



August 29, 2013

Ms. Lydia Romero, Deputy City Manager  
City of San Marcos  
1 Civic Center Drive  
San Marcos, CA 92069

Dear Ms. Romero:

Subject: Housing Assets Transfer Form

This letter supersedes Finance's Housing Asset Transfer Form letter dated August 30, 2012. Pursuant to Health and Safety Code (HSC) section 34176 (a) (2), the City of San Marcos as Housing Successor Agency (Agency) submitted a Housing Assets Transfer Form (Form) to the California Department of Finance (Finance) on August 1, 2012, for the period February 1, 2012 through August 1, 2012. Finance issued its determination related to those transferred asset on August 30, 2012. Subsequently, the Agency requested a Meet and Confer session on one or more items that was objected to by Finance. The Meet and Confer session was held on February 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.

- Exhibit A, Item 6 – Vera Cruz Management Property. Finance continues to object to the transfer of this item. Although the vacant lot was acquired with Tax Allocation Bond proceeds deposited in the Low and Moderate Income Housing Fund (LMIHF), Finance objected to the transfer because the property was purchased on May 24, 2012. HSC section 34163 (b) prohibits a redevelopment agency (RDA) from entering into agreements, obligations, or contracts with any entity for any purpose after June 27, 2011. Furthermore, HSC section 34163 (e) states that agencies shall not have the authority to, and shall not, acquire real property by any means for any purpose. As such, the former RDA did not have the authority to acquire the property. Therefore, the item is not a housing asset pursuant to HSC section 34716 (e) (1).

However, Finance notes that to the extent the Agency would like to continue with the development of Item 6 for affordable housing purposes, HSC section 34191.5 (c) (2) states that one of the property disposition options available to the successor agency of the former RDA is the retention of property for future development purposes pursuant to an approved Long Range Property Management Plan. If this option is selected, the funds received for the value of the property retained should be used to replace the bond proceeds that were expended without authority.

- Exhibit C, Item 2 and Exhibit D, Items 23 and 24 –Finance continues to object to the transfers of these items. Finance originally objected to the transfers because these

items were previously denied as enforceable obligations on the January through June and July through December 2012 Recognized Obligation Payment Schedules (ROPS). Furthermore, the project was also denied on the January through June 2013 ROPS and the decision was upheld through the ROPS Meet and Confer process.

For Exhibit C, Item 2, an Exclusive Negotiating Agreement (ENA) was entered into on June 9, 2010; however, Section 1 – Negotiating Period states “The Agency agrees to exclusively negotiate with Developer and Developer agrees to exclusively negotiate with the Agency regarding the terms of the [Development and Disposition Agreement/Owner Participation Agreement] DDA/OPA for a one hundred-eighty (180) day period from [June 9, 2010].” This means the DDA should have been signed by December 2010. Furthermore, Section 5 of the ENA states that “the Parties are not contractually bound to enter into a DDA/OPA.” It is Finance’s position the DDA was not enforceable until it was signed by all parties, including the Developer, on June 28, 2011. Therefore, since there was no existing encumbrance as of June 27, 2011, Exhibit C, Item 2 is not a housing asset pursuant to HSC section 34176 (e) (2).

For Exhibit D, Items 23 and 24, loans were made October 13, 2011, and up to May 7, 2012, respectively, using housing bond proceeds pursuant to the aforementioned DDA. Because the DDA is not an enforceable obligation, the Agency lacked the authority to make the loans. Therefore, the loans were not made pursuant to an enforceable obligation and should be returned to the successor agency. The successor agency shall administer the loan receivable and any payments received shall be returned to the housing bond fund.

However, to the extent the project was to be funded with housing bond funds issued prior to January 1, 2011, the Agency should follow the process set forth in HSC section 34176 (g) to request the use of the bond funds or successor agencies will be eligible to expend bonds once a finding of completion is received pursuant to HSC section 34191.4 (c). Those obligations should be reported on a subsequent ROPS.

This is Finance’s final determination related to the assets reported on your Form. Except for items disallowed as noted above, Finance is not objecting to the remaining items listed on your Form. Assets transferred deemed not to be a housing asset shall be returned to the successor agency.

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

Sincerely,



STEVE SZALAY  
Local Government Consultant

cc: Mr. Karl Schwarm, Housing Services Director, City of San Marcos  
Ms. Laura Rocha, Finance Director, City of San Marcos  
Mr. Juan Perez, Senior Auditor and Controller Manager, San Diego County  
Ms. Nenita DeJesus, Senior Auditor and Controller Accountant, San Diego County  
Mr. Steven Mar, Bureau Chief, Local Government Audit Bureau, California State  
Controller’s Office