



CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

FIGHTING FOR JUSTICE, CHANGING LIVES

December 21, 2012

[By Electronic Mail and Regular Mail]

Ana J. Matosantos
Director, California Department of Finance
Redevelopment Administration
915 L Street
Sacramento, CA 95814-3706
Sent via email at redvelopment_administration@dof.ca.gov

Angela Freitas
Director, Planning and Community Development and
Staff, Successor Agency to the Stanislaus County Redevelopment Agency
Secretary, Oversight Board of the Successor Agency
the Stanislaus County Redevelopment Agency
1010 Tenth Street, Suite 3400
Modesto, CA 95354
Sent via e-mail at ANGELA@stancounty.com

Members of the Board of Supervisors as Successor Agency
to the Stanislaus County Redevelopment Agency
c/o Christine Ferraro Tallman, Clerk
Stanislaus County Board of Supervisors
1010 Tenth Street, Suite 3400
Modesto, CA 95354
Sent via e-mail at ctallman@mail.co.stanislaus.ca.us

Members of the Oversight Board of the Successor Agency
to the Stanislaus County Redevelopment Agency
c/o Brenda McCormick, Clerk, Oversight Board
1010 Tenth Street, Suite 3400
Modesto, CA 95354
Sent via e-mail at bmccormick@mail.co.stanislaus.ca.us

Lauren Klein
Auditor-Controller of Stanislaus County
1010 Tenth Street, Suite 5100
Modesto, CA 95354
Sent via e-mail at lklein@mail.co.stanislaus.ca.us

BOARD OF SUPERVISORS
2013 JAN - 3 A 10:34

Re: Department of Finance Determination Letter regarding Stanislaus County's DDR pertaining to the Low and Moderate Income Housing Fund

Dear Ms. Matosantos, Ms. Freitas, Members of the Board of Supervisors, Members of the Oversight Board, and Ms. Klein:

California Rural Legal Assistance (CRLA) represents rural low-income Californians, farmworkers, and families, including Stanislaus County residents who are affected by the 1991 Settlement Agreement which is the subject of the Department of Finance's determination dated December 15, 2012 as to the Due Diligence Review (DDR) regarding Low and Moderate Income Housing Funds. We are writing to object to the Department's determination that over \$10 million in Low and Moderate Income Housing Funds are not encumbered by a 1991 agreement between the former redevelopment agency and lower income residents of Stanislaus County.

We were verbally informed on December 19, 2012 by Angela Freitas and Jennifer Gore, Counsel for the County, that over \$10 million of Low and Moderate Income Housing Funds were transferred to the Real Property Tax Trust Fund (RPTTF) administered by the County Auditor for distribution to other taxing entities pursuant to the Department's letter of December 15, 2012. An independent licensed accountant approved by the County Auditor-Controller determined as you know that the \$10,052,753 at issue is required to be used to increase, improve, and expand the supply of low and moderate income housing in the County pursuant to the former redevelopment agency's agreement in 1991 with CRLA's clients. The independent accountant consequently determined, pursuant to Health & Saf. C. §§34179.5 and 34179.6, that these funds are *not* available for disbursement to other taxing entities. Likewise, the Oversight Board for the Successor Agency approved the DDR, authorized the Successor Agency to *retain* the \$10+ million fund, instructed Successor Agency staff to submit the approved DDR to the Department and County Auditor-Controller, and instructed staff to request an opportunity to meet and confer with the Department to resolve any disputes regarding the amounts and sources of funds identified in the DDR. *See* Oversight Board Resolution No. 2012-08 dated October 26, 2012 (enclosed). Notably, the Oversight Board did *not* authorize Successor Agency staff to transfer these funds to the County Auditor for distribution to other taxing entities. Nonetheless, staff of the Successor Agency transferred over \$10 million of contractually restricted affordable housing funds to the County Auditor in response to the Department's letter of December 15th.

The Department's position and the Successor Agency's transfer of these funds to the County Auditor violate the provisions of AB X1 26 and AB 1484 and amount to a breach and impairment of our clients' agreement. Our letter to the Department dated December 5, 2012 (a copy of which is enclosed and incorporated herein) explained that the Dissolution Act includes as an express enforceable obligation any "legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy." Health & Saf. C. § 34171(d)(1)(E). The 1991 CRLA Agreement constitutes just such an enforceable obligation. The funds deposited into the former agency's Low/Mod Fund pursuant to the 1991 agreement were properly transferred by the former agency to the Successor Agency as a "housing asset" pursuant to Health & Saf. C. § 34176(e). The balance of the housing fund is "legally [and] contractually dedicated or restricted for the funding of an enforceable obligation that identifies the nature of the dedication or restriction and the specific enforceable obligation." *Id.* at § 34179.5(c)(5)(D). The code expressly provides that only the net balance of a housing fund after deducting the restricted amounts shall be available for allocation to affected taxing entities. *Id.* at § 34179.5(c)(6).

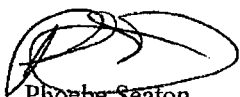
The Department acknowledges in its December 15th letter that Health & Saf. C. § 34177(d) requires only that *unencumbered* balances in the Low and Moderate Income Housing Fund are to

be remitted to the county auditor-controller for distribution to other taxing entities. The Department erroneously concluded that the balance of the Low/Mod Fund in Stanislaus County is not encumbered because the funds are associated with the former RDA's previous "statutory" housing obligations. The Department is wrong. The funds accumulated in the Low/Mod Fund stem from the former agency's *contractual* obligation to our clients – pursuant to a "third party" contract that preceded the enactment of ABx1 26 by 20 years. That contract was no more repudiated by ABx1 26 and AB 1484 than were contracts involving the issuance of bonds. The Department's determination to the contrary violates the law and substantially impairs the legal rights of our clients and other low-income families that stand to benefit from the Agreement. The Successor Agency's transfer of the funds to the County-Auditor similarly constitutes a breach of its agreement with our clients.

We demand that the Department of Finance rescind its letter of December 15, 2012 and issue a letter certifying and approving the DDR for Low and Moderate Income Housing Funds approved by the Oversight Board and submitted to the Department on October 26, 2012. We further demand that the County Auditor cease any steps to distribute the \$10,052,753 to other taxing entities and that it immediately transfer \$10,052,753 from the RPTTF to the Low and Moderate Income Housing Asset Fund administered by the Successor Agency. Finally, we urge the Oversight Board to direct the Successor Agency to use the \$10,052,753 exclusively pursuant to the terms of the 1991 Agreement with our clients.

Our clients appreciate all of the prior efforts of the Successor Agency, the Oversight Board and County staff to resolve this dispute with the Department of Finance, however, the Department, the Successor Agency, the Oversight Board and the County very well might leave our clients with no choice but to seek judicial relief against all responsible parties should the funds that they secured long ago be disbursed for any purpose other than to increase, improve, and expand affordable housing in Stanislaus County.

Sincerely,



Phoebe Seaton
California Rural Legal Assistance

Cc:

Kamala D. Harris, Attorney General of the State of California
Deborah Collins and Lauren Hansen, the Public Interest Law Project
Ilene J. Jacobs and Juan Carlos Cancino, California Rural Legal Assistance, Inc.
Jennifer Gore, Miller, Owen & Trost

Encl.

**OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE
STANISLAUS COUNTY REDEVELOPMENT AGENCY**

RESOLUTION NO. 2012-08

DATE: October 26, 2012

SUBJECT: Review and Approval of the Low and Moderate Income Housing Fund Due Diligence Review

On the motion of Board Member Stephen Mayotte; seconded by Board Member James Duval; and approved by the following vote:

Ayes: Stephen Mayotte; James Duval; Terry Withrow; Duane Wolterstorff
Noes: None
Absent: Dave Cogdill Jr.; Linda Flores; Brad Hawn
Abstained: None

THE FOLLOWING RESOLUTION WAS ADOPTED:

WHEREAS, the Redevelopment Agency Dissolution Act (ABx1 26), requires that the Successor Agency transfer all unobligated redevelopment agency funds, including the unencumbered balance of the former Redevelopment Agency's Low and Moderate Income Housing Fund ("LMIHF"), to the County Auditor-Controller for distribution to the taxing entities; and

WHEREAS, the Redevelopment Agency Dissolution Act, as amended by AB 1484, requires successor agencies to employ a licensed accountant, approved by the County Auditor-Controller, to conduct a "Due Diligence" review to determine the unobligated balance available for transfer to the taxing entities; and

WHEREAS, on October 8, 2012, the required Due Diligence review was completed by the independent licensed accountant and provided to the Oversight Board, County Auditor-Controller, the State Controller, and the Department of Finance; and

WHEREAS, on October 11, 2012, following its receipt of the Due Diligence review, the Oversight Board convened a public comment session at which no public comment was received; and

WHEREAS, the Due Diligence review reflects that the entire balance of the LMIHF, totaling \$10,052,753, is legally restricted for uses specified in the 1991 settlement agreement between the former Redevelopment Agency of Stanislaus County and the California Rural Legal Assistance ("1991 CRLA Settlement Agreement"), and no unobligated balance is to be returned for distribution to the taxing entities; and

WHEREAS, the Oversight Board has considered the Due Diligence review during public session.

Stanislaus Co. RDA Oversight Board
Resolution No. 2012-08
October 26, 2012
Page 2

NOW, THEREFORE, BE IT RESOLVED that the Oversight Board to the Successor Agency to the Stanislaus County Redevelopment Agency:

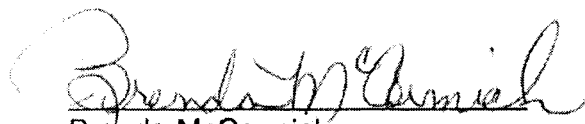
1. Has convened the required public comment session on the Due Diligence review, held on October 11, 2012.
2. Has reviewed, and hereby approves the Due Diligence review prepared by the independent licensed accountant approved by the County Auditor-Controller.
3. Has determined, consistent with the findings in the Due Diligence review, that there are no funds available for disbursement to taxing entities.
4. Has identified \$10,052,753, consistent with the findings in the Due Diligence review, to be retained by the Successor Agency, to be used to increase, improve, and expand the supply of low- and moderate-income housing available at affordable housing cost to persons and families of low or moderate income, consistent with the 1991 CRLA Settlement Agreement.
5. Has determined that the \$10,052,753 balance to be retained includes funds deposited pursuant to the 1991 CRLA Settlement Agreement, which required that not less than twenty-five percent (25%) of all tax increment collected by the former Redevelopment Agency be deposited in the former Redevelopment Agency's LMIHF.

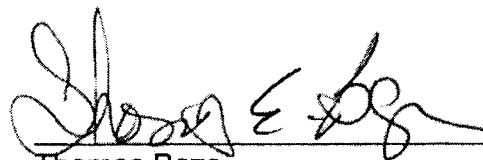
BE IT FURTHER RESOLVED that this Oversight Board directs Successor Agency staff to take all actions required by the Redevelopment Agency Dissolution Act (ABx1 26), as amended by AB 1484, including but not limited to, transmitting the approved Due Diligence review to the Stanislaus County Auditor-Controller and the California Department of Finance, for certification and approval.

BE IT FURTHER RESOLVED that, in the event that Department of Finance overturns this Oversight Board's authorization to retain the funds identified, Successor Agency staff is directed to request an opportunity to meet and confer with the Department to resolve any disputes regarding the amounts or sources of funds identified.

ATTEST:

APPROVED AS TO FORM:


Brenda McCormick
Oversight Board Clerk


Thomas Boze
Deputy County Counsel



CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

FIGHTING FOR JUSTICE, CHANGING LIVES

December 5, 2012

[By Electronic Mail and Regular Mail]

Steve Szalay
Local Government Consultant
Department of Finance of the State
of California
Redevelopment Administration
915 L Street
Sacramento, CA 95814-3706

Re: Department of Finance's Adjustment of Due Diligence Review of Low and Moderate Income Housing Fund of the Successor Agency for Stanislaus County Redevelopment Agency

Dear Mr. Szalay and Department of Finance:

We are writing to support the Successor Agency of the Stanislaus County Redevelopment Agency's meet and confer request in response to the Department's August 9, 2012 demand that the County transmit housing asset funds for allocation to other taxing entities. California Rural Legal Assistance represents thousands of rural low-income Californians, farmworkers and families, and predominantly Latino Californians. We also represent Stanislaus County residents who are parties to the 1991 settlement agreement with the former redevelopment agency. CRLA strongly disputes the Department's adjustment of the Due Diligence Review submitted on October 26, 2012 and its demand that the Successor Agency turn over more than \$10 million of funds that are legally restricted for affordable housing purposes. For the reasons discussed below, the Department's position violates the provisions of the California Redevelopment Law as amended by ABx1 26 and AB 1484; it also interferes with our clients' Settlement Agreement with the former Stanislaus County Redevelopment Agency and deprives them of the benefit of that agreement. We respectfully request that the Department reconsider its determination to avoid further administrative action or litigation.

Summary of Argument

The CRLA Settlement Agreement requires the former Redevelopment Agency to deposit 25% of tax increment revenue into its Low and Moderate Income Housing Fund (Housing Fund) over the life of the project area governed by the agreement and to *use* those funds to increase, improve, and expand housing for very low, low, and moderate income households. The agreement was entered into in 1991 between the former agency and third parties, long before the enactment of

ABx1 26 and AB 1484. The balance in the Housing Fund as of June 30, 2012 was \$10,052,753 and is legally restricted as confirmed by an independent accountant in the Due Diligence Review (DDR) and approved by the Oversight Board.

The Department's determination that the 1991 Settlement Agreement does not constitute an enforceable obligation that requires the funds to be used for their intended purpose is wrong as a matter of law. Indeed, The Department's reasoning, that an obligation to "set aside tax increment" for the Low and Moderate Income Housing Fund no longer exists, is fundamentally flawed. Regardless of any *future* obligation to deposit tax increment into the Housing Fund, any balance of the *existing Housing Fund* that is legally restricted for other purposes may *not* be allocated to other taxing entities. Health & Saf. C. §34179.5. Our letter to the Department dated August 30, 2012 (enclosed and incorporated with this letter) explains that the 1991 Settlement Agreement creates both current and future obligations for the purpose of the Department's determinations on the ROPS. .

Legal Analysis

The 1991 Settlement Agreement is an enforceable obligation as a "legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy." Health & Saf. C. §34171(d)(1)(E). The funds that were contributed to the Housing Fund as required under the terms of the 1991 Agreement constitute a "housing asset" under Health & Saf. C. §34176(e). These are funds that are expressly "encumbered by an enforceable obligation to build or acquire low- and moderate-income housing, as defined by the Community Redevelopment Law. . . ." *Id.* at subd. (e)(2). Accordingly, the balance of the Housing Fund is "legally [and] contractually dedicated or restricted for the funding of an enforceable obligation that identifies the nature of the dedication or restriction and the specific enforceable obligation." *Id.* at §34179.5(c)(5)(D). Only the net balance of a Housing Fund – *after* deducting the restricted amounts – "shall be available for allocation to affected taxing entities." *Id.* at §34179.5(c)(6). The Housing Fund of the former Stanislaus County Redevelopment Agency is legally restricted by the terms of the 1991 Agreement, thus there is no balance available for distribution to other taxing entities as a matter of law. The DDR properly concluded there is no balance available for distribution, and the Oversight Board approved the DDR. The balance of the Housing Fund therefore must be deposited into a Housing Asset Fund administered by the entity that assumes the housing assets and functions of the former agency (here the Successor Agency) and must be used "in accordance with applicable housing-related provisions of the Community Redevelopment Law. . . ." *Id.* at §34176. Those uses are entirely consistent with the terms of the Settlement Agreement.

The Department's position is untenable. Its rejection of a lawful, valid 21-year-old Settlement Agreement between the former agency and third parties violates the law, and substantially impairs the legal rights of our clients and other low-income families that stand to benefit from the Agreement. The Department's determination also threatens the matching contributions and other commitments made by the agency for State CalHOME and federal HOME funds. The Department's threats of imposing claw-back provisions, such as withholding of the County's sales tax, also are unwarranted under the circumstances; and, if carried out, they would likely be held unconstitutional.

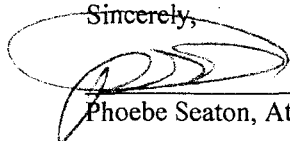
Ongoing dispute with respect to ROPS

We continue to oppose the Department's determination with respect to the prior ROPS submitted by the Successor Agency.¹ The Department's interpretation that there is no more "tax increment"

for purposes of meeting enforceable obligations related to affordable housing cannot be reconciled with its interpretation that property tax revenue (formerly referred to as tax increment) remains available to pay off bonds that were secured with "future" tax increment. We continue to urge the Department to honor the pledges of the former Agency and the decisions of the Successor Agency to carry out its obligations with approval of its Oversight Board.

Thank you for your attention to this matter, and please contact me directly if you have any questions or would like any further information.

Sincerely,



Phoebe Seaton, Attorney, California Rural Legal Assistance

Cc:

Angela Freitas, Deputy Director, Stanislaus County Planning Department
Deborah Collins and Lauren Hansen, The Public Interest Law Project
Ilene J. Jacobs, Director of Litigation, Advocacy & Training, California Rural Legal Assistance, Inc.

Encl:

¹ CRLA opposes the Department of Finance's determination regarding both the 1991 CRLA Settlement Agreement and the Public Works Infrastructure Agreement which includes enforceable obligations of 36.5 million dollars. (See CRLA Letter to the Department dated August 30, 2012, attached hereto and incorporated herein)