



April 20, 2013

Ms. Tori Hannah, Finance Director
City of Capitola
420 Capitola Avenue
Capitola, CA 95010

Dear Ms. Hannah:

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 15, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Capitola Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on January 10, 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 15, 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 3, 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:

- Transfers in the amount of \$47,895. Our review indicates that \$47,895 was transferred to the City of Capitola (City) on April 22, 2011. The Agency claims this was an annual interest payment for monies the City loaned the former redevelopment agency (RDA) between 1997 and 2001 pursuant to an agreement between the City and the former on RDA October 1981. However, per HSC section 34179.5 (c) (2), 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.

Per HSC section 34171 (d) (2), loan agreements entered into between the RDA and the city, county, or city and county that created it, within two years of the date of creation of the RDA, may be deemed to be enforceable obligations. The loan agreement was entered into within the first two years of the date of creation; however, the agreement

provided to Finance was unsigned and the various advances or loans were made from 1997 through 2001, which is after the first two years of creation. Therefore, the transfer was not made pursuant to an enforceable obligation and is not permitted. The OFA balance available for distribution will be increased by \$47,895.

The Agency's OFA balance available for distribution to the affected taxing entities is \$137,431 (see table on the next page).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ 89,536
Finance Adjustments	
Add:	
Disallowed transfers:	\$ 47,895
Total OFA available to be distributed:	\$ 137,431

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.

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.

Ms. Tori Hannah
April 20, 2013
Page 3

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

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Ms. Lonnie Wagner, Accountant II, City of Capitola
Ms. Mary Jo Walker, Auditor-Controller, County of Santa Cruz
Ms. Marianne Ellis, Property Tax Accounting Manager, County of Santa Cruz
California State Controller's Office