Public Counsel LAW CENTER

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August 10, 2011

California Tax Credit Allocation Committee
915 Capitol Mall, Room 485
Sacramento, CA 95814
Via facsimile at (916) 654-6033

Re: Cost Containment–Fair Housing Considerations

Dear Executive Director William J. Pavão and Committee Members,

Public Counsel writes to request that the California Tax Credit Allocation Committee (TCAC) analyze and affirmatively consider how to meet its goal of cost containment while also ensuring that funding for affordable housing development is equitably available throughout the State. Established in 1970, Public Counsel is one of the nation's largest not-for-profit law firms with a 40-year track record of fighting for the rights of children and youth, persecuted immigrants, military veterans and nonprofit organizations and small businesses. As one of its eight projects, Public Counsel's Community Development Project (CDP) builds foundations for healthy communities – with a strong focus on supporting the production and preservation of affordable housing for lower-income people in Los Angeles County. Our clients include nonprofit affordable housing developers, community organizations and low-income residents of Los Angeles County who struggle on a daily basis with the impacts of California's housing crisis.

We are aware that TCAC is engaging in cost containment analysis, and recently developed the following **Problem and Goal Statement**:

> *Occasionally TCAC and other funding sources make awards to extremely costly projects. TCAC-awarded projects generally may be more costly than necessary, fostering the public perception that affordable housing is too expensive. Effective in 2012, TCAC reservations would go only to cost-reasonable projects, and outlier-cost projects would no longer be awarded by TCAC or other funders.*

While Public Counsel understands the need to both assess per unit costs when allocating tax credits to affordable housing developments and maximize the effectiveness of California's valuable tax credits, we caution against a flat prohibition of funding projects with higher than average land costs. Because land costs vary by geographic area, such a prohibition is likely to exclude affordable housing opportunities for lower-income residents in certain areas with high land costs – areas where underrepresented racial minorities and lower-income residents have traditionally been excluded from the housing market.

In fact, the State of California, as a recipient of federal Housing and Urban Development (HUD) funds[1], has an affirmative duty to further fair housing and is required, in its Analysis of

[1] The Federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968, 42 U.S.C § 3601 *et seq.*) requires HUD, as a federal entity, to "administer [its housing] programs…in a manner affirmatively to further the policies of [the Fair Housing Act]." 42 U.S.C. § 3608(e)(5). This also includes taking actions to prevent increased housing segregation of groups of people who have historically lacked housing opportunities and who this Act was designed to protect. *Otero v. New York City Housing Authority*, 484 F.2d 1122, 1134 (2d Cit. 1973).

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Impediments on Fair Housing Choice, to assess how its laws, regulations, policies and procedures affect the ***location***, availability and accessibility of housing. HUD Fair Housing Planning Guide, p. 2-7 (emphasis added), http://www.hud.gov/offices/fheo/images/fhpg.pdf. TCAC's own Qualified Allocation Plan additionally requires the Committee "[t]o provide an equitable distribution of Credits across the state." Low Income Housing Tax Credit Programs Qualified Allocation Plan, http://www.treasurer.ca.gov/ctcac/qap.pdf, p. 7 (2007).[2] Furthermore, both federal and California law[3] prohibit discrimination against protected classes in making housing available. 42 U.S.C. § 3604; Cal. Gov't. Code §12955.

We believe that in order to comply with applicable law, among other things, an equitable tax credit allocation policy must be careful to avoid blanket exclusions for areas across California with higher per unit costs due to higher land costs. As TCAC works to further develop its goal of cost containment, we urge the Committee to investigate how it will affect the location and availability of housing in California and how to affirmatively further fair housing in a way that does not violate federal and state fair housing protections. Public Counsel welcomes the opportunity to offer guidance to TCAC as you move forward to meet the goal of cost containment - while also furthering the equitable dispersion of affordable housing throughout the State.

Sincerely,

Shashi K. Hanuman
Directing Attorney
Community Development Project
Public Counsel

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[2] In addition to these fair housing considerations, TCAC is required to use certain selection criteria in allocating tax credits, including: project location, housing needs characteristics, project characteristics (including whether the project includes the use of existing housing as a part of a community revitalization plan), sponsor characteristics, tenant populations with special housing needs, public housing waiting lists, tenant populations of individuals with children, projects intended for eventual tenant ownership, energy efficiency of the project, and historic nature of the project. Title 26 of the Internal Revenue Code § 42(m)(1)(C). Although not the subject of this comment letter, it is important to note that these factors, along with the fair housing considerations we cite, are all part of the equity considerations TCAC must consider in allocation of tax credits.

[3] California Fair Employment & Housing Act (Cal. Gov't . Code §12900 *et seq.*)