

THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE
May 15, 2013

Consideration of a Request for a Waiver of the Forfeiture of Performance Deposit and Assessment of Negative Points for the Aspens at South Lake Tahoe Apartments (11-177) 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 the Aspens at South Lake Tahoe Apartments (11-177). This item was originally heard for consideration and awarded an allocation by the Committee at the meeting held on May 18, 2011; and then due to the Redevelopment Agency (RDA) dissolution legislation, again awarded allocation on December 14, 2011.

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.

The Aspens at South Lake Tahoe Apartments Project (11-177)

On May 18, 2011, the Aspens at South Lake Tahoe Apartments Project (“The Aspens” or “Project”) was awarded \$9,000,000 in tax-exempt bond allocation. Due to the delay caused by the RDA lawsuit, CDLAC permitted projects delayed from closing to return their allocation and reapply in the December 14, 2011 Allocation Round. Following the Committee approval of a new allocation for the Project, the new issuance deadline was April 2, 2012; with a final extension to August 14, 2012. After some discussion, the California Statewide Communities Development Authority (the Applicant) notified CDLAC by letter that SLT Pacific Associates, a California LP (the “Project Sponsor”) wanted to return the awarded allocation in order to pursue the project as a 9%-Level Housing Tax Credit transaction.

According to the Project Sponsor, on August 4, 2009, the South Tahoe Redevelopment Agency (STRA) passed a resolution and issued a loan commitment for the Project in the amount of \$1.5 million from its Low- and Moderate-Income Housing Fund. Then on February 8, 2011, STRA passed a second resolution and increased the commitment to \$2.5 million in order to allow the Project Sponsor to switch the financing structure from a 9% project to a 4% tax-exempt bond project. In March of 2011, the Project Sponsor applied for tax-exempt bonds and 4% tax credits, with the bond allocation awarded in May and the tax credit allocation awarded on June 22, 2011. On June 27, 2011, the RDA dissolution legislation was signed into law (AB1X26).

Shortly following the enactment of AB1X26, a lawsuit was filed by the California Redevelopment Association and other parties challenging the constitutionality of the law. This lawsuit placed all RDA-supported projects in limbo while the lawsuit was adjudicated over the seceding months. Following the resolution of the lawsuit in December 2011, STRA removed the Project from their Enforceable Obligation Payment Schedule based upon their understanding of what constituted an “enforceable

obligation” under the law. The ‘loss’ of the STRA \$2.5 million loan commitment effectively stopped the project from proceeding.

Despite the loss of the STRA Loan and the Project Sponsor’s inability to proceed as a bond transaction, the Project Sponsor still pursued the construction of the Project as an affordable housing development. To this end, the Project Sponsor applied for an allocation of 9% Tax Credits in March of 2012; securing an award from TCAC on July 11, 2012. The Project Sponsor closed on April 5, 2013 and is currently in construction on the Project.

DISCUSSION:

The Committee has taken the position that projects that fail to proceed with their awarded allocation due to the elimination of the RDAs may be fully subject to all applicable penalties. While the circumstances of this project would seem to fully merit such consideration, the fact that the Project Sponsor still intends to provide the public benefit called for in the CDLAC Resolution (namely the affordable housing units) necessitates a further review.

In its administration of the private activity bond volume cap, CDLAC emphasizes the prudent usage of this limited resource (in terms of project readiness and bond issuance feasibility) and the maximum provision of public benefits to the community. While the Aspens did not proceed in as rapid a fashion as intended (due to the RDA Dissolution), the Project is still proceeding to deliver its public benefits. Further, the Project was awarded allocation in a non-competitive CDLAC allocation round (both times). As such, no other project was disadvantaged in the awarding of allocation to this project; and since the Project did not issue its bonds, the reverted allocation is now available for use on another project to be issued by the same Applicant. Lastly, though the STRA felt compelled to remove their loan commitment to the Project based upon the law, they have continued to voice the importance of the Project to their community and their strong support its development.

Under normal circumstances, CDLAC staff would make its recommendation to approve or deny a request to waive penalties based upon the verification of the facts presented and the waiver test described in the Background section of this report. However, the changing legal landscape and its direct impact on this project’s financing structure make it a singularly unique situation and chain of events. Thus, in this case where: 1) the public benefits will still be provided; 2) the allocation is still available for provision to another eligible project; and 3) no other eligible projects were prevented from securing an allocation in the same (non-competitive) allocation round that the Project was awarded in; then CDLAC staff conclude that the waiver test does not apply here. Further, CDLAC Staff concludes that the Project Sponsor should not be penalized for the reversion of the allocation alone.

RECOMMENDATION:

Staff recommends the approval of the Waiver of Forfeiture of the Performance Deposit and Negative Points for the Aspens at South Lake Tahoe Apartments Project (11-177).

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