

CITY OF OAKLAND

AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 OCT 15 PM 6:43

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: October 27, 2009

RE: **A Report On The Status Of The Oakland Community Land Trust's Funding Commitments To Fully Fund Acquisition And Rehabilitation Of All 200 Homes, As Well As Fund The First Year Of Organizational Operating Costs; And A Resolution Amending Resolution No. 81933 C.M.S To Modify The Terms Of The Neighborhood Stabilization Program (NSP) Loan To The Urban Strategies Council/Oakland Community Land Trust To Allow Conversion Of A Portion Of The NSP Loan To A Grant As Units Are Sold.**

SUMMARY

This is a report on the status of the Oakland Community Land Trust's (OakCLT) funding commitments to fully fund acquisition and rehabilitation of all 200 homes planned as part of OakCLT's project to acquire, rehabilitate and sell foreclosed single-family homes in certain target areas of West and East Oakland with funding from the City's Neighborhood Stabilization Program (NSP) grant. The report also includes information on OakCLT's progress in obtaining funding for the first year of their organizational operating costs. Lastly, this report includes a resolution amending the previous resolution authorizing a loan of NSP funds to the Urban Strategies Council/OakCLT. The proposed amendment will allow conversion of a portion of the NSP loan to a grant as units are sold, thereby enabling the units to remain permanently affordable to very low and low income households.

FISCAL IMPACT

Funds in the amount of \$5,025,000 for OakCLT are already budgeted in the HUD-CDBG Fund (2108), Community Development Block Grant Organization (88949), Neighborhood Stabilization Project (G368110).

The proposed amendment to the original authorizing resolution would permit NSP funds to be converted from a loan to a grant to provide permanent affordability. While NSP funds would be used as a revolving loan fund that would be used several times over for acquisition and rehabilitation costs, over time, portions would be forgiven and ultimately the City would be foregoing \$5,025,000 in repayment of those funds.

BACKGROUND

On April 21, 2009, Council adopted Resolution No. 81933 C.M.S. authorizing a \$5,025,000 loan from the U.S. Department of Housing and Urban Development (HUD) Neighborhood

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Stabilization Program to the Urban Strategies Council/Oakland Community Land Trust for the acquisition and rehabilitation of foreclosed homes. The Resolution provided that staff would bring a report to the October 27, 2009, Community and Economic Development Committee meeting to report on whether the OakCLT has or will likely have sufficient commitments to fully fund acquisition and rehabilitation of all 200 homes, as well as fund the first year of organizational operating costs within the nine month reservation period.

KEY ISSUES AND IMPACTS

Ensuring Permanent Affordability

The OakCLT program is unique in providing permanently affordable homeownership for households with incomes between 50 and 80 percent of area median income, or roughly \$40,000 to \$70,000 per year.

Making ownership affordable to low and moderate income households requires funding to cover the gap between development costs and a sales price that is affordable to low and moderate income families. The City has provided substantial subsidies to finance new homeownership developments for moderate income families. City funds are provided as a grant to the development, providing community benefit in the form of homeownership units kept permanently affordable through City deed restrictions.

If a unit costs \$400,000 to develop, and the affordable sales price is \$250,000, the City provides a grant of \$150,000 to cover the affordability gap. This form of assistance has been used for many years for homeownership development projects funded under the City's annual Notice of Funding Availability (NOFA) process. Recent projects such as Edes Avenue Homes, Sausal Creek Townhomes, Mandela Gateway Townhomes, and others were structured in this way.

Because of the tremendous gap between new construction costs and affordable sales prices, in recent years the City Council has increased the maximum income to an average of 100 percent of median income and increased the maximum subsidy from 40 percent to 50 percent of total development costs.

The foreclosure crisis has created an opportunity for the OakCLT to acquire and rehabilitate homes for far less than it has typically cost to build new ownership units. At the same time, OakCLT is working to bring new subsidy sources, such as New Market Tax Credits, into the deal. As a result, OakCLT is making homeownership available to a lower income group than has typically been targeted, and at the same time requires less City assistance per moderate income development unit than has been provided in the past.

At the time the NSP1 awards were first made, HUD's program rules contained provisions that made it impossible to keep NSP funds invested in properties and still ensure permanent affordability under the land trust model. The resolution that staff presented only authorized a loan because it was not yet clear that a grant would be workable. Since then, advocacy by NSP

participants, including the City, has resulted in program changes that make clear that the City can invest NSP funds in the OakCLT project in the same manner that NOFA funds are provided to moderate income homeownership developments.

Staff is proposing an amendment to the original resolution that will allow NSP funds to be used initially as a loan for acquisition and construction, and then gradually converted to a grant to ensure permanent affordability as each home is sold.

OakCLT Progress in Securing Project Financing

OakCLT has secured or is in the process of securing a number of commitments for financing for their project.

As reported to the City Council on October 6th, the City's loan to OakCLT was executed on September 29, 2009. Closing of this loan has paved the way for OakCLT to secure other funds. At the request of OakCLT, only \$2.2 million of the \$5,025,000 loan approved by the City Council was included in the loan agreement. The remaining \$2.8 million is being set aside for as a potential source to leverage additional funds through the use of New Market Tax Credits as described below.

Since the loan closing, OakCLT has moved quickly to obtain preliminary approval from NCB Capital Impact for a \$1 million loan, and NCB is now beginning the full underwriting process. Loan approval is anticipated within the next 12 weeks. NCB is also working with an additional potential partner, Catalyst Foundation, to secure an additional \$1 million in Program Related Investment financing from Catalyst.

Additionally, OakCLT is in discussions with a number of traditional banks to secure short-term financing for acquisition and rehabilitation, which would expand their capacity to pursue larger numbers of homes simultaneously.

Financing to help low income families acquire rehabilitated homes is expected to come from programs operated by the California Housing Finance Agency (CalHFA). CalHFA staff have expressed great interest in working with the OakCLT program. City staff have met directly with CalHFA staff and confirmed that funding is available for both down payment assistance and below-market rate mortgages, similar to funds that have been leveraged for years by the City's first-time homebuyer Mortgage Assistance Program. CalHFA is also developing a new loan program, "Circle of Hope," to provide special permanent financing to support City and County programs for foreclosed homes.

CalHFA is also offering to make its own inventory of foreclosed homes, or Real Estate Owned (REO) properties available to the City for purchase with NSP funds. Additionally, CalHFA would help the City market these properties by posting them on CalHFA's website, along with properties directly marketed by CalHFA around the state.

OakCLT's biggest challenge is obtaining additional subsidy to ensure that sales prices are written down to a level affordable to families with incomes at 50%-80% of Area Median Income (AMI).

OakCLT's response to the RFP included a need for additional City funding to acquire and rehabilitate 200 homes. When a second round of NSP funds became available (NSP2), OakCLT was included as part of a consortium the City developed for an application for \$25 million. If the City's NSP2 application is successful, OakCLT will receive an additional \$8 million, which would cover a substantial portion of the funds needed to provide gap financing to make all 200 homes affordable to low income families. OakCLT plans to use its remaining NSP1 allocation, along with the NSP2 funds, to help leverage private equity investments through the sale of New Markets Tax Credits (NMTCs), which will provide the balance of the gap financing.

New Markets Tax Credits

The City and OakCLT are in ongoing discussions to determine the best legal and financing structure to use to secure NMTCs and leverage additional funds to support the project. Based on the outcome of those discussions, staff will return to Council to seek any additional authority that may be required in order for the City to participate in a New Markets Tax Credit deal. The City successfully used NMTCs to finance the restoration of the Fox Theater.

NMTCs primarily support the provision of low cost loans for the construction or major renovation of real estate projects located in low income census tracts. Other uses include real property acquisition, including land and single family home programs, and business expansion, typically with the purchase of equipment or inventory. The general purpose of the program is to promote economic and business development. The NMTC program provides tax credits for a period of seven years. These credits are used to generate private capital investment in qualified areas judged needy according to federal criteria.

NMTC Program qualifications

Several specific criteria determine NMTC eligibility. The high points are as follows:

- Projects must be located in a qualified low income census tract. The tract must qualify in two ways: it must be on the Community Development Financial Institutions (CDFI) Fund's list of qualifying areas; and it must be in the market area defined by interested NMTC allocatees. There are about ten NMTC allocatees that are actively working in the Bay Area market.
- The real estate project can be for profit or nonprofit and can be almost any real estate product type except rental housing, which is typically financed with Low Income Housing Tax Credits (LIHTC). The NMTC program was in fact developed as a corollary to the LIHTC program to promote investment in real estate and business development other than rental housing.

- The project is ideally in a "targeted distress" area as defined by the CDFI Fund. It must also provide clear benefits to low income populations and demonstrated job creation.

NMTC Investment structure

Use of NMTCs will require that the City's NSP funds be provided through a Community Development Enterprise (CDE), which would be formed specifically to blend loan funds and equity received from an NMTC investor. These funds would then be provided as a below market loan or investment to the Project. Under current market conditions, loan and grant funds provided to the CDE can leverage an additional 30 percent in equity generated by the NMTCs.

Structuring a NMTC deal involves complex legal and financing considerations. The City and OakCLT are still in preliminary discussions on the best way to proceed. Staff and the City Attorney's Office are working with outside legal counsel with extensive knowledge around NMTCs to determine what kinds of risks the City could face in a deal like this, using an NMTC syndication model, and ways to structure the City's funding to minimize this risk and maximize the benefits that NMTC would provide.

Funding for OakCLT's Operations Costs

OakCLT has made good progress in securing funding for its first year of operations. To date it has secured commitments for \$75,000 of the anticipated \$125,000 it needs for the first year. Fifty Thousand Dollars (\$50,000) is a grant from NCB Capital Impact, and \$25,000 is from Enterprise Partners. OakCLT has applications pending with additional foundations to cover the remaining \$50,000. With over 50% of its first year needs already met, and other applications in place, OakCLT appears likely to be able to cover its first year costs.

Focus on Long-Term Vacant Homes

Since signing the loan agreement, OakCLT has been pursuing the acquisition of nine (9) foreclosed vacant single homes in the target area of East Oakland. As prescribed in the Request For Proposals (RFP), OakCLT is seeking primarily to acquire only those homes that have been vacant for at least 90 days. OakCLT has informed staff that in some instances there may not be any documentation to verify how long the home has been vacant in order to meet the 90 day requirement.

Staff is working with OakCLT to ensure to the greatest extent possible that properties have been vacant for 90 days prior to acquisition. Staff is developing certification forms for sellers to execute, verifying that the property has been vacant for 90 days.

However, neither staff nor OakCLT have control over how banks choose to dispose of foreclosed homes. Limiting the program to properties that have been vacant for 90 days could prevent OakCLT from acquiring properties that would otherwise be suitable for the NSP program and would place them at a disadvantage compared to private investors and speculators who are not limited to long-term vacant properties. Staff is exploring ways to permit acquisition of

properties that have been vacant for less than 90 days while seeking to verify there has been no involuntary displacement of bona fide tenants.

PROGRAM DESCRIPTION

Modification of Terms of NSP Loan

Ensuring permanent affordability requires an investment of funds to bridge the gap between development costs and affordable prices. This report includes a resolution to amend Resolution No. 81933 C.M.S., adding language that allows the conversion of a portion of the NSP loan to a grant as units are sold. With each sale, a portion of the NSP funds would be converted to a grant to cover the difference between the cost of acquisition, rehabilitation, and sale (including a share of predevelopment and general development costs) and the affordable sales price.

SUSTAINABLE OPPORTUNITIES

Economic: The OakCLT program will provide construction employment and contracting opportunities for local residents. Successful rehabilitation and resale of foreclosed homes in the NSP target areas will also help improve the housing market.

Environmental: OakCLT will seek to use green building techniques where feasible, including improving energy efficiency of rehabilitated homes.

Social Equity: The OakCLT program will provide permanently affordable homeownership opportunities to low income households and will help revitalize disadvantaged neighborhoods that have been hardest hit by the foreclosure crisis.

DISABILITY AND SENIOR CITIZEN ACCESS

The OakCLT program will not have a significant impact on disability and senior citizen access.

RECOMMENDATION AND RATIONALE

Staff recommends that the City Council accept this report on the status of the Oakland Community Land Trust's funding commitments to fully fund acquisition and rehabilitation of all 200 homes, as well as fund the first year of organizational operating costs. OakCLT has made progress in securing funds for both project costs and operational costs, and staff will work closely with OakCLT to develop a structure for the use of New Markets Tax Credits to secure equity investments to provide additional funds to ensure permanent affordability.

Staff further recommends that the City Council amend Resolution No. 81933 C.M.S to modify the terms of the NSP Loan to the Urban Strategies Council/Oakland Community Land Trust to allow conversion of a portion of the NSP loan to a grant as units are sold.

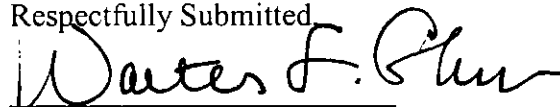
The OakCLT project will provide much more efficient subsidies than typical NOFA funded projects. Ownership projects funded between 2006 and 2009 through the NOFA process have required an average City subsidy of approximately \$185,000 per unit, and are affordable to households between 80% and 120% of area median income (AMI), with an average of 100% of AMI.

The OakCLT program will provide permanently affordable homes to households between 50% and 80% of AMI and yet will require no more than \$85,000 per unit in City subsidy. As units are sold, net proceeds from each sale (not including the amount converted to a grant) will be deposited into a revolving loan fund jointly controlled by the City and OakCLT, which will be used to acquire and rehabilitate additional units. At the end of the loan term (currently set at five years), any amount left in the revolving loan fund would be repaid to the City.

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that the City Council accept this report on the status of the Oakland Community Land Trust's funding commitments to fully fund acquisition and rehabilitation of all 200 homes, as well as fund the first year of organizational operating costs; and adopt the attached resolution amending Resolution No. 81933 C.M.S to modify the terms of the NSP Loan to the Urban Strategies Council/Oakland Community Land Trust to allow conversion of a portion of the NSP Loan to a grant as units are sold.

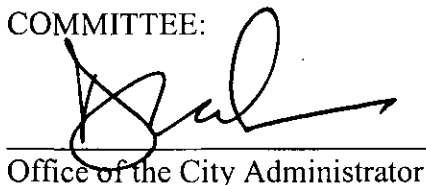
Respectfully Submitted,



Walter S. Cohen, Director
Community and Economic Development Agency

Prepared by:
Michele Byrd, Manager
Community Development Block Grant Program

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT
COMMITTEE:


Office of the City Administrator

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APPROVED AS TO FORM AND LEGALITY:


DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C. M. S.

A RESOLUTION AMENDING RESOLUTION NO. 81933 C.M.S TO MODIFY THE TERMS OF THE NEIGHBORHOOD STABILIZATION PROGRAM (NSP) LOAN TO THE URBAN STRATEGIES COUNCIL/OAKLAND COMMUNITY LAND TRUST TO ALLOW CONVERSION OF A PORTION OF THE NSP LOAN TO A GRANT AS UNITS ARE SOLD.

WHEREAS, on April 21, 2009, the City Council adopted Resolution No. 81933 C.M.S. authorizing a \$5,025,000 loan from the HUD Neighborhood Stabilization Program (NSP) to the Urban Strategies Council/Oakland Community Land Trust (OCLT) for the acquisition and rehabilitation of vacant foreclosed homes; and

WHEREAS, since rehabilitated units will be sold to eligible homebuyers at an affordable sales price and it is anticipated that the proceeds from the sale of units may be less than the amount of NSP loan funds that will need to be used to acquire and rehabilitate the units, there is a need to have progressive conversion of the loan to a grant as units are rehabilitated and sold to the extent net sales proceeds are less than the amount of loan funds disbursed for the unit; now, therefore, be it

RESOLVED: That the City Council hereby amends Resolution No. 81933 C.M.S. to authorize the City Administrator to convert the NSP loan to a grant if and to the extent that the net proceeds from the sale of units acquired and rehabilitated with NSP funds are less than the amount of NSP loan funds disbursed to acquire and rehabilitate said units, as well as loan funds used for general predevelopment and administrative expenses; and be it

FURTHER RESOLVED: That the City Council authorizes the City Administrator or his or her designee to take any action with respect to this loan and project consistent with this Resolution and its basic purposes.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and
PRESIDENT BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California