

THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE
January 16, 2019

**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.

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

Step Up on Second Apartments ("Project") received an allocation on December 13, 2017 with an expiration date of June 11, 2018. Upon the Applicant's request, the Executive Director granted two additional 90-day extensions to September 10, 2018 and to December 10, 2018. The performance deposit forfeitures in support of the project were waived at the Committee meetings on July 18, 2018 and October 17, 2018. The Applicant requested and was granted a third extension to March 12, 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 for this third extension.

Originally, the Project was delayed because it involved multiple types of project-based vouchers and coordinating these various sources of subsidies took longer than expected. The Project Sponsor had submitted various proposals to the City of Santa Monica ("City") and it took them time to negotiate the preexisting and ongoing vouchers.

When the development process first began with the City of Santa Monica, the subordination of a City loan was their key consideration in approving the project and City staff initially believed it could be approved without Council involvement. As the discussions continued, the City determined that any sales proceeds involving this property needed to be approved by the City Council. As part of these discussions the City also determined that a portion of their loan needed to be paid back which also triggered Council approval. City Council approved the subsidy, loan and property transfer transaction in a closed-door session in July 2018. At the City Council public meeting on December 11, 2018, the financing structure was approved. The Project Sponsor anticipates closing January 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.

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 three additional extensions were requested and granted to October 2, 2018, January 2, 2019, and April 2, 2019. The performance deposit in support of the projects for the first three extensions were waived at the Committee meetings on May 16, 2018 and July 18, 2018, and December 12, 2018, respectively. The performance deposit in support of the project for the extension request to April 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 (“City”) 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 initial expectation was to be able to close the project by the end of the year but unfortunately the project has experienced some additional delays that were outside of the sponsor’s control. The City required final CDFW resolution before it would re-engage it’s outside financial and legal firms. Although the City continues to be a strong advocate and fully committed to the project, it determined that a full project re-evaluation was necessary. The City was also unwilling to begin drafting documents or schedule the new TEFRA hearing until the re-evaluation was complete. Legal documentation commenced this week and the development team is in the process of scheduling the new TEFRA hearing for January. Closing calls will now resume as all barriers appear to have been resolved.

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.

Post 310 Apartments, Application No. 18-321

Post 310 Apartments, (“Project”) received an allocation on March 21, 2018, with an expiration date of October 1, 2018. On October 30, 2018, the Applicant 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.

The reason for this request is because the project could not move forward under the original financing structure due to unexpected and extraordinarily high construction cost increases.

In Fall 2016/Winter 2017, the development team finalized negotiations with the San Diego Housing Commission in connection with the Commission's loan to the Project. Part of the loan underwriting process included a review of the Project's construction costs. Cost estimates were derived from costs from a project which was nearing completion and located within close geographic proximity to the Project site, with a similar construction type/finishes and the same design team. Extra escalation factors were added to those costs as a precautionary measure. Additionally, part of the loan approval process included a third party cost review by the Commission's consultant, the Gordian Group. The Gordian Group's extensive cost analysis process could not have prepared any party involved in the transaction for the extraordinary costs increases of more than 25% that occurred in 2018.

The land was acquitted in 2017 and the Project was scheduled to close the construction loan on May 31, 2018. The Project was permit ready and in a position to move forward. However, weeks ahead of the construction loan closing, competitive bids from multiple contractors were received with construction costs in excess of the original budget. The unusually high construction costs were due to (a) lack of labor and increased labor costs, (b) unusually long completion times due to a lack of labor which increases the construction interest carry costs, (c) uncertainty regarding tariffs causing overnight and continually escalating materials costs, (d) competition for construction materials throughout California. The 25% rise in costs vs. a normal cost escalation of 5% or 10% was unusually high resulting in the funding gap.

The San Diego Housing Commission was unable to increase its funding commitment, and as the State of California Veterans Housing and Homelessness Prevention Program (VHHP) and the Housing Commission loan commitments were expiring in the near future, the only viable funding alternative for the Project was to return the reservation of 4% Low Income Housing Tax Credits and seek competitive 9% Low Income Housing Tax Credit in July 2018 in on order to attempt to preserve the soon expiring loan commitments.

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.

Rocklin Gateway Apartments, Application No. 18-365

Rocklin Gateway Apartments ("Project") received an allocation on June 20, 2018 with a bond issuance expiration date of December 17, 2018. On November 30, 2018, the Applicant 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.

The sponsor encountered unexpected issues that were outside of their control, preventing the Project from being built. At the time the Applicant submitted the application for allocation, the Project had received a preliminary commitment from HUD staff, providing the developer with assurance that their financing structure was acceptable. The sponsor and development team were under the impression that the expected property tax exemption was acceptable; however, the

Regional HUD director disagreed with that assessment at final approval, after more than a year into the process. Unfortunately, the HUD director was not consulted by HUD staff until the final hours before the loan was set to close. HUD staff had reviewed and approved the loan amount calculations throughout the application process and were also surprised by the outcome. Without the tax exemption he proposed financing structure was not feasible.

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.

Sierra Heights Apartments, Application No. 18-395

The Sierra Heights Apartments (“Project”) received an allocation on July 18, 2018 with a bond issuance expiration date of January 28, 2019. Upon the Applicant’s request, the Executive Director granted a 90-day extension to April 25, 2019. 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 recent fire in the City of Paradise has dramatically affected the immediate area and surrounding communities including Oroville where this project is located. Rental units and hotel/motel spaces are not available in the Project area. The Project contractor and all of the subcontractors are working to remove debris and rebuild anything possible in the City of Paradise. Thus, the developer of the Project is having difficulty finalizing the construction contract due to the absence of subcontractors, and concern about where workers from out of town can stay while on the job. The developer has also been asked to consider allowing temporary housing trailers on the Project site to help with the short term transition for families who lost their homes.

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 five (5) projects noted above: Step Up on Second Apartments, Cottages at Mission Trail Apartments, Post 310 Apartments, Rocklin Gateway Apartments, and Sierra Heights Apartments.

Prepared by Shirley Hom