

# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Leslye Krutko  
Jennifer A. Maguire

**SUBJECT:** SEE BELOW

**DATE:** June 3, 2010

6/8/10

**COUNCIL DISTRICT:** 7  
**SNI AREA:** NA

**SUBJECT: ADOPTION OF A RESOLUTION AUTHORIZING THE DIRECTOR OF HOUSING TO ACCEPT A BROWNFIELDS CLEANUP REVOLVING LOAN FUND GRANT FROM THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCE CONTROL AND ADOPTION OF AN APPROPRIATION ORDINANCE AMENDMENTS IN THE MULTI-SOURCE HOUSING FUND FOR THE ORVIETO FAMILY APARTMENTS PROJECT SITE**

## RECOMMENDATION

It is recommended that the City Council:

- 1) Adopt a resolution authorizing the Director of Housing to accept a Brownfields Cleanup Revolving Loan Fund ("BCRLF") grant of up to \$525,000 from the California Department of Toxic Substances Control ("DTSC") and to negotiate and execute the grant agreement and any amendments or other documents necessary to implement the grant for the cleanup of the site of the previously approved 92-unit Orvieto Family Apartments ("Project"), an affordable multifamily rental project located at the Southeast corner of Montecito Vista Way and Montecito Vista Drive, to be developed by ROEM Development Corporation ("ROEM"), or its legal affiliate.
- 2) Adopt the following Appropriation Ordinance amendments in 2010-2011 in the Multi-Source Housing Fund:
  - a. Establish an appropriation to the Housing Department for the Toxic Substances Control Grant project in the amount of \$525,000.
  - b. Decrease the Ending Fund Balance by \$525,000.

## **OUTCOME**

Approval of the recommended action will allow the City of San Jose to substitute the \$525,000 BCRLC grant funds for previously approved Low and Moderate Income Housing Funds. This substitution will allow the developer to pay, rather than capitalize, \$525,000 of accrued interest on the City's land acquisition loan. ROEM will be able to proceed with the development of 91 affordable rental units and one manager's unit, to be made available to households with incomes from \$22,300 to \$57,300, depending upon household size.

## **BACKGROUND**

On December 16, 2008, the City Council approved an acquisition loan in the amount of \$3,680,000 to acquire the subject site. In March 2009, ROEM purchased the site. On May 19, 2009, the City Council approved a construction/permanent loan of up to \$11,228,000 for the Project. On November 11, 2009 the City Council approved the issuance of tax-exempt multifamily housing revenue bonds in the amount of \$14,200,000 and a loan of the bond proceeds to Orvieto Family Apartments, L.P., a legal affiliate of ROEM, for the financing of the Project. In the November 11, 2009 action, the City Council also approved a ground lease from the Joint Financing Authority to the project of up to 55 years. On June 15, 2010, the City Council also will consider a revised request to approve the issuance of two series of tax-exempt bonds, with amended bond documents, totaling \$14,200,000 and a revised ground lease term of up to 99 years.

The subject 1.72-acre site is located at the Southeast corner of Montecito Vista Way and Montecito Vista Drive, off of Monterey Highway in the Communications Hill Specific Plan area. The project is within the second phase of the 22-acre Montecito Vista Urban Village development. This is a master planned community that will include eight distinct phases comprised of condominiums, affordable and market rate apartments, and attached townhouses. The community will include a two-acre park and 18,000 square feet of retail.

The Project will consist of a four-story structure with three residential stories containing 92 residential units above a one-level podium garage with 145 parking spaces. The project will have 23 units that will be affordable to extremely low-income families, 68 units affordable to very low-income families, and one unrestricted manager's unit. The Project will contain Green building features in accordance with the City's emphasis on supporting environmentally-sensitive development. The total estimated project cost is currently \$26,882,043.

The City proposes that the City of San Jose Financing Authority ("CSJFA") take ownership of the site from ROEM and lease it back to ROEM, or its legal affiliate, at the time of the closing of the bond financing for the project. At the June 15, 2010 City Council meeting, the CSJFA proposes entering into a long-term ground lease of at least 99 years, with the specific term to be negotiated by Housing Department staff to be the shortest possible term that meets all funders' feasibility requirements.

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The property was found to contain elevated levels of petroleum hydrocarbons, metals and other contaminants in the soil due to historical industrial uses. Contaminated soil will be required to be removed and disposed off-site prior to the development of the affordable housing project.

Because the CSJFA will own the land and return lease revenues to the Housing Department, it is eligible for a grant of funds from DTSC to pay for remediation costs. The purpose of the DTSC's BCRLF is to facilitate the reuse and/or redevelopment of contaminated sites by making low-cost financing available for the cleanup of eligible public or privately held properties. Loans or grants are provided to eligible governmental entities and site owners or developers, provided that they are not responsible for the contamination of the site. Governmental entities are eligible to receive this funding as a sub-grant.

### **ANALYSIS**

The Housing Department submitted a BCRLF application package for a grant of up to \$525,000 to the DTSC on May 6, 2010. Currently, the DTSC is working with the Federal Environmental Protection Agency ("EPA") to evaluate all the environmental reports previously done on the site and the chain of title to the site in order to determine site eligibility for participation in the program. DTSC is also determining the amount of funding available to fund the grant.

The City's application is currently under review by the U.S. Environmental Protection Agency and DTSC. It is not yet known whether the request will be approved, but staff believes there is a strong likelihood of award. This request to accept the grant, if awarded, is being submitted at this time so that the City Council's July recess would not risk delaying the Project's start of construction by one month.

If received, the City would use the \$525,000 BCRLF sub-grant to augment previously approved Low and Moderate Income Housing Funds. Use of these funds would allow the City to reduce its previous loan commitment to the project by up to \$525,000, or would allow the developer to pay--rather than capitalize--up to \$525,000 of accrued interest on the City's land acquisition loan. Most likely, a combination of these options will ultimately be utilized. Both of these uses would benefit the City financially.

Specific business terms related to the substitution of the BCRLF grant for Low and Moderate Income Housing Funds will be approved by the Director of Housing pursuant to the Director's Delegation of Authority ordinance, located in Chapter 5.06 of Title 5 of the San Jose Municipal Code.

### **Economic Development Benefits**

Taking actions to further this project will benefit San José economically. First, the Developer expects to pay City fees of \$365,437 and an additional \$222,183 in school district fees in order to proceed with the development process. The Developer expects to additionally pay \$10,450 in City fees for the related offsite improvements. The total of these up-front fees is \$598,070.

Second, total local impacts for communities in the area are defined as benefits of the direct construction activity itself as well as the impact of local residents who earn money from the construction activity and spend part of it within the area. According to a 2009 study by the National Association of Homebuilders (NAHB) on the economic benefits to local areas for multifamily low income housing tax credit-funded construction, 92 units of family housing are estimated to generate over \$7.4 million of local benefits in the first year and approximately \$2.4 million each year thereafter.

Third, according to the NAHB metrics, it is also anticipated that proceeding with and completing the development of the Project will create 139 local jobs in San José in the first year, directly and indirectly, and 35 local jobs each year thereafter. For example, ROEM Development Corporation, the Developer, will target building material suppliers in Santa Clara County for competitive bids. Support for ROEM Development Corporation is also support for a local business, as ROEM Development Corporation is headquartered in the City and has built all of their 1,400 units in projects in the City. ROEM Development Corporation is an important part of the local affordable housing development and delivery network and their continued organizational viability is important to the City.

### **EVALUATION AND FOLLOW-UP**

The Department posts quarterly reports on the status of its subsidized construction projects to its website, [www.sjhousing.org](http://www.sjhousing.org). Upon the approval of City construction financing, the Orvieto Family Apartments project was included in these reports.

### **POLICY ALTERNATIVES**

To arrive at this proposal, staff considered the following options:

**Alternative #1:** *Forego accepting the BCRLF grant, if approved.*

**Pros:** This would avoid potential delays in closing the project's other financing that would result from delays in the approval of the BCRLF grant by DTSC.

**Cons:** Foregoing the BCRLF grant would require that the full City loan commitment be funded by Low and Moderate Income Housing funds, which would reduce the City's return on its existing committed and expended loan to ROEM. The City would lose the opportunity to preserve Low and Moderate Income Housing Funds by substituting BCRLF funds for them.

**Reason for not recommending:** The BCRLF grant will allow the City to preserve its Low and Moderate Income Housing Funds as well as to enhance its financial return on already-committed and expended funds.

### **PUBLIC OUTREACH/INTEREST**

- 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)**

This item meets none of the above criteria but this Memorandum will be posted on the City's website for the June 22, 2010 City Council agenda.

### **COORDINATION**

This report has been coordinated with the Office of the City Attorney and Planning, Building and Code Enforcement Department.

### **FISCAL/POLICY ALIGNMENT**

This action is consistent with the City's *2007-2012 Five-Year Housing Investment Plan*, adopted by the City Council on June 12, 2007, to increase the supply of affordable housing, and with the City's *Consolidated Plan 2005-2010* to provide housing units for very low- and extremely low-income households.

### **COST SUMMARY/IMPLICATIONS**

The actions recommended in this Memorandum will accept the grant in the amount of \$525,000. The grant has not been officially awarded; however, the Housing Department expects to receive notification of the grant award in late June 2010 or early July 2010. Because the project is on a tight timeline and the Housing Department expects to start the project in mid-July 2010, the Multi-Source Housing Fund is expected to provide the funds necessary for the project until the receipt of the grant. However, if grant funding is not awarded, the project would move forward with its original project funding. Additional budget actions will be brought forward for City Council consideration as appropriate.

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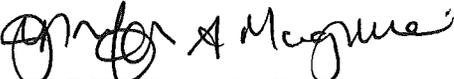
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**CEQA**

CEQA: Resolution No. 72877, Goble Lane Environmental Impact Report, file number PP09-086.

/s/

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