

**CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE**  
**Minutes of the February 23, 2022 Meeting**

**1. Call to Order and Roll Call**

State Treasurer Fiona Ma chaired the meeting of the California Tax Credit Allocation Committee (CTCAC). Treasurer Ma called the meeting to order at 11:17 a.m. Also, present Anthony Sertich for State Controller Betty Yee; Gayle Miller for Department of Finance (DOF) Director Keely Martin Bosler; California Housing Finance Agency (CalHFA) Executive Director Tiena Johnson Hall and California Department of Housing and Community Development (HCD) Director Gustavo Velasquez.

City Representative Vivian Moreno and County Representative Terra Lawson-Remer were absent.

**2. Approval of the Minutes of the January 19, 2022 Meeting**

**MOTION:** Mr. Sertich moved to approve the January 19, 2022 Meeting Minutes. Ms. Miller seconded, and the motion passed unanimously via a roll call vote.

**3. Executive Director's Report**

CTCAC Executive Director, Nancee Robles announced the five (5) new staff joining the Compliance Section of CTCAC: Frederick Jazmin, Joshua Helmich, Karen Snyder, Eric Turlak, and Tricia Mitchell. She explained that the Compliance Section conducts important work for the state by ensuring tax credits are used and tenant rights are upheld. Ms. Robles welcomed the new staff to the team.

On the outreach front, Ms. Robles stated that Treasurer Ma spoke at a grand opening ceremony for St. Teresa of Calcutta Villa. She described the project as a 14-story project in San Diego consisting of 407 units, including 270 units set aside for permanent supportive housing and 80 units for veterans. Ms. Robles added that the project received both bond allocation and tax credits.

In legislative news, Ms. Robles provided a summary of AB 950 (Ward), AB 1288 (Quirk-Silva), and SB 971 (Newman).

- AB 950 would authorize the Department of Transportation to sell its excess real property to the city and/or county where the real property is located. If those municipalities agree to use the real property for the sole support of implementing affordable housing, emergency shelter or feeding programs, the bill would exempt these sales from the California Environmental Quality Act (CEQA) process.
- AB 1288 (Quirk-Silva) will provide for up to \$500 million in state low income housing tax credits if the annual Budget Act or relative legislation specifies an amount for allocation going forward rather than restricting it to a specific year.
- SB 971 (Newman) will require the scoring system for CDLAC and CTCAC to include points for a project's policy that allows a resident of a housing development

to keep one or more common pets in the resident's dwelling unit. The bill would also require the scoring system to provide a point value to a project that imposes reasonable conditions, including, but not limited to, limiting the number of animals in a unit based on the unit size and prohibitions on potentially dangerous or vicious dogs.

- End of Executive Director's Report

Mr. Sertich asked about the extensions for USDA projects as it relates to the statutory 180-day requirement for 4% projects awarded state tax credits in addition to extensions for 9% projects. He also requested a discussion on the allocation of the \$500 million in state tax credits at the next CTCAC meeting.

Ms. Robles confirmed the topics will be discussed at the next CTCAC meeting.

**4. Recommendation to Rescind Federal 9% Tax Credits and State Tax Credits Allocated to the CA-20-056 San Mateo Senior Project for Failure to Maintain Site Control**

Mr. Zeto stated staff recommended the rescission of tax credits awarded to San Mateo Senior (CA-20-056) for failure to maintain site control pursuant to CTCAC regulations. To provide additional background, Mr. Zeto provided a timeline stating that the project was awarded federal and state tax credits on June 17, 2020, and then informed by the current owner of the land that the purchase and sales contract provided in the initial application was no longer in effect. He explained CTCAC Regulations Section 10328(b)(2) requires that site control be maintained from the initial application. Mr. Zeto added that the applicant acknowledged there was a lapse in the site control and thus no longer meeting regulatory requirement. Staff was also informed by the owner's counsel that the contract was extended on three separate occasions and that the owner chose to terminate the purchase and sales agreement on December 23, 2020 and no longer wished to sell the land to the applicant. Staff recommends the tax credits be rescinded and returned to the South and West Bay region for the upcoming 9% round.

Andrew Hanna with Global Premier Development, Inc. stated that he submitted an extension request for a 10% test and in response, Mr. Zeto requested documentation to confirm site control. He described the project stating it was located in San Mateo County and the timelines with the county were not met resulting in delays.

An affidavit and cost summary from Mr. Hanna was presented.

Mr. Hanna explained that \$100,000 was released to the seller which also included multiple extensions. He added that seller's counsel informed him that instead of the extensions, the seller wanted to move forward with one final extension and close when he was ready. Mr. Hanna noted the seller was not in the industry and did not understand the struggles of development and the time it takes to put these projects together. He added that \$700,000 has been spent on the project thus far and the project is about three months from entitlements. In response to Mr. Zeto's original request for site control documentation,

Mr. Hanna proposed to the seller \$100,000 applicable to the purchase price and an extension to run concurrent with the entitlements and then referenced an email received from the seller the day before the seller's counsel contacted CTCAC. In the email, he stated the seller wanted \$100,000 not applicable to the purchase price and to close in 15 days.

Mr. Hanna stated that there is an intent from the seller to close. Following the seller's counsel contacting CTCAC, he agreed to the \$100,000 not applicable to the purchase price as a carrying cost. Mr. Hanna forwarded Mr. Zeto's email requesting the site control documents to the seller to demonstrate the urgency. He explained that with the owner being a Trust there may be a lot of decision makers and that possibly under pressure they did not want to sell. Mr. Hanna believed the issue could be resolved in 30 days and explained additional needs with the sale would be to relocate a small machine shop. He stated that he never signed a cancellation of escrow and relied on the email for one extension and then closing. Within 30 days, he reiterated he could button up everything and close. Mr. Hanna stated developers are dealing with a lot of inflation costs and rising interest costs. He referenced another one of his projects in Los Angeles County that has a \$7 million gap that he may not be able to make up. He urged the Committee to keep the developers healthy, especially when there is a seller who indicated he wanted to sell the day before informing CTCAC they did not want to sell. Mr. Hanna requested 30 days to close on the transaction, accommodate the needs of the seller, and get the project entitled so everyone can attend the grand opening.

Treasurer Ma asked Mr. Hanna about the accounting transactions. Based on the cost documents, she stated it appears that Mr. Hanna has been working on the project as there has been over \$335,000 incurred.

Mr. Hanna explained the costs also did not include the CTCAC fees totaling \$200,000, the \$100,000 already released to the seller, and another \$100,000 to the seller once a closing date is agreed upon. For land loans, especially in a revitalization area, he explained that there are a lot of lenders who want entitlements in place to provide security that some future value is there. Mr. Hanna stated a lot of the delays were at the county level and had documentation to support that.

Mr. Sertich asked Mr. Hanna if there was currently a purchase and sales agreement in place.

Mr. Hanna explained that there is a purchase and sales agreement and he never signed a cancellation of escrow. He added that by releasing \$100,000 to the seller, it creates certain rights to the property. Mr. Hanna reiterated that he was acting in reliance on the seller's counsel's language regarding closing with one last extension. If he was not acting in reliance, he stated he would not have continued to spend dollars on the project as shown on the cost documentation.

Mr. Sertich stated that there is conflicting information from Mr. Hanna and the seller. He explained that the email forwarded to him stated that the seller believed they cancelled the agreement on December 23, 2020, which may have been tied to the expirations of one of the last extensions. Mr. Sertich stated that the regulations were put into place for a reason and that if site control were in place the whole time, that would be a very different discussion.

Mr. Hanna stated that as a developer he must be flexible and that he acted in reliance of the one last extension and ready to close. He stated that he shared an email from the seller's counsel stating that they were ready to close in 15 days and requested \$100,000 indicating their intent to sell.

Mr. Sertich explained that he did not want to focus on the seller's intent to sell, but instead how it meets the regulations based on the documents submitted. He added that by closing in 30 days and making the seller happy doesn't solve the problem of true site control today.

Mr. Hanna stated that if sellers know all they have to do is withhold an extension, they can leverage the developer for additional dollars.

Treasurer Ma stated that after December 23, 2020, into 2021, costs were still being incurred by the developer for architects and civil engineers. She asked Mr. Hanna if he was still working with the seller.

Mr. Hanna stated the seller was aware costs were still being incurred.

Treasurer Ma asked Mr. Hanna why would he continue to incur costs in 2021.

Mr. Hanna stated it was detrimental reliance and reiterated his reliance on one last extension when they were ready to close. He stated if he is unable to close within 30 days, he will accept the rescission of credits.

Treasurer Ma stated she was sympathetic to the costs and time spent by Mr. Hanna.

There was public comment.

William Wilcox with the San Francisco Mayor's Office of Housing and Community Development supported CTCAC's recommendation to rescind the tax credits for the San Mateo Senior (CA-20-056). He added that CTCAC impose full negative points for maximum period of two years. Mr. Wilcox stated that Global Premier Development, Inc. has not pulled permits on a San Francisco 9% project that has a placed in service date deadline of December 31, 2022 and take that as evidence that this developer is similarly not able to deliver on a commitment. He explained that it is important CTCAC maintain strong standards, to incentivize good faith compliance, and avoid delaying the use of valuable affordable housing funding.

Treasurer Ma stated she was open to 30 days to see if Mr. Hanna can close with the seller given the amount of time and money spent on the project. She added that it appears the seller was still trying to negotiate on February 17, 2022 saying they were still interested in selling. Treasurer Ma understood the challenges dealing with Trusts and does not like when sellers re-negotiate at the last minute when they are not familiar with the process.

Ms. Miller stated she has not been sympathetic to these extensions. She asked staff how common these issues come up and has concerns with setting precedence.

Ms. Robles stated that this does not occur often and stated Mr. Zeto in his long tenure at CTCAC has not seen this previously. She added that staff would not have brought this to the Committee's attention had staff not felt strongly about it. Ms. Robles stated this was a matter of site control and that there is no site control. She explained that the regulations are clear that if you cannot maintain site control that tax credits should be rescinded.

Treasurer Ma and Ms. Miller asked what exactly does maintain site control mean.

Mr. Zeto stated that site control must be continuously maintained with no lapse. The documentation for the project showed three amendments, all of which provided extensions to the closing date. Mr. Zeto explained the third amendment extended the closing date to November 2020. He added that staff does not have any other amendments extending beyond the November 2020 closing date.

Mr. Hanna restated that the \$100,000 non-refundable deposit creates certain rights as a buyer. He explained that agreements are written and may be verbal as well. Mr. Hanna pointed to email from the seller's counsel and his reliance that they will get to a point where they are ready to close in conjunction with the entitlements. He did not want any developers to lose any dollars because the seller did not understand the process.

Treasurer Ma asked if Mr. Hanna had any emails with the seller's counsel as it appears there are costs incurred through October 3, 2021. Specifically, she asked if he had emails with the seller or the seller's counsel from November 2020 through the present day regarding the progress of the project.

Mr. Hanna restated that he had not sent in any cancellation of escrow and that technically escrow is still open.

Mike Jobak representing the seller disagreed. He stated he was part of the seller entity making all the decisions for his father.

Mr. Hanna stated he tried to meet with Mr. Jobak in San Mateo.

Mr. Jobak stated the agreement was cancelled and that they received \$100 deposit back from the title company in January 2021. He stated that he has received nothing but less than truthful answers throughout the last year. Mr. Jobak explained that people informed him that he had to move his business before the lender can close, and then that the soil samples were dirty and it was going to cost more to remove the soil. He believed he was no longer in escrow and clarified he was not trying to get additional funds, just to close on the sale based on the purchase and sales contract.

Mr. Hanna apologized for the long process and the delays from San Mateo County.

Treasurer Ma asked if they would be able to close in 15 days.

Mr. Hanna stated 30 days would allow the lender to get comfortable closing without the final entitlements.

Treasurer Ma asked Mr. Jobak if they could come to some conclusion within 30 days.

Mr. Jobak stated they could.

Ms. Miller stated she would vote against this since she is unable to decipher what is being discussed between Mr. Hanna and Mr. Jobak and that she felt like she witnessed a negotiation between two parties which is not an appropriate role of the Committee.

Mr. Hanna stated there is seldom little communication with the seller regarding the details of the entitlement process unless they are somehow still involved.

Ms. Johnson Hall agreed with Ms. Miller's prior comments.

**MOTION:** Mr. Velasquez moved to rescind the federal 9% tax credits and state tax credits allocated to the San Mateo Senior Project (CA-20-056). Mr. Sertich seconded, and the motion passed via a roll call vote of 4-0 (Treasurer Ma abstained).

## 5. Public Comment

There was public comment.

Justin Solomon with Dawson Holdings, Inc. stated that he has experience with the USDA loan assumption and rental assistance. He added that since the delays are documented with respect to the 4% projects, the premium attached to the 9% competition has diminished in the last couple of years, and these projects do not represent any risk to the federal placed in service deadline, he requested the Committee make changes to the regulations providing the Executive Director the discretion to extend the Readiness to Proceed deadline for 9% projects with a USDA component.

Patrick Sabelhaus with the California Council of Affordable Housing thanked the Committee for the CDLAC resolution authorizing the Executive Direction to grant extensions for USDA financed projects suffering delays. He urged the Committee to adopt a similar change for 9% projects suffering the same delays resulting from the reorganization at USDA.

## 6. Adjournment

Treasurer Ma adjourned the meeting at 12:12 p.m.