

TURLOCK REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



BETTY T. YEE
California State Controller

February 2015



BETTY T. YEE
California State Controller

February 4, 2015

Roy W. Wasden, City Manager
City of Turlock/Successor Agency
156 S. Broadway, Suite 230
Turlock, CA 95830

Dear Mr. Wasden:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Turlock Redevelopment Agency (RDA) to the City of Turlock (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 \$41,984,429 in assets after January 1, 2011, including unallowable transfers to the City totaling \$402,582, or less than 1% of transferred assets. These assets must be turned over to the Successor Agency.

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

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/kw

cc: Lauren Klein, CPA, Auditor-Controller
Stanislaus County
Dr. Curt Andre, Oversight Board Chair
c/o Kellie Weaver, City Clerk
City of Turlock
David Botelho, Program Budget Manager
California Department of Finance
Richard J. Chivaro, Chief Legal Counsel
State Controller's Office
Elizabeth González, Bureau Chief
Division of Audits, State Controller's Office
Betty Moya, Audit Manager
Division of Audits, State Controller's Office
Cecilia Michaels, Auditor-in-Charge
Division of Audits, State Controller's Office

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Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Turlock 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 \$41,984,429 in assets after January 1, 2011, including unallowable transfers to the City of Turlock (City) totaling \$402,582, or less than 1% of transferred assets. These assets must be turned over to the Successor Agency.

Background

In January of 2011, the Governor of the State of California proposed statewide elimination of redevelopment agencies (RDAs) beginning with the fiscal year (FY) 2011-12 State budget. The Governor's proposal was incorporated into Assembly Bill 26 (ABX1 26, Chapter 5, Statutes of 2011, First Extraordinary Session), which was passed by the Legislature, and signed into law by the Governor on June 28, 2011.

ABX1 26 prohibited RDAs from engaging in new business, established mechanisms and timelines for dissolution of the RDAs, and created RDA successor agencies and oversight boards to oversee dissolution of the RDAs and redistribution of RDA assets.

A California Supreme Court decision on December 28, 2011 (*California Redevelopment Association et al. v. Matosantos*), upheld ABX1 26 and the Legislature's constitutional authority to dissolve the RDAs.

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

H&S Code section 34167.5 states in part, ". . . the Controller shall review the activities of redevelopment agencies in the state to determine whether an asset transfer has occurred after January 1, 2011, between the city or county, or city and county that created a redevelopment agency or any other public agency, and the redevelopment agency."

The SCO identified asset transfers that occurred after January 1, 2011, between the RDA, the City and/or any other public agency. By law, the SCO is required to order that such assets, except those that already had been committed to a third party prior to June 28, 2011, the effective date of ABX1 26, be turned over to the Successor Agency. In addition, the SCO may file a legal action to ensure compliance with this order.

Objective, Scope, and Methodology

Our review objective was to determine whether asset transfers that occurred after January 1, 2011, and the date upon which the RDA ceased to operate, or January 31, 2012, whichever was earlier, between the city or county, or city and county that created an RDA, or any other public agency, and the RDA, were appropriate.

We performed the following procedures:

- Interviewed Successor Agency personnel to gain an understanding of the Successor Agency's operations and procedures.
- Reviewed meeting minutes, resolutions, and ordinances of the City, the RDA, the Successor Agency, and the Oversight Board.
- Reviewed accounting records relating to the recording of assets.
- Verified the accuracy of the Asset Transfer Assessment Form. This form was sent to all former RDAs to provide a list of all assets transferred between January 1, 2011, and January 31, 2012.
- Reviewed applicable financial reports to verify assets (capital, cash, property, etc.).

Conclusion

Our review found that the Turlock Redevelopment Agency transferred \$41,984,429 in assets after January 1, 2011, including unallowable transfers to the City of Turlock totaling \$402,582, or less than 1% of transferred assets. These assets must be turned over to the Successor Agency.

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

Views of Responsible Officials

We issued a draft review report on August 5, 2014. Roy Wasden, City Manager, responded by letter dated August 15, 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 Turlock, 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

February 4, 2015

Finding and Order of the Controller

FINDING— Unallowable asset transfers to the City of Turlock

The Turlock Redevelopment Agency (RDA) made unallowable asset transfers of \$402,582 to the City of Turlock (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:

- During the period of January 1, 2011, through January 31, 2012, the RDA transferred cash totaling \$75,327 to the City of Turlock to pay 60% of the salary of one Code Enforcement Officer (\$25,576), and 100% of the salary of one Graffiti Abate Maintenance Worker (\$49,751).
- On June 27, 2011, the RDA transferred cash to the City totaling \$327,255 to accomplish purchasing a City-owned property identified as 301 Star Avenue, Turlock, California. The escrow closed on July 11, 2011.

Pursuant to Health and Safety (H&S) Code section 34167.5, the RDA may not transfer assets to a city, county, city and county, or any other public agency after January 1, 2011. The assets must be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177(d) and (e).

Order of the Controller

Pursuant to H&S Code section 34167.5, the City is ordered to reverse the transfers totaling \$402,582 and turn them over to the Successor Agency. The Successor Agency is directed to properly dispose of the assets in accordance with H&S Code section 34177(d) and (e).

City's Response

The City of Turlock believes that the California Constitution prevents the State Controller's Office (SCO) from ordering the City to return valid transfers made by the former RDA. The City provided additional information regarding two items.

See Attachment for the City's complete response.

SCO's Comment

It has been determined that the transfer of funds to the City for the purchase of the home at 26 Murray Street was, in fact, encumbered to a third party and not subject to H&S Code section 34167.5; therefore, this item has been removed from the final review report.

The City states in their response that the Notes Receivable were transferred to the City as the Housing Successor. The interest earned as of January 31, 2012, was included in that transfer. Therefore, this item has been removed from the final review report.

The City states that the sale of property to the former RDA for \$327,255 cash, is a valid and legal transaction that occurred on June 27, 2011, before the execution of ABX1 26. H&S Code section 34167.5 requires the Controller to order the return of assets received by a public agency where the asset, in this case, cash was not already obligated to a third party.

The City contends that a total of \$75,325 was transferred to the City to pay for City employee salaries for conducting work in project areas. As with the cash transfer of \$327,255 for the payment of property above, these transfers were made to the City, and were not obligated to a third party.

The SCO's authority under H&S Code section 34167.5 extends to all assets transferred after January 1, 2011, by the RDA to the city or county, or city and county that created the RDA or any other public agency. As a result, the cash transfers made by the RDA to the City during the period of January 1, 2011, through January 31, 2012, are unallowable. With the exception of the adjustments related to the purchase of the home at 26 Murray Street, and the Notes Receivable and interest, the Order of the Controller remains as stated.

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

Current Assets	
Salaries for two City employees paid with RDA cash on various dates	\$ 75,327
RDA purchased 301 Star Avenue from the City on June 27, 2011	<u>327,255</u>
Total Transfers subject to Health and Safety Code section 34167.5	<u>\$ 402,582</u>

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



ROY W. WASDEN
CITY MANAGER
rwasden@turlock.ca.us

OFFICE OF THE CITY MANAGER
ADMINISTRATION

156 S. BROADWAY, SUITE 230 | TURLOCK, CALIFORNIA 95380 | PHONE 209-668-5540 | FAX 209-668-5668

August 15, 2014

Jeffrey V. Brownfield, CPA
State Controller's Office
P.O. Box 942850
Sacramento, CA 94250-5874

Dear Mr. Brownfield:

The Successor Agency (the "Agency") to the Turlock Redevelopment Agency (the "Former RDA") and the City of Turlock (the "City") have reviewed the draft Asset Transfer Review, Review Report (the "Draft Report"), dated August 5, 2014 and conducted by the State Controller's Office. The Agency and the City appreciate the opportunity to comment and respond to the Draft Report. The Draft Report concludes that the Former RDA made unallowable asset transfers to the City in the amount of \$780,080 and orders the City to transfer such assets to the Agency. In summary, the City and Agency believe that the California Constitution prevents the State Controller from ordering the City to reverse a valid transfer of the Former RDA's assets for the purpose of distributing such assets to taxing entities pursuant to California Health and Safety Code Section 34177.

The Draft Report states that the Former RDA transferred cash totaling \$75,327 to the City to pay 60% of the salary of one code enforcement officer and 100% of the salary of one graffiti abatement maintenance worker. The Agency and the City object to the order to transfer \$75,327 from the City to the Agency. The Former RDA paid these salaries pursuant to California Health and Safety Code Section 33420.2, which authorized the Former RDA to remove graffiti from public or private property until its 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 the salaries paid by the Former RDA to the City, for purposes of distribution to taxing entities, 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 states that on June 8, 2011, the Former RDA transferred \$182,000 to the City, in connection with the Former Agency's loan (the "Homebuyer Assistance Loan") to purchase a home from the City. The Agency and the City object to the order to transfer \$182,000 from the City to the Agency. The Former RDA paid the \$182,000 to the City on behalf of a low income family with disabilities (the "Homeowner") for purchase of the home. On April 1, 2011, the Former RDA adopted its Resolution No.

2011-008, authorizing the Former RDA to appropriate \$182,000 from its housing fund for the Homebuyer Assistance Loan. The home was one of ten properties purchased in foreclosure and rehabilitated by the City to provide affordable housing to families of low and moderate income with disabilities. The Former RDA received a deed of trust and promissory note from the Homeowner for repayment of the Homebuyer Assistance Loan. In addition, the Former RDA and Homeowner executed a regulatory agreement, dated June 6, 2011, to restrict the use of the home to affordable housing for persons or families of low or moderate income. California Health and Safety Code Sections 33334.2 and 33334.3 authorized the Former RDA to provide the Homebuyer Assistance Loan from the Former RDA's housing fund to provide affordable housing for persons or families of low or moderate income. The Homebuyer Assistance Loan was a valid and legal transaction, which was completed before the adoption of AB x1 26 on June 28, 2011. The order to return to the Agency, for purposes of distribution to taxing entities, the Homebuyer Assistance Loan 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.

The Draft Report also states that on June 27, 2011, the former RDA transferred \$327,255 in cash to the City to purchase certain property (the "Property"). The Agency and the City object to the order to transfer \$327,255 from the City to the Agency. Sale of the Property was a valid and legal transaction, pursuant to a purchase and sale agreement executed on June 21, 2011, 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 sale price for the Property 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.

Finally, the Draft Report states that the Former RDA understated by \$195,498 the value of the notes receivable transferred from the Former RDA to the City as the successor to the Former RDA's housing assets and functions. As required by California Health and Safety Code Section 34176(a)(2), the City identified the notes receivable on the housing asset transfer list, which the California Department of Finance approved by its letter dated August 30, 2012. As further required by Section 34176(d), the City holds all of the Former RDA's housing assets in the Low and Moderate Income Housing Asset Fund (the "Housing Asset Fund").

The Former RDA did not transfer to the City an asset in the amount of \$195,498. Rather, this amount represents the increased value of the Former Agency's notes receivable based on accrued but unpaid interest and a higher principal balance due to draws by the borrower. The Agency recorded the accrued interest and additional principal amount at the end of the fiscal year, on June 30, 2012. Therefore, the current value of the notes receivable, which is recorded for the Housing Asset Fund, includes the \$195,498 identified in the Draft Report. In other words, the \$195,498 represents the increased value of an asset held in the Housing Asset Fund and does not represent an asset held by the City to be "turned over" to the Agency.

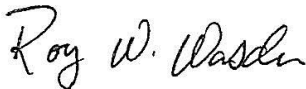
JEFFREY V. BROWNFIELD, CPA

August 15, 2014

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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,

A handwritten signature in black ink that reads "Roy W. Wasden". The signature is written in a cursive, flowing style.

ROY W. WASDEN
City Manager

cc: City of Turlock Mayor and City Council

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

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