

FOSTER CITY COMMUNITY DEVELOPMENT 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 19, 2014

James C. Hardy, City Manager
Foster City/Successor Agency
610 Foster City Boulevard
Foster City, CA 94404

Dear Mr. Hardy:

Pursuant to Health and Safety (H&S) Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Foster City Community Development Agency (RDA) to the City of Foster City (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 \$27,904,123 in assets after January 1, 2011, including unallowable transfers to the City totaling \$1,368,510, or 4.9% of transferred assets.

However, on June 18, 2014, the City remitted \$1,368,510 in cash to the San Mateo County Auditor-Controller. 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/sk

cc: Bob Adler, CPA, Controller
San Mateo County
Dick W. Bennett, Oversight Board Chair
City of Foster City
Lin-Lin Cheng, Finance Director
City of Foster City
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
Betty Moya, Audit Manager
Division of Audits, State Controller's Office
Anita Bjelobrk, 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	3
Finding and Order of the Controller	4
Schedule 1—Unallowable Asset Transfers to the City of Foster City	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 Foster City Community 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 \$27,904,123 in assets after January 1, 2011, including unallowable transfers to the City of Foster City (City) totaling \$1,368,510, or 4.9% of transferred assets.

However, on June 18, 2014, the City remitted \$1,368,510 in cash to the San Mateo County Auditor-Controller. 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 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 Community Development Agency of Foster City transferred \$27,904,123 in assets after January 1, 2011, including unallowable transfers to the City of Foster City (City) totaling \$1,368,510, or 4.9% of transferred assets.

However, on June 18, 2014, the City remitted \$1,368,510 in cash to the San Mateo County Auditor-Controller. 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 September 23, 2014. James C. Hardy, City Manager, responded by letter dated October 8, 2014, disagreeing with the review results. The City's response is included in this final review report as an attachment. The City's response references a finding related to the housing assets. The finding was eliminated due to a subsequent court ruling.

Restricted Use

This report is solely for the information and use of the City of Foster 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 19, 2014

Finding and Order of the Controller

**FINDING—
Unallowable asset
transfers to the
City of Foster City**

The Community Development Agency of Foster City (RDA) made unallowable asset transfers of \$1,368,510 to the City of Foster City (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 June 29, 2011, the RDA transferred \$1,272,382 in loan repayments, including interest, to the City.
- On January 31, 2012, the RDA transferred \$96,128 in cash to the City. On April 18, 2011, the RDA and the City entered into a cooperation agreement to transfer money from the RDA to the City for continuation of RDA projects after the dissolution of the RDA.

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 totaling \$1,368,510, and turn over the assets to the Successor Agency.

However, on June 18, 2014, the City remitted \$1,368,510 in cash to the San Mateo County Auditor-Controller. Therefore, no further action is necessary.

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

Unallowable asset transfers to the City of Foster City	
Loan repayments, including interest (June 29, 2011)	\$ 1,272,382
Cash (January 31, 2012)	<u>96,128</u>
Total unallowable transfers	<u>1,368,510</u>
Less:	
Cash remitted to the San Mateo County Auditor-Controller (June 18, 2014)	<u>(1,368,510)</u>
Total transfers subject to H&S Code section 34167.5	<u><u>\$ —</u></u>

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



City of Foster City

ESTERO MUNICIPAL IMPROVEMENT DISTRICT

610 FOSTER CITY BOULEVARD
FOSTER CITY, CA 94404-2222

October 8, 2014

Mr. Jeffrey V. Brownfield, Chief
Local Government Compliance Bureau
State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874

Re: Comments on Draft City of Foster City Community Development Agency
Asset Transfer Review

Dear Mr. Brownfield:

This letter is in response to Jeffrey V. Brownfield's letter dated September 23, 2014 in which he concludes that eight low- and moderate-income properties with an aggregate value of \$3,779,210 (the "Affordable Housing Properties") "must be turned over to the Successor Agency," and invites the submittal of comments on the draft Asset Transfer Review (the "Draft Report") prepared by the State Controller's Office for the City of Foster City Community Development Agency (the "Redevelopment Agency").

At the outset, we note that the Draft Report contains a number of implications with which we disagree. For the record, we would like to state that all of the "transfers" described in the Draft Report were undertaken lawfully and in full compliance with all legal requirements in effect at the time the actions were taken. Furthermore, all of the actions taken by the Redevelopment Agency and by the City of Foster City (the "City") were taken in full compliance with the statutes applicable to housing assisted with the Redevelopment Agency's Low- and Moderate-Income Housing Fund.

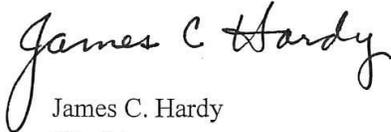
The conclusions reached in the Draft Report diverge from (i) the analysis conducted by the independent auditor who performed the Due Diligence Reviews for the Foster City Successor Agency (the "Successor Agency"), (ii) the Department of Finance's determination with respect

to the Due Diligence Reviews, (iii) the Department of Finance's determination with respect to the inventory of housing assets transferred to the City in its capacity as the entity assuming the housing assets and obligations of the Redevelopment Agency (the "Housing Successor"), and (iv) statutes and court decisions that address the transfer of housing assets.

- On November 7, 2012, the Department of Finance issued a determination letter in connection with the Successor Agency's Low- and Moderate-Income Housing Due Diligence Review. Neither the independent auditor who conducted this review nor the Department of Finance raised any questions regarding the Affordable Housing Properties.
- On July 25, 2012, the City submitted to the Department of Finance a Housing Assets Transfer Form listing all housing assets transferred by the Redevelopment Agency or the Successor Agency to the City. This inventory (copy enclosed) listed all of the Affordable Housing Properties. On August 30, 2012, the Department of Finance issued a determination letter (copy enclosed) in which the Department raised no objection to any of the housing asset transfers.
- Health and Safety Code Section 34176(a) provides that all housing assets (other than unencumbered funds on deposit in the Low and Moderate Income Housing Fund) "shall be transferred" to the entity that assumes the housing assets and obligations of a former redevelopment agency. By resolution adopted in January 2012, the City assumed this role. No further action is required to validate the transfer of the Affordable Housing Properties to the City. Section 34176(a)(2) provides that assets are to be returned to the successor agency only if the Department of Finance objects to their characterization as housing assets. No such objection has been made. The Draft Report (page 4) acknowledges that the Affordable Housing Properties are low- and moderate-income properties.
- In a ruling issued by the Sacramento Superior Court in *City of Fresno v. Matosantos* (Case No. 34-2013-80001450-CU-WM-GDS), the court confirms that "where a city elects to act as the housing successor...the law requires all housing assets to be transferred to the city." The court concludes that "An order directing that asset transfers required by law be reversed so that the Oversight Board may simply order the assets transferred back to the City serves no legitimate purpose."

The City respectfully requests modification of the Draft Report to recognize that the Affordable Housing Properties were validly transferred to the City in its capacity as the housing successor, and that such assets need not be transferred back to the Successor Agency. We welcome the opportunity to discuss this with you further.

Sincerely,



James C. Hardy
City Manager
Foster City/Successor Agency

Enclosures:

Housing Asset Inventory
Department of Finance August 30, 2012 letter regarding Housing Asset Inventory

cc: Lin-Lin Cheng, Finance Director
City of Foster City
Richard J. Chivaro, Chief Legal Counsel
State Controller's Office
Elizabeth Gonzalez, Bureau Chief
Division of Audits, State Controller's Office
Betty Moya, Audit Manager
Division of Audits, State Controller's Office
Anita Bjelobrk, Auditor-in-Charge
Division of Audits, State Controller's Office
Susan E. Bloch, Partner
Burke, Williams & Sorensen, LLP
Gerald J. Ramiza, Partner
Burke, Williams & Sorensen, LLP

DEPARTMENT OF FINANCE
HOUSING ASSETS LIST
ASSEMBLY BILL X1 26 AND ASSEMBLY BILL 1484
(Health and Safety Code Section 34176)

Former Redevelopment Agency: Foster City Community Development Agency

Successor Agency to the Former Redevelopment Agency: City of Foster City

Entity Assuming the Housing Functions of the former Redevelopment Agency: City of Foster City

Entity Assuming the Housing Functions Contact Name: Steve Toler Title Assistant City Manager Phone (650)286-3214 E-Mail Address stoler@fostercity.org

Entity Assuming the Housing Functions Contact Name: _____ Title _____ Phone _____ E-Mail Address _____

All assets transferred to the entity assuming the housing functions between February 1, 2012 and the date the exhibits were created are included in this housing assets list. The following Exhibits noted with an X in the box are included as part of this inventory of housing assets:

Exhibit A - Real Property	X
Exhibit B- Personal Property	X
Exhibit C - Low-Mod Encumbrances	X
Exhibit D - Loans/Grants Receivables	X
Exhibit E - Rents/Operations	X
Exhibit F - Rents	X
Exhibit G - Deferrals	X

Prepared By: Steve Toler

Date Prepared: 25-Jul-12

Exhibit A - Real Property

City of Foster City
Inventory of Assets Received Pursuant to Health and Safety Code section 34176 (a) (2)

Item #	Property Type	Legal Description	Assessed Value of Asset	Total square footage	Squares/feet reserved for low/mod housing	Is the property subordinated by a low/mod housing covenant?	Source of low/mod housing covenant	Date of Transfer to Housing Stabilization Agency	Cost of acquisition with low/mod Housing Fund monies	Construction or acquisition costs funded with other RDA funds	Construction or acquisition costs funded with RDA funds	Date of construction or acquisition by the former RDA	Interest in Real Property (options, purchase agreement, etc.)
1	Single Family	City of Foster City/633 Gull Ave.	\$281,829	1,820	1,820	Yes	California Redevelopment law	4/5/2011	\$402,785	\$0	\$0	8/6/1997	
2	Duplex	City of Foster City/631-633 Connet Dr.	\$360,678	3,597	3,597	Yes	California Redevelopment law	4/5/2011	\$510,384	\$0	\$0	11/19/1997	
3	Townhouse	City of Foster City/705 Emerald Bay Ln.	\$186,065	677	677	Yes	California Redevelopment law	4/5/2011	\$232,597	\$0	\$0	2/23/2005	
4	Condominium	City of Foster City/920 Beach Park Blvd #37	\$420,276	1,004	1,004	Yes	California Redevelopment law	4/5/2011	\$475,000	\$0	\$0	1/11/2008	
5	Duplex	City of Foster City/633-635 Connet Dr.	\$1,425,973	3,596	3,596	Yes	California Redevelopment law	4/5/2011	\$1,465,930	\$0	\$0	9/25/2008	
6	Single Family	City of Foster City/388 Chessapeake Ave.	\$721,469	1,280	1,280	Yes	California Redevelopment law	4/5/2011	\$751,204	\$0	\$0	6/5/2009	
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a/ Asset types may include low/mod housing, mixed-income housing, low/mod housing with commercial space, mixed-income housing with commercial space.

b/ May include California Redevelopment Law, tax credits, state bond indentures, and federal funds requirements.

Exhibit D - Loans/Grants Receivables

City of Foster City
Inventory of Assets Received Pursuant to Health and Safety Code section 34176 (a) (2)

Item #	Was the Low-Moderate Income Housing Fund amount raised for a loan or a grant?	Amount of the loan or grant	Date the loan or grant was issued	Person or entity to whom the loan or grant was issued	Purpose for which the funds were loaned or granted	Are there contractual requirements specifying the purposes for which the funds may be used?	Repayment date if the funds are to be repaid	Interest rate of loan	Current outstanding principal balance
1	Yes	\$50,000.00	07/12/89	Steinmakh, Victor & Zinaida Gali, Laura	1st time home buyer	Yes	From 8/1/2004 Thru 7/1/2009	3%	\$38,349.37
2	Yes	\$60,000.00	01/28/03		1st time home buyer	Yes	From 3/1/2008 Thru 2/1/2033	3%	\$44,044.37
3	Yes	\$50,000.00	04/29/05	Monzon, Rosemarie & Juan	1st time home buyer	Yes	From 6/1/2010 Thru 5/1/2035	3%	\$47,349.30
4	Yes	\$80,000.00	12/30/05	Kashmir, Mehdi & Azila	1st time home buyer	Yes	From 2/1/2011 Thru 1/1/2036	3%	\$20,433.00
5	Yes	\$75,000.00	06/19/05	Bisceglie, John	1st time home buyer	Yes	From 8/1/2011 Thru 7/1/2036	3%	\$73,471.35
6	Yes	\$80,000.00	10/23/06	Kertawidjaja, erita & kusma	1st time home buyer	Yes	From 11/1/2011 Thru 10/1/2036	3%	\$74,139.45
7	Yes	\$75,000.00	11/20/06	Elizabeth, Conceicao	1st time home buyer	Yes	From 1/1/2012 Thru 12/1/2036	3%	\$74,324.84
8	Yes	\$75,000.00	01/22/07	Hocker, Daniel	1st time home buyer	Yes	From 3/1/2012 Thru 2/1/2037	3%	\$74,663.26
9	Yes	\$75,000.00	08/20/07	Kwong, Nafhan & Jaclyn	1st time home buyer	Yes	From 10/1/2012 Thru 9/1/2037	3%	\$75,000.00
10	Yes	\$75,000.00	08/27/07	Teves, Diana	1st time home buyer	Yes	From 10/1/2012 Thru 9/1/2037	3%	\$75,000.00
11	Yes	\$75,000.00	09/17/07	Declan, Costello & Ann	1st time home buyer	Yes	From 11/1/2012 Thru 10/1/2037	3%	\$75,000.00
12	Yes	\$75,000.00	03/17/08	Priscilla, Ludmila	1st time home buyer	Yes	From 5/1/2013 Thru 4/1/2038	3%	\$75,000.00
13	Yes	\$75,000.00	05/05/08	Hui, Chintia	1st time home buyer	Yes	From 7/1/2013 Thru 6/1/2038	3%	\$75,000.00
14	Yes	\$80,000.00	09/22/08	Huang, LiXian	1st time home buyer	Yes	From 11/1/2013 Thru 10/1/2038	3%	\$80,000.00
15	Yes	\$75,000.00	06/26/09	Jamal, Mary	1st time home buyer	Yes	From 8/1/2014 Thru 7/1/2039	3%	\$75,000.00
16	Yes	\$75,000.00	09/14/10	Chao, Lisa	1st time home buyer	Yes	From 11/1/2015 Thru 10/1/2040	3%	\$75,000.00
17	Yes	\$73,625.00	09/12/10	Chin, Kuochun	1st time home buyer	Yes	From 11/1/2015 Thru 10/1/2040	3%	\$73,625.00
18	Yes	\$75,000.00	03/18/11	Liu, ChungNang	1st time home buyer	Yes	From 5/1/2016 Thru 4/1/2041	3%	\$75,000.00
19	Yes	\$810,000.00	06/30/95	Bridge Housing	Senior Housing	Yes	From 7/1/1987 Thru 6/1/2052	0%	\$616,361.88

2,278,725

20	Yes	\$6,519,310.00	09/12/95	Bridge Housing	Senior Housing	Yes	From 7/1/1997 Thru 6/1/2002	2%	\$5,953,825.43
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a/ May include rents or home loan payments.

b/ May include low-mod housing, mixed-income housing, low-mod housing with commercial space, mixed-income housing with commercial space.

c/ May include California Redevelopment Law, tax credits, state bond indentures, and federal funds requirements.



DEPARTMENT OF
FINANCE

EDMUND G. BROWN JR. ■ GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

August 30, 2012

Mr. Steve Toler, Assistant City Manager
City of Foster City
610 Foster City Blvd.
Foster City, CA 94404

Dear Mr. Steve Toler:

Subject: Housing Assets Transfer Form

Pursuant to Health and Safety Code (HSC) section 34176 (a) (2), the City of Foster City submitted a Housing Assets Transfer Form (Form) to the California Department of Finance (Finance) on July 31, 2012 for the period February 1, 2012 through July 31, 2012.

Finance has completed its review of your Form, which included obtaining clarification for various items. Based on a sample of line items reviewed and the application of law, Finance is not objecting to any assets or transfers of assets identified on your Form.

Please direct inquiries to Robert Scott, Supervisor or Jenny DeAngelis, Lead Analyst at (916) 445-1546.

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Mr. Jim Hardy, City Manager, City of Foster City
Ms. Shirley Tourel, Auditor, San Mateo County Controller's Office
Ms. Robyn Rose, Senior Internal Auditor, County of San Mateo
California State Controller's Office

**State Controller's Office
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