

# **BELMONT REDEVELOPMENT AGENCY**

## **ASSET TRANSFER REVIEW**

### Review Report

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



**JOHN CHIANG**  
California State Controller

November 2014



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

November 24, 2014

Thomas Fil, Finance Director  
City of Belmont/Successor Agency  
One Twin Pines Lane  
Belmont, CA 94002

Dear Mr. Fil:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Belmont Redevelopment Agency (RDA) to the City of Belmont (City) or any other public agency after January 1, 2011. This statutory provision states, "The Legislature hereby finds that a transfer of assets by a redevelopment agency during the period covered in this section is deemed not to be in furtherance of the Community Redevelopment Law and is thereby unauthorized." Therefore, our review included an assessment of whether each asset transfer was allowable and whether the asset 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 to the City or any other public agency have been reversed.

Our review found that the RDA transferred \$20,954,755 in assets after January 1, 2011, including unallowable transfers totaling \$11,347,549, or 54.15% of transferred assets. The unallowable transfers included \$10,402,768 to the City and \$944,781 to the Entity Assuming the Housing Functions.

However, on various dates the City turned over \$10,326,079 in assets to the Successor Agency. Also, on September 12, 2013, the City (as the Entity Assuming the Housing Functions) turned over \$944,781 in notes receivable to the Successor Agency. Therefore, the remaining \$76,689 in unallowable transfers must be turned over to the Successor Agency.

If you have any questions, please contact Elizabeth González, Chief, Local Government Compliance Bureau, by telephone at (916) 324-0622 or by email at [egonzalez@sco.ca.gov](mailto:egonzalez@sco.ca.gov).

Sincerely,

*Original signed by*

**JEFFREY V. BROWNFIELD, CPA**  
Chief, Division of Audits

JVB/sk

cc: Bob Adler, Controller  
County of San Mateo  
Christopher Bohl, Chair  
Successor Agency Oversight Board  
Brooke Lazzari, Deputy Finance Director  
City of Belmont  
David Botelho, Program Budget Manager  
California Department of Finance  
Richard J. Chivaro, Chief Legal Counsel  
State Controller's Office  
Elizabeth González, Bureau Chief  
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Scott Freesmeier, Audit Manager  
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Steven Noguchi, Auditor-in-Charge  
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 Belmont 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 \$20,954,755 in assets after January 1, 2011, including unallowable transfers totaling \$11,347,549, or 54.15% of transferred assets. The unallowable transfers included \$10,402,768 to the City of Belmont (City) and \$944,781 to the Entity Assuming the Housing Functions.

However, on various dates the City turned over \$10,326,079 in assets to the Successor Agency. Also, on September 12, 2013, the City (as the Entity Assuming the Housing Functions) turned over \$944,781 in notes receivable to the Successor Agency. Therefore, the remaining \$76,689 in unallowable transfers 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 and oversight boards 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.

H&S Code section 34167.5 states in part, ". . . the Controller shall review the activities of redevelopment agencies in the state 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."

The SCO identified asset transfers that occurred after January 1, 2011, between the RDA, the City and/or any other public agency. 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 action 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's operations and procedures.
- Reviewed meeting minutes, resolutions, and ordinances of the City, the RDA, the Successor Agency, and the Oversight Board.
- 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 Belmont Redevelopment Agency transferred \$20,954,755 in assets after January 1, 2011, including unallowable transfers totaling \$11,347,549, or 54.15% of transferred assets. The unallowable transfers included \$10,402,768 to the City of Belmont (City) and \$944,781 to the Entity Assuming the Housing Functions.

However, on various dates the City turned over \$10,326,079 in assets to the Successor Agency. Also, on September 12, 2013, the City (as the Entity Assuming the Housing Functions) turned over \$944,781 in notes receivable to the Successor Agency. Therefore, the remaining \$76,689 in unallowable transfers must be turned over to the Successor Agency.

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

## **Views of Responsible Official**

We issued a draft review report on August 25, 2014. Greg Scoles, City Manager, responded by letter dated September 22, 2014. 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 Belmont, the Successor Agency, the Oversight Board, the Entity Assuming the Housing Functions, 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

November 24, 2014

# Findings and Orders of the Controller

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

The Belmont Redevelopment Agency (RDA) made unallowable asset transfers of \$10,402,768 to the City of Belmont (City). The transfers occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

The transfers consisted of the following:

- On March 8, 2011, the RDA transferred real property, with book values totaling \$10,069,368, to the City.

<u>Description</u>	<u>Amount</u>
Land	\$ 3,600,794
Land Held For Resale	1,080,000
Buildings - Net of Depreciation	3,823,813
Improvements – Net of Depreciation	<u>1,564,761</u>
Total	<u>\$ 10,069,368</u>

- Between January 1, 2011, to January 31, 2012, the RDA made unallowable transfers of cash to the City totaling \$333,400 for City staff costs related to the 6<sup>th</sup> & O'Neill project and other street improvements.

Pursuant to Health and Safety (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 section 34177(d) and (e).

### Order of the Controller

Pursuant to H&S Code section 34167.5, the City is ordered to reverse the transfer of real property totaling \$10,069,368. However on June 30, 2012, the Improvements and associated Accumulated Depreciation in the amount of \$1,564,761 was turned over to the Successor Agency. Also, on September 12, 2013, the City turned over the Land, Land Held for Resale, and Buildings totaling \$8,504,607 to the Successor Agency. Furthermore, on September 29, 2014, \$256,711 in cash was turned over to the Successor Agency. Therefore, the remaining \$76,689, which consists of transfers made with bond proceeds, must be turned over to the Successor Agency.

### City's Response

The Former Agency paid the amount of \$76,441 in permit fees to the City for 600 Clipper because those payments were contractually committed to a third party. . . . Because those payments were contractually committed to a third party, Section 34167.5 does not require that they be returned to the Successor Agency.

To settle ongoing litigation with the DOF. . . the City has agreed to remit to the Successor Agency for transfer to the County Controller the amount of \$256,710.77 in disputed payments. . .

Health and Safety Code section 34167.5 contains no definition of “asset transfers.” However, Section 34179.5(b)(3) defines “transferred” as follows:

“Transferred” means the transmission of money to another party *that is not in payment for goods and services* or an investment or where the payment is de minimus. Transfer also means where the payments are ultimately merely a restriction on the use of the money. . .

All of the payments at issue were for specific goods and services performed by the City for the benefit of the Former Agency. Consequently, none of the cash payments were “asset transfers.”

See attachment for the City’s complete response

#### SCO Comment

After reviewing additional documents, the State Controller’s Office (SCO) agrees with the City regarding the order to reverse the Land, Land Held for Resale, and Buildings transferred to the City in the amount of \$8,504,607. The Order of the Controller has been updated to reflect the change and no further action is necessary in regards to the aforementioned real properties.

In regards to the unallowable cash transfer of \$333,400, the SCO agrees that the former agency paid a total of \$76,441 in permit fees to the City and the payments were contractually committed to a third party. The finding has been updated to remove these items. In addition, the City has provided documentation of cash in the amount of \$256,711 turned over to the Successor Agency for remittance to the County of San Mateo Auditor-Controller for distribution to the taxing entities.

The remaining \$76,689, which consists of transfers made with bond proceeds, must be turned over to the Successor Agency. The SCO’s authority under H&S Code section 34167.5 extends to all assets transferred after December 31, 2010, by the RDA to the city or county, or city and county that created the RDA or any other public agency. This responsibility is not limited by the other provisions of the RDA dissolution legislation, including 34179.5(b)(3). This determination should not be interpreted as a finding that the 2011 transfers to the City were inconsistent with the bond covenants.

The Order of the Controller has been adjusted accordingly.

**FINDING 2—  
Unallowable asset  
transfer to the Entity  
Assuming the Housing  
Functions**

The Belmont Redevelopment Agency (RDA) made an unallowable asset transfer of \$944,781 to the Entity Assuming the Housing Functions. The transfer occurred after January 1, 2011, and the asset was not contractually committed to a third party prior to June 28, 2011.

On January 24, 2012, the RDA made an unallowable asset transfer consisting of Notes Receivables in the amount of \$944,781 to the Entity Assuming the Housing Functions.

Pursuant to Health and Safety (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 section 34177(e).

Order of the Controller

Pursuant to H&S Code section 34167.5, the City of Belmont (City) is ordered to reverse the transfer of Notes Receivables totaling \$944,781. However on September 12, 2013, the City turned over \$944,781 in Notes Receivables to the Successor Agency. Therefore, no further action is necessary.

City's Response

The Oversight Board for the Successor Agency on September 12, 2013 adopted Resolution No.2013-004 ordering the transfer of the housing assets contained in the housing asset list to the City in its capacity as the housing successor. . . While the State Controller's exit interview characterized this resolution as attempting to retroactively approve the transfer of housing assets to the City, it simply directs that the housing assets be transferred to the City, as has occurred.

SCO Comment

After reviewing additional documents, the State Controller's Office agrees with the response provided by the City regarding the order to reverse the Notes Receivables transferred to the Entity Assuming the Housing Functions in the amount of \$944,781. The Order of the Controller has been updated to reflect the change and no further action is necessary.

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

Date	Description	Amount
3/8/11	Land	\$ 3,600,794
3/8/11	Land Held For Resale	1,080,000
3/8/11	Buildings – net of depreciation	3,823,813
3/8/11	Improvements – net of depreciation	<u>1,564,761</u>
	Unallowable real property transfers to the City of Belmont	<u>10,069,368</u>
Date	Description	Amount
3/11/11	Staff costs – project management for Contract 509	4,850
3/11/11	Staff costs – RDA projects	12,200
4/15/11	Staff costs – RDA projects	47,940
6/21/11	Staff costs – RDA projects	10,780
6/28/11	Sidewalk repairs in RDA area, includes staff time	25,092
6/28/11	Sidewalk repairs in RDA area, includes staff time	19,822
6/30/11	Staff costs for RDA projects	16,366
6/30/11	Staff costs for RDA projects	11,326
1/7/11	Pothole repairs in RDA area	10,666
1/6/12	Staff costs – RDA projects	354
1/6/12	Staff costs – project management for Contract 509	66,610
1/24/12	Staff costs	256
1/24/12	Staff costs	134
1/24/12	Staff costs	540
1/27/12	Staff costs – project management for Contract 509	38,431
1/30/12	Staff costs – project management for Contract 509	4,545
1/31/12	Staff costs for RDA projects	19,298
1/31/12	Installation of 6 ADA ramps in the RDA area, includes staff time	14,092
1/31/12	Installation of 6 ADA ramps in the RDA area, includes staff time	3,746
1/31/12	Installation of 1 ADA ramps in the RDA area, includes staff time	<u>26,352</u>
	Unallowable cash transfers to the City of Belmont	<u>333,400</u>
	Total unallowable transfers to the City of Belmont	<u>\$ 10,402,768</u>
6/30/12	Improvements and accumulated depreciation turned over to the Successor Agency	\$ (1,564,761)
9/12/13	Real property turned over to the Successor Agency	(8,504,607)
9/29/14	Cash turned over to the Successor Agency	<u>(256,711)</u>
	Total transfers subject to H&S Code section 34167.5	<u>\$ 76,689</u>

**Schedule 2—  
Unallowable Asset Transfer to  
the Entity Assuming the Housing Functions  
January 1, 2011, through January 31, 2012**

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<u>Date</u>	<u>Description</u>	<u>Amount</u>
1/24/12	Notes receivables	\$ 944,781
	Unallowable asset transfers to the Entity Assuming the Housing Functions	944,781
9/12/13	Notes receivables turned over to the Successor Agency	(944,781)
	Total amount subject to Health & Safety Code section 34167.5	<u>\$ —</u>

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

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**Response to DOF Draft Review**

September 22, 2014

Elizabeth González  
Chief, Local Government Compliance Bureau  
State Controller's Office  
Division of Audits  
PO Box 942850  
Sacramento, CA 94250-5874



Dear Ms. González:

The purpose of this letter is to contest the accuracy of the findings contained in the letter from Jeffrey V. Brownfield dated August 25, 2014 and received on August 28, 2014 regarding the State Controller's Office ("SCO") review of asset transfers between the City of Belmont (the "City") and the former Redevelopment Agency of the City of Belmont (the "Former Agency") between January 1, 2011 and January 31, 2012 (the "Draft Review") under Health and Safety Code section 34167.5. In particular, the City contests the following conclusions:

1. Order requiring the return of \$9,449,388 in housing assets to the Successor Agency.
2. Order requiring the return of \$409,841 in cash transfers to the Successor Agency.

A discussion is below.

**Housing Assets**

The Draft Review states that "unallowable" transfers of housing assets were made to the City of Belmont as follows:

March 8, 2011 – To City of Belmont

Land	\$	3,600,794
Land Held for Resale	\$	1,080,000
Buildings – Net of Depreciation	\$	3,823,813

January 24, 2011 – To City of Belmont as Housing Successor

Notes Receivable	\$	<u>944,781</u>
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**TOTAL** \$ **9,449,388**

The Draft Review has ordered that these housing assets be returned to the Successor Agency. The City disputes this order and believes it is contrary to the provisions of AB1x26 and AB1484 (the "Dissolution Statutes").

1. The City of Belmont is the Housing Successor, and the Transfer of the Housing Assets to the Housing Successor Was Required by the Dissolution Statutes.

On January 24, 2012, the City Council adopted Resolution No. 2012-13 (Attachment 1) electing to retain the housing assets and functions previously held and performed by the Former Agency and to act as the housing successor to the Former Agency.

Health and Safety Code section 34176(a) specifically provides that if a city that created a redevelopment agency elects to retain the housing functions previously performed by the agency, "...all rights, powers, duties, obligations, and housing assets. . . shall be transferred to the city."

To comply with these statutes, these housing assets were required to be transferred to the City because the City elected to be the housing successor.

2. The Transfer of the Housing Assets to the City as Housing Successor Was Approved by the Department of Finance on August 30, 2012, and that Decision is Final and Binding.

Health and Safety Code section 34176(a)(2) required the City as housing successor to submit a list of transferred housing assets to the Department of Finance ("DOF") for its review by August 1, 2012. DOF was given up to 30 days to object to any item on the list. If DOF had found that a transferred asset was *not* a housing asset, the City would have been required to transfer that asset back to the Successor Agency.

DOF, however, by letter dated August 30, 2012, did not object to *any* assets or transfers of housing assets to the City (see Attachment 2). DOF has never withdrawn or modified this decision, nor did DOF object to any asset transfers in its review of the Successor Agency's Due Diligence Review for the Low and Moderate Income Housing Fund (see Attachment 3, letter from DOF dated November 8, 2012). Consequently, DOF's August 30, 2012 decision was final and binding and cannot be reversed.

3. The Oversight Board to the Successor Agency Ordered All Housing Assets Transferred to the City as Housing Successor.

The Oversight Board for the Successor Agency on September 12, 2013 adopted Resolution No. 2013-004 ordering the transfer of the housing assets contained in the housing asset list to the City in its capacity as the housing successor (see Attachment 4). While the State Controller's exit interview characterized this resolution as attempting to retroactively approve the transfer of the housing assets to the City, it simply directs that the housing assets be transferred to the City, as has occurred.

4. The Sacramento County Superior Court Has Held that Approval of the Housing Asset List by the Department of Finance is Final and Binding, and the State Controller Does Not Have the Authority to Reverse the Transfers of Housing Assets to the City.

Judge Michael P. Kenny, in his ruling in *City of Fresno v. State of California* (Sacramento County Superior Court Case No. 34-2013-80001450-CU-WM-GDS, February 11, 2014), determined that DOF's decisions regarding housing assets are "final and binding and [can]not be reversed." In *City of Fresno*, Judge Kenny concluded that if housing assets were transferred to a City as required by Section 34176, an order by the State Controller reversing the transfers is "unnecessary and improper," and the State Controller does "not have authority to make the challenged order," Judge Kenny also noted that:

an order [by the State Controller] directing that asset transfers required by law be reversed so that the Oversight Board may simply order the assets transferred back to the City serves no legitimate purpose.

In conclusion: 1) the housing assets were required to be transferred to the City as housing successor; 2) the housing assets transferred were approved by DOF; 3) the Oversight Board directed that the housing assets be transferred to the City in its capacity as housing successor to the Former Agency; and 4) the Sacramento Superior Court has ruled that DOF's approval of the housing asset transfers is final and binding.

Hence, in the final review, the State Controller must determine that no further action is needed with regard to housing assets.

#### Cash "Transfers" to the City of Belmont

The Draft Review further orders the return of \$409,841 in "unallowable cash transfers to the City of Belmont." The Draft Review contends that these payments were "asset transfers. . .not contractually committed to third parties," and so must be returned to the Successor Agency in conformance with Health and Safety Code section 34167.5. The City disputes this order for the following reasons:

1. Most of the Payments at Issue Were Made with Bond Proceeds, Which Cannot Be Returned to the Successor Agency for Distribution to Taxing Entities or to Use for Enforceable Obligations.

Following the exit interview held with the SCO's representatives on September 25, 2013, the City has determined that the majority of payments made to the City in the period from January 1, 2011 to January 31, 2012 were made from bond proceeds. Of the \$409,841 in asserted "unallowable cash transfers," the amount of \$334,209.42 was made from bond proceeds (see Attachment 5), with payments of only \$75,632 not made from bond proceeds. Bond proceeds cannot be transferred to the Successor Agency for distribution to taxing entities, nor can they be used to pay the Successor Agency's enforceable obligations. Consequently, of the amounts in dispute, the maximum amount that could be transferred to the Successor Agency is \$75,632.

2. The City Has Agreed to Remit \$256,710.77 to the Successor Agency, an Amount Much Greater than the Payments Not Made with Bond Proceeds.

To settle ongoing litigation with the DOF (*Successor Agency to the Redevelopment Agency of the City of Belmont v. Cohen*, Sacramento Superior Court, Case No. 34-2013-80001617), the City has agreed to remit to the Successor Agency for transfer to the County Controller the amount of \$256,710.77 in disputed payments (see Attachment 6). This amount is much greater than the \$75,632 at issue with the SCO that was not paid with bond funds. Consequently, even if the SCO believes that \$75,632 was improperly transmitted to the City and should be returned to the Successor Agency, no further action is required by the City.

3. Some of the Payments Were Contractually Committed to Third Parties.

The Former Agency paid the amount of \$76,441 in permit fees to the City for 600 Clipper because those payments were contractually committed to a third party. Resolution No. 531 (see Attachment 7) provides that the Former Agency will pay up to \$86,400 in permit fees to the City on behalf of SunEdison.

Because these payments were contractually committed to a third party, Section 34167.5 does not require that they be returned to the Successor Agency.

4. The Cash Payments Were Not "Asset Transfers."

Health and Safety Code section 34167.5 contains no definition of "asset transfers." However, Section 34179.5(b)(3) defines "transferred" as follows:

"Transferred" means the transmission of money to another party *that is not in payment for goods and services* or an investment or where the payment is *de minimus*. Transfer also means where the payments are ultimately merely a restriction on the use of the money. [emphasis added]

All of the payments at issue were for specific goods and services performed by the City for the benefit of the Former Agency. Consequently, none of the cash payments were "asset transfers."

In conclusion: 1) all but \$75,632 of the payments at issue were made with proceeds of bonds and cannot be returned to the taxing agencies for distribution to taxing agencies; 2) some of the payments were contractually committed to third parties; 3) the cash payments were not "asset transfers"; and 4) even if the SCO believes that \$75,632 should be remitted to the Successor Agency, the City will remit more than this amount under the approved settlement agreement with DOF, so that no further City action is needed.

Conclusion

The State Controller's final review must find that no further action is required by the City of Belmont.

If you have any questions or desire any additional information, please feel free to contact Brook Lazzari, Deputy Finance Director, (650) 595-7434, or [blazzari@belmont.gov](mailto:blazzari@belmont.gov). We would like to have the opportunity to discuss these issues with the State Controller's Office before you issue your final review and will be contacting you to set up such a meeting.

Sincerely,



Greg Scoles  
City Manager

cc: Jeffrey V. Brownfield, CPA, Chief, Division of Audits  
Richard J. Chivaro, Chief Legal Counsel, State Controller's Office  
Scott Freesmeier, Audit Manager, Division of Audits, State Controller's Office  
Steven Noguchi, Auditor-in-Charge, Division of Audits, State Controller's Office  
City Attorney  
Finance Director

Attachments:

1. City Resolution No. 2012-13, Electing to Serve as Housing Successor to the Former Agency.
2. Letter from California Department of Finance Dated August 30, 2012 Approving Proposed Housing Asset List.
3. Letter from California Department of Finance Dated November 8, 2012 Expressing No Objections to Due Diligence Review of Low and Moderate Income Asset Fund.
4. Oversight Board resolution No. 2013-004, Ordering Transfer of Housing Assets to Successor Agency.
5. Documents Demonstrating Payments of Disputed Items from Bond Proceeds.
6. Settlement Agreement Dated September 19, 2014
7. Redevelopment Agency Resolution No. 531 Regarding Permit Fees for 600 Clipper Drive.

**State Controller's Office  
Division of Audits  
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**<http://www.sco.ca.gov>**