



May 4, 2013

Ms. Marti Noel, Redevelopment & Housing Assistant Director
Monterey County
168 West Alisal Street, 3rd Floor
Salinas, CA 93901

Dear Ms. Noel:

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 28, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the Monterey County 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 28, 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 17, 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:

- The request to retain balances for payment of delinquent tax increment revenues to the Monterey County Office of Education in the amount of \$500,000 is not allowed. During the Meet and Confer process, the Agency stated that this is the estimate for the expected settlement of claims filed against the former Redevelopment Agency (RDA), not for current pass-through payments. Once a settlement agreement is entered by a competent court of law the item would then be an enforceable obligation pursuant to HSC section 34717 (d) (1) (D) and may be placed on a Recognized Obligation Payment Schedule (ROPS) for payment from the Redevelopment Property Tax Trust Fund (RPTTF). Therefore, the OFA balance available will be increased by \$500,000.
- The Agency requested to retain \$4,156,273 for fiscal year 2012-13 enforceable obligations. Based on further review during the Meet and Confer process, the Agency may retain \$1,353,260 for approved enforceable obligations and the OFA balance will be increased by \$2,803,013 (\$4,156,273 - \$1,353,260), as further discussed below.

For the July through December 2012 Recognized Obligation Payment Schedule (ROPS II) period, Finance approved and the County Auditor Controller (CAC) distributed \$1,341,160 from the RPTTF. On the July through December 2013 ROPS (ROPS 13-14A) form, the Agency reported actual expenditures that were less than the RPTTF

received. Additionally, the Agency reported \$12,100 in expenditures from "Other" funds for Item 6 on Page 3 of ROPS II, which was not denied by Finance. Therefore, sufficient RPTTF was received to cover the expenditures during the ROPS II period and the Agency may retain \$1,353,260 (\$1,341,160 + \$12,100) for the ROPS II period. To the extent excess RPTTF was provided during the ROPS II period, the CAC may make an adjustment to the ROPS 13-14A distribution pursuant to HSC section 34186 (a).

For the January through June 2013 ROPS (ROPS III) period, Finance approved and the CAC distributed \$1,553,713 from the RPTTF. The CAC did not make any adjustments for the January through June 2012 ROPS (ROPS I) period on the January 2, 2013 ROPS III distribution pursuant to HSC section 34186 (a). As such, the Agency received sufficient funds from the RPTTF to cover all of the approved expenditures in the ROPS III period and it is unnecessary for the Agency to retain current OFA balances for obligations that have already been funded through a separate process.

Should deficits occur in the future, HSC provides successor agencies with various methods to address short term cash flow issues. These may include requesting a loan from the city pursuant to HSC section 34173 (h), requesting the accumulation of reserves on the ROPS when a future balloon or uneven payment is expected pursuant to HSC section 34177 (d) (1) (A), or subordinating pass-through payments pursuant to HSC section 34183 (b). The Agency should seek counsel from their oversight board to determine the solution most appropriate for their situation if a deficiency were to occur.

- The request to restrict assets as non-cash/cash equivalents has been decreased by \$619,400, as further discussed below.
 - Advances from the County of Monterey totaling \$387,187 are not allowed. HSC section 34179.5 states "enforceable obligation" includes any of the items listed in subdivision (d) of section 34171. HSC section 34171 (d) (2) states "enforceable obligation" does not include any agreements, contracts, or arrangements between the city that created the RDA and the former RDA. These loans were issued after the first two years of the RDA's creation. Therefore, the transfers would not be pursuant to an enforceable obligation and are not permitted. The OFA balance available will be increased by \$387,187.
 - During our review, and based on discussions with Agency staff, it appears the Japanese School Park Synthetic Turf Bridge Loan note receivable in the amount of \$232,213 was no longer outstanding as of June 30, 2012. The Agency did not object to this adjustment during the Meet and Confer process; therefore, the OFA balance available will be increased by \$232,213.

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

- Pajaro Fund/Kent's Court properties in the amount of \$601,661 as land held by the Agency for resale. These properties were transferred to the Housing Successor on the Housing Asset Transfer Form (HAT) as of February 1, 2012; therefore, these assets are no longer the responsibility of the Agency. These non-cash or cash equivalent assets are included in the DDR erroneously, but will not affect the amount available for distribution to the affected taxing entities

The Agency's OFA balance available for distribution to the affected taxing entities is \$13,175,036 (see table below).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ 9,252,623
Finance Adjustments	
Add:	
Non cash or cash equivalent balance not supported	\$ 619,400
Requested retained balance not supported	3,303,013
Total OFA available to be distributed:	\$ 13,175,036

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. Marti Noel
May 4, 2013
Page 4

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

Sincerely,



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Local Government Consultant

cc: Ms. Bertha Calderon, Redevelopment & Housing Project Analyst, Monterey County
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California State Controller's Office