CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE
Minutes of the March 15, 2017 Meeting

1. Roll Call.

   Tim Schaefer for State Treasurer John Chiang chaired the meeting of the Tax Credit Allocation Committee (TCAC). Mr. Schaefer called the meeting to order at 11:00 a.m. Also present: Alan LoFaso for State Controller Betty Yee; Eraina Ortega for Department of Finance Director Michael Cohen; California Housing Finance Agency (CalHFA) Executive Director Tia Boatman-Patterson; John Hiber 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 January 18, 2017.

   MOTION: Ms. Ortega moved approval of the January 18, 2017 minutes. Mr. LoFaso seconded. Mr. Schaefer abstained from the vote. The motion passed by a roll call vote.

3. Executive Director's Report.

   Executive Director Mark Stivers announced that Gina Ferguson was recently promoted to Development Section Chief within TCAC. She has been with TCAC for many years as the Development Manager and was promoted to this position in January.

   Mr. Stivers reported that TCAC recently received applications for the nine percent (9%) tax credit first round competition. There were 76 applications submitted this year which is a similar number to what TCAC received last year. In addition, there are nine applications requesting four percent (4%) credits plus state credits which is somewhat more than TCAC received last year. He reported that staff is just beginning to look at the applications. The review process begins with an initial sort based on the self-score.

   Mr. Stivers announced that, based on the self-scores, TCAC would award 28 projects, which is down from the 37 awarded in the first round last year. TCAC would fund a fewer numbers of units, as projects are requesting a greater number of credits per unit. He speculated that this is a function of costs are going up and credit pricing going down significantly.

   Mr. Stivers stated that the applications are reflecting that credit prices have gone down about fifteen cents on the dollar. He mentioned that if there are higher costs and less equity, more credit is needed. The average credit request went up from $20,000 per unit to $25,000 per unit, a twenty percent (20%) increase. Mr. Stivers commented that when there is a fixed amount of credit and you give more to each unit, you end up doing fewer projects and fewer units. Mr. Stivers commented that while it is of concern, it is expected and in line with the marketplace. He states that he is mindful and interested in ways to increase the number of units where possible.

4. Discussion and Consideration of the 2017 Applications for Reservation of Federal Four Percent (4%) Low income Housing Tax Credits (LIHTCs) for Tax-Exempt Bond financed Projects.

   Development Section Chief, Gina Ferguson, reported that there were two corrections to the Crossroad Gardens staff report CA-17-720. TCAC removed the paragraph that was specific to an existing daycare facility on page 5. There was confusion as to whether this facility was a service amenity or an on-site physical facility.

   Ms. Ferguson stated that after reviewing the existing 1993 regulatory agreement, TCAC has determined that it is a physical facility which will remain functioning. She mentioned that this is not a service amenity as described in the staff report. In addition, there was a correction to the CA Debt Limit Allocation Committee (CDLAC) service amenities on page 6. The service amenities requirement through CDLAC was also removed from the additional conditions on page 6.

   Mr. Stivers commented that the Camellia Place II project is receiving State Farmworker Credits. TCAC has five hundred thousand a year in state credits reserved for farmworker projects. The set aside for Farmworker State Credit is over the counter and not part of the State Credit process. He stated that this will be the first award in almost two years and second one in nearly 10 years. Additional funding remains in this set aside for future projects.

   Mr. LoFaso asked Ms. Ferguson about the service amenities in comparison to the on-site facility.

   Ms. Ferguson responded that at this time TCAC is trying to be consistent with the way the facility was described in the original regulatory agreement from 1993 because it will be carried to the 2017 regulatory agreement. This facility is described as a physical building rather than the services being provided within the building.

   Mr. LoFaso asked Ms. Ferguson if this would have any relevance to who would be responsible for operating and staffing the facility, an outside entity or the project sponsor.

   Ms. Ferguson responded that there is an outside entity that is operating the facility and will continue to operate it. There has been some discussion on whether it could be included in an eligible basis, and it falls into the purview of being included.

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

5. Discussion and Consideration of a Resolution to Adopt a Schedule of Fines in accordance with Title 4 of the California Code of Regulations, Sections 10337(f).

Mr. Stivers announced that when TCAC funds a project the project remains affordable for 55 years. The federal government is involved in assisting in the enforcement of the regulatory agreements on these properties for the first 15 years for basic program elements. There are additional requirements within the 15 years that are state-only requirements, such as deeper targeting and service commitments that the Internal Revenue Service (IRS) does not enforce. He stated that the IRS is not involved in anything between years 16 and 55 so TCAC is the sole enforcer. As projects mature TCAC is concerned that it has minimal implements to handle violations of requirements not enforced by the IRS.

Mr. Stivers explained that while TCAC does have the ability to take legal action towards a project, it can be a time consuming and costly endeavor, especially considering that most of these violations do not merit litigation. There is also the ability to issue negative points, which TCAC has on occasion imposed. However, if a developer is not bringing a project forward in the near future, the negative points would not affect them. There is a need to have some tools in place to ensure compliance over the long term.

Mr. Stivers stated that TCAC prefers compliance over levying fines, but if TCAC ever did levy fines, the money would go to HCD's Multi-Family Housing Program (MHP) rather than stay with TCAC. TCAC does feel that there should be some type of mechanism in case it is needed. Last year, the Legislature granted TCAC the authority to adopt a schedule of fines through a bill authored by Assemblymen Chau, and TCAC is now implementing that legislation.

Mr. Stivers noted that the schedule of fines did have a public comment period. In general there were not a large volume of comments, considering that TCAC usually gets around one hundred commenters. There were only eight commenters on this schedule of fines.

For the most part, TCAC is allowing people to correct violations before a fine is imposed. Most violations come with a 30 day correction period. However, there is a class of violations that TCAC considers more serious that need sufficient deterrence. For example if a project were just to disregard the Regulatory Agreement and charge market rate rents, the idea that they could correct this problem and move forward would be an insufficient penalty. There needs to be some type of consequence for the more serious violations. There are some that are not correctable and would come with an immediate fine.

Mr. Stivers stated that another comment received was related to current regulations allowing for an appeal to be made to TCAC and then subsequently to the Committee. The first appeal would be free of charge but the second appeal to the Committee comes with a $500.00 fee.

Mr. Stivers explained that this is similar to the process of appeals for point scoring and disqualifications. Another individual commented to the Committee that the appeal process should be free. If the Committee were to approve this, the change would have to go through the regulation change process separate from the adoption of the schedule of fines. However, if the Committee directed TCAC, it could be included this in the next Falls Regulation changes. He stated he is hopeful that the Committee will be able to keep all appeals the same as it relates to fees.

Mr. Stivers announced that he would like to present the Committee with the schedule of fines. It is TCAC's intent that the scheduled fines will become applicable for inspections that occur after adoption. Again, it is not our intent to issue many fines but to ensure compliance.

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

Ms. Ortega commented that the Committee would be interested in hearing back about the fines that were assessed within a year.

Mr. Stivers responded that he will be happy to respond back with an update at the latest by the end of the year.

6. Discussion and consideration of a Resolution to Adopt Proposed Regulations, Title 4 of the California Code of Regulations. Sections 10325 through 10337(a)(4), Revising Allocation and Other Procedures.

   Mr. Stivers explained that the disruption in the tax credit market has resulted in the credit pricing going down. Many of TCAC's 2016 projects have been caught unaware. They thought they were fully funded and found they actually were not. He stated that with the authority the Committee provided in December, TCAC has been able to extend the closing deadlines. Projects that have readiness points are still working towards closing. There has been no confirmation that we are losing any at this time. TCAC will perhaps see by the end of June where it stands on these projects.

   Mr. Stivers announced a possible solution presented to TCAC where TCAC could assist in closing some of these financial gaps. Unfortunately, this would not work with 4% projects since they have maximized their tax credits. They will need to find ways to close these gaps through other sources.

   Mr. Stivers explained that for the 9% projects there are three options. The first option would be to take no action. The next option would be to award additional 9% credits to these projects. TCAC has been reluctant to do this since it takes credits away from the 2017 projects. This would be done outside of the competition which we base all of our 9% awards on. The third option is what TCAC is proposing. It involves a change to the Regulations allowing 9% projects that have not closed their construction financing to split the project into two projects with the second project applying for 4% credits.

   Mr. Stivers responded this restructuring can be complicated and time consuming and is probably no one's first option. These projects have additional basis in excess of what they need to justify their 9% tax credit award and could utilize the extra basis to generate a 4% credits. He stated that the proposed emergency regulations will allow this restructuring.

Mr. Stivers explained that the public was told to move forward and begin the process of preparing their applications. If the committee approves the regulation changes today, the application deadline will be Friday to submit this hybrid approach to TCAC and CDLAC. There are at least two or three projects expected to be submitted.

He also noted that the hybrid approach will need some additional time.

Mr. Stivers stated that every year second round new construction projects have challenges meeting their Federal placed in service deadline. A project receiving a 2016 award of credits must complete construction and be placed in service no later than December 31, 2018. The second round projects start construction about 3-4 months later. This year all projects are looking to find other financial resources. Some projects may also be working towards the hybrid approach, so meeting this December 31 deadline may be difficult. At this time, there is nothing TCAC can do to change this deadline. Not meeting this deadline will result the loss of their credits.

Mr. Stivers commented that the regulations currently allow high-rise new construction projects to return their credits and exchange them for the year later credit. What TCAC is proposing in the regulations is to allow 2nd round 2016 new construction projects and also 1st round 2016 new construction projects that are pursuing the hybrid approach to exchange their 2016 credits for 2017 credits, which extends their Federal placed in service date by an additional year to the end of 2019. There have been additional requests to be more generous, but he believes that rehabilitation projects and 1st round projects that have already closed don't merit an extension of time.

With respect to the second piece of the regulation changes, Mr. Stivers noted that there is a clarification that for projects with ground-leases, TCAC will require lease-riders as part of the regulatory agreement to protect TCAC's investment in the property should any issues with the lease arise in the future.

He stated he received one comment in support of the hybrid approach and extending the deadlines.

Executive Director Tia-Boatman-Patterson asked if projects did exchange 2016 credits for 2017 credits, what would then happen to the 2016 credit. She asked if TCAC would award the credits to other projects now.

Mr. Stivers responded to Ms. Tia-Boatman-Patterson that the 2016 credits come back to TCAC and become 2017 credits that are immediately reissued back to the project requesting the exchange. In essence, there are no additional credits to be issued out. Essentially, it is a resetting of the credit year and there is no net change in the credit that has gone out.

Ms. Tia-Boatman-Patterson responded that we don’t lose anything in that regard.

Mr. Stivers stated that we don’t lose or gain anything.

Mr. LoFaso asked why this would require regulation change. He asked to compare and contrast the current authority TCAC has now.

Mr. Stivers responded that currently the Regulations say TCAC can do an exchange for high-rise projects only. He interprets the regulations to say there is no ability to change that credit year for other types of projects. TCAC thought it was best to amend the regulation language to allow the exchange for this subclass of projects.

Mr. LoFaso asked Mr. Stivers what would be considered a high-rise. Mr. Stivers stated five or more stories. He mentioned that five or more stories generally take more time to construct due to the materials required for these type of projects and the nature of the construction. TCAC proposed the regulation change to allow this subclass of projects some additional time due to the delays in construction.

Mr. LoFaso asked if this would be on a one-time basis. Mr. Stivers confirmed that it would be on a one-time basis to exchange their credits, where the 2019 placed in service deadline would be a hard deadline.

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

7. Public Comment

   No public comments.

8. Adjournment

   Meeting adjourned at 11:35 a.m.