

**COMMUNITY IMPROVEMENT
COMMISSION OF THE CITY OF
ALAMEDA**

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

November 2013



JOHN CHIANG
California State Controller

November 12, 2013

John A. Russo
City of Alameda/Successor Agency
2263 Santa Clara Avenue
Alameda, CA 94501

Dear Mr. Russo:

Pursuant to Health and Safety (H&S) Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Community Improvement Commission of the City of Alameda (CIC) to the City of Alameda 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 it should be turned over to the Alameda Redevelopment 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 of Alameda or any other public agencies have been reversed.

Our review found that the CIC transferred \$65,278,033 in assets after January 1, 2011, including unallowable transfers of assets totaling \$23,290,317 or 35.68% of the transferred assets. On July 30, 2013, the Oversight Board retroactively approved the transfer of the assets to the City of Alameda through Oversight Board Resolution 13-10. Therefore, no further action is needed.

If you have any questions, please contact Steven Mar, Bureau Chief, Local Government Audits Bureau, by phone at (916) 324-7226.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/kw

cc: Fred Marsh, Finance Director
City of Alameda
Debbie Potter, Development Manager
City of Alameda
Patrick O'Connell, Auditor-Controller
County of Alameda
David Botelho, Program Budget Manager
California Department of Finance
Richard J. Chivaro, Chief Legal Counsel
State Controller's Office
Steven Mar, Bureau Chief
Division of Audits, State Controller's Office
Scott Freesmeier, Audit Manager
Division of Audits, State Controller's Office
Ernesto Pangilinan, Auditor-in-Charge
Division of Audits, State Controller's Office

Contents

Review Report

Summary	1
Background	1
Objective, Scope, and Methodology	2
Conclusion	2
Views of Responsible Officials	2
Restricted Use	2
Finding and Order of the Controller	3
Schedule 1—Unallowable RDA Asset Transfers to the City of Alameda	5
Attachment—City’s Response to Draft Review Report	

Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Community Improvement Commission of the City of Alameda (CIC) 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 CIC transferred \$65,278,033 in assets after January 1, 2011, including unallowable transfers of assets totaling \$23,290,317 or 35.68% of the transferred assets. On July 30, 2013, the Oversight Board retroactively approved the transfer of the assets to the City of Alameda through Oversight Board Resolution 13-10. Therefore, no further action is needed.

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 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 Code (H&S Code) beginning with section 34161.

In accordance with the requirements of H&S Code section 34167.5, the State Controller is required to review the activities of RDAs, "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," and the date on which the RDA ceases to operate, or January 31, 2012, whichever is earlier.

The SCO has identified transfers of assets that occurred after January 1, 2011, between CIC, the City of Alameda, and/or other public agencies. 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 order 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 CIC 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 CIC, were appropriate.

We performed the following procedures:

- Interviewed Successor Agency personnel to gain an understanding of the Successor Agency operations and procedures.
- Reviewed meeting minutes, resolutions, and ordinances of the CIC, the City of Alameda, 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 CIC transferred \$65,278,033 in assets after January 1, 2011, including unallowable transfers of assets totaling \$23,290,317 or 35.68% of the transferred assets. On July 30, 2013, the Oversight Board retroactively approved the transfer of the assets to the City of Alameda through Oversight Board Resolution 13-10. Therefore, no further action is needed.

Details of our finding are in the Finding and Order of the Controller section of this report. We also have included a detailed schedule of assets to be turned over to, or transferred to, the Successor Agency.

**Views of
Responsible
Official**

We issued a draft review report on August 29, 2013. John A. Russo, City Manager, responded by letter dated September 17, 2013, 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 Alameda, 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

November 12, 2013

Finding and Order of the Controller

FINDING— Unallowable asset transfers to the City of Alameda

The Community Improvement Commission of the City of Alameda (CIC) transferred \$23,290,317 in assets to the City of Alameda (City). The transfer consisted of the following current and capital assets:

- On March 9, 2011, the CIC transferred capital assets consisting of land and improvements for the Alameda Theatre and Parking Structure. The land and improvements have a book value of \$811,120 and \$19,170,491, respectively.
- On July 1, 2011, the CIC transferred current assets consisting of \$3,074,237 in loans receivables and \$234,469 in cash from fund 227.1, relating to the Alameda Theatre and Parking Structure.

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. Those assets should be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177 (d) and (e). However, it appears that some of those assets also may be subject to the provisions of H&S Code section 34181(a).

H&S Code section 34181(a) states:

The oversight board shall direct the successor agency to do all of the following:

- (a) Dispose of all assets and properties of the former redevelopment agency; provided, however, that the oversight board may instead direct the successor agency to transfer ownership of those assets that were constructed and used for a governmental purpose, such as roads, school buildings, parks, police and fire stations, libraries, and local agency administrative buildings, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset.

Order of the Controller

Based on H&S Code section 34167.5, the City is ordered to return the above assets, described in Schedule 1, in the amount of \$23,290,317, and return them 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).

City's Response

. . .the Oversight Board for the Successor Agency has adopted a resolution ratifying the transfer of the Alameda Theatre and Parking Structure to the City and making finding about the propriety of the transfer, attached for your reference as Exhibit A. . . .

SCO's Comment

The Oversight Board ratified Resolution No. 13-10 on July 30, 2013, which retroactively approved the transfer of the of the Alameda Theatre and Parking Garage properties, theater lease, ground lease, and associated assets and liabilities to the City of Alameda.

However, note that the Department of Finance (DOF) must approve the Oversight Board decision regarding this matter. If the DOF does not approve this decision, then the City is ordered to transfer those assets to the Successor Agency pursuant to H&S Code section 34167.5, and dispose of the assets in accordance with 34177(d), and (e).

**Schedule 1—
Unallowable RDA Assets
Transferred to the City of Alameda
January 1, 2011, through January 31, 2012**

Unallowable transfers to the City of Alameda

Capital assets:

Alameda Theatre/parking structure – building

\$ 19,170,491

Alameda Theatre/parking structure – land

811,120

Current assets:

Loans receivable

3,074,237

Cash

234,469

Total unallowable transfers

\$ 23,290,317¹

¹ See the Finding and Order of the Controller section.

**Attachment—
City of Alameda’s Response to
Draft Review Report**

City of Alameda California



September 17, 2013

Mr. Steven Mar
Chief, Local Government Audits Bureau
State Controller's Office, Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874

Dear Mr. Mar:

I am writing in response to the draft report of the Asset Transfer Review for the former Community Improvement Commission of the City of Alameda ("CIC"), which we received on September 9. As we have previously indicated, the City of Alameda strongly disputes the conclusion of the State Controller's Office (SCO) that the transfer of the Alameda Theater and Parking Structure from the former CIC to the City was an unallowable transfer of assets. The City has argued, and continues to maintain, that the transfer of these assets did not violate the provisions of Health and Safety Code Section 34167.5 because it was undertaken pursuant to legitimate, pre-existing third-party contractual obligations. Specifically, conveyance of these assets to the City was the long-anticipated final step in a multi-year development process and was intended to ensure the availability of lease revenues generated by the project to meet debt service payments on HUD 108 loan program debt incurred by the former CIC in connection with the project. Furthermore, the governmental purpose nature of both the public parking garage and the historic theater, the integration of the various project elements, and the centrality of the project to the revitalization of the Park Street Business District, all support the retention of the entirety of the project by the City.

Indeed, the Oversight Board for the Successor Agency has adopted a resolution ratifying the transfer of the Alameda Theater and Parking Structure to the City and making findings about the propriety of the transfer, attached for your reference as Exhibit A to this letter. We request that the final report include an acknowledgement of the Oversight Board's findings.

However, if upon further review and consideration, the SCO's final report continues to disallow the transfer and orders the return of the Alameda Theater and Parking Structure to the Successor Agency, then the final report must acknowledge that the related liabilities of the Alameda Theater and Parking Structure (i.e., the outstanding principal of approximately \$7 million and interest of approximately \$5 million on the HUD 108 debt) must also be transferred to the Successor Agency and be included

Office of the City Manager
2263 Santa Clara Avenue, Room 320
Alameda, California 94501
510 748-4505 Office - 510 748-4504 Fax - TDD 510 522-7538

Mr. Steven Mar
Chief, Local Government Audits Bureau

September 17, 2013
Page 2

on its Required Obligation Payment Schedule (ROPS) for all subsequent periods until the loan is paid off.

The draft report acknowledges that certain of the assets to be returned to the Successor Agency also may be subject to the provisions of Health and Safety Code Section 34181(a) providing for an oversight board to direct the transfer of governmental purpose properties to the appropriate public jurisdiction (in this case, the City). Although the City has maintained and continues to maintain that the entire Alameda Theater and Parking Structure project serves important public and governmental purposes, it would be helpful if the SCO's final report would specify which of the project components, in the SCO's view, meet the statutory definition of a governmental purpose property subject to Section 34181(a).

Finally, the draft report recounts that at the exit conference, the SCO stated that the final report would include the views of responsible officials. We do not see these views reflected in the draft report, and respectfully request that they be included as outlined above, in the final report.

Thank you for your consideration. Please feel free to contact me if you have any further questions.

Sincerely,



John A. Russo
City Manager

FM/DP: rr

Enclosure

cc: Janet Kern, City Attorney
Stephanie Sierra, Assistant City Attorney
Debbie Potter, Interim Community Development Director
Fred Marsh, Finance Director
Gerald J. Ramiza, Successor Agency Special Counsel
Craig Labadie, Oversight Board Counsel

Exhibit A

Oversight Board Resolution

RESOLUTION NO. 13-10

RESOLUTION OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA ACKNOWLEDGING, AFFIRMING, AND RATIFYING THE FORMER COMMUNITY IMPROVEMENT COMMISSION'S TRANSFER OF THE ALAMEDA THEATER AND PARKING GARAGE PROJECT TO THE CITY OF ALAMEDA

WHEREAS, the Alameda Theater/Parking Garage project ("Project") is a successful public/private partnership development project located in Alameda's Park Street business district, involving restoration of the historic Alameda Theater building, construction of a 352-car public parking garage and development of a new modern seven-screen cineplex located directly adjacent to and integrated with the historic theater building; and

WHEREAS, the Project was undertaken pursuant to and in furtherance of the Community Improvement Plan for the Business and Waterfront Community Improvement Project adopted by Ordinance No. 2559 of the City Council of the City on June 18, 1991, as amended ("Redevelopment Plan"); and

WHEREAS, the goals stated in the Redevelopment Plan included: (a) "elimination of blighting influences . . . in the Project Area," (b) "strengthening of retail and other commercial functions in the historic downtown areas" (c) "strengthening of the economic base of the Project Area and the community by the installation of needed site improvements to stimulate new commercial/light industrial expansion, employment and economic growth," (d) "the provision of adequate land for parking and open spaces," and (e) "the establishment and implementation of performance criteria to assure high site design standards and environmental quality and other design elements which provide unity and integrity to the entire Project;" and

WHEREAS, the parking garage component of the Project was financed and constructed by the Community Improvement Commission of the City of Alameda ("CIC") and the City of Alameda, the historic theater restoration work was largely undertaken by the CIC, and the new Cineplex construction was undertaken by the developer/theater operator, Alameda Entertainment Associates L.P. ("AEA"), with assistance from the CIC, all as set forth in a Disposition and Development Agreement between CIC and AEA dated May 3, 2005 ("DDA"); and

WHEREAS, the Project was completed in May, 2008, with the remaining obligations of the parties set forth in the Historic Theater Lease and Cineplex Ground Lease, both dated March 15, 2007; and

WHEREAS, conveyance of the Project to the City was the final step in a multi-year development process, the key components of which included: (i) CIC acquisition of

land, improvements and easements required for the Project; (ii) identification of public and private financing sources, including tax allocation bond proceeds, developer equity, a Small Business Administration Section 504 loan, a private construction loan from Bank of Alameda, and a \$7 Million loan from the US Department of Housing and Urban Development (HUD) under the HUD 108 loan program; (iii) demolition and site preparation; (iv) CIC restoration of the historic theater; (v) City/CIC development of the parking garage; (vi) AEA development of the cineplex and integration of the cineplex with the historic theater; and finally (vii) CIC transfer of the interests in the Project to the appropriate entities (i.e., AEA and City) having the authority and capacity to meet long-term contractual obligations associated with operation, maintenance and capital replacement of the Project; and

WHEREAS, under Article XI, Section 5 of the California Constitution, city charters may provide, as Alameda's does, for a city to exercise broad authority over municipal affairs, including the legal authority to own, maintain, operate and undertake capital replacement work on publicly owned property and facilities, while redevelopment agencies were prohibited by sections 33445(b)(3) and 33678(b) of the Community Redevelopment Law from paying for "normal maintenance and operation of publicly owned buildings" and ongoing employee or contractual services not directly related to "redevelopment activities," with the purpose of such limitations being to ensure that redevelopment agencies would partner with other public and private entities to acquire and redevelop blighted property and then step away and leave the long-term ownership and operation of such property to those entities; and

WHEREAS, following completion of the Project in May 2008, in order to meet the landlord's ongoing administrative responsibilities and maintenance and repair obligations under the Historic Theater Lease, in particular Historic Theater Lease sections 10.1 (obligating the landlord to maintain the structural portions of the roof, foundation and load-bearing portions of walls of the building) and 15.1 (obligating the landlord to maintain insurance or an insurance equivalent insuring structural components of the building against fire and extended coverage), it was necessary for the City to assume the CIC's interests as landlord under those leases; and

WHEREAS, transfer of the CIC's obligations to the City was anticipated at the time the CIC and AEA entered into the DDA, as well as the Historic Theater Lease and Ground Lease, and all three agreements expressly authorized the CIC to transfer its interests to the City; and

WHEREAS, on March 9, 2011, prior to its dissolution pursuant to AB 1X 26, the CIC transferred its interests in the Project to the City, with specific findings related to the statutory restrictions identified above and the need to transfer and assign the relevant lease documents to the City set forth in Resolution No. 14554 adopted by the City Council and Resolution No. 11-180 adopted by the CIC Board at the time the transfer of CIC's interests in the Project were approved; and

WHEREAS, in addition to transferring its interests in the Project, the CIC also transferred to the City all the liabilities associated with the Project, including the HUD Section 108 loan (evidenced by two notes totaling \$7 million, repayment of which will total \$12 million with interest), parking garage operating expenses totaling approximately \$300,000 annually and landlord obligations to maintain the structural portions of the roof, foundation, and load-bearing walls of the historic theater; and

WHEREAS, the assets and liabilities associated with the Project cannot be separated due to the pledge of revenues, in particular rent, to meet the liabilities described above; and

WHEREAS, the physical integration of the Project, in particular the fact that the main concession areas, lobby, ticket purchase windows and entrances for the historic theater/cineplex complex are all located within the historic Alameda Theater building, precludes separation of the various components of the historic theater/cineplex complex; and

WHEREAS, the historic Alameda Theater is a critical component of the historic Alameda Park Street Commercial District (National Register of Historic Places #82002154), was designed by noted architect, Timothy L. Pflueger, and is the last grand movie palace built in the San Francisco Bay Area; and

WHEREAS, in recognition of the importance of the historic Alameda Theater to the community of Alameda and in order to maintain the historic integrity of the building, the City, as landlord, has significant reserved rights to use the main auditorium for various public events, and AEA, as lessee, is obligated to continuously use and operate the theater as a first-class, first-run theater 7 days per week, with minimum hours of operation from 4 pm to 10 pm, and must maintain the ground floor theater auditorium as a single screen auditorium, all as set forth in sections 2.4 and 9.2 of the Historic Theater Building Lease; and

WHEREAS, the parking garage component of the Project is available to City of Alameda employees for parking at no cost during normal business hours – Monday through Friday, 9 am to 5 pm, with approximately 200 City employees currently possessing placards that entitle them to park in the garage; and

WHEREAS, California Health and Safety Code Section 34181(a) provides that the oversight board may direct the successor agency to transfer ownership of those assets that were constructed and used for a governmental purpose to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset; and

WHEREAS, California Health and Safety Code Section 34191.5(c)(2)(A) further allows the transfer of assets to a city for a project identified in an approved redevelopment plan; and

WHEREAS, notice of adoption of this Resolution was provided in accordance with Health and Safety Code section 34181(f).

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Oversight Board of the Successor Agency to the Community Improvement Commission of the City of Alameda as follows:

1. The Oversight Board finds and determines based on the information set forth in the Recitals above and in the Staff Report accompanying this Resolution as follows:

A. The Project, and specifically the City's retention of its ownership interest in the historic Alameda Theater and parking garage which provides free parking for public employees and low-cost public parking, has been essential to the revitalization of the Park Street business district, is critical to the ongoing success of such district, and serves the governmental purposes of the City of Alameda.

B. The transfer of the Project to the City was anticipated and authorized under the DDA, the Historic Theater Lease and Ground Lease.

C. The assets and liabilities associated with the Project cannot be separated due to the pledge of revenues, primarily rent, to meet the Project's liabilities.

D. The physical layout of the Project components, specifically the integration of the historic theater and the cineplex, precludes division of the City's ownership interests into separate components.

E. Since opening in 2008, the Project has acted as a catalyst for economic development of the Park Street business district consistent with the goals of the Redevelopment Plan, resulting in increased economic activity in and around the Park Street business district, increased sales tax revenue, and higher property tax revenue all to the benefit of the affected taxing entities.

F. City's retention of its ownership interests in and ongoing control over the Project will ensure AEA's continued use and operation of the Project in conformance with covenants in the Cineplex Ground Lease and Historic Theater Lease related to such matters as continuous operation, alterations, types of programming and community use, all of which will result in increased economic activity in and around the Park Street business district, increased sales tax revenue, and higher property tax revenue to the benefit of the affected taxing entities.

G. City retention of the Project, including liabilities associated with the Project, particularly the obligation to pay the HUD 108 loan and parking garage and historic theater operation, maintenance and capital replacement expenses, benefits the affected taxing entities by relieving the Successor Agency of the obligation to pay those liabilities out of revenues available to the Successor Agency, including Redevelopment Property Tax Trust Fund (RPTTF) monies.

2. The Oversight Board hereby acknowledges, affirms, and ratifies the May 2011 transfer of the Project by the former CIC to the City of Alameda and approves City's retention of the Project.

3. The Oversight Board authorizes Successor Agency staff to transmit a copy of this resolution to the State Controller and the State Department of Finance.

PASSED AND ADOPTED AT A SPECIAL MEETING OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE COMMUNITY IMPROVEMENT COMMISSION OF THE CITY OF ALAMEDA ON JULY 30, 2013, BY THE FOLLOWING VOTE:

AYES: BIGGS, ORTIZ, POTTER, RUSSO

NOES: (none)

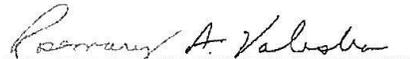
ABSENT:  CHAN, GERHARD, McMAHON

ABSTAIN: (none)



Chair
John A. Russo

ATTEST:


Secretary of the Board
Rosemary A. Valeska

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

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