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DATE: June 10, 2011
TO: Low Income Housing Tax Credit Stakeholders and the General Public
FROM: William J. Pavão, Executive Director
SUBJECT: Explanation of Reservation Not Made in Accordance with Established Selection Criterion

The California Tax Credit Allocation Committee (TCAC) staff is recommending that credits be reserved for a project in a manner that varies from a State Qualified Allocation Plan (QAP) project selection criterion. This memorandum explains the circumstances surrounding that decision.

Federal and State Law Regarding Award Decisions and the Qualified Allocation Plan (QAP):

Internal Revenue Code §42(m)(1)(B) describes a state QAP as a document that “sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions.” Section 42(m)(1)(A)(iv) states that housing credit amounts awarded to any project shall be zero, unless:

- (iv) a written explanation is available to the general public for any allocation of a housing credit dollar amount which is not made in accordance with established priorities and selection criteria.

This federal statutory language anticipated circumstances under which states achieve a public policy objective in a manner that varies from their adopted QAP.

California Code of Regulations Section 10325(e) similarly states that:

- (e) In scoring and evaluating project applications, the Executive Director shall have the discretion to interpret the intent of these regulations and to score and evaluate applications accordingly. Applicants understand that there is no “right” to receive Tax Credits under these regulations. The Committee shall make available to the general public a written explanation for any allocation of Tax Credits that is not made in accordance with the established priorities and selection criteria of these Regulations.

This regulation provision permits the Executive Director to interpret not only the regulations, but their intent. However, if making a reservation that varies from the regulation selection criteria, the Committee must produce a written explanation to the general public.

The Project and Circumstances

Minto Place (CA-2011-054) is an 88-unit, large family, new construction project proposed in unincorporated Santa Cruz County. The property's mailing address, including its zip code, is Watsonville. Watsonville is listed on the USDA Rural Designated Places for Section 515 New Construction Applications, Fiscal Year 2010 (<http://www.rurdev.usda.gov/SupportDocuments/CA-MFH-515DPL.pdf>).

On March 14, 2011, nine days before the first round application deadline, the California Tax Credit Allocation Committee and the project sponsor learned definitively from USDA Rural Housing Service that the Minto Place project location is Section 515 eligible due to the Watsonville mailing address and zip code. The maximum number of low-income units permitted in a rural set-aside application is 80 affordable units. Under the circumstances, I as the TCAC Executive Director advised the sponsor to submit the application under the rural set-aside, in spite of its proposing 87 affordable units.

The Decision and Explanation

Under the totality of circumstances, I have determined that entertaining the Minto Place application as a rural competitor met the regulatory intent, and that funding it as a rural project would further the public interest and the tax credit program's goals. Therefore, I intend to recommend the project to the Committee for a tax credit reservation at the June 22nd meeting.

The sponsor did not realize the location was a "rural area" under state statute (Health and Safety Code Section 50199.21(a)), in part, because the project does not reside within the Watsonville city limits. The property physically resides in unincorporated Santa Cruz County which does not appear on the USDA Designated Places List. In addition, the USDA Designated Places List incorrectly lists Watsonville in Monterey County, rather than in Santa Cruz County where the project resides. Finally, Watsonville's listed population as of May 2011 was 51,495, well in excess of the traditional USDA rural maximum of 20,000.

The Minto Place application had been previously submitted to TCAC for consideration in 2009 and 2010 as a nonprofit set-aside competitor. However, the project's self-score each year was too low to compete for credits, and was never reviewed by TCAC staff. Therefore, TCAC did not investigate the project's location within a rural area.

In light of the late notice regarding the project's rural status, the sponsor was faced with reducing the number of affordable units from 87 down to 80. The sponsor's credit request would have remained the same, and the project still would have prevailed in spite of a slightly lower final tiebreaker. Assuming the sponsor could have obtained agreement from its other lenders and partners in time, this result would have been contrary to the program's goal. That is, the State would have committed the same credit amount for fewer affordable units. Entertaining the application as it had been submitted previously would result in seven (7) additional units of affordable housing in a moderately-sized community.

The 80-unit maximum was established for two primary reasons: First, the Committee was concerned about market demand for large rental projects in small rural communities. Second, the Committee sought to avoid assisting an affordable housing project that would

constitute the largest rental property in a small town. That is, 80 units seemed to be right-scaled to most rural California communities.

Watsonville, however, is much larger than the typical USDA rural city, and exceeds TCAC's alternative statutory population standard of 40,000 for rural areas. Therefore, neither the market concern nor the scale concern applies in this unusual case.

Conclusion

Under the totality of circumstances surrounding the Minto Place application, I conclude that the regulatory intent behind the rural project size maximum has been met, and that the greatest public good is met by entertaining the Minto Place application as submitted for 87 affordable units. The remedy of reducing the affordable units delivered for the same credit amount is contrary to the program's goals of maximizing affordable units per tax credit.