



August 23, 2013

Mr. Richard Loomis, Finance Director
City of Pinole
2131 Pear Street
Pinole, CA 94564

Dear Mr. Loomis:

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 July 18, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Pinole Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on May 3, 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 complete its review and make a determination by the April 1, 2013 deadline pursuant to HSC section 34179.6 (d). Finance issued an OFA DDR determination letter on July 18, 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 August 6, 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:

- Finance previously determined transfers totaling \$24,514,621 to the City of Pinole (City) are not permitted. This amount represents the book value of land and improvements totaling \$22,436,257 as well as net gain of \$2,078,364 on transferred properties that was subsequently sold by the City. In Finance's July 18, 2013 letter, the cash portion of the transfers totaling \$2,078,364, plus interest earned, was ordered returned to the Agency and remitted to the County Auditor Controller (CAC) for distribution to the affected taxing entities. Finance also determined that properties totaling \$22,436,257 are to be returned to the Agency and disposed of through the Long-Range Property Management Plan (LRPMP).

Based on further review during the Meet and Confer process, Finance determined the property transfers actually total \$23,951,094. Of this amount, \$9,500,563 remains as non-cash assets and should be returned to the Agency. For DDR purposes, these remaining property transfers would not affect the balance available for distribution to the affected taxing entities. However, the OFA balance for remittance will be increased by the remaining \$14,450,531. This amount represents available cash proceeds from the

sale of properties in the amount of \$1,354,000 and \$13,096,531 as further discussed below.

Per the California State Controller's Office (Controller) December 12, 2012 Asset Transfer Review Report (report), the transfer of these assets to the City was not permitted and the Controller ordered their immediate return. However, three of the transferred properties have since been sold to third parties and are not available for return to the Agency. The properties would have retained their book value for DDR purposes, if the Agency had not transferred the properties. Additionally, because the properties have been sold, they cannot be returned to the Agency for disposition as per HSC section 34191.4. Therefore, the OFA balance available to be remitted to the affected taxing entities is increased as a result of the following transactions:

- o 2401 San Pablo Avenue Mixed Use property – This property includes low income housing and commercial use property with a book value of \$2,189,124 that was transferred to the City in February 2012 with a value of \$835,124. The property was subsequently sold by the City at a loss for \$1,561,460. The City then transferred \$835,124 of the sale proceeds back to the Agency. This resulted in a \$726,336 gain by the City and a \$1,354,000 loss to the Agency. Per the Controller's report, the amount transferred back to the Agency was incorrectly included on the asset transfer form as \$563,527. As such, the Controller reduced the total land and improvements by \$271,597 to correct the error. Therefore, Finance has reduced the non-cash assets book value by \$271,597 and OFA balance available for distribution will be increased by \$1,354,000 ($\$2,189,124 - \$835,124$), which reflects the book value of the property less the cash received by the Agency from the sale.
- o Pinole Vista and Pinole Valley Shopping Centers – Per the Controller's report, these properties were transferred to the City in February 2011 with a combined book value of \$10,746,570. The Controller's report also concluded that the transfers were unallowable and ordered the return of the properties to the Agency. However, the City sold both properties to a third party between May and June of 2012 for a total of \$13,096,531 ($\$12,830,531 + \$266,000$), which equals the sale price of the property net of sale costs plus ground lease payments made by the tenant of Pinole Vista Shopping Center. Therefore, Finance has reduced the non-cash assets total by the combined book value of the properties in the amount of \$10,746,570 and increased the OFA balance available for distribution by \$13,096,531 or the book value of the properties, and gains on the sale, plus the lease payments not realized due to the transfer.

The Agency claims all three transfers are valid and should be permitted as they are the subject of a July 5, 2011 Judgment of Validation (Judgment). However, as stated in the Controller's report, the Judgment does not override the provisions of ABx1 26 and AB 1484, which prohibit the transfers of properties to the City. Specifically, 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. 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. Therefore, the transfers of these properties were not made pursuant to enforceable obligations and are not permitted. The Agency did not provide any other information to demonstrate that the transfers of the properties were made pursuant to an enforceable obligation.

- Legally restricted assets totaling \$5,084,417 was previously decreased by \$765,614. Bond documents for the 1999, 2003A, Second Subordinate 2004A, and Third Subordinate 2004A Tax Allocation Bonds indicate a reserve requirement amount totaling \$4,318,803. However, reserved funds, as documented by US Bank statements, total \$5,084,417. The Agency claims these funds are needed to satisfy future bond debt service payments. Finance continues to believe this adjustment is appropriate; the Agency may not retain those funds for legally restricted purposes. However, Finance is allowing the Agency to retain an additional \$623,856 to satisfy enforceable obligation for fiscal year 2012-13 per HSC 34179.5 (c) (5) (E). Accordingly, the OFA balance available for distribution will be increased by \$141,758 (\$765,614 - \$623,856) for the remaining balances not supported.
 - The Agency previously requested and was approved to retain \$5,399,574 of OFA balances under Procedure 9 to satisfy the Recognized Obligation Payment Schedule (ROPS) for fiscal year 2012-13. This amount includes the CAC June 2012 distribution of \$3,670,445 for the July through December 2012 ROPS period (ROPS II) and \$1,729,129 for the January through June 2013 ROPS period (ROPS III) prior period adjustment for the January through June 2012 period (the CAC allowed the Agency to retain the amount from the ROPS I period to be expended during ROPS III period). Both of these amounts are included in the June 30, 2012 OFA balance and intended for use after June 30, 2012.

The Agency's was approved to spend \$4,954,285 during ROPS II; however, the CAC only distributed \$3,670,446. Therefore, Finance has determined the Agency will be permitted to retain the amount actually expended up to the amount approved by Finance and already funded by the CAC, as noted above. Per the Prior Period reconciliation worksheet, the Agency reported expenditures of \$4,294,302 on approved enforceable obligations during the ROPS II; therefore, the Agency will be permitted to retain an additional \$623,856 (\$4,294,302 - \$3,670,445).

Finance notes that HSC section 34177 (a) (3) states that only those payments listed in the approved ROPS may be made from the funding source specified in the ROPS. However, HSC section 34177 (a) (4) goes on to state that with prior approval from the oversight board, the successor agency can make payments for enforceable obligations from sources other than those listed in the ROPS. In the future, the Agency should obtain prior oversight board approval when making payments for enforceable obligations from a funding source other than those approved by Finance.

The Agency's OFA balance available for distribution to the affected taxing entities is \$13,972,817 (see table on the following page).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ (619,472)
Finance Adjustments	
Add:	
Disallowed transfers	\$ 14,450,531
Request to restrict balances not supported	141,758
Total OFA available to be distributed:	\$ 13,972,817

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.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Szalay", with a horizontal line extending to the right from the end of the signature.

STEVE SZALAY
Local Government Consultant

cc: Ms. Belinda Espinosa, City Manager, City of Pinole
Mr. Bob Campbell, Auditor-Controller, Contra Costa County
Mr. Steven Mar, Bureau Chief, Local Government Audit Bureau, California State
Controller's Office
California State Controller's Office