



December 15, 2012

Ms. Angela Freitas, Deputy Director
Stanislaus County Planning Department
1010 10th Street, Suite 3400
Modesto, CA 95354

Dear Ms. Freitas:

Subject: Low and Moderate Income Housing Fund Due Diligence Review

This letter supersedes Finance's original LMIHF DDR determination letter dated November 9, 2012. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the Stanislaus County Successor Agency (Agency) submitted an oversight board approved Low and Moderate Income Housing Fund (LMIHF) Due Diligence Review (DDR) to the California Department of Finance (Finance) on October 26, 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 6, 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 reasons:

- The former RDA signed an agreement with the California Rural Legal Assistance (CRLA) in 1991 to set aside 25% of the tax increment distribution. Within the agreement, it states there is a requirement for the RDA to use the deposited funds on affordable housing. The Agency believes in order to abide by the agreement, the unencumbered LMIHF needs to be used for low and moderate income housing. Finance disagrees and maintains that HSC section 34177 (d) requires all unencumbered balances in the LMIHF be remitted to the county auditor controller for distribution to the taxing entities.

HSC section 34163 (a) (5) prohibits the agency from transferring funds out of the LMIHF. In addition, HSC section 34163 (b) and (c) prohibit the Agency from entering into new contracts or to amend or modify existing contracts. Therefore, by state law, the Agency cannot use the accumulated funds for the purposes outlined in the 1991 CRLA agreement.

Furthermore, obligations associated with the former RDA's previous statutory housing obligations are not enforceable obligations. Upon the transfer of the former RDA's

housing functions to the new housing entity, Health & Safety Code section 34176 requires that, "all rights, powers, duties, obligations and housing assets, ...shall be transferred" to the new housing entity. This transfer of "duties and obligations" necessarily includes the transfer of statutory obligations; to the extent any continue to be applicable. To conclude that such costs should be on-going enforceable obligations of the successor agency could require a transfer of tax increment for life – directly contrary to the wind down directive in ABx1-26/AB1484.

- The Vacant Lot in the amount of \$53,216 (acquisition cost w/ LMIHF) reported on the Housing Asset Transfer was denied by Finance in our letter dated August 31, 2012. This item is not a cash equivalent; therefore the adjustment will not affect the amount remitted to the county for disbursement to taxing entities. However this item will need to be included in the long range management plan. Two adjustments were made regarding this item; an adjustment to add in the disallowed transfer and an adjustment to recognize it as an asset other than cash or cash equivalent. The Agency did not contest to this item.

The Agency's LMIHF balance available for distribution to the affected taxing entities continues to be \$10,052,753 (see table below).

LMIHF Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ -
Finance Adjustments	
Add:	
Requested retained balance not supported:	\$ 10,052,753
Denied HAT items:	53,216
Non-cash asset adjustment:	(53,216)
Total LMIHF available to be distributed:	\$ 10,052,753

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

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Ms. Marianne Rucker, Manager, Stanislaus County
Ms. Lauren Klein, CPA, Auditor-Controller, Stanislaus County
California State Controller's Office