

PICO RIVERA REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



BETTY T. YEE
California State Controller

January 2015



BETTY T. YEE
California State Controller

January 15, 2015

Rene Bobadilla, City Manager
City of Pico Rivera/Successor Agency
6615 Passons Boulevard
Pico Rivera, CA 90660

Dear Mr. Bobadilla:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Pico Rivera Redevelopment Agency (RDA) to the City of Pico Rivera (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 \$9,990,215 in assets after January 1, 2011, including unallowable transfers to the City totaling \$1,890,000, or 18.92% 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 or by email at egonzalez@sco.ca.gov.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/kw

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Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Pico Rivera 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 \$9,990,215 in assets after January 1, 2011, including unallowable transfers to the City of Pico Rivera (City) totaling \$1,890,000, or 18.92% 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 Pico Rivera Redevelopment Agency transferred \$9,990,215 in assets after January 1, 2011, including unallowable transfers to the City of Pico Rivera totaling \$1,890,000, or 18.92% 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. Rene Bobadilla, City Manager, responded by letter dated November 17, 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 Pico Rivera, 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

January 15, 2015

Finding and Order of the Controller

**FINDING—
Unallowable asset
transfers to the
City of Pico Rivera**

The Pico Rivera Redevelopment Agency (RDA) made unallowable asset transfers of \$1,890,000 to the City of Pico Rivera (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 July 1, 2011, the RDA made an unallowable loan repayment of \$1,000,000 in cash to the City.
- On December 23, 2011, the RDA made an unallowable loan repayment of \$760,000 in cash to the City.
- On January 23, 2012, the RDA made an unallowable loan repayment of \$130,000 in cash 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 transfers in the amount of \$1,890,000 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

The City disagrees with the finding for the following reasons:

- The Draft Audit states incorrect payment dates
- Payments were lawful when made, and are not subject to reversal under H&S Code section 34167.5
- The payments were approved in the Department of Finance's (DOF) due diligence review, and the City has received a Finding of Completion
- Reversal of the challenged payments is unconstitutional

See Attachment for the City's complete response.

SCO's Comment

The payment date in the final report has been updated to reflect the correct date.

The asset transfer review performed by the SCO is a different and separate review from the Department of Finance's (DOF) Due Diligence Review (DDR). As such, transfers not identified through the DDR process may be identified in the asset transfer review.

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 redevelopment agency dissolution legislation. As a result, the cash transfers made by the RDA to the City during the period of January 1, 2011, through January 31, 2012, are unallowable.

On April 26, 2013, the Successor Agency received a DOF Finding of Completion. Pursuant to H&S Code section 34191.4, 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 loan was for legitimate redevelopment purposes.

The Finding and Order of the Controller remain as stated.

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

Loan repayment transferred to the City on July 1, 2011	\$ 1,000,000
Loan repayment transferred to the City on December 23, 2011	760,000
Loan repayment transferred to the City on January 23, 2012	<u>130,000</u>
Total unallowable asset transfers	<u>\$ 1,890,000</u>

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



René Bobadilla, P.E.
City Manager

City of Pico Rivera **OFFICE OF THE CITY MANAGER**

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November 17, 2014

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Re: State Controller's Draft Asset Transfer Review – Pico Rivera Redevelopment Agency

Dear Mr. Brownfield:

The Pico Rivera Successor Agency and City of Pico Rivera (jointly the "City") are in receipt of the State Controller's ("SCO") Draft Asset Transfer Review ("Draft Audit") concerning the Pico Rivera Redevelopment ("Agency").¹ The City strongly disagrees with the findings and order presented in the Draft Audit for the reasons set forth below.

Finding and Order of the Controller²

FINDING – Unallowable asset transfers to the City of Pico Rivera

The Pico Rivera Redevelopment Agency (RDA) made unallowable asset transfers of \$1,890,000 to the City of Pico Rivera. 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:

1. On July 1, 2011, the RDA made an unallowable loan repayment of \$1,000,000 in cash to the City.
2. On December 23, 2011, the RDA made an unallowable loan repayment of \$760,000 in cash to the City.

¹ The Draft Audit is dated September 23, 2014, but SCO granted extensions of the City's response deadline.

² The Draft Audit findings are set forth here for ease of reference.

3. On July 23, 2011, the RDA made an unallowable loan repayment of \$130,000 in cash 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 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 is ordered to reverse the asset transfers in the amount of \$1,800,000 and turn over the assets to the Successor Agency. The Successor Agency is ordered to properly dispose of the assets in accordance with H&S Code Section 34177(d).

Response by City

**RELEVANT
BACKGROUND**

Just two months after the Agency's creation the parties entered into a 1972 Cooperative Agreement. The Cooperative Agreement required the City to: (1) give the Agency access to various services and services; (2) establish and deposit monies into an "administrative fund" for Agency use; and (3) establish and deposit monies into a "revolving fund" for Agency capital improvement projects. The Agency was required to repay all advances, with interest.

In 1990, the Agency and County of Los Angeles amended a preexisting pass-through agreement ("Amended Pass-Through Agreement") to assist the Agency in meeting debt service obligations on its 1989 Tax Allocation Bonds (the "Bonds"). Among other things, the Amended Pass-Through Agreement required the City to transfer a portion of its sales tax revenues to the Agency for the latter's use in repaying the Bonds.

In furtherance of the Amended Pass-Through Agreement, the City and Agency adopted respective sales tax ordinances. The Agency's ordinance imposed a sales and use tax rate of sixty-eight percent (68%) of one percent (1%) of the sales tax generated in the project area, and the City's ordinance granted retailers a credit for taxes paid the Agency.

Simultaneously the City and Agency approved an "Agreement Relative To Redevelopment Revolving Fund Indebtedness" (the "Agreement"). The Agreement consolidated and restated the debt owed by the Agency under the Cooperative Agreement, and further required the Agency to repay all sales tax revenues transferred by the City to the Agency by way of the sales tax ordinances.

Between January 1, 2011 and the Agency's dissolution, three (3) payments were made to the City under the Agreement (the "Challenged Payments"), as follows:

- \$1,000,000 on July 1, 2011;
- \$760,000 on December 23, 2011; and
- \$130,000 on January 23, 2012.

**RESPONSE # 1 –
Draft Audit states
incorrect payment
dates**

The City acknowledges that the Challenged Payments, totaling \$1,890,000, were made by the Agency after January 1, 2011. However the Draft Audit incorrectly states that the third (3rd) payment of \$130,000 was made on July 23, 2011. The correct date of this payment was January 23, 2012. This error should be corrected.

**RESPONSE # 2 –
Payments were
lawful when made,
and are not subject
to reversal under
Section 34167.5**

Prior to the operative date of AB 1X 26 ("AB 26"), the Agreement was a lawful and binding agreement under the Community Redevelopment Law ("CRL"). Between June 28, 2011, and January 31, 2011, the Agreement was an "enforceable obligation" under Part 1.8 of Division 24 of the Health & Safety Code ("Part 1.8"). (H&S Code §§ 34167(d)(2), (d)(5)). Pending its dissolution, Part 1.8 prevented the Agency from incurring new indebtedness, executing new contracts, and transferring any assets. (H&S Code § 34162(a),(b),(d).) But notwithstanding these limitations, Part 1.8 commanded the Agency make payments on existing "enforceable obligations." (H&S Code §§ 34167(f), 34169(a).) Until February 1, 2012, "enforceable obligations" included agreements between a RDA and its sponsoring city ("RDA-City Agreements"), such as the Agreement.

H&S Code Section 34167.5 allows the SCO to reverse "asset transfers" *if* the governing agency that received the assets is not

contractually committed to a third party to expend those funds, and *only* to the extent not prohibited by federal and state law. The Draft Audit acknowledges Section 34167.5's prohibition on reversing assets that have been committed to third parties, but does not acknowledge – or even reference – the prohibition against issuing “reversal orders” that conflict with state law. The Draft Audit should be revised to address this limitation on the SCO's authority.

Section 34167.5 also declares any transfer of assets by a RDA to its sponsoring community after January 1, 2011 as not in furtherance of the CRL, and unauthorized. The SCO interprets this provision as voiding any payments by a RDA to its sponsoring city after January 1, 2011.

However Section 34167.5 is codified in Part 1.8, and SCO's interpretation results in reversing the very payments that Part 1.8 required RDAs make. Nothing in Part 1.8 suggests that payments between RDAs and their sponsoring community pursuant to preexisting agreements were “unauthorized.” In fact Part 1.8 states the exact opposite. SCO's determination to the contrary is improper, and the Draft Audit should be revised to address this clear conflict.

**RESPONSE # 3 –
The payments
were approved in
the DDR, and the
City has received a
Finding of
Completion**

The Challenged Payments were made under express authority of Part 1.8, and the SCO's demand they be reversed is improper.

In early 2013, the City timely completed its “all other fund due diligence review” (“DDR”). As required, the DDR identified all transfers of cash assets from the Agency to the City between January 1, 2011, and January 31, 2012; including the Challenged Payments.

**RESPONSE # 4 –
Reversal of the
Challenged
Payments is
unconstitutional**

The DDR concluded the Challenged Payments were lawful; a conclusion reviewed and approved by the Pico Rivera Oversight Board, DOF, and the SCO. Following this determination, the City was issued a “Finding of Completion” (“FOC”) certifying that all unauthorized transfers of Agency assets had been reversed.

The SCO's Draft Audit findings expressly conflict with the DDR determination and FOC, and fail to indicate any basis for this different determination.

The SCO's Draft Audit findings violate several provisions of California's Constitution.

Proposition 22 prohibits the Legislature from requiring the payment, remittance, loan, or transfer of tax increment monies allocated to RDAs. (Cal. Const., art. XIII, § 25.5(a)(7).) Not only does Proposition 22 protect RDAs, but it prohibits the Legislature requiring sponsoring communities repay tax increment revenues allocated RDAs. (*California Redevelopment Association v. Matosantos* (2011) 53 Cal.4th 251, 254.)

Here, the Challenged Payments were made with tax increment revenues allocated the Agency prior to its dissolution, and Proposition 22 prevents the SCO from demanding such revenues be returned.

Furthermore, Article XIII, § 24(b) prevents the Legislature from reallocating, transfer, borrowing, appropriating, or restricting the use of, or otherwise using the proceeds of any tax imposed by a local government. Article XIII, § 25.5(a)(2)(A) also prohibits the Legislature from restricting the authority of a city to impose a sales and use tax.

Here, SCO reversal of the Challenged Payments infringes upon revenues of the Agency and City's sales tax ordinances, in violation of these constitutional provisions.

Finally, reversal of the Challenged Payments would result in an unconstitutional gift of public funds, in violation of Article XVI, § 6 of California's Constitution. This section prohibits gifts of public funds to all government entities, and applies to the Legislature's requirement that one government entity transfer funds to another. (*Golden Gate Bridge, etc. Dist. v. Luehring* (1970) 4 Cal.App.3d 204, 207; *Mallon v. City of Long Beach* (1955) 44 Cal.2d 199, 211.) If a transfer of funds from one government entity to another does not serve the purpose of the "transferring entity," the transfer is unconstitutional.

Here, the City's remittance of \$1.8 million from its general fund to other taxing entities would be extremely detrimental to the City, and only benefit the recipient entities. This result is unconstitutional.

Re: SCO Draft Audit of RDA Transfers
November 17, 2014
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In closing, the City appreciates the opportunity to respond to the SCO's Draft Audit, and are available to provide additional and/or clarifying information as needed. We request the SCO reconsider its Draft Audit finding and order in light of the foregoing. Should you have any further questions or concerns, please contact the undersigned.

Very truly yours,



René Bobadilla
City Manager, City of Pico Rivera

RB:CC:LT:es

cc: Richard J. Chivaro, Chief Legal Counsel, SCO
Elizabeth Gonzalez, Bureau Chief, SCO
Betty Moya, Audit Manager, SCO
Nicole Baker, Auditor in Charge, SCO
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