



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Julia H. Cooper
Leslye Corsiglia

SUBJECT: SEE BELOW

DATE: March 27, 2014

Approved

Date

4/3/14

COUNCIL DISTRICT: 2

SUBJECT: TEFRA HEARINGS FOR THE ISSUANCE OF TAX-EXEMPT MULTIFAMILY HOUSING REVENUE BONDS BY THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY TO CONSTRUCT THE CHARLOTTE DRIVE APARTMENTS AND THE LEXINGTON APARTMENTS PROJECTS IN SAN JOSE

RECOMMENDATION

It is recommended that the City Council:

- (a) Hold a Tax Equity and Fiscal Responsibility Act ("TEFRA") public hearing for the issuance of up to \$38,000,000 in tax-exempt private-activity bonds by the California Statewide Communities Development Authority ("CSCDA") for the new construction of the proposed 200-unit Charlotte Drive Apartments located at 5600 Charlotte Drive by ROEM Development Corporation or by its related legal entity ("ROEM");
- (b) Hold a Tax Equity and Fiscal Responsibility Act ("TEFRA") public hearing for the issuance of up to \$26,000,000 of tax-exempt private-activity bonds by CSCDA for the new construction of the proposed 134-unit Lexington Apartments located at the Northeast corner of Lexington Avenue and Great Oaks Parkway by ROEM; and
- (c) Adopt a resolution approving the issuance of Tax-Exempt Revenue Bonds by CSCDA in an aggregate principal amount not to exceed \$64,000,000 to be used by ROEM to finance the construction of Charlotte Drive Apartments and Lexington Apartments and to pay certain expenses incurred in connection with the issuance of the bonds.

OUTCOME

Approval of the recommended action will help to secure the financing necessary to construct two apartment complexes offering a total of up to 334 apartments—332 of which will be offered at

very affordable rents—that are located on the former Hitachi site, named Charlotte Drive Apartments and Lexington Apartments (collectively, the “Projects”). Allowing CSCDA to issue the tax-exempt bonds will support the financial feasibility for these 100% affordable projects that have no local subsidy, will allow the developer to obtain the other necessary project funding commitments, and will enable these projects to fulfill negotiated affordable housing requirements generated by market-rate housing developments within the Hitachi sites under a Development Agreement with the City.

The City Council date of April 15, 2014, cannot be delayed given the TEFRA deadlines involved in requesting tax-exempt bond allocation awards from the State of California. For the current awards round, TEFRA hearings must be completed by April 21, 2014.

BACKGROUND

TEFRAs for CSCDA Bond Issuances in San José

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.

CSCDA has requested the City’s approval to issue tax-exempt bonds (“Bonds”) in an aggregate principal amount not to exceed \$64,000,000, and to hold the TEFRA hearing, to fund the construction of two separate affordable housing projects to be built in San José by ROEM Development Corporation (“Sponsor”). ROEM has requested that the CSCDA issue the Bonds.

The City is a member of CSCDA, a joint powers authority, and operates under an agreement that allows CSCDA to issue multifamily housing revenue bonds in San José if the City agrees. California Debt Limit Allocation Committee (“CDLAC”) requires that TEFRA hearings for bonds to be issued through conduit issuers such as CSCDA occur in the locality in which the subject project(s) will be built.

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 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 currently is reviewing amendments to the City’s Policy for the Issuance of Multifamily Housing Revenue Bonds (“Bonds Policy”) and expects to return to the City Council late this

fiscal year with a recommendation allowing the Director of Finance to hold TEFRA hearings under both circumstances.

City Bonds Policy

The City's Bonds Policy requires that the City be the issuer of tax-exempt private-activity bonds for affordable housing projects located within San José. An exception to the Bonds Policy allows the City to authorize a conduit issuer to issue tax-exempt bonds only under certain circumstances: 1) the project sponsor has two or more projects for which it is seeking authority to issue tax-exempt bonds in the same round of bond allocations from CDLAC; 2) the projects are using a similar financing program so as to result in economies of issuance; and 3) the City is not making a loan or grant to the project.

Although it is the City's strong preference to be the issuer of bonds for all projects in San José, on rare occasions when the Bonds Policy's conditions are met, staff has approved developers' use of an alternate issuer and asked the City Council to hold a TEFRA hearing.

Projects

The Projects will satisfy negotiated affordable housing requirements under the Development Agreement ("Agreement") between the former Redevelopment Agency and Hitachi Global Storage Technologies, Inc. in December 2005. Per the Agreement, the City's Housing Department is responsible for overseeing compliance with negotiated affordable housing production requirements on all Hitachi housing sites. See Attachments A and B for location maps.

Charlotte Drive Apartments, located at 5600 Charlotte Drive, is being developed to satisfy the Agreement's requirement for affordable homes from the Lennar Corporation, the developer that purchased Hitachi Lots 10 and 12. ROEM has entered into an agreement to produce the stand alone affordable apartments to fully satisfy Lennar's obligation.

Charlotte Drive is currently entitled for 191 total units under (PD Permit file PD12-039). ROEM has requested a new PD Permit (file PD14-010) to add nine units and change internal layouts. The application for the new PD Permit is scheduled to be heard at a Planning Director's Hearing on April 23, 2014. If this new PD Permit is approved, Charlotte is expected to offer 198 restricted affordable apartments and two unrestricted manager's units—82 one-bedroom apartments and 116 two-bedroom apartments. Of the total, 67 apartments would be restricted to tenants with incomes at or below 50% of the area median income ("AMI") and 131 apartments would be restricted at or below 60% AMI. Financing sources are expected to include tax-exempt bonds proceeds, equity derived from 4% Low Income Housing Tax Credits (LIHTCs), and deferred fees.

Lexington Apartments—also known as Santa Teresa Transit Site B—is located at the corner of Lexington Avenue and Great Oaks Parkway. It is fully entitled (PD Permit file PD13-044) and is being developed to satisfy the Agreement's requirement for affordable homes on Lot 1 on behalf of City Ventures, the developer that purchased Hitachi Lot 1, as well as ROEM, which

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will also develop and own market-rate apartments in addition to the standalone affordable apartments. Lexington Apartments is expected to offer 133 affordable apartments and one unrestricted manager's unit—48 apartments restricted to tenants with incomes at or below 50% AMI, and 85 apartments restricted at or below 60% AMI. Lexington will offer 74 one-bedroom and 59 two-bedroom apartments. Financing sources are expected to include tax-exempt bonds proceeds, equity derived from 4% LIHTCs, and deferred fees.

Charlotte's PD Permit is scheduled to be heard at a Director's Hearing on April 23, 2014. If that approval is obtained and both projects are approved for financing, construction could begin within a few months (July for Charlotte and September for Lexington) and could be completed by early to mid 2016.

ANALYSIS

The request for CSCDA to issue bonds for the Projects meets the Bonds Policy exception for the City's issuance under the City's Bonds Policy. Both Projects are applying for a bond allocation in the CDLAC allocation meeting on May 21, 2014, and both have conditional financing commitments from Citibank for construction and permanent loans with similar structures. Further, there are no City loans or grants on the Projects. As both deals are in the same pool and CSCDA fees are set lower than the City's, economies of scale will result if CSCDA issues the bonds. As issuer, CSCDA will assume full responsibility for bond issuance, administration, and ongoing compliance. Therefore, the Finance and Housing Departments recommend approval for CSCDA to issue bonds for the Projects.

Planning staff has confirmed that the nine additional units being considered for the Charlotte Apartments under the pending new PD Permit currently are allowable per the site's existing zoning. Charlotte's current PD Permit for 191 units also fully satisfies Lennar's obligation under the Agreement, so the additional units are not necessary for that purpose. If the PD Permit is not approved, ROEM may choose to delay Charlotte Apartments to improve financial feasibility in another way, but would proceed towards construction on Lexington.

Staff is supportive of these proposed new construction Projects, which augment the mix of homes in the new neighborhood being built on the former Hitachi site. The apartments will be affordable to lower-income worker households at rents far below those in the current market. The apartments' rents—capped under the LIHTC program for 2014 at \$922 and \$1,333 for one- and two-bedrooms, respectively—would be 25% to 50% below current market-rate apartment rents. Using 2014 income levels in Santa Clara County, the apartments would house San José individuals and families with maximum incomes between \$38,250 (assuming one-bedroom units at 50% AMI) and \$55,080 (assuming two-bedroom units at 60% AMI).

EVALUATION AND FOLLOW-UP

PBCE's reports on building permits will include these two projects. Staff will request that ROEM notify the City Council offices of the groundbreaking and/or grand opening ceremonies.

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)**

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 *Post Record* on or about March 31, 2014.
2. This report will be posted to the City's website for the City Council's agenda for the April 15, 2014 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. There are no City funds in these Projects. The tax-exempt bonds to be issued by CSCDA will be secured solely by the Projects' 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, but will collect \$5,000 per project to cover staff and publishing costs associated with this request per the City's Bonds Policy.

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FISCAL/POLICY ALIGNMENT

This action is consistent with several City Council-approved policy plans: the City's *2007-2012 Five-Year Housing Investment Plan*, adopted by City Council on June 12, 2007, in that this approval will increase the supply of affordable housing; the City's *Consolidated Plan 2010-2015*, in that this approval will provide housing units for low- and very low-income households; and, the City's State-certified *2007-14 Housing Element*, in that these units will help the City to meet its Regional Housing Needs Allocation (RHNA) goals.

CEQA

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

/s/

JULIA H. COOPER

Director, Finance Department

/s/

LESLYE CORSIGLIA

Director, Housing Department

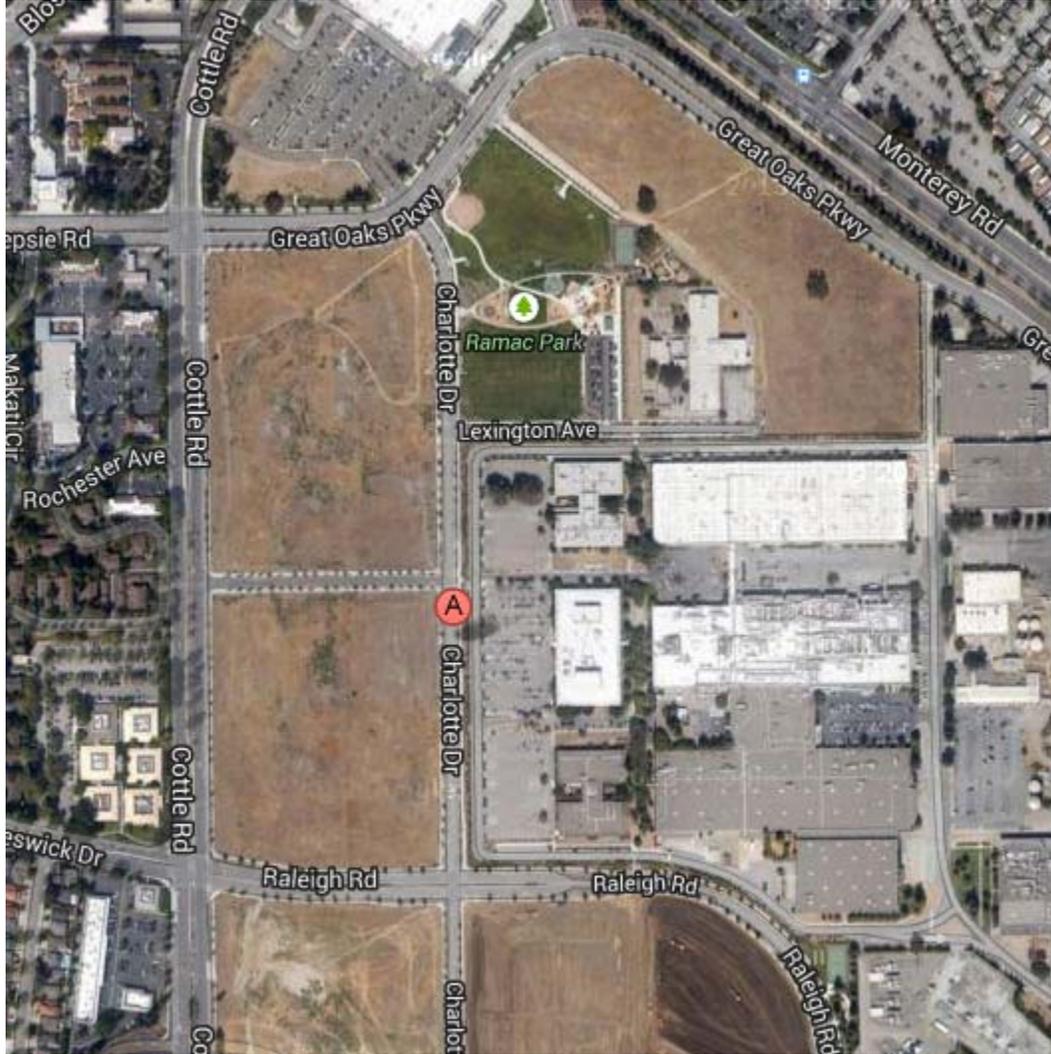
For questions please contact LESLYE CORSIGLIA, Director of Housing at 408-535-3851.

Attachments—Location maps

ATTACHMENT A

CHARLOTTE APARTMENTS LOCATION MAP

5600 Charlotte Drive (Hitachi Lots 10/12)



ATTACHMENT B

LEXINGTON APARTMENTS LOCATION MAP

NE corner of Lexington Avenue and Great Oaks Parkway (Hitachi Lot 1)

