

VERNON 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 8, 2014

William Fox, Finance Director
Vernon Redevelopment Successor Agency
4305 Santa Fe Avenue
Vernon, CA 90058

Dear Mr. Fox:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Vernon Redevelopment Agency (RDA) to the City of Vernon (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 \$133,595,578 in assets after January 1, 2011, including unallowable transfers to the City totaling \$38,621,052, or 28.91% 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: Gustavo Lemanna, Special Counsel
City of Vernon
Mark Whitworth, City Administrator
City of Vernon
Michael McCormick, Oversight Board Chairperson
City of Vernon
John Naimo, County Auditor-Controller
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David Botelho, Program Budget Manager
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Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Vernon 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 \$133,595,578 in assets after January 1, 2011, including unallowable transfers to the City of Vernon (City) totaling \$38,621,052, or 28.91% 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 Vernon Redevelopment Agency transferred \$133,595,578 in assets after January 1, 2011, including unallowable transfers to the City of Vernon totaling \$38,621,052, or 28.91% of transferred assets. These assets 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 June 6, 2014. William Fox, Finance Director, responded by letter dated July 2, 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 Vernon, 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 8, 2014

Finding and Order of the Controller

FINDING— Unallowable asset transfers to the City of Vernon

The Vernon Redevelopment Agency (RDA) made unallowable asset transfers of \$38,621,052 to the City of Vernon (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 March 9, 2011 (Per RDA Resolution RA-403 and City Resolution 2011-31), the RDA transferred \$24,834,844 in trading credits to the City in exchange for the assignment of the City's development costs.
- On June 7, 2011 (Per RDA Resolution RA-399), the RDA transferred \$2,389,362 in cash and \$11,396,846, in receivables to the City as payment for unreimbursed capital outlay expenditures.

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. Those assets should 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 of Vernon is ordered to reverse the transfers in the amount of \$38,621,052 and turn over the assets to the Successor Agency.

City's Response to the Draft

The City and the Successor Agency object to the Findings on the following bases:

The Report is incorrect and premature and the City and the Successor Agency respectfully request the California State Controller consider. . . (a) defer the Report until the *City of Brentwood vs. California Department of Finance* legal action. . . is fully litigated. . . (b) revise the Finding to reflect the Oversight Board to the Successor Agency intends on taking up the required California Health & Safety Code section 34181 (a) ratification of the Former Agency actions in Resolutions RA-403 and RA-399. . . after the *Brentwood* case is fully litigated and final . . .

In addition, the trading credits were never held in the name of the Former Agency as they related to the proposed power plant application by the City before January 1, 2011. . . and the capital outlay expenditures predated January 1, 2011. . . the statements. . . are incorrect and not supported by the substantial evidence. . .

The receivable of. . . (\$11,396,846). . . is improperly characterized as an unallowable transfer because Health & Safety Code section 34174(a) confirms all agency loans, advances, or indebtedness, and interest thereon, shall be deemed extinguished and paid. . .

The recitation of Health & Safety Code Section 34177(d). . . is incorrect. . . does not apply. . . and 34177(e) does not apply. . . .

SCO Comment

The SCO cannot delay the report based on an appeal being filed for another former RDA.

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. This responsibility is not limited by the other provisions of the RDA dissolution legislation.

H&S Code section 34177(d) applies to all former RDAs.

The SCO agrees that H&S Code section 34177(e) no longer applies, as your agency received a Finding of Completion from the DOF. The final report has been revised.

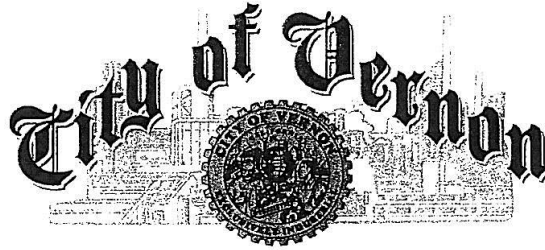
The finding and Order of the Controller remain as stated.

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

March 9, 2011 (Per RDA resolution RA-403 and City resolution 2011-31)	
Trading credits exchanged for development costs	\$ 24,834,844
June 7, 2011 (Per RDA resolution RA-399)	
Transfer as payment for unreimbursed capital outlay	
Cash transferred to City	2,389,362
Receivable due from City of Vernon	<u>11,396,846</u>
Total transfers subject to Health and Safety Code section 34167.5	<u>\$ 38,621,052</u>

¹ See the Finding and Order of the Controller section.

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



4305 Santa Fe Avenue, Vernon, California 90058
Telephone (323) 583-8811 x 355
SUCCESSOR AGENCY OF THE VERNON REDEVELOPMENT AGENCY

July 2, 2014

*Via Certified Mail Parcel No. 7004 1350 0001 2557 0871
with Return Receipt Requested and E-Mail to EGonzalez@sco.ca.gov*

Jeffrey V. Brownfield, CPA, Chief
Elizabeth González, Bureau Chief
Local Government Compliance Bureau
Division of Audits
California State Controller
P.O. Box 942850
Sacramento, California 94250-5874

Re: Response to June 6, 2014 letter and review report from State Controller Division of Audits per Health & Safety Code section 34167.5 and the Redevelopment Dissolution Statutes Parts 1.8 and 1.85 of Division 24 of the Health & Safety Code

Dear Ms. González and Mr. Brownfield:

This is the response of the City of Vernon (the "City") and the Vernon Redevelopment Successor Agency (the "Successor Agency") to the June 6, 2014 letter and attached Review Report prepared in connection with the Vernon Redevelopment Agency Asset Transfer Review for the period January 1, 2011 through January 31, 2012 (collectively the "Report"). The City and the Successor Agency reviewed the Report, including the conclusion, finding and order. The Report allegedly found the former Redevelopment Agency for the City of Vernon (the "Former Agency") transferred One Hundred Thirty Three Million Five Hundred Ninety Five Thousand Five Hundred Seventy Eight Dollars (\$133,595,578) in assets after January 1, 2011, including unallowable transfers to the City totaling Thirty Eight Million Six Hundred Twenty One Thousand Fifty Two Dollars (\$38,621,052), or 28.91% of transferred assets (the "Finding"). Both the City and the Successor Agency disagree with the Finding for the reasons set out below.

The City and Successor Agency confirm a telephone conversation with your authorized representative on June 16, 2014, appreciate the e-mail exchange on June 17, 2014 permitting this response to be delivered on or before July 3, 2014, and thank you for the opportunity to comment and respond to the Report.

Exclusively Industrial

The City and the Successor Agency object to the Finding on the following bases:

- I. The Report is incorrect and premature and the City and Successor Agency respectfully request the California State Controller consider taking the following two actions concerning the Report: (a) defer the Report until the *City of Brentwood vs. California Department of Finance* legal action (Sacramento Superior Court Case No. 34-2013-80001568 CUWMGDS and Court of Appeal Third Appellate District Case No. C076343) is fully litigated and final following all appeals and (b) revise the Finding to reflect the Oversight Board to the Successor Agency intends on taking up the required California Health & Safety Code section 34181(a) ratification of the Former Agency actions in Resolutions RA-403 and RA-399 referenced in the Finding after the *Brentwood* case is fully litigated and final following all appeals.

The Finding contains the following recitation of unallowable asset transfers in two bullet points and statement on page 3 which are transcribed below *verbatim*:

- On March 9, 2011 (Per RDA Resolution RA-403 and City Resolution 2011-31), the RDA made an unallowable transfer of Trading Credits to the City in exchange for the assignment of the City's development costs totaling \$24,834,844.
- On June 7, 2011 (Per RDA Resolution RA-399), the RDA made an unallowable transfer of cash and receivables to the City (\$2,389,362 and \$11,396,846, respectively) as payment for unreimbursed capital outlay expenditures.

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. Those assets should be turned over to the Successor Agency for disposition in accordance with H&S Code Section 34177(d) and (e).

1. The Report is Incorrect.

The records of the City, Successor Agency, and Former Agency do not support the two bullet points on page 3 of the Report. In addition, the trading credits were never held in the name of the Former Agency as they related to a proposed power plant application by the City before January 1, 2011; therefore, there was no cash transfer after January 1, 2011 concerning the trading credits; and the capital outlay expenditures predated January 1, 2011. The City and Successor Agency object as the statements in those two bullet points are incorrect and not supported by the substantial evidence.

Furthermore, the receivable of Eleven Million Three Hundred Ninety Six Thousand Eight Hundred Forty Six Dollars (\$11,396,846) in the second bullet point of the Finding is improperly characterized as an unallowable transfer because Health & Safety Code section 34174(a) confirms all agency loans, advances, or indebtedness, and interest thereon, shall be deemed extinguished and paid. Therefore, the amount of the alleged unallowable transfer in the Finding should be reduced accordingly.

The recitation of Health & Safety Code section 34177(d) in the Finding is also incorrect because the Successor Agency already remitted all unencumbered balances prior to receipt of its finding of completion from the Department of Finance on April 17, 2013. And, since the Successor Agency received a finding of completion after remitting its unencumbered balances, Health & Safety Code section 34177(e) does not apply.

In the event the Controller is not persuaded by the assertions of above, the City and Successor Agency make the following alternate request for a deferral and revision to the Report.

2. *The Report is Premature.*

The alleged unallowable transfer in the Finding would also likely be further reduced and perhaps fully eliminated following a final decision in a pending case before the California courts and proposed actions of the Oversight Board to the Successor Agency under Health & Safety Code section 34181(a).

(a) The Successor Agency requests the Report and Finding be deferred due to the unsettled law and legal challenges in the Brentwood case.

The Oversight Board specifically considered, among other things, the impact of the *City of Brentwood vs. California Department of Finance* legal action (Sacramento Superior Court Case No. 34-2013-80001568 CUWMGDS). The *Brentwood* case addresses actions like those in RA-403 and RA-399, which predate the chaptering of AB X1 26 and its companion bill AB X1 27 on June 29, 2011. In other words, at the time RA-403 and RA-399 were taken by the Former Agency, the actions were legal and valid; however due to the chaptering of AB X1 26 and AB X1 27 and the decision in *California Redevelopment Association vs. Matosantos* (2011) 53 Cal.4th 231 on December 29, 2011, the actions are allegedly subject to challenge. The actions are allegedly subject to challenge because of the state of the law and pending actions of the Oversight Board; these two key items, the outcome of the *Brentwood* case and pending ratification of the Oversight Board, would alter the Report and change the Finding. The Oversight Board expects to take up the Health & Safety Code section 34181(a) ratification of Resolutions RA-403 and RA-399 on the next regular meeting of the Oversight Board following the final decision, following all appeals, on the *Brentwood* case.

Given this pending case, which is not yet final with all appeals concluded, the Report should be deferred and held in abeyance until that time in the future.

(b) The Successor Agency requests the Report and Finding be revised to show the unsettled law and legal challenges, including, but not limited to the Brentwood case, as the Oversight Board is to consider a ratification of Former Agency Resolutions RA-403 and RA-399 when the Brentwood case is final and all appeals are concluded.

On March 6, 2014, the Oversight Board to the Successor Agency considered the ratification of the Former Agency Resolutions RA-403 and RA-399 under Health & Safety Code section 34181(a), which would have confirmed the actions in the two resolutions are not unallowable transfers. In addition, the Findings should be revised to clearly identify the Oversight Board is to consider the ratification of Resolutions RA-403 and RA-399 which would construe them as not unallowable transfers; this action is expected after the *Brentwood* case is fully litigated and all appeals are final. We have not reached that point in time. When confronted with the *Brentwood* case, on March 6, 2014, the Oversight Board elected to wait for clarity in the law concerning the Former Agency actions in RA-403 and RA-399, which predate the chaptering of the AB X1 26 and AB X1 27. Given the unsettled application of AB X1 26, as amended, to the Former Agency actions in Resolutions RA-403 and RA-399, it would be proper for the California State Controller to revise the Findings to reflect the future consideration of the ratification under Health & Safety Code section 34181(a) which would eliminate the alleged unallowable transfers in the Findings as stated in the Report.

The response provided herein does not waive the right of the City and the Successor Agency to later provide additional information or statements as part of the review process or any other proceeding or action that may follow. The City and the Successor Agency retain the right to raise new positions or material as required. These objections and responses are made without prejudice to, and are not a waiver of, the City's and the Successor Agency's right to rely on other documents, facts, information, or responses at a later proceeding or in the California State Controller review process or any other proceeding or action that may follow. By making the aforesaid objections and responses, the City and the Successor Agency do not waive, and hereby expressly reserve, their respective rights to assert any and all objections to the California State Controller statements and findings in this review, or in any other proceedings, on any and all grounds including, without limitation, scope, jurisdiction, relevancy, competency and materiality. In addition, the City and the Successor Agency make the responses herein without in any way implying that they each consider all of the State Controller's findings and statements to be within the scope of AB X1 26, as amended, or legally valid, or material or relevant to the subject matter hereof. The City and the Successor Agency each reserve the right to clarify, supplement, correct or revise any and all of the statements and responses herein and to assert additional arguments or information, in one or more subsequent supplemental responses or in any other proceeding or action that may follow. The rights and reservations herein include, but are not limited to, express reference to (i) the reservation of the Oversight Board to the Successor Agency to consider a ratification of Former Agency Resolutions RA-403 and RA-399 under Health & Safety Code section 34181(a) which would render the Finding null and void, (ii) the numerous challenges to AB X1 26, as amended, including but not limited to *City of Brentwood*

vs. *California Department of Finance* legal action (Sacramento Superior Court Case No. 34-2013-80001568 CUWMGDS and Court of Appeal Third Appellate District Case No. C076343), (iii) Health & Safety Code sections 33500, 33501, 34167.5, and 34179.7, and (iv) that certain April 17, 2013 finding of completion issued by the California Department Finance.

Should you desire additional information regarding the matters referenced above or the Successor Agency, please contact Mr. Alex Kung, Economic Development Manager, at (323) 583-8811 ext. 355, or our special outside counsel for the Successor Agency, Gustavo Lamanna of Kane, Ballmer & Berkman at (213) 452-0131.

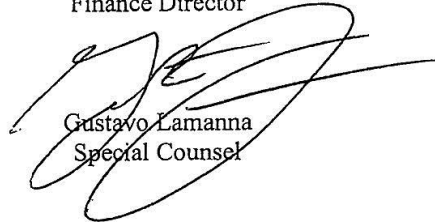
Sincerely,

CITY OF VERNON

SUCCESSOR AGENCY OF THE
VERNON REDEVELOPMENT AGENCY



William Fox
Finance Director



Gustavo Lamanna
Special Counsel

**State Controller's Office
Division of Audits
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