

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE
Minutes of the February 25, 2009 Meeting

1. Roll Call.

Bettina Redway for Bill Lockyer, State Treasurer, chaired the meeting of the Tax Credit Allocation Committee (TCAC). Ms. Redway called the meeting to order at 2:00 p.m. Also present: David O'Toole for John Chiang, State Controller; Miriam Ingenito for Michael Genest, Director of the Department of Finance; Steven Spears, Acting Executive Director of the California Housing Finance Agency; Elliott Mandell for Lynn Jacobs, Director of the Department Housing and Community Development; and David Rutledge, County Representative.

2. Approval of the minutes of the January 28, 2009 Committee meeting.

No public comment.

MOTION: Mr. O'Toole moved to adopt the minutes of the January 28, 2009 meeting. Ms. Ingenito seconded and the motion passed unanimously.

3. Executive Director's Report.

Mr. Pavão reported that on February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009. He explained that the Act made \$2.25 billion available to State housing credit agencies to distribute to low income housing tax credit projects. He predicted that TCAC would receive approximately \$325 million. He stated that the Act also permitted TCAC to exchange a portion of its 2009 credits, and prior-year returned credits for cash to be given to qualified tax credit projects. He estimated that if TCAC exchanged 40% of the current year credits, the program would receive about \$287 million. He stated that TCAC staff would draft and promulgate regulations to administer the resources provided by the new law.

Mr. Pavão announced that the 2009 First Round application deadline, originally scheduled for April 22nd was postponed until late May. He explained that staff needed the additional time to promulgate new regulations, post them to the TCAC website for public comments. He stated that staff would conduct public hearings and then bring the finalized regulations to Committee for approval on April 30th.

Mr. Pavão directed the Committee's attention to the revised Agenda, given to them at the beginning of the meeting. He explained that no action was required on Agenda Item 6 because Sunnyslope Apartments (CA-2009-800) was withdrawn and no others were recommended for funding.

4. Discussion and Consideration of a Resolution to Adopt Proposed Emergency Regulations, Title 4 of the California Code of Regulations, Sections 10300 through 10337, Revising Allocation and Other Procedures.

Mr. Pavão reported that on December 10, 2008, staff released a set of proposed regulation changes to the public, which included substantive changes to the tax credit program. He stated that on December 22, 2008 staff released a second set of proposed changes in response to suggestions from a working group formed by the California Housing Consortium. He announced that the public would have an opportunity to comment this week at the TCAC Public Hearings.

Mr. Pavão reported that staff received the most comments in two areas of the proposed regulations: 1) The leverage scoring factor associated with the 9% tax credit application and 2) The final tie-breaker. He announced that staff revised their initial recommendation to increase the leverage scoring category from 20 points to 30 points. Additionally, staff suggested withdrawing the requirement that applicants must earn at least 2 of the 20 possible leverage points by reducing the amount of credit requested.

Mr. Pavão stated that staff did not remove the clarifying language concerning the cost efficiency scoring from the proposed regulation changes.

Mr. Pavão explained that the final tie-breaker system evaluates the eligible basis requested relative to the project's cost minus land and developer fees. He stated that over the years TCAC observed negative outcomes associated with the current tie-breaker system. He commented that the proposed change to the tie breaker encouraged applicants to be more aggressive in finding sources other than tax credits to pay for projects. He summarized a proposal to change the final tie breaker by measuring other public funds committed to the project relative to the total project costs. Mr. Pavão stated that the objective of the policy change was to increase the volume of other public funds in the project. He reported that stakeholders expressed concerns in two major areas: 1) Changing the system to emphasize public funds could systematically skew the competition for credits away from locations with less access to public resources and 2) Emphasizing public funds may encourage administrators of such funds to load excessive amounts of resources into tax credit projects.

Mr. O'Toole asked Mr. Pavão why staff elected to assign one point to historic tax credit properties.

Mr. Pavão explained that federal legislation adopted last summer required TCAC to consider energy efficiency and the historic nature of the building as part of the criteria for awarding credits. He stated TCAC policies already covered energy efficiency; however, they did not include standards relative to the historic nature of the property. Mr. Pavão summarized a policy change, which allowed applicants to earn 1 point within an 8 point category called Sustainable Building Methods. The point would be available to applicants who were preserving historic properties.

Ms. Redway asked Mr. Pavão if he knew how other states applied historical building standards.

Mr. Pavão reported that some states weighted historic nature criteria more heavily than TCAC. In some cases the criteria represented 5% of the program's scoring system.

Ms. Redway asked the audience if there were any public comments.

Ben Lingo, from Lynx Realty, commented on the proposed regulations. He stated that too much emphasis had been placed on the third tie-breaker, which has led to more aggressive competition among developers. He commented that the proposed changes also placed too much emphasis on public funds and unintentionally put certain projects in a favorable position. Mr. Lingo explained that by taking land cost out of the tie breaker's denominator projects with higher land costs received an unfair advantage. He suggested that land costs should be included in the tie breaker ratio.

Charlie Brumbaugh, from Lynx Realty, commented that he did not agree with the proposal to extend the 150-Day Readiness deadline. He explained that extending the deadline gave 2008 applicants who knew they would not be able to meet the readiness requirements an undeserved opportunity to compete for 2009 credits. He commented that putting 2008 and 2009 credits together in an already collapsed market would not benefit California communities. Mr. Brumbaugh suggested that 2008 credit recipients who could not meet the readiness obligations by the established deadline should send their credits to the federal government for \$0.85.

Bill Pennington, from the California Energy Commission, commented that he was pleased with Mr. Pavão's proposal to use the California Utility Allowance Calculator. He predicted that the calculator would promote the viability of energy efficiency improvement in affordable housing. He stated that he looked forward to working with TCAC to promote energy efficiency and solar energy use in affordable housing.

Ajit Mithaiwala, from Advanced Development and Investment Inc., commented that he approved of staff recommendations related to site amenities. He informed the Committee that a section in the proposed regulations prevented his agency from receiving funds from the City of Industry.

Anna Scott, from Affirmed Housing Group, commented on Mr. Pavão's decision to extend the 150-Day Readiness deadline. She requested a 30-extension for one of her tax credit projects. She explained that the project had a syndicator and construction lender, but needed more time to secure HCD and MHP funding.

Kevin Payne, from Payne Development, LLC, commented that the proposed regulations as a whole are good and supported their adoption. He suggested that TCAC seek further input from lenders in order to clarify the definition of private permanent financing. He stated that Bank of America senior officials were concerned about financial risks associated with the federal exchange policy.

Nick Stewart, from Burbank Housing, thanked Mr. Pavão and his staff for their work on the TCAC regulations. He stated that his agency had a viable project

until December 2008 despite the declining equity market. He reported that the equity market declined even further in the last two months. Mr. Stewart explained that the intent of the American Reinvestment and Recovery bill was to promote immediate development activities to help stimulate the economy. He stated that there were many 2008 projects that could be under construction in a short time, however, the applicants need an extension to the readiness deadline.

Kevin Pickett, from Palms Residential, thanked Mr. Pavão and his staff for their efforts in developing the regulations. He agreed with the previous speakers who suggested the Committee keep the regulations structured in a way developers were comfortable working with.

Joel Rubenzahl, from Community Economic, Inc., stated that a year ago, Mr. Pavão commented that the tie breaker system was broken. Mr. Rubenzahl stated that there were a myriad of interest groups trying to take advantage of flaws in the regulations. He commented that the proposed changes would make improvements to the current system. Although Mr. Rubenzahl agreed with promotion of efficiency, he did not believe that TCAC could measure the level of efficiency. He stated that development costs in different geographic areas prevented TCAC from accurately measuring project efficiency. Mr. Rubenzahl commented that TCAC staff would have an opportunity to evaluate long term public benefits as they developed regulations to incorporate the federal exchange option. He urged the Committee to select projects that provide the best public benefits such as good-quality housing and jobs.

Mr. Pavão commented that his staff made their best attempt to address the needs of the community of developers while they drafted the regulations. He reviewed the proposed change, which gave the Executive Director of TCAC authority to extend the 150-Day Readiness deadline up to 90 days. He commented that it was not his intention to reward applicants for failing to meeting readiness obligations. He reported that staff revised the readiness policy so the Executive Director of TCAC was given authority to extend the readiness deadline, however, he would only be able to grant extensions to 2008 Second Round and waiting list applicants. Mr. Pavão predicted that TCAC would receive a large volume of returned credits from 2008 applicants on March 9th unless they were granted an extension. He suggested extending the readiness deadline to June 8th for qualified applicants.

Mr. Pavão commented on applicants concerns about the proposed changes to the leverage scoring category. He stated that applicants had strong arguments in favor of and against the changes. He predicted that staff and developers working together could create a system to measure cost efficiency.

Mr. Pavão stated that TCAC awards projects with nearly completed amenities. He explained that applicants used to be able to garner points for nearly completed amenities under the Balanced Communities scoring category. He reminded the Committee that the Balanced Communities scoring factor was removed from the TCAC application. He reported that that staff received public requests to put the Balanced Communities option back into the application.

Mr. Rutledge commented that the TCAC staff did a wonderful job developing the regulations. He commended the staff for attempting to address the developer's concerns.

Mr. Pavão brought the Committee's attention to an amended section of the proposed regulations. He explained that currently applicants have 60 days from the reservation date to complete performance requirements. He reported that staff received comments indicating applicants needed more time to complete the rigorous TCAC requirements. Mr. Pavão suggested extending the performance deadline from 60 to 90 days after the reservation date. He stated that staff recommended the proposed regulations with the language amending the performance deadline. Mr. Pavão directed the Committee's attention to Section 10305(e) of regulations, which proposed an increase to the per project maximum award from \$2 million to \$2.5 million. He suggested amending the motion for Agenda Item 4 to state "We propose to adopt the recommended regulation changes and the proposed change to maximum award."

Mr. Pavão reviewed a recommendation to provide special accommodation for substitutions if AHP funds were brought into projects after the tax credit reservation. He asked Mr. Mithaiwala contact him at a later time to explain how the substitution language prevented his agency's ability to receive City of Industry funds.

MOTION: Mr. O'Toole moved to adopt the regulations with the modification to Section 10305E. Ms. Ingenito seconded and the motion passed unanimously.

5. Discussion and Consideration of setting a minimum point requirement for competitive first round applications.

Mr. Pavão proposed the Committee set a minimum score of 121 points for all rural and non-rural 9% credit applications. He proposed setting a minimum score of 110 points for 4% plus State credit applications. He predicted TCAC would receive a large volume of applicants that exceeded the proposed minimum scores.

MOTION: Mr. O'Toole moved to approved staff recommendations. Ms. Ingenito seconded and the motion passed unanimously.

6. Discussion and Action on 2009 Applications for Reservation of Federal Low Income Housing Tax Credits (LIHTCs) for Tax-Exempt Bond Financed Projects, and appeals filed under TCAC Regulation Section 10330.

No action was required on Agenda Item 6 because Sunnyslope Apartments (CA-2009-800) was withdrawn.

7. Public Comment.
8. Adjournment.

The meeting adjourned at 3:45 p.m.