

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE
Minutes of the August 21, 2013 Meeting
REVISED

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 11:00 a.m. Also present: Alan Gordon for State Controller John Chiang; Eraina Ortega for the Department of Finance Director Ana Matosantos; Timothy Hsu for California Housing Finance Agency Executive Director Claudia Cappio; and Department of Housing and Community Development Representative Laura Whittall-Scherfee.

County Representative Lois Starr was absent.

2. Approval of the minutes of the July 17, 2013 Committee meeting.

MOTION: Mr. Gordon moved to adopt the minutes of the July 17, 2013 meeting. Ms. Ortega abstained from the vote. Ms. Redway seconded and the motion passed.

3. Executive Director's Report.

Mr. Pavão reported that staff had almost finished review of the 2013 competitive application for the second and final funding round. He stated that TCAC received 98 applications and would likely recommend 42 projects for 9% credits and 2 for 4% credits.

4. Discussion and consideration of the 2013 Applications for Reservation of Federal Low Income Housing Tax Credits for Tax-Exempt Bond financed projects.

Mr. Pavão advised the Committee that staff reviewed the 12 projects for feasibility and recommended them for funding. He noted that Peppertree Senior Apartments (CA-13-864) was removed from that day's Agenda, but may return for consideration at a future meeting.

Mr. Pavão reported that sponsors for Westside Village (CA-13-856), Harden Ranch Apartments (CA-13-862), and Tyler Park Townhomes (CA-13-857), estimated unusually low tax credit pricing for their projects. He stated that all 3 projects were rehabilitation developments and were estimated to receive \$0.85 per \$1.00 in tax credit pricing. Mr. Pavão brought the Committee's attention to the Staff Report for Gabilan Plaza (CA-13-858), a rehabilitation project in Salinas with an estimated tax credit pricing of \$0.99 per \$1.00. Based on staff's price comparisons, Mr. Pavão recommended the Committee require projects CA-13-856, CA-13-857, and CA-13-862 to submit a letter of intent (LOI) from their equity partners to TCAC earlier than would normally be required so that staff could see how much the equity partner and upper tier investor were contributing and how much of their contribution would actually go into the project. Mr. Pavão predicted that after reviewing the LOIs, staff would be able to determine the cause of the low credit pricing. Mr. Pavão explained that normally LOIs for 9% projects were due within 90 days of their credit reservation and LOIs for 4% projects were due at place-in-service.

MOTION: Mr. Gordon moved to adopt staff recommendations including the additional requirement related to project numbers CA-13-856, CA-13-857, and CA-13-862. Ms. Ortega seconded and the motion passed unanimously.

5. Discussion and consideration of staff recommendation to vacate that portion of the October 10, 2012 decision made on an appeal to staff's point score determination relating to sustainable building practices and sustain the portion relating to the threshold basis increase based on a requirement to pay prevailing wages for the 2012 Application of Federal Low Income Housing Tax Credits (LIHTCs) for The Crossings on Amigo (CA-12-203) project and denial of requested LIHTCs consistent with the ruling in UHC Reseda 00402, L.P. v. CTCAC, Sacramento Superior Court Case No. 34-2012-80001337.

Mr. Pavão reminded the Committee that The Crossings on Amigo was a 2012 Second Round project that was determined to be infeasible due to its scores in the sustainable building and cost efficiency categories and due to the assumption of a basis limit increase for payment of prevailing wages. He reported that the scoring issues were litigated and TCAC received a court order for a peremptory writ of mandate directing TCAC to vacate its decision to deny UHC's appeal related to the deduction of points in the sustainable building category and to grant UHC's appeal on that issue. Mr. Pavão stated that the writ further directed TCAC to reconsider UHC's application for tax credits in light of the court ruling. He reported that staff re-scored UHC's application and assigned it the 10 available points in the sustainable building category. As a result the total application score increased from 127 points to 137 points. Mr. Pavão stated that the application's tie breaker remained at 10.8%. He asked the Committee to endorse the revised score although the applicant was still ineligible for a tax credit award. He explained that the project would not have competed successfully in the Los Angeles regional competition with a score of 137.

Mr. Gordon asked Mr. Pavão if applicants could receive points for being supported by a local government.

Mr. Pavão stated that there was a category in which applicants could garner points if a public funding source contributed funds to their project. He noted that it was TCAC policy to request a review of each application from the local reviewing agency.

Mr. Gordon asked Mr. Pavão if The Crossings on Amigo received a contribution from a local government.

Mr. Pavão stated that the project did not receive a contribution from a local government.

John Bigley, a representative of UHC, reiterated that The Crossings on Amigo received 10 additional points in the sustainable building category. He explained that because staff did not give the applicant the eligible basis boost for payment of prevailing wages, the applicant did not score 100% of the points and was therefore not competitive with other projects.

Mr. Bigley stated that when his brother appeared before the Committee during the original appeal he discussed 2 issues: the sustainable building methods and the eligible basis boost for payment of prevailing wages. He stated that the issue regarding sustainable building methods was being remedied; however there was additional information about the prevailing wage issue that was not shared with the Committee at the last TCAC meeting. Mr. Bigley gave each Committee member a printed document. He explained that the document was the regulations as they pertained to the eligible basis boost for prevailing wages. He stated that in 1999 the first amendment was made to the section that stated "Where the use of federal, state, or local subsidies requires that higher than normal wages must be paid." Mr. Bigley stated that in 2003 the same section was amended to state "for development as required to pay state and federal prevailing wages." He explained that his firm was being judged on the section of the regulations as amended in 2003 because The Crossings on Amigo was a 2012 project. Mr. Bigley commented that the version of the regulations as amended in 2003 were significantly different from the 1999 version. Mr. Bigley stated that when his firm made the first appeal at the previous TCAC meeting, the Committee directed staff to clarify the language in the regulations. He reported that Mr. Pavão released a draft of proposed regulations, which included substantial changes.

Mr. Bigley stated that the project had a \$4.3 million private funding commitment. He noted that the private funding was just as much a soft commitment as much as a public funding was. He stated that the \$4.3 million commitment required payment of prevailing wages because the City of Los Angeles was very labor oriented and his firm did a lot of business there. Mr. Bigley stated that a city council member directed his firm to require payment of prevailing wages. He stated that in order to gain support from the council member, his firm was obligated to pay prevailing wages.

Mr. Bigley stated that during court proceedings the project sponsor was asked to report if it stated in the project application that the sponsor was required to pay prevailing wages. He reported that the sponsor did not state that payment of prevailing wages was not required in their application. Mr. Bigley stated that his firm provided a financing commitment letter, which was a standard commitment letter. He stated that under the regulations TCAC dictated what information must be contained in the commitment letter; however the regulations did not require the sponsor to have a commitment letter that stated prevailing wages would be required at the time of application. Mr. Bigley explained that under Section 10325(c)(8) applicants had 90 days from the date of their tax credit reservation to provide TCAC with documentation of their permanent commitments. He stated that prevailing wage requirements were stated in the permanent financing letters. He explained that his firm intended to state its prevailing wage requirement in its permanent financing documentation consistent with Section 10325(c)(8).

Mr. Bigley summarized that the project had a private funding commitment of \$4.3 million with 55-year term and 0% interest, which replaced a public subsidy that would normally be required. He commented that the private funding alleviated the public sector from providing a subsidy for the project. In addition, it provided well-paid jobs for people who provided labor and 61 units of much needed affordable housing. He concluded that the financing structure of the project provided public benefits and requested the Committee reinstate the eligible basis boost for payment of prevailing wages. Mr. Bigley advised the Committee that his firm submitted a

commitment letter to TCAC yesterday, which included a revised commitment that stated the sponsor was required to pay prevailing wages.

Ms. Redway stated that she understood Mr. Bigley's position; however the issues he described had already been raised during the appeals process and litigated before the court. She stated that she was not prepared to re-litigate the issues and would stand by staff's recommendation.

Mr. Gordon asked Mr. Bigley if the Los Angeles city council approved The Crossings on Amigo and if it was a priority project in the Los Angeles region.

Mr. Bigley stated that the project was considered a priority at the time council member Dennis Zine supported it. He stated that council member Bloomingfield currently supported the project.

Mr. Gordon asked if projects in Los Angeles were prioritized by just one person or by the city council or by the housing agency.

Mr. Pavão stated that a single council person could support a project. He explained that staff typically requested the local housing agency's opinion on prospective projects. He commented that a local housing agency clearly supported a project when it committed funds to the project. He noted that Los Angeles had a very competitive system for entertaining and funding applications. He explained that for Los Angeles, the commitment of public funds was a strong indicator of the housing priorities.

Mr. Gordon asked if the project was a considered a priority by the Los Angeles housing agency.

Mr. Pavão stated that the project was not a funding priority. He clarified that the housing agency did not commit funds to the project.

Mr. Gordon asked if there were any 2012 credits still available.

Mr. Pavão stated that 2012 credits were virtually exhausted for the Los Angeles County region. The amount remaining was about \$87,000. He commented that there were not enough credits left to fund another project. He explained that under the regulations, the remaining \$87,000 in credits would become available to the Los Angeles County region in 2013. Mr. Pavão advised the Committee that the balance of the county was oversubscribed in the first and second round of 2013.

Mr. Gordon reiterated that there were not enough credits available to fund another project in 2013. He asked Mr. Pavão to confirm that the application for The Crossings on Amigo was not resubmitted for 2013.

Mr. Pavão and Mr. Bigley confirmed that the application was not resubmitted for 2013.

Mr. Pavão reported that TCAC was in the last stage of its second and final round of 2013. He stated that TCAC made sponsors aware of how much funding would be available that year. He stated that both Los Angeles regions, the city and the balance of the county, were oversubscribed. Mr. Pavão explained that when the application

for The Crossings on Amigo was submitted there was a single region called Los Angeles County, which included the city.

Mr. Gordon asked Mr. Pavão to confirm that if the Committee decided to award credits to The Crossings on Amigo, they could only do so by taking credits away from another project.

Mr. Pavão stated that if the Committee entertained the project application, TCAC would not have sufficient credits to fund it. He explained that staff already announced the amount of credits available for the second round and they had pending applications from sponsors who relied on that announcement.

Mr. Gordon asked Mr. Pavão if there was anything preventing Mr. Bigley's firm from applying for 2014 credits.

Mr. Pavão stated that there was nothing preventing the firm from applying in 2014.

Mr. Bigley commented that he thought the project would be considered a priority from the Los Angeles Housing Authority's (LAHD) perspective. He suggested that if LAHD had \$25 million to spend on a project and his firm contributed an additional \$4.5 million in private funding, the project would likely be a priority. He explained that by securing private funding for Crossings on Amigo, LAHD could use public funds on another project. Mr. Bigley commented that most areas in Los Angeles were oversubscribed. He stated that he hoped his project was not denied funding due to a technicality. He stated that he did not think his firm erred in its application. He asked if it was possible for the project to receive funding through a forward commitment or from a supplemental set aside and then treated as a priority in the second round.

Ms. Redway acknowledged the two suggestions made by Mr. Bigley. She asked if the Committee had any further questions or comments.

Mr. Pavão reiterated that the matter concerning The Crossings on Amigo was litigated in detail. He explained that the court order stated that "UHC has not demonstrated that it is entitled to relief from TCAC's denial of its appeal on the issue of the threshold basis limit adjustment for prevailing wages. The petition for writ of mandate and other requests for relief on that basis are denied." Mr. Pavão commented that the issues were reviewed thoroughly in court and TCAC was ordered to change its decision regarding one of the issues, but not the other.

Ms. Redway advised Mr. Bigley that he was entitled to appeal if he felt that he would win on the prevailing wage argument.

Steve Strain, from the Law Office of Patrick Sabelhaus, advised the Committee that he has worked as an affordable housing consultant and attorney for over 13 years, primarily with TCAC. He commented that the matter under discussion involved interpretation and enforcement of the regulations. Mr. Strain stated that his firm did not represent UHC on the project. He commented that as a consultant it was important that he understood TCAC requirements so he could help his clients maximize their chances for success. Mr. Strain stated that the court gave wide latitude to the body promulgating and interpreting the regulations. He stated that he

understood the court's ruling that UHC did not make an adequate showing that TCAC's decision should be reconsidered. He stated that the threshold on the matter was very high and as a result TCAC had a great responsibility to make the regulations clear to program users. Mr. Strain commented that in coming to its decision, the court rested on the wide latitude TCAC had in interpreting the regulations.

Ms. Redway stated that she understood Mr. Strain's point and disagreed with his last comment.

Mr. Strain stated that UHC was an experienced developer and unlikely to pursue the matter to such lengths if they did not firmly believe their interpretation of the regulations was correct. He urged the Committee to clarify the matter in regulations in greater detail as it seemed they have.

Mr. Gordon asked why a lender would demand payment of prevailing wages. He asked how the lender would enforce prevailing wages.

Ms. Redway stated that at one point the sponsor stated that the city council member demanded payment of prevailing wages and then later claimed it was the lender that demanded it.

Mr. Gordon stated that he did not think the city council member demanded prevailing wages.

Ms. Redway stated that the sponsor originally took the position that the city council member demanded prevailing wages. She noted that Mr. Bigley made reference to the council member's requirement.

Mr. Bigley stated that the lender required prevailing wages because the city council member wanted jobs to pay prevailing wages. He stated that his firm did a lot of business in Los Angeles and if a city council member demanded prevailing wages, his firm would comply. Mr. Bigley reported that about 6 years ago, his firm worked on a project that received state tax credits and was not required to pay prevailing wages. He stated that just when the firm was ready to break ground it was notified that due to a change in policy, state tax credits triggered prevailing wages. He explained that while the issue was being litigated in court, his firm was losing money on the project and had to relinquish the state credits in order to proceed with development. He reported that the court later reversed the prevailing wage requirement for projects with state credits. He explained that because his firm does business in Los Angeles it was obligated to pay prevailing wages. He stated that the firm already had \$4.3 million committed and did not want to be obligated to pay any more if prevailing wages were triggered.

Ms. Redway stated that she appreciated Mr. Bigley's comments and believed the Committee tried to be as clear as possible in its interpretation of the regulations. She commented that there were times the Committee was not being as clear as they thought and subsequently adopted changes to make the regulations more clear.

Mr. Pavão stated that during his 8-year tenure there was only one other instance when that same mistake was made.

Deborah Caplan stated that prevailing wages were enforced in multiple ways. She stated that within 90 days the developer must submit a contract, which included prevailing wage requirements. She explained that after the project was completed the rules required a full review for compliance with all of the representations made in the application. Ms. Caplan stated that if the project sponsor did not pay prevailing wages as required, they would not be issued tax credits. She commented that the State was never at risk, but the developer risked losing their credits if they did not comply with the conditions represented in their application.

Ms. Caplan stated that 2 issues related to the court case may have been misinterpreted. She stated that at the last meeting the Committee addressed the issue of whether payment of prevailing wages required the sponsor to have a public funding commitment. In addition, they discussed whether or not a private entity could legally impose prevailing wage requirements on a project and if the project would qualify for additional points for carrying out that requirement. Ms. Caplan stated that at the prior meeting there was no question about the fact that a private entity required prevailing wages. She stated that the court did not reach the question of whether or not the regulations allowed prevailing wages to be imposed by a private entity rather than a public entity. Ms. Caplan stated that the court did not have to reach the question because during the course of the briefing TCAC suggested that even if UHC's interpretation of the regulations was correct UHC had not submitted sufficient evidence of the private entity's requirements. She stated that the problem with TCAC's suggestion was that UHC was advised that a private entity could not legally impose prevailing wages. She stated that during court proceedings TCAC stated that UHC did not submit sufficient evidence of the private entity's requirements.

Ms. Caplan stated that if TCAC had advised UHC that additional documentation was necessary during the internal and administrative review process, UHC would have provided it. She stated that the court did not address the issue regarding prevailing wage requirements and interpretation of the old regulations. The court's ruling required that UHC must provide more evidence of its prevailing wage requirement. UHC did provide additional evidence to TCAC. Ms. Caplan stated that the point of that day's discussion was to determine if there was a problem with TCAC continuing to insist that the regulations required public funding with the prevailing wage boost. She suggested the problem could also be that the developer needed to submit more evidence. She stated that UHC presented evidence as TCAC suggested even though it was not legally required at the application stage.

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

6. Public Comment.

There were no comments.

7. Adjournment

The meeting adjourned at 11:36 a.m.

