



**Calabasas**

23801 Calabasas Road  
Suite 1015  
Calabasas CA 91302  
818 704-0195  
Fax 818 704-4729

**Rancho Mirage**

41750 Rancho Las Palmas Dr.  
Suite P-1  
Rancho Mirage CA 92270  
760 770-0873  
Fax 760 770-1724

**Irvine**

3 Park Plaza  
Suite 490  
Irvine, CA 92614  
(949) 975-9633

[www.gdblawoffices.com](http://www.gdblawoffices.com)

Please reply to:  
Calabasas Office

Direct E-Mail Address:  
[andre@gdblawoffices.com](mailto:andre@gdblawoffices.com)

January 25, 2016

Shelley Renner, Senior Staff Counsel  
State of California Department of Finance  
915 "L" Street  
Sacramento, CA 95814-3706

Re: Recognized Obligation Payments Schedule Letter Dated December 17, 2015

Dear Ms. Renner:

We are general counsel for the Victor Valley Economic Development Authority ("VVEDA") and have served in such role since 1991. We also serve as general counsel to the Southern California Logistics Airport Authority ("SCLAA") and have served in such capacity since its formation in 1997.

In our role as general counsel to both VVEDA and SCLAA, we have been responsible for the structuring of the joint powers authority agreements establishing both entities. As such, we are intimately familiar with the provisions of both Agreements as well as the intent of the parties in structuring both entities.

We are in receipt of electronic correspondence from Ms. Danielle Brandon, Staff Finance Budget Analyst with the Department of Finance ("DOF") dated as of January 21, 2016. This correspondence was in response to prior electronic correspondence sent from Keith Metzler, Executive Director of VVEDA, dated December 18, 2015. A copy of the e-mail thread is attached hereto for your reference. This electronic mail thread was in response to the above referenced correspondence wherein the DOF has apparently interpreted the provisions of the VVEDA Fourth Amended Joint Powers Agreement (the "JPA") in a manner that will result in the potential catastrophic default of numerous bond issues previously undertaken by the SCLAA.

Ms. Brandon's e-mail acknowledges the pledge of tax increment revenues language as set forth in the various bond documents, but yet indicates that while DOF is familiar with the provisions of the JPA, it has apparently interpreted the JPA as only establishing a pledge of revenues from the "GAFB Parcels". Accordingly, per Ms. Brandon's e-mail, DOF apparently believes that other documents are required in order to document the pledge of tax increment

revenues and therefore fails to understand that the pledge of tax increment revenues to support the SCLAA Bonds is expressly set forth in the JPA itself.

How DOF can interpret the JPA, and specifically Sections 34 and 38 thereof, as only establishing a pledge of tax increment revenues from the GAFB Parcels is baffling at best. The relevant language of Section 34 of the JPA is highlighted and provides:

*34. Tax Increment Agreement/Member Reimbursements. The Members hereby agree that the Authority shall not receive or use any property tax moneys, other than tax increment revenues as described in the Community Redevelopment Law and as provided in the Redevelopment Plan, which would have been received by any Member had the Redevelopment Plan not been adopted.*

*The Members further agree that for fiscal year 1997-98 and fiscal year 1998-99 all Project Area Tax Increment Revenues and GAFB Tax Increment Revenues received during such period, shall be allocated solely for use on property comprising the GAFB Parcels. Of said amount, twenty percent shall be set aside for low and moderate income housing purposes in accordance with the California Redevelopment Law. Thereafter, all GAFB Tax Increment Revenues will continue to be allocated for use on GAFB with the understanding that Victorville shall set aside twenty percent thereof for low and moderate income housing purposes.*

*Commencing with the 1999-2000 fiscal year, the Project Area Tax Increment Revenues will be divided and allocated as follows: First, twenty percent (20%) of the Project Area Tax Increment Revenues shall be set aside for low and moderate income housing purposes of which one half of said amount will be allocated amongst each Member Agency and one half will be allocated to GAFB.*

*The remaining balance of Project Area Tax Increment Revenues, after the twenty percent set aside amounts, shall hereinafter be referred to as the "Net Revenues".*

*With respect to the Net Revenues, forty percent (40%) attributable to any Members Territory, exclusive of the GAFB Parcels, shall be allocated for use in such Members Territory and forty percent (40%) attributable to such Members Territory shall be allocated solely for use on the GAFB Parcels.*

*The remaining balance equal to twenty percent (20%) of the Net Tax Increment Revenues attributable to each Members portion of the Project Area, exclusive of the GAFB Parcel's, shall be placed into a separate reimbursement fund of the Authority and shall be paid out annually at the commencement of each fiscal year for eligible reimbursements to each Member in proportion to the outstanding balance of any Prior Contributions. After such reimbursements are made, such moneys may be used to reimburse Member Contributions.*

Upon full reimbursement to each Member of their Prior Contributions and Member Contributions, the twenty percent (20%) tax increment portion otherwise allocated for reimbursement shall be split such that fifty percent (50%) thereof shall be allocated for use in each Members territory with the remaining fifty percent (50%) to be allocated solely for use on George Air Force Base.

With respect to the portion of the Project Area that lies within the boundaries of Adelanto, the Parties agree that (i) fifty percent (50%) of the Net Revenues attributable to such area shall be allocated for use solely on GAFB, (ii) twenty-five percent (25%) of such Net Revenues shall be allocated for use in Adelanto's territory, and (iii) twenty-five percent (25%) shall be allocated to reimburse the Authority for the administrative and start-up expenses and costs associated with the establishment of the Authority and the original Project Area as shown on Exhibit "B" attached hereto and incorporated herein by this reference until such time as said amount is paid in full, at which time said twenty-five percent (26%) portion shall thereafter be allocated for use by Adelanto in its portion of the Project Area.

Said reimbursement obligations of the Authority may, by a unanimous vote of all Commissioners, be subordinated to any bond financing or similar indebtedness as agreed to by the Authority.

The Parties further agree that there shall be no amendment of the Redevelopment Plan which would alter the allocation of tax increment revenues as provided in this Section 34 without the prior formal approval of each Member of the Authority.

Section 38 further addressed the pledge and the relevant provisions are highlighted hereinbelow:

38. Financing. The Authority shall have the power and authority to issue bonds and/or notes or similar forms of indebtedness in accordance with the procedures and requirements specified as follows:

(a) Article 2, Chapter 5, Title 1, Division 7, of the Government Code commencing with Section 6540;

(b) Chapter 6, Title 5, Division 2, of the Government Code commencing with Section 54300;

(c) Health and Safety Code Section 33640;

(d) Any other provision of law, now in existence or hereafter enacted, applicable to the Authority.

The foregoing bonds may be issued for any purpose specified in paragraph 3 herein.

The Authority shall also have the power to utilize any other financing mechanism which is legally authorized for any Members of the

Authority, or for a redevelopment agency.

*In connection with the issuance of any bonds or similar forms of indebtedness which are to be secured by a pledge of lease revenues or sales tax revenues attributable solely to activities on or at GAFB, any such issuance may be undertaken and authorized solely by Victorville or the Southern California Logistics Airport Authority without the consent of the other Members; provided, however, that the proceeds of any such debt issuance shall be used to cause the development and redevelopment of GAFB and shall not be used for activities outside of the boundaries of GAFB.*

*In connection with the issuance of any bonds or similar forms of indebtedness to be issued by the Authority which are to be secured by a pledge of Participating Jurisdictions Tax Increment Revenues, the Members agree that the Authority shall only issue such bonds or indebtedness to the extent the Authority receives the consent of all Members and the pledge by all Members of that portion of each Participating Member's Tax Increment Revenues which would otherwise be allocated for use by such Member in its own territory pursuant to Section 34 hereof.*

*Notwithstanding the foregoing, each of the Members or their respective Redevelopment Agencies may, individually or jointly with other Members or their respective Redevelopment Agencies, undertake the issuance of tax increment bonds or similar forms of indebtedness secured by tax increment revenues by pledging that portion of the Participating Members' Tax Increment Revenues which is attributable to such Participating Member's jurisdiction and which would otherwise be allocated for use by such Member(s) pursuant to Section 34 hereof and which is not otherwise earmarked for use in connection with the development and redevelopment of GAFB. Any such issuance shall not require the official authorization of the Authority.*

*The Members further agree that Victorville, the Victorville Redevelopment Agency or the Southern California Logistics Airport Authority may pledge that portion of Participating Member's Tax Increment Revenues which, pursuant to Section 34 of this Agreement, is to be allocated to GAFB, along with any GAFB Tax Increment Revenues, to secure the issuance of tax increment bonds or similar indebtedness, provided, however, that the proceeds of any such debt issuance shall only be used for the purposes of causing the redevelopment and development of GAFB. Any such issuance by Victorville, the Victorville Redevelopment Agency or the Southern California Logistics Airport Authority shall not require the official authorization of the Authority.*

Sections 34 and 38 of the JPA reflect the binding commitment of the five parties to the JPA, whereby each Member agreed to contribute 50% of the tax increment generated from their respective portions of the Victor Valley Redevelopment Project Area for the purposes of causing the redevelopment and reuse of former George Air Force Base (now known as Southern California Logistics Airport).

In suggesting that other pledge agreements may be necessary to establish a pledge of tax increment from portions of the Project Area indicates that DOF fails to recognize that the Joint Powers Agreement is, in and of itself, is a binding contractual arrangement amongst the County of San Bernardino, the City of Victorville, the Town of Apple Valley, the City of Hesperia and the City of Adelanto. Each of the Member Jurisdictions has taken formal action and approved the JPA, pursuant to which each of the Members made certain binding commitments. Those commitments are specifically set forth in Section 34 and Section 38 of the Agreement. It clearly establishes the allocation of tax increment revenues from George Air Force Base, as well as from each Member Jurisdiction's portion of the Victor Valley Redevelopment Project Area. By executing the JPA, each Member Jurisdiction agreed to commit and contribute tax increment generated within its jurisdictional boundaries for the reuse and redevelopment of former GAFB.

Moreover, this commitment by the various Member Jurisdictions to allocate a significant portion of their respective tax increment revenues is consistent with the entire purpose of VVEDA and the statutory scheme which supported the establishment of VVEDA (Health & Safety Code Section 33492.40).

This unequivocal pledge of tax increment as set forth clearly in the JPA has been relied upon since 2001, when SCLAA issued its first bond issue supported by the above described stream of tax increment revenues. Moreover, this formula has been previously acknowledged and accepted by DOF in its prior determination letters.

To suggest that there may be other documents which are necessary to establish the pledge is nonsensical. Neither Bond Counsel, Bond Trustees, Bond Investors or any other persons or entities has ever required anything more than the clear and unequivocal language of the JPA to document the pledge. The JPA pledge has been continuously relied upon and is now an established course of conduct, which has been validated pursuant to the numerous statutory validating acts of the State.


As a result of the adoption of AB 1x 26, the State Legislature recognized that existing obligations were to be honored and, as such, we believe it is clear and unambiguous that the binding commitments made by the Member Jurisdictions of VVEDA as set forth in the JPA must be honored. To do otherwise has the immediate effect of causing significant defaults with respect to numerous existing and outstanding bond issues.

Accordingly, DOF should immediately revise the above referenced correspondence in order to correctly reflect the allocation of tax increment revenues as specifically set forth in the VVEDA JPA. Under the existing disclosure obligations provided in the Bond Documents, SCLAA believes that DOF's current misinterpretation of the JPA will surely invite litigation against DOF from aggrieved bond holders. Given the foregoing, we believe the bond holders will likely prevail on their claims.

If you have any immediate questions regarding the foregoing, please do not hesitate to contact me at your earliest convenience.

Very truly yours,

**GREEN de BORTNOWSKY, LLP**



Andre de Bortnowsky

AdB:law  
enc

cc: Danielle Brandon, Staff Finance Budget Analyst  
State of California Department of Finance  
915 "L" Street  
Sacramento, CA 95814-3706

Justyn Howard, Program Budget Manager  
State of California Department of Finance  
915 "L" Street  
Sacramento, CA 95814-3706

Keith Metzler, Executive Director  
Victor Valley Economic Development Authority

From: Brandon, Danielle [mailto:Danielle.Brandon@dof.ca.gov]  
Sent: Thursday, January 21, 2016 10:49 AM  
To: 'Keith Metzler' <KMetzler@ci.victorville.ca.us>  
Cc: 'Marc Puckett' <MPuckett@applevalley.org>; Andre de Bortnowsky <andre@gdblawoffices.com>; 'Hitta Mosesman' <hmosesman@webrsg.com>; Jason Gonsalves <Jason@gonsalvi.com>; Doug Robertson <DRobertson@CI.VICTORVILLE.CA.US>; Sophie Smith <ssmith@CI.VICTORVILLE.CA.US>; Howard, Justyn <Justyn.Howard@dof.ca.gov>; Suess, Evelyn <Evelyn.Suess@dof.ca.gov>; Takagi-Galamba, Chikako <Chikako.Takagi-Galamba@dof.ca.gov>; Thomas, Nichelle <Nichelle.Thomas@dof.ca.gov>; Barr, Michael <Michael.Barr@dof.ca.gov>; Painter, Michael <Michael.Painter@dof.ca.gov>  
Subject: RE: Victor Valley ROPS 15-16B MC Determination

Good afternoon Keith,

This is in response to your email below. Based on Finance's review of the Victor Valley Successor Agency's (Agency) January through June 2016 Recognized Obligation Payment Schedule (ROPS 15-16B) during the meet and confer process, Finance determined that, to the extent funding was approved for Item 2, 18 or 19, such amounts are only allowable from tax increment generated from the George Air Force Base (GAFB) Parcels. Our determination is based on both the 4<sup>th</sup> Amended Joint Powers Authority Agreement (JPA agreement) and the 2008 Southern California Logistics Airport Authority (SCLAA) Bond Indenture. Specifically, per Section 1.01 (page 13), Pledged Revenues of the SCLAA Bond Indenture:

"The term "Pledged Tax Revenues" means, on a subordinate basis to the Senior Bonds, on a parity basis to the Series 2007 Bonds and on a parity basis with the Additional Obligations, (A) all tax increment revenues generated on the parcels comprising the Airport pledged and annually allocated and paid to the Authority pursuant to the Redevelopment Plan and the SCLAA JPA, including all payments, subventions and reimbursements (if any) to the Authority specifically attributable to ad valorem taxes lost by reason of tax exemptions and tax rate limitations, but excluding (i) all amounts of such taxes required to be deposited for low and moderate income housing purposes by the Authority in any Fiscal Year pursuant to Section 33334.3 of the Redevelopment Law, (ii) amounts, if any, payable to a taxing entity and (iii) amounts, if any, received by the Authority pursuant to Section 16111 of the Government Code, (B) all tax increment revenues pledged and annually allocated and paid to the Authority by the VVEDA Members from the VVEDA Project Area, exclusive of the parcels comprising the Airport, pursuant to the Redevelopment Plan and the VVEDA JPA, including all payments, subventions and reimbursements (if any) to the VVEDA Members specifically attributable to ad valorem taxes lost by reason of tax exemptions and tax rate limitations, but excluding (i) all amounts of such taxes required to be deposited for low and moderate income housing purposes by the VVEDA Members in any Fiscal Year pursuant to Section 33334.3 of the Redevelopment Law, (ii) amounts, if any, payable to a taxing entity and (iii) amounts, if any, received by the VVEDA Members pursuant to Section 16111 of the Government Code, (C) the Ground Lease Guaranty, and (D) the Victorville Pledge."

We recognize that the Pledged Revenues section of the 2008 SCLAA bond indenture also cites pledged revenues from three other sources for debt service payments (as referenced in sections B, C and D). However, as the Agency has not

provided the respective pledge agreements or other such documents, we have been unable to determine those other pledged costs are enforceable obligations of VVEDA and if amounts should be requested on VVEDA's ROPS. If the Agency wishes Finance to consider these additional funding sources during the 2016-17 annual ROPS (ROPS 16-17) review process, please provide the respective pledge agreements to the Audit and Review Analyst (Michael Painter), who has been cc'd on this email.

Sincerely,

*Danielle M. Brandon, MBA*  
*Staff Finance Budget Analyst*

*Department of Finance*  
*Local Government Unit*  
*(916) 445-3274 ext. 3022*

CONFIDENTIALITY OF BUDGET INFORMATION NOTICE: This e-mail and any attachments thereto contain private, confidential, and privileged information. It is solely for the use of the intended recipient(s) and may not be forwarded to other email addresses. Unauthorized interception, review, use or disclosure of this email (or any attachments thereto) is strictly prohibited. If you are not the intended recipient, please contact the sender immediately and destroy all copies of the communication.

---

**From:** Keith Metzler [<mailto:KMetzler@ci.victorville.ca.us>]  
**Sent:** Friday, December 18, 2015 11:07 AM  
**To:** Brandon, Danielle  
**Cc:** 'Marc Puckett'; Andre de Bortnowsky; 'Hitta Mosesman'; 'evelyn.seuss@dof.ca.gov'; Jason Gonsalves; Doug Robertson; Sophie Smith  
**Subject:** FW: Victor Valley ROPS 15-16B MC Determination

Hi Danielle.

I received this determination and would like to take you upon the offer contained in the letter that we will continue to work together, and set up a meeting either in person or over the phone.

First, I do appreciate the effort you and Evalyn put into our appeal (Meet and Confer). Resulting from the M&C, we are pleased that the DOF approved Item's 18 and 19 as those items dealt with the repayment of bond reserve deficiencies and principal and interest defaults. Unfortunately however, we are unclear as to the limitation that they, along with Item 2, are only to be paid from tax increment generated from GAFB Parcels (See last paragraph on Page 1). If DOF's definition of GAFB Parcels is the same as ours (which is technically based from the JPA), the attached ROPS determination further reduces amounts available to pay debt service and more clearly departs from the actual definition of Secured Pledge which is contained in the bond documents. We did share the DOF letter and this concern with investors this morning.

Given a characterization of a phone call between yourself and Ms. Sophie Smith earlier this week, my impression from that phone call was that we would be pleased in the DOF determination. We are pleased about the approval of 18 and 19 but we do believe that the narrowing definition of revenue is inconsistent with the JPA, Bond Documents and our Final and Conclusive Determination. This limiting definition would further increase amounts owed in items 18 and 19 and items 18 and 19 will never get paid, largely due to the decrease in revenue to pay Item 2.

Accordingly, I am hoping we have differing definitions and that the DOF definition is speaking instead, to revenues generated by GAFB consistent with the definition used to define the Pledged Security for the bonds.

I am around all next week and would look forward to discussing further. I hope all is well.

Regards



Keith



Keith C. Metzler  
Assistant City Manager  
City Manager's Office

---

**From:** Redevelopment Administration [<mailto:RedevelopmentAdministration@dof.ca.gov>]  
**Sent:** Thursday, December 17, 2015 10:10 PM  
**To:** Keith Metzler; [mpuckett@applevalley.org](mailto:mpuckett@applevalley.org); [linda.santillano@atc.sbcounty.gov](mailto:linda.santillano@atc.sbcounty.gov)  
**Subject:** Victor Valley ROPS 15-16B MC Determination

Pursuant to Health and Safety Code Section 34177 (m) (1) (A), you submitted a Recognized Obligation Payment Schedule (ROPS 15-16B) to the California Department of Finance (Finance). See the attached letter for Finance's determination. You subsequently requested a meet and confer on Finance's determination. Please see the attached letter for Finance's revised determination based on the meet and confer session.

Department of Finance  
Redevelopment Agency Administration