California Debt Limit Allocation Committee

Jesse Unruh Building
Room 587
915 Capitol Mall
Sacramento, CA 95814

January 15, 2020

Meeting Minutes

OPEN SESSION

1. Call to Order and Roll Call

Board Chair, Treasurer Fiona Ma, called the California Debt Limit Allocation Committee (CDLAC) meeting to order at 11:10.

Members Present:	Fiona Ma, CPA, State Treasurer; Gayle Miller for Gavin Newsom, Governor; Anthony Sertich for Betty T. Yee, State Controller.
Advisory Members Present:	Zachary Olmstead for the California Department of Housing and Community Development (HCD), Tia Boatman-Patterson, executive director of the California Housing and Finance Agency (CalHFA).

2. Minutes – Larry Flood

Executive Director, Larry Flood informed the committee that the minutes for Dec. 11, 2019 and Dec. 23, 2019, meeting were not available because of problems communicating with the contractor that have delayed the publication of minutes. He said he would put the minutes of the Dec. 11 meeting on the website this afternoon along with a transcript of the Dec. 23 meeting. He said he expected the board, at its Feb. 12 meeting, to approve the minutes of the Dec. 11, Dec. 23, and January 15 meeting.

Board Chair, Treasurer Fiona Ma said: "I want to guarantee to everyone that minutes will not be late in the future. We are going to deal with whatever internal issues we have."

3. Executive Director's Report

Mr. Flood said he had an opening statement to address rumors and clear the air. Mr. Flood said that Judith Blackwell and he arrived at state government on Aug. 12. 2019. In the time they have been there, he said, they have created new regulations to establish and implement the new state tax credit program, developed a joint multi-family application, streamlined operations in CDLAC and CTAC, worked through a December allocation round, and developed emergency regulations.

He discussed AB 101, saying it caused confusion. Further, he said we inherited the problems that we are trying to deal with and that CDLAC has not had a comprehensive overhaul of regulations in quite some time. He said CDLAC and the California Tax Credit Allocation Committee staff speak to each other daily.

Mr. Flood said CDLAC will ask the public to comment on the comprehensive revision of regulations they have proposed. He said he expected to bring the regulations to the Feb. 12 meeting for discussion and approval. In those regulations, he said, there will be a question of whether or not you are allowed to do scattered site new construction development. His view is that the regulations were clearly constructed for rehabilitation and not new construction.

Mr. Flood said CDLAC is working on a request made during the Dec. 23 meeting to produce a dashboard on the CDLAC website that gives a running tally on how much bond cap has been allocated, including in the various categories. On another topic, he said CDLAC was going to leave the Jan. 17 deadline in place so we don't have to change the rest of our schedule. For anyone who applied to the February round of funding and is planning to appeal, he said, they can have a one-week extension to apply for an allocation being awarded at the March 18 meeting.

In response to Board Chair Ma, Flood said the public has five days to comment and can also comment on the Feb. 12 meeting. At that meeting, he expects the board to vote. He said he will post all proposed changes on the website.

4. Determination and adoption of the 2020 State Ceiling among the State Ceiling on Private Activity Bonds.

CDLAC staff member Evan Kass said the 2020 State Ceiling comes from an IRS formula that multiplies the per capita amount of $105 by the population of each state. Mr. Kass said this year California's population declined slightly, by about 45,000, from 39,557,045 to 39,512,223. As a result, the state ceiling for California, which is $4,148,783,415 this year, is $4.7 million lower than the 2019 ceiling. Mr. Kass asked for approval of that number.

Motion: Ms. Miller moved to approve, Mr. Sertich seconded, and all board members voted to approve.

5. Consider and Adoption of the Apportionment of the 2020 State Ceiling among the State Ceiling Pools.

Mr. Flood said that based on input from the Dec. 23 meeting, he recommends the board adopt the staff report. It recommends that 84.3 percent of the allocation be set aside for multi-family housing and 15.6 percent for exempt facilities. He also recommended that the board move $207 million in the "on hold" category to new construction.

Within the multi-family pool, he said, are three pools, general, mixed income, and rural. Staff recommends that the general pool receive $2.3 billion, mixed income receive $749.8 million and rural receive $207 million.

Within the general pool are three sub pools, new construction with $1.424 billion, preservation with $522.3 million, and other affordable with $387.4 million.

The total recommended for exempt facilities, including for pollution control, solid waste and others, is $639.7 million.

He reminded board members that the board has flexibility at any time to change and reapportion the allocation.

Board Members Ms. Miller, Mr. Sertich, and Ms. Boatman-Patterson discussed possible changes to invest more in new construction as well as the timing of mixed-income projects.

Ms. Miller suggested reducing mixed income allocation from 18 percent to 15 percent, taking the approximately $123 million in savings from that reduction and adding it to new construction.

Board Members Mr. Sertich and Ms. Miller discussed the need to further define preservation for the preservation pool. Flood said staff would work with stakeholders to help define preservation in the proposed emergency regulations. Those regulations will be effective in the May round with applications that have a March deadline.

Mr. Sertich moved to adopt the recommendation of staff with the adjustments that the “on hold” allocation be moved to the new construction pool and the mixed income be reduced from 18 percent to 15 percent of the total allocation with the remainder moved to the new construction pool. In addition, the remainder of the mixed income allocation would be moved to the Round 3 March allocation.

Miller seconded the motion.

She added that the motion allocates 42.4 percent of the bond allocation to new construction.

Several speakers discussed a variety of topics, including the per-unit bond allocation, the definition of new construction, and extending applications.

Some advocated moving back the preservation round until a new definition of preservation is established.

One speaker discussed Hope SF, started by Gov. Newsom when he was San Francisco Mayor. It is an effort to renovate four of the largest housing projects in San Francisco. Those efforts are proceeding rapidly and now can apply to a $600 million bond passed by voters. He said the projects are shovel ready.

One speaker recommended a public hearing to discuss the revised regulations.

Several speakers supported the importance of continuing to reserve part of the volume cap to support exempt facilities, especially to combat climate change.

One speaker discussed a project in East Palo Alto called “Light Tree” that he said did not fit into the normal categories neatly. It will eventually have 195 units. Some existing units will be demolished and rebuilt, while others will be rehabilitated.

Board Member Mr. Miller reiterated the need to have clear definitions of new construction and preservation to help applicants.

Board Member Ms. Tia-Boatman asked how projects in the "other affordable" category would be scored.

Board Member Ms. Miller asked Mr. Flood to provide, at the Feb. 12 meeting, a short summary of the "other" pool, including how those applications would be scored, and the application deadlines.

Board Chair Ma said she wanted definitions to be clear to make it easier for the public. In particular, she recommended making definitions of CTCAC and CDLAC similar.

Mr. Sertich amended and restated his motion. It is to move $207 million of "on hold" allocation to new construction, to reduce mixed income from 18 percent to 15 percent and move the 3 percent that is saved into new construction. In addition, the motion moves Round 4 mixed income allocation to Round 3 and defines "preservation" for purposes of the CDLAC preservation subpool in the same way as "at-risk" is defined by the Tax Credit Allocation Committee.

Motion: Miller seconded Mr. Sertich's amended motion and the motion passed unanimously by a roll call vote.

6. Determination and Adoption of the 2020 State Ceiling on Qualified Public Educational Facility Bonds (Action Item)

Mr. Kass said that every year the state also sets a ceiling on Qualified Public Educational Facility Bonds. These are primary and secondary educational facilities. He said the IRS has a per capita amount of $10 that is multiplied by a state's population. In California this totals $395,122, 230 for 2020.

Motion: Mr. Sertich moved to approve the ceiling, Ms. Miller seconded, and the motion passed unanimously by a roll call vote.

7. Delegation of Authority in the Absence of the Executive Director (Action Item)

Mr. Flood recommended allowing Mr. Kass to sign documents in the absence of the Executive Director, with consultation from the Executive Director.

Motion: Ms. Miller moved approval, Mr. Sertich seconded and the motion passed unanimously by a roll call vote.

8. Recommendation for Regulation Changes (Action Item)

Mr. Flood said he recommended changes to make the application process fairer to applicants who made "silly" technical mistakes, such as putting attachments in the wrong place or placing signatures on the wrong page. Rather than rejecting these applications, Mr. Flood recommended giving each applicant one business day to cure technical items that are deficient. If those items are not cured within one business day, the applicant would be rejected as incomplete.

Board Chair Ma said she supported ideas to make CDLAC more flexible and fair to applicants.

Motion: Mr. Sertich made a motion to approve, Ms. Miller seconded, and the motion passed unanimously by a roll call vote.

Mr. Flood also recommended adding a requirement for CDLAC applications to self-score so CDLAC can put out information about what the general rankings are to the rest of the developer community.

Motion: Mr. Sertich made a motion to approve, Ms. Miller seconded and the motion passed unanimously by a roll call vote.

9. Consideration of Appeal and Application for an Allocation of the State Ceiling on a Qualified Private Activity Bond, the XpressWest Passenger Rail Project, commonly referred to as Virgin Trains USA.

Board Chair Ma allowed some speakers to go before the Virgin Trains project so they could make flights to Southern California.

Several speakers, including public officials from Apple Valley, San Bernardino and Los Angeles counties, and Victorville, supported the Virgin Trains project, saying it would be one of the most important economic development and transportation projects in Southern California.

CDLAC staff member Richard Fischer introduced the XpressWest Passenger Rail Project, also known as Virgin Trains USA. The California Infrastructure and Economic Development Bank, also known as the I-Bank, has applied to issue $2.4 billion in tax-exempt bonds on behalf of the Virgin Trains Project.

For the I-Bank to be able to issue $2.4 billion in bonds, however, Virgin Trains would have to have an allocation of $600 million in bond cap. The reason for the difference in totals is that under IRS rules, bond cap allocated for transportation projects can be leveraged by four times the amount of the cap. Thus, the allocation of $600 million can be used to issue $2.4 billion in bonds.

Virgin Trains is seeking $300 million in 2020 bond allocation, in addition to the $300 million it conditionally received in 2019. Since the bonds would be tax-exempt, they would generally lower the costs of financing the project.

As proposed, the High-Speed Rail Project would operate from Victorville in San Bernardino County to Las Vegas. Trains could carry up to 600 passengers and travel up to 150 miles per hour on the 180-mile route.

Fischer said staff recommends approval of $300 million in 2020 bond allocation and $300 million in 2019 bond allocation. He said that approval should be conditioned on the receipt of an economic development plan from Virgin Trains USA that outlines their goals in the areas of housing, jobs, and workforce development to the satisfaction of the chair and the executive director, and a letter from the federal railroad administration acknowledging their acceptance of the National Environmental Policy Act (NEPA) and Environmental Protection Agency (EPA) report submitted with the CDLAC application.

Mr. Flood added that I-Bank also plans to sell $800 million of Department of Transportation tax-exempt bond allocation.

Board Chair Ma said that Nevada is seeking to sell an additional $800 million in tax-exempt bonds, bringing the total of tax-exempt financing for the project to $4 billion.

The Chief Strategy Officer for Florida East Coast Industries, the parent company for XpressWest, Husein Cumber, went over the history of the project. He said that Virgin Trains USA announced its plans to acquire XpressWest in September, 2018 and closed on the transaction in March, 2019. Before the deal closed, Virgin Trains hired a construction management company, Mr. Cumber said.

Mr. Cumber said private-activity, tax-exempt bonds are crucial because the reduced rate on the debt allows the project to successfully incur the up-front operating costs during the time it takes to shift people out of their cars and onto our trains.

Sanjay Varshney from Varshney & Associates outlined the economic development plan he prepared for Virgin Trains for the project.

Varshney extensively discussed the plan, saying it would create more than 20,000 construction jobs, and 600 permanent jobs each year for 10 years, and produce $2.66 billion in economic activity for California and $360 million in federal, state, and local taxes. In addition, it will lead to the construction of 3,490 housing units and remove 100,000 metric tons of carbon emissions each year.

The full report is available on the Treasurer's office website: https://www.treasurer.ca.gov/comm-external-urls/economic-development-plan-virgin-trains-usa.pdf

Mr. Olmstead said he did not see any part of the plan that discussed how the housing would be built, and said he was hoping to hear what the cities would do to facilitate the housing.

Board Chair Ma said elected officials in the High Desert area are uniform in their desire to see more housing and economic development.

Ms. Miller asked Mr. Flood whether the second condition for approval, which required federal approval of the NEPA and EPA report submitted with the CDLAC application, had been met.

Mr. Flood said they had requested a letter from the federal railroad administration, saying they were satisfied that the current NEPA study was sufficient. He said we received a letter that said they were still looking at it, and at this time they have not uncovered anything that would lead them to believe that the study was not sufficient. Mr. Flood said that's not exactly the language we were looking for. We were looking for something more affirmative, and so there is some question in our mind as to whether the second condition has been met.

Ms. Miller asked whether funding can take place before the condition is met. Mr. Kass said the bonds could not be issued until the condition is met.

Board Chair Ma asked a project representative to clarify the letter, the federal process, and what could be expected from the federal government in the future.

The representative, Husein Cumber, discussed what investors want to know, saying the key issue is whether there is a need for a supplemental environmental report, which would start a multi-year process, and he did not believe there would be a need for that since the project is less complicated than it had been, and he does not expect major changes. He said he believed investors would buy bonds, if they knew there would be no supplemental environmental report.

Ms. Miller said CDLAC needed some assurance that Virgin Trains would meet the condition for federal approval.

Ms. Miller said it was the first time she had seen the letter. It didn't read like approval and the federal government can change its mind quickly.

Next, public speakers began their comments. Mr. Robbie Hunter, president of the State Building Trades Council, which represents 450,000 workers, and 65,000 apprentices, supported the project, saying it does everything that California needs. He said it will create jobs and opportunity for people of the High Desert.

A number of other speakers also supported the project, saying it would create jobs, spur housing, retail and commercial development, as well as reduce air pollution, and traffic congestion on Interstate 14, and it would do so in an economically struggling region, the High Desert area.

Mr. Flood amended the staff recommendation, from support to postpone until the February board meeting. He said he wants his staff to talk to the Federal Railroad Administration, and CDLAC board members to be able to read the full economic impact report.

Board Chair Ma asked the underwriters for the project, Morgan Stanley, what investors will look for.

Margie Backstrom of Morgan Stanley, the underwriter, said she believes that investors would be willing to invest, but might require the money to be held in escrow until a more definitive letter from the federal government is received.

Mr. Sertich said that is the last thing we want, saying we do not want to issue the bonds and not be able to issue them somewhere else.

Board Chair Ma said she hears from staff and board members that CDLAC needs more certainty from the federal government and more time to answer questions and review the economic impact report.

Board Chair Ma said we are going to table this item until the Feb. 12 meeting.

10. Public Comment

She asked if there was any public comment, observed that there was no public comment.

11. Adjournment

The meeting was adjourned.