

Meeting Date: 09/19/14

AGENDA REPORT

Agenda Item # 5A

Oversight Board for Successor Agency
to the City of Santa Clara
Redevelopment Agency



Date: September 15, 2014

To: Oversight Board for Action

From: City Manager/Executive Officer to Successor Agency

Subject: Approval of a Resolution Directing Transfer of certain assets removed from the Housing Asset Transfer List by the Department of Finance to the City of Santa Clara as Governmental Use Assets and acknowledging compensation to the taxing entities for such assets pursuant to the Installment Payment Plan Agreement and disclaiming Successor Agency interest in 2525 El Camino Real

BACKGROUND AND ANALYSIS:

At its regular meeting of January 24, 2012, the City Council of the City of Santa Clara adopted Resolution No. 12-7902, electing to retain the housing assets and functions previously performed by the Redevelopment Agency of the City of Santa Clara (the "Dissolved RDA") and to serve as the housing successor agency for the Dissolved RDA, effective February 1, 2012.

In accordance with Health and Safety Code Section 34176(a)(2), the City, acting as the housing successor agency, submitted the Housing Successor Agency Housing Asset List (the "Housing Asset List") to the State Department of Finance ("DOF"). The Housing Asset List was a list of all "housing assets" of the Dissolved RDA, 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. AB 1484 states that these assets are to be transferred to the Successor Agency. The City received a letter from the DOF, dated July 16, 2013, attached as Exhibit A, approving certain items listed on the Housing Asset List as Housing Assets properly transferred to the City acting as the housing successor agency ("Department Approval Letter"). The Department Approval Letter also directed the City to return certain assets to the Successor Agency. A list of the items that the DOF directed be removed from the Housing Asset Transfer List is set forth as Exhibit B.

The Successor Agency submitted to the DOF the Due Diligence Review for the Low and Moderate Income Housing Funds ("LMIHF DDR") in accordance with Health and Safety Code Section 34179.5. After a meet and confer, the DOF issued a final determination on the LMIHF DDR on April 19, 2013. The DOF, the City and the Successor Agency subsequently entered into an Installment Payment Plan Agreement pursuant to Health and Safety Code Section 34179.5(D)(3), a copy of which is attached as Exhibit C ("Installment Payment Plan Agreement"). In accordance with the terms of the Installment Payment Plan Agreement certain amounts in dispute with regards to the LMIHF DDR were resolved and the DOF original final determination letter dated April 19, 2013 was subsequently revised to reduce the amount of funds available for distribution to the taxing entities related to the LMIHF DDR to \$45,490,068. Pursuant to the Installment Payment Plan Agreement, the Successor Agency transferred to

the County Auditor-Controller \$37,900,000 as a partial payment of the amount determined available for distribution to the taxing entities pursuant to the DOF's Final Determination on the LMIHF DDR. Under the terms of the Installment Payment Plan Agreement, the remaining amounts owed are to be paid by the City foregoing its share of the residual distributions from the LMIHF DDR payment and ROPS residuals until the full amount of \$45,490,068 has been distributed to the taxing entities. To date the City has contributed \$44,566,999 toward the amount required to be paid on the LMIHF DDR. The remaining amounts owed will be paid by the City foregoing its share of residual distributions over the next ROPS cycles with the full amount expected to be paid in 2015.

The Oversight Board, in September, approved the transfer of the housing assets that were approved for transfer by the DOF on the Housing Asset Transfer List. However certain assets were not approved by the DOF as housing assets. The disapproved assets primarily consist of loans and grant receivables for loans and grants entered into after the passage of AB1X26. The funds spent on these assets constitute part of the funds that are being paid by the City in compliance with the LMIHF DDR. The Housing Asset Transfer List also included property located at 2525 El Camino although the Former RDA never held an interest in this land. The Successor Agency would like to clarify the appropriate owner of the assets rejected by DOF on the Housing Asset Transfer List and is asking the Oversight Board to approve the transfer of loans and grants receivable to the City in accordance with Health and Safety Code Sections 34181(a) as a governmental purpose asset. The Successor Agency is also requesting that the Oversight Board make a finding that the Successor Agency has no interest in 2525 El Camino in order to ensure that there is no cloud on title resulting from ambiguous language in the Department Approval Letter. The governmental purposes assets to be transferred to the City consist of the following:

1. Grants

Items 88 through 99 on Schedule D of the Housing Asset Transfer list consist of grants made by the Housing Authority to low income property owners to assist with rehabilitation of the property. The Housing Authority made the grants pursuant to a Cooperation Agreement between the Housing Authority and the Former RDA ("Cooperation Agreement"), whereby the Housing Authority agreed to assume responsibility for the Former RDA's housing obligations and the Former RDA agreed to transfer funds to the Housing Authority to fund such activities. The grants were made after the adoption of ABx1 26 and thus were also disallowed as expenditures from the Low and Moderate Income Housing Fund on the LMIHF DDR. The LMIHF DDR recovered the funds expended on these grants as part of the \$45,490,068 deemed available for distribution to the taxing entities. The City has paid the value of these grants pursuant to the Installment Payment Plan Agreement.

2. First Time Homebuyer Loans

Items 252 through 265 on Schedule D of the Housing Asset Transfer list consist of first time homebuyer loans made by the Housing Authority pursuant to the Cooperation Agreement after the adoption of ABx1 26. The First Time Homebuyer Loans were also disallowed as expenditures on the LMIHF DDR and thus also make up part of the \$45,490,068 distributed to the taxing entities pursuant to the LMIHF DDR and the Installment Payment Plan Agreement.

3. 2525 El Camino LP Loan

Item 35 of Schedule D of the Housing Asset Transfer List is a loan made by the Housing Authority to El Camino LP for the acquisition and development of 2525 El Camino as affordable housing. The loan consists of both predevelopment and construction loan funds.

On January 25, 2011, the City Council and the Former RDA received an informational report proposing that the 2011-2012 Capital Improvement Project budget for the Former RDA Affordable Housing Fund include a \$6.8 million commitment to a 50-unit affordable housing project proposed by ROEM Development Corporation (“Developer”) to be located at 2525 El Camino Real. Subsequent to the initial proposal presented to the City and the former RDA, the former RDA and the Santa Clara Housing Authority entered into the Cooperation Agreement. One of the specific projects called out in the Cooperation Agreement was the affordable housing development at 2525 El Camino Real. After execution of the Cooperation Agreement, in April 2011, the Housing Authority and the Developer entered into a predevelopment loan agreement in the amount of \$249,425. In July 2011, the Housing Authority committed \$3,750,000 to the Developer to fund acquisition of 2525 El Camino Real and the Developer acquired the property in December 2011 using the funds provided by the Housing Authority. The terms of the Affordable Housing Agreement between the Authority and the Developer also called for the Developer to convey the Property to the Authority at a subsequent date and the Authority to then lease the property back to the Developer. In January 2012, the Housing Authority provided a commitment of additional funds to the Development, raising the Housing Authority’s total commitment to the Development to \$7,000,000. As part of this commitment, the Housing Authority and the Developer also agreed on the terms of a lease of the property whereby the Housing Authority, upon acquisition of the Property from the Developer, would lease it to the Developer for development of the affordable housing units.

On May 16, 2012, the Housing Authority acquired the property and then proceeded to lease the property to the Developer. The Housing Authority also provided the Developer with construction funds raising the total amount of the Housing Authority’s loan to the Development to \$7,000,000.

As part of the LMIHF DDR and the Installment Payment Plan Agreement, \$157,091 of the predevelopment loan was approved as an enforceable obligation of the Former RDA and the Final Determination of the amount available for distribution to the taxing entities on the LMIHF DDR was reduced by this amount. The remaining expenditures on the Development were disallowed as expenditures from the Low and Moderate Income Housing Fund on the LMIHF DDR and the amounts loaned to the Developer are part of the funds that are being paid by the City pursuant to the Installment Payment Plan Agreement.

The Housing Asset Transfer List also included the property located at 2525 El Camino Real although the Former RDA never had any interest in that property and never had any rights to acquire that property. The DOF Department Approval Letter acknowledges that the Former RDA was not a party to the Acquisition Loan Agreement and had no authority to enter into the Acquisition Loan Agreement, thus making clear that the Former RDA had not rights or interest in the property located at 2525 El Camino

Real. However, the Department Approval Letter creates a cloud on title to 2525 El Camino Real by requiring that the City return all assets disapproved by the Department to the Successor Agency.

The Successor Agency believes that the items listed on the Exhibit B constitute assets of the City of Santa Clara by virtue of the fact that the City has paid for these assets pursuant to the Installment Payment Plan Agreement. However, ownership of these assets is clouded by the DOF's final determination letter on the Housing Asset Transfer List, which states that the items that they have deemed not be housing assets are to be returned to the Successor Agency. In order to ensure that ownership of the above assets is not clouded, the Successor Agency is requesting that the Oversight Board approve the attached resolution approving transfer of the loans and grants receivable to the City of Santa Clara a government purpose assets and further acknowledging that the Successor Agency has no interest in the property located at 2525 El Camino Real. This will also ensure that as the Successor Agency winds down as directed by the Dissolution Laws, that there will be no residual assets resting with the Successor Agency, making complete wind down impossible.

Section 34181(a) provides for the disposition of government purpose assets to the appropriate public jurisdiction with compensation for the asset to be determined based on the existing agreements. The Installment Payment Plan Agreement provides the compensation related to these assets. The assets constitute government purpose assets in that all of the assets are used for the purpose of increasing and improving the supply of affordable housing in the City of Santa Clara.

FISCAL IMPACT:

The adoption of the Resolution will have no fiscal impact on the taxing entities. The taxing entities have been or will be fully compensated for the assets pursuant to the Installment Payment Plan Agreement. To date \$44,566,999 has been distributed to the taxing entities representing the unencumbered funds in the Low and Moderate Income Housing Fund. Because the above assets were not deemed to be enforceable obligations, the value of these assets was added to the balance of the funds available for distribution to the taxing entities representing unencumbered housing funds. Thus the City of Santa Clara effectively purchased these assets by paying a portion of the LIMIHF DDR payment.

RECOMMENDATION:

That the Oversight Board adopt the Resolution directing the transfer of certain assets to the City of Santa Clara pursuant to California Health and Safety Code Section 34181(a) and acknowledging that the Successor Agency has no interest in certain real property assets of the Santa Clara Housing Authority.



Julio J. Fuentes
City Manager/Executive Officer to Successor Agency

Documents Related to this Report:
1) Resolution

RESOLUTION NO. 2014 - ___ (OVERSIGHT BOARD)

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA, DIRECTING THE TRANSFER OF CERTAIN ASSETS TO THE CITY OF SANTA CLARA PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTION 34181(a) AND ACKNOWLEDGING THAT THE SUCCESSOR AGENCY HAS NO INTEREST IN CERTAIN REAL PROPERTY ASSETS OF THE SANTA CLARA HOUSING AUTHORITY

WHEREAS, the California state legislature enacted Assembly Bills 1x 26 and 1484 to dissolve and unwind the affairs of redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code Section 33000 et seq.);

WHEREAS, the City Council of the City of Santa Clara (the "City Council") declared that the City of Santa Clara, acting in a separate legal capacity and as a separate public entity pursuant to Health and Safety Code Section 34173(g), will act as successor agency (the "Successor Agency") for the dissolved Redevelopment Agency of the City of Santa Clara (the "Dissolved RDA") effective February 1, 2012;

WHEREAS, an oversight board for the Successor Agency (the "Oversight Board") has been established and is functioning in accordance with Health and Safety Code Section 34179;

WHEREAS, pursuant to Health and Safety Code Section 34176(a)(1), the City Council elected that the City of Santa Clara (the "City") will retain the housing assets and functions previously performed by the Dissolved RDA, and will serve as the successor housing agency of the Dissolved RDA effective February 1, 2012;

WHEREAS, pursuant to Health and Safety Code Section 34176(a)(2), on July 30, 2012, the City submitted the required housing asset transfer list (the "Housing Asset List") to the California Department of Finance (the "Department");

WHEREAS, the City received a letter from the Department dated July 16, 2013, copies of which are attached to this Resolution as Exhibit A, approving certain housing assets listed in the Housing Asset List (the "Department Approval Letter");

WHEREAS, the Housing Asset List, as modified pursuant to the Department Approval Letter constitutes a list of all "housing assets" of the Dissolved RDA, 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;

WHEREAS, the Department Approval Letter also directed the City to remove certain items from the Housing Asset Transfer List and to return such items to the Successor Agency, including certain grant and loan receivables and property which the Department determined was acquired by the Santa Clara Housing Authority and not the former RDA and therefore was not a Housing Asset ("Removed Assets") as more particularly listed on Exhibit B attached hereto;

WHEREAS, in compliance with Health and Safety Code Section 34179.5, the Successor Agency submitted to the Department the Due Diligence Review for the Low and Moderate Income Housing Fund ("LMIHF DDR") and the DOF issued a final determination on the LMIHF DDR after a meet and confer with the Successor Agency determining that funds available for distribution to the taxing entities was \$45,490,068;

WHEREAS, the Department, the Successor Agency and the City entered into an Installment Payment Plan Agreement whereby the City agreed to forego its share of certain residual distributions pursuant to Health and Safety Code Section 34183(a)(4) and to have such funds distributed to the taxing entities in order to pay a portion of the amount determined by the Department to be available

Oversight Board Resolution/Transfer of Housing Assets

for distribution on the LMIHF DDR;

WHEREAS, pursuant to Health and Safety Code Section 34181(a) the Successor Agency has requested that the Oversight Board direct transfer of the Removed Assets to the City in acknowledgement that the City's payments pursuant to the Installment Payment Plan Agreement compensated the taxing entities for these assets and that the assets, to the extent they were ever owned by the former RDA are now the property of the City, including Oversight Board direction for the Successor Agency to enter into such documents and agreements as are appropriate to accomplish this transfer, such as an assignment and assumption agreement for the Removed Assets between the Successor Agency and the City;

WHEREAS, one of the Removed Assets consists of property located at 2525 El Camino Real, Santa Clara that was acquired by the Santa Clara Housing Authority and was never owned by the Former RDA;

WHEREAS, the Department Approval Letter has resulted in a potential cloud on title of 2525 El Camino Real by directing the return of all of the Removed Assets to the Successor Agency;

WHEREAS, the Oversight Board has determined that the Former RDA never held any interest in 2525 El Camino Real and never held a right to acquire 2525 El Camino Real;

WHEREAS, the proposed actions of the Oversight Board set forth in this Resolution were dully noticed in the Santa Clara Weekly in accordance with Health and Safety Code Section 34181(f); and,

WHEREAS, the accompanying staff report (the "Staff Report") provides supporting information upon which the actions set forth in this Resolution are based.

NOW, THEREFORE, BE IT FURTHER RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY FOR THE CITY OF SANTA CLARA REDVELOPMENT AGENCY AS FOLLOWS:

SECTION 1. 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 Housing Asset List, as modified by the Department Approval Letter; (2) the Department Approval Letter; (3) the LMIHF DDR; (4) the Installment Payment Plan Agreement; (5) the Staff Report; and (6) the information provided by the Successor Agency and City staff and the public.

SECTION 2. The Oversight Board hereby acknowledges and confirms that, pursuant to Health and Safety Code Section 34176(a)(2) and as evidenced by the Department Approval Letter, the Department has already fully approved those Housing Assets set forth in the Housing Asset List, as modified by the Department Approval Letter, and approved in the Department Approval letter to comprise housing assets as defined in Health and Safety Code Section 34176(e) and that certain assets were not approved on the Housing Asset List consisting of the assets set forth in Exhibit B.

SECTION 3. The Oversight Board hereby acknowledges and confirms that pursuant to Health and Safety Code Section 34179.6(D)(3), the Successor Agency, the City and the Department have entered into an Installment Payment Plan Agreement whereby the City and the Successor Agency have agreed to distribute to the taxing entities a total of \$45,490,068, a portion of which is being paid by the City in accordance with the terms of the Installment Payment Plan Agreement.

SECTION 4. In accordance Health and Safety Code Section 34181(a), the Oversight Board hereby authorizes and directs the transfer of those certain Removed Assets listed on Exhibit B consisting of loan and grant receivable to the City as governmental purpose assets on the basis that the assets are used for the purpose of increasing and improving the supply of affordable housing. The Oversight Board further finds that that taxing entities have been fully compensated for the loans and grants receivables as part of the funds received pursuant to the Installment Payment Plan Agreement.

SECTION 5. The Successor Agency Executive Director, or the Executive Director's designee, is hereby authorized and directed to execute all documents and take all actions necessary and appropriate to effectuate the transfer of loan and grant receivables listed on Exhibit B to the City.

SECTION 6. The Oversight Board further finds that the Successor Agency has no interest in the property located at 2525 El Camino Real, Santa Clara and authorizes the Successor Agency Executive Director or the Executive Director's designee to execute all documents and take all actions necessary to disclaim any interest in 2525 El Camino Real.

SECTION 7. The transfer of the Removed Assets to the City is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines Section 15301 (as an action resulting in continuation of an existing facility) and Section 15061(b)(3) (as an action which it can be seen with certainty will not have a significant effect on the environment). The Oversight Board's Designated Contact Official, or the Designated Contact Official's designee, is hereby authorized and directed to file a notice of exemption in accordance with CEQA in connection with approval of this Resolution and the transfer of the Non-Approved Housing Assets to the City.

SECTION 8. The Successor Agency is hereby directed to notify the Department of the actions set forth in this Resolution in accordance with Health and Safety Code Sections 34179(h) and Section 34181(f).

SECTION 9. Effective date. This resolution shall take effect at the time and in the manner prescribed in Health and Safety Code Section 34179(h).

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I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 19TH DAY OF SEPTEMBER, 2014, BY THE FOLLOWING VOTE:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

ABSTAINED: BOARD MEMBERS:

APPROVE:

ATTEST:

Don Gage
Chairperson

Jennifer Yamaguma
Clerk to the Oversight Board

Attachments incorporated by reference:
Exhibit A – Department Approval Letter
Exhibit B - Housing Asset List



DEPARTMENT OF
FINANCE

EXHIBIT A

EDMUND G. BROWN JR. ■ GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

REVISED

July 16, 2013

Mr. Ron Garratt, Interim City Manager
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Dear Mr. Garratt:

Subject: Housing Assets Transfer Form

This letter supersedes the California Department of Finance's (Finance) Housing Asset Transfer Form letter dated August 30, 2012. Pursuant to Health and Safety Code (HSC) section 34176 (a) (2), the City of Santa Clara as Housing Successor Agency (Agency) submitted a Housing Assets Transfer Form (Form) to Finance on July 31, 2012, for the period February 1, 2012 through July 31, 2012. Finance issued its determination related to those transferred assets on August 30, 2012. Subsequently, the Agency requested a Meet and Confer session on one or more items that was objected to by Finance. The Meet and Confer session was held on February 20, 2013.

Based on a review of additional information and documentation provided to Finance during the Meet and Confer process, Finance has completed its review of those specific items being disputed.

- Exhibit A, Item 5 – Land at 2525 El Camino Real (ROEM Project). Finance continues to object to the transfer. Finance originally objected to the transfer because the acquisition portion of the project is not an enforceable obligation. The Acquisition Loan Agreement for this property is dated July 12, 2011. HSC section 34163 (b) prohibits a redevelopment agency (RDA) from entering into a contract with any entity after June 27, 2011. Finance maintains this position as the Predevelopment Loan Agreement dated April 19, 2011, did not require the former RDA to enter into the Acquisition Loan Agreement. Additionally, the agreements were between the Housing Authority and a third party, not the former RDA. Therefore, since the former RDA was not a party to the agreements and had no authority to enter into the Acquisition Loan Agreement to acquire the property, the item is not a housing asset pursuant to HSC section 34176 (e) (1).

However, Finance notes that to the extent the Agency would like to continue with the development of Item 5 for affordable housing purposes, HSC section 34191.5 (c) (2) states that one of the property disposition options available to the successor agency of the former RDA is the retention of property for future development purposes pursuant to an approved Long Range Property Management Plan. If this option is selected, HSC

section 34180 (f) (1) states that the city, county, or city and county must reach a compensation agreement with the other taxing entities to provide payments to them in proportion to their shares of the base property tax, as determined pursuant to HSC section 34188, for the value of the property retained.

- Exhibit A, Item 6 – Land at 90 N. Winchester Boulevard (BAREC Project). Finance no longer objects to the transfer. Finance originally objected to the transfer because the agreement was amended after June 27, 2012. HSC section 34163 (c) prohibits amending or modifying existing agreements. The Agency contends the item is a housing asset because the property was acquired pursuant to a Purchase and Sale Agreement entered into in 2005. The Agency provided the Purchase and Sale Agreement, which states the property is to be used for affordable housing. Therefore, the item is a housing asset pursuant to HSC section 34176 (e) (1).
- Exhibit A, Items 7 and 8 and Exhibit F, Items 1 and 2 – Master Leases, Subleases, and Rents. Finance determined the items should be removed from the Form. Finance originally objected to the transfers because these items are dependent upon master leases between the City of Santa Clara and the former RDA. HSC section 34171 (d) (2) deemed any agreements between the city, county, or city and county that created the RDA and the former RDA to be void. The sublease agreements between the former RDA and third parties are now inoperative because they are dependent on the master leases, which are now void. Additionally, the properties are owned by the City, not the former RDA. Therefore, the items are not housing assets of the former RDA and should not be included on the Form. Additionally, since the sublease agreements are inoperative, the associated rents reported on Exhibit F, Items 1 and 2 should also be removed from the Form.
- Exhibit C, Item 1 – \$1.1 million amount associated with the Bill Wilson Center. Finance no longer objects to the transfer. Finance originally objected to the transfer because based upon conversations with the Agency, it is our understanding that this obligation has been paid in full. The Agency contends the item is a housing asset because the loan proceeds related to 2010 Amended Affordable Housing Loan Agreement have not been fully disbursed. The Agency provided accounting records showing the various disbursements that have been made and that there was still an outstanding balance of \$1.1 million as of February 1, 2012. Therefore, the item is a housing asset pursuant to HSC section 34176 (e) (2).

However, the successor agency has not listed the agreement on the Recognized Obligation Payment Schedules (ROPS) for the January through June 2012 period, the July through December 2012 period, or the January through June 2013 period. The successor agency should list the payments that have been made during prior ROPS periods without Finance's approval as well as any additional payments that need to be made on a future ROPS for Finance's review.

- Exhibit C, Item 2 – \$4.6 million amount associated with the Monroe/San Tomas site. Finance continues to object to the transfer. Finance originally objected to the transfer because based upon conversations with the Agency, we understand that no contracts have been entered into by June 27, 2011; therefore, this item is not an enforceable obligation. The Agency contends the item is a housing asset because the Purchase Agreement obligated the former RDA to develop the property as affordable housing

pursuant to HSC section 33334.16. However, obligations associated with the former RDA's previous statutory housing obligations are not enforceable obligations. Upon the transfer of the former RDA's housing functions to the new housing entity, HSC section 34176 requires that "all rights, powers, duties, obligations and housing assets... shall be transferred" to the new housing entity. This transfer of "duties and obligations" necessarily includes the transfer of statutory obligations; to the extent any continue to be applicable. Therefore, the item is not a housing asset pursuant to HSC section 34176 (e) (2).

- Exhibit C, Item 3 – \$8 million encumbrance for the BAREC Project. Finance continues to object to the transfer. Finance originally objected to the transfer because the Purchase and Sale Agreement was entered into on August 20, 2011. HSC section 34163 (b) prohibits a RDA from entering into a contract with any entity after June 27, 2011. The Agency contends the item is a housing asset because the Development Agreement states the property "shall be developed for up to 165 units of senior residences which shall be made affordable to low- and very low-income seniors." However, the Grant Deed states that "in the event [the Housing] Authority... does not comply with the land use requirements... or the Affordability Covenants... [the Housing] Authority shall pay the State the difference between the actual price paid... and the fair market value of the Property" or "if development... has not commenced within the timeframes... the Property shall revert to the State." Pursuant to the Grant Deed, the requirement to develop affordable housing is now the obligation of the Housing Authority, not the former RDA, and if the obligation is not met, the Housing Authority is to pay the difference between the actual price and the fair market value or return the property to the State. Therefore, the item is not a housing asset pursuant to HSC section 34176 (e) (2).
- Exhibit C, Item 5 – Finance continues to object to the transfer. Finance originally objected to the transfer because the First Time Homebuyer Financing Program is based upon contracts with the City and not the former RDA. Therefore, the \$5.4 million line item is not an enforceable obligation and is not a housing asset. The Agency contends the item is a housing asset because the Operating Agreements for the First-Time Homebuyers Financing Program obligated the former RDA to "make available an annual allocation of funds to provide Agency Loans for Homebuyers under the terms and conditions set forth in [the] Agreement." However, the Operating Agreements do not have specific terms, such as term of the agreement or total amount to be committed. Furthermore, the third Recital of the Agreements states that "Further allocations to the Program may be made by the Agency at its own discretion." The former RDA no longer has this discretion. Therefore, the agreements are not enforceable obligations and the item is not a housing asset pursuant to HSC section 34176 (e) (2).
- Exhibit D, Items 252 through 265 – Finance determines that the items should be removed from the Form. Finance originally objected to the transfers because the First Time Homebuyer loans totaling \$1.1 million were entered into after June 27, 2011, and are not enforceable obligations. HSC section 34163 (b) prohibits a RDA from entering into a contract with any entity after June 27, 2011. The Agency contends the items are housing assets because the loans were made in accordance with the Operating Agreements for the First-Time Homebuyers Financing Program. However, the Operating Agreements do not have specific terms, such as the term of the agreement or the total amount to be committed. In addition, the third Recital of the Agreements states that "Further allocations to the Program may be made by the Agency at its own

Mr. Ron Garratt
July 16, 2013
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discretion." The former RDA no longer has the discretion; therefore, the agreements were not enforceable obligations and no loans could be made pursuant to them.

In addition, although not included in the initial review, it appeared Exhibit D, Items 100 through 251 should have been removed from the Form because the loan agreements all had execution dates after June 27, 2011. However, based on clarifying information and additional documents provided by the Agency, the maturity dates for the loan agreements were reported rather than the execution dates. The Agency provided the corrected execution dates for the loan agreements, which were all entered into prior to June 27, 2011. Therefore, the items are housing assets pursuant to HSC section 34176 (e) and eligible for transfer.

In addition, per Finance's Housing Asset Transfer Form letter dated August 30, 2012, Finance continues to object to the following items not disputed by the Agency:

- Exhibit C, Item 4 – The Habitat for Humanity \$381,289 line item does not qualify as a transferable housing asset because the successor agency is not a party to the underlying agreement. Therefore, the item is not an enforceable obligation.
- Exhibit C, Item 6 – Based upon conversations with the City and a review of underlying agreements, the Housing Services line item is a grant receivables already included in Exhibit D and is a duplicate of the amounts indicated as being owed for the obligation. The balance of the amount was associated with anticipated administrative and monitoring costs for the successor housing entity associated with these grants. Administrative and monitoring costs are not housing encumbrance assets and are not eligible for transfer.
- Exhibit D, Item 35 – \$7 million loan for 2525 El Camino Real. The loan does not qualify as a housing asset because the agreement supporting the purchase of the asset is not an enforceable obligation of the successor agency. The acquisition loan agreement portion of this project was entered into on July 12, 2011. HSC section 34163 (b) prohibits a RDA from entering into a contract with any entity after June 27, 2011. As a result, only the \$249,425 associated with the Predevelopment Loan Agreement dated April 19, 2011 is eligible for transfer.
- Exhibit D, Items 88 through 99 – Grants totaling \$465,129 were entered into after June 27, 2011 and are not enforceable obligations. HSC section 34163 (b) prohibits a RDA from entering into a contract with any entity after June 27, 2011.

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.

Mr. Ron Garratt
July 16, 2013
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Sincerely,



for
STEVE SZALAY

Local Government Consultant

cc: Mr. Gary Ameling, Director of Finance, Housing Agency, City of Santa Clara
Mr. Jeff Pederson, Housing and Community Services Division Manager, Housing
Agency, City of Santa Clara
Ms. Tamara Haas, Assistant Finance Director, City of Santa Clara
Ms. Irene Lui, Division Manager, Santa Clara County
Ms. Jacelyn Ma, Property Tax Apportionment Manager, Santa Clara County
Ms. Manju Beher, Santa Clara County
California State Controller's Office

EXHIBIT B
Non-Housing Assets

Santa Clara – Housing Assets denied on Housing Asset Transfer List and subsequently paid for by the City pursuant to Installment Payment Plan Agreement

Real Property:

5	Land at 2525 El Camino Real (ROEM Proj)	APN 216-01-052	\$3,262,500	0.998 acre	0.998 acre
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Loans and Grants

35	Loan	\$7,000,000	1/24/2012	2525 El Camino LP
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88	Grant	\$25,401	July-11
89	Grant	\$36,354	August-11
90	Grant	\$14,990	September-11
91	Grant	\$27,559	October-11
92	Grant	\$42,770	November-11
93	Grant	\$38,455	December-11
94	Grant	\$56,220	January-12
95	Grant	\$51,490	February-12
96	Grant	\$51,466	March-12
97	Grant	\$43,221	April-12
98	Grant	\$36,797	May-12
99	Grant	\$40,406	June-12

252	FTHB Loan	\$125,000	11/16/2011
253	FTHB Loan	\$75,000	1/23/2012
254	FTHB Loan	\$75,000	1/27/2012
255	FTHB Loan	\$75,000	5/21/2012
256	FTHB Loan	\$75,000	7/29/2012
257	FTHB Loan	\$75,000	8/25/2012
258	FTHB Loan	\$75,000	9/20/2012
259	FTHB Loan	\$75,000	10/17/2012
260	FTHB Loan	\$75,000	11/9/2012
261	FTHB Loan	\$75,000	12/23/2012
262	FTHB Loan	\$75,000	12/23/2012
263	FTHB Loan	\$75,000	6/1/2012
264	FTHB Loan	\$75,000	7/6/2012
265	FTHB Loan	\$75,000	7/12/2012