

# **MONTCLAIR 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 6, 2013

Edward C. Starr, City Manager  
City of Montclair/Redevelopment Successor Agency  
5111 Benito Street  
Montclair, CA 91763

Dear Mr. Starr:

Pursuant to Health and Safety (H&S) code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Montclair Redevelopment Agency (RDA) to the City of Montclair or any other public agency during the period of January 1, 2011, through January 31, 2012. This statutory provision explicitly states that, "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 assets 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 any rights to payment of any kind. We also reviewed and determined whether any unallowable transfers of assets to the City of Montclair or any other public agencies have been reversed.

Our review found that the RDA transferred \$33,856,070 in cash and receivables to the Successor Agency, per the Successor Agency general ledger. The RDA also transferred seven capital assets, valued at \$0, and \$14,154,996 in bond proceeds to the City of Montclair. In addition, the RDA sold housing assets to the Montclair Housing Corporation for \$12,141,000, secured by a note. Those assets must be turned over to the Successor Agency. The RDA retained \$336,636 in assets. As a result, the total of unallowable transfers and retentions is \$26,632,632, or 44.03% of the total RDA assets of \$60,488,702.

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**

Chief, Division of Audits

JVB/bf

Attachment

cc: Donald Parker, Finance Director  
City of Montclair  
Steven Szalay, Local Government Consultant  
California Department of Finance  
William Ruh, Chairman, Oversight Board  
Montclair Redevelopment Successor Agency  
Larry Walker, Auditor-Controller  
San Bernardino County  
Richard J. Chivaro, Chief Legal Counsel  
State Controller's Office  
Scott Freesmeier, Audit Manager  
Division of Audits, State Controller's Office  
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Division of Audits, State Controller's Office

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# Asset Transfer Review Report

## Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Montclair Redevelopment Agency (RDA) for the period of January 1, 2011, through January 31, 2012. 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 \$33,856,070 in cash and receivables to the Successor Agency, per the Successor Agency general ledger. The RDA also transferred seven capital assets, valued at \$0, and \$14,154,996 in bond proceeds to the City of Montclair. In addition, the RDA sold housing assets to the Montclair Housing Corporation for \$12,141,000, secured by a note. Those assets must be turned over to the Successor Agency. The RDA retained \$336,636 in assets. As a result, the total of unallowable transfers and retentions is \$26,632,632, or 44.03% of the total RDA assets of \$60,488,702.

## Background

In January of 2011, the Governor of the State of California proposed statewide elimination of redevelopment agencies (RDAs) beginning with the fiscal year (FY) 2011-12 State budget. The Governor's proposal was incorporated into Assembly Bill 26 (ABX1 26, Chapter 5, Statutes of 2011, First Extraordinary Session), which was passed by the Legislature, and signed into law by the Governor on June 28, 2011.

ABX1 26 prohibited RDAs from engaging in new business, established mechanisms and timelines for dissolution of the RDAs, and created RDA Successor Agencies to oversee dissolution of the RDAs and redistribution of RDA assets.

A California Supreme Court decision on December 28, 2011 (California Redevelopment Association et al. v. Matosantos) upheld ABX1 26 and the Legislature's constitutional authority to dissolve the RDAs.

ABX1 26 was codified in the Health and Safety Code (H&S Code) beginning with section 34161.

In accordance with the requirements of H&S Code section 34167.5, the State Controller is required to review the activities of RDAs, "to determine whether an asset transfer has occurred after January 1, 2011, between the city or county, or city and county that created a redevelopment agency, or any other public agency, and the redevelopment agency," and the date at which the RDA ceases to operate, or January 31, 2012, whichever is earlier.

The SCO has identified transfers of assets that occurred during that period between the Montclair Redevelopment Agency, the City of Montclair, 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 returned 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 City Council, the Montclair Redevelopment Agency, and the Montclair Housing Corporation.
- Reviewed accounting records relating to the recording of assets.
- Reviewed applicable financial reports to verify assets (capital, cash, property, etc.).

**Conclusion**

Our review found that the RDA transferred \$33,856,070 in cash and receivables to the Successor Agency, per the Successor Agency general ledger. The RDA also transferred seven capital assets, valued at \$0, and \$14,154,996 in bond proceeds to the City of Montclair. In addition, the RDA sold housing assets to the Montclair Housing Corporation for \$12,141,000, secured by a note. Those assets must be returned to the Successor Agency. The RDA retained \$336,636 in assets. As a result, the total of unallowable transfers and retentions is \$26,632,632, or 44.03% of the total RDA assets of \$60,488,702.

Total Unallowable Asset Transfers:	
Unallowable assets transferred to City of Montclair (see Schedules 1 and 3)	\$ 14,154,995.60
Unrecorded assets transferred to the MHC (see Schedule 2)	<u>12,141,000.00</u>
Total:	<u><u>26,295,995.60</u></u>
Asset never transferred to Successor Agency (4113 Kinsley Street)	<u>\$ 336,636.44</u>

The agencies named above as recipients of the unallowable asset transfers are ordered to immediately reverse the transfers, and to turn over the assets identified in this report to the Successor Agency. Undocumented assets are to be recorded in the Successor Agency's records, and the property still held by the former RDA is to be transferred to the Successor Agency by grant deed and on the accounting records.

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

**Views of  
Responsible  
Official**

We issued a draft audit report on November 6, 2012. Edward C. Starr, City Manager, responded by letter dated November 15, 2012. The auditee's response is included in this final audit report as an attachment.

**Restricted Use**

This report is solely for the information and use of the City of Montclair, the Successor Agency, the Successor Agency Oversight Board, and the State Controller's Office; 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 as final.

*Original signed by*

JEFFREY V. BROWNFIELD  
Chief, Division of Audits

March 6, 2013

# Findings and Orders of the Controller

## **FINDING 1— Unallowable asset transfers to the City**

On March 21, 2011, the Montclair Redevelopment Agency (RDA) transferred seven capital asset properties to the City of Montclair. The RDA valued the properties at \$0. The properties included a park, parcels of land, two structures, a parking lot, and an impound lot. See Schedule 2 for details.

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. Any asset transfers by the RDA to a city, county, city and county, or any other public agency after January 1, 2011 must be turned over to the Successor Agency for disposition in accordance with H&S Code sections 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 an asset...[emphasis added]

### Order of the Controller

Based on H&S Code section 34167.5, the City of Montclair is ordered to reverse the transfer of the above assets, described in Schedule 2, 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(e) and 34181(a).

### City's Response

Due to the confusion which existed at the time that AB 26 was implemented, the former redevelopment agency was under the impression, after consulting with its legal counsel, that properties used for governmental purposes should be transferred to the City of Montclair to continue to be used for those public purposes. While this process will have no substantive effect on the ultimate use of the properties, we will agree to transfer the properties to the Successor Agency and then transfer the properties to the City of Montclair for a public purpose in accordance with the Health and Safety Code requirements.



### SCO's Comment

The State Controller's Office (SCO) is in agreement with the City. Once the assets are transferred to the Successor Agency, the Successor Agency can transfer the properties to the City for a public purpose in accordance with the Health and Safety Code.

The SCO finding remains as stated.

### **FINDING 2— RDA assets were not transferred to the Successor Agency**

The Montclair Redevelopment Agency failed to transfer a housing asset to the Successor Agency. The RDA still has title to 4113 Kingsley Street. The property is valued at \$336,636. On October 20, 2009, National Community Renaissance of California entered into an option agreement, which ends on December 31, 2012, to purchase the property.

H&S Code section 34175(b) states, in part:

“All assets, properties, contracts, leases, books and records, buildings, and equipment of the former redevelopment agency are to be 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.”

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

Furthermore, the Oversight Board shall direct the Successor Agency to dispose of housing assets as pursuant to Health and Safety Code section 34181(c).

### Order of the Controller

Based on H&S Code section 34167.5, the City of Montclair is ordered to transfer the 4113 Kingsley Street property 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), and 34181(c).

### City's Response

The property has been and currently is considered by the Successor Agency as a housing asset. It was purchased with housing fund moneys and is currently subject to an option agreement for development as a housing project. As such, it has been listed on the Housing Asset Transfer Form, submitted to the Department of Finance for transfer ultimately to the Montclair Housing Authority (Successor Housing Entity); however, for unknown reasons the Department of Finance objected to that transfer. Presently, there is a meet and confer request pending on that decision. We do not object to the order to transfer the title on this property to the Successor Agency; however, we believe that it should be transferred to the Successor Housing Entity and sold to the housing developer in accordance with the option agreement.

SCO's Comment

The SCO is in agreement with the City. Once the assets are transferred to the Successor Agency, the Successor Agency can, with the Department of Finance's approval, transfer the properties to the Successor Housing Entity.

The SCO finding remains as stated.

**FINDING 3—  
Unrecorded asset  
transfer to the  
Montclair Housing  
Corporation**

On April 4, 2011, the RDA sold property to the Montclair Housing Corporation (MHC), which is a 501 (c) (3) non-profit corporation, for \$12,141,000. The RDA accepted a promissory note for payment. The note is due in 55 annual installments starting with the first anniversary of execution of the promissory note. The 55 installments will be forgivable as each payment becomes due if the MHC stays in full compliance with the covenants of the agreement. The note was never recorded on the RDA's records.

Pursuant to 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. Any asset transfers by the RDA to a city, county, city and county, or any other public agency after January 1, 2011 must be returned to the Successor Agency for disposition in accordance with H&S Code sections 34177(d) and (e).

H&S Code section 34175(b) states, in part:

“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.”

Further, 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.

Order of the Controller

Based on H&S Code section 34167.5, the Montclair Housing Corporation would have been ordered to reverse the transfers of the above assets in the amount of \$12,141,000, and turn over the assets to the Successor Agency. The Successor Agency would have been directed to properly dispose of those assets in accordance with H&S sections 34177(d) and (e) and 34181(a). However, the Successor Agency Oversight Board approved the transfer of the housing assets under H&S Code 34176.

### Response from City

On January 29, 2013 the Oversight Board passed resolution No. 13-02 approving the sale of 33 properties, valued at \$12,141,000, to the Montclair Housing Corporation.

### SCO's Comments

We agree with the City's response that the Successor Agency has approved the housing transfers as of January 29, 2013.

The City of Montclair provided documentation that the Oversight Board approved the sale to the Montclair Housing Corporation; therefore no further action is required.

## **FINDING 4— RDA bond proceeds were not transferred to the Successor Agency**

On March 7, 2011, the Montclair Redevelopment Agency transferred \$23,606,769 in bond proceeds to the City of Montclair. \$9,451,773 of the bond proceeds were used, among other things, to finish construction on existing RDA project areas and to pay off debt services. See schedule 4 for details. Currently, the City of Montclair has the remaining balance of \$14,154,996 of RDA bond proceeds recorded in the City's financial records.

Pursuant to 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. Any asset transfers by the RDA to a city, county, city and county, or any other public agency after January 1, 2011 must be turned over to the Successor Agency. 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 to be transferred by February 1, 2012 to the control of the Successor Agency.

### Order of the Controller

Based on H&S Code section 34167.5, the City of Montclair is ordered to transfer the remaining \$14,154,996 in bond proceeds, described in Schedule 4, to the Successor Agency and establish the proceeds in the Successor Agency's financial records.

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

### City's Response

The former redevelopment agency did transfer unspent pre-January 1, 2011 bond proceeds to the City of Montclair for administration, which is allowed by the bond instruments. No attempt was made to conceal this administrative option as these transactions were fully disclosed in financial audits issued by the City and the former redevelopment agency and they were included in regulatory reports filed with the State Controller's Office. These transfers were also done prior to the introduction and adoption of AB 26 which eliminated redevelopment agencies. The project costs incurred were all valid enforceable

obligations and the utilization of proceeds to pay debt service was approved by the Oversight Board, the county of San Bernardino and the Department of Finance. The Successor Agency is presently attempting to complete the liquidation process of the former redevelopment agency and obtain a finding of completion from the Department of Finance. Once that is obtained, the Successor Agency will be allowed to utilize these unspent bond proceeds as specified in the bond documents. If that cannot be obtained, these would be utilized to defease the bond issues to which they relate. We do not object to the order to transfer these unspent bond proceeds back to the Successor Agency; however, to accomplish this will require governing board actions by the City of Montclair.

SCO's Comments

The SCO is in agreement with the City's intention to transfer the unspent bond proceeds to the Successor Agency via the City's governing board actions. Also, it is understood that the transfers were done prior to the adoption of Assembly Bill 26 (ABX1 26), which was adopted and in effect on June 26, 2011. The effective date, as stated in ABX1 26, of all transfer reviews performed by the SCO, starts on January 1, 2011.

The SCO finding remains as stated.

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**Schedule 1—  
Summary of Asset Transfers  
January 1, 2011, through January 31, 2012**

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Cash and receivables	\$ 33,856,070 <sup>1</sup>
Properties to City of Montclair	—
Bond proceeds to City of Montclair	<u>14,154,996</u>
Total asset transfers	<u>\$ 48,011,066</u>

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<sup>1</sup> See Attachment 1—Summary of RDA Cash and Receivables.

## Schedule 2— RDA Assets Transferred to the City of Montclair

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	<u>Amount</u> <sup>1</sup>
Unallowable transfers to the City of Montclair:	
Capital Asset Properties:	
4385 Holt Boulevard	\$ —
5326 San Bernardino Street	—
9499 Monte Vista Avenue	—
4960 Palo Verde Street	—
8752 Monte Vista Avenue	—
4985 Richton Street	—
Southeast Corner Ramona Avenue and State Street	—
	—
Total unallowable transfers – City of Montclair	\$ —

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<sup>1</sup> The Montclair Redevelopment Agency valued these seven properties at \$0.

### Schedule 3— RDA Assets Sold to the Montclair Housing Corporation

Unrecorded Assets	Status	Amount
Housing Assets:		
4811 Canoga Street	Sold	
4820 Canoga Street	Sold	
4791 Canoga Street	Sold	
10333 Pradera Avenue	Sold	
10380 Pradera Avenue	Sold	
10390 Pradera Avenue	Sold	
4275 Kingsley Street	Sold	
10313 Amherst Avenue	Sold	
10323 Amherst Avenue	Sold	
10330 Amherst Avenue	Sold	
10333 Amherst Avenue	Sold	
10380 Amherst Avenue	Sold	
10383 Amherst Avenue	Sold	
10390 Amherst Avenue	Sold	
10410 Amherst Avenue	Sold	
10079 Central Avenue	Sold	
10087 Central Avenue	Sold	
9815 Central Avenue	Sold	
5290 Orchard Street	Sold	
10215 Central Avenue	Sold	
10235 Central Avenue	Sold	
9741 Central Avenue	Sold	
9751 Central Avenue	Sold	
9761 Central Avenue	Sold	
9644 Central Avenue	Sold	
9916 Central Avenue	Sold	
9945 Central Avenue	Sold	
9963 Central Avenue	Sold	
5225 Palo Verde Street	Sold	
5444 Palo Verde Street	Sold	
10291 Greenwood Avenue	Sold	
9448 Carrillo Avenue	Sold	
9010 Freemong Avenue	Sold	
Total unrecorded assets – Montclair Housing Corporation		<u>\$ 12,141,000</u>

## Schedule 4— RDA Schedule of Bond Proceeds

Payee	Description	Date	Project	Bond Proceeds	Amount	Project Funds
Montclair Redevelopment Agency	Transfer to City	3/9/2011	Central/Benito Signalization	Taxable 1997 (Proj Area:I)	182,560.31	
		3/9/2011	Arrow Hwy- (Underground Utilities)	T/A 2007A (Proj Area:III)	1,761,383.79	
		3/9/2011	Freemont St Imp.	Taxable 2007B (Proj Area:III)	488,408.05	
		3/9/2011	*State St Overlay(Central Recycled)	T/A 2004 (Proj Area:IV)	13,056.47	
		3/9/2011	Sunset Park (Reeder Ranch)	Taxable 2006A (Proj Area:V)	3,747,147.84	
		3/9/2011	Monte Vista Overpass	T/A 2006B (Proj Area:V)	3,413,096.46	
		3/9/2011	Monte Vista Overpass	T/A 2001 (Proj Area:V)	791,690.38	
		3/9/2011	Mission Blvd	T/A 2008 (Proj Area:VI)	2,445,653.61	
		3/9/2011	Alma Hofman	TA Notes Area II (Capital Imp.)	128,391.88	
		3/9/2011	Arrow Hwy (Moreno St)	TA 97 Bonds Area III (Capital Imp.)	118,973.58	
		3/9/2011	Fremont St		4,330,636.15	
		3/9/2011	Monte Vista Overpass		342,505.79	
		3/9/2011	Public Open Space		4,643,265.00	X
		3/9/2011	Business Rehab		700,000.00	X
		3/9/2011	Monte Vista Overpass		500,000.00	X
<b>Total</b>		3/9/2011			<b>\$ 23,606,769.31</b>	
<b>Total - Balance Remaining</b>					<b>\$ 14,154,995.60</b>	



## Attachment 1

Summary of RDA Cash and Receivables	As of February 1, 2012
<b>CASH &amp; RECEIVABLES</b>	
SA - Area I '97 Bond Proceeds	-109.67
SA - Area I Operating Fund	-15,672.96
SA - Area I Tax Increment Fund	99,937.10
SA - Area I Low-Mod Housing	170,941.44
SA - Area I '97 Bond Debt Svc. ASSETS	59,230.28
SA - Area II TA Notes	0
SA - Area II Operating Fund	2.16
SA - Area II Tax Increment	0
SA - Area II Low-Mod Housing	0
SA - Area II SB99 Bonds	0
SA - Area III 97 Bond Proceeds	0
SA - Area III 07A Bnd Proceeds	19,852.14
SA - Area III 07B Bnd Proceeds	0
SA - Area III Operating Fund	418,728.41
SA - Area III 98 Bond Proceeds	-1,322.39
SA - Area III Tax Increment	2,023,537.20
SA - Area III Low-Mod Housing	7,461,471.36
SA - Area III 07A Bnd Debt Svc	2,655,094.03
SA - Area III 07B Bnd Debt Svc	480,247.00
SA - Area III 97 Bond Proceeds	0
SA - Area III 98 Bond Proceeds	0
SA - Area IV Operating Fund	139,067.79
SA - Area IV Tax Increment	1,561,335.09
SA - Area IV Low-Mod Housing	1,165,350.68
SA - Area IV 92 Bond Debt Svc. ASSETS	0
SA - Area IV 04 Bond Proceeds	306.41
SA - Area IV 04 Bond Debt Svc	623,894.00
SA - Area V 92 Bond Proceeds	0
SA - Area V 06A Bond Proceeds	-10,593.78
SA - Area V 06B Bond Proceeds	0
SA - Area V Operating Fund	1,046,259.93
SA - Area V 06A Bond Debt Svc. ASSETS	1,405,685.96
SA - Area V 06B Bond Debt Svc. ASSETS	533,275.50
SA - Area V 92 Bond Debt Svc. ASSETS	0
SA - Area V Tax Increment Fund	4,824,775.68
SA - Area V Low-Mod Housing	6,900,088.77
SA - Area V 95 Bond Proceeds	-9,539.61
SA - Area V 95 Bond Debt Svc. ASSETS	0
SA - Area V 01 Bond Debt Svc	888,919.75
SA - Area V 01 Bond Proceeds	0
SA - MB 08 Bond Proceeds	0
SA - MB Operating Fund	43,631.00
SA - MB 08 Bond Debt Svc. ASSETS	389,964.21
SA - MB Tax Increment Fund	484,117.11
SA - MB Low-Mod Housing Fund	497,595.23
SA - Red Oblig Ret Fund - RORF ASSETS	0
SA - RORF Area I ASSETS	0
SA - RORF Area II ASSETS	0
SA - RORF Area III ASSETS	0
SA - RORF Area IV ASSETS	0
SA - RORF Area V ASSETS	0
SA - RORF Area VI ASSETS	0
<b>TOTAL</b>	<b>\$ 33,856,070</b>

**Attachment 2—  
City's Response to  
Draft Audit Report**

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November 15, 2012

Mr. Jeffrey V. Brownfield,  
Chief, Division of Audits  
California State Controller's Office  
P.O. Box 942850  
Sacramento, CA 94250-5874

**RE: Draft Transfer Asset Audit Report  
City of Montclair Redevelopment Agency and its Successor Agency**

Dear Mr. Brownfield:

I am in receipt of the draft copy of the Transfer Asset Review conducted on the City of Montclair Redevelopment Agency and its Successor Agency. In connection with that engagement, we provide the following responses to the comments made and the conduct of this engagement.

**Conduct of the Review and Representations Made**

We fully cooperated with the personnel of your office that performed this review. Those personnel represented the process to be accomplished in an open and professional manner. Specifically, they represented that it would be an open process with any findings to be discussed with us, and that we would be provided with a summary of all findings at the end of the field work with opportunity to address any subsequent changes. We received a summary of those findings with specific indication that, "Should any additional items come to our attention during the course of preparing the draft report, we will contact you by telephone and e-mail to inform you of the additional items".

During the exit conference, findings were discussed and agreed to by us, including the finding that the receivable for the sale of \$12,141,000 of housing properties to the Montclair Housing Corporation would need to be recorded, but no further action would be proposed. I am dismayed, then, that the draft report indicates this sale should be voided and those assets returned. Our notification of this change occurred by e-mail the day after we received the draft report. This non-notification prior to reporting, coupled with a 10 day response period, makes responding to this change completely impossible which is what the represented process was designed to avoid. Since the exit conference occurred on August 16, 2012 and we were not notified of the change until November 6, 2012, it would appear this late notification is to include an additional finding designed to increase the computed percentage of un-allowed transferred assets, rather than determining the legal status of that transaction.

**Conclusion Reached**

The conclusion indicates that \$26,295,996 is classified as unallowable transfers. It is indicated that "Those assets need to be turned over to the Successor Agency for use in paying off all allowable obligations and bond debt."

CITY OF MONTCLAIR

5111 Benito Street, P.O. Box 2308, Montclair, CA 91763 (909) 626-8571 FAX (909) 621-1584

Mayor Paul M. Eaton • Mayor Pro Tem Carolyn Raft. • Council Members: Leonard Paulitz, J. John Dutrey, Bill Ruh • City Manager Edward C. Starr

November 15, 2012

Response

We disagree with this amount and the conclusion reached. The amount of \$26,295,996 is composed of \$14,154,996 of pre January 1, 2011 bond proceeds and \$12,141,000 of housing properties sold to the Montclair Housing Corporation. We state that only these two amounts are present, and the computation listed on Page 3 is mathematically incorrect as the components listed do not total the amount presented. We have addressed each of these matters separately, below. We also take exception with the conclusion that return of these assets would be used in "paying off all allowable obligations and bond debt". This statement is entirely incorrect. AB 1484 allows successor agencies that receive a finding of completion to use pre January 1, 2011 unexpended bond proceeds for the purpose specified in the bond documents. The City of Montclair as Successor Agency for the City of Montclair Redevelopment Agency is currently pursuing that finding of completion and will utilize those unexpended proceeds for the purpose intended upon receipt of it. Utilization of these proceeds to pay bonded debt would only occur if that finding of completion cannot be obtained; furthermore, we do not believe the State Controller's Office has the legal authority to specify the utilization of those proceeds in that manner.

Additionally, the housing properties specified are real property and improvements currently occupied by approximately 300 qualifying low- and moderate-income families. Approximately 80 percent of the units contain covenants restricting residency to very low income families. The remaining units are restricted to persons of low- to moderate-income. These covenants applied prior to the sale of the units to the Montclair Housing Corporation. These real properties are covered by affordability covenants and would under AB 1484 be transferred to the Successor Housing Entity. Therefore, sale proceeds from these are not available to pay any obligations of the former redevelopment agency. To indicate that these items are to be used to retire obligations of the former redevelopment agency is in error, misstates legal and bond requirements, and incorrectly imparts available resources to readers of the State Controller's report.

**Views of Responsible Officials**

The Report indicates "At an exit conference on August 16, 2012, we discussed the review results with Donald Parker, Finance Director, and Marilyn Staats, Director of Redevelopment/Public Works. At the exit conference, we stated that the final report will include the views of responsible officials."

Response

As stated above, we assert and attest that the results of this review were completely discussed with officials of our organization, and changes to the findings presented were made by your office with no opportunity for resolution, explanation, or response by our personnel. The indication that discussions were conducted with us, without referencing that unilateral changes were made by your office, infers to the reader that we were completely aware of the finding(s) to be presented. That statement is incorrect and should be modified to indicate what actually occurred.

November 15, 2012

The draft report indicates that the final report will include our views on these findings. Specific comments are listed below addressing the findings and I would ask that you include those as presented. If your office truly wishes to be perceived as objective, our responses should be presented utilizing the same font size and structure as the findings. In that way, presentation bias could be avoided which has occurred in previous audit reports of the State Controller's Office. I would also ask that the general comments above also be included and that no subsequent evaluation of our response be done unless we are allowed to respond to those comments as well.

**Finding 1**

The former redevelopment agency transferred title to seven properties to the City of Montclair which were utilized for public purposes. It is ordered that title to these be transferred to the Successor Agency and then transfer to the City be accomplished as specified in the Health and Safety Code.

Response

Due to the confusion which existed at the time that AB 26 was implemented, the former redevelopment agency was under the impression, after consulting with its legal counsel, that properties used for governmental purposes should be transferred to the City of Montclair to continue to be used for those public purposes. While this process will have no substantive effect on the ultimate use of the properties, we will agree to transfer the properties to the Successor Agency and then transfer the properties to the City of Montclair for a public purpose in accordance with the Health and Safety Code requirements.

**Finding 2**

The former redevelopment agency did not transfer real property located at 4113 Kingsley Street to the Successor Agency and is ordered to transfer title to this property to the Successor Agency.

Response

This property has been and currently is considered by the Successor Agency as a housing asset. It was purchased with housing fund moneys and is currently subject to an option agreement for development as a housing project. As such, it has been listed on the Housing Asset Transfer Form, submitted to the Department of Finance for transfer ultimately to the Montclair Housing Authority (Successor Housing Entity); however, for unknown reasons the Department of Finance objected to that transfer. Presently, there is a meet and confer request pending on that decision. We do not object to the order to transfer the title on this property to the Successor Agency; however, we believe that it should be transferred to the Successor Housing Entity and sold to the housing developer in accordance with the option agreement.

**Finding 3**

Prior to AB 26 being adopted, the former redevelopment agency sold low- and moderate-income housing properties, operated by the Montclair Housing Corporation (Corporation), to the Corporation for \$12,141,000. As part of that sale, affordability covenants were reinstated on the properties for a period of 55 years.

November 15, 2012

Response

The draft report cites as authority for Finding 3 the provisions of Health & Safety Code § 34167.5, § 34177(d) and (e) which, in combination, prohibit the transfer of property by the Agency to the City or any other public agency after January 1, 2011 and require the retransfer of any properties so transferred. Those sections are inapplicable to the transfers to the Montclair Housing Corporation. The Montclair Housing Corporation is a California corporation formed under the provisions of Corporation Code. It is not a city, a city and county or any other public entity. The Montclair Housing Corporation is a separate, third party entity to which the restrictions of § 34167.5 and § 34177(d) and (e) do not apply. We feel that this transaction was validly done between a California corporation and the former redevelopment agency prior to the adoption of AB 26 which eliminated redevelopment. We agreed with the State Controller's personnel to record the receivable from this transaction (offset by an uncollectible as payments would be forgiven as long as the affordability covenants were maintained); however, we disagree with the unilateral change in this finding presented by the State Controller's Office in this draft report.

**Finding 4**

The former redevelopment agency transferred unspent bond proceeds to the City of Montclair and utilized a portion to complete existing projects and to accomplish some debt service on the former redevelopment agency's debt. The remaining balance is ordered to be transferred back to the Successor Agency.

Response

The former redevelopment agency did transfer unspent pre-January 1, 2011 bond proceeds to the City of Montclair for administration, which is allowed by the bond instruments. No attempt was made to conceal this administrative option as these transactions were fully disclosed in financial audits issued by the City and the former redevelopment agency and they were included in regulatory reports filed with the State Controller's Office. These transfers were also done prior to the introduction and adoption of AB 26 which eliminated redevelopment agencies. The project costs incurred were all valid enforceable obligations and the utilization of proceeds to pay debt service was approved by the Oversight Board, the County of San Bernardino and the Department of Finance. The Successor Agency is presently attempting to complete the liquidation process of the former redevelopment agency and obtain a finding of completion from the Department of Finance. Once that is obtained, the Successor Agency will be allowed to utilize these unspent bond proceeds as specified in the bond documents. If that cannot be obtained, these would be utilized to defease the bond issues to which they relate. We do not object to the order to transfer these unspent bond proceeds back to the Successor Agency; however, to accomplish this will require governing board actions by the City of Montclair.

Conclusion

We understood that the State Controller's Office was charged with the responsibility to perform these reviews and we cooperated fully in providing resources and time to allow this to be

Letter: Draft Transfer Asset Audit Report Response

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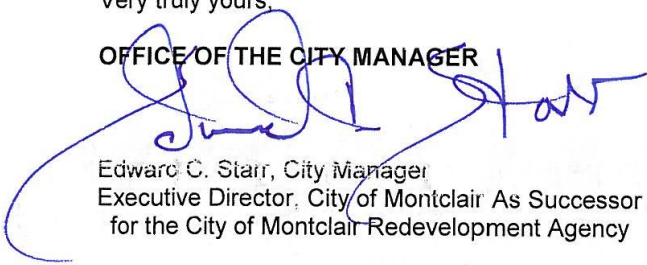
November 15, 2012

accomplished. I sincerely hope that the State Controller's Office will review the comments above and consult with us prior to issuing a final report. In that way misinformation can be avoided.

If you have any questions regarding the above comments or items that we can clarify, please do not hesitate to contact Mr. Donald L. Parker, CPA, Finance Director at (909)625-9418 or by e-mail at [dparker@cityofmontclair.org](mailto:dparker@cityofmontclair.org).

Very truly yours,

**OFFICE OF THE CITY MANAGER**



Edward C. Starr, City Manager  
Executive Director, City of Montclair As Successor Agency  
for the City of Montclair Redevelopment Agency

**Attachment 3—  
Oversight Board Resolution**

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**RESOLUTION NO. 13-02**

**A RESOLUTION OF THE OVERSIGHT BOARD  
FOR THE SUCCESSOR AGENCY TO THE CITY OF  
MONTCLAIR REDEVELOPMENT AGENCY RETRO-  
ACTIVELY APPROVING ACTIONS TAKEN BY THE  
CITY OF MONTCLAIR REDEVELOPMENT AGENCY  
AND THE MONTCLAIR HOUSING CORPORATION  
AS REQUESTED BY THE STATE CONTROLLER'S  
OFFICE**

**WHEREAS**, Assembly Bill 1X 26 (AB 26) was signed by the Governor on June 28, 2011 and upheld as constitutional by the California Supreme Court. On June 27, 2012, the Governor signed Assembly Bill 1484 (AB 1484). AB 26 and AB 1484 (together called the Dissolution Bills) eliminated California Redevelopment agencies statewide and established successor agencies to pay, perform, and effectuate the enforceable obligations of the former redevelopment agencies and to wind down the affairs of the former redevelopment agencies; and

**WHEREAS**, pursuant to Section 34167.5 of the Health and Safety Code, the State Controller was charged with conducting a review of the activities of each redevelopment agency in the state to determine whether an asset transfer 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

**WHEREAS**, if the State Controller concludes an asset transfer did occur during the period from January 1, 2011, and the date at which the redevelopment agency ceased on January 31, 2012, and the government agency that received the assets is not contractually committed to a third party for the expenditure or encumbrance of those assets, to the extent not prohibited by state and federal law, the Controller shall order the available assets be returned to the redevelopment agency or successor agency; and

**WHEREAS**, to meet the requirement of Health and Safety Code Section 34167.5, the State Controller's Office conducted a transferred asset review of the Successor Agency to the City of Montclair Redevelopment Agency and issued a draft report of the findings dated November 2012; and

**WHEREAS**, a portion of the State Controller's draft report indicated that on April 4, 2011, the City of Montclair Redevelopment Agency sold property to the Montclair Housing Corporation, a California Corporation, for \$12,141,000. The City of Montclair Redevelopment Agency accepted a promissory note for payment. Such sale occurred before the law eliminating redevelopment agencies was adopted and was accomplished between the City of Montclair Redevelopment Agency and the Montclair Housing Corporation; and

**WHEREAS**, the State Controller's Office indicated in its finding that these properties must be returned to the Successor Agency for disposition in accordance with the Health and Safety Code; and

**WHEREAS**, the Montclair Housing Corporation administered the operation of 99 affordable rental housing units owned by the City of Montclair Redevelopment Agency prior to the sale of such units on April 4, 2011; and

**WHEREAS**, the 99 rental units contain 55-year affordability covenants restricting use of the properties to persons of Low and Moderate Income and approximately 80 percent of the 99 units are restricted to rental by persons with Very Low Income; and

**WHEREAS**, the rental units contain a tenant population of over 300 persons; and

**WHEREAS**, Successor Agency staff responded to the draft findings of the State Controller's Office and indicated disagreement with such finding indicating that the sale of the units to the Montclair Housing Corporation was a valid sale of the properties that preceded the law eliminating redevelopment agencies and that, in the opinion of the Successor Agency and its legal counsel, the validity of such a sale should be a recognized legal transaction; and

**WHEREAS**, after discussion with the State Controller's Office, the State Controller has indicated that the State Controller will not seek return of the housing assets to the Successor Agency if the Oversight Board retroactively approves the actions taken by the former City of Montclair Redevelopment Agency and the Montclair Housing Corporation in accomplishing the sale; and

**WHEREAS**, the Oversight Board to the Successor Agency of the City of Montclair Redevelopment Agency desires to recognize the prior action of the former City of Montclair Redevelopment Agency and Montclair Housing Corporation related to the sale of these housing assets; and

**WHEREAS**, pursuant Health and Safety Code Sections 34179(f) and 34181(f), notice of this action was posted on the City's website on January 24, 2013.

**NOW, THEREFORE, BE IT RESOLVED** that the Oversight Board to the Successor Agency of the City of Montclair Redevelopment Agency does hereby find, determine, and order as follows:

**Section 1.** The above recitals are true and correct and are a substantive part of this Resolution.

**Section 2.** This Resolution is adopted pursuant to Health and Safety Code Sections 34177(g) and 34181(c).

**Section 3.** As requested by the State Controller's Office, the Successor Agency retroactively approves the sale of housing properties to the Montclair Housing Corporation by the City of Montclair Redevelopment Agency which occurred on April 4, 2011.

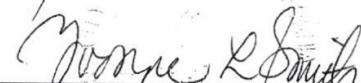
**Section 4.** The staff of the Successor Agency is hereby directed to provide the Department of Finance and the State Controller's Office with written notice and information regarding the action taken by the Oversight Board pursuant to this Resolution. Such notice and information shall be provided by electronic means and in a manner acceptable to the Department of Finance.

**Section 5.** The staff and the Board of the Successor Agency are hereby authorized and directed, jointly and severally, to execute and record such documents and instruments and to do any and all other things which may be deemed necessary or advisable to effectuate this Resolution.

**APPROVED AND ADOPTED** this 29th day of January, 2013.

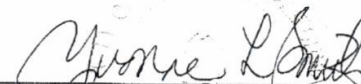
  
\_\_\_\_\_  
Chairman

ATTEST:

  
\_\_\_\_\_  
Secretary

I, Yvonne L. Smith, Secretary of the Oversight Board for the Successor Agency to the City of Montclair Redevelopment Agency, DO HEREBY CERTIFY that Resolution No. 13-02 was duly adopted by the Oversight Board of said successor agency and was approved by the Chairman of said Oversight Board at a special meeting thereof held on the 29th day of January, 2013, and that it was adopted by the following vote, to-wit:

AYES: Stallings, Kulbeck, Erickson, Catlin, Johnson, Ruh  
NOES: None  
ABSTAIN: None  
ABSENT: Richardson

  
\_\_\_\_\_  
Yvonne L. Smith  
Secretary

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

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