CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE
Minutes of the October 28, 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 2:30 p.m. Also present: Anthony Sertich for State Controller Betty Yee; California Housing Finance Agency (CalHFA) Executive Director Tia Boatman Patterson and Zachary Olmstead for California Department of Housing and Community Development (HCD) Acting Director Doug McCauley and City Representative Vivian Moreno.

   Gayle Miller for Department of Finance (DOF) Director Keely Martin Bosler and County Representative Santos Kreimann were absent.

2. **Discussion of the Minutes of the September 25, 2019 and October 16, 2019 Meetings.**

   Executive Director, Judith Blackwell stated that due to staff vacations, the Meeting Minutes would be presented at the next Committee meeting.

3. **Executive Director's Report.**

   Ms. Blackwell stated that CTCAC's revised regulations will be considered for the Committee's approval at this Committee meeting. She presented an overview of the revised regulations at the previous meeting and reminded the Committee that they had asked for additional time to consider the changes and confirm with other members of the community. Ms. Blackwell provided a brief overview of the various factors that lead to the regulation changes, which started with garnering information from the development community through Treasurer Ma's Ten City Tour. On August 16, 2019, staff released the proposed regulations and solicited public comment. On September 11, 2019, a public hearing was live streamed in Sacramento. Written comments were accepted through September 16, 2019. At the September 25, 2019 Committee meeting, the Committee discussed the possibility of delaying the consideration of the proposed regulation from October 16, 2019 to October 28, 2019. At the October 16, 2019 meeting, Ms. Blackwell provided a PowerPoint presentation on the proposed regulations. In developing the regulation changes, Ms. Blackwell reminded the Committee of the six driving principles, which guided staff in the process and opened the floor for any comments.

   Mr. Sertich stated he would save his comments for agenda item #5, which directly addresses the proposed regulation changes.

   Mr. Agee requested that Gayle Miller be added to the roll call at 2:37 p.m.

4. **Discussion of California Tax Credit Allocation Committee (CTCAC) and the California Debt Limit Allocation Committee (CDLAC) Strategic Plan.**

In regards to the strategic plan, Mr. Agee stated that it would be presented to the Committee at the December Committee meeting. He noted that he met with Impact Development Brands for the revised timeline and that it would be up for a topic of discussion at the next meeting. He also plans to go over alignment issues that have been raised by the Controller's Office.

5. **Discussion and Consideration of a Resolution to Adopt Proposed Regulations, Title 4 of the California Code of Regulations, Sections 10302 through 10337, Revising Allocation and Other Procedures.**

Ms. Blackwell recommended the proposed regulation changes to the Committee for approval.

Mr. Agee stated the changes were in regards to a tremendous amount of feedback, which was received throughout the state and development community over the last several months. He thanked staff for their hard work on developing the changes. He also thanked specific members from the development community for all the feedback that went into the discussions surrounding the changes. He believes that the changes presented before the Committee today does not favor nonprofit developers or for profit developers and believes the changes were developed using a holistic approach. Mr. Agee added that staff tackled mostly non-controversial changes along with changes that would enable the new $500 million state tax credits to be utilized in the most efficient way possible to address the ongoing housing crisis.

Ms. Moreno asked if staff could speak to the new changes concerning geographic dispersion as they relate to the regulations.

Ms. Blackwell stated the only change would be with regard to the new $500 million state tax credits, noting that staff did not implement a geographic set of requirements. Staff's understanding was that the new funding was not meant to mirror the competitive 9% program but to merely upstart the use of state tax credits.

Ms. Moreno stated she was deeply concerned with the lack of geographic dispersion policy for the new state tax credit program and believed that all regions of the state should be able to participate. Without geographic dispersion policy, she believes that affordable housing developments in high cost areas like San Diego will face a disadvantage. If projects are ranked based on state tax credits per unit, affordable housing projects in richer and higher cost areas will not qualify for the new program. The lack of geographic dispersion will only build housing in lower income areas of the state. Research supports that incorporating lower income populations into higher income neighborhoods significantly improves the socioeconomic mobility of lower income residents and people of color. Since this will most likely be a one-time funding, Ms. Moreno asked the Committee to consider implementing a geographic dispersion policy for the new state tax credit program.

Ms. Boatman Patterson asked Ms. Blackwell if staff could reference the factors that were taken into consideration for the first round of funding. To her understanding, the intent of the legislation was not to disadvantage one geographic area over another but to jump start the production of shovel ready projects that can meet the 180-day readiness requirement, with a specific credit efficiency standard, speaking to the amount of credits used over the amount of units produced. The focus of the first round of funding was production. Initially, it was not expected that the first round was going to be competitive or oversubscribed. Ms Boatman Patterson added that the new funding is expected to be an ongoing source of funding and the tax credits would be proposed as part of the state budget so that they can be sized to what the economy calls for.

Ms. Miller did not guarantee any ongoing funding from the state with regard to the new state tax credits due to uncertainties in the economy. She agreed with Ms. Boatman Patterson on all the other topics she raised.

Mr. Sertich stated that the lack of geographic dispersion is an issue and that staff should look to clean it up next year after the initial round of funding.

Mr. Olmstead stated he was still struggling with the change going from 59% AMI to 60% AMI since the policy tradeoff would be sacrificing some affordability. He wanted to get a better understand on how necessary it was to move in this direction since the program is intended to be competitive.

Ms. Blackwell stated that staff received comments of equal weight on both sides of the proposed AMI change. As a result, staff decided to press forward with the established priorities of the administration, which is to increase housing production. Staff strongly believes the change to 60% will lead to a greater number of large family developments with more bedroom space.

Mr. Olmstead asked how exactly the change would lead to more production since the program is already expected to be oversubscribed. It is hard to guarantee there will be more production since the applications are unknown at this time.

Ms. Boatman Patterson disagreed with Mr. Olmstead that the change would sacrifice affordability. She stated that calculations showed how many additional units would be built with the change from 59% to 60% AMI, which was quantified at about 300 additional units per year. She referenced a federal law change in 2017, which allowed states to take advantage of income averaging, which allows for units with up to 80% AMI. She explained that keeping the existing state regulation at 59% AMI would not allow projects to take full advantage of the federal law that allows for income averaging and a fewer number of units produced overall. She also stated that keeping the 59% AMI complicates calculations that are done on the asset management side to show monitoring and compliance of affordability.

Mr. Olmstead referenced public comments from local governments, which spoke in opposition to the change and thought that the Committee should be mindful of those comments and consider them as well since it will have an impact on the renters.

Ms. Boatman Patterson stated that local governments who want deeper affordability should invest more local dollars into affordable housing projects. She added that the average AMI across 4,885 new developments averaged 53% AMI so she is hard pressed to see how moving to 60% AMI would sacrifice affordability.

Mr. Olmstead stated that the justification given to them said the change would increase the number of applicants and asked it that would pose as issue to staff, given the current construct of competiveness.

Mr. Sertich stated he believes this change will not have too much of an impact since most of the tax credit underwriting process is done assuming a lower than 59% average affordability. He stated that it might make sense to table this change for further discussion with the next set of regulation changes in 2020, which will examine more controversial changes. He does not believe the change will produce more units because the program is intended to be oversubscribed.

Mr. Agee stated he was having issues separating theory from a tangible conversation to get a sense of what is really being discussed. He believes that the Committee is also co-mingling many of the topics. He wants to clarify that changes to the rules of the program does not mean that program participants would be opposed to the new rule, other than having to change their financing models.

Development Section Chief, Gina Ferguson stated that based on the public comment matrix, there were five entities opposing the change and five entities supporting the change. She read aloud which entities opposed and supported the change.

Mr. Olmstead stated that HCD also opposed the change and addressed their concerns relating to affordability.

Mr. Agee asked whether the opposing comments elaborated to the issue of whether the change would increase unit production.

Mr. Olmstead went over the public comment matrix and explained that the entities opposed to the change raised concerns regarding increased rents, which moves away from deeper affordability. He added that the change would merely generate more applications, not necessarily an increase in unit production.

Ms. Boatman Patterson stated she has seen nothing quantifying that the change would lead to a loss in affordability. Under the change, for every higher income unit produced above 60% AMI, an equivalent lower income unit must be produced, which only leads to a broader range of incomes within a project.

Mr. Olmstead stated the argument is that the averaging slightly creeps up as well. He was not comfortable with the only justification being that the program would receive more applications.

Ms. Boatman Patterson asked staff to clarify if whether the justification would lead to more units produced or just generate more applicants.

Ms. Blackwell stated that the change would lead to more units produced due to a broader range of applicants and projects.

Mr. Agee asked if a broader applicant pool also allows projects to pencil better in markets that contain communities of color.

Ms. Blackwell stated the feedback she has gotten from the development community was that the 1% does make a difference in the project's ability to close financing gaps.

Mr. Agee stated that Ms. Blackwell's comment was specifically why he was supportive of the change, especially due to its impact on communities of color.

Ms. Miller stated she does support to change to 60% AMI. If the change leads to a decrease in affordability, the Committee can take action to address it accordingly. She emphasized that it is hard to make certain decisions that are short of real data.

Ms. Miller also stated she is concerned with the way the 33% in the regulations is phrased. For clarity, she asked staff to further explain how the tax credits are scheduled to be divided amongst the 3 separate pools.

Ms. Blackwell stated the separate pools were created so that no single developer could run away with all the state tax credits. Staff also ensured that no single developer or their affiliates could get more than a third of the state tax credits in each pool. Some concerns were raised by developers in regards to the remaining state tax credit at the end of the third round so additional language was added to address those concerns. If there is some odd number of tax credits remaining and the round is undersubscribed, staff would let the developer take all remaining tax credits.

Ms. Miller thanked Ms. Blackwell for the clarification and requested that staff notify applicants that they need to read both the guidance and regulations for the new state tax credit program to ensure staff can effectively administer the program.

In regards to regulation change #33, which speaks to an increase in the developer fee, Mr. Sertich stated that it seems odd the cash out developer fee is increasing since the program is expected to be oversubscribed. He also had concerns that the change is not in the best interest of the program and that the Committee should consider examining this change next year with the more controversial regulation changes and rework the developer cash out fee on the 4% side accordingly.

Ms. Ferguson stated the comments they received spoke to increasing the developer fee on the 4% program by adding an inflation factor. Staff chose not to do that but instead added a cash out amount as an alternative. At the time of decision, the oversubscription of bonds were not readily apparent so in retrospect, staff may have chosen not to move forward with the change.

Mr. Agee asked if staff could speak to the last time they considered increasing the developer fee on the 4% program.

Ms. Ferguson stated the last time a change was considered on the 4% developer fee was in 2015. Prior to this, there was a hard cap on both the 4% and 9% programs but as of now, a cap does not exist on the 4% program, which can result in a very large developer fee paid up front, which does not require repayment throughout the life of the project via cash flow.

Ms. Boatman Patterson stated the developer fee is not being increased but rather allowing an additional $500,000 to be taken up front as opposed to requiring it to be deferred.

Ms. Ferguson stated that is correct and that you would essentially be decreasing the deferred developer fee which acts as a funding source and does influence the financing of a project. By not deferring the developer fee and using it as a cash source, you would be taking up more bond volume cap per project.

Mr. Sertich stated that was correct.

Ms. Boatman Patterson asked if the change was due to a reasonable compromise based on public comments.

Ms. Ferguson stated from her recollection, the original request in public comments from the Ten City Tour asked for an overall increase in the developer fee.

Ms. Boatman Patterson asked if there were any developers in the room who wanted to speak to how the increase in developer fee would affect their projects.

William Leach with Kingdom Development stated that the strategy implemented by the state was to get the developer fee as high as possible so that it generate the most basis and federal tax credits for the State of California. Letting the overall fee go as high as possible is a good strategy, however, whatever the developer takes in cash from the development sources is going to limit local funding sources. For instance, if the cash out fee were increased, immediate projects costs would also go up, which cannot be deferred and would result in less units produced. Mr. Leach emphasized that developers are much more concerned about increasing the developer cash out fee but the tradeoff is that it would result in slightly less production of units since more subsidy is needed in general. He does not believe it would play with the bond volume cap.

Mr. Agee stated that Mr. Leach's remarks were contrary to the request made by other developers who wanted to see an overall increase in the developer fee.

Mr. Leach clarified that what developers really mean to say is that they would like to see an increase in the cash out portion of the developer fee without jumping into too much detail with regard to specifics.

Mr. Sertich stated this could also be referring to the 9% developer fee.

Ms. Miller stated that she would like to push this regulation change be considered with the more controversial changes next year so that they could first examine how many units are constructed in the first round of funding, which will allow them to determine whether a developer fee increase is necessary.

Mr. Sertich stated the developer fee is the incentive for the developer to join the CTCAC program. The best approach would be to balance the fee increase with demand for the program. The last time the fee was increased was to increase demand for the 4% program. They are simply not in the same market place they once were two or three years ago.

Patrick Sabelhaus with the California Council for Affordable Housing delivered a brief history of the developer fee since program incepted. He stated that the conversations that have surrounded increasing the developer fee for the past few years was for the purpose of producing more affordable housing projects that were intended to be more financially feasible, which otherwise would not have been possible. The developer fee increase merely serves to fill gaps in financing since other soft financing options are not available. He stated that staff could expect to see developers deferring at least 50% of their fee if not more. Mr. Sabelhaus referenced two major projects he is working on where he has deferred at least 50% of the developer fee since the financial feasibility of the projects would not have been possible otherwise. He agreed with Ms. Miller that the Committee should take a closer look at unit production at the end of the first round before making a decision.

Ms. Miller asked Mr. Sabelhaus if he would still be able to defer 50% of the developer fee without the regulation change.

Mr. Sabelhaus stated that is correct. In terms of cost efficiency, he referenced a formula currently being used in CalHFA's Mixed Income Program (MIP), which speaks to limiting the amount of soft government funding from Assembly Bill (AB) 101. He stated this was a significant change in how business is done in the State of California as it relates to financing affordable housing.

Mr. Sertich agrees that the Committee should revisit the developer fee change next year because he does not want to disincentives larger projects. He added that there does not appear to be an immediate need for the change and that a larger study should be done before any further discussions on increasing the developer fee.

MOTION: Ms. Miller moved to approve the final regulations with the deletion of item 33 (pages 33-35), regarding the increase to the cash out developer fee for 4% projects. For clarity, this change is in section 10327(c)(2)(b)(1-2) of the CTCAC regulations. Ms. Boatman Patterson seconded and the motion passed unanimously by a roll call vote.

Mr. Agee took a moment to thank the development community for their patience with the new administration and input with regard to the new regulations. While the regulation changes for this round were focused around increasing production and capacity, he asked the development community to continue working with the Treasurer's Office on the next set of regulation changes, which will focus around building equity for all Californians.

6. Public Comment.

Kara Brodfuehrer with the National Housing Law Project expressed her comments surrounding the need for greater tenant protections for residents living in tax credit properties in the State of California. Despite years of advocacy, no movement had been made on the issue. She stated general concern surrounding AB 1482, although the legislation passed, it exempts all tax credit properties. Tenant rights have been lacking in general for residence in the state. In her role as a staff attorney, she has dealt with a handful of wrongful evictions, which have lacked good cause. She stated that CTCAC needs to take action to provide greater protections for these residences. Many tenants living in the Bay Area have been displaced with the use of 4% tax credits. She referenced a project in Hayward where 90% of its tenants lost their units recently due to a conversion. She stressed the need for more oversight among these issues. As of today, the State of Georgia has better tenant protections than the State of California in tax credit properties.

Since equity is going to be the focal point for next year's regulation changes, Ms. Brodfuehrer requested that staff have more meetings with the advocacy community to discuss what happens after tenants move into tax credit properties so they can bring these issues to light. She made a point that tenants should not be displaced with the use of state money.

Mr. Agee thanked Ms. Brodfuehrer for her comments and stated there has been some movement in regards to due diligence on the matter after the issue had been brought up to him during the housing tour and advises Ms. Brodfuehrer to connect with Ms. Blackwell for further discussions.

Ms. Brodfuehrer stated that staff should act quickly because many low-income tenants are at risk of eviction due to rent increased after the rehabilitation of 4% projects and noted that 60% AMI is not affordable for senior citizens living in tax credit properties that have converted. Because of the conversion, tenants are faced with a $300-$400 rent increase.

Ms. Boatman Patterson stated that she would like to follow up with Ms. Brodfuehrer on the issue.

Ms. Brodfuehrer stated she would be happy to speak to any of the Committee members on this issue.

Ms. Blackwell stated staff has been slowly becoming aware of this issue and noted she would loop in CalHFA. She added that legislative staff has been working on developing a solution for the issue but they are not quite there yet. She understands it is a real time issue and apologized for the delay.

Ms. Brodfuehrer stated she has spoken to nonprofit developers who have dealt with the issue in the past and believes that they should be included in the conversation, developers like Mid-Pen Housing.

Ms. Boatman Patterson stated that part of the issue is due to the disappearance of redevelopment funding sources, which contained rules and regulations that addressed the issue of tenant displacement. The rules that protected tenants are not following the new funding sources, which is causing the gap in tenant protections.

Mr. Agee stated that this was a larger issue the administration has been grappling with, which has been caused by the dissolution of redevelopment, adding that roles and responsibilities must be clarified in regards to which entities are in charge of protecting tenant rights.

Mr. Leach thanked the Committee and staff on the new regulation changes and reminded everyone that they have an even bigger hurdle next year with more controversial regulation changes. He strongly recommended the administration should provide more policy goals to the development community in order to better align and streamline increased housing production. Getting to a more granular level with what the Committee is looking to achieve in 2020 will provide for better feedback from the development community.

Mr. Agee agreed with Mr. Leach and stated the Committee will look to provide greater direction to staff concerning the regulation changes scheduled for 2020.

7. Adjournment.

Mr. Agee adjourned the meeting at 3:40 p.m.