

THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE
May 15, 2019

Consideration of Requests for a Waiver of the Forfeiture of Performance Deposit for Various Projects (Agenda Item No. 7)

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.

Truckee Artist Lofts (App#17-427)

This project was originally awarded allocation at the December 13, 2017 board meeting and then with a supplemental at the December 12, 2018 board meeting for a total allocation of \$25,181,216.

A letter, dated February 28, 2019, from CalHFA informed staff that the project cannot move forward with existing financing and are therefore reverting the full \$25,181.216 in allocation. Section 5052 of the CDLAC regulations state that failure to issue bonds or issue less than 80% of the allocation would result in the forfeiture of the performance deposit.

However, the same section also permits the committee to waive the forfeiture if the circumstance were beyond the control and unforeseen by the Developer or Sponsor. According to the letter, the project became financially unfeasible due to high constructions costs causing a budget overrun and drastic and unforeseen changes in the low income housing tax credit market causing an increase in interest rates, tax credit rents and the sudden termination of the Federal Financing Bank's participation in the purchase of HUD Risk Sharing loans.

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.

Sierra Heights Apartments (App#18-395)

This project received an extension at the July 18, 2018 meeting extending the original bond closing deadline of January 28, 2019 to April 25, 2019. This is the second request to extend the deadline an additional 90 days making the revised deadline July 24, 2019. Section 5052 of the CDLAC regulations state that failure to issue bonds or issue less than 80% of the allocation would result in the forfeiture of the performance deposit.

The rationale has not changed. The developer is still having difficulty obtaining construction contractors, subcontractors, and other building resources as these resources have been dedicated for debris removal and construction in the City of Paradise after the Camp fires.

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.

North San Pedro Apartments (App#18-405)

This project was awarded allocation on September 19, 2018 and with VHHP financing which restricts availability to military veterans. Bond counsel notified CalHFA on October 5, 2018 that Section 142(d) of the Internal Revenue Code prohibits tax-exempt bonds that can be used to finance units with tenant preference restrictions. Because of this unexpected notification, the developer reduced the bond usage so that 59% of the projects would utilize the tax-exempt bonds (74% of the original allocation award of \$49,400,000). This is below CDLAC's requirement that at least 80% of the awarded allocation be issued as tax-exempt private activity bonds. Given the timing of the notice from Bond counsel, CDLAC staff believes the circumstance were unforeseen and therefore recommends waiving the partial forfeiture of \$26,000 in performance deposit.

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.

Dino Papavero Senior Centre Apartments (App#18-417)

This project received allocation on October 17, 2018 with a closing deadline of April 15, 2019. The request for extension and waiver of forfeiture of deposit was received on April 4, 2019. Section 5052 of the CDLAC regulations state that failure to issue bonds or issue less than 80% of the allocation would result in the forfeiture of the performance deposit.

The unexpected government shutdown had caused significant delays in the necessary review and approval process with HUD. This was exacerbated by the extent of due diligence and underwriting involved with elements such as a senior rehabilitation project involving relocation, prepayment of the HUD loan, and HAP renewal.

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.

Sands Apartments (App#18-428)

This project received allocation on October 17, 2018 with an original closing deadline of April 15, 2019. A 90 day extension was granted moving the closing deadline to July 15, 2019. Section 5052 of the CDLAC regulations state that failure to issue bonds or issue less than 80% of the allocation would result in the forfeiture of the performance deposit.

Their original lender, Deutsche Bank, pulled out of the project which was unexpected and beyond the developer's control. They have been actively looking for equity lenders and now have East West Bank lined up with the subordinate bonds to be purchased by Align Finance. Based on these adjustments and necessary preparations they are expecting a late June or early July closing.

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.

Aqua Apartments (App#18-429)

This project received a 5 day hardship extension from the original deadline of April 15, 2019 to April 22, 2019. Section 5052 of the CDLAC regulations state that failure to issue bonds or issue less than 80% of the allocation would result in the forfeiture of the performance deposit. CSCDA was unable to issue the bonds on the new deadline and have asked for an additional 30 day extension and a waiver of forfeiture of the performance deposit.

As this is a full demolition/rebuild project, the developer is using an Infill Infrastructure Grant from the California Department of Housing and Community Development (HCD) which involves discussion of easements with neighboring landowners.

The discovery of the neighbor's rights to the easement was not specified by the original owner's title company.

During due diligence the sponsor was able to work with the title company they regularly use for bond issuance to make sure all proper steps were taken for release of the easement. Repeated attempts were made to contact the neighboring landowners and eventually, the team was able to resolve the issues. However, with the unexpected delay, the 15th suddenly became an uncertainty.

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.

1717 S Street Apartments (App#18-447)

This project received an allocation of \$48,103,724 on December 12, 2018 with an original bond issuance deadline of June 10, 2019. The issuer (CalHFA) has requested a 90 day extension. Section 5052 of the CDLAC regulations state that failure to issue bonds or issue less than 80% of the allocation would result in the forfeiture of the performance deposit.

Aside from unexpected large increases in construction costs, a financing gap suddenly opened with the end of the Federal Financing Bank's purchase of HUD Risk Sharing Loans. The sponsor has been diligently working with the investors to restructure the financing but the negotiation will take time. They are also working with project engineers to determine if the hard construction costs can be reduced.

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 seven (7) projects noted above: Truckee Artist Lofts, Sierra Heights Apartments, North San Pedro Apartments, Dino Papavero Senior Centre Apartments, Sands Apartments, Aqua Apartments and 1717 S Street Apartments.