



January 8, 2016

Mr. Christopher J. Jicha, Senior Consultant, Kosmont Companies
City of Merced Designated Local Authority
865 South Figueroa Street, 35th Floor
Los Angeles, CA 90017

Dear Mr. Jicha:

Subject: Low and Moderate Income Housing Fund Due Diligence Review

This letter supersedes the California Department of Finance's (Finance) original Low and Moderate Income Housing Fund (LMIHF) Due Diligence Review (DDR) determination letter dated December 4, 2015. The City of Merced Designated Local Authority Successor Agency (Agency) submitted an oversight board approved LMIHF DDR to Finance on May 15, 2015. The purpose of the review was to determine the amount of cash and cash equivalents available for distribution to the affected taxing entities. Since the Agency did not meet the October 15, 2012 submittal deadline pursuant to HSC section 34179.6 (c), Finance was not bound to complete its review and make a determination by the November 9, 2012 deadline pursuant to HSC section 34179.6 (d). 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 22, 2015.

HSC section 34179.6 (d) authorizes Finance to adjust the DDR's stated balance of OFA available for distribution to the taxing entities. Based on a review of additional information and documentation provided to Finance during the Meet and Confer process, Finance has completed its review of the specific items being disputed. Specifically, the following adjustments were made:

- Disallowed Transfers in the amount of \$3,942,258. Finance continues to object to the \$3,942,258 transferred. The California State Controller (Controller) completed the Asset Transfer Review for the Agency on July 30, 2015, and noted disallowed transfers between the former redevelopment agency (RDA) and the City of Merced's (City) Public Financing and Economic Development Authority (Authority) in the amount of \$35,014,913. Of this amount, \$3,942,258 is unencumbered cash, which the Controller has ordered to be remitted to the County Auditor-Controller (CAC) for distribution to the taxing entities.

During the Meet and Confer process, the City contended that \$3,147,221 was properly paid out pursuant to enforceable obligations of the former RDA and that only \$795,037 was owed by the City, which was paid by the City to the Agency on December 22, 2015. Based on a review of the agreements and payment information provided by the City as support for the remaining \$3,147,221, Finance makes the following determinations:

- Meet and Confer Exhibit A, Item Nos. 2, 6, and 8 totaling \$2,688,500 for a Disposition and Development Agreement for the Hwy 59 Tax Credit Project entered into by the former RDA and Merced Pacific Associates on March 7, 2011. The invoice provided

was dated February 26, 2013, and a payment was recorded on May 6, 2013, totaling \$2,688,500. Per HSC section 34179.5 (c) (2), the dollar value of assets and cash transferred by the former RDA or successor agency to the city, county, or city and county that formed the former RDA between January 1, 2011 through June 30, 2012, must be evidenced by documentation of the enforceable obligation that required the transfer. HSC section 34179.5 states enforceable obligation includes any of the items listed in subdivision (d) of section 34171, contracts detailing specific work that were entered into by the former RDA prior to June 28, 2011, with a third party other than the city, county, or city and county that created the former RDA.

Based on our review, the amount transferred is related to a former RDA obligation. However, funding was not requested on the Recognized Obligation Payment Schedule (ROPS) during the January through June 2013 (ROPS III) period, which is the corresponding period for the payment made. It appears that this project was listed on as Item Nos. 32 and 68; however, no funding was requested from the LMIHF or any other source of funding. Additionally, we note that in Finance's ROPS III letters dated October 11, 2012, and December 18, 2012, Finance denied Item No. 68 and the Agency did not object to the denial during the Meet and Confer process. Therefore, the Agency did not have the authority to make this payment during the ROPS III period and Finance continues to object to the transfer of funds. Pursuant to HSC section 34177 (a) (3), only those payments listed in the ROPS may be made by the successor agency from the funds specified in the ROPS. To the extent the Agency believes the payment was an enforceable obligation, the Agency should request funding from the Redevelopment Property Tax Trust Fund for this item on a subsequent ROPS for Finance's review and approval.

- o Meet and Confer Exhibit A, Item No. 5 totaling \$14,000 for a Contract for Rehabilitation of Property at 951 West 7th Street that was entered into by and between the Authority and T.C. Construction on December 5, 2011. The City contended that the Authority, which the former RDA was a member of, was acting on behalf of the former RDA. However, as of June 27, 2011, RDAs were prohibited from creating any new obligations and engaging in any new redevelopment.

ABx1 26 requires agencies to expeditiously wind down the affairs of the dissolved RDAs and provides successor agencies with limited authority only to the extent needed to implement the wind down of RDA affairs and perform under enforceable obligations. As of February 1, 2012, the RDAs were dissolved and ceased to exist. Any attempted transfers of the former RDA's powers to a third party, in this case the Authority, were also impacted by the prohibitions and the dissolution. Since the City of Merced RDA no longer had the power to engage in any activity to create obligations as of June 27, 2011, these powers could not be transferred to a third party. Thus, any specific obligations, whether by the former RDA or a third party acting on behalf of the former RDA that did not exist as of June 27, 2011, are not enforceable obligations within the meaning of HSC section 34171 (d) (1).

As previously stated, per HSC section 34179.5 (c) (2), the dollar value of assets and cash transferred by the former RDA or successor agency to the city, county, or city and county that formed the former RDA between January 1, 2011 through June 30, 2012, must be evidenced by documentation of the enforceable obligation that required the transfer. HSC section 34179.5 states enforceable obligation includes any of the items listed in subdivision (d) of section 34171, contracts detailing specific work that were

entered into by the former RDA prior to June 28, 2011, with a third party other than the city, county, or city and county that created the former RDA. HSC section 34171 (d) (2) states enforceable obligation does not include any agreements, contracts, or arrangements between the city that created the RDA and the former RDA. The City of Merced Public Financing Authority Joint Exercise of Powers Agreement, which establishes the Authority, was entered into by the City and former RDA. Therefore, the transfer of funds to the Authority was not made pursuant to an enforceable obligation and is not permitted. As such, Finance continues to object to the transfer of funds.

- o Meet and Confer Exhibit A, Item No. 10 totaling \$444,930 for a General Construction Contract for Cooper Avenue and Hwy 59 Traffic Signal and Road Improvements that was entered into by the City and George Reed, Inc. on September 19, 2011. This item is an obligation of the City, and therefore not an enforceable obligation of the Agency. No further documentation was provided to Finance to support that the payment made was pursuant to an enforceable obligation as defined in HSC section 34171 (d) (1). As such, Finance continues to object to the transfer of funds.

For the reasons stated above, Finance continues to increase the Agency's LMIHF available balance by \$3,942,258.

The Agency's LMIHF balance available for distribution to the affected taxing entities is \$4,748,908 (see table below):

LMIHF Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ 806,650
Finance Adjustments	
Add:	
Disallowed transfers	3,942,258
Total LMIHF available to be distributed:	\$ 4,748,908

HSC section 34179.6 (f) requires successor agencies to transmit to the CAC 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 Agency's failure to recover and remit those funds may result in offsets to its sales and use tax allocation or to its property tax allocation.

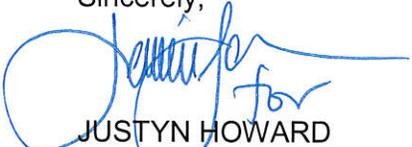
Failure to transmit the identified funds will also prevent the Agency from being able to receive a finding of completion from Finance. Without a finding of completion, the Agency will be unable to take advantage of the provisions detailed in HSC section 34191.4. Specifically, these provisions allow certain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

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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.

Please direct inquiries to Evelyn Suess, Dispute Resolution Supervisor, or Mary Halterman, Analyst, at (916) 445-3274.

Sincerely,



JUSTYN HOWARD
Program Budget Manager

cc: Mr. Michael Amabile, Chair, Merced Designated Local, City of Merced Designated Local Authority
Ms. Sylvia Sanchez, Supervising Accountant, Merced County