

THOUSAND OAKS REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



BETTY T. YEE
California State Controller

February 2015



BETTY T. YEE
California State Controller

February 17, 2015

Scott Mitnick, City Manager
City of Thousand Oaks/Successor Agency
2100 Thousand Oaks Boulevard
Thousand Oaks, CA 91362

Dear Mr. Mitnick:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Thousand Oaks Redevelopment Agency (RDA) to the City of Thousand Oaks (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 \$139,725,084 in assets after January 1, 2011, including unallowable transfers to the City totaling \$7,379,410, or 5.28% of transferred assets.

However, on November 19, 2013, the City remitted \$7,229,410 in cash to the County Auditor-Controller. Therefore, the remaining \$150,000 in unallowable transfers 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
Ventura County
Jacqui Irwin, Oversight Board Chair
Thousand Oaks Redevelopment/Successor Agency
David Botelho, Program Budget Manager
California Department of Finance
Richard J. Chivaro, Chief Legal Counsel
State Controller's Office
Elizabeth González, Bureau Chief
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Scott Freesmeier, Audit Manager
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Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Thousand Oaks 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 \$139,725,084 in assets after January 1, 2011, including unallowable transfers to the City of Thousand Oaks (City) totaling \$7,379,410, or 5.28% of transferred assets.

However, on November 19, 2013, the City turned over \$7,229,410 in cash to the County Auditor-Controller. Therefore, the remaining \$150,000 in unallowable transfers 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 an asset transfer 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 Thousand Oaks Redevelopment Agency transferred \$139,725,084 in assets after January 1, 2011, including unallowable transfers to the City of Thousand Oaks (City) totaling \$7,379,410, or 5.28% of transferred assets.

However, on November 19, 2013, the City remitted \$7,229,410 in cash to the County Auditor-Controller. Therefore, the remaining \$150,000 in unallowable transfers must be turned over to the Successor Agency.

Details of our findings are described in the Findings and Orders of the Controller section of this report.

Views of Responsible Officials

We issued a draft review report on November 25, 2014. John F. Adams, Finance Director, responded by letter dated December 12, 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 Thousand Oaks, 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

February 17, 2015

Finding and Order of the Controller

FINDING— Unallowable asset transfers to the City of Thousand Oaks

The Thousand Oaks Redevelopment Agency (RDA) made unallowable asset transfers totaling \$7,379,410 to the City of Thousand Oaks (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 March 17, 2011, the RDA transferred \$8,138,684 in cash assets to the City's Community Facility Fund per Funding Agreement (Contract No. 9584-2011) dated March 8, 2011. (JE# RC 205 I). However, after February 1, 2012, the City expended \$909,274 on third-party obligations. The remaining \$7,229,410 in cash is unallowable.
- On December 31, 2011, the RDA transfer \$150,000 in cash assets to the City's Local Housing Trust Fund (JE# RC 222). The transfer was to demonstrate a revenue stream for a Notice of Funding Availability Program application process.

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 agency after January 1, 2011. Those 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 of \$7,379,410 and turn over the assets to the Successor Agency. However, on November 19, 2013 the City remitted \$7,229,410 in cash to the County Auditor-Controller for distribution to the taxing entities. Therefore, the remaining \$150,000 in unallowable transfers must be turned over to the Successor Agency.

City's Response – Community Facility Fund Transfer – Auto Mall Association

The City of Thousand Oaks (City) respectfully disagrees with this finding as the subject transfer was from the Agency to the Successor Agency, not the City's Community Facility Fund. Furthermore, the City believes that during the review period that the Auto Mall Agreement was an Enforceable Obligation. For background, the Agency entered into a written contract that created an enforceable obligation with the Thousand Oaks Auto Mall Association (Association) in March 2011 and committed the funds in an escrow account of the Successor Agency to construct public improvements. This action was done prior to the approval of Assembly Bill 26 on June 28, 2011. As part of the dissolution process, the Department of Finance approved this obligation on multiple occasions (EOPS/ROPS) until ROPS III, when it first asserted that the obligation was no longer allowed as the term of the agreement expired. After a Meet and Confer with the Department of Finance (DOF), a settlement agreement was

ultimately executed in November 2013 to reimburse the Association for its incurred costs and the City remitted the remaining required amount from escrowed funds to the County Auditor-Controller.

The City respectfully requests that this erroneous finding be removed from the final report as all steps legally possible were performed to remit the funds promptly and remedy the dispute with each party. City's position is based on the fact that during the review period from June 2011 through January 2012, the obligation was enforceable and the funds remained with the Successor Agency.

City's Response – Housing Trust Fund Transfer

During July 2010 the Agency Board approved an annual transfer of \$150,000 for 5 years from the Agency to the City's Housing Trust Fund in order to meet the grant recurring revenue stream requirement initially set forth by the Notice of Funding Availability from State Department of Housing and Community Development (HCD). The City was awarded a \$1 million Housing Grant from the State and the City awarded \$2 million to the Area Housing Authority, a housing non-profit agency, for its Los Feliz Housing Project from its Housing Trust Fund.

The annual \$150,000 Housing Trust Fund Transfer was included and processed in accordance with the EOPS approved by the DOF. The transfer was completed on December 31, 2011, in compliance with the EOPS dated August 26, 2011, covering August through December 2011. Even though this enforceable obligation was approved by the Agency Board and the DOF, it was ultimately denied by the DOF prior to the submission of ROPS III, at which point the City did not make any additional transfers nor include it on future ROPS.

The City respectfully requests that the SCO reverse its Order demanding the transfer of \$150,000 from the City's Housing Trust Fund to the Successor Agency as the transaction was completed in compliance with the Board Action and EOPS. Should the SCO issue the Review without changing the order, the City will process the \$150,000 transfer to the Successor Agency within 30 days of issuance of final Review.

SCO's Comment

In response to the Community Facility Fund Transfer – Auto Mall Association, the journal entries and financial statements provided identified that the cash asset was transferred on March 17, 2011, from the RDA Capital Projects Fund 420 to the city Investment Pool Fund 930, to place funds in the bank escrow.

The contract is considered a funding agreement and not a construction agreement to start building the project. The project was ultimately not constructed. On November 19, 2013, the City remitted \$7,229,410 in cash to the County Auditor-Controller for distribution. Therefore, no further action is necessary for this item.

In response to the Housing Trust Fund transfer on December 31, 2011, in the amount of \$150,000, once the cash is turned over to the Successor Agency as stated in the City's response, no further action will be necessary.

The Finding and Order of the Controller remain as stated.

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

<u>Unallowable transfers to the City of Thousand Oaks</u>	<u>Date</u>	<u>Amount</u>
Cash transfer for Thousand Oaks Auto Mall project	3/17/2011	\$ 7,229,410
Low-Mod Housing funds transfer to Local Housing Trust Fund program	12/31/2011	<u>150,000</u>
Total unallowable transfers		7,379,410
Less: cash remitted to the County Auditor-Controller	11/19/2013	<u>(7,229,410)</u>
Total unallowable transfers subject to H&S Code section 34167.5		<u>\$ 150,000</u>

**Attachment—
Auditee’s Response to
Draft Review Report**



Finance Department

2100 Thousand Oaks Boulevard • Thousand Oaks, CA 91362
Phone 805/449.2200 • Fax 805/449.2250 • www.toaks.org

December 12, 2014

John F. Adams
Finance Director

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

Re: Thousand Oaks Redevelopment Agency - Response to Draft Asset Transfer Review

Dear Ms. González:

The purpose of this letter is to respond to the two findings contained in the draft Asset Transfer Review (Review) dated November 25, 2014, for the former Thousand Oaks Redevelopment Agency (Agency). In addition, the City believes that providing this background from management to the reader of the Review on the findings is critical to understanding the former Agency's actions.

Finding 1 - Community Facility Fund Transfer – Auto Mall Association

The City of Thousand Oaks (City) respectfully disagrees with this finding as the subject transfer was from the Agency to the Successor Agency, not the City's Community Facility Fund. Furthermore, the City believes that during the review period that the Auto Mall Agreement was an Enforceable Obligation. For background, the Agency entered into a written contract that created an enforceable obligation with the Thousand Oaks Auto Mall Association (Association) in March 2011 and committed the funds in an escrow account of the Successor Agency to construct public improvements. This action was done prior to the approval of Assembly Bill 26 on June 28, 2011. As part of the dissolution process, the Department of Finance approved this obligation on multiple occasions (EOPS/ROPS) until ROPS III, when it first asserted that the obligation was no longer allowed as the term of the agreement expired. After a Meet and Confer with the Department of Finance (DOF), a settlement agreement was ultimately executed in November 2013 to reimburse the Association for its incurred costs and the City remitted the remaining required amount from escrowed funds to the County Auditor-Controller.

The City respectfully requests that this erroneous finding be removed from the final report as all steps legally possible were performed to remit the funds promptly and remedy the dispute with each party. City's position is based on the fact that during the review period from June 2011 through January 2012, the obligation was enforceable and the funds remained with the Successor Agency.

Finding 2 - Housing Trust Fund Transfer

During July 2010 the Agency Board approved an annual transfer of \$150,000 for 5 years from the Agency to the City's Housing Trust Fund in order to meet the grant recurring revenue stream requirement initially set forth by the Notice of Funding Availability from State Department of Housing and Community Development (HCD). The City was awarded a \$1 million Housing Grant from the State and the City awarded \$2 million to the Area Housing Authority, a housing non-profit agency, for its Los Feliz Housing Project from its Housing Trust Fund.

The annual \$150,000 Housing Trust Fund Transfer was included and processed in accordance with the EOPS approved by the DOF. The transfer was completed on December 31, 2011, in compliance with the EOPS dated August 26, 2011, covering August through December 2011. Even though this enforceable obligation was approved by the Agency Board and the DOF, it was ultimately denied by the DOF prior to the submission of ROPS III, at which point the City did not make any additional transfers nor include it on future ROPS.

The City respectfully requests that the SCO reverse its Order demanding the transfer of \$150,000 from the City's Housing Trust Fund to the Successor Agency as the transaction was completed in compliance with the Board Action and EOPS. Should the SCO issue the Review without changing the order, the City will process the \$150,000 transfer to the Successor Agency within 30 days of issuance of final Review.

Please contact me with any questions or requests for additional documents.

Sincerely,


John F. Adams
Finance Director



**State Controller's Office
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