

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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DATE: March 1, 2006
TO: Tax Credit Stakeholders
FROM: William J. Pavão, Executive Director
SUBJECT: State Prevailing Wages and State Tax Credits

On November 16, 2005 the State Department of Industrial Relations (DIR) determined that a project receiving State Low Income Housing Tax Credits is not a public work, and therefore is not subject to State prevailing wage requirements. That is, unless another funding source requires State prevailing wages, the project may proceed without paying State prevailing wages. This decision was administratively appealed on December 13, 2005 but the appeal was denied on January 12, 2006. On February 22, 2006 a civil action was filed in superior court challenging the decision.

Many applicants request State credits along with nine percent (9%) or four percent (4%) federal credits in each of two competitive funding rounds. In addition, most applicants for competitive 9% federal credits seek points under the "State credit substitution" scoring criterion (Cal. Code Regs., tit. 4, § 10325(c)(11)). Applicants contemplating using State credits now face uncertainty as to the future applicability of State prevailing wage requirements. Pending the outcome of the legal challenge, Tax Credit Allocation Committee (TCAC) staff has been asked to provide guidance to applicants competing for credits in March 2006.

In light of the uncertainty surrounding State prevailing wages as they relate to State credits, TCAC will accept development budgets and basis calculations that assume prevailing wages will be required. Alternatively, an applicant could choose to build their budget upon the assumption that prevailing wages will not be required on their proposed project.

In summary, TCAC is neither requiring the assumption of prevailing wages, nor are we prohibiting such an assumption based upon State credits. However, those applicants requesting credits based upon prevailing wage assumptions will be required to either (a) pay State prevailing wages on the project, or (b) have their tax credit reservation reduced by the associated wage cost savings realized by not paying prevailing wages. This reduction would be calculated from the information provided in the application regarding any prevailing wage basis limit boosts and wage cost differentials.

As the matter is resolved in the courts, TCAC will attempt to keep program stakeholders apprised of developments. The above policy will be in effect for the first round of 2006.