

ROHNERT PARK COMMUNITY DEVELOPMENT COMMISSION

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

October 2014



JOHN CHIANG
California State Controller

October 6, 2014

Ana Kwong, Acting Finance Manager
City of Rohnert Park/Successor Agency
130 Avram Avenue
Rohnert Park, CA 94928

Dear Ms. Kwong:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Rohnert Park Community Development Commission (RDA) to the City of Rohnert Park (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 \$81,418,475 in assets after January 1, 2011, including unallowable transfers to the City totaling \$12,019,520, or 14.76% of transferred assets.

However, on June 30, 2012, the City turned over \$11,505,035 in land and buildings to the Successor Agency. Additionally, the City made a payment on an RDA bond that the RDA was unable to pay. The unallowable loan payment was offset against the bond payment made by the City; therefore, the return of \$273,485 in cash to the Successor Agency is not required. The remaining \$241,000 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: Shirlee Zane, Chairperson
Oversight Board
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Sonoma County
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Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Rohnert Park Community Development Commission (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 \$81,418,475 in assets after January 1, 2011, including unallowable transfers to the City of Rohnert Park (City) totaling \$12,019,520, or 14.76% of transferred assets.

However, on June 30, 2012, the City turned over \$11,505,035 in land and buildings to the Successor Agency. Additionally, the City made a payment on an RDA bond that the RDA was unable to pay. The unallowable loan payment was offset against the bond payment made by the City; therefore, the return of \$273,485 in cash to the Successor Agency is not required. The remaining \$241,000 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 Rohnert Park Community Development Commission transferred \$81,418,475 in assets after January 1, 2011, including unallowable transfers to the City of Rohnert Park (City) totaling \$12,019,520, or 14.76% of transferred assets.

However, on June 30, 2012, the City turned over \$11,505,035 in land and buildings to the Successor Agency. Additionally, the City made a payment on an RDA bond that the RDA was unable to pay. The unallowable loan payment was offset against the bond payment made by the City; therefore, the return of \$273,485 in cash to the Successor Agency is not required. The remaining \$241,000 must be turned over to the Successor Agency.

**Views of
Responsible
Officials**

We issued a draft review report on July 2, 2014. Rafael Mandelman, City of Rohnert Park Outside Council, responded by letter dated August 1, 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 Rohnert Park, 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

October 6, 2014

Finding and Order of the Controller

**FINDING—
Unallowable asset
transfers to the
City of Rohnert
Park**

The Rohnert Park Community Development Commission (RDA) transferred \$12,019,520 to the City of Rohnert Park (City). All of the asset transfers to the City occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

- On March 8, 2011, the RDA transferred real properties (land and buildings), with book values totaling \$11,505,035, to the City.
- On June 15, 2011, the RDA transferred cash in the form of an interest payment of \$97,110 and a principal payment of \$83,000, on a loan between the RDA and the City. Additionally, on December 30, 2011, the RDA transferred cash in the form of an interest payment of \$93,375 to the City.
- On June 15, 2011, and December 30, 2011, the RDA made two unallowable transfers of cash totaling \$241,000 to the City, for Community Center lease payments based on the July 8, 2003 ground lease agreement between the RDA and 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, that are 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 is ordered to reverse the transfers totaling \$12,019,520, and turn over the assets to the Successor Agency.

However, on June 30, 2012, the City turned over \$11,505,035 in real property to the Successor Agency. Additionally, the City made a payment on an RDA bond that the RDA was unable to pay. The unallowable loan payment was offset against the bond payment made by the City; therefore, the return of \$273,485 in cash to the Successor Agency is not required. The City is ordered to turn over the assets, in the amount of \$241,000, to the Successor Agency. The Successor Agency is directed to properly dispose of the assets in accordance with 34177(d) and (e).

City's Response

The City has unfortunately not been able to determine why these transfers, if in fact made, would not have been identified through the Department of Finance's Due Diligence Review ("DDR") process nor has the City as yet been able to confirm whether such transfers may already have been reversed through that DDR process.

Nonetheless and reserving the City's rights to challenge whether these amounts were in fact paid by the CDC and such payments not subsequently reversed, the City maintains that any such payments were legally valid when made and were paid in consideration for the CDC's rental and use of real property and improvements owned by the City and as required under the terms of that certain Lease Agreement between the City and CDC dated July 8, 2003.

See attachment for the City's complete response.

SCO's Comment

The asset transfer review performed by the SCO is a different and separate review from the Department of Finance's (DOF) Due Diligence Review. As such, transfers not identified through the DDR process may be identified in the asset transfer review. The RDA transferred funds to the City after January 1, 2011; therefore, the asset transfers are unallowable under H&S Code section 34167.5.

Additionally, once the DOF issues a Finding of Completion, the Successor Agency may place loan agreements between the RDA and the City on a Recognized Obligation Payment Schedule for approval.

The Finding and Order of the Controller remain as stated.

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

Unallowable transfers to the City of Rohnert Park:

Date	Description	
March 8, 2011	Land	\$ 9,282,145
March 8, 2011	Buildings	2,222,890
	Subtotal	<u>11,505,035</u>
June 15, 2011	Principal payment on loan with the City of Rohnert Park	83,000
June 15, 2011	Interest payment on a loan with the City of Rohnert Park	97,110
June 15, 2011	Community Center lease payment	120,500
December 30, 2011	Interest payment on a loan with the City of Rohnert Park	93,375
December 30, 2011	Community Center lease payment	120,500
	Subtotal	<u>514,485</u>
	Total unallowable transfers to the City of Rohnert Park	<u>\$ 12,019,520</u>
	Capital assets returned to Successor Agency on June 30, 2012	\$ (11,505,035)
	Loan payment to the City offset against RDA Bond payment made by City	<u>(273,485)</u>
	Total unallowable transfers subject to H&S code section 34167.5	<u><u>\$ 241,000</u></u>

**Attachment—
City of Rohnert Park's Response to
Draft Review Report**



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August 1, 2014

VIA E-MAIL EGONZALEZ@SCO.CA.GOV AND
U.S. MAIL

Elizabeth Gonzalez
Chief, Local Government Compliance Bureau
State Controller's Office, Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874

Re: State Controller's Office (SCO) Asset Transfer Review -
Rohnert Park Community Development Commission

Dear Ms. Gonzalez:

I am writing on behalf of our client the City of Rohnert Park ("City") regarding the draft Asset Transfer Review Report ("Draft Report") received by the City on July 9, 2014. Thank you for allowing us the opportunity to comment on the Draft Report and for affording us additional time to look into the transfers described in the Draft Report.

The Draft Report finds that on June 15, 2011 and December 30, 2011, the Community Development Commission ("CDC") made lease payments to the City in a combined total amount of \$241,000, determines that those payments constituted unallowable transfers of cash under AB x1 26 and AB x1 27 ("Dissolution Law"), and orders the City to turn over the amount of these payments to the Successor Agency for disposition in accordance with Health and Safety Code Section 34177(d) and (e).

The City has unfortunately not been able to determine why these transfers, if in fact made, would not have been identified through the Department of Finance's Due Diligence Review ("DDR") process nor has the City as yet been able to confirm whether such transfers may already have been reversed through that DDR process.

Nonetheless, and reserving the City's rights to challenge whether these amounts were in fact paid by the CDC and such payments not subsequently reversed, the City maintains that any such payments were legally valid when made and were paid in consideration for the CDC's rental and use of real property and improvements owned by

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Ms. Elizabeth Gonzalez
Chief, Local Government Compliance Bureau
August 1, 2014
Page 2

the City and as required under the terms of that certain Lease Agreement between the City and the CDC dated July 8, 2003.

Article XIII, Sections 24(b) and 25(a)(7) ("Proposition 22") prohibits the Legislature from requiring "a community redevelopment agency... to pay, remit, loan, or otherwise transfer, directly or indirectly, taxes on ad valorem real property... allocated to the agency... to or for the benefit of the State, any agency of the State, or any jurisdiction." Proposition 22 further prohibits the Legislature from requiring a redevelopment agency to "use, restrict, or assign a particular purpose for" property tax revenues "for the benefit of the State." The California Supreme Court applied Proposition 22 to the Dissolution Law in *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231 and held that it was unconstitutional for the Legislature to raid or restrict an operational redevelopment agency's use of previously allocated property tax revenues. (Id. at 263.)

The SCO's draft audit determination, which demands the reversal of \$241,000 in legally valid pre-dissolution payments by the CDC, violates Proposition 22 because it seeks to restrict the CDC's use of its property tax revenues and to redistribute tax revenues from the CDC for the benefit of the State by invalidating legal transfers made by the CDC prior to dissolution. (Id.) Consequently, the Draft Report should be revised to state that the amount of unallowable transfers that must be turned over to the Successor Agency is \$0.

Thank you again for your consideration. Should you have any questions, please feel free to contact me.

Sincerely,

BURKE, WILLIAMS & SORENSON, LLP



Rafael Mandelman

cc: Darrin Jenkins, City Manager (via email)
Michelle Marchetta Kenyon, City Attorney (via email)
Don Schwartz, Assistant City Manager (via email)
Ana Kwong, Acting Finance Manager (via email)

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