

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE
Minutes of the June 12, 2013 Meeting

1. Roll Call.

Bettina Redway for State Treasurer Bill Lockyer chaired the meeting of the Tax Credit Allocation Committee (TCAC). Ms. Redway called the meeting to order at 10:00 a.m. Also present: Alan Gordon for State Controller John Chiang; Timothy Hsu for California Housing Finance Agency Executive Director Claudia Cappio; Department of Housing and Community Development Representative Laura Whittall-Scherfee; and County Representative Lois Starr.

Department of Finance Director Ana Matosantos was absent.

2. Approval of the minutes of the May 15, 2013 Committee meeting.

MOTION: Mr. Gordon moved to adopt the minutes of the May 15, 2013 meeting. Ms. Redway seconded and the motion passed by a roll call vote.

3. Executive Director's Report.

Mr. Pavão reported that staff was in process of developing a Google-based map, which would be available on the TCAC website in the next 30-45 days. He explained that the map identified TCAC projects throughout the state and provided information to users such as housing type, size, project number, and management company phone number.

Mr. Pavão reported that staff had been using another mapping product to review analytics related to the location of TCAC projects. He explained that staff would compare project locations to poverty impacted census tracts and other distress and environmental indicators. Mr. Pavão introduced Executive Fellow, Daniel Tran, who carried out the mapping exercise for TCAC.

4. a) Discussion and consideration of the 2013 First Round applications for reservation of Federal and State Low Income Housing Tax Credits.

MOTION: Mr. Gordon moved to adopt staff recommendations. Ms. Redway seconded and the motion passed by a roll call vote.

b) Discussion and consideration of an appeal filed under TCAC Regulation Section 10330 for the 2013 First Round application for reservation of Federal Low Income Housing Tax Credits and opposed by the Local Reviewing Agency.

Robert Haden, representative for Central Valley Coalition for Affordable Housing (CVCAH), commented on the appeal related to Manali Town Homes (CA-2013-027). Mr. Haden stated that the project sponsor was not made aware of the Los Angeles Housing Department's (LAHD) position until a couple of days ago. He commented that it was improper that staff did not inform the sponsor of the pending issue with LAHD in any of the 3 letters they sent.

Mr. Gordon suggested reviewing the predicate issue of two organizations being seemingly identical, which may cause TCAC to violate its regulations should the program award credits to a sponsor that has already received awards for 4 projects in the current round. Mr. Gordon asked Mr. Haden to address that the issue of violating the TCAC regulations as he felt it was more critical than the LAHD issue.

Mr. Haden stated that he would address that issue during his presentation because both issues tied together. He stated that there were several problems related to LAHD's opposition to the project. The first being that the sponsor was not made aware of the agency's position until shortly before the meeting. Mr. Haden stated that LAHD's position should not have applied to the current funding round. He stated that he did not know how the policy adopted by the mayor of Los Angeles on March 4, 2013, the same day applications were due, could apply to the current round. Mr. Haden stated that TCAC would be required to change its regulations in order to conform to the policy that only the Los Angeles projects funded by LAHD should receive TCAC funding. He clarified that the sponsor requested tax credits for Manali Town Homes, but not LAHD funding. He stated the project should be able to move forward with tax credit funding because it did not require LAHD funding. Mr. Haden added that the position taken by the City of Los Angeles specifically stated what was required to obtain approval from LAHD related to those projects that received LAHD funds. Mr. Haden commented that he did not understand why anyone would want to prevent a perfectly acceptable project from moving forward when there was sufficient credit available.

Ms. Redway stated that the Committee would not make its decision regarding the appeal based on LAHD's recommendation. She clarified that the Committee would act based on staff recommendations in accordance with program regulations.

Mr. Haden stated that he would like to address the issue that the two nonprofit organizations were identical. He explained that the two organizations were not identical because they had separate boards of directors and officers. He stated that under these circumstances, the organizations were not considered related parties according to TCAC regulations. Mr. Haden stated that the rationale was that the number of awards should somehow be limited. He stated that no one has suggested there should be a rationale for limiting the number of awards to a nonprofit that was not a developer in the deal. Mr. Haden stated that staff took that position when Regulation section 10325(c) was adopted. He explained that the rationale for limiting project awards did not apply to nonprofits at all when the nonprofit was in a non-lead position, which was the case for Manali Town Homes. Mr. Haden stated that neither CVCAH nor Valley Initiative were not named the developer in any of the applications they submitted. In all applications the two entities were named the managing general partner, which had a relatively limited role to play. Mr. Haden explained that the managing general partner was not in the business of constructing or developing the project. He stated that the CVCAH was in the business of being the managing general partner, which brought in a tax credit exemption under 214G of the revenue taxation code. Mr. Haden stated that the 4 award limitation should not apply at all because the rationale behind Section 10325(c) did not apply when the nonprofit was not the lead agency.

Mr. Gordon reiterated Mr. Haden's comment that the nonprofit was a general partner. He noted that Section 10325(c) stated that awards were limited to individuals,

entities, affiliates, related entities and applied to a project applicant, developer, sponsor, general partner, and apparent companies, etc. He asked Mr. Haden to explain the discrepancy in his testimony.

Mr. Haden stated that when the regulation section was adopted, people recognized and commented on the fact that there was no reason to limit the number of awards to a nonprofit organization acting in a non-lead position. He stated that the two nonprofits should be reviewed to determine whether if they were related parties and not whether they were managing general partners in the projects. He stated that related parties were defined in the regulations. Mr. Haden commented that if Section 10325(c) redefined a related party, the change should have been part of the regulation process. He stated that after adoption of 10325(c), TCAC held 4 workshops during which staff made it clear that the 4 projects per sponsor limitation would not apply when a nonprofit was not a lead position.

Mr. Haden explained that CVCAH and Valley Initiative had separate boards of directors and were not related parties as defined by TCAC regulations. He stated that there was no section in the regulations that described related parties as two nonprofit organizations. Mr. Haden stated that since Section 10325(c) did not change the definition of related parties, CVCAH and Valley Initiative were not related parties because they had separate boards of directors and officers. In addition, the two agencies filed separate tax returns and had separate tax advisors. Mr. Haden stated that the minor points indicating the two entities were somehow affiliated did not prove them to be related parties as defined by TCAC regulations.

Mr. Gordon stated that the Committee vote had nothing to do with LAHD issue. It was based primarily on staff's view that the two nonprofits were related parties. He noted that the organizations had the same attorney and address. He commented that the 4 awards per sponsor rule was good public policy for many reasons. He stated that he supported staff's decision regarding Manali Town Homes.

Mr. Haden commented regarding Mr. Gordon's statement that the two nonprofits had the same attorney. He stated that if an attorney could not represent two clients, no attorney in New York could represent more than two corporations because the clients would be considered related due to their outstanding securities. Mr. Haden commented that it was a meaningless fact that one attorney represented two clients. He stated that lawyers represent multiple parties all the time. Mr. Haden stated that nonprofits should be encouraged and not limited in their efforts to help the industry grow and prosper.

Ms. Redway stated that she was ready to make a motion to deny the appeal based on the regulations and facts presented. She stated that she felt the situation was clearly considered at the time the regulations were adopted. She commented that the board anticipated grey areas, however the two nonprofits discussed that day should be considered related parties.

MOTION: Ms. Redway moved to deny the appeal regarding Manali Town Homes. Mr. Gordon seconded and the motion passed by a roll call vote.

5. Discussion and Consideration of the 2013 Applications for Reservation of Federal and State Low Income Housing Tax Credits (LIHTCs) for Tax-Exempt Bond Financed Projects.

Mr. Pavão stated that TCAC received 5 applications for 4% plus state credits. He reported that staff recommended all 5 applications for awards.

MOTION: Mr. Gordon moved to adopt staff recommendations. Ms. Redway seconded and the motion passed by a roll call vote.

6. Discussion and consideration of the 2013 First Round Application for Reservation of Federal Low Income Housing Tax Credits as a priority project.

Mr. Pavão advised the Committee that the sponsor for Tres Lagos Apartments withdrew their request to fund the project.

7. Public Comment.

Ms. Redway thanks the TCAC staff for efforts in preparing the 2013 First Round applications.

Pat Sabelhaus, from the California Council for Affordable Housing, commented regarding the LAHD position to oppose any project that did not receive public funding from LAHD. He stated that he did not understand why LAHD could not carry out their objectives by simply making sure the agency had enough applications in the First Round to utilize the funds it had left over in its subsidy program.

Mr. Sabelhaus stated that Manali Town Homes was a 20th project Abhay Gokani has developed. He stated that he has represented Mr. Gokani, was a very efficient developer, for about 10 years. Mr. Sabelhaus reported that 7 of the 9 projects developed by Mr. Gokani received LAHD funding and 2 did not receive any subsidies or "soft funding". He commented that he was surprised by LAHD's opposition to Manali Town Homes. He noted that one of the projects on the agenda cost \$505,000 per unit and another cost \$375,000 per unit. Mr. Sabelhaus stated that Mr. Gokani produced Manali Town Homes at a cost of \$302,000 per unit. He commented that the project was developed efficiently without soft funding, yet the city seemed to oppose anyone trying to produce a project without funding from the city. Mr. Sabelhaus commented that a convoluted reason for the opposition was that the city had \$1.4 million left for the City of Los Angeles regional allocation from TCAC that would go unutilized. He commented that he hoped the Committee would not allow local jurisdictions to act in such a way. Developers spend time and money and assume the risks associated with getting the required entitlements and scoring. Mr. Sabelhaus stated that Manali Town Homes had a low tie breaker at .9 only because the project did not have a soft funding commitment, which dictates whether the project will have a great tie breaker. He asked that the Community review the issues and keep in mind that efficient developers were a good thing.

Mr. Gordon stated that Mr. Sabelhaus was suggesting TCAC override local reviewing agencies (LRAs) that opposed certain projects within their jurisdiction. He commented that he assumed LAHD had reasons for wanting certain projects and opposing others. He stated that he did not feel the Committee had the granularity to

override LAHD's judgment. He asked Mr. Sabelhaus why he thought the Committee should try to do so.

Ms. Redway stated that the board definitely did not make its decision regarding the appeal based on the LAHD issue. She clarified that TCAC had not joined the issue yet. She predicted that when TCAC took up the issue, the discussions would be specific to the project in question. She predicted that the issue would be a tough one and likely come before the Committee in the next couple of years.

Mr. Sabelhaus stated that when the issue of local reviews came up 29 years ago, he was concerned because there was more NIMBY-ism and opposition to affordable housing in general at that time. He stated that he was full of anxiety about what local jurisdictions would do if the local review gave them a veto power over projects. Mr. Sabelhaus stated that he wanted to clarify for the record that the Committee would make the final decision and not the LRA, even though the LRA had a right to comment on projects in their jurisdiction.

Mr. Sabelhaus commented that it was unacceptable that the City of Los Angeles could get authority from the city council and mayor to oppose Manali Town Homes because the project did not get LAHD funding. He stated that the city did not have rationale for opposing the project even though it less costly and more efficient than other city funding projects. Mr. Sabelhaus agreed with Mr. Gordon's comment that local jurisdictions have important opinions, which they generally expressed through their planning and entitlement process and architectural committees. He objected strenuously to the city's general opposition to any project simply because it did not receive LAHD funding. He commented that the city should provide TCAC with documentation and reasoning for opposing the project. Mr. Sabelhaus stated that he worried about cities having the authority to oppose projects because they did not want to raise NIMBY issues or cause citizens to bring grievances to the council members.

8. Closed Session – Litigation (Government Code Section 11126(e)(2)(c))
Discussion with Legal Counsel Regarding Pending Litigation – UHC 00402 Reseda, L.P. v. CTCAC, Sacramento Superior Court Case No. 34-2012-80001337, Filed 12/17/12.

Closed session took place from 10:28 a.m. to 10:44 a.m.

9. Adjournment

The meeting adjourned at 10:54 a.m.