



December 15, 2012

Mr. Steve Lantsberger, Economic Development Director  
City of Hesperia  
9700 Seventh Ave  
Hesperia, CA 92345

Dear Mr. Lantsberger:

**Subject: Low and Moderate Income Housing Fund Due Diligence Review**

This letter supersedes Finance's original Low and Moderate Income Housing Fund (LMIHF) Due Diligence Review (DDR) determination letter dated November 9, 2012. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Hesperia Successor Agency (Agency) submitted an oversight board approved LMIHF DDR to the California Department of Finance (Finance) on October 12, 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 December 4, 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 adjustment:

- Requested retained balance in the amount of \$3,974,877 for bond reserves was denied because this balance was not required to be retained from LMIHF. During the Meet and Confer process, the Agency provided additional information including bond obligation retirement schedules, general ledger report, bank statements for reserves and bond indentures for 2005 bond series B and 2007 bond series A and B. Based on review of the additional information, the Agency's request to retain the bond reserves in the amount of \$3,974,877 million is allowed.

However, Finance continues to believe some of the adjustments made to the DDR's stated balance of LMIHF available for distribution to the taxing entities is appropriate. HSC section 34179.6 (d) authorizes Finance to make these adjustments. We maintain the adjustments continue to be necessary for the following reasons:

- Adjustment to assets held as of June 30, 2012 in the amount of \$9,847,916. The LMIHF balance dedicated to the payment of inclusionary housing obligations was denied by Finance in the letter dated October 12, 2012 as an inclusion to the Recognized Obligation Payment Schedule (ROPS) for the period of January 1, 2013 through June 30, 2013. Subsequently, the Agency requested a Meet and Confer session regarding the disputed items. Based on the Meet and Confer session held on November 6, 2012, Finance continues to object to these items.

The Agency requested to retain \$9,847,916 to pay for Contingent Contract Liabilities approved by Finance in the letter dated October 12, 2012 as an inclusion to the ROPS for the period of January 1, 2013 through June 30, 2013. Upon the review of the Owner Participation Agreements for these liabilities, Finance has concluded that these obligations were not funded by LMIHF. As such, the Agency's request to retain these funds is disallowed.

- Requested retained balance in the amount of \$2,347,762 for bond payments. The request to retain LMIHF for bond payments was not listed on the July through December 2012 ROPS or January through June 2013 ROPS, and LMIHF was not listed as a funding source.

Additionally, upon review of Oversight Board action 2012-025, Finance objects to the transfer of \$31,680,000 from the LMIHF that occurred on March 15, 2011. HSC section 34163 (c) (5) prohibits agencies from transferring funds out of the Low and Moderate Income Housing Fund, except to meet minimum housing-related obligations that existed as of January 1, 2011. Additionally, this amount was not listed as a transfer in the DDR, and has been added back for distribution to the affected taxing entities.

The Agency's LMIHF balance available for distribution to the affected taxing entities has been revised to \$43,875,678 (see table below).

<b>LMIHF Balances Available For Distribution To Taxing Entities</b>	
Available Balance per DDR:	\$ -
Finance Adjustments	
Add:	
Adjustment to the June 30, 2012 balance	\$ 9,847,916
Requested retained balance not supported	2,347,762
Disallowed transfer of funds from the LMIHF	31,680,000
<b>Total LMIHF available to be distributed:</b>	<b>\$ 43,875,678</b>

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 September 18, 2012 do not in any way eliminate the Controller's authority.

Please direct inquiries to Nichelle Thomas, Supervisor or Susana Medina Jackson, Lead Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY  
Local Government Consultant

cc: Ms. Anne M. Duke, Deputy Finance Director, City of Hesperia  
Ms. Vanessa Doyle, Auditor Controller Manager, San Bernardino County  
California State Controller's Office