

PERRIS REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



BETTY T. YEE
California State Controller

April 2015



BETTY T. YEE
California State Controller

April 1, 2015

Ron Carr, Assistant City Manager
Perris Redevelopment/Successor Agency
101 North D Street
Perris, CA 92570

Dear Mr. Carr:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Perris Redevelopment Agency (RDA) to the City of Perris (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 \$58,486,635 in assets after January 1, 2011, including unallowable transfers to the City totaling \$5,969,127, or 10.21% 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: Daryl Busch, Oversight Board Chair
Perris Redevelopment/Successor Agency
Paul Angulo, Auditor-Controller
County of Riverside
David Botelho, Program Budget Manager
California Department of Finance
Richard J. Chivaro, Chief Legal Counsel
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 Perris 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 \$58,486,635 in assets after January 1, 2011, including unallowable transfers to the City of Perris (City) totaling \$5,969,127, or 10.21% 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 Perris Redevelopment Agency transferred \$58,486,635 in assets after January 1, 2011, including unallowable transfers to the City of Perris totaling \$5,969,127, or 10.21% 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 report on August 12, 2014. Pam K. Lee, Deputy City Attorney for the City of Perris, responded by letter dated September 5, 2014. The City's response is included in this final review report as Attachment A. Also included in the final report is a list of RDA land as of June 30, 2011, as Attachment B.

Restricted Use

This report is solely for the information and use of the City of Perris, 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

April 1, 2015

Finding and Order of the Controller

FINDING— Unallowable asset transfers to the City of Perris

The Perris Redevelopment Agency (RDA) made unallowable asset transfers of \$5,969,127 to the City of Perris (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 January 4, 2011, the RDA transferred \$3,541,000 in cash to the City as repayment of long-term loans from the City. The payments on the loans included principal and interest.
- On various dates throughout 2011, the RDA transferred a total of \$2,428,127 in land held for resale to the City.

Pursuant to 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, in the amount of \$5,969,127, and turn over the assets to the Successor Agency.

City's Response

The City stated in their response:

- The City believes that the loan agreement is an enforceable obligation.
- The City states that the \$2,290,088 listed in the SCO draft review report is incorrect.

See Attachment for the City's complete response.

SCO's Response

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. As a result, the cash transfers made by the RDA to the City during the periods of January 1, 2011, through January 31, 2012, were unallowable.

On June 20, 2013, the Successor Agency received a Finding of Completion from the California Department of Finance. The Successor Agency may place loan agreements between the RDA and the City on the Recognized Obligation Payment Schedule, as an enforceable

obligation, provided that the Oversight Board finds that the loans were for legitimate redevelopment purpose.

The City is correct, the amount of land transferred to the City was inadvertently listed as \$2,290,088. The correct amount should be \$2,428,127.

The Finding and Order of the Controller has been modified to include the correct amount of \$5,969,127 in assets transferred by the RDA to the City during the review period. These assets must be turned over to the Successor Agency.

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

Current assets—cash	
Cash to pay interest on long-term loans from the City	\$ 3,541,000
Capital assets—land held for resale	
303 N D Street (APN 311-120-007)	524,308
310 East 4 th Street (APN 310-082-021)	228,439
3 rd and F Street (APN 310-034-001)	74,632
279 South D Street (APN 313-093-006)	731,980
D Street Land for Metrolink	767,062
D Street Land for Metrolink	<u>101,706</u>
Total land held for resale	<u>2,428,127</u>
Total transfers subject to H&S Code section 34167.5	<u>\$ 5,969,127</u>

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



**ALESHIRE &
WYNDER LLP**
ATTORNEYS AT LAW

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September 5, 2014

VIA E-MAIL AND U.S. MAIL

Elizabeth Gonzalez
Chief Local Government Compliance Bureau
STATE CONTROLLER'S OFFICE
Division of Audits - Local Government Audits Bureau
P.O. Box 942850
Sacramento, CA 94250-5874

Re: SCO Draft Review Report on Perris Redevelopment Agency Asset Transfers

Dear Ms. Gonzalez:

This office represents the City of Perris ("City") as its City Attorney. This letter is in response to the State Controller's Office ("SCO") Draft Review Report of the Asset Transfers of the Perris Redevelopment Agency for the Period January 1, 2011 to January 31, 2012 ("Draft Report"). In the Draft Report, the SCO found that the former Perris Redevelopment Agency ("Agency") transferred approximately \$58,348,596 in assets after January 1, 2011, including a total of \$5,831,088 of "unallowable asset transfers." Specifically, the SCO pointed out that the unallowable asset transfers include:

- Transfer to the City of \$3,540,000 in cash on January 4, 2011 as repayment of long-term loans from the City ("Loan Repayment"); and
- Transfer to the City of \$2,290,088 in land held for resale on various dates throughout 2011 ("Land Transfers").

The SCO has demanded that the unallowable asset transfers be turned over to the Successor Agency for disposition in accordance with Health and Safety Code Section 34177(d).

\$3,540,000 Cash Transfer

The Loan Repayment was part of a loan agreement between the City and the Agency in June, 1989 ("Loan agreement") – decades before the enactment of ABX1 26 and AB 1484, where the City loaned the Agency funds for the cost of land and improvements for the community as authorized by the Community Redevelopment Law, including land for 4th street

widening, public parking lot construction, and city hall rehabilitation. (*See* Loan Agreement attached hereto.) The Loan Agreement was not only expressly authorized but encouraged by California law, including Health and Safety Code Sections 33220, 33600, 33601 and 33610, and Government Code Section 53600 *et seq.* Once the Loan Agreement was approved and entered into, it was a valid, binding, executory contract that evidenced indebtedness of the Agency and entitled to repayment with the Agency's tax increment under California law. (*See* Cal. Const., art. XVI, § 16; Health & Safety Code §§ 33670, 33675 [tax increment provisions]; *Marek v. Napa Community Redevelopment Agency* (1988) 46 Cal.3d 1070, 1087 ["We conclude that 'indebtedness,' as it is used in article XVI, section 16 and sections 33670 and 33675, includes redevelopment agencies' executory financial obligations under redevelopment contracts. Such indebtedness entitles those agencies to payment of available tax increment revenues by the local county auditor."].)

Applicable statutes and controlling case precedent required the Loan Agreement to be honored as indebtedness of the Agency with repayment from tax increment because the contract was executed between two separate public agencies—even if the governing board of a redevelopment agency was the same as the host jurisdiction. (*Ibid.* *See also*, Health & Safety Code § 33100 [expressly allowing city council to serve as board of directors for redevelopment agency]; *Pacific States Enterprises v. City of Coachella* (1993) 13 Cal.App.4th 1414, 1424 ["Well-established and well-recognized case law holds that the mere fact that the same body of officers acts as the legislative body of two different governmental entities does not mean that the two different governmental entities are, in actuality, one and the same."].)

The terms and conditions in the Loan Agreement expressly provided that funds loaned from the City to the Agency are to be repaid. For instance, the Loan Agreement provides: "The Agency hereby agrees to make payments in a timely manner from certain moneys available in the Central/North and the 1987 Redevelopment Projects, these money being the tax increment revenues deposited in the respective projects' debt service funds and subordinate to any existing pledge of the respective Redevelopment Projects' tax increment revenues." (Loan Agreement, ¶ 3.) Thus, with the anticipated termination of redevelopment agencies under ABX1 26, it was entirely consistent with the terms and conditions of the Loan Agreement that the loan be paid off prior to the dissolution of the Agency.

ABX1 26 provides that agreements between the city that created the redevelopment agency and the former redevelopment agency are not considered enforceable obligations. (Health & Safety Code § 34171(d)(2).) However, this provision was *not effective* until redevelopment agencies were dissolved on February 1, 2012. During the "freeze" period of the dissolution process, from June 28, 2011, until January 30, 2012, agreements between redevelopment agencies and their creator cities were not excluded from the definition of enforceable obligations. (Health & Safety Code § 34167(d).) In addition, during the freeze period redevelopment agencies were instructed to continue making all scheduled payments on enforceable obligations. (Health & Safety Code § 34169(a).) Enforceable obligations are defined to include (i) loans of money borrowed by the redevelopment agency for a lawful

Elizabeth Gonzalez
September 5, 2014
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purpose, and (ii) any legally binding and enforceable agreement or contract. (Health & Safety Code § 34167(d)(2) and (d)(5).)

Here, the Loan Agreement is an enforceable obligation because it is a loan of money borrowed by the Agency for a lawful purpose and is a binding and legally enforceable contract. Furthermore, the Loan Agreement was made decades *before* the Dissolution Law under ABX1 26 was even contemplated. The Loan Repayment was also made *before* the “freeze” period and was a lawful exercise of the Agency’s authority to fulfill its enforceable obligations. On January 4, 2011, the Agency Board lawfully authorized the repayment of the outstanding balance of the Loan Agreement at its regular meeting. The Loan Repayment is therefore not an unallowable asset transfer and does not need to be returned to the Successor Agency for disposition.

\$2,290,088 Land Transfers

The SCO erroneously points out that the Agency improperly transferred \$2,290,088 in land to the City during 2011. In fact, however, \$2,290,087 is the *amount of assets that the Agency retained* in Fiscal Year 2011-2012. (See Agency Journal Entry (“JE”) 1716, attached hereto.) Therefore, the Draft Report is unclear as to what land transfers the SCO wants the City to turn over to the Successor Agency for disposition.

We, therefore, hope that the SCO will consider this matter carefully, including all the information previously provided to you by the City, to avoid what is made clear to be a violation of State law. Should you wish to discuss this matter further, please contact the undersigned.

Sincerely,

ALESHIRE & WYNDER, LLP



Pam K. Lee

Deputy City Attorney for the City of Perris

PKL:cd
Enclosures

cc: Richard Belmudez, City Manager, w/encls. (via email: rbelmudez@cityofperris.org)
Ron Carr, Assistant City Manager, w/encls. (via email: rcarr@cityofperris.org)
Jennifer Erwin, Assistant Director of Finance, w/encls. (via email:
jerwin@cityofperris.org)
Eric L. Dunn, City Attorney, w/encls. (via email: edunn@awattorneys.com)

**Attachment B—
Land Transferred to the City**

City of Perris
RDA Land
as of 6/30/11

30-Jun-11 30-Jun-10 12

Asset Number	Fund	Dept.	Func.	Description	Add/Del	EO MONTH	Ending Depr Date	Useful Life	Periods Elapsed as of June 30, 2011	Periods Elapsed in Current Year	Monthly Depr Exp	Cost	Beginning Accum Depr	Current Year Depr Exp	Ending Accum Depr	Net Book Value
721	3000	RDA	24	South D Street		30-Jun-07		1	0	0	1,470,200.00	1,470,200.00	-	-	1,470,200.00	
721	3000	RDA	40	South D Street		31-Aug-07		1	0	0	484,839.00	484,839.00	-	-	484,839.00	
701	3000	RDA	APN #311-120-007-1			14-Nov-07		1	0	0	524,308.00	524,308.00	-	-	524,308.00	
701	3000	RDA	Gas Station 40 D Street			1-May-05		1	0	0	316,148.00	316,148.00	-	-	316,148.00	
700	3000	RDA	8th & Perris			1-Jul-08		1	0	0	18,900.00	18,900.00	-	-	18,900.00	
700	3000	RDA	310 East 4th Street			2-Sep-09		1	0	0	228,439.00	228,439.00	-	-	228,439.00	
700	3000	RDA	APN #310-004-001			2-Sep-09		1	0	0	74,632.00	74,632.00	-	-	74,632.00	
700	3000	RDA	279 South D Street			2-Sep-09		1	0	0	731,980.00	731,980.00	-	-	731,980.00	
700	3000	RDA	D Street Land for MetroLink			26-Jun-10		1	0	0	767,062.00	767,062.00	-	-	767,062.00	
700	3000	RDA	D Street Land for MetroLink			16-Dec-10		1	0	0	101,706.00	101,706.00	-	-	101,706.00	
												4,718,214.00	4,718,214.00			

these assets were transferred to Land (Non Park) in current year

since land is bulked up in the financial statements it should not be an addition and deletion on the schedule beginning balance in RDA Land for 2011-2012 should be 2,290,087.00

Strength Line Depreciation is used unless otherwise noted

721	3000	RDA	APN #311-120-007-1	14-Nov-07	1	0	0	0	0	0	524,308.00	524,308.00	-	-	524,308.00
700	3000	RDA	310 East 4th Street	2-Sep-09	1	0	0	0	0	0	228,439.00	228,439.00	-	-	228,439.00
700	3000	RDA	APN #310-004-001	2-Sep-09	1	0	0	0	0	0	74,632.00	74,632.00	-	-	74,632.00
700	3000	RDA	279 South D Street	2-Sep-09	1	0	0	0	0	0	731,980.00	731,980.00	-	-	731,980.00
700	3000	RDA	D Street Land for MetroLink	26-Jul-10	1	0	0	0	0	0	767,062.00	767,062.00	-	-	767,062.00
700	3000	RDA	D Street Land for MetroLink	16-Dec-10	1	0	0	0	0	0	101,706.00	101,706.00	-	-	101,706.00

0**

524,308.00 +
228,439.00 +
74,632.00 +
731,980.00 +
767,062.00 +
101,706.00 +
2,428,127.00 *

2,428,127.00 -
4,718,214.00 +
2,290,087.00 *

\$2,428,127 Assets Transferred in FY2010-2011 leaving a remainder of Assets for FY2011-2012 of \$2,290,087

**State Controller's Office
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