



December 15, 2012

Ms. Carol Augustine, Finance Director
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025

Dear Ms. Augustine:

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 Menlo Park Successor Agency (Agency) submitted an oversight board approved LMIHF DDR to the California Department of Finance (Finance) on October 17, 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 7, 2012.

Based on a review of additional or clarifying information provided to Finance during the Meet and Confer process, Finance continues to believe 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 adjustments continue to be necessary for the following reason:

- Finance denied \$494,469 for payments made during the Recognized Obligation Payment Schedule (ROPS) period January through June 2012. The DDR stated these items were on the Initial Recognized Obligation Payment Schedule (IROPS); however the IROPS requested Redevelopment Property Tax Trust Fund (RPTTF) and not LMIHF. Of the \$494,469, the Agency only contends the retention of \$57,028 as valid expenses of the former agency that should not be allowed by the City.

Pursuant to HSC section 34177 (a) (3), only payments listed on the ROPS may be made by the Agency from the funds specified on the ROPS. However, HSC section 34177 (a) (4) allows Agencies, with prior approval of the oversight board, to pay enforceable obligations from sources other than those listed on the ROPS. The Agency was unable to provide sufficient documentation that identifies that they received prior oversight board approval to pay for enforceable obligations with sources other than those identified on the ROPS, as well as failed to provide evidence to support that the obligations were paid from LMIHF and not RPTTF as was approved on the ROPS. Therefore, Finance continues to deny the total amount of \$494,469 and must be remitted to the county for disbursement to taxing entities.

- The Agency raised another concern relating to a fund transfer error. Although, not related to the amount denied on the November 9, 2012 determination letter, Finance reviewed the documents provided. The Agency claimed that a \$19,986 County refund was erroneously deposited into the LMIHF instead of the City's General Fund. This error was not corrected prior to the submission of the LMIHF DDR and has caused the available distribution to be overstated. Finance has adjusted this amount accordingly by deducting \$19,986 from the available distribution balance as shown in the table below.

The Agency's LMIHF balance available for distribution to the affected taxing entities was revised to be \$5,565,088 (see table below).

LMIHF Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ 5,090,605
Finance Adjustments	
Add:	
Adjustment to the June 30, 2012 balance:	(19,986)
Requested retained balance not supported:	494,469
Total LMIHF available to be distributed:	\$ 5,565,088

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.

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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 September 7, 2012 do not in any way eliminate the Controller's authority.

Please direct inquiries to Zachary Stacy, Manager or Jenny DeAngelis, Lead Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Ms. Margaret Roberts, City Clerk, City of Menlo Park
Mr. Bob Adler, Controller, San Mateo County
California State Controller's Office