

THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE
March 20, 2019

**Consideration of Requests for a Waiver of the Forfeiture of Performance Deposit for
Various Projects
(Agenda Item No. 4)**

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 three additional 90-day extensions to September 10, 2018, December 10, 2018 and March 12, 2019. The performance deposit forfeitures in support of the project were waived at the Committee meetings on July 18, 2018, October 17, 2018 and January 16, 2019. The Applicant requested and was granted a fourth extension to June 10, 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 fourth extension.

When the development process first began with the City of Santa Monica ("City"), 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 and approved the subordination of their existing loan and other aspects of the financing in December 2018.

The City of Santa Monica informed the Project Sponsor that they will need another 9 to 10 weeks for project review before granting permit approval. This delay in the permit approval process delayed the project beyond the March 12, 2019 closing date

The Project Sponsor anticipates closing in April 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.

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 four issuance extensions to December 26, 2017, to March 26, 2018, June 25, 2018, to September 24, 2018. The performance deposit forfeiture was waived on each occasion and most recently at the July 18, 2018 Committee Meeting. The Applicant requested a fifth extension to December 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 bond was issued on October 31, 2018.

The original delay was the result of the project’s Phase 2 Environmental Report showing evidence of ground water and vapor contamination. This has added delays to the project as they have had to do additional testing to have all information necessary to know where to put in boundaries to contain the extent of the contamination.

The primary reason for the need for the additional extension related to the permanent lender deciding to have their consultant, Partner Environmental (“Partner”), conduct a peer review of all of the environmental documents produced by West Environmental (“West”, Project Sponsor’s Consultant) on August 6, 2018. Partner’s “Risk Evaluation Memo” (REM) was not completed until September 6, 2018. The REM identified “data gaps” in the testing and also estimated higher remedial costs. West Environmental had to review and respond to the Partner Environmental REM. After a conference call between the parties, West produced a response to the Partner report challenging the data gaps as well as Partner’s cost estimate. Partner then had to respond to West’s response in order to satisfy the lender. This back and forth process took nearly 8 business days and was not consummated until Sept 17, 2018. While holding firm to their assessment, Partner Environmental did concur on the remedial measures and agreed that the “data gaps” could be addressed once the remedial actions are underway. Apart from the perceived risk and liability, the reason the environmental question was so important is that the equity investor and the construction and permanent lender based their equity installments and loan conversion conditions on milestones for the remedial actions and sign-off by the County of Alameda.

All parties were pushing to close by September 24, 2018, until the permanent lender informed the Project Sponsor on September 19, 2018 that the earliest they could get final investor and committee approval was October 4, 2018. The Project Sponsor had actual costs from a Contractor and West to provide the remedial services and project management. The permanent lender’s final investor/loan approval was completed on Oct 4, 2018, the project closed on October 31, 2018, which was prior to the last extension due date of December 24, 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.

Hope on Alvarado Apartments, Application No. 18-327

Hope on Alvarado Apartments (“Project”) received an allocation on March 21, 2018 with an expiration date of September 17, 2018. Upon the Applicant’s request, the Executive Director granted a 5 day hardship extension to September 24, 2018, and a 45 day extension to November 8, 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 request for extension was due to unexpected delays in the financing. The development team worked diligently to close by the new extension date and issued the bond on the due date of November 8, 2018.

One of the biggest obstacles was that the Project is a first on many levels, and took the financing team longer than expected to complete approvals and complete due diligence. The Project was built out of shipping container materials, which Housing and Community Development has the only oversight in the approvals of the plans and specifications. This, in turn, caused the City of Los Angeles to process permits slower than normal.

In addition, the Los Angeles Housing and Community Investment Department (“HCID”) was challenged in signing off on the project as it had a small element of a Residential Hotel Ordinance requirement to be satisfied. Additionally, the Project was scrutinized by the lender and equity investors to a greater degree than a traditional financing due to the different and revolutionary way of building the project. The Project Sponsor believes that they have developed a great model of how to deliver high quality residential units to the most underserved and neglected population on a much faster and cheaper basis. The first is always the most difficult, and each subsequent projects like this one, two of which are in the pipeline, will go much smoother.

This will be the largest property in the country using this building material and construction process, and is the only project that is supported 100% to benefit the chronically homeless. The Project Sponsor hopes to improve on this model to deliver more desperately needed housing units for these future residents, and to develop a workable model that can be used throughout the state.

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.

Viridis Fuels, LLC, Application No. 18-018

Viridis Fuels, LLC (“Project”) received an allocation and a supplemental allocation on July 18, 2018 and September 19, 2018. Upon the Applicant’s request, the Executive Director granted a 90 day extension to March 16, 2019,, and the performance deposit in support of the project was waived at the January 16 Committee meeting. On March 6, 2018, the Applicant requested to return the full amount of the allocation and the supplemental 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 previous extension request was required due to the contractor delay in the construction and design of the project resulting from necessary engineering revisions. Sacre-Davey Engineering, (“SDE”), the project engineer, withdrew its initial guaranteed maximum price, in response to concerns that federally imposed steel tariffs might escalate project costs beyond the amount that SDE was willing to guarantee in the initial submission to the Project. Viridis is working with SDE to revise the agreements and the GMP for submission to an independent engineer as expeditiously as possible. SDE indicated that it would take an additional three months to complete the revised design to a level that more accurate construction bids could be obtained.

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.

North Fork Community Power, LLC, Application No. 18-025

North Fork Community Power, LLC (“Project”) received an allocation on December 12, 2018 with a bond issuance expiration date of March 12, 2019. Upon the Applicant’s request, the Executive Director granted a 90-day extension to June 10, 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 bond closing was anticipated to be prior to March 12, 2019. The project’s economics and feasibility are dependent on a Pacific Gas & Electric power purchase agreement and associated interconnection to the power grid. PG&E’s pending bankruptcy has created a great uncertainty in the market and involves the questionable ability of the pea to honor the power purchase agreement and to complete the required transmission interconnection. This uncertainty has hampered the transaction and has made finding bond purchases a more difficult task for the finance team. As a result, the Company is not able to complete the bond issuance by the original required date.

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.

800 Block Apartments, Application No. 17-385

The 800 Block Apartments (“Project”) received an allocation on September 20, 2017 with a bond issuance expiration date of July 2, 2018. No bonds were issued by this deadline and the performance deposit in support of the project would normally be forfeited to the Committee in accordance with Section 5052 of the Committee’s Regulations.

There was large and unexpected increase in construction expenses due to limited available resources after the local wildfires. While the project Sponsor and Developer were evaluating financial vehicles to handle the shortfall, they unexpectedly lost the Federal Finance Bank (FFB) as a financing source as they announced the ending of their Risk Sharing initiative with HUD due to a rising interest rate environment.

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.

RECOMMENDATION:

In light of the circumstances described above, staff recommends the approval of the Waiver of Forfeiture of the Performance Deposit for the six (6) projects noted above: Posada de Colores Apartments, 800 Block Apartments, Step Up On Second Apartments, Viridis Fuels, LLC, North Fork Community Power, LLC and Hope on Alvarado Apartments.

Prepared by Shirley Hom and Evan Kass