



March 22, 2013

Mr. Jeff Kay, Administrative Analyst  
City of San Leandro  
835 East 14<sup>th</sup> Street  
San Leandro, CA 94577

Dear Mr. Kay:

Subject: Other Funds and Accounts Due Diligence Review

Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of San Leandro 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 January 11, 2013. The purpose of the review was to determine the amount of cash and cash equivalents available for distribution to the affected taxing entities. Pursuant to HSC section 34179.6 (d), 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:

- Transfers in the amount of \$2,610,750. Our review of the OFA DDR indicated that unallowable cash transfers were made to the City of San Leandro (City) for the Plaza Project City Loan:
  - Payments on January 21, 2011 for \$171,764 principal and \$128,236 interest
  - Loan Balance Repayment on March 7, 2011 for \$2,137,273
  - Payments on January 23, 2012 for \$48,141 principal and \$125,336 interest

HSC section 34171 (d) (2) states that agreements, contracts, or arrangements between the City and the former RDA are not enforceable unless the loan agreements were entered within the first two years of the date of the creation of the RDA. These loans were issued after the first two years of the RDA's creation; therefore, the loan payments are not permitted. Finance's letter dated April 11, 2012 related to review of the Recognized Obligation Payment Schedule for January through June 2012 period also denied the payments related to this City loan.

- During the review of the OFA DDR, Finance noted a reserve amount of \$825,000 related to the 2002 Plaza Tax Allocation Bonds (TAB) that is legally restricted for a sinking fund requirement. However, this amount was not included in the restricted cash held with a fiscal agent balances. Our review of the 2002 Plaza TABs bond indentures indicates the

Agency is required to set aside funds to account for a forecasted shortage of property tax increment toward the end of the bond's repayment period. Therefore, Finance recommends that the Agency establish a separate reserve account and or escrow account held with a trustee to set these funds aside in order to comply with bond indenture requirements.

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/](http://www.dof.ca.gov/redevelopment/meet_and_confer/)

The Agency's OFA balance available for distribution to the affected taxing entities is \$3,049,354 million (see table below).

<b>OFA Balances Available For Distribution To Taxing Entities</b>	
Available Balance per DDR:	\$ 438,604
Finance Adjustments	
Disallowed transfers	\$ 2,610,750
<b>Total OFA available to be distributed:</b>	<b>\$ 3,049,354</b>

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.

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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,



STEVE SZALAY  
Local Government Consultant

cc: Ms. Cynthia Battenberg, Business Development Manager, City of San Leandro  
Ms. Carol S. Orth, Tax Analysis Division Chief, Alameda County  
California State Controller's Office