

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE
Minutes of the September 10, 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 1:35 p.m. Also present: Marcy Jo Mandel for John Chiang, State Controller; Thomas Sheehy for Michael Genest, Director of the Department of Finance; Elliott Mandell for Lynn Jacobs, Director of the Department of Housing and Community Development. Steven Spears, Acting Executive Director of the California Housing Finance Agency and County Representative, David Rutledge were absent.

2. Approval of the minutes of the August 26, 2009 Committee meeting.

No public comment.

MOTION: Mr. Sheehy moved to adopt the minutes of the August 26, 2009 meeting. Ms. Mandel seconded and the motion passed unanimously.

3. Executive Director's Report.

Mr. Pavão announced that staff would post new changes to Section 10323 of the TCAC Regulations on the TCAC website. He stated that the public would have 21 days to review the changes and provide comments. In addition, staff would hold a Public Hearing on September 17th to discuss the regulation changes. The final changes would be brought to the Committee for approval at the October 22nd meeting.

Mr. Pavão announced that California received its portion of the national pool of 9% tax credits. He stated that California would receive approximately \$882,000 in annual federal credit and staff would make \$529,000 of that amount available to in the 2009 funding round. He informed the Committee that TCAC had authority under the American Recovery and Reinvestment Act of 2009 (ARRA) to exchange in 40% of the 2009 9% credits for Section 1602 ARRA funds.

4. Discussion and Consideration of the 2009 Single Round Applications for Reservation of Federal and State Low Income Housing Tax Credits (LIHTCs) and appeals filed under TCAC Regulation Section 10330.

Mr. Pavão announced that staff accepted a total of 241 applications for 2009 9% tax credits. He reported that 78 of the 241 applicants were successful in the funding competition. Mr. Pavão noted that of the 241 applications received, 220 self scored the maximum 146 points. He stated that staff sent tie-breaker scores to each applicant, entertained appeals to those scores, and then generated the final tie-breaker scores. He explained that the final tie-breaker scores allowed staff to

determine which projects would be most competitive in their respective set-aside or geographic apportionment. Mr. Pavão noted that all but 3 of the 78 recommended applications received the maximum 146 points. One of the applicants was a project in the At-Risk Set-Aside. Another applicant was the last recommended project in the East Bay geographic apportionment. And the third applicant scoring less than the full 146 points was in the San Francisco geographic apportionment. Mr. Pavão stated that applicants would likely voice their concerns today regarding the tie-breaker results. He explained that staff declined 3 SRO projects in favor of another housing types because the SRO funding goal was already met. In addition, 3 special needs projects and 13 senior projects were not funded as a result of the first tie-breaker. Mr. Pavão commented that the stakeholders were understandably concerned about the results of the first tie-breaker. He estimated that 78 projects were recommended for \$90.9 million in federal credits and \$55.9 million in state credits.

Mr. Pavão explained that staff was not only recommending 2009 credits but also to forward reserve approximately \$7.2 million in 2010 credits. He stated that normally TCAC held two funding rounds in the year. And when staff over reserved credits in the first round they typically reached into the second round and forward reserved credits. Mr. Pavão reported that this year TCAC held a single funding round and the supplemental set aside became rapidly exhausted prompting staff the reach forward into the 2010 credits.

Mr. Pavão stated that he was not going to exercise his authority under Section 10317(e), which would allow him to take back federal credits and deliver state credits to applicants who did not request them. He explained that delivering state credits instead of federal credits to projects would disrupt applicants who were struggling to secure equity investors.

Mr. Pavão predicted that many of today's funded projects would return their credits with the next 60 days and compete for ARRA funds. He stated that TCAC would likely receive back more credits than the program was allowed to exchange at the federal level. He concluded that the amount of surplus returned 2009 credits would help offset the \$7.2 million forward reservation of 2010 credits.

Mr. Pavão reported that in the last 24 hours staff was informed that three rural TCAC projects received funding from another state source called the Joe Serna Jr. Farmworker Program. The Joe Serna program, administered by the California Department of Housing and Community Development (HCD), had more restrictive rules for reporting of developer fees. Mr. Pavão explained that the three project sponsors built a larger developer fee into their basis than was permissible under the Joe Serna program. He stated that staff may reduce the amount of credits reserved for the projects if they determine the sponsors built in developer fees that exceeded the other program's limit.

Mr. Pavão informed the Committee that the 9% Staff Reports reflected the Area Median Income (AMI) equivalent of the rents that were proposed in the project application. He stated that the AMI reported in the Staff Reports helped measure how deeply the units of the projects were income targeted. In previous years staff

included the actual proposed rents in the Staff Report and the listed rents for competitive purposes. Mr. Pavão stated that staff reported the AMI rent in the 9% Staff Reports in order to demonstrate that TCAC was not awarding more credits to applicants than was warranted under federal guidelines.

Ms. Mandel stated that she would not participate in the Committee vote with regard to the following projects: Amorosa Village II (CA-2009-012), Harmon Gardens (CA-2009-049), Main Street Apartments (CA-2009-095), Fair Oaks Senior Housing (CA-2009-100), The Alameda at San Leandro (CA-2009-129), Juniper Senior Village (CA-2009-159), 7th and Coronado Family Apartments (CA-2009-226), Orchard Village (CA-2009-228), and Tresor Apartments (CA-2009-233).

Ms. Mandel exited the meeting.

Mr. Sheehy thanked Mr. Pavão for thoroughly explaining the results of the 2009 9% funding round. He asked if Mr. Pavão if he thought the negative tie-breaker outcomes had caused applicants to think that TCAC set-aside goals may not be set properly.

Mr. Pavão stated that applicants probably did not expect the tie-breaker to systematically work to the disadvantage of Special Needs and SRO projects. He explained that over time TCAC made policy changes such as giving homeless assistance first priority in the Non-profit set aside. He reported that TCAC met its Special Needs target for the 2009 9% round by funding Non-profit set aside projects first. Mr. Pavão explained that once Special Needs target was met staff did not consider any more projects of that housing type, but defaulted to other housing types such as Large Family and Senior.

Mr. Sheehy asked Mr. Pavão if staff could revisit the goals for the various housing types in the fall or winter.

Mr. Pavão stated that in the fall staff would have an opportunity to review the goals outlined in the TCAC Regulations and determine whether they should be adjusted.

Mr. Mandel commented that considering a project for TCAC funding could be rather complicated if the project received funding from another state source like the Joe Serna program. He suggested the voting members of the Committee take an action that maximized the Committee's ability to fund projects and gave staff the flexibility to make technical adjustments during their reviews.

Ms. Redway announced that Candace Gonzalez and Nick Stewart requested to make comment.

Candace Gonzalez, Executive Director of Palo Alto Housing Corporation, approached the Committee. Ms. Gonzalez stated her company submitted an application for a 35-unit SRO project in the city of Palo Alto, serving extremely low to very low income levels between 15% and 20% of the AMI. She stated that

the project self scored the maximum points and had a fairly high tie-breaker of 63.725%. Ms. Gonzalez stated that she believed her company's project was not funded because the SRO ceiling was met. She commented that it was unfortunate the project was not recommended for credits because the community of Palo Alto was in short supply of low-income housing, especially for the lowest income levels. Ms. Gonzalez stated that TCAC regulations illustrated the importance of SRO and Special Needs housing as a high priority for allocation of credits. She stated that SRO projects served the poorest and most vulnerable households in the state. She commented that placing caps on the allocation of credits to SRO projects and skipping over them in favor of other housing types was inconsistent with TCAC policies. Ms. Gonzalez commented that the purpose of the housing type goal was to ensure that the project types were all funded appropriately. She stated that rejecting SRO and Special Needs projects that scored full points and ranked high based on the tie-breaker was not appropriate. Ms. Gonzalez requested that TCAC provide a forward allocation of 2010 credits to fund the three competitive SRO's that were skipped over. She also requested that the regulations be amended to make TCAC's practices more consistent with its public policy goals.

Nick Stewart, Deputy Executive Director of Burbank Housing, approached the Committee. Mr. Stewart stated that his company's project, Fife Creek Commons, was a Special Needs project located in the rural city of Guerneville. He stated that the project had a second tie-breaker, which was higher than all but five of the rural area projects recommended for awards. Mr. Stewart commented that there were unique issues with the sorting methodology with regard to rural projects. He stated that it was unfortunate that SRO and Special Needs projects, for which TCAC allocated significant funding, were skipped in favor of other projects. Mr. Stewart commented that the tie-breaker outcomes showed how extremely difficult it would have been for any rural Special Needs project to obtain funding. He stated that projects in other geographic areas had a unique advantage over the rural projects within Non-profit set aside competition. Mr. Stewart stated that Fife Creek Commons did not have a homeless component; however, it scored higher than one of the projects funded in the Non-profit set aside. He commented that the tie-breaker results signaled a structural flaw in the review process. The flaw made it so rural projects had no chance of receiving an award even if the project competed in another set-aside. Mr. Stewart asked that the Committee forward commit 2010 credits in order to fund the rural projects. He commented that the allocation percentages were approximate according to the Regulations and funding additional projects seemed to be within the Committee's discretion. Mr. Stewart reiterated Mr. Pavão's statement that he anticipated the forward commitment of 2010 credits would be offset by returned credits as project sponsors reviewed at their ability to acquire investors and chose to compete for ARRA funds. He predicted that a forward commitment of 2010 funds would not result in a large drain on the future year credits and there was leeway to remedy the unfortunate results of the current year.

Mr. Sheehy asked Mr. Pavão if he thought TCAC had a structural issue that caused the rural Special Needs projects to be at a disadvantage in the funding competition.

Mr. Pavão commented that there was a structural issue that staff should examine. He noted that if TCAC continued its current tie-breaker system homeless assistance projects would continue to have a competitive advantage over Special Needs projects in rural areas.

Mr. Sheehy suggested the Committee members review the current funding processes to prevent unfair outcomes in future competitions.

Dan, from Charity Housing, approached the Committee. Dan stated that his company's project was SRO and located in Santa Clara County. He explained that the project had a tie-breaker of 61, which was higher than another project that was recommended for an award. He commented that tie-breaker results were not consistent with the goals outlined in the Regulations. Dan stated that Santa Clara County had a significant number of single and 2-person households with special needs. He stated that for each of his company's projects 10% of the units were reserved for tenants receiving assistance under the Mental Health Services Act. He also reported that one his company's projects received 2,600 tenant applications and approximately 75% of the applicants were single person or 2-person households. Dan concluded that Santa Clara County had a great need for Special Needs housing and asked that the Committee amend their policy goals.

Mr. Redway thanked the speakers. She assured them that staff would review the Regulations and consider drafting changes in the fall. She asked Mr. Pavão to comment on Mr. Stewarts request that staff forward commit 2010 tax credits to fund the rural area projects.

Mr. Pavão stated that he would seek advice from legal counsel on the prospect of forward committing 2010 credits. He commented that TCAC stakeholders may be concerned that staff was reaching into next year's credits to fund projects this year. He noted that the amount of credits available for 2010 would certainly not be as high as it was for 2009. He stated that in 2009 the nation benefited from receiving an additional 20 cents in the calculation used to determine the credit allocations. Mr. Pavão reported that TCAC would not have the same benefit in 2010. He explained that TCAC would have a slightly smaller amount of 9% credits available beginning in 2010. He recommended that staff should not forward commit an excessive amount of next year's credits.

MOTION: Mr. Sheehy moved to adopt staff recommendations of the following projects: Amorosa Village II (CA-2009-012), Harmon Gardens (CA-2009-049), Main Street Apartments (CA-2009-095), Fair Oaks Senior Housing (CA-2009-100), The Alameda at San Leandro (CA-2009-129), Juniper Senior Village (CA-2009-159), 7th and Coronado Family Apartments (CA-2009-226), Orchard Village (CA-2009-228), and Tresor Apartments (CA-2009-233). Ms. Redway seconded and the motion passed.

Ms. Mandel re-entered the meeting.

MOTION: Mr. Sheehy moved to adopt staff recommendations, excluding Amorosa Village II (CA-2009-012), Harmon Gardens (CA-2009-049), Main Street Apartments (CA-2009-095), Fair Oaks Senior Housing (CA-2009-100), The Alameda at San Leandro (CA-2009-129), Juniper Senior Village (CA-2009-159), 7th and Coronado Family Apartments (CA-2009-226), Orchard Village (CA-2009-228), and Tresor Apartments (CA-2009-233). Ms. Mandel seconded and the motion passed unanimously.

5. Discussion and Consideration of the 2009 Applications for Reservation of Federal and State Low Income Housing Tax Credits (LIHTCs) for Tax-Exempt Bond Financed Projects and appeals filed under TCAC Regulation Section 10330.

Mr. Pavão summarized that staff recommended four projects for funding with 4% and State tax credits. He noted that the aggregate amount of state credits requested by the projects was less than the amount made available.

MOTION: Mr. Sheehy moved to adopt staff recommendations. Ms. Mandel seconded and the motion passed unanimously.

6. Discussion of and Action on 2009 9% Financing Applications with Federal and State Tax Credits for American Recovery and Reinvestment Act (ARRA) Funds for either Gap Financing.

Mr. Pavão explained that 41 of the 78 projects recommended for funding under Agenda Item 4 were being recommended for ARRA awards under Agenda Item 6.

Ms. Mandel stated that she would not participate in the Committee vote with regard to the following projects: Harmon Gardens (CA-2009-049), Main Street Apartments (CA-2009-095), Fair Oaks Senior Housing (CA-2009-100), The Alameda at San Leandro (CA-2009-129), and Orchard Village (CA-2009-228).

Ms. Mandel exited the meeting.

MOTION: Mr. Sheehy moved to adopt staff recommendation of Harmon Gardens (CA-2009-049), Main Street Apartments (CA-2009-095), Fair Oaks Senior Housing (CA-2009-100), The Alameda at San Leandro (CA-2009-129), and Orchard Village (CA-2009-228). Ms. Redway seconded and the motion passed.

Ms. Mandel re-entered the meeting.

MOTION: Mr. Sheehy moved to adopt staff recommendations, excluding Harmon Gardens (CA-2009-049), Main Street Apartments (CA-2009-095), Fair Oaks Senior Housing (CA-2009-100), The Alameda at San Leandro (CA-2009-129), and Orchard Village (CA-2009-228). Ms. Mandel seconded and the motion passed unanimously.

7. Discussion and Consideration of a Resolution Authorizing the Executive Director of the California Tax Credit Allocation Committee to enter into an Interagency Agreement with the California Housing Finance Agency not to exceed \$2,000,000.00 for the processing of ARRA loans resulting from the award of American Recovery and Reinvestment Act of 2009 funds.

Mr. Pavão reported that staff modified an existing interagency agreement between TCAC and the California Housing Finance Agency (CalHFA). He explained that the current interagency agreement stated that TCAC would pay \$0 to CalHFA for processing of ARRA loans agreements on behalf of TCAC. He stated that CalHFA intended to charge loan processing fees to ARRA recipients directly, however, staff was informed of federal guideline that prohibit the charging of such fees. Mr. Pavão explained that TCAC would absorb the cost of servicing the ARRA loans and would pay the fees with funds from the TCAC fee account. Mr. Pavão recommended an interagency agreement authorizing the transfer of no more than \$2 million from TCAC to CalHFA over a multi-year period as CalHFA provide loan processing services.

Mr. Sheehy asked Mr. Pavão if maintaining a large balance in the TCAC fee account was necessary to perform long term monitoring of TCAC projects.

Mr. Pavão confirmed that the fee account maintains a high balance partly to cover costs associated long term monitoring.

Mr. Sheehy commented that he felt it was appropriate for a state agency to carry a large fund balance as TCAC did to pay long term fees associated with monitoring projects.

MOTION: Mr. Sheehy moved to adopt the resolution. Ms. Mandel seconded and the motion passed unanimously.

Ms. Redway thanked the staff for all their hard work during the 9% funding round.

Mr. Sheehy also thanked the staff for their efforts during a remarkably challenging year.

8. Public Comment.

Mr. Stewart reported that construction on one of his company's projects was delayed the project had yet to receive exchange funds. He asked that Mr. Pavão provide an estimate of when CalHFA would be able to close the ARRA loans.

Mr. Stewart stated that his company also had a project that was awarded TCAP funds. He explained that the HUD office in San Francisco conducted a NEPA review of the project; however, TCAC required a second review as a condition of the TCAP award. Mr. Stewart asked the Committee if there was any way to expedite the review process. He explained that his company needed to start work on the project by October 15th to insure the project obtained the necessary permits

in a timely manner. He stated that the project could experience a 6 to 7-month delay if the owner did not begin work soon.

Mr. Vergolini stated that TCAC was a different responsible entity than HUD. She explained that federal law required TCAC to conduct a NEPA review for projects that received TCAP awards. Ms. Vergolini stated that TCAC selected a consultant to assist with NEPA reviews as the program's in-house resources were very limited.

Mr. Pavão reported that staff received a NEPA review that did not meet all of the federal requirements although the review was certified by a local entity. He stated that TCAC was legally obligated to conduct a complete review to ensure applicants met all federal requirements.

Mr. Stewart commented that it was odd that TCAC required applicants to submit a second NEPA review when the first review had already been subject to public comment and at the local and federal level.

Mr. Pavão pointed out that the source of funding that invoked the first NEPA review was different from the source administered by TCAC.

Ms. Vergolini stated that the project requested additional funds under the TCAC program, which had different federal guidelines.

Ms. Redway commented that TCAC staff was advised by legal counsel to carry out the NEPA responsibilities associated with TCAP.

Mr. Pavão stated that TCAC was working with CalHFA to expedite the ARRA loan process. He predicted the timing of the loan closings would vary and urged ARRA recipients to execute and return their loan agreements quickly so that TCAC could forward them to CalHFA for processing.

9. Adjournment.

The meeting adjourned at 2:30 p.m.