

Jonathan Carr

Subject: FW: Santa Monica - A-C ROPS III Review
Attachments: 2012-09-28 Santa Monica.pdf; Attachment A.pdf; Attachment B.pdf
Importance: High

From: Duenas, Alejandro [mailto:aduenas@auditor.lacounty.gov]
Sent: Monday, October 01, 2012 4:53 PM
To: Tina Rodriguez; paul.silvern@smoversightboard.net; Redevelopment_Administration@dof.ca.gov
Cc: Successor
Subject: Santa Monica - A-C ROPS III Review
Importance: High

Dear Successor Agency, Oversight Board and Department of Finance,

In accordance with H&S Code §34182.5, Los Angeles County Auditor-Controller's Office has reviewed Santa Monica's Recognized Obligation Payment Schedule (ROPS III) for the period January 2013 through June 2013. Attached is our letter along with documentation to support our findings. Please note this letter is advisory in nature and a final determination of the enforceable obligations approved for ROPS III is to be made by the Department of Finance. A copy of this correspondence can also be found at <http://auditor.lacounty.gov/wps/portal/ac>

Should you have any questions, please contact Arlene Barrera at (213) 974 – 8361 or email her at abarrera@auditor.lacouny.gov

Thank you

Alejandro Dueñas
Los Angeles County, Auditor-Controller,
Property Tax Division
Community Redevelopment Administration Section
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**COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER**

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ROBERT A. DAVIS
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September 28, 2012

Successor Agency to the
Santa Monica Redevelopment Agency
1901 Main Street, Suite D
Santa Monica, CA 90405

Oversight Board to the
Successor Agency of Santa Monica
Redevelopment Agency
Attn: Paul Silvern, Chair
1901 Main Street, Suite D
Santa Monica, CA 90405

Department of Finance
Local Government Unit
915 L Street
Sacramento, CA 95814

Dear Successor Agency, Oversight Board, and Department of Finance:

**HEALTH & SAFETY CODE §34182.5 – AUDITOR-CONTROLLER NOTICE OF
OBJECTIONS TO RECOGNIZED OBLIGATION PAYMENT SCHEDULE (ROPS III)
SUBMITTED AUGUST 28, 2012**

Health and Safety (H&S) Code §34182.5 was added by Assembly Bill (AB) 1484, Chapter 26, Statutes of 2012. AB 1484 provides the County Auditor-Controller with the opportunity to review the Recognized Obligation Payment Schedules (ROPS III) and object to 1) the inclusion of items that are not demonstrated to be enforceable obligations, and 2) the proposed funding sources listed.

We reviewed the Santa Monica ROPS III for the six-month period from January 2013 to June 2013 and have the following objections:

- 1) ROPS III items 14 & 16. These items were previously determined not to qualify as enforceable obligations by the Department of Finance in their letter to your agency dated May 22, 2012 (Attachment A).

2) ROPS III items 9-10, 25, and 29. As discussed in Attachment B, we have objections to the following obligations:

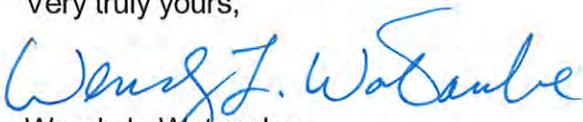
- ROPS III items 9 and 10. The tests established in H&S §34171(d)(2) are not met. The 1981 and 1983 debt was not entered into within the first two years of the RDA's establishment. In addition, the agreements were not entered into at the time of the original indebtedness.
- ROPS III item 25. The successor agency has not demonstrated that these legal costs are associated with specific litigation. Therefore, the obligations should be paid using the Administrative Cost Allowance.
- ROPS III item 29. AB 1484 enacted new rules that clarified that all housing assets and liabilities are transferred to the Housing Successor Agency (H&S §34176 (a)). The City of Santa Monica Housing Authority assumed the rights and responsibilities of the Housing Successor Agency. The Redevelopment Dissolution law does not provide for the administrative costs of the Housing Successor Agency to be paid for out of the Redevelopment Property Tax Trust Fund (RPTTF).

In addition to the items listed above, we do not have sufficient information to substantiate the ROPS III items 11, 17, and 18 as enforceable obligations. ROPS III items 15, 19-23, and 26-28 are new obligations listed on ROPS III, for which there is also insufficient documentation or information to support these items as enforceable obligations.

Thank you for your cooperation in our review of these documents. All obligations listed on future ROPS are subject to review and may be questioned, even if not questioned in preceding ROPS. This letter is advisory in nature and a final determination of the enforceable obligations approved for ROPS III is to be made by the Department of Finance.

If you have any questions, please contact Arlene Barrera, Property Tax Division Chief at (213) 974-8361 or abarrera@auditor.lacounty.gov.

Very truly yours,



Wendy L. Watanabe
Auditor-Controller

WLW:JN:AB:kb

Attachments

c: Supervisor Zev Yaroslavsky, Third Supervisorial District
William T Fujioka, Chief Executive Officer
John F. Krattli, County Counsel



May 22, 2012

Tina Rodriguez, Administrative Services Officer
City of Santa Monica
1685 Main Street
Santa Monica, CA 90401

Dear Ms. Rodriguez:

Subject: Recognized Obligation Payment Schedule Approval Letter

Pursuant to Health and Safety Code (HSC) section 34177 (l) (2) (C), the City of Santa Monica Successor Agency (City) submitted Recognized Obligation Payment Schedules (ROPS) to the California Department of Finance (Finance) on May 16, 2012, for the January through June 2012 and July through December 2012 ROPS periods. Finance is assuming appropriate oversight board approval. Finance has completed its review of your ROPS, which may have included obtaining clarification for various items.

HSC section 34171 (d) lists enforceable obligation (EO) characteristics. Based on a sample of line items reviewed and application of the law, the following do not qualify as EOs:

January through June 2012 ROPS

- Items 9 and 11 – Civic Center Joint Use and Affordable Housing agreements totaling \$5 million. HSC section 34163 (b) prohibits a redevelopment agency from entering into a contract with any entity after June 27, 2011. It is our understanding that contracts for these line items were awarded after June 27, 2011.
- Item 13 – 1978 Promissory Notes in the amount of \$1.6 million. HSC section 34171 (d) (2) states that agreements, contracts, or arrangements between the city, county, or city and county that created the redevelopment agency and the former redevelopment agency are not enforceable obligations.
- Administrative cost exceeds allowance by \$847,983 out of \$1,224,104 claimed. HSC section 34171 (b) limits the fiscal year 2011-12 administrative cost allowance to five percent of the property tax allocated to the successor agency or \$250,000, whichever is greater. Five percent of the property tax allocated is \$376,121.

Except for the items noted above that are disallowed in whole or in part as enforceable obligations, Finance is approving the remaining items listed in your ROPS for both periods. This is our determination with respect to any items funded from the Redevelopment Property Tax Trust Fund for the June 1, 2012 property tax allocations. If your oversight board disagrees with our determination with respect to any items not funded with property tax, any future resolution of the disputed issue may be accommodated by amending the ROPS for the appropriate time

Ms. Rodriguez

May 22, 2012

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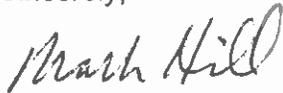
period. Items not questioned during this review are subject to a subsequent review, if they are included on a future ROPS. If an item included on a future ROPS is not an enforceable obligation, Finance reserves the right to remove that item from the future ROPS, even if it was not removed from the preceding ROPS.

Please refer to Exhibit 12 at http://www.dof.ca.gov/assembly_bills_26-27/view.php for the amount of Redevelopment Property Tax Trust Fund (RPTTF) that was approved by Finance based on the schedule submitted.

As you are aware the amount of available RPTTF is the same as the property tax increment that was available prior to ABx1 26. This amount is not and never was an unlimited funding source. Therefore as a practical matter, the ability to fund the items on the ROPS with property tax is limited to the amount of funding available in the RPTTF.

Please direct inquiries to Evelyn Suess, Supervisor or Michael Barr, Lead Analyst at (916) 322-2985.

Sincerely,



MARK HILL

Program Budget Manager

cc: Ms. Kristina Burns, Manager, Community Redevelopment Administration Section,
Property Tax Division, Los Angeles County Auditor Controller

Attachment B

City of Santa Monica Review of ROPS 3 Items

This report offers information and recommendations based on supporting documentation provided by the successor agency and from the Agreed-Upon Procedures (AUP) audit. This analysis is not a legal opinion.

Payee: CDBG Fund					
Item	Project Name / Debt Obligation	Outstanding Debt Obligation	Total Due During FY2012-13	Six-Month Total	Funding Source
9	1981 CDBG Promissory Note	9,505,816	-	-	
10	1983 CDBG Promissory Note	1,193,066	-	-	

These items are related to CDBG loans that appear to have been made to the RDA by the City and are new items that have not appeared on previous ROPS. Item 9 is a claim to secure debt from June 30, 1981 and Item 10 is a claim to secure debt from Sept. 14, 1983. However, successor agency staff has not provided documents dated and signed from 1981 and 1983. The oldest promissory notes provided are dated July 1, 2004 and are unsigned, but reference the debts from 1981 and 1983.

These notes appear to fall outside of the definition of enforceable obligations. HSC Section 34171(d)(2) excludes from the definition of "*enforceable obligations*" any agreement between the sponsoring city and its RDA unless it was entered into within two years of the date of the creation of the RDA, it was entered into at the time of issuance solely for the purpose of securing or repaying indebtedness obligations, and was entered into no later than December 31, 2010.

The tests established in HSC Section 34171(d)(2) are not met. First, the Santa Monica RDA was established in 1960, therefore the 1981 and 1983 debt was not entered into within the first two years of the RDA's establishment. Second, the Promissory Notes were not entered into at the time of issuance of the original indebtedness. They are dated July 1, 2004, not 1981 and 1983. Finally, the Second Amendment to each of the Promissory Notes, which establish the payment schedule and interest rate, are both dated January 17, 2011, after the cut-off date of December 31, 2010. Therefore, these items do not appear to be enforceable obligations.

Items 9 and 10 should not be considered enforceable obligations.

Payee: Santa Monica Malibu Unified School District					
Item	Project Name / Debt Obligation	Outstanding Debt Obligation	Total Due During FY2012-13	Six-Month Total	Funding Source
14	Civic Center Joint Use Agreement	126,015,000	8,130,000	4,065,000	Bond Proceeds

The Department of Finance determined that this item is not enforceable in its May 22, 2012 letter to the City of Santa Monica. Pursuant to HSC Section 34163(b), redevelopment agencies are not authorized to enter into contracts executed after June 27, 2011, except as required by an existing enforceable obligation or for the purpose of winding down the agency. It appears the agency signed and executed this contract after the deadline established by ABx1 26.

Item 14 should not be considered an enforceable obligation.

Payee: Parking Authority					
Item	Project Name / Debt Obligation	Outstanding Debt Obligation	Total Due During FY2012-13	Six-Month Total	Funding Source
17	2003 Promissory Note A	53,573,743	2,551,505	2,551,505	RPTTF
18	2003 Promissory Note B	23,497,570	1,118,820	1,118,820	RPTTF

These items are related to an agreement between the City, RDA and Parking Authority in which the RDA acquired downtown parking lots from the Parking Authority. HSC section 34171(d)(2) states that agreements, contracts or arrangements between the city that created the redevelopment agency and the former redevelopment agency are not enforceable. It does not appear that the Parking Authority is an independent third party, as its Board consists exclusively of City of Santa Monica city council members and employees, its executive director is the City Manager, and its address is City Hall. Therefore, these items are agreements between the City and the RDA, which are prohibited.

Items 17 and 18 should not be considered enforceable obligations unless the successor agency can provide supporting documentation verifying that the Parking Authority is an independent third party.

Payee: City of Santa Monica

Item	Project Name / Debt Obligation	Outstanding Debt Obligation	Total Due During FY2012-13	Six-Month Total	Funding Source
16	1978 Promissory Notes	33,245,252	1,649,458	3,229,766	RPTTF

The Department of Finance determined that this item is not enforceable in its May 22, 2012 letter to the City of Santa Monica. DOF's determination letter states that pursuant to HSC section 34171(d)(2), agreements, contracts or arrangements between the city that created the redevelopment agency and the former redevelopment agency are not enforceable. Item 16 lists payments due to the City from the RDA as a result of the RDA's obligation to pay the City in exchange for the transfer of title to several parcels of land within the downtown area. This obligation dates back to October 24, 1978. The Second Amended Promissory Note is dated January 17, 2011, and establishes the interest rate and schedule of payments due to the City.

This note falls outside of the definition of enforceable obligations. HSC Section 34171(d)(2) excludes from the definition of "*enforceable obligations*" any agreement between the sponsoring city and its RDA unless it was entered into within two years of the date of the creation of the RDA, it was entered into at the time of issuance solely for the purpose of securing or repaying indebtedness obligations, and was entered into no later than December 31, 2010.

The tests established in HSC Section 34171(d)(2) are not met. First, the Santa Monica RDA was established in 1960, therefore the 1978 resolution was not entered into within the first two years of the RDA's establishment. Second, the Promissory Notes were not entered into at the time of issuance of the original indebtedness. The original Promissory Note is dated July 1, 2004, the Amendment to Promissory Note is dated June 21, 2005, and the Second Amendment to the Promissory Note is dated January 17, 2011. Finally, the Second Amendment to the Promissory Note, which establishes the payment schedule and interest rate, is dated January 17, 2011, after the cut-off date of December 31, 2010.

Item 16 should not be considered an enforceable obligation.

Payee: City of Santa Monica Housing Authority

Item	Project Name / Debt Obligation	Outstanding Debt Obligation	Total Due During FY2012-13	Six-Month Total	Funding Source
29	Successor Housing Agency Administrative Costs	2,011,422	2,011,422	1,005,711	RPTTF

AB 1484 enacted new rules that clarified that all housing assets and liabilities are transferred to the Housing Successor Agency (HSC Section 34176(a)). The City of Santa Monica assumed the rights and responsibilities of the Housing Successor Agency. The Redevelopment Dissolution law does not provide for the administrative costs of the Housing Successor Agency to be paid for out of the Real Property Tax Trust Fund (RPTTF). Rather, because all housing assets and liabilities have been transferred to the Housing Successor Agency, it appears that those assets should be the source for paying Housing Successor Agency Administrative costs.

Item 29 should not be considered an enforceable obligation.

Payee: Successor Agency

Item	Project Name / Debt Obligation	Outstanding Debt Obligation	Total Due During FY2012-13	Six-Month Total	Funding Source
25	Successor Agency and Oversight Board legal services	504,401	504,401	244,013	RPTTF

According to HSC section 34171(b), "*Administrative cost allowances shall exclude any litigation expenses related to assets or obligations, settlements and judgments, and the costs of maintaining assets prior to disposition.*" The successor agency has not demonstrated that these legal costs are associated with specific litigation or settlements.

Item 25 should not be paid from RPTTF, but instead should be included in the Administrative Cost Allowance, subject to the 3 percent cap.

Payee: Successor Agency					
Item	Project Name / Debt Obligation	Outstanding Debt Obligation	Total Due During FY2012-13	Six-Month Total	Funding Source
11	Collective Bargaining Units	2,497,403	1,873,500	1,873,500	RPTTF
<p>Pursuant to HSC section 34171(b), <i>“Employee costs associated with work on specific project implementation activities, including, but not limited to, construction inspection, project management, or actual construction, shall be considered project-specific costs and shall not constitute administrative costs.”</i> The Successor Agency has not demonstrated that the above employee costs are associated with specific project activities or construction.</p> <p>Unless the successor agency can provide documentation supporting these items as enforceable obligations, item 11 should not be paid out of RPTTF, but instead should be included in the Administrative Cost Allowance, subject to the 3 percent cap.</p>					