



August 23, 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

This letter supersedes Finance's original Low and Moderate Income Housing Fund (LMIHF) Due Diligence Review (DDR) determination letter dated July 22, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Oakley Successor Agency (Agency) submitted an oversight board approved LMIHF DDR to the California Department of Finance (Finance) on January 17, 2013. Finance issued a LMIHF DDR determination letter on July 22, 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 August 7, 2013.

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

- Finance originally denied a \$200,000 transfer of land held for resale to the City of Oakley (City) pursuant to a Cooperation 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 per HSC section 34176 (a) (1), cash does not qualify as a housing asset.

During the Meet and Confer process, the Agency provided a Purchase and Sale Agreement that was entered into prior to the cut-off date. Therefore, Finance no longer objects to the transfer of land held for resale in the amount of \$200,000.

- Finance originally denied the Agency's adjustment of \$170,464 (\$50,464 + \$120,000) to the balance available to the taxing entities; pursuant to HSC 34176 (a) (1), cash does not qualify as a housing asset, and per HSC section 34171 (d) (2), agreements between the City and the Agency are not considered enforceable obligations.

The Agency asserts that \$50,464 was retained by the Housing Successor to pay for services related to expenses incurred during the Recognized Obligation Payment Schedule (ROPS) for the period January through June 2012. During the Meet and Confer process, the Agency provided documentation to support the expenditure of

funds. Therefore, Finance no longer objects to the adjustment of \$50,464 identified in the DDR by Maze & Associates.

Additionally, the Agency requested the retention of \$120,000 for obligations pursuant to the same Cooperation Agreement. Per HSC section 34171 (d) (2), agreements between the Agency and sponsoring entity are not enforceable obligations. During the Meet and Confer process, the Agency stated that the request for funding was duly approved on the ROPS for the period July through December 2012, and thus, the City had already provided services in good faith. However, the Agency only expended \$50,400. Therefore, Finance will adjust the amount available for distribution to the affected taxing entities by \$69,600 (\$170,464 - \$50,464 - \$50,400).

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 adjustments continue to be necessary for the following reason:

- Finance originally denied a cash transfer in the amount of \$415,556 to the City pursuant to a Cooperation 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 per HSC section 34176 (a) (1), cash does not qualify as a housing asset.

During the Meet and Confer process, Finance discovered the amount to be denied should have been \$466,020 instead of \$415,556; the amount adjusted already included the \$50,464 identified by the Maze & Associates. The Agency stated that due to AB 1x27 and pending litigation, they should be allowed to transfer cash to the City. Per HSC section 34163 (c) (5), an Agency shall not have the authority to transfer funds out of the Low and Moderate Income Housing Fund. Therefore, Finance continues to deny this transfer, as corrected, in the amount of \$466,020.

The Agency's LMIHF balance available for distribution to the affected taxing entities has been revised to \$537,576, as detailed below:

LMIHF Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ 1,956
Finance Adjustments	
Add:	
Denied cash transfer	\$ 466,020
Disallowed Agency adjustments	\$ 69,600
Total LMIHF available to be distributed:	\$ 537,576

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

Sincerely,


STEVE SZALAY
Local Government Consultant

cc: Mr. Bryan Montgomery, Executive Director, City of Oakley
Mr. Bob Campbell, Auditor-Controller, Contra Costa County
California State Controller's Office