



DEPARTMENT OF
FINANCE

EDMUND G. BROWN JR. ■ GOVERNOR

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REVISED

June 6, 2013

Mr. David Loya, Community Development Deputy Director
City of Arcata
736 F Street
Arcata, CA 95521

Dear Mr. Loya:

Subject: Other Funds and Accounts Due Diligence Review

This letter supersedes the California Department of Finance's (Finance) original Other Funds and Accounts (OFA) Due Diligence Review (DDR) determination letter dated March 25, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Arcata Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on January 15, 2013. The purpose of the review was to determine the amount of cash and cash equivalents available for distribution to the affected taxing entities. Finance issued an OFA DDR determination letter on March 25, 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 April 16, 2013.

Based on a review of additional information and documentation provided to Finance during the Meet and Confer process, Finance has completed its review of those specific items being disputed. Specifically, the following adjustments were made:

- Cash transferred in the amount of \$4,493,798 was not supported by an enforceable obligation. Out of the \$4,689,798 cash transferred from the former redevelopment agency (RDA) to the City of Arcata (City) during March 2011, \$196,000 is an allowable transfer and \$2,424,801 was from the 2003 Bond Proceeds. The cash transferred was intended for use on anticipated projects listed in a corresponding Public Improvement Agreement (PIA) between the City and former RDA, executed March 9, 2011. According to the Agency, most of the PIA projects did not move forward; therefore, the Agency was requesting to use cash transferred for the following projects noted in DDR, Schedule 3A:
 - Plaza Point Development Project: The DDR shows \$100,000 was transferred for this project. The Agency requested to use the \$100,000 to fund the former RDA's remaining obligation. The Agency provided that \$100,000 was disbursed during December 2011; therefore, no obligation remains for this project and the transfer of \$100,000 is permitted as it was made pursuant to an enforceable obligation.
 - Sandpiper Mobile Home Park: The Agency requested to use \$1,953,000 in cash transferred to fund the remaining obligation. Under a loan agreement executed October 1, 2010, between the City, former RDA, and developer, the former RDA

committed \$504,862 in RDA housing funds. The project was transferred to the City under the March 2011 PIA. The City, as the housing successor entity, subsequently executed two amendments to the agreement on September 7, 2011, and June 6, 2012, to commit a total of \$1,953,000 in additional RDA funds. The City was not allowed to commit additional RDA funding towards the project after June 27, 2011. Therefore, \$1,953,000 in cash transferred is not allowed as a transfer for this project.

For any amounts that remain outstanding from the original loan agreement dated October 1, 2010, the Agency may list the item for review by Finance on a Recognized Obligation Payment Schedule to be funded from the Redevelopment Property Tax Trust Fund.

- Mad River Parkway Business Center: The Agency requested to use \$96,000 in cash transferred to fund the remaining obligation. The project was listed on the March 2011 PIA to be funded with RDA project funds. The City's contract with the third party was executed prior to June 27, 2011. Therefore, \$96,000 in cash transferred is allowed to be used for this project.
- In addition to the projects noted in the DDR above, the Agency provided additional City contracts for the Happy Valley Master Plan, Little Lakes Master Plan, Downtown Sidewalks, and Somao Boulevard Streetscape projects in which the Agency contended were allowable uses of the cash transferred. Although the four projects were listed in the PIA, the contract terms either ended prior to the execution of the PIA or were executed after June 27, 2011. Therefore, the contracts provided for the four projects are not enforceable obligations.

For the amounts noted above not permitted as transfers, HSC section 34179.5 (c) (2) states the dollar value of assets and cash transferred by the former redevelopment agency or successor agency to the city, county, or city and county that formed the former RDA between January 1, 2011 through June 30, 2012 must be evidenced by documentation of the enforceable obligation that required the transfer. HSC section 34179.5 states "enforceable obligation" includes any of the items listed in subdivision (d) of section 34171, contracts detailing specific work that were entered into by the former redevelopment agency prior to June 28, 2011 with a third party other than the city, county, or city and county that created the former RDA, and indebtedness obligations as defined in subdivision (e) of Section 34171. Therefore, the transfer was not made pursuant to an enforceable obligation and is not permitted. As such, the OFA balance available will be increased by \$2,068,997 (\$4,689,798 - \$196,000 - \$2,424,801) and restricted balances will be increased by \$2,424,801.

The Agency did not object to the following adjustments made by Finance during the Meet and Confer process. HSC section 34179.6 (d) authorizes Finance to make adjustments. We maintain that the following adjustments are appropriate:

- Balances retained for fiscal year 2012-13 administrative costs in the amount of \$57,212. The Agency requested to retain \$114,422 for administrative costs. According to the DDR, the Agency estimated \$9,535 per month in administrative costs for the fiscal year. However, the administrative allowance for the period of January 1, 2013 through June 30, 2013 was part of the January 2013 Redevelopment Property Tax Trust Fund distribution. Therefore, \$57,210 (\$9,535 x 6) for the period June 1, 2012 to December

31, 2012 retention is allowed. The OFA balance available will be increased for the difference of \$57,212 (\$114,422 - \$57,210).

- Finance identified invalid transfers to the City during March 2011, consisting of capital assets valued at \$1,320,297 and an Arcata Theatre note receivable of \$294,226. Because land and receivables are not considered cash or cash-equivalent assets, Finance made no adjustment to the available balance to the affected taxing entities. However, the Agency is required to reverse the improper transfer of assets and recover the assets from the City.

The Agency's OFA balance available for distribution to the affected taxing entities is \$2,126,209 (see table below).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ -
Finance Adjustments	
Add:	
Disallowed cash transfers:	\$ 2,068,997
Requested retained balance not supported:	57,212
Total OFA available to be distributed:	\$ 2,126,209

This is Finance's final determination of the OFA 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. Upon submission of payment, it is requested you 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.

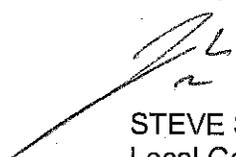
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In addition to the consequences above, willful failure to return assets that were deemed an unallowable transfer or failure to remit the funds identified above could expose certain individuals to criminal penalties under existing law.

Pursuant to HSC sections 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 do not in any way eliminate the Controller's authority.

Please direct inquiries to Evelyn Suess, Supervisor or Mary Halterman, Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Ms. Janet Luzzi, Finance Director, City of Arcata
Mr. Shane Brinton, Successor Agency Chair, Successor Agency
Mr. Mark Wheatley, Oversight Board Chair, Oversight Board
Ms. Nancy Diamond, Attorney, Law Offices of Nancy Diamond
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California State Controller's Office