



**CSCDA**  
CALIFORNIA STATEWIDE COMMUNITIES  
DEVELOPMENT AUTHORITY



**AGENDA OF THE  
REGULAR MEETING OF THE  
CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY**

**February 21, 2013**

**10:00 a.m.**

**California State Association of Counties**

**1100 K Street**

**Sacramento, California**

City of Santa Ana  
20 Civic Center Plaza  
Santa Ana, CA 92701

County of Monterey  
168 West Alisal Street  
Salinas, CA 93901

County of Yuba  
915 8<sup>th</sup> Street, Suite 103  
Marysville, CA 95901

- I. Call the Roll (alternates designate which member they are representing).
- II. Approve the Minutes of the February 7, 2013 Regular Meeting.
- III. Staff Updates.
- IV. Approve Consent Calendar.
- V. Approve the financing; all necessary actions; the execution and delivery of all necessary documents and authorize any member to sign all necessary financing documents for the following:
  - a. California Baptist University, City of Riverside, County of Riverside; up to \$65 million in 501(C)(3) non-profit revenue bonds.

This \_\_\_ page agenda was posted at 1100 K Street, Sacramento, California on \_\_\_\_\_, 2013 at \_\_: \_\_ m,  
Signed \_\_\_\_\_ . Please fax signed page to (925) 933-8457.

- b. Lancer Plaza L.L.C., City of Riverside, County of Riverside; up to \$50 million in 501(C)(3) non-profit revenue bonds.
  
- VI. Discuss and approve amendments to certain documents for the Southern California Edison Company 2006 Series A and B refunding revenue bonds.
  
- VII. Discussion of Bureau of State Audits Implementation Report.
  
- VIII. Discuss and Consider Professional Services Ad Hoc Committee Report.
  
- IX. Public Comment.
  
- X. Adjourn.



**CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY  
CONSENT CALENDAR**

1. Induce the following projects:
  - a. ROEM Development Corporation (Seabreeze Apartments), City of Vallejo, County of Solano; issue up to \$24 million in multi-family housing debt obligations.

Thursday, February 21, 2013

**Note: Persons requiring disability-related modification or accommodation to participate in this public meeting should contact (925) 933-9229, extension 225.**

**Item II**

Approve the Minutes of the February 7, 2013 Regular Meeting.

**REGULAR MEETING OF THE  
CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY  
(CSCDA)**

League of California Cities  
1400 K Street, Sacramento, California

February 7, 2013

**MINUTES**

Commission Chair Larry Combs called the meeting to order at 10:02 a.m.

**I. Roll Call**

Commission members present: Larry Combs, Terry Schutten, and Dwight Stenbakken. Commission members participating by conference telephone: Irwin Bornstein. Alternate Commissioners participating by conference phone: Ron Holly sitting for Dan Mierzwa.

Others present: James Hamill, CSCDA staff; Perry Stottlemeyer, League of California Cities, Mark Paxson, State Treasurer's Office; Others participating by conference telephone: Greg Stepanicich, Richards Watson Gershon; Mark Holmstedt, Westhoff Cone & Holmstedt; Mark Northcross, NHA Advisors; Bob Stewart, City of Pleasant Hill; Caitlin Lanctot, CSCDA Staff.

**II. Approval of Minutes—January 24, 2013 Annual Meeting**

The commission approved the minutes of the annual meeting held January 24, 2013.

Motion by Schutten; second by Stenbakken; unanimously approved by roll-call vote.

**III. Staff Updates**

None

**IV. Approve Consent Calendar**

The commission approved the consent calendar consisting of the following items:

A. Induce the following projects:

1. Preservation Partners Development III, LLC (Casa de Cortez Apartments), City of Fallbrook, County of San Diego; issue up to \$5 million in multi-family housing debt obligations.
2. Psalms 127, LLC (Naomi Gardens Apartments), City of Arcadia, County of Los Angeles; issue up to \$13 million in multi-family housing debt obligations.
3. Steel Properties, LLC (Inglewood Gardens), City of Stockton, County of San Joaquin; issue up to \$8 million in multi-family housing debt obligations.

B. Approve the following invoices for payment:

1. David Taussig & Associates Invoice #1212009.
2. David Taussig & Associates Invoice #1212090.

C. Approve the Continuing Disclosure Annual Report for the Pooled Tobacco Securitization Program.

Motion by Schutten; second by Stenbakken; unanimously approved by roll-call vote.

**V. Financing Approval**

Approve the financing; all necessary actions; the execution and delivery of all necessary documents and authorize any member to sign all necessary financing documents for the following:

- a. Gilroy Park Investors, L.P. (Gilroy Park Apartments), City of Gilroy, County of Santa Clara; up to \$13,000,000 in multi-family housing debt obligations.

Motion by Bornstein; second by Holly; unanimously approved by roll-call vote.

**VI. Discuss and approve Supplemental Bond Trust Indenture for the American Baptist Homes of the West Series 2010 revenue bonds.**

Motion by Stenbakken; second by Schutten; unanimously approved by roll-call vote.

**VII. City of Pleasant Hill CFD approval**

Adopt a resolution authorizing the issuance, sale and delivery of not to exceed \$7,000,000 aggregate principal amount of 2013 Revenue Bonds, Series A (Pleasant Hill Downtown Community Facilities District No. 1) AND NOT TO EXCEED \$100,000 aggregate principal amount of 2013 Taxable Revenue Bonds, Series A-T (Pleasant Hill Downtown Community Facilities District No. 1) for the purpose of refinancing the City of Pleasant Hill Pleasant Hill Downtown Community Facilities District No. 1 Refunding Special Tax Bonds Subordinated Series 2002 and providing for the terms and conditions for the issuance of said bonds and approving other actions and matters related thereto.

Motion by Schutten; second by Stenbakken; unanimously approved by roll-call vote.

**VIII. Public Comment**

Terry Schutten thanked Caitlin Lanctot for speaking at the CAO meeting and said he received positive feedback.

**IX. Adjourn.**

Commission Chair Larry Combs adjourned the meeting at 10:19 a.m.

Submitted by: James Hamill, CSCDA Staff

*The next regular meeting of the commission is scheduled for  
**Thursday, February 21, at 10:00 a.m.**  
in the CSAC Office at 1100 K Street, Sacramento, CA.*

## Item IV

### Approve Consent Calendar

1. Induce the following projects:
  - a. ROEM Development Corporation (Seabreeze Apartments), City of Vallejo, County of Solano; issue up to \$24 million in multi-family housing debt obligations.





Building Communities, Investing in Local Government Since 1988

## Housing Bond Application

### APPLICANT INFORMATION

Application Number: **2013037**  
Name of Developer: **ROEM Development Corporation**  
Primary Contact: **Megan Quisenberry**  
Title: **Development Associate**  
Address: **1650 Lafayette Street  
Santa Clara, CA 95050**  
Telephone Number: **(408) 984-5600 Ext. 13**  
Fax Number: **(408) 984-3111**  
E-mail: **mquisenberry@roemcorp.com**

### BORROWER DESCRIPTION

Type of Entity:  For-profit Corporation  Non-profit Corporation  
 Municipality  Partnership  
 Other (specify): \_\_\_\_\_

For Non-profits only: Will you be applying for State Volume Cap? **No**

Name of Borrowing Entity: **TBD**

Date Established: **TBD**

Number of Multi-Family Housing Projects Completed in the Last 10 Years: **14**

Number of Low Income Multi-Family Housing Projects Completed in the Last 10 Years: **14**

### PRINCIPAL FINANCE TEAM INFORMATION

#### UNDERWRITER/PLACEMENT AGENT

Firm: **TBD**

Contact:

Address:

Telephone:

Fax:

E-mail:

#### BOND COUNSEL

Firm: **Orrick, Herrington & Sutcliffe**

Contact: **Justin Cooper**

Address: **405 Howard Street  
San Francisco, CA 94105**

Telephone: **(415) 773-5908**

Fax: **(415) 773-5759**

E-mail: **jcooper@orrick.com**

Application Number: **2013037 - Seabreeze Apartments**

Name of Borrower: **ROEM Development Corporation**

**PROJECT DESCRIPTION**

Current Project Name: **Seabreeze Apartments**

New Project Name:

Project Street Address: **100 Larissa Lane**

City: **Vallejo** State: **CA** Zip Code: **94590**

County: **Solano**

Is Project located in unincorporated part of the County? **No**

Total Number of Units: Market: **2** Restricted: **182** Total Units: **184**

Lot Size: **8 Acres**

Amenities: **Pool, spa, laundry room, recreation room**

Type of Construction (i.e., Wood Frame, 2 Story, 10 Buildings): **15, Wood Frame, Two Story Walk-up Buildings, One Office/recreation Building And One Laundry Facility.**

Type of Housing:  New Construction  Family  
 Acq/Rehab  Senior Is this an Assisted Living Facility? \_\_\_\_\_

City or county contact information:

Contact Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Ext. \_\_\_\_\_

Fax Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

**PUBLIC BENEFIT**

Percentage of Units in Low Income Housing: **100%**

Percentage of Area Median Income(AMI) for Low Income Housing Units: **50-60% AMI**

Total Number of Management Units: **2**

Unit Size	% AMI	# of Restricted Units	Restricted Rent	Market Rent	Expected Savings
1 Bedroom	50	6	\$739	\$1,135	\$396
1 Bedroom	60	58	\$887	\$1,135	\$248
2 Bedrooms	50	13	\$887	\$1,370	\$483
2 Bedrooms	60	105	\$1,065	\$1,370	\$305

Remarks:

**OTHER PUBLIC BENEFIT**

**SERVICES PROVIDED**

- High-speed internet service in each affordable unit of an on-going nature for a minimum of 10 years.
- After school program of an on going nature for the minimum of 10 years.
- Educational classes (which are not the same as the after school program) for a minimum of 10 years.
- Licensed childcare providing 20 hours or more per week(Monday through Friday) to residents of the development.
- Contract for services, such as assistance with the daily living activities, or provision of senior counseling services.

**ENVIRONMENT**

**Energy**

- Does the facility exceed Title 24 Standards?  Yes  No  N/A  
If Yes, by what percent? \_\_\_\_\_%
- Does the facility have solar(PV) panels?  Yes  No  N/A  
If Yes, what is the size in kWh? \_\_\_\_\_
- Does the facility purchase carbon credits?  Yes  No  N/A  
If Yes, what is the annual consumption? \_\_\_\_\_

**Water**

- Does the facility provide any of the following:
- Efficient Toilets?  Yes  No  N/A
  - Water-saving showerheads?  Yes  No  N/A
  - Drought tolerant landscaping?  Yes  No  N/A
  - Other, specify: \_\_\_\_\_

**Transportation**

- Does the entity provide carpooling or mass-transit subsidies?  Yes  No  N/A
- Does the entity maintain a fuel efficient fleet?  Yes  No  N/A

**Waste**

- Does the project provide recycling facilities?  Yes  No  N/A

**WORKFORCE**

**Employment Creation**

Job Type/Description	During Construction	Post Construction
None	<u>0</u>	<u>0</u>

**GOVERNMENTAL INFORMATION**

Congressional District #      State Senate District #      State Assembly District #  
5                                      3                                      14

Application Number: **2013037 - Seabreeze Apartments**

Name of Borrower: **ROEM Development Corporation**

**FINANCING STRUCTURE**

Type of Financing:     Public Sale                       Private Placement                       Refunding

For Refundings only: Will you be applying for State Volume Cap? **Yes**

For Refundings only: Is this a transfer of property to a new owner? \_\_\_\_\_

Maturity: **35 Years**

Interest Rate Mode:     Fixed

Variable

**CONSTRUCTION FINANCING:**

Credit Enhancement:     None                       Letter of Credit  
                                    FNMA(Fannie Mae)     Freddie Mac  
                                    Bond Insurance         Other (specify): **TBD**

Name of Credit Enhancement Provider or Private Placement Purchaser: **TBD**

**PERMANENT FINANCING:**

Credit Enhancement:     None                       Letter of Credit  
                                    FNMA(Fannie Mae)     Freddie Mac  
                                    Bond Insurance         Other (specify): **TBD**

Name of Credit Enhancement Provider or Private Placement Purchaser: **TBD**

Expected Rating:     Unrated                       S & P \_\_\_\_\_  
                                    Moody's \_\_\_\_\_                       Fitch \_\_\_\_\_

Projected State Allocation Pool:     General     Mixed Income     Rural

Will the project use Tax-Credit as a source of funding?: **Yes**

**SOURCES & USES**

<b>CONSTRUCTION SOURCES</b>		<b>USES</b>	
Tax-Exempt Bond Proceeds:	<b>\$20,881,526</b>	Land Acquisition:	<b>\$1,000,000</b>
Taxable Bond Proceeds:		Building Acquisition:	<b>\$19,000,000</b>
Tax Credits:	<b>\$8,179,665</b>	Construction or Remodel:	<b>\$4,350,240</b>
Developer Equity:		Cost of Issuance:	<b>\$462,704</b>
Other Funds(Describe):		Capitalized Interest:	<b>\$809,250</b>
Lease Up Income	<b>\$470,485</b>	Reserves:	<b>\$441,272</b>
_____	.....	Other Funds(Describe):	
_____	.....	Relocation/Marketing	<b>\$448,090</b>
_____	.....	Third Party Reports	<b>\$100,060</b>
_____	.....	Legal/Insurance	<b>\$280,060</b>
<b>TOTAL:</b>	<b>\$29,531,676</b>	Permits & Fees	<b>\$140,000</b>
		Developer Fee	<b>\$2,500,000</b>
		<b>TOTAL:</b>	<b>\$29,531,676</b>

Application Number: **2013037 - Seabreeze Apartments**  
Name of Borrower: **ROEM Development Corporation**

**PRINCIPAL FINANCE TEAM INFORMATION (continued)**

<b>FINANCIAL ADVISOR</b>		<b>REBATE ANALYST</b>	
Firm:	<b>N/A</b>	Firm:	<b>TBD</b>
Contact:		Contact:	
Address:		Address:	
Telephone:		Telephone:	
Fax:		Fax:	
E-mail:		E-mail:	

**ADDITIONAL REQUIREMENT**

Please provide the following as an additional attachment:

<u>Attachment</u>	<u>Description of Information</u>
A	\$5,000 non-refundable* issuance fee deposit payable to "California Communities."  *Refundable only if financing not approved.

**MAILING ADDRESS**

California Communities®  
2999 Oak Road, Suite 710  
Walnut Creek, CA 94597

## Item VI

Discuss and approve amendments to certain documents for the Southern California Edison Company 2006 Series A and B refunding revenue bonds.

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## SUMMARY AND APPROVALS

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**DATE:** FEBRUARY 21, 2013

**PURPOSE:** DISCUSS AND APPROVE AMENDMENTS TO CERTAIN DOCUMENTS FOR THE SOUTHERN CALIFORNIA EDISON COMPANY 2006 SERIES A AND B REFUNDING REVENUE BONDS

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### Background:

On April 12, 2006 CSCDA issued the 2006 Series A and B Bonds for the Southern California Edison Company (“SCE”) Project totaling \$196,000,000. The issuance refinanced the acquisition and construction of certain pollution control and solid waste disposal facilities at the San Onofre Nuclear Generating Station located in San Diego County.

SCE desires to amend certain provisions of the original Bond Indenture, Loan Agreement, and Tax Exemption Certificate to allow for more flexibility and ease of marketing the bonds. The main changes include:

1. Combine the 2006 Series A and B into one series, the “2006 Series”
2. The addition, removal and modification of certain interest rate modes, such as a SIFMA-Based Term Rate Mode
3. The amendment of certain redemption provisions
4. The ability to add provisions for a Credit Facility or direct pay Letter of Credit in the future
5. The removal of bond insurance and Auction provisions

The amendments are expected to become effective April 1, 2013 as part of the Preliminary Reoffering Circular. Bondholder consent will not be needed since the new bondholders will be buying the bonds with all the amendments already in place following the mandatory tender on April 1<sup>st</sup>.

Staff has reviewed the requested amendments with Bond Counsel and Issuer Counsel and the changes do not expose CSCDA to any additional risk or liability.

### Approval:

Based upon the request by SCE and review by Bond Counsel and Issuer Counsel, staff submits the approval of a resolution approving the Authority to enter into an Amended and Restated Indenture of Trust, a First Amendment to Loan Agreement, a Supplemental Tax Exemption Certificate and Agreement, and a Preliminary Reoffering Circular.

## Item VII

Discussion of Bureau of State Audits Implementation Report



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## DISCUSSION

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**DATE:** FEBRUARY 21, 2013

**REPORT:** DISCUSSION OF BUREAU OF STATE AUDITS IMPLEMENTATION REPORT

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### **Background:**

As this Commission is aware on August 23, 2012, the Bureau of State Audits (the “BSA”) reported its findings of an audit reviewing CSCDA, the California Municipal Finance Authority (CMFA) and the California Health Facilities Financing Authority (CHFFA). Annually the BSA provides a report to the Legislature and the Governor on the implementation of the recommendations outlined in its findings.

### **Discussion:**

On February 12, 2013 the BSA released its implementation report. The pertinent sections of the report are attached. (Attachment 1) Notably the following section is contained in the report:

**Recommendation 1.2—See pages 20—23 of the audit report for information on the related finding.**

The FPPC should adopt regulations that clarify whether the analysis in the *McEwen* advice letter is intended to apply to the factual circumstances presented in this audit.

***FPPC's Action: Fully implemented.***

In October 2012 the FPPC informed the California State Treasurer that, pursuant to its *McEwen* advice letter and other advice letters it has issued in the past, the compensation models of the joint powers authorities included in the audit (California Communities and Municipal Finance) do not violate the political reform act.

To support this finding that the compensation model does not violate the Political Reform Act attached is the letter from the Fair Political Practices Commission (FPPC) to the State Treasurer and Assemblyman Feuer.

As outlined in the other sections the other areas are currently in progress or have been fully implemented, and this Commission and CSCDA staff continue to address the issues outlined by the BSA.

## Attachment 1

## Conduit Bond Issuers

### Issuers Complied With Key Bond Requirements, but Two Joint Powers Authorities' Compensation Models Raise Conflict-of-Interest Concerns

#### REPORT NUMBER 2011-118/2011-613, ISSUED AUGUST 2012

This report concludes that it may be helpful for the Legislature or the Fair Political Practices Commission (FPPC), as appropriate, to provide clear policy direction regarding whether contingency fees paid to private employers of consultants participating in financing decisions should be permissible under California's conflict-of-interest laws. Both California Statewide Communities Development Authority (California Communities) and California Municipal Finance Authority (Municipal Finance) are staffed entirely by private consulting firms. For their work, the consulting firms receive a percentage of the fees associated with each conduit revenue bond the joint powers authorities issue. During July 2006 through June 2011, California Communities and Municipal Finance paid their consultants roughly \$50 million and \$4.6 million, respectively. These amounts represent 59 percent of total revenues generated for California Communities and 49 percent for Municipal Finance. This method of compensation raises a concern under the Political Reform Act of 1974 (political reform act), which prohibits public officials—including consultants performing the work of public officials—from making, participating in, or attempting to influence certain governmental decisions in which they have a material economic interest. In explaining why they believe the compensation model does not violate the political reform act, consultants who advise the public entities rely on an advice letter issued by the FPPC to a different entity. However, neither the FPPC nor a court of appropriate jurisdiction have considered the applicability of the reasoning set out in that advice letter to the specific circumstances described in this audit report.

The joint powers authorities' use of consultants also raises a concern under California Government Code, Section 1090 (Section 1090). This state law prohibits public officials and employees from having a financial interest in any public contract whose formation or approval they participate in, which includes the issuance of conduit revenue bonds. Although there is some case law that suggests that consultants who contract with public agencies may be paid on a contingency fee basis for their services without violating Section 1090, no court has squarely addressed the specific question presented here and we therefore cannot reach a definitive legal conclusion.

This report also concludes that the joint powers authorities could improve their contracting practices to better ensure the services they receive are reasonably priced. The boards of directors for California Communities and Municipal Finance have not required the consulting firms staffing the joint powers authorities to compete against other firms since the joint powers authorities were formed in 1988 and 2004, respectively. By not periodically bidding out the contracts for these services, the joint powers authorities have less assurance that they are getting the best value from their consultants. However, notwithstanding the potential problems described above, during 2006 through 2011 California Communities and Municipal Finance met bond issuance requirements and generally fulfilled reporting obligations, including those established in 2010 under Senate Bill 99. Similarly, the California Health Facilities Financing Authority (Health Financing Authority) also met these requirements.

In the report, the California State Auditor (state auditor) made the following recommendations to California Communities, Municipal Finance, and the Health Financing Authority. The state auditor's determination regarding the current status of recommendations is based on these agencies' responses to the state auditor as of October 2012 and additional information California Communities and Municipal Finance provided in November 2012.

**Recommendation 1.1—See pages 18—23 of the audit report for information on the related finding.**

If the Legislature believes that the compensation model is appropriate, whereby the private firms that employ consultants are paid a percentage of the fees associated with bond issuances, the Legislature should enact legislation that creates a clearly stated exemption from Section 1090. On the other hand, if the Legislature believes that this compensation model is not appropriate, it should enact legislation that clearly proscribes, or limits, such a model.

***Legislative Action: Unknown.***

The state auditor is not aware of any action taken by the Legislature as of December 18, 2012.

**Recommendation 1.2—See pages 20—23 of the audit report for information on the related finding.**

The FPPC should adopt regulations that clarify whether the analysis in the *McEwen* advice letter is intended to apply to the factual circumstances presented in this audit.

***FPPC's Action: Fully implemented.***

In October 2012 the FPPC informed the California State Treasurer that, pursuant to its *McEwen* advice letter and other advice letters it has issued in the past, the compensation models of the joint powers authorities included in the audit (California Communities and Municipal Finance) do not violate the political reform act.

**Recommendation 1.3—See pages 18—23 of the audit report for information on the related finding.**

To be better informed about the compensation of their consultants, including any potential conflicts of interest, California Communities and Municipal Finance should require the consulting firms that staff their organizations to disclose the amount and structure of compensation provided to individual consultants, including disclosing whether any of this compensation is tied to the volume of bond sales.

***California Communities' Action: Partially implemented.***

California Communities indicated that its commission considered requiring HB Capital Resources, Ltd. (HB Capital) to disclose the amount of compensation paid to each of its employees. However, the commission concluded that it does not have discretion over such compensation. Instead, California Communities amended its contract with HB Capital in October 2012 to require HB Capital not to compensate its employees providing services directly or indirectly to the joint powers authority on a commission basis or pursuant to any other method of compensation that is based on the dollar amount or volume of bonds issued by the joint powers authority.

***Municipal Finance's Action: Pending.***

Municipal Finance stated that a subcommittee of its board members is reviewing proposed contract language that will prohibit its consultants from compensating their employees on a commission basis or any other method that is based on the volume of bonds sales. Municipal Finance indicated that the proposed contract language will also require all consultants to disclose the amount of compensation provided to individual employees.

**Recommendation 1.4—See page 28 of the audit report for information on the related finding.**

In implementing its January 2012 contracting policy, California Communities should either periodically subject existing contracts to competitive bidding or perform some other price comparison analysis to ensure that the public funds it oversees are used effectively.

***California Communities' Action: Pending.***

California Communities stated that the term of its contract with HB Capital does not expire until June 2015, and that the contract automatically extends for another two years unless California Communities gives written notice to HB Capital prior to May 2013 that it does not desire to extend the contract. California Communities indicated that at the beginning of 2013, its commission will consider whether to provide such notice and conduct a competitive bid process for selecting a program manager for a term commencing in July 2015. California Communities added that at the beginning of 2013, its commission will be reviewing each of its other consultant contracts to determine whether it would be timely to conduct a competitive bid process for one or more of these contracts.

**Recommendation 1.5—See pages 28 and 29 of the audit report for information on the related finding.**

Municipal Finance should follow its July 2012 policy that describes how it will select contractors and periodically review existing contractors' services and prices to ensure the public funds it oversees are used effectively.

***Municipal Finance's Action: Fully implemented.***

In July 2012 Municipal Finance's board compared Sierra Management's services and prices to other conduit bond issuers and concluded that it is receiving the best value for the public funds it oversees. Municipal Finance also sought competitive bids for issuer/special counsel services in November 2012, which it stated was a result of its review of the services it was receiving. Municipal Finance affirmed that it will continue to follow its July 2012 policy, stating that for any engagement for professional services with a duration of at least one year, its board will conduct a review on a periodic basis to assess and evaluate the performance of the service provider. It added that it expects to conduct a review on an annual basis each January.

**Recommendation 1.6—See pages 26 and 28 of the audit report for information on the related finding.**

As suggested by the Government Finance Officers Association guidance, California Communities and Municipal Finance should include provisions in their contracts prohibiting consultants from engaging in activities on behalf of the issuers that produce a direct or indirect financial gain to the consultants, other than the agreed-upon compensation, without the issuer's informed consent.

***California Communities' Action: Fully implemented.***

In October 2012 California Communities amended its contract with HB Capital to prohibit HB Capital from receiving any additional compensation, payment, or other financial benefit from any person in connection with the issuance of bonds by the joint powers authority, except for the compensation authorized by its contract.

***Municipal Finance's Action: Pending.***

Municipal Finance indicated that it is reviewing proposed contract language that would prohibit its consultants from engaging in activities on its behalf that produces a direct or indirect financial gain to the consultants without its informed consent. Municipal Finance added further that Sierra Management voluntarily restricts itself to serve Municipal Finance and no other financing authority.

**Recommendation 1.7—See pages 30 and 31 of the audit report for information on the related finding.**

Once the Securities and Exchange Commission (SEC) finalizes its definition of *municipal advisor*, California Communities should have its legal counsel review whether HB Capital should register with the Municipal Securities Rulemaking Board.

***California Communities' Action: Pending.***

California Communities noted that the SEC has not finalized the definition of municipal advisors, and has extended the temporary definition until September 2013. California Communities stated that its legal counsel will continue to monitor SEC communications for when the definition is finalized and conduct an independent review.

**Recommendation 2.1—See pages 34 and 35 of the audit report for information on the related finding.**

To provide more accessible venues for citizens to understand the financing of projects and to voice their opinions, the Health Financing Authority should either hold local approval hearings in each jurisdiction in which a project will be built or create a cost-effective technological solution (streaming video, teleconference, etc.) to provide more public accessibility.

***Health Financing Authority's Action: Fully implemented.***

The Health Financing Authority indicated that it will now provide telephone access for all of its local approval hearings so members of the public may participate via a toll-free phone call. The Health Financing Authority demonstrated its new process using an October 2012 hearing for the city of Hope. The Health Financing Authority published notices for this hearing in both *The Sacramento Bee* and in the *Los Angeles Times*. These notices included the date and time of the hearing, an address for members of the public who wished to attend in person, and a toll-free number and participation code for members of the public who wished to participate remotely.

**Recommendation 2.2—See page 39 of the audit report for information on the related finding.**

To ensure that all issuers of conduit revenue bonds make their activities sufficiently transparent to the public, the Legislature should consider amending state law to provide deadlines for issuers to post the information SB 99 requires on their Web sites and to specify how long issuers must keep this information posted.

***Legislative Action: Unknown.***

The state auditor is not aware of any action taken by the Legislature as of December 18, 2012.



## FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

October 10, 2012

Bill Lockyer  
California State Treasurer  
915 Capitol Mall C-15  
Sacramento, CA 95814

Mike Feuer  
Assembly Member, AD-42  
State Capitol  
P.O. Box 942849  
Sacramento, CA 94249-0042

Dear Treasurer Lockyer and Assembly Member Feuer:

I am writing in response to your letter inquiring about the propriety, under the Political Reform Act<sup>1</sup> (the Act), of certain compensation models prevalent in many conduit bond financing arrangements between public entities and private companies. Specifically, your questions concern certain compensation models discussed in the recent audit issued by the California State Auditor on August 23, 2012 titled, "*Conduit Bond Issuers, Issuers Complied With Key Bond Requirements, but Two Joint Powers Authorities' Compensation Models Raise Conflict-Of-Interest Concerns*" (Audit). I hope you find the following response informative and helpful.

### Summary of Conclusion

Assuming the compensation models at issue in the Audit are set forth in contracts in which the terms of payment are defined, the contracts were put in place prior to the consultants' participation in any government decision making, the terms were negotiated by disinterested agency officials, and the consultants' participation merely constitutes implementation of those preexisting decisions, pursuant to long standing Commission advice the Act's conflict-of-interest provisions are not implicated.

### Relevant Background

A tax-exempt conduit revenue bond is a bond issued by a public agency that provides lower cost financing for a private entity to construct a privately owned project that benefits the public, such as a

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<sup>1</sup> The Political Reform Act appears at Government Code Sections 81000-91015. Commission regulations appear at Title 2, California Code of Regulations Section 18000, *et seq.* Our analysis focuses solely on the provisions of the Act, and we express no opinion on any other statutory or common law conflict rules or prohibitions.

hospital, affordable housing, or a pollution control facility. When the agency issues the bond, it is purchased by investors and the proceeds provide the capital for the private entity's project. The private entity, not the public agency, is responsible for making principal and interest payments to the investors. Typically, the financing concept originates with the private entity, which assembles a financial team (bond counsel, underwriter, trustee, financial advisor, etc.), approaches the public agency and, assuming the public agency is agreeable, provides legal and financial information and services to the agency. The agency reviews the plan and pertinent documents to ensure that the financing is in compliance with the agency's policies, and that all required hearings are held to allow for public comment on the project. Before issuing bonds on certain types of projects, the agency must receive approval from the California Debt Limit Allocation Committee, which ensures the bond does not exceed specified limits on the amount of tax-exempt debt that can be issued annually in each state for certain types of projects. The California Debt Limit Allocation Committee operates under the State Treasurer's Office.

Many types of public agencies issue conduit revenue bonds in California, including state agencies, cities, counties, and other local agencies. Local governments often establish separate joint powers authorities to issue these bonds, as is the focus of the Audit at issue. This can provide smaller local governments with greater access to bond market expertise than they would have if acting alone, and it can allow the joint powers authority to issue a single bond to finance small projects across multiple jurisdictions.

The Audit focused on the "organizational structure and significant policies and practices" of three agencies that issue conduit revenue bonds: two local joint powers authorities – the California Statewide Communities Development Authority ("California Communities") and the California Municipal Finance Authority ("Municipal Finance"); and a State-established agency, the California Health Facilities Financing Authority ("Health Financing Authority"), which issues conduit revenue bonds to assist public and nonprofit health care providers.

The Audit found that both of the local joint powers authorities did not have sufficient staff and therefore utilized consulting firms (private contractors) to perform the usual functions of agency staff to analyze and make recommendations on proposed bond issuances. Under the contracts with these agencies, the consulting firms were paid for their services based on a percentage of each bond issued by the agencies. By contrast, the State's Health Financing Authority mostly utilized employed staff to perform these services and, when utilizing private contractors, paid these contractors on an hourly (rather than on a percentage) basis.

The Audit found that the two joint powers authorities properly complied with the Political Reform Act by requiring employees of the consulting firms to file Statements of Economic Interests in their capacities as "consultants", and also found no improprieties on the reporting by the consultants. However, the Audit questioned whether these consultants had a conflict of interest under the Act when making recommendations to the agencies on bond issuances because an agency-approved bond issuance resulted in increased income to the consultants. A detailed explanation of the Act's conflict-of-interest provisions at issue is provided below.

In analyzing this issue, the Audit acknowledged the agencies' and consulting firm's reliance on the Fair Political Practices Commission's (Commission) 1993 *McEwen* Advice Letter, No. I-92-481. That advice letter reached the following conclusions on two general issues that arguably apply to the facts raised in



the Audit. First, the advice letter concluded that an attorney who provides services for a public agency under a contract between the agency and the attorney's law firm (and who is therefore a consultant to the agency under the Act) does not have a conflict of interest when the attorney participates in agency decisions that may result in the agency paying additional attorney's fees to the firm, so long as the contract expressly provides for payment for the additional services. In other words, if the agency has already consented by contract to the firm making recommendations to the agency that could result in payments for additional legal services, the consultant attorney who makes those recommendations does not have a conflict of interest in making these types of recommendations. Second, the advice letter concluded that a contract between an agency and private bond counsel (who is also a consultant under the Act) that provides for payment of the bond counsel based on a percentage of each bond successfully issued by the agency, is permissible and does not create a conflict of interest for the bond counsel under the Act when advising the agency on bond issues.

However, the Audit stated that because there were factual differences in the *McEwen* advice letter and the model under which the joint powers authorities paid their consultants, the State Auditor "cannot predict what the FPPC or a reviewing court would conclude."

Your inquiry focuses on the conflict-of-interest concerns posited in the Audit, and urges the Commission to adopt regulations clarifying that the percentage-fee compensation model used by joint powers authorities to compensate consultants, such as those discussed in the Audit, violates the Act's conflict-of-interest provisions. You state that the *McEwen* advice letter "addresses different factual circumstances than those presented here, and we do not believe the reasoning set forth in *McEwen* was intended to apply to the authorities' business model." Because of this, you conclude that this compensation model presents "an inherent conflict of interest."

#### Legal Analysis

Government Code Sections 87100 and 87103 prohibit a public official from making or participating in a government decision that, among other things, will have a foreseeable financial effect on a source of income to that official. It is undisputed that the consultants at issue in the Audit qualify as public officials under the Act, given their scope of work for the public agencies. The Audit raises the concern that the compensation model used by the joint powers authorities results in consultants participating in government decisions (whether to issue bonds) that will foreseeably affect their sources of income (the bond consulting firms employing the consultants) given the percentage-fee basis on which the consulting firms are paid.

In the *McEwen* advice letter, which presented multiple fact patterns similar to those set forth in the Audit, the Commission concluded that the compensation model there did not violate the Act's conflict-of-interest provisions. We reasoned that because the contract under which the terms of payment were defined was put in place prior to the consultants' participation in any government decision making, the contract expressly provided for payment for additional services resulting in additional income to a contractor, the terms were negotiated by disinterested agency officials, and the consultants' participation merely constituted implementation of that preexisting decision, the Act's conflicts provisions were not implicated. But the *McEwen* advice letter was not the first (or last) time the Commission spoke on the issue of percentage-based consultant fees in the conflict-of-interest context.

In *McEwen*, we relied on the Commission's 1979 *Ritchie* Advice Letter, No. 79-045, which advised that the percentage-based fee received by a bond counsel consultant was "government salary", which is exempt from the conflict provisions, and not implicated by the conflict-of-interest rules. In arriving at this conclusion, the letter stated: "A percentage fee, not being tied to the amount of work performed, is somewhat less like a salary, but it is a customary way to compensate lawyers for the services in connection with a bond issue. In addition, it is up to the agency involved to determine the method by which they want to compensate those who work for them, and they may believe that the chances are such that the bond work will prove so time consuming that the percentage fee is more favorable to the agency than an hourly fee would be. That is a decision for the agency to make in its fee negotiations, not one for the Commission to make in application of the Political Reform Act."

We reached similar conclusions in the *Pardee* Advice Letter, No. I-91-506, applying the same logic to conclude that an agency's consultant, a real estate broker, did not have a conflict of interest when advising the agency on leases and property purchases on which the broker was paid a percentage of the lease/property value. And also in the *Eckis* Advice Letter, No. 93-270, where we concluded that a contract city attorney/redevelopment agency counsel did not have a conflict of interest in rendering advice to a city to initiate or defend litigation that would foreseeably increase the amount of payments to his firm under an existing contract:

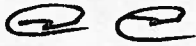
[W]here a governmental entity has already contracted to permit the consultant to make recommendations that result in the rendering of identified services for an agreed upon price, there is no conflict of interest. In that case, the consultant's participation in governmental decisions will not have a foreseeable financial effect on the consultant's employer. This is because, according to the *McEwen* advice letter, the agency's decision to pay the consultant's employer for the additional services contemplated by the contract was previously made by disinterested agency officials and the consultant's participation merely constitutes the implementation of that preexisting decision.

The same reasoning we have consistently applied for over thirty years applies to the compensation model at issue in the Audit. Thus, assuming all of the controlling terms under which the consulting firms are paid are set forth within contracts previously made by disinterested joint powers authority officials, and the consultants' participation in rendering bond advice is within the scope of those terms and is simply implementation of the contracts, the Act's conflict-of-interest provisions are not implicated.

As noted in *Ritchie* and *McEwen*, the Commission's role is to interpret and enforce the Act, and not to make policy judgments regarding the compensation of public agency contractors. Those decisions are best left to the public officials entrusted with the duty to act on behalf of their agencies in the public's best interest and, ultimately, to the Legislature. Although using a percentage-fee arrangement in advising government agencies can potentially color advice given by the consultant being paid, and may present the appearance of a conflict, such payment arrangements do not constitute an actual conflict of interest under the Act.

Therefore, although the concerns you raise do not present a conflict of interest under the Act, we would be happy to work with your offices should you wish to address your concerns through the legislative process.

Sincerely,



Zackery P. Morazzini  
General Counsel

cc: Connie LeLouis, Supervising Deputy Attorney General