



April 6, 2013

Ms. Kelly McAdoo Morariu, Assistant City Manager
City of Hayward
777 B Street
Hayward, CA 94541

Dear Ms. Morariu:

Subject: Low and Moderate Income Housing Fund Due Diligence Review

This letter supersedes Finance's original LMIHF DDR determination letter March 1, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Hayward Successor Agency (Agency) submitted an oversight board approved Low and Moderate Income Housing Fund (LMIHF) Due Diligence Review (DDR) to the California Department of Finance (Finance) on February 5, 2013. Finance issued a LMIHF DDR determination letter on March 1, 2013. 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 March 18, 2013.

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:

- Disallowed cash transfers in the amount of \$6,740,026. Finance initially disallowed the transfer to the Housing Authority (Authority) because the amount was not supported by an enforceable obligation. The Agency contends that the Authority is a third party as stated in HSC section 34171 (d) (3) and has encumbered and expended funds under contracts with third parties. Based on a review of information and clarification provided by the Agency during the meet and confer, Finance determined the following encumbered cash held by the Authority was expended for obligations with a third party.
 - South Hayward BART Housing Loan Agreement for \$3,832,000. The loan agreement with Eden Housing dated June 14, 2011 meets the criteria of an enforceable obligation. To date, the Authority spent \$2,691,094 of the funds and is scheduled to spend the remainder by June 2013. Since the transfer of cash to the Authority resulted in an obligation with a third party, Finance is allowing the amount of \$3,832,000 transferred to the Housing Authority pursuant to the Housing Cooperative Agreement and is revising the adjustment made in the original LMIHF determination.
 - City Staffing Costs totaling \$39,079. The staff project costs associated with the South Hayward BART Housing; therefore, transfer of cash to pay for these costs are

allowed. Finance is revising the adjustment made in the original LMIHF Determination.

- o Tennyson Preservation Partner Agreement in the amount of \$300,000. The agreement between the former RDA and Tennyson Preservation Limited Partnership dated October 1, 2009 requires funding of an Agency Controlled Operating Reserve Account for the amount and is considered an enforceable obligation. To date, the Authority has expended only \$173,518 of the reserves. The Agency contends the remaining funds must be accessible to developer for maintenance projects on the property; however, there are no pending requests or set expenditure schedule. Finance has only approved funding through the January through June 2013 Recognized Obligation Payment Schedule (ROPS III) period, the Agency's fund balances could only be encumbered to the extent they have been approved through the June 30, 2013 period. Therefore, the remaining balance of \$126,482 is not allowed for retention. Finance is revising the original determination to allow for \$173,518. Since the agreement is an enforceable obligation, future requests for funding up to \$126,482 should be made on subsequent ROPS from the Redevelopment Property Tax Trust Fund.

However, Finance continues to believe some of the adjustments made to the DDR's stated balance of LMIHF available for distribution to the taxing entities is appropriate. HSC section 34179.6 (d) authorizes Finance to make these adjustments. We maintain the following adjustments related to the disallowed transfer continue to be necessary for the following reasons:

- Project Management Consultant Services for South Hayward BART Housing project in the amount of \$157,000. The agreement with John Declercq for consultant services is dated November 15, 2011. HSC section 34163 (b) prohibits a redevelopment agency from entering into a contract with any entity after June 27, 2011. Therefore, this is not an enforceable obligation and \$157,000 remains as part of the disallowed transfer.
- Legal Services Agreement in the amount of \$100,000. The Agency provided a Purchase Order for the renewal of legal services for Affordable Housing Related matters and the Green Shutter Hotel dated May 1, 2012. The DDR has referenced this as an encumbrance to the South Hayward BART Housing Loan project; however, the description of the purchase order does not reference this project. Therefore, \$100,000 remains as part of the disallowed transfer.
- Route 238 Homebuyer Loans pursuant to a Settlement Agreement in the amount of \$1,000,000. The Agency provided a Settlement Agreement in which the City of Hayward (City) and the California Department of Transportation were the defendants. The ruling was in favor of the plaintiffs which obligated the City to provide funding in the amount of \$1,000,000 to the First Time Home Buyer Program (FTHBP). The Settlement Agreement does not reference the RDA nor obligate the RDA to provide funding for the City's FTHBP. Therefore, no enforceable obligation existed and \$1,000,000 remains as a disallowed transfer.

The Agency's LMIHF balance available for distribution to the affected taxing entities has been revised to \$2,695,429 (see table below).

LMIHF Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ 1,311,947
Finance Adjustments	
Disallowed Transfer:	1,383,482
Total LMIHF available to be distributed:	\$ 2,695,429

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.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Szalay', with a long, sweeping underline.

STEVE SZALAY
Local Government Consultant

cc: Ms. Tracy Vesely, Finance Director, City of Hayward
Ms. Carol Orth, Tax Analysis Division Chief, County Auditor-Controller, County of Alameda
California State Controller's Office