



November 9, 2012

Ms. Debra Auker, Director of Administrative Services  
City of Emeryville  
1333 Park Avenue  
Emeryville, CA 94608

Dear Ms. Auker:

Subject: Low and Moderate Income Housing Fund Due Diligence Review

Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Emeryville Successor Agency (Agency) submitted an oversight board approved Low and Moderate Income Housing Fund Due Diligence Review (DDR) to the California Department of Finance (Finance) on October 15, 2012. The purpose of the review was to determine the amount of cash and cash equivalents available for distribution to the affected taxing entities. Pursuant to HSC section 34179.6 (d), Finance has completed its review of your DDR, which may have included obtaining clarification for various items.

HSC section 34179.6 (d) authorizes Finance to adjust the DDR's stated balance of Low and Moderate Income Housing Fund (LMIHF) available for distribution to the taxing entities. Based on our review of your DDR, the following adjustments were made:

- Assets transferred in the amount of \$2,800,000. Our review indicated the cash transferred was not supported by an enforceable obligation of the former redevelopment agency (RDA). The former RDA transferred a total of \$2,800,000 in cash to the Housing Capital Fund in May 2011 for the acquisition of property at 5890 and 5900 Christie Avenue. Finance denied acquisition as an enforceable obligation in the Recognized Obligation Payment Schedules (ROPS) for the periods January through June 2012 (ROPS I) and January through June 2013 (ROPS III). Therefore, the balance was adjusted by \$2,800,000.
- Assets transferred in the amount of \$3,100,000. Our review indicates the amount was for ROPS I, Item No. 22, Owner Participation Agreement with Rockwood Christie, LLC for 64<sup>th</sup> and Christie Avenue development subsidy. The funding identified for the obligation was Bonds, not the LMIHF. Therefore, \$3,100,000 is not an allowable transfer.
- Restricted assets in the amount of \$445,387 for an Owner Participation Agreement (OPA) with Catellus Development Corporation. Our review indicates the OPA was not listed on any of the ROPS I, II, and III to be considered an enforceable obligation. Therefore, the balance was adjusted by \$445,387.

- Balances retained for enforceable obligations in the amount of \$740,135. Of the \$2,385,017 requested to be retained for future obligations, \$1,644,882 is supported by enforceable obligations payable from LMIHF on the ROPS III. However, the other obligations were not listed on either ROPS II or III. Therefore, the balance is adjusted by the difference of \$740,135 (\$2,385,017-\$1,644,882).

If you disagree with Finance's adjusted amount of LMIHF balances available for distribution to the taxing entities, you may request a Meet and Confer within five business days of the date of this letter. The Meet and Confer process and guidelines are available at Finance's website below:

[http://www.dof.ca.gov/redevelopment/meet\\_and\\_confer/](http://www.dof.ca.gov/redevelopment/meet_and_confer/)

The Agency's LMIHF balance available for distribution to the affected taxing entities is \$7,693,831 (see table below). Pursuant to HSC 34179.6 (h) (1) (B), any remittance related to unallowable transfers to a private party may also be subject to a 10 percent penalty if not remitted within 60 days.

<b>LMIHF Balances Available For Distribution To Taxing Entities</b>	
Available Balance per DDR:	\$ 608,309
Finance Adjustments	
Add:	
Disallowed transfers	\$ 5,900,000
Amount restricted not supported	445,387
Requested retained balance not supported	740,135
<b>Total LMIHF available to be distributed:</b>	<b>\$ 7,693,831</b>

Absent a Meet and Confer request, HSC section 34179.6 (f) requires successor agencies to transmit to the county auditor-controller the amount of funds identified in the above table within five working days, plus any interest those sums accumulated while in the possession of the recipient.

If funds identified for transmission are in the possession of the successor agency, and if the successor agency is operated by the city or county that created the former redevelopment agency, then failure to transmit the identified funds may result in offsets to the city's or the county's sales and use tax allocation, as well as its property tax allocation. If funds identified for transmission are in the possession of another taxing entity, that taxing entity's failure to remit those funds may result in offsets to its sales and use tax allocation or to its property tax allocation.

Failure to transmit the identified funds will also prevent the Agency from being able to receive a finding of completion from Finance. Without a finding of completion, the Agency will be unable to take advantage of the provisions detailed in HSC section 34191.4. Specifically, these provisions allow certain loan agreements between the former redevelopment agency (RDA) and the city, county, or city and county that created the RDA to be considered enforceable obligations. These provisions also allow certain bond proceeds to be used for the purposes in which they were sold and allows for the transfer of real property and interests into the Community Redevelopment Property Trust Fund once Finance approves the Agency's long-range property management plan.

Ms. Debra Auker  
November 9, 2012  
Page 3

In addition to the consequences above, willful failure to return assets that were deemed an unallowable transfer or failure to remit the funds identified above could expose certain individuals to criminal penalties under existing law.

Pursuant to HSC section 34167.5 and 34178.8, the California State Controller's Office (Controller) has the authority to claw back assets that were inappropriately transferred to the city, county, or any other public agency. Determinations outlined in this letter and Finance's Housing Assets Transfer letter dated August 31, 2012 do not in any way eliminate the Controller's authority.

Please direct inquiries to Beliz Chappuie, Supervisor or Cindie Lor, Lead Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY  
Local Government Consultant

cc: Ms. Paula Crow, Attorney, City of Emeryville  
Ms. Carol S. Orth, Division Chief, Tax Analysis County of Alameda  
California State Controller's Office