

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE
Minutes of the March 20, 2019 Meeting

1. Roll Call.

Jovan Agee for State Treasurer Fiona Ma chaired the meeting of the California Tax Credit Allocation Committee (CTCAC). Mr. Agee called the meeting to order at 1:49 p.m. Also present: Anthony Sertich for State Controller Betty Yee; Jolie Onodera for Department of Finance Director Keely Martin Bosler; Mark Stivers for California Department of Housing and Community Development (HCD) Director Ben Metcalf and Carr Kunze for California Housing Finance Agency (CalHFA) Executive Director Tia Boatman Patterson.

County Representative Santos Kreimann and City Representative Ray Mueller were absent.

2. Approval of the Minutes of the January 16, 2019 and February 27, 2019 Meetings

MOTION: Ms. Onodera moved the approval of the Meeting Minutes, Mr. Sertich seconded and the motion passed unanimously by a roll call vote.

3. Executive Director's Report

Acting Executive Director, Vincent P. Brown stated Treasurer Ma has a vision for housing programs in the Treasurer's office and would like to align with Governor Newsom's proposals in the State Budget, particularly the \$500 million state tax credit proposal. He stated that a Request for Proposal (RFP) has been issued to develop a strategic plan for both CTCAC and the California Debt Limit Allocation Committee (CDLAC). Mr. Brown added staff hopes to have a draft of the plan for board consideration at the October 2019 meeting and a final draft by the November 2019 meeting. Following a request previously from Ms. Onodera, Mr. Brown stated that he will make sure all board members receive a copy of the RFP following today's meeting. He noted that the consultant hired by the RFP will be looking at federal and state regulations and statutes, as well as policies and procedures in both CTCAC and CDLAC. The consultant will also reach out to stakeholders for additional input. He added the results could propose a merger of both CTCAC and CDLAC or some derivative thereof. Mr. Brown stated the goal is to improve the overall efficiency and functions of both boards and committees.

Mr. Brown stated General Counsel Mark Paxson will be providing legal services to both CTCAC and CDLAC. Due to the high priority placed on the Treasurer's housing programs and the Governor's initiative, staff feels it is important to have the General Counsel involved, not only with the strategic plan but also with appeals and the review of regulations moving forward.

4. Discussion and Consideration of the 2019 Applications for Reservation of Federal Four Percent (4%) Low Income Housing Tax Credits (LIHTCs) for Tax-Exempt Bond Financed Projects.

Development Section Chief, Gina Ferguson stated staff is recommending 17 projects for approval. She noted one project (Glen Haven) withdrew, which is the reason for the golden rod. The project anticipates coming back with another application in May of this year. Ms. Ferguson stated staff has reviewed the 17 projects and they meet program requirements. She added two are new construction projects and fifteen are rehabilitation projects, nine of which are re-syndication projects coming back in for a new allocation of credits after their 15 year compliance period had ended.

MOTION: Ms. Onodera moved the approval of the staff recommendation, Mr. Sertich seconded and the motion passed unanimously by a roll call vote.

5. Discussion and Consideration of an Appeal Filed Under TCAC Regulation Section 10330 on Behalf of PATH Villas at South Gate (CA-18-035).

Deputy Director Anthony Zeto stated staff received an appeal to a performance deposit refund request for a project that returned their credits last year and then turned it over to the appealing party.

Amy Anderson, Executive Director of PATH Ventures stated they are a non-profit organization focused on developing supportive housing in the Los Angeles region. With her was Allison Riley, Managing Director of Real Estate Development for PATH Ventures.

Ms. Anderson stated PATH Ventures has a long relationship and great respect for CTCAC staff as affordable housing developers. She urged the board to reconsider the determination of staff and to refund the performance deposit for their PATH Villas at South Gate project. The project received in allocation of tax credits in June 2018 but returned the credits in August that same year. PATH Ventures submitted a letter to CTCAC staff on January 2, 2019 requesting a refund of the performance deposit, specifically citing Section 10335(e)(2) of CTCAC regulations. She stated this section of the regulations allows for a refund of the performance deposit in exceptional circumstances and noted it implicitly includes lawsuits. She added the sole reason PATH Ventures had to return the credits was due to a lawsuit and therefore, should be eligible for the refund. Ms. Anderson stated that in the denial of PATH Ventures' request, CTCAC staff noted that PATH Ventures was aware of the lawsuit at the time the credits were accepted and therefore isn't eligible for the refund. She stated the regulations don't suggest that the timing around exceptional circumstances is a prerequisite for eligibility for the refund. She added one can reasonably assume that a project is eligible for a refund whether these exceptional events occur before or after one has accepted the credits as the regulations are written.

Ms. Anderson reiterated the sole reason PATH Ventures returned its credits was due to the lawsuit. In the fall of 2016, PATH Ventures purchased the site that would become PATH Villas at South Gate. She explained the site was occupied by two warehouse-like buildings. Under request and agreement with the local police department, the site was made available for police K-9 training. She added in the summer of 2017, while police were using the building, an accident occurred injuring a police officer and the police officer subsequently filed a personal injury lawsuit against the limited partnership in March 2018. Ms. Anderson stated PATH Ventures accepted the allocation of tax credits in July 2018 because at the time, they were in active negotiations with two or three investors as well as a potential owner partner, working on strategies that would close the financing on the project and begin construction. She noted because none of the investors were comfortable with the potential financial risk associated with the lawsuit, PATH Ventures returned the credits to CTCAC in August 2018. Ms. Anderson added it was specifically the unknown financial liabilities associated with the lawsuit that prevented PATH Ventures from being able to find an investor who was willing to acquire the tax credits.

Ms. Anderson summarized, given that the credits could not be used due to the lawsuit and that the regulations as written provide that a lawsuit is an exceptional circumstance for which a performance deposit can be refunded, PATH Ventures asked the Committee to approve their request to refund the performance deposit.

Mr. Zeto stated that the project did return their credits in August 2018 and added that negative points were issued since the credits could have been utilized by another project that was beaten in the competitive round. The negative points were also appealed by the PATH Ventures but ultimately, the negative points would stand. In the appeal letter, CTCAC staff made it clear that the pending litigation was known by the applicant and that there are risks associated with accepting a reservation. He added PATH Ventures accepted the reservation knowing the risk, one of which was receiving negative points if the project did not perform. As far as the regulatory language, it does reference extraordinary circumstances like lawsuits and natural disasters, and is not explicit in terms of timing but the intent of the regulations is that these are events that could arise after a reservation has been received. He stated that technically the lawsuit was not the reason the project did not to go forward but rather there was no interested investors since they could not get comfortable due to the liabilities associated with the lawsuit, which existed at the time PATH Ventures submitted their application for tax credits. Mr. Zeto added that a performance deposit is refunded if the project performed throughout the process and based on the circumstances here, CTCAC staff believes the project did not meet the requirements to be eligible for the refund.

Mr. Brown added that CTCAC staff also consulted with General Counsel on the reading of the regulations and that TCAC was going to rely on Mr. Paxson's interpretation of the regulations.

Mr. Sertich asked Mr. Brown and Mr. Zeto if the regulations in Section 10335(e)(2) still allowed the Committee to make the final decision in regards to the ruling of the appeal.

Mr. Zeto stated that Mr. Sertich was correct.

Mr. Sertich asked Ms. Anderson what their plans were for the property moving forward and she added that it is going to be difficult going through the same process again with the negative points.

Ms. Anderson stated that first they're waiting for the lawsuit to wrap up and they would go from there.

MOTION: Mr. Sertich moved to deny the appeal for PATH Villas at South Gate, Ms. Onodera seconded and the motion passed unanimously by a roll call vote.

6. Public Comment.

None.

7. Adjournment.

Mr. Agee adjourned the meeting at 2:05 p.m.