

MILPITAS REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

August 2012



JOHN CHIANG
California State Controller

August 28, 2012

Thomas C. Williams, City Manager
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035

Dear Mr. Williams:

Pursuant to Health and Safety Code (H&S) code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Milpitas Redevelopment Agency to the City of Milpitas or any other public agency during the period January 1, 2011, through January 31, 2012. As you know, 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 it should be returned to the Milpitas Redevelopment Successor Agency.

The 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 Milpitas or any other public agencies have been reversed.

Our review disclosed that the Milpitas Redevelopment Agency transferred \$175,613,510 in assets. This included unallowable transfers of \$147,108,600, or 83.77% of assets to the City of Milpitas and the Milpitas Economic Redevelopment Corporation. Pursuant to H&S code section 34167.5 the City of Milpitas and the Milpitas Economic Development Corporation are ordered to reverse all unallowable transfers identified in this report and return them to the Milpitas Redevelopment Successor Agency.

Additionally, our review identified \$87,622,392 of Milpitas Redevelopment Agency assets that have not yet been transferred to any agency and the City of Milpitas is ordered to transfer these assets to the Milpitas Redevelopment Successor Agency.

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

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/sk

cc: Thomas C. Williams, President
Milpitas Redevelopment Successor Agency
Thomas C. Williams, President
Milpitas Economic Development Corporation
Don Gage, Chairman
Oversight Board-Milpitas RDA Successor Agency
Vinod Sharma, Director of Finance
County of Santa Clara
Irene Lui, Controller-Treasurer
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Asset Transfer Review Report

Summary

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

Our review disclosed that the Milpitas Redevelopment Agency (RDA) transferred \$175,613,510 in assets, including unallowable transfers of \$147,108,600, or 83.77% of the transferred assets. Those assets must be returned to the Successor Agency. Additionally, \$87,622,392 of Milpitas Redevelopment Agency assets have not yet been transferred to the Successor Agency and must be transferred 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.

On June 27, 2012, the Governor signed a trailer bill, AB 1484, which clarified provisions of ABX1 26, and imposed new tasks on county auditor-controllers and Successor Agencies related to redevelopment agency dissolution.

ABX1 26 and AB 1484 were 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," through 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 Milpitas Redevelopment Agency, the City of Milpitas, and/or other public agencies. By law, the State Controller 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, through 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 Milpitas City Council, the Milpitas Redevelopment Agency, and the Milpitas Economic Development Corporation.
- 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 listing of all assets transferred between January 1, 2011, and January 31, 2012.
- Reviewed applicable financial reports to verify assets (capital, cash, property, etc.).

Assembly Bill 1484 (AB 1484) was passed on June 27, 2012, adding Health & Safety Code section 34178.8, which states “. . . the Controller shall review the activities of successor agencies in the state to determine if an asset transfer has occurred after January 31, 2012. . . .”

The SCO has not completed the review associated with AB 1484 because the ABX1 26 asset transfer review was completed prior to the passage of AB 1484.

Conclusion

Our review disclosed that the Milpitas Redevelopment Agency transferred \$175,613,510 in assets, including unallowable transfers of assets totaling \$147,108,600, or 83.77% of the transferred assets. Those assets must be returned to the Successor Agency. Additionally, \$87,622,392 of the Milpitas Redevelopment Agency assets have not yet been transferred to the Successor Agency and must be transferred to the Successor Agency.

Unallowable Assets Transferred:

Unallowable assets transferred to City of Milpitas (Schedule 1 and Attachment 1)	\$ 96,946,837
Unallowable assets transferred to the MEDC (Schedule 2 and Attachment 2)	<u>50,161,763</u>
Total unallowable assets transferred	<u>\$ 147,108,600</u>

Assets That Have Not Yet Been Transferred:

Milpitas Redevelopment Agency assets that have not been transferred to the Successor Agency (Schedule 3 and Attachment 3)	<u>\$ 87,622,392</u>
Grand total	<u>\$ 234,730,992</u>

The agencies named above, as recipients of the unallowable asset transfers, are ordered to immediately reverse the transfers and to return the assets identified in this report to the Successor Agency (see Schedules 1 and 2 and Attachments 1 and 2). Additionally, assets totaling \$87,622,392 that have not been transferred, must be transferred to the Successor Agency (see Attachment 3).

Details of our Findings and Orders of the Controller are in the Findings and Orders of the Controller section of this report. We also have included a detailed schedule of assets to be returned to, or transferred to, the Successor Agency.

**Views of
Responsible
Official**

We issued a draft audit report on July 23, 2012. Thomas Williams, City Manager/Successor Agency Executive Officer/Housing Authority Executive Officer, responded by letter dated August 6, 2012. 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 Milpitas, the Milpitas Economic Development Corporation, Successor Agency, 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
Chief, Division of Audits
August 28, 2012

Findings and Orders of the Controller

FINDING 1— Unallowable asset transfers to the City of Milpitas

The Milpitas Redevelopment Agency made unallowable asset transfers of \$96,946,837 to the City of Milpitas. The purpose of these asset transfers was to protect the Milpitas Redevelopment Agency resources. All of the asset transfers occurred during the period January 1, 2011, through January 31, 2012, to the City of Milpitas, and the assets were not contractually committed to a third party prior to June 28, 2011. These assets consisted of properties held for resale and capital assets.

Unallowable asset transfers were as follows:

- On March 7, 2011, the Milpitas Redevelopment Agency transferred assets to the City of Milpitas, by Resolution RA 408, and these assets were accepted by the City of Milpitas, by Resolution 8070.

In the City of Milpitas and the Milpitas Redevelopment Agency joint meeting minutes of March 7, 2011:

- The Milpitas City Manager addressed the Milpitas City Council regarding the Governor's proposed budget, which he stated was expected to include a legislative proposal to do away with RDAs in the State. The Milpitas City Manager recommended a series of actions to insulate the Milpitas Redevelopment Agency's assets from the anticipated legislation.
- The Milpitas Economic Development Corporation Manager presented information, explaining that State legislation was expected to dissolve RDAs and that Governor Brown was expected to sign the legislation on March 9, 2011, thus the urgent need for the City of Milpitas to take action.
- The Milpitas Assistant City Attorney stated, "the purpose was to accomplish three main goals: protect land, protect financial resources, and ensure that economic development activity continued in Milpitas."
- Milpitas City Council Member Gomez remarked that the State was continuing to take from cities, which he viewed as "stealing." He stated that he would do all he could to protect assets.
- On March 28, 2011, the Milpitas Redevelopment Agency transferred assets to the City of Milpitas and the City of Milpitas accepted these assets by joint resolution RA 413/8077.

In the City of Milpitas and the Milpitas Redevelopment Agency joint meeting minutes of March 28, 2011:

The Milpitas Assistant City Attorney, “addressed the council to explain the next steps needed to protect assets of the Milpitas Redevelopment Agency, due to expected actions by the Governor in his budget proposal. . . .”

Pursuant to H&S Code section 34167.5, a redevelopment agency may not transfer assets to a city, county, city and county, or any other public agency after January 1, 2011. Those assets should be returned 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 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 governmental 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....”

Order of the Controller

Based on H&S Code section 34167.5, the City of Milpitas is ordered to reverse the transfer of assets, described in Schedule 1 and Attachment 1, in the amount of \$96,946,837, 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) and 34181(a).

City’s Response

A. Finding and Order No. 1—Allegedly “Unallowable” Asset Transfers to the City of Milpitas

As a preliminary matter, the City, the Housing Authority and the Successor Agency strongly protest the suggestion in the Draft Report that the Milpitas public agencies engaged in unlawful activities at the time of the property transfers in question on March 7 and March 28, 2011. All transfers were done at duly-noticed public meetings that comported with all State law requirements, in particular the provisions of the Community Redevelopment Law and the Brown Act in effect at the time. Citations to new laws passed months after the transfers causes a false impression of bad intent— where none exists—by Milpitas public agency entities and should be withdrawn from the final report.

SCO's Comment

The SCO did not suggest that Milpitas public agencies deliberately engaged in unlawful activities. However, the intent of Milpitas public agencies to protect Milpitas Redevelopment Agency resources by transferring assets clearly is demonstrated by the joint minutes of the Milpitas City Council and the Milpitas Redevelopment Agency on March 7, 2011, and March 28, 2011. Asset transfers in the amount of \$96,946,837 are unallowable and must be returned to the Successor Agency.

City's Response

As to the substance of the Finding and Order No. 1, the City, the Housing Authority and the Successor Agency note that as to the Properties held for Resale List on Schedule 1 of the Draft Report, the 1432-1440 S. Main Street Property (APN 086-22-031) is an asset of the Milpitas Housing Authority and is currently awaiting determination of the Department of Finance as to whether it is a Housing Asset under AB 1484 and ABX1 26. If the State Department of Finance determines that the asset does not constitute a Housing Asset, it is the Housing Authority's understanding that the asset would then be ordered to be conveyed to the Successor Agency. The City, the Housing Authority and the Successor Agency therefore request that this part of the State Controller Draft Report be amended or stayed pending that determination.

SCO's Comment

Pursuant to ABX1 26 and AB 1484, only the Successor Agency, with direction from the Oversight Board and with Department of Finance approval, has the authority to transfer assets to the Housing Authority. The City must transfer the assets to the Successor Agency for disposition.

City's Response

Furthermore, as to the "assets" on the Capital Assets Transferred to the City List of Schedule 1 of the Draft Report, almost all facilities listed are public works projects such as fire stations and police stations and facility upgrades like building machinery and equipment and street resurfacing. As was stated in the City and Successor Agency's previous June 5, 2012 communication to the State Controller, such Public Works Assets were only recorded for accounting purposes as being "RDA assets," but as a legal matter have always been City assets and therefore do not fall under the clawback provisions of ABX1 26 and AB 1484.

SCO's Comment

The City's intent is not supported by the title information for the real property assets. Based on our review, the title of the real property assets was in the name of the RDA. Therefore, the City must transfer these assets to the Successor Agency for disposition.

City's Response

Furthermore, the Public Works Assets are all public facilities that were constructed for public use and benefit. The former RDA was permitted to wholly or partially fund City public works assets under Health & Safety Code section 33445, so long as such assets were publicly owned; the Community Redevelopment Law did not require the former RDA itself to own or hold title to the public improvements to fund them. Consistent with these rules, these assets were included in the City's Capital Improvement Plans and were always considered City assets as a legal matter.

Thus, while the Public Works Assets may have been funded in part by the RDA, the assets as a legal matter were owned and operated by the City. The Public Works Assets are therefore City property, not RDA property, and are not subject to State Controller jurisdiction and should not be included in the Draft Report.

Nonetheless, the City is willing to convey such assets under protest to the Successor Agency in a form satisfactory to the State Controller. Still, there is no need for such a conveyance, as such assets would undoubtedly be conveyed back to the City. See Health & Safety Code §34181(a).

SCO's Comment

We acknowledge the City's willingness to convey assets under protest to the Successor Agency. We recognize and agree that the Oversight Board can order assets with a "governmental purpose" to be transferred to the City. However, these assets transfers were not approved by the Successor Agency Oversight Board, as required by Health and Safety Code section §34181(a), and must be transferred to the Successor Agency for proper disposition.

City's Response

The City must also point out that several parcels listed on the Capital Assets were included in error. These errors were communicated to the State Controller audit staff on our response to the preliminary exit interview statement on June 5, 2012 and are repeated as follows:

Parcels of land listed below were never transferred to the City and instead, by operation of ABX1 26, transferred to the Successor Agency on February 1, 2012.

Parcel # 086-02-061 - \$559,057, Land – Fire Station No. 4

Parcel #028-04-047 (correct APN# 022-02-047) - \$694,896, Land – 1275 N. Milpitas (Police Station)

Parcel #022-08-042 (correct APN# 022-08-003) - \$2,677,297.50 Land and improvement -(correct description should be County Health Center Parking Garage)

Another parcel of land listed on the Capital assets schedule parcel #086-02-004 for \$5,110,381, described as Land – Alder Site Redev-Tasman was an accounting error. This is a duplication of the land listed as properties held for resale Alder Site Redevelopment #086-02-076 (correct APN# 086-02-086). The City will correct this error by deleting this value before the close of fiscal 2011-12 year-end accounting.

SCO's Comment

We have revised our finding to reflect the corrections noted.

City's Response

Two parcels of land listed both with parcel no. 086-11-022, described as Land-Elms Park, \$2,755,170 and Land-Alvarez/McDermontt, \$2,228,094 have always been City's assets but were accounted as former RDA's assets in error. The transfer was to correct the accounting error.

SCO's Comment

We have revised our finding to reflect the corrections noted.

**FINDING 2—
Unallowable transfers
to the Milpitas
Economic
Development
Corporation**

The Milpitas Redevelopment Agency transferred \$50,161,763 in assets, primarily cash (Schedule 2 and Attachment 2), to the newly created Milpitas Economic Development Corporation (MEDC) in March 2011. The purpose of the asset transfers was to protect the City of Milpitas Redevelopment Agency resources from elimination. All of the asset transfers to the MEDC occurred during the period of January 1, 2011, through January 31, 2012, and the assets were not contractually committed to a third party prior to June 28, 2011.

The unallowable asset transfers were as follows:

- On March 7, 2011, the City of Milpitas Redevelopment Agency transferred assets by Resolution RA 409 to the MEDC.

The joint meeting minutes of March 7, 2011, disclosed:

- The Milpitas City Manager addressed the Milpitas City Council regarding the Governor's proposed budget, which was expected to include a legislative proposal to eliminate RDAs in the State. The Milpitas City Manager recommended a series of actions to insulate the Milpitas Redevelopment Agency's assets from the anticipated legislation.
- The MEDC Manager presented information, explaining that the State was expected to dissolve RDAs and Governor Brown was expected to sign related legislation on March 9, 2011, thus the urgent need for the City of Milpitas to take action.

- The Milpitas Assistant City Attorney stated, “the purpose was to accomplish three main goals: protect land, protect financial resources, and ensure that economic development activity continued in Milpitas.”
- Milpitas City Councilmember Gomez remarked that the State was continuing to take from cities, which he viewed as “stealing.” He stated that he would do all he could to protect assets.

Pursuant to provisions of H&S Code 34167.5, the RDA may not transfer assets to a city, county, city and county, or any other public agency after January 1, 2011.

The City of Milpitas contends that the MEDC is a public nonprofit corporation created to provide charitable or other public purposes and that transfers from the RDA to the MEDC are not prohibited under H&S Code section 34167.5. However, H&S Code section 34167.10 states the following:

34167.10. (a) Notwithstanding any other law, for purposes of this part and Part 1.85 (commencing with Section 34170), the definition of a city, county, or city and county includes, but is not limited to, the following entities:

- (1) Any reporting entity of the city, county, or city and county for purposes of its comprehensive annual financial report or similar report.
- (2) Any component unit of the city, county, or city and county.
- (3) Any entity which is controlled by the city, county, or city and county, or for which the city, county, or city and county is financially responsible or accountable.

(b) The following factors shall be considered in determining that an entity is controlled by the city, county, or city and county, and are therefore included in the definition of a city, county, or city and county for purposes of this part and Part 1.85 (commencing with section 34170):

- (1) The city, county, or city and county exercises substantial municipal control over the entity’s operations, revenues, or expenditures.
- (2) The city, county, or city and county has ownership or control over the entity’s property or facilities.
- (3) The city, county, or city and county and the entity share common or overlapping governing boards, or coterminous boundaries.
- (4) The city, county, or city and county was involved in the creation or formation of the entity.
- (5) The entity performs functions customarily or historically performed by municipalities and financed through levies of property taxes.
- (6) The city, county, or city and county provides administrative and related business support for the entity, or assumes the expenses incurred in the normal daily operations of the entity.

- (c) For purposes of this section, it shall not be relevant that the entity is formed as a separate legal entity, nonprofit corporation, or otherwise or is not subject to the constitution debt limitation otherwise applicable to a city, county, or city and county. The provisions in this section are declarative of existing law as the entities described herein are and were intended to be included within the requirements of this part and Part 1.85 (commencing with section 34170) and any attempt to determine otherwise would thwart the intent of these two parts.”

The current relationship between the City of Milpitas and the MEDC is described below:

- The MEDC is reported in the City of Milpitas’ comprehensive annual financial report (H&S Code section 34167.10 (a)(1)).
- The MEDC is a component unit of the City of Milpitas (H&S Code section 34167.10 (a)(2)).
- The Board of Directors for the MEDC is the City of Milpitas’ council members, who previously acted as the Board of the Milpitas Redevelopment Agency, and the corporate officers are all City of Milpitas and Milpitas Redevelopment Agency employees (H&S Code section 34167.10 (a)(3)).
- The City of Milpitas exercises substantial control over the MEDC’s operations, revenues, or expenditures (H&S Code section 34167.10 (b)(1)).
- The City of Milpitas has ownership or control over the MEDC’s property and facilities (H&S Code section 34167.10 (b)(2)).
- The City of Milpitas and the MEDC share common governing boards and have coterminous boundaries (H&S Code section 34167.10 (b)(3)).
- The MEDC was created by the City of Milpitas (H&S Code section 34167.10 (b)(4)).
- The specific charge given to the MEDC was to continue redevelopment functions, which historically were performed by the City of Milpitas and financed through levies of property taxes (H&S Code section 34167.10 (b)(5)).
- The City of Milpitas provides administrative and related business support for the MEDC (H&S Code section 34167.10 (b)(6)).

Order of the Controller

Based on H&S Code sections 34167.5 and 34167.10, the City of Milpitas is ordered to direct the MEDC to reverse the transfers of assets, which are described in Schedule 2 and Attachment 2, in the amount of \$50,161,763 and return them to the Successor Agency. The Successor Agency is directed to properly dispose of these assets in accordance with H&S Code sections 34177(d) and (e) and 34181(a).

City's Response

B. Finding and Order No. 2—Allegedly “Unallowable” Transfers to the Milpitas Economic Development Corporation

The Draft report seeks to have the City “direct the MEDC to reverse the transfer of assets” which are described in Schedule 2. The MEDC is an independent legal entity; the City has no legal authority to compel or force the MEDC to convey assets. To the extent that AB 1484 attempts to undermine this separate legal status, it is unconstitutional and illegal.

Furthermore, notwithstanding the foregoing, it should be noted that as was stated in the June 5th response, the Finding and Order No. 2 also seeks the return of funds that came in part from non-redevelopment tax increment sources (e.g., grants and other City funds) and are therefore not subject to the clawback provisions of ABX1 26 and AB 1484.

SCO's Comment

The MEDC governing board members are the same governing board members for the City and the former RDA. In addition, the corporate officers for the MEDC are the same officers for the City and the former RDA. However, the SCO also will issue an order to the MEDC to reverse these transfers.

AB 1484 added H&S Code section 34167.10(c), which states, “The provisions in this section are declarative of existing law as the entities described herein are and were intended to be included within the requirements of this part and part 1.85 (commencing with section 34170) and any attempt to determine otherwise would thwart the intent of these two parts.”

Additionally, the City contends that redevelopment assets were funded with non-redevelopment sources. However, all redevelopment assets, regardless of funding source, must be transferred to the Successor Agency for disposition.

**FINDING 3—
RDA failed to transfer
assets to Successor
Agency**

The Milpitas Redevelopment Agency failed to transfer \$87,622,392 in assets to the Successor Agency by January 31, 2012. These assets, including cash and construction-in-process, are recorded on the Milpitas Redevelopment Agency’s ledgers and should have been transferred to the Successor Agency by January 31, 2012:

- Low and Moderate Income Housing Fund Balance – January 31, 2012, Fund 290 – \$8,543,276.
- Construction in Process – June 30, 2011 – \$79,079,116.

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 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.”

The construction-in-process projects all appear to be related to a governmental purpose. If so, their disposition would be governed by H&S Code section 34181 as follows:

“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 governmental 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...”

In addition, the construction-in-process projects listed all appear to be in progress which indicates that H&S Code section 34177(I) may apply as well. Under that section, the Oversight Board is to “...continue to oversee development of properties until the contracted work has been completed or the contractual obligations of the former redevelopment agency can be transferred to other parties.”

Order of the Controller

Based on H&S Code section 34175 (b), the City of Milpitas is ordered to ensure that the remaining Milpitas Redevelopment Agency assets, which are described in Schedule 3 and Attachment 3, in the amount of \$87,622,392, plus any additional amounts for construction-in-process between July 1, 2011, and January 31, 2012, be transferred to the Successor Agency. The Successor Agency is directed to properly dispose of these assets in accordance with H&S Code sections 34177(d), (e) and (l), and 34181(a). In addition, in accordance with H&S Code section 34177 (d), the Successor Agency is directed to transmit the balance of the Low and Moderate Income Housing Fund to the Santa Clara County Auditor-Controller for distribution in accordance with H&S Code section 34188.

City's Response

C. Finding and Order No. 3—Assets that Allegedly Should Have Been Transferred to the Successor Agency

Cash Balance January 31, 2012, Fund 390 - \$5,035

Cash Balance January 31, 2012, Fund 290 - \$2,989

Cash Balance January 31, 2012, Fund 295 - \$2,500

City staff has previously responded to the State Controller audit staff that the cash balances listed above were all encumbered for accrued payroll, for expenses that were incurred prior to the dissolution of the Redevelopment Agency. Pursuant to ABX1 26, only unencumbered cash balance needs to be transferred to the Successor Agency.

SCO's Comment

Cash balances encumbered for accrued payroll are not subject to transfer to the Successor Agency. Therefore, we revised the finding accordingly. The Successor Agency should provide the documentation that these balances have been encumbered and/or expended to the Oversight Board for review and approval.

City's Response

*Low and Moderate Income Housing Cash Balance – January 31, 2012,
Fund 290 - \$20,299,243*

As of January 31, 2012, Low and Moderate Income Housing Fund did not have a cash balance of \$20,299,243. The City attempts to understand where the State Controller audit staff came up with this cash balance and can only conclude that they used the fund balance of the Low and Moderate Income Housing Fund as of June 30, 2011. The City wishes to clarify that fund balance which is the residual balance of assets minus liabilities do not necessarily equate to cash (see Attachment 2).

Attachment 3 is a reconciliation of the financial transactions of Fund 290 from July 1, 2011, through January 31, 2012. Pursuant to ABX1 26, on February 1, 2012, the cash component of the ending fund balance was transferred to the Successor Agency while the non-cash fund balance was transferred to the Successor Housing Agency.

SCO's Comment

We have revised our finding to reflect the correction noted to the cash balances. The city response was that the non-cash component was transferred to the Successor Housing Agency. However, H&S Code Section 34177 requires all unencumbered assets, which include cash as well as non-cash assets to be transferred to the county Auditor-Controller for distribution.

City's Response

Construction in Process — January 31, 2011 (2012?), - \$79,079,116

The “Construction in Process” assets in the Draft Report are apparently a reference to public works projects that have not yet been finally accepted by the City of Milpitas (i.e., public works facilities for which the one-year warranty period has not yet expired). As in the public works “assets” listed in Finding and Order No. 1, such projects were recorded by the former Milpitas Redevelopment Agency for only accounting purposes as being “RDA assets,” but as a legal matter have always been City assets and therefore do not fall under the clawback provisions of ABX1 26 and AB 1484. The same objections raised in the City's and the Successor Agency's response to the public works component of Finding and Order No. 1 are incorporated herein by reference.

Nonetheless, as in connection to the public works assets listed in Finding and Order No. 1, the City is willing to convey such assets under protest to the Successor Agency in a form satisfactory to the State Controller. Still, there is no need for such a conveyance, as such assets would undoubtedly be conveyed back to the City. See Health and Safety Code § 34181(a).

SCO's Comment

We recognize that the oversight board can order assets with a “governmental purpose” to be transferred to the City. However, these assets transfers were not approved by the Successor Agency Oversight Board, as required by Health and Safety Code section §34181(a), and must be transferred to the Successor Agency for proper disposition.

**Schedule 1—
Unallowable Transfers to the City of Milpitas**

Capital Assets ¹	\$ 88,165,837
Properties Held for Resale ¹	<u>8,781,000</u>
Total Unallowable Transfers – City	<u><u>\$ 96,946,837</u></u>

¹ Detail Listing of Assets on Attachment 1.

**Schedule 2—
Unallowable Transfers to the Milpitas
Economic Development Corporation (MEDC)**

Current Assets	
Cash	\$ (2,417,334)
Investments Specific Funds	7,477,843
Market Gain Special Fund	18,184
Investments Pooled (LAIF)	37,600,000
Market Gain	995,789
Advance to Other Funds	6,389,612
Deferred Revenue	(310,451)
Tax Increment	<u>12,294,281</u>
Total Transfer to the MEDC	62,047,924
Transferred back to RDA ¹	<u>(11,886,161)</u>
Total Unallowable Transfers – MEDC ²	<u>\$ 50,161,763</u>

¹ The amounts transferred back to the RDA from the MEDC were for RDA expenditures. The transfers were for \$9,707,455, \$1,061,094, and \$1,117,612, respectively.

² Detail Listing of Assets on Attachment 2.

**Schedule 3—
Assets that Should Have Been
Transferred to the Successor Agency**

Low and Moderate Income Housing Fund (Fund 290)	8,543,276
Construction in Process ¹	<u>79,079,116</u>
Total	<u>\$ 87,622,392</u>

¹ Detail Listing of Assets on Attachment 3.

Attachment 1—

Properties Held for Resale Transferred to the City On March 7, 2011

Description	Address	Parcel #	Amount
	1432 -1440 S. Main	086-22-031	1,792,200
SCVTA	Alder Site Redevelopment	086-02-076	<u>6,988,800</u>
Total	Property Held for Resale	Unallowable Transfers	8,781,000

Capital Assets Transferred to the City On 3/7/11 and 3/28/11

Asset Description	Parcel #/Project #	Amount
Land-Parcel 1 & 2/Ayer HS	029-17-015	1,232,218
Land-Parcel 3/Ayer HS	029-17-013	616,109
Land-Parcel 4/Ayer HS	029-17012	616,109
Land-Parcel 5/Ayer HS	029-17-011	616,109
Land-1265 N. Milpitas Blvd(Public Works)	022-02-012	770,131
Land-Parcel 6/Ayer HS	029-17-010	616,109
Land-Parcel 7/Ayer HS	029-17-009	616,109
Land-Parcel 8/Ayer HS	029-17-008	616,109
Land-Parcel 9/Ayer HS	029-17-007	616,109
Land-Parcel 10/Ayer HS	029-17-006	616,109
Land-Parcel 11/Ayer HS	029-17-005	616,109
Land-Parcel 12/Ayer HS	029-17-004	616,109
Land-N. Main Street(Cracolice/YMCA)	086-10-025	39,441
Land-86 N.Main Street(Rodriguez)	028-24-025	401,690
Land - Apton 230 N. Main	028-34-001 thru-0093	6,800,000
Bldg & Improv-Community Center	n/a	825,590
Bldg & Improv-City Library	n/a	950,195
Bldg & Improv-Police & Public Works	n/a	4,441,845
Bldg & Improv-Corporate Yard	n/a	1,082,335
Bldg & Improv-Milpitas Sport Center	n/a	2,506,828
Bldg & Improv-Tower & Training Facility	n/a	328,063
Bldg & Improv-Fire Station #4	n/a	148,164
Bldg & Improv-Civic Center	CP8026	29,696,480
Bldg & Improv-Milpitas Sports Center	CP8053	4,416,813
Bldg & Improv-Police Dept-Public Works	CP8066	698,196
Bldg & Improv-ADA Fire Stations	CP8067	14,350
Bldg & Improv-Haz Material Remediation-City of Milpitas	CP8074	295,963
Bldg & Improv-Fire Station Replacement	CP8089	3,806,255
Bldg & Improv-Telecommunications Infrastructure	CP8093	3,203,374
Bldg & Improv-Storm Water Pump Improvement	CP8106	100,843
Bldg & Improv-Senior Center Renovation	CP8134	640,143
Bldg & Improv-Gateway Improv Tasman Drive	CP8146	329,543

Asset Description	Parcel #/Project #	Amount
Bldg & Improv-MSC Master Plan Imprv Phase 1	CP8149	1,146,160
Bldg & Improv-Refinish City Garage Floor	CP8150	23,610
Bldg & Improv-Interim Senior Center Project	CP8151	580,150
Bldg & Improv-Sports Center Large Gym Improv	CP8160	841,874
Bldg & Improv-Sports Center Underwater Pool	CP8163	90,418
Bldg & Improv-Public Works Security	CP8173	92,390
Bldg & Improv-Interim Senior Ctr Re-roofing	CP8178	79,853
Bldg & Improv-Sports Center Swimming Pool	CP8180	220,363
Bldg & Improv-Corporation Yard Canopies	CP8183	610,213
Bldg & Improv-Library Arts	CP8189	165,639
Land Improv-Senior Center Parking Lot	CP8005	0.00
Land Improv-Jacklin Median-Escuela to 680	CP8007	0.00
Land Improv-New Corporation Yard	CP8010	91,151
Land Improv-Milpitas Sport Center-East Parking Lot	CP8017/8042	469,465
Land Improv-City Hall Grounds Renovation	CP8028	0.00
Land Improv-Milpitas Sport Center-Pool Deck Drains	CP8054/8078	17,203
Land Improv-Civic Ctr Pond & Filtration System	CP8071	8,336
Land Improv-Public Works/Corp Yard Parking Lot	CP8083	243,689
Land Improv-Community Center Tot Lot	CP8088	43,188
Land Improv-Softball Scoreboards-Gill Pk	CP8097	33
Land Improv-Corp Yard Non-point Modifications	CP8099	220,122
Land Improv-MSC Sport Field Modifications	CP8101	10,162
Land Improv-Senior Center Entrance Modifications	CP8104	86,777
Land Improv-Civic Center Walkway Repair	CP8119	23,104
Land Improv-MSC Phases 11 & 12	CP8128	1,434
Land Improv-Range Improvements	CP8136	63,929
Land Improv-Gateway Identification	CP8137	117,421
Land Improv-City Gateway Identification(New)	CP8137B	18,245
Land Improv-City Hall Pond Improvements	CP8141	1,103,092
Land Improv-City Hall Parking/Circulation	CP8143	625,944
Mach & Equip-Senior Center Remodeling	CP8006E	0.00
Mach & Equip-Computer Master Plan	CP8020E	0.00
Mach & Equip-Computer Master Plan	CP8020E1	0.00
Mach & Equip-Phone Equipment	CP8027E1	0.00
Mach & Equip-Emergency Operation Center Equip	CP8036	249,907
Mach & Equip-New Finance System	CP8107	2,631,679
Mach & Equip-Network Hardware & Software	CP8108E	0.00
Mach & Equip-Network Hardware & Software	CP8108E1	22,370
Mach & Equip-Desktop Technology	CP8109	2,229,224
Mach & Equip-New Permits System	CP8110	58,112
Mach & Equip-Computer Aided Draft	CP8112	2,537,250
Mach & Equip-Police Records Management	CP8113E	10,930
Mach & Equip-Police & Fire CAD System	CP8115E	138
Mach & Equip-Information Management System	CP8131	660,920
Mach & Equip-Public Information	CP8132	0.00
Mach & Equip-Berryesa Pump Station Improvements	CP8138	1,198,612
Mach & Equip-Oakcreek Pump Station	CP8140	229,594
Mach & Equip-City Hall Technology	CP8142	0.00
Mach & Equip-E-Commerce	CP8145	0.00
Mach & Equip-Evidence Freezer	CP8159	90,554
CIP-Calaveras/Abel Dual Left Turn Lanes	CP8155	129,060
CIP-Street Resurfacing Project 2009	CP8194	2,233,972.
		88,165,837

Attachment 2—

Unallowable Asset Transfers to the Milpitas Economic Development Corporation

Current Assets

Date	Account #	Type of Asset	Fund 390	Fund 391	Fund 392	Fund 395	Total
3/07/11	1000	Cash	(6,579,505.16)	3,759,786.63	400,230.00	2,154.46	(2,417,334)
3/07/11	1060	Investments Specific Funds				7,477,842.99	7,477,843
3/07/11	1067	Market Gain Specific Fund				18,184.28	18,184
3/07/11	1050	Investments Pooled	37,600,000.00				37,600,000
3/07/11	1057	Market Gain	995,788.91				995,789
3/07/11	1400	Advance to Other Funds	6,389,612.20				6,389,612
3/07/11	2400	Deferred Revenue	(310,451.20)				(310,451)
3/15/11	3981	Increment	2,343,848.85				2,343,849
3/31/11	3981	Increment	1,171,924.44				1,171,924
4/18/11	3981	Increment	4,330,140.33				4,330,140
4/29/11	3981	Increment	1,365,517.46				1,365,517
5/31/11	3981	Increment	54,117.46				54,117
6/30/11	3981	Increment	2,890,690.31				2,890,690
6/30/11	3981	Increment	138,043.52				138,044
			50,389,727.03	3,759,786.63	400,230.00	7,498,181.73	62,047,924
				Transfer to	EDC		62,047,924
				Transferred	Back to RDA		(9,707,455)
				Transferred	Back to RDA		(1,061,094)
				Transferred	Back to RDA		(1,117,612)
				Amount	Demanded	Back from EDC	50,161,763

Attachment 3—

Assets that have not been Transferred As of 1/31/12

Construction in Process

Description	Project Number	Committed	Amount Spent
CIP-Community Center Renovation	CP8102		445,736
CIP-Radio Replacement Plan	CP8125		1,075,073
CIP-Misc City Bldg Improvements	CP8135		953,163
CIP-Midtown Improvements	CP8154		2,385,545
CIP-Midtown Parking Garage	CP8161		12,095,507
CIP-Library Design	CP8162		36,950,597
CIP-Bart Extension Coordination & Planning	CP8164		472,418
CIP-Main Street Improvement	CP8165		7,283,814
CIP-N. Main Street EIR Mitigations	CP8169		623,650
CIP-Range Lead Containment System	CP8174		159,533
CIP-Senior Center	CP8176		10,644,675
CIP-City Building Improvement	CP8182		390,962
CIP-Storm Pump Station Improvement	CP8188		220,564
CIP-Green Facility Study	CP8190		72,973
CIP-Park Master Plan Improvement	CP8191		466
CIP-Carlo Street Ramp Project	CP8195		602,812
CIP-Sound wall Renovation	CP8196		212,014
CIP-Civic Center Site Improvement	CP8197		440,095
CIP-Department of Energy Grant Program	CP8198		806,460
CIP-Street Light Pole Improvement	CP8199		18,491
CIP-City Hall AV Equipment	CP9001		6,786
CIP-KP Infrastructure	CP-KB Dev		538,003
CIP-KP Infrastructure	CP-KB Dev		716
CIP-KP Infrastructure	CP-KB Dev		2,679,063
			79,079,116

Construction in Process as of June 30, 2011 totaled \$79,079,116; any additional Construction in Process from July 1, 2011 through January 31, 2012 needs to be transferred as well.

**Attachment 4—
City's Response to
Draft Audit Report**



CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CA 95035-5479
GENERAL INFORMATION: 408-586-3000 www.ci.milpitas.ca.gov

August 6, 2012

VIA EMAIL

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

RE: Milpitas Successor Agency, Milpitas Housing Authority and City Response to State Controller Draft Asset Transfer Review Report

The City of Milpitas Acting as the Successor Agency ("Successor Agency") to the former Milpitas Redevelopment Agency (sometimes referred to herein as the "RDA"), the Milpitas Housing Authority ("Housing Authority") and the City of Milpitas ("City") appreciates and welcomes the opportunity to comment and provide corrections to the Draft Asset Transfer Review Report (January 1, 2011 through January 31, 2012) (referred to herein as the "Draft Report").¹ These comments are respectfully submitted to ensure that a proper review and report is prepared that complies with ABIX 26, AB 1484 and other applicable law. The Draft Report is attached hereto as Attachment 1.

The response provided herein does not waive the right of the Successor Agency, the Successor Housing Agency, and the City to later provide additional information or statements as part of the review process. The Successor Agency, the Successor Housing Agency and the City retain the right to raise new materials or positions as required. Furthermore, the State Controller's attention is directed to the public agencies' previous response, dated June 5, 2012, to a preliminary exit interview communication, which is incorporated herein by reference.

GENERAL RESPONSE

1. The City's, Housing Authority's and the Successor Agency's review of the State Controller Draft Report is ongoing. These responses and objections are made without prejudice to, and are not a waiver of, the City's and the Successor Agency's right to rely on other facts, documents, responses or information in the State Controller review process or at a later proceeding.
2. By making the accompanying responses and objections, the City, Housing Authority and the Successor Agency do not waive, and hereby expressly reserve, its right to assert any and all objections as to the State Controller findings and statements in the Draft Report, or in any other proceedings, on any and all grounds including, but not limited to, jurisdiction, scope, competency, relevancy, and materiality. Further, the City, the Housing Authority and the Successor Agency make the responses herein without in any way implying that they consider all

¹ It should be noted that the Milpitas Economic Development Corporation is a lawfully created nonprofit public benefit corporation and may respond by separate communication apart from the public agencies listed herein.

of the State Controller findings and statements to be legally valid or relevant or material to the subject matter of this action.

3. The City, the Housing Authority and the Successor Agency reserve the right to supplement, clarify, revise, or correct any or all of the responses and statements herein, and to assert additional information in one or more subsequent supplemental response(s).

SPECIFIC RESPONSES

A. Finding and Order No. 1—Allegedly “Unallowable” Asset Transfers to the City of Milpitas

As a preliminary matter, the City, the Housing Authority and the Successor Agency strongly protest the suggestion in the Draft Report that the Milpitas public agencies engaged in unlawful activities at the time of the property transfers in question on March 7 and March 28, 2011. All transfers were done at duly-noticed public meetings that comported with all State law requirements, in particular the provisions of the Community Redevelopment Law and the Brown Act in effect at the time. Citations to new laws passed months after the transfers causes a false impression of bad intent—where none exists—by Milpitas public agency entities and should be withdrawn from the final report.

As to the substance of the Finding and Order No. 1, the City, the Housing Authority and the Successor Agency note that as to the Properties held for Resale List on Schedule 1 of the Draft Report, the 1432-1440 S. Main Street Property (APN 086-22-031) is an asset of the Milpitas Housing Authority and is currently awaiting determination of the Department of Finance as to whether it is a Housing Asset under AB 1484 and ABX1 26. If the State Department of Finance determines that the asset does not constitute a Housing Asset, it is the Housing Authority’s understanding that the asset would then be ordered to be conveyed to the Successor Agency. The City, the Housing Authority and the Successor Agency therefore request that this part of the State Controller Draft Report be amended or stayed pending that determination.

Furthermore, as to the “assets” on the Capital Assets Transferred to the City List of Schedule 1 of the Draft Report, almost all facilities listed are public works projects such as fire stations and police stations and facility upgrades like building machinery and equipment and street resurfacing. As was stated in the City and Successor Agency’s previous June 5, 2012 communication to the State Controller, such Public Works Assets were only recorded for accounting purposes as being “RDA assets,” but as a legal matter have always been City assets and therefore do not fall under the clawback provisions of ABX1 26 and AB 1484.

Furthermore, the Public Works Assets are all public facilities that were constructed for public use and benefit. The former RDA was permitted to wholly or partially fund City public works assets under Health & Safety Code section 33445, so long as such assets were publicly owned; the Community Redevelopment Law did not require the former RDA itself to own or hold title to the public improvements to fund them. Consistent with these rules, these assets were included in the City’s Capital Improvement Plans and were always considered City assets as a legal matter.

Thus, while the Public Works Assets may have been funded in part by the RDA, the assets as a legal matter were owned and operated by the City. The Public Works Assets are therefore City property, not

RDA property, and are not subject to State Controller jurisdiction and should not be included in the Draft Report.

Nonetheless, the City is willing to convey such assets under protest to the Successor Agency in a form satisfactory to the State Controller. Still, there is no need for such a conveyance, as such assets would undoubtedly be conveyed back to the City. See Health & Safety Code § 34181(a).

The City must also point out that several parcels listed on the Capital Assets were included in error. These errors were communicated to the State Controller audit staff on our response to the preliminary exit interview statement on June 5, 2012 and are repeated as follows:

Parcels of land listed below were never transferred to the City and instead, by operation of ABX1 26, transferred to the Successor Agency on February 1, 2012.

Parcel # 086-02-061 - \$559,057, Land – Fire Station No. 4
Parcel #028-04-047 (correct APN# 022-02-047) - \$694,896, Land – 1275 N. Milpitas (Police Station)
Parcel #022-08-042 (correct APN# 022-08-003) - \$2,677,297.50 Land and improvement -(correct description should be County Health Center Parking Garage)

Another parcel of land listed on the Capital assets schedule parcel #086-02-004 for \$5,110,381, described as Land – Alder Site Redev-Tasman was an accounting error. This is a duplication of the land listed as properties held for resale Alder Site Redevelopment #086-02-076 (correct APN# 086-02-086). The City will correct this error by deleting this value before the close of fiscal 2011-12 year-end accounting.

Two parcels of land listed both with parcel no. 086-11-022, described as Land-Elms Park, \$2,755,170 and Land-Alvarez/McDermontt, \$2,228,094 have always been City's assets but were accounted as former RDA's assets in error. The transfer was to correct the accounting error.

B. Finding and Order No. 2—Allegedly “Unallowable” Transfers to the Milpitas Economic Development Corporation

The Draft report seeks to have the City “direct the MEDC to reverse the transfer of assets” which are described in Schedule 2. The MEDC is an independent legal entity; the City has no legal authority to compel or force the MEDC to convey assets. To the extent that AB 1484 attempts to undermine this separate legal status, it is unconstitutional and illegal.

Furthermore, notwithstanding the foregoing, it should be noted that as was stated in the June 5th response, the Finding and Order No. 2 also seeks the return of funds that came in part from non-redevelopment tax increment sources (e.g., grants and other City funds) and are therefore not subject to the clawback provisions of ABX1 26 and AB 1484.

C. Finding and Order No. 3—Assets that Allegedly Should Have Been Transferred to the Successor Agency

Cash Balance January 31, 2012, Fund 390 - \$5,035
Cash Balance January 31, 2012, Fund 290 - \$2,989
Cash Balance January 31, 2012, Fund 295 - \$2,500

City staff has previously responded to the State Controller audit staff that the cash balances listed above were all encumbered for accrued payroll, for expenses that were incurred prior to the dissolution of the Redevelopment Agency. Pursuant to ABX1 26, only unencumbered cash balance needs to be transferred to the Successor Agency.

Low and Moderate Income Housing Cash Balance – January 31, 2012, Fund 290 - \$20,299,243

As of January 31, 2012, Low and Moderate Income Housing Fund did not have a cash balance of \$20,299,243. The City attempts to understand where the State Controller audit staff came up with this cash balance and can only conclude that they used the fund balance of the Low and Moderate Income Housing Fund as of June 30, 2011. The City wishes to clarify that fund balance which is the residual balance of assets minus liabilities do not necessarily equate to cash (see Attachment 2).

Attachment 3 is a reconciliation of the financial transactions of Fund 290 from July 1, 2011 through January 31, 2012. Pursuant to ABX1 26, on February 1, 2012, the cash component of the ending fund balance was transferred to the Successor Agency while the non-cash fund balance was transferred to the Successor Housing Agency.

Construction in Process – January 31, 2011 (2012?), - \$79,079,116

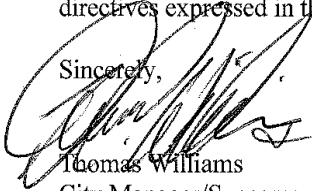
The “Construction in Process” assets in the Draft Report are apparently a reference to public works projects that have not yet been finally accepted by the City of Milpitas (i.e., public works facilities for which the one-year warranty period has not yet expired). As in the public works “assets” listed in Finding and Order No. 1, such projects were recorded by the former Milpitas Redevelopment Agency for only accounting purposes as being “RDA assets,” but as a legal matter have always been City assets and therefore do not fall under the clawback provisions of ABX1 26 and AB 1484. The same objections raised in the City’s and the Successor Agency’s response to the public works component of Finding and Order No. 1 are incorporated herein by reference.

Nonetheless, as in connection to the public works assets listed in Finding and Order No. 1, the City is willing to convey such assets under protest to the Successor Agency in a form satisfactory to the State Controller. Still, there is no need for such a conveyance, as such assets would undoubtedly be conveyed back to the City. See Health & Safety Code § 34181(a).

CONCLUSION

For these reasons, we respectfully request that the Office of the State Controller revise its findings and directives expressed in the Draft Report.

Sincerely,



Thomas Williams

City Manager/Successor Agency Executive Officer/Housing Authority Executive Officer

MILPITAS REDEVELOPMENT AGENCY
GOVERNMENTAL FUNDS
BALANCE SHEET
JUNE 30, 2011

	Redevelopment Project	Housing Reserve	Total Governmental Funds
ASSETS			
Cash and investments available for operations (Note 3)	\$375,738	\$11,687,354	\$12,063,092
Restricted investments (Note 3)			
Receivables:			
Accounts	196		196
Due from other governments	163,221		163,221
Interest		40,049	40,049
Loans receivable (Note 5)		29,832,457	29,832,457
Advances to other funds (Note 4C)		8,925,177	8,925,177
Prepays and deposits	15,868	3,822	19,690
	<u>\$555,023</u>	<u>\$50,488,859</u>	<u>\$51,043,882</u>
LIABILITIES			
Accounts payable	\$517,556	\$20,025	\$537,581
Accrued payroll	37,468	9,456	46,924
Refundable deposits		2,500	2,500
Deferred revenue		30,157,634	30,157,634
Advances from other funds (Note 4C)	8,925,177		8,925,177
	<u>9,480,201</u>	<u>30,189,615</u>	<u>39,669,816</u>
FUND BALANCES			
Fund balances (Note 10)			
Nonspendable	15,868	3,822	19,690
Restricted for Low and Moderate Income Housing		20,295,422	20,295,422
Unassigned	(8,941,046)		(8,941,046)
	<u>(8,925,178)</u>	<u>20,299,244</u>	<u>11,374,066</u>
Total Fund Balances	<u>\$555,023</u>	<u>\$50,488,859</u>	<u>\$51,043,882</u>
Total Liabilities and Fund Balances	<u>\$555,023</u>	<u>\$50,488,859</u>	<u>\$51,043,882</u>

Amounts reported for Governmental Activities in the Statement of Net Assets are different from those reported in the Governmental Funds above because of the following:

CAPITAL ASSETS

Capital assets used in Governmental Activities are not current assets or financial resources and therefore are not reported in the Governmental Funds. 98,453,746

ACCRUAL OF NON-CURRENT REVENUES AND EXPENSES

Revenues which are deferred on the Fund Balance Sheets because they are not available currently are taken into revenue in the Statement of Activities. 30,157,634

LONG TERM ASSETS AND LIABILITIES

The assets and liabilities below are not due and payable in the current period and therefore are not reported in the Funds:

Long-term debt:

2003 Tax Allocation Bonds	(168,940,000)
Installment Purchase Agreement	(33,977,967)
Purchase and Sale Agreement	(23,225,237)
Interest payable	(2,727,628)
	<u>(232,870,832)</u>

NET ASSETS OF GOVERNMENTAL ACTIVITIES (\$88,885,386)

See accompanying notes to financial statements

Housing Reserve Fund (Fund 290)
Statement of Revenues, Expenditures and Changes in Fund Balance
7/1/2011-1/31/2012

Revenues	
Interest Income	\$ 104,816
Rental Income	39,432
Miscellaneous Revenue	246
	144,494
Program expenditures	
Deficiency of Revenues over Expenditures	404,073
	(259,579)
Other Financing Sources (Uses)	
Proceeds from sale of property - 642 Claridad Loop	374,253
Current Year 20% set-aside from Tax increment Revenue	3,504,861
Prior Year excess housing set-aside adjustment, return to Project Fund	(3,867,933)
Operating Cost Reimbursement to City	(1,032,754)
Operating Trf to RDA project fund for debt servcie payment	(387,397)
Total Other Financing Uses	(1,408,970)
Net Change in Fund Balance	(1,668,549)
Fund Balance at 6/30/2011	20,299,243
Fund Balance at 1/31/2012 before asset transfers	\$ 18,630,694

Asset Transfers to Successor Agencies on February 1, 2012	
Cash to Successor Agency	\$ 10,087,418
Non Cash assets to Successor Housing Agency	8,543,276
Total Transfers	\$ 18,630,694
Transfer to Successor Housing Agency consists of:	
Advance to Other Funds	\$ 8,925,178
Loan Receivables	29,775,732
Deferred Revenue	(30,157,634)
Total	\$ 8,543,276

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

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