

THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE
January 16, 2013

Consideration of a Request for a Waiver of the Forfeiture of Performance Deposit and
Assessment of Negative Points for Tres Lagos Apartments (12-114)
Qualified Residential Rental Project Program
(Agenda Item No. 5)

ACTION:

Consider the approval of a Waiver of the Forfeiture of Performance Deposit and Negative Points for Tres Lagos Apartments (12-114).

BACKGROUND:

An Applicant bears the risk of forfeiting all or part of their performance deposit and receiving negative points if the Allocation is not used in accordance with the conditions and timeframes set forth in the California Debt Limit Allocation Committee (“CDLAC”) Resolution. As provided for under the Government Code, CDLAC permits an Applicant to request the waiver of the forfeiture of the performance deposit and negative points 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.

DISCUSSION:

Tres Lagos Apartments Project (12-114)

On September 26, 2012, the Tres Lagos Apartments Project (“Project”) was awarded \$13,634,145 in tax-exempt bond allocation. The Project’s issuance deadline was December 26, 2012. After some discussion in December, on January 3, 2012, the California Statewide Communities Development Authority (the Applicant) notified CDLAC by letter that PC Wildomar Tres Lagos, LP (the “Project Sponsor”) wanted to return the awarded allocation.

According to the Project Sponsor, the County of Riverside (“County”), the successor agency of the Riverside County Redevelopment Agency, submitted their first Recognized Obligation Payment Schedules (“ROPS”) to the State Department of Finance (“DOF”) on April 12, 2012. The ROPS showed the County’s funding commitments (including loans for projects such as the Tres Lagos Apartments) and the funds the County planned to meet its various obligations with. For the Project, the first ROPS showed the Project’s loan obligation on two lines to delineate the two types of funds (\$1,000,000 and \$9,500,000), totaling \$10,500,000. The County followed up with a second ROPS submission on May 3, 2012; showing the \$10,500,000 loan obligation to the Project. DOF responded on April 25, 2012 and May 18, 2012, respectively, with lists of items that did not qualify as enforceable obligations, which the Project was not listed on either.

On May 26, 2012, DOF approved all items on the ROPS that were not objected to in their two preceding responses. On August 30, 2012, the County submitted their third (now periodic) ROPS, showing the \$10,500,000 obligation. On October 14, 2012, DOF responded; denying a portion of the obligation and deeming the \$10,500,000 loan agreement between the Project and the County not enforceable. Denial of the obligation created a fatal funding shortfall for the Project, and the Project Sponsor was unable to find a replacement funding source that would provide the Project with the ability to issue and begin construction by the CDLAC deadline. Given these circumstances, the Project Sponsor is requesting a waiver of penalties associated with returning the allocation.

At the Committee's direction, CDLAC Staff publicized an informational memorandum stating that, as a policy and in alignment with the CDLAC Regulations, "...all RDA-related projects that receive an award of allocation **after March 16, 2011** and subsequently fail to issue bonds will be subject to all non-issuance penalties as described in the CDLAC Regulations." The memorandum was sent to all CDLAC subscribers and continuously posted on the CDLAC website since March 11, 2011. The Project received an award of allocation on September 26, 2012.

The Project Sponsor acknowledges that they were aware of the Committee's direction for these situations; however, they believe that this situation merits special consideration by the Committee since the DOF denial occurred months after three written (de facto) approvals by DOF. The Project Sponsor has pointed out that they actually purposely waited until after DOF's approval of the ROPS before submitting an application to CDLAC.

Staff is not aware of any other projects that have faced a similar situation, and therefore concludes that a situation such as this one would have been unforeseen at the time of application. Thus, when applying the waiver request tests (namely that the fatal issue was wholly unforeseen, and that the issue was out of the control of the Issuer and Project Sponsor), Staff believes this request meets the standard CDLAC uses for a recommendation of approval of a waiver of penalties.

RECOMMENDATION:

In light of the circumstances described, staff recommends the approval of the Waiver of Forfeiture of the Performance Deposit and Negative Points for the Tres Lagos Apartments (12-114).

Prepared by Sarah Lester