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DATE: June 2, 2017

TO: Low Income Housing Tax Credit Stakeholders

FROM: Gina Ferguson, Development Section Chief

SUBJECT: 2017 Second Round Guidance

With this memorandum, the California Tax Credit Allocation Committee (“TCAC”) is providing guidance for prospective second round applicants.

Advisory Guidance to Second Round Applicants

During first round reviews of nine percent (9%) and four percent (4%)-plus-State credit applications, TCAC staff noted items to clarify for second round applicants based on regulation requirements. The following items and corresponding application content expectations were identified.

Documenting Land Acquisition

For 2017, TCAC Regulation Section 10327(c)(6) was revised in order to more clearly identify the requirements of new construction and rehabilitation acquisitions costs. Please review this section and contact TCAC staff with any questions prior to the application deadline. Staff specifically noted that some first round new construction project applicants seemed not to fully understand site purchase documentation requirements. The value of land acquired through a third party transaction with an unrelated party must be evidenced by a sales agreement, purchase contract, or escrow closing statement. The value of land acquired from a related party is underwritten using the lesser of the current purchase price or appraised value pursuant to Section 10322(h)(9) so applications must include both an appraisal and purchase contract. For competitive projects, the value of donated land, including land donated as part of an inclusionary housing ordinance, must be evidenced by an appraisal pursuant to Section 10322(h)(9). Rehabilitation applications must include both an appraisal and purchase contract.

During application reviews, there are cases where a considerable amount of TCAC staff time was spent trying to understand unusual site control for a project (multiple contiguous site purchases,

scattered sites, phased projects, etc.) and how land cost/value and acquisition cost in the application were derived (for example, a phased project’s prorated land value). If the site control is an unusual or complicated case where the site control and/or the cost or value are not clear based on the documents submitted, please include a narrative explanation. For line item figures in the application not clearly outlined in the supporting documents, please provide an explanation as to how these were derived, complete with calculations. TCAC staff noted the same issues in the Service Amenities point category. Please apply the guidance above for Service Amenities section (Tab 24) where services being provided and the costs associated are not clearly evident based on the documentation provided.

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Calculating Eligible Basis

Pursuant to TCAC Regulation Sections 10325(c)(1)(A) and 10325(d), in calculating actual eligible basis TCAC shall use all project costs listed within the application unless those costs are not includable in basis under federal law. Exclusion from basis can be demonstrated by either the shaded cells in the application form itself or by a certification from the development team’s third party tax professional. For purposes of determining the actual eligible basis for the cost efficiency point category or “high cost” determination, the third party tax professional certification must identify all ineligible costs not included in eligible basis by the specific line item description(s) and dollar amount(s) in the Sources and Uses Budget worksheet of the application. Any costs not included in eligible basis that are not acknowledged as ineligible by the tax professional will be considered when determining the actual eligible basis for the cost efficiency point category or “high cost” determination.

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Basis Related to Parking

Applicants must demonstrate compliance with TCAC Regulation Section 10327(c)(10), which requires 9% new construction projects with land use entitlements after 12-31-16 to exclude from eligible basis parking costs that exceed specified ratios. Documenting compliance includes identification of a project’s parking spaces, presenting a calculation of the applicable ratio as described in TCAC regulations, an explanation of any applicable major transit stop information (including support for any representation that the project site is not within ½ mile of a major transit stop as defined in Section 21064.3 of the Public Resources Code), and documentation from a CPA of any required basis reduction in the final cost certification. Please [contact TCAC staff](#) with any questions prior to the application deadline.

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Prevailing Wage Documentation for Threshold Basis Limit Increase

Pursuant to TCAC Regulation Section 10327(c)(5)(A) a threshold basis limit increase is permitted for prevailing wage requirements. The application checklist Tab 18 requires an applicant certification of prevailing wage requirements as a means of clearly identifying which prevailing wage requirements the project is subject to. Additionally, the checklist requires applicants to confirm whether the project is or is not required to comply with Section 1725.5 of the Labor

Code. Please review the checklist carefully and contact TCAC staff with any questions prior to the application deadline.

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Tranche B Financing

Tranche B loans for public funds points and the final tie breaker calculation must be identified as Tranche B financing in the commitment letter. The application requires evidence of private Tranche B subsidy-based loans. The commitment letter must identify the rental subsidy and the Tranche B (and Tranche A) amount. For a commitment letter that does not explicitly state the Tranche B amount, it is presumed that there is no Tranche B.

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Large Family Housing Type

Applicants must demonstrate compliance with play/recreational facility requirements, including play/recreational area(s) for ages 2-17, as described in TCAC Regulation Section 10325(g)(1)(D). These should be clearly described and identified in Attachment 4(A), Attachment 12, and the architectural drawings.

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Local Development Impact Fees

TCAC is providing guidance regarding local development impact fees as shown on the Sources and Uses Development Budget and TCAC Attachment 18(A). The total dollar amount of the local development impact fee line item in the Sources and Uses Budget worksheet must match the amount shown on TCAC Attachment 18(A) (this may include multiple sheets if there are multiple entities assessing fees). Both the residential and commercial costs must be included. In cases where alternative documentation from the fee assessing entity is submitted in lieu of TCAC Attachment 18(A), a detailed explanation from the applicant clearly identifying how the fee amounts were derived must be included in Tab 18. This may include a narrative explanation, marking up the documentation from the assessing entity showing the calculations, or a table showing the calculation based on dwelling unit or square footage, and should clearly indicate how the total in the Sources and Uses Budget was calculated.

For the local development impact fees increase to the Threshold Basis Limit (TBL) on Page 20 of the Application worksheet, only the residential portion of the fees may be included. While local development impact fees can be waived, they still must be included as a project cost in the Sources and Uses Budget worksheet with the corresponding source being the fee assessing entity. Furthermore, the project is not eligible to receive a TBL increase for waived local development impact fees.

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Approvals Necessary to Begin Construction for Readiness to Proceed Point Category

Any item on TCAC Application Attachment 26, Approvals Necessary to Begin Construction, that are checked "Not Applicable (N/A)" must include documentation and/or a clear explanation

stating why the item is not applicable. A sheet may be attached if needed. In no case should any of the items can be left unchecked.

If any item on Attachment 26 contains a statement that says “not required” or “not reviewed” by this agency, you must submit another Attachment 26 completed by the agency that does have oversight over the approval(s).

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Environmental Clearance

TCAC is providing further clarification relating to environmental clearance for the Readiness to Proceed point category. Tab 26 of the application must include National Environmental Policy Act (NEPA) environmental clearance documentation for **each** federal funding source in the project. In some cases, the same Responsible Entity under NEPA 24 CFR Part 58 is providing additional funds for the project from a different federal funding source. In those cases, NEPA may be exempt, but documentation (i.e. Finding of Exemption form) must still be included in the application.

- As an example, if a project has HOME funds where a NEPA review has already been completed and the project is subsequently awarded CDBG funds, the application must contain NEPA environmental clearance documentation for the HOME **and** CDBG funds no matter the level of NEPA environmental clearance (i.e. exempt, excluded, FONSI, etc.).
- In another example, if a project has HUD Project-based Section 8 and HOME funds, the application must contain NEPA environmental clearance documentation for both sources.

For rehabilitation projects that are exempt from NEPA, an explanation for the exemption **and** exemption documentation (i.e. Finding of Exemption form) must be submitted in Tab 26.

In addition to the clarifying information above, please also refer to previously posted guidance relating to environmental clearance for the Readiness to Proceed point category on the TCAC website:

- Memorandum dated May 26, 2011:
(<http://www.treasurer.ca.gov/ctcac/2011/firstround/update.pdf>)
- Memorandum dated June 20, 2013:
(<http://www.treasurer.ca.gov/ctcac/2013/secondround/guidance.pdf>)

If applicants have circumstances regarding NEPA environmental clearance not addressed in the above guidance, please contact your regional TCAC analyst immediately.

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Final Tie Breaker

- **Land Donation and Fee Waivers:** Land donations and fee waivers as described in TCAC Regulation Sections 10325(c)(1)(C), 10325(c)(10)(A) and 10325(c)(10)(B) are true donations when not encumbered by any debt obligation including residual receipt payments. Please ensure land donations and fee waivers are identified and categorized correctly in the Final Tie Breaker Self-Score worksheet to assure only true land donations

and fee waivers are excluded from the leveraged soft resources/financing increase to the requested unadjusted eligible basis in the second ratio of the final tie breaker calculation.

- **Leveraged Soft Resources from Unrelated Non-Public Entity(ies):** In order for an applicant to have leveraged soft resources from an unrelated non-public entity(ies) qualify for the first ratio of the final tiebreaker calculation (TCAC Regulation Section 10325(c)(10)(A)(ii)), the applicant shall provide in the application (1) a certification from an independent Certified Public Accountant (CPA) or independent tax attorney that the leveraged soft resource(s) is from an unrelated non-public entity(ies), that the unrelated non-public entity(ies) shall not receive any benefit from a related party to the project, and that the leveraged soft resource(s) is available and not committed to any other project or use; and (2) a narrative from the applicant regarding the nature and source of the leveraged soft resource(s) and the conditions under which it was given.
- **Related Party Transactions:** When a related party to the applicant has transferred land or existing improvements to an entity that is now transferring the land or improvements to the applicant, this is not a leveraged soft resource under TCAC Regulation Section 10325(c)(10)(A)(iii).
- **Ineligible Off-Site Costs:** Ineligible off-site costs excluded from the final tie breaker calculation must be entered as a positive number on the row labeled “Less: Ineligible Offsites” (cell E42) in the Final Tie Breaker Self-Score worksheet to assure that these costs are correctly excluded and accounted for in the increase to the requested unadjusted eligible basis pursuant to TCAC Regulation Section 10325(c)(10)(B).

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Vacancy Rate for Special Needs and SRO Housing Types

Special Needs and SRO housing type applications are required to use a 10% vacancy rate assumption pursuant to TCAC Regulation Section 10327(g)(3) as part of the underwriting criteria of Section 10327(g). Applicants proposing a lesser vacancy rate as permitted by TCAC regulation must obtain a waiver prior to submitting an application. This waiver requirement includes projects with rental subsidies. TCAC staff strongly recommends applicants allow sufficient time for the waiver request to be reviewed and a response to be provided prior to the application deadline.

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Operating Expenses

Pursuant to TCAC Regulation Section 10327(g)(1) minimum operating expense requirements are identified as part of the underwriting criteria of Section 10327(g). Operating expenses are expenses related to the operation of the property. TCAC calculates the published minimum operating expenses based on annual operating expense (AOE) data collected annually from awarded projects. Standard operating expense categories are clearly identified in both the TCAC application and the AOE form. TCAC Regulation Section 10327(g)(1) lists certain expenses that are not considered operating expenses and should not be included as such in the TCAC application. The list is not meant to be an exhaustive list; the items identified are examples of non-operating expenses such as depreciation and service amenity costs. For second round

applicants TCAC staff is clarifying that transit pass expenses, financing-related expenses, and monitoring costs are not considered operating expenses. These costs would be included in the 15-year pro forma in the section below Total Operating Expenses. Please contact TCAC staff with any questions prior to the application deadline.

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Miscellaneous

Following are some examples of application errors seen in previous applications. Please review your applications carefully to avoid or correct these errors:

- Failure to include explanatory information when submitting multiple, lengthy, and interrelated documents;
- Failure to include all necessary documentation to support site amenity point requests;
- Failure to provide detailed explanations for approvals on TCAC Application Attachment 26 identified as “N/A”;
- Failure to provide documentation verifying NEPA completion for each federal funding source (i.e. HOME, CDBG, HOPWA, NSP, USDA RHS financing, HUD Project-based Section 8, etc.);
- Failure to properly complete the Funding Source table on Page 19 of the Application worksheet;
- Failure to note caution formula prompts in the Excel application (i.e. funding gap, exceeding limits, etc.);
- Failure to copy the correct application to the flash drive/CD/DVD ***Make sure the application being submitted is for the correct project you are submitting for.***

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When preparing your application for the second round, please also refer to the following links on the TCAC website:

- Competitive Tax Credit Application Submittals
<http://www.treasurer.ca.gov/ctcac/2016/submittals.asp>
- Current Guidance Memos
<http://www.treasurer.ca.gov/ctcac/guidance.asp>
- 2017 Development Application Workshop Questions and Answers (Q&As)
<http://www.treasurer.ca.gov/ctcac/2017/workshops/questions.pdf>
- First Round Applicants Re-applying in Second Round
<http://www.treasurer.ca.gov/ctcac/2017/secondround/memo.pdf>

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If you have any questions regarding the above guidance items, please contact your regional analyst (<http://www.treasurer.ca.gov/ctcac/assignments.pdf>).