

# **LIVERMORE REDEVELOPMENT AGENCY**

## **ASSET TRANSFER REVIEW**

### Review Report

*January 1, 2011, through January 31, 2012*



**JOHN CHIANG**  
California State Controller

February 2014



**JOHN CHIANG**  
**California State Controller**

February 24, 2014

Erik Peterson, Administrative Services Accountant  
Livermore Redevelopment/Successor Agency  
1052 South Livermore Avenue  
Livermore, CA 94550

Dear Mr. Peterson:

Pursuant to Health and Safety (H&S) Code section 34167.5, the State Controller's Office reviewed all asset transfers made by the Livermore Redevelopment Agency (RDA) to the City of Livermore (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 it 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 agencies have been reversed.

Our review found that the RDA transferred \$58,813,180 in assets after January 1, 2011, including unallowable transfers of assets totaling \$41,493,698 (\$36,005,239 to the City and \$5,488,459 to the Successor Housing Agency), or 70.55% of transferred assets.

However, the following corrective actions have been taken since the unallowable transfers occurred:

- On October 17, 2012, the Oversight Board approved \$23,033,324 of the transferred assets because the assets are used for either housing or public purposes.
- On January 15, 2013, the Successor Housing Agency remitted \$909,190 in unencumbered cash to the Alameda County Auditor-Controller.
- On February 11, 2013, the City transferred \$1,704,483 in former RDA assets to the Successor Agency.
- On June 5, 2013, the Oversight Board retroactively approved \$15,761,701 of the asset transfers because the assets are used for either housing or public purposes.

No further action is necessary in relation to the transfers of assets in the amount of \$41,408,698. However, the remaining amount of unallowable transfers, totaling \$85,000, must be turned over to the Successor Agency.

If you have any questions, please contact Elizabeth Gonzalez, Bureau Chief, Local Government Compliance Bureau, by phone at (916) 324-0622.

Sincerely,

*Original signed by*

JEFFREY V. BROWNFIELD, CPA  
Chief, Division of Audits

JVB/kw

Attachment

cc: Marc Roberts, City Manager  
Livermore Redevelopment/Successor Agency  
Scott Haggerty, Oversight Board Chairperson  
Oversight Board to the Livermore Successor Agency  
Patrick O'Connell, County Auditor-Controller  
County of Alameda  
David Botelho, Program Budget Manager  
California Department of Finance  
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  
Daniel Tobia, Auditor-in-Charge  
Division of Audits, State Controller's Office

# Contents

## Review Report

<b>Summary</b> .....	1
<b>Background</b> .....	1
<b>Objectives, Scope, and Methodology</b> .....	2
<b>Conclusion</b> .....	2
<b>Views of Responsible Officials</b> .....	3
<b>Restricted Use</b> .....	3
<b>Findings and Orders of the Controller</b> .....	4
<b>Schedule 1—Unallowable RDA Asset Transfers to the City of Livermore</b> .....	9
<b>Schedule 2—Unallowable RDA Asset Transfers to the Successor Housing Agency</b> .....	10
<b>Attachment 1—Successor Agency’s Response to Draft Review Report</b>	
<b>Attachment 2—SCO Revised Finding 1</b>	
<b>Attachment 3—Successor Agency’s Response to Revised Finding 1 of Draft Review Report</b>	

# Asset Transfer Review Report

## Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Livermore 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 \$58,813,180 in assets after January 1, 2011, including unallowable transfers of assets totaling \$41,493,698 (\$36,005,239 to the City of Livermore (City) and \$5,488,459 to the Successor Housing Agency), or 70.55% of transferred assets.

However, the following corrective actions have been taken since the unallowable transfers occurred:

- On October 17, 2012, the Oversight Board approved \$23,033,324 of the transferred assets because the assets are used for either housing or public purposes.
- On January 15, 2013, the Successor Housing Agency remitted \$909,190 in unencumbered cash to the Alameda County Auditor-Controller.
- On February 11, 2013, the City transferred \$1,704,483 in former RDA assets to the Successor Agency.
- On June 5, 2013, the Oversight Board approved \$15,761,701 of the transferred assets because the assets are used for either housing or public purposes.

No further action is necessary in relation to the transfer of assets in the amount of \$41,408,698. However, the remaining amount of unallowable transfers, totaling \$85,000, 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 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.

In accordance with the requirements of H&S Code section 34167.5, the State Controller is required to review the activities of redevelopment agencies (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 the RDA, the City, 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.

## **Objectives, 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 operations and procedures.
- Reviewed meeting minutes, resolutions, and ordinances of the Livermore City Council and the RDA.
- 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 Livermore Redevelopment Agency transferred \$58,813,180 in assets after January 1, 2011, including unallowable transfers totaling \$41,493,698 (\$36,005,239 to the City of Livermore and \$5,488,459 to the Successor Housing Agency), or 70.55% of transferred assets.

However, the following corrective actions have been taken since the unallowable transfers occurred:

- On October 17, 2012, the Oversight Board approved \$23,033,324 of the transferred assets because the assets are used for either housing or public purposes.
- On January 15, 2013, the Successor Housing Agency remitted \$909,190 in unencumbered cash to the Alameda County Auditor-Controller.
- On February 11, 2013, the City transferred \$1,704,483 in former RDA assets to the Successor Agency.
- On June 5, 2013, the Oversight Board approved \$15,761,701 of the transferred assets because the assets are used for either housing or public purposes.

No further action is necessary in relation to the transfer of assets in the amount of \$41,408,698. However, the remaining amount of unallowable transfers, totaling \$85,000, must be turned over to the Successor Agency.

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

## **Views of Responsible Officials**

We issued a draft review report on June 21, 2013. Erik Peterson, Administrative Services Accountant, responded by email dated July 5, 2013, agreeing with the review results. Subsequently, we issued a revision of Finding 1 on September 10, 2013. Mr. Peterson responded by letter dated September 26, 2013, disagreeing with revised Finding 1. The Successor Agency's responses are included in this final review report.

## **Restricted Use**

This report is solely for the information and use of the City of Livermore, the Successor Agency, the Oversight Board, the Successor Housing Agency, 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 24, 2014

# Findings and Orders of the Controller

## **FINDING 1— RDA assets transferred to the City of Livermore**

The Livermore Redevelopment Agency (RDA) transferred \$36,005,239 in assets to the City of Livermore (City). All of the asset transfers to the City 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 23, 2011, the RDA transferred \$31,385,013 in capital assets to the City. To accomplish those transfers, on March 22, 2011, the City and the RDA entered into an agreement under Resolution RA-2011-05 and Meeting Agenda Item No. 3.01.
- On June 30, 2011, the RDA transferred \$85,000 in cash assets as loan repayment to the City.
- On January 31, 2012, the RDA transferred three capital assets valued at \$4,535,226 to the City.

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 that were funded by tax increment revenues of the dissolved 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 government purpose, such as roads, school buildings, parks, and fire stations, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such as asset. . . .

However, the following corrective actions have been taken since the unallowable transfers occurred:

- On October 17, 2012, the Oversight Board retroactively approved \$23,033,324 of the transferred assets because the assets are used for either housing or public purposes. To accomplish this, the Oversight Board passed and adopted Resolution OB-003.
- On February 11, 2013, the City transferred \$1,704,483 in former RDA assets to the Successor Agency. To accomplish this, the City and the Successor Agency entered into an agreement under Resolution LSA 2013-01.



- On June 5, 2013, the Oversight Board retroactively approved \$11,182,432 of the transferred assets because the assets are used for either housing or public purposes. To accomplish this, the Oversight Board passed and adopted Resolution OB-009.

#### Order of the Controller

Pursuant to H&S Code section 34167.5, the City of Livermore is ordered to turn over the assets in the amount of \$35,920,239, to the Successor Agency for disposition under H&S Code sections 34177(d) and (e) with approval by the Oversight Board pursuant to H&S Code section 34181(a) and (c). However, because the Oversight Board retroactively approved the transfer of \$34,215,756 in assets, and \$1,704,483 in assets were turned over to the Successor Agency, no further action is necessary in relation to the transfer of assets in the amount of \$35,920,239.

The California Department of Finance (DOF) has requested to review the Oversight Board's decision to adopt Resolution OB-009. If the DOF does not approve that decision, and the remedies authorized by H&S Code sections 34177.5(f) and 34179(h), and in law have been exhausted, then, the City is ordered to transfer the assets to the Successor Agency pursuant to H&S Code section 34167.5.

The remaining \$85,000 is subject to H&S Code section 34167.5. The City is ordered to reverse the transfers of assets described in Schedule 1, in the amount of \$85,000, plus any interest earned, and turn them over to the Successor Agency.

The Successor Agency is directed to properly dispose of those assets in accordance with H&S Code section 34177(d) and (e) with approval by the Oversight Board pursuant to H&S Code section 34181(a).

#### Response to Draft Report

The Successor Agency responded to an initial version of Finding 1 by email dated July 5, 2013 (Attachment 1). Subsequently, the SCO issued a revised Finding 1 (Attachment 2) on September 10, 2013, and the Successor Agency responded to the revision with a letter dated September 26, 2013 (Attachment 3) disagreeing with Finding 1. The SCO's comments to the two responses are given below.

#### Successor Agency's July 5, 2013 Response

While the Livermore Successor Agency supports the conclusion that "no further action is necessary in relation to the transfer of asset findings," we do have a few comments that will help clarify the scope of the findings.

In regards to the finding #1, "unallowable asset transfer to the City of Livermore", we request that paragraph #3 on page 5 be more specific in regards to identifying the "decision" that is under review. . .

SCO's Comment

The changes requested by the Successor Agency regarding the clarification of the Oversight Board decision have been made to the Order of the Controller section above.

Successor Agency's September 26, 2013 Response

See Successor Agency's comments disputing the Order in Attachment 3.

SCO's Comment

The SCO disagrees with the Successor Agency's response. Although the \$85,000 loan payment is in accordance to the August 4, 2008 Cooperation and Repayment Agreement and not excluded by H&S Code section 34167(d), it is still subject to clawback under H&S Code section 34167.5. Originally this was interpreted to allow transfers that were historically consistent. However, H&S Code section 34167(a) states:

. . . It is the intent of the Legislature that redevelopment agencies take no actions that would further deplete the corpus of the agencies' funds regardless of their original source. All provisions of this part shall be construed as broadly as possible to support this intent and to restrict the expenditure of funds to the fullest extent possible.

H&S Code section 34167.5 retroactively gives the SCO the authority to order the return of any asset transferred to a public agency after January 1, 2011 to the Successor Agency.

Additionally, the Successor agency has provided the following:

- On July 16, 2013 the Successor Agency obtained a Finding of Completion from the DOF.
- On September 24, 2013, the Oversight Board approved the ROPS13-14B, reinstating the loan agreement as an enforceable obligation.

The finding and Order of the Controller remains as stated for the transfer of \$85,000 in cash to the City.

**FINDING 2—  
Unallowable asset  
transfers to the  
Successor Housing  
Agency**

The RDA made unallowable asset transfers of \$5,488,459 to the Successor Housing Agency. The asset transfers to the Successor Housing Agency occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

The unallowable transfers included \$5,488,459 transferred to the Successor Housing Agency on February 1, 2012. Those assets consisted of \$4,068,732 receivables, \$909,190 unencumbered cash, \$487,583 encumbered cash, and \$22,954 in capital assets.

Pursuant to H&S Code section 34175(b) the RDA was required to transfer all assets, including housing assets, to the Successor Agency.

H&S Code section 34175(b) states, “All assets, properties, contracts, leases, books and records, buildings, and equipment of the former redevelopment agency are transferred on February 1, 2012, to the control of the successor agency, for administration pursuant to the provisions of this part. This includes all cash or cash equivalents and amounts owed to the redevelopment agency as of February 1, 2012.”

Additionally, H&S Code section 34181(c) requires the Oversight Board to direct the Successor Agency transfer housing assets pursuant to section 34176.

Also, pursuant to H&S Code section 34177(d) the Successor Agency is to, “Remit unencumbered balances of redevelopment agency funds to the county auditor-controller for distribution to the taxing entities, including, but not limited to, the unencumbered balance of the Low and Moderate Income Housing Fund of a former redevelopment agency...for allocation and distribution...[in accordance with]...Section 34188.”

However, the following corrective actions have been taken since the unallowable transfers occurred:

- On January 15, 2013, the Successor Housing Agency remitted the \$909,190 in unencumbered cash directly to the Alameda County Auditor-Controller.
- On June 5, 2013, the Successor Agency Oversight Board retroactively approved \$4,579,269 of the transferred assets because the assets are used for housing purposes. To accomplish this, the Oversight Board passed and adopted Resolution OB-008.

Order of the Controller

Pursuant to H&S Code section 34167.5, the Successor Housing Agency should have turned over the assets, in the amount of \$5,488,459, to the Successor Agency for disposition under H&S Code section 34177(d) and (e) with approval by the Oversight Board pursuant to H&S Code section 34181(a) and (c). However because the Oversight Board has retroactively approved the transfer of \$4,579,269 in assets and \$909,190 in assets already have been remitted directly to the county auditor-controller, no further action is necessary in relation to these findings.

Please note that the DOF must approve the Oversight Board's decision in this matter. If the DOF does not approve the decision, then the City of Livermore is ordered to transfer the assets to the Successor Agency pursuant to H&S Code section 34167.5.

Successor Agency's July 5, 2013 Response

While the Livermore Successor Agency supports the conclusion that "no further action is necessary in relation to the transfer of asset findings," we do have a few comments that will help clarify the scope of the findings.

. . . in regards to the finding #2, "Unallowable asset transfer to the Successor Housing Agency", we request that the last paragraph on page 6 be more specific in regards to identifying the "decision" that is under review . . .

SCO's Comment

The changes requested by the Successor Agency regarding the clarification of the Oversight Board decision have been made to the Order of the Controller section above.

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

Description	Date	Finding Values <sup>1</sup>	Adjustments to SCO Order	SCO Order
Unallowable transfers of capital assets	March 23, 2011	\$ 31,385,013		
Unallowable transfers of cash assets	June 30, 2011	85,000		
Unallowable transfers of capital assets	January 31, 2012	<u>4,535,226</u>		
Total unallowable transfers		<u>36,005,239</u>		
Retroactive approval by Oversight Board	October 17, 2012		\$ (23,033,324)	
City transfer to Successor Agency	February 11, 2013		(1,704,483)	
Retroactive approval by Oversight Board <sup>2</sup>	June 5, 2013		<u>(11,182,432)</u>	
Total adjustments			<u>(35,920,239)</u>	
Total unallowable transfers remaining				<u>\$ 85,000</u>

<sup>1</sup> Rounded.

<sup>2</sup> If the DOF does not approve that decision, and the remedies authorized by H&S Code section 34177.5(f) and 34179(h) and in law have been exhausted, then, the City of Livermore is ordered to transfer the assets to the Successor Agency pursuant to H&S Code 34167.5.

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

Description	Date	Finding Values <sup>1</sup>	Adjustments to SCO Order	SCO Order
Unallowable transfers of current assets:				
Encumbered cash	February 1, 2012	\$ 487,583		
Unencumbered cash	February 1, 2012	909,190		
Notes receivable	February 1, 2012	1,561,803		
Loans receivable	February 1, 2012	2,506,929		
Unallowable transfers of capital assets:				
Land Held for Resale	February 1, 2012	22,954		
Total unallowable transfers		<u>5,488,459</u>		
Remittance to County Auditor-Controller	January 15, 2013		\$ (909,190)	
Retroactive approval by Oversight Board <sup>2</sup>	June 5, 2013		(4,579,269)	
Total adjustments			<u>(5,488,459)</u>	
Total unallowable transfers remaining				<u>\$ —</u>

<sup>1</sup> Rounded

<sup>2</sup> If the DOF does not approve that decision, and the remedies authorized by H&S Code section 34177.5(f) and 34179(h) and in law have been exhausted, then the City of Livermore is ordered to transfer the assets to the Successor Agency pursuant to H&S Code section 34167.5.

**Attachment 1—  
Successor Agency’s Response to  
Draft Review Report**

---

---

**From:** Peterson, Erik [<mailto:etpeterson@cityoflivermore.net>]  
**Sent:** Friday, July 05, 2013 04:27 PM  
**To:** Mar, Steven  
**Cc:** Alcala, Jason; Peterson, Erik  
**Subject:** Comments on the State Controllers Asset Review Draft Report

Good afternoon Mr. Mar-

Thank you for the opportunity to review the draft report from the State Controller's Office. While the Livermore Successor Agency supports the conclusion that "no further action is necessary in relation to the transfer of asset findings," we do have a few comments that will help clarify the scope of the findings.

In particular, we offer the following comments. The final paragraph for both findings 1 and 2, both state that:

"Please note the California Department of Finance (DOF) must approve the Oversight Board's decision in this matter. If the DOF does not approve the decision, then the City of Livermore is ordered to transfer the assets to the Successor Agency pursuant to H&S Code section 34167.5"

However, that language does not clearly articulate which Oversight Board decision its being referenced. This is important since the Department of Finance did not perfect its opportunity to review certain Oversight Board decisions, and it is currently reviewing Oversight Board decisions other than the adoption of resolutions OB-008 and OB-009, which are not germane to the State Controller's Office review. In particular, the Department of Finance did not request to review the Oversight Board's adoption of OB-003 on October 17, 2012. As a result, Health and Safety Code section 34177.5(f) provides that it is no longer subject to review by either the Department of Finance or the State Controller's Office.

Therefore, we request the following changes to the report:

In regards to the finding #1, "unallowable asset transfers to the City of Livermore", we request that paragraph #3 on page 5 be more specific in regards to identifying the "decision" that is under review, and specifically request that the SCO's order for Finding 1 be revised as follows:

"Please note the California Department of Finance (DOF) **has requested to review** ~~must approve~~ the Oversight Board's decision ~~in this matter~~ **to adopt Resolution OB-009**. If the DOF does not approve ~~the~~ **that** decision, **and the remedies authorized in H&S Code 34177.5(f) and 34179(h) and in law have been exhausted**, then the City of Livermore is ordered to transfer the assets to the Successor Agency pursuant to H&S Code section 34167.5"

Similarly in regards to finding #2, "Unallowable asset transfer to the Successor Housing Agency", we request that the last paragraph on page 6 be more specific in regards to identifying the "decision" that is under review, and specifically request that the SCO's order for Finding 2 be revised as follows:

"Please note the California Department of Finance (DOF) **has requested to review** ~~must approve~~ the Oversight Board's decision ~~in this matter~~ **to adopt Resolution OB-008**. If the DOF does not approve ~~the~~ **that** decision, **and the remedies authorized in H&S Code 34177.5(f) and 34179(h) and in law have been exhausted**, then the City of Livermore is ordered to transfer the assets to the Successor Agency pursuant to H&S Code section 34167.5"

Sincerely,

Erik Peterson



Erik Peterson  
Accountant  
Finance Division / Administrative Services  
City of Livermore  
(925) 960-4325  
[www.cityoflivermore.net](http://www.cityoflivermore.net)



**Attachment 2—  
SCO Revised Finding 1**

---



**JOHN CHIANG**  
California State Controller

September 10, 2013

Erik Peterson, Administrative Services Accountant  
Livermore Redevelopment/Successor Agency  
1052 South Livermore Avenue  
Livermore, CA 94550

Dear Mr. Peterson:

The State Controller's Office has made a change to the findings in the draft redevelopment agency asset transfer review report dated June 21, 2013. This change was discussed with your staff in a phone conversation on July 23, 2013. A copy of the revised finding along with a revised Schedule 1 is enclosed.

Please submit any comments concerning the revised finding within 10 calendar days after you receive this letter. In particular, you should address the accuracy of our revised finding. We may modify the revised finding in the final report based on your comments. In the final report, we will include your comments regarding the revised finding, along with any other comments you previously provided regarding the other three findings included in the draft report.

Please send your response to Steven Mar, Chief, Local Government Audits Bureau, State Controller's Office, Division of Audits, Post Office Box 942850, Sacramento, California 94250-5874. If we do not receive your comments within the specified time, we will release the report, with the revised finding, as final.

The revised finding, like the original draft asset transfer review report, is confidential. We limit access to the revised finding and distribution to those referenced in the letter. However, when we issue the final report, it becomes a public record.

If you have any questions, please contact Mr. Mar by phone at (916) 324-7226.

Sincerely,

A handwritten signature in black ink that reads "Jeffrey V. Brownfield".

JEFFREY V. BROWNFIELD, CPA  
Chief, Division of Audits

JVB/nh

Attachment

## Findings and Orders of the Controller

### **FINDING 1— RDA assets transferred to the City of Livermore**

The Livermore Redevelopment Agency (RDA) transferred \$36,005,239 in assets to the City of Livermore (City). All of the asset transfers to the City 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 23, 2011, the RDA transferred \$31,385,013 in capital assets to the City. To accomplish those transfers, on March 22, 2011, the City and the RDA entered into an agreement under Resolution RA-2011-05 and Meeting Agenda Item No. 3.01.
- On June 30, 2011, the RDA transferred \$85,000 in cash assets as loan repayment to the City.
- On January 31, 2012, the RDA transferred three capital assets valued at \$4,535,226 to the City.

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 that were funded by tax increment revenues of the dissolved 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 government purpose, such as roads, school buildings, parks, and fire stations, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such as asset. . . .

However, the following corrective actions have been taken since the unallowable transfers occurred:

- On October 17, 2012, the Successor Agency Oversight Board retroactively approved \$23,033,324 of the transferred assets because the assets are used for either housing or public purposes. To accomplish this, the Oversight Board passed and adopted Resolution OB-003.
- On February 11, 2013, the City of Livermore transferred \$1,704,483 in former RDA assets to the Successor Agency. To accomplish this, the City and the Successor Agency entered into an agreement under Resolution LSA 2013-01.

- On June 5, 2013, the Successor Agency Oversight Board retroactively approved \$11,182,432 of the transferred assets because the assets are used for either housing or public purposes. To accomplish this, the Oversight Board passed and adopted Resolution OB-009.

Order of the Controller

Pursuant to H&S Code section 34167.5, the City of Livermore would have been ordered to turn over the assets in the amount of \$35,920,239, to the Successor Agency for disposition under H&S Code section 34177(d) and (e) with approval by the Oversight Board pursuant to H&S Code section 34181(a) and (c). However, because the Oversight Board retroactively approved the transfer of \$34,215,756 in assets, and \$1,704,483 in assets were turned over to the Successor Agency, no further action is necessary in relation to the transfer of assets in the amount of \$35,920,239.

Please note the California Department of Finance (DOF) has requested to review the Oversight Board's decision to adopt Resolution OB-009. If the DOF does not approve that decision, and the remedies authorized in H&S Code section 34177.5(f) and 34179(h) and in law have been exhausted, the City of Livermore is ordered to transfer the assets to the Successor Agency pursuant to H&S Code section 34167.5.

However, the remaining \$85,000 is subject to H&S Code section 34167.5. The City of Livermore is ordered to reverse the transfer of the above assets described in Schedule 1, in the amount of \$85,000, plus any interest earned, and return them to the Successor Agency.

The Successor Agency is directed to properly dispose of those assets in accordance with H&S Code section 34177(d) and (e) with approval by the Oversight Board pursuant to H&S Code section 34181(a).

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

Description	Date	Finding Values <sup>1</sup>	Adjustments to SCO Order	SCO Order
Unallowable transfers of capital assets	3/23/2011	\$ 31,385,013		
Unallowable transfers of capital assets	6/30/2011	85,000		
Unallowable transfers of capital assets	1/31/2012	<u>4,535,226</u> <sup>2</sup>		
Total unallowable transfers		<u>36,005,239</u>		
Retroactive approval by Oversight Board	10/17/2012		\$ (23,033,324)	
City transfer to Successor Agency	02/11/2013		(1,704,483)	
Retroactive approval by Oversight Board	06/05/2013		<u>(11,182,432)</u>	
Total adjustments			<u>(35,920,239)</u>	
Total unallowable transfers remaining				<u>\$ 85,000</u>

<sup>1</sup> Rounded.

<sup>2</sup> If the DOF does not approve that decision, and the remedies authorized in H&S Code section 34177.5(f) and 34179(h) and in law have been exhausted, the City of Livermore is ordered to transfer the assets to the Successor Agency pursuant to H&S Code 34167.5.

**Attachment 3—  
Successor Agency's Response to Revised Finding 1  
of Draft Review Report**

---



September 26, 2013

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

Dear Mr. Mar:

This letter is to advise you that on September 16, 2013, the Livermore Successor Agency (LSA) received a letter dated September 10, 2013 from the State Controller's Office (SCO) along with the SCO's draft "Findings and Orders of the Controller." A copy of that letter and the draft findings are attached as Attachment "1". This letter is also to advise you that the LSA disagrees with and disputes the following portion of the controller's order:

"However, the remaining \$85,000 is subject H&S Code section 34167.5. The City of Livermore is ordered to reverse the transfer of the above assets described in Schedule 1, in the amount of \$85,000, plus any interest earned, and return them to the Successor Agency."

The LSA disputes the SCO's order based upon the following:

1. In June 2011, the City of Livermore Redevelopment Agency (former-RDA) was obligated to pay \$85,000 to the City of Livermore pursuant to a cooperation and repayment agreement. That agreement was executed in 2008. A copy of the loan documents is attached hereto as Attachment "2". The payment terms were set to have the RDA pay the City \$85,000 annually for 25 years and then at the end of the 25 years, the agency would pay any outstanding amount of principle and interest due the City. According to the contract, this payment is due on or before June 30<sup>th</sup> of each fiscal year.

Since Fiscal year 2008/09 this payment has been posted as part of the fiscal year end closing process of the City's books. A journal voucher is submitted and then posted to June 30 of the current fiscal year. This journal voucher has been historically created after June 30<sup>th</sup> during the year end close process. The journal was created in August 2009,

City Hall

1052 South Livermore Avenue  
Livermore, CA 94550

[www.cityoflivermore.net](http://www.cityoflivermore.net)  
TDD: (925) 960-4104



October 2010 and again October 2011 all being posted to June 30, 2009, June 30, 2010 and June 30, 2011 respectively.

2. In 2011 at the time when the payment was due and as it was paid, the \$85,000 payment was authorized pursuant to a binding contractual agreement, and meets the requirements for an "enforceable obligation" as that term is defined by *California Health and Safety Code section 34167(d)*. Prior to the preparation of the recognized obligation payment schedule (and even their precursors which include the preliminary draft initial recognized obligation payment schedule, the initial obligation payment schedule, and then the enforceable obligation payment schedule) the former-RDA was authorized and required continue making the payment pursuant to *California Health and Safety Code section 34169*.
3. It was not until the LSA's adopted its enforceable obligation payment schedule pursuant to *California Health and Safety Code section 34169* on August 24, 2011 that the loan became subject to the provisions in *California Health and Safety Code section 34171(d)(2)* that excludes the loan from the definition of "enforceable obligations."
4. The exclusion of the agreement from the definition of "enforceable obligations" in *California Health and Safety Code section 34171(d)(2)* only applies to Part 1.85. However, the statutory authority relied upon by the SCO in its order is found in Part 1.8. Part 1.8 is governed by the definition of "enforceable obligations" set forth in *California Health and Safety Code section 34167(d)*.
5. On July 16, 2013, the Department of Finance (DOF) issued a finding of completion to the LSA. A copy of the finding of completion is attached hereto as Attachment "3". The DOF's finding of completion authorized the LSA's Oversight Board to determine that the loan is an enforceable obligation entitled to be placed on an enforceable obligation payment schedule pursuant to *California Health & Safety Code sections 34180 and 34191.4(b)*. On September 24, 2013, the LSA's Oversight Board found that the loan was for legitimate redevelopment purpose and approved it as an enforceable obligation on the Recognized Obligation Payment Schedule (ROPS 13-14B). A copy of Oversight Board Resolution No. OB-011 is attached hereto as Attachment "4".
6. During the original audit process in April/May 2013, the SCO's auditor asked about the \$85,000 transfer. He indicated that if it was part of a contract entered into prior to January 1, 2011 and if there was history of regular scheduled payments, it would be deemed to be an allowable transfer.
7. There is no authority for the SCO's order that interest be paid.
8. The SCO's order also violates Proposition 22 by "seizing, diverting, shifting, borrowing, transferring, suspending, or otherwise taking or interfering with" revenue dedicated to the City of Livermore.

Mr. Steven Mar  
September 26, 2013  
Page 3 of 3

The LSA respectfully requests the SCO reconsider and eliminate that portion of the order that is disputed by this letter. If the SCO does not revise its order as requested, the LSA then further requests the SCO include responses to the LSA's bases for dispute in the order.

Sincerely,

A handwritten signature in black ink, appearing to read "Erik Peterson".

Erik Peterson  
Accountant  
Finance, Administrative Services Department

**COOPERATION AND REPAYMENT AGREEMENT  
(Consolidation of Existing Redevelopment Agency Loans)**

This Agreement is entered into as of the 4<sup>th</sup> day of August 2008, by and between the City of Livermore, a municipal corporation ("City") and the Redevelopment Agency of the City of Livermore, a body corporate and politic ("Agency") regarding the consolidation of outstanding loans to the Agency.

**RECITALS**

A. The Amended and Restated Redevelopment Plan for the Livermore Redevelopment Project, as adopted on July 12, 1982, by Ordinance No. 1114 (Original Project Area) and thereafter amended and restated December 21, 1992, by Ordinance No. 1398 (Expansion Area); amended November 14, 1994, by Ordinance No. 1435 (Establishing and Amending Certain Time Limits – AB 1290); amended August 11, 2003, by Ordinance No. 1696 (Eliminating Certain Time Limits – SB 211); amended November 10, 2003, by Ordinance No. 1703 (Amending Certain Time Limits); and amended October 11, 2004, by Ordinance No. 1739 (Second Amendment), collectively referred to in this Agreement as the "Redevelopment Plan," affecting the Livermore Redevelopment Project Area (the "Project Area").

B. The Agency is vested with the responsibility for formulating and carrying out necessary redevelopment projects within the Project Area.

C. The City has previously issued three loans to the Agency which still carry outstanding balances. The first of these loans was issued to the Agency in 1986 in the amount of \$843,950 and was for Agency operating expenses. No interest was charged on this loan and it was to be repaid upon the sale of Agency-owned property located at 2164 Second Street (APN 097-0014-003-040).

D. A second loan of \$4,135,351 was issued to the Agency over a four year period between 1987 and 1990 and was also for Agency operation expenses. No interest was charged on this loan, and payments have occurred since 1991. The current remaining balance for loan #2 is \$1,889,000 with a payoff date of 2030.

E. The third outstanding loan was for \$1,000,000 for the purchase of the courthouse building at 39 South Livermore Avenue in 1999. This loan has accrued an interest payment of \$331,980. To date, no payments have been made on this loan.

F. Pursuant to Health and Safety Code § 33220, the City agrees to consolidate the three outstanding loans into one loan amount ("the Consolidated Loan") to facilitate the orderly repayment of the loan and, to this end, the Agency and the City will enter into this Cooperation Agreement to facilitate the Agency's repayment obligations stated herein.

G. The City and the Agency desire to enter into this Agreement for the following purposes:

(i) To set forth activities, services, and facilities that the City will render for and make available to the Agency in furtherance of the activities and functions of the Agency under the Community Redevelopment Law; and

(ii) To provide that the Agency will reimburse the City for actions undertaken and costs and expenses incurred by it for and on behalf of the Agency.

## AGREEMENT

### 1. PURPOSE

The purpose of this Agreement is to establish a mechanism for repayment of the Consolidated Loan amount provided by the City to the Agency, as more fully set forth in Section 4, in order to facilitate redevelopment pursuant to the Livermore Redevelopment Project.

### 2. LOAN AMOUNT

In consideration for the consolidation of the three loans into one loan amount, the Agency promises and agrees to pay the City an the amount of \$4,064,930 (Four Million, Sixty-Four Thousand, Nine Hundred and Thirty Dollars).

### 3. TERM OF AGREEMENT

Subject to Section 4 below, this Agreement shall be in full force and effect for a period beginning as of the date first above written and continuing until the earlier of (i) all repayment obligations of the Agency to the City are satisfied in full in accordance with the terms of this Agreement, or (ii) the expiration date of the Redevelopment Plan.

### 4. REPAYMENT

(a) Annual Payment. Beginning with fiscal year 2008/2009, the Agency shall repay \$85,000 towards the Loan in twenty-five (25) annual installments (the "Agency Payment") on or before June 30 of each fiscal year (the "Payment Date") from funds generated by tax increment arising out of the redevelopment of the Property. At the end of the 25 year period, the Agency Payment shall be any outstanding amount of principal and interest owed to the City. Payments shall be deposited into the City's General Fund.

(b) Interest. The principal balance of this Note shall bear interest from the date of disbursement at the Local Agency Investment Rate per annum until repaid.

5. RECORD KEEPING

The City will keep records of activities and services undertaken pursuant to the Agreement and the costs thereof so that an accurate determination of the Agency's total liability to the City can be made. The City shall periodically, but not less than annually, submit to the Agency, upon Agency's request, a statement of costs incurred by the City in rendering activities and services of the City in connection with the administration of this Consolidated Loan. Such statement of costs may include consultant expenses incurred by the City.

6. SUBORDINATION

It is agreed by the parties hereto that all repayments to the City pursuant to this Agreement are subordinated to any and all payments necessary to satisfy existing debt of the Agency and to any and all payments necessary to satisfy the Agency's obligations in connection with existing bonds or bonds which may be issued in the future or to the extent necessary for any bonded indebtedness for which the Agency has pledged as a security or source of repayment tax increment generated within the Project Area.

7. INDEBTEDNESS

The Agency's obligations under this Agreement shall constitute an indebtedness of the Agency within the meaning of Health and Safety Code Section 33670 et seq.

8. VALIDITY OF AGREEMENT

If any provisions of this Agreement, or the application thereof to any person, party, transaction, or circumstance, is held invalid, the remainder of this Agreement, or the application of such provision to other persons, parties, transactions or circumstances, shall not be affected thereby.

9. AMENDMENT

This Agreement may be amended provided such amendment is in writing and is signed by both parties to this Agreement.


IN WITNESS WHEREOF, the City Manager of the City of Livermore, as authorized by resolution of the City Council of the City of Livermore, has caused the name of the City of Livermore to be affixed to this Agreement, and the Executive Director of the Livermore Redevelopment Agency, as authorized by resolution of the Agency, has caused the name of the Redevelopment Agency of the City of Livermore to be affixed to this Agreement on the above date.

REDEVELOPMENT AGENCY OF THE CITY OF LIVERMORE  
CITY OF LIVERMORE

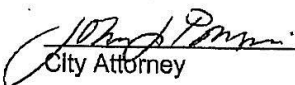
By:   
Executive Director

By:   
City Manager

Approved as to form:

  
Asst. Agency Counsel

Approved as to form:

  
City Attorney

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE  
STATE OF CALIFORNIA

A RESOLUTION AUTHORIZING THE EXECUTION OF A COOPERATION AND  
REPAYMENT AGREEMENT FOR THE CONSOLIDATION OF THREE EXISTING  
LOANS ISSUED TO THE REDEVELOPMENT AGENCY BY THE CITY OF  
LIVERMORE INTO A SINGLE LOAN WITH INTEREST

In 1986 the City of Livermore issued a loan in the amount of \$843,950 (Loan #1) to the Redevelopment Agency for operating expenses; and

Between 1987 and 1990 the City of Livermore issued a loan in the amount of \$4,135,351 (Loan #2) to the Redevelopment Agency for operating expenses; and

In 1999 the City of Livermore issued a loan in the amount of \$1,000,000 (Loan #3) to the Redevelopment Agency for the purchase of the courthouse building at 39 South Livermore Avenue; and

The current total balance for the existing loans and interest is \$4,064,930.

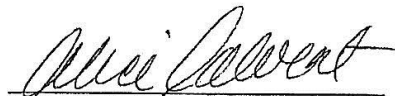
NOW, THEREFORE, BE IT RESOLVED by the Livermore City Council that the City Manager is authorized on behalf of the City of Livermore to execute a Cooperation and Repayment Agreement to restructure the existing loans between the City of Livermore and Redevelopment Agency and consolidate those loans as a single loan amount subject to one consistent interest rate equal to the adjustable Local Agency Investment Fund interest rate. Repayment will occur on a yearly basis with a payment of \$85,000 and a final balloon payment at the end of the loan term (25 years). Terms of the restructured loan are subject to the Cooperation and Repayment Agreement.

BE IT FURTHER RESOLVED that the prior resolutions authorizing the original loans are hereby rescinded.

On the motion of Councilmember Williams, seconded by Councilmember Leider, the foregoing resolution was passed and adopted on the 4<sup>th</sup> day of August, 2008, by the following vote:

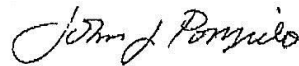
AYES: Councilmembers Horner, Leider, Williams, Vice Mayor Marchand  
NOES: None  
ABSENT: Mayor Kamena  
ABSTAIN: None

ATTEST & DATE:



CITY CLERK  
ALICE CALVERT

APPROVED AS TO FORM:



CITY ATTORNEY  
JOHN J. POMIDOR

DATE: August 5, 2008

RESOLUTION NO. 2008-170

IN THE REDEVELOPMENT AGENCY OF THE CITY OF LIVERMORE  
STATE OF CALIFORNIA

A RESOLUTION AUTHORIZING EXECUTION OF A COOPERATION AND  
REPAYMENT AGREEMENT FOR THE CONSOLIDATION OF THREE EXISTING  
LOANS ISSUED TO THE REDEVELOPMENT AGENCY BY THE CITY OF  
LIVERMORE INTO A SINGLE LOAN WITH INTEREST

In 1986 the City of Livermore issued a loan in the amount of \$843,950 (Loan #1) to the Redevelopment Agency for operating expenses; and

Between 1987 and 1990 the City of Livermore issued a loan in the amount of \$4,135,351 (Loan #2) to the Redevelopment Agency for operating expenses; and

In 1999 the City of Livermore issued a loan in the amount of \$1,000,000 (Loan #3) to the Redevelopment Agency for the purchase of the courthouse building at 39 South Livermore Avenue; and

The current total balance for the existing loans and interest is \$4,064,930.

NOW, THEREFORE, BE IT RESOLVED by the Redevelopment Agency of the City of Livermore that the Executive Director is authorized on behalf of the City of Livermore to execute a Cooperation and Repayment Agreement to restructure the existing loans between the City of Livermore and Redevelopment Agency and consolidate those loans as a single loan amount subject to one consistent interest rate equal to the adjustable Local Agency Investment Fund interest rate. Repayment will occur on a yearly basis with a payment of \$85,000 and a final balloon payment at the end of the loan term (25 years). Terms of the restructured loan are subject to the Cooperation and Repayment Agreement.

BE IT FURTHER RESOLVED that the prior resolutions authorizing the original loans are hereby rescinded.

On the motion of Agencymember Williams, seconded by Agencymember Leider, the foregoing resolution was passed and adopted on the 4<sup>th</sup> day of August, 2008, by the following vote:

AYES: Agencymembers Horner, Leider, Williams, Vice Chair Marchand

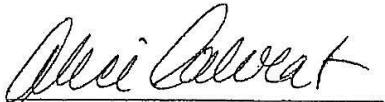
NOES: None

ABSENT: Chairperson Kamena

ABSTAIN: None

ATTEST:

APPROVED AS TO FORM:



SECRETARY  
ALICE CALVERT



AGENCY GENERAL COUNSEL  
JOHN J. POMIDOR

DATE: August 5, 2008

RESOLUTION NO. RA-2008-11





DEPARTMENT OF  
**FINANCE**

EDMUND G. BROWN JR. ■ GOVERNOR

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

July 16, 2013

Mr. Marc Roberts, Executive Director of the LSA  
City of Livermore  
1052 South Livermore Avenue  
Livermore, CA 94551

Dear Mr. Roberts:

Subject: Request for a Finding of Completion

The California Department of Finance (Finance) has completed the Finding of Completion for the City of Livermore Successor Agency.

Finance has completed its review of your documentation, which may have included reviewing supporting documentation submitted to substantiate payment or obtaining confirmation from the county auditor-controller. Pursuant to Health and Safety Code (HSC) section 34179.7, we are pleased to inform you that Finance has verified that the Agency has made full payment of the amounts determined under HSC section 34179.6, subdivisions (d) or (e) and HSC section 34183.5.

This letter serves as notification that a Finding of Completion has been granted. The Agency may now do the following:

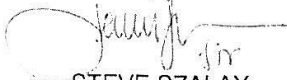
- Place loan agreements between the former redevelopment agency and sponsoring entity on the ROPS, as an enforceable obligation, provided the oversight board makes a finding that the loan was for legitimate redevelopment purposes per HSC section 34191.4 (b) (1). Loan repayments will be governed by criteria in HSC section 34191.4 (a) (2).
- Utilize proceeds derived from bonds issued prior to January 1, 2011 in a manner consistent with the original bond covenants per HSC section 34191.4 (c).

Additionally, the Agency is required to submit a Long-Range Property Management Plan to Finance for review and approval, per HSC section 34191.5 (b), within six months from the date of this letter.

Please direct inquiries to Andrea Scharffer, Staff Finance Budget Analyst, or Chris Hill, Principal Program Budget Analyst, at (916) 445-1546.

Mr. Marc Roberts  
July 17, 2013  
Page 2

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Szalay", with a long horizontal flourish extending to the right.

STEVE SZALAY  
Local Government Consultant

cc: Mr. Erik Peterson, Accountant, City of Livermore  
Ms. Carol S. Orth, Tax Analysis, Division Chief, County of Alameda  
California State Controller's Office

**IN THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE  
LIVERMORE REDEVELOPMENT AGENCY OF THE CITY OF LIVERMORE,  
CALIFORNIA**

**A RESOLUTION APPROVING ADOPTION OF THE RECOGNIZED  
OBLIGATION PAYMENT SCHEDULE FOR THE PERIOD JANUARY 1,  
2014 THROUGH JUNE 30, 2014**

The Recognized Obligation Payment Schedule (ROPS) lists all obligations of the Livermore successor Agency and includes all funds the Successor Agency will need to carry out the dissolution process and meet current and future obligations.

The ROPS sets forth the payment amount and due dates of payments for the next six months. Only those payment listed on the ROPS may be made by the Successor Agency.

Per AB 1484, the ROPS must be submitted to the Oversight Board for review and approval and then transmitted to the State Department of Finance by March 1, 2013 for its review.

The ROPS is looking forward to the next six months, prepared twice annually, until all debt is repaid. Previously approved ROPS covered the time periods between May 1 through June 30, 2012, July 1 through December 31, 2012, January 1 and June 30, 2013 and July 1, 2013 through December 31, 2013.

**NOW, THEREFORE, BE IT RESOLVED** that the Oversight Board for the Successor Agency to the Livermore Redevelopment Agency hereby approves the adoption of the Recognized Obligation Payment Schedule, as requested by the State Department of Finance, for the period January 1, 2014 to June 30, 2014.

On motion of Oversight Board Member \_\_\_\_\_, seconded by Oversight Board Member \_\_\_\_\_, the foregoing Resolution was passed and adopted on September 25, 2013.

AYES: Oversight Board Members:  
NOES: Oversight Board Members:  
ABSENT: Oversight Board Members:  
ABSTAIN: Oversight Board Members:

ATTEST:

APPROVED AS TO FORM

\_\_\_\_\_  
Clerk of the Board  
Susan Neer

\_\_\_\_\_  
Executive Director  
Marc Roberts

RESOLUTION NO. \_\_\_\_\_

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

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