



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Jacky Morales-Ferrand
Paul Krutko

SUBJECT: SEE BELOW

DATE: January 13, 2010

Approved

Debra S. Peltre

Date

1/14/10

COUNCIL DISTRICT: Citywide

SUBJECT: APPROVAL OF AMENDMENTS TO THE CDBG CONSOLIDATED PLAN ANNUAL ACTION PLAN FOR CHANGE IN USE OF 16.1 ACRES AT THE FMC SITE

RECOMMENDATION

It is recommended that the City Council:

1. Adopt amendments to the 2004-2005 Consolidated Plan Annual Action Plan to authorize the submission of an amended 2004-2005 annual Action Plan to the City's Community Development Block Grant Program (CDBG) for the change of use, pursuant to 24 CFR 570.505, for 16 acres of the 23.23 acre FMC site purchased in 2004 with funding assistance from the Department of Housing and Urban Development (HUD), and the City pledging additional security to cover the outstanding principal balance of the Section 108 loan; and
2. Adopt a resolution to amend the 2005 Section 108 Loan Guarantee Agreement to the Department of Housing and Urban Development for changes in use and to substitute security for the remaining principal balance on the Section 108 loan for the purchase of the 23.23 acre Airport West (Formerly FMC Corporation) property; and
3. Authorize the City Manager, or her designee, to negotiate and execute Loan Guarantee documents required by HUD to consent to the substitute property(ies).

OUTCOME

The approval of the amended 2004-2005 Action Plan and Section 108 Loan Guarantee Agreement will comply with Department of Housing and Urban Development's requirements related to use of Section 108 funds.

BACKGROUND

On February 10, 2005, the Department of Housing and Urban Development (HUD) approved a \$25.8 million Section 108 loan and \$2 million Brownfields Economic Development Initiative (BEDI) grant for the use in purchasing 23.23 acres of the 74.87 acre Airport West site located at 1125 Coleman Avenue. Section 108 loan funds were drawn down and secured by both the purchased property and Remillard Court property located north of Keyes/Story Road, south of Interstate 280 and west of 12th Street (former Story Road landfill). The BEDI grant funds were used to pay the interest on the Section 108 loan in 2007. The Section 108 funds are an eligible activity under 24 CFR 570.703(a) as property acquisition. The project meets the national objective of activities benefiting low- and moderate-income persons, job creation or retention under 570.208(a)(4).

The interim use approved by HUD for the 23.23 acres acquired with the HUD funds during the construction period was for airport related uses such as rental car used car sales, recreational vehicle sales, motorcycle sales, and courier and delivery services. The use for the adjacent 52 acres purchased with City Lease Revenue bonds was for Airport construction lay down activities. Due to potential development interest, the City did not demolish the buildings on the 23 acres to allow for the interim uses. The adjacent 52 acres is intended to be used for lay-down space through the completion of the new terminal construction. The 74.87 acres has development rights for 3 million square feet of commercial, industrial and retail development. The original Section 108 application projected 836 jobs at the Airport and from the new development. Approximately 9.3 acres of the site was designated as a site for the BART maintenance facility.

Subsequent to the acquisition of the 74.87 acres, the City received a proposal from Coleman Airport Partners LLC and FWSH Partners LLC for the development of all of the property except the 9.3 acres for the BART facility. In May of 2008 the City entered into Option Agreements with the developers for the purchase of the property for a soccer stadium and a commercial and retail development. In December 2008 the developers indicated that they could not proceed under the existing purchase terms and would need to discuss restructuring the purchase transaction. In addition, in the summer of 2009, BART notified the City that it would not be utilizing the 9.3 acres for a maintenance facility. Included in FWSH's proposal was the designation of 14 acres of the 23.23 acres for a major league soccer specific stadium. City staff has come to understand from HUD that uses related to professional sports teams do not qualify as an eligible activity with HUD funds. However, when alternative collateral has been identified, HUD has worked with other communities to amend loan agreements to exclude the ineligible activity.

Additionally, the City is considering the use of the 9.3 acres (of which 2.1 acres are part of the 23.23 acres purchased with the HUD funds) for recreational soccer fields to relieve the demand on a series of soccer fields throughout the City and to limit those fields to youth soccer. In addition because it would be difficult to determine whether more than 51% of the adults using the proposed soccer fields are low- and moderate-income persons, the activity is not eligible for use of Section 108 funds under the HUD regulations.

Because the 2004-2005 Annual Action plan was already submitted and adopted it is necessary to amend the 2004-2005 Annual Action Plan to note the change in use of the 16.1 acres of the Section 108 loan in the amount of \$25.8 million for the acquisition of the Airport West property formerly know as the FMC property located at 1125 Coleman Avenue

A Notice of Public Hearing regarding the proposed amendments was published in the San Jose Mercury News on December 3rd and 4th, 2009. The 30-day public comment period began on December 10, 2009 and will end on January 10, 2010. At their December 10, 2010 meeting, City staff recommended to the Housing and Community Development Advisory Commission adopting amendments to the 2004-2005 Consolidation Action Plan.

ANALYSIS

Consolidated Plan Amendment

In conversations with Housing and Urban Development (HUD) officials in Washington, D.C., the following course of action for San Jose is necessary to amend the "change of use" consistent with HUD regulations:

- Conduct Public Hearing on proposed amendments
- Amend the 2004-2005 Consolidated Plan Annual Action plan changing the use of the proposed Soccer Stadium and accompany adult soccer fields to an ineligible use
- Amend the Section 108 Agreement and related documents to reflect the amendments to the Consolidated Plan with the City agreeing to provide substitute collateral for the HUD Section 108 loan.
- Use proceeds of sale of property for the stadium to pay down the Section 108 loan.

Section 108 Amendment to Agreement

On August 24, 2004, the City Council approved the Purchase Agreement for the acquisition of 74.87 acres of land owned by FMC located at 1125 Coleman Avenue directly adjacent to and west of the Norman Y. Mineta San Jose International Airport.

The approved Purchase Agreement allowed the City of San Jose, through Section 108 financing, to borrow \$25.8 million to purchase the 23.23 acres of FMC property. The Section 108 program guidelines specify that the local allocation of CDBG funds will be taken to support debt service if the municipality cannot make debt service payments. A local government would have the option of providing an additional source of funds to avoid diminishing the area's CDBG allocation.

As collateral for the Section 108 loan, HUD was provided a deed of trust on the 23.23-acre FMC parcel. In order to meet the necessary 1.2 loan to value HUD collateral requirement, the City of San Jose also pledged the former Story Road Landfill (Remillard site).

In order for the Airport West project to continue to be eligible under the Section 108 agreement and meet the CDBG National Objective of benefiting low-and moderate-income persons through

the creation of new jobs, stimulating the local economy and addressing a major economic goal of the community the City has to pledge additional collateral to replace the 16.1 acres of ineligible activity represented by the Soccer Stadium and recreational soccer facility.

Collateral Required

The City will need to provide \$4.2 million dollars in replacement collateral to comply with HUD requirements.

Valuation of Collateral

Section 108 Loan Outstanding (8/1/2009)	\$22,915,000
<i>Ineligible Use</i>	
14 acres for Soccer Stadium (Council approved Purchase and Sales Agreement 5/5/2009) Proceeds to be used to pay down Section 108 Loan ¹	(\$7,013,160)
Outstanding Section 108 Loan Balance	<u>\$15,901,840</u>
7.12 acres of the remaining 23.23 pledged for HUD Loan (est. \$25 sq ft) ²	(\$7,753,680)
HUD Loan Outstanding Balance	<u>\$8,184,160</u>
Remillard Court Collateral (Dec. 2004 MAI Appraisal) ³	(\$4,600,000)
Loan Outstanding Balance	<u>\$3,548,160</u>
Collateral Rate (loan to value ratio)	1.2
Value of Replacement Collateral Needed⁴	\$4,257,792

¹ The City sells the 14 acres for the Soccer Stadium at 11.50 sq ft per the approved Purchases and Sales agreement from May 5, 2009. The proceeds from the sale pay down the principal balance of the Section 108 loan.

² 2.11 acres for the adult soccer facility are considered ineligible and therefore cannot count towards, collateral, this leaves only 7.12 acres of the 23.23 acres that can be used for collateral. The estimated appraisal value, which is considered conservative, is \$25 sq. ft.

³ Under the original 2005 Section 108 Loan, the City pledged the Remillard Court parcel as collateral. The 2004 appraisal of the property estimated its value at \$4.6 million.

⁴ This represents a conservative estimation of the collateral needed to replace the ineligible uses. The City will reappraise the property listed above and below to determine their current market values.

The City has identified the following properties as potential replacement collateral for the Section 108 loan. The City submitted the list of properties to HUD for a preliminary review and approval. If the following properties are acceptable to HUD as potential substitute collateral, the City will conduct an MAI appraisal along with an opinion letter from the Attorney's office certifying the properties being pledged are valid and legally binding obligations addressing the need to meet \$4.2 million in collateral.

Property	Property Description	Estimated Valuations
Singleton Landfill	Multiple Parcels 90.09 acres	\$76,524,248
San Jose Municipal Golf Course	Multiple Parcels 146 acres -18 hole golf course	\$254,390,400
Municipal Stadium	588 E. Alma Ave., San Jose 95112 - APN: 477-38-003 - 21.232 acres	\$32,370,307

The City does not intend to record deeds of trust against all of the listed properties above, only enough property that sufficiently meets HUDs 1.2 loan to value requirement. The calculated amount of collateral is based upon assumptions about land value, should those values decline the City would need to pledge a greater amount of property. The property list provides a range of alternatives for the City depending on the outcome of the MAI appraisals.

EVALUATION AND FOLLOW-UP

City staff has incorporated changes based on the public comments received so far. Upon approval by HUD of the substitute collateral properties for the Amended Section 108 Loan Guarantee, the City will conduct MAI appraisals and title reports of the approved sites.

PUBLIC OUTREACH

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

A Notice of Public Hearing was published on the Housing Department's website (www.sjhousing.org) and the Mercury News on December 3rd and 4th 2009. The 30-day public comment period began on December 10, 2009 and will end on January 10, 2010.

During the 30-day public comment period, City staff will gather public comments related to these amendments. A matrix of the public input and the Administration responses will be

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forwarded to the Council as a Supplemental Memo one week prior to the January 26, 2010 Council meeting.

FISCAL/POLICY ALIGNMENT

These actions further the vision of San Jose as the World's Most Livable Big City contained in the Economic Development Strategy to "Encourage Sporting Teams, Events, and Facilities, Professional as well as Amateur" (Initiative 12).

COORDINATION

This report has been coordinated with the Budget Office, Finance Department, Housing Department and the City Attorney's Office.

CEQA

EIR Resolution No. 71716. File No: PP08-093.



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