

THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE
March 13, 2013

Consideration of a Request for a Waiver of the Forfeiture of Performance Deposit and
Assessment of Negative Points for Tres Lagos Apartments (12-114)
Qualified Residential Rental Project Program
(Agenda Item No. 4)

ACTION:

Consider the approval of a Waiver of the Forfeiture of Performance Deposit and Negative Points for Tres Lagos Apartments (12-114). This item was originally heard for consideration and continued by the Committee at the meeting held on January 16, 2013.

BACKGROUND:

An Applicant bears the risk of forfeiting all or part of their performance deposit and receiving negative points if the Allocation is not used in accordance with the conditions and timeframes set forth in the California Debt Limit Allocation Committee (“CDLAC”) Resolution. As provided for under the Government Code, CDLAC permits an Applicant to request the waiver of the forfeiture of the performance deposit and negative points if the allocation is not used to issue the bonds within the set timeframe given. For a waiver to be approved, the CDLAC Executive Director subjects the request to two tests: 1) was the issue or event that prevented the issuance of the bonds unforeseen; and 2) was the issue or event wholly outside the control of the Applicant and Project Sponsor. A request must pass both tests.

Tres Lagos Apartments Project (12-114)

On September 26, 2012, the Tres Lagos Apartments Project (“Project”) was awarded \$13,634,145 in tax-exempt bond allocation. The Project’s issuance deadline was December 26, 2012. After some discussion in December, on January 3, 2013, the California Statewide Communities Development Authority (the Applicant) notified CDLAC by letter that PC Wildomar Tres Lagos, LP (the “Project Sponsor”) wanted to return the awarded allocation.

According to the Project Sponsor, the County of Riverside (“County”), the successor agency of the Riverside County Redevelopment Agency, submitted their first Recognized Obligation Payment Schedules (“ROPS”) to the State Department of Finance (“DOF”) on April 12, 2012. The ROPS showed the County’s funding commitments (including loans for projects such as the Tres Lagos Apartments) and the funds the County planned to meet its various obligations with. For the Project, the first ROPS showed the Project’s loan obligation on two lines to delineate the two types of funds (\$1,000,000 and \$9,500,000), totaling \$10,500,000. The County followed up with a second ROPS submission on May 3, 2012; showing the \$10,500,000 loan obligation to the Project. DOF responded on April 25, 2012 and May 18, 2012, respectively, with lists of items that did not qualify as enforceable obligations, which the Project was not listed on either.

On May 26, 2012, DOF issued a letter approving all items on the County’s ROPS that were not objected to in their two preceding responses (see Attachment A). On August 30, 2012, the County submitted their third (now periodic) ROPS, showing the \$10,500,000 obligation. On October 14, 2012, DOF responded; denying a portion of the obligation and deeming the \$10,500,000 loan agreement between the Project and the County not enforceable. Denial of the obligation created a fatal funding shortfall for the Project, and the Project Sponsor was unable to find a replacement funding source that would provide the Project with the ability to issue and begin construction by the CDLAC deadline. Given these circumstances, the Project Sponsor is requesting a waiver of penalties associated with returning the allocation.

DISCUSSION:

This item was originally presented to the Committee at its January 16, 2013 meeting. At said meeting, the Committee requested additional information from staff regarding the project's timeline of obtaining the DOFs approvals and objections, which is provided below:

Timeline:

- ROPS I submitted – April 12, 2012
- DOF response to ROPS I – April 25, 2012 [*no objection to Tres Lagos*]
- ROPS II submitted – May 3, 2012
- DOF response to ROPS II – May 18, 2012 [*no objection to Tres Lagos*]
- DOF approved ROPS I & II – May 26, 2012 [*approved all remaining items that were not objected to in their two preceding responses*]
- AB1484 amended and signed into law – June 25 & June 27, 2012, respectively
- Applicant applied to CDLAC for bond allocation – July 18, 2012
- ROPS III submitted – August 30, 2012
- Applicant received CDLAC bond allocation – September 26, 2012
- DOF response to ROPS III – October 14, 2012 [*deemed the \$10,500,000 loan agreement between the project and the Riverside County Public Housing Authority not enforceable*]

At the Committee's direction, CDLAC Staff publicized an informational memorandum stating that, as a policy and in alignment with the CDLAC Regulations, "...all RDA-related projects that receive an award of allocation **after March 16, 2011** and subsequently fail to issue bonds will be subject to all non-issuance penalties as described in the CDLAC Regulations." The memorandum was sent to all CDLAC subscribers and continuously posted on the CDLAC website since March 11, 2011. The Project received an award of allocation on September 26, 2012.

The Project Sponsor acknowledges that they were aware of the Committee's direction for these situations; however, they believe that this situation merits special consideration by the Committee since the DOF denial occurred months after three written (de facto) approvals by DOF. The Project Sponsor has pointed out that they actually purposely waited until after DOF's approval of the ROPS before submitting an application to CDLAC.

At the January 16th CDLAC Meeting, the Committee learned that each of DOF's ROPS Letters include language reserving their ability to reconsider any approval of an obligation if it should appear in a subsequent ROPS submission. Additionally, the Committee learned that AB 1484 now provides the Successor Entities with the ability to secure an unqualified approval of an enforceable obligation from DOF.

At the time of application submission and subsequent CDLAC approval, the DOF ROPS approval was commonly seen as the final hurdle to concluding that the RDA-related commitment was valid and could be relied upon, even though DOF included conditional language in their approval correspondence. Lenders, investors, public agencies, and Bond Counsels all concluded that a subject project could close and proceed through the development process. Further, few appear even today to be aware of the availability of the DOF Final Determination Letter option provided by AB 1484; as evidenced by the fact that only four (4) of these letters have been issued since June.

As a matter of course, CDLAC relies upon the Bond Counsel's determination that a project can proceed based upon a review of the legal and regulatory circumstances at the time. Staff does not believe that

CDLAC should penalize the Project Sponsor for relying upon the Bond Counsel's Opinion, the good-faith actions of the Successor Entity, and the financing entities that understood all necessary commitments to be in-place at the time of CDLAC approval. Based upon these collective opinions, staff still concludes that for Tres Lagos, this situation would still have been unforeseen by the Project Sponsor at the time of application and award acceptance. Thus, when applying the waiver request tests (namely that the fatal issue was wholly unforeseen, and that the issue was out of the control of the Issuer and Project Sponsor), Staff believes this request meets the standard CDLAC uses for a recommendation of approval of a waiver of penalties.

RECOMMENDATION:

In light of the circumstances described and the additional information gathered following the January 16, 2012 CDLAC Meeting, staff recommends the approval of the Waiver of Forfeiture of the Performance Deposit and Negative Points for the Tres Lagos Apartments (12-114).

Prepared by Sarah Lester



May 26, 2012

Lisa Brandl, Executive Director
County of Riverside Economic Development Agency
P.O. Box 1180
Riverside, CA 92502

Dear Ms. Brandl:

Subject: Recognized Obligation Payment Schedule Approval Letter

Pursuant to Health and Safety Code (HSC) section 34177 (l) (2) (C), the County of Riverside Successor Agency submitted Recognized Obligation Payment Schedules (ROPS) to the California Department of Finance (Finance) on April 12, 2012 for period of the January to June 2012 and on May 3, 2012 for the period of July to December 2012. Finance is assuming appropriate oversight board approval. Finance has completed its review of your ROPS, which may have included obtaining clarification for various items.

Except for items disallowed in whole or in part as enforceable obligations noted in Finance's letters dated April 25, 2012 and May 15, 2012, Department of 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 (RPTTF) 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 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 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 Robert Scott, Supervisor at (916) 322-2985.

Sincerely,

MARK HILL
Program Budget Manager

cc: Ms. Pam Elias, Chief Accountant, Property Tax, Riverside County Auditor-Controller
Ms. Jennifer Baechel, Business Process Analyst, Riverside County Auditor-Controller
Ms. April Nash, Supervising Accountant, Riverside County Auditor-Controller