

CITY OF CLAYTON REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

December 2014



JOHN CHIANG
California State Controller

December 23, 2014

Gary A. Napper, City Manager
City of Clayton Redevelopment/Successor Agency
6000 Heritage Trail
Clayton, CA 94517

Dear Mr. Napper:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the City of Clayton Redevelopment Agency (RDA) to the City of Clayton (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 \$13,865,645 in assets after January 1, 2011, including an unallowable transfer to the City of \$200,000, or 1.44% 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/sk

cc: Kevin Mizuno, Finance Manager
City of Clayton
Robert R. Campbell, County Auditor-Controller
Contra Costa County
Dan Richardson, Oversight Board Chairperson
City of Clayton
David Botelho, Program Budget Manager
California Department of Finance
Richard J. Chivaro, Chief Legal Counsel
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Attachment—Auditee’s Response to Draft Review Report

Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the City of Clayton 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 \$13,865,645 in assets after January 1, 2011, including an unallowable transfer to the City of Clayton (City) of \$200,000, or 1.44% 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 City of Clayton Redevelopment Agency transferred \$13,865,645 in assets after January 1, 2011, including an unallowable transfer to the City of Clayton of \$200,000, or 1.44% 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 September 23, 2014. Gary Napper, City Manager, responded by letter dated September 29, 2014. 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 Clayton, the Successor Agency, the Oversight Board, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record when issued final.

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

December 23, 2014

Finding and Order of the Controller

FINDING— Unallowable asset transfer to the City of Clayton

The City of Clayton Redevelopment Agency (RDA) made an unallowable asset transfer of \$200,000 to the City of Clayton (City). The transfer occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

On February 28, 2011, the RDA made a cash transfer of \$262,738 to the City.

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).

Order of the Controller

Pursuant to H&S Code Section 34167.5, the City is ordered to reverse the transfer in the amount of \$200,000 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 section 34177(d).

City's Response to Draft

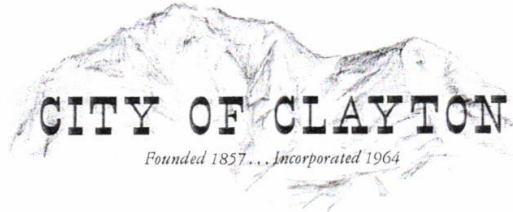
...\$62,718 [\$62,738] of the total transfers ordered to be repaid to the Successor Agency pertained to reimbursements to the City of Clayton for 2% election payments that tied to a legally adopted agreement dating back to 1987. . . On July 1, 1987, the City Council of the City of Clayton adopted Resolution. 31-87 ordering "2% election" payments to the City for each year by the RDA as authorized by Section 33676 of the H&S Code in Connection with the Clayton Redevelopment Project.

SCO Comment

After further reviewing the documentation, the SCO asserts that \$62,738, not \$62,718 of the cash transferred by the RDA to the City was a 2% election payment authorized pursuant to H&S Code 33676 in connection with the Clayton Redevelopment Project. Therefore, the City need not return these assets to the Successor Agency. The remaining \$200,000 in assets must be turned over to the Successor Agency.

The report has been modified accordingly.

**Attachment—
Auditee’s Response to
Draft Review Report**



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City Council
HANK STRATFORD, *MAYOR*
DAVID T. SHUEY, *VICE MAYOR*
JIM DIAZ
HOWARD GELLER
JULIE K. PIERCE

September 29, 2014

Elizabeth Gonzalez, Chief
Local Government Compliance Bureau
Stat Controller's Office Division of Audits
P.O. Box 942850
Sacramento, CA 94250-5874

Re: Partial Dispute of Draft Finding – Asset Transfer Review

Dear Ms. Gonzalez,

We have reviewed the draft Review Report issued by the State Controller's Office (SCO) regarding its review of asset transfers from timeframe January 1, 2011 through January 31, 2012. It contains a finding the City of Clayton Redevelopment Agency (RDA) made unallowable asset transfers totaling \$262,738 to the City of Clayton in the timeframe specified above. Furthermore, the report states that pursuant to California Health and Safety (H&S) Code Section 34167.5, the City is ordered to reverse the transfer in the amount of \$262,738 and turn over the assets to the Successor Agency. The Successor Agency is then directed to properly dispose of the assets in accordance with H&S Code section 34177(d).

What the SCO's report failed to outline is that \$62,718 of the total transfers ordered to be repaid to the Successor Agency pertained to reimbursements to the City of Clayton for 2% election payments that tied to a legally adopted agreement dating back to 1987. Although we have previously provided copies of the underlying documents supporting the 2% repayment arrangement to the State Controller's Office and Department of Finance, we again summarize the background of this repayment agreement below:

On July 1, 1987, the City Council of the City of Clayton adopted Resolution No. 31-87 ordering "2% election" payments to the City each year by the RDA as authorized by Section 33676 of the H&S Code in connection with the Clayton Redevelopment Project. The 2% election payments to the City were designed to commence after the tax year in which or ordinance adopting the Clayton Redevelopment Plan became effective (fiscal year 1988-89). During an examination of the Agency's remaining fiscal status and condition during calendar year 2009, it was discovered by Agency staff and its consultant, Seifel Consulting, Inc., that these 2% election payments had never been made to the City. Subsequent review by the Contra Costa County Auditor-Controller's Office supported that the Agency owed the City an accumulated total of \$501,898.64 over the course of the RDA's existence since 1987.

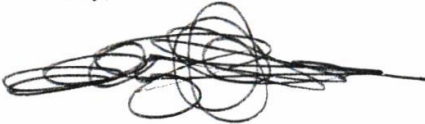
Ms. Elizabeth Gonzalez
September 29, 2014
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We continue to assert the lawfully-due 2% election payments pre-dated the Dissolution Act, were obligations committed in 1987, and legally should not be subject to the provisions of H&S code section 34167.5 as they pertain to repayments outlined in a legally binding agreement between the City and RDA now 27 years ago. The establishment of a repayment agreement between the City and RDA through RDA Resolution No. 02-2010 dated February 16, 2010 was designed to minimize the negative impact to the RDA's 5 Year Implementation Plan by deferring repayment of the balance of 2% election monies over a 4 year period.

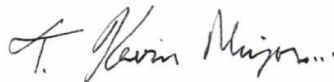
It is our position that classifying these 2% election repayments as "transfers" improperly concludes that these payments are flows of assets between the RDA and City that do not pertain to legally binding agreements. Provided these circumstances, we maintain that any payments pertaining to the 2% election repayment agreement should be excluded from the total obligation ordered to be repaid from the City to the Successor Agency in the SCO Review Report. This would result in a revised total to be paid from the City to the Successor Agency of \$200,020.

We appreciate your time and cooperation in this matter, and the opportunity to provide the City's comments on the SCO's Review Report. We look forward to your favorable reconsideration of this dispute. Please do not hesitate to contact us if additional clarification or documentation is required.

Sincerely,



Gary Napper
City Manager
925-673-7309



Kevin Mizuno
Finance Manager
925-673-7309

cc: Karen Tiedemann, Goldfarb & Lipman LLP

**State Controller's Office
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