

**CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE**  
**Minutes of the August 11, 2021 Meeting**

**1. Roll Call**

State Treasurer Fiona Ma chaired the meeting of the California Tax Credit Allocation Committee (CTCAC). Treasurer Ma called the meeting to order at 2:11 a.m. Also, present Anthony Sertich for State Controller Betty Yee; Teresa Calvert for Department of Finance (DOF) Director Keely Martin Bosler; Kate Ferguson for California Housing Finance Agency (CalHFA) Acting Executive Director Donald Cavier and California Department of Housing and Community Development (HCD) Director Gustavo Velasquez.

City Representative Vivian Moreno and County Representative Terra Lawson-Remer were absent.

**2. Approval of the Minutes of the June 16, 2021 Meeting**

**MOTION:** Mr. Sertich moved to approve the June 16, 2021 Meeting Minutes. Mr. Velasquez seconded, and the motion passed unanimously via a roll call vote.

**3. Executive Director's Report**

CTCAC Executive Director, Nancee Robles stated that on the outreach front, she and CTCAC Deputy Director, Anthony Zeto attended the National Council of State Housing Agencies (NCSHA) 2021 Housing Credit Connection Virtual Conference. She stated that Mr. Zeto was a moderator on his panel and she participated on behalf of CTCAC on the topic "The Intersection of Affordable Housing and Climate Change". Ms. Robles stated the panel focused on disaster credits and how projects are ranked for utilizing sustainable building methods that go beyond California's building code like renewable generation that reduce tenant costs.

On the legislative front, Ms. Robles stated that Treasurer Ma signed a letter of support for Assembly Bill 1288, a bill that would allow CTCAC the ability to redirect state tax credits to the 9% tax credit program in years when tax-exempt bonds are oversubscribed.

Under general business, Ms. Robles summarized the 2021 second round 9% applications received in July. She stated staff received 122 applications, which was down from the 142 applications received in the second round of 2020 and explained this could be due to less disaster credits being available in 2021 compared to 2020. Of the 122 applications received, she noted 65 requested disaster credits, whereas there were 88 in 2020. Based on self-scores, Ms. Robles stated staff expects to recommend 37 projects for disaster credits, 3 more than were awarded in 2020. In addition, she stated staff expects to recommended 32 projects from the regular 9% competition, which is one less when compared to 2020.

Mr. Sertich asked about staff's plan for regulation changes.

Ms. Robles stated staff will begin engaging with stakeholders in September and present recommendations in October for general public comments. In December, she stated staff

will bring final recommended regulation changes to the Committee for approval and implementation in 2022.

- End of Executive Director's Report

#### **4. Consideration of appeals if filed under CTCAC Regulation Section 10330(b)(1)**

Mr. Zeto stated that staff received one appeal for the Marina Village Apartments project (CA-21-567) relating to a small reduction in the federal credit amount due to a reduction in the developer fee.

William Leach with Kingdom Development and Don Harris with Solano Affordable Housing Foundation presented the appeal. Mr. Leach opened with a brief background on the project and explained their project is being recommended for \$1.4 million (or \$135,429 annual) fewer federal credits than requested. He asked the Committee to authorize staff to use a plain reading of the regulation language in question and not put meaning to the heading to allow the project to obtain the full developer fee and full amount of federal credit requested. Mr. Leach provided some background on the regulation change in question relating to BIPOC developers partnering with maximum experienced developers resulting in more joint ventures leading to more equity in the development landscape in California. He referenced CTCAC Regulation Section 10327(c)(2)(E) and summarized his interpretation of the language and how the larger developer fee will fill gaps for BIPOC developers. Mr. Leach mentioned staff pointed to the header of the regulation section, and that the project must meet the California Debt Limit Allocation Committee (CDLAC) definition for BIPOC Project. He raised concerns with pointing to a definition in the CDLAC regulations not referenced in the CTCAC regulations.

Mr. Sertich asked General Counsel if it is typical for program regulations to cross-reference each other.

General Counsel, Spencer Walker stated that does not typically occur, however, the CTCAC regulations refer to the CDLAC regulations and the CDLAC regulations refer to the term BIPOC. Therefore, Mr. Walker stated CDLAC's definition would apply because otherwise there is no definition to refer to and the term BIPOC would have no meaning.

Mr. Leach argued that BIPOC and BIPOC Project were two different definitions.

Mr. Walker disagreed with Mr. Leach and re-stated the CTCAC Regulation Section 10327(c)(2)(E) along with CDLAC Regulation Section 5230(f)(1)(B). He reiterated that staff referred to the CDLAC definition because otherwise the term BIPOC would have no meaning.

Mr. Leach stated he has no concern with the CDLAC definition of BIPOC. He re-affirmed that the joint venture is with a BIPOC. He raised concern with the "BIPOC Project" definition, which is to hone who is eligible for the BIPOC pool.

Mr. Walker stated this was a regulation issue. In his opinion, CTCAC regulations should not reference the CDLAC regulations with respect BIPOC. He believes the CTCAC

regulations should include a definition within their regulations. By referring to the CDLAC regulations, Mr. Walker stated it creates confusion rendering it ambiguous.

Mr. Harris stated he represents a BIPOC entity and raised concern for the regulation in question. He found it disconcerting that if you have too much experience as a BIPOC entity, you are not eligible for the BIPOC pool. As a result, Mr. Harris said his application was determined to be ineligible for the BIPOC pool. He cited the CTCAC regulations section relating to developer fee for BIPOC entities and emphasized that the language always controls over a header. Mr. Harris stated the language requires a BIPOC entity and a joint venture so you could never have an entity that qualifies for the BIPOC pool ever qualify for the higher developer fee under the provision. He agrees the regulations need to be cleaned up and hopes the Committee will consider their appeal.

Treasurer Ma explained why the BIPOC pool was created and how the BIPOC pool was to encourage more BIPOC entities to apply. She added that if a BIPOC joint ventured with a more experienced developer, it would provide them the necessary experience for the project to be awarded. Treasurer Ma stated developer fee had to be increased in order for a large experienced developer to joint venture with a smaller less experienced developer because the fee would have to be split. She stated that she expected a large volume of applications from BIPOC and was shocked that there were not enough applicants in the BIPOC pool. Treasurer Ma concluded that the regulations should be reviewed and corrected.

Mr. Harris explained the policy surrounding BIPOC experience and how it is viewed negatively for purposes of the BIPOC pool. He stated the regulations in its existing form is counterintuitive. Mr. Harris stated no one has stated in writing that their interpretation of the regulations is incorrect.

Mr. Sertich agreed with Treasurer Ma on the intent of the term BIPOC and why the BIPOC pool was created. He differentiated the BIPOC pool and experience points. Mr. Sertich clarified that the pool was to capture emerging developers. With regard to the appeal, he stated from a logical understanding of the regulation language, he could understand how the term BIPOC could be referring to a BIPOC entity and not a BIPOC Project. He expressed support for the appeal.

Ms. Calvert asked if this issue in the regulations or if text in a header has come up before.

Treasurer Ma and Mr. Zeto stated this is the first time this issue has come up.

Ms. Ferguson summarized that under the CDLAC regulations, BIPOC entity is defined and under the CTCAC regulations, it states BIPOC. She restated Mr. Walker's comment regarding the referencing of CDLAC regulations assuming the CDLAC definition of BIPOC. Ms. Ferguson explained that while the project is not a BIPOC Project as defined in CDLAC regulations, in order to receive the higher developer fee, the project needs to be a BIPOC Project for CTCAC versus a BIPOC entity. She asked Mr. Leach if her understanding of the issue was correct.

Mr. Leach stated it was 99% correct. He confirmed the sponsor is a BIPOC entity and staff would only have concern if the sponsor was too experienced for the BIPOC Project

definition. Mr. Leach explained that if the definition is attached to the CTCAC regulations, no one would qualify.

Mr. Sertich explained that the section in the CDLAC regulations in question references BIPOC, not BIPOC entity or BIPOC Project.

Mr. Leach pointed to the CDLAC regulations on Westlaw and stated the definition was changed from BIPOC to BIPOC entity.

Mr. Sertich referred to CDLAC Regulation Section 5230(f)(1)(B) where it references BIPOC. He believed that by referring it BIPOC Project, no one would ever qualify. Mr. Sertich stated BIPOC entity made more sense to him and if that were the case, the appellant's project would be eligible for the higher developer fee.

Mr. Walker stated there is a conflict, and the Committee could grant the appeal based on the regulations not satisfying the intent of Committee. He stated staff could go back to the regulations to clean up the ambiguity and allow this project to move forward.

Ms. Ferguson stated that she did not recall that the two BIPOC references were mutually exclusive and would rely on the other Committee members present last year when the regulations were adopted.

Treasurer Ma and Mr. Walker agreed that was not the intent of the Committee.

Mr. Velasquez stated that he did not believe the policy objective is any different than what is before them, but rather needs to be clarified.

Mr. Walker agreed.

Mr. Zeto stated that if the Committee grants the appeal, their federal credit will be increased amount back to the original requested amount. He stated the project is currently being recommended and could be considered in Agenda Item 5. Mr. Zeto clarified the decision would have no impact on any other projects.

**MOTION:** Mr. Sertich moved to grant the appeal. Mr. Velasquez seconded, and the motion passed unanimously via a roll call vote.

**5. Recommendation for Reservation of 2021 Federal Four Percent (4%) and State Low Income Housing Tax Credits (LIHTCs) for Tax-Exempt Bond Financed Projects**

Mr. Zeto stated that there was a golden rod staff report for Avalon 1355 (CA-21-541). He noted a typo to the credit amount by \$1 and clarified the requested and recommended federal tax credit amount for this project is \$1,358,683. Mr. Zeto stated staff has reviewed all of the other projects under this agenda item and is recommending them to the Committee for approval with the exception of CA-21-605 and CA-21-620, both of which were withdrawn, as well as the following four (4) projects not approved at the CDLAC meeting, which are CA-21-579, CA-21-615, CA-21-647 and CA-21-651. He thanked staff for their time spent

reviewing the high volume of applications while balancing their time to review the 9% applications that came in as well.

Mr. Sertich asked how many state tax credits were still available after these awards.

Mr. Zeto stated for the general allocation, there would be approximately \$20 million along with the surplus from the \$150 million set aside for the CalHFA Mixed Income Program (MIP). He stated staff recommended \$28 million in state tax credits for the CalHFA MIP so potentially \$120 million could be transferred over to the general allocation. However, Mr. Zeto explained there were some CalHFA MIP projects not awarded this round so staff will need to coordinate with CalHFA on the amount transferred to the general allocation. He stated it was staff's goal to have this resolved as soon as possible in advance of the September 9<sup>th</sup> application deadline.

Mr. Sertich asked if staff could also include a CTCAC meeting along with the CDLAC meeting to consider any outstanding projects.

Mr. Zeto stated they can do that.

Mr. Zeto clarified that as a result of the Committee's decision on Agenda Item 4, staff is recommending the full \$3,250,293 in annual federal credits requested for Marina Village Apartments (CA-21-567). The project costs and eligible basis were also increased slightly to account for the increase in the developer fee.

Mr. Zeto noted the three projects that were added to the CDLAC list and ultimately approved bond allocations would be considered the next CTCAC meeting and those projects were: CA-21-634, CA-21-593 and CA-21-619.

Jimmy Silverwood with Affirmed Housing asked a question pertaining to the three projects added to list and whether they would be considered at the September meeting. In the event there is insufficient state credits, he asked how that would impact his project's state credit request.

Mr. Zeto stated staff will reconcile the state tax credit amount, but believed there would be sufficient state tax credits.

Mr. Sertich stated that since there will be surplus from the CalHFA MIP amount, he also was hopeful there will be enough.

Mr. Zeto agreed and stated staff can confirm following this meeting.

Mr. Silverwood asked if the three projects that were added were going to be considered at the next CTCAC meeting or the one following.

Mr. Zeto stated that he expected the three projects to be considered at the next CTCAC meeting.

**MOTION:** Mr. Sertich moved to approve staff's recommendation, Ms. Ferguson seconded, and the motion passed unanimously via a roll call vote.

**6. Recommendation of a Performance Deposit Refund**

Mr. Zeto stated there was a request from applicant of LakeHouse Commons Affordable Apartments (CA-20-456). He explained the project was awarded federal and state tax credits in 2020 and was a mixed-income project that returned their credits in February because the financing for the market rate portion of the project fell through. Mr. Zeto stated they are requesting a refund of their performance deposit in the amount of \$100,000 and noted CDLAC issued a refund to this project previously.

**MOTION:** Mr. Sertich moved to approve staff's recommendation to refund the performance deposit. Ms. Ferguson seconded, and the motion passed unanimously via a roll call vote.

**7. Public Comment**

There was no public comment.

**8. Adjournment**

Treasurer Ma adjourned the meeting at 3:01 p.m.