

**REPORT BY THE STATE AUDITOR
OF CALIFORNIA**

**THE ADELANTO REDEVELOPMENT AGENCY NEEDS TO
IMPROVE ITS PROCEDURES TO COMPLY WITH
THE COMMUNITY REDEVELOPMENT LAW**

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July 26, 1994

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The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

Summary The Adelanto Redevelopment Agency (agency) is responsible for preparing and implementing redevelopment plans designed to eliminate blight within the territorial boundaries of the City of Adelanto (city). Under the Community Redevelopment Law (law), the agency may raise funds for redevelopment projects by issuing bonds, selling or leasing redeveloped property, and collecting tax increment revenues. Tax increment revenue is that portion of property taxes that is attributable to added property value caused by redevelopment efforts. However, the law requires that the agency use 20 percent of its tax increment revenues to increase, improve, and preserve the community's supply and its regional share of low- and moderate-income housing, unless the agency meets the legal requirements to claim exemption to the set aside provision.

The purpose of this audit was to determine whether the agency's redevelopment fund expenditures complied with the law. Specifically, we were requested to determine the extent to which the agency has used redevelopment funds to acquire George Air Force Base (GAFB) and to pay for legal actions against neighboring communities and an adjacent redevelopment agency.

We determined that the agency has inappropriately spent funds in an attempt to redevelop GAFB, and the agency spent some funds relating

to GAFB for legal fees relating both to the environmental impact of the proposed reuse of GAFB and to water rights issues, which appears to be an appropriate use of redevelopment funds. GAFB is located outside the agency's territorial jurisdiction. The agency's territorial jurisdiction is defined by the law as the boundaries of the city. In addition, our audit revealed that although the Adelanto City Council (city council) discussed redevelopment projects in public meetings, it did not always follow the Health and Safety Code and Brown Act requirements to keep the public informed of the decisions made by the city council and the purposes for which the agency spends redevelopment funds. Further, we found that the agency did not meet the purposes of increasing, improving, or preserving the community's supply of low- and moderate-income housing when it paid for part of the cost of the city's police and fire facilities from the Low and Moderate Income Housing Fund. Finally, the agency claimed exemption to the requirement to set aside 20 percent of its tax increment revenue for low- and moderate-income housing before it fully documented that no need existed for additional low- and moderate-income housing in the community or that its regional share of such housing was adequate. A more specific discussion of these conditions follows:

- The agency has inappropriately spent at least \$2.1 million for purposes relating to the redevelopment of GAFB. These expenditures include costs for land use planning, lobbying, public relations, promotional materials, and legal services.
- The agency spent approximately \$2.3 million relating to GAFB in what appear to be appropriate uses of redevelopment funds. These expenditures include amounts for legal fees relating both to the environmental impact of the proposed reuse of GAFB and to water rights issues. The agency has determined that the reuse of GAFB, as proposed by the Victor Valley Economic Development Agency (VVEDA), will exacerbate blight in the agency's project area. Based on the Legislative Counsel's opinion, we determined such expenditures are appropriate under the law.

- The city council has not always followed the Health and Safety Code and the Brown Act requirements to keep the public informed of the decisions made by the city council and the purposes of agency expenditures. For example, the city council did not make the necessary findings or publish notice of public hearings before the agency paid for the costs of publicly-owned facilities. In addition, it did not follow the requirements of the Brown Act when it used closed sessions to discuss the purchase of property used to expand the Adelanto police facility.
- The agency did not meet the purpose of increasing, improving, and preserving the community's supply of low- and moderate-income housing when it paid for part of the cost of the police and fire facilities from the Low and Moderate Income Housing Fund. Further, the agency claimed exemption to the requirement to set aside 20 percent of its tax increment revenues for low- and moderate-income housing before fully documenting that no need existed for additional low- and moderate-income housing in the community or that its regional share of such housing was adequate.
- The agency accepted city-owned property, valued at \$3,050,000, as payment for debt owed to it by the city. As of June 30, 1993, the city owed the agency approximately \$4.4 million for its share of legal fees and operating costs paid by the agency. The law does not provide the agency the authority to acquire property for the purpose of relieving debt.
- Finally, we were asked to report on how the agency intended to use and repay its December 1993 \$46 million bond issue. The agency used its December 1993 bond issues to refinance prior obligations in order to reduce interest costs. See Appendix A for a schedule of the sources and uses of the funds.

We recommend that the agency develop and implement procedures to ensure that agency expenditures comply with the law. In addition, the city and agency should follow the requirements of the Health and Safety Code designed to keep the public informed of the purposes of agency expenditures. We further recommend that the city ensure that it has identified its needs for low- and moderate-income housing before it takes steps to commit available funds for other purposes. Finally, the agency should reverse its acquisition of city-owned property and

the city should prepare and implement a plan to repay all its debt to the agency.

Background The Adelanto Redevelopment Agency

The agency is located in the Victor Valley region of the Mojave Desert, approximately 36 miles north of the City of San Bernardino. The law defines the agency's boundaries as the same boundaries as the city. The city established the agency in October 1976. The city council designated itself as the governing board of the agency, and the city manager serves as the agency executive director. The agency is responsible for preparing and implementing redevelopment project plans designed to eliminate conditions of blight within the territorial boundaries of the city. Blight is characterized as the existence of buildings or structures that are unsafe or unfit for their intended use. Blight is further characterized as the underutilization of properties to the extent that it places a physical, social, or economic burden on the community. Typical redevelopment projects include the development, improvement, or rehabilitation of residential and commercial property or public facilities. Some of the purposes of redevelopment are to improve housing conditions and employment opportunities within a project area. Additionally, redevelopment is intended to provide an environment for the social, economic, and psychological growth and well-being of all citizens. A project area is an area within the jurisdiction of the agency, which the city and the agency have characterized as a blighted area or an integral part of the redevelopment plan.

In October 1976, the agency established its first redevelopment project area by designating 16 city lots as a project area. In February 1981, as its second project area, the agency designated approximately 1,100 acres of the city's southern area for increased manufacturing and industrial development. In May 1983, the agency's third project plan placed approximately 12,300 acres of the city under an improvement plan designed to provide regional streets, flood control, and water and sewer facilities to the project area. The agency envisioned approximately 12,200 new residential units and 17 million square feet of new manufacturing, industrial, and commercial development over a 30-year period.

The agency receives funding from tax increment revenues, the sale or lease of redeveloped or improved property, and bonds issued to raise capital for redevelopment projects. Tax increment revenue is that portion of property taxes that is attributable to added property value caused by redevelopment efforts. Tax increment revenue is available to the agency to defray all or part of the cost of a redevelopment project, including debt service, that would otherwise have to be advanced from public funds. When the project indebtedness is paid, the tax increment revenues are paid to the respective taxing agencies as all other property taxes are paid.

For the period July 1, 1989, through June 30, 1993, the agency reported approximately \$60 million in revenue and bond proceeds and \$52 million in expenditures for redevelopment projects and debt service.

The agency has participated in sewer and water projects, street and underground improvements, the acquisition or development of four industrial parks, and other projects. In addition, it has paid for the acquisition of land and the construction of publicly-owned facilities, including the Adelanto Governmental Center (City Hall), the Adelanto police and fire facilities, and Maverick Stadium. Maverick Stadium is home to the High Desert Mavericks, a California League baseball team. Most notably, the agency has spent redevelopment funds in an attempt to influence U.S. Department of Defense reuse decisions on recently deactivated GAFB.

GAFB is located partially within, but primarily adjacent to, the city. Of the approximately 5,350 acres that comprise GAFB, 275 acres in the southwest corner of the base lie within the Adelanto city limits. Because the law defines the territorial boundaries of the agency as the city limits, GAFB lies primarily outside the territorial jurisdiction of the agency. Since the Department of Defense announced the closure of GAFB in 1989, the city has been involved in a competition with the VVEDA and the city of Victorville for control of the airfield facilities at GAFB. VVEDA is a redevelopment agency comprised of the communities of Victorville, Apple Valley, Hesperia, and the County of San Bernardino. See Appendix B for a history of the GAFB controversy.

The San Bernardino County Grand Jury Report

The fiscal year 1992-93 San Bernardino County Grand Jury (grand jury) contracted with an independent auditor to perform a review of the management practices of the city and the agency. The purpose of the review was to determine whether the city and agency were complying with the law and to report on the city and agency's fiscal and administrative policies and procedures.

The June 1993 Grand Jury Report raised questions regarding the appropriateness of the agency's use of approximately \$4.2 million of redevelopment funds to acquire GAFB. In addition, the report charged inadequate accounting and budgeting procedures as the cause of an approximately \$2.8 million deficit in the city's general fund as of June 30, 1991. The report projected the general fund deficit to grow to approximately \$6.1 million by June 30, 1993. Further, the report questioned the city's compliance with its procurement procedures, its administration of construction contracts, and the adequacy of its long-range financing planning for capital projects.

Scope and Methodology

The purpose of our audit was to determine whether the agency's use of redevelopment funds complied with the law. Specifically, we were requested to determine the extent to which the agency has used redevelopment funds to acquire GAFB and to pay for legal actions against neighboring communities and an adjacent redevelopment agency. Additionally, we were requested to determine the status of the city's general fund deficit. Finally, we were requested to determine both the agency's intended use of its December 1993 \$46 million bond issue and how the agency intended to repay the bonds issued.

To determine the extent to which the agency has used redevelopment funds to acquire GAFB, we did not perform tests of revenue or expenditure transactions but instead relied on the revenues and expenditure information provided as a result of audit procedures performed by the grand jury auditors and the city's and agency's independent financial auditors for the fiscal years 1989-90 through 1992-93. Accordingly, we performed analyses to determine whether identified expenditures complied with the law. Because the law does not specify whether an agency may spend redevelopment funds to fund litigation designed to protect its redevelopment project interests from activities outside the territorial jurisdiction of the agency, on April 27,

1994, we obtained an opinion from the California Legislative Counsel regarding the appropriateness of such expenditures.

In an effort to determine the status of the deficit in the city's general fund, we reviewed the city's unaudited fiscal year 1993-94 general ledger, and the unpublished fiscal year 1991-92 and 1992-93 financial statements. In addition, we interviewed the city's independent financial auditor, KPMG Peat Marwick. As of May 31, 1994, the city's auditor has not published the city's financial statements for fiscal years 1991-92 or 1992-93 because it is trying to correct inaccuracies in the city's financial records attributable to past inadequate accounting practices.

Finally, to determine how the agency intends to use and repay its December 1993 \$46 million bond issue, we reviewed the official statement for the bond issue. We traced the information contained in the "Sources and Uses" section of the official statement for the bond issue to supporting bank statements, escrow contracts, and the Agency Bond Counsel's certifications of the execution of the bond documents. See Appendix A for a schedule of sources and uses of the agency's December 1993 bond issues.

**The Agency Has
Inappropriately
Spent At Least
\$2.1 Million
Relating to the
Redevelopment
of George Air
Force Base**

The law authorizes the agency to establish redevelopment project areas and spend funds for redevelopment purposes within the boundaries of its territorial jurisdiction. GAFB is located primarily outside the territorial boundaries of the agency. We determined the agency has inappropriately spent at least \$2.1 million for purposes relating to the redevelopment of GAFB. Of those expenditures, the agency spent \$1.7 million for the redevelopment of GAFB, and \$400,000 relating to a project with a purpose to aid the city in redeveloping GAFB and to bring industry to the city. Although the law may allow the agency to redevelop the 275 acres of GAFB that lie within the agency's boundaries, the airfield and supporting parcels contained within the remaining 5,075 acres on GAFB which lie outside the city and agency boundaries are necessary for the agency's base reuse plan.

On April 27, 1994, we obtained a Legislative Counsel opinion on the authorized use of redevelopment funds. According to this legal opinion, the agency's expenditures to acquire or redevelop the portion of GAFB, which lies outside the territorial jurisdiction of the agency, are an inappropriate use of redevelopment funds. The Health and

Safety Code, Section 33120, defines the territorial jurisdiction of the agency as the boundaries of the city.

Applying the standard cited by the Legislative Counsel, the agency has inappropriately spent approximately \$1.7 million in an attempt to redevelop GAFB. Specifically, the agency has spent redevelopment funds for the purposes of planning the land use at GAFB, lobbying federal officials, preparing promotional materials, and retaining legal services. The expenditures are displayed in Table 1 below.

Table 1 Agency Expenditures for the Redevelopment of GAFB

Planning	\$ 547,000
Consulting services (legislative process and architectural)	110,590
Public relations (lobbying and promotional)	224,922
Legal services	740,611
Miscellaneous	106,145
Total	\$1,729,608

According to the city manager, the purpose of the agency's expenditures was to facilitate the annexation of GAFB by the city. The city, through the Adelanto Public Financing Authority (authority) had an agreement with a developer for the developer's financial partner to purchase GAFB. In addition, the agreement required the developer's financial partner to reimburse the authority and the developer for their costs to acquire GAFB.

According to the city manager, the agency spent its redevelopment funds for the acquisition and redevelopment of GAFB, based on the advice of its legal counsel. The agency's counsel cited the Health and Safety Code, Section 33391, as the agency's authority to spend redevelopment funds to acquire GAFB. Section 33391 of the code allows that within the project area, or for the purposes of redevelopment, an agency may use various methods to acquire property, including purchasing or leasing any real property or any improvements on it.

In the opinion of the Legislative Counsel, the redevelopment or acquisition of property outside the territorial jurisdiction of an agency, which is not specifically authorized by a statute, is unconstitutional. Moreover, it is questionable that a statute ostensibly authorizing such an acquisition would be constitutional under the California Constitution, Article XVI, Section 16. Section 16 is the agency's authority for taxation of redevelopment projects. According to the Legislative Counsel, the courts have consistently viewed Section 16 as a grant of power (as opposed to a restriction of power) to the Legislature and local governing bodies. The agency is currently involved in two lawsuits that ask the courts to determine whether the agency's expenditures to redevelop GAFB are an appropriate use of redevelopment funds.

In addition, the agency inappropriately made payments, totaling \$400,000, relating to a project with a purpose to aid the city in redeveloping GAFB and bring industry to the city. The city contracted with Advanced Industry Technology, Inc. (AIT) to represent, assist, and advise the city in its efforts to acquire GAFB. AIT also was required to contact, meet, and correspond with any and all agencies that have the power or authority to decide the disposition of GAFB.

According to the city manager, the primary purpose of the \$400,000 expenditures was to assist AIT in gaining access to GAFB runways from the Air Force. AIT would then locate its aircraft inspection and rehabilitation center in Adelanto. In addition, AIT would use its contacts to encourage the sale of GAFB to the city, ensuring AIT's future access to the base.

AIT is proposing the development of an x-ray diagnostic facility for completely assembled aircraft on property that is located primarily within one of the agency's project areas. The proposed AIT project site is adjacent to GAFB and requires access to GAFB runways. According to the city manager, the agency agreed to help finance AIT's efforts to gain Air Force approval for the project because of the potential economic benefits of the proposed project to the community. According to correspondence between AIT and the city, AIT intends to repay the \$400,000 amount to the agency when AIT arranges financing for start-up costs. However, the agreement did not *require* AIT to repay the agency. The city manager characterized the \$400,000 payments in the following manner: "A return of 3,500 jobs and 7,000,000 square feet of installation, along with a refund of the

investment commitment, is a good investment on the part of the agency.”

Because the expenditures are related to acquiring access to runways outside the territorial jurisdiction of the agency and because speculative business investments or loans to for-profit corporations do not meet the definition of redevelopment, the above expenditures are an inappropriate use of redevelopment funds. Support for this conclusion is found in the Legislative Counsel opinion, which states that no provision of law authorizes the “preemptive acquisition” of GAFB, and that a redevelopment agency is not authorized to engage in land speculation generally.

Because the agency inappropriately used redevelopment funds in an attempt to redevelop GAFB and to invest in the AIT project, those funds are not available to the community to fulfill the fundamental purpose of redevelopment.

**The Use of
Agency Funds
To Protect
Redevelopment
Efforts in the
Project Area
Appears
Appropriate**

The agency has spent approximately \$2.3 million for expenditures relating to GAFB in what appear to be appropriate uses of redevelopment funds. These expenditures include the legal costs relating to the environmental impacts of proposed land use and water rights.

We obtained a Legislative Counsel opinion on the authorized use of redevelopment funds. According to this legal opinion, the agency may spend redevelopment funds in litigation relating to property outside its jurisdiction if the purpose is to prevent a joint powers agency from acquiring GAFB and if the planned use will exacerbate conditions of blight within the redevelopment project area of the city and hinder the efforts of the agency to eliminate the blight.

In April 1993, the agency, based on the advice of its legal counsel, adopted a resolution stating that the agency has for years spent redevelopment funds to implement and protect the agency's adopted redevelopment plans by attempting to acquire GAFB and thereby prevent the VVEDA from carrying out a redevelopment program that would exacerbate blight conditions in the agency's redevelopment area. The resolution states that VVEDA intends to turn the base into a commercial airport that would maintain intrusive flight patterns (similar to those used by the Air Force) that have historically frustrated development in the project area. In addition, the resolution states that land use at GAFB has been the root cause of blight in the project area and that controls over land use at GAFB are of fundamental importance to the alleviation of blight in the project area.

Through our review of invoices, agreements, and information provided by the city manager, we have determined that the agency spent approximately \$2 million on legal costs relating to land use planning and the associated environmental impact regarding GAFB. The city attorney identified 22 court cases filed by the city, VVEDA, the City of Victorville, the County of San Bernardino, an Adelanto taxpayers group, the Victorville Redevelopment Agency, and others. Of the 22 cases, 9 cases are actions against redevelopment plans and their environmental impact, 6 cases relate to the disposition and acquisition of GAFB, 3 cases relate to planning and land use, 3 cases relate to the improper use of redevelopment funds, and one case relates to the condemnation of water wells that are located on city-owned property and leased by GAFB.

In addition, the agency has spent approximately \$289,000 for legal costs to protect water rights it maintains are critical to its redevelopment effort. The water rights issue relates, in part, to wells that are located on city-owned property and operated by GAFB. The wells pump water from the Mojave River underflow and service GAFB and the city. The water wells and the property on which they are located are within the territorial jurisdiction of the agency. In 1956, a predecessor agency to the city leased the water rights to the Air Force to support GAFB. The Air Force was required to return the water rights to the city upon deactivation of the base. In September 1993, the Air Force announced that the water rights would remain with GAFB and the recipient of the base could also acquire the water rights held by the Air Force. In an attempt to resolve water supply issues in the region, in 1991, the Mojave Water Agency initiated a legal action to

allocate water supplies from the Mojave River and the more expensive State Water Project to the communities within the Mojave River Basin.

**The City Council
Did Not Always
Follow Procedures
Designed To
Keep the Public
Informed of Agency
Expenditures**

The city council did not always follow Health and Safety Code and Brown Act requirements to keep the public informed of the decisions made by the city council and the purposes of agency expenditures. Before the agency used redevelopment funds to pay for the construction of certain publicly-owned facilities, the city council did not make the necessary findings that the facilities were of benefit to the project area and that no other reasonable means of financing were available to the city. In addition, the city council did not publish notice of a public hearing to discuss the expenditure of agency funds for the construction of the publicly-owned facilities. Further, the city council did not follow the requirements of the Brown Act when it used closed sessions to discuss the purchase of property used to expand its police facility.

The Health and Safety Code, Section 33445, states that an agency may pay for the land acquisition and cost of construction of any publicly-owned facility if the legislative body finds that the facility is a benefit to the project area and that no reasonable means of financing are available to the community. In addition, Section 33679 of the code requires that before an agency uses tax increment revenues to pay for the cost of any publicly-owned building, other than parking facilities, the legislative body must publish notice of and hold a public hearing.

The grand jury reported that the agency spent approximately \$7.8 million for the construction of the publicly-owned Maverick Stadium and the adjacent public meeting facility. Although the city and agency gave advance approval to the project in September 1990, the city did not publish notice of a public hearing and adopt the necessary findings, as required by the Health and Safety Code, Sections 33445 and 33679, until June 1991. At that time, approximately \$5.9 million had already been spent on the project. Although the city council was procedurally incorrect, expenditures for Maverick Stadium and the adjacent public meeting facility appear to meet the fundamental purpose of redevelopment.

In addition, the grand jury reported that the agency spent approximately \$1.8 million to construct and equip the publicly-owned police station and approximately \$1.9 million to construct and equip the publicly-owned fire station. We determined that the agency spent

approximately \$395,000 for the police facility, and \$899,000 for the fire facility before the city council published notice of a public hearing and before the city council adopted the findings required by the Health and Safety Code, Section 33445. The agency expended funds for the police and fire facilities from September 1989 through November 1992. However, the city council did not publish notice of a public hearing or adopt the necessary findings related to spending redevelopment funds for publicly-owned facilities until June 1991.

Further, in September 1992, the agency purchased the property adjacent to the Adelanto Police Station, known as the Hangar Inn, for the city for approximately \$260,000. We were provided no evidence that the city council made the finding that the property was a benefit to the project area or that no other reasonable means of financing were available to the city, nor were we provided any evidence that the city council held a public hearing regarding the use of redevelopment funds to pay for the publicly-owned facility.

According to the city manager, the city is holding the property for improved ingress and egress for emergency vehicles and future expansion of the police facility. The city is using a portion of the building for storage and is using the adjacent property for ingress and egress and as an impound yard. It leased the remaining portion of the building to the previous owner, who operated the Hangar Inn as a bar until June 1994. Although the city and agency did not follow proper procedures to acquire the property, based on its current use, the acquisition appears to meet the fundamental purpose of redevelopment.

Because the agency spent funds for the publicly-owned facilities before making the necessary findings and before publishing notice of and holding a public hearing, it did so without meeting all of the requirements of the Health and Safety Code to keep the public informed of decisions that are being made and the purposes for which redevelopment funds are being spent.

Further, the city council did not follow the requirements of the Brown Act when it discussed the purchase of the Hangar Inn in closed session.

The California Government Code, Section 54956.8, allows a legislative body to hold a private session with its negotiator before the acquisition of real property to give instructions regarding price and terms of acquisition. However, the legislative body must hold an open and

public meeting to identify the real property and person or persons with whom they negotiate.

The city finance director stated that the agency members, the city attorney, the agency executive director, and the city finance director discussed the acquisition of the Hangar Inn in an August 4, 1992, closed session meeting. However, we found no evidence in the minutes of the August 4, 1992, open and public meeting that the members announced that they were going to discuss the property acquisition in closed session or that they identified the person with whom their negotiator may negotiate.

In its response to the 1992-93 grand jury report, the city stated that, in the August 4, 1992, meeting, city officers had identified GAFB as the only real property of discussion in the closed session and subsequently discussed GAFB and the Hangar Inn. The city further stated in its response that to ensure its anonymity in negotiations, it does not identify to the public real property it contemplates purchasing.

According to the city manager, the agency conducted the above transactions on the advice of its past and present legal counsel. In addition, the city manager stated that the agency's past and present legal counsel was present at all meetings where the agency members made the decisions, and at no time did any of the attorneys suggest handling these decisions or actions in any other manner.

Failure by the city and agency to hold public hearings and follow the requirements of the Brown Act prevents the public from remaining informed of decisions made by the city council and the purposes for which the agency spends redevelopment funds.

**The Agency
Has Failed To
Comply With
Some of the
Requirements of
the Health and
Safety Code
Relating to Low-
and
Moderate-Income
Housing**

The agency did not meet the purpose of increasing, improving, and preserving the supply of low- and moderate-income housing when it used the Low and Moderate Income Housing Fund to pay for part of the cost of the Adelanto police and fire facilities. In addition, the agency did not meet all the necessary requirements of the Health and Safety Code before it claimed exemption from setting aside 20 percent of its tax increment revenue for low- and moderate-income housing.

The Health and Safety Code, Section 33334.2, requires an agency to set aside 20 percent of its tax increment revenue for the purpose of increasing, improving, and preserving the community's supply of housing available to persons and families of low or moderate income. In addition, Section 33334.3(d) further defines the intended uses of the low- and moderate-income housing funds as defraying the costs of production, improvement, and preservation of such housing.

Prior to January 1992, the agency did not meet the purposes of increasing, improving, and preserving the supply of low- and moderate-income housing when it spent approximately \$102,000 for the police facility and \$852,000 for the fire facility using monies from the Low and Moderate Income Housing Fund. According to the staff report that the agency used to support its findings, the agency rationalized that it could improve the supply of low- and moderate-income housing by constructing public facilities necessary to serve such housing. Further, the agency rationalized that the new police and fire facilities would attract developers who would build new housing, thus increasing the supply of low- and moderate-income housing. According to the city manager, both facilities were constructed to provide improved service and to preserve the low- and moderate-income housing stock. However, Section 33334.3(h) of the Health and Safety Code uses the term "preservation" in the context of maintaining the affordability of housing to low- and moderate-income persons and families. Accordingly, the agency's use of low- and moderate-income housing funds for the police and fire facilities did not meet the purpose of defraying the costs of the production, improvement, and preservation of such housing as required by the Health and Safety Code.

Because the agency spent restricted funds for police and fire facilities instead of for low- and moderate-income housing, these funds were not available for their intended purpose.

The agency did not meet all the necessary requirements of the Health and Safety Code before it claimed exemption from setting aside 20 percent of its tax increment revenue for low- and moderate-income housing.

The Health and Safety Code, Section 33334.2, states that an agency may claim exemption from the requirement to set aside its tax increment revenue for low- and moderate-income housing by making one of three findings annually, including a finding that it has met its needs in the community and its regional share of low- and moderate-income housing. Further, the code requires the finding to be consistent with the housing element of the community's general plan and the planning agency's annual report to the city council on the implementation of the housing element.

Agencies must report the findings and the supporting facts to the Department of Housing and Community Development (HCD) within 10 days of adoption. Beginning with fiscal year 1991-92, the agency determined that the supply of low- and moderate-income housing within the project area would exceed the needs of the community for the foreseeable future. Accordingly, the agency discontinued setting aside 20 percent of its tax increment revenue for low- and moderate-income housing, and subsequently closed out the fund and transferred the balance of approximately \$5.9 million to the Redevelopment Fund. However, when the agency reported the findings to HCD, the city did not correctly follow procedures because it had not adopted a housing element that complied with the guidelines established by the HCD.

In addition, in January 1994, the agency adopted a resolution stating that, for fiscal year 1993-94, there was no need in the city or in its regional share for low- and moderate-income housing that would benefit the project area. Based on that resolution, the city determined that it would not set aside fiscal year 1993-94 tax increment revenue for low- and moderate-income housing. However, according to the HCD,

as of May 1994, it had not received a report of the findings and the supporting facts, as required by Section 33334.2 of the Health and Safety Code.

Because the agency transferred the funds set aside for low- and moderate-income housing to the Redevelopment Fund before the city adopted its housing element and made the necessary findings, the agency did not document, as required by the Health and Safety Code, that funds will be available to meet its needs in the community and its regional share of low- and moderate-income housing.

**The Agency
Inappropriately
Accepted Property
From the City
To Reduce the
City's General
Fund Deficit**

The agency inappropriately accepted property owned by the city, valued at \$3,050,000, as partial payment of amounts owed to it by the city. According to the city finance director, the city owed the agency approximately \$4.4 million as of June 30, 1993, for its share of legal fees and operating costs. According to the city's independent auditors, as of June 30, 1993, the city's general fund had a fund deficit of approximately \$4.4 million. However, although the fund balance includes all adjustments proposed to date, the balances are not final and may change. The transfer of the property to the agency would reduce the city's general fund deficit by approximately \$3.1 million.

In fiscal year 1993-94, the agency accepted the transfer from the city of a 10-acre parcel of land, valued at \$3,050,000, to pay the city's liabilities to the agency for legal fees and operating costs. The city decided to pay the debt by selling city-owned property to the agency. The 10-acre parcel contains two 3-million-gallon water reservoirs, which represent approximately 36 percent of the city's water storage capacity. The agency intends to continue to use the reservoirs to provide water storage to the community without altering or improving the facilities on the property.

According to the city attorney, the Health and Safety Code, Section 33391, for the purposes of redevelopment, gives the agency the authority to purchase real or personal property, any interest in property, and any improvements on it. In addition, the city attorney states that Section 33395 of the Health and Safety Code implicitly suggests that an agency may purchase land already devoted to public use.

While the law may allow the agency to purchase property, including land already devoted to public use, for the purposes of redevelopment, this purchase did not meet the definition of redevelopment. The law

defines redevelopment as the planning, development, replanning, redesign, clearance, reconstruction, or rehabilitation of all or part of an area designated for project survey. The law further defines redevelopment as providing residential, commercial, industrial, public, recreational, or other structures or facilities as may be appropriate or necessary to improve the general welfare of the community. Because the agency intends to use the property in the same manner as the city, the purchase by the agency will not improve the general welfare of the community and thus does not meet the definition of redevelopment.

Further, the law requires any redevelopment plan that provides for the acquisition of real property to provide for the disposition of the property. Section 33432 requires that an agency shall sell or lease all real property acquired by it in any project area, except property conveyed by it to the community or other public body. Any sale or lease must be conditioned on redevelopment and use of the property in conformity with the redevelopment plan. To comply with Section 33432, the agency must sell or lease the property containing the reservoirs that are integral to the city's water supply, or convey the property back to the city or other public body.

The city manager has stated that the agency believes the water well use of the property is necessary to the development of the project area. However, the agency is considering substituting an alternate property, to be commercially developed, which would clearly be consistent with the definition of redevelopment.

By accepting the transfer of the city-owned property as payment of its debt, the agency will cause the funds it would have received in repayment from the city to be unavailable for their intended purpose.

Recommendations

The agency should not spend redevelopment funds for purposes not specifically authorized by the law. They should establish procedures to ensure proposed redevelopment projects comply with the law, thus ensuring that redevelopment funds are available to the community to fulfill the fundamental purpose of redevelopment.

The city council and agency members should make the necessary findings and publish notice of and hold public hearings to keep the public informed when it proposes to use agency funds to pay for publicly-owned property.

The city council should ensure that it follows the requirements of the Brown Act when it uses closed sessions to discuss the acquisition of real property.

The agency should ensure that it is using funds restricted for the purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing for their intended purpose, unless it follows the requirements of the Health and Safety Code, Section 33334.2.

The agency should ensure that it has identified its needs in the community and its regional share, of low- and moderate-income housing before it takes steps to commit available funds to other purposes. This includes making the necessary findings, supported with facts and consistent with an approved housing element of its general plan, prepared in compliance with the guidelines established by the HCD.

The agency should reverse its acquisition of city-owned property for the purpose of reducing debt owed to the agency. In addition, the city should prepare and implement a plan to repay from the city's unrestricted funds the approximately \$4.4 million owed to the agency.

We conducted this review under the authority vested to the state auditor by Section 8543 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope of this letter report.

Respectfully submitted,

KURT R. SJOBERG
State Auditor

Staff: Philip Jelich, CPA, Audit Principal
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The City of Adelanto's response is included in this report as Attachment 1 and our rebuttal to their response is Attachment 2.

Appendix A

Use of Proceeds From the Agency's December 1993 Bond Issue

In December 1993, the Adelanto Redevelopment Agency (agency) issued the Adelanto Improvement Project Tax Allocation Refunding Bonds, Series 1993B (Series B bonds) and the Adelanto Improvement Project Subordinated Tax Allocation Refunding and Improvement Bonds, Series 1993C (Series C bonds). The agency issued these bonds to refund, and reduce the interest costs on, its 1990, 1991, and 1993 Series A bonds.

Sources:

Principal amount of Series B bonds	\$15,095,983
Principal amount of Series C bonds	31,695,000
Reserve account for 1990 bonds	3,163,358
Reserve account for 1991 bonds	352,745
Reserve account for 1993 Series A bonds	800,000
Interest account for 1990 bonds	3,331
Interest account for 1991 bonds	3,473
Interest account for 1993 Series A bonds	3,447
Sinking account for 1991 bonds	795
Special fund for 1993 Series A bonds	87
Agency contribution	246,193
Total	\$51,364,412

Uses:

Escrow fund	\$28,254,894
Purchase of 1990 bonds	16,013,222
Series B debt service reserve account	1,346,193
Series B costs of issuance fund	138,900
Underwriter's discount (Series B bonds)	339,660
Original issue discount (Series B bonds)	792,050
Bond insurance policy (Series B bonds)	258,469
Redevelopment fund	147,757
Series C debt service reserve account	2,400,000
Series C costs of issuance fund	236,650
Underwriter's discount (Series C bonds)	713,137
Original issue discount (Series C bonds)	723,480
Total	\$51,364,412

Appendix B George Air Force Base Controversy

May 1988The Defense Secretary's Commission on Base Realignment and Closure (commission) recommended that the U.S. Department of Defense (department) close George Air Force Base (GAFB). The department closed GAFB on December 15, 1992.

August 1989The city of Adelanto (city) formed the Adelanto–George Air Force Base Reuse Commission to establish a plan to compete with the Victor Valley Economic Development agency (VVEDA) for the acquisition and redevelopment of GAFB. The city declined to join VVEDA because of disagreements with VVEDA's proposed land use and flight patterns at the base. In addition, VVEDA's plan would not allow the city to influence decisions on the reuse of GAFB. The city's plan for the reuse of GAFB is an international airport to serve the greater southern California area. The VVEDA reuse plan calls for a regional airport.

1989 Through 1991Approximately 275 acres of GAFB, south of the airfield, lies within the city's boundaries. The city made attempts to annex and redevelop the remainder of GAFB. In addition, the city made four attempts to purchase GAFB from the department. The department refused all four offers even though the 1988 commission report recommended that the department sell the base at market value.

1992 Through 1994The city and the agency became involved in at least 18 lawsuits with VVEDA, surrounding communities, and interest groups over the acquisition and environmental impacts of the planned reuse of GAFB. The city maintains that the VVEDA reuse plan will continue the intrusive flight patterns used by the Air Force. Those flight patterns would prohibit the agency from implementing its redevelopment plan in the project areas. In addition, the agency became involved in two lawsuits regarding its use of redevelopment funds to fund legal actions relating to the redevelopment of GAFB.

January 1993The department announced in its Record of Decision that the airfield parcels would be conveyed to a qualified sponsor of a public airport to preserve the airfield as part of the national airport system. The department announced that the parcels containing the support facilities for the airfield would be offered for competitive negotiated sale to VVEDA and the city.

September 1993The department announced in its Supplemental Record of Decision that the supporting parcels at GAFB would not be offered for competitive negotiated sale but

would instead be offered for negotiated sale to an eligible public body.

April 1994 The department and VVEDA signed a lease allowing VVEDA control over the reuse of the airfield and supporting parcels at GAFB, exclusive of the 275 acres that lie within the boundaries of the city.

