

**THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE**  
**July 17, 2019**

**Consideration of Requests for a Waiver of the Forfeiture of Performance Deposit for Various Projects (Agenda Item No. 5)**

**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.

**North Fork Community Power (App#18-025)**

This project was originally awarded an allocation of up to \$9,305,000 in tax-exempt bonds at the December 12, 2018 allocation meeting with a bond issuance date of June 10, 2019. CPCFA is requesting a waiver of forfeiture of performance deposit for \$46,525.

A letter, dated May 17, 2019 from CPCFA, and we were informed that the closing was anticipated to be prior to the bond issuance date. The project economics and feasibility are dependent on a Pacific Gas & Electric (PG&E) power purchase agreement and associated interconnection to the power grid. North Fork continues to work with officials at the California Public Utilities Commission (CPUC) and the Governor's Office to clarify PG&E's obligations under the BioMat program. Through the cooperation of multiple state agencies, the Company will be receiving an interim loan from the California Infrastructure and Economic Development Bank for \$1.2 million. This loan will allow the company to pay for the PG&E interconnection and to provide funds for the completion of construction related costs.

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.

**Miramar Tower Apartments (App#18-380)**

On December 12, 2018, CDLAC awarded Miramar Tower Apartments a bond allocation of \$5,450,677 with an issuance deadline of June 24, 2019. In a letter dated May 14, 2019, CSCDA requested an extension and a waiver of forfeiture of the performance deposit.

CSCDA states the project meets the standards for the waiver under the committee regulations for the following reasons. The delay is due predominantly to two key items: (1) the recent government shut-down caused a delay in the submissions to and processing by FHA, which created delays and rework in several other items that needed to be updated for FHA, and (2) the City of Los Angeles has been slow in processing the Lot Line Adjustment for the project, which is a key piece of finalizing title and all associated legal documents for the property that include its legal description. It now seems that FHA processing has been sorted out, and that the approval of the lot line adjustment is imminent, which puts the project on track for an August 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.

**Placer Village Apartments (App#18-413)**

On October 17, 2018, CDLAC awarded Placer Village Apartments a bond allocation of \$8,495,000 with an issuance deadline of April 15, 2019. On March 1, 2019, an extension was granted moving the issuance deadline to May 15, 2019. In a letter dated June 24, 2019, CSCDA requested a waiver of negative points and forfeiture of the performance deposit, \$42,475K.

Water intrusion and severe water damage was discovered inside the walls of all buildings just before the simultaneously scheduled tax credit and tax-exempt bond debt closing, which was just prior to the CDLAC required closing date.

High Ridge Costa Housing Partners (Developer) began preliminary feasibility studies and gathered third-party reports for an Acquisition & Rehab of Place Village Apartments in March 2018. Consultant firms sent their technicians to the site for exterior inspections, inspections of every building, and inspections of every unit. Not one of the onsite consultants/inspectors, general contractors, employees, or the onsite management employees reported any unusual conditions when inspecting the inside of any unit or exterior of any building. Water damage occurring in the wall cavities of any building remained undetected. The onsite property management company is a TCAC-approved property management company.

Over 40 building structure locations throughout the project were tested and similar conditions were identified. At that point, they knew the scope and cost of repair was way beyond the requested amounts in applications to CDLAC and TCAC. The contemplated acquisition/rehab is infeasible.

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.

**Oak Groves North and Oak Groves South Apartments (App#18-457)**

In a letter dated June 4, 2019, CMFA requested a waiver of forfeiture of the performance deposit. The project received the allocation on December 12, 2018 with a closing date of June 24, 2019. An extension has been approved with an issuance deadline of September 23, 2019.

At the time of application, the project was fully ready to close in time to satisfy that deadline. However, subsequent changes to environmental standards and the discovery of potential environmental conditions at the site have caused significant delays, resulting in the inability to meet the current deadline.

A Phase I Environmental Site Assessment was completed for this site on October 22, 2018. The Phase I ESA indicated that uses of the site, prior to the construction of the project, included those often associated with environmental issues. However, it was believed, at the time, that no environmental contamination that would require significant mitigation would be encountered.

The results of the Phase I ESA did warrant further study and a Phase II ESA was commissioned. While the Phase II ESA was underway, the San Francisco Bay Regional Water Quality Control Board revised its Tier 1 Environmental Screening Levels (“ESLs”), which, in turn, significantly lowered the threshold for required remediation actions. Because of the changes to the ESLs, the project became subject to a wide range of environmental remediation requirements that had not been required at the time of the CDLAC application.

Significant progress has been made on these issues. It is currently anticipated that the issues will be sufficiently resolved, and the bond closing should be able to take place in the latter part of the third quarter of 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.

**Bernal Gateway Apartments (App#19-413)**

This project received an allocation on January 16, 2019 with an original closing deadline on July 29, 2019. A 90-day extension was granted moving the closing deadline to October 27, 2019.

A number of staff changes, limits on submitting projects through the city's legislative branch, and the implementation of new policies applicable to the project delayed the city's review and approval of the project. The project now has staff in place, can now submit legislation to the Board of Supervisors for approval, are in final rounds of negotiation, and will be able to close the bonds within the extended deadline

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: North Fork Community Power, Miramar Tower, Placer Village Apartments, Oak Grove North and Oak Grove South Apartments, and Bernal Gateway Apartments.

*Prepared by Muri Bartkovsky*