

**COMMUNITY DEVELOPMENT
AGENCY OF THE
CITY OF MISSION VIEJO**

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

May 2013



JOHN CHIANG
California State Controller

May 13, 2013

Cheryl Dyas, Director of Administrative Services
City of Mission Viejo/Successor Agency
200 Civic Center
Mission Viejo, CA 92691

Dear Ms. Dyas:

Pursuant to Health and Safety (H&S) Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Community Development Agency of the City of Mission Viejo to the City of Mission Viejo or any other public agency after January 1, 2011. This statutory provision states, "The Legislature hereby finds that a transfer of assets by a redevelopment agency during the period covered in this section is deemed not to be in furtherance of the Community Redevelopment Law and is thereby unauthorized." Therefore, our review included an assessment of whether each asset transfer was allowable and whether it should be turned over to the Successor Agency.

Our review applied to all assets including, but not limited to, real and personal property, cash funds, accounts receivable, deeds of trust and mortgages, contract rights, and rights to payment of any kind. We also reviewed and determined whether any unallowable transfers of assets to the City of Mission Viejo or any other public agencies have been reversed.

Our review found that the Community Development Agency of the City of Mission Viejo transferred \$12,037,052 to the City of Mission Viejo and the Mission Viejo Housing Authority. Of these transfers, \$6,193,880 (51.1%), including \$493,880 (4.10%) cash was transferred to the City, and \$5.7 million (47%) cash was transferred to the Mission Viejo Housing Authority. However, the City has subsequently remitted \$4.8 million to the County Auditor-Controller and provided proof that the remaining \$900,000 represents enforceable obligations, therefore, no action is needed in regards to the \$5.7 million. The \$493,880 transfer is unallowable and should be reversed pursuant to H&S Code section 34167.5.

If you have any questions, please contact Mr. Steven Mar, Bureau Chief, Local Government, Audits at (916) 324-7226.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/nh

Attachment

cc: Robert Brenton, Chairperson, Oversight Board
City of Mission Viejo/Successor Agency
Jan E. Grimes, Auditor-Controller
County of Orange
Steven Szalay, Local Government Consultant
Department of Finance
Richard J. Chivaro, Chief Legal Counsel
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Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Community Development Agency of the City of Mission Viejo (RDA) after January 1, 2011. Our review included, but was not limited to, real and personal property, cash funds, accounts receivable, deeds of trust and mortgages, contract rights, and rights to payments of any kind from any source.

Our review found that the RDA transferred \$12,037,052 to the City of Mission Viejo (City) and Mission Viejo Housing Authority. Of these transfers, \$6,193,880 (51.1%), including \$493,880 (4.10%) cash was transferred to the City, and \$5.7 million (47%) cash was transferred to the Mission Viejo Housing Authority. These transfers were unallowable and should be reversed pursuant to H&S Code section 34167.5.

Background

In January of 2011, the Governor of the State of California proposed statewide elimination of redevelopment agencies (RDAs) beginning with the fiscal year (FY) 2011-12 State budget. The Governor's proposal was incorporated into Assembly Bill 26 (ABX1 26, Chapter 5, Statutes of 2011, First Extraordinary Session), which was passed by the Legislature, and signed into law by the Governor on June 28, 2011.

ABX1 26 prohibited RDAs from engaging in new business, established mechanisms and timelines for dissolution of the RDAs, and created RDA Successor Agencies to oversee dissolution of the RDAs and redistribution of RDA assets.

A California Supreme Court decision on December 28, 2011 (*California Redevelopment Association et al. v. Matosantos*), upheld ABX1 26 and the Legislature's constitutional authority to dissolve the RDAs.

ABX1 26 was codified in the Health and Safety (H&S) Code beginning with section 34161.

In accordance with the requirements of H&S Code section 34167.5, the State Controller is required to review the activities of RDAs, "to determine whether an asset transfer has occurred after January 1, 2011, between the RDA, or any other public agency, and the redevelopment agency," and the date on which the RDA ceases to operate, or January 31, 2012, whichever is earlier.

The SCO has identified transfers of assets that occurred after January 1, 2011, between the RDA, the City of Mission Viejo, and/or other public agencies. By law, the SCO is required to order that such assets, except those that already had been committed to a third party prior to June 28, 2011, the effective date of ABX1 26, be turned over to the Successor Agency. In addition, the SCO may file a legal order to ensure compliance with this order.

Objective, Scope, and Methodology

Our review objective was to determine whether asset transfers that occurred after January 1, 2011, and before the date upon which the RDA ceased to operate, or January 31, 2012, whichever was earlier, between the city or county, or city and county that created an RDA, or any other public agency, and the RDA, were appropriate.

We performed the following procedures:

- Interviewed Successor Agency personnel to gain an understanding of the Successor Agency operations and procedures.
- Reviewed meeting minutes, resolutions, and ordinances of the RDA and the City.
- Reviewed accounting records relating to the recording of assets.
- Verified the accuracy of the Asset Transfer Assessment Form. This form was sent to all former RDAs to provide a list of all assets transferred between January 1, 2011, and January 31, 2012.
- Reviewed applicable financial reports to verify assets (capital, cash, property, etc.).

Conclusion

Our review found that the Community Development Agency of the City of Mission Viejo transferred \$12,037,052 to the City of Mission Viejo and the Mission Viejo Housing Authority. Of these transfers, \$6,193,880 (51.1%), including \$493,880 (4.10%) cash was transferred to the City, and \$5.7 million (47%) cash was transferred to the Mission Viejo Housing Authority. These transfers were unallowable and should be reversed pursuant to H&S Code section 34167.5.

Details of our findings are in the Findings and Orders of the Controller section of this report. We also have included a detailed schedule of assets to be turned over to, or transferred to, the Successor Agency.

Views of Responsible Official

We issued a draft review report on March 22, 2013. Cheryl Dyas, Director of Administrative Services/City Treasurer responded by letter dated April 10, 2013, disagreeing with the review results. The City's response is included in this final review report as an attachment.

Restricted Use

This report is solely for the information and use of the Successor Agency, the City of Mission Viejo, the Mission Viejo Housing Authority, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record when issued final.

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

May 13, 2013

Findings and Orders of the Controller

FINDING 1— Unallowable Transfers to the City

The Community Development Agency of the City of Mission Viejo (RDA) entered into a loan agreement with the City of Mission Viejo (City), which was dated July 20, 2009. The agreement stated that “The City of Mission Viejo agrees to loan the Community Development Agency \$520,000 and the Agency agrees to repay the principal and accrued interest within six years from the date of this Agreement, or at such other times as the parties may agree.”

On March 17, 2011, the RDA transferred \$493,880 in cash (\$492,000—Note Principal, and \$1,880—Note Interest) to the City in order to pay off the remainder of the loan.

Pursuant to Health and Safety (H&S) Code section 34167.5, any asset transfers by the RDA to a city, county, city and county, or any other public agency after January 1, 2011 must be returned to the Successor Agency for disposition in accordance with H&S Code sections 34177(d) and (e).

To the extent that a valid repayment agreement exists for the \$493,880, it becomes void on February 1, 2012 under H&S Code section 34171 (d) (2) and (3). However, once the Successor Agency obtains a Finding of Completion from the Department of Finance, pursuant to H&S Code section 34179.7, the agreement may be reinstated in accordance with H&S Code section 34191.4.

Order of the Controller

Based on H&S Code section 34167.5, the City of Mission Viejo is ordered to reverse the transfer of assets described in Schedule 1, in the amount of \$493,880, and turn the assets over to the Successor Agency. The Successor Agency is directed to properly dispose of those assets in accordance with H&S Code sections 34177(d) and (e).

City’s Response

The former Agency entered into a certain loan agreement with the City in July 2009. The original principal amount of the loan was \$520,000, and this amount was reduced by a loan repayment in the amount of \$28,000 in June 2010, and the balance was paid off pursuant to the terms in March 2011. . .

To assist in facilitating projects, loans were arranged between the former Agency and the City for cash flow purposes. At the time that the subject loan was provided in July 2009, it was anticipated that the former Agency would be required by State to make an ERAF/SERAF payment in excess of \$1,000,000; however, the former Agency did not have sufficient cash balances available to make the ERAF/SERAF payment. If this circumstance had not been present in 2009, this loan would not have been made. . .

Part 1.8 of Dissolution Act was effective during the suspension period of June 27, 2011 to January 31, 2012 and defined an “enforceable obligation” to include “loans of money borrowed by the redevelopment agency for a lawful purpose, to the extent they are legally required to be repaid pursuant to a required repayment schedule or other mandatory loan terms.” . . . If the legislature intended that Part 1.8 apply retroactively, before June 27, 2011, the bill would have expressly so stated.

The City and the former Agency entered into a valid, legally enforceable contract in July 2009. The full repayment of this loan in March 2011 preceded the enactment of the Dissolution Act effective June 27, 2011. . .

Under Part 1.85 of the Dissolution Act, in particular Section 34171(d)(2) that purports to exclude agreements, contracts and arrangements between the City and former Agency as enforceable obligations, did not apply until dissolution on February 1, 2012 and subsequently. Therefore, at the time the Successor Agency made these repayments the law, both contract law and the California Constitution, clearly allowed payments on existing contracts. . .

Reversal and claw-back of the repayment made by former Agency prior to enactment of AB x1 26 would violate Cal. Const. Art. XIII, Sec. 24 and 25.5 (Propositions 1A and 22) that preclude forced movement of moneys from the City to the State, County, or affected taxing agencies. . .

No authority exists under Art. XIII, Sec. 24(b) and Sec. 25(a)(2) to reallocate sales and use tax revenue allocations of the City here, and no ability exists under Art. XIII, Sec. 25.5(a)(1) & (3) because neither AB x1 26 nor AB 1484 passed with a two thirds majority.

Further, under the Doctrine of “Competed Acts” repayment made on a city/agency contract dictates that loan repayments should be enforced. . .

SCO’s Comment

The former RDA was permitted to make payments under the agreement that was in place prior to January 1, 2011, in accordance with the terms and conditions of the agreement. The RDA made one payment in June 2010 that reduced the outstanding balance to \$493,880. No other payments were made until the March 17, 2011 transfer to pay off the principle and interest of the loan.

This significant payment is inconsistent with the intent of H&S Code section 34167(a) which states:

This part is intended to preserve, to the maximum extent possible, the revenues and assets of redevelopment agencies so that those assets and revenues that are not needed to pay for enforceable obligations may be used by local governments to fund core governmental services including police and fire protection services and schools. It is the intent

of the Legislature that redevelopment agencies take no actions that would further deplete the corpus of the agencies' funds regardless of their original source. All provisions of this part shall be construed as broadly as possible to support this intent and to restrict the expenditure of funds to the fullest extent possible.

The finding and order of the Controller remain as stated.

**FINDING 2—
Unallowable
Transfers to the
Housing Authority**

In June 2011, the RDA transferred \$5.7 million to the Mission Viejo Housing Authority to implement a court judgment; however, the City of Mission Viejo was named in the judgment, not the RDA.

The transfers occurred as follows:

6/16/2011	Transfer of subsidies for affordable housing as required by a Settlement Agreement and Judgment to the Mission Viejo Housing Authority	\$ 4,000,000
6/30/2011	Transfer of subsidies for affordable housing as required by a Settlement Agreement and Judgment and in accordance with an executed Affordable Housing Agreement to the Mission Viejo Housing Authority	<u>1,700,000</u>
Total		<u>\$ 5,700,000</u>

Order of the Controller

Based on H&S Code section 34167.5, the Mission Viejo Housing Authority is ordered to reverse the transfer of assets described in Schedule 2, in the amount of \$5,700,000, and turn the assets over to the Successor Agency. The Successor Agency is directed to properly dispose of those assets in accordance with H&S Code sections 34177(d) and (e).

City's Response

In June 2011, the former Agency transferred \$5.7 million of monies from the LMIHF to the MVHA to implement a court Settlement Agreement in July 2008. . .

The balance of the \$5.7 million, i.e. \$4.8 Million was remitted in full to the County of Orange Auditor-Controller on December 21, 2012, as directed by the DOF and pursuant to the Dissolution Act.

SCO's Comment

SCO agrees in part with the statements made by the City that the Affordable Housing Agreement and the legal services costs associated with it represent enforceable obligations, and because the City has provided proof that the \$4.8 million has already been remitted to the County Auditor-Controller, no further action is needed.

**Schedule 1—
RDA Assets Transferred to the City of Mission Viejo
January 1, 2011, through January 31, 2012**

Unallowable Transfers to the City of Mission Viejo		
03/17/2011	RDA Loan No. 31 payoff (Note Principal)	\$ 492,000
03/17/2011	RDA Loan No. 31 payoff (Note Interest)	<u>1,880</u>
Total transfers to the City of Mission Viejo		<u><u>\$ 493,880</u></u>

**Schedule 2—
RDA Assets Transferred to the
Mission Viejo Housing Authority
January 1, 2011, through January 31, 2012**

Unallowable Transfers to the Mission Viejo Housing Authority		
06/16/2011	Transfer of subsidies for affordable housing as required by a Settlement Agreement and Judgment to the Mission Viejo Housing Authority	\$ 4,000,000
06/30/2011	Transfer of subsidies for affordable housing as required by a Settlement Agreement and Judgment and in accordance with an executed Affordable Housing Agreement to the Mission Viejo Housing Authority	<u>1,700,000</u>
	Total transfers to Mission Viejo Housing Authority	<u>\$ 5,700,000</u>

**Attachment 1—
City's Response to
Draft Review Report**



City of Mission Viejo

Administrative Services Department

Rhonda Reardon
Mayor

Trish Kelley
Mayor Pro Tem

Dave Leckness
Council Member

Cathy Schlicht
Council Member

Frank Ury
Council Member

April 10, 2013

By Email and USPS Certified Mail

Steven Mar, Chief, Local Government Audits Bureau
State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874

Re: *Response, Comments and Request for Corrections/Changes to the SCO Draft Asset Transfer Review Report of the former Community Development Agency of the City of Mission Viejo*

Dear Mr. Mar:

On April 2, 2013, the Successor Agency to the Community Development Agency of the City of Mission Viejo ("Successor Agency") and the City of Mission Viejo ("City") received a letter ("April 2 Letter") from the State Controller's Office ("SCO"), which enclosed the *draft* Asset Transfer Review Report ("SCO Draft Report") of the former Community Development Agency of the City of Mission Viejo ("former Agency") for the period of January 1, 2011, through January 31, 2012. In particular, contained in the SCO Draft Report are two proposed findings that the Successor Agency, City, and Mission Viejo Housing Authority ("MVHA")¹, as housing successor under the Dissolution Act², strongly disagree with and that Mission Viejo respectfully requests that the SCO correct, reverse, and modify before the report is finalized. In the April 2 Letter, the SCO requests that Mission Viejo submit comments regarding the SCO's proposed findings and thus we respectfully submit the following responses.

Finding 1 – Unallowable Transfer to the City

The former Agency entered into a certain loan agreement with the City in July 2009. The original principal amount of the loan was \$520,000, and this amount was reduced by a loan repayment in

¹ The former Agency, Successor Agency, City and MVHA are referred to together as "Mission Viejo".

² The "Dissolution Act" refers to is AB x1 26, AB 1484 as codified in Parts 1.8 and 1.85 of the California Health and Safety Code, and the Supreme Court's decision in *California Redevelopment Association, et al v. Ana Matasantos, et al*, issued December 29, 2011.



the amount of \$28,000 in June 2010, and the balance was paid off pursuant to the terms in March 2011. Because a majority of the property tax increment received by the former Agency was dedicated to the Low to Moderate Income Housing Fund 20% set aside ("LMIHF") and contractual pass through agreements entered into pursuant to former Section 33401 of the California Community Redevelopment Law, Health & Safety Code Section 33000, *et seq.* ("CRL"), a minimal amount of tax increment was available for project area improvements, projects, programs, and other unexpected demands on tax increment including ERAF/SERAF shifts and payments mandated by the State of California. To assist in facilitating projects, loans were arranged between the former Agency and the City for cash flow purposes. At the time that the subject loan was provided in July 2009, it was anticipated that the former Agency would be required by the State to make an ERAF/SERAF payment in excess of \$1,000,000; however, the former Agency did not have sufficient cash balances available to make the ERAF/SERAF payment. If this circumstance had not been present in 2009, this loan would not have been made. The timing of the final repayment coincided with available funds in the former Agency to repay the loan pursuant to its terms. The ERAF/SERAF payment was not an obligation of the City, but rather an obligation of the former Agency, a separate legal entity, and the fully executed loan agreement between the City and the former Agency was duly approved, entered into, and became a valid executory contract under California law, including the California Constitution, through execution of all legal documents and repayments that occurred prior to the enactment of the Dissolution Act.

Part 1.8 of Dissolution Act was effective during the suspension period of June 27, 2011 to January 31, 2012 and defined an "enforceable obligation" to include "loans of moneys borrowed by the redevelopment agency for a lawful purpose, to the extent they are legally required to be repaid pursuant to a required repayment schedule or other mandatory loan terms." In addition under Part 1.8, it was clear that the suspension of redevelopment activities was intended to preserve revenues and assets of redevelopment agencies *prospectively* during that suspension period; however, Part 1.8 did not exclude prior payments on enforceable obligations, which this loan repayment was in March 2011 prior to the enactment of the AB x1 26 on June 27, 2011. If the Legislature intended that Part 1.8 apply retroactively, before June 27, 2011, the bill would have expressly so stated.

The City and the former Agency entered into a valid, legally enforceable contract in July 2009. The full repayment of this loan in March 2011 preceded the enactment of the Dissolution Act effective June 27, 2011. Part 1.8 authorized payments and continued performance under enforceable obligations; the term "enforceable obligation" as defined in Part 1.8 did not exclude payments due on existing contracts, and did not specifically exclude loans or other arrangements between the city and its redevelopment agency during the suspension period. Under Part 1.8, in particular Section 34167, during the suspension period and prior to dissolution and the effective application date for Part 1.85, these kinds of city/agency arrangements were not excluded from the definition of "enforceable obligation" and the repayments were authorized payments of an enforceable obligation.

Under Part 1.85 of the Dissolution Act, in particular Section 34171(d)(2) that purports to exclude agreements, contracts and arrangements between the City and former Agency as enforceable obligations, did not apply until dissolution on February 1, 2012 and subsequently. Therefore, at the time the Successor Agency made these repayments the law, both contract law and the California Constitution, clearly allowed payments on existing contracts. During the suspension period under

Part 1.8, enforceable obligations, in particular Section 34167(d) defined such a loan agreement as an enforceable obligation.

Reversal and claw-back of the repayment made by former Agency prior to enactment of AB x1 26 would violate Cal. Const. Art. XIII, Sec. 24 and 25.5 (Propositions 1A and 22) that preclude forced movement of moneys from the City to the State, County, or affected taxing agencies. Under the law and rules of statutory construction, moneys available upon application of Sections 34167.5 and 34179.6 are only funds that are "available"; the amounts at issue have been encumbered and/or expended by the City and are not available. Enforceability of a city/agency loan under Dissolution Act and these constitutional provisions require that repayments by the former Agency to City be honored notwithstanding Legislature's enactment of AB x1 26 and AB 1484. No authority exists under Art. XIII, Sec. 24(b) and Sec. 25.5(a)(2) to reallocate sales and use tax revenue allocations of the City here, and no ability exists under Art. XIII, Sec. 25.5(a)(1) & (3) because neither AB x1 26 nor AB 1484 passed with a two-thirds majority.

Further, under the Doctrine of "Completed Acts" repayment made on a city/agency contract dictates that loan repayments should be enforced. The United States Supreme Court has either held or stated expressly that courts must not apply a statute that changes the legal consequence of completed acts without evidence of clear legislative intent to do so. (See, e.g., *Bowen v. Georgetown Univ. Hosp.* (1988) 488 U.S. 204, 208-209; Kahn, Hilde E., *Completed Acts, Pending Cases, and Conflicting Presumptions: The Retroactive Application of Legislation After Bradley* (1990) 13 Geo. Mason U. L. Rev. 231, 234.) And, California law follows the same principle: "It is a widely recognized legal principle . . . that in the absence of a clear legislative intent to the contrary statutory enactments apply prospectively." (*Strauss v. Horton* (2009) 46 Cal.4th 364, 470, quoting *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1193-1194.) "California continues to adhere to the time-honored principle . . . that in the absence of an express retroactivity provision, a statute will not be applied retroactively unless it is very clear from extrinsic sources that the Legislature or the voters must have intended a retroactive application." (*Strauss*, 46 Cal.4th at 470 [*italics in original*].)

Finding 2 – Unallowable Transfers to the Housing Authority

In June 2011, the former Agency transferred \$5.7 million of monies from the LMIHF to the MVHA to implement a court Settlement Agreement executed in July 2008. While the City acknowledges that the City was the named defendant in the lawsuit that resulted in a Peremptory Writ in March 2007, a Judgment in August 2007, and a Settlement Agreement in July 2008, the core legal issues related to affordable housing and the City and former Agency committed LMIHF to implementation of the Settlement Agreement. The City's Housing element to the General Plan that was re-written and certified by State HCD included express provisions that committed LMIHF to affordable housing development in Mission Viejo; and, the Settlement Agreement is clear in identifying all of the unencumbered LMIHF of the former Agency as the source of funding to implement the new Housing Element of the General, as ordered by the Superior Court and as directed and certified by State HCD and then included in the Settlement Agreement.

The first implementing contract executed in furtherance of the Settlement Agreement was an Affordable Housing Agreement ("AHA") entered into between Lennar Homes of California, Inc. ("Lennar") and the former Agency, which contract was approved on March 1, 2010. This AHA

encumbered and contractually committed payments to Lennar by the former Agency totaling \$3,556,241 in consideration for Lennar developing and selling 22 Low and Very Low Income "Affordable Units" restricted with affordable housing covenants for 45 years. The first installment payment of the subsidy was \$2.0 Million that was disbursed to Lennar on July 2, 2010. The second installment of \$1,556,241 is required to be paid in 22 equal sub-installments of \$70,738 that are being disbursed to Lennar upon the sale of each Affordable Unit. To date, seven of the 22 Affordable Units have been constructed, completed and sold by Lennar, so seven sub-installment payments of \$70,738 have been made between the first sale in September 2011 and the most recent sale on February 28, 2013; and, 15 Affordable Units remain to be completed and sold by Lennar and the remaining sub-installment payments are due upon each sale pursuant to the March 2010 contract'/AHA.

At the time the \$5.7 million transfer was made to the MVHA, the outstanding obligation on this AHA was \$1,556,241. Mission Viejo has consistently demonstrated to the State Department of Finance ("DOF") through the Enforceable Obligation Payment Schedule (EOPS) approval process, each Recognized Obligation Payment Schedule ("ROPS") approval process, and the Housing Due Diligence Review Report ("DDR") process that the contract with Lennar is in fact an "enforceable obligation" that must be paid, honored and continued to be implemented by the contract parties, which include Lennar and now the MVHA, as housing successor. Attached to this letter is a copy of the Low and Moderate Income Housing Fund Due Diligence Review determination letter issued by the DOF in January 2013 that (i) acknowledges the AHA is an "enforceable obligation", (ii) acknowledges that \$900,000 of the \$5.7 million is properly being held and reserved by the MVHA to pay this enforceable obligation, and (iii) approves the MVHA to retain this \$900,000, as the housing successor to the former Agency, all in order to perform under and pay this lawful enforceable obligation.

The balance of the \$5.7 million, i.e., \$4.8 Million was remitted in full to the County of Orange, Auditor-Controller on December 21, 2012, as directed by the DOF and pursuant to the Dissolution Act.

Please reverse and correct all parts of the Draft SCO Report that purport to disallow transfers relating to Finding 1 and Finding 2, as each and all expenditures and transfers were and remain valid under the law.

If you have other questions, request for other documents, or require additional information, please do not hesitate to contact me.

Respectfully,



Cheryl Dyas
Director of Administrative Services/City Treasurer

Enclosure: Low and Moderate Income Housing Fund Due Diligence Review determination letter issued by the DOF in January 2013





January 14, 2013

REVISED

Ms. Cheryl Dyas, Director of Administrative Services
City of Mission Viejo
200 Civic Center
Mission Viejo, CA 92691

Dear Ms. Dyas:

Subject: Low and Moderate Income Housing Fund Due Diligence Review

This letter supersedes Finance's original LMIHF DDR determination letter dated December 14, 2012. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the Successor Agency to the City of Mission Viejo Community Development Agency (Agency) submitted an oversight board approved Low and Moderate Income Housing Fund (LMIHF) Due Diligence Review (DDR) to the California Department of Finance (Finance) on October 11, 2012. Finance issued a LMIHF DDR determination letter on November 9, 2012. 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 November 30, 2012.

Based on a review of additional or clarifying information provided to Finance during the Meet and Confer process, Finance is revising some of the adjustments made in our previous DDR determination letter. Specifically, we are revising the following adjustments:

- Transfers to the Mission Viejo Housing Authority (MVHA) totaling \$5.7 million were denied in the DDR as the City, and not the former redevelopment agency (RDA), was named in the court judgment. However, the Affordable Housing Agreement in the amount of \$1,273,289 and the related legal services costs in the amount of \$90,000 represent enforceable obligations. Therefore, \$1,363,289 in enforceable obligations is allowed. However, it is our understanding that the Agency has remitted \$4.8 million in LMIHF funds to the county auditor-controller and only \$900,000 is remaining to pay for the enforceable obligations. As such, the Agency should include the balance of the unfunded obligations on a subsequent Recognized Obligation Payment Schedule for payment using Redevelopment Property Tax Trust Fund funding.
- Housing Loans totaling \$263,600 were denied as an inclusion during the review of the Housing Asset Transfer form dated August 30, 2012. Based on the information provided during the Housing Meet and Confer process, Finance no longer objects to the transfer of these loans.

Finance continues to believe the adjustment made to the DDR's stated balance of LMIHF available for distribution to the taxing entities is appropriate. As noted above, although \$1,363,289 of the transfers to MHVA is approved based on enforceable obligations, the

remaining \$4,336,711 is still denied. HSC section 34179.6 (d) authorizes Finance to make these adjustments. The Agency's LMIHF balance available for distribution to the affected taxing entities has been revised to \$4,336,711 (see table below).

LMIHF Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ -
Finance Adjustments	
Add:	
Disallowed transfers	\$ 4,336,711
Total LMIHF available to be distributed:	\$ 4,336,711

This is Finance's final determination of the LMIHF 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.

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 and Finance's Housing Assets Transfer letter dated August 30, 2012 do not in any way eliminate the Controller's authority.

Ms. Cheryl Dyas
January 14, 2013
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Please direct inquiries to Nichelle Thomas, Supervisor or Wendy Griffe, Lead Analyst at
(916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Ms. Josephine Julian, Treasury Manager, City of Mission Viejo
Mr. Frank Davies, Property Tax Manager, Orange County
California State Controller's Office

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