

THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE
November 15, 2017

**Consideration of Requests for a Waiver of the Forfeiture of Performance Deposit
And/or Negative Points for Various Qualified Residential Rental Projects (QRRP)**
(Agenda Item No. 4)

ACTION:

Consider the approval of a Waiver of the Forfeiture of Performance Deposit and/or Negative Points for Various Qualified Residential Rental Projects (QRRP).

BACKGROUND:

Approval of a Carryforward extension requires forfeiture of a project's performance deposit. In addition, the full reversion of an award of allocation requires both the forfeiture of the project's performance deposit and the assessment of negative points against the Project Sponsor. The Committee may grant a waiver of each upon a satisfactory showing that: (1) the issue or event that prevented the issuance of the bonds was unforeseen; and (2) the issue or event was wholly outside the control of the Applicant and Project Sponsor. A waiver request must meet both parts of the test.

Posada De Colores Apartments, Application 17-316

The Posada De Colores Apartments ("Project") received an allocation on March 15, 2017 with a bond issuance expiration date of September 25, 2017. An additional extension was granted to December 26, 2017 and the performance deposit in support of the project was forfeited to the Committee in accordance with Section 5052 of the Committee's Regulations.

The Project had a change in lenders from Citibank to Wells Fargo Bank on June 6, 2017. Wells Fargo Bank's policy normally requires third party Phase 2 Environmental Reports, in contrast to Citibank, which uses its in house Environmental Reports. This caused a delay when evidence of ground water and vapor contamination were discovered in the new reports. Due to these findings, the Project has had to perform additional testing in order to determine the extent of the contamination and where to put in boundaries to contain the contamination.

The Applicant requests a waiver of the performance deposit forfeiture, based upon the additional testing required by the findings in the Phase 2 Environmental Report, resulting in unforeseen delays that were outside of the Applicant's and Sponsor's control.

EE Cleveland Manor Apartments, Application No. 17-310

The EE Cleveland Manor Apartments ("Project") received an allocation on March 15, 2017 with a bond issuance expiration date of September 25, 2017. Upon the Applicant's request, the Executive Director granted an issuance extension to October 25, 2017 and bonds were issued on October 20, 2017. The performance deposit in support of the project was forfeited to the Committee in accordance with Section 5052 of the Committee's Regulations.

The Project encountered delays originally due to two issues. The lender was in the process of completing their engineering review and, unfortunately, the two firms responsible for preparing the reports were located in both Texas and Florida which had just experienced two major hurricanes. This delayed the finalization of their reports. The second issue was related to a delay in obtaining HUD final approvals. During the course of the analysis, HUD determined there was an error made on HUD's part which needed correction. The correction took several weeks longer than expected which delayed the closing.

The Applicant requests a waiver of the performance deposit forfeiture based upon the delays caused by both the recent Texas and Florida hurricanes and the HUD final approvals, both unforeseen delays that were outside of the Applicant's and Sponsor's control.

Fruitvale Transit Village II-A Apartments, Application No. 17-348

The Fruitvale Transit Village II-A Apartments Project ("Project") received an allocation on May 17, 2017 with a bond issuance expiration date of November 13, 2017. Upon the Applicant's request, the Executive Director granted an issuance extension to January 31, 2018, and the performance deposit in support of the project was forfeited to the Committee in accordance with Section 5052 of the Committee's Regulations.

The Project is currently subject to a California Housing and Community Development (HCD) funding deadline of June 30, 2019. The Project Sponsor realized that the construction schedule would not meet this deadline and requested an extension of this deadline from HCD. Unfortunately, HCD's response to the funding deadline extension request was delayed and as a result, the Project was unable to issue by the November 13, 2017 CDLAC deadline. HCD has since agreed to grant a funding deadline extension by late December 2017. This will allow the HCD financing to remain in place and the Project to issue bonds with all financing sources committed. The Project Sponsor has requested a corresponding CDLAC extension to allow a closing in January 2018.

The Applicant requests a waiver of the performance deposit forfeiture based upon the delay in HCD processing, resulting in unforeseen delays that were outside of the Applicant's and Sponsor's control.

North San Pedro Apartments, Application No. 17-342

The North San Pedro Apartments Project ("Project") received an allocation on May 17, 2017 with a bond issuance expiration date of November 27, 2017. On October 25, 2017, the Applicant requested to return the previously awarded bond allocation and receive a waiver of the performance deposit forfeiture and negative points associated with the return of the allocation.

The Project has an agreement with the Successor Agency of the City of San Jose (City) for the transfer of the land required for the development. The City began the process of vacating a public right of way earlier this year. In March 2017, it was discovered that the City did not own the land underneath the street that it planned to vacate. Since July 2017, the City and the Project developer have been working to clear the title issues either through negotiations with the original owner's heirs or through the eminent domain process. The Project anticipates that the issues may be resolved within the next 12 months.

The Applicant requests a waiver of the performance deposit forfeiture and waiver of negative points based upon title issues with the City of San Jose, resulting in the unforeseen delays that were outside of the Applicant's and Sponsor's control.

RECOMMENDATION:

In light of the circumstances described above, staff recommends the approval of the Waiver of Forfeiture of the Performance Deposit and/or Negative Points for the projects noted above: Posada De Colores Apartments, EE Cleveland Manor Apartments, Fruitvale Transit Village II-A Apartments and North San Pedro Apartments.