

ORANGE COUNTY DEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



BETTY T. YEE
California State Controller

May 2015



BETTY T. YEE
California State Controller

May 21, 2015

Jeff Kirkpatrick, Administrative Manager
Orange County Redevelopment/Successor Agency
1770 N. Broadway
Santa Ana, CA 92706

Dear Mr. Kirkpatrick:

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

Our review found that the RDA transferred \$155,312,841 in assets after January 1, 2011, including unallowable transfers to the County totaling \$6,800,023, or 4.38% of transferred assets.

However, on July 1, 2013, the County turned over \$2,300,623 in cash to the Successor Agency. Additionally, on December 20, 2012, the Successor Agency effectuated the transfer of housing functions and assets of \$4,500,000 to the Housing Successor in accordance with H&S Code sections 34176(b)(2) and 34177(g), and via Resolution No. 12-011, and subsequently approved by the Department of Finance on August 1, 2013. Therefore, no further action is necessary.

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/lis

cc: Eric H. Woolery, CPA, Auditor-Controller
Orange County
William G. Steiner, Oversight Board Chair
Orange County/Successor Agency
Salvador Lopez, Administrative Manager
Auditor-Controller
Orange County
Yolanda Vazquez, Accounting Manager
Orange County Successor Agency
Fatima Son, Senior Accountant
Orange County 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
Division of Audits, State Controller's Office
Reginald Nidoy, Audit Manager
Division of Audits, State Controller's Office
Sapna Paintal, Auditor-in-Charge
Division of Audits, State Controller's Office
Nesha Neycheva, 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 Orange County Development 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 \$155,312,841 in assets after January 1, 2011, including unallowable transfers to Orange County (County) totaling \$6,800,623, or 4.38% of transferred assets.

However, on July 1, 2013, the County turned over \$2,300,623 in cash to the Successor Agency. Additionally, on December 20, 2012, the Successor Agency effectuated the transfer of housing functions and assets of \$4,500,000 to the Housing Successor in accordance with H&S Code sections 34176(b)(2) and 34177(g), and via Resolution No. 12-011, and subsequently approved by the Department of Finance (DOF) on August 1, 2013. Therefore, no further action is necessary.

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 County 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 County, 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 Orange County Development Agency transferred \$155,312,841 in assets after January 1, 2011, to Orange County, including unallowable transfers totaling \$6,800,623, or 4.38% of transferred assets.

However, on July 1, 2013, the County turned over \$2,300,623 in cash to the Successor Agency. Additionally, on December 20, 2012, the Successor Agency effectuated the transfer of housing functions and assets of \$4,500,000 to the Housing Successor in accordance with H&S Code sections 34176(b)(2) and 34177(g), and via Resolution No. 12-011, and subsequently approved by the Department of Finance on August 1, 2013. Therefore, no further action is necessary.

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 December 4, 2014. Jeff Kirkpatrick, Administrative Manager, responded by letter dated December 18, 2014. The County's response is included in the final report as an attachment.

Restricted Use

This report is solely for the information and use of Orange County, 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

May 21, 2015

Finding and Order of the Controller

FINDING— Unallowable asset transfers to Orange County

The Orange County Development Agency (RDA) made unallowable asset transfers of \$6,800,623 to Orange County (County). 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 30, 2011, the RDA transferred \$4,500,000 in cash to the County per a Regulatory Agreement entered between the RDA and the County on June 21, 2011, to reimburse project costs the County incurred in prior years.
- On October 31, 2011, the RDA transferred \$2,300,632 in cash on behalf of the County for the purchase of property per the Purchase and Sale Agreement between the County and Saddleback Vineyards 100, LLC, dated July 28, 2011.

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 County is ordered to reverse the transfers of the above assets in the amount of \$6,800,632 and turn over the assets to the Successor Agency.

However, on July 1, 2013, the County transferred \$2,300,632 in cash to the Successor Agency. Additionally, on December 20, 2012, the Successor Agency effectuated the transfer of housing functions and assets of \$4,500,000 to the Housing Successor in accordance with H&S Code sections 34176(b)(2) and 34177(g), and via Resolution No. 12-011, and subsequently approved by the Department of Finance on August 1, 2013. Therefore, no further action is necessary.

County's Response to the Draft Report

The County responded to the State Controller's Office Draft Review Report by letter dated December 18, 2014.

The County would like to take the opportunity to augment the understanding of the Tustin Family Campus Project.

On February 5, 2008, the County of Orange awarded a construction contract in the amount of \$21,052,000, to Woodcliff Corporation for the development of a 14 unit transitional family housing complex at the former MCAS Tustin. Due to the nature of the project, the County's Social Services Agency (SSA) was designated as the Project Leader.

On June 21, 2011, the County of Orange and the (former) Orange County Development Agency (OCDA) enter [sic] into an Agreement, by which OCDA would grant a total of \$4.5 million to the County for construction costs associated with the development of 14 affordable housing units. Specifically, OCDA provided \$3,105,000 in tax-exempt low and moderate income housing bonds and \$1,395,000 in housing set-aside funds. . . . Funding after construction is consistent with County procedure as the risk of project failure at construction completion is minimized.

Additionally, the County received its “Finding of Completion” from the Department of Finance in 2012. . . .

Finally, this project was also included on the OCDA Housing Successor’s housing asset list that was submitted by August 1, 2012 pursuant to HSC § 34176. . . . The Department of Finance reviewed the Housing Successor’s housing transfer list and did not object to any asset transfer.

See Attachment for the County’s complete response.

SCO’s Comment:

The Finding and Order of the Controller has been modified to reflect the additional information provided by the County.

**Schedule 1—
Unallowable Asset Transfers to Orange County
January 1, 2011, through January 31, 2012**

	<u>Total Transfers</u>
Cash transfers to Orange County (June 30, 2011)	\$ 4,500,000
Cash transfers to Orange County (October 31, 2011)	<u>2,300,623</u>
Total unallowable transfers	6,800,623
Less cash turned over to the Successor Agency (July 1, 2013)	(2,300,623)
Less cash turned over to the Housing Successor Agency (December 20, 2012)	<u>(4,500,000)</u>
Total unallowable transfers subject to H & S Code section 34167.5	<u>\$ —</u>

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

In addition to the attached letter, the County provided two additional documents. Due to their size, we are not including them as attachments to this report. Please contact Orange County for copies of the following documents:

- Orange County Finding of Completion
- NDAPP 1992A Official Statement

ORANGE COUNTY
OC Community Resources
Our Community. Our Commitment.

STEVE FRANKS
DIRECTOR
OC COMMUNITY RESOURCES

JENNIFER HAWKINS, DVM
INTERIM DIRECTOR
OC ANIMAL CARE

KAREN ROPER
DIRECTOR
OC COMMUNITY SERVICES

STACY BLACKWOOD
DIRECTOR
OC PARKS

HELEN FRIED
COUNTY LIBRARIAN
OC PUBLIC LIBRARIES

December 18, 2014

Elizabeth Gonzales
State Controller's Office
Division of Audit
P.O. Box 942850
Sacramento, CA 94250

Dear Ms. Gonzales:

Thank you for provided a copy of our office's draft Asset Review Report regarding the County of Orange. After reviewing your preliminary findings, the County would like to take this opportunity to augment your understanding of the Tustin Family Campus project.

On February 5, 2008, the County of Orange awarded a construction contract, in the amount of \$21,052,000, to Woodcliff Corporation for the development of a 14 unit transitional family housing complex at the former MCAS Tustin (see attached). Due to the nature of the project, the County's Social Services Agency (SSA) was designated as the Project Leader. On June 21, 2011, the County of Orange and the (former) Orange County Development Agency (OCDA) enter into an Agreement, by which OCDA would grant a total of \$4.5 million to the County for construction costs associated with the development of 14 affordable housing units. Specifically, OCDA provided \$3,105,000 in tax-exempt low and moderate income housing bonds and \$1,395,000 in housing set-aside funds. It should be noted that the tax-exempt housing bonds utilized for this project can only be used in limited situations including financing "... certain low and moderate income housing projects of the Agency" and "for the purpose of financing various redevelopment activities relating to the redevelopment of the Project Area and relating to certain low and moderate income housing projects of the Agency (see pages 1 and 3 of the Official Statement for the former Orange County Financing Authority 1992 Tax Allocation Revenue Bonds, Series A (Neighborhood Development and Preservation Project), dated May 28, 1992). In exchange for utilizing these funds, all 14 units are rent and occupancy restricted to eligible families and individuals for a term of fifty-five (55) years. Funding after construction is consistent with County procedure as the risk of project failure at construction completion is minimized.

Additionally, the County received its "Finding of Completion" from the Department of Finance in 2012. As you are aware, a Finding of Completion, pursuant to HSC § 34179.7, is only granted when the Department of Finance determines that any amounts owed to the affected taxing entities, pursuant to the statutorily required due diligence review of the Low and Moderate Income Housing Fund, have been remitted (see, HSC §§ 34179.5, 34179.6, 34179.7). Given that at least two levels of independent review, the Successor Agency's external auditor and the Department of Finance, have determined that the Successor Agency's use of Low and Moderate Income Housing Funds



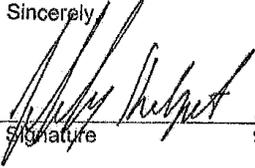
OFFICE OF THE DIRECTOR
1770 NORTH BROADWAY
SANTA ANA, CA 92706-2642
PHONE: 714.480.2788
FAX: 714.480.2899

was appropriate, the State Controller's Office should rely on the Finding of Completion to put to rest any questions regarding the grant to the County of Orange to fund low and moderate income housing at the Tustin Family Campus. At the same time, the Successor Agency should be able to rely on a sense of finality that a "Finding of Completion" suggests.

Another benefit a Finding of Completion provides is that, upon receipt of such determination, the County is authorized to utilize proceeds derived from bonds issued prior to Jan. 1, 2011 in a manner consistent with the original bond covenants (see, HSC Section 34191.4 (c)). Given we have received a Finding of Completion, use of our bond proceeds toward funding low and moderate toward units in the Tustin Family Campus is completely appropriate and consistent with the bond covenants applicable to the use of these bond proceeds and the Dissolution Act, Parts 1.8 and 1.85 of Division 24 of the Health and Safety Code. The former Orange County Development Agency was required to expend these bond proceeds in a timely manner, on eligible projects such as the Tustin Family Campus project.

Finally, this project was also included on the OCDA Housing Successor's housing asset list that was submitted by August 1, 2012 pursuant to HSC § 34176. Section 34176 states that should the Department of Finance object to any assets on that list, the asset must be returned. The Department of Finance reviewed the Housing Successor's housing transfer list and did not object to any asset transfer. See the attached letter from the Department of Finance dated September 11, 2012 for confirmation of the Department's determination.

Sincerely


Signature

on behalf of
Steve Franks

Date

12/18/14

Enclosures: County of Orange - Finding of Completion
Official Statement - 1992 Series A Housing Bonds

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

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