Housing Due Diligence Report (DDR)

Oversight Board Meeting

October 11, 2012

Purpose of the DDR

- Health & Safety Code, HSC Section 34179.5 "*requires each Successor Agency to employ a licensed accountant, approved by the county auditor-controller and with experience and expertise in local government accounting, to conduct a due diligence review to* ***determine the unobligated balances available for transfer to taxing entities.*** *As an alternative, an audit provided by the county auditor-controller that provides the information required by this section may be used to comply with this section with the concurrence of the oversight board.*

- The purpose of DDR is clear and defined: what are the **unobligated balances available** to transfer to taxing entities.

Housing Funded by RDA

Prior to Dissolution

Tax Increment Collected

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South Tahoe Redevelopment Agency

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80% for Redevelopment

Projects
Bond Debt
Financing
Economic
Development

20% "Set Aside" for Housing

Affordable Housing Projects (Aspens), Homebuyer Programs, Multi-family Inspection, Housing Rehab
Lead Paint Program, Monitoring

After Dissolution

Tax Increment Collected

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~~Successor Agency~~

↓

Purpose :
Pay debt/obligations
and
Dispose of Assets

100+ million in debt
No new"set aside" for housing.

Housing Fund: LMIHF Accounting

- The 20% "Set aside" housing funds were required to be accounted for separately.
- Maintained in Low and Moderate Income Housing Fund Account (LMIHF).
- Annually audited by independent accounting firm.
- LMIHF could ***only*** be utilized for projects or programs those persons meeting the Low and Moderate Income levels in the community.
  - *Households and persons below median household income*
- South Lake Tahoe Redevelopment Agency funded over $12 million dollars in affordable housing projects/programs

Due Diligence Review (DDR)

- DDR determines the "net balance" of the Low and Moderate Income Housing Fund.
  - specifically the amount of cash and cash equivalents determined to be available for allocation to taxing entities as of June 30, 2012.
- Amount is total value of **assets** and **cash** and cash equivalents in the LMIHF; and then subtracting the following:
  - (1) restricted funds,
  - (2) assets that are not cash or cash equivalents,
  - (3) amounts that are legally or contractually dedicated or restricted for the funding of an enforceable obligation, and
  - (4) amounts that are needed to satisfy obligations that **will be** put on the Recognized Obligation Payment Schedule ("ROPS") for the current fiscal year.
- Remainder is the amount determined to be available for allocation to taxing entities .
- The Due Diligence Review documents the Restricted Assets and provides the respective amounts, sources and purposes for which the Restricted Assets should be retained.

LMIHF/ DDR Timeline

- **Oct 1, 2012:** Completed DDR is to be submitted to Successor Agency (SA received on Oct 2).
  Oct 15, 2012: Oversight Board required to make determinations of the DDR
  - A five day public review period is required *in advance* of OB determination
  - Oct 2, 2012: OB received and released DDR for public review.
- **Nov 9, 2012:** Department of Finance required to complete review of DDR and provide SA & OB explanation of its basis to overturn or modify any findings or authorizations of the OB.
- Successor Agency then has option to meet and confer with DOF to discuss any modifications.
- **Dec 1, 2012:** County-Auditor must provide DOF report specifying the amounts submitted by SA's from LMIHF

South Tahoe DDR: Process

- June and September, 2012: Successor Agency staff sought coordination meetings with County Auditor.
- Successor Agency attempted to locate independent auditor to perform DDR (only one responded).
- DOF issues clarification on DDR requirements to encourage auditors to perform DDRs.
- August 23, 2012 OB Meeting: requested assistance for coordination with County-Auditor.
- August, 2012: Successor Agency staff seek intervention from DOF to compel response by County – Auditor or provide direction to authorize hiring of auditor.
- September 6: with deadline looming, Successor Agency staff contract with the only auditing firm responded to perform DDR: Mann Urrutia.
- September 7: County-Auditor begins questioning the selection of the firm.
- September 10: DDR draft completed by Mann Urrutia.
- September 14: County-Auditor objects to selection of firm.
- September 19-20: County-Auditor agrees to meet next day to discuss situation; during meeting agrees to perform DDR. County-Auditor was informed regarding Aspens Housing Project, was provided all of the documents Mann Urrutia were provided and the draft DDR.
- October 1: Successor Agency receives County-Auditor's DDR draft report.
- October 1: SA staff submit objections via email, and provide additional documentation regarding Aspens Housing Project .
- October 2: County-Auditor provides final DDR, it is submitted to Successor Agency.
- October 2: Successor Agency BOD receive and authorize submission to OB – state objections.
- October 2: Oversight Board receives report and releases for public review.

County-Auditor's DDR: Findings

- County-Auditor's DDR incorrectly includes as available for disbursement to taxing entities the following amounts:
  - $426,210 that was already transferred to Housing Authority
  - Balance of $1,485,309 , which is obligated to Aspens Affordable Housing Project

4. Expenditure and Revenue information for the Moderate and Low Income Housing Funds for September 30, 2011 through June 30, 2012:

	Fund#262	Fund#725	Total
Beginning Balance October 1, 2011	2,059,703	-	2,059,703
Expenditures:			
Operating Transfer in (out) to City General fund	(28,376)		(28,376)
Transfer in (out) to Housing Fund	(122,168)		(122,168)
Operating Transfer in trust #725 and (out) #262	(1,485,309)	1,485,309	-
Total Expenditures	(1,635,853)	1,485,309	(150,544)
Revenue (Interest)	2,360		2,360
June 30, 2012 Ending Balance	426,210	1,485,309	1,911,519

SERAF Loan Repayment

- 2010-2011 state passed AB x4 26, budget trailer bill, requiring RDA's to make a State's Supplemental Educational Revenue Augmentation Fund payment (SERAF).
- If RDA's unable to make their SERAF pymt, they could "borrow" the funds ***from*** the Low /Mod Income Housing Fund (LMIHF).
- AB 26 x 4 imposed a number of sanctions on agencies that failed to timely pay the funds.
- Lawsuits followed, RDA's lost, payments were made.
- Next year, state passes AB x1 26 (2011/12) dissolving RDAs altogether – but **required repayment** of this LMIHF loan.
- Lawsuits followed, RDAs lost, and agencies dissolved by Feb 1, 2012.
- January 30, 2012 (special meeting of STRA), actions to dissolve agency were taken in accordance with CA Supreme Ct ruling including reactivating the South Tahoe Housing Authority .
  - LMIHF repayment was made from RDA fund balance into *Housing Authority (these are not LMIHF).*
- June, 2012: AB 1484 passed (*after* AB x1 26) delayed repayment of SERAF until after DDR completed. **AB 1484 did not contemplate if already repaid.**
- October 1, 2012, draft DDR by County-Auditor incorrectly includes the $426,410 as funds available for distribution.
  - Successor Agency staff explain this error to Successor Agency and County Auditor.
  - It is not available for distribution.

Aspens Affordable Housing Project

- 2007- to now, South Tahoe Redevelopment Agency staff worked with Pacific West Communities to develop *The Aspens at South Lake Tahoe* , a 48-unit affordable housing project.
- Project applicants have invested over $1M in project, land acquired, majority of permits approved.
- February 2011, STRA committed $2.5M in LMIHFs.
- 2011/12, state passage of AB x1 26, dissolving redevelopment stalls project.
- 2011/12 PacWest seeks additional financing and relies on LMIHF balance (estimated at $1.5M).
- Oct 2, DDR: County-Auditor's DDR declines to acknowledge the LMIHF balance ($1.485) committed to Aspens project.

Summary

- Successor Agency objects to County-Auditor's DDR
  - $426,210 was a state-ordered loan from LMIHF to RDA
    - AB x1 26 required repayment of the loan; repayment was made in accordance with law.
  - $1,485,309 , balance of LMIHF is not available for distribution.
    - Pac West Communities builders have relied on commitments from South Tahoe Redevelopment Agencies (Resolution 2011-1) to fund *The Aspens* affordable housing project.
    - Failure to honor the obligation could result in litigation.
  - However, if *The Aspens* is unable to secure final financing, there are no other obligations of the LMIHF and those funds would become available for distribution to taxing entities.