

SELMA REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



BETTY T. YEE
California State Controller

July 2015



BETTY T. YEE
California State Controller

July 17, 2015

Ken Grey, City Manager
Selma Redevelopment/Successor Agency
1710 Tucker Street
Selma, CA 93662

Dear Mr. Grey:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Selma Redevelopment Agency (RDA) to the City of Selma (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 \$3,540,506 in assets after January 1, 2011, including unallowable transfers to the City totaling \$950,000, or 26.83% of transferred assets. These assets must be turned over to the Successor Agency.

However, on November 12, 2013, the Department of Finance ordered the Fresno County Auditor-Controller to withhold \$125,000 from the Successor Agency's Redevelopment Property Tax Trust Fund distributions on its Recognized Obligations Payment Schedule 13-14B in connection with the RDA's Due Diligence Review. Included with the withholding amount is the \$75,000 loan repayment. Therefore, the remaining \$875,000 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/ljs

Attachment

cc: Steven Yribarren, CPA, Consultant
City of Selma
Neal Costanzo, City Attorney
Costanzo & Associates, PC
Roseann Galvan, Oversight Board Chair
City of Selma
Vicki Crow, CPA, Auditor-Controller
County of Fresno
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Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Selma 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 \$3,540,506 in assets after January 1, 2011, including unallowable transfers to the City of Selma (City) totaling \$950,000, or 26.83% of transferred assets. These assets must be turned over to the Successor Agency.

However, on November 12, 2013, the Department of Finance ordered the Fresno County Auditor-Controller to withhold the Successor Agency's Redevelopment Property Tax Trust Fund distributions on its Recognized Obligations Payment Schedule 13-14B in connection with the RDA's Due Diligence Review, which included the \$75,000 loan repayment. Therefore, the remaining \$875,000 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 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 Selma Redevelopment Agency transferred \$3,540,506 in assets after January 1, 2011, including unallowable transfers to the City of Selma totaling \$950,000, or 26.83% of transferred assets. These assets must be turned over to the Successor Agency.

However, on November 12, 2013, the Department of Finance ordered the Fresno County Auditor-Controller to withhold the Successor Agency's Redevelopment Property Tax Trust Fund distributions on its Recognized Obligations Payment Schedule 13-14B in connection with the RDA's Due Diligence Review, which included the \$75,000 loan repayment. Therefore, the remaining \$875,000 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 22, 2014. Neal E. Costanzo, City Attorney, responded by letter dated September 8, 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 City of Selma, 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 17, 2015

Finding and Order of the Controller

FINDING— Unallowable asset transfers to the City of Selma

The Selma Redevelopment Agency (RDA) made unallowable asset transfers of \$950,000 to the City of Selma (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 June 20, 2011, and September 6, 2011, the RDA transferred \$725,000 in capital asset properties to the City.
- On January 30, 2012, the RDA transferred \$225,000 in cash to the City (\$75,000 for a loan repayment, and \$150,000 for prepayment of administrative charges).

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 the 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 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 of Selma is ordered to reverse the transfers of assets in the amount of \$950,000 and turn over the assets to the Successor Agency.

However, on November 12, 2013, the Department of Finance (DOF) ordered the Fresno County Auditor-Controller to withhold the Successor Agency's Redevelopment Property Tax Trust Fund distributions on its Recognized Obligations Payment Schedule (ROPS) 13-14B in connection with the RDA's Due Diligence Review, which included the \$75,000 loan repayment. Therefore, the remaining \$875,000 in unallowable transfers must be turned over to the Successor Agency.

City's Response

The City disagrees with the SCO's Finding and states that the City and the Successor Agency believe that unallowable transfers did not occur.

See Attachment for the City's complete response.

SCO's Comment

The SCO communicated to the City that the asset transfers to the City are unallowable pursuant to H&S Code section 34167.5. At the exit conference, we stated that we would consider Oversight Board actions. However, due to a recent Superior Court ruling (Successor Agency to the *Brea Redevelopment Agency, et al. v. Matosantos, et al.*), the SCO no longer can accept retroactive Oversight Board approval of RDA asset transfers to the City.

That ruling 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. For example, Health and Safety Code section 34180 sets out a list of actions of the *successor agency* that must be approved by the oversight board, and Health and Safety Code section 34181 sets out a list of acts the oversight board shall direct the *successor agency* to take. 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 had no legal authority or mandate to review actions of the RDA.

The SCO is not denying the fact that the Oversight Board has the right to direct the transfer of assets to the City if the Board sees it as an appropriate action. However, according to the ruling, the Oversight Board can only approve transfers from the Successor Agency and not from the former RDA.

Real Property Transfers:

1. APNs 389-181-07 and 389-182-05

The City disagreed with the findings regarding the former Gateway Building/Current Arts Center and Parking Lot at 1936 High Street. Yet, the City agrees that both properties were purchased by the RDA and the RDA held the grant deed titles to each of the properties.

The draft report was issued with no value for the parking lot because the City and Successor Agency were not able to provide documentation to show the value of the property. The documentation received by the SCO shows the grant deeds and Resolution No. 2011-3RDA, transferring the properties from the RDA to the City on June 20, 2011. Once the properties are turned over, the Successor Agency, with Oversight Board approval, can decide whether the properties are for governmental purposes and how to dispose of the properties.

2. APN 398-072-32

As with the properties mentioned above, the SCO has no authority to determine whether the parcel with APN 398-072-32 was purchased for municipal or governmental purpose. The RDA transferred this property to the City and the property was not encumbered to a third party prior to June 28, 2011.

3. APN 389-213-05

The City asserts that the City conveyed the property and transferred it to the RDA without consideration. However, the City was not able to provide documentation showing that the City ever owned the property. According to the grant deed provided to the SCO, this vacant property was conveyed to the RDA on March 13, 1998, for valuable consideration, from Eugene Ying and Janet W.F. Ying. Therefore, the property belongs to the RDA, and is subject to H&S Code section 34167.5.

Monetary Transfers

4. \$150,000

Pursuant to H&S Code section 34167.5, the SCO has the authority to review all asset transfers and is not limited to the review of real property.

The \$150,000 was a prepayment made to the City by the RDA on January 31, 2012, for administrative and professional services. According to the RDA's general ledger activity, the \$150,000 covered administrative charges from October 2011 through June 2012. However, the RDA no longer existed as of February 1, 2012; therefore, it could not continue to incur charges. The SCO allowed transfers for all other administrative charges incurred by the RDA between January 2011 and September 2011. The SCO inquired about monthly calculations of administrative charges so that partial credit of the \$150,000 could be given for the months of October 2011 through January 2012. The City never replied to the inquiry. Therefore, the SCO took exception to the entire \$150,000 in transfers.

The Successor Agency can incur administrative charges beginning February 1, 2012. Upon receiving a Finding of Completion from the DOF, the Successor Agency can use the ROPS process in order to be reimbursed for any administrative services that it incurs after its establishment.

5. \$75,000

The \$75,000 repayment of the loan is an unallowable transfer, pursuant to H&S Code section 34167.5. The money was not encumbered to a third party and is not for allowable administrative charges.

According to the DOF's letter to the Successor Agency dated April 1, 2013, the \$75,000 is not an enforceable obligation pursuant to H&S Code section 34171(d)(2).

Upon receiving a Finding of Completion from the DOF, the Successor Agency can use the ROPS process in order to be reimbursed for the loan repayment, provided that the Oversight Board finds that the loans were for legitimate redevelopment purposes.

The Finding and Order of the Controller remains as stated for all of the unallowable transfers.

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

Capital assets:

On June 20, 2011, the RDA transferred a parking lot located at 1936 High Street, APN #389-182-05	\$ —
On June 20, 2011, the RDA transferred the former Gateway Building/Current Arts Center, APN #389-181-07	200,000
On June 20, 2011, the RDA transferred 40 acres of agricultural land, APN #393-072-32	525,000
On September 6, 2011, the RDA transferred a communications tower located on City Hall property, APN #389-213-05 ¹	—
Subtotal	<u>725,000</u>
Cash	
On January 30, 2012, the RDA made a prepayment on administrative charges to the City	150,000
On January 30, 2012, the RDA made a loan repayment to the City	<u>75,000</u>
Subtotal	225,000
Less: Loan repayment withheld from Redevelopment Property Tax Trust Fund distributions on the City's ROPS 13-14B	(75,000)
Total unallowable transfers to the City of Selma	<u><u>\$ 875,000</u></u>

¹ The draft review report was issued with an incorrect APN. The correct APN is reflected in the final review report.

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

NEAL E. COSTANZO
MICHAEL G. SLATER

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September 8, 2014

By Mail & Email: egonzalez@sco.ca.gov
Elizabeth Gonzalez, Chief
Local Government Compliance Bureau
State Controller's Office, Division of Audits
P.O. Box 942850
Sacramento, CA 94250-5874

Re: Selma Redevelopment Agency Asset Transfer Review Report

Dear Ms. Gonzalez:

This will serve as the response to the "Draft Selma Redevelopment Agency Asset Transfer Review Report" ("Draft Report") dated August 2014 transmitted to the Selma City Manager and the Selma Redevelopment/Successor Agency.

BACKGROUND INFORMATION

The audit conducted by your office, or Asset Transfer Review as it is referred to in the Draft Report, was completed long ago with the preliminary exit conference occurring January 8, 2014. The City and Successor were requested to provide extensive information and documentation concerning what the draft report refers to as "unallowable transfers to the City of Selma totaling \$950,000 of transferred assets". What the City and Successor Agency provided clearly established that none of the "transfers" referred to in the draft report are in fact unallowable transfers under the governing Redevelopment Dissolution Law. The City and Successor also provided extensive legal authorities showing that to the extent any such transfers did occur, they are not the type of transfer that may be set aside under the Redevelopment Dissolution Law.

The Controller's Office, before finalizing a conclusion that Selma was correct and that no unallowable transfers subject to being set aside existed, requested, and the Successor did, submit to its Oversight Board for its consideration the question of whether there were unallowable transfers. The Oversight Board adopted two resolutions, both of which have been provided to the Controller's Office, Resolution 2014-2, specifically addressing in detail the facts, circumstances and law applicable to transfers identified in the draft report that are real property and 2014-3, relating to the two purported transfers of money. Following adoption of resolutions, 2014-2 and 3, the Successor and City were

notified by the Controller on February 26, 2014, that a final report would be issued and would reflect that there were no unauthorized or "unallowable" transfers, and that no further action was required of the City or Successor.

THE SUPERIOR COURT DECISIONS

On July 15, 2014, the City was contacted by the Chief Auditor and apprised that because of recent superior court rulings, the Controller had determined that the Oversight Board had no power, authority or jurisdiction to issue the above resolutions finding that the transfers identified were, for stated reasons, allowable and fully consistent with the Redevelopment Dissolution Law and that, as a consequence, a new draft report reversing the Controller's stated intention to issue a final report acknowledging that there were no unallowable transfers, would issue for the City's review and comment that identifies all of the subject transfers as unallowable and ordering the reconveyance or return of those assets to the Successor. Three decisions of the Superior Court were provided by the Controller in support of this claimed need to reverse its determination. Of the three decisions provided, the City of Brentwood v. California Department of Finance (DOF) ("Brentwood"); City of Fresno et al v. Montosantos et al ("Fresno"); and, City of Brea v. Montosantos (Brea), only the last, Brea, addresses the authority or jurisdiction of an oversight board in connection with its review of and determinations of whether a transfer occurred.¹

Brentwood does not address the authority, power or jurisdiction of an Oversight Board. The Controller was not a party to the Brea case. That decision is not binding precedent on any court and it only binds that city and DOF. Although the Controller was

¹ The issue is indirectly addressed in the Fresno case, but that discussion deals with a very different issue - what the Oversight Board's role is with respect to the approval or authorization of the transfer of Low to Moderate Income (LMIH) Housing Funds to the entity that chose to become the Replacement Housing Authority under the Dissolution Act. The relevant portion of the decision, dealing with the Oversight Board, finds DOF had no authority to "issue an order that effectively reverses the previously approved transfers of enumerated cash assets to the Housing Authority through its Due Diligence Review power". (At Statement of Decision p. 5-6). Indeed the court found that since DOF had previously made a determination that these very transfers were permissible "it was prohibited from making a contrary determination". (At p. 10). Here, the statute under which the Controller is operating is similar and the Controller is precluded from making a different determination than it previously indicated from it would make in response to the information, documentation and Oversight Board resolutions provided by Selma.

not a party, the court does describe what the Controller did in connection with its review under Section 34178.8. In that case the Controller's Office conducted its transfer review pursuant to that section at the same time DOF was conducting a Due Diligence Review. The court determined that the same land transfers identified by the Controller's Office in its review under Section 34178.8, were not subject to DOF's review under any provision of the Dissolution Act. The court also found that the Controller had exclusive authority to determine the validity of the land transfer. The court reversed DOF's order that the land be transferred back to the Successor for that reason. (At p. 6, 8). With respect to the Controller's Office's reliance on what is characterized as the Oversight Board's retroactive ratification of the transfers, the court states:

"In this case, it does not appear to the court that the Oversight Board action ratifying the land transfer actually was a legitimate and legally necessary action taken pursuant to this part. The Redevelopment Dissolution laws establish Oversight Boards to supervise the actions of Successor Agency's, but not to supervise or ratify (after the fact) the actions of former Redevelopment Agencies" . . . the Oversight Board thus appears to have had no legal authority or mandate to review actions of the RDA

...

Thus, in adopting a resolution to ratify the transfers more than a year later, . . . the Oversight Board was not approving an act of the Successor Agency. Instead, it attempted retroactively to approve an act of the RDA, which it had no legal authority to do. Accordingly, the Oversight Board performed a legally unauthorized and unnecessary act - one that was, and is, of no legal force or effect

Because the Oversight Board's resolution was not a legally valid action 'taken pursuant to this part', it was not subject to review by DOF under Health & Safety Code §34179(h). Instead, the action that was properly subject to administrative review was the RDA's action transferring the land to the City on January 17, 2012. The proper agency to perform that review was the State Controller's Office"

Decision at p. 8-9.

The court concluded that DOF lacked statutory authority to make a determination "regarding land transfers from the RDA to the City" and that its determination that the Oversight Board's ratification of those transfers was required to be set aside, was invalid.

The Controller's Office determination agreeing with the Oversight Board's ratification of the transfer of the properties to the City and that no further action was required by that City as a result was not set aside and was not at issue in the case. The factual and legal basis of the Oversight Board's "ratification" is not disclosed in the decision. The court found only that this determination, specifically relating to real property, as opposed to money, was one DOF lacked statutory authority to make, and was a matter within the authority of the Controller's Office.

Decision at p. 9.

A footnote (footnote 42) makes clear that the question of whether the State Controller's Office acted properly in finding no transfers based upon the Oversight Board's determinations, was not an issue before the court because the State Controller's Office was not a party to the action and no review of its determination was sought. This decision is irrelevant to determining the effect of Selma's Oversight Board's determinations concerning the "transfers" identified in the Draft Report.

Here, the Oversight Board's determinations are not a mere ratification of the action of the former RDA. Instead, Resolutions 2014-2 and 3 are legal and factual determinations based entirely upon the same evidence that was produced to the Controller showing that these "transfers" were either lawful under the provisions of the Dissolution Act, involved property dedicated to a governmental use within the jurisdiction of Selma, involved property that is subject to the contract rights of a third party or are otherwise not transfers within the meaning of the Dissolution Act.

Because it appears that the Controller's Office only has review authority with respect to purported real property transfers, and that the DOF has previously sought, and by withholding real property tax trust fund monies from the Successor to which the Successor is entitled, has fully recovered the two monetary transfers, a \$150,000 expenditure on salaries and benefits of RDA employees and payment of a \$75,000 loan by the City to the RDA, Selma believes the determinations in the Draft Report relative to the two identified monetary transfers have been rendered moot. The Controller is precluded from attempting to require the repayment of these funds to the Successor since the Successor has fully repaid these funds as a result of the DOF's actions. Accordingly, Selma addresses the real property transfers first, and the reasons why the final report issued by the Controller's Office can only determine that there is no transfer that occurred that is not allowable or permitted expressly by the provisions of the Dissolution Act.

THE REAL PROPERTY 'TRANSFERS'

1. APN's 389-181-07 and 389-182-05 (former Gateway Building/Current Arts Center and Parking Lot at 1936 High Street).

The Draft Report states that unallowable asset transfers occurred on June 20, 2011 and September 6, 2011 when the RDA transferred capital asset properties to the City totaling \$725,000. The Schedule I attached to the Draft Report identifies the parking lot at 1936 High Street as being one of the assets transferred on June 20, 2011, but assigns no dollar value to that property. It is unclear, therefore, whether this asset transfer of the parking lot is one of the assets the report indicates "must be turned over to the Successor Agency for disposition in accordance with Health & Safety Code §34177(d) and (e)", since the total capital asset value identified as unallowable asset transfers do not include any value for this parking lot.

The value assigned to the collapsed Gateway Building, which is now the Selma Arts Center is \$200,000 which is the amount the Redevelopment Agency paid to purchase this property on July 15, 2005. The parking lot which is essentially across the street from the Selma Arts Center was purchased by the RDA on July 26, 1988. Both properties were purchased by the RDA for legitimate purpose of redevelopment of what was blighted property. The parking lot was an existing parking lot which was purchased by the RDA for the purposes of improving the parking lot, which it did and the parking lot has at all times been dedicated to a municipal purpose of providing parking in downtown Selma.

As recited in the resolution (No. 2011-3RDA) after the parking lot was redeveloped, the Redevelopment Agency continued to hold title to the property simply because it had more flexibility with respect to holding and disposition of real property than does the City. The City adhered to a practice of having the Redevelopment Agency hold title to various parcels of real property, all of which were in fact intended for and in this case used by the City for municipal purposes. The acquisition and improvement of the parking lot is a legitimate and duly authorized Redevelopment activity under state law as it existed at the time.

With respect to the former Gateway Building, that too was purchased by the RDA and was at the time of that purchase a vacant dilapidated structure within the RDA boundaries. It was purchased by the RDA for the purpose of redeveloping it into a publically owned building or facility to be used by the City of Selma, again, a legitimate Redevelopment Agency activity under then existing law. The RDA did not actually undertake to develop this particular property. The City of Selma, however, knowing that the site of the former Gateway Building was ultimately to be developed as a City-owned facility, procured insurance coverage on that old building. The old Gateway Building sat on a relatively small lot in downtown Selma which, for the most part, consists of very old

connected buildings, or buildings that are in very close proximity to one another. When the building collapsed, it damaged the adjoining structure and the City was sued, and through insurance, was required to pay damages to the adjoining property owner to settle that suit.

Once the building collapsed, which occurred prior to the June 20, 2011 transfer of title to the City, that property necessarily had a negative fair market value as ownership of the lot carried with it a significant civil liability to the adjoining property owner and because, as the owner of the property, the City was required to demolish and remove the debris from the site, which was an exceedingly expensive endeavor that was covered, for the most part, by insurance that the City of Selma had procured on that building prior to its collapse. The cost of the demolition work and satisfying the liability to the adjoining property owner was significantly in excess of the amount paid for the property by the RDA.

Once the liability that the adjoining property owner was satisfied and the demolition and removal of debris from the site had been completed, the City of Selma, using primarily the insurance proceeds from insurance that it had paid for, constructed the current Selma Arts Center at that site. In addition to insurance proceeds, private donations and contributions from the City of Selma were used to supplement the cost of that development. What was transferred to the City of Selma on June 20, 2011, was a collapsed building that had absolutely no value and was in fact a significant liability for the owner. That liability was covered by the City. The current property now fully developed as the Selma Arts Center does have a significant value, but that value is the product of expenditures made improving the property by the City of Selma.

The provision under which the asset transfer review report was generated, is Health & Safety Code §34167.5 which provides that the Controller shall review the activities of Redevelopment Agencies to determine whether an asset transfer has occurred after January 1, 2011, between the City that created the RDA and the RDA and that if such asset transfers did occur during that period and "the government agency that received the assets is not contractually committed to a third party for the expenditure or encumbrance of those assets, to the extent not prohibited by state and federal law, the Controller shall order the available assets to be returned to the Redevelopment Agency or the Successor Agency, as the case may be". The statute, therefore, provides by its own terms that the Controller is to order the available assets to be returned to the Successor if and only if that is not prohibited by state and federal law. (Health & Safety Code §34167.5).

Unlike the situation in Brea, the Oversight Board in this case acted pursuant to specific statutory authority giving it discretion to make determinations concerning the use to which the property has been dedicated and to order that the local governmental agency that has put the property to a specified use may retain it. Section 34181 of the dissolution

Elizabeth Gonzalez
September 8, 2014
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law provides that the Oversight Board "shall direct the Successor Agency" to "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 these assets that were constructed and used for a government purpose, such as roads, school buildings, parks, police and fire stations, libraries and local administrative buildings, to the appropriate public jurisdiction pursuant to any existing agreement relating to the construction or use of such an asset".

The Oversight Board's resolution insofar as it relates to the former Gateway Building and Current Art Center and the adjacent parking lot specifically recites and refers to the provisions of Section 34818(a), and based upon recitations that mirror the facts recited above, and that are plainly apparent from documents and information provided to the Controller in connection with its audit, finds that the Arts Center and the parking lot are "properties [that] were acquired and constructed for the purpose of serving a governmental use and are in fact dedicated to that government use, all in accordance with the state law in existence at the time of the acquisition, construction and/or improvement". The Oversight Board approved the transfer by the RDA to the City specifically on this basis.

While it is true that the Oversight Board has not directed the Successor Agency to transfer ownership of the Arts Center or parking lot that were in fact constructed and used for a governmental purpose of the type specifically referred to in Section 34181(a) to the appropriate public jurisdiction, in this case, the City of Selma, its approval of the transfer is premised upon a discretionary determination that it alone has the statutory authority to make, subject only to the review of the DOF, which must be conducted timely and, in this case, was not. (Section 341818(f)). As acknowledged in the City of Fresno case, the fact that the Oversight Board approved the transfer, as opposed to ordering the Successor Agency to transfer ownership is, quite simply, a function of who held ownership at the time the Oversight Board made its discretionary determinations. It would serve no legitimate or useful purpose, as the court specifically noted in the City of Fresno case, to have the City transfer ownership of the Arts Center or the parking lot to the Successor Agency, only to have the Oversight Board order the retransfer of that title to the City based upon the discretionary determination that has already been made by the Oversight Board; that the Arts Center and parking lot were both assets constructed and used for a governmental purpose. (See City of Fresno Statement of Decision p. 6 ("An order directing that asset transfer required by law be reversed so that the Oversight Board may simply order the assets transferred back to the City serves no legitimate purpose.")).

Contrary to the position taken by the Controller's Office that the Brea case requires the City to transfer those assets back to the Successor Agency so that the Oversight Board may order the assets transferred back to the City pursuant to the provisions of Section

34181(a) it is clear such an order would plainly serve no legitimate purpose and is simply not required by the provisions of Section 34167.5. The statute, as noted, provides by its terms that an order requiring the "available assets to be returned to the Successor Agency" can be made if and only if that it is not prohibited by state or federal law. Here, the state law relating to the Oversight Board's discretion to make this determination would be violated by an order requiring that transfer to occur.

Moreover, the property acquired in 2005 was a legitimate acquisition by the Redevelopment Agency for the purpose of eliminating blight within the Redevelopment boundary area. Through no fault of the RDA or of the City, the property was rendered worthless by the time the property was transferred to the City on June 20, 2011, and the entire development (and any enhancement to the value of that property) was undertaken at the sole expense of the City of Selma which has effectively acquired the property by transforming it from a worthless property into an asset that is dedicated to the municipal use.

The Oversight Board's determination with respect to the parking lot or the building cannot simply be overlooked by the Controller. The determination is binding on the Controller and is not in any sense the same type of determination that was apparently involved in the Brea case. The Brea case is no authority for the abrupt decision of the Controller's Office to reverse its prior determination that this is not a transfer that can be ordered reversed under the Dissolution Act. The City would be forced to resist any such order by initiating appropriate litigation which, as you can see from the decisions in Brea and Fresno, must necessarily be determined in the City's favor. The City wishes to avoid that litigation, and urges the Controller to evaluate the legal basis of its determinations more carefully. The parking lot is also obviously valueless except as a City parking lot, has been and is dedicated to the public use for many years and is also a matter as to which the Oversight Board has discretion in determining that it is validly held by the City as opposed to the Successor Agency.

2. APN 398-072-32 vacant land (40 acres on Nebraska Avenue)

The Oversight Board exercised similar discretionary authority relative to approving the City's retention of the 40 acre parcel on Nebraska Avenue. The land is assigned a value of \$525,000 by the Draft Report. (As Schedule I). As with the Gateway Building, the RDA purchased the property at that price for the legitimate Redevelopment purpose of creating a park or other municipal use facility. The acquisition was made in 2007. The property was not ever developed by the RDA. Instead, in advance of the dissolution of the RDA, the property was transferred by the RDA to the City on June 20, 2011, so that the use of the property for a municipal purpose as intended could be carried out. The City, in

turn, on October 1, 2012, entered into and is currently bound by a cooperative agreement with Consolidated Irrigation District (CID), a copy of which is in the possession of the Controller, pursuant to which the City is obliged to transfer the 40 acre parcel to CID. In exchange, the City receives a much larger parcel - known as Rockwell Pond - which is currently a ponding basin that is in fact dedicated to the municipal use in that the pond, generally located north of Floral Avenue and west of Highway 99 in the City of Selma is the location where the City's storm drain system discharges. Accordingly the pond serves both as a retention basin for stormwater discharge for the City of Selma stormwater system and is intended to be developed, partially, as a park or other recreational facility following the acquisition of Rockwell Pond by the trade of the 40 acre parcel.

By transferring the 40 acre parcel to the Successor as required by the Draft Report, the City would be willingly breaching the Cooperative Agreement it has with CID by making it impossible for the City to perform by transferring the 40 acre parcel in exchange for Rockwell Pond. As noted, the statute under which the Controller is conducting this asset review specifically provides that the Controller's authority to order the reversal of a transfer is limited to assets as to which the recipient is "not contractually committed to a third party for the expenditure or encumbrance of those assets" and to the extent such an order is not prohibited by state or federal law. (Section 34167.5). An order requiring the transfer of the 40 acre lot to the Successor is both prohibited by state law and not permitted by Section 34167.5 because the City is very clearly contractually obligated to a third party to transfer this asset.

The City does not have the option of transferring this asset to the Successor as doing so will cause it to breach its agreement with CID. The agreement relates to a great many other things. The agreement, in addition to providing for the trade of Rockwell Pond for the 40 acre lot, is one which establishes, subject to approval of California Public Utilities Commission, which is currently being sought and expected to be obtained in Application No. A.14-08-001, a surcharge on ratepayers and the creation of a replenishment fund from which groundwater recharge activities and projects are to be funded. It also disposes of lawsuits against the City of Selma, one of which relates to the legality of the City's practice of discharging water into Rockwell Pond, a facility currently owned by CID.

Thus, in addition to determining that the asset is plainly not subject to an order requiring a retransfer of the property to the Successor, the Oversight Board determined, as it did with respect to the Arts Center and parking lot that the property which the City is due to receive, which is Rockwell Pond, and not the 40 acre parcel, is property that is dedicated to a municipal use and is required and allowed by virtue of Section 34181(a) to be retained by the jurisdiction which is using that property for that governmental purpose, in this case, the City of Selma. Again, the City would be forced to resist an order of the

Controller that this property be transferred to the Successor solely so that the Oversight Board may order its retransfer back to the City pursuant to Section 34181(a). Such an order, as shown by the City of Fresno case could serve no legitimate purpose and would not be a lawful order consistent with the provisions of Section 34167.5 since there is an intervening contract with a third party involved.

3. APN 289-213-05, Vacant Lot Surrounding City Hall.

The records received by the Controller's Office clearly show that the vacant land surrounding City Hall is property that was actually purchased by the City, for future expansion of its City Hall in 1997. The title was only held by the RDA and the transfer from the RDA to the City only occurred because the City, during the RDA's existence adhered to a consistent practice of having the RDA hold title to all of its real property for purposes of convenience as the RDA had virtually unlimited authority with respect to the disposition of real property, an activity as to which the City is restricted by various laws relating to surplus property owned by a city. The transfer to the RDA by the City was without any consideration. The RDA held title to this property in name only, and only as the agent of the City which paid to acquire it. Needless to say, the Oversight Board was acting well within its authority in determining that this vacant land which surrounds City Hall and includes the communications tower which the City leases currently to a number of other public entities and private enterprises, and which it uses for its own municipal purposes is property which has already been dedicated to a governmental use and rightfully retained by the City pursuant to the provisions of 34181(a). Further, since the RDA simply held this title solely for purposes of the convenience of the City and as the City's agent, the City is entitled to require the RDA to reconvey the property to the rightful owner at any time it wishes. Ordering the City to reconvey the property to the Successor would plainly violate state and federal laws. The property simply is not subject to a recision or retransfer order by the Controller's Office.

THE MONETARY TRANSFERS

4. Transfers of \$75,000 and \$150,000 Prior to the RDA's Dissolution.

As alluded to above, it seems very clear from the City of Brea decision that the Controller's authority to review and set aside asset transfers is limited to assets that are real property. In connection with its Due Diligence Review process DOF has identified these same purported transfers, the \$150,000 payment to the City of Selma for goods and services rendered, by employees shared by the City and the former RDA for the period from October 1, 2011 to June 30, 2012 and the \$75,000 amount remaining owing on a loan made by the City to the RDA in 2001 as money available to other taxing agencies held by

the Successor. By withholding orders, and adjustments to the Recognized Obligation Payment Schedules with respect to the source of monies to be paid against enforceable obligations, DOF has mandated the distribution by the County Auditor of far more than the total of these two amounts to other taxing agencies. The Controller's Office is simply precluded from ordering the City from paying again what the Successor has already paid pursuant to the directives of DOF.

The Controller is routinely copied on DOF's determinations concerning the Due Diligence Review and its review of the semi-annual ROPS. The above facts are clear from DOF's April 4, 2014 letters relating to ROPS 13-14B. Moreover, this particular "clawback" provision of the Dissolution Act is quite similar to the provisions allowing DOF to enforce its orders against a city, which have been declared unconstitutional by the same Superior Court the Controller is relying upon to say that the Oversight Board's determinations in this case are invalid.

The Draft Report directs return to the Successor of \$150,000 paid by the RDA, prior to its dissolution, to the City, on January 31, 2011 and \$75,000 paid to the City on the same date. A transfer within the meaning of Health & Safety Code §34167.5 is defined in Section 34179.5(b)(3) to mean the "transmission of money to another that is not in payment for goods and services". The \$150,000 payment to the City of Selma was the semi-annual administrative charge assessed to the RDA by the City throughout the entire term of its existence in order to pay that portion of the salary and benefits of City/RDA shared employees attributable to their services rendered in connection with the operations of the RDA. The payment was for salaries and benefits of those employees falling due between October 2011 and June 2012, all of which were payments that were budgeted by both the City and the RDA prior to the date of the RDA's dissolution. The Successor received absolutely no allocation of any administrative expense during the first six months of its operations because its ROPS - 1 was not funded at all. It is clear from the documents that were provided to the Controller that the \$150,000 was in fact spent to cover salaries and benefits of City/RDA employees for the referenced time period.

Beginning in 2001, the City loaned the RDA several hundred thousands of dollars which as shown by the RDA's general ledger that was provided during your audit was slowly repaid to the City during the following decade and one half. The \$75,000 is, quite simply, the remaining amount owing when the legislature abruptly declared that it was dissolving Redevelopment Agencies. Section 34167(d)(2) provides that loans of money to the RDA for a lawful purpose to the extent they are legally required to be repaid pursuant to a required repayment schedule or other mandatory loan terms is an enforceable obligation of the former RDA which the Successor is obliged to perform. The mandatory terms of this loan are clear from the past practice as reflected by the general ledger entries

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of both the City and the RDA dating back to 2001. The payment was made because the obligation to repaying that money was an enforceable obligation of the RDA and ordering a reversal of that transfer of money so that the money is paid back to the Successor would be a completely ineffectual, unnecessary directive as the Successor is duty bound to repay that enforceable obligation to the City.

CONCLUSION

There is simply no basis for the determination reflected in the Draft Report. The purported transfers identified are either not transfers at all by definition, or they are transfers that are specifically allowable and/or not subject to being set aside as they would involve the setting aside of the transfer to the proper jurisdiction of property that has been dedicated to municipal use, or of property that is subject to the contractual rights of a third party or because ordering the transfer would otherwise violate state and federal law. The current "draft" directive of the Controller that these transfers be reversed appears to be premised entirely upon a misreading and misapplication of the determinations made in the Superior Court decisions referred to above. Selma is confident that on a more careful reevaluation of the situation, the Controller's Office will recognize that the resolutions of the Oversight Board previously adopted and provided are necessarily valid exercises of its discretion that are required to be honored by the Controller.

Sincerely,

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