



July 11, 2013

Mr. Steve Matarazzo, City Administrator
City of Sand City
1 Sylvan Park
Sand City, CA 93955

Dear Mr. Matarazzo:

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 9, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Sand City Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on January 7, 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 9, 2013. Subsequently, the Agency requested a Meet and Confer session on one or more items adjusted by Finance.

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 Agency's request to retain balances for restricted assets totaling \$1,870,637 is disallowed, as further explained below:
 - The total claimed as restricted assets does not tie to the DDR procedure for legally restricted assets. Per DDR Procedure 10 (Summary of Balances Available for Allocation to Affected Taxing Entities), the total claimed is \$1,870,637; however, per DDR Procedure 8A for restricted assets, the total is \$1,631,084. Therefore, the OFA balance available for distribution will be increased by \$239,553 (\$1,870,637 - \$1,631,084).
 - The request to restrict assets totaling \$812,160 for a contingent settlement is not allowed. The Agency claims these funds are restricted pending the outcome of a lawsuit between the Agency and the City of Seaside. The Agency claims that the funds are needed if the court rules against the Agency. Per HSC section 34179.5 (c) (5) (D), restricted assets are permitted for funding enforceable obligations. 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. While HSC section 34171 (d) (1) includes judgments or settlements entered by a competent court, it does not provide for contingent liabilities or settlements. If and when a judgment or settlement is entered against the Agency, the item may be included on future Recognized Obligation Payment Schedules (ROPS) for payment with Redevelopment Property Tax Trust Funds (RPTTF). Therefore, the request to restrict OFA balance available for distribution will be increased by \$812,160.

- The request to restrict \$818,924 on deposit with the trustee for bond reserves is not allowed. While bond reserves are restricted, these amounts have already been accounted for in Procedure 6A (Restricted Fund) of the DDR. Therefore, the OFA balance available for distribution will be increased by \$818,924.
- Restricted bond proceeds totaling \$1,054,399. The Agency claims these funds are restricted by bond covenants; however, the amount was not included in the DDR under Procedure 8A (Restricted for Funding Enforceable Obligations). Our review indicates the Agency placed the 2008 Series A and B bond proceeds into two separate Certificates of Deposit (CDs) when the bonds were issued. The balance of the CDs as of June 30, 2012 was \$1,054,399. Bond proceeds and interest earned on the proceeds are restricted assets; therefore, the Agency will be permitted to retain these restricted assets.
- The Agency's request to retain \$812,160 to satisfy approved ROPS items for the 2012-13 fiscal year is approved and increased by \$12,053, as further discussed below:
 - The Agency was approved for \$815,231 in expenditures for the July through December 2012 period (ROPS II). However, the County Auditor Controller (CAC) only distributed \$307,731 to the Agency for ROPS II; therefore, the Agency will be permitted to retain this amount, which is the amount expended by the Agency as reported on the Prior Period Payment Schedule submitted with the July through December 2013 ROPS.
 - Although not included on the ROPS II reconciliation, the Agency will also be permitted to retain an additional \$357,284 (\$540,015 - \$182,731) for debt service payments. Our review indicates the Agency paid \$540,015 towards bond debt service payments for the November 2012 payment; however, the Agency only claimed \$182,731.

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 was approved for \$897,731 for the January through June 2013 ROPS (ROPS III) period; however, the CAC only distributed \$738,533. As such, the Agency will be permitted to retain \$159,198 (\$897,731 - \$738,533), to satisfy ROPS III approved enforceable obligations.

In total, the Agency will be permitted to retain \$824,213 (\$307,731 + \$357,284 + \$159,198). The OFA balance available for distribution will be decreased by \$12,053 (\$824,213 - \$812,160).

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.

The Agency's OFA balance available for distribution to the affected taxing entities is \$804,245 (see table below).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ -
Finance Adjustments	
Add:	
Restricted assets not included in DDR	\$ (1,054,339)
Requested restricted balances not allowed	\$ 1,870,637
Additional allowed retention	\$ (12,053)
Total OFA available to be distributed:	\$ 804,245

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.

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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 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, Dispute Resolution Supervisor, or Danielle Brandon, Analyst, at (916) 445-1546.

Sincerely,



STEVE SZALAY *for*
Local Government Consultant

cc: Ms. Linda Scholink, Director of Administrative Services, Sand City
Ms. Connie Horca, Deputy City Clerk, Sand City
Ms. Julie Aguero, Auditor Controller Analyst II, Monterey County
California State Controller's Office