## **DRAFT**

# CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE Minutes of the September 28, 2005 Meeting

#### 1. Roll Call.

Ted Eliopoulos for Philip Angelides, State Treasurer, chaired the meeting of the Tax Credit Allocation Committee (TCAC). Mr. Eliopoulos called the meeting to order at 1:06 p.m. Also present were: Cindy Aronberg for Steve Westly, State Controller; Ann Sheehan for Tom Campbell, Director of the Department of Finance; Theresa Parker, Executive Director of the California Housing Finance Agency (CalHFA), and Rich Friedman for Lucetta Dunn, the Department of Housing and Community Development. Kathleen Paley, County Representative, was absent.

#### 2. Minutes.

MOTION: Ms. Aronberg moved to adopt the minutes of the August 17 and September 1, 2005 meetings. Ms. Sheehan seconded the motion. The motion passed unanimously.

### 3. Staff Report.

Mr. William Pavão stated that staff is recommending 35 9% applications for funding. In addition, staff is recommending approval of nine applications for federal and state credits combined, as well as 14 4% projects. Staff is recommending allocating just over \$34 million in 9% credits and approximately \$17.9 million in state credits to 35 projects. The 4% federal and state credit applicants would receive over \$5 million in federal 4% credits and \$17,753 in state credits. Because this is the second funding round, staff has proposed a waiting list and those projects will be allocated any credits that become available during the balance of the year. This will leave a balance of approximately \$5.9 million in 9% credits and \$25.5 million in state credits. It is anticipated that those balances will be exhausted during the remainder of the year, due to the waiting list and additional applications for state credits and the exchange process that occurs after the funding round.

The 35 projects proposed for funding would result in 2360 low-income residential units. Of the 35 projects, 26 are family projects, 6 are senior projects, and 3 are at-risk projects. Staff received no qualifying special needs or SRO applications in the second round.

This round included three projects in the non-profit set-aside, six projects in the rural set-aside, including two RHS projects, three at-risk deals and two small development projects.

Mr. Pavão summarized the geographic breakdown of the proposed projects. He stated that Los Angeles is proposed to receive 13 credit awards, and will still have a balance of credits in their region. The Central, North Bay, East Bay and San Diego regions will all meet their geographic targets. The remaining regions will most likely meet their targets as the waiting list projects are awarded.

Mr. Pavão noted that this agenda also includes a report on the construction cost increase issue, and that there would be a series of items related to the tiebreaker dispute from the first round.

4. Report of the 2005 Low Income Housing Tax Credit Second Round Applications.

Mr. Pavão recommended approval of the following projects with standard conditions:

Project #	Project Name	State Credit	Federal Credit
		Amount	Amount
05-058	Santa Monica/Berkeley	\$0	\$951,753
05-060	Pascual Reyes Townhomes	\$0	\$310,726
05-062	Hart Village	\$0	\$1,106,574
05-064	Community Road Apartments	\$0	\$1,083,296
05-065	Jeffrey Lynne Neighborhood	\$0	\$1,214,959
05-066	Polk & Geary Senior Housing	\$0	\$1,549,090
05-067	Royal Court Apartments	\$0	\$1,078,995
05-070	Plummer Village Apartments	\$0	\$230,589
05-075	Montecito Townhomes	\$4,045,979	\$1,095,414
05-077	Oak Glen Apartments	\$0	\$1,013,917
05-080	Harvard Ave Apartments	\$0	\$1,059,946
05-082	City Heights Senior Housing	\$0	\$1,999,198
05-087	El Paseo Family Apartments	\$0	\$1,999,575
05-088	Union Point Apartments	\$0	\$457,172
05-090	Somerset Place	\$0	\$944,294
05-091	Villa Escondido	\$0	\$974,913
05-092	Coronita Family Apartments	\$0	\$447,022
05-093	Auburn Park	\$0	\$1,358,894
05-094	Arroyo de Paz II	\$1,736,054	\$468,735
05-095	Casa Bella II	\$3,460,341	\$934,293
05-097	Parkview Terrace	\$0	\$1,495,054
05-099	Cottonwood Gardens	\$0	\$1,061,145
05-101	Desert Senior Living	\$0	\$988,383
05-104	Cider Village Family	\$2,486,449	\$671,341
05-106	Anaheim Family Housing	\$0	\$1,266,078
05-110	Witmer Heights	\$0	\$915,860
05-111	Runnymede Springs	\$0	\$833,195
05-112	Cortez City Lights	\$0	\$620,375
05-113	Kimball Crossing	\$0	\$1,002,333
05-114	Terry Manor Apartments	\$0	\$1,092,940

Project #	Project Name	State Credit	Federal Credit
		<u>Amount</u>	<u>Amount</u>
05-115	South Bay Villa	\$0	\$391,515
05-116	United Seniors at Eastmont	\$0	\$792,140
05-121	Bay Family Apartments	\$0	\$964,921
05-122	Oak Creek Family	\$3,474,967	\$995,190
05-123	Poso Place Senior Apartments	\$2,713,799	\$778,015

5. Presentation of Findings regarding the Review of Appeals properly filed under TCAC Regulation Section 10330 on Applications listed under item #4 above.

Mr. Dana Treister, Munger Tolles & Olson, representing Willow Partners and the Plaza City Apartments project (CA-2005-059) asked that the Committee consider awarding credits to this project. He stated that the project, which had been awarded the maximum number of points, had lost in a tiebreaker and asked that the Committee consider a forward commitment of funds. He stated that this was a justified request because in reliance upon a "verified" point score posting on the Committee's web site, the developer took some actions in advanced. He stated that if this project is not allocated the credits, it could potentially cause the developer substantial hardship. Mr. Treister explained that this project is a key redevelopment opportunity for the city and that it will not be built if the project is not awarded credits in this funding round.

Mr. Davis Slajchert, Willow Partners, stated that is a unique situation because a key development in the city's revitalization effort. Mr. Slajchert explained that they were working under the assumption that credits were going to be awarded based upon the verified points log and the recommended funding list that was posted on the web site, and the staff report received. Mr. Slajchert stated that he realizes that the staff report and the recommended funding list are preliminary, however, the points log says, "TCAC Verified," with no disclaimer as to whether or not it is preliminary or that it may or may not be accurate. Because an error had been made on that points log, and later discovered, the Plaza City project was removed from the recommended funding list. Mr. Slajchert asked for the Committee's consideration of forward committing credits for this project because of that.

Mr. Benjamin Martinez, Community Development Commission of National City, gave some background on the city of National City and explained why this project is a key part of the city's revitalization effort.

Mr. Neil Socquet, AIG Sun America, discussed his company's prior partnerships with Willow Partners. He stated that they would be willing to exchange federal credits for state credits in order to finance this deal.

Ms. Aronberg requested and was provided with a copy of the item that appeared on the web site stating that it was TCAC verified.

Mr. Eliopoulos reminded Mr. Slajchert that the allocations are never final until the Committee acts upon them at the allocation meeting and asked Mr. Pavão to further explain the circumstances that occurred. Mr. Pavão explained that, in responxe to public comment at recent meetings, staff made an effort to be more forthcoming with information regarding the program. He explained that in the past, if errors were made, they were often not discovered until the allocation meeting and posting information in advance was an attempt to avoid that situation. In the case of this funding round, an applicant discovered and notified staff that they had not revised the point score after an appeal had been granted and the preliminary funding list was incorrect on the points log and notified staff. Mr. Pavão notified the affected parties immediately after this was discovered. He also reminded Mr. Slajchert that within the application the applicant acknowledged that TCAC is not responsible for actions taken by an applicant in reliance upon a prospective tax credit reservation and allocation.

Mr. Eliopoulos asked about the process of forward committing credits and the exchange of federal credits for state credits. Mr. Pavão explained that staff did explore the possibility of exchanging enough credits to fund one more deal in that region and discovered that it would be an unprecedented level of making state credits available in lieu of federal credits and it was not a feasible option.

Ms. Aronberg asked about the credit amounts being proposed by the applicant. Mr. Socquet answered that they are asking for \$690,000 in federal credits and the rest of the amount in state credits. Mr. Pavão explained that the San Diego region has already exhausted their allocation of credits and is reaching into the supplemental set-aside for \$819,000 already.

Ms. Theresa Parker asked if forward committing credits in this case would be setting a precedent and asked how this situation fits in with projects that have asked in the past for consideration and if there was some standard that the Committee has applied in the past.

Mr. Ed Johnson, TCAC staff, answered that in the past, in unique circumstances, the Committee has awarded projects a forward commitment and it is within the Committee's purview to do so. Ms. Sheehan asked for an example of those unique circumstances and it was explained that it had been done in instances when the applicant was going to lose site control and when a lower-scoring application had been inappropriately funded over a higher-scoring application.

Mr. Pavão asked if it had ever been done in response to a request for relief when the applicant had moved forward without a reservation secured. Mr. Johnson replied that he could not recall if that had ever happened.

Ms. Aronberg asked if it would make a difference in the amount of credits requested if the developer opted to defer a portion of their developer fee, and noticed that that was not a suggestion that had been offered by the applicant. Mr. Slajchert responded that they are already deferring a portion of their developer fee

but would be open to any vehicle that would allow them to move forward with the project considering the circumstances.

Mr. Friedman expressed concern that, if the Committee were to award a forward commitment of credit, the rational used by the applicant could be applied by other applicants in future rounds in order to secure an allocation.

Ms. Rene Franken, a former TCAC Executive Director, noted that this is a very unpleasant situation and though she sympathizes with the developer's situation, it must be noted that the process of posting the recommendations was to avoid this type of situation. She also noted that competition is very keen every year and that forward committing means that other projects that are being developed for next year will have less to compete for.

Ms. Janet Falk, Mercy Housing California, stated that credits aren't allocated until they're allocated. She also called the Committee's attention to the letter that applicants receive that says that the staff report does not confirm or constitute a tax credit reservation.

Mr. Pavão stated that staff's recommendations remain the same.

Mr. Alfredo Izmajtovich, Southern California Housing, asked the Committee to consider examining the regulations with regards to the rural set-asides and census tracts. He explained that his company had submitted an application for a project in Montclaire, a city on the southwestern side of San Bernardino County, which is a fairly urbanized area, but for some reason is considered a rural project. During the first round, despite the fact that it had scored high enough to be funded in the non-profit and rural set-asides, this project was thrown out of contention because they had not applied in the rural set-aside. He explained that TCAC relies on data from the Department of Housing and Community Development and they in turn rely on data from Rural Housing Services and the Department of Finance to determine rural census tracts. In this case, the Department of Finance has designated this area as rural solely based on a population of less than 40,000. He stated that this project is unable to utilize other city funding sources because of this rural designation.

Mr. Eliopoulos stated that the Committee would be open to looking at the regulations and the definition of rural and how it is applied during the Committee's annual regulation process.

6. Discussion and Consideration of Action to Reserve State and/or Federal Tax Credits to Applications listed under Item #4 above, provided that such Applications are complete, eligible, financially feasible and ranked highly enough to be funded with available State and/or Federal Tax Credits.

MOTION: Ms. Sheehan moved to adopt staff recommendations. Ms. Aronberg seconded the motion. The motion passed unanimously.

7. Discussion and Consideration of a Resolution, establishing a Waiting List of pending Applications listed under Item #4 above, provided that Credit becomes available and such Applications are complete, eligible and financially feasible.

Mr. Pavão noted that this waiting list would remain in effect through December 31, 2005 and explained that, as credits become available, they will be awarded to the projects in the order prescribed by the regulations.

MOTION: Ms. Sheehan moved to adopt staff recommendations. Ms. Aronberg seconded the motion. The motion passed.

8. Report of 2005 Applications for Tax-Exempt Bond Financed Projects Considered to Receive Reservations of Federal and State Tax Credits.

Mr. Pavão noted that the original meeting notice had project 05-884 listed with a different, incorrect name. He noted that the correct name is Woodhaven Manor Apartments as it is listed in the staff report and project summary.

Mr. Pavão recommended approval of the following project with standard conditions:

Project #	Project Name	State Credit	Federal Credit
		<u>Amount</u>	<u>Amount</u>
05-879	2795 West Street	\$1,056,222	\$284,368
05-880	Macarthur Apartments	\$264,965	\$71,337
05-881	Vineyard Crossings	\$4,570,094	\$1,230,410
	Parlier Plaza Apartments & Garden	\$717,525	\$193,180
05-882	Valley Homes II		
05-883	Murphy Commons	\$1,968,988	\$530,112
05-884	Woodhaven Manor Apartments	\$661,411	\$457,556
05-885	Grizzly Hollow Phase III	\$1,958,777	\$514,150
05-888	North Park Apartments II	\$1,704,709	\$458,960
05-889	Oakwood Apartments	\$4,850,885	\$1,306,008

9. Presentation of Findings Regarding the Review of Appeals properly filed under TCAC Regulation Section 10330 for Applications listed under Item #7 above.

There were no appeals.

10. Discussion and Consideration of Action to Reserve Federal and State Tax Credits for Applications listed under Item #7 above, provided that such Applications are complete, eligible, financially feasible and ranked highly enough to be funded with available Federal and State Tax Credits.

MOTION: Ms. Aronberg moved to adopt staff recommendations. Ms. Sheehan seconded the motion. The motion passed unanimously.

11. Report of 2005 Tax-Exempt Bond Financed Projects to be Considered to Receive Reservations of Federal Tax Credits. Tax-Exempt Project Reservations are not deducted from the federal ceiling.

Project #	Project Name	Credit Amount
05-891	Jackie Robinson Apartments	\$818,303
05-892	Baywood Apartments	\$437,687
05-893	Courson Connection Senior Project	\$471,666
05-894	Irvington Family Apartments	\$1,345,847
05-895	Josephine Lum Lodge	\$924,490
05-896	The Cascades	\$401,864
05-897	Banneker Homes	\$673,826
05-898	Greenbriar Apartments	\$551,786
05-899	Woodland Terrace	\$410,918
05-900	Briarwood Manor Apartments	\$197,162
05-901	Casa de Vallejo	\$501,251
05-902	Deer View Park Apartments	\$184,962
05-903	Orland Apartments	\$206,089
05-904	Hartford Avenue Apartments	\$652,630

12. Presentation of Findings Regarding the Review of Appeals properly filed under TCAC Regulation Section 10330 for Applications listed under Item #10 above.

There were no appeals.

13. Discussion and Consideration of Action to Reserve Federal Tax Credits for Applications listed under Item #10 above, provided that such Applications are complete, eligible, and financially feasible.

MOTION: Ms. Aronberg moved to adopt staff recommendations. Ms. Sheehan seconded the motion. The motion passed unanimously.

14. Discussion and Consideration of a Resolution to Adopt Proposed Emergency Regulations, Title 4 of the California Code of Regulations, Sections 10300 through 10337.

Mr. Pavão stated that there are no changes to the regulations and this action would simply be to keep them in effect, which is required every 120 days because they are emergency regulations.

MOTION: Ms. Sheehan moved to adopt staff recommendations. Ms. Aronberg seconded the motion. The motion passed unanimously.

15. Final Report on Cost Increase

Mr. Pavão noted that this has been a long-standing issue and at the last meeting, staff was directed by the Committee to solicit and report back on comments from interested parties on the dramatic construction cost increases for projects receiving credits in 2003. The Committee had been asked to consider augmenting those projects by a number of developers. Mr. Pavão stated that the written comments received were split evenly between pro and con.

In addition, the Committee asked staff to solicit comments from lenders and investors about this issue. Staff spoke to seven lenders and investors and each of them, while they had some unique insights, confirmed that costs increased dramatically and that typically, other local government or private funding sources utilized to cover those increases. In cases where the developer was developing both low-income and market rate housing, they could recover some of their costs on the market rate side. In essence, each of the lenders confirmed their understanding that in many of these cases, developers have deferred or contributed their developer fee. None of these lenders and investors was aware of any projects in the 2003 pool that were not going forward to completion.

Mr. Pavão noted that one alternative suggestion was received from the Reznick Group on September 12 and staff has posted its analysis on the Committee's web site. He also noted that the Reznick Group had presented its responses to that analysis to the Committee just before this meeting. Mr. Pavão summarized the staff analysis and noted that it recites some of the policy concerns that have been presented at prior meetings. Among those concerns is allocating current credits for past years projects and truncating the amount of resources to be allocated to new deals, and setting precedence for the future. In the long term, this practice could undermine the Committee's emphasis on credit efficient projects. Also, it appears to the best of staff's knowledge, that these projects are going to be completed and other competing projects have not sought relief.

In addition, the Reznick proposal raises some additional fairness concerns because it suggests that the only developers allowed to seek relief are those that have projects in this current round and that they would be allowed to redirect some or all of that credit to resolve the 2003 shortfall. Mr. Pavão stated that this raises concerns because the allocation process is project-based and staff reviews applications based on their merits as they relate to projects in the current round. The notion of making credits available for a specific project with the understanding that it may not be that project, but an earlier project that ends up using those credits, seems to undermine the underpinnings of the entire award process.

Mr. Pavão stated that the Reznick proposal suggested that there be no increases in developer fee over what had been proposed in the initial application, however it is staff's understanding that, in essence, that is the amount that would be restored with this relief.

Mr. Pavão stated that staff's recommendation remains the same as it had been in the past, which is to not use current years credits to resolve the 2003 cost issue.

Mr. Eliopoulos suggested that the Committee hear public comment on the specific proposal from the Reznick Group, or other alternative proposals, such as using state credits to alleviate the burden or allowing applicants to reapply without returning the credits that were previously awarded.

Ms. Theresa Parker noted that as a non-voting member her role is to give some perspective on matters. She stated that it is very difficult to unwind a process that has been done and that, if all of the 2003 projects are not reviewed on equal footing, the Committee may be setting a precedent unknowingly. She stated that, as a governmental body, the Committee must treat everyone fairly and consistently.

Ms. Aronberg said that it had been brought to the Committee's attention that 48 of the 50 states had some type of provision to allow applicants to request additional credits and she asked staff what their processes were. Mr. Pavão stated that, while not all 50 states were contacted, it does seem that other states have some mechanism for augmentation.

Mr. Rob Wiener, California Coalition for Rural Housing, noted his support for the staff recommendation. He stated that his organization had polled members about what measures they were taking to deal with cost overruns and they answered that they are deferring their developer fund and/or receiving funds from local government or other private equity sources. He stated that none of the members thinks it is a good idea to request additional funds and are instead seeking other alternatives.

Mr. Doug Shoemaker, Non-Profit Housing Association of Northern California, on behalf of the Southern California Association of Non-Profit Housing and the San Diego Housing Federation representing approximately 1200 members in total, noted support of staff's recommendation. He suggested that allowing augmentation would be an obliteration of the Committee's scoring system because the deciding factor for virtually all competing projects is their cost efficiency and by judging them at the beginning based on that, then allow them to ask for more completely undermines the process.

Mr. Andrew Lief, South County Housing Corporation, noted his agreement with past speakers and his support of staff's recommendation.

Ms. Jeanne Peterson, Reznick Group, urged the Committee to consider the proposal they presented because it would alleviate some of the concerns with respect to permitting the award of additional credit to certain developments. She summarized the proposal by saying that it would allow applicants that had been awarded credit in 2003 and are being awarded credits in the second round of 2005 to be able to utilize, either in whole or in part, those fund for hard cost overruns in

their 2003 deals. As part of this program, developers would be required to defer at least 80% of their developer fee. Mr. Eliopoulos asked what would happen to the 2005 project. Ms. Peterson answered that it would not be built.

Mr. Friedman asked if this suggested proposal was harmful to developers who competed in the current round against a project that won't be built because they competed and lost to a phantom project. Ms. Peterson answered that there is no way of knowing what the participation would be and if any of the projects approved today will not get built. Ms. Peterson acknowledged that the proposal has some flaws but it's too difficult to judge if the system will be undermined because the data simply isn't available at this time. Ms. Peterson also noted that, in staff's memo that was posted yesterday in response to this proposal, the timeframe for seeking a regulatory change seems exaggerated and it is not clear that a regulatory change is needed because the regulations state that, were the Committee to take an action that wasn't clearly defined by the regulations, the Committee's responsibility would only be to publish the reasoning for that action to the public.

Mr. Ajit Mithiawala, A.D.I., urged the Committee to take quick action because 2003 projects must be placed in service by the end of 2005. He reminded the Committee that they are only seeking relief from hard cost overruns. He noted support of the Reznick proposal and stated that developers wishing to utilize the provisions are making a large sacrifice.

Ms. Mary Ellen Shay, Cal-ALHFA, expressed support of staff's recommendation on this matter and feels that any revision of the process would be unfair, unwise, and unnecessary. She suggested that moving forward with a proposal like the one from Reznick Group would be creating the tax credit equivalent of a "get out of jail" card.

Mr. Eric Kjeldgaard, Opportunity Builders, affirmed that cost issues were driven by material cost increases but that not everyone is having those same issues. He said that the current regulations do not look kindly on developers going to other funding sources that were not in their original applications and suggested that the regulations be changed to allow that. He noted that other states have a mechanism in place that allows developers to request up to 5% of the original allocation for cost overruns. He advocated changing the current process to assist developers who face these overruns in the future.

Ms. Ronne Thielen, Related Capital, urged the Committee to consider the proposal from the Reznick Group.

Ms. Janet Falk, Mercy Housing, noted her support of staff's recommendation. She said that past speakers have classified this as a unique or one time situation and she disagreed with that statement because costs will continue to rise. She suggested that the notion of setting aside a percentage at the beginning of the year has merit.

Mr. Joel Rubenzahl, Community Economics, stated that this is not a simple issue and said that if the Committee were to set up a program in due time and after due consideration, it should be open to everyone and not just those developers who happened to apply and be awarded credits in the second round of 2005. Mr. Rubenzahl also stated that he appreciates the work the staff has been doing to make information on the program more accessible. Mr. Eliopoulos asked about using state credits to alleviate the cost issue burdens and Mr. Rubenzahl replied that it wouldn't be feasible because of the prevailing wage issues associated with state credits.

Mr. Kjeldgaard made one more comment regarding the developer fee and whether or not additional credits will just fund that. He said that any relief given would help keep his organization functioning so that they may develop future projects.

Mr. Friedman said that there is no way to give relief to 2003 projects without being selective and that it would be disadvantaging projects that were completed without the augmentation. He suggested that the Reznick proposal is haphazard and suggested that the Committee look for a way to improve the current system prospectively.

Ms. Peterson replied that the proposal is selective and that this issue has appeared before the Committee multiple times and that there has been ample opportunity to set up a process that allows competition and what kind of funds if any should be made available and there has been no action. This proposal is meant to provide relief to 2003 projects and that there will be ample opportunity for everyone to provide a better solution to projects going forward during the regulation change process for 2006.

Mr. Eliopoulos asked the Committee if they wanted to direct staff to develop an alternative process to the one in place currently, whether that is the suggestion by the Reznick Group or another alternative.

Ms. Sheehan stated that this has been a very difficult issue and everyone has legitimate points, however the one concern she has is that the Committee will be losing units in 2005. She stated that she would support developing a process prospectively and recommends that staff look at doing so.

Ms. Aronberg agreed with Ms. Sheehan and suggested that staff look to the other states for ideas on a process that can be implemented in the future.

Mr. Eliopoulos summarized by saying that the Committee is not considering any changes for 2003, 2004, or 2005 projects and the current process will remain in place. However, the Committee would like staff, as part of the annual regulatory process, to make suggestions and provide explore an alternative process for future rounds and bring that back as part of the overall regulatory package.

16. The Committee shall designate a clerk or other officer or employee of the state body, who shall then attend each closed session of the state body and enter in a minute book a record of topics discussed and decisions made at the meeting pursuant to the Bagley-Keene Act, Government Code Section 1126.1.

The Committee designated Ms. Kathy Ely.

17. The Committee will go into Closed Session with its counsel pursuant to the Bagley-Keene Act, Government Code section 11126(e)(2)(B)(i) regarding threatened litigation by AMCAL Multi-Housing, Inc. and to consider and act on a proposed settlement regarding the threatened litigation.

The Committee retired to a closed session.

18. Discussion and possible announcement of actions taken in closed session.

The Committee returned to open session.

Mr. Eliopoulos announced that the Committee entered into a settlement with AMCAL with respect to the first round tiebreaker dispute.

19. Discussion, Consideration and possible action to award AMCAL's Sommerset (CA-2005-090) project, federal tax credits to address issues and concerns raised regarding that project's first round application. This award will be conditioned on the receipt of a revised development budget. Other conditions may also be put in place.

MOTION: Ms. Sheehan moved to award a reservation to AMCAL in the amount of \$204,955 in annual federal tax credits from the second round supplemental setaside. Ms. Aronberg seconded the motion. The motion passed unanimously.

- 20. Other Business.
- 21. Public Comment.
- 22. Adjournment.

The meeting was adjourned at 4:04 pm.