

**CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE**  
**Minutes of the October 19, 2016 Meeting**

1. Roll Call.

Alan Gordon for State Treasurer John Chiang chaired the meeting of the Tax Credit Allocation Committee (TCAC). Mr. Gordon called the meeting to order at 11:00 a.m. Also present: Alan LoFaso for State Controller Betty Yee; Jacqueline Wong-Hernandez for Department of Finance Director Michael Cohen; California Housing Finance Agency (CalHFA) Executive Director Tia Boatman- Patterson; and Department of Housing and Community Development (HCD) Director Ben Metcalf.

County Representative Santos Kreimann and City Representative Lucas Frerichs were absent.

2. Approval of the minutes of the September 21, 2016.

MOTION: Mr. LoFaso moved approval of the September 21, 2016 minutes. Ms. Wong-Hernandez seconded and the motion passed unanimously by a roll call vote.

3. Executive Director's report.

Executive Director Mark Stivers reported that each year TCAC seeks eligibility for the national pool of unused tax credits from other states. He explained that TCAC qualifies for the national pool because the agency had less than 1% of its annual credits remaining at the end of last year. He received notice that TCAC would receive an extra \$416,000 in tax credits, to be utilized this year.

Mr. Stivers reported that staff would recommend additional projects for 9% tax credits at the November meeting. He noted that, in addition to the national pool credits, TCAC also has some remaining federal credits to award. Staff will establish a waiting list according to the regulations. He stated, depending on the outcome of today's appeal, a project from one of regions may also be recommended.

Mr. Stivers reported that TCAC has had a backlog of Form 8609 requests for a long time. He explained that requestors of Form 8609s have completed project construction and submitted to TCAC their final documentation of costs and compliance with various requirements and commitments. Previously TCAC staff required up to a year to process a Form 8609. More recently staff has been able to process Form 8609 reviews within about 3 months of receiving them. Mr. Stivers noted the huge improvement in processing time and hoped the staff would eventually reduce processing to 60 or possibly 30 days.

Mr. Stivers announced that if the Committee approved all the 4% projects on that day's agenda, TCAC will have set a record for funding the most 4% units in a given year. The previous record was set in 2001 when TCAC funded 16,400 units. If the Committee approved all projects on that day's agenda, TCAC will have funded a record 16,700 units during that year.

Mr. Stivers noted that there 2 more TCAC meetings scheduled in 2016. He predicted staff would recommend 12 applications in November and another 25 in December.

Mr. Stivers announced that Deputy Director Lisa Vergolini would retire from her position in December. He stated that Ms. Vergolini would be greatly missed by the TCAC staff.

Mr. LoFaso asked Mr. Stivers to confirm that 1% of TCAC's annual allocation equaled \$416,000.

Mr. Stivers clarified that \$416,000 is not 1% of TCAC's annual allocation. TCAC was eligible for national pool credits in the amount of \$416,000 because the agency allocated more than 99% of its available credits last year. He explained that when the annual credit amount is multiplied by 10 years the actual total is \$4.1 million in credits.

4. Discussion and consideration of an appeal filed under TCAC Regulation Section 10330 for a 2016 Second Round Application for Federal Nine Percent (9%) Low Income Housing Tax Credits (LIHTCs).

Patrick Sabelhaus stated that he represented the applicant for Cesar Chavez Phase II (CA-16-128), a farm worker project that was denied credits in the recent funding round. He introduced Cheri Hoffman, president of Chelsea Investment Corporation the applicant for Cesar Chavez Phase II.

Mr. Sabelhaus explained that the TCAC staff disqualified the applicant on the grounds that it failed to meet the required 3-month operating reserve of \$167,994 and was therefore infeasible. He stated that his client made a mathematical error in proposing an operating reserve of \$124,694, which was about \$43,000 below the required 3-month reserve. He noted that \$43,000 was about 16/100 of 1% of the estimated \$27 million in total development costs.

Mr. Sabelhaus stated that the mathematical error was insignificant for a \$27 million project and could be easily corrected, as permitted by the regulations, simply by increasing the operating reserve by \$43,000 and then increasing the deferred developer fee amount, which the project has room to do. Such a correction by staff would not cause any other change in the application itself.

Mr. Sabelhaus stated that the project scored the maximum points and had the highest tie-breaker in the Inland Empire at 52.56 points. He explained that the project would be serving the farm workers of the Coachella Valley area, a population that is most in need of decent housing.

Mr. Sabelhaus stated that the project received \$3 million in U.S. Department of Agriculture soft financing, \$4.3 million from the City of Coachella, and \$650,000 from the Federal Home Loan Bank's Affordable Housing Program. In addition, 100% of the units were receiving rental assistance, which is the equivalent of Section 8 subsidies and ensures residents are not paying more than 30% of their income to live at the property.

Mr. Sabelhaus stated that Section 10327(a) provides the Committee with discretionary authority to make changes in an application as long as the changes do not improve the score

or the credit amount. He explained that the requested change to the operating reserve and deferred developer fee in the Cesar Chavez application would comply with the regulation section he recited. The requested change would have no effect on the applicant's score and would not change the tie-breaker or the basic financing structure of the project.

Mr. Sabelhaus stated that he was concerned about a proposed regulations change for 2017, which requires that large family projects be permitted only in high opportunity communities as identified by data provided by the University of California, Davis. He explained that if the proposed regulation was adopted the city of Coachella would be deemed an ineligible location for the project next year. He stated that Coachella is considered a low opportunity community due the amount poverty and the fact that the city is primarily a farm worker community.

Mr. Gordon asked Mr. Sabelhaus to further explain what it means for an area to be a low opportunity community as opposed to high opportunity community.

Mr. Sabelhaus explained that the policy related to the Fair Housing Act and a lawsuit brought against the Texas committee for developing many of its projects in redevelopment agency (RDA) areas. He noted that Section 42 includes a statement that priority be given to developing in RDA revitalization areas. He explained that although the Texas case was dismissed, it caused national concern about the difficulty associated with Fair Housing policy. Mr. Sabelhaus stated that TCAC staff has been researching ways to mitigate the risks.

Mr. Sabelhaus stated that UC Davis developed a data set, which considers numerous items to determine where both high and low opportunity areas are. He stated that he was not sure about the soundness of the data because UC Davis just developed it during the past year. He stated that there could be criticism for refusing to develop any large family projects in the lowest income neighborhoods just because they are low income.

Mr. Gordon asked if, absent the new regulations, the project would be a viable applicant next year if the Committee rejected the appeal that day.

Ms. Hoffman stated that the application would be viable; however her firm would have to request that the seller extend the site control.

Mr. Gordon asked Ms. Hoffman if the project could move forward without a credit award in 2016. He asked Mr. Sabelhaus to confirm that the required funding really does exist and applicant simply made a miscalculation.

Mr. Sabelhaus stated that his financial analysis confirmed that the funding does exist.

Ms. Hoffman confirmed that the applicant made an error and the funding does exist. She stated that the project would likely preserve the committed sources, but she did not know if the seller would maintain site control if the applicant did not receive a 2016 award.

Mr. LoFaso asked Ms. Hoffman to confirm she was not aware of any reason for the USDA to claim that the farm worker rural housing service grant will somehow expire. He asked her to elaborate on why the seller may not extend the sales contract.

Ms. Hoffman confirmed that the USDA farm worker grant would not expire. She stated that property was being sold by two parties that were somehow related and in a conflict with one another.

Mr. Sabelhaus reported that he spoke to USDA staff that morning to confirm that their commitment would remain in place so long as the project moved forward in development. He stated that the only way the commitment would be withdrawn is if the project collapsed completely.

Mr. Stivers stated that his staff viewed the 3-month operating reserve as a threshold requirement, which the project did not meet. He explained that if staff fixed the calculation error by increasing the operating reserve to the required amount, project costs would be increased by \$43,000, which would cause the sources identified in the application to become inadequate.

Mr. Stivers stated that the applicant has suggested increasing the developer fee. He explained that staff has interpreted such action as a material change to the application, which is not legal according TCAC attorneys.

Mr. Stivers reported that TCAC reviewed a project for the same applicant in 2013. Staff found an error in the application, which the sponsor was allowed to correct at the placed in service stage of development. Shortly thereafter, under former Executive Director William Pavão, TCAC stopped allowing applicants to fix application errors. Mr. Stivers reported that since he has worked for TCAC staff has been consistent in the manner it disqualifies projects for applications errors.

Mr. Stivers noted that 4 other projects were disqualified for errors that year, but none of the applicants filed an appeal that has reached the level of Committee review. He reported that staff disqualified another project in same region as Cesar Chavez Phase II during the same funding round and for same type of error. Staff also disqualified a San Francisco project because the asset management fee was included in the operating expenses, which TCAC does not allow. After subtracting the asset management fee, staff found the cash flow amounts were too high and the project did not meet the required debt service coverage ratio.

Mr. Stivers reported that staff disqualified another project because the applicant mistakenly checked a box indicating they were requesting both State credits and a federal basis boost for which they did not qualify. After removing the basis boost for both State and Federal credits, staff found the project had a funding shortfall.

Mr. Stivers explained that the final disqualified project included a few items in their application, which were over the limit. As a result, the project lacked enough sources to cover its uses and was therefore disqualified.

Mr. Stivers commented that TCAC has been consistent in its disqualification process since 2013. He asked that the Committee provide clearer direction on what future disqualification policy should be if they decided to approve Cesar Chavez Phase II that day. He stated that he would need to know how far his authority to overlook application errors should extend. Mr.

Stivers noted that if the project was not approved, staff would recommend another project in its place next month.

Mr. Gordon asked which project would be next in line for an award in the Inland Empire region if the Committee did not approve Cesar Chavez Phase II.

Mr. Stivers stated that the Rialto Metro Link South was next in line for an award. The project includes 64 units and is located near the Metro Link Station in the city of Rialto. It is a family project that received full points, however it has a smaller tie-breaker of 43 points. Mr. Stivers noted that staff would recommend the Rialto project assuming the application passed the threshold review currently in progress.

Mr. Gordon asked TCAC legal counsel, Robert Hedrick, to comment on what actions the Committee was allowed to take.

Mr. Hedrick stated that the approach taken by staff was consistent with regulatory provision 10322(d) which specifically references incomplete applications. The provision simply states that compliance with all basic and additional thresholds and the scoring of the application shall be based entirely on documents contained in the application as of the final filing deadline. Applications not meeting all basic threshold requirements or relevant additional threshold requirements or any other application submission requirements shall be considered incomplete and shall be disqualified from reserving a reservation of tax credits during the cycle in which the application was determined incomplete.

Mr. Hedrick stated that the regulations section 10322(d) should be considered before other sections including 10327(a) which references changes that can be made but cannot improve scoring. He explained that the application was currently incomplete with zero points; however if the Committee allowed the requested change the applicant score would clearly be improved from zero points to something greater. He noted that the Committee could still make a motion.

Mr. Sabelhaus commented that he understood Mr. Stivers' concerns about preserving the integrity of the competitive process. He stated that the regulations purposely include the provision that gives the Committee discretionary authority to recognize that staff found a harmless error in the application, which does not impact the financing structure of the project. He asked that the Committee vote in favor of the appeal notwithstanding the error.

Ms. Wong-Hernandez stated that she appreciated staff efforts to follow the process under the best legal guidance and judgement. She stated that her agency is concerned about funding a project with a lower tie-breaker as a result of the application error. She expressed concern that Cesar Chavez Phase II may never be funded if the regulations were changed next year.

Mr. Gordon asked staff to comment regarding the proposed regulation change.

Mr. Stivers stated that the proposed change is one of the most controversial in the entire regulation package. He reported that TCAC has received a lot of comments, which have been mostly negative. He stated he was undecided as to whether the proposed change would be in the final regulation package. Mr. Stivers noted that the Committee ultimately has the voting authority to approve or deny the change.

Mr. Gordon asked Mr. Stivers if Cesar Chavez Phase II would be excluded from receiving tax credits next year if the proposed regulation change is approved.

Mr. Stivers predicted the project would be categorized as a low opportunity area and would therefore be excluded from the process as a large family project. He explained that the project cannot convert to another housing type because it has farmworker and other funding commitments. Mr. Stivers stated that the project would require additional subsidies in order to receive 4% credits, which might not be feasible. He concluded that the sponsor would have serious problems trying to restructure their application.

Mr. Metcalf asked if staff has considered whether the project qualifies for the proposed exemption for community revitalization.

Mr. Stivers explained that under the proposed regulations TCAC would not award 9% credits to large family new construction projects in areas of lowest opportunity unless they are part of a larger community revitalization program. He stated that he was not aware of any such investment committed to the neighborhood in question.

Mr. Gordon asked Mr. Stivers to provide a time frame on the regulation package. He asked if the appeal could be delayed until the outcome of the specific regulation change is known at either the November or December meeting. He suggested the Committee would not have to override the regulations that day if the project could be approved next year.

Mr. Stivers stated that delaying the appeal was unlikely to cause legal issues, but it may cause other problems. He explained that staff intended the Committee to vote on the regulations at the December 14<sup>th</sup> meeting.

Mr. Gordon suggested that the regulations and the appeal could be taken up at the same meeting.

Mr. Hedrick stated that he was not aware of any legal impediment to delaying this agenda item until the December meeting. He stated that the regulations and the appeal can be included on the same agenda provided the regulations are discussed and concluded first followed by the appeal item.

Mr. Stivers stated that his staff must finish awarding funds to the Inland Empire region. He explained that number of projects to be recommended and the nature of the waiting list depended largely on the outcome of the appeal. He noted that additional projects would be postponed an extra month due to the delayed appeal. Mr. Stivers commented that consideration of an appeal based on the project's future prospects was a challenging reason to make an appeal decision.

Mr. Sabelhaus stated that there was about \$2.2 million dollars allocated to the Inland Empire, which would increase to \$2.7 million under the 125% maximum rule. The Fontana project received about \$1,453,000 of the available funds, which left about \$1,320,000 remaining. The sponsor requested a little less than \$1,299,000 for Cesar Chavez Phase II. Mr. Sabelhaus concluded that there was enough credits to fund both projects in the current round without going deeper into the pool of projects that had lesser tie-breakers.

Ms. Wong-Hernandez suggested that if the regulations stayed the same and the project competed for credits next year the only loss to the project would be the one year.

Mr. LoFaso disagreed with the characterization of “overriding the regulations”. He stated that the regulations contained some ambiguity and the mechanics of delaying the project for 2 months were problematic. Mr. LoFaso stated that he would like to move that the Committee grant the appeal.

Mr. Gordon asked if a board member would like to make a motion to grant the appeal, which would override the rejection by staff.

MOTION: Mr. LoFaso moved to grant the appeal, which would override the rejection by staff. Ms. Wong-Hernandez seconded the motion. Mr. Gordon abstained from the vote. The motion passed by a roll call vote.

Mr. LoFaso asked Mr. Gordon if the Committee vote was to approve the project or the appeal only.

Mr. Gordon stated that the Committee granted the appeal, which will result in approval of the project.

Mr. Stivers stated that his staff had prepared a staff report for the event that the Committee granted the appeal. He suggested the Committee entertain another motion to award credits to the project. He asked that the Committee provide direction on how staff should handle application errors in the future. Mr. Stivers noted that TCAC received 3 applications that year, which had shortages of operating expenses.

Mr. Hedrick stated that it is important for the Committee to give staff guidance regarding circumstances where the same approach can be taken. He stated that serious consideration should also be given to changing the current regulations due to the Committee actions, which were not consistent with section 10322.

Mr. Gordon suggested each board member confer with their respective principals on how the Committee should give future direction. He stated that he was not ready to opine on the matter until he conferred with the Treasurer.

Mr. LoFaso stated that some portions of the regulations, like those Mr. Sabelhaus sited, offer clear guidance on application errors. He suggested that it would be helpful if staff provided more information to the board about the challenges they face as they consider the implications of granting flexibility to obvious errors. He stated that he accepts the consequences of having to take up additional appeals in order to establish parameters.

Mr. Stivers stated that he would provide the Committee with more detail about the 4 projects disqualified that year to assist them in providing further guidance to staff.

Mr. Gordon stated that he would like to add a comment to potential applicants who may view the Committee’s actions as precedent for future overturning of staff decisions. He explained

that the Committee exception was based on that fact that there were no changes to the applicant's point score. In addition, the project was the highest scoring applicant in the region and correcting the application caused no change to the basis.

Mr. Gordon stated that the project is in a region where the need for farmworker housing is acute. He stated that the project is 100% affordable and designed for large families, which are important features. He concluded that applicants seeking to overturn future staff decisions should make sure their projects include all the required features before assuming the Committee will act in their favor.

Mr. LoFaso stated that he agreed with Mr. Gordon's comment regarding future appeals.

MOTION: Mr. LoFaso moved to grant tax credits to Cesar Chavez Phase II. Ms. Wong-Hernandez seconded and the motion passed unanimously by a roll call vote.

5. Discussion and consideration of the 2016 Second Round Applications for Reservation of Federal Nine Percent (9%) and State Low Income Housing Tax Credits (LIHTCs).

Development Section Chief, Anthony Zeto, stated that the recommended projects were reviewed for feasibility and compliance with federal and state regulations. He recommended them for approval.

MOTION: Mr. LoFaso moved approval of staff recommendations. Ms. Wong-Hernandez seconded and the motion passed unanimously by a roll call vote.

6. Discussion and consideration of the 2016 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. Zeto reported that staff recommended 32 projects for 4% credit awards. He noted that prior to the meeting staff made a minor correction to the staff report for project Redwood Hill Townhomes (CA-16-937). Staff updated the report to show that the project received an Infill Infrastructure Grant rather than HCD MHP funds. Staff also changed the report to show that services would be available on the project site rather than off site.

MOTION: Mr. LoFaso moved approval of staff recommendations. Ms. Wong-Hernandez seconded and the motion passed unanimously by a roll call vote.

7. Discussion and consideration of a resolution authorizing the Executive Director of the California Tax Credit Allocation Committee to exercise its option with Boston Capital, not to exceed \$400,000, per year for a period of one year 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.

Mr. Stivers explained that TCAC has an existing contract with Boston Capital to provide asset management for projects that received loans from TCAC with the help of CalHFA. He explained that for a period of time Congress allowed tax credit to be converted to loans due



to a dearth of investors. TCAC was now seeking Committee approval to exercise its option to continue the existing contract with Boston Capital for one more year at a cost of \$400,000.

Mr. LoFaso asked if TCAC would advance to a situation where the contract for asset management services was no longer needed.

Mr. Stivers explained that the loans are in place for a 55-year period. Therefore TCAC would likely be responsible for asset management services throughout the loan term. He asked Ms. Vergolini to comment further.

Ms. Vergolini stated that when the Boston Capital contract expires TCAC plans to work with CalHFA for future asset management services if possible. She explained that TCAC was previously not able to work with CalHFA and therefore entered into a contract with Boston Capital. She stated that TCAC must oversee asset management services for a minimum of 15 years; however that obligation could extend out to 30 years.

Ms. Boatman-Patterson stated that CalHFA services would not be free, but may provide a more cost efficient contract for TCAC.

MOTION: Mr. LoFaso moved approval of the Resolution. Ms. Wong-Hernandez seconded and the motion passed unanimously by a roll call vote.

#### 8. Public comment

Mr. LoFaso proposed to hold a discussion about the UC Davis opportunity index. He noted that the board had only one meeting left before they had to vote on the regulations. He asked Mr. Stivers if he could invite representatives from UC Davis to the November meeting.

Mr. Stivers stated that he would try to arrange for UC Davis representatives to come to the meeting. He asked Mr. LoFaso to clarify if he was seeking an explanation of how the Davis staff derived the index or how TCAC staff would be using the index.

Mr. LoFaso stated that he was mainly interested in applying the index to the regulations. He asked that the representatives discuss the design of their index as it relates to the awarding of credits for affordable housing.

Mr. Metcalf stated that HCD supported Mr. LoFaso's comment as the state body responsible for implementing the state's Affirmatively Furthering Fair Housing plan.

#### 9. Adjournment

This meeting adjourned at 11:46 p.m.