

April 4, 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

This letter supersedes the California Department of Finance's (Finance) original Other Funds and Accounts (OFA) Due Diligence Review (DDR) determination letter dated February 27, 2014. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the Los Banos Designated Local Authority (Authority) as successor agency to the former City of Los Banos Redevelopment Agency submitted an oversight board approved OFA DDR to 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 was not bound to completing its review and making a determination by the April 1, 2013 deadline pursuant to HSC section 34179.6 (d). Finance issued an OFA DDR determination letter on February 27, 2014. Subsequently, the Authority requested a Meet and Confer session on one or more items adjusted by Finance. The Meet and Confer session was held on March 19, 2014.

Based on a review of additional information and documentation provided to Finance during the Meet and Confer process, Finance has determined the following adjustments are necessary:

- The beginning OFA balance as reported by the Authority should be reduced by \$924,479. This amount represents the anticipated Redevelopment Property Tax Trust Fund (RPTTF) distribution for the Recognized Obligation Payment Schedule (ROPS) for the July through December 2012 (ROPS II) period. During the meet and confer process, the Authority provided accounting records and additional documentation supporting that this amount was included in the beginning balance although the funds were not actually received until November 20, 2013 and should not be included in the beginning balance. Therefore, Finance will reduce the beginning balance by \$924,479.
- The Authority requested to retain an additional \$367,669 for the January through June 2013 ROPS (ROPS III) RPTTF shortfall; however, the Authority will only be permitted to retain \$289,369. During the ROPS III period, the County of Merced acted as the fiscal agent for the former redevelopment agency paying expenses as invoices were received. This included Tier II pass-through amounts generally paid from residuals available after the RPTTF distribution to successor agencies. Our review indicates that the Authority was approved to receive RPTTF totaling \$1,413,734 for use in the ROPS III period;

however, because the Tier II pass-through amounts were paid first, only \$1,046,065 was available for distribution and thus, the Authority appeared to have experienced a shortfall of \$367,669 (\$1,413,734 - \$1,046,065) during the period. However, based on additional review of the January through June 2014 ROPS (ROPS 13-14B) prior period adjustment page, the Authority only reported expending \$1,335,434 during the ROPS III period. Therefore, the Authority will only be permitted to retain the difference of the actual amount expended on approved enforceable obligations and the amount distributed for the ROPS III period or \$289,369 (\$1,335,434 - \$1,046,065) to satisfy the actual funding shortfall.

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:

- 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 the 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 a 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, as previously discussed, the OFA balance to be remitted is increased by \$2,025,328 (\$33,668 + \$1,360,207 + \$15,759 + \$615,694),.

- 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 ROPS II period and \$114,227 during the 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).

The Authority's OFA balance available for distribution to the affected taxing entities is \$1,578,136 (see table on following page).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ 1,478,671
Finance Adjustments	
Less:	
Reduction to beginning balance	(924,479)
Unallowed balances retained for fiscal year 2012-13 obligations	(289,369)
LMIHF cash	(1,124,645)
Add:	
Unallowed balances retained beyond fiscal year 2012-12	2,025,328
Unallowed balances retained for fiscal year 2012-13 obligations	412,630
Total OFA available to be distributed:	\$ 1,578,136

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 section 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 Authority from being able to receive a finding of completion from Finance. Without a finding of completion, the Authority 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 Authority'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.

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

Sincerely,



JUSTYN HOWARD
Assistant Program Budget Manager

cc: Mr. Michael Amabile, Chair, Los Banos Designated Local Authority
Ms. Kim Tomas, Oversight Board Member and Deputy City Treasurer, City of Los Banos,
Ms. Joy Otsuki, Counsel to the Los Banos Designated Local Authority, Leibold McClendon & Mann
Mr. Brent Kuhn, Financial Consultant to the Los Banos Designated Local Authority, Vavrinek, Trine & Day,
Ms. Sonya Williams, Finance Director, City of Los Banos
Ms. Sylvia Sanchez, Supervising Accountant, Merced County California State Controller's Office