DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR

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September 10, 2013

Mr. Paul Abelson, Finance Director
City of Oakley
3231 Main Street
Oakley, CA 94561

Dear Mr. Abelson:

Subject: Other Funds and Accounts Due Diligence Review

The City of Oakley Successor Agency (Agency) submitted an oversight board approved Other Funds and Accounts (OFA) Due Diligence Review (DDR) to the California Department of Finance (Finance) on June 26, 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:

- A commercial parcel, identified as APN 037-132-038, transferred to the City of Oakley (City), is not allowed. The City originally transferred the parcel to the former redevelopment agency (RDA) in 2005 for development. Because the RDA was unable to develop the property prior to dissolution, it was returned to the City on May 8, 2012. However, Finance was unable to identify an enforceable obligation which stated the property must be returned to the City if left undeveloped.

  Additionally, Finance noted the Agency transferred land to the East Contra Costa Fire Protection District (District). Although the transfer to the District would qualify as a transfer for governmental purpose, the Agency should consider memorializing the transfer through the oversight board resolution process.

  For DDR purposes, however, the value of these properties will not be considered when determining the amount available for distribution to the affected taxing entities. The Agency should reverse the improper transfers, recover the assets from the City and District, and include the properties in the Long Range Property Management Plan to be submitted to Finance pursuant to HSC section 34191.5.

- The request to retain balances that are legally restricted for the funding of enforceable obligations or balances needed to satisfy Recognized Obligation Payment Schedule (ROPS) obligations for the 2012-13 fiscal year has been adjusted by $381,290, from $451,290 to $70,000.

  The Agency was approved for $1,382,745 in Redevelopment Property Tax Trust Funds and $30,000 in Other Funds for the period July through December 2012, totaling $1,412,745. Because the Agency already identified $1,372,745 for debt service payments as legally restricted assets, Finance will allow the restriction of $40,000 ($1,412,745 - $1,372,745) in order to fully fund debt service payments. For the January through June 2013 ROPS period, the Agency was approved for $30,000, funded by Other Funds. The amount approved for retention, therefore, is $70,000.

  The Agency has not adequately proven there will be insufficient property tax revenues to pay for the remaining obligations. HSC section 34179.5 (c) (5) (D) states that a successor agency shall provide a listing of all approved enforceable obligations that includes a projection of annual spending requirements to satisfy each obligation and a projection of annual revenues available to fund those requirements. If a DDR review finds that future revenues together with dedicated or restricted balances are insufficient to fund future obligations and thus retention of current balances is required, it shall identify the amount of current balances necessary for retention. The review shall also detail the projected property tax revenues and other general purpose revenues to be received by the successor agency, together with both the amount and timing of the bond debt service payments of the successor agency, for the period in which the oversight board anticipates the successor agency will have insufficient property tax revenue to pay the specified obligations. It is not evident the thorough analysis required by HSC section 34179.5 (c) (5) (D) was conducted. Further, it is not evident that future property tax revenue will be insufficient or that there is an immediate need to retain these balances.

  Should a deficit 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), 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.

Additionally, the Agency adjusted the final amount to be remitted to the taxing entities by $861,008 for various items on the Agency's ROPS for the period July through December 2012. These items were denied by Finance in our letter dated May 24, 2012 because they were obligations of the City, and not the former RDA. Finance continues to deny these items as enforceable obligations, therefore, the request to retain balances to fund those items is not allowed.

Finally, Finance notes that the City, and not the Agency, executed the Fifth Amendment to the Lease Agreement with James D'Amico and Delta Black Bear Diner. Although the City may have been acting as the Agency, this leased property should be included in the Long Range Property Management Plan to be submitted to Finance pursuant to HSC section 34191.5.

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 $1,020,026 (see table below):

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	(222,272)
Finance Adjustments		
Add:		
Requested retained balances not supported		381,290
Disallowed Agency adjustment		861,008
Total OFA available to be distributed:	$	1,020,026

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 Nichelle Thomas, Supervisor or Alex Watt, Lead Analyst at (916) 445-1546.

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Mr. Bryan Montgomery, Executive Director, City of Oakley
Mr. Bob Campbell, Auditor-Controller, Contra Costa County
Mr. Steve Mar, Bureau Chief, Local Government Audit Bureau, California State Controller's Office
California State Controller's Office