



July 12, 2012

Robert Campbell, Auditor-Controller
Contra Costa County
625 Court Street, Room 103
Martinez, CA 94553-1282

Re: Payment Demand Pursuant to Health & Safety Code § 34183.5(b)

Dear Mr. Campbell:

This letter responds to your demand dated July 9, 2012 that the El Cerrito Successor Agency ("Successor Agency"), pursuant to Health & Safety Code § 34183.5, remit \$1,756,795 to the Contra Costa County Auditor-Controller ("CAC") by July 12, 2012 for deposit into the Redevelopment Property Tax Trust Fund ("RPTTF") for subsequent distribution to taxing entities.

We are sending this letter to clearly set forth the Successor Agency's position that, among other defects:

- 1) Pursuant to the California Supreme Court's decision in *California Redevelopment Association v. Matosantos*, no RPTTF existed prior to February 1, 2012, and funds distributed to the former El Cerrito Redevelopment Agency ("RDA" or "Dissolved RDA") between July 1, 2011 and January 31, 2012 are tax increment funds not subject to the provisions of AB1x26 ("Dissolution Act"), AB 1484, or Section 34183.5 regarding the use of RPTTF funds. Redistribution of tax increment funds to other taxing entities violates Proposition 22.
- 2) Distribution of additional funds to taxing entities reallocates property tax among cities, counties, special districts, and school districts, yet was not approved by a two-thirds vote, as required by Article XIII, Section 25.5 of the California Constitution.
- 3) The methodology developed by the Department of Finance ("DOF") for calculation of amounts demanded is inconsistent with Section 34183.5(b), in that it fails to recognize all enforceable obligations listed on the approved Recognized Obligations Payments Schedule for the period between January 1, 2012 and June 30, 2012 ("First ROPS").
- 4) Neither the CAC nor the DOF is authorized to retroactively disallow payments made by the RDA or the Successor Agency if those payments were shown on the Enforceable Obligation Payment Schedules ("EOPS") prepared by the RDA and the Successor Agency and were made prior to the approval of the First ROPS.

In the specific case of the El Cerrito RDA and Successor Agency, note the following relevant facts:

- 1) Consistent with the Successor Agency's position stated above, the Successor Agency did not list payments made by the RDA from the December 16, 2011 tax increment distribution on the First ROPS. Only payments made by the Successor Agency were subject to ROPS review.
- 2) The RDA made payments from the December 16, 2011 tax increment distribution for obligations listed on its EOPS adopted August 15, 2011 and amended January 17, 2012. As stated above, these were allowable payments of enforceable obligations that neither the CAC nor DOF may retroactively disallow.
- 3) Prior to the December 2011 tax increment distribution, the RDA had reserves totaling \$187,107, only \$5,810 of which was in the Low and Moderate Income Housing Fund ("LMIHF"). These balances were entirely composed of unspent tax increment proceeds and LMIHF set-aside from FY 2010-11, and interest earnings.
- 4) None of the December 2011 tax increment distribution was identified as fund balance or reserve on the First ROPS. The funding source for all payments on the First ROPS was listed as RPTTF, as the fund balance that existed prior to the December 2011 tax increment distribution had been expended by the Redevelopment Agency prior to its dissolution on February 1, 2012.
- 5) DOF approved housing loan obligations to Eden Housing and Ohlone Gardens LP, but changed the approved funding source from RPTTF to LMIHF, implying that there was an available balance or reserve in the LMIHF prior to the December 2011 tax increment distribution, which was not the case.
- 6) Payments from RPTTF on the First ROPS approved by DOF total \$953,988, including:
 - a. \$288,215 Valente Note
 - b. \$415,773 SERAF/ERAF Loan
 - c. \$250,000 Successor Agency Administrative Allowance
- 7) Payments for the outstanding balances for the approved housing loan obligations to Eden Housing and Ohlone Gardens LP totaling \$781,152 should be added back to the approved uses of RPTTF on the First ROPS. They were not listed for payment from the LMIHF because it had no fund balance prior to the December 2011 tax increment distribution. Additionally, \$40,000 was advanced to Eden Housing pursuant to the predevelopment loan agreement immediately following the December 2011 tax increment distribution and therefore should also be included as an approved payment on the First ROPS.
- 8) Other payments made by the Redevelopment Agency listed on its EOPS from the December 2011 tax increment distribution are as follows:
 - a. Debt service payments totaling \$433,110 paid on January 1, 2012
 - b. Payroll for three former Redevelopment Agency staff members for payments made subsequent to December 16, 2011 totaling \$50,600

- c. Payments on consulting contracts made subsequent to December 16, 2011 totaling \$3,136
 - d. Partial payment of \$356,000 to the City of El Cerrito for the Redevelopment Agency's share of citywide FY11-12 cost recovery, as approved in the Redevelopment Agency Operating Budget adopted on June 6, 2011
 - e. Partial payment of \$400,000 to the El Cerrito Municipal Services Corporation for the FY11-12 obligation under the contract to implement redevelopment projects dated March 7, 2011
 - f. Partial payment of \$201,161 to the City of El Cerrito for the FY11-12 obligation under the contract to implement affordable housing projects dated February 22, 2011
- 9) Based on the obligations of the December 16, 2011 tax increment distribution outlined above in items 6, 7 and 8, the total First ROPS payable from RPTTF is \$3,219,181. Based on the tax increment distribution amount of \$2,710,783, there is no residual for distribution pursuant to Health & Safety Code § 34183.5 and items on the approved First ROPS will need to be deferred until a future ROPS due to insufficient funds.
- 10) The Successor Agency's current balance in the Redevelopment Obligation Retirement Fund ("RORF") is \$748,998. Of that amount, \$406,139 is from the June 2012 Distribution of RPTTF for debt service due in December 2012. The remaining \$342,850 is December 2011 tax increment for payment of items on the First ROPS, which the Successor Agency intends to disburse once disputes regarding those items are resolved.
- 11) If the Successor Agency's current balance is used to pay the payment demand, the Successor Agency will default on its bond payments listed on the approved Second ROPS for the period of July 1, 2012 and December 31, 2012, and be unable to meet funding obligations to third parties relying on the DOF's approval of the First ROPS, in particularly Eden Housing and Ohlone Gardens LP. Additionally, the DOF would presumably pursue the balance due from the City of El Cerrito's General Fund by withholding payment of its sales tax revenue. The payment demand of \$1,756,795 represents nearly half of the City's General Fund reserves.

Consequently, we are hereby declining to make the payment demanded by you on July 9, 2012, and the Successor Agency expressly reserves any and all rights, privileges, and defenses available under law and equity.

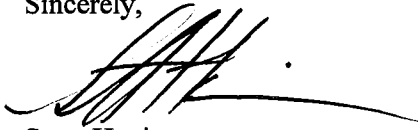
As detailed above, the Successor Agency believes there is a valid basis for a major change to the Department of Finance's Column E of Exhibit 12 for our Successor Agency. This change would either significantly reduce or completely eliminate the amount demanded by your office on July 9, 2012 for payment on July 12, 2012. In this regard, we request your assistance in participating in a meet and confer process with the Department of Finance to achieve this equitable result. By this letter, which is being copied to Mr. Chris Hill at the DOF, we renew our formal request for a meet and confer consideration of this matter that was contained in our July 9, 2012 letter to the DOF (copy attached).

While we appreciate Mr. Hill's discussion with Lori Treviño of Successor Agency staff on July 10, 2012, that discussion did not provide the opportunity for a careful consideration of the

detailed information provided above in this letter. We understand that, in discussions with League of California Cities representatives on July 11, 2012 the DOF indicated a willingness to conduct the kind of review we are requesting and that it would not seek application of penalties during the pendency of such review or following a review that resulted in an appropriate change in its Column E figure. Your cooperation and participation with the Successor Agency and the DOF in this meet and confer process is most appreciated.

Please feel free to contact me or Economic Development Manager Lori Treviño at (510) 215-4383 or ltrevino@ci.el-cerrito.ca.us, if you have any questions regarding the above.

Sincerely,

A handwritten signature in black ink, appearing to read 'SH', with a long horizontal flourish extending to the right.

Scott Hanin
Designated Contact Official
El Cerrito Successor Agency

cc: Chris Hill, California Department of Finance



July 9, 2012

Ana Matosantos, Finance Director
Mark Hill, Program Budget Manager
California Department of Finance
redevelopment_administration@dof.ca.gov

John Chiang, Controller
T. Austin
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Robert Campbell, Auditor-Controller
Office of the Auditor-Controller of the County of Contra Costa
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Re: AB 1484 "True Up" Payment Due Under HSC 34183.5

Ladies and Gentlemen:

The Successor Agency to the El Cerrito Redevelopment Agency and the City of El Cerrito (the "Successor Agency" and "Sponsoring Community") wish to meet and confer with the Department of Finance (the "DOF") to discuss the payment due on July 12, 2012 under Health and Safety Code Section 34183.5 (the "34183.5 Payment"). The Successor Agency and Sponsoring Community also request that the DOF notify the Auditor-Controller of the County of Contra Costa and the State Controller's Office that no payment is due and no penalties or sales tax offsets should be assessed during the pendency of these discussions. Because serious concerns were raised while AB 1484 was before the Senate Committee on the Budget and Fiscal Review on June 26-27, 2012 regarding the processes for calculating and collecting the 34183.5 Payment, the DOF committed that it would work with Sponsoring Communities and Successor Agencies to avert assessment of the penalty and offset provisions. We wish to immediately commence that process.

The El Cerrito Redevelopment Agency (the "RDA" or "Dissolved RDA") was dissolved on February 1, 2012. Prior to dissolution, the RDA received its December 2011 installment of tax increment from the County of Contra Costa (the "County") on December 16, 2011 (the "Last Tax Increment"). Since ABx1 26 was stayed at this time, the RDA deposited the Last Tax Increment into its reserve fund. The RDA, prior to February 1, 2012, used the proceeds of the Last Tax Increment to pay costs of the RDA authorized under the Community Redevelopment Law. After February 1, 2012, the Successor Agency used the remaining proceeds of the Last Tax Increment to pay costs listed on the EOPS, and later, ROPS, all pursuant ABx1 26.

On July 3, 2012, DOF provided guidance on the 34183.5 Payment, which DOF refers to as the "July True Up Process" (the "Guidance"). There is an error and an inconsistency between the Guidance and AB 1484.

Health and Safety Code Section 34183.5(b), added by AB 1484, provides as follows:

"The amount to be retained by taxing entities pursuant to paragraph (4) of subdivision (a) of Section 34183 for the January 1, 2012, through June 30, 2012, period is determined based on the Recognized Obligation Payment Schedule approved by the Department of Finance pursuant to subdivision (h) of Section 34179 and any amount determined to be owed pursuant to subdivision (b)." [emphasis added]

The relevant portion of the Guidance states that:

"For purposes of determining the amount of RPTTF that a successor agency was authorized by Finance to expend for the January 2012-June 2012 period, county auditor-controllers must use the amounts shown in Column E of the Exhibit 12 document on this webpage."

Column E of Exhibit 12 deals only with a subset of the approved January through June 2012 Recognized Obligation Payment Schedule (the "First ROPS") and does not include all enforceable obligations approved by DOF. In particular, Column E includes only the portion of the First ROPS payable from the Redevelopment Property Tax Trust Fund (the "RPTTF"), and fails to recognize that other enforceable obligations were payable from other sources, including the Last Tax Increment. The First ROPS showed amounts to be paid from the Last Tax Increment as payable from "Fund Balance" rather than from the RPTTF, because at the time the Last Tax Increment was received, ABx1 26 had been stayed, and the RPTTF did not exist. To exclude from the approved First ROPS those payments for enforceable obligations made from the Last Tax Increment results in double payments by agencies, as further highlighted below.

Had the RPTTF system been in effect at the time the Last Tax Increment was paid, the distribution waterfall that the Legislature directs to be simulated through Section 34183.5(b) would first have allowed all enforceable obligations on the approved First ROPS to be paid from amounts distributed under Section 34183(a)(2) before arriving at the residual amount available to taxing entities under the distribution prescribed in Section 34183(a)(4). Unless the entire enforceable obligation payment amount shown in the First ROPS is deducted from the Last Tax Increment, the Section 34183.5(b) calculation will overstate the amount of revenues from the Last Tax Increment available for distribution to the affected taxing entities in a manner inconsistent with the legislative intent that requires the use of all enforceable obligations listed on the First ROPS, not just a portion of them, as the basis for the calculation.

Since previous DOF guidance and AB 1484 stated that there would be no RPTTF distribution on May 16, 2012 to make payments for approved enforceable obligations on the First ROPS, as a practical matter, the only source of funds the Successor Agency had to make their First ROPS enforceable obligations payments was the Last Tax Increment. The new Guidance calculation would in effect require the Successor Agency to spend the Last Tax Increment twice over—once for the approved enforceable obligations listed on the First ROPS and then again to make the 34183.5 Payment. This is not consistent with ABx1 26 or AB 1484.

Further it is our position that no 34183.5 Payment is due because the RPTTF did not exist until February 1, 2012 and thus there would be no residual from the RPTTF for the period for which the CAC is required to calculate a residual distribution under Section 34183.5. The 34183.5 Payment violates numerous state laws, including Proposition 1A and Proposition 25. The 34183.5 Payment also violates Proposition 22, since the Last Tax Increment was "tax increment" at the time it was received by the RDA and therefore cannot be redirected by the State.

Please contact Economic Development Manager Lori Treviño at (510) 215-4383 or ltrevino@ci.el-cerrito.ca.us at your earliest convenience to arrange for our conference on this matter. In the meantime, we request your immediate confirmation to us, the Auditor-Controller of the County of Contra Costa, and the State Controller's Office that the Successor Agency and Sponsoring Community 34183.5 Payment obligation is suspended and postponed pending the outcome of our meet and confer discussions with DOF on this matter.

Thank you for your prompt attention to our request.

Sincerely,

A handwritten signature in cursive script that reads "Scott Hanin". The signature is written in black ink and includes a stylized flourish at the end.

Scott Hanin
City Manager

cc: Senator Mark DeSaulnier, 7th Senate District
Assemblymember Nancy Skinner, 14th Assembly District
Senate President pro Tem Darrell Steinberg
Steve Shea, Policy Consultant, Senate President pro Tem Darrell Steinberg
Assemblymember Loni Hancock, 9th Assembly District
Jennifer Rockwell, General Counsel, California Department of Finance
Sky Woodruff, City Attorney, Meyers Nave
Susan Bloch, Legal Counsel, Meyers Nave
Jack Nagle, Legal Counsel, Goldfarb & Lipman