

**THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE**  
**December 12, 2018**

**Consideration of Requests for a Waiver of the Forfeiture of Performance Deposit for  
Various Projects  
(Agenda Item No. 6)**

**ACTION:**

Consider the approval of a Waiver of the Forfeiture of Performance Deposit for various projects.

**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 the full forfeiture of the project's performance deposit. The Committee may grant a waiver upon a satisfactory review 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.

**SiONEER Stockton, LLC, Application No. 18-020**

SiONEER Stockton, LLC ("Project") received an allocation on October 17, 2018 with an expiration date of January 15, 2019. The applicant has requested to return the full amount of the allocation. 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 Applicant has requested a waiver of the forfeiture of the performance deposit.

A Preliminary Limited Offering Memorandum (PLOM) was posted for potential bond purchasers on September 21, 2018. After an investor conference on October 4, 2018 there were 9 qualified investors. The underwriter determined that there was a lack of confirmed interest in the SiONEER Stockton bonds. On November 6, 2018 four of the investors were contacted with none opting to purchase the bonds who were reportedly chilled by market trends and the uneven regulatory enforcement of landfill rules in California.

The unanticipated rejection by the investor community for this bond has led to return of the allocation that was granted on October 17, 2018.

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

**Viridis Fuels, LLC, Application No. 18-018**

Viridis Fuels, LLC ("Project") received an allocation on July 18, 2018, and a supplemental allocation on September 19, 2018, both with an expiration date of December 18, 2018. Upon the Applicant's request, the Executive Director granted a 90-day extension to March 18, 2019 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 Applicant has requested a waiver of the forfeiture of the performance deposit.

The project was delayed primarily due to two factors. First, the recently imposed steel tariffs impacted the components constructed from steel. As a result of the increased costs of steel, Sacre-Davey Engineering, ("SDE"), the project engineer, withdrew its initial guaranteed maximum price. Second, SDE featured a design using a liquid enzyme product. Novozymes, the company providing the liquid enzyme product, notified Viridis Fuels that it could no longer provide a product performance guarantee. SDE had to utilize a different manufacturer, TransBiodiesel (TBD), a manufacturer of "TransZyme A" which is an immobilized enzyme. TBD agreed to provide a 100% product performance guarantee. This change required SDE to redesign the process and supporting components. Viridis Fuels, LLC is working diligently with SDC to complete the revised agreements and expects the bonds to be closed in by March 2019.

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. As the original allocation received on July 18, 2018 was not a carryforward allocation, the Applicant also requests authorization to carryforward the allocation to 2019,

**Sycamore Street Commons and La Playa Residential Apartments, Application No. 17-402 and 18-008**

Sycamore Street Commons and La Playa Residential Apartments, ("Project") received an allocation on November 15, 2017, and a supplemental allocation on June 20, 2018, both with an expiration date of December 17, 2018. The applicant has requested to return the full amount of both allocations. 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 Applicant has requested a waiver of the forfeiture of the performance deposit.

The California Department of Housing and Development (HCD) reviewed the proposed project structure as part of a Loan Portfolio Restructuring application in June 2016 (prior to a 9% tax credit application) and again in November 2017. In late March 2018 (in the middle of the construction financing closing), HCD alerted the Sponsor, Mercy Housing, that they believed the existing HOME program loan on Sycamore would require approval from the U.S. Department of Housing and Urban Development (HUD) to be assigned to the new proposed scattered site ownership. Mercy worked with HCD over the next few months to obtain this approval. Ultimately, in August 2018, HUD determined that it was not possible to recast an existing HOME loan on only one property in a combined scattered site development. To recast the HOME loan, the 30-year extended affordability period would have to be reduced, by waiver, to the 20-year Federal affordability period, and the full 20 years must run their course. There is no waiver or exception that can be made to this requirement. According to the HUD database the project's starting date for the period of affordability was September 8, 1999; while MHC has provided documentation to HUD that the project's affordability period should have begun as of June 1998. HUD has denied the request to adjust the date.

HUD and HCD have recommended that the Project Sponsor seek the waiver of the 30-year extended affordability period that would allow the project to move forward after the minimum 20-year period of affordability expires in September 2019. Without this waiver the project would not be able to move forward until September 2029. HUD and HCD have indicated that they are open to approving this type of waiver and have done so in the past. Assuming the Project Sponsor is successful in getting the affordability period reduced, they intend to re-apply for tax credits and bond allocation again in mid-2019 with a closing date after September 2019.

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

**San Pablo Hotel Apartments, Application No. 18-340**

The San Pablo Hotel Apartments (“Project”) received an allocation on May 16, 2018 with a bond issuance expiration date of November 13, 2018. Upon the Applicant’s request, the Executive Director granted a 90-day extension to February 11, 2019, 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 Applicant has requested a waiver of the forfeiture of the performance deposit.

The San Pablo Hotel project has encountered an unanticipated delay in receiving National Environmental Policy Act (NEPA) clearance due to concern over whether the project could be eligible for the National Historic Register. (The project is not currently listed, and the City’s existing historic inventory states that the project does not appear eligible. This determination was brought into question during the NEPA review). This concern resulted in multiple rounds of questions and comments before the application was processed. The Project Sponsor was told in initial inquiries that typical NEPA turnaround time for a renovation project could be anywhere from 6-10 weeks. Due to the extra processing around the historic status, the actual turnaround will be approximately 18 weeks. The Project Sponsor anticipates the bond closing by mid- to late December 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.

**Westlake Christian Terrace West Apartments, Application No. 18-346**

The Westlake Christian Terrace West Apartments, (“Project”) received an allocation on May 16, 2018, with a bond issuance expiration date of November 13, 2018. Upon the Applicant’s request, the Executive Director granted a 90-day extension to February 11, 2019, 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 Applicant has requested a waiver of the forfeiture of the performance deposit.

The Project experienced a delay when HUD raised concerns over the Project’s rent setting, which in turn delayed the ability of the Oakland Housing Authority (“OHA”) to set the rents for its

Project-Based Voucher (PBV) contract. Earlier this month, however, HUD finally resolved its issues regarding the restricted rent levels at the project and OHA has begun its process of verifying income eligibility for 121 unassisted households and inspecting the affected units to ensure they meet minimum habitability standards. OHA expects to complete this process by the end of January 2019, at which point the lender and investor can complete their underwriting. The Project Sponsor anticipates the bond closing in February 2019.

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.

**Kristen Court Apartments II, Application No. 18-319**

Kristen Court Apartments (“Project”) received an allocation on March 21, 2018 with a bond issuance expiration date of September 17, 2018. The Applicant has requested to revert the full amount of the allocation 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 Applicant has requested a waiver of the forfeiture of the performance deposit.

The Project Sponsor had originally requested a 30 day extension to October 17, 2018, and planned on closing the bond by that date. The extension was requested due to market conditions, including a tight labor market and high material prices which resulted in higher than expected bids from subcontractors. The developer’s failure to meet the extended deadline of October 17, 2018 is due to the factors above, plus the rural location of the project has also added to these costs. The Project is therefore faced with a significant financing gap. The Developer, Pacific West Communities, Inc. (“PWC”) intends to fill a large portion of this gap by pursuing state credits from the California Tax Credit Allocation Committee (“TCAC”), redesigning the project, and continuing to value engineer the project. Already, a proposed site plan change has brought the project into the range of feasibility. PWC plans to submit a new bond application to CDLAC in January 2019 with updated design approvals. This will allow the Project additional time to secure the necessary financing to ensure the successful completion.

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

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

The Cottages at Mission Trail Apartments (“Project”) received an allocation on September 20, 2017 with a bond issuance expiration date of April 2, 2018. Upon the Applicant’s request, the Executive Director granted a 90-day extension to July 2, 2018, and additional extensions were requested and granted to October 2, 2018 and January 2, 2019. The performance deposit in support of the projects the first two extensions was waived at the Committee meetings on May 16, 2018 and July 18, 2018 respectively. The performance deposit in support of the project for the third extension request to January 2, 2019 will be forfeited to the Committee in accordance with Section 5052 of the Committee’s Regulations. The Applicant has requested a waiver of the forfeiture of the performance deposit.

As reported previously to the Committee, the Project Sponsor became aware that California Department of Fish and Wildlife (CDFW) was aggressively asserting an increased level of jurisdiction over the Project site. After a challenge of this position, the Sponsor, the City of Lake Elsinore and CDFW have come to an understanding on how best to reach resolution avoiding a lengthy arbitration process, and allowing the Project to move forward.

The necessary series of substantive meetings and discussions leading up to resolution has been difficult to calendar, primarily due to the lack availability of CDFW and the City of Lake Elsinore personnel. CDFW's lead supervisor has been on extended vacation/leave since mid-August. To further complicate things, the City Manager has been on extended leave and City Attorney has been on vacation. However, the development team now has an understanding regarding an acceptable location and approximate size of off-site mitigation requirements. All that remains is to document the ongoing management and security of the area and CDFW has committed to complete that final agreement within the time frame of an additional 90-day extension and by the end of the December 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.

**St Anton ECR, Application No. 18-351**

St Anton ECR Apartments ("Project") received an allocation on May 16, 2018 with a bond issuance expiration date of November 13, 2018. Upon the Applicant's request, the Executive Director granted a five day hardship extension to November 20, 2018 and a 90-day extension to February 18, 2019, 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 Applicant has requested a waiver of the forfeiture of the performance deposit.

The reason for the delay in closing was the delay in recordation of the Parcel Map. The coordination of offsite improvements between the utility agency and the City of Sunnyvale (City) was a lengthy process. The City binds the review and approval of the Parcel Map with the offsite improvements. Therefore, delays in the offsite improvements affected the timing of the Parcel Map. Additionally, there was a backlog in the City's final review process.

The applicant, after weeks of negotiation, has been able to obtain City officials' permission to process the Parcel Map independently from the offsite improvements in order to not delay the Parcel Map recordation and the project closing. Originally the applicant was anticipating that upon City's permission, the Parcel Map recordation could be processed within a few days, which is the reason for the 5-day hardship extension. However, certain items required for the recordation may take up to 10 business days. The project sponsor is actively working with all responsible agencies to get the Parcel Map approved and recorded as soon as possible and close the construction loan immediately afterwards.

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 for the eight (8) projects noted above: SIONEER Stockton, LLC, Viridis Fuels, LLC, Sycamore Street Commons / La Playa Residential Apartments, San Pablo Hotel Apartments, Westlake Christian Terrace West Apartments, Kristen Court Apartments II, Cottages at Mission Trail, and St. Anton ECR. Staff also recommends approval for Viridis Fuels, LLC to carryforward their allocation to 2019.

*Prepared by Evan Kass and Shirley Hom*