

The People are the City



Mayor
SCOTT W. NELSON

City Administrator
TROY L. BUTZLAFF, ICMA-CM

Councilmembers:
JOSEPH V. AGUIRRE
CONSTANCE UNDERHILL
CHAD P. WANKE
JEREMY B. YAMAGUCHI

401 East Chapman Avenue – Placentia, California 92870

May 10, 2011

Mr. David Sundstrom, CPA
Orange County Auditor-Controller
PO Box 567
Santa Ana, California 92702

RE: Fiscal Year 2010-11 SERAF Payment

Dear Auditor-Controller Sundstrom:

As you are aware, each redevelopment agency, pursuant to ABX4-26, is required to remit its share of a cumulative contribution to the county Supplemental Educational Revenue Augmentation Fund (SERAF) prior to May 10, 2011 (Health & Safety Code Sect. 33690.5(a)). ABX4-26 further requires that the legislative body report to the County Auditor by March 1st how it intends to fund its allocation of the ERAF payment (Sect. 33690.5(d)).

The Placentia Redevelopment Agency ("Agency") previously reported to your office in correspondence dated February 24, 2011 of its intention to pay less than the required SERAF amount. In a subsequent action, the Agency's Board of Directors approved a resolution authorizing a loan of \$173,378 from the Agency's Low and Moderate Income Housing Fund to cover its share of funds, if required, to make its SERAF payment to the County. A copy of this resolution is attached. Although the Agency has taken all the necessary actions pursuant to Health & Safety Code § 33690.5, the Agency's Board of Director's position has been, and continues to be, that the legislation mandating the transfer of local tax increment to the County, and ultimately the State, is unconstitutional in that it violates Article 16, Section 16 of the California Constitution.

As you know, the constitutionality of ABX4-26 has been challenged by the California Redevelopment Association (CRA). Although a Superior Court Judge upheld that the transfer of redevelopment funds under ABX4-26 is constitutional, the CRA has filed an appeal of this decision to the Third District Court of Appeal (*California Redevelopment Association et al v. Genest et al*, Case No. 34-2009-80000359 ("CRA v. Genest")). The CRA's appeal alleges, among other things, that the duties of county auditors under Health & Safety Code Sections 33690(a) and 33690.5(a) to deposit funds received from redevelopment agencies in County Educational Revenue Augmentation Funds are inconsistent with various state and federal constitutional provisions and are therefore unlawful and unenforceable. Although the CRA's appeal has not yet been heard by the Third District Court of Appeals, the CRA's position was recently bolstered by an opinion

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rendered by the State's Legislative Counsel Bureau which basically states that the transfer of property tax revenues from redevelopment agencies for use solely to reimburse the State for costs would violate Section 1 of Article XIII of the California Constitution. This opinion, combined with the assertions made in the CRA's appeal, cast serious doubt on the constitutionality of ABX4-26. As such the Agency's Board of Directors feels justified in its position to withhold payment of its SERAF to the County.

Although the Agency did make a good faith SERAF payment to the County last year, the Agency's Board of Directors is unwilling to make further payment to the County pending the outcome of the CRA's appeal or until such a time as the Agency is informed that the transfer of local tax increment is deemed constitutional.

Should you have any questions concerning this correspondence or the Agency's position on making its SERAF payment, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Butzloff', written over a circular stamp.

Troy L. Butzloff, ICMA-CM
City Administrator/Executive Director

Attachment – As Stated

cc: City Council
Senator Bob Huff
Assembly Member Chris Norby

RESOLUTION NO. RA-2011-09

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF PLACENTIA MAKING CERTAIN FINDINGS WITH RESPECT TO THE 2010-11 PAYMENT TO THE SUPPLEMENTAL EDUCATIONAL REVENUE AUGMENTATION FUND AND OTHER MATTERS PROPERLY RELATING THERETO

A. Recitals.

(i) Assembly Bill 26 4x, adopted by the California Legislature in July 2009, added § 33690.5 to the California Health and Safety Code ("Law") and § 33690.5 was subsequently amended by Senate Bill 68.

(ii) Section 33690.5(a)(1)(A) of the Law requires redevelopment agencies to make a payment, on or before May 10, 2011, to the county Supplemental Educational Revenue Augmentation Fund ("SERAF").

(iii) The amount required by § 33690.5 of the Law to be paid by the Redevelopment Agency of the City of Placentia ("Agency") is \$173,378.

(iv) Pursuant to § 33690.5(c)(1), an agency may borrow from either the amount required to be allocated by the agency for the current fiscal year to the Low and Moderate Income Housing Fund pursuant to § § 33334.2, 33334.3, and 33334.6, or any moneys presently contained in that fund, or both, unless executed contracts exist that would be impaired if the agency reduced the amount allocated to the Low and Moderate Income Housing Fund, if the agency finds that there are insufficient funds to meet the SERAF obligation

(v) Moneys in the Agency's Debt Service and Capital Improvement Funds have been earmarked for existing bonded debt obligations, acquisition of property, capital projects and amounts owed to the City of Placentia.

(vi) In addition to its bonded indebtedness and tax sharing obligations, the Agency has an obligation to pay a portion of the Certificates of Participation issued in 2003 and to make payments under property acquisition agreements with the City. The Agency, additionally, has a current obligation to acquire sites to provide parking for the proposed Metrolink station.

(vii) If the Agency does not reserve the balance of its currently available funds to secure the prior reimbursement payments due to the City, the City's ability to fund essential City services will be impaired.

(viii) Based on obligations described in the Recitals, paragraphs (iv), (v) and (vi) of this Resolution, there are insufficient funds to meet the requirements of § 33690.5 of the Law and the Agency will be required to borrow the amount required for the SERAF payment from the Low and Moderate Income Housing Fund.

(ix) Agency must repay amounts so borrowed on or before June 30, 2016.

B. Resolution.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF THE CITY OF PLACENTIA DOES HEREBY FIND, DETERMINE AND RESOLVE AS FOLLOWS:

1. In all respects as set forth in the Recitals, Part A., of this Resolution.

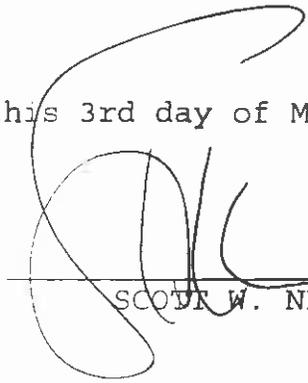
2. Loan. The Agency hereby approves a loan from the Agency's Low and Moderate Income Housing Fund in the amount of \$173,378 to pay the SERAF amount due pursuant to § 33690.5(a)(1) of the Law.

3. Repayment. The Agency will repay such amounts to the Low and Moderate Income Housing Fund not later than June 30, 2016, without interest.

4. Subordination. The obligation of the Agency to repay the Low and Moderate Income Housing Fund shall be subordinate to the lien of any pledge of collateral securing, directly or indirectly, the payment of principal or interest on any bonds of the Agency including, without limitation, bonds secured by a pledge of taxes allocated to the Agency pursuant to § 33670 of the Law. The Agency shall factor in the fiscal obligations created by this Resolution when issuing bonded indebtedness.

5. Effective Date. This Resolution shall take effect from and after the date of approval and adoption hereof.

APPROVED, PASSED AND ADOPTED this 3rd day of May, 2011.



SCOTT W. NELSON, CHAIRMAN

ATTEST:



PATRICK J. MELIA, SECRETARY

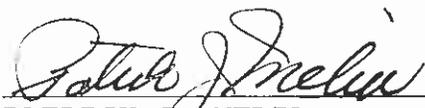
I, Patrick J. Melia, Secretary to the Redevelopment Agency of the City of Placentia, do hereby certify that the foregoing Resolution was adopted at a regular meeting of the Board of Directors of the Redevelopment Agency of the City of Placentia, held on the 3rd day of May, 2011, by the following vote:

AYES: Aguirre, Wanke, Yamaguchi, Nelson

NOES: None

ABSENT: Underhill

ABSTAIN: None



PATRICK J. MELIA,
SECRETARY

APPROVED AS TO FORM:



ANDREW V. ARCZYNSKI,
GENERAL COUNSEL
REDEVELOPMENT AGENCY OF
THE CITY OF PLACENTIA