

# **CITY OF MONTEREY REDEVELOPMENT AGENCY**

## **ASSET TRANSFER REVIEW**

Review Report

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



**JOHN CHIANG**  
California State Controller

May 2013



**JOHN CHIANG**  
California State Controller

May 13, 2013

Richard Marvin, Housing and Property Manager  
City of Monterey Redevelopment/Successor Agency  
580 Pacific Street  
Monterey, CA 93940

Dear Mr. Marvin:

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

Our review found that the Monterey Redevelopment Agency transferred \$16,170,180 in assets. These assets included unallowable transfers totaling \$4,438,446 or 27.44%, 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/sk

Attachment

cc: Michael J. Miller, Auditor-Controller  
County of Monterey  
Don Rhoads, Finance Director  
City of Monterey Redevelopment/Successor Agency  
Chip Rerig, Chair  
Oversight Board  
City of Monterey Redevelopment/Successor Agency  
Steven Szalay, Local Government Consultant  
California Department of Finance  
Richard J. Chivaro, Chief Legal Counsel  
State Controller's Office  
Scott Freesmeier, Audit Manager  
Division of Audits, State Controller's Office  
Radu Stefan, Auditor-in-Charge  
Division of Audits, State Controller's Office  
Daniela Anechitoaie, Auditor  
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 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 rights to payments of any kind from any source.

Our review found that the RDA transferred \$16,170,180 in assets. These assets included unallowable transfers totaling \$4,438,446, or 27.44%, 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 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 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.

**Objective, Scope,  
and Methodology**

Our review objective was to determine whether asset transfers that occurred after January 1, 2011, and the date upon which the RDA ceased to operate, or January 31, 2012, whichever was earlier, between the city or county, or city and county that created an RDA, or any other public agency, and the RDA, were appropriate.

We performed the following procedures:

- Interviewed Successor Agency personnel to gain an understanding of the Successor Agency operations and procedures.
- Reviewed meeting minutes, resolutions, and ordinances of 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 RDA transferred \$16,170,180 in assets. These assets included unallowable transfers totaling \$4,438,446 or 27.44%, that 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. We also have included a detailed schedule of assets to be turned over to, or transferred to, the Successor Agency.

**Views of  
Responsible  
Official**

We issued a draft review report on March 5, 2013. Don Rhoads, CPA, Finance Director, responded by letter dated March 20, 2013, disagreeing with the review results. The City's response is included in this final review report as an attachment.

**Restricted Use**

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

May 13, 2013

# Findings and Orders of the Controller

## **FINDING 1— Unallowable payments to the City of Monterey**

The State Controller's Office (SCO) found that contractual payments totaling \$7,662,258 made by the Monterey Redevelopment Agency (RDA) to the City of Monterey (City) after January 1, 2011 were not allowable. The City and RDA entered into an Advance and Reimbursement Agreement (Agreement) on October 1, 1993, whereby the RDA would pay the City for property acquisition and improvement costs. According to Health and Safety (H&S) Code section 34171(d)(2), the Agreement terms do not represent an "enforceable obligation." All RDA payments and transfers are assets of the Successor Agency and subject to Oversight Board authority. The cash payments details are presented in Schedule 1.

### Order of the Controller

Based on H&S Code section 34167.5, the City of Monterey is ordered to reverse the transfer of the above assets, described in Schedule 1, in the amount of \$7,662,258 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 sections 34177(d) and (e).

### City's Response

The City acknowledges that the transfers made on December 22, 2011 were required by AB 1484 to be transferred back and remitted to the affected taxing entities, and per a letter received on July 24, 2012 from Monterey County Auditor-Controller, immediately issued payment totaling \$3,223,812. **We request that these amounts be removed from the Findings and from Schedule 1 of your Report, as the City has already complied with the requirements of the legislation.**

In addition, the assets listed below have been identified in the Due Diligence Report for "Other Funds", Schedule 2, Note 2, which was presented to the Oversight Board and also sent to the State Controller's Office on December 14, 2012. This report was revised on March 6, 2013 and is expected to be finalized in April 2013, upon which time the funds will be remitted to the County Auditor-Controller based on the balance listed on Schedule 4 (Attachment 2). **We request that the Findings note that the City is aware of this obligation and is addressing it through the DDR process.**

### SCO Response

The SCO agrees in part with the statement made by the City and acknowledges the fact that \$3,223,812 was transferred to the Auditor-Controller for remittance to the affected taxing entities. Therefore, no further action is needed from the City on this issue.

In addition, the SCO would agree that no further action would be required once the City transfers the assets listed on Schedule 1 in the draft report. But, the City has not made the appropriate transfers yet. This part of the finding remains as stated.

**FINDING 2—  
Unallowable  
transfer of real  
property to the  
City of Monterey**

The SCO found that property title and rights were improperly transferred from the RDA to the City after January 1, 2011, via a bond defeasance agreement that accelerated the release of lease obligations tying property title and rights to bond payments. The total value of property transferred was \$8,507,922. The agreement created for defeasance conflicts with H&S Code section 34163(c), which prohibits amending or modifying existing agreements and obligations, and as such, it effectively removes assets from disposition by the Successor Agency.

The RDA issued a series of bonds, “Lease Revenue Refunding Bonds,” pursuant to an indenture, dated April 1, 1999. The indenture secured bond repayment from revenues consisting primarily of certain rental payments payable by the City to the RDA under an “Amended and Restated Facility Lease,” dated April 1, 1999. The RDA held title, rights and interest in (and to) the lease properties that were financed by the bonds. The pledge and lien of the indenture terminated either at maturity or upon an earlier defeasance of the bonds, at which point the RDA and City agreed that such title, rights and interest shall be transferred to the City. The bonds matured on November 1, 2012.

Ahead of bond maturity, the City Council passed Resolution No. 11-029 on March 15, 2011, approving an agreement for defeasance of the remaining outstanding bonds, and in conjunction, terminating the lease. The properties were transferred to the City on March 22, 2011.

The property transfers details are presented in Schedule 1.

Order of the Controller

Based on H&S Code section 34167.5, the City of Monterey is ordered to reverse the transfer of the above assets, described in Schedule 1, in the amount of \$8,507,922 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 sections 34177(d) and (e).

City’s Response

We believe that this statement is in error as it relates to four of the real properties listed on Schedule 1 of the Report, and shown in the table below:

Cannery Row parking garage	3/22/11	\$3,909,494
Hilltop Recreation Center	3/22/11	654,902
Hartnell Gulch	3/22/11	145,100
CR7 Parking Lot	3/22/11	--
Total real property transfers related to March 2011 bond defeasance		4,709,496

The error lies in the fact that the City and RDA did not amend or modify existing agreements when it paid off the 1999 RDA Lease Revenue Refunding Bond. . . . In addition, . . . it is also important to point out that, in the case of the two parking related properties in the



above list (Cannery Row parking garage and CR7 parking lot), it was parking fee revenue earned by the Parking Enterprise Fund that paid the debt service on the bonds that were issues by the RDA. This means that no property tax increment monies were used on the purchase or construction of these two properties.

SCO Comment

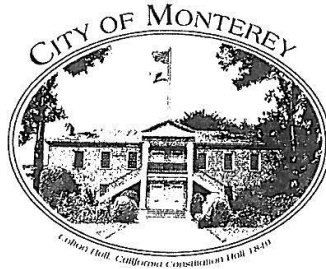
The SCO agrees with the statements made by the City, therefore no further action is needed.

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

Description	Draft Review Values		Adjustments	Final Review Values
	Date Transferred	Amount		
Schedule of cash payments:				
Transfer reserve to fund balance	3/31/2011	\$ 3,083,802		
Transfer funds per RDA agreement	5/31/2011	598,329		
Transfer funds per RDA agreement	5/31/2011	853,376		
Transfer tax increment to reserve	6/24/2011	72,296		
Low-moderate income housing fund-				
Cannery Row	12/22/2011	306,774		
Monterey County/property tax	12/22/2011	634,693		
Monterey County/property tax	12/22/2011	1,227,095		
Monterey County/property tax	12/22/2011	885,893		
Total		<u>7,662,258</u>		
Amount remitted to the County Auditor-Controller on 07/24/2012			<u>\$ (3,223,812)</u>	
Total Cash				<u>\$ 4,438,446</u>
Schedule of property transfers:				
Cannery Row parking garage	3/22/2011	3,909,494		
Conference Center/Portola Plaza	3/22/2011	3,798,426		
Hilltop Recreation Center	3/22/2011	654,902		
Hartnell Gulch	3/22/2011	145,100		
CR7 Parking Lot	3/22/2011	no value listed		
Total		<u>8,507,922</u>		
Adjusted amount based on City's response			<u>\$ (8,507,922)</u>	<u>—</u>
Total Transfers		<u>\$ 16,170,180</u>		<u>\$ 4,438,446</u>

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

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FINANCE DEPARTMENT

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

March 20, 2013

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

Subject: City of Monterey Redevelopment Agency Asset Transfer Review Received March 11, 2013

Dear Mr. Mar:

This letter is in response to the subject report (Report) and the related letter dated March 5, 2013 (received March 11, 2013) from Mr. Jeffrey Brownfield, CPA. In that letter Mr. Brownfield asked that we submit comments regarding the Report and especially note any inaccuracies we find in the report. After a careful review we do believe there are some inaccuracies in the report that we request be corrected before the Report is finalized.

**Inaccuracies in Finding 1 – Unallowable payments to the City of Monterey**

The State Controller's Office (SCO) found that contractual payments totaling \$7,662,258 made by the City of Monterey Redevelopment Agency (RDA) to the City of Monterey (City) after January 1, 2011 were not allowable. The City acknowledges that the transfers made on December 22, 2011 were required by AB 1484 to be transferred back and remitted to the affected taxing entities, and per a letter received on July 24, 2012 from the Monterey County Auditor-Controller, immediately issued payment totaling \$3,223,812 (Attachments 1 and 3). **We request that these amounts be removed from the Findings and from Schedule 1 of your Report, as the City has already complied with the requirements of the legislation.**

Low-moderate income housing fund-Cannery Row	12/22/11	\$306,774
Monterey County property tax	12/22/11	634,693
Monterey County property tax	12/22/11	1,227,095
Monterey County property tax	12/22/11	885,893
Low-moderate income housing fund-GD		279,356
Low-moderate income housing fund-CH		158,673
County adjustment for redistribution		(268,672)
Total		\$3,223,812

In addition, the assets listed below have been identified in the Due Diligence Report for "Other Funds", Schedule 2, Note 2, which was presented to the Oversight Board and also sent to the State Controller's Office on December 14, 2012. This report was revised on March 6, 2013 and is expected to be finalized in April, 2013, upon which time the funds will be remitted to the County Auditor-Controller based on the balance listed on Schedule 4 (Attachment 2). **We request that the Findings note that the City is aware of this obligation and is addressing it through the DDR process.**

Transfer reserve to fund balance	3/31/11	\$3,083,802
Transfer funds per RDA agreement	5/31/11	598,329
Transfer funds per RDA agreement	5/31/11	853,376
Transfer tax increment to reserve	6/24/11	72,296
Total		\$4,607,803

**Inaccuracies in Finding 2 – Unallowable transfer of real property to the City of Monterey**

Regarding Finding 2, the Report starts out by saying:

The SCO found that property title and rights were improperly transferred from the RDA to the City after January 1, 2011, via a bond defeasance agreement that accelerated the release of lease obligations tying property title and rights to bond payments...The agreement created for defeasance conflicts with H&S Code section 34163(c), which prohibits amending or modifying existing agreements....

We believe this statement is in error as it relates to four of the real properties listed on Schedule 1 of the Report, and shown in the table below:

Cannery Row parking garage	3/22/11	\$3,909,494
Hilltop Recreation Center	3/22/11	654,902
Hartnell Gulch	3/22/11	145,100
CR7 Parking Lot	3/22/11	--
Total real property transfers related to March 2011 bond defeasance		\$4,709,496

The error lies in the fact that the City and RDA did not amend or modify existing agreements when it paid off the 1999 RDA Lease Revenue Refunding Bond. Section 25 of the Amended and Restated Facility Lease between the RDA and the City (Attachment 4) says that the City has an option to purchase the Agency's interest in the Project, and that upon exercising the option to purchase "...title to such part of the Project shall vest in the City and the term of this Facility Lease shall end..." This indicates that the option to purchase was always available and was not "amending or modifying existing agreements" as the SCO report states in Finding 2. This also means the bond defeasance (which was only 1 ½ years early) was, therefore, not contrary to H&S Code sec 34163(c).

In addition to the above information, it is also important to point out that, in the case of the two parking related properties in the above list (Cannery Row parking garage and CR7 parking lot), it was parking fee revenue earned by the Parking Enterprise Fund that paid the debt service on the bonds that were issues by the RDA. This means that no property tax increment monies were used on the purchase or construction

of these two properties. Therefore, no other “taxing entity” in the County was ever financial harmed by the purchase and construction of these facilities. Saying now that parking facilities built in the 1980s and paid for with parking fees are now Successor Agency assets merely because the RDA was the financing vehicle for the bonds and that after decades they were paid off a little early, as allowed by the Facility Lease, seems very unreasonable on its face.

Similarly, the other two real properties listed in the table above (Hilltop Recreation Center and Hartnell Gulch) were financed by an RDA bond but the debt service was paid for through general funds rather than tax increment receipts. **For the above reasons we request that the four real properties listed above be removed from the SCO Report.**

Regarding the fifth real property shown in Schedule 1 and below, we believe the SCO Report is again in error but, in the case of the Conference Center, for a different reason.

Conference Center/Portola Plaza	3/22/11	\$3,798,426
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Finding 2 includes the Conference Center in the list of properties that it says were “improperly transferred from the RDA to the City after January 1, 2011, via a bond defeasance agreement.” However, it was apparently not clear to SCO auditors that the Conference Center property was not part of the 1999 bond that was defeased in March of 2011. The Conference Center was financed by the Urban Renewal Agency Custom House Center Lease Revenue Bonds, Series 1978. These bonds were paid off on schedule, not early, in 2005 – several years before the passage of ABx1 26 or AB 1484 (See Attachment 5 for audited Note to Financial Statements showing retirement of this bond in 2005).

The only thing that occurred in March of 2011 was that the title was cleaned up at the County Recorder’s Office to show that fee ownership in the property had already passed from the RDA to the City by action of law in 2005. The 1978 Amended Project Lease (Attachment 6) related to this 1978 bond makes the legitimacy of this action very clear in Section 12, which reads:

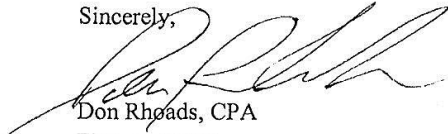
*Surrender of Premises and Vesting of Title.* Upon termination or expiration of this lease, fee title to the Project shall vest in the City. Upon such termination or expiration, the Agency shall execute such conveyances, deeds and other documents as may be necessary to effect such vesting of record.

So since the bond related to the Conference Center was paid off several years before January 1, 2011, the only thing happening in March of 2011 was the Agency executing “such conveyances, deeds and other documents as may be necessary to effect such vesting of record” as stated in the Project Lease. We can see, however, how SCO auditors would have been confused on this point since the clean-up of the title on the Conference Center was mixed in with the other four projects that were related to the early bond defeasance.

Given the above information and clarification, **we request that the Conference Center/Portola Plaza real property item also be removed from the SCO Report Schedule 1.**

Please don't hesitate to contact me or our Housing & Property Manager, Rick Marvin if you have any questions.

Sincerely,



Don Rhoads, CPA  
Finance Director

Attachments: Amended and Restated Facility Lease between the RDA and the City  
1978 Amended Project Lease

Cc: City Attorney, Christine Davi  
Housing & Property Manager, Rick Marvin  
Administrative Analyst, Janna Aldrete  
Assistant Finance Director, Julie Porter

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

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