

FONTANA REDEVELOPMENT AGENCY

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 14, 2014

Lisa A. Strong, Director
Fontana Redevelopment/Successor Agency
8353 Sierra Avenue
Fontana, CA 92335

Dear Ms. Strong:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Fontana Redevelopment Agency (RDA) to the City of Fontana (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 \$344,129,501 in assets after January 1, 2011, including unallowable transfers to the City totaling \$7,124,646, or 2.07% 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/kw

cc: Evelyne Ssenkoloto, Oversight Board Chair
City of Fontana Redevelopment/Successor Agency
Larry Walker, Auditor-Controller
San Bernardino County
David Botelho, Program Budget Manager
California Department of Finance
Richard J. Chivaro, Chief Legal Counsel
State Controller's Office
Elizabeth González, Bureau Chief
Division of Audits, State Controller's Office
Betty Moya, Audit Manager
Division of Audits, State Controller's Office
Daniel Tobia, Auditor-in-Charge
Division of Audits, State Controller's Office
Keith DeAnda, Auditor
Division of Audits, State Controller's Office
Sashi Lal, Auditor
Division of Audits, 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 Fontana 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 \$344,129,501 in assets after January 1, 2011, including unallowable transfers to the City of Fontana (City) totaling \$7,124,646, or 2.07% 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 Fontana Redevelopment Agency transferred \$344,129,501 in assets after January 1, 2011, including unallowable transfers to the City of Fontana totaling \$7,124,646, or 2.07% 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 June 30, 2014. Lisa A. Strong, Deputy City Treasurer, responded by letter dated July 16, 2014, disagreeing with the review results. The City's response is included in this final review report.

Restricted Use

This report is solely for the information and use of the City of Fontana, 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 14, 2014

Finding and Order of the Controller

FINDING— Unallowable asset transfers to the City of Fontana

The Fontana Redevelopment Agency (RDA) made unallowable transfers of \$7,124,646 to the City of Fontana (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 June 7, 2011, and September 22, 2011, the RDA transferred a total of \$1,000,000 in cash to the City for loan payments related to the Downtown Project Area.
- On June 6, 2011, and June 7, 2011, the RDA transferred a total of \$2,280,000 in cash to the City for loan payments related to the Sierra Corridor Project Area.
- On March 29, 2011, November 8, 2011, and January 31, 2012, the RDA transferred a total of \$3,844,646 in cash to the City for loan payments related to the purchase and sale of the Ventana property.

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 totaling \$7,124,646 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

The City disputes your order to reverse the March 29, 2011 payment of \$1,687,323, the June 6, 2011 payment of \$140,000, the June 6, 2011 payment of \$231,106, the June 7, 2011 payment of \$140,000, the June 7, 2011 payment of \$500,000, and the June 7, 2011 payment of \$1,768,894. The City agrees it paid these obligations. These obligations were paid prior to the enactment of AB X1 26. These were authorized by law and consistent with the loan documents between City and Agency at the time it was made. Any order to return funds that were lawful paid prior to the effective date of AB X1 26 impacts the City's budgeting process. The City and the Fontana community have relied upon that lawful action and those funds have been encumbered as part of a subsequent City budgeting process. Consequently, the funds are not available to be returned to the Successor Agency.

SCO's Response

The SCO disagrees with the City. H&S Code section 34167.5 is effective six months prior to the enactment of AB X1 26. This legislation retroactively disallows the transfer of RDA assets to other public agencies effective after January 1, 2011. We understand that the assets may now be encumbered and unavailable; however, the transfer of RDA assets was unallowable and the City should not have encumbered the assets to another party. It is the obligation of the City, Successor Agency, and Oversight Board to determine the best method of returning the assets in a timely manner.

The findings remain as stated.

City's Response

The City also disputes your order to reverse the November 8, 2011 payment of \$1,687,323, the November 8, 2011 payment of \$405,000, and the January 31, 2012 payment of \$65,000. To clarify, the January 31, 2012 payment was actually made on November 8, 2011 although it may not have posted to the City books until January 2012. The City agrees it paid these obligations. These obligations were paid prior to the dissolution of redevelopment agencies during the initial Enforceable Obligation Payment Schedule ("EOPS") period. The EOPS was submitted to the SCO and the Department of Finance ("DOF") as required by Health and Safety Code section 34169. As required by the statute, the SCO and DOF were provided with copies of EOPS. The SCO did not object to the payment at the time of the EOPS. The DOF did not deny the payment on the EOPS. The City, relying upon the SCO's and DOF's failure to object to the payments, has encumbered those funds as part of the city budgeting process. Consequently, the funds are not available to be returned to the Success Agency.

SCO's Response

The SCO disagrees with the City. Although H&S Code section 34167(d) does not exclude city-agency agreements, H&S Code section 34167.5 further defines the actions of RDA to exclude transfers to other public agencies. Additionally, although the payments were listed on the EOPS and were not denied, this does not indicate that they were approved. The purpose of this review is to determine if such transfers occurred. We understand that the assets may now be encumbered and unavailable; however, the transfer of RDA assets was unallowable and the City should not have encumbered the assets to another party. It is the obligation of the City, Successor Agency, and Oversight Board to determine the best method of returning the assets in a timely manner.

The Finding and Order of the Controller remain as stated.

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

Unallowable asset transfers to the City of Fontana:

Cash transfer for principal and interest payment (June 7, 2011)	\$ 500,000
Cash transfer for interest payment (September 22, 2011)	<u>500,000</u>
Total loan payments for Downtown Project Area	<u>1,000,000</u>
Cash transfer for interest payment (June 6, 2011)	140,000
Cash transfer for interest payment (June 7, 2011)	140,000
Cash transfer for principal payment (June 6, 2011)	231,106
Cash transfer for principal payment (June 7, 2011)	<u>1,768,894</u>
Total loan payments for Sierra Corridor Project Area	<u>2,280,000</u>
Cash transfer for interest payment (March 29, 2011)	1,687,323
Cash transfer for interest payment (November 8, 2011)	1,687,323
Cash transfer for principal payment (November 8, 2011)	405,000
Cash transfer for interest payment (January 31, 2011)	<u>65,000</u>
Total loan payments for Ventana property	<u>3,844,646</u>
Total transfers subject to H&S Code section 34167.5	<u><u>\$ 7,124,646</u></u>

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



City of Fontana CALIFORNIA

July 16, 2014

Mr. Jeffrey V. Brownfield, CPA, Chief
Local Government Audits Bureau
State Controllers' Office Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874

RE: Response to State Controller's Asset Transfer Review Report for the Fontana
Redevelopment Agency

Dear Mr. Brownfield:

We appreciate the opportunity to respond to the State Controller's letter dated June 30, 2014, received July 9, and State Controller's Office (SCO) review report dated June 2014 that found the City of Fontana Redevelopment Agency (RDA) between January 1, 2011 and January 31, 2012, transferred \$344,129,501 in assets, which included unallowable transfers of \$7,124,646. The City of Fontana as Successor Agency is providing the following information for the finding and order of the Controller.

FINDING: Unallowable asset transfers to the City of Fontana

- The SCO contends that the \$1,000,000 RDA loan repayment to the City on June 7, 2011 and September 22, 2011 related to the Downtown Project Area were unallowable asset transfers.

The City disputes your order to reverse the June 7, 2011 transfer of \$500,000. The City agrees it paid this obligation. This obligation was paid prior to the enactment of AB X1 26. It was authorized by law and consistent with the loan documents between City and Agency at the time it was made. Any order to return funds that were lawful paid prior to the effective date of AB X1 26 impacts the City's budgeting process. The City and the Fontana community have relied upon that lawful action and those funds have been encumbered as part of a subsequent City budgeting process. Consequently, the funds are not available to be returned to the Successor Agency.

The City does not object to the order related to the September 22, 2011 payment.

Mr. Jeffrey V. Brownfield, CPA, Chief
July 16, 2014
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- The SCO contends that the \$2,280,000 loan repayment to the City on June 6, 2011 and June 7, 2011 related to the Sierra Corridor Project Area were unallowable asset transfers.

The City disputes your order to reverse the June 6 and 7, 2011 transfer of \$2,280,000. The City agrees it paid these obligations. These obligations were paid prior to the enactment of AB X1 26. The payments were authorized by law and consistent with the loan documents between City and Agency at the time made. Any order to return funds that were lawful paid prior to the enactment of AB 1X 26 impacts the City's budgeting process. The City and the Fontana community have relied upon that lawful action and those funds have been encumbered as part of a subsequent City budgeting process. Consequently, the funds are not available to be returned to the Successor Agency.

- The SCO contends that the \$3,844,646 loan repayment to the City on March 29, 2011, November 8, 2011, and January 31, 2012 related to the purchase and sale of the Ventana property were unallowable asset transfers.

The City disputes your order to reverse the March 29, 2011 transfer of \$1,687,323. The City agrees it paid this obligation. This obligation was paid prior to the enactment of AB X1 26. It was authorized by law and consistent with the loan documents between City and Agency at the time it was made. Any order to return funds that were lawful paid prior to the enactment of AB X1 26 impacts the City's budgeting process. The City and the Fontana community have relied upon that lawful action and those funds have been encumbered as part of a subsequent City budgeting process.

The City also disputes your order to reverse the November 8, 2011 payment of \$1,687,323, the November 8, 2011 payment of \$405,000 and the January 31, 2012 payment of \$65,000. To clarify, the January 31, 2012 payment was actually made on November 8, 2011 although it may not have posted to the City books until January 2012. The City agrees it paid these obligations. These obligations were paid prior to the dissolution of redevelopment agencies during the initial Enforceable Obligation Payment Schedule ("EOPS") period. The EOPS was submitted to the SCO and the Department of Finance ("DOF") as required by Health and Safety Code section 34169. As required by the statute, the SCO and DOF were provided with copies of the EOPS. The SCO did not object to the payment at the time of the EOPS. The DOF did not deny the payment on the EOPS. The City, relying upon the SCO's and DOF's failure to object to the payments, has encumbered those funds as part of the city budgeting process. Consequently, the funds are not available to be returned to the Successor Agency.

Each of these repayments was based upon a loan related to the May 11, 2008 agreement between the City of Fontana and the Fontana Redevelopment Agency. That agreement was binding and effective at the time of dissolution. Section 34167 governed the actions of redevelopment agencies prior to their dissolution. The definition of "enforceable obligation" in Section 34167(d) did not exclude city-agency agreements, and the section authorized the agency to repay "any legally binding and enforceable agreement or contract that is not

Mr. Jeffrey V. Brownfield, CPA, Chief
July 16, 2014
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otherwise void as violating the debt limit or public policy.” Section 34167 remained in effect through January 31, 2012. Each of these questioned payments was made while Section 34176(d) was in effect.

Please let us know if you have any questions regarding the City’s responses. We would appreciate your consideration of the above information prior to finalizing the report.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Lisa A. Strong', with a stylized flourish at the end.

Lisa A. Strong
Management Services Director/Deputy City Treasurer

cc: Oversight Board of the Fontana Successor Agency

**State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874**

<http://www.sco.ca.gov>