

ONTARIO REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

September 2014



JOHN CHIANG
California State Controller

September 30, 2014

Charity Hernandez, Redevelopment Manager
Ontario Redevelopment/Successor Agency
303 East B Street
Ontario, CA 91764

Dear Ms. Hernandez:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Ontario Redevelopment Agency (RDA) to the City of Ontario (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 of assets to the City or any other public agency have been reversed.

Our review found that the RDA transferred \$110,546,340 in assets after January 1, 2011, including unallowable transfers totaling \$84,806,786, or 76.72% of transferred assets. The unallowable transfers included \$73,911,642 to the City and \$10,895,144 to the Ontario Housing Authority. 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/sk

cc: Al Boling, Oversight Board Chair
Ontario Redevelopment/Successor Agency
Larry Walker, Auditor-Controller
San Bernardino County
David Botelho, Program Budget Manager
California Department of Finance
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Contents

Review Report

Summary	1
Background	1
Objective, Scope, and Methodology	2
Conclusion	2
Views of Responsible Officials	2
Restricted Use	2
Findings and Orders of the Controller	3
Schedule 1—Unallowable Asset Transfers to the City of Ontario	5
Schedule 2—Unallowable Asset Transfers to the Housing Authority	6

Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Ontario 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 \$110,546,340 in assets after January 1, 2011, including unallowable transfers totaling \$84,806,786, or 76.72% of transferred assets. The unallowable transfers included \$73,911,642 to the City and \$10,895,144 to the Ontario Housing Authority. 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 Ontario Redevelopment Agency transferred \$110,546,340 in assets after January 1, 2011, including unallowable transfers totaling \$84,806,786, or 76.72% of transferred assets. The unallowable transfers included \$73,911,642 to the City and \$10,895,144 to the Ontario Housing Authority. These assets 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

At an exit conference on August 20, 2014, we discussed the review results with Doreen Nunes, Fiscal Services Director; and Aleli Burgos, Accounting Manager. Ms. Nunes and Ms. Burgos stated that further comment was not necessary and that the report could be issued as final.

Restricted Use

This report is solely for the information and use of the City, the Successor Agency, the Oversight Board, the Ontario 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 as final.

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

September 30, 2014

Findings and Orders of the Controller

FINDING 1— Unallowable asset transfers to the City of Ontario

The Ontario Redevelopment Agency (RDA) made unallowable transfers of \$73,911,642 in assets to the City of Ontario (City). The asset 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 January 31, 2011, and December 31, 2011, the RDA transferred a total of \$151,833 in cash to the City related to the Public Library Improvement.
- On February 28, 2011, and July 31, 2011, the RDA transferred a total of \$495,833 in cash to the City for interest payments related to the Baxter/Allegiance loan.
- On July 31, 2011, the RDA transferred a total of \$17,113,036 in cash to the City related to the 2001 Subordinate Tax Allocation Bonds.
- On June 30, 2011, and July 31, 2011, the RDA transferred a total of \$8,954,167 in cash from the 2001 subordinate tax allocated bonds to the City, related to the 2001 Oaks Middle School loan.
- On July 1, 2011, and July 31, 2011, the RDA transferred a total of \$24,884,840 in capital assets to the City related to Resolution ORA-814.
- On August 31, 2011, the RDA transferred a total of \$262,969 in cash to the City as reimbursement for rental payments regarding a police and fire department facility.
- On July 31, 2011, and December 1, 2011, the RDA transferred a total of \$22,048,964 in cash to the City as reimbursement for payments made regarding the 2001 and 2007 Lease Revenue Bonds.

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 transfers totaling \$73,911,642 and turn the assets over to the Successor Agency. The Successor Agency is directed to properly dispose of the assets in accordance with H&S Code section 34177(d) and (e).

**FINDING 2—
Unallowable asset
transfers to the
Housing Authority**

The Ontario Redevelopment Agency (RDA) made unallowable transfers of \$10,895,144 in assets to the Ontario Housing Authority (OHA). The asset 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 30, 2011, the RDA transferred \$664,674 in land held for resale assets to the OHA related to Resolution ORA-814.
- On July 1, 2011, the RDA transferred \$2,451,674 in capital assets to the OHA related to Resolution ORA-814.
- On July 31, 2011, the RDA transferred \$3,750,499 in land held for resale assets to the OHA related to Resolution ORA-814.
- On January 31, 2012, the RDA transferred \$4,028,297 in cash to the OHA as reimbursement related to Resolution ORA-696.

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 Ontario Housing Authority is ordered to reverse the transfers totaling \$10,895,144 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) and (e).

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

Unallowable asset transfers to the City of Ontario	
Cash transfer for payment 8 (January 31, 2011)	\$ 50,768
Cash transfer for payment 9 (December 31, 2011)	50,768
Cash transfer for payment 10 (December 31, 2011)	<u>50,297</u>
Total transfers related to the Public Library Improvement	<u>151,833</u>
Cash transfer for interest payment (February 28, 2011)	350,000
Cash transfer for interest payment (July 31, 2011)	<u>145,833</u>
Total transfers related to the Baxter/Allegiance loan	<u>495,833</u>
Cash transfer for principal payoff (July 31, 2011)	6,895,000
Cash transfer for interest payoff (July 31, 2011)	<u>10,218,036</u>
Total transfers related to the 2001 Subordinate Tax Allocation Bonds	<u>17,113,036</u>
Cash transfer for interest payment (June 30, 2011)	350,000
Cash transfer for principal payoff (July 31, 2011)	3,500,000
Cash transfer for interest payoff (July 31, 2011)	<u>5,104,167</u>
Total transfers related to the 2001 Oaks Middle School loan	<u>8,954,167</u>
Capital assets transfers (July 1, 2011)	6,542,377
Land held for resale transfers (July 31, 2011)	<u>18,342,463</u>
Total transfers related to Resolution ORA-814	<u>24,884,840</u>
Cash transfer for police and fire facility debt service payment (August 31, 2011)	<u>262,969</u>
Total transfers related to the police and fire department facility	<u>262,969</u>
Cash transfer for lease payment for 2001 Lease Revenue Bonds (July 31, 2011)	1,668,741
Cash transfer for lease payment for 2007 Lease Revenue Bonds (July 31, 2011)	768,250
Cash transfer for principal and interest payoff of 2001 LRBs (December 1, 2011)	<u>19,611,973</u>
Total transfers related to the 2001 and 2007 Lease Revenue Bonds	<u>22,048,964</u>
Total transfers subject to H&S Code section 34167.5	<u>\$ 73,911,642</u>

**Schedule 2—
Unallowable Asset Transfers to
the Housing Authority
January 1, 2011, through January 31, 2012**

Unallowable asset transfers to the Ontario Housing Authority

Land held for resale transfers (June 30, 2011)	\$ 664,674
Capital asset transfers (July 1, 2011)	2,451,674
Land held for resale transfers (July 31, 2011)	3,750,499
Cash transfer for reimbursing housing projects (January 31, 2012)	<u>4,028,297</u>
Total transfers subject to H&S Code section 34167.5	<u>\$ 10,895,144</u>

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