MEET AND CONFER REQUEST FORM

Instructions: Please fill out this form in its entirety to initiate a Meet and Confer session. Additional supporting documents may be included with the submittal of this form—as justification for the disputed item(s). Upon completion, email a PDF version of this document (including any attachments) to:

Redevelopment_Administration@dof.ca.gov

The subject line should state "[Agency Name] Request to Meet and Confer". Upon receipt and determination that the request is valid and complete, the Department of Finance (Finance) will contact the requesting agency within ten business days to schedule a date and time for the Meet and Confer session.

To be valid, all Meet and Confer requests must be specifically related to a determination made by Finance and submitted within the required statutory time frame. The requirements are as follows:

- **Housing Asset Transfer** Meet and Confer requests must be made within five business days of the date of Finance's determination letter per HSC Section 34176 (a) (2).
- **Due Diligence Review** Meet and Confer requests must be made within five business days of the date of Finance's determination letter, and no later than **November 16, 2012 fo**r the Low and Moderate Income Housing Fund due diligence review per HSC Section 34179.6 (e).
- **Recognized Obligation Payment Schedule (ROPS)** Meet and Confer requests must be made within five business days of the date of Finance's determination letter per HSC Section 34177 (m).

Agencies should become familiar with the Meet and Confer Guidelines located on Finance's website. Failure to follow these guidelines could result in termination of the Meet and Confer session. Questions related to the Meet and Confer process should be directed to Finance's Dispute Resolution Coordinator at (916) 445-1546 or by email to Redevelopment_Administration@dof.ca.gov.

AGENCY (SELECT ONE):

☒ Successor Agency ☐ Housing Entity

AGENCY NAME: Successor Agency to the Santa Clara Redevelopment Agency

TYPE OF MEET AND CONFER REQUESTED (SELECT ONE):

☐ Housing Assets Transfers ☒ Due Diligence Reviews ☐ ROPS Period _____

DATE OF FINANCE'S DETERMINATION LETTER: March 15, 2013

REQUESTED FORMAT OF MEET AND CONFER SESSION (SELECT ONE):

☒ Meeting at Finance ☐ Conference Call

DETAIL OF REQUEST

A. Summary of Disputed Issue(s) *(Must be specific.)*
See Attachment 1

B. Background/History *(Provide relevant background/history, if applicable.)*
See Attachment 1

C. Justification *(Provide additional attachments to this form, as necessary.)*
See Attachment 1

Agency Contact Information

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Date:	March 22, 2013	Date:	March 22, 2013

Department of Finance Local Government Unit Use Only

REQUEST TO MEET AND CONFER DATE: ☐ APPROVED ☐ DENIED

REQUEST APPROVED/DENIED BY: _____ DATE: _____

MEET AND CONFER DATE/TIME/LOCATION: _____

MEET AND CONFER SESSION CONFIRMED: ☐ YES DATE CONFIRMED: _____

DENIAL NOTICE PROVIDED: ☐ YES DATE AGENCY NOTIFIED: _____

Form DF-MC (Revised 9/10/12)

Attachment 1

Successor Agency to the Santa Clara Redevelopment Agency
Meet and Confer Request
Low and Moderate Income Housing Fund Due Diligence Review

A. Summary of Disputed Issues:

The Department of Finance ("DOF") issued a determination letter dated March 15, 2013 on the Low and Moderate Income Housing Fund Due Diligence Review ("LMIHF DDR") submitted by the Successor Agency to the Santa Clara Redevelopment Agency ("Successor Agency") on February 19, 2013 finding that the amount available from the Successor Agency's LMIHF for distribution to the taxing entities is $63,179,968. The DOF determination letter also states that approximately $18 million of these funds were used to pay enforceable obligations and that the enforceable obligations should be placed on a future ROPS. The Successor Agency disputes the total amount of funds that are available for distribution to the taxing entities for the reasons that are set forth below.

B. Background/History.

The Successor Agency submitted the LMIHF DDR to the DOF on February 19, 2013. The LMIHF DDR was prepared by a licensed accountant hired by the County of Santa Clara and included a determination based on the County's findings that the Successor Agency had a $63,179,968 LMIHF remittance obligation to be distributed to the taxing entities and also included information provided by the Successor Agency to the County, the licensed accountant, the Oversight Board and the DOF regarding why the amount available for distribution to the taxing entities was significantly less than $63,179,968. After lengthy discussions at the Oversight Board meetings on the LMIHF DDR, the Oversight Board was unable to determine what the correct amount available for distribution was and approved the LMIHF DDR with both the County determination and the Successor Agency reconciliation, with the understanding that the DOF would ultimately determine the correct amount.

The differences between the County determination and the amount the Successor Agency has determined is available for distribution results in part on the treatment of a Cooperation Agreement entered into prior to the Redevelopment Agency's dissolution.

On February 8, 2011, the City of Santa Clara ("City") and the RDA entered into a Cooperation Agreement for Payment of Costs Associated with Certain Redevelopment Agency Funded Low and Moderate Income Housing Projects ("Cooperation Agreement") wherein the City agreed to complete certain RDA-related projects in exchange for the commitment of "net available housing funds" (as defined therein) allocated to the RDA for affordable housing.

On February 22, 2011, the City established the Santa Clara Housing Authority ("Housing Authority").

On March 8, 2011, the City and Housing Authority entered into an Assignment and Assumption Agreement (Cooperation Agreement for Payment of Costs Associated with Certain Redevelopment Agency Funded Low and Moderate Income Housing Projects) ("Assignment and Assumption Agreement"), recorded on June 23, 2011 as Document No. 21216118 in the Santa Clara County Recorder's Office, wherein the City assigned its rights, interests and obligations under the Cooperation Agreement to the Housing Authority with the consent of the RDA pursuant to which all RDA housing funds currently held or to be deposited in the RDA's accounts were transferred to the Housing Authority in order to carry out the obligations under the Cooperation Agreement.

On March 9, 2011, the RDA and Authority entered into an Agreement of Assignment (Promissory Notes and Other Evidences of Indebtedness) ("Assignment Agreement" and together with the Cooperation Agreement and the Assignment and Assumption Agreement are collectively referred to herein as the "Cooperation/Assignment Agreements") wherein the RDA assigned its rights, interests and obligations relating to all Assets (as defined therein and together with the "net available housing funds" referred to in the Cooperation Agreement collectively referred to herein as the "RDA Funds") to facilitate the Housing Authority's performance of its obligations under the Cooperation Agreement. As a result of the Cooperation/Assignment Agreements the RDA transferred to the Housing Authority assets with a total value of $136,899,997 ($77,117,126 of which are non-cash assets). In addition the RDA transferred to the Housing Authority the encumbrances associated with the cash assets and the Housing Authority assumed these obligations. The cash assets transferred and the subsequent expenditure of these cash assets for enforceable obligations that were assigned to the Housing Authority from the RDA is where the difference between the amounts that the Successor Agency has determined is available and the amount the DOF has determined is available rests.

C. Justification.

The Successor Agency believes that the amount available for distribution to the taxing entities from the LMIHF is not $63,179,968 but rather is $32,655,434[1]. The differences and the expenditures between these two numbers fall into three categories of expenditures:

1. Expenditures on RDA Enforceable Obligations - $17,716,867

2. A recapture of LMIHF used to pay approved enforceable obligations on the ROPS I and ROPS II - $5,900,000

3. Expenditures made by the Housing Authority pursuant to the Cooperation Agreement based on valid contractual obligations - $6,907,667.

Each of these categories of expenditures and the details of the expenditures is discussed below.

[1] This amount differs from the reconciliation included in the LMIHF DDR. The Successor Agency has, subsequent to the submittal of the LMIHF DDR, determined that obligations listed in the reconciliation in the amount of $17,060,859 represent future obligations that may be placed on subsequent ROPS for funding and that retention of LMIHF for this purpose is not necessary at this time.

1. Expenditures on RDA Enforceable Obligations - $17,716,867 of the funds that the DOF has determined are available for distribution to the taxing entities are encumbered funds and indeed have been expended based on valid enforceable obligations and thus are not available for distribution to the taxing entities.

This category of obligations represents obligations and contracts that were entered into by the former RDA with third parties prior to the dissolution of the RDA and prior to January 1, 2011. The DOF determination letter appears to acknowledge that these expenditures constitute enforceable obligations but appears to take the position that these expenditures were not listed on an Enforceable Obligation Payment Schedule ("EOPS") and must be so listed in order for the expenditures to be considered as part of the Due Diligence Review and the determination of the cash available for distribution. The DOF acknowledgment that the expenditures were pursuant to an enforceable obligation and can be listed on a future ROPS fails to acknowledge that the funds have been spent and thus are not available for distribution to the taxing entities.

The funds spent on RDA Enforceable Obligations were listed on an EOPS. The Successor Agency listed the Cooperation Agreement with the Housing Authority on the EOPS and the obligation was not objected to by the DOF. The Cooperation Agreement provides the contractual basis for the underlying expenditures and was a valid enforceable obligation at the time it was listed on the EOPS and continues to be a valid enforceable obligations under the provisions of Health and Safety Code Section 34171(d)(3). Under Health and Safety Code Section 34171(d)(3), contracts or agreements between the former RDA and other public agencies (like the Housing Authority) that are "for the provision of housing properly authorized under Part 1 (commencing with Section 33000) "shall not be deemed void." The sole purpose of the Cooperation Agreement is the provision of housing affordable to low and moderate income households and thus the Cooperation Agreements squarely falls within Section 34171(d)(3).

The objection to these items because they were not listed on the EOPS is incorrect given the listing of the Cooperation Agreement on the EOPS. It should be noted that the Successor Agency did not continue to list the Cooperation Agreement on subsequent ROPS at the direction of the County, which determined that since no additional funds from RPTTF were being requested to fund the obligations of the Cooperation Agreement there was no need to list it on ROPS.

The transfers made with respect to the obligations in this category should be recognized as "transfers" subject to enforceable obligations and should not be added to the balance available for distribution to the taxing entities pursuant to Section 34179.5(c)(6). Section 34179.5(c)(6) requires that amounts "transferred" be added to the net balance available if an enforceable obligation to make that transfer did not exist. The definition of transfer at Section 34179.5(b)(3) excludes the transmission of money to another party for goods and services. The LMIHF DDR acknowledges that the expenditures in this category are for goods and services in the form of the construction of affordable housing units and the acquisition of property for purposes of constructing affordable housing. Since the transfers were clearly for goods and services, these funds should not have been listed in the LMIHF DDR at all, should not be added to the available balance and certainly are not available for distribution to the taxing entities.

Additional information about the transfers associated with these funds are set forth below;

BAREC $11,666,211 (Purchase Price)

The RDA and the City have worked on the BAREC Project (defined below) since 2005, negotiating a purchase and sale agreement with the State of California for the purchase of the property that restricts the use of the property to affordable housing and requires the Successor Agency to develop that affordable housing. As the below history illustrates, the funds included in the LMIHF DDR are encumbered pursuant to the agreements listed below.

- On July 5, 2005, the RDA committed to purchase property from the State of California, Department of General Services ("State") pursuant to a Purchase and Sale Agreement ("PSA") for development of a 165 unit affordable housing project for seniors (the "BAREC Project"). Under the PSA at section 6.4, entitled Close of Sale, the close of escrow shall occur within 10 days after the close of the sale of other surplus property owned by the State to a private third party developer ("SummerHill") for market rate housing (the "SummerHill Sale"). The PSA established a formula for determining the sales price of the property based on the purchase price to be paid by SummerHill for their parcel and established a not to exceed purchase price.

- On June 19, 2007, the RDA, City, State and SummerHill entered into a Development Agreement, recorded as Document No. 19519315 in the Office of the Santa Clara County Recorder.

- On December 13, 2011, at the insistence of the State, the State and the Housing Authority entered into a First Amendment to Purchase and Sale Agreement ("First Amendment to PSA") wherein State expressly recognized the validity of the Cooperation/Assignment Agreements and the eligibility of the assignments pursuant thereto.

- On or about December 22, 2011, the SummerHill sale occurred. Pursuant to the PSA, the close of escrow was required to occur within 10 days of the close of the SummerHill sale.

On or about January 5, 2012, escrow closed for the sale of the property from the State to the Housing Authority pursuant to a State of California Grant Deed (Senior Housing Site) ("BAREC Grant Deed") recorded January 5, 2012 as Document No. 21485774 in the Official Records of Santa Clara County. The Housing Authority purchased the property for $11,666,211.

The PSA was entered into on July 5, 2005. Thereafter, the RDA assigned its rights under the PSA to the Housing Authority pursuant to the Cooperation/Assignment Agreements in March 2011. This assignment was expressly consented to by the State pursuant to paragraph 6 of the First Amendment to PSA which provides, in pertinent part, that "the State consents to the Assignment (as defined therein), as described above in Recital B, to the Authority on the condition that the [RDA] remains fully obligated under the terms of the Purchase Agreement..." Under the terms of the First Amendment to the PSA, the RDA would still have been obligated to purchase the property under the PSA which was entered into long before the dissolution process

commenced. Because escrow for the property closed on January 5, 2012 pursuant to a valid enforceable obligation, it is proper to consider the funds in the amount of $11,666,211 used to purchase the property as encumbered and unavailable to be remitted to the County for distribution to the taxing entities. The acquisition of the property occurred prior to the dissolution of the RDA and during the EOPS period that listed the Cooperation Agreement as an enforceable obligation. The Cooperation Agreement specifically included the BAREC Project as an underlying obligation of the former RDA and the purchase obligations under the PSA were included in the total obligation amount listed on the EOPS. Pursuant to that EOPS, the funds were transferred to the State of California in return for title to the property and are not available for distribution to the taxing entities. It should be noted that the DOF has recognized the property acquired with these funds as a housing asset on the Housing Asset Transfer List submitted by the City to the DOF.

BILL WILSON CENTER – The Commons Project - $1,258,497

A portion of the funds included in the amount available for distribution are related to the Bill Wilson Center. The funds at issue related to an obligation originally entered into by the RDA in 2007 and subsequently amended twice to increase the RDA's financial commitment to the project. The final amendment to the Affordable Housing Loan Agreement was made on March 30, 2010, long before dissolution. At that time the project was under construction and disbursements were being made to the Bill Wilson Center in accordance with the Affordable Housing Loan Agreement. The funds included in the LMIHF DDR represent funds encumbered for payment of costs already incurred by the Developer in accordance with the Affordable Housing Loan Agreement and subject to disbursement to the Developer upon submission of invoices, and indeed the Developer has submitted invoices for the full amount of the loan and has met all conditions to disbursement of the funds. To date all but $244, 930 of the funds have been disbursed for this completed project and the Successor Agency has received a disbursement request for the final funds being held.

Even the LMIHF DDR in Attachment C makes clear that these funds are required for an enforceable obligation. Attachment C1 at Item 6 under the heading "Findings" provides in pertinent part:

> Pursuant to Affordable Housing Loan Agreement dated April 17, 2007, the Agency agreed to loan up to $3,500,000 to the third party. Pursuant to First Amendment to the Affordable Housing Loan Agreement dated June 23, 2009, the Agency agreed to loan an additional $805,956 to the third party. Pursuant to Second Amendment to the Affordable Housing Loan Agreement dated March 30, 2010, the Agency agreed to loan an additional $461,609 to the third party, which bring the total loan amount to $4,767,565. Based on the Agency's accounting record, as of March 8, 2011, the total loan disbursement made was $3,367,349 and <u>remaining undisbursed loan commitment of $1,400,216 is considered an enforceable obligation</u>. (Emphasis added.)

Based on these findings (i.e., that the Affordable Housing Loan Agreement is an enforceable obligation), it is unclear why the LMIHF DDR fails to characterize these funds as encumbered

and why the DOF has not recognized these funds as encumbered. The DOF in response to the City's meet and confer request on the Housing Asset Transfer List has now recognized this obligation as an encumbrance. Failure to disburse the funds in accordance with the terms of the Affordable Housing Loan Agreement would result in a breach of the agreement on the part of the Successor Agency, exposing the Successor Agency to potential litigation risks that would not serve either the Successor Agency or the taxing entities best interests.

1430 El Camino Real Housing Project Presidio - $4,455,636

The LMIHF DDR reports $4,455,636 in available funds related to the Presidio El Camino Project (defined below). These funds have been transferred to a private entity and used for the development of a low income housing project, which is now complete and fully occupied.

The RDA Board entered into a Predevelopment Loan Agreement with CORE Affordable Housing, LLC, effective April 16, 2010, for initial project funding to undertake feasibility and planning activities for a mixed-use residential development at 1410-1456 El Camino Real ("Presidio El Camino Project"). The investment of funds was to determine feasibility of developing housing for extremely low-, very low- and low-income renters. The redevelopment project would address the City's efforts to implement the El Camino Real Corridor Guidelines.

On February 8, 2011, the RDA Board entered into an Acquisition Loan Agreement with Presidio El Camino, L.P., obligating the RDA to commit $8,000,000 to the Presidio El Camino Project which included a $4,240,000 loan for site acquisition and predevelopment costs including relocation costs. The Presidio El Camino Project received City approval of project entitlements on November 9, 2010. The facility consists of forty studio and one-bedroom apartments and a 3,000 square foot community building.

On August 30, 2011, the Housing Authority entered into an Affordable Housing Agreement to authorize the additional $3,760,000 for project construction costs, for a total loan principal of $8,000,000. After consultation with the Department of Finance, the Department of Finance responded in a letter dated August 30, 2012 wherein it did not object to the Presidio El Camino Project and the $8,000,000 in funds being placed on the Housing Asset Transfer List as a Housing Asset.

As with the BAREC project, the expenditures for the Presidio Project were pursuant to an enforceable obligation entered into by the former RDA before dissolution and before the passage of AB x1 26. As with the BAREC Project, the Cooperation Agreement, that specifically included the Presidio project, was listed on the EOPS and the funds were allocated pursuant to that Agreement.

ROEM Senior Housing Project - $157,091

Pursuant to a Predevelopment Loan agreement dated April 19, 2011, the RDA agreed to loan up to $249,425 to the ROEM Apartment Communities, LLC. The Predevelopment Loan was for initial project funding to undertake feasibility and planning activities, including relocation assistance for development of a 48-unit residential project at 2525 El Camino Real. The

Predevelopment Loan Agreement is an enforceable obligation entered into prior to the effective date of AB x1 26 and the payments made pursuant to that agreement were proper disbursements in compliance with the enforceable obligation, were listed on the EOPS as part of the Cooperation Agreement and are not available for distribution to the taxing entities.

Administration and Grants to Non-Profit Housing Services Providers - $179,432

Effective July 1, 2009, the RDA entered into three-year Affordable Housing Service Grant Agreemens with eight non-profit service agencies. The Grant Agreements provided for three utilization periods identified as fiscal years 2009-10, 2010-11 and 2011-12. According to the provisions of the Grant Agreements, the RDA made annual appropriations of LMIHF funds to the service agencies. The $179,432 is the funding appropriation for the third utilization period of fiscal year 2011-12.

2. **Recapture of LMIHF used to pay approved enforceable obligations on the ROPS I and ROPS II - $5,900,000**

The Oversight Board previously approved the Successor Agency entering into a loan agreement with the City of Santa Clara to provide sufficient cash for the Successor Agency to pay the enforceable obligations listed on the ROPS for the period of July 1 through December 31, 2012. The cash flow loan was necessary because the County refused to distribute funds from the RPTTF to the Successor Agency to pay obligations on the approved ROPS for July 1, 2012 through December 31, 2012. In addition to this cash flow loan the Housing Authority returned to the Successor Agency $3,082,026 representing the deposits to the LMIHF for the 2011/12 fiscal year in order to pay enforceable obligations after the County failed to distribute funds from the RPTTF. The City was able to provide the cash flow loan to the Successor Agency by borrowing the necessary funds from the Housing Authority pursuant to a loan agreement approved by both the City and the Housing Authority. The LMIHF DDR includes these funds as part of the funds to distribute to the taxing entities although to do so would essentially be providing the taxing entities with the same funds twice. The RPTTF funds for ROPS II should have been distributed to the Successor Agency for payment of obligations in which event there would have been no need to borrow the funds from the Housing Authority cash assets and the Housing Authority funds would have been available for distribution to the taxing entities.

However, because the County did not distribute RPTTF to the Successor Agency for the ROPS II period, the County is currently holding over $13 million in RPTTF funds. Some of these funds would have been distributed to the taxing entities except for the litigation that ensued after the Oversight Board voted to terminate the Stadium related agreements with the 49ers. Essentially the LMIHF DDR is counting the funds for distribution to the taxing entities twice by retaining the funds in the RPTTF that should have been used to pay enforceable obligation on ROPS II and then requiring that the funds that were used to pay the approved enforceable obligations on ROPS II be distributed to the taxing entities. The end result of this logic is that the City would be left with paying the approved enforceable obligations of the Successor Agency, a result that is clearly not contemplated in the Dissolution Act. The City recognizes that the funds were used for enforceable obligations, assuming that the funds are not required to be disbursed to the taxing

entities pursuant to the LMIHF DDR, the City does not intend to continue to request that the loan be included as an enforceable obligation on subsequent ROPS for payment from the RPTTF.

3. **Expenditures made by the Housing Authority pursuant to the Cooperation Agreement based on valid contractual obligations - $6,907,667.**

The Housing Due Diligence Review shows $6,907,667 in available funds related to the ROEM Senior Housing Project. The Successor Agency believes this $6,907,667 should not be available for distribution to the taxing entities because the funds have been disbursed pursuant to the Cooperation/Assignment Agreement and the funds are committed to ROEM Corporation pursuant to an Acquisition Loan Agreement dated July 12, 2011. The funds loaned to the developer are not subject to the clawback and are no longer assets of the Successor Agency.

The DOF determination appears to be based on the position that the Housing Authority was prohibited from taking any actions with regards to the expenditure of the cash assets once the assets were transferred to the Housing Authority. ABx1 26 prohibited redevelopment agencies from taking certain actions after the effective date of ABx1 26 but did not and does not contain any prohibition on activities of other public entities. The Housing Authority continued to proceed with housing projects and programs that the RDA had proposed long before dissolution in accordance with the terms of the Cooperation/Assignment Agreements. All of the expenditures by the Housing Authority were in compliance with the California Redevelopment Law provisions regarding the use of Low and Moderate Income Housing Funds and all of the expenditures furthered the statewide goals of increasing and improving the supply of affordable housing. The funds loaned to the ROEM Corporation are being used for the construction of 48 units of low income housing available to seniors. The Successor Agency believes that these actions were valid actions and must be recognized as part of the LMIHF DDR for the following, among other, reasons.

Health and Safety Code Section 34167.5 (the "clawback provision") provides, in part, that the State Controller is to review the activities of redevelopment agencies to determine whether an asset transfer has occurred after January 1, 2011 between a redevelopment agency and its sponsoring city or county. The statute then provides: "If such an asset transfer did occur during that period <u>and the government agency that received the assets is not contractually committed to a third party for the expenditure or encumbrance of those assets</u>, to the extent not prohibited by state and federal law, the State Controller shall order the available assets to be returned to the redevelopment agency or, on or after October 1, 2011 [presumably now February 1, 2012], to the successor agency..." (Emphasis added.) To date the State Controller has not issued any order with regards to the Cooperation/Assignment Agreements and in particular has not ordered the return of the funds loaned to the ROEM Corporation. The very purpose of the language in Health and Safety Code Section 34167.5 is to prevent the unlawful impairment of contracts. The same prohibition on impairment of contracts applies to the LMIHF DDR.

It would be most reasonable to interpret Health and Safety Code Section 34167.5 to mean that property or assets that are contractually committed to a third party at the time that the State

Controller orders their return to the successor agency are covered by this exception. This interpretation is based on: (i) the use of the present tense in the pertinent portion of Health and Safety Code Section 34167.5 (e.g., "and the government agency that received the assets is not contractually committed....") (in short "is" means "is", not "was"); (ii) the fact that where the Legislature intended a particular provision of ABx1 26 to be applicable on the effective date of the bill it consistently so provided, and did so in many places in the bill (for example there is a reference to the effective date in this very section of the bill, but not in connection with when a contractual commitment triggers the exemption from clawback, only in connection with when the State Controller is to commence their review of post January 1, 2011 transfers) and (iii) this section involves the forfeiture of title to real estate and other property, and a public agency demanding the forfeiture of property should only be able to do so on the basis of a crystal clear statutory provision.

The DOF's position appears to rests primarily on an interpretation of Health and Safety Code Section 34167.5 that all asset transfers after January 1, 2011 were to be reversed. If the legislation was intended to reverse all transfers occurring after January 1, 2011, Section 34167.5 would not have required the State Controller to review all asset transfers and only order the return of those assets that were not committed to third parties. The Section though is clear that there are only certain asset transfers that the Controller can reverse because to do otherwise would result in the unlawful impairment of contract and violate state and federal law.