

THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE
November 12, 2014

Consideration of Requests for Waivers of the Forfeiture of Performance Deposits for the Hunters View Phase IIA Apartments Project, the Heritage Commons Phase II Apartments Project, and the Olive Wood Apartments Project
(Agenda Item No. 6)

ACTION:

Consider the approval of a Waiver of the Forfeiture of Performance Deposit for the Hunters View Phase IIA Apartments Project, the Heritage Commons Phase II Apartments Project, and the Olive Wood Apartments Project.

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. The Projects noted below received a Carryforward extension approval; which the Executive Director approved to provide the Projects with additional time to issue bonds. Approval of a Carryforward extension requires the forfeiture of each Project’s performance deposit. 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 Hunters View Phase IIA Apartments (14-038)

The Hunters View Phase IIA Apartments Project (“Project”) received allocation on March 18, 2014 and had its issuance deadline extended to December 31, 2014, as permitted under the CDLAC Regulations. The Project has experienced several unforeseen delays outside the control of the Project Sponsor.

The Project has not yet received a Rental Assistance Demonstration (“RAD”) Conversion Commitment (“RCC”) from the Department of Housing and Urban Development (“HUD”). The RCC is the initial document that references the conversion of the site’s 54 public housing units to RAD affordable housing units, and from there allows a HUD Office of General Counsel attorney to be assigned to the Project. HUD staff currently estimates that it will take approximately 3-4 weeks to proceed to the RAD Committee for the issuance of an RCC, and 30-45 days from that point to receive HUD approval for a closing with RAD financing. The Project Sponsor began submitting documents to HUD for this process beginning in late spring of 2014, but delays have occurred due to the number of other RAD transactions currently being processed by the HUD offices, including Phase I of the Hunters View Apartments. The Project Sponsor now expects to receive the RCC during the first week of November 2014, and for HUD to complete its review of the applicable Project documentation by the first week of December 2014. The financing cannot close before HUD completes this final review.

Another issue for the Project involves its building permits from the City of San Francisco. The permit approval process required multiple rounds of comments by numerous City departments, which resulted in unanticipated lengthy review periods and prolonged discussion periods between various city agencies (i.e., the Mayor’s Office on Disability, the Fire Department, and the Planning Department). The development team pursued workarounds to keep the general contractor moving under the grading and other sub-permits; however, the delay in obtaining the full Infrastructure Permit approval has

prolonged the start of road construction, which is a key precursor to the start of vertical construction. Based on the shorter approval time experienced for Phase I, the Project Sponsor could not have anticipated such a lengthy approval process for Phase II.

The Project Sponsor's site permit for Block 7 and 11 is now ready for issuance; however, the process of obtaining this approval has also taken much longer (originally the Project Sponsor anticipated receiving the site permit in Spring 2014) than expected due to the fact that there are multiple buildings on each block and multiple construction types within each building, complicating the review process by the City's building and other departments. The Project Sponsor has recently received the Site Permit, and is working aggressively with the plan check team to ensure timely approval of the subsequent architectural addenda necessary to begin vertical construction.

The development team has experienced significant delays associated with the San Francisco Housing Authority ("SFHA") and HUD process for the review and execution of site control and finance/closing documents. Review and final approval of the Phase II Disposition and Development Agreement ("DDA") and associated Ground Leases has taken longer than anticipated due to a lengthy HUD review timeline. The original schedule anticipated review and execution of these documents no later than the end of March 2014. Unfortunately, these documents were not executed until June 2014. In addition, with the support of SFHA and the Mayor's Office of Housing and Community Development ("MOHCD"), the Developer applied for RAD Program financing earlier this year. Upon receiving the award, the DDA and Ground Leases for the Project were amended to account for the change from Annual Contributions Contract ("ACC") to RAD financing. This added another round of attorney updates and HUD review, and has delayed approval of the site control documents needed for closing.

Additionally, the Memorandum of Ground Lease for Phase IIA(1) (a recorded document that references the applicable Ground Lease) has not been recorded, as the Final Map for Phase II has not yet been accepted by the San Francisco Board of Supervisors. The Final Map approval process experienced significant delays due to extensive comment and disagreement internally at the Public Utilities Commission. The transaction and construction financing cannot close until the Final Map is accepted and approved by the City, which in turn will allow legal descriptions to be added to the transaction and financing documents, and the Memorandum of Ground Lease. The original anticipated execution date for these transactional documents was March 2014, but now this approval is not anticipated to occur until early November 2014.

Despite these multiple issues, the development team is confident it will be able to complete all closing steps and start construction by the end of December 2014, and for this reason received a carry-forward extension to December 31, 2014. While this can be granted by the Executive Director under the CDLAC Regulations, the Applicant is required to surrender the associated performance deposit. The Applicant and Project Sponsor hereby request waiver of this requirement based upon the unforeseen issues described above.

Heritage Commons Phase II (14-063)

Heritage Commons Phase II received allocation on May 21, 2014 and had its issuance deadline extended to November 16, 2014, as permitted under the CDLAC Regulations. The Project Sponsor initially applied for competitive state tax credits in March 2014, but did not receive an award in June 2014. Prior to this year the state tax credit pool was long under-subscribed, and the Project Sponsor did not anticipate the possibility of not receiving an award on the first try when they originally applied for bond allocation from CDLAC. The Project Sponsor reapplied for state tax credits in July 2014 and was awarded an allocation in September 2014. Thereafter, the Project Sponsor began working with the lender and tax credit investor to complete their due diligence and begin drafting closing documents. As mentioned, the state tax credit pool is now competitive and an allocation for the Project in September was not guaranteed.

As a result, it was not possible to begin the closing process in advance of the tax credits award. This process is now currently underway; however, given the short time-frame a carry-forward extension was approved to provide the additional time needed to issue the bonds for this project. The approved extension to March 23, 2015 will align the bond issuance deadline with the tax credits deadline. As part of such approval under the CDLAC Regulations, the Applicant is required to surrender the associated performance deposit. The Applicant and Project Sponsor hereby request waiver of this requirement based upon the unforeseen issues described above. The Project Sponsor has targeted a closing date of March 1, 2015 for the Project.

Olive Wood Apartments (14-039)

Olive Wood Apartments Project (“Project”) received allocation on March 18, 2014 and was extended an issuance deadline of December 31, 2014. The Project has experienced several unforeseen delays outside the control of the Project Sponsor.

In July of this year, the Project was granted an extension of the deadline for issuance of bonds until October 14, 2014 due to difficulties the general contractor had obtaining payment and performance bonds that would satisfy the specific requirements of the tax credit equity investor (“Investor”). Since that time, the general contractor has been replaced with a new general contractor that can perform within the approved budget and provide the security required by the Investor. Unfortunately, unforeseen circumstances outside the control of the Project Sponsor later arose in regard to the selected property management company that created the need for this additional extension. It was discovered that the property management company initially selected by the Project Sponsor had a troubled history with the Investor and as a result, the Investor refused to move forward with the Project unless a new property management company was selected. On November 4, 2014, the Project Sponsor reported that the issue had been resolved and that a new property management company was selected and approved by the Investor.

A carry-forward extension was required to provide the additional time needed to issue the bonds for this Project. As part of such approval under the CDLAC Regulations, the Applicant is required to surrender the associated performance deposit. The Applicant and Project Sponsor hereby request waiver of this requirement based upon the unforeseen delays in meeting the requirements of the tax credit investor. The development team is now confident that it will be able to complete all closing steps by the extended bond close date of December 31, 2014.

RECOMMENDATION:

In light of the circumstances described above, staff recommends the approval of the Waivers of Forfeiture of the Performance Deposit for the Heritage Commons Phase II Project (14-063), the Hunters View Phase IIA Apartments Project (14-038), and the Olive Wood Apartments Project (14-039).

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