

California Debt Limit Allocation Committee (CDLAC)

Jesse Unruh Building
915 Capitol Mall, Room 587
Sacramento, CA 95814

July 18, 2012 – Meeting Minutes

1. Call to Order and Roll Call

Rohimah Moly, Chairperson, called the California Debt Limit Allocation Committee meeting to order at 11:02 a.m.

Members present were Alan Gordon for State Controller John Chiang, Pedro Reyes for Governor Edmund G. Brown, Jr., and Rohimah Moly for State Treasurer Bill Lockyer.

Advisory Members present were Linn Warren for HCD and Tim Hsu for CALHFA.

2. Approval of the Minutes of the May 16, 2012 Meeting

There were no comments or questions. Pedro Reyes made a motion to approve the minutes of the May 16, 2012 meeting. Alan Gordon seconded the motion. The May 16, 2012 meeting minutes passed unanimously.

3. Executive Director's Report

Sean Spear began his report referencing the revised agenda, Item No. 8, Appeal by Albert Otero. Mr. Otero has requested that the issue be postponed until the September 26th meeting. Mr. Spear explained that the appellant Mr. Otero, is seeking information from the Secretary of the State and other sources that he has not yet received. Mr. Otero views the information as critical for his appeal and has respectfully requested that we continue the agenda item to the September 26th meeting.

Mr. Spear informed the Committee of the latest allocation status report. Currently there is approximately \$3.1 billion remaining out of \$3.6 billion available this year. He further explained the volume so far this year is significantly lower than last year; however, Staff is expecting an increase in applications for the next couple rounds. Mr. Spear continued to explain that despite the increased applications they are anticipating, there will be more allocation left over at the end of the year. Staff will prepare a recommendation at the end of the year for addressing the remaining allocation.

Mr. Spear discussed the recent Transportation bill HR4348 signed into law by President Obama on July 7th. The original bill on the Senate side had a provision that would strip water facility projects from the private activity volume cap, allowing them to issue tax-exempt bonds without having to come to allocating agencies such as CDLAC.

The final bill passed had the provision removed. CDLAC anticipates water agencies, associations, and advocates will work on having those facilities removed from the volume cap later through some other bill. In the meantime, both CDLAC and CPCFA will continue to make project sponsors aware that there is allocation available. CPCFA is expected to market to projects that are eligible. CDLAC staff will continue to monitor the situation.

There were no questions or comments.

4. Consideration and Approval for the Proposed Emergency/Permanent CDLAC Regulations for Submittal to the Office of Administrative Law

There were no questions or comments

Pedro Reyes made the motion to approve submission of the package to the Office of Administrative Law. Alan Gordon seconded the motion. The motion to Submit the Proposed Emergency/Permanent CDLAC Regulations to the Office of Administrative Law passed unanimously.

5. Consideration and Approval of an Issuance Date Extension for Various Apartment Projects

Lugonia Avenue Apartments (12-037)	October 16, 2012
Oak Center Homes Apartments (12-012)	August 14, 2012
Gridley Springs Apartments (12-036)	October 16, 2012
Villa Mirage Apartments (12-033)	August 17, 2012
North Point Apartments (12-016)	August 17, 2012
Sonoma Gardens Apartments (12-017)	August 17, 2012
Harvest Park Apartments (12-032)	October 16, 2012

There were no questions or comments.

Pedro Reyes requested to separate the first four projects from the others. Mr. Reyes then moved to Approve Date Extensions on the following projects: Lugonia Avenue Apartments (12-037), Oak Center Homes Apartments (12-012), Gridley Springs Apartments (12-036), Villa Mirage Apartments (12-033). Mr. Gordon seconded the motion. The motion passed unanimously.

Alan Gordon moved to Approve Date Extensions on the following projects: North Point Apartments (12-016), Sonoma Gardens Apartments (12-017), and Harvest Park Apartments (12-032). Rohimah Moly seconded the motion. Mr. Gordon, Ms. Moly voted aye, Mr. Reyes abstained. The motion passed 2-0-1.

6. Consideration of Requests for a Waiver of Forfeiture of Performance Deposit for the Broadway Villas Apartments Project (11-017) and McCarty Manor Apartments (11-165) – Qualified Residential Rental Project Program

Crystal Alvarez explained that for a waiver to be recommended for approval, the CDLAC Executive Director subjects a request to two tests. One is whether the issue or event that prevented the issuance of the bonds was unforeseen. Two is whether the issue or event was fully outside the control of the applicant and project sponsor.

Ms. Alvarez continued to explain that the land which the Broadway Villa Apartments project is being built upon was owned by the CRA of L.A. and was to be transferred to the borrower pursuant to a Disposition and Development Agreement. The Oversight Board anticipates the land transfer to be administrative. The city expected this item to be heard on the agenda of the next Oversight Board meeting.

Due to the number of items that the Oversight Board is reviewing, there exists now an unforeseen delay of the hearing of these items; which is wholly out of the control of the applicant and project sponsor. The applicant and project sponsor are thus requesting a waiver of forfeiture of the performance deposit.

For the McCarty Manor Apartments, the project sponsor had expected the USDA to execute a Rider to the loan document that specifically states that the USDA agrees that it is subject to the requirements of the IRC Section 42(H)(6)(E) in the event that the USDA forecloses on the property. A Rider is required with the relevant language submitted to the USDA, along with the subordinate agreement for bond financing.

Crystal Alvarez continued to explain that the USDA has executed such Riders in the past, but now has informed the Project Sponsor that they no longer consider the signing of such a Rider as a routine manner. The USDA now has stated that the Project Sponsor must submit a formal request to the USDA central office to get the authority for the USDA California office to sign the Rider. The USDA has further stated that the request approval will not likely be processed quickly; jeopardizing the project's final bond sale closure date.

Because of the delay in the processing of the Rider by the USDA, there exists now an unforeseen delay of the hearing of these items; which is wholly out of the control of the applicant and project sponsor. The applicant and project sponsor are thus requesting a waiver of forfeiture of the performance deposit.

Given the facts associated with these waiver requests, staff recommended approval of waiver of the performance deposit for the Broadway Villa Apartments and the McCarty Manor Apartments.

- Rohimah Moly asked if there are questions from the board or public comments.
- Pedro Reyes stated when the Broadway Villa Apartments came before the Board he abstained because it involved redevelopment agency funds. However, this agenda item has nothing to do with redevelopment funds, in as much as it is for the clarification of the land transfer.

Pedro Reyes moved for Approval. Alan Gordon seconded the motion. The motion for the Approval of a Waiver of Forfeiture of Performance Deposit for the Broadway Villas Apartments Project (11-017) and McCarty Manor Apartments (11-165) passed unanimously.

7. Consideration of Request for a Waiver of the Forfeiture of Performance Deposit and Negative Points for Morgan Hill Apartments (11-105) – Qualified Residential Rental Project Program

Crystal Alvarez reported staff recommended the Committee deny the applicant's request to return the Performance Deposit and reverse Negative Points assessed to the Project Sponsor for the Morgan Hill Retirement Residence Apartments, application 11-105 due to the failure to issue tax-exempt bonds.

Ms. Alvarez explained that for consideration of a waiver of the assessment of the penalties for failure to issue bonds, staff subjects the requests to two tests. One is whether the issue or event that prevented the issuance of the bonds was unforeseen. Two is whether the issue or event was fully outside the control of the applicant and project sponsor. A request must pass both tests.

The project sponsor contends that both the seller's unwillingness to extend the purchase and sale agreement for the property and the notices of default from SunAmerica satisfied the two tests. By its very nature a purchase and sale agreement extension is not a guaranteed action. Neither a seller nor a buyer is obligated to extend such an agreement. Ms. Alvarez continued to explain it is not reasonable to assume an extension be granted so a project can continue through the development process. Given this, the possibility an extension to not be granted by a seller cannot be defined as unforeseen.

To the project's second reason, difficulties with SunAmerica may have contributed to the Project Sponsor's inability to find a tax credit investor for the project, delaying their ability to close on the bonds by the extended seller and CDLAC deadlines. By the Project Sponsor's own admission, the SunAmerica notices of default relate to a previously-negotiated May 2011 workout plan.

The Project Sponsor has also recently informed CDLAC that the SunAmerica NODs [Notices of Default] were issued on February 9, 2012; well before CDLAC's consideration of the Project's Sponsor's carry-forward extension and related Performance Deposit waiver request. Staff believed that this critical information likely impacted the Project's Sponsor's relationship with WNC and other potential investors, jeopardizing the feasibility of the project.

Had the NODs been disclosed to CDLAC in the applicant's March 5, 2012 CDLAC extension request, it may have influenced both staff's approval recommendation, and the ultimate decision of the Committee. In reviewing the information provided, staff is forced to conclude that the Project Sponsor was aware of the possibility that the purchase and sale agreement would not be extended and that the Project Sponsor was aware of the potential fatal issue associated with SunAmerica prior to requesting a carry-forward extension and waiver of the required forfeiture of Performance Deposit back in March.

Given this, the subject waiver request does not meet the two-test requirement, since the current circumstances cannot be considered unforeseen and wholly outside the control of the Project Sponsor. In light of the circumstances described, staff does not recommend Committee approval of the request for a waiver of penalties against the Project Sponsor for the Morgan Hill Retirement Residence Apartments, application number 11-105.

Rohimah Moly asked if there were any questions or comments.

- Robert Labbe, general counsel for Global Pacific Development, the applicant came forward to speak. He explained that their co-counsel Steve Strain had a medical emergency and could not make it to the meeting. Mr. Labbe requested a continuance for 30-60 days.
- Alan Gordon asked would there be new information brought forward in the future.
- Mr. Labbe explained Steve Strain is the attorney representing the applicant on this matter; and he was not able to attend. Mr. Labbe felt the Committee did not have all the information from Global's perspective. He stated he believed there is information indicating that this was outside Global's control and they were entirely unaware and could not have anticipated the issuance of the notices of default.

Mr. Labbe went on to explain that it is Global's position that the notices of default have some significant material defects. Not disclosing them to CDLAC was primarily due to the fact that they did not want to further publication of items that they believed to be materially incorrect.

- Pedro Reyes asked Sean Spear, what has been the customary practice on this.
- Sean Spear replied, when a project sponsor requests a waiver they submit a letter, along with evidence and information they want considered in formulating a recommendation to the Committee. Mr. Spear went on explain they have received two different letters and email correspondence. To staff's knowledge they have presented everything that they were planning to present to the Committee for consideration.
- Pedro Reyes asked if staff would have seen the request from the attorney who is unable to be here, and evidence they were going to present ahead of time. He continued to inquire that if that is the case, the information he wanted to present apparently is known only to him.
- Mr. Labbe replied that was correct.
- Rohimah Moly asked if the Committee can continue this to another meeting.
- Sean Spear replied yes, the Committee can elect to do so.
- Alan Gordon asked was there any contention that the development applicant did not have notice of the NOD on the dates alleged in the report?
- Robert Labbe replied they did have notice. The reason the NODs were not cited, and brought up initially was for the simple fact that Global Premier did not want to further propagate what they believed to be false information.
- Alan Gordon then stated the information was on the record. The applicant may not have agreed with it, but they had the information. And it was thus the applicant's contention that there was no obligation to disclose that information to CDLAC while asking for a waiver? Even the information that you had received a NOD that you disagreed with, but were not going disclosed while asking for the waiver?
- Robert Labbe replied that it is Global's opinion and belief that the NOD's are materially incorrect. Since the applicant did not agree with the NOD, they did not want to propagate it.
- Alan Gordon stated in his opinion he found it disturbing that the applicant had information in their possession – regardless of whether they disagreed with the conclusions reached in the NOD - and was obviously material to the request made, but elected not to disclose it to CDLAC.

- Mr. Labbe replied when the applicant's financing disappeared and the project investor pulled out, they did not cite a reason. They know that the notices of default are not something that is filed publicly.

Pedro Reyes stated he would like to extend the courtesy of moving this issue until the next meeting. He went on to say he is prepared to vote in favor of staff's recommendation unless we get something that provides some background as to why we should not follow it.

Alan Gordon agreed with Mr. Reyes and is not favorably disposed to extending this issue, but will second the motion to grant the waiver to extend this until the next CDLAC meeting. The Committee agreed to add the issue on the September 26th meeting.

8. Withdrawn from Consideration

9. Consideration of Appeals and Applications for an Allocation of the State Ceiling on Qualified Private Activity Bonds for Single Family Housing Programs and Awards of Allocation

The Committee received two (2) applications requesting their 2012 Fair Share Single Family Housing allocation for a total of \$17,986,123 for the issuance of Mortgage Credit Certificates under their Mortgage Credit Certificate Program. Staff recommends approval of \$13,704,436 to fund two (2) programs in the Single Family Housing Program as noted above.

12-062	County of Santa Clara (Bonus Pool)	\$12,013,887
12-068	Housing Authority of the County of Marin	\$1,690,549

There were no questions or comments. Pedro Reyes moved for Approval. Alan Gordon seconded the motion. The motion passed unanimously for an Allocation of \$13,704,436 of the State Ceiling for Qualified Private Activity Bonds for Single Family Housing Programs.

10. Consideration of Appeals and Applications for an Allocation of the State Ceiling on Qualified Private Activity Bonds for Qualified Residential Rental Projects and Awards of Allocation

Mixed Income Pool		
12-072	Alexander Crossing Apartments	\$22,370,000
12-074	La Moraga Apartments	\$52,440,000

General Pool		
12-063	University Village Apartments	\$17,500,000
12-061	Villa Garcia Apartments	\$12,100,000
12-065	Loma Linda Terrace Apartments	\$9,000,000
12-066	Knox Glen Townhomes Apartments	\$5,500,000
12-064	Township Nine Apartments	\$23,000,000
12-067	Ridgeview Terrace Apartments	\$3,000,000
12-073	Granite City Apartments	\$8,220,000
12-078	Morgan Hill Retirement Residence Apartments	\$18,187,922
12-079	Rancho Seneca Apartments	\$4,000,000
12-069	Mercy Auburn Senior Apartments	\$10,000,000

There were no questions or comments. Pedro Reyes moved for Approval. Alan Gordon seconded the motion. The motion for an Allocation of the \$185,317,922 of the State Ceiling on Qualified Private Activity Bonds for Qualified Residential Rental Projects passed unanimously.

Pedro Reyes moved for Approval to exceed the 30 million for the La Moraga Apartments (12-074). Alan Gordon seconded the motion. The motion passed unanimously.

11. Consideration of Appeals and Applications and a Waiting List for a Re-Allocation of American Recovery and Reinvestment Act – Qualified Energy Conservation Bonds and Award of Allocation

Richard Fischer reported that the Qualified Energy Conservation Bond program received three complete applications for projects requesting a total allocation of \$33,100,000. However, currently there is only \$22,305,765 available in the QECCB allocation. This provides only enough allocation to award the two projects with the highest scores in the respective sub-programs, and provide a partial allocation to the third project.

He went on to explain in order to make immediate use of any waived QECCB allocation that CDLAC may receive between July 18 and October 23, 2012, CDLAC staff recommended the creation of a waiting list for the third-place complete application, Solano Community College District Solar project. The project will be awarded any available allocation in the same manner that it was awarded its partial award authority.

Staff recommended approval of the \$22,305,765 in reallocated American Recovery and Reinvestment Act, Qualified Energy Conservation Bond Authority to fully fund two projects (ARRA-088 and ARRA-090) and partially fund one project (ARRA-089). And second, the creation of a waiting list for ARRA-089 – the Solano Community College District Solar project; with the expiration date of October 23, 2012.

ARRA-088	Desert Community College Photovoltaic Electric Generating System Project	\$19,400,000
ARRA-089	Solano Community College Photovoltaic Electric System Project	\$1,505,765
ARRA-090	San Francisco PACE GREENFINANCESF Program	\$1,400,000

- Pedro Reyes asked if the amount for one of the projects is only twelve percent of what they requested, will they be first in line if any allocation returned unused.
- Richard Fischer informed the Committee that was correct.
- Rohimah Moly asked would CDLAC be able to reach out to those who have received allocations and haven't spent it, for them to voluntarily waive their allocation.
- Sean Spear explained there are some localities that have retained their QECCB allocations, but may not have used it all entirely. Last year we sent a request for such localities to waive back to us whatever they had not expended at that point. We can send out another request.

Alan Gordon moved for Approval. Pedro Reyes seconded the motion. The motion for the Approval of Applications and Re-Allocation of American Recovery and Reinvestment Act Allocation passed unanimously.

12. Public Comment

No public comment.

13. Adjournment

The Chairperson adjourned the meeting at 11:33 a.m.