

THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE
September 26, 2012

Consideration of Appeal by Albert Otero Jr. of the Assessment of Negative Points and Debarment from the CDLAC Tax Exempt Bond Allocation Program for Affordable Housing Construction, Inc. and All Related Entities and Parties
(Agenda Item No. 6)

I. ACTION

Consideration of an appeal of an assessment by the Executive Director of new negative points and continued debarment from the CDLAC Tax Exempt Bond Allocation Program for American Housing Construction, Inc.; its principals, any and all related entities, and any and all related parties as defined in Section 5000 of the CDLAC Regulations.

II. BACKGROUND

CDLAC provides tax exempt bond allocation to projects with the goal of providing a defined set of public benefits to the communities they are developed in. This resource is limited, and thus CDLAC operates on the basic assumption that any awarded allocation will be put to use as committed to by the project's development team. When this does not occur, CDLAC has the option to assess penalties for the failure to comply with the CDLAC Resolution, including the failure to deploy the allocation as intended and committed to by the Project Sponsor or other related parties, and/or if the public benefits are not conveyed. These penalties were documented in the original CDLAC Procedures, and currently in Section 5230 of the CDLAC Regulations.

III. DISCUSSION:

Previous CDLAC Actions

Between 2001 and 2004, CDLAC awarded allocation to nine (9) QRRP applications where American Housing Construction Incorporated ("AHC") was the Project Sponsor. TCAC also awarded 9%-level tax credits to one (1) application by AHC. In 2005, CDLAC learned that all ten projects had either stalled or entirely failed to move forward. For each of the bond projects, the bonds had been issued by the CDLAC-imposed issuance deadline as a "Dry Closing" (where the bond documents are executed in a closing but only a de minimis amount of bond proceeds are drawn), but construction had not commenced. At the time, AHC had cited a dispute with their tax credit investor and inability to enter into final Partnership Agreements as the reason for not proceeding. Ultimately, AHC was replaced as the developer on three (3) out of the nine bond projects, with the projects completing construction and delivering the affordable rental units as originally intended. The other six (6) projects redeemed their bonds (losing the bond allocation), one of which was later developed for affordable housing, another is currently in development for affordable housing, two more remain undeveloped, and the last two later lost their affordability covenants to foreclosure (please attached summary table). The final portion of the CDLAC application fee for two of these projects, Holly Tree Village and Almond Tree Village, also remained unpaid.

On December 15, 2005, then-CDLAC Executive Director Laurie Weir sent a letter to AHC informing them of: 1) a provisional assessment of negative points (for the abovementioned failures to develop the subject projects); 2) a request for payment of unpaid fees; and 3) the possibly finding of future applications from AHC and its principals ineligible for consideration of award of new allocation. AHC and its principals were offered the opportunity to appeal these determinations at that time, but did not do so on their own behalf. Ms. Weir then confirmed these determinations via a second letter dated January

26, 2006. As much as a total of 40 negative points were assessed against them for varying time periods between 2006 and the end of 2008.

Almond Tree Foreclosure

Following the redemption of the original bonds for the Almond Tree Village Apartments, the property was later transferred from AHC, via its affiliate AHC Finance, LLC, to GTS Property Santa Ana, Inc. (“GTS”) on July 16, 2004. Despite the bond redemption, the affordable housing restrictions recorded on the property’s title remained in-place. GTS attempted to develop the property first as a mixed-income housing development, and later as a predominately affordable housing development.

A recent investigation by CDLAC uncovered that on May 11, 2006, GTS executed a Deed of Trust with Assignment of Rents as Additional Security with a set of individuals as a collective noteholder (the “Noteholders”, otherwise known as “CTWY”). On March 17, 2009, the Noteholders issued to GTS, and had recorded, a Notice of Default and Election to Sell Under the Deed of Trust (the “NOD”) for non-payment of the loan. Afterwards the property was later transferred by GTS to Diversified California Affiliated Properties, LLC (an affiliate of AHC, “Diversified”) on July 10, 2009, and again to AHC Finance, LLC on April 7, 2010, and finally back to Diversified on April 23, 2010. However, the Noteholders’ Note was assumed in each case and the Noteholders’ rights as provided for under the NOD were retained. AHC failed to cure the Noteholders default during the period of their ownership of the property. Accordingly, the Noteholders foreclosed on the property on or before July 13, 2010. Said foreclosure terminated the affordable housing restrictions recorded on the property; thereby losing the opportunity to have the site provide the 173 affordable units as required by the original CDLAC Resolution.

As provided for under Section 17.L of the then-applicable CDLAC Procedures, a Project Sponsor may be subject to ten (10) negative points for up to three (3) years for failure to comply with the CDLAC Resolution from the date of assessment/determination. Therefore, the current Executive Director assessed ten (10) new negative points for AHC, its affiliates and subsidiaries, and its co-owners/principals for the period of January 4, 2012 to January 4, 2015.

Ineligibility for Consideration based upon Repeated Violations

According to CDLAC records, AHC has been assessed negative points five (5) times (plus the three current instances) for the following violations:

- 1) *Holly Tree Village Apartments (CDLAC Resolution 03-36)*
 - a) 10 negative points from 2006-2008 for failure to spend the proceeds of the bond issuance
 - b) 10 newly-assessed negative points (2012-2015) for failure to comply with the CDLAC Resolution (non-payment of filing fee owed*)
- 2) *Mountain View Village Apartments (02-37)*
 - a) 10 negative points from 2005-2006 for failure to utilize a past allocation to complete the related project
- 3) *Chancellor II Apartments (01-199)*
 - a) 10 negative points from 2005-2006 for failure to utilize a past allocation to complete the related project
- 4) *Las Trojas Apartments (01-205)*
 - a) 10 negative points from 2005-2006 for failure to utilize a past allocation to complete the related project
- 5) *Sycamore Village Apartments (02-21)*
 - a) 10 negative points from 2006-2008 for failure to spend the proceeds of the bond issuance
- 6) *Almond Tree Village Apartments (03-49)*
 - a) 10 newly-assessed negative points (2012-2015) for failure to comply with the CDLAC Resolution (non-payment of filing fee owed*)

- b) 10 newly-assessed negative points from 2012-2015 for failure to comply with the CDLAC Resolution (Removal of Affordability Covenants due to Foreclosure)
- * *It should be noted that simultaneous to their filing of this Appeal on February 17, 2012, AHC submitted payment for the outstanding fees owed for the Holly Tree and Almond Tree applications.*

These repeated violations represent a previous and continuing pattern of non-compliance with the applicable CDLAC Procedures, and the individual CDLAC Resolutions that AHC agreed to comply with when the allocations were awarded to them for the subject projects. Further, by Mr. Albert Otero Jr.'s admission, Mr. Otero continues to provide financial consulting services to Project Sponsors submitting CDLAC and TCAC applications for consideration. Mr. Otero does not identify himself as the Financial Advisor/Consultant of record for these projects as called for on the CDLAC and TCAC Application Forms.

Each of the before-mentioned projects was subject to the then-CDLAC Procedures Section 17, which stated: "Additionally, multiple or repeated violations as described above may result in the Committee finding Applications involving the Project Sponsor ineligible for consideration of an Allocation at the recommendation of the Executive Director." This provision still exists in Section 5230 of the CDLAC Regulations. Pursuant to this provision, Executive Director Weir determined in 2006 that AHC and its principals would be ineligible for consideration of new awards of allocation by CDLAC. However, by virtue of the subsequent violations of CDLAC Resolutions (i.e. the unpaid fees and the Almond Tree foreclosure) that involved parties and entities related to AHC, CDLAC staff believed that the 2006 Determination needed to be reaffirmed and clarified to confirm that said determination would include all related parties and entities. Therefore, the current Executive Director, in the effort to further clarify the 2006 CDLAC determination, resolved that should American Housing Construction Incorporated, any subsidiary or affiliate thereof, and/or either Arthur Otero and/or Albert Otero Jr. (the owners and principals thereof, as individuals) submit an application requesting new or additional bond authority, or be found to be involved in any such application in any way, the Executive Director would recommend to the Committee that the subject application be deemed ineligible for consideration of an allocation.

On September 12, 2012, Mr. Albert Otero Jr. submitted a package of documents in support of his assertion that he was not a co-owner of AHC when the first set of violations occurred and when Executive Director Weir made her determination in 2006. CDLAC staff relies upon the information presented in a project's application and in correspondence with the applicant's and project sponsor's representatives. CDLAC's application process does not require submission of proof of ownership interests or proof via a resolution establishing who is authorized to represent a project sponsor in its dealings with CDLAC. In this case, when the CDLAC Resolution violations for the projects listed above were discovered by CDLAC staff, correspondence and phone conversations related to the projects and the determination were chiefly handled by Mr. Albert Otero Jr.; so CDLAC staff concluded that Mr. Otero was acting as both a "Principal" and "Management Agent" (as defined in the CDLAC Procedures of the time) for AHC. While Mr. Otero's documents may open a question as to whether he was a share-holding partner in the ownership of AHC prior to 2006, Mr. Otero does not dispute his role as AHC's representative (and thus "Management Agent") to CDLAC at that time. Further, Mr. Otero does confirm that he was a partner in the ownership of AHC at the time that the more recent violations (i.e. the unpaid fees and the Almond Tree foreclosure) occurred.

It should be noted that nearly \$111 million in valuable bond allocation was lost as a result of AHC and its principals' actions on the before-mentioned projects; with at least one case where other competitive projects were denied allocation because this limited resource was awarded to an AHC project that was unable to proceed through the development process. 402 affordable housing units remain undelivered to

the communities that desperately need them; with no guarantee that they'll ever be built. CDLAC staff believes that such a situation should not be allowed to happen again.

IV. RECOMMENDATION:

Staff recommends the denial of the Appeal of the assessment of negative points and debarment, submitted by Albert Otero Jr. on behalf of American Housing Construction Incorporated (and all related parties and entities).

Prepared by Sean Spear