

**CITY OF SAND CITY SUCCESSOR AGENCY
Oversight Board Meeting Agenda
July 22, 2013**

**2:00 p.m., Monday, July 22, 2013,
City Hall, Council Chambers, 1 Sylvan Park, Sand City, CA 93955**

AGENDA ITEMS:

1. CALL TO ORDER

2. ROLL CALL & ESTABLISHMENT OF QUOROM

John McPherson, Monterey County Office of Education
Jane Parker, Monterey County Board of Supervisors
Sandra Miles, Monterey County Board of Supervisors Public Member
Stephen Ma, Monterey Peninsula College
Linda Scholink, City of Sand City Successor Agency
Steve Matarazzo, City of Sand City Successor Agency
Jayanti Addleman, Monterey County Libraries

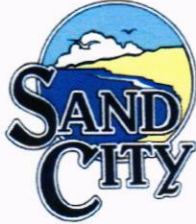
3. PLEDGE OF ALLEGIANCE

4. COMMUNICATIONS FROM THE FLOOR: At this time, any person may comment on any item which is not on the agenda. Please state your name and address for the record. Action will not be taken on an item that is not on the agenda. If it requires action, it will be referred to staff and/or placed on the next agenda. In order that all interested parties have an opportunity to speak, please limit comments to a maximum of three (3) minutes. Any member of the public may comment on any matter listed on this agenda at the time the matter is being considered by the Board.

5. BOARD MEMBER COMMENTS: Board Members may ask a question for clarification; make a brief report or announcement on his/her activities. Board members may provide a referral to Staff or other resources for factual information, or direct Staff to agendize a matter of business on a future agenda. Any item not listed on the Agenda after the posting of the Agenda and that must be acted upon (2/3rds vote required to place on agenda) prior to the next Board meeting may be addressed at this time. (G.C. 54954.2)

6. ACTION/ DISCUSSION ITEMS

- A. Consideration of Oversight Board RESOLUTION Approving the Oversight Board Minutes of June 3, 2013
- B. Status Report and Update on Department of Finance Other Funds Due Diligence Review
- C. Update regarding Claims by the Local Educational Agencies (LEAs) regarding Pass-through Payment Obligations of the Successor Agency (SA)
- D. Update regarding State Controller's Office (SCO) Other Funds Asset Transfer Due Diligence Review Meeting with County Auditor



**CITY OF SAND CITY SUCCESSOR AGENCY
Oversight Board Meeting Agenda for July 22, 2013**

- E. Preliminary Review of ROPS 13-14B
 - F. Consideration of next Oversight Board Meeting Time and Date
 - G. Update regarding *Seaside v. Sand City*-Verbal Report
7. REQUEST FROM BOARD MEMBERS FOR FUTURE AGENDA ITEMS
8. ADJOURNMENT:

Next Scheduled Oversight Board Meeting:

Monday, August 5, 2013
3:00 P.M.
Sand City Council Chambers
1 Sylvan Park, Sand City

ALL MEETINGS ARE OPEN TO THE PUBLIC. The City of Sand City does not discriminate against persons with disabilities. City Hall and the Council Chambers are accessible facilities. Any person with a disability who requires a modification or accommodation to be able to participate in this meeting is asked to contact the office of the City Clerk at (831) 394-3054 no fewer than two business days prior to the meeting to allow for reasonable arrangements.

SAND CITY SUCCESSOR AGENCY OVERSIGHT BOARD

RESOLUTION OB ____, 2013

RESOLUTION OF THE OVERSIGHT BOARD FOR THE SAND CITY SUCCESSOR AGENCY APPROVING THE OVERSIGHT BOARD MEETING MINUTES OF JUNE 3, 2013

WHEREAS, the Oversight Board at its regular meeting of July 22, 2013 reviewed the Oversight Board draft meeting minutes of June 3, 2013; and

WHEREAS, based on its review of said minutes, the Oversight Board finds the draft minutes to be an accurate summary of the major points and actions taken during the meeting of June 3, 2013.

NOW, THEREFORE, THE OVERSIGHT BOARD hereby finds the subject minutes to be adequate and they are hereby approved as the approved meeting minutes of June 3, 2013.

PASSED AND ADOPTED by the Sand City Successor Agency Oversight Board on this 22nd day of July, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

John McPherson, Board Chair

ATTEST:

Connie Horca, Board Secretary



**CITY OF SAND CITY SUCCESSOR AGENCY
Oversight Board Meeting Minutes
June 3, 2013**

The meeting was called to order by Chair McPherson at 3:01 P.M.

AGENDA ITEM 2, ROLL CALL & ESTABLISHMENT OF QUOROM

John McPherson, Monterey County Office of Education
Jane Parker, Monterey County Board of Supervisors
Monterey County Board of Supervisors-Public Member (**Vacant**)
Stephen Ma, Monterey Peninsula College
Linda Scholink, City of Sand City Successor Agency {Excused absence}
Steve Matarazzo, City of Sand City Successor Agency
Jayanti Addleman, Monterey County Libraries

AGENDA ITEM 3, PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Board Member Addleman.

AGENDA ITEM 4, COMMUNICATIONS FROM THE FLOOR

3:02 P.M. Floor opened for Public Comment.

There was no comment from the Public.

3:02 P.M. Floor closed to Public Comment.

AGENDA ITEM 5, BOARD MEMBER COMMENTS

Board Member Parker announced that the Monterey County Board of Supervisors has appointed Sandra Miles to be Sand City's community representative to the Oversight Board. She plans to be in attendance at the next Oversight Board meeting.

AGENDA ITEM 6, ACTION/ DISCUSSION ITEMS

A. Consideration of Oversight Board Resolution approving the Oversight Board Minutes of May 6, 2013

Board Member Ma requested that page 5 of the minutes be changed to reflect that Legal Counsel Clarissa Canady also represented Monterey Peninsula College.

Motion to approve the Oversight Board **Resolution** approving the Oversight Board Minutes of May 6, 2013, as amended was made by Board Member Parker, seconded by Board Member Addleman. AYES: Board Members McPherson, Parker, Ma,

Matarazzo, Addleman. NOES: None. ABSENT: Board Member Scholink. ABSTAIN: None. Motion carried.

B. Status Report and Update on Department of Finance Other Funds Due Diligence Review

Board Member Matarazzo reported that the request to Meet and Confer was sent to the Department of Finance (DOF) on March 15, 2013. DOF has 75 days to respond to the request and Staff is still waiting to hear back from them. Chair McPherson suggested that this item be placed on the next agenda should Staff have an update.

C. Update regarding Claims by the Local Educational Agencies (LEAs) regarding Pass-through Payment Obligations of the Successor Agency (SA)

Board Member Matarazzo reported that the Successor Agency Board met in closed session and determined that outside Legal Counsel will need to review the LEA's claim. Staff is hopeful for some progress on this issue by the next Oversight Board meeting.

This item to be continued to the next Oversight Board meeting.

D. Consideration of State Controller's Office (SCO) Other Funds Asset Transfer Due Diligence Review

Board Member Matarazzo suggested that the attached resolution be re-approved by the Board as previously passed and adopted in December 2012, and forwarded to the County Auditor. The State Controller's Office (SCO) disagreed with the Successor Agency's conclusion that \$6 million of the former Redevelopment Agency's assets were transferred to the Successor Agency.

Board Member Matarazzo commented that the Successor Agency does not have \$23 million (shown as a potential "asset" in materials sent to the SCO) in any account. Staff would be willing to meet with the County Auditor and to have him come before the Board at a future date.

In response to Oversight Board comments, Board Member Matarazzo stated that the Successor Agency's Finance Director and Auditor Therese Courtney of Hayashi & Wayland can meet with the County Auditor to resolve the issue.

This item will be continued to the next Oversight Board meeting.

AGENDA ITEM 7, REQUEST FROM BOARD MEMBERS FOR FUTURE AGENDA ITEMS

Board Member Parker requested an update on settlement negotiations between Seaside and Sand City. Board Member Ma suggested that the next Oversight Board meeting be deferred to a later date in July so that additional information regarding updates can be provided by Staff. There was Board

consensus to reschedule the next Oversight Board meeting to Monday, July 22 at 2:00 P.M. Updates on Agenda items 6B,C & D will be scheduled for the next meeting. Board Member Parker suggested that it would be helpful to review the next ROPS at the July meeting so that the Board can present any questions at the August meeting.

AGENDA ITEM 8, ADJOURNMENT


Motion to adjourn the Oversight Board Meeting was made by Chair McPherson, seconded by Board Member Parker, to the next scheduled Oversight Board meeting on Monday, July 22, 2013 at 2:00 P.M. There was unanimous consensus of the Board to adjourn the meeting at 3:35 P.M.

Connie Horca, Board Secretary

**CITY OF SAND CITY SUCCESSOR AGENCY
OVERSIGHT BOARD**

DATE: July 15, 2013 (for Oversight Board Meeting of July 22, 2013)

TO: Oversight Board Members

FROM: Steve Matarazzo, Staff 

SUBJECT: Update Regarding the Department of Finance (DOF) Determination Regarding the "Other Funds Due Diligence Review (OFDDR)"

Following the Oversight Board's approval of the subject due diligence review, completed in December, 2012, the Department of Finance sent a letter to the Successor Agency (SA) stating that it disagreed with the OFDDR's finding that all remaining assets of the SA (exclusive of housing funds) be retained for existing and future enforceable obligations. The DOF letter stated that \$2,235,000 of the assets should be disbursed to the County Auditor (CA) for distribution to all effected taxing entities. In dispute of that finding, the SA requested a "meet and confer" conference with the Department of Finance.

On June 24, 2013, SA representatives met with two DOF accountants to review the subject DDR and the SA's contention that all liquid assets of the SA should be retained to address existing and future enforceable obligations. The SA has the following assets (not including property) in its bank accounts:

Sales and Use Tax:	\$228,282.26
Checking Account:	588,754.12
Property tax:	645,919.79
Total:	\$1,462,956.17

Tax Exempt Bond Proceeds (3-month CD):	\$524,824.62
Tax Exempt Bond Proceeds (6-month CD):	\$530,111.23
Total Bond Proceeds:	\$1,054,935.85

During our meeting in Sacramento, it was argued that all of the bond proceeds need to be retained by the SA because the bond covenants require those monies to be spent on public projects within Sand City; and, the bonds were issued in 2008, well in advance of the Redevelopment Dissolution Act becoming effective. DOF has agreed with this assessment and is allowing the bond proceeds to remain with the SA. The SA representatives also argued that the remaining liquid assets are needed, in part, to eventually reimburse King Ventures, if necessary, as an enforceable obligation created by the Disposition and Development Agreement (DDA) associated with the coastal property known as "the McDonald Site", now owned by the SA. As the Oversight Board may recall, the SA will owe King Ventures \$1,445,000 plus interest should King Ventures decide not to pursue development of their coastal resort, now going through the environmental review process with the City. However, the DOF has found (see attached letter dated July 11, 2013) the majority of funds being retained in the sales and use tax account and the checking account need to be disbursed to affected taxing entities and cannot be retained by the SA.. The total amount required to be disbursed by DOF is \$804,245. The SA has 5 working days from July 11th to disburse those funds or face legal penalties.

This matter will be discussed between SA staff and the SA Board under closed session on July 16th. SA staff will report any reportable action to the Oversight Board at the Oversight Board meeting on July 22, 2013.

Attachment: Final Determination Letter from DOF dated July 11, 2013



July 11, 2013

Mr. Steve Matarazzo, City Administrator
City of Sand City
1 Sylvan Park
Sand City, CA 93955

Dear Mr. Matarazzo:

Subject: Other Funds and Accounts Due Diligence Review

This letter supersedes the California Department of Finance's (Finance) original Other Funds and Accounts (OFA) Due Diligence Review (DDR) determination letter dated March 9, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Sand City Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on January 7, 2013. The purpose of the review was to determine the amount of cash and cash equivalents available for distribution to the affected taxing entities. Finance issued an OFA DDR determination letter on March 9, 2013. Subsequently, the Agency requested a Meet and Confer session on one or more items adjusted by Finance.

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. Specifically, the following adjustments were made:

- The Agency's request to retain balances for restricted assets totaling \$1,870,637 is disallowed, as further explained below:
 - The total claimed as restricted assets does not tie to the DDR procedure for legally restricted assets. Per DDR Procedure 10 (Summary of Balances Available for Allocation to Affected Taxing Entities), the total claimed is \$1,870,637; however, per DDR Procedure 8A for restricted assets, the total is \$1,631,084. Therefore, the OFA balance available for distribution will be increased by \$239,553 (\$1,870,637 - \$1,631,084).
 - The request to restrict assets totaling \$812,160 for a contingent settlement is not allowed. The Agency claims these funds are restricted pending the outcome of a lawsuit between the Agency and the City of Seaside. The Agency claims that the funds are needed if the court rules against the Agency. Per HSC section 34179.5 (c) (5) (D), restricted assets are permitted for funding enforceable obligations. HSC section 34179.5 states "enforceable obligation" includes any of the items listed in subdivision (d) of section 34171, contracts detailing specific work that were entered into by the former redevelopment agency prior to June 28, 2011 with a third party other than the city, county, or city and county that

created the former RDA. While HSC section 34171 (d) (1) includes judgments or settlements entered by a competent court, it does not provide for contingent liabilities or settlements. If and when a judgment or settlement is entered against the Agency, the item may be included on future Recognized Obligation Payment Schedules (ROPS) for payment with Redevelopment Property Tax Trust Funds (RPTTF). Therefore, the request to restrict OFA balance available for distribution will be increased by \$812,160.

- The request to restrict \$818,924 on deposit with the trustee for bond reserves is not allowed. While bond reserves are restricted, these amounts have already been accounted for in Procedure 6A (Restricted Fund) of the DDR. Therefore, the OFA balance available for distribution will be increased by \$818,924.
- Restricted bond proceeds totaling \$1,054,399. The Agency claims these funds are restricted by bond covenants; however, the amount was not included in the DDR under Procedure 8A (Restricted for Funding Enforceable Obligations). Our review indicates the Agency placed the 2008 Series A and B bond proceeds into two separate Certificates of Deposit (CDs) when the bonds were issued. The balance of the CDs as of June 30, 2012 was \$1,054,399. Bond proceeds and interest earned on the proceeds are restricted assets; therefore, the Agency will be permitted to retain these restricted assets.
- The Agency's request to retain \$812,160 to satisfy approved ROPS items for the 2012-13 fiscal year is approved and increased by \$12,053, as further discussed below:
 - The Agency was approved for \$815,231 in expenditures for the July through December 2012 period (ROPS II). However, the County Auditor Controller (CAC) only distributed \$307,731 to the Agency for ROPS II; therefore, the Agency will be permitted to retain this amount, which is the amount expended by the Agency as reported on the Prior Period Payment Schedule submitted with the July through December 2013 ROPS.
 - Although not included on the ROPS II reconciliation, the Agency will also be permitted to retain an additional \$357,284 (\$540,015 - \$182,731) for debt service payments. Our review indicates the Agency paid \$540,015 towards bond debt service payments for the November 2012 payment; however, the Agency only claimed \$182,731.

Finance notes that HSC section 34177 (a) (3) states that only those payments listed in the approved ROPS may be made from the funding source specified in the ROPS. However, HSC section 34177 (a) (4) goes on to state that with prior approval from the oversight board, the successor agency can make payments for enforceable obligations from sources other than those listed in the ROPS. In the future, the Agency should obtain prior oversight board approval when making payments for enforceable obligations from a funding source other than those approved by Finance.

- The Agency was approved for \$897,731 for the January through June 2013 ROPS (ROPS III) period; however, the CAC only distributed \$738,533. As such, the Agency will be permitted to retain \$159,198 (\$897,731 - \$738,533), to satisfy ROPS III approved enforceable obligations.

In total, the Agency will be permitted to retain \$824,213 (\$307,731 + \$357,284 + \$159,198). The OFA balance available for distribution will be decreased by \$12,053 (\$824,213 - \$812,160).

Should a deficit occur in the future, HSC provides successor agencies with various methods to address short term cash flow issues. These may include requesting a loan from the city pursuant to HSC section 34173 (h), or subordinating pass-through payments pursuant to HSC section 34183 (b). The Agency should seek counsel from their oversight board to determine the solution most appropriate for their situation if a deficiency were to occur.

The Agency's OFA balance available for distribution to the affected taxing entities is \$804,245 (see table below).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ -
Finance Adjustments	
Add:	
Restricted assets not included in DDR	\$ (1,054,339)
Requested restricted balances not allowed	\$ 1,870,637
Additional allowed retention	\$ (12,053)
Total OFA available to be distributed:	\$ 804,245

This is Finance's final determination of the OFA balances available for distribution to the taxing entities. HSC section 34179.6 (f) requires successor agencies to transmit to the county auditor-controller the amount of funds identified in the above table within five working days, plus any interest those sums accumulated while in the possession of the recipient. Upon submission of payment, it is requested you provide proof of payment to Finance within five business days.

If funds identified for transmission are in the possession of the successor agency, and if the successor agency is operated by the city or county that created the former redevelopment agency, then failure to transmit the identified funds may result in offsets to the city's or the county's sales and use tax allocation, as well as its property tax allocation. If funds identified for transmission are in the possession of another taxing entity, the successor agency is required to take diligent efforts to recover such funds. A failure to recover and remit those funds may result in offsets to the other taxing entity's sales and use tax allocation or to its property tax allocation. If funds identified for transmission are in the possession of a private entity, HSC 34179.6 (h) (1) (B) states that any remittance related to unallowable transfers to a private party may also be subject to a 10 percent penalty if not remitted within 60 days.

Failure to transmit the identified funds will also prevent the Agency from being able to receive a finding of completion from Finance. Without a finding of completion, the Agency will be unable to take advantage of the provisions detailed in HSC section 34191.4. Specifically, these provisions allow certain loan agreements between the former redevelopment agency (RDA) and the city, county, or city and county that created the RDA to be considered enforceable obligations. These provisions also allow certain bond proceeds to be used for the purposes in which they were sold and allows for the transfer of real property and interests into the Community Redevelopment Property Trust Fund once Finance approves the Agency's long-range property management plan.

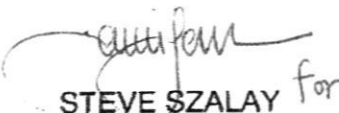
Mr. Steve Matarazzo
July 11, 2013
Page 4

In addition to the consequences above, willful failure to return assets that were deemed an unallowable transfer or failure to remit the funds identified above could expose certain individuals to criminal penalties under existing law.

Pursuant to HSC sections 34167.5 and 34178.8, the California State Controller's Office (Controller) has the authority to claw back assets that were inappropriately transferred to the city, county, or any other public agency. Determinations outlined in this letter do not in any way eliminate the Controller's authority.

Please direct inquiries to Evelyn Suess, Dispute Resolution Supervisor, or Danielle Brandon, Analyst, at (916) 445-1546.

Sincerely,



STEVE SZALAY for
Local Government Consultant

cc: Ms. Linda Scholink, Director of Administrative Services, Sand City
Ms. Connie Horca, Deputy City Clerk, Sand City
Ms. Julie Aguero, Auditor Controller Analyst II, Monterey County
California State Controller's Office

**CITY OF SAND CITY SUCCESSOR AGENCY
OVERSIGHT BOARD**

DATE: July 17, 2013 (for Oversight Board Meeting of July 22, 2013)

TO: Oversight Board Members

FROM: Steve Matarazzo, Staff 

SUBJECT: Update on Claims by Local Educational Agencies (LEAs) Regarding Pass-through Obligations of the Successor Agency (SA)

The Monterey County Office of Education (MCOE), the Monterey Peninsula Unified School District (MPUSD) and the Monterey Peninsula College District (MPCD), collectively known as local educational agencies (LEAs), have filed claims with the Successor Agency (SA) stating that monies are owed by the former Redevelopment Agency either due to statute (MCOE) or due to the wording of pass-through agreements (MPUSD and MPCD). The LEAs have hired legal counsel and the Dolinka Group to express the opinion that approximately \$1.6 million is owed, primarily due to language in the pass-through agreements. The pass-through agreements required the former redevelopment agency to pay the affected LEAs, additional property tax, equivalent to a 2% annual increased property value from the base year (1987) when the tax base was frozen. The amount of additional revenue to the LEAs (MPUSD and MPCD) was to be paid "upon request". The LEAs did not make that request until 2011 and 2012, respectively. The LEAs claim that the 2% amounts of additional revenue should be calculated from the inception of the RDA (1987) to the date of dissolution in 2012. However, It is the SA's opinion that "upon request" triggers the amounts due, going forward, not backward. During a couple of meetings when this issue was discussed with the SA, the LEA representatives indicated that they would prefer to find a reasonable compromise as a settlement rather than litigate the issue.

The SA has obtained the outside counsel of Best, Best and Kreiger (BB&K) to opine on this issue as it relates to the interpretation of the relevant pass-through agreements. It can also be stated that there is money due to the MCOE that is required by statute. (The MCOE has no pass-through agreement with the former RDA.) The BB&K opinion is attached, as is the opinion of the LEA's counsel. SA staff finds the BB&K opinion to be the stronger case, in light of the additional analysis provided. A proposed settlement will be discussed between SA staff and counsel with the SA board on July 16th. A further report will be presented to the Oversight Board on July 22, 2013.

ATTACHMENTS:

1. Opinion of LEA counsel
2. Opinion of Best, Best & Kreiger



DANNIS WOLIVER KELLEY

CLARISSA R. CANADY

Attorney at Law

ccanady@DWKesq.com

San Francisco

March 15, 2013

VIA EMAIL and U.S. MAIL

Garry P Bousum
Associate Superintendent, Finance & Business Services
Monterey County Office of Education
901 Blanco Circle
Salinas, CA 93901

Re: *Response to Sand City Re: Interpretation of Cooperation Agreements*
Our file 5040.10212

Dear Mr Bousum:

We have reviewed the Agreements for Cooperation between Monterey Peninsula Unified School District ("MPUSD"), Monterey Peninsula Community College District ("MPCCD"), the former Sand City RDA and Sand City ("Cooperation Agreement"). I focused specific attention on Sections 3.1 and 3.2 of the Cooperation Agreements in light of Sand City's claim that MPUSD and MPCCD were required to make a request for certain 2% payments, and that those payments would only flow prospectively following the request. We disagree with this interpretation.

BRIEF SUMMARY

In July and August of 1987, MPUSD and MPCCD entered into Cooperation Agreements with the former Sand City RDA and Sand City. These agreements were commonly known as "mitigation agreements" in which RDA's worked with school districts to negotiate payments to defray the costs to districts associated with growth in the area due to redevelopment activities. It appears that the primary purpose of the Cooperation Agreements at issue was to address these mitigation issues.

The Cooperation Agreements both contain the following "2%" provision:

3.2 Upon the request of the School District the Agency shall provide as a minimum, an amount equal to the projected portion of the tax revenues generated by the incremental two percent (2%) increase in the base

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year assessed valuation of the property within the redevelopment area during the period of the project, including any amendments.

(MPUSD Agmt., §3.2, MPCCD Agmt., §3.1) The Districts and Sand City disagree regarding the interpretation of this provision.

LEGAL ANALYSIS

Sand City contends. (1) that 2% provision requires the City/former RDA to pay these amounts *prospectively*; (2) the City was only required to hold these funds in reserve for 1 year, and if the Districts failed to make a request, they were entitled to spend these revenues on other items, and (3) even assuming the Districts could seek payment for prior years, the Districts would be limited to a four year statute of limitations to make such a claim. San City's contentions are not supported by the clear contract language, or the law

There is no reference in the 2% provision to an annual reserve that can be spent if the Districts did not make a request in that year. In other words, there is no "use it or lose it" language in the provision that amounts to a waiver on the part of the District if it does not make a request in a given year. Thus, any expenditure of these funds by the City/former RDA was made at their risk, and did not alleviate the City/former RDA's obligation to make full payment under the 2% provision.

Moreover, Cooperation Agreement does not place a time limit on the amount of funds that can be sought under the 2% provision. In fact, there is no specified timeframe for the Districts to make the request. Rather, the language of the provision is quite broad, and requires the City/former RDA to make, at a minimum, "an amount equal to the projected portion of the tax revenues generated by the incremental two percent (2%) increase in the base year assessed valuation of the property within the redevelopment area *during the period of the project, including any amendments.*" This highlighted language clearly requires the payment of these sums for the entire period of the project. In other words, the request does not trigger only a prospective payment of these amounts, but rather the full payment of these amounts for the entire period of the project, as amended. In sum, there is simply no support for the City's interpretation that the request only requires payments going forward. The plain language of the provision clearly states otherwise.

Finally, the City lacks any basis to conclude that the Districts would be limited to only four years of payments based on the statute of limitations for contracts. The 4-year statute of limitations applies where there has been a breach of an obligation in the contract. Here, the Districts are simply exercising their rights under the agreements by requesting that the City fulfill its obligation to pay the 2% payments for the entire period of the project pursuant to sections 3.1 and 3.2. If the City fails to do so, the Districts will have 4 years from the date of their refusal to bring a legal action to pursue their claims. However, in the resulting action, the City would be required to make the payments specified in the 2% provision - i.e., the entire sum for the full project period - and not be limited to only four years. Thus, it is our opinion that the City is misapplying the statute of limitations in this case.

Their claim might have merit if the 2% provision required the Districts to make an election at a time certain, and the Districts did so but the City failed to make such payment. Alternatively, if

Garry P Bousum
Monterey County Office of Education
March 15, 2013
Page 3

the payments were supposed to be made automatically, and the City failed to do so, the Districts may be limited to seeking payments for only four years from the dates the City was required to make the automatic payments. However, as explained above, the express terms of the agreements do not require the Districts to make a request at a time certain, the failure to respond to which by the City would trigger the statute of limitations. Moreover, the City also concedes, and the plain language provides, that the Districts were required to make a request. Thus, there was not a failure to make an automatic payment which might trigger the statute of limitations.


CONCLUSION

Based on the foregoing, we conclude that the Cooperation Agreements provide for full payment under the 2% provision for the entire period of the project, as amended, not simply prospective payments. We further found no contractual or legal basis to read into the Cooperation Agreements the "use it or lose it" terms that the City relies upon. We likewise find no merit in the City's argument that the statute of limitations would bar the Districts from seeking full payment under the 2% provision. Rather, the Districts are entitled to pursue the payments by merely exercising their rights under the agreement and making the requisite requests. After such requests are made, the agreement is clear that the City/former RDA "shall" make such payments.

Please contact me should you have further questions on this matter

Very truly yours,

DANNIS WOLIVER KELLEY



Clarissa R. Canady

CRC:dlh



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Memorandum

To: Steve Matarazzo
City Administrator
City of Sand City

From: Ethan J. Walsh

Date: July 17, 2013

Re: Claim from Local Education Agencies to Successor Agency of Sand City
Redevelopment Agency

QUESTION PRESENTED

The Sand City Redevelopment Agency ("SCRDA") has received claims from the Monterey County Office of Education ("MCOE"), Monterey Peninsula College ("MPC") and Monterey Peninsula Unified School District ("MPUSD") asserting that they are entitled to additional pass through payments from SCRDA. The claims received from MPUSD and MPC are based on pass through agreements (the "Pass Through Agreements") entered into with SCRDA in 1987 pursuant to Health & Safety Code section 33401, which then allowed for such agreements. MCOE's claim is based on statutory obligations of SCRDA set forth in Health & Safety Code section 33676, along with SB 211 statutory pass through payments that are required under the Community Redevelopment Law.¹

The law firm of Dannis Woliver Kelley submitted a letter (the "DWK letter") to MCOE interpreting certain provisions in the Pass Through Agreements. You have asked me to provide you with a memo responding to the analysis in the DWK letter.

ANALYSIS

The Pass Through Agreements each include the following provision:

"Upon the request of the School District the Agency shall provide as a minimum an amount equal to the projected portion of the tax revenues generated by the incremental two percent (2%) increase in the base year assessed valuation of the property within the redevelopment area during the period of the project, including any amendments."

(MPC Agreement, §3.1, MPUSD Agreement, §3.2.)

The DWK letter interprets this provision to mean that, at any time during the term of the redevelopment plan, MPC and MPUSD could make a request to the SCRDA, and SCRDA

¹ The MCOE claim is not addressed in this memo.
82833.00002\8083433.1



BEST BEST & KRIEGER
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would have to pay the full amount of projected two percent increase in the assessed valuation of the property within the project area over the life of the redevelopment plan. (DWK letter p. 2 ["In other words, the request does not trigger only a prospective payment of these amounts, but rather the full payment of these amounts for the entire period of the project, as amended."].) Consequently, MPC and MPUSD believe that they can now request the full amount of incremental two percent increases in property tax dating back to the adoption of the redevelopment plan in 1987.

I disagree with the DWK letter for the reasons outlined below.

The Pass Through Agreements were entered into pursuant to Health & Safety Code section 33401.² Prior to 1994, Section 33401 redevelopment agencies and affected taxing entities were permitted to enter into agreements pursuant to which the redevelopment agency would pay the taxing entities an amount of money in lieu of property taxes, and/or any amounts of money that the redevelopment agency found are necessary and appropriate to alleviate any financial burden or detriment caused to any taxing entity by a redevelopment project. There were, however, limitations on the amounts that the taxing entities could receive from such pass through agreements. Section 33401(b) provides in part:

"The payments to a taxing agency in any single year shall not exceed the amount of property tax revenues which would have been received by that taxing agency if all the property tax revenues from the project area had been allocated to all the affected taxing agencies without regard to the division of taxes required by Section 33670 [the section allowing for receipt of tax increment by the RDA]"

This reflects the purpose of the Pass Through Agreements, which was to offset the potential loss in property tax revenue increases that may occur each year following the adoption of the redevelopment. Section 33401 established a mechanism through which redevelopment agencies could provide a payment of tax increment to account for some or all of those losses. It did not, however, allow the redevelopment agency to pay a lump sum to a single taxing entity, except in limited circumstances not applicable here.³ DWK's interpretation of the Pass Through Agreements is inconsistent with the state law authorizing those agreements, and therefore is not a reasonable interpretation of those contracts.

SCRDA and MPC and MPUSD could have, in theory, entered into a Pass Through Agreement pursuant to which SCRDA agreed to set aside and hold the 2% increases received each year, and turn those revenues over to the school entities to use as such time that they deemed appropriate. The redevelopment agency only received tax increment necessary to

² I have enclosed the chaptered version of Health & Safety Code section 33401 that was in effect in 1987.

³ A redevelopment agency could enter into an agreement to pay a larger sum if the other taxing entities in the redevelopment agency's jurisdiction agreed to defer their payments in order to accomplish a specific project. There is no evidence (or suggestion by MPC and MPUSD) that this exception would apply here.



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pay its outstanding indebtedness as listed on the outstanding statement of indebtedness, so if SCRDA were not setting aside the 2% increases, in all likelihood it would not have the funds necessary to pay the total increases at a future date. The Pass Through Agreements do not include any language indicating that SCRDA was required to set aside those amounts, and there is no indication that MPC or MPUSD ever suggested that SCRDA should be prepared to make a payment of the 2% increases for the first 24 years of the redevelopment plan. The more logical interpretation is that SCRDA is required to begin making payments to MPC and MPUSD on an annual basis "upon request" from each of those entities, as specifically required in the Pass Through Agreements. Under this interpretation, SCRDA would receive the 2% payments starting as of the date of the request, and no back payments would be required.

CONCLUSION


MPC and MPUSD's argument that SCRDA is required to pay them a lump sum equal to the total amount of 2% increases that have occurred since adoption of the plan is inconsistent with the restrictions in Section 33401 and is not a valid interpretation of the Pass Through Agreements. The most reasonable interpretation of these agreements is that MPC and MPUSD are entitled to payment of the 2% increases starting on the date that they make such a request.

cc: James G. Heisinger

**CITY OF SAND CITY SUCCESSOR AGENCY
OVERSIGHT BOARD**

DATE: July 15, 2013 (for Oversight Board Meeting of July 22, 2013)

TO: Oversight Board Members

FROM: Steve Matarazzo, staff 

SUBJECT: Update Regarding Proposed Meeting with County Auditor to Settle the Correct Amount of Assets Held by the Successor Agency

Earlier this year, the State Controller's Office (SCO) reviewed the Other Funds Due Diligence Review (OFDDR) approved by the Oversight Board in December, 2012. From their review, the SCO concluded that approximately \$34 million of assets (exclusive of housing funds) were transferred to the Successor Agency (SA) from the former Redevelopment Agency. The Department of Finance (DOF) also reviewed the OFDDR and generally agrees with the Oversight Board's estimation of asset value at about \$ 6.2 million (this includes properties held by the SA). The SA's bank accounts and property values also confirm the lesser amount of value. The SCO incorrectly assumed that "assets" listed in SA ledgers as anticipated revenue to balance long-term debt, were also considered assets for the purposes of the OFDDR. The purpose of the OFDDR was to ascertain liquid assets and other tangible assets that could be disbursed to the affected taxing entities should they not be retained to pay enforceable obligations. Future anticipated revenue through tax increment which no longer exists and from a terminated agency is therefore not an asset.

When presented to the Oversight Board last month, SA staff was directed to have the County Auditor settle the issue, something also suggested in the letter from the SCO. (See attachment.) That meeting has not taken place yet because the SA's auditor was on an extended vacation. SA staff and the auditor are scheduled to meet with the County Auditor on July 29th.



JOHN CHIANG
California State Controller

February 28, 2013

Steve Matarazzo
City Administrator/Community Development Director
City of Sand City/Successor Agency
1 Sylvan Park
Sand City, CA 93955

Dear Mr. Matarazzo:

Pursuant to Health and Safety (H&S) Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Sand City Redevelopment Agency to the City of Sand City or any other public agency after January 1, 2011. This statutory provision states, "The Legislature hereby finds that a transfer of assets by a redevelopment agency during the period covered in this section is deemed not to be in furtherance of the Community Redevelopment Law and is thereby unauthorized." Therefore, our review included an assessment of whether each asset transfer was allowable and whether it should be turned over to the Sand City Redevelopment Successor Agency.

Our review applied to all assets including, but not limited to, real and personal property, cash funds, accounts receivable, deeds of trust and mortgages, contract rights, and rights to payment of any kind. We also reviewed and determined whether any unallowable transfers of assets to the City of Sand City or any other public agencies have been reversed.

Our review found that the Sand City Redevelopment Agency transferred \$34,265,487 to the Successor Agency. This includes \$2,262,708 in Low and Moderate Income Housing Fund unencumbered cash, or 6.6% that the Successor Agency must dispose of in accordance with ABX1 26 and AB 1484.

If you have any questions, please contact Steven Mar, Bureau Chief, Local Government Audits Bureau, at (916) 324-7226.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey W. Brownfield".

JEFFREY W. BROWNFIELD, CPA
Chief, Division of Audits

JVB/bf

cc: Steven Szalay, Local Government Consultant
Department of Finance
David Pandergrass, Oversight Board Chair
City of Sand City Successor Agency
Michael J. Miller, County Auditor-Controller
County of Monterey
Richard J. Chivaro, Chief Legal Counsel
State Controller's Office
Scott Freesmeier, Audit Manager
Division of Audits, State Controller's Office
Anita Bjelobrk, Auditor-in-Charge
Division of Audits, State Controller's Office

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Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Sand City Redevelopment Agency (RDA) for the period of January 1, 2011, through January 31, 2012. Our review included, but was not limited to, real and personal property, cash funds, accounts receivable, deeds of trust and mortgages, contract rights, and any rights to payments of any kind from any source.

Our review found that the Sand City RDA transferred \$34,265,487 to the Successor Agency. This total includes \$2,262,708, or 6.6% of transferred assets in Low and Moderate Income Housing Fund unencumbered cash that the Successor Agency must dispose of in accordance with ABX1 26.

Background

In January of 2011, the Governor of the State of California proposed statewide elimination of redevelopment agencies (RDAs) beginning with the fiscal year (FY) 2011-12 State budget. The Governor's proposal was incorporated into Assembly Bill 26 (ABX1 26, Chapter 5, Statutes of 2011, First Extraordinary Session), which was passed by the Legislature, and signed into law by the Governor on June 28, 2011.

ABX1 26 prohibited RDAs from engaging in new business, established mechanisms and timelines for dissolution of the RDAs, and created RDA Successor Agencies to oversee dissolution of the RDAs and redistribution of RDA assets.

A California Supreme Court decision on December 28, 2011 (California Redevelopment Association et al. v. Matosantos) upheld ABX1 26 and the Legislature's constitutional authority to dissolve the RDAs.

ABX1 26 was codified in the Health and Safety Code (H&S Code) beginning with section 34161.

In accordance with the requirements of H&S Code section 34167.5, the State Controller is required to review the activities of RDAs, "to determine whether an asset transfer has occurred after January 1, 2011, between the city or county, or city and county that created a redevelopment agency, or any other public agency, and the redevelopment agency," and the date at which the RDA ceases to operate, or January 31, 2012, whichever is earlier.

The SCO has identified transfers of assets that occurred during that period between the Sand City RDA, the City of Sand City, and/or other public agencies. By law, the SCO is required to order that such assets, except those that already had been committed to a third party prior to June 28, 2011, the effective date of ABX1 26, be turned over to the Successor Agency. In addition, the SCO may file a legal order to ensure compliance with this order.

Objectives, Scope, and Methodology

Our review objective was to determine whether asset transfers that occurred after January 1, 2011, and the date upon which the RDA ceased to operate, or January 31, 2012, whichever was earlier, between the city or county, or city and county that created an RDA, or any other public agency, and the RDA, were appropriate.

We performed the following procedures:

- Interviewed Successor Agency personnel to gain an understanding of the Successor Agency operations and procedures.
- Reviewed meeting minutes and resolutions of the Sand City Redevelopment Agency.
- Reviewed accounting records relating to the recording of assets.
- Verified the accuracy of the Asset Transfer Assessment Form. This form was sent to all former RDAs to provide a list of all assets transferred between January 1, 2011, and January 31, 2012.
- Reviewed applicable financial reports to verify assets (capital, cash, property, etc.).

Conclusion

Our review found that the Sand City Redevelopment Agency transferred \$34,265,487 to the Successor Agency. This total includes \$2,262,708, or 6.6% of transferred assets in Low and Moderate Income Housing Fund unencumbered cash that the Successor Agency must dispose of in accordance with ABX1 26.

Details of our findings and conclusions of the Controller are in the Finding and Conclusion of the Controller section of this report.

Views of Responsible Official

We issued a draft review report on December 21, 2012. Connie Horca, Deputy City Clerk, responded by email, disagreeing with the review results. The city's response is included in this final review report as an attachment.

Restricted Use

This report is solely for the information and use of the City of Sand City, the Successor Agency to the Sand City RDA, the Oversight Board, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record when issued final.



JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

February 28, 2013

Finding and Conclusion of the Controller

FINDING— Disposal of Housing Fund assets

The Sand City Redevelopment Agency (RDA) transferred \$2,262,708 in cash assets to the Successor Agency; the assets were unencumbered cash from the Low and Moderate Income Housing Fund. The asset transfer to the Successor Agency occurred on February 29, 2012.

The Sand City RDA transferred \$2,200,000 in Low and Moderate Income Housing Fund cash to Sand City on March 8, 2011. The RDA also transferred \$60,000 to the City on June 29, 2011. Consequently, due to the implementation of AB 1484, the City reversed the transfer of the unencumbered cash and transferred the total of \$2,260,000, plus interest of \$2,708, to the Successor Agency on February 29, 2012.

Conclusion

Our review found that the assets discussed above are properly located in the Successor Agency's accounting records. Therefore, it is our conclusion that the Successor Agency should properly dispose of those assets in accordance with Health & Safety (H&S) Code section 34177(d).

H&S Code section 34177(d) states that the Successor Agency should forward unencumbered balances of RDA funds to the county auditor-controller, including, but not limited to, the unencumbered balance of the Low and Moderate Income Housing Fund of a former RDA for distribution to the taxing entities for allocation and distribution in accordance with section 34188.

City's Response

The City does not agree with the SCO's finding. The city responded that:

Your Auditors were very cordial and helpful during our Audit Review. The State Controller's Office (SCO) draft estimate of \$34,265,723.55 of total asset value transferred to the Sand City Successor Agency (SA) is incorrect. For an accurate accounting of total asset transfer please review the attached due diligence review (DDR) recently approved by the Sand City Oversight Board on December 17, 2012 and received by the SCO and the DOF, as required by law. The true value of the total asset transfer is \$5,973,397.71, as further itemized in the DDR. Furthermore, due to existing liabilities of the Sand City Successor Agency, the DDR recommends that all of the assets be retained by the SA for future payment of the enforceable obligations of the SA. The \$34,265,723.55 of assets cited in your draft report is really a reflection of Sand City's double-entry accounting system which balances liabilities with assets as shown on the attachment, a copy of which your representatives received during their audit here. You will note that the balances of both sides of the ledger are exactly the \$34,265,723.55 figure you cite. The "Asset" in the amount of \$23,071,866 represents the amount to be provided to fund long-term debt and does not represent an actual tangible asset, but rather is the amount needed to balance the double-entry accounting system. Therefore, it was not included as an asset in the above-referenced DDR.

SCO Comments

The SCO does not agree with the City.

Our conclusion of the estimated \$34,265,487 in asset transfers is based on the accounting records provided to us by the Successor Agency, specifically the Balance Sheet Report. The eventual distribution of these assets will need to be determined by an agreement between the Successor Agency, with the Oversight Board approval, and the County Auditor-Controller. As such, the DDR and Successor Agency's accounting records reflecting existing liabilities should be taken into account before reaching an agreement.

MEMORANDUM

TO: OVERSIGHT BOARD
FROM: LINDA SCHOLINK *Linda*
SUBJECT: 13-14B ROPS
DATE: JULY 17, 2013

The future ROPS 13-14B covers the period January 2014 through June 2014. The instructions and forms are not available on the Department of Finance, (DOF) website at this time. It does state they will be coming soon. The ROPS 13-14B is to be submitted to DOF by October 1, 2013, which is 2 ½ months away. The projected ROPS will request funding for the enforceable obligations listed below and the remaining administrative allowance for the fiscal year.

2008A Tax Allocation bonds-November payment	\$ 383,350.00
2008B Tax Allocation bonds-November payment	\$ 177,113.00
Administrative costs	<u>\$ 65,329.00</u>
Sub-total	\$ 625,792.00

LEA Claims (Residual Amount Possibly Available) \$25,000- \$75,000

My recommendation would be, once the schedule for the remainder of the year for the Oversight Board meetings has been approved, and the forms and guidelines have been updated on the DOF website we can review the ROPS 13-14B in late August or early September.