

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE
Minutes of the September 28, 2011 Meeting

1. Roll Call.

Bettina Redway for State Treasurer Bill Lockyer chaired the meeting of the Tax Credit Allocation Committee (TCAC). Ms. Redway called the meeting to order at 11:58 a.m. Also present: Alan Gordon for State Controller John Chiang; Pedro Reyes for the Department of Finance Director Ana Matosantos; California Housing Finance Agency Executive Director Claudia Cappio; Maziar Movassaghi for the Department of Housing and Community Development Acting Director Cathy Creswell; and City Representative Christopher Armenta.

2. Approval of the minutes of the July 20, 2011 Committee meeting.

MOTION: Mr. Reyes moved to adopt the minutes of the July 20, 2011 meeting. Mr. Gordon seconded and the motion passed unanimously.

3. Executive Director's Report.

Mr. Pavão reported that TCAC held a public hearing on September 14, 2011 to gather feedback regarding cost containment. He noted that a transcript of the hearing was posted to the TCAC website.

Mr. Pavão stated that TCAC would seek help of its sister agencies to procure assistance in analyzing a study related to cost containment within tax credit projects.

Mr. Pavão announced that staff posted a notice of a proposed regulation change on the TCAC website. If adopted the change would affect 2011 9% credit recipients who received full readiness points for being prepared to close their construction period financing within 180 days. Mr. Pavão stated that several projects with redevelopment agency (RDA) funding commitments were unlikely to meet the 180-day deadline. He stated that a pending court decision affecting the availability of RDA funds had delayed closings for some of the projects. The proposed regulation change would grant the First Round 2011 9% projects with RDA funding an additional 90 days to close their loans. If adopted the change would change the deadline date from December 22, 2011 to March 22, 2012. Mr. Pavão announced that staff scheduled a public hearing in Sacramento on October 5th to discuss the proposed change. And at the end of the public comment period staff would prepare a recommendation for Committee review at the October TCAC meeting.

Mr. Pavão reported that staff received the tax credit pricing that equity partners of the First Round 2011 9% and 4% plus state credit recipients had committed to. He stated that 11 of the 62 projects funded in the First Round had credit pricing in the \$.80-\$.89 range. The lowest price was \$.8298 per tax credit dollar while

the highest was \$0.89. 30 projects were priced in the \$0.90-\$0.99 range and 20 projects were priced at \$1.00-\$1.14. He noted that Palo Alto Family Apartments had the highest tax credit pricing at \$1.14.

4. Discussion and Consideration of the 2011 Second Round Application for Reservation of Federal Low Income Housing Tax Credits (LIHTCs) opposed by the Local Reviewing Agency.

Mr. Pavão explained that the project, 1000 Mississippi Street, applied for Second Round 2011 9% credits. He stated that the project was the only competing project within the county of San Francisco. The project received an application score of 135 points out of a possible 148. Mr. Pavão noted that the applicant lost 13 points under TCAC's leverage scoring category. He explained that the applicant requested cost efficiency points, claiming the points were related to an adjusted basis limit that included an adjustment for paying prevailing wages. Staff determined that the project did not have public funding committed that would invoke state or federal prevailing wages. Mr. Pavão reported that staff sent a letter to the applicant explaining that the score was reduced because the project lacked public funding that invoked prevailing wage requirements. He stated that TCAC received a response from the applicant stating "It is our understanding that mostly all development in the city of San Francisco must be built with prevailing wages. In the event that prevailing wages will not be necessary we are more than happy to give back the associated boost at a later time." Mr. Pavão stated that the applicant's offer to return the boost was not taken under consideration when staff scored the application.

Mr. Pavão stated that San Francisco city and county officials expressed their formal objection to the project in the Local Reviewing Agency (LRA) review and subsequent documentation submitted to TCAC. He recommended that the Committee hear comments from the San Francisco officials and project proponents.

Olson Lee, Director of the Mayor's Office of Housing (MOH), approached the Committee. He stated that the city of San Francisco had a stellar record of supporting affordable housing. He stated that the community provided 50% of its tax increment to providing affordable housing. Prior to his position as Director of MOH, Mr. Lee was Deputy Director of the San Francisco RDA. Mr. Lee stated that during his 15 years with the RDA, he was responsible for financing over 14,000 units of affordable housing and encumbering \$600 million in local financing for affordable housing. Mr. Lee expressed his support of TCAC's goal to build better more sustainable affordable housing. He stated that San Francisco was unique because the city has its own county allocation. He explained that none of the surrounding counties wanted to be attached to the San Francisco because the city had a greater commitment to affordable housing. The city used TCAC allocations to fund deeply affordable housing and to provide services much greater than TCAC required. In addition, the city used tax credits to fund housing that was supported by the city's general fund for people who had no income. Mr. Lee stated that the project, 1000 Mississippi Street, does not meet the city's goals. He reported that his agency had asked other developers in San

Francisco to seek financing other than tax credits so the agency might preserve credits for projects that were only feasible with the 9% credits. He stated that the city has moved projects to the 4% and bond queue, sometimes getting MHP, and taking the extra subsidy from local resources in order to preserve the valuable 9% credits. Mr. Lee explained that by funding 1000 Mississippi Street, the city's SRO project and public housing project at Alice Griffith would be delayed or would require more money from the local government to keep them on their schedule.

Mr. Gordon asked Mr. Lee to define "deeply affordable".

Mr. Lee stated that a project he mentioned previously was an SRO project damaged by fire in the Tenderloin district. He predicted the rents for the project would not exceed 30% of area median income. The other project was a public housing rebuild supported by the city and by HUD. He reported that the city received a \$30 million Choice Neighborhoods Grant, which would be contributed to the rebuild project. Mr. Lee stated that deeply affordable units would be rented mainly to formerly homeless individuals who would pay about \$300 per month for rent or half of their monthly social security payments.

Mr. Gordon asked Mr. Lee if the project proponents ever contacted city officials to discuss the project.

Mr. Lee stated that the proponents did contact city officials. He stated that his office notified proponents that the city was opposed to funding 1000 Mississippi Street because the city had other projects in their 9% queue. The city suggested the project sponsor apply for 4% credits or MHP funds.

Mr. Gordon asked Mr. Lee how the project proponents responded to the city's opinion.

Mr. Lee stated that the proponents applied for 9% credits without the city's support.

Edward Freeman stated that the city admitted in the evaluation form submitted to TCAC that 1000 Mississippi Street met all the eligibility requirements described in the regulations. In addition, the city admitted there was a great need for the type of housing offered by the project. Mr. Freeman stated that there were set-aside programs available to support development of housing for the homeless if that was the city's priority. He stated that there were set-aside programs for that type of housing. Mr. Freeman commented that TCAC could not properly decline an application because the city believed that the project did not satisfy its housing policy objectives. He stated that congress and the legislature did not intend for local agencies to have the authority to override TCAC decisions. He stated TCAC was empowered to enforce the criteria established in the regulations and statutes when making allocation decisions. Mr. Freeman stated the city raised issues about a loan commitment. He explained the loan commitment was no different any he had seen over the years. He stated that his client had similar commitments to 3 other projects that were recommended for approval by TCAC

that day. In addition, the lender submitted similar commitments for other projects in that funding round and prior year rounds. Mr. Freeman stated that the city reported in its evaluation that costs associated with the project were unrealistically low. He commented that the city's opinion was not supported by an expert analysis.

Mr. Gordon suggested Mr. Freeman's primary argument was that TCAC did not have legal authority to decline the project. He cited IRC Section 42(m)(1)(A)(ii), which requires TCAC to contact the local agency's executive director and provide such individual reasonable opportunity to submit comments on the proposed project. He asked Mr. Freeman if he thought the local agency's ability to comment on the project should have no impact on the Committee's decision.

Mr. Freeman stated that the regulations did not provide the local reviewing agency any authority or direction to offer its opinion about the project.

Mr. Gordon stated that the regulations provide the local agency the ability to conduct a review of proposed projects within its location. He asked Mr. Freeman if he thought the Committee should not take the city's evaluation into consideration when making allocation decisions.

Mr. Freeman stated that the LRA form asks primarily for the city to confirm many of the factual matters set forth in the tax credit application such as proximity to various facilities, costs, local zoning, and other requirements. He stated that the evaluation structure described in regulations did not contemplate the local agency substituting its judgment for the nearly objective review.

Mr. Gordon asked Mr. Freeman if he thought the Committee did have the ability to judge the quality of the project based on his interpretation of the regulations.

Mr. Freeman stated that the Committee could judge the quality of the project by determining whether it meets the specific criteria in the regulations. He commented that developers spend a lot of money to prepare their applications and be informed of their legal obligations in advance. Mr. Freeman commented that as an attorney it was his opinion that it was not legal for TCAC to override the criteria of the regulations based on the preference of the local agency.

Mr. Gordon asked Mr. Freeman if the IRC section that required TCAC to confer with the local agency regarding proposed projects was meaningless based on his interpretation of the law.

Mr. Freeman stated that the federal and state statutes require that TCAC develop specific regulations so applicants understand what is required of them. He commented that TCAC should incorporate the local agency's criteria into the competitive scoring system so applicants understand the type of local approvals they will need to compete successfully.

Mr. Gordon asked Mr. Freeman if he thought the San Francisco LRA's opinion, which opposed the project, should have no influence on the Committee's decision to allocate credits.

Mr. Freeman commented that the LRA should have an impact on the Committee decision only if the agency found that the project did not meet the specific criteria in the regulations.

John Conomos, the current owner of 1000 Mississippi Street, stated that the project had been in progress over the last 5 years. He stated that project had planning commission approval and 100% construction documentation. He stated that the costs to build the project as estimated the developer were consistent with his estimate. He stated that the project site, which is near the 3rd Street light rail, was not mentioned in some of the reports he received from city officials. He stated that other facilities such as technology and healthcare structures were being developed near the project site. Mr. Conomos addressed the city's concern about the presence of hazardous waste on the project site. He stated that the site was a vacant lot that never been built upon. He explained that a soils report indicated that the soil contained naturally occurring asbestos, which was common for major project sites in the city. He stated that the asbestos was the only hazardous material at the site that would have to be excavated and disposed of. Mr. Conomos stated that 27 of the 28 project units had 3 or more bedrooms, which were suitable for families. He stated that over the last 5 years total project costs were approaching \$5 million. He stated that the project sponsors could not finance the units if they were developed as market rate units. Mr. Conomos pointed out that the city could encourage families to remain in the city by supporting the development 1000 Mississippi Street, as an affordable family housing project.

Ms. Redway asked the project proponents if they would be able to finance the project without 9% tax credits financing.

Andrew Hanna, president of Global Premier Development, stated that the project was not feasible as a 4% tax credit applicant. In addition, the project would not compete for MHP funding.

Robert Hedrick, the State Treasurer's legal counsel, approached the Committee. He stated that the language in IRC Section 42(m)(1)(A)(ii) made it clear that Congress intended for the Committee to have authority to consider the local agency's opinion when entering their decision to allocate a project. He explained that Congress anticipated there would be occasions when TCAC departed from its mathematical selection criteria in order to address public policy concerns. He noted that the language in regulation Section 10325(e), states that there is no right to an allocation and that TCAC is required to provide a written explanation when it departs from its usual selection criteria. Mr. Hedrick stated that he believed TCAC had legal authority to depart from its usual selection criteria in order to account for the LRA public policy concerns.

Mr. Reyes agreed with Mr. Hedrick's opinion.

Mr. Gordon stated that he was concerned the project cost was significantly higher than average at \$565,000 per unit. He stated that in the future he would support funding of projects that strived to reduce their costs. He stated that he would vote against funding 1000 Mississippi Street with 9% tax credits.

Ms. Redway stated that she would like to comment on Mr. Freeman's opinion about the LRA's decision influencing TCAC's decision to allocation the project. She stated that during her service with TCAC there were several occasions when the LRA was neutral in its recommendation of a project. However, this was the first time the LRA was opposed to the project. She stated that the Committee should not support projects with tax credits if the projects were opposed by the local housing authority.

Mr. Freeman commented that in the past the TCAC's scoring criteria provided additional points to applicants for obtaining LRA approval of their project. He stated that the scoring criteria changed over time and no longer requires that applicants get LRA approval to gain points.

Ms. Redway responded that the Committee did not require the LRA's approval in order to fund the project, but were considering the LRA's strong opposition to the project.

Jared Eigerman, attorney for the project developer, commented that he did not understand why the Committee would reject the project based on the LRA's opposition. He stated that the LRA's review form showed the project did meet the city's need for family housing. Mr. Eigerman stated that 1000 Mississippi Street was the only project in the city and county of San Francisco that was eligible credits in that funding round. He stated that city indicated the project costs were too low. He predicted that the city's recommended projects reached TCAC they would have much higher costs.

No action was taken by the Committee on this item.

5. Discussion and Consideration of the 2011 Second Round Applications for Reservation of Federal and State Low Income Housing Tax Credits (LIHTCs) and appeals filed under TCAC Regulation Section 10330.

Mr. Pavão brought the Committee's attention to a golden rod list of 2011 Second Round Preliminary Recommendation for the Geographic Regions. He stated that staff removed the project called Cathedral Gardens from the original list and added Oak Meadow Family Apartments under the North and East Bay region.

Mr. Reyes brought the Committee's attention to TCAC's RDA spreadsheet showing recommended 9% projects with RDA funds committed. He stated that he did not understand how staff computed the RDA amount for Oak Park Senior Apartments (CA-2011-110). He explained the amount of RDA funds shown in the Project Staff Report was greater than the amount shown in the RDA spreadsheet.

TCAC analyst, Gina Ferguson, stated that she reviewed the application for Oak Park Senior Apartments. She explained that some of the RDA financing shown in the Project Staff Report may not be tax increment money.

MOTION: Mr. Reyes moved approval of staff recommendations regarding only the projects numbered as CA-2011-105, CA-2011-110, CA-2011-116, CA-2011-117, CA-2011-130, CA-2011-134, CA-2011-147, CA-2011-154, CA-2011-157, CA-2011-161, CA-2011-167, and CA-2011-170. Mr. Gordon seconded and the motion passed unanimously.

MOTION: Mr. Gordon moved approval of staff recommendations regarding only the projects numbered as CA-2011-108, CA-2011-111, CA-2011-112, CA-2011-115, CA-2011-119, CA-2011-120, CA-2011-121, CA-2011-141, CA-2011-142, CA-2011-145, CA-2011-146, CA-2011-150, CA-2011-153, CA-2011-158, CA-2011-163, CA-2011-165, and CA-2011-172. Ms. Redway seconded and the motion passed.

MOTION: Mr. Reyes moved approval of staff recommendations regarding only the projects numbered as CA-2011-107, CA-2011-113, CA-2011-123, CA-2011-124, CA-2011-126, CA-2011-129, CA-2011-131, CA-2011-132, CA-2011-133, CA-2011-136, CA-2011-137, CA-2011-139, CA-2011-140, CA-2011-144, CA-2011-152, CA-2011-160, CA-2011-162, CA-2011-173, and CA-2011-174. Mr. Gordon seconded and the motion passed unanimously.

6. Discussion and Consideration of the 2011 Second Round 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 noted that 3 of the 7 recommended projects scored below the minimum score established by TCAC. The projects were Paradise Community Village Apartments-Phase 1, Hallmark Apartments, and Eucalyptus Village II. Mr. Pavão stated that even though the projects scored under the established minimum, they still warranted an award of state credits. He reminded the Committee that they had authority to reject projects that scored below TCAC's established minimum score.

Mr. Pavão informed the Committee that TCAC would have a surplus of state credits after the funding round. He stated that staff already began contacting the 2011 Second Round 9% awardees to discuss the possibility of exchanging their 9% federal credits for state credits. Mr. Pavão stated that exchanging federal credits for state credits would allow staff minimize or possibly eliminate the need to forward commit next year's credits to 2011 projects. In addition staff may be able to fund another 9% project from the waiting list.

Mr. Reyes asked Mr. Pavão why staff would recommend projects that scored below the established minimum.

Mr. Pavão explained that Paradise Community Village lost 5 under the lowest income targeting category. In addition, the project lost 5 points under the Readiness category and 5 points under the quality of services category. He stated that even though the applicant did not meet the established minimum score, the project still had the level of quality that warranted an award of credits.

Patrick Sabelhaus commented on behalf of Juniper Apartments, the only project that applied for 2011 Second Round 4% plus state credits, but was not recommended for an award. He stated that the project lost most of the application points under the lowest income rents category. The rent schedule provided by the applicant assigned just 20% of the units at 50% of area median income (AMI), 40% at 55% AMI, and 40% at 60% AMI. He stated that the local jurisdiction asked the developer to structure the rent schedule that way due to requirements imposed upon the city by HCD. Mr. Sabelhaus explained that because the applicant utilized the rent structure imposed by the local jurisdiction, they could not score more than 10 out of 52 possible points. He stated that the city invested \$11 million into the project, so the applicant felt they could not object to the rent schedule suggested by the local jurisdiction. He asked that the Committee reconsider awarding credits to the project.

Mr. Pavão asked Mr. Sabelhaus to confirm that the project already received a bond allocation and a 4% credit award.

Mr. Sabelhaus confirmed that credits were awarded and the bond allocation was received in 2010.

Mr. Pavão informed the Committee that they already approved the project for 4% tax credits.

Mr. Pavão asked Mr. Sabelhaus to confirm that the project would be able to proceed without the 4% plus state credit award.

Mr. Sabelhaus confirmed stated that the project would proceed even without a 4% plus state credit award.

Ms. Redway commented that the state was under heavy scrutiny to ensure that public funds were being used appropriately. She stated that TCAC should not award credits just because they are available; but TCAC should preserve credits for those projects that provided more affordability.

Mr. Sabelhaus stated that the total project cost was \$28 million. In addition, the project had 153 large family units, for which the average development cost per unit was \$188,000. He commented that the project was highly efficient and met the city's highest standards in terms of quality.

MOTION: Mr. Reyes moved approval of staff recommendations. He noted that one of the projects had RDA funding; however the project had cash-on-hand committed prior to January 1, 2011. Mr. Gordon seconded and the motion passed unanimously.

7. Discussion and Consideration of the 2011 Application for Reservation of Federal Low Income Housing Tax Credits (LIHTCs) for Tax-Exempt Bond Financed Projects.

Mr. Pavão reminded the Committee that the 2 projects under consideration that day were also listed on the July meeting agenda. The projects were withdrawn at the July meeting because staff learned the applicants did not secure a bond allocation. Mr. Pavão reported that the projects resolved their previous issues and were eligible for 4% tax credits.

MOTION: Mr. Gordon moved approval of staff recommendations. Mr. Reyes seconded and the motion passed unanimously.

8. Discussion and Consideration of a Resolution Authorizing the Executive Director of the California Tax Credit Allocation Committee to Sign Contracts and Interagency Agreements.

MOTION: Mr. Reyes moved approval of staff recommendations. Mr. Gordon seconded and the motion passed unanimously.

9. Discussion and Consideration of a Resolution Authorizing the Executive Director of the California Tax Credit Allocation Committee to enter into a contract with Spectrum Enterprises, Inc., not to exceed \$250,000 to provide professional tenant demographic data collection services related to compliance with HUD program requirements as required under the Housing and Economic Recovery Act of 2008.

MOTION: Mr. Reyes moved approval of staff recommendations. Mr. Gordon seconded and the motion passed unanimously.

10. Discussion and Consideration of a Resolution Authorizing the Executive Director of the California Tax Credit Allocation Committee to enter into a contract with Boston Capital Asset Management, LP., not to exceed \$945,000 to provide professional asset management services related to compliance with TCAP and Section 1602 program requirements for projects awarded funds made available by the American Recovery and Reinvestment Act of 2009.

MOTION: Mr. Reyes moved approval of staff recommendations. Mr. Gordon seconded and the motion passed unanimously.

11. Public Comment.

Mr. Pavão noted that the binders given to Committee members contained a copy of the written comments staff received from members of the public who were unable to attend the TCAC Public Hearing regarding cost containment held September 14, 2011.

12. Adjournment.

The meeting adjourned at 1:09 p.m.