

DELANO COMMUNITY REDEVELOPMENT AGENCY

Review Report

ASSET TRANSFER REVIEW

January 1, 2011, through January 31, 2012



BETTY T. YEE
California State Controller

May 2015



BETTY T. YEE
California State Controller

May 12, 2015

Rosa Rios, Finance Director, Treasurer
City of Delano/Successor Agency
P. O. Box 3010
1015 11th Avenue
Delano, CA 93216

Dear Ms. Rios:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Delano Community Redevelopment Agency (RDA) to the City of Delano (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 \$12,675,996 in assets after January 1, 2011, including unallowable transfers to the City totaling \$1,009,514, or 7.96% 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/lis

cc: Maribel G. Reyna, City Manager
City of Delano
Steve Dukett, Managing Principal
Urban Futures Inc.
Mary B. Bedard, Auditor-Controller
Kern County
Joe Aguirre, Chairman
Oversight Board
City of Delano/Successor Agency
David Botelho, Program Budget Manager
California Department of Finance
Richard J. Chivaro, Chief Legal Counsel
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Elizabeth González, Bureau Chief
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Scott Freesmeier, Audit Manager
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Daniela Anechitoaie, 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 Delano Community 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 \$12,675,996 in assets after January 1, 2011, including unallowable transfers to the City of Delano (City) totaling \$1,009,514, or 7.96% 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 Delano Community Redevelopment Agency transferred \$12,675,996 in assets after January 1, 2011, including unallowable transfers to the City of Delano totaling \$1,009,514, or 7.96% 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 June 20, 2014. Maribel G. Reyna, City Manager, responded by letter dated July 25, 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 Delano, 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

May 12, 2015

Finding and Order of the Controller

FINDING— Unallowable asset transfers to the City of Delano

The Delano Community Redevelopment Agency (RDA) made unallowable asset transfers of \$1,009,514 to the City of Delano (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:

- Our review found that the RDA made unallowable principal and interest payments to the City on various dates between January 1, 2011, and January 31, 2012, totaling \$115,563. The payments were made on a promissory note issued by the RDA on June 1, 2004, to help an automobile dealership with a new loan to purchase another dealership in the amount of \$350,000, and to fund the revival of a dormant façade-improvement program within the RDA's project area in the amount of \$150,000. Monthly payments commenced on July 1, 2004.
- Our review found that the RDA made unallowable principal and interest payments to the City on various dates between January 1, 2011, and January 31, 2012, totaling \$41,413. On April 11, 2002, the RDA borrowed money from the City's Sewer Fund in the amount of \$100,000. This amount was for a new automobile dealership as a site improvement plan. Monthly payments commenced on March 19, 2004.
- Our review found that the RDA made unallowable principal and interest payments to the City on various dates between January 1, 2011, and January 31, 2012, totaling \$214,128. The payments were made on an April 1, 2001 loan from the City's Sewer Fund to finance the construction of an 80-unit housing complex for senior citizens. Monthly installments commenced on April 23, 2003.
- Our review found that the RDA made unallowable principal and interest payments to the City on various dates between January 1, 2011, and January 31, 2012, totaling \$579,762. On April 6, 1992, the RDA issued an advance payable to the City for the acquisition of real property. Annual payments began on April 1, 1997. A deed of trust on the property secured the advance. During the fiscal year ended June 30, 1999, the Water and Sewer Fund purchased this advance from the City's General Fund.
- Our review found that the RDA made unallowable principal and interest payments to the City on various dates between January 1, 2011, and January 31, 2012, totaling \$58,648. On July 1, 2002, the RDA issued a promissory note to the City's General Fund for \$228,700, payable in ten annual installments of principal and interest in the amount of \$29,618. The note was issued in exchange for land that was subsequently sold in 2003 by the RDA at book value.

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, that were not contractually committed to a third party prior to June 28, 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 of Delano is ordered to reverse the transfers in the amount of \$1,009,514 and turn over the assets to the Successor Agency.

City's Response

The City disagreed with the SCO's finding. See Attachment for the City's complete response.

SCO's Comment

The SCO's authority under H&S Code section 34167.5 extends to all assets transferred after December 31, 2010, by the RDA to the city or county, or city and county that created the RDA or any other public agency. As a result, loan repayments made by the RDA to the City during the periods of January 1, 2011, through January 31, 2012, were unallowable, despite the subsequent determination of the Department of Finance that those loans are enforceable obligations.

Additionally, H&S Code section 34167.5 states that if such an unallowable transfer occurs, the Controller shall order the return of those assets to the Successor Agency. When the Successor Agency receives its Finding of Completion from the Department of Finance, it may place the loan agreements between the RDA and the City on the Recognized Obligation Payment Schedule as an enforceable obligation, provided the Oversight Board finds that the loans were for a legitimate redevelopment purpose. The Finding and Order of the Controller remain as stated.

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

Cash transfers on various dates between January 1, 2011, and January 31, 2012:

Repayment of a promissory note to the City	\$ 115,563
Repayment of a loan from the City's Sewer Fund	41,413
Repayment of a loan from the City's Sewer Fund	214,128
Repayment of an advance payable to the City	579,762
Repayment of a promissory note to the City's General Fund	<u>58,648</u>
Total unallowable transfers subject to H&S Code section 34167.5	<u>\$ 1,009,514</u>

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



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CITY MANAGER

Maribel Reyna

July 25, 2014

Jeffrey V. Brownfield, CPA
Chief, Division of Audits
California State Controller
P. O. Box 942850
Sacramento, California 94250-5874

Attn: Elizabeth Gonzalez, Chief, Local Government Compliance Bureau

Re: Comments on Draft Delano Community Redevelopment Agency Asset Transfer Review

Dear Mr. Brownfield:

This letter is a follow-up to the June 20, 2014 draft Delano Community Redevelopment Agency Asset Transfer Review ("ATR"). Pursuant to your invitation to provide comments, this letter provides the Successor Agency's comments with respect to the ATR, which are included within the attachment to this letter. They follow the format of the ATR. I trust that you will find them easy to follow.

Once you have reviewed the Successor Agency's comments, I would like to discuss them with the appropriate SCO staff via a conference call. Please ask the appropriate SCO staff person to let me know a convenient time for a conference call meeting for that purpose.

In the interim, if you have any questions, please contact me at 661-721-3303, extension 2269.

Sincerely,

MARIBEL G. REYNA
City Manager/Executive Director

City of Delano

MGR:nrr

Attachment

cc: Richard J. Chivaro, Chief Legal Counsel, SCO
Elizabeth Gonzales, Chief Division of Audits, SCO
Scott Freesmeier, Audit Manager, SCO
Daniela Anechitoaie, Auditor-in-Charge, SCO

ATTACHMENT

FORMAL COMMENTS ON THE SCO'S DRAFT JUNE 20, 2014
DELANO COMMUNITY REDEVELOPMENT AGENCY
ASSET TRANSFER REVIEW

ASSET TRANSFER REVIEW REPORT

In the Summary section, the second paragraph, reads as follows:

“Our review found that the RDA transferred \$12,675,996 in assets after January 1, 2011, including unallowable transfers to the City of Delano (City) totaling \$1,009,514, or 0.08% of transferred assets. These assets must be turned over to the Successor Agency.”

Proposed alternative language:

“Our review found that the RDA transferred \$12,675,996 in assets after January 1, 2011, including unallowable transfers to the City of Delano (City) totaling \$215,624, or approximately 0.02% of transferred assets. These assets must be turned over to the Successor Agency.”

In the Conclusion section, the first paragraph reads as follows:

“Our review found that the RDA transferred \$12,675,996 in assets after January 1, 2011, including unallowable transfers to the City of Delano (City) totaling \$1,009,514, or 0.08% of transferred assets. These assets must be turned over to the Successor Agency.”

Proposed alternative language:

“Our review found that the RDA transferred \$12,675,996 in assets after January 1, 2011, including unallowable transfers to the City of Delano (City) totaling \$215,624, or approximately 0.02% of transferred assets. These assets must be turned over to the Successor Agency.”

FINDINGS AND ORDERS OF THE CONTROLLER

FINDING – Unallowable asset transfers to the City of Delano

The first paragraph in this section reads as follows:

“Our review found that the RDA transferred \$12,675,996 in assets after January 1, 2011, including unallowable transfers to the City of Delano (City) totaling \$1,009,514, or 0.08% of transferred assets. These assets must be turned over to the Successor Agency.”

Proposed alternative language:

“Our review found that the RDA transferred \$12,675,996 in assets after January 1, 2011, including unallowable transfers to the City of Delano (City) totaling \$215,624, or approximately 0.02% of transferred assets. These assets must be turned over to the Successor Agency.”

The first sentence in the second paragraph reads as follows:

“Unallowable asset transfers were as follows:” Following this sentence, there is an enumeration of five (5) specific asset transfers.

Proposed modifications and justification:

It is recommended that enumerated item Nos. 3 and 4 be deleted.

Item Nos. 3 and 4 correlate to enforceable obligation Nos. 10 and 9 on the Successor Agency’s ROPS I that were specifically approved for payment by the California Department of Finance (“DOF”) within their letters of May 11, 2012 and May 30, 2012. Therefore, the payments made by the Successor Agency with respect to enumerated item Nos. 3 and 4 (that correlate to enforceable obligation Nos. 10 and 9 on the Successor Agency’s ROPS I) were valid when made and should not be reversed by the SCO.

Order of the Controller

The first sentence of the Order of the Controller reads as follows:

“Pursuant to H&S Code section 34167.5, the City of Delano is ordered to reverse the transfers in the amount of \$1,009,514 and turn them over to the Successor Agency.”

Proposed alternative language:

“Pursuant to H&S Code section 34167.5, the City of Delano is ordered to reverse the transfers in the amount of \$215,624 and turn them over to the Successor Agency.”

Schedule 1 – Unallowable Asset Transfers to the City of Delano January 1, 2012, through January 31, 2012

The schedule reads as follows:

Cash transfers for repayment of a promissory note to the City issued on June 1, 2004:	\$115,563
Cash transfers for repayment of a loan from the City’s Sewer Fund originated on April 11, 2002:	41,413
Cash transfers for repayment of a loan from the City’s Sewer Fund originated on April 1, 2001:	214,128

Cash transfers for repayment of an advance payable to the City originated on April 6, 1992:	579,792
Cash transfers for repayment of a promissory note to To the City's General Fund issued on July 1, 2002:	<u>58,648</u>
Total unallowable transfers subject to H&S Code Section 34167.5	<u>\$1,009,514</u>

Proposed alternative language:

Cash transfers for repayment of a promissory note to the City issued on June 1, 2004:	\$115,563
Cash transfers for repayment of a loan from the City's Sewer Fund originated on April 11, 2002:	41,413
Cash transfers for repayment of a promissory note to To the City's General Fund issued on July 1, 2002:	<u>58,648</u>
Total unallowable transfers subject to H&S Code Section 34167.5	<u>\$215,624</u>

CONCLUSION

In conclusion, it is requested that the SCO review and give consideration to the above described proposed amendments to the ATR. The proposed amendments will ensure that the ATR is accurate, complete and clear. Given these desired traits, the amended ATR will benefit, the SCO, the Successor Agency, the Oversight Board, the citizens of Delano and the California Department of Finance.

**State Controller's Office
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