DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

July 22, 2013

Mr. Paul Abelson, Finance Director
City of Oakley
3231 Main Street
Oakley, CA 94561

Dear Mr. Abelson:

Subject: Low and Moderate Income Housing Fund Due Diligence Review

The City of Oakley 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 June 26, 2013. 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 is not bound to completing its review and making a determination by the November 9, 2012 deadline pursuant to HSC section 34179.6 (d). However, 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:

- Transfers totaling $666,020, to the City of Oakley (City), are not allowed.
  On January 19, 2011, the Agency transferred $415,556 in cash and $200,000 in land held for resale to the City pursuant to a cooperative agreement between the City and the Agency. Per HSC section 34171 (d) (2), agreements between the City and the Agency are not considered enforceable obligations, and pursuant to HSC section 34176 (a) (1), cash does not qualify as a housing asset. For DDR purposes, however, the land transfer in the amount of $200,000 does not affect the balance available for distribution to the affected taxing entities.

- The Agency's adjustment of $170,464 to the balance available to the taxing entities is not allowed. Cash in the amount of $50,464 transferred to the Housing Successor does not qualify as a housing asset pursuant to HSC section 34176 (a) (1). The remaining $120,000 requested for retention was an obligation pursuant to the Cooperation Agreement identified above. Per HSC section 34171 (d) (2), "enforceable obligation" does not include any agreements, contract, or arrangements between the city, county, or city and county that created the redevelopment agency and the former redevelopment agency.

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/

The Agency's LMIHF balance available for distribution to the affected taxing entities is $587,976 (see table below).

LMIHF Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	1,956
Finance Adjustments		
Add:		
Disallowed transfers	$	415,556
Disallowed Agency adjustments		170,464
Total LMIHF available to be distributed:	$	587,976

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. Upon submission of payment, please provide proof of payment to Finance within five business days.

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 Nichelle Thomas, Supervisor or Alex Watt, Lead Analyst at (916) 445-1546.

Sincerely,

for
STEVE SZALAY
Local Government Consultant

cc: Mr. Bryan Montgomery, Executive Director, City of Oakley
Mr. Bob Campbell, Auditor-Controller, Contra Costa County
Mr. Steven Mar, Bureau Chief, Local Government Audit Bureau, California State Controller's Office
California State Controller's Office