



February 27, 2014

Mr. Christopher J Jicha, Kosmont Companies Senior Consultant
City of Los Banos Designated Local Authority
865 South Figueroa Street, 35th Floor
Los Angeles, CA 90017

Dear Mr. Jicha:

Subject: Other Funds and Accounts Due Diligence Review

The Los Banos Designated Local Authority (Authority) submitted an oversight board approved Other Funds and Accounts (OFA) Due Diligence Review (DDR) to the California Department of Finance (Finance) on December 13, 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 January 15, 2013 submittal deadline pursuant to HSC section 34179.6 (c), Finance is not bound to completing its review and making a determination by the April 1, 2013 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 OFA available for distribution to the taxing entities. Based on our review of your DDR, the following adjustments were made:

- Our review noted the total amount of assets held by the Authority included assets that belong to the Low to Moderate Income Housing Fund (LMIHF) which resulted in the following adjustments to the OFA DDR balance:
 - The Authority included \$2,796,049 in loans receivable, land, and land improvements. These assets were reported in the Authority's LMIHF DDR; therefore, should not be included in OFA balances. Because loans receivable, land, and improvements are not considered cash or a cash-equivalent assets, Finance has made no adjustment to the available balance for distribution to the affecting taxing entities.
 - The Authority included \$1,124,645 in cash and investments that were identified as LMIHF assets according to the City of Los Banos' 2011-12 fiscal year Comprehensive Annual Financial Report. Therefore, the OFA balance has been reduced by \$1,124,645. To offset this adjustment, the LMIHF DDR balances were increased by the same amount.

- The Authority requested to retain cash balances in the amount of \$2,398,650 beyond fiscal year 2012-13. Based on our review, the Authority is permitted to retain \$373,322 due to the following:
 - The balance due to the State Controller's Office in amount of \$33,668. Although this audit is required by HSC section 34167.5, the cost was not listed on a Recognized Obligation Payment Schedule (ROPS) for approval to be considered an enforceable obligation. The Authority can request funding on a future ROPS.
 - The balance due Supplemental Education Revenue Augmentation Fund (SERAF) in the amount of \$1,360,207. Although repayment of these loans may begin during the July through December 2014 ROPS period, payments must be made based on a specific formula described in HSC section 34191.4 (b) (2) (A). The Authority can request funding for these payments on future ROPS.
 - The amount of \$422,749 requested to be retained for the ROPS period of June through December 2013 (ROPS 13-14A) shortfall. Our review noted that the Merced County Auditor Controller (CAC) distributed \$915,806 when the Authority was authorized to receive \$1,322,796 in Redevelopment Property Tax Trust Fund (RPTTF) for its debt service during the ROPS 13-14A period. The shortfall amount is computed to be \$406,990 (\$915,806 - \$1,322,796). Therefore, Finance is increasing the amount to be remitted by \$15,759 (\$422,749 - 406,990) the difference between the Authority's actual debt service shortfall and the amount requested to be retained by the Authority.
 - The amount of \$615,694 requested to be retained for the ROPS period of January through June 2014 (ROPS 13-14B) shortfall. Our review noted that the Merced CAC distributed \$1,261,721 in RPTTF to the Authority for the ROPS 13-14B period which was the amount authorized by Finance. Since the Authority received its full distribution for the ROPS 13-14B, it is not able to retain any balances for a shortfall in this period.

Therefore, the he balance to be remitted to the county is increased by a total of \$2,025,328 ($\$33,668 + 1,360,207 + 15,759 + 615,694$) as described above.

- Balances retained to satisfy the fiscal year 2012-13 obligations in the amount of \$1,073,626. Based on our review, the Authority may retain \$660,996 for unpaid ROPS obligations. Therefore, Finance adjusted the OFA balance available by \$412,630 ($\$1,073,626 - \$660,996$) due to the following:
 - The Authority provided a list of its unpaid obligations for the January through June 2012 (ROPS I) period. However, we noted that several of the items were either denied, unlisted, or significantly higher than the amount authorized by Finance on the ROPS I schedule. These items as listed below total to \$171,799.
 - L&L District Reimbursement, City of Los Banos in the amount of \$85,724
 - AUTHORITY Legal Counsel, Leibold, McClendon, & Mann in the amount of \$30,000
 - Pacheco Oil Site Cleanup, Provost & Prichard in the amount of \$15,000
 - Audit, Maze & Associates in the amount of \$7,830
 - Weed Abatement, City of Los Banos in the amount of \$1,728
 - Weed Abatement, City of Los Banos in the amount of \$1,517

- No obligation listed, City of Los Banos & others and needed in the amount of \$30,000
- Furthermore the Authority requested to retain \$126,604 for enforceable obligations funded with RPTTF during the July through December 2012 (ROPS II) period and \$114,227 during the January through June 2013 (ROPS III) period. Finance approved ROPS II on October 15, 2012 and ROPS III on December 18, 2012. The CAC held the RPTTF distributions on behalf of the Authority and the RPTTF was not distributed prior to June 30, 2012. Since these amounts were not part of the beginning asset balance, the Authority may not retain the total requested amounts for ROPS II and III of \$240,831(\$126,604 + \$114,227).

If you disagree with Finance’s adjusted amount of OFA 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 OFA balance available for distribution to the affected taxing entities is \$2,791,984 (see table below).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ 1,478,671
Finance Adjustments	
Less:	
LMIHF cash	(1,124,645)
Add:	
Unallowed balances retained beyond fiscal year 2012-13	2,025,328
Unallowed balances retained for fiscal year 2012-13 obligations	412,630
Total OFA available to be distributed:	\$ 2,791,984

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. Upon submission of payment, please 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 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 do not in any way eliminate the Controller's authority.

Please direct inquiries to Beliz Chappuie, Supervisor or Todd Vermillion, Lead Analyst at (916) 445-1546.

Sincerely,



JUSTYN HOWARD
Assistant Program Budget Manager

cc: Mr. Michael Amabile, Chair, Los Banos Designated Local Authority
Ms. Sylvia Sanchez, Supervising Accountant, Merced County
California State Controller's Office