

MINUTES

**California Pollution Control Financing Authority
915 Capitol Mall, Room 587
Sacramento, California
December 18, 2007**

1. CALL TO ORDER & ROLL CALL

Bill Lockyer, Chairman, called the California Pollution Control Financing Authority (CPCFA) meeting to order at 10:44 a.m.

Members Present: Bill Lockyer, State Treasurer
Les Kleinberg for John Chiang, State Controller
Vince Brown for Michael C. Genest, Director, Department of Finance

Staff Present: Michael Paparian, Executive Director

Quorum: The Chairperson declared a quorum

2. MINUTES

Mr. Lockyer asked if there were any questions or comments concerning the December 3, 2007 meeting minutes. There were none.

Mr. Kleinberg moved approval of the minutes; upon a second, the motion was unanimously carried.

3. EXECUTIVE DIRECTOR'S REPORT (INFORMATION ITEM)

Mr. Paparian began with the Executive Director's report noting that two sets of regulations will be presented to the Board. Mr. Paparian further acknowledged the tremendous effort staff went through getting the regulations to the Board. Deana Carrillo took the lead on the CALReUSE regulations with Aaron Todd taking the lead on the CalCAP regulations. They worked very hard with stake holders, sister state agencies and others. Staff held meetings and conference calls, working to understand and address questions that were raised. Staff also received support from Bob Hedrick, Staff Counsel, of the State Treasurer's Office.

Mr. Paparian further reported that CalCAP has an independent contributor program that allows state agencies and other entities to help encourage loans. CPCFA has an arrangement with the Integrated Waste Management Board (IWMB) that allows it to put in the borrower's contribution to a loan loss reserve account for small businesses that focus on waste reduction, material reuse and recycling. On December 10, 2007 the Professional Business Bank enrolled a one million dollar loan for Wind Plast, a company that will use post consumer plastic material and recycle it into value added plastic molded products. IWMB contributed the

borrower portion of the loan loss reserve contribution in the amount of \$20,000. CPCFA is developing information about projects expecting tax-exempt bond financing in 2008.

In 2007 the California Debt Limit Allocation Committee (CDLAC) set aside \$440,000,000 for exempt facilities. Looking forward to 2008 CPCFA is aware of over one billion dollars in projects that are considering seeking allocation. More information will be forthcoming in January about these possible proposals and where they are coming from. In January or February staff hopes to report on progress towards streamlining the bond application and developing new model bond documents. Also, in coming weeks staff will be finalizing the arrangements for distribution and monitoring of the Sustainable Communities Grant and Loan Program grants.

Mr. Lockyer asked if there were any questions or comments. There were none.

4. BUSINESS ITEMS

A. APPROVAL OF 2008 MEETING CALENDAR

Mr. Brown moved approval of the item. Upon a second, the item passed with the following vote: Mr. Brown, Aye; Mr. Kleinberg, Aye; Mr. Lockyer, Aye.

B. PROPOSED REGULATION CHANGES FOR THE CALIFORNIA CAPITAL ACCESS (CALCAP) REQUEST TO APPROVE EXTENSION OF INITIAL RESOLUTION AUTHORIZING THE ISSUANCE OF REVENUE BONDS

- 1) The California Pollution Control Financing Authority is organized and operating pursuant to Section 44500 through 44563 of the California Health and Safety Code. The Act and existing regulations of the Authority provide for the California Capital Access Program for Small Businesses to assist small businesses obtain financing. The proposed changes are designed to (1) refocus CalCAP on truly small businesses in order to provide maximum return for the limited resources, and (2) clarify several items. The proposed amendments to the existing regulations are the result of preliminary conversations with lenders and staff recommendations. Presented by – Aaron Todd.

Concerning interest earnings on the loan loss reserve accounts, Mr. Brown asked about the comparable market rate and if it is tied to any specific index.

Mr. Todd replied no, because of the various sizes of loan loss reserve accounts that the lenders have (from \$5,000 to \$10,000,000). Staff relies on the lenders, the State Treasurer's Office (STO) Investment Division, and The Bank of New York for indications of whether or not these various sized accounts are receiving market rates.

Mr. Brown asked what the market rate would be for a \$10,000,000 account.

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Mr. Todd replied that having spoken with STO Investment Division staff, a three to four percent range would be conservative with respect to what a \$10,000,000 account would be expected to earn.

Mr. Lockyer agreed that three to four percent would be conservative. Mr. Lockyer then asked if there were questions or comments from the public.

Scott Wittfield, First Vice President, Professional Business Bank, stated that he had been operating with CalCAP for 10 years. He expressed concern about the business model as a lender as he continues to contribute to the loss reserve accounts growing his CalCAP account; if in one to two years from now CalCAP lowers to a \$1,000,000 loan maximum and holds him to a smaller bracket, it would not make economic sense for his bank to continue in this program at that loan size.

Mr. Lockyer asked if Mr. Wittfield was concerned that there will be subsequent changes in the program or just with the proposed changes.

Mr. Wittfield responded that his concern is that he will not be able to make the same types of loans he made two years ago if the loan loss reserve account drops to \$1,000,000.

Mr. Lockyer replied that Professional Business Bank is one of the principle participants and that other banks have expressed interest as well. Staff's recommendation was to keep the loan loss reserve at a million and a half. Any other changes are unnecessary.

Mr. Wittfield further stated that he had spoken to Mr. Todd about statutory code changes, which is a longer process. He noted that he was the one who actually came up with the suggestion that once the loss reserve exceeds one to two million dollars, the State does not need to provide a four percent match to the lender's four percent. Two percent is effective for active players like First Bank and Professional Business Bank. The additional loss reserves are not needed because they are already above six to ten percent.

Mr. Lockyer replied that staff is considering legislative changes, possibly next year, that would modify those numbers.

Mr. Kleinberg moved approval of the item. Upon a second, the item passed with the following vote: Mr. Kleinberg, Aye; Mr. Brown, Aye; Mr. Lockyer, Aye.

C. PROPOSED REGULATIONS FOR THE CALIFORNIA RECYCLE UNDERUTILIZED SITES (CALReUSE) PROGRAM TO IMPLEMENT PROVISIONS OF THE HOUSING AND EMERGENCY SHELTER TRUST FUND ACT (PROPOSITION 1C)

- 1) The Housing and Emergency Shelter Trust Fund Act (Proposition 1C) was approved in November 2006. Of the total \$2.85 billion in general obligation bonds approved

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under Proposition 1C, \$850 million is slated for the Regional Planning, Housing and Infill Incentives Account, which includes a provision for Brownfield cleanup that promotes infill housing development and other related infill development consistent with regional and local plans. In the most recent State budget, \$60 million of Proposition 1C funds were allocated to the CALReUSE program. The funds are for loans or grants for the purposes of Brownfield cleanup that promotes infill residential and mixed-use development, consistent with regional and local land use plans. Pursuant to this legislative mandate, staff proposes amending the CPCFA regulations to 1) implement the CALReUSE Remediation Program, and 2) amend the CALReUSE Assessment Program to increase its effectiveness and create consistency between the two programs. Presented by – Deana Carrillo.

Vince Brown asked how money for grants and loans will be allocated.

Ms. Carrillo replied that staff will solicit Strategic Partners through an RFP process and will also gauge how much money will go out in loans by reviewing potential pipelines requested as part of this process.

Mr. Lockyer commented that these are the preliminary emergency regulations to get the program moving and more permanent regulations will be adopted later. Mr. Lockyer further stated that there are three individuals for public comment.

Mr. Bob Hoffman of Paul Hastings Law Firm, representative for the Dewey Group, acknowledged staff for a job well done. Mr. Hoffman requested that the percentage requirement for the match be dropped. It is currently 25% and his clients believe that this has a significant impact in getting to the more difficult Brownfield sites and spurring development.

Ms. Carrillo replied that the match referred to is an existing requirement with the CALReUSE site assessment program and not the remediation program.

Ms. Wahl explained that the concern at the time this requirement was written into the program was to make sure that various players, whether municipalities or developers, had “skin in the game.” There is a forgiveness element to the assessment program and staff wanted to make sure that applicants were looking at sites that they were serious about. The way the match can work is that strategic partners put up part of the match. Strategic partners are allowed 10% of that as administrative overhead and the remainder either can be charged back to the developer, or the strategic partner can pay it.

Mr. Lockyer asked if there was anything else to mention.

Mr. Hoffman replied that an alternative would be a provision to cap the maximum loan amount and consider the public interest to advance the program. There are sites that will be problematic with that match and we would like to see the money reach more problematic sites.

Mr. Brown agreed with staff that we do have skin in the game.

Ms. Wahl stated that people can submit comments about this requirement during the permanent regulation process.

Desmond Parrington, City of Sacramento, thanked staff and voiced concerns about language related to the exclusion of responsible parties that would exclude applicants simply because they own the property; the defenses and exemptions in the Federal regulations would be more appropriate to reference in the Section 9607 paragraphs B-R. In regard to the affordability ranking, while the City supports mixed income development and the 15% affordability requirement, there was a concern that the two sections 8102.14 (d)&(e) shift the focus away from mixed use production and stress affordability production. Too many sites are blighted in the State that have cleanup issues. It is critical that any type of housing development be encouraged and with the 15% threshold the program achieves that affordability. Putting the additional threshold and the focus on the deep levels of affordability and higher percentages really shift the program focus away from housing production to an affordable housing program.

Deana Carrillo stated that staff is recommending to amend the regulations with one definition to refer to the Federal code that matches the intent of the program.

Mr. Lockyer stated that with respect to the affordable housing question there is a range of opinion. To what extent it should be Brownfield cleanup/affordable housing may be fine tuned as the program goes along.

Kyri S. McClellan, Project Manager from the Mayor's Office, City and County of San Francisco, thanked staff and commented that this has been an intense but transparent process and she was grateful for the opportunity to contribute. She represented that she was here specifically because the Hunter's Point Shipyard was closed thirty years ago and San Francisco approved redevelopment plans that look at 30% affordable housing as part of its development and needs every possible resource. It is looking at the grant program to try to accelerate the cleanup. San Francisco has been at this for many years now with fine advocates in Washington D.C., but that is not enough. The Bay View Hunter's Point Community has the highest breast cancer rate, infant mortality rates, poverty and unemployment and violence rate. The mayor of San Francisco, Mayor Newsom, has made it a top priority and has been working with the Department of Toxic Substances Control (DTSC) for some time now and is pleased to see Military sites and superfund sites be eligible. This is going to make a big difference in San Francisco. San Francisco staff looks forward to working with the California Center for Land Recycling who has been a great partner and leader in the regulatory making process.

Mr. Kleinberg commented that Section 8091 seems to be the most controversial change as it opens up some large sites. The concern is that if we bring in the more

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complex sites we are then going to diminish the ability to work on the less complex sites, which was the purpose. He questioned whether there is a way we can limit the use of the monies toward superfunds as to not encompass the entire program.

Mr. Lockyer stated that there is a \$5,000,000 cap. Concerns with the superfund sites include environmental justice issues; legal issues as to whether or not a responsible party can be accountable to clean up the site that it caused to be contaminated; if there is money available of this sort, whether it would relieve the obligation of a Responsible Party; cost and complexity. All are relevant concerns. Staff indicated that there may be a way to write prioritization language that would constrain the superfund potential.

Mr. Paparian replied that one model familiar to the Board is the Tier 1 and Tier 2 approach that CDLAC uses. We could start with projects that do not have viable party issues and then address others in Tier 2.

Ms. Carrillo stated that staff can include a provision that prioritizes projects that do not have a viable responsible party or alternative adequate financing in order to fund clean up to insure that the state dollars are going towards the projects that have no other means of going forward. Within that same type of priority provision it can also include, give priority to, a project that is not a superfund site. Again, that would not eliminate this type of site from being eligible. As staff looks at the pipeline and where the needs are, the Authority has the ability to refrain from funding these sites until it deemed appropriate. Concern on the listed sites is that the complexity of the site would require cost beyond \$5,000,000.

Mr. Kleinberg stated that the intention is not to eliminate listed sites from being eligible, but it would be nice to see a priority system so that the less complex sites get priority.

Ms. Wahl stated that during the Strategic Partner RFP process Staff will be asking for pipelines of projects that will be ready in the next 6-12 months.

Ms. McClellan commented that their site has a redevelopment plan in place; 80-acres were transferred from the Navy, construction has begun and there is a clean up plan in place with DTSC. Hunter's Point is different than a superfund site; the local Board of Supervisors and the Community has invested significant resources in the site. What San Francisco is doing is looking for monies to accelerate the cleanup which the Navy will not do.

Mr. Lockyer asked what the Federal Government has committed.

Ms. McClellan replied that it has committed about \$80,000,000 in the next fiscal year if the President signs all the appropriations. Almost \$500,000,000 has been spent at the shipyard to date.

Mr. Lockyer asked what the total price tag is going forward.

Ms. McClellan replied \$350,000,000 over the next five years.

Mr. Brown asked whether this included proposals for a stadium.

Ms. McClellan responded that CALReUSE money would be in no way used for ongoing stadium considerations; Parcels B&D, and Parcel B specifically, is housing related.

Mr. Lockyer stated that there is some language that would prioritize projects within the listed sites category that do not have a viable party or adequate alternative financing mechanisms for the clean up. Mr. Lockyer asked for a motion to approve the regulations with the Federal definition changes and the superfund guideline.

Mr. Kleinberg moved approval of the item. Upon a second, the item passed with the following vote: Mr. Kleinberg, Aye; Mr. Brown, Aye; Mr. Lockyer, Aye.

D. OTHER BUSINESS

1) Request for Approval of Interagency Agreement with the California Department of Housing and Community Development Regarding the CALReUSE Program to Implement Provisions of The Housing and Emergency Shelter Trust Fund Act (Proposition 1C).

- 1) Staff requested the Authority's approval of an Interagency Agreement with the Department of Housing and Community Development (HCD) in order for HCD to make available, in the form of one or more transfers, sixty million dollars (\$60,000,000) from item 2240-101-6069 of Section 2.00, Budget Act of 2007, to CPCFA. Through this Interagency Agreement, HCD will transfer and CPCFA will deposit the sixty million dollars into a separate sub-account of the continuously appropriated Pollution Control Financing Authority Fund (fund number 0930). It is unclear at this time whether the funds will be transferred in a one time transaction or will be transferred from HCD to CPCFA as applicants are approved for funding. CPCFA, in consultation with HCD, will develop a program for Brownfield cleanup that promotes infill housing development and other related infill development consistent with regional and local plans. CPCFA will administer these funds as loans or grants under the California Recycle Underutilized Sites (CALReUSE) program established under Article 9 (commencing with Section 8090) of Division 11 of Title 4 of the California Code Regulations. The term of the Interagency Agreement will be through June 30, 2012. Presented by – Sherri Wahl.

Mr. Brown moved approval of the item. Upon a second, the item passed with the following vote: Mr. Kleinberg, Aye; Mr. Brown, Aye; Mr. Lockyer, Aye.

5. PUBLIC COMMENT

Mr. Lockyer asked if there were any public comments. There were none.

6. ADJOURNMENT

There being no further business, public comments, or concerns, Mr. Lockyer adjourned the meeting at 11:34 p.m.

Respectfully submitted,

Michael Papanian
Executive Director