

THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE
July 18, 2018

**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. Using less than 80% of the allocation requires a pro-rata forfeiture of a portion of the 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 Project Sponsor and the development team. A waiver request must meet both parts of the test.

Posada De Colores Apartments, Application No. 17-316

The Posada De Colores Apartments ("Project") received an allocation on March 15, 2017 with a bond issuance expiration date of September 25, 2017. Thereafter, upon the Applicant's request, the Executive Director granted three issuance extensions to December 26, 2017, to March 26, 2018 and most recently to June 25, 2018. The performance deposit forfeiture was waived on each occasion and most recently at the May 16, 2018 Committee Meeting. The Applicant requested a fourth extension to September 24, 2018, 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 original delay was the result of the Project's Phase 2 Environmental Report showing evidence of ground water and vapor contamination. This added several delays to the project as the project had additional testing done to determine the boundaries necessary to contain the extent of the contamination. Although the results of the second round of testing were received and the results were encouraging, the results were inconclusive and a third round of testing was required to see if contamination was coming from off-site or on-site.

Alameda County has now approved the Ground Water Remedial Action Permit (RAP) and Soil Management Plan. The environmental costs were finalized on June 28, 2018. Wells Fargo will complete final cost review, prepare loan documents, and HUD can finalize a Housing Assistance Payments (HAP) Agreement. Bonds are expected to be issued on July 23, 2018.

The Applicant requests a waiver of the performance deposit forfeiture, based upon the factors above, resulting in unforeseen delays that were outside the control of the Project Sponsor and the development team.

Cottages at Mission Trail Apartments, Application No. 17-378

Cottage at Mission Trail Apartments (“Project”) received an allocation on September 20, 2017 with an expiration date of April 2, 2018. Upon the Applicant’s request, the Executive Director granted a 90-day extension to July 2, 2018, and the performance deposit in support of the project was waived at Committee meeting on May 16, 2018. The applicant requested and was granted an additional extension to October 2, 2018 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 delayed in closing due to unexpected issues with the City of Elsinore (City) and the California Department of Fish and Wildlife (CDFW). The Project is located within the boundaries of East Lake Specific Plan (ELSP). The CDFW is requiring that any development within the boundaries of the ELSP Area require substantial and costly mitigation as a condition to obtaining a Lake or Streambed Alteration Agreement (LSA), which is a condition to obtaining a building permit from the City. CDFW’s recent mandates could require acquisition of up to 4 to 1 acre acquisition, plant off-site mitigation and funding of a substantial maintenance endowment for long term management, which, for this project would mean acquisition of 70.4 acres for mitigation plus the endowment. The City believes that this property would be exempt from CDFW jurisdiction. Several pending projects within the City, including this project, are affected by this issue.

The Project is a permit ready project, however the timing for achieving resolution with CDFW remains uncertain. The project sponsor and the City are working together to aggressively and timely challenge CDFW’s claim of jurisdiction over the Project.

The Applicant requests a waiver of the performance deposit forfeiture, based upon the factors noted above, resulting in unforeseen delays that are outside the control of the Project Sponsor and the development team.

Rise Apartments, Application No. 17-409

The Rise Apartments (“Project”) received an allocation on December 13, 2017 with a bond issuance expiration date of June 25, 2018. Upon the Applicant’s request, the Executive Director granted a 90-day extension to September 24, 2018, and the performance deposit in support of the project will be forfeited to the Committee in accordance with Section 5052 of the Committee’s Regulations.

The developer had originally planned to conduct a traffic study in July 2017, however the California Department of Transportation requested that the traffic study be delayed until August 29, 2017 once classes resumed at the University of Southern California. The City of Los Angeles approved the traffic study on September 28, 2017, and it was subsequently approved by California Department of Transportation on January 17, 2018. The City of Los Angeles put this project on hold until the traffic study was completed. The plan check comments were received April 23, 2018 and the development team has been diligently completing necessary clearances required for the issuances of the local permits. The Project is anticipating a bond issuance in August 2018.

The Applicant requests a waiver of the performance deposit forfeiture based upon the factors noted above resulting in the unforeseen delays that were outside the control of the Project Sponsor and the development team.

Step Up On Second Apartments, Application No. 17-417

The Step Up On Second Apartments (“Project”) received an allocation on December 13, 2017 with a bond issuance expiration date of June 11, 2018. Upon the Applicant’s request, the Executive Director granted a 90-day extension to September 10, 2018, and the performance deposit in support of the project will be forfeited to the Committee in accordance with Section 5052 of the Committee’s Regulations.

The Project closing was delayed due to the coordination of multiple types of project based vouchers and various sources or subsidies taking longer than expected. The Project Sponsor has submitted various proposals to the City of Santa Monica and they are in the process of negotiating the seventeen (17) pre-existing vouchers. The City of Santa Monica is in process of working with the Sponsor to finalize a contract, however it has taken longer than expected. It is anticipated that the documentation will be finalized by end of July 2018, with bond issuance expected in August 2018.

The Applicant requests a waiver of the performance deposit forfeiture and based upon the factors noted above resulting in the unforeseen delays that were outside the control of the Project Sponsor and the development team.

2675 Folsom Street Apartments, Application No. 17-420

The 2675 Folsom Street Apartments (“Project”) received an allocation on December 13, 2017 with a bond issuance expiration date of June 25, 2018. On June 20, 2018, 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.

On November 15, 2017, Deutsche Bank executed a term sheet signed by the Project’s equity capital partner, Hunt Investment Management (Hunt), AOF/Affordable Housing Corporation (AOF) and Axis Development Group (Axis) for a direct purchase of the bonds. The term sheet was included in the CDLAC application in mid to late December 2017, Axis learned that Deutsche Bank had imposed an additional cash collateral requirement to secure Hunt’s guaranties during construction – approximately \$20 million. Hunt decided to withdraw from the transaction and Axis needed to secure a new equity capital partner. Hunt delayed communicating their decision until early June 2018. The developer is actively seeking another equity investor, and realistically needs more than six months to secure and negotiate the financing. The Project Sponsor intends to return the allocation and reapply at a future date.

The Applicant requests a waiver of the performance deposit forfeiture and waiver of negative points, based upon the factors noted above resulting in the adverse material changes in the transaction which prevented the bond issuance by the expiration date. The events were unforeseen and were outside the control of the Project Sponsor and the development team.

Market Street Apartments, Application No. 17-426

The Market Street Apartments (“Project”) received an allocation on December 13, 2017 with a bond issuance expiration date of June 25, 2018. Upon the Applicant’s request, the Executive Director granted a 30-day extension to July 11, 2018, and the performance deposit in support of the project will be forfeited to the Committee in accordance with Section 5052 of the Committee’s Regulations. The bonds were issued on July 5, 2018.

The Project closing was delayed due to several factors. First, the California Housing Finance Agency (CalHFA) was utilizing its HUD Risk Share Program and backing from the Federal Finance Bank. During the closing process, the federal government did not extend the Federal Finance Bank backed component of the CalHFA permanent loan causing a review of the construction and lease up schedule of the Project. Concern arose that any delays in the existing schedule could potentially preclude closing of the permanent loan in time. The Project Sponsor, CalHFA and the rest of the development team worked diligently to identify and obtain a commitment for backstop financing that preserved the feasibility of the Project. This included re-underwriting the Project and modifying other financing commitments which prevented the closing of the bonds by the original expiration date.

Additionally, the Project is funded with an award from the Affordable Housing and Sustainable Communities (AHSC) program which requires that affordable housing developments be combined with Transit related infrastructure project. The Project Sponsor, the City of Redding and other members of the development team are working to finalize and execute the AHSC Standard Agreement. The coordination of unrelated housing and infrastructure obligations amongst multiple parties has caused the process to be much lengthier than expected.

Lastly, there were large increases in labor and material costs which caused modifications of the construction and overall development budget. These changes resulted in a delay in the bid process.

The Applicant requests a waiver of the performance deposit forfeiture based upon the factors noted above resulting in the unforeseen delays that were outside the control of the Project Sponsor and the development team.

Hunter Street Apartments, Application No. 17-431

The Hunter Street Apartments (“Project”) received an allocation on December 13, 2017 with a bond issuance expiration date of June 25, 2018. Upon the Applicant’s request, the Executive Director granted a 90-day extension to September 24, 2018, 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 is partially financed with funds from the AHSC program which requires that affordable housing developments be combined with Transit related infrastructure project to receive funding. The Sponsor and development team were notified that the resolution submitted by the City of Stockton (City) did not meet AHSC requirements and a revised resolution would be needed. The City has scheduled consideration of the revised resolution at a meeting on July 17, 2018. It is anticipated that approval of the revised resolution is mostly a formality, however a formal approval is required in order for the bond issuance to occur.

In addition, there were delays in finalizing the construction plan review with the City. The City utilized outside plan reviewers instead of internal plan reviewers to perform its construction plan check, resulting in administrative delays.

Lastly, changes in the tax credit equity market due to the tax reform activity at the end of 2017 made it more difficult than previous projects to procure binding debt and equity commitments in

conjunction with the State and Federal Funding, and required the project to be re-underwritten and re-structured. One of the original lenders and investors had withdrawn from the project.

It is anticipated that the bond will be issued in August 2018.

The Applicant requests a waiver of the performance deposit forfeiture based upon the factors noted above resulting in the unforeseen delays that were outside the control of the Project Sponsor and the development team.

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 seven (7) projects noted above: Posada De Colores Apartments, Cottages at Mission Trail Apartments, Rise Apartments, Step Up On Second Apartments, 2675 Folsom Street Apartments, Market Street Apartments, and Hunter Street Apartments.

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