

THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE
November 12, 2014

Consideration of a Request for a Waiver of the Assessment of Negative Points and Forfeiture of Performance Deposit for the Santa Monica RHCP Apartments Project
(Agenda Item No. 7)

ACTION:

Consider the approval of a Waiver of the Forfeiture of Performance Deposit for the Santa Monica RHCP Apartments Project (13-083).

BACKGROUND:

A Project Sponsor 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 Santa Monica RHCP Apartments Project (“Project”) received allocation on September 18, 2013 and had its issuance deadline extended to September 30, 2014, as permitted under the CDLAC Regulations. The Project is situated on sites that are ground leased from PJG LP. The ground lease agreement requires the landlord to allow changes in ownership, and the landlord repeatedly indicated its willingness to approve the proposed transfer when Santa Monica-Villa Nueva LP (“Project Sponsor”) discussed the pending transaction with them prior to accepting the original CDLAC allocation. Nevertheless, the landlord later refused to approve the necessary financing subordination and non-disturbance agreements required for bond issuance. The Project Sponsor later learned that the reason for the landlord’s lack of cooperation was that he became subject to a pending bankruptcy case that required court approval of any changes in status of the landlord’s assets. The Project Sponsor stated that they learned of the pending bankruptcy action on April 28, 2014; well after the CDLAC allocation was received.

The Project Sponsor continues its discussions with the landlord and is optimistic that the Project can ultimately be completed. The landlord has indicated its continued willingness to be cooperative at such time as court approval can be obtained. Unfortunately it is difficult to estimate when that will be, although the Project Sponsor remains hopeful that the project closing can resume in 2015. The Project Sponsor plans to return to CDLAC with a new CDLAC application once there is certainty regarding the landlord's legal capacity to complete the transaction.

RECOMMENDATION:

In light of the circumstances described above, staff recommends the approval of the Waiver of Forfeiture of the Performance Deposit and a waiver of the assessment of Negative Points for the Santa Monica RHCP Apartments (13-083) Project.

Prepared by Richard Fischer