

THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE
May 20, 2015

Consideration of Requests for a Waiver of the Forfeiture of Performance Deposit for the Tuolumne Apartments Project (14-094)
(Agenda Item No. 4)

ACTION:

Consider the approval of a Waiver of the Forfeiture of Performance Deposit for the Tuolumne 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 Project noted below received a Carryforward extension approval; which the Executive Director approved to provide the Project 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 Tuolumne Apartments Project (“Project”) received allocation on September 17, 2014 and initially had its issuance deadline extended by the Committee to April 21, 2015, as permitted under the CDLAC Regulations. As a result of several unforeseen delays outside the control of the Project Sponsor, the CDLAC Executive Director provided a subsequent Carryforward extension to June 15, 2015.

The process has been delayed due to HUD administrative staff changes which according to the Applicant and Project Sponsor, made it difficult to elicit responses with respect to who they should be working with to obtain the approvals. The Project is currently working with the San Francisco HUD office on: 1) the transfer and assumption of the existing HAP Contract; 2) approval of a 20-year extension to that HAP Contract; and 3) prepayment of the HUD 241 loan that was previously erroneously denied.

A Carryforward 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 a waiver of this requirement based upon the unforeseen delays experienced by the HUD administrative staff. The development team is now confident that it will be able to complete all closing steps by the extended bond close date of June 15, 2015.

RECOMMENDATION:

In light of the circumstances described above, staff recommends the approval of the Waiver of Forfeiture of the Performance Deposit for the Tuolumne Project (14-094).

Prepared by Sarah Lester