



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Julia H. Cooper
Leslye Corsiglia

SUBJECT: SEE BELOW

DATE: November 6, 2012

Approved 

Date 11/12/12

COUNCIL DISTRICTS: 3 and 7

SUBJECT: TEFRA HEARINGS FOR THE ISSUANCE OF TAX-EXEMPT MULTIFAMILY REVENUE BONDS TO CONSTRUCT THE SEVENTH AND TAYLOR (AJISAI) APARTMENTS AND ORVIETO B APARTMENTS

RECOMMENDATION

It is recommended that the City Council:

1. Hold a Tax Equity and Fiscal Responsibility Act ("TEFRA") public hearing for the issuance of up to \$27,000,000 in tax-exempt private-activity bonds by the California Statewide Communities Development Authority ("CSCDA") for the new construction of ROEM Development Corporation's proposed 103 unit Ajisai Apartments located at Seventh and Taylor Streets;
2. Hold a Tax Equity and Fiscal Responsibility Act ("TEFRA") public hearing for the issuance of up to \$24,000,000 of tax-exempt private-activity bonds by CSCDA for the new construction of ROEM Development Corporation's proposed 106 unit Orvieto B Apartments located at the corner of Montecito Vista Drive and Montecito Vista Way; and
3. Adopt a resolution approving the issuance of Tax-Exempt Revenue Bonds by CSCDA in an aggregate principal amount not to exceed \$51,000,000 to be used to finance the Ajisai Apartments and Orvieto B Apartments and pay certain expenses incurred in connection with the issuance of the bonds.

OUTCOME

Approval of the recommended action will contribute to securing the financing necessary to construct the Seventh and Taylor Apartments (Ajisai) and Orvieto B Apartments (together, the

“Projects”) to go forward and obtain the other necessary project funding commitments at this time.

BACKGROUND

ROEM Development Corporation. (“Sponsor”), a California corporation has requested that the CSCDA issue tax-exempt bonds (“Bonds”) in an aggregate principal amount not to exceed \$51,000,000 for two separate affordable housing projects in San José. Proceeds of the Bonds are to be made available to finance the new construction of the Projects.

ROEM is proposing to construct two projects. The Seventh and Taylor (Ajisai) project, located at the corner of North Seventh Street and East Taylor Street, will be a 4% tax credit deal in which 20% of the 103 units have restricted rents that must serve tenants with incomes at 50% of the area median income (“AMI”) or less. The proposed project consists of six one-bedroom and 15 two-bedroom units that will be restricted at 50% AMI. The Orvieto B project, located at the corner of Montecito Vista Drive and Montecito Vista Way off Monterey Highway is a 4% tax credit deal providing additional restricted units to the City. The proposed project consists of 106 units, of which three one-bedroom and eight two-bedroom units will be restricted at 50% AMI and 21 one-bedroom and 73 two-bedroom units will be restricted at 60% AMI.

The proposed new construction projects will result in a mix of units affordable to families at 50% and 60% of AMI. These incomes equate to maximum annual incomes of \$42,000 per household for one-bedroom units at 50% AMI and \$56,700 per household for two-bedroom units at 60% AMI.

ANALYSIS

The City’s Policy for the Issuance of Multifamily Housing Revenue Bonds (“Policy”) requires that the City be the issuer of tax-exempt private-activity bonds for projects located within San José. An exception to the Policy allows the City to authorize another entity to issue the bonds if the project sponsor is seeking the issuance of bonds to finance other projects in the same round of bond allocations from the California Debt Limit Allocation Committee (“CDLAC”) under a similar financing program so as to result in economies of issuance and the City is not making a loan or grant to the project. Although, it is the City’s policy to require that the City be the issuer of bonds for all projects in San José, on rare occasions we have approved developers’ use of an alternate issuer. In this case, the developer asserts that the budgets for the projects are too tight to afford the City’s issuance fees. Since ROEM is proposing tax-exempt bonds for two affordable housing projects in the City in the same CDLAC round and there are no City loans or grants, the Finance and Housing Departments jointly recommend an exception to the policy to allow for the outside issuer.

Under this proposal, CSCDA will assume full responsibility for bond issuance, administration and on-going compliance. Aside from tax-exempt bonds, the Sponsor proposes the following

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sources of revenue for the Projects: federal 4% Low-Income Housing Tax Credits; State Tax Credits; and a seller take-back note. There is no current City loan on the Projects and none is proposed in the subject transactions.

The federal tax law, known as the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") requires that projects funded with qualified tax-exempt private activity bond proceeds be approved by the City Council after a noticed public hearing, called a "TEFRA hearing." A qualified private activity bond is a bond issued to fund a project for a private entity but meets certain requirements under the Internal Revenue Code (the "Code") in order for the interest received by the bondholder to be excluded from gross income for federal income tax purposes. These hearings provide interested individuals or parties the opportunity to comment on any matters related to such potential bond issues, including the nature and location of the project.

The TEFRA Hearing is scheduled to be held as part of the action items on the November 27, 2012 Council Agenda and serves as a method of notifying the community of CSCDA's intent to issue tax-exempt private activity bonds for the Projects. The public hearing notice will be published in the *San Jose Mercury News* on or about November 6, 2012, announcing the time and location of the public hearing.

Federal tax law limits the types of projects that may be funded with tax-exempt bond proceeds since the interest earned on such bonds is exempt from federal taxation. Pursuant to the Code, the issuance of the Bonds by CSCDA requires the City's approval because the Project is located within the territorial limits of the City. In order for the interest on the Bonds to be excluded from the gross income of the owner of the Bonds (i.e. tax-exempt), an "applicable elected representative" of the government unit must approve the issuance of the Bonds after the TEFRA hearing. Council's approval of the issuance of the Bonds and the use of the proceeds serves to meet the applicable Code requirements. Council's approval of this action is not approval of the Project for any other purpose.

Chapter 5.06 of the Municipal Code, "Contract Authority of the Director of Housing, City Manager and Director of Finance" also known as the Delegation of Authority, sets forth a number of actions that the City Administration can undertake in connection with the City's affordable housing program. In situations in which the City allows an external agency such as CSCDA to issue the bonds, the City Council must hold the TEFRA hearing since the delegation of authority to the Director of Finance is limited to those cases where the City will be the issuer. Staff is reviewing amendments to the Policy and will return to Council with a recommendation allowing the Director of Finance to hold a TEFRA Hearing in either situation.

EVALUATION AND FOLLOW-UP

Council will be notified of the ground breaking and/or grand opening ceremonies for these projects. No further Council action is anticipated.

PUBLIC OUTREACH

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**

- Criteria 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)**

- Criteria 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)**

The actions recommended in this report do not meet any of the above criteria. The City will notice the projects as follows:

1. A public hearing notice regarding the TEFRA hearing to be held as part of the actions recommended in this report is scheduled to be published in the *San Jose Mercury News* on or about November 6, 2012.

2. This report will be posted to the agenda website for the City Council's November 27, 2012 meeting.

COORDINATION

This memorandum has been prepared in coordination with the City Attorney's Office.

COST IMPLICATIONS

The TEFRA hearings will have no fiscal impact on the City as there are no City funds in this Project. The tax-exempt bonds issued by CSCDA will be secured solely by the Project's revenues. By not exercising its option to be the bond issuer, the City will forego the issuance fees and the annual fees associated with the bond monitoring obligation.

FISCAL/POLICY ALIGNMENT

This action is consistent with the City's *2007-2012 Five-Year Housing Investment Plan*, adopted by Council on June 12, 2007, to increase the supply of affordable housing, and with the City's

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Consolidated Plan 2010-2015 to provide housing units for very low- and extremely low-income households.

CEQA

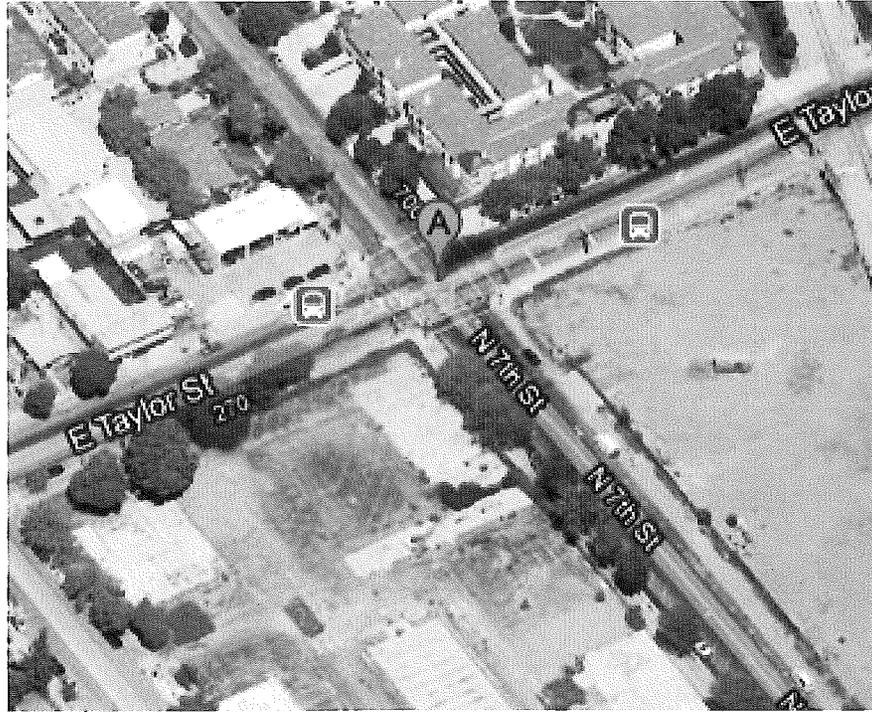
Not a Project, File No. PP10-069, City Organizational and Administrative Activities.

/s/
JULIA H. COOPER
Acting Director, Finance Department

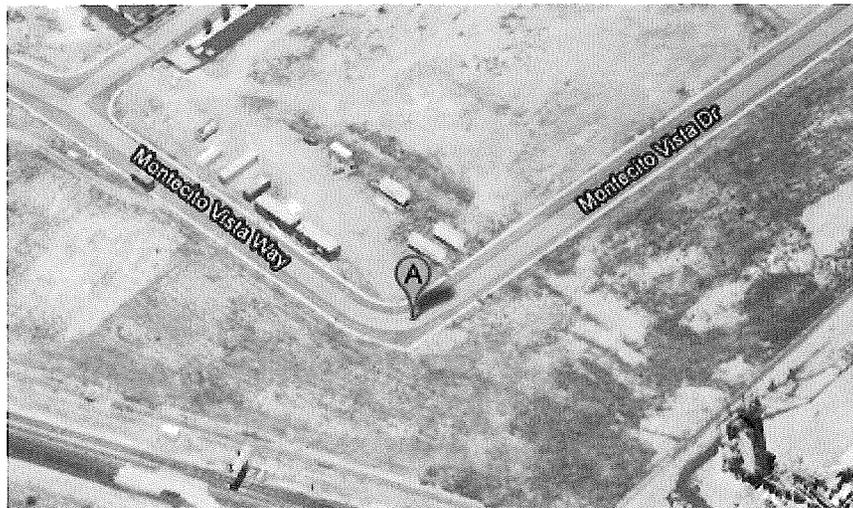
/s/
LESLYE CORSIGLIA
Director, Housing Department

For questions please contact Leslye Corsiglia, Director of Housing at 408-535-3851.

Attachment



7th and Taylor



Montecito Vista Drive and Montecito Vista Way