

**THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE**  
**September 20, 2017**

**Consideration of Requests for a Waiver of the Forfeiture of Performance Deposit  
And/or Negative Points for Various Qualified Residential Rental Projects (QRRP)**  
**(Agenda Item No. 5)**

**ACTION:**

Consider the approval of a Waiver of the Forfeiture of Performance Deposit and/or Negative Points for Various Qualified Residential Rental Projects (QRRP).

**BACKGROUND:**

Approval of a Carryforward extension requires forfeiture of a project's performance deposit. In addition, the full reversion of an award of allocation requires both the forfeiture of the project's performance deposit and the assessment of negative points against the Project Sponsor. The Committee may grant a waiver of each upon a satisfactory showing that: (1) the issue or event that prevented the issuance of the bonds was unforeseen; and (2) the issue or event was wholly outside the control of the Applicant and Project Sponsor. A waiver request must meet both parts of the test.

**Temple View Apartments, Application No. 16-485**

The Temple View Apartments Project ("Project") received an allocation on September 21, 2016 with a bond issuance expiration date of April 3, 2017. Thereafter, upon the Applicant's request, the Executive Director granted an extension to August 15, 2017. An additional extension was granted to November 13, 2017 and the performance deposit in support of the project was forfeited to the Committee in accordance with Section 5052 of the Committee's Regulations.

The Project encountered delays originally due to the disruption of the equity markets and the loss of the initial equity partner. A new equity partner was obtained, but the Project had to overcome a significant financing gap that was unanticipated at the time of the application. To fill the gap, Temple View restructured the deal, including a commitment for fifty-eight (58) project based rental subsidy vouchers. This restructure has significantly delayed the financing process. Due to these unforeseen circumstances that were outside of the developer's control, the closing date was delayed past the August 15, 2017 CDLAC deadline. The anticipated closing date is November 2017.

The Applicant requests a waiver of the performance deposit forfeiture based upon the changes in the tax credit market, resulting in the unforeseen delays that were outside of the Applicant's and Sponsor's control.

**Coliseum Connections Apartments Project, Application No. 16-538**

The Coliseum Connections Apartments Project ("Project") received an allocation on October 19, 2016 with a bond issuance expiration date of April 17, 2017. Thereafter, upon the Applicant's request, the Executive Director granted an issuance extension to June 30, 2017, and an additional extension to August 15, 2017. An additional extension was granted to October 16, 2017, and the performance deposit in support of the project was forfeited to the Committee in accordance with Section 5052 of the Committee's Regulations.

The Project encountered delays originally due to disruption in the tax credit equity market in November 2016, when the Project Sponsor lost their commitment from the investor to purchase the tax credits at \$1.13. Subsequently, a new commitment was received from the investor this year, but at a reduced amount of \$0.94 per credit, which created a \$2.5 million gap in financing sources. More recently, a commitment was secured from the County of Alameda from their Measure A-1 Bond funding, but the negotiations between the County and the other lenders providing approximately \$50 million in public and private funding have been complicated due to the multiple financing sources. The Project Sponsor anticipates closing in September 2017.

The Applicant requests a waiver of the performance deposit forfeiture based upon the changes in the tax credit market, resulting in the unforeseen delays that were outside of the Applicant's and Sponsor's control.

**Swansea Park Senior Apartments, Application No. 16-550**

The Swansea Park Senior Apartments Project ("Project") received an allocation on December 14, 2016 with a bond issuance expiration date of June 12, 2017. Thereafter, upon the Applicant's request, the Executive Director granted an issuance extension to August 15, 2017. An additional extension was granted to November 13, 2017, and the performance deposit in support of the project was forfeited to the Committee in accordance with Section 5052 of the Committee's Regulations.

The Project was unable to close by the deadline due to the disruption in the tax credit equity market in November 2016. Specifically, the developer was informed by their initial tax credit equity investor that (1) The price per credit on the transaction would be reduced, and (2) They no longer had an upper tier investor for the transaction, and thus would be unable to close until an upper tier investor had been identified. Their construction lender was also unwilling to close until an upper tier investor had been identified.

After several months the developers were able to identify a new tax credit investor, Alliant Capital Partners, LLC, and a letter of intent was executed on May 1, 2017. Once the letter of intent of was entered, the Bank of Hope issued a commitment letter July 1, 2017. The Project Sponsor anticipates closing in November 2017.

The Applicant requests a waiver of the performance deposit forfeiture based upon the changes in the tax credit market, resulting in the unforeseen delays that were outside of the Applicant's and Sponsor's control.

**Twenty One and Twenty Three Nevin Apartments, Application No. 16-398**

The Twenty One and Twenty Three Nevin Apartments Project ("Project") received an allocation on July 20, 2016 with a bond issuance expiration date of January 30, 2017. Thereafter, upon the Applicant's request, the Executive Director granted an issuance extension to August 15, 2017. On July 12, 2017, the Applicant requested to return the previously awarded bond allocation, a waiver of performance deposit forfeiture associated with the return of the allocation, and a waiver of negative points. The Executive Director was unable to waive the penalty due to the Applicant missing the July 1, 2017 deadline for the return of the allocation.

It was the intent of the project Sponsor, Richmond Nevin Associates, a California Limited Partnership (RNA) to close debt and equity financing and issue the bonds in the winter of 2016. However, due to the disruption in the tax credit equity markets, the Project Sponsor was unable to meet the deadline of August 15, 2017.

It is the intent of the Project Sponsor to reapply for a bond allocation in the third or fourth quarter of 2017. The developer has made significant changes to the financing plan that have improved project feasibility, but the pricing of the equity component still falls short of that needed for a feasible project at this time. The City of Richmond has made significant accommodations to improve project feasibility, and still has a very strong public support for the Nevin Apartments Project. The Project Sponsor continues to work diligently to secure the necessary equity to ensure the project can successfully move forward with a new allocation of bonds.

The Applicant requests a waiver of the performance deposit forfeiture and waiver of negative points based upon the changes in the tax credit market, resulting in the unforeseen delays that were outside of the Applicant's and Sponsor's control.

**Barrett Plaza Apartments Project, Application No. 16-318**

**Barrett Plaza Apartments (Supplemental) Project, Application No. 16-027**

The Barrett Plaza Apartments Project (“Project”) received an allocation on March 16, 2016 with a bond issuance expiration date of September 26, 2016. The Project received a supplemental allocation on December 14, 2016 with a closing deadline for both allocations of June 26, 2017. The Executive Director granted an issuance extension for both allocations to August 15, 2017. An additional extension was granted to October 15, 2017, and the performance deposit in support of the project was forfeited to the Committee in accordance with Section 5052 of the Committee’s Regulations.

The Project Sponsor is working diligently to overcome the three main factors that initially delayed the project, 1) The disruption in the equity markets and the loss of the initial equity partner, 2) The discovery of a possible environmental contamination and lastly, 3) Delays caused by HUD’s processing of the Section 8 renewal request.

Issues (1) and (2) are being quickly resolved. The Sponsor and entire development team are working closely with CREA, the new tax credit equity partner, to close the financing and begin the renovation shortly. The possible environmental contamination has been investigated and the appropriate regulators have determined that there is no further action required.

The Sponsor continues to work closely with HUD but was not in a position to close by the August 15, 2017 deadline. Moreover, given the extremely competitive contractor market, the project was forced to begin working with an alternate general contractor who is now bidding the project. The final pricing was not available until mid-August. It is anticipated that it will take until mid to late September for the Sponsor to finalize the construction contract, secure a Section 8 HAP Contract Renewal and incorporate this information into the closing process.

The Applicant requests a waiver of the performance deposit forfeiture based upon the changes in the tax credit market and the loss of the initial equity partner, the delay in the HUD processing of the Section 8 HAP contract renewal and the discovery of a possible environmental contamination. These factors resulted in unforeseen delays that were outside of the Applicant’s and Sponsor’s control.

**Renascent Place Apartments, Application No. 17-309**

The Renascent Place Apartments Project (“Project”) received an allocation on March 15, 2017 with a bond issuance expiration date of September 11, 2017. The Executive Director granted an issuance extension for the project to December 12, 2017 and the performance deposit in support of the project was forfeited to the Committee in accordance with Section 5052 of the Committee’s Regulations.

As part of the financing, the County of Santa Clara has committed to contribute County funds and lend to the Project. The County originally agreed to have financing documents to the financing team by August 25<sup>th</sup> in order to meet a pre-close deadline of September 8, 2017. However, the County later informed the Project Sponsor that another project was took precedence over the Renascent Place Project, resulting in the Project Sponsor being unable to close the project by the original CDLAC deadline of September 11, 2017. Financing documents from the County have recently been prepared and the Project is now moving forward, with an anticipated closing date of late October or early November 2017.

The Applicant requests a waiver of the performance deposit forfeiture based upon the delays caused by the County of Santa Clara. The delays were both unforeseen and also outside of the Applicant’s and the Sponsor’s control.

**Ageno Apartments (aka Brisa Apartments) Project, Application No. 16-470 (17-323)**

The Ageno Apartments Project (“Project”) received allocation March 15, 2017 with a closing date of September 25, 2017. An additional extension was granted to December 24, 2017, conditional upon a Letter of Intent from a tax credit investor being received by CDLAC no later than October 31, 2017. The performance deposit in support of the project was forfeited to the Committee in accordance with Section 5052 of the Committee’s Regulations.

The delay in the bond issuance is due to certain changes that have occurred outside of the Applicant and Developer’s control, i.e. the anticipated changes in the Federal income taxation rates, and recent outreach by the Chief Counsel’s Office of the Internal Revenue Service advising of enforcement of the IRS treatment of debt structures typically used in mixed income projects. These changes would make it difficult or impossible for the applicant to monetize the associated Federal Low Income Housing Tax Credit available to the Project under its existing ownership structure. The uncertainty relating to the change in tax rates has resulted in lower pricing of credits, which in turn has caused gaps in financing sources for the Low Income Housing Tax Credit project. The complex structure of the mixed income projects also reduces the number of potential buyers, due to the additional risks to investors from the market rate units that the investors do not control.

**RECOMMENDATION:**

In light of the circumstances described above, staff recommends the approval of the Waiver of Forfeiture of the Performance Deposit and/or Negative Points for the projects noted above: Temple View Apartments, Coliseum Connections Apartments, Swansea Park Senior Apartments Phase 2, Twenty One and Twenty Three Nevin Apartments, Barrett Plaza Apartments, Renascent Place Apartments and Ageno Apartments.

**Posada De Colores Apartments, Application 17-316**

The Posada De Colores Apartments (“Project”) received allocation March 15, 2017 with a bond issuance expiration date of September 25, 2017. An additional extension was granted to December 26, 2017, and the performance deposit in support of the project was forfeited to the Committee in accordance with Section 5052 of the Committee’s Regulations.

The Project will be unable to close by the original deadline due to the recently completed Phase 2 Environmental Report which showed evidence of ground water and vapor contamination. These findings caused delays, as the Project has had to perform additional testing in order to determine the extent of the contamination and where to put in boundaries to contain the contamination. The Project now anticipates closing in October 2017.

The Applicant requests a waiver of the performance deposit forfeiture based upon the additional testing required by the findings in the Phase 2 Environmental Report, resulting in unforeseen delays that were outside of the Applicant’s and Sponsor’s control.

**RECOMMENDATION:**

In light of the circumstances described above, staff recommends that the request for Waiver of Forfeiture of the Performance Deposit **be declined** for the Posada De Colores Apartments Project. Although the delays were due to unforeseen factors, not all of these delays were outside of the Applicant’s and Sponsor’s control.

*Prepared by Shirley Hom*