DEPARTMENT OF FINANCE
ARNOLD SCHWARZENEGGER, GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

Transmitted via e-mail

November 8, 2010

Mr. Joseph Edmiston, Executive Director
Santa Monica Mountains Conservancy
5100 West Avenue 26, Suite 100
Los Angeles, CA 90065

Dear Mr. Edmiston:

Final Report—City of Thousand Oaks Mount Clef Grant Audit

The Department of Finance, Office of State Audits and Evaluations (Finance), has completed its audit of the City of Thousand Oaks' (City) grant agreement NP-0631 for the period April 24, 2006 through June 30, 2010.

The enclosed report is for your information and use. Because there were no audit findings or issues requiring a response, we are issuing the report as final. However, a significant control weakness has been identified in the grant agreement.

The award grants the City $500,000 of California bond funds to acquire real property–a non-depreciable and marketable asset—to hold as open space. However, there are no provisions or control requirements in the grant agreement or other title documents obligating the City to secure the state's interest in the property. California bond funds may only be used for the purpose stated in the bond act. Without a security interest in the real property or other mitigating controls, the City could sell the property at a future date and use the proceeds for purposes not approved by the bond act. The Santa Monica Mountains Conservancy is requested to include a real property security provision or other title document in future bond grant agreements

In accordance with Finance's policy of increased transparency, this report will be placed on our website. Additionally, pursuant to Executive Order S-20-09, please post this report in its entirety to the Reporting Government Transparency website at http://www.reportingtransparency.ca.gov/ within in five working days of this transmittal.

We appreciate the assistance and cooperation of the City of Thousand Oaks and the Santa Monica Mountains Conservancy. If you have any questions, please contact Susan M. Botkin, Manager, or Robert Scott, Supervisor, at (916) 322-2985.

Sincerely,

Original signed by:

David Botelho, CPA
Chief, Office of State Audits and Evaluations

Enclosure

cc: On following page

cc: Ms. Rorie Skei, Chief Deputy Director, Santa Monica Mountains Conservancy
Mr. Scott Mitnick, City Manager, City of Thousand Oaks
Ms. Amy Albano, City Attorney, City of Thousand Oaks
Mr. Mark Towne, Deputy Director, City of Thousand Oaks
Ms. Catherine Haywood, Accounting Manager, City of Thousand Oaks
Ms. Kristin Foord, Manager, Conejo Open Space Conservation Agency
Mr. Patrick Kemp, Assistant Secretary, California Natural Resources Agency
Mr. Bryan Cash, Deputy Assistant Secretary, California Natural Resources Agency
Ms. Julie Alvis, Deputy Assistant Secretary, California Natural Resources Agency

A Grant Audit

City of Thousand Oaks
Mount Clef Property Acquisition
Grant Agreement NP-0631

Prepared By:
Office of State Audits and Evaluations
Department of Finance

103810125

November 2010

MEMBERS OF THE TEAM

Susan M. Botkin, CGFM
Manager

Robert Scott, CPA
Supervisor

Staff
Ermias Tecle, CPA

Final reports are available on our website at http://www.dof.ca.gov

You can contact our office at:

Department of Finance
Office of State Audits and Evaluations
300 Capitol Mall, Suite 801
Sacramento, CA 95814
(916) 322-2985

BACKGROUND

In November 2002, California voters approved the Water Security, Clean Drinking Water, Coastal and Beach Protection Bond Act of 2002 (Proposition 50), which authorized the State of California to sell $3.44 billion in general obligation bonds. Bond proceeds provide funds for grants and loans to assist in meeting safe drinking water standards, acquisition, restoration, protection, and development of river parkways, and coastal watershed and wetland protection.

Santa Monica Mountains Conservancy

Santa Monica Mountains Conservancy (Conservancy) was established by the California State Legislature in 1980. The Conservancy's mission is to strategically buy back, preserve, protect, restore, and enhance treasured pieces of Southern California to form an interlinking system of urban, rural and river parks, open space, trails, and wildlife habitats that are easily accessible to the general public. The Conservancy accomplishes its mission through grants to local agencies, nonprofit organizations, and other eligible applicants to promote the proposition's goals.

City of Thousand Oaks

City of Thousand Oaks (City) was incorporated in 1964 as a general law city. The City operates under a City Council-City Manager form of government and provides traditional municipal and public enterprise services. The City Council consists of five members elected by the community at large and selects the Mayor from its members for a one-year term. City council terms are four years, with elections held every two years. The City Council appoints the City Manager, the City Attorney, and members of City Boards and Commissions.

The City, located in Ventura County, 12 miles inland from the Pacific Ocean, is nestled against the Santa Monica Mountains and surrounded by foothills and encompasses a diverse mosaic of natural landscapes. Over the last 30 years, local residents and elected officials have preserved for perpetuity these scenic and natural resources through an extensive system of natural open space. Currently more than 15,135 acres, comprising 34 percent of the City's planning area, is set aside as open space. This publicly owned open space contains about 75 miles of multi-purpose hiking, biking and equestrian trails that provide recreational opportunities for all ages.

The City received a grant from the Conservancy for the acquisition of a portion of the Mount Clef property to add to open space preservation and public access.

SCOPE

In accordance with Department of Finance's (Finance) bond oversight responsibilities, we conducted an audit of the following grant:

Grant Agreements	Audit Period	Awarded
NP-0631	April 24, 2006 through June 30, 2010	$ 500,000

The audit objective was to determine whether the City complied with applicable laws, regulations, and grant requirements. In order to design adequate procedures to evaluate compliance, we obtained an understanding of the relevant controls. However, we did not assess the efficiency or effectiveness of operations.

The City's management is responsible for ensuring accurate financial reporting and compliance with applicable laws, regulations, and grant requirements as well as evaluating the efficiency and effectiveness of the program. The Conservancy along with California Natural Resources Agency is responsible for state-level administration of bond programs.

METHODOLOGY

To determine whether expenditures were in compliance with applicable laws, regulations, and the grant requirements, we performed the following procedures:

- Interviewed key personnel to obtain an understanding of grant-related internal controls
- Examined the grant files, the grant agreement, and applicable policies and procedures
- Reviewed records for the land acquisition to determine if costs were allowable, grant related, incurred within the grant period, and supported
- Conducted a site visit to verify the property's existence

The audit results are based on review of documentation, other information made available to us, and interviews with staff directly responsible for administering bond funds. Audit procedures were completed during May and June 2010. In addition, audit procedures evaluated compliance with applicable laws, regulations, and grant requirements through April 30, 2010. As bond grant funds were used to acquire real property to hold as open space with public access, the City will have ongoing maintenance and property security requirements.

This audit was conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our observations and recommendations based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our observations and recommendations.

RESULTS

Based on the audit procedures performed, the City complied with applicable laws, regulations, and grant requirements and no findings or questioned costs are reported. The Schedule of Claimed, Audited, and Questioned Amounts is presented in Table 1.

Table 1: Schedule of Claimed, Audited, and Questioned Amounts

Grant Agreement NP-0631 April 24, 2006 through June 30, 2010			
Category	**Claimed**	**Audited**	**Questioned**
Land Acquisition	$500,000	$500,000	$ 0

STATE OF CALIFORNIA-THE NATURAL RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, *Governor*

SANTA MONICA MOUNTAINS CONSERVANCY
RAMIREZ CANYON PARK
5750 RAMIREZ CANYON ROAD
MALIBU, CALIFORNIA 90265
PHONE (310) 589-3200
FAX (310) 589-3207
WWW.SMMC.CA.GOV

November 10, 2010

Ana J. Matosantos
Director of Finance
915 "L" Street
Sacramento, California 95814

Mount Clef Property Acquisition Audit, Grant Agreement NP-0631
Santa Monica Mountains Conservancy

Dear Director Matosantos:

We are responding directly to you because of a significant failure on the part of the Office of State Audits and Evaluations of your Department to follow the procedures of the Comptroller General of the United States, as promulgated in *Government Auditing Standards*, August 2010 [available at http://www.gao.gov/new.items/d10853g.pdf] with respect to the publication of this audit without an opportunity for comment or response by the responsible agency, *i.e.,* the Santa Monica Mountains Conservancy, and the failure, because we were not offered an opportunity to comment, to publish the agency's side of the story.

Section 5.32 of *Government Auditing Standards* requires "reporting views of responsible officials."

The failure to afford the Santa Monica Mountains Conservancy the opportunity to comment and respond to what OASE called "a significant control weakness" constitutes a violation of *Government Auditing Standards* and exposes the Department of Finance to the opprobrium of those know and understand government land acquisition policies and procedures, something that could have been avoided had OASE followed the appropriate auditing standards as established by the Comptroller General.

To be clear, the OASE said that it found 'no audit findings or issues" with this grant from the Santa Monica Mountains Conservancy to the city of Thousand Oaks for acquisition of the Mount Clef Ridge open space project.

Yet, OASE went on to gratuitously opine that the Santa Monica Mountains Conservancy (SMMC) should have retained a "security interest in the real property" in order to protect bond funds against the city selling-off the property for a non-park use.

OASE auditors, not being real estate professionals, and not seeking comment from the Conservancy staff who are, suggest a procedure wholly inconsistent with the nature of the grant. A security interest in property vouchsafes the payment of the fee to the grantor of title. Since a fee simple acquisition is required without mortgage or deed of trust, *there is no residual security interest* that can be placed on the property by the *grantee.* It is embarrassing to have to say this to the California Department of Finance, but your staff should take on-line courses offered by the Department of Real Estate or third-party vendors before you lecture the Santa Monica Mountains Conservancy on real estate practice.

What OASE wants to assure, no less than the SMMC does, is protection against miss-use of the property, or sale thereof, once the acquisition has been completed and the city of Thousand Oaks has the title.

Had OASE consulted with us, and allowed us to comment, your auditors would have found that the SMMC's grant agreement fully protects the State and the Bond Funds against potential conversion by the city of Thousand Oaks.

This is a core concern of the Conservancy, and in keeping with the practice of the standard grant agreement language promulgated by the California Natural Resources Agency, the State and its bond funds are fully protected, *viz,*

- Paragraph G (4) provides for the right of the SMMC to sue in specific performance for the provisions of the grant agreement.

- Paragraph J (2) provides that: "Grantee shall use the property for the purposes for which the Grant was made <u>and shall make no other use or sale or other disposition of the property</u>, except as consistent with the [Bond] Act and authorized by the State." [Emphasis added.]

It is a misconception that there is some kind of "automatic" reversion that can be placed on property, even assuming that the grantor (original property owner) would place such restriction on behalf of the State. California law does not allow this, and this is just one

more reason why auditors should talk to and consult with professionals who know their business. See California Civil Code Section 885.020.

The standard grant agreement language, per the California Natural Resources Agency grant agreement template, as quoted above, and incorporated in Grant Agreement No. NP-0631, fully protects the State, the Santa Monica Mountains Conservancy, and the Bond Funds issued pursuant to Proposition 84.

We request, nay demand, that the Office of State Audits and Evaluations within your Department include this response letter as a part of any posting on the World Wide Web, and any submissions to, or availability of, such report on Grant NP-0631 to any persons whatsoever. Failure to do so will constitute a violation of the Comptroller General's *Government Auditing Standards* .

I am happy to, and encourage, you to discuss this audit with me personally. Office 310-589-3200 x 110, or by cell: 310-985-5101.

Very truly yours,

Original signed by:

JOSEPH T. EDMISTON, FAICP, Hon. ASLA
Executive Director

Copies to: Interested Parties

DEPARTMENT OF FINANCE
ARNOLD SCHWARZENEGGER, GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

Transmitted via e-mail

November 18, 2010

Mr. Joseph T. Edmiston, Executive Director
Santa Monica Mountains Conservancy
5750 Ramirez Canyon Road
Malibu, CA 90265

Dear Mr. Edmiston:

Your correspondence dated November 10, 2010, addressed to Ana Matosantos, Director of the Department of Finance, was forwarded to my office, Office of State Audits and Evaluations, for evaluation and response.

With respect to the November 8, 2010 report regarding the City of Thousand Oaks Mount Clef Grant Audit; although the audit did not identify any audit findings requiring a response from the auditee, the City of Thousand Oaks, the audit did identify a control weakness which we believe Santa Monica Mountains Conservancy (Conservancy), as the grantor, would find of value.

The goal is to assure protection against the misuse, or potential misuse of any property purchased with taxpayer funds. While the grant agreement includes property protection provisions, several state departments require the recording of a Memorandum of Unrecorded Grant Agreement (MOUGA) as additional protection (see attached example). The MOUGA provides constructive notice to all third parties of certain reserved rights contained in the specific grant agreement. Our reference to *secure the state's interest* in the November 8, 2010 letter was in reference to the use of MOUGAs.

This issue was previously discussed with the Conservancy's Staff Counsel on two separate occasions during the current Conservancy bond audit. The Staff Counsel initially indicated that the Conservancy did not believe MOUGA's were necessary to protect the state's interest; however, during a follow-up discussion on September 2, 2010, Conservancy Staff Counsel stated the Conservancy was considering the use of MOUGA's for future grant agreements.

As requested, your letter dated November 10, 2010 will be included in the City of Thousand Oaks Grant Audit report that is posted to our website. Additionally, a copy of this letter will also be included.

If you have any questions, please contact me or Susan M. Botkin, Manager, at (916) 322-2985.

Sincerely,

Original signed by:

David Botelho, CPA
Chief, Office of State Audits and Evaluations

Attachment

cc: On following page

cc: Ms. Rorie Skei, Chief Deputy Director, Santa Monica Mountains Conservancy
Mr. Scott Mitnick, City Manager, City of Thousand Oaks
Ms. Amy Albano, City Attorney, City of Thousand Oaks
Mr. Mark Towne, Deputy Director, City of Thousand Oaks
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Mr. Patrick Kemp, Assistant Secretary, California Natural Resources Agency
Mr. Bryan Cash, Deputy Assistant Secretary, California Natural Resources Agency
Ms. Julie Alvis, Deputy Assistant Secretary, California Natural Resources Agency

17. SAMPLE MEMORANDUM OF UNRECORDED GRANT AGREEMENT

(for all RP projects; for USR acquisition projects)

Recording requested by, and)
when recorded, return to:)
State of California)
Resources Agency)
Bonds & Grants)
1416 Ninth Street, Suite 1311)
Sacramento, CA 95814)

Space above this line for Recorder's use

MEMORANDUM OF UNRECORDED GRANT AGREEMENT

This Memorandum of Unrecorded Grant Agreement (Memorandum), dated as of _____, 20____, is recorded to provide notice of an agreement between the State of California, by and through the Resources Agency ("Agency") and

_____
("Grantee").

RECITALS

- On or about _____, _____, Agency and Grantee entered into a certain Grant Agreement, Grant No. _____ ("Grant"), pursuant to which Agency granted to Grantee certain funds for the acquisition of certain real property, more particularly described in attached Exhibit A and incorporated by reference (the "Real Property").

- Under the terms of the Grant, Agency reserved certain rights with respect to the Real Property.

- Grantee desires to execute this Memorandum to provide constructive notice to all third parties of certain Agency reserved rights under the Grant.

NOTICE

- The Real Property (including any portion of it or any interest in it) may not be sold or transferred without the written approval of the State of California, acting through the Resources Agency, or its successor, provided that such approval shall not be unreasonably withheld as long as the purposes for which the Grant was awarded are maintained.

- The Grantee shall not use or allow the use of any portion of the real property for mitigation without the written permission of the State.

- The Grantee shall not use or allow the use of any portion of the real property as security for any debt.

- For additional terms and conditions of the Grant, reference should be made to the Grant Agreement, which is on file with the Resources Agency, 1416 Ninth Street, Suite 1311, Sacramento, California 95814.

GRANTEE:

By:_____