



December 15, 2012

Ms. Lisa Kim, Acting Economic Development Manager
City of Orange
230 East Chapman Avenue
Orange, CA 92866

Dear Ms. Kim:

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 Successor Agency to the City of Orange Redevelopment Agency (Agency) submitted an oversight board approved LMIHF DDR to the California Department of Finance (Finance) on October 15, 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 November 30, 2012.

Finance recognizes the Oversight Board disagreed with the findings stated in the DDR. However, Finance continues to believe the DDR's stated balance of LMIHF available for distribution to the taxing entities of \$19,573,156 is appropriate for the following reasons:

Finance denied the Affordable Housing Rental Loans/Serrano House Project, in the amount of \$7,145,234, as an enforceable obligation because HSC section 34163 (b) prohibits a redevelopment agency from entering into contracts with any entity after June 27, 2011. While the statement of intent to issue a loan was executed on March 9, 2011, the actual loan agreement was entered into on November 8, 2011. The Agency contends the item is an enforceable obligation because the loan commitment is a legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy as defined in HSC sections 34167 (d) (5) and 34177 (d) (1) (E).

However, HSC section 34177.3 (a) states that successor agencies shall lack the authority to, and shall not, create new enforceable obligations or begin new redevelopment work, except in compliance with an enforceable obligation that existed prior to June 28, 2011. The loan commitment is not an enforceable obligation because Paragraph 5 of the commitment letter states:

"This letter is not intended to describe all of the requirements, terms, conditions and documents necessary for the Agency loan. A Loan Agreement including the form of promissory note, deed of trust and related documents, will be prepared, and is subject to execution by Borrower prior to its consideration by the

governing body of the Agency. The final form of the Loan Agreement approved by Borrower shall be subject to the discretionary approval of the Agency..."

The loan commitment does not include all of the necessary terms and conditions of an official loan document, it requires the loan documents to be prepared at a later date, and it requires consideration by the Agency's Board after June 27, 2011. Therefore, this item is not an enforceable obligation, and the request to retain funds continues to be denied.

The Agency's LMIHF balance available for distribution to the affected taxing entities continues to be \$19,573,156, as reported on the DDR. 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 above 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 30, 2012 do not in any way eliminate the Controller's authority.

Ms. Lisa Kim
December 15, 2012
Page 3

Please direct inquiries to Nichelle Thomas, Supervisor or Wendy Griffe, Lead Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Ms. Barbara Messick, Economic Development Project Manager, City of Orange
Mr. Frank Davies, Orange County Auditor-Controller, Orange County
California State Controller's Office