

**CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE**  
**Minutes of the November 16, 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; Anthony Sertich for California Housing Finance Agency (CalHFA) Executive Director Tia Boatman- Patterson; Laura Whittall-Scherfee for Department of Housing and Community Development (HCD) Director Ben Metcalf; and County Representative Santos Kreimann.

City Representative Lucas Frerichs was absent.

2. Approval of the minutes of the October 19, 2016.

MOTION: Ms. Wong-Hernandez moved approval of the October 19, 2016 minutes. Mr. LoFaso seconded and the motion passed unanimously by a roll call vote.

3. Executive Director's report.

Executive Director Mark Stivers reported that 3 new employees joined the TCAC staff. Marlene McDonough and Diane Soohoo joined the Development staff and Michelle Fadenipo joined the support staff.

Mr. Stivers announced that the public comment period for the proposed regulations ended on October 31<sup>st</sup>. He reported that staff received quite a few comments, which they were continuing to read and respond to. He anticipated that the final proposed regulation changes would be finalized by December 1<sup>st</sup> so staff can present them at the December 14<sup>th</sup> committee meeting.

4. Discussion and consideration of the 2016 Applications for Reservation of Federal Four Percent (4%) Low income Housing Tax Credits (LIHTCs) for Tax-Exempt Bond financed Projects.

Development Section Chief, Anthony Zeto, reported that staff updated the staff report for CA-16-965 The Salvation Army Bell Oasis Apartments after the Committee meeting materials were distributed. Staff updated the project address and the source of the federal rental subsidy. In addition, staff changed the dates of the bond issuance from December 15<sup>th</sup> to December 20<sup>th</sup>.

Mr. Zeto confirmed the projects were reviewed for feasibility and compliance with federal and state regulations. He recommended them for approval.

Mr. Gordon asked Mr. Zeto how the project was moved from one address to another.

Mr. Zeto explained that upon staff review the property turned out to be in a different section of the parcel map.

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

5. Discussion and consideration of a Resolution, establishing a Waiting List of pending applications for Federal Nine Percent (9%) Low Income Housing Tax Credits (LIHTCs), provided that credit remain available and such applications are complete, eligible and financially feasible.

Mr. Zeto reported that TCAC published a waiting list prior to posting the meeting notice because staff determined there was a surplus of 2016 federal credits. Staff considered the regions that were most undersubscribed and recommended the highest scoring projects in those regions. Staff recommended a total of 4 projects for funding upon approval of the waiting list.

Mr. Stivers noted that the fifth project on the waiting list, El Dorado II Apartments, was included as a backup in case one of the other four on the list was withdrawn for some reason.

Mr. LoFaso asked Mr. Zeto to confirm that staff prioritized the regions based on those that are the least subscribed and then selected one project per region. He asked if El Dorado II Apartments was actually the fifth priority on the waiting list although it appeared third on the list.

Mr. Zeto confirmed that the regions were prioritized according to the least subscribed. In addition, staff would recommend El Dorado II Apartments for funding in the event that Promenade at Creekside II could not go forward and upon completion of the threshold review by staff.

Mr. Zeto stated that if TCAC had exhausted the remaining federal credits after the second region on the list then staff would have ended the list there. He explained that TCAC had enough surplus enough to fund one project from each of the listed regions.

Mr. Zeto reported that staff updated the staff report for Edwina Benner Plaza CA-16-138. He explained that staff added a few underlined items that were left out by mistake.

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

6. Discussion and Guidance to Staff on Competitive Application Errors.

Mr. Gordon stated that at the last meeting the Committee voted to override the decision by staff to disqualify a project due to application errors. At that meeting Mr. Stivers asked the board for guidance on how to determine which errors should be disqualifying and which ones should be considered very minor in future applications. Mr. Gordon noted that staff may be in the difficult position of reviewing projects without proper guidance. He recognized staff's concern that applicants who are going to be denied credits due to applications errors will be appealing to the Committee on a regular basis.

Mr. Stivers explained that resolving appeals could cause a delay in the award recommendations process. He suggested staff could be delayed in making the competitive award recommendations if they received several appeals in June or September when the competitive awards are typically made. Mr. Stivers stated that the appeal discussed at the last meeting was received at a time when it did not affect any other projects in the sort; however this may not be the case for future appeals. He suggested the regulations could be amended to explain how staff should address similar appeals.

Mr. Stivers directed the Committee's attention to a memo in which he listed options for addressing future appeals. He explained that if the Committee was not interested in granting similar appeals in the future, TCAC could simply continue its current process and treat the most recent appeal as a one-off. Another option would be for TCAC to update the regulations to address issues related to inadequate reserves. He explained that the regulations could be updated to state that inadequate reserves, up to a certain amount, can be corrected at placed-in-service through the contingency.

Mr. Stivers noted that the errors involving reserves were not much different from many other types of errors. He suggested that TCAC could expand authority to different types of financial errors and include some tolerance for situations wherein a project's sources do not equal its uses. Similarly, TCAC could provide some tolerance for cash flow pro formas that do not meet program standards by a certain amount.

Mr. Stivers stated that there are all types of other errors that are not dissimilar to those he mentioned. He explained that some errors do not involve a tolerance issue. Some applicants meet program requirements and others do not. He stated that he would prefer some type of change to the regulations such as providing allowances for certain financial errors.

Mr. Stivers suggested the additional guidance be included in the final regulation changes; however he preferred to hear comments from the board before he made a proposal.

Mr. Gordon commented that there seemed to be an array of possibilities according to the list of options presented by Mr. Stivers. He asked if the board would find it helpful to review the options in a spread sheet form so they can determine which ones they are open to setting additional rules for and which ones should be reviewed on a case by case basis. Mr. Gordon stated that he did not have a strong sense of which options were most or least feasible at that time.

Mr. Stivers stated that he was not sure how to provide the options to the board members outside the context of a TCAC meeting since the options must be presented in public. He asked if the board members could comment on how they would prefer staff approach errors in general.

Mr. LoFaso stated that after the previous meeting he consulted with Mr. Stivers regarding the systemic implications of the board's decision to grant the appeal. He noted that Mr. Gordon made a comment at the last meeting, which signaled to the public that the board decision did not set precedent for similar appeals.

Mr. LoFaso commented that Mr. Stivers was making a mistake in the way he was pursuing this inquiry in two respects. He stated that Mr. Stivers was broadening the inquiry too much

as it was already clear that certain types of corrections are not permitted by the regulations. As discussed at the previous meeting, corrections that cause increase in basis or changes in points or tie-breaker scores are not permitted. Mr. LoFaso stated that there was no reason to entertain those items. He noted that some of the information Mr. Gordon requested in spread sheet form was already addressed in the regulations.

Mr. LoFaso stated that it was important for staff to understand what kind of errors they tolerate currently. He noted that the board just had a discussion wherein they determined there was a range of tolerable errors because 1) the errors are innocent mistakes and 2) correcting the errors does not reverberate negatively in the system.

Mr. LoFaso stated that he has been involved in many administrative appeals in many State bodies. He explained that as an adjudicatory decision maker his goal was to truly understand the system he was impacting and carry out the most nimble error corrections while causing the least amount of change to that system.

Mr. LoFaso stated that there was a discrete disconnect from staff as to what the issues were in the appeal last month. He stated that he was not sure if the issue involved a 10322(e) processing error or a 10327(a) discreet substantive error regarding sources and uses. He explained that there was a disagreement between TCAC and the project applicant regarding the character of certain sources and uses and whether they truly changed or were simply moved to another section of the application to satisfy an insufficient dollar value within the overall set of funds.

Mr. LoFaso stated that he was trying to determine if staff was addressing processing errors only. He noted that staff already proposed to remove the assembly error language in the regulations. He suggested that staff seek clarity among themselves as to whether appeals at the staff level were ultimately focused on a substantive degree of inquiry around sources and uses or did they stop at the 10322(e) review level. Mr. LoFaso stated that it was his understanding that staff entertained appeals up to the 10327(a) sources and uses level.

Mr. Stivers stated that he disagreed with Mr. LoFaso's comment. He explained that the project was disqualified because its sources did not meet its uses. The application revealed that the reserve amount was short. He explained that when the reserve is increased, the cost of the project is also increased, which causes a gap in the financing. Mr. Stivers commented that 10322(e) provided a general provision, which indicated that the application is incomplete. He noted that 10322(e) may have been applicable in addition to the funding gap issue. Mr. Stivers reported that to date staff has taken a hard stand on feasibility issues in that staff has disqualified applications which involve a funding gap.

Mr. LoFaso commented that he and Mr. Stivers were not actually in disagreement. He explained that Mr. Stivers' letter disputed the applicant's analysis of 10327(a) but it did not state that the analysis was inadmissible because the reviewed was limited to 10322(e) guidance as TCAC counsel confirmed at the prior meeting.

Mr. LoFaso urged staff to jettison the discussion about entertaining mistakes related to changes in basis or points or tie-breakers as there was no need for it. He acknowledged that there were certain mistakes that the board already reviewed. He urged staff to clarify whether staff review ended with 10322(e) or 10327(a). Finally, he suggested staff to drill

down into the 10327(a) processing only. Mr. LoFaso suggested staff may wish to offer some guidance on limits TCAC should place on the sources and uses analysis involving 1) true mistakes and 2) correctable without adding new sources and uses.

Mr. LoFaso noted that Mr. Stivers raised a process issue concerning appeals in general. He explained that there was concern about how overturning staff's decision would impact the next project in the queue. He suggested that staff could 1) put the project that is next in line into the queue for the next meeting so it can be approved in the alternative or 2) potentially eliminate the appeals process, which he would not support.

Mr. LoFaso concluded that staff should narrow down the inquiry so it is manageable and seek clarity on how they view the appeal from the staff level up to the Executive Director level. He also suggested staff determine whether the error analysis is based on 10322(e) or 10327(a). He recommended staff focus the 10327(a) analysis as the recent appeal seemed to that section of regulations.

Ms. Wong-Hernandez stated she supported Mr. LoFaso's suggestions. She stated that she viewed the recent appeal as a one-off and did not believe it sets a precedent for future applicants. She commented that the board acted appropriately in its decision to grant the appeal. She suggested that the board refrain from opening a much bigger regulation discussion.

Mr. Stivers asked the board to confirm that they did not wish to make any regulatory changes and preferred to keep the application review process the same.

Mr. Gordon confirmed that the board would treat the actions at the previous meeting as a one-off. He stated that the board would wait to see how many more applicants came forward with similar appeals.

7. Discussion and consideration of a resolution authorizing the Executive Director of the California Tax Credit Allocation Committee to sign an Interagency Agreement with the State Treasurer's Office on behalf of the Committee for Administrative Support Service.

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

No public comment.

9. Adjournment

This meeting adjourned at 11:28 a.m.