

SAN CARLOS REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

December 2014



JOHN CHIANG
California State Controller

December 31, 2014

Jeff Maltbie, City Manager
San Carlos Redevelopment/Successor Agency
600 Elm Street
San Carlos, CA 94070

Dear Mr. Maltbie:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the San Carlos Redevelopment Agency (RDA) to the City of San Carlos (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 \$29,124,634 in assets after January 1, 2011, including unallowable transfers to the City totaling \$3,308,092, or 11.36% 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: Bob Adler, CPA, Controller
County of San Mateo
Jim Porter, Oversight Board Chair
City of San Carlos
Tracy Kwok, Financial Services Manager
City of San Carlos
Tammy Mak, Accountant
City of San Carlos
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Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the San Carlos 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 \$29,124,634 in assets after January 1, 2011, including unallowable transfers to the City of San Carlos (City) totaling \$3,308,092, or 11.36% 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 of San Carlos (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 San Carlos Redevelopment Agency transferred \$29,124,634 in assets after January 1, 2011, including unallowable transfers to the City of San Carlos totaling \$3,308,092, or 11.36% of transferred assets. These assets must be turned over to the Successor Agency.

Views of Responsible Officials

We issued a draft review report on November 20, 2014. Jeff Maltbie, City Manager, responded by letter dated December 4, 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, 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

December 31, 2014

Finding and Order of the Controller

**FINDING—
Unallowable asset
transfers to the
City of San Carlos**

The San Carlos Redevelopment Agency (RDA) made unallowable asset transfers of \$3,308,092 to the City of San Carlos (City). The transfers occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

On June 30, 2011, the RDA made a loan repayment of \$3,308,692 to the City (\$3,100,000 in principal and \$208,092 in interest).

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) and (e).

Order of the Controller

Pursuant to H&S Code section 34167.5, the City is ordered to reverse the transfer of the assets in the amount of \$3,308,092 and turn them over to the Successor Agency.

City's Response:

The City disagreed with the finding and Order of the Controller.

See Attachment for the City's complete response.

SCO's Comment

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, loan repayments made by the RDA to the City during the periods of January 1, 2011, through January 31, 2012, were unallowable.

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.

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

CITY OF SAN CARLOS

CITY COUNCIL

MARK OLBERT, MAYOR
RON COLLINS, VICE MAYOR
BOB GRASSILLI
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December 4, 2014

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

RE: State Controller's Draft Asset Transfer Review Report
(November 2014)

Dear Ms. Gonzalez:

The San Carlos Successor Agency ("Successor Agency"), successor-in-interest of the San Carlos Redevelopment Agency ("RDA"), has reviewed the Draft Asset Transfer Review Report prepared by the State Controller's Office ("SCO") pursuant to Health and Safety Code Section 34167.5. The Successor Agency disagrees with the Finding and Order of the SCO that the RDA made unallowable asset transfers of \$3,308,092 to the City of San Carlos ("City") that must be reversed. It is the position of the Successor Agency that the payment of \$3,308,092 by the RDA to the City was not an unallowable asset transfer.

The amount in question consists of the principal and interest due on two loans made by the City. The first loan, approved on April 26, 2010, in the amount of \$1.6 million, was provided by the City to the RDA in order to enable the RDA to make the Supplemental Educational Revenue Augmentation Fund ("SERAF") payment due on May 10, 2010. The second loan, approved on October 11, 2010, in the amount of \$1.5 million, was provided by the City to the RDA to finance redevelopment activities within the San Carlos Redevelopment Project Area. Each of these loans was a valid and binding obligation of the RDA both at the time of approval and at the time of payment. The laws providing for the suspension of activities and dissolution of redevelopment agencies (AB 1X 26, Stats. 2011, chap. 5) did not take effect until June 28, 2011. Prior to the effective date of AB 1X 26, the RDA possessed its full legal authority to continue to pay its legitimate obligations.

Similar to the definition in AB 1X 26 of enforceable obligations of the RDA (Health and Safety Code §34167(d)), these loan funds were "borrowed by the redevelopment agency for a lawful purpose" and were made pursuant to "a legally binding and enforceable agreement that is not otherwise void as violating the debt limit or public policy." Payment of the loans by the RDA was not an unallowable transfer of assets, but rather a lawful payment of a legitimate obligation.

We respectfully request that the SCO reverse its Finding and Order concerning the two loan payments made by the RDA.

Sincerely,

Jeff Maltbie
Executive Director

**State Controller's Office
Division of Audits
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