

SANTA PAULA 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

Sandy K. Easley, Finance Director
Santa Paula Designated Local Authority
P.O. Box 569
970 Ventura Street
Santa Paula, CA 93060

Dear Ms. Easley:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Santa Paula Redevelopment Agency (RDA) to the City of Santa Paula (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 Santa Paula Designated Local Authority as Successor Agency to the RDA (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 \$5,389,202 in assets after January 1, 2011, including unallowable transfers to the City totaling \$1,149,329, or 21.33% 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/sk

cc: Jeffery S. Burgh, Auditor-Controller
County of Ventura
Bill Bartels, Oversight Board Chair
Santa Paula Redevelopment/Successor Agency
Christopher J. Jicha, Senior Consultant
Kosmont Companies
David Botelho, Program Budget Manager
California Department of Finance
Richard J. Chivaro, Chief Legal Counsel
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Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Santa Paula 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 \$5,389,202 in assets after January 1, 2011, including unallowable transfers to the City of Santa Paula (City) totaling \$1,149,329, or 21.33% of transferred assets. These assets must be turned over to the Santa Paula Designated Local Authority as Successor Agency to the RDA (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.

The City of Santa Paula elected not to serve as the Successor Agency.

Health and Safety Code section 34173(d)(3)(A) states:

If no **local** agency elects to serve as a successor agency for a dissolved **redevelopment** agency, a public body, referred to herein as a “**designated local authority**” shall be immediately formed, pursuant to this part, in the county and shall be vested with all the powers and duties of a successor agency as described in the part. The Governor shall appoint three residents of the county to serve as the governing board of the **authority**. The **designated local authority** shall serve as successor agency until a local agency elects to become the successor agency in accordance with this section.

On February 1, 2012, Governor Brown appointed a three-member governing board to serve as the Designated Local Authority (Successor Agency) for the former Santa Paula Redevelopment Agency.

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 Santa Paula Redevelopment Agency (RDA) transferred \$5,389,202 in assets after January 1, 2011, including unallowable transfers to the City totaling \$1,149,329, or 21.33% of transferred assets. These assets must be turned over to the Santa Paula Designated Local Authority as Successor Agency to the RDA.

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. Christopher J. Jicha, Senior Consultant, Kosmont Companies, responded for the DLA by letter dated October 10, 2014. Mr. Jicha provided additional information validating a transfer of cash to the Housing Authority as committed to a third party prior to June 28, 2011. Therefore, this finding has been removed.

In addition, the city indicated that it is willing to transfer the real properties to the Successor Agency. The DLA'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, the Santa Paula Designated Local Authority as the Successor Agency, the Housing Authority, 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 Santa Paula**

The Santa Paula Redevelopment Agency (RDA) made unallowable asset transfers totaling \$1,149,329 to the City of Santa Paula (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 transfers were as follows:

- On March 31, 2011, the Paseo Property (APN #103-0-102-245) valued at \$949,233, was transferred to the City.
- On June 1, 2011, the Tower Theatre (APN #103-0-113-095) valued at \$200,096, was transferred 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(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 \$1,149,329 and turn over the assets to the Successor Agency.

City's Response

The City indicated its willingness to transfer the properties to the Santa Paula Designated Local Authority, as the Successor Agency to the RDA (Successor Agency). However, in 2012, the Successor Agency requested that the City hold these assets for the purpose of maintaining property and liability insurance on the properties. The City agreed that once the SCO's Order is final, the City will transfer title to the properties to the Successor Agency.

See Attachment for the City's complete response.

SCO's Comment

The SCO accepts the City's plans to take corrective action by returning the assets to the Successor Agency. Once the City turns over the assets to the Successor Agency, no further action will be necessary.

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

Paseo Property (March 31, 2011)	\$ 949,233
Tower Theatre (July 1, 2011)	<u>200,096</u>
Total unallowable transfers	<u>\$ 1,149,329</u>

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

SANTA PAULA DESIGNATED LOCAL AUTHORITY,
AS SUCCESSOR AGENCY TO THE
SANTA PAULA REDEVELOPMENT AGENCY

October 10, 2014

BY EMAIL AND FIRST CLASS MAIL
egonzalez@sco.ca.gov

Ms. Elizabeth Gonzalez
Chief, Local Government Compliance Bureau
State Controller's Office
Division of Audits
P.O. Box 942850
Sacramento, California 94250-5874

Re: Draft Asset Transfer Review Report and Letter of
September 30, 2014

Dear Ms. Gonzalez:

This letter is written in response to the draft Santa Paula Redevelopment Agency Asset Transfer Report (the "Draft Report") from the State Controller's Office (SCO) dated September 2014 and the cover letter dated September 23, 2014 from Jeffrey V. Brownfield, CPA, Chief, Division of Audits. In the Draft Report, the SCO has indicated that the former Redevelopment Agency made unallowable transfers totaling \$1,359,329, or 24.8% of transferred assets, including \$1,149,329 to the City of Santa Paula and \$210,000 to the Housing Authority. The Draft Report goes on to say that these assets must be turned over to the Successor Agency.

The Santa Paula Designated Local Authority, as Successor Agency to the Santa Paula Redevelopment Agency ("Successor Agency") agrees with certain statements made in the Draft Report, but disagrees with others and would like the following views of responsible officials considered in the SCO's final report.

Unallowable Asset Transfers to the City of Santa Paula

Unallowable transfers to the City per the Draft Report consist of the following:

1. The transfer on March 31, 2011 of the Paseo Property (APN #103-0-102-245) valued at \$949,233; and
2. The transfer on June 1, 2011 of the Tower Theater (APN #103-0-113-095) valued at \$200,096.

The City has indicated its willingness to transfer the properties to the Successor Agency; however, the Successor Agency requested in 2012 that the City hold these assets for the benefit of the Successor Agency for the purpose of maintaining property and liability insurance on the properties. The Successor Agency has been unable to locate reasonably-priced insurance for the properties, and the City has access to insurance that the Successor Agency does not.

Once the SCO's order is final, the City will transfer title to the properties to the Successor Agency so that they can be disposed of in accordance with HSC Section 34177(e).

Unallowable Asset Transfers to the Housing Authority

Unallowable transfers to the Housing Authority per the Draft Report consist of the following:

1. The transfer on February 10, 2011 of \$105,000 in cash for the development of a low-income homeownership project; and
2. The transfer on August 1, 2011 of \$105,000 in cash for the development of a low-income homeownership project.

The Successor Agency believes these transfers were made in accordance with applicable law and therefore should not be considered unallowable. The "transfers" in fact constitute payments made pursuant to an enforceable obligation: that certain Contract for Affordable Housing Grant between the Santa Paula Redevelopment Agency and Santa Paula Housing Authority (SPHA) dated November 24, 2009 (the "Grant Contract")(copy attached).

The Draft Report states that the transfers were made in violation of HSC Section 34167.5, which states that the RDA may not transfer assets to a public agency after January

1, 2011. The Draft Report erroneously characterizes the payments as transfers to a public agency under HSC Section 34167.5. Instead, and more accurately, the “transfers” should be characterized as payments made on an enforceable obligation in accordance with, and as permitted by, HSC Section 34167.

HSC Section 34167(f) states that “Nothing in this part shall be construed to interfere with a redevelopment agency’s authority, pursuant to enforceable obligations as defined in this chapter, to (1) make payments due, (2) enforce existing covenants and obligations, or (3) perform its obligations.”

The payments made by the RDA to the SPHA were made pursuant to the Grant Contract, a valid enforceable obligation under applicable law. HSC Section 34171(d)(5) includes in the definition of an enforceable obligation “Any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy.”

The Grant Contract was entered into in 2009, was signed by the parties to be bound, contains consideration, and otherwise meets the legal definition of an enforceable contract or obligation. Therefore, payments made under the Grant Contract are allowable under HSC Section 34167.

Further, the SCO cannot argue that the Grant Contract is not an enforceable obligation since it falls within the exception set forth in HSC Section 34171(d)(2), which states that enforceable obligations do not include any agreements, contracts, or arrangements between the city and the former redevelopment agency. SPHA is not considered the City for purposes of applicable law.

HSC Section 34167.10(a) sets forth the definition of a “city,” and also sets forth the criteria by which such determinations are to be made. The definition of a city includes, but is not limited to, the following entities:

- (1) Any reporting entity of the city for purposes of its comprehensive annual financial report or similar report.
- (2) Any component unit of the city.
- (3) Any entity which is controlled by the city, or for which the city is financially responsible or accountable.

SPHA should not be considered as an alter-ego of the City for purposes of HSC Section 34171(d)(2) because it fails to meet the criteria set forth in HSC Section 34167.10 (b). Relevant facts based on the criteria set forth in Section 34167.10 (b) are as follows:

- a) The City Manager and City Council do not exercise control over SPHA’s operations, revenues and expenditures. SPHA has an independent board

- and employs an Executive Director and separate staff. SPHA does not share offices with the City.
- b) The City does not own or control SPHA's property or facilities.
 - c) The governing body of SPHA is not the City Council, nor does the SPHA employ or utilize members of the City's staff.
 - d) SPHA does not perform functions customarily performed by a municipality – it owns and operates affordable housing. Municipalities do not typically or historically own and operate affordable housing.
 - e) SPHA is not a blended component unit of the City.
 - f) SPHA is not included in the City's reporting for purposes of its comprehensive annual financial report or similar report
 - g) The City/former RDA maintained its own low and moderate income housing funds, and no such funds were deposited with the SPHA (the City's and the former RDA's audited financial statements can be found on the City's web site).
 - h) The City is not financially responsible or accountable for SPHA

Accordingly, SPHA does not fall within the definition of a "city" under HSC Section 34167.10.

As a result, the payments made to SPHA in 2011 totaling \$210,000 constituted payments made pursuant to an enforceable obligation in accordance with HSC Section 34167, and do not constitute unallowable transfers to another public entity under HSC Section 34167.5.

Conclusion

In closing, the Successor Agency, its governing bodies and staff look forward to the timely resolution of these matters so that we can move forward with the wind-down of the former Santa Paula Redevelopment Agency.

If you have any questions, please contact Christopher Jicha, Staff to the Successor Agency at (951) 203-8730 or Joy Heuser Otsuki, Successor Agency Counsel at (949) 457-6111.

Ms. Elizabeth Gonzalez
Re: Draft Asset Transfer Review Report
October 10, 2014
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Sincerely,

CHRISTOPHER J. JICHA
Successor Agency Staff

cc: Members of the Oversight Board to the Santa Paula Designated Local Authority
Members of the Santa Paula Designated Local Authority
Honorable Mayor and Members of the Santa Paula City Council
Honorable Chairman and Members of the Santa Paula Housing Authority
Sandy K. Easley, Finance Director
Joy Heuser Otsuki, Esq.

Attachments: SP Housing Agreement ("Grant Contract")

**State Controller's Office
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