursuant to Section 16 of Article XVI of the California Constitution.

As also stated in the Draft Report, on June 30, 2011, the Former RDA transferred \$7,638,838 to repay a loan advance from the City. The amounts transferred on June 30, 2011 are incorrect. The Former RDA repaid a loan in the amount of \$2,886,838 on February 10, 2011, and repaid other loans totaling \$4,752,000 on June 30, 2011. Regardless of this inaccuracy, the Agency and the City object to the order to transfer the \$7,638,838 in loan repayments. The Former RDA's repayment of the City's loan was required pursuant to the Former RDA's obligation to the City, which existed long before the adoption of AB x1 26 on June 28, 2011 and prior to the Former RDA's dissolution on February 1, 2012. The order to return to the Agency, for purposes of distribution to taxing entities, the loan repayments from the Former RDA to the City is an unconstitutional "transfer" of tax increment allocated to the Former RDA pursuant to Section 16 of Article XVI of the California Constitution.

The Draft Report also identifies property transfers in March and July 2011 at a value of \$3,352,037, which were not included in the March Report. The properties are described as follows: (1) Fairfield Center for Creative Arts, (2) Green Valley Corporate Park (planned employment center), (3) police investigation unit headquarters, (4) police parking lot (Pruneyard), (5) police local operations / community center, (6) Oakbrook Elementary School, and (7) Suisun Valley Road at I-80 (truck stop) (properties described in 1 through 6 above, being the "Government Use Properties"). The Redevelopment Dissolution Law (being California Health and Safety Code Sections 34161 through 34191.5) created a number of uncertainties related to the Former RDA's activities, including the Former RDA's transfer of Government Use Properties in 2011. However, the Redevelopment Dissolution Law provides specific authority for the Oversight Board to direct the Successor Agency to dispose of the Former RDA's real property assets.

As relevant here, California Health and Safety Code Section 34181(a) specifically authorizes the Oversight Board to direct the Agency to transfer ownership of those assets that were constructed and used for a governmental purpose. Accordingly, the Oversight Board adopted its Resolution No. OB2012-08 on July 11, 2014, to transfer the Government Use Properties from the Agency to the City and directed the Agency to execute and deliver quitclaim deeds to the City to remove any cloud on the City's fee title to such properties. As relevant here, Resolution No. OB2012-08 became effective under the terms and conditions specified in Section 34181 and the Agency transferred the Government Use Properties to the City in compliance with the Redevelopment Dissolution Law. We are not aware of any legal authority for the State Controller's Office to order the City to return the Government Use Properties, which the Agency transferred in compliance with the Redevelopment Dissolution Law.

Finally, the Draft Report states that the Former RDA transferred the Suisun Valley Road at I-80 (truck stop) property to the City. According to our records, the Former RDA did not transfer this property to the City, and the Agency holds title to the property. Therefore, the City does not need to return such property to the Agency.

Letter to Elizabeth González
August 18, 2014
Page 3

This response does not waive the right of the Agency and the City to later provide additional information or statements as part of the review process. The Agency and the City retain the right to raise new issues with respect to the State Controller's order and the Draft Report. These responses and objections are made without prejudice to, and are not a waiver of, the Agency's and the City's right to rely on other facts, documents, responses, or information in the review process or at a later proceeding. By providing this response and making the objections herein, the Agency and the City do not waive, and hereby expressly reserve, their rights to assert any and all objections to the State Controller findings and statements in this review process, or in any other proceedings, on any and all grounds. Further, the Agency and the City provide this response without in any way implying that they consider all of the State Controller's findings and statements to be legally valid and factually correct. The Agency and the City reserve the right to supplement, clarify, revise, or correct any and all of the responses and statements herein, and to assert additional information or arguments, in one or more subsequent responses to, or other correspondence with the State Controller.

Sincerely,



DAVID A. WHITE
City Manager

DAW/ah

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

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