

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE
Minutes of the November 13, 2013 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 11:35 a.m. Also present: Alan Gordon for State Controller John Chiang; Eraina Ortega for the Department of Finance Director Michael Cohen; Timothy Hsu for California Housing Finance Agency Executive Director Claudia Cappio; Department of Housing and Community Development Representative Laura Whittall-Scherfee; and County Representative Lois Starr.

City Representative Lucas Frerichs was absent.

2. Approval of the minutes of the October 16, 2013 Committee meeting.

MOTION: Mr. Gordon moved to adopt the minutes of the October 16, 2013 meeting. Ms. Ortega seconded and the motion passed unanimously by a roll call vote.

3. Executive Director's Report.

Mr. Pavão reported that staff published the proposed regulation changes for 2014. He stated that the 45-day public comment period was in progress. In addition, staff held a public hearing regarding the regulations in Oakland the day prior to the Committee meeting. A public hearing would also be held that day in Sacramento, November 14th in San Diego, and November 15th in Los Angeles. Staff proposed 36 substantive changes to the regulations. He explained that many of the changes were related to each other, and that the changes were fairly noncontroversial, although some were likely to elicit substantive comments. Mr. Pavão stated that the public comment period would end on December 9th after which time staff would review comments and respond to them. Staff would bring the final set of recommended changes to the Committee at the meeting scheduled for January 29th.

Mr. Pavão announced that the Internal Revenue Service (IRS) published the multiplier that the agency would use next year in calculating California's credit ceiling or 9% credit authority. He stated that the multiplier for California would be \$2.30 per capita next year, while the same factor was \$2.25 for 2013. He concluded that the resulting amount of federal 9% credits available would increase slightly in 2014.

Mr. Pavão reported that following last meeting staff posted an explanation, consistent with federal statute and state regulations, describing the Committee's action at the October 16th meeting. The action granted a forward reservation of credits to Playa Senior Affordable Housing (CA-13-105) located in the City of Los Angeles. Mr. Pavão stated that since the Committee decision was not explicitly described in the regulations, staff was obliged to explain the decision publicly. He reported that staff posted an explanation on the TCAC website and sent an email notice to everyone on TCAC's distribution list.

4. Discussion and consideration of the 2013 Applications for Reservation of Federal Low Income Housing Tax Credits (LIHTCs) for Tax-Exempt Bond Financed Projects.

Mr. Pavao reported that 5 applications for 4% credits were recommended for approval. He stated that the Project Staff Report for Washington Plaza Apartments (CA-13-889) was recently amended.

TCAC development manager, Anthony Zeto brought the Committee's attention to the revised report printed on golden rod paper. He explained that staff corrected the qualified basis for rehabilitation shown on page 3.

MOTION: Mr. Gordon moved to adopt staff recommendations. Ms. Ortega seconded and the motion unanimously by a roll call vote.

5. Discussion and consideration of a resolution to adopt proposed regulation, Title 4 of the California Code of Regulations, Section 10325(c)(8) Revising Allocation and Other Procedures.

Mr. Pavão reminded that Committee that at the October 16th meeting he reported that the federal government shut down affected several project sponsors who received First Round 2013 awards in June and were facing a 180-day readiness deadline of December 9th. He explained that the federal shutdown could jeopardize sponsors ability to close their construction period financing before the deadline. Mr. Pavão stated that staff recommended a regulation change just for the subset of First Round applicants who received 9% credit reservations and had federal funding commitments and were delayed by the federal government shutdown. He explained that the regulation change would grant the sponsors an additional 45 days to close construction period financing, thus extending their readiness deadline to January 23rd.

MOTION: Mr. Gordon moved to approve the resolution. Ms. Ortega seconded and the motion unanimously by a roll call vote.

6. Public Comments.

William Leach stated that he worked with Palm Communities, a southern California developer. While reviewing the 2013 Second Round 9% applications provided by TCAC in July, Mr. Leach noticed that the City of Perris took potentially illegal actions to provide Verano Apartments (CA-13-138) a competitive advantage. He stated that the City Manager committed in writing to loan the applicant public funding without obtaining City Council approval for it. Mr. Leach stated that the City Manager made the commitment just days before the TCAC deadline. He stated that if his interpretation was correct, the actions of the city manager were illegal and conflicted with TCAC regulation Section 10325(f)(8)(a), which required commitments to be expressly authorized by the governing board. Mr. Leach stated that since he was concerned CA-13-138 might prevail over his own application, Siena Apartments (CA-13-156), he notified TCAC staff of the apparently unlawful actions by the City of Perris. He commented that he appreciated staff taking the time to meet with him and hear his concerns. He stated that it was his understanding that staff

inquired with the City of Perris and that the city attorney asserted that their actions were lawful and authorized. Mr. Leach stated that since the application included all required documentation, TCAC staff recommended it for funding and the Committee subsequently granted approval to fund it at the September meeting. He reported that as an individual who was harmed by the City of Perris' actions and as a defender of due process, he filed a writ of mandate with the Riverside County court. And he petitioned the court to mandate the City of Perris to retract its unlawfully executed agreement and retract its assertions to TCAC that the agreement was made with authority and that it was valid. Mr. Leach reported that he filed a temporary restraining order, which would be heard in court tomorrow. He summarized that his objective was to advise TCAC of what had happened and to thank staff for thoroughly addressing his concerns as they came up. In addition, he asked what actions TCAC would take if the court mandated the City of Perris to retract its agreement and assertions.

Robert Hedrick, counsel for TCAC, stated that the Committee was not in a position to speculate on the course of action to be taken depending on the court's orders. Mr. Hedrick stated that it was very difficult for the Committee to guess right then what actions were appropriate in light of an unknown court order that may or may not be issued.

Ms. Redway asked Mr. Hedrick to advise the Committee regarding the outcome of tomorrow's court session.

Manuel Bernal stated that he was the director of housing for the City of Los Angeles. He reported that for the 2013 first and second round, the City released a Notice of Funding Availability (NOFA) right before the TCAC application deadline in order to solicit projects that wanted to compete for tax credit funding. He explained the City supported its approved projects with funding and a local review letter and then recommended them to TCAC for funding. Mr. Bernal stated that for 10 years the City followed the same process. He explained that for the 2013 funding rounds the City published the same NOFA with a caveat explaining that because the City of Los Angeles had become a geographic region, the City Council granted authority to the City to oppose any project that did not go through the NOFA process. Mr. Bernal reiterated that the solicitation process for projects had been the same for 10 years. He explained that during the NOFA process the City was also developing a more thorough managed pipeline. He stated that when TCAC approved the Qualified Allocation Plan (QAP) to set up the 11th region, the City understood that it needed to consider how it would get projects through the managed pipeline. Mr. Bernal had conversations with the Los Angeles development community to figure out how the City could develop a process for applicants to access resources made available by the managed pipeline.

Mr. Bernal distributed a report to each of the Committee members. He explained that the report was a chronology of the conversations he had regarding the orchestrated process for accessing the city pipeline. He stated that the conversations started in May 2011, almost a year and a half before TCAC approved the QAP. Mr. Bernal reported that he spoke to individuals both internally and externally to the department. In addition, he spoke to SCANPH members and held small group meetings and 2 stakeholder meetings. Mr. Bernal reported that his agency eventually developed a document called the 9% LIHTC Pipeline Management Plan. He stated that the

document was approved when the 2013 Second Round applicants were approved in late July 2013. He stated that it was true that the document was approved shortly before the TCAC deadline; however 2013 Second Round applicants were given notice previously.

Mr. Bernal stated that one of the main features of the LIHTC Pipeline Management Plan dictated that the City would no longer seek out projects right before the TCAC deadlines because it was too difficult. He stated that the City had a huge inheritance of CRA funded projects that needed to go through the City's pipeline or else the CRA funding commitments, the state's money, and other resources would be lost. Mr. Bernal stated that one of the big tenements of the pipeline management plan was to set up a 2-year/24-project pipeline that included categories such as special needs, non-profit, family, and seniors. He explained that the projects would be prioritized and ranked so that applicants could access the pipeline.

Mr. Bernal stated that in July 2013, the City posted an application online for a month. He reported that by August 19th, the City received approximately 41 applications requesting whole money and/or the local review letter. He stated that on August 25th, 5 working days after the deadline, the City posted its list of applicants and their self-scores for public view. Mr. Bernal reported that since August 20th, the City had been evaluating and ranking the self-scores and had trimmed its list down to 24 projects. He stated that the City finished its reviews, but still needed to submit the results to the mayor's office before they became public. He predicted that in the next 2 weeks the City would publish its 24-project pipeline with the intent that the projects would apply for 9% tax credits over the next two years. Mr. Bernal commented that the community approved of the new system because it gave the developers more certainty as to whether their projects would be worth their investments. He stated that historically, the Los Angeles County apportionment was divided 50/50, more or less. He stated that the City, which was very competitive, had a lot of whole money and was actually able to get more than 50%. Mr. Bernal stated that as resources began to dry up, the City gave up competing for a larger portion of the credits in exchange for providing certainty to the developer community.

Ms. Ortega asked Mr. Bernal if the self-scoring system was based on the application provided by the City.

Mr. Bernal stated that the pipeline management plan included a scoring system, which had two phases: the threshold criteria section and the scoring criteria section. He explained that the threshold criteria section required projects to have a perfect TCAC application score. In addition, projects had to meet site control standards, not exceed the maximum projects per developer, and comply with occupancy monitoring and prevailing wage regulations.

Mr. Bernal stated that the self-score could be a maximum of 100 points. He stated that in the First Round, the City added a bonus section for projects that had commitments from CRA or another non-City funding sources. He stated that the 100-point scoring system addressed leverage, location within the city, and serving special needs.

Ms. Redway asked if there were any changes in the regulatory package regarding the City's pipeline.

Mr. Pavão confirmed that the proposed regulations contained changes related to the City's managed pipeline. He reported that staff posted a change for public review, which stated that for single jurisdiction regions such as the City of Los Angeles, the first tie-breaker for projects with perfect scores, would depend on whether the project had city housing agency funds committed to it. Mr. Pavão stated that if the change had been applied to the situation that occurred two months ago, the Playa Senior project would have prevailed because locally controlled resources were committed to the project, whereas the two competing projects did not have local commitments.

Mr. Gordon asked Mr. Pavão to name the two competing projects.

Mr. Pavão stated that the projects were Turner Apartments and Crenshaw Family Apartments.

Mr. Gordon asked Mr. Bernal to assume for a moment that the projects had gone through the City's process and scored all 148 points, but did not have a funding commitment from the City. He suggested that it would be positive if the City received a project that could be financed with other sources rather than using limited City resources. Mr. Gordon asked why a project's tie-breaker should be negatively impacted if the project scored 148 points but did not need city funding.

Mr. Pavão stated that Mr. Gordon was right to draw a distinction between the City's interests and TCAC's interests. He commented that TCAC's interest was to induce in City funding as leverage.

Ms. Redway stated that the Committee was heading toward a discussion of the issues related to the regulations. She noted that such a discussion was not a publicly noticed Agenda Item; therefore the Committee must refrain from taking a position. Ms. Redway advised Mr. Bernal that he could make comments during the regulatory process.

Mr. Bernal stated that his agency would submit comments through the regulatory process.

Mr. Gordon stated that the Committee previously discussed project sponsors who believed they did not need to go through the pipeline process because they did not request public financing. He asked Mr. Bernal if the developer community in Los Angeles now understood that they needed to apply through the pipeline process even if they did not require City funding.

Mr. Bernal confirmed that the developer community understood. He stated that there was a disagreement as to whether the developer community as a whole understood. He stated that the City's position was that most developers knew what process would be because the City went through an extensive process of notifying the community and asking for feedback while shaping the process.

Mr. Bernal announced that his agency had again published that the pipeline would be opening. He stated that twice each year the pipeline would be opened and once the agency decided what kind of projects it needed, it would send out a public notice.

Mr. Gordon stated that he started working in government with a senator from Los Angeles. He commented that the culture in Los Angeles had always been that if you were told no in one place, go someplace else to find someone who would say yes. He stated that the developers did not get the answer they wanted from the housing commission so they went to the individual members of the City Council to get the answer they wanted. Mr. Gordon asked if something was going to happen next year to prevent another situation in which a project sponsor argued that they did not need support from the housing commission, so they obtained a letter of support from a City Council member.

Mr. Bernal stated that when his agency reduced its project list to 24 applicants, it intended to have the list approved by the City Council, consistent with City regulations. He noted that whenever the agency added to the list, its process would be the same. Mr. Bernal reported that he had started conversations with members of the City Council and all committee members on the housing side to let them know 1) they would be receiving the list of 24 projects selected based on the process they approved previously and 2) the City would like the process to be reaffirmed in order to avoid future misunderstandings. Mr. Bernal stated that the 24 selected projects would be formally adopted as the projects the City intended to fund.

Ms. Starr asked Mr. Pavão if there was a percentage of money the City had to contribute to a project to make it as a tie-breaker. She asked if a project would score better in the Los Angeles system if it had county MHSA funding, but no City funding.

Mr. Pavão stated that the current rules did not specify a threshold amount for City funding in the project; however the proposed rule specified city housing agency funding. He gave an example, stating that in San Francisco the City and County were the same entity. He stated that TCAC was looking for City funding in the Los Angeles projects under the proposed rule.

7. Closed Session

The closed session took place from 11:59 a.m. to 12:10pm. No action was taken during closed session.

8. Adjournment

The meeting adjourned at 12:11 p.m.