



December 15, 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**

This letter supersedes Finance's original Low and Moderate Income Housing Fund (LMIHF) Due Diligence Review (DDR) determination letter dated November 9, 2012. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Emeryville Successor Agency (Agency) submitted an oversight board approved LMIHF DDR to the California Department of Finance (Finance) on October 15, 2012. Finance issued a LMIHF DDR determination letter on November 9, 2012. Subsequently, the Agency requested a Meet and Confer session on one or more items adjusted by Finance. The Meet and Confer Session was held on December 3, 2012.

Based on a review of additional or clarifying information provided to Finance during the Meet and Confer process, Finance is revising some of the adjustments made in our previous DDR determination letter. Specifically, we are revising the following adjustments:

- Assets transferred in the amount of \$1,500,000. Our initial review disallowed a total of \$2,800,000 in transfers that was not supported by an enforceable obligation of the former redevelopment agency (RDA). The 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 the acquisition and related items as enforceable obligations on the Recognized Obligation Payment Schedules (ROPS) for the periods January through June 2012 (ROPS I) and January through June 2013 (ROPS III). According to the Agency, the transfer was an inter-fund transfer between the RDA's LMIHF fund account and Housing Capitol fund account. Of the \$2,800,000, only \$1,500,000 was used for the acquisition of the properties. Because the remaining \$1.3 million was transferred to another RDA fund, Finance is not objecting to that amount. However, as a result of the ROPS III Meet and Confer process, Finance has determined that Item Nos. 12 through 14, and 21, related to the \$1,500,000, were not enforceable obligations. Therefore, the \$1,500,000 use for the acquisition of the properties is disallowed as a transfer.
- Assets transferred in the amount of \$3,100,000. Our initial review indicated 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. According to the Agency, the funds were housing bond funds. Finance reviewed additional documentation provided by the Agency and

determined the funds used were housing bond funds. Therefore, \$3,100,000 is allowed as a transfer.

- Assets legally restricted in the amount of \$445,387. During our initial review, the Agency provided an Owner Participation Agreement (OPA) with Catellus Development Corporation. Our review indicated the OPA was not listed on any of the ROPS I, II, and III to be considered an enforceable obligation. According to the Agency, the appropriate agreement should have been the East Bay Bridge Project, Agreement to be Recorded Affecting Real Property. Per the agreement, the developer was required to make annual payments into a trust fund maintained by the Agency. The funds are restricted for providing down payment assistance for individuals seeking to purchase the housing units within the housing development. If the developer chooses to not use funds for down payment assistance, then the housing successor entity will be allowed to use the funds for other housing projects/activities. Therefore, the \$445,387 is allowed as funds restricted for use.
- Balances retained for enforceable obligations in the amount of \$617,420. Of the \$2,385,017 requested to be retained for future obligations, Finance initially allowed \$1,644,882 for ROPS III items. The Agency provided a revised DDR Attachment B8a, to identify the \$1,912,229 ROPS II items that LMIHF needed to be retained for. However, the Agency's revised schedule included the total fiscal year obligations for some ROPS II items and not the payment requested for the six month period. Therefore, Finance recalculated the allowable amount based on six-month payments. Of the total \$2,385,017 initially requested to be retained on the DDR, \$1,767,597 is allowed to be retained for fiscal year 2012-13. The remaining \$617,420 (\$2,385,017-\$1,767,597) is not allowed to be retained.

The Agency's LMIHF balance available for distribution to the affected taxing entities has been revised to \$2,725,729 (see table below).

<b>LMIHF Balances Available For Distribution To Taxing Entities</b>	
Available Balance per DDR:	\$ 608,309
Finance Adjustments	
Add:	
Disallowed transfers	\$ 1,500,000
Requested retained balance not supported	617,420
<b>Total LMIHF available to be distributed:</b>	<b>\$ 2,725,729</b>

This is Finance's final determination of the LMIHF balances available for distribution to the taxing entities. 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, the successor agency is required to take diligent efforts to recover such funds. A failure to recover and remit those funds may result in offsets to the other taxing entity's sales and use tax allocation or to its property tax allocation. If

funds identified for transmission are in the possession of a private entity, HSC 34179.6 (h) (1) (B) states that 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.

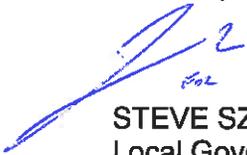
Failure to transmit the identified funds will also prevent the Agency from being able to receive a finding of completion from Finance. Without a finding of completion, the Agency will be unable to take advantage of the provisions detailed in HSC section 34191.4. Specifically, these provisions allow certain 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.

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,

A handwritten signature in blue ink, appearing to read 'Steve Szalay', is written over the typed name.

**STEVE SZALAY**  
Local Government Consultant

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