DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR
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March 6, 2013

Mr. Richard Warne, City Manager
Twentynine Palms Successor Agency
6136 Adobe Road
Twentynine Palms, CA 92277

Dear Mr. Warne:

Subject: Low and Moderate Income Housing Fund Due Diligence Review

The City of Twentynine Palms 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 February 8, 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:

- The request to retain funds in the amount of $2,000,000 for the Cooperation and Funding Agreement between the former redevelopment agency (RDA) and the City of Twentynine Palms (City) is denied. Per HSC section 34171 (d) (2), agreements, contracts, or arrangements between the city, county, or city and county that created the redevelopment agency and the former redevelopment agency are not considered enforceable obligations.

- The request to retain funds in the amount of $249,784 is denied. The Agency requested Redevelopment Property Tax Trust Funds for payment of these obligations, not LMIHF. Therefore, LMIHF may not be retained for this purpose at this time.

- The transfer to the City in the amount of $2,572,650 is not allowed. The transfer of bond proceeds to the City is void pursuant to HSC section 34177.3 (c) which prohibits the successor agency from transferring revenues or powers to any other public entity except pursuant to an enforceable obligation on an approved Recognized Obligation Payment Schedule. For DDR purposes, this disallowed transfer will not be considered in our determination of the amount available for distribution to the affected taxing entities.

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 $1,959,063 (see table below).

LMIHF Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	(290,721)
Finance Adjustments		
Add:		
Requested retained balance not supported		2,249,784
Total LMIHF available to be distributed:	$	1,959,063

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.

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 its sales and use tax allocation or to its property tax allocation. Pursuant to HSC 34179.6 (h) (1) (B), 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 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 29, 2012 do not in any way eliminate the Controller's authority.

Please direct inquiries to Nichelle Thomas, Supervisor or Susana Medina Jackson, Lead Analyst at (916) 445-1546.

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Mr. Ron Peck, Finance Director, City of Twentynine Palms
Ms. Vanessa Doyle, Auditor Controller Manager, San Bernardino County