



JOHN CHIANG
California State Controller

November 24, 2014

Fran David, City Manager
City of Hayward Redevelopment Successor Agency
777 B Street
Hayward, CA 94541

Dear Ms. David:

Pursuant to Health and Safety (H&S) Code section 34167.5, the State Controller's Office reviewed all asset transfers made by the Hayward Redevelopment Agency (RDA) to the City of Hayward (City) 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 or any other public agencies have been reversed.

Our review found that the RDA transferred \$102,348,009 in assets after January 1, 2011, including unallowable transfers of assets totaling \$32,882,838, or 32.13% of transferred assets.

However, as of June 30, 2012, the City turned over \$28,789,886 in assets to the Successor Agency. In addition, on October 25, 2013, the City turned over \$4,092,952 in cash to the Successor Agency. Therefore, no further action is required.

If you have any questions, please contact Elizabeth González, Chief, Local Government Compliance Bureau, by telephone at (916) 324-0622.

Sincerely,

A handwritten signature in blue ink that reads "Jeffrey V. Brownfield".

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/mh

Attachment

cc: Tracy Vesely, Director of Finance
City of Hayward
Kelly McAdoo, Assistant City Manager
City of Hayward
Patrick O'Connell, County Auditor-Controller
County of Alameda
David Botelho, Program Budget Manager
California Department of Finance
Richard J. Chivaro, Chief Legal Counsel
State Controller's Office
Elizabeth González, Bureau Chief
Division of Audits, State Controller's Office
Betty Moya, Audit Manager
Division of Audits, State Controller's Office
Nicole Baker, Auditor-in-Charge
Division of Audits, State Controller's Office

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Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Hayward Redevelopment Agency (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 \$102,348,009 in assets after January 1, 2011, including unallowable transfers totaling \$32,882,838, or 32.13% of transferred assets.

However, as of June 30, 2012, the City of Hayward (City) turned over \$28,789,886 in assets, to the Successor Agency. In addition, on October 25, 2013, the City turned over \$4,092,952 in cash to the Successor Agency. Therefore, no further action is required.

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.

H&S Code section 34167.5 states in part, ". . .the Controller shall review the activities of redevelopment agencies in the state, to determine whether an asset transfer has occurred after January 1, 2011, between the city or county, or city and county that created a redevelopment agency or any other public agency, and the redevelopment agency."

The SCO identified asset transfers that occurred after January 1, 2011, between the RDA, the City, 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 action 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 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 City Council and the RDA, the Successor Agency, and the Oversight Board.
- 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 Hayward Redevelopment Agency transferred \$102,348,009 in assets after January 1, 2011, including unallowable transfers totaling \$32,882,838, or 32.13% of transferred assets.

However, as of June 30, 2012, the City of Hayward (City) turned over \$28,789,886 in assets to the Successor Agency. In addition, on October 25, 2013, the City turned over \$4,092,952 in cash to the Successor Agency. Therefore, no further action is required.

Details of our findings are in the Findings and Orders of the Controller section of this report.

Views of Responsible Officials

We issued a draft review report on March 24, 2014. Kelly McAdoo, Assistant City Manager, responded by letter dated April 11, 2014, disagreeing with the review results. The City's response is included in this final review report as an attachment.

Please note that the City's response references finding(s) related to Housing Assets. This finding(s) was eliminated due to a subsequent court ruling.

Restricted Use

This report is solely for the information and use of the City, the Successor Agency, the Oversight Board, the Entity Assuming the Housing Functions, 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.



JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

November 24, 2014

Findings and Orders of the Controller

FINDING 1— Unallowable asset transfers to the City of Hayward

The Hayward Redevelopment Agency (RDA) made unallowable asset transfers of \$32,882,838 to the City of Hayward (City). The transfers occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

Cash transfers in the amount of \$4,092,952 were as follows:

- On March 2, 2011, the RDA made an unallowable loan repayment of \$1,041,075 in cash to the City of Hayward's Water Enterprise.
- On March 2, 2011, the RDA made an unallowable loan repayment of \$831,877 in cash to the City of Hayward's Sewer Enterprise.
- On March 2, 2011, the RDA made a loan repayment of \$2,220,000 in cash to the City of Hayward for the B Street/Watkins/Mission/Garage and B Street Retail and Civic Center.

Capital asset transfers were as follows:

- On March 11, 2011, the RDA transferred a total of \$9,565,031 (\$5,870,000 from the Tax Allocation Bonds Capital Project Fund and \$3,695,031 from the General Capital Project Fund) in Land Held for Redevelopment to the City under Resolution No. RA 11-06.
- On March 11, 2011, the RDA transferred \$19,224,855 in capital assets to the City under Resolution No. RA 11-06.

Pursuant to Health and Safety (H&S) Code section 34167.5, the RDA may not transfer assets to a city, county, city and county, or any other public agency after January 1, 2011. Those assets should be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177(e). However, it appears that some of those assets also may be subject to the provisions of H&S Code section 34181(a). H&S Code section 34181(a) states:

The oversight board shall direct the successor agency to do all of the following:

- (a) Dispose of all assets and properties of the former redevelopment agency; provided, however, that the oversight board may instead direct the successor agency to transfer ownership of those assets that were constructed and used for a governmental purpose, such as roads, school buildings, parks, police and fire stations, libraries, and local agency administrative buildings, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset. Any compensation to be provided to the successor agency for the transfer of the asset shall be governed by the agreements relating to the construction or use of that asset. Disposal shall be done expeditiously

and in a manner aimed at maximizing value. Asset disposition may be accomplished by a distribution of income to taxing entities proportionate to their property tax share from one or more properties that may be transferred to a public or private agency for management pursuant to the direction of the oversight board.

Order of the Controller

Pursuant to H&S Code section 34167.5, the City of Hayward is ordered to reverse the transfer of the above assets in the amount of \$32,882,838. However, as of June 30, 2012, the City had returned a total of \$9,565,031 in Land Held for Redevelopment and \$19,224,855 in fixed assets to the Successor Agency. In addition, on October 25, 2013, the City turned over cash-for loan repayments totaling \$4,092,952 to the Successor Agency. Therefore, no further action is necessary.

City's Response to the Draft

The City and the Successor Agency disagree with the SCO findings in the draft report. The draft report identifies \$4,092,952 in unallowable asset transfers from the former redevelopment agency to the City of Hayward. . . These Loan Repayments (in excess of the amounts noted in the Controller's Report) were returned to the Successor Agency on October 25, 2013 in compliance with the Department of Finance's determination on the Other Funds and Assets Due Diligence Review. . . .

SCO Comment

We completed fieldwork on April 30, 2013, and at the time, the \$4,092,952 in loan repayments were not returned to the Successor Agency. Since then, the City has returned these assets to the Successor Agency and provided the proper documentation. The SCO has noted this corrective action in the final report. No further action is necessary.

**Schedule 1—
Unallowable RDA Asset Transfers to the City of Hayward
January 1, 2011, through January 31, 2012**

Cash assets:		
Cash transferred to the City on March 2, 2011	\$	4,092,952
Capital assets:		
Land held for redevelopment transferred on March 11, 2011		9,565,031
Assets transferred on March 11, 2011		<u>19,224,855</u>
Total unallowable asset transfers to the City of Hayward		32,882,838
Land held for redevelopment returned to the Successor Agency as of June 30, 2012		(9,565,031)
Assets returned to the Successor Agency as of June 30, 2012		(19,224,855)
Loan repayment turned over to the Successor Agency on October 25, 2013		<u>(4,092,952)</u>
Total amount subject to H&S Code section 34167.5	\$	<u> —</u>

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



April 11, 2014

Elizabeth Gonzalez, Chief
Local Government Compliance Bureau
State Controller's Office, Division of Audits
P.O. Box 942850
Sacramento, CA 94250-5874

RE: Hayward Redevelopment Agency Asset Transfer Review

Dear Ms. Gonzalez:

I am responding on behalf of the Hayward Successor Redevelopment Agency to the draft Asset Transfer Review Report recently completed by the State Controller's Office. The Hayward Successor Agency, the City of Hayward and the Hayward Housing Authority have remedied all unallowable asset transfers identified in your draft report and respectfully request that the final report reflect the additional actions taken since your office began its review.

Finding 1 – Unallowable Asset Transfers to the City of Hayward

The draft report identifies \$4,092,952 in unallowable asset transfers from the former redevelopment agency to the City of Hayward, specifically citing repayments of: (1) \$1,041,075 to the City's Water Enterprise Fund; (2) 831,877 to the City's Sewer Enterprise Fund; and (3) \$2,200,000 to the City (collectively, the "Loan Repayments").

These Loan Repayments (in excess of the amounts noted in the Controller's Report) were returned to the Successor Agency on October 25, 2013 in compliance with the Department of Finance's determination on the Other Funds and Assets Due Diligence Review. The Successor Agency remitted the funds returned to it from the City to the Alameda County Auditor-Controller who subsequently distributed those funds to the affected taxing entities as prescribed in applicable law. Please see Attachment I to this letter, which presents accounting records demonstrating the transfer of these funds from the City into the Successor Agency cash balance and the remittance of those funds to the County-Auditor Controller for distribution. The Successor Agency received its finding of completion from the Department of Finance, and as a result, the loans remain enforceable obligations of the Hayward Successor Agency under Health and Safety Code Section 34191.4(b)(1) and the City and Successor Agency will continue to seek repayment of these loans in accordance with the provisions of AB1484.

Because the Loan Repayment funds have already been returned by the City to the Successor Agency, the City and the Successor Agency respectfully request that the SCO remove all findings related to the Loan Repayments from the SCO's final report.

Office of the City Manager

777 B Street • Hayward • CA • 94541-5007
Tel: 510-583-4300 • Fax: 510-583-3601 • Website www.hayward-ca.gov

Finding 2 – Unallowable Asset Transfers to the Entity Assuming the Housing Functions

The draft report notes that there are \$10,712,940 in unallowable asset transfers made from the former redevelopment agency to the City of Hayward. The Draft Report inaccurately states that the housing assets were transferred to the City. The City did not receive any housing assets and is not the entity elected to retain the housing assets. All housing assets were instead transferred to the Hayward Housing Authority in compliance with Section 34176(b).

On January 10, 2012, the Hayward Housing Authority adopted Resolution 12-01 agreeing to retain the housing assets and functions previously performed by the former redevelopment agency as allowed under Health and Safety Code Section 34176(b)(Attachment II). We dispute the characterization of these as disallowed asset transfers because they were duly listed on the Hayward Successor Agency's Housing Asset Transfer List, which was approved by the Department of Finance (DOF) on February 25, 2013 (see Attachment III for Approval Letter).

In the exit conference with the State Controller's Office staff, your staff indicated that because these assets were transferred directly from the former redevelopment agency to the housing successor and did not go to the Successor Agency first, the transfers would be classified as unallowable, even though all of the assets now ultimately reside with the legally correct entity (the Hayward Housing Authority). Your staff indicated that the Successor Agency Oversight Board could adopt a resolution acknowledging the DOF's review and findings regarding the Housing Asset Transfer List and directing transfer of these assets to the Housing Authority, as the entity retaining the housing assets and functions of the former redevelopment agency under the Health and Safety Code and that this would remedy the finding in the SCO report. On May 20, 2013, the Hayward Oversight Board adopted Resolution 2013-05, taking precisely these actions (See Attachment IV). I believe this resolution was submitted to your staff team prior to completion of the draft report.

In addition, in the recently released ruling in the case *City of Fresno v. State of California*, Sacramento Superior Court Case No. 34-2013-80001450-CU-WM-GDS, the Court ruled that the SCO lacks the statutory authority to order the reversal of transfers of housing assets which were transferred in the manner prescribed in Health and Safety Code Section 34176 (See Attachment VI). As in the City of Fresno litigation, the Housing Assets were transferred to the Housing Authority in compliance with Health and Safety Code Section 34176, making the SCO's order with regards to the Housing Assets unnecessary and improper.

The SCO's interpretation of 34175(b) is erroneous and leads to the illusion that the Dissolved RDA inappropriately transferred the Housing Assets to the City, when in fact such a transfer was the intended and logical result of the application of Health and Safety Code Section 34176(b). The City, the Housing Authority and the Successor Agency request that the finding be removed from the SCO's final report.

In sum, the City of Hayward, the Hayward Successor Agency and the Hayward Housing Authority have taken the appropriate remedial actions to address the findings outlined in the draft

Asset Transfer Review report and respectfully request that these findings be corrected and/or removed from the SCO's final report accordingly.

I am happy to answer any further questions on these issues and can be reached by phone at (510) 583-4305 or via email kelly.mcadoo@hayward-ca.gov

Sincerely,



Kelly McAdoo
Assistant City Manager

Attachments:

Attachment I – Hayward Successor Agency Accounting Records
Attachment II – Housing Authority Resolution 12-01
Attachment III – Department of Finance Housing Asset List Approval Letter
Attachment IV – Hayward Oversight Board Resolution 2013-05
Attachment V – *City of Fresno Ruling*

cc: Fran David, City Manager
Michael Lavson, City Attorney
Tracy Vesely, Director of Finance
Maureen Conneely, Assistant City Attorney
Heather Gould, Goldfarb Lipman
Rafael Yaquian, Goldfarb Lipman
Jeffrey Brownfield, Chief, Division of Audits, State Controller's Office
Richard Chivaro, Chief Legal Counsel, State Controller's Office
Betty Moya, Audit Manager, Division of Audits, State Controller's Office
Nicole Baker, Auditor-in-Charge, Division of Audits, State Controller's Office

HOUSING AUTHORITY OF THE CITY OF HAYWARD

RESOLUTION NO. HA- 12-01

Introduced by Commissioner Halliday

RESOLUTION ELECTING TO RETAIN THE HOUSING
ASSETS AND FUNCTIONS PREVIOUSLY PERFORMED BY
THE REDEVELOPMENT AGENCY OF THE CITY OF
HAYWARD PURSUANT TO HEALTH AND SAFETY CODE
SECTION 34176

WHEREAS, Assembly Bill 1X 26 (the "Dissolution Act") and Assembly Bill 1X 27 (the "so-called Voluntary Redevelopment Program Act") were enacted on June 28, 2011, to significantly modify the Community Redevelopment Law (Health & Safety Code §33000, et seq., the "Redevelopment Law"); and

WHEREAS, on August 11, 2011, the California Supreme Court agreed to review the California Redevelopment Association's and League of California Cities' petition challenging the constitutionality of the Redevelopment Restructuring Acts; and

WHEREAS, on December 29, 2011, the California Supreme Court ruled that the Dissolution Act is largely constitutional and the Alternative Redevelopment Program Act is unconstitutional; and

WHEREAS, the Court's decision means that all California redevelopment agencies will dissolve on February 1, 2012 pursuant to the Dissolution Act; and

WHEREAS, Section 34176(a) of the Redevelopment Law provides that the city that authorized the creation of a redevelopment agency may elect to retain the housing assets and functions previously performed by the former redevelopment agency; and

WHEREAS, Section 34176(b)(3) of the Redevelopment Law provides that if the city that authorized the creation of a redevelopment agency elects to not retain the housing assets and functions previously performed by the former redevelopment agency and there is more than one local housing authority in the territorial jurisdiction of the former redevelopment agency, the city may select the local housing authority which will retain the housing assets and functions previously performed by the former redevelopment agency; and

WHEREAS, the City of Hayward (the "City"), by Resolution No. 12-006, adopted on January 10, 2012, elected not to retain the housing assets and functions previously performed by the Redevelopment Agency of the City of Hayward (the "Agency") in accordance with Section 34176 of the Redevelopment Law and instead selected the Housing Authority of the City of Hayward (the "City Housing Authority") to serve as the successor housing agency pursuant to Section 34176(b)(3) of the Redevelopment Law.

ATTACHMENT II

NOW, THEREFORE, BE IT RESOLVED, that the City Housing Authority hereby accepts the designation, and hereby declares its intent, to serve as the successor housing agency for the Agency in accordance with Section 34176(b)(3) of the Redevelopment Law.

BE IT FURTHER RESOLVED, that the City Housing Authority's Executive Director is hereby directed to file a copy of this resolution with the Alameda County Auditor-Controller.

BE IT FURTHER RESOLVED, that the City Housing Authority's Executive Director is hereby authorized to take such additional actions, and to execute all documents necessary and appropriate, for the Agency to transfer the assets of the Agency to the City Housing Authority in its capacity as successor housing agency to the Agency, pursuant to Section 34176(b)(3) of the Redevelopment Law.

HAYWARD, CALIFORNIA, January 10, 2012

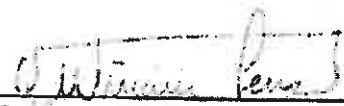
ADOPTED BY THE FOLLOWING VOTE:

AYES: COMMISSION MEMBERS: Zermeno, Quirk, Halliday, Peixoto, Salinas, Henson
CHAIR: Sweeney

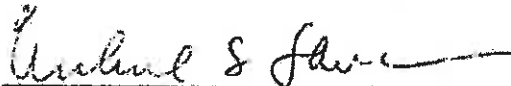
NOES: COMMISSION MEMBERS: None

ABSENT: COMMISSION MEMBERS: None

ABSTAIN: COMMISSION MEMBERS: None

ATTEST: 
Secretary of the Housing Authority of the
City of Hayward

APPROVED AS TO FORM:


General Counsel of the Housing Authority
of the City of Hayward



February 25, 2013

Ms. Kelly McAdoo, Assistant City Manager
City of Hayward
777 B Street
Hayward, CA 94541

Dear Ms. McAdoo:

Subject: Housing Asset Transfer Form

This letter supersedes the California Department of Finance's (Finance) Housing Asset Transfer Form letter dated August 31, 2012. Pursuant to Health and Safety Code (HSC) section 34176 (a) (2), the City of Hayward Housing Successor Agency (Agency) submitted a Housing Assets Transfer Form (Form) to Finance on August 1, 2012 for the period February, 1 2012 through August 1, 2012. Finance issued its determination related to those transferred assets on August 31, 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 January 23, 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, Items 1 and 2 – Finance no longer objects to the transfers. Finance originally objected to the transfers because the real properties were transferred to the City prior to February 1, 2012. HSC 34176 (a) (2) states the list shall include assets transferred between February 1, 2012, and the date upon which the list is created. The Agency contends that the property was transferred from the former redevelopment agency (RDA) to the City in March 2011, prior to February 1, 2012; however, the City then transferred the property to the Agency on July 27, 2012. Although the properties are housing assets, they are still subject to review by the State Controller's Office since the properties were transferred prior to February 1, 2012.
- Exhibit D, Item 1 – Finance no longer objects to the transfer. Finance originally objected to the transfer because documents provided were not sufficient to demonstrate that the former RDA housing funds were loaned to the City for payments related to the SR238 Housing Settlement Agreement. The Agency provided documentation showing the loan was made to the City on March 2, 2011 from the Low and Moderate Income Housing Fund. Therefore, the item is a housing asset pursuant to HSC section 34176 (e) (3).
- Exhibit D, Items 106 and 107 – Finance continues to object to the transfers. Finance originally objected to the transfers because the loan agreements are between the Housing Authority of the City of Hayward and the borrowers. Furthermore, the loan

Ms. McAdoo
February 25, 2013
Page 2

ATTACHMENT III

agreements were executed after June 27, 2011. Even if the City was acting on behalf of the former RDA, HSC 34163 (b) prohibits an agency from entering into agreements, obligations, or contracts with any entity for any purpose after June 27, 2011. Additionally, HSC section 34163 (a) states that the former RDA shall not have the authority to, and shall not, make loans or advances or grant or enter into agreements to provide funds or provide financial assistance of any sort to any entity or person for any purpose. Therefore, the items are not housing assets and shall be returned to the successor agency. The successor agency shall administer the receivables and any payments received shall be used to fund approved enforceable obligations or be disbursed to the affected taxing entities.

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 Mary Halterman, Analyst at (916) 445-1546.

Sincerely,



Steve Szalay
Local Government Consultant

cc: Mr. Omar Cortez, Housing development Specialist, City of Hayward
Ms. Carol S. Orth, Tax Analysis Division Chief, Alameda County
California State Controller's Office

RESOLUTION 2013- 05

RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY FOR THE REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD, ACKNOWLEDGING STATE DEPARTMENT OF FINANCE REVIEW AND FINDINGS REGARDING THE HOUSING ASSET TRANSFER LIST AND DIRECTING TRANSFER OF HOUSING ASSETS CONTAINED IN THE DEPARTMENT OF FINANCE APPROVED HOUSING ASSET LIST TO THE HOUSING AUTHORITY OF THE CITY OF HAYWARD ACTING AS THE HOUSING SUCCESSOR AGENCY PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTION 34181(C)

WHEREAS, the California state legislature enacted Assembly Bill x1 26 (the "Dissolution Act") to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code Section 33000 et seq); and

WHEREAS, pursuant to Health and Safety Code Section 34173, the City Council of the City of Hayward (the "City Council") declared that the City of Hayward, a charter city (the "City"), would act as successor agency (the "Successor Agency") for the dissolved Redevelopment Agency of the City of Hayward (the "Dissolved Agency") effective February 1, 2012; and

WHEREAS, pursuant to Health and Safety Code Section 34176(b)(3) of the Redevelopment Law, the City Council elected for the City not retain the housing assets and functions previously performed by the former redevelopment agency, and instead selected the Housing Authority of the City of Hayward (the "City Housing Authority") to serve as the successor housing agency pursuant to Section 34176(b)(3) effective February 1, 2012; and

WHEREAS, on August 1, 2012, the Housing Authority submitted the Housing Asset Transfer List (the "Draft Housing Asset List") to the California Department of Finance (the "Department") (Attachment III to the Staff Report dated May 20, 2013 (the "Staff Report")). The Draft Housing Asset List was a list of all "housing assets" of the Dissolved Agency, as defined in Health and Safety Code Section 34176(e), including: real and personal property interests acquired for low- and moderate-income housing purposes; encumbered funds; loan and grant receivables for assistance provided by the Low and Moderate Income Housing Fund ("Housing Fund"); rents and payments from housing operations, and amounts owed to the Housing Fund as a result of previously deferred or borrowed Housing Fund deposits; and

WHEREAS, the Housing Authority received a letter from the Department dated February 25, 2013, approving all housing assets listed on the Draft Housing Asset List (except for Items 106 and 107 on Exhibit D thereof) herein after referred to as the "Final Housing Asset List" (Attachment II to the Staff Report) which includes all of those housing assets approved by the Department; and

ATTACHMENT IV

WHEREAS, the State Controller's Office (the "SCO") intends to conduct a review of the Dissolved Agency's assets. The SCO has stated in other published audits that the transfer of housing assets from a successor agency to a housing successor requires Oversight Board action directing transfer of those assets; and

WHEREAS, the Successor Agency requests that the Oversight Board direct transfer of the housing assets contained in the Final Housing Asset List to the Housing Authority as the housing successor for the Dissolved Agency; and

WHEREAS, the accompanying Final Housing Asset List and the Staff Report provide supporting information upon which the actions set forth in this Resolution are based.

NOW, THEREFORE, BE IT RESOLVED that the Oversight Board hereby finds and determines that the foregoing recitals are true and correct, and together with the following documents and information form the basis for the approvals, authorizations, findings, and determinations set forth in this Resolution: (1) the Final Housing Asset List; (2) the Staff Report; and (3) the information provided by the Successor Agency and Housing Authority staff and the public.

BE IT FURTHER RESOLVED that in accordance with Health and Safety Code Section 34181(c), the Oversight Board does hereby authorize and direct the transfer of the housing assets contained in the Final Housing Asset List to the Housing Authority acting as the housing successor to the Dissolved Agency, and to do everything necessary and appropriate to effectuate said transfer.

BE IT FURTHER RESOLVED that the transfer of the interests shown in the Final Housing Asset List to the Housing Authority is exempt from the requirements of the California Environmental Quality Act pursuant to State CEQA Guidelines Section 15301 (as an action resulting in continuation of an existing facility).

BE IT FURTHER RESOLVED that the Successor Agency is hereby directed to notify the California Department of Finance of the actions set forth in this Resolution in accordance with Health and Safety Code Sections 34179(h) and Section 34181(f).

BE IT FURTHER RESOLVED that this Resolution shall take effect at the time and in the manner prescribed in Health and Safety Code Section 34179(h).

HAYWARD, CALIFORNIA, May 20, 2013

ADOPTED BY THE FOLLOWING VOTE:

AYES:	4	BOARD MEMBERS:	Sweeney, Chair
			Hodges
			Salinas
			Armas


ATTACHMENT IV

NOES: 0 BOARD MEMBERS.

ABSTAIN: 0 BOARD MEMBERS.

ABSENT: 3 BOARD MEMBERS.

Valle
Henson
Bristow


Chairperson of the Oversight Board

ATTEST: 
Oversight Board Designated
Communication Official

ATTACHMENT IV

FILED/ENDORSED
 FEB 11 2014
S. Lee
 By S. Lee, Deputy Clerk

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SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SACRAMENTO

**CITY OF FRESNO; SUCCESSOR
 AGENCY TO THE
 REDEVELOPMENT AGENCY OF
 THE CITY OF FRESNO,**

Plaintiffs and Petitioners,
 v.

**STATE OF CALIFORNIA; ANA J.
 MATOSANTOS, in her official capacity
 as Director of the State of California
 Department of Finance, JOHN
 CHIANG, in his official capacity as
 Controller of the State of California;
 VICKI CROW, in her official capacity
 as Auditor-Controller of the County of
 Fresno,**

Defendants and Respondents.

Case No. 34-2013-80001450-CU-WM-GDS

**RULING ON SUBMITTED MATTER:
 PETITION FOR WRIT OF MANDATE
 AND COMPLAINT FOR DECLARATORY
 AND INJUNCTIVE RELIEF**

Introduction

The long and complicated process of winding down the activities of redevelopment agencies continues. In this case, which involves a petition for writ of mandate under Code of Civil Procedure section 1085 and claims for declaratory and injunctive relief, the City of Fresno and the Successor Agency to the former Redevelopment Agency of the City of Fresno ("petitioners") challenge several administrative

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1 orders and determinations made by respondents State Controller and Department of Finance ("DOF"),¹

2 The order and determinations at issue here are the following:

- 3 1. An Order of the State Controller dated March 14, 2013, directing the City to return
4 housing assets, including cash, that had been transferred to the City as the designated
5 housing successor to the former Redevelopment Agency.
- 6 2. Two related determinations by DOF dated January 11, 2013 and June 27, 2013. The
7 first determination found that a balance of \$168,534 in the Successor Agency's Low
8 and Moderate Income Housing Fund ("LMIHF") was available for transfer to taxing
9 entities. The second determination found that a balance of \$4,933, 178 in the Successor
10 Agency's Other Funds and Accounts was available for transfer to taxing entities. The
11 two determinations addressed cash housing assets previously transferred to the City as
12 the designated housing successor to the former Redevelopment Agency, and effectively
13 directed the City and the Successor Agency to accomplish the transfer of the cash
14 (totaling \$5,101,712) to the Successor Agency.
- 15 3. A determination by DOF dated June 27, 2013 that an account receivable payable from
16 Utility Trailer Sales ("UTS") to the former Redevelopment Agency is to be considered
17 payable on demand and therefore is considered "cash" or a "cash equivalent" for
18 purposes of the Due Diligence Review.
- 19 4. A determination by DOF dated March 19, 2013 that a payment to the City under an
20 agreement entered into between the City and the former Redevelopment Agency in
21 2000, referred to in this ruling as the "Downtown Stadium Agreement", is not an
22 enforceable obligation that may be paid with funds from the Redevelopment Property
23 Tax Trust Fund ("RPTTF").
24

25 The Court heard oral argument on Friday, January 10, 2014. At the close of the hearing, the Court
26 took the matter under submission for issuance of a written ruling. Having considered the oral and written

27 ¹ Respondent Vicki Crow, the Fresno County Auditor-Controller, filed an answer to the petition but filed no briefing
28 on the merits and has not taken an active role in the case.

1 arguments submitted by the parties, as well as the documentary evidence, the Court now issues its final
2 ruling

3 Standard of Review

4 Petitioners seek a writ of mandate pursuant to Code of Civil Procedure section 1085 to review the
5 administrative orders and determinations of respondents State Controller and DOF, described above, under
6 the redevelopment dissolution laws. In ordinary mandamus actions the Court applies an abuse of
7 discretion standard, reviewing the challenged administrative decision to determine if it was arbitrary,
8 capricious, or entirely lacking in evidentiary support, or whether the agency failed to follow the procedure
9 and give the notices the law requires. (*Shelden v. Marin County Employees' Retirement Association*
10 (2010) 189 Cal.App.4th 458, 463; see also, *Ridgecrest Charter School v. Sierra Sands Unified School*
11 *District* (2005) 130 Cal.App.4th 986, 1003.)

12 The Court's review necessarily extends to the question of whether the respondents properly
13 applied the law. Issues involving the agency's interpretation of statutes raise questions of law, upon which
14 the Court exercises its independent judgment. (*California Correctional Peace Officers' Association v.*
15 *State of California* (2010) 181 Cal.App.4th 1454, 1460.)

16 Under well-established principles of law, there is a presumption that the agency's action was valid,
17 and petitioners have the burden of demonstrating that it was not. (See, e.g., *MCM Construction, Inc. v.*
18 *City and County of San Francisco* (1998) 66 Cal. App. 4th 359, 368.)

19 In this case, because declaratory and injunctive relief are essentially ancillary remedies to issuance
20 of a writ of mandate, the standard of review to be applied by the Court is identical.

21 This proceeding arises out of an administrative determination that did not involve an evidentiary
22 hearing or other formal fact-finding procedure. The Court therefore must find the relevant facts based on
23 the evidence submitted by the parties.² Because this case involves several separate administrative actions,
24 the Court will set forth its determination of the relevant facts for each of those actions, based on the
25
26

27 ² No formal administrative record has been lodged with the Court. All evidence has been presented through
28 declarations or requests for judicial notice. Petitioner's request for judicial notice filed on December 20, 2013,
including Exhibits 32-35, is granted. Respondents have not objected to the request.

1 preponderance of the evidence, under separate headings below.

2 State Controller's Order

3 Facts:

4 The Court finds that the following are the facts relevant to petitioners' challenge to the State
5 Controller's Order.

6 On January 26, 2012, the Fresno City Council adopted Resolution 2012-12 in order to address the
7 imminent dissolution of the Redevelopment Agency of the City of Fresno. The Resolution provided that
8 the City elected to serve as the Successor Agency to the Redevelopment Agency. The Resolution further
9 provided that the City elected "... to assume all rights, powers, assets, liabilities, duties and obligations
10 associated with the housing activities of the Agency in accordance with Health and Safety Code section
11 34176". The City thus elected to serve as the Successor Agency to the former Redevelopment Agency,
12 and to act as the successor to the former Redevelopment Agency for housing purposes. The City's Mayor
13 approved the Resolution on January 30, 2012, and the Resolution became effective on that date.³

14 On February 1, 2012, the Redevelopment Agency was dissolved by operation of law as provided
15 in the redevelopment dissolution laws and the Supreme Court's decision in *California Redevelopment*
16 *Association v. Matosantos* (2011) 53 Cal. 4th 231.

17 On the same date, the Successor Agency transferred the former Redevelopment Agency's
18 housing-related assets to the City, acting as the housing successor. The assets were placed in the City's
19 new Low and Moderate Income Housing Fund.⁴

20 The assets transferred included \$17,880,383 in cash, \$12,906,497 in receivables and advances, and
21 \$10,682,955 in property held for resale, for a total of \$41,469,835.⁵

22 At the time of this transfer, the Oversight Board for the Successor Agency had not yet held its first
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24

25 ³ See, Index to Petitioners' and Plaintiffs' Documentary Evidence ("Evidence"), Exhibit 29.

26 ⁴ See, Declaration of Debra Barletta, Financial Officer of the Successor Agency to the Redevelopment Agency of the
27 City of Fresno, paragraph 3.

28 ⁵ See, Evidence, Exhibit 29. City of Fresno Redevelopment Agency Asset Transfer Review prepared by the State
Controller's Office, dated March 2013.

1 meeting, which took place on April 30, 2012.⁶

2 On March 14, 2013, the State Controller issued a report reviewing all asset transfers made from
3 the City of Fresno Redevelopment Agency to the City of Fresno after January 1, 2011. The report found
4 that the Redevelopment Agency had made unallowable transfers of assets totaling \$41,469,825, i.e., all of
5 the cash, receivables and advances and property held for resale that had been transferred to the City's Low
6 and Moderate Income Housing Fund, as described above. The basis of this finding was the State
7 Controller's legal conclusion that Health and Safety Code section 34181(c) required the Oversight Board
8 to direct the Successor Agency to "[t]ransfer housing responsibilities and all rights, powers, duties and
9 obligations ... to the appropriate entity pursuant to Section 34176", and that until a transfer of the assets to
10 the Successor Agency was made, the Oversight Board was denied the opportunity to take such action. In
11 essence, the State Controller found that a direct transfer of the housing assets from the Successor Agency
12 or the Redevelopment Agency to the City as housing successor agency was improper. The State
13 Controller ordered the City, acting as the Successor Housing Agency, to reverse the transfer of those assets
14 and return them to the Successor Agency.⁷

15
16 Analysis:

17 The State Controller makes no attempt to defend its order in this proceeding. Instead, it claims
18 that the order is moot. The Court is not persuaded. As petitioners argue, the continued existence of the
19 order constitutes a cloud on the title of real property housing assets and may inhibit the use of any of the
20 housing assets, real property or otherwise, for their intended purposes. The Court therefore finds it
21 necessary and appropriate to address the issue of whether the order is valid.

22 The Court finds that it is not. The State Controller's authority to review asset transfers from a
23 successor agency to a city occurring after January 31, 2012 arises out of Health and Safety Code section
24 34178.8. The statute specifically provides, however, that "[t]his section shall not apply to housing assets
25 as defined in subdivision (e) of Section 34176." It is undisputed for the purposes of reviewing the State
26

27 ⁶ See, Declaration of Marlene Murphey, Executive Director of the Successor Agency to the Redevelopment Agency
of the City of Fresno, paragraph 19.

28 ⁷ See, Evidence, Exhibit 19: Finding and Order of the Controller, pages 4-5.

1 Controller's order that all of the assets covered by the order are housing assets of the former
2 Redevelopment Agency. The State Controller therefore lacked the authority to make the order.

3 Furthermore, the order is based on the theory that the Oversight Board has the authority, and the
4 right, to direct or approve the transfer of the former Redevelopment Agency's housing assets to the agency
5 acting as the housing successor, and that any transfer done without such direction or approval is invalid.
6 This theory is untenable because Health and Safety Code section 34176(a)(1) specifically provides that if a
7 city that created a redevelopment agency elects to retain the authority to perform housing functions
8 previously performed by the agency, "... all rights, powers, duties, obligations, and housing assets ... shall
9 be transferred to the city". (Emphasis added.) Furthermore, Health and Safety Code section 34177(g)
10 specifically requires a successor agency to "[e]ffectuate the transfer of housing funds and assets to the
11 appropriate entity designated pursuant to Section 34176." Indeed, the provision of law cited in the State
12 Controller's order, Health and Safety Code section 34181(c), only gives the Oversight Board the authority
13 to direct the Successor Agency to "[t]ransfer housing assets pursuant to Section 34176", i.e., to the
14 designated housing successor.
15

16 Clearly, where a city elects to act as the housing successor, as occurred here, the law requires all
17 housing assets to be transferred to the city. Thus, even if the Oversight Board had been in existence and
18 active at the time of the transfer in this case, which it was not, it would have had no discretion or authority
19 to direct the transfer of housing assets to any other entity. An order directing that asset transfers required
20 by law be reversed so that the Oversight Board may simply order the assets transferred back to the City
21 serves no legitimate purpose.

22 The State Controller did not have authority to make the challenged order, which involved housing
23 assets. Also, because the housing assets in this case were properly transferred to the City as required by
24 Section 34176, the State Controller's order reversing the transfer was unnecessary and improper. The
25 State Controller's order therefore was not made in compliance with law, and was not supported by any
26 evidence. The Court grants the petition for writ of mandate and finds that petitioners are entitled to
27 declaratory and injunctive relief on this issue. The Court finds and declares that the State Controller's
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1 order dated March 14, 2013 is invalid, and will issue a writ directing the State Controller to rescind the
2 order, and an injunction directing the State Controller not to enforce it.

3 Department of Finance Orders Regarding Cash Housing Assets

4 Facts:

5 The Court finds that the following are the facts relevant to petitioners' challenge to DOF's orders
6 regarding cash housing assets.

7 As stated above, on February 1, 2012, the Successor Agency transferred the former
8 Redevelopment Agency's housing-related assets to the City's new Low and Moderate Income Housing
9 Fund.⁸

10 The assets transferred included \$17,880,383 in cash, \$12,906,497 in receivables and advances, and
11 \$10,682,955 in property held for resale, for a total of \$41,469,835.⁹

12 On July 31, 2012, petitioners prepared and submitted to respondent DOF a Housing Assets
13 Transfer list as required by Health and Safety Code section 34176(a)(2), showing all assets transferred to
14 the City in its role as the entity assuming the housing functions of the former Redevelopment Agency.¹⁰

15 Pursuant to Health and Safety Code section 34176(a)(2), respondent DOF had up to 30 days from
16 the date of receipt of the list to object to any of the assets or transfers of assets identified on the list. On
17 August 31, 2012 respondent DOF issued a letter setting forth the results of its review of petitioners'
18 Housing Assets Transfer list. "Based on a sample of line items reviewed and the application of law",
19 respondent DOF objected to one item, a consultant service contract executed on September 22, 2011.
20 Respondent DOF did not object to any other items on the list.¹¹ DOF therefore did not object to any of the
21 cash transfers.
22

23 Respondent DOF subsequently conducted a Due Diligence Review of the Successor Agency's
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25 ⁸ See, Declaration of Debra Barletta, Financial Officer of the Successor Agency to the Redevelopment Agency of the
City of Fresno, paragraph 3.

26 ⁹ See, Evidence, Exhibit 29: City of Fresno Redevelopment Agency Asset Transfer Review prepared by the State
Controller's Office, dated March 2013.

27 ¹⁰ See, Evidence, Exhibit 11.

28 ¹¹ See, Evidence, Exhibit 12.

1 Low and Moderate Income Housing Fund, and a separate Due Diligence Review of the Successor
2 Agency's Other Funds and Accounts, according to the process set forth in Health and Safety Code section
3 34179.6(c). The purpose of the Due Diligence Review was to determine the amount of cash available for
4 transfer from the Successor Agencies to the County Auditor-Controller for distribution to other taxing
5 entities.

6 On January 11, 2013, respondent DOF issued a letter setting forth its determination in the Low
7 and Moderate Income Housing Fund review. The letter stated DOF's conclusion that "... the amount of
8 available cash in the LMIHF was \$312,704 as of January 31, 2012. [¶] The full \$312,704 was transferred
9 to the Housing Successor on February 1, 2012. However, the Recognized Obligation Payment Schedules
10 for the January 1, 2012 through June 30, 2013 periods only identified \$144,170 in expenditures to be
11 funded by the LMIHF. Therefore, Finance is adjusting the June 30, 2012 cash balance by only \$168,534
12 (\$312,704 - \$144,170). [¶] The Agency's LMIHF balance available for distribution to the affected taxing
13 entities has been revised to \$168,534."¹²

14
15 On June 27, 2013, respondent DOF issued a letter setting forth its determination in the Other
16 Funds and Accounts review. The letter stated:

17 "Cash transfers totaling \$17,567,681 to the City of Fresno Housing Successor were initially
18 disallowed. Per HSC section 34176(a)(1), assets approved by Finance as an inclusion on the Housing
19 Asset Transfer Form excludes any amounts on deposit in the Low and Moderate Income Housing Fund, or
20 other Agency Funds. During the Meet and Confer process, it was determined that \$7,975,191 has already
21 been expended with approval from Finance and another \$4,659,312 has been approved for expenditure
22 during the January through June 2013 and July through December 2013 periods. Therefore, Finance is
23 reversing \$12,634,503 (\$7,975,191 + \$4,659,312) of the adjustment and increasing the [Other Funds and
24 Accounts] balance available by \$4,933,178 (\$17,567,681 - \$12,634,503). [¶] Additional funding needed
25 for the remaining balances of the commitments and the Agency's direct project costs should be requested
26 in future Recognized Obligation Payment Schedule (ROPS) on separate line items to be paid out of the
27

28 ¹² See, Evidence, Exhibit 15.

1 Redevelopment Property Tax Trust Fund (RPTTF).” In a chart entitled “OFA Balances Available for
2 Distribution to Taxing Entities”, the letter identified the amount of \$4,933,178 as “Disallowed transfers”.¹³

3 Analysis:

4 In essence, DOF’s determinations addressed a portion of the \$17,880,497 in cash housing assets
5 that previously had been transferred to the City, as the designated housing successor to the former
6 Redevelopment Agency, on February 1, 2012. DOF’s two determinations amounted to a directive to
7 return to the Successor Agency a portion of the amount previously transferred (totaling \$5,101,732) on the
8 ground that such amount was not presently needed to pay for enforceable housing obligations.

9 The Court finds that DOF exceeded its authority in making these two determinations. DOF
10 previously had determined that all of the \$17,880,497 in cash transferred to the City as housing successor
11 represented housing assets. This necessarily represented a determination that the cash, as a housing asset,
12 was encumbered by one or more enforceable housing obligations. Once DOF made that determination, it
13 was precluded from making a contrary determination in the Due Diligence Review process.

14 Health and Safety Code section 34176 governs the treatment of housing assets of the former
15 redevelopment agency. As described above, subsection (a)(1) of the statute provides that a city may elect
16 to retain the housing assets and functions previously performed by its redevelopment agency. If it does so,
17 as occurred here, the statute provides that the assets shall be transferred to the city. Subsection (a)(2) then
18 requires the housing successor (in this case, the City) to submit a list of housing assets that have been
19 transferred, along with an explanation of how the assets meet the definition of “housing asset” contained in
20 subdivision (e) of the statute. Subdivision (e) defines “housing assets” as including “any funds
21 encumbered by an enforceable obligation to build or acquire low- and moderate-income housing”.
22 Subsection (a)(2) gives DOF up to 30 days to raise any objection to the list, and if a transferred asset is
23 deemed not to be a housing asset as defined in subdivision (e), it shall be returned to the successor agency.
24

25 Under these provisions of law, DOF has specific statutory authority to review transfers of housing
26 assets to the housing successor and to disapprove any transfer that does not involve a legitimate housing
27

28 ¹³ See, Evidence, Exhibit 18.

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1 asset as defined in the statute. In conducting that review, DOF necessarily must determine whether a
2 transferred asset is a "housing asset" within the meaning of Health and Safety Code section 34176(e), i.e.,
3 DOF must determine whether the housing asset is encumbered by an enforceable obligation.

4 In this case, DOF exercised its statutory review authority. It issued a determination on August 31,
5 2012 that raised no objection to the transfer of any of the cash to the City. In making that determination,
6 DOF necessarily found that the cash transferred to the City represented a "housing asset" within the
7 meaning of Health and Safety Code section 34176(e), and thus found that all of the cash represented funds
8 encumbered by an enforceable obligation to build or acquire low- and moderate-income housing.¹⁴

9 Moreover, DOF's June 27, 2013 determination recognized that it previously had approved the
10 spending of \$4,659,312 of the cash housing assets through the ROPS process, which required a finding
11 that the expenses were for enforceable obligations.¹⁵ That determination also recognized that "remaining
12 balances of the commitments and the Agency's direct project costs" would be expended in the future.
13 Thus, DOF implicitly conceded that virtually all of the cash housing assets were needed for enforceable
14 obligations.

15
16 In this proceeding, DOF has offered no evidence to show that the transferred funds were not
17 encumbered by one or more enforceable housing obligations. Nor did DOF ever withdraw or modify its
18 August 31, 2012 determination. The Court notes that Health and Safety Code section 34179.6(d), which
19 sets forth DOF's authority in the Due Diligence Review Process, does not explicitly state that DOF may
20 issue an order that effectively reverses previously-approved transfers of encumbered cash assets to the
21 housing successor. The Court accordingly concludes that DOF's August 31, 2012 determination
22 approving transfer of cash housing assets to the City was final and binding and could not be reversed, in
23

24 ¹⁴ Schedule C of the Housing Assets List, which lists nine separate types of housing built or acquired with
25 enforceably obligated funds and states the amounts owed as enforceable obligations on each type, is evidence that
26 supports DOF's August 31, 2012 determination approving the transfer of the cash to the City. (See, Evidence,
27 Exhibit 11)

28 ¹⁵ In passing, petitioners argue that the City, acting as housing successor, was not legally required to obtain DOF's
approval for expenditures for housing purposes through the ROPS process, and state that such expenditures were
listed in the ROPS under protest. The issue of whether the City was required to submit a ROPS for housing
expenditures is not before the Court and is not material to the Court's ruling in this matter. The Court accordingly
does not address that issue in this ruling.

1 whole or in part, through a contradictory determination in the Due Diligence Review process.

2 The Court therefore grants the petition for writ of mandate and finds that petitioners are entitled to
3 declaratory and injunctive relief on this issue. The Court finds and declares that DOF's January 11, 2013
4 and June 27, 2013 determinations that cash housing assets in the possession of the City as housing
5 successor represent unencumbered assets available for distribution to taxing entities are invalid, in that
6 those determinations exceeded its authority under the law and are not supported by the evidence. The
7 Court will issue a writ directing DOF to vacate those determinations, and an injunction directing DOF not
8 to take any action to enforce them.

9 UTS Receivable

10 Facts:

11 The Court finds that the following are the facts relevant to petitioners' challenge to DOF's
12 determination regarding the UTS receivable.

13 In July 2008, UTS executed a Drainage Facility Development Agreement with the Fresno
14 Metropolitan Flood Control District, in which the District agreed to reimburse UTS for certain costs
15 incurred by UTS for construction of a public storm drain. The District agreed to reimburse UTS from
16 future drainage fees received by the District from the local drainage area served by the drain.¹⁶

17 On or about March 17, 2010, the Redevelopment Agency of the City of Fresno agreed to advance
18 \$58,970.00 to UTS to cover "the amount of monies Utility Trailer Sales paid in excess of storm drain fees
19 to construct a storm drain on East Avenue". UTS and the Redevelopment Agency agreed that the latter
20 would be reimbursed by the District. The parties memorialized this agreement on the face of a UTS
21 invoice, and the Redevelopment Agency paid \$58,970.00 to UTS.¹⁷

22 The former Redevelopment Agency recorded the disbursement to UTS as a receivable from the
23 District.¹⁸

24 On May 7, 2013, the Successor Agency, the District and UTS executed an Agreement of Excess
25

26 ¹⁶ See, Evidence, Exhibit 27.

27 ¹⁷ *Id.*

28 ¹⁸ See, Declaration of Debra Barletta, paragraph 7.

1 Credit Reimbursement under which UTS, with the District's agreement, assigned excess credit
2 reimbursement payments to the Successor Agency in the amount of \$46,485.00.¹⁹

3 On June 27, 2013, DOF issued a letter setting forth its determination based on the Other Funds and
4 Accounts Due Diligence Review. The letter addressed the UTS receivable as follows:

5 "Based on the documentation provided for the East Avenue Improvements project, an advance
6 receivable in the amount of \$58,970 ... is not evidenced with a contract. Pursuant to the Drainage Facility
7 Development Agreement dated July 8, 2008 between the Fresno Metropolitan Flood Control District
8 (District) and Utility Trailer Sales (Developer), the District was to reimburse the Developer for costs in
9 excess of the drainage fee obligation. However, on an invoice dated March 17, 2010, the former
10 Redevelopment Agency (RDA) agreed to reimburse the Developer \$58,970 on behalf of the District and
11 the former RDA would be reimbursed by the District. The former RDA had agreed to make the payment
12 to the Developer as part of the Memorandum of Understanding between the former RDA and the
13 Developer dated April 15, 2008. The only agreement between the Agency and the District is the
14 Assignment of Excess Credit Reimbursement Agreement dated May 7, 2013; however, the Agency no
15 longer has the authority to enter into agreements. Without a valid contract or repayment schedule with the
16 District, this loan is considered payable on demand from the District and should be included as part of the
17 June 30, 2012 balance. Per HSC section 34179.5(b)(1), 'cash' and 'cash equivalents' include payables on
18 demand. As such, the [Other Funds and Accounts] available for distribution to the taxing entities will be
19 increased by \$58,970."²⁰

21 Analysis:

22 Health and Safety Code section 34171.5(b)(1) provides, as DOF stated, that "payables on
23 demand" are considered to be cash or cash equivalents for purposes of the Due Diligence Review. In this
24 case, however, there is no evidence to support the conclusion that the UTS receivable represented a
25

26 ¹⁹ See, Evidence, Exhibit 28. It is not clear why this amount differs from the amount stated in the 2010 invoice. The
27 parties do not address the discrepancy. The Court accordingly concludes that the discrepancy is not material to its
analysis of this issue.

28 ²⁰ See, Evidence, Exhibit 18.

1 "payable on demand" Instead, all the evidence before the Court demonstrates that the UTS receivable
2 represented a three-party agreement between the Redevelopment Agency, the District and UTS that
3 contemplated a future payment to be made upon the fulfillment of certain contingencies.

4 Specifically, the agreement provided that the District would reimburse excess drainage costs from
5 fees the District would receive in the future, and that the reimbursement would go to the Redevelopment
6 Agency rather than to UTS when the District received such fee payments. The District thus did not agree
7 to make payment on demand, and the Redevelopment Agency did not have the right to demand payment
8 until the District actually received fees. There is no evidence that the District has received the fee
9 payments, which would make the obligation currently due. Thus, the evidence regarding the agreement
10 does not support DOF's conclusion that the receivable is a "payable on demand". DOF's determination
11 that the receivable should be treated as cash or a cash equivalent for purposes of the Due Diligence Review
12 therefore cannot be upheld.

13
14 The Court accordingly grants the petition for writ of mandate and finds that petitioners are entitled
15 to declaratory and injunctive relief on this issue. The Court finds and declares that DOF's June 27, 2013
16 determination that the UTS receivable is cash or a cash equivalent under Health and Safety Code section
17 34179.5(b)(1) for purposes of the Due Diligence Review is invalid. The Court will issue a writ directing
18 DOF to vacate that determination, and an injunction directing DOF not to take any action to enforce it.

19 Downtown Stadium Agreement

20 Facts:

21 The Court finds that the following are the facts relevant to petitioners' claims regarding the
22 Downtown Stadium Agreement.

23 On October 24, 2000, the City of Fresno and its former Redevelopment Agency entered into a
24 written agreement entitled the "Downtown Sports/Entertainment Stadium Disposition and Development
25 Agreement".²¹

26 The former Redevelopment Agency agreed to sell property it owned in downtown Fresno to the
27

28 ²¹ See, Evidence, Exhibit 21.

1 City for a price of \$710,000, which the City would pay by crediting that amount against current
 2 Redevelopment Agency debts to the City.²²

3 The City agreed to design and construct a stadium on the property, financing construction through
 4 the Fresno Joint Powers Financing Authority ("JPA"), a joint powers authority created by the City Council
 5 and the former Redevelopment Agency in 1988.²³ The City was to enter into a Site Lease with the JPA,
 6 and the JPA was to enter into a Facilities Lease with the City, for the purpose of the JPA issuing bonds in
 7 an amount not to exceed \$45,000,000 to finance construction of the stadium. The agreement provided that
 8 the JPA would pledge the Facilities Lease payments from the City to pay down the debt on the bond
 9 transaction. The agreement further provided that the City anticipated pledging "any and all legally
 10 available funds of the City's general fund to pay the annual Facility Lease payments, which will be
 11 equivalent to the Bond Transaction debt service, to the JPA."²⁴

12 The agreement also provided for potential payments by the Redevelopment Agency, described as
 13 the "Agency Obligation". In the event that the City's annual Facility Lease payment to the JPA exceeded
 14 the stadium's annual revenues actually received by the City and certain "pass through payments" of tax
 15 increment revenue from the Redevelopment Agency's four newest redevelopment project areas, the
 16 Redevelopment Agency agreed "...to reimburse or pay the City the excess amount, not to exceed
 17 \$200,000 annually, from any legally available revenues."²⁵

18 On June 7, 2001, the JPA issued bonds for the downtown stadium project. A copy of the Bond
 19 Official Statement Cover Page states that the bonds "...are special obligations of the [JPA], payable solely
 20 from and secured by a pledge of certain Revenues and other moneys pledged therefor on the Trust
 21 Agreement consisting primarily of Base Rental Payments ... to be received by the [JPA] from the City
 22 pursuant to a Facility Lease. ... Such Base Rental Payments are calculated to be sufficient to pay the
 23 principal of and interest on the Bonds when due. The obligation of the City to make Base Rental
 24

25
 26 ²² *Id.*, page 7, Section 3.

27 ²³ *Id.*, page 10, Section 5.

28 ²⁴ *Id.*, pages 16-17, Section 10(e).

²⁵ *Id.*, page 17, Section 10(e).

1 Payments is an obligation payable from any lawfully available funds of the City.²⁶

2 The City subsequently built the stadium, which now serves as the home park for a minor league
3 baseball team and hosts other events. Prior to its dissolution, the former Redevelopment Agency made
4 payments to the City under the agreement to supplement stadium revenues.²⁷

5 On August 21, 2012, the Successor Agency for the Redevelopment Agency of the City of Fresno
6 submitted a Recognized Obligation Payment Schedule ("ROPS") for the period January 1, 2013 to June
7 30, 2013. Item 3 of the ROPS listed a projected payment of \$140,743 for the Downtown Stadium
8 Agreement, and sought approval to make the payment with funds from the Redevelopment Property Tax
9 Trust Fund ("RPTTF").²⁸

10 On March 19, 2013, respondent DOF issued a letter stating its determination with regard to this
11 item. DOF denied the item on the following basis:

12 "Finance previously denied the item as HSC section 34171(d)(2) states that agreements, contracts,
13 or arrangements between the city that created the redevelopment agency (RDA) and the former RDA are
14 not enforceable. The Agency contends the item is an enforceable obligation because written agreements
15 entered into at the time of issuance, but in no event later than December 31, 2010, of indebtedness
16 obligations, and solely for the purpose of securing or repaying those obligations may be deemed
17 enforceable. HSC section 34171(d)(2) states that written agreements entered into at the time of issuance,
18 but in no event later than December 31, 2010, of indebtedness obligations, and solely for the purpose of
19 securing or repaying those indebtedness obligations may be deemed enforceable obligations. However,
20 the agreement was not entered into at the time of the issuance as the Disposition and Development
21 Agreement between the City and the former RDA was dated October 24, 2000, and the bonds were dated
22 June 7, 2001. Furthermore, the agreement was not solely for the purpose of securing or repaying the
23 indebtedness obligations. The provisions of HSC section 34171 apply. HSC section 34171(d)(2) states
24 that agreements, contracts, or arrangements between the city, county, or city and county that created the
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26 ²⁶ See, Evidence, Exhibit 22.

27 ²⁷ See, Declaration of Marlene Murphey, paragraph 25.

28 ²⁸ See, Evidence, Exhibit 6.

1 RDA and the former RDA are not enforceable obligations. Therefore, this item is not an enforceable
 2 obligation and is not eligible for Redevelopment Property Tax Trust Fund (RPTTF).²⁹

3 **Analysis:**

4 The issue before the Court is whether respondent DOF correctly determined that the Downtown
 5 Stadium Agreement was not an "enforceable obligation" for purposes of the redevelopment dissolution
 6 laws. If DOF's determination was correct, DOF was also correct in disapproving the payment under the
 7 agreement petitioners claimed as Item 3 on the ROPS for January 1-June 30, 2013.
 8

9 Health and Safety Code section 34171(d)(2) applies directly to this case. The statute declares that
 10 the term "enforceable obligation" does not include "... any agreements, contracts, or arrangements
 11 between the city, county, or city and county that created the redevelopment agency and the former
 12 redevelopment agency". The Downtown Stadium Agreement, as an agreement between the City and the
 13 former Redevelopment Agency, falls squarely within the terms of the statute, and therefore may not be
 14 considered an "enforceable obligation" unless an exception applies.

15 Health and Safety Code section 34171(d)(2) does contain a potential exception to the general rule
 16 that agreements between a city and its redevelopment agency may not be treated as enforceable
 17 obligations, which is stated as follows: "However, written agreements entered into (A) at the time of
 18 issuance, but in no event later than December 31, 2010, of indebtedness obligations, and (B) solely for the
 19 purpose of securing or repaying those indebtedness obligations may be deemed enforceable obligations for
 20 the purposes of this part."³⁰

21 Petitioners contend that the Downtown Stadium Agreement falls within this exception. This
 22 contention is not persuasive, for reasons of both timing and substance.

23 With regard to timing, the exception applies to agreements entered into at the time of issuance of
 24

25 ²⁹ See Evidence, Exhibit 7.

26 ³⁰ Health and Safety Code section 34171(d)(2) contains another exception for loan agreements entered into between a
 27 redevelopment agency and the city, county or city and county that created it, within two years of the date of creation
 28 of the redevelopment agency. Petitioners do not contend that this exception applies, and it does not, because the City
 created the Redevelopment Agency in 1959 (see, Declaration of Marlene Murphey, paragraph 2) and the agencies
 entered into the Downtown Stadium Agreement in 2000.

1 "indebtedness obligations". Subdivision (c) of the statute defines this term as meaning "... bonds, notes,
2 certificates of participation, or other evidence of indebtedness, issued or delivered by the redevelopment
3 agency, or by a joint exercise of powers authority created by the redevelopment agency, to third-party
4 investors or bondholders to finance or refinance redevelopment projects undertaken by the redevelopment
5 agency in compliance with the Community Redevelopment Law ...". In this case, the bonds issued for
6 stadium construction in June 2001 qualify as "indebtedness obligations", because the bonds were issued to
7 third-party investors or bondholders to finance downtown stadium project. However, petitioners'
8 contention that the Downtown Stadium Agreement is an enforceable obligation under the exception
9 founders on the fact that the bonds were not issued until nine months after the City and the Redevelopment
10 Agency entered into that agreement.

11 Petitioners argue that the Downtown Stadium Agreement and the subsequent issuance of bonds
12 should be considered as a single transaction, because the Downtown Stadium Agreement explicitly
13 contemplated the issuance of bonds. In essence, petitioners argue that the statutory language applying the
14 exception in subdivision (d)(2) to agreements entered into "at the time of issuance" of indebtedness
15 obligations should be interpreted as meaning agreements entered into "in connection with", but not
16 necessarily "simultaneously with", the issuance of indebtedness obligations.

17 The Court finds petitioners' proposed interpretation of the statutory exception to be unconvincing.
18 In this case, the City and the Redevelopment Agency entered into the Downtown Stadium Agreement
19 approximately nine months before the bonds were issued. To interpret the statutory language "at the time
20 of issuance" to apply to an action taken nine months before the issuance of bonds, as petitioners suggest,
21 stretches such language far beyond its reasonable and ordinary meaning. Indeed petitioners' interpretation
22 could make an agreement between a city and its redevelopment agency into an "enforceable obligation"
23 even when bonds are issued many years after the date of the agreement, as long as issuance of the bonds
24 was at least contemplated at the time of the agreement. Petitioners cite no evidence of legislative intent
25 that would support such an expansive interpretation of the statutory timing requirement. The Court
26 therefore finds no basis for adopting that interpretation here.
27
28

ATTACHMENT V

1 With regard to substance, petitioners' contention that the Downtown Stadium Agreement falls
2 within the terms of the exception in Health and Safety Code section 34171(d)(2) also fails. Part (B) of the
3 exception provides that, to be considered as an enforceable obligation, an agreement between a
4 redevelopment agency and its sponsor city must be one entered into *solely* for the purpose of securing or
5 repaying indebtedness obligations.

6 In this case, the City and the Redevelopment Agency did not enter into the Downtown Stadium
7 Agreement solely for the purpose of securing or repaying projected bonds for the project. They also did so
8 for the purpose of transferring ownership of the project site from the Redevelopment Agency to the City,
9 and for the purpose of building a stadium on the property, which the parties believed would help eliminate
10 blight in the project area and provide jobs for the local economy. Indeed, the contractual recitals contained
11 in the agreement focus primarily on achieving such benefits, and only mention bond financing in one of
12 the seventeen recital paragraphs.³¹ Bond financing thus appears to be the means of accomplishing the
13 agreement to build a stadium, rather than the sole or even major purpose of the agreement. The fact that
14 the Downtown Stadium Agreement had purposes other than solely securing or repaying indebtedness
15 obligations precludes those agreements from being considered enforceable obligations under Health and
16 Safety Code section 34171(d)(2).

17 Because the City and the Redevelopment Agency did not enter into the Downtown Stadium
18 Agreement at the time of issuance of the bonds for the project, and did not enter into that agreement solely
19 for the purpose of securing or repaying the bonds, the Downtown Stadium Agreement may not be
20 considered an "enforceable obligation" under the provisions of Health and Safety Code section
21 34171(d)(2). The petition for writ of mandate challenging respondent DOF's determination is therefore
22 denied, as are petitioners' requests for declaratory and injunctive relief on this issue.

23
24 Conclusion

25 For the reasons stated above, the Court finds in favor of petitioners, and grants their requests for
26 declaratory, injunctive and writ of mandate relief, with regard to the State Controller's order, DOF's
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28 ³¹ See, Evidence, Exhibit 20, pages 1-4, paragraphs A - Q.

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determinations regarding cash housing assets transferred to the City as housing successor, and DOF's determination regarding the UTS receivable. The Court finds in favor of respondents and denies petitioners' claims for relief with regard to DOF's determination regarding the Downtown Stadium Agreement.

In accordance with Local Rules 2.07 and 2.15, counsel for petitioners is directed to prepare a formal order granting declaratory and injunctive relief and the petition for writ of mandate in part, as stated above, and denying such relief in part, incorporating this Court's ruling as an exhibit, and a separate judgment and writ of mandate; submit the order, judgment and writ to all other counsel for approval as to form in accordance with Rule of Court 3.1312(a); and thereafter submit them to the Court for signature, entry of judgment and issuance of the writ in accordance with Rule of Court 3.1312(b).

DATED: February 11, 2014



Judge MICHAEL P. KENNY
Superior Court of California,
County of Sacramento

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CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above-entitled **RULING ON SUBMITTED MATTER** in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at 720 9th Street, Sacramento, California.


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Superior Court of California,
County of Sacramento

Dated: February 11, 2014

By: 
S. LEE
Deputy Clerk