

# **COUNTY OF MONTEREY REDEVELOPMENT AGENCY**

## **ASSET TRANSFER REVIEW**

### Review Report

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



**JOHN CHIANG**  
California State Controller

March 2013



**JOHN CHIANG**  
California State Controller

March 8, 2013

Marti Noel  
Redevelopment and Housing Assistant Director  
County of Monterey/Successor Agency  
168 W. Alisal 3<sup>rd</sup> Floor  
Salinas, CA 93901

Dear Ms. Noel:

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

Our review found that the RDA transferred \$25,549,908 in assets. This included unallowable transfers of assets totaling \$9,740,323, or 38.12%, that must be turned over to the Successor Agency.

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

Sincerely,

*Original signed by*

JEFFREY V. BROWNFIELD, CPA  
Chief, Division of Audits

JVB/vb

cc: Steven Szalay, Local Government Consultant  
Department of Finance  
Michael J. Miller, Auditor-Controller  
County of Monterey  
Jerry Hernandez, Oversight Board Chair  
County of Monterey/Successor Agency  
Richard J. Chivaro, Chief Legal Counsel  
State Controller's Office  
Betty Moya, Audit Manager  
Division of Audits, State Controller's Office  
Michael Mock, Auditor-in-Charge  
Division of Audits, State Controller's Office  
Nesha Neycheva, Auditor  
Division of Audits, State Controller's Office

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

# Asset Transfer Review Report

## Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the County of Monterey 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 any rights to payments of any kind from any source.

Our review found that the RDA transferred \$25,549,908 in assets. This included unallowable transfers of assets totaling \$9,740,323, or 38.12%, that 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 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 at 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 County of Monterey, 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 and resolutions of the County of Monterey, the RDA, and the Successor Agency.
- 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 RDA transferred \$25,549,908 in assets. This included unallowable transfers of assets totaling \$9,740,323, or 38.12%, that must be turned over to the Successor Agency.

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

**Views of  
Responsible  
Officials**

We issued a draft review report on January 3, 2013. Linda B. Guillis, Interim Director, responded by email dated January 25, 2013, disagreeing with the review results. The auditee's response is included in the final review report as an attachment.

**Restricted Use**

This report is solely for the information and use of the County of Monterey, the Successor Agency, the Successor Agency 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

March 8, 2013

# Findings and Orders of the Controller

**FINDING 1—  
Unallowable asset  
transfer to the  
Successor Housing  
Agency of the  
County of  
Monterey**

The County of Monterey Redevelopment Agency (RDA) transferred \$9,740,323 in assets to the Monterey County Successor Housing Agency (SHA). All of the asset transfers occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

On January 31, 2012, the RDA transferred a total of \$9,740,323 (\$8,980,520 and \$759,803 for current and capital assets) to the SHA. Based on Health & Safety (H&S) Code section 34177(e), the Successor Agency, not the SHA, is responsible for the disposition of assets and properties of the former RDA.

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.

H&S Code section 34176(a) states:

The city, county, or city and county that authorized the creation of a redevelopment agency may elect to retain the housing assets and functions previously performed by the redevelopment agency. If a city, county, or city and county elects to retain the responsibility for performing housing functions previously performed by a redevelopment agency, all rights, powers, duties, and obligations, excluding any amounts on deposit in the Low and Moderate Income Housing Fund, shall be transferred to the city, county, or city and county.

H&S Code section 34181(c) states:

The oversight board shall direct the successor agency to do the following: (c) Transfer housing responsibilities and all rights, powers, duties, and obligations along with any amounts on deposit in the Low and Moderate Income Housing Fund to the appropriate entity pursuant to Section 34176.

H&S Code section 34167.5 requires that any asset transfers by the RDA to a city, county, city and county, or any other public agency after January 1, 2011 be turned over to the Successor Agency for disposition in accordance with H&S Code sections 34177(d) and (e).

H&S Code section 34177(d) states:

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.

H&S Code section 34177(e) states:

Dispose of assets and properties of the former redevelopment agency as directed by the oversight board; provided, however, that the oversight board may instead direct the successor agency to transfer ownership of certain assets pursuant to subdivision (a) of Section 34181.

#### Order of the Controller

Based on H&S Code section 34167.5, the Monterey County Successor Housing Agency is ordered to reverse the transfer of the above assets, in the amount of \$9,740,323 plus any interest earned, and turn the assets over to the Successor Agency.

The Successor Agency is directed to properly dispose of those assets in accordance with H&S Code sections 34177(d) and (e).

#### County's Response

The County of Monterey agrees with State Controller's Office and responded that:

On January 11, 2013, the County of Monterey received a copy of the draft report of the County of Monterey Redevelopment Agency Asset Transfer Review conducted by the State Controller's Office (SCO). The draft report was satisfactory with the exception of a typographical error discovered on Schedule 1 – RDA Assets Transferred to the Monterey County Successor Housing Agency After January 1, 2011. This error has been discussed with SCO staff and they have indicated that corrections will be reflected on the final report. Also, the Successor Agency for the County of Monterey would like to request that the final report include the action taken on December 14, 2012 by the Oversight Board of the Successor Agency for the County of Monterey approving the transfer of the Housing Assets to the Successor Agency of the County of Monterey. This action was taken as a result of the exit conference on November 29, 2012 with Betty Moya, Audit Manager and Michael Mock, Auditor-in-Charge.



SCO's Comment

The State Controller's Office is in agreement with the County of Monterey's response.

On December 14, 2012, the SHA received retroactive approval by the Oversight Board for the transfer of the Housing Assets to the Successor Agency. The SHA does not need to reverse the transfer of current and capital assets (\$5,521,348.00 and \$759,803) to the Successor Agency.

Pursuant to H&S Code section 34177(d), the Successor Housing Agency should forward unencumbered balances of \$3,459,172 in redevelopment agency funds to the Successor Agency for distribution to the taxing entities by the County Auditor-Controller 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.

The Order of the Controller remains as stated. The Successor Agency must forward the \$3,459,172 of unencumbered balance of former RDA funds to the County Auditor-Controller.

**FINDING 2—  
RDA asset not  
transferred to the  
Successor Agency**

On February 1, 2012, a capital asset valued at \$0 (Fort Ord) was not transferred to the Successor Agency and consequently remains with the former RDA.

Based on H&S Code section 34175(b):

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.

Order of the Controller

Based on H&S Code section 34167.5, the County of Monterey is ordered to ensure that the remaining RDA asset described above is turned over to the Successor Agency for disposition in accordance with H&S Code sections 34177(d) and (e).

County's Response

The County does not agree with State Controller's Office's order and responded that:

We respectfully disagree with the SCO Finding #2. As we read the law, all assets of the former Redevelopment Agency for the County of Monterey were transferred by operation of the very law cited in Finding #2 (Health and Safety Code § 34175) to the Successor Agency. As such, no further action was necessary to complete that transfer, and the Successor Agency of the County of Monterey is already the owner of the asset identified. Nevertheless, the Successor Agency will take appropriate steps to formally accept transfer of property formerly held by the Redevelopment Agency of the County of Monterey on the former Fort Ord.

SCO's Comment

The SCO is not in agreement with the County's interpretation that all assets of the former RDA were transferred by operation of the law.

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."

The County of Monterey provided a resolution (No. 12-006), signed and dated on January 13, 2012, stating that the County of Monterey elects to serve as the Successor Agency, and accepts the control of all assets, and is authorized to execute all documents necessary and appropriate, for the County to transfer the assets of the former RDA to the County in its capacity as Successor Agency. Therefore no further action is required.

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**Schedule 1—  
RDA Assets Transferred to the  
Monterey County Successor Housing Agency  
January 1, 2011, through January 31, 2012**

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Unallowable transfers to the Monterey County Successor Housing Agency:	
Cash and receivables	\$ 5,521,348
Capital assets	759,803
Unencumbered cash	<u>3,459,172</u>
Total unallowable transfers to the Monterey County Successor Housing Agency	<u>\$ 9,740,323</u> <sup>1</sup>

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<sup>1</sup> See the Findings and Orders of the Controller section.

**Attachment 1—  
Auditee’s Response to  
Draft Review Report**

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# MONTEREY COUNTY

## ECONOMIC DEVELOPMENT DEPARTMENT

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Linda Guillis, Interim Director

168 West Alisal Street, 3<sup>rd</sup> Floor  
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[www.co.monterey.ca.us](http://www.co.monterey.ca.us)

January 25, 2013

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

Subject: Response to State Controller's Office Draft Report of County of Monterey Redevelopment Agency  
Asset Transfer Review

On behalf of the Successor Agency for the County of Monterey, please accept this letter as a response to the draft report of the review of asset transfers made by the County of Monterey Redevelopment Agency after January 1, 2011.

On January 11, 2013, the County of Monterey received a copy of the draft report of the County of Monterey Redevelopment Agency Asset Transfer Review conducted by the State Controller's Office (SCO). The draft report was satisfactory with the exception of a typographical error discovered on Schedule 1 – RDA Assets Transferred to the Monterey County Successor Housing Agency After January 1, 2011. This error has been discussed with SCO staff and they have indicated that corrections will be reflected on the final report. Also, the Successor Agency for the County of Monterey would like to request that the final report include the action taken on December 14, 2012 by the Oversight Board of the Successor Agency for the County of Monterey approving the transfer of the Housing Assets to the Successor Agency of the County of Monterey. This action was taken as a result of the exit conference on November 29, 2012 with Betty Moya, Audit Manager and Michael Mock, Auditor-in-Charge.

Should there be any questions or if additional information is necessary, please don't hesitate to contact me at (831) 755-5396 or Marti Noel at (831) 755-5394.

Sincerely,

*Linda B. Guillis*

Linda B. Guillis  
Interim Director  
Economic Development Department

**From:** Noel, Marti x5394 [<mailto:noelm@co.monterey.ca.us>]  
**Sent:** Monday, January 28, 2013 3:14 PM  
**To:** Mock, Michael  
**Cc:** Calderon, Bertha I. x5396  
**Subject:** Audit Report Finding 2

Michael, I have conferred with County Counsel and other staff on this matter and here is our response:

We respectfully disagree with the SCO Finding #2. As we read the law, all assets of the former Redevelopment Agency for the County of Monterey were transferred by operation of the very law cited in Finding #2 (Health and Safety Code § 34175) to the Successor Agency. As such, no further action was necessary to complete that transfer, and the Successor Agency of the County of Monterey is already the owner of the asset identified. Nevertheless, the Successor Agency will take appropriate steps to formally accept transfer of property formerly held by the Redevelopment Agency of the County of Monterey on the former Fort Ord.

I intend to schedule the matter for Successor Agency action in February. M.

***Marti Noel, Assistant Director***  
**Monterey County Resource Management Agency**  
**Redevelopment and Housing**  
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