

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE
Minutes of the September 24, 2014 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 11:00 a.m. Also present: Alan Gordon for State Controller John Chiang; Eraina Ortega for the Department of Finance Director Michael Cohen; California Housing Finance Agency (CalHFA) Executive Director Tia Boatman-Patterson; and Laura Whittall-Scherfee for Department of Housing and Community Development (HCD) Director Claudia Cappio.

City Representative Lucas Frerichs was absent.

2. Approval of the minutes of the August 20, 2014 Committee meeting.

MOTION: Mr. Gordon moved to adopt the minutes of the August 20, 2014 meeting. Ms. Ortega seconded and the motion passed unanimously.

3. Executive Director's Report.

Executive Director, William Pavão reported that staff finalized regulation changes for next year and posted them for public comment. He noted that staff also sent an email notice of the changes to Committee members. Mr. Pavão stated that the regulation package contained about 20 pages worth of changes. He noted that the package was fairly modest compared to that of the previous year. Mr. Pavão stated that there were a couple of significant changes proposed and he urged board members to read through them. He announced that TCAC would hold public hearings in a variety of locations around the state in an effort present a complete package of regulations to the Committee at the December 17th meeting. Mr. Pavão stated that the regulations were typically adopted in January. He explained that staff decided to present the regulations for adoption before the anticipated change in Committee membership took place next year. He stated that the new members would join the board under an established set of rules for that program year.

Mr. Pavão reported that the affordable housing cost study report was complete and expected to be released momentarily. He stated that he would brief the Committee on the results of the study at the next meeting if the report was in fact released.

Mr. Pavão stated that the Committee would vote on staff recommendations for the 2014 Second Round 9% credit and 4% plus State credit awards at that day's meeting. He thanked his staff for all their efforts in preparing the Second Round applications for the meeting.

Ms. Redway thanked the staff for their hard work.

Mr. Pavão announced that two staff recently joined TCAC.

Deputy Director Lisa Vergolini introduced Julio Villanueva and Travis Taketa, who recently joined the compliance unit of TCAC.

4. Discussion and consideration of the 2014 Second Round Applications for Reservation of Federal Nine Percent (9%) and State Low Income Housing Tax Credits (LIHTCs).

Mr. Pavão reported that TCAC received 87 applications for 9% credit awards. He noted that some applicants requested 9% federal credits and state low-income housing tax credits. He brought the Committee's attention to a list of the 38 recommended projects on golden rod paper. Mr. Pavão explained that the projects were sorted by their respective set asides and by geographic apportionments.

Mr. Pavão noted that staff published a preliminary list of 39 recommended projects. He explained that one project was removed from the list due to disqualification. He advised the Committee that 38 projects were being recommended for awards that day.

Mr. Pavão anticipated that some federal credits would remain available if the Committee approved the recommended projects. And staff would likely recommend a waiting list to the Committee at the October meeting. Mr. Pavão noted that TCAC has not had a waiting list since 2008.

Mr. Pavão reported that there was a radical increase in demand for state credits. He explained that state credits would be oversubscribed and TCAC would have to reach into next year's state credits if the Committee approved the 38 recommended projects. He explained that TCAC received annual authority for about \$90 million of state credit. He predicted that about \$10 million dollars would be subtracted from next year's state credits if the Committee approved the recommended projects.

Mr. Pavão explained that the radical increase in demand for state credits was largely due to legislation that became law in 2013. The law allowed Special Needs applications to request state credits even if the projects were in a Difficult to Develop Area (DDA) or Qualified Census Tract (QCT) and receiving the federal 30% boost to their basis before TCAC calculated the federal credits. Mr. Pavão reported that nearly every Special Needs project TCAC reviewed in 2014 took advantage of the new legislation. Virtually all were in DDA's and QCT's and received the federal boost. They also requested state credits, which led to the oversubscription in 2014.

Mr. Pavão noted that there was an appeal pending under Agenda Item 5. He stated that the outcome of the Committee's decision on the appeal would not have any bearing on the 38 projects recommended under Agenda Item 4.

Ms. Redway invited Jack Gardner to comment.

Mr. Gardner stated that he was president of the John Stewart Company. He explained that his firm submitted 9% and 4% plus state credit applications. He stated that he had been in the housing industry for a long time and was currently a state wide manager and developer of affordable housing. Mr. Gardner stated that Mr. Pavão's tenure as executive director of TCAC had been exemplary. He praised Mr. Pavão for his accessibility and receptivity to the many comments and ideas people gave him. He praised Mr. Pavão's ability to create balance among the many competing interests and desires within the industry. He complemented Mr. Pavão's commitment to the production and preservation of high quality affordable housing for low-income Californians. Mr. Gardner congratulated Mr. Pavão for a job very well done.

Ms. Redway commented that Mr. Pavão was an exemplary public servant who put the goals of the organization ahead of almost everything else. She complimented his openness and accessibility.

MOTION: Mr. Gordon moved to adopt staff recommendations. Ms. Ortega seconded and the motion unanimously.

5. Discussion and consideration of an appeal filed under TCAC Regulation Section 10330 for a 2014 Second Round Application of Federal Nine Percent (9%) and State Low Income Housing Tax Credits (LIHTCs).

Ms. Redway invited Randall Kelly to comment.

Mr. Kelly stated that he was an attorney with Nixon Peabody representing the developer of Casa Del Pueblo. The developer applied for an At-Risk determination for Casa Del Pueblo in the 9% funding round and was denied. Mr. Kelly stated that he was in receipt of an August 22nd letter from TCAC indicating the project continued to be denied At-Risk status and was therefore denied a 9% allocation.

Mr. Kelly explained that there were a couple of reasons for the appeal. He stated that after reviewing the correspondence it appeared TCAC did not dispute that the project met the statutory definition of At-Risk housing. With respect to the regulation; however it seemed there was a disagreement between TCAC and the developer. Mr. Kelly stated that he felt TCAC was erroneously reading criteria requirements into the regulation that simply did not exist in the plain language of regulation. The last correspondence from TCAC stated that the question before the Committee was whether a project with both an expiring Section 236 rental agreement and an ongoing Project Based Section 8 rental contract was considered At-Risk under the regulation. Mr. Kelly stated that he believed the question was not the correct one because incorporating the notion of a Project Based Section 8 contract into the definition was not in the regulation. He stated that the regulation in question presented an either/or scenario where the project only had to meet one of the two criteria in order to be considered At-Risk. He stated that TCAC agreed the project met the plain language of the first prong of the test, which required that the project must currently possess or have within the past 5 years from the

date of its application possessed either federal mortgage insurance or a federal loan. Mr. Kelly reiterated that the project was a Section 236 property with federal mortgage insurance. He explained that the United States Department of Housing and Urban Development (HUD) approved the prepayment of the Section 236 mortgage, which meant the accompanying Section 236 regulation structure would be released once the mortgage had been prepaid. Mr. Kelly stated that TCAC's analysis under the regulation should stop at the first prong of the test. If for some reason one strayed into second prong of test they would see language concerning the availability of project based assistance. Mr. Kelly stated that TCAC did not need to delve into that area because the project met the first part of the 2-prong test.

Mr. Kelly commented that he understood, to a certain degree, the reaction to the presence of a long term Section 8 contract at the property. He stated that intuition probably led people to think the property was locked up and had 15 years of a Section 8 contract left to run out. Mr. Kelly stated that applying the Section 8 requirement to the first prong of the regulation test was unfair and arbitrary since the language was not present. He observed that historically TCAC had been wise not to couple the two concepts together for a variety of reasons. The main reason was that Project Based Section 8 assistance was not as permanent as one might think. For example, the owner of project could apply for and HUD could approve the moving of the contract from the current property to another one in another neighborhood of the community. Mr. Kelly stated that he feared Section 8 would be abated at the property at some point because the property required more than \$6 million worth of earthquake retrofits and seismic upgrades so it could be code complaint. He stated that completing the upgrades was a major goal of the proposed rehabilitation of the property.

Mr. Kelly explained that Congress had to fund the Section 8 program. He stated that he attended industry events around the country where people were very nervous about what was going on in the House of Representatives with sequestration and the like. He stated that industry participants like Fannie Mae and Freddie Mac routinely required what they called Section 8 transition reserves. The transition reserves were designed to cover the property in the event that HUD could not adequately fund Section 8 contracts because Congress failed to act in some form or another.

Mr. Kelly stated that if TCAC ultimately conceded that the project required the rehabilitation and met the definition of At-Risk, the developer would be able to preserve the housing for 163 senior citizen residents. He stated that even if the Committee disagreed with his comments, they still had the ability to fund the project as a high priority project by using the supplemental set aside allocation pool. Mr. Kelly stated that if there were insufficient state credits remaining, the developer would ask the Committee to consider a forward commitment from 2015 authority or to work with the developer so they could approach the seller and work out a purchase and sale agreement that will help the preserve the project.

Mr. Gordon stated that the Committee was not ready to grant the appeal, at least not from the perspective of the Controller. He stated that since TCAC had some

credits available he would be willing to entertain further negotiations to see how the project might fit.

Ms. Redway stated that she respected her colleague's request that the Committee continued to research possibilities as they moved forward. She reminded Mr. Kelly and the audience that TCAC had a waiting list procedure, which was in the regulations. She explained that the procedure would be used to identify eligible applicants on the waiting list who would compete for credits. Ms. Redway stated that the waiting list applicants would have the legal authority entitled to them. She stated that the applicants would likely challenge the Committee giving the credits to another project, which according to TCAC legal counsel did not meet the threshold requirements. Ms. Redway commented that Casa Del Pueblo was probably a very a meritorious project and she hoped that the applicant would work with the City of San Jose to bring it back to the Committee.

Ms. Redway suggested the project could be eligible for 9% credits in the future. She commented that she would like to see it rehabilitated. She stated that due to TCAC's competitive process the Committee must often deny very meritorious projects. Ms. Redway stated that she supported staff's recommendation to deny the appeal. She asked board members if they wished to make a motion on the agenda item. Ms. Redway confirmed that no motion was made and Committee would take no action on the appeal.

Mr. Kelly stated that the developer respected TCAC's process and was happy and willing to work with staff to get the project done.

Ms. Redway confirmed again that the appeal was denied due to lack of a motion. She thanked Mr. Kelly for his comments.

6. Discussion and consideration of the 2014 Second Round Applications for Reservation of Federal Four Percent (4%) and State Low Income Housing Tax Credits (LIHTCs) for Tax-Exempt Bond Financed Projects.

Mr. Pavão stated that staff recommended 3 projects for 4% federal credits plus state credits. He explained that approval of the 3 projects would virtually exhaust the 15% of available 2014 credits that were set aside for tax-exempt bond 4% awards. Mr. Pavão stated that about \$1 million of the amount set aside would remain; however the next application in line requested an amount well beyond the remaining \$1 million. Mr. Pavão explained that the regulations were very specific about TCAC's ability to set aside 15% of the state credits for this population of projects. In addition, the regulations provided scenarios in which TCAC may exceed the 15%. He concluded that none of those scenarios were in effect and staff stopped before completely exhausting the 15%. Mr. Pavão reminded the Committee that staff still recommended reaching forward into next year's state credits in spite of the remaining \$1 million in the current 4% plus state credit competition.

MOTION: Mr. Gordon moved to adopt staff recommendations. Ms. Ortega seconded and the motion unanimously.

7. Public Comments.

There were no public comments.

8. Adjournment

The meeting adjourned at 11:28 a.m.