

THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE
December 15, 2010

Consideration and Approval of
Waiver of Forfeiture of Performance Deposit for the New Hope Home Project
and the Buckingham Senior Apartments Project
(Agenda Item No. 6)

I. ACTION

Approve the Waiver of forfeiture of Performance Deposit for the New Hope Home Apartments Project and the Buckingham Senior Apartments Project.

II. BACKGROUND

An applicant bears the risk of forfeiting all or part of their performance deposit if the Allocation is not used in accordance with the conditions and timeframes set forth in the Committee Resolution. As provided for under the Government Code, CDLAC permits an applicant to request the waiver of the forfeiture of the performance deposit if the allocation is not used to issue the bonds within the set timeframe given. For a waiver to be approved, the CDLAC Executive Director subjects the request to two tests: 1) was the issue or event that prevented the issuance of the bonds unforeseen; and 2) was the issue or event wholly outside the control of the applicant and project sponsor. A request must pass both tests.

III. DISCUSSION:

New Hope Home Apartments Project (09-144 and 10-029)

The New Hope Home Apartments Project received an allocation through the California Statewide Communities Development Authority (“CSCDA”) under the New Issue Bond Program (“NIBP”) being offered by the U.S. Treasury to stimulate the financing and/or production of housing throughout the country. In addition, the Project received a financial commitment from the U.S. Department of Housing and Urban Development (HUD).

To date, the New Hope Home Apartments Project has not issued its bond allocations. The Project’s current deadline to issue bonds is December 31, 2010. CSCDA has requested the approval of a staff-level Carryforward Extension to accommodate a future bond issuance in 2011. However, per the CDLAC Regulations, the Project’s performance deposit must be forfeited for failure to issue the bonds by the initial deadline. Because the HUD Program commitment for the Project has experienced ongoing delays in processing that were unforeseen and outside the control of New Hope Home’s Project Sponsor, CSCDA is seeking a waiver of such penalty.

Given the facts associated with this waiver request, Staff recommends an approval of a waiver of the Performance Deposit forfeiture.

Buckingham Senior Apartments Project (10-003)

In addition to its CDLAC allocation for \$14 million, the Buckingham Senior Apartments Project (“Project”) received a commitment for an award of Neighborhood Stabilization Program (NSP) funds from the CA Housing and Community Development Department (HCD). However, due to extended NSP processing delays, the Applicant has determined that the CDLAC allocation cannot be issued by the established CDLAC issuance deadline and that a reversion of the allocation is required in order to reapply for a new award of allocation in 2011. Because the NSP loan processing delay was unforeseen and wholly outside the control of the Developer, the Applicant is seeking a waiver of the performance deposit forfeiture penalty.

Specifically, the aforementioned unforeseen circumstance that prevented the project from closing as scheduled was lack of clarity in the U.S. Department of Housing and Urban Development (HUD) regulations governing appraisals of multifamily properties applying for NSP funds. The NSP was designed to help communities and developers mitigate the single family home foreclosure crisis by enabling them to purchase these foreclosed assets at a discount and then in turn rehabilitate and/or develop them. Considering that the NSP program was designed primarily for single family homes, the Applicant believes the regulations did not adequately address the appraisal methods for foreclosed multifamily properties with affordability deed restrictions on title. The absence of HUD regulatory clarity regarding the appraisal issue required HCD staff to seek direction from the regional HUD office in San Francisco and ultimately, HUD headquarters in Washington, D.C.

With the appraisal issue now resolved, HCD staff is working towards issuing an enforceable commitment to the Project prior to year end. This will enable the Applicant to issue a new 2011 award of allocation within a newly established issuance period.

IV. RECOMMENDATION:

Staff recommends the approval of the Waiver of Performance Deposit forfeiture for the New Hope Home Project Initial and supplemental awards (09-144 and 10-029) and Buckingham Senior Apartments (10-003).

Prepared by Misti Armstrong.