

OFFICE OF THE CITY CLERK
2007 MAY 22 PM 3:41

**REDEVELOPMENT AGENCY OF THE
CITY OF OAKLAND
AGENDA REPORT**

TO: Office of the Agency Administrator
ATTN: Deborah A. Edgerly
FROM: Community and Economic Development Agency
DATE: May 22, 2007

RE: **An Agency Resolution Amending Agency Resolution No. 2005-0067 C.M.S. authorizing a \$2,464,400 Predevelopment and Development Loan to Resources for Community Development for the Fox Courts Affordable Housing Development Located Between 18th Street, 19th Street, San Pablo Avenue and Telegraph Avenue to (1) Convert a Portion of the Loan in the Amount of \$2,000,000 to a Grant; and (2) Redesignate the \$1,280,000 Portion of the Funding Now Designated for Development Costs to Predevelopment Costs**

SUMMARY

The Community and Economic Development Agency (CEDA) is recommending approval of a Resolution amending Resolution No. 2005-0067 C.M.S. authorizing a \$2,464,400 predevelopment and development loan to Resources for Community Development (RCD), a non-profit corporation, for Fox Courts, an affordable housing development ("Fox Courts" or the "Project") to be developed on Agency-owned property located between 18th Street, 19th Street, San Pablo Avenue and Telegraph Avenue (the "Property") to (1) convert a portion of the loan in the amount of \$2,000,000 to a grant; and (2) redesignate the \$1,280,000 portion of the funding now designated for development costs to predevelopment costs.

The Agency identified Central District Tax Allocation Bond Series 2003 (the "2003 Bonds") proceeds as the only available source for funding \$2,000,000 of the total loan amount to RCD. The Agency structured its funding assistance as a secured loan because the Project includes low income housing tax credits as a source of funding. Projects involving tax credits allow development costs funded by loans to be added to the "eligible basis" of a building, which is used to calculate the amount of potential equity investment that can be raised by a developer. Staff has been advised that tax-exempt bonds cannot be used to make loans to private entities. As a result, staff is recommending that the 2003 Bond-funded component of the predevelopment and development loan to RCD in the amount of \$2,000,000 be changed to a grant as there is no alternative Agency funding source available to provide that portion of the gap financing assistance to the developer. The proposed legislation would also allow the grant to be secured or

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unsecured by a deed of trust on the project site at the option of staff; the grant may need to be unsecured if RCD's tax credit equity investor is unable to accommodate a secured grant as part of the Project's financing structure. The balance of the Agency's funding assistance to RCD in the amount of \$464,400 will remain as a secured loan.

A portion of the Agency's funding assistance in the amount of \$770,000 to RCD was structured as an unsecured predevelopment loan for architectural work and related costs to permit the developer to apply for funding from the State of California's Multi-family Housing Program (MHP). Since RCD has received an allocation of MHP funds, the Agency would like to redesignate a portion of the Agency funding assistance in an amount of up to \$1,280,000 now designated for development costs to predevelopment costs, as this will allow the developer to keep the Project on schedule for a construction start in August of this year.

FISCAL IMPACT

Pursuant to Resolution No. 2005-0067 C.M.S., the Agency used the following sources of funding for the predevelopment and development loan to RCD:

- \$2,000,000 from the Central District Tax Allocation Bond Series 2003: Central District TA Bond Series 2003 Fund (#9532), Uptown Forest City DDA 9532 Project (#T245610); and
- \$464,400 from the proceeds of the sale of Preservation Park from Preservation Park Loan Repayment Fund (#9562), Project Retail/Entertainment District Catalyst Project FY01 (#P132780).

The Agency's loan is for a term of 55 years with no interest. Loan payments are deferred unless the Project generates any surplus cash flow after paying for operating costs, debt service on other loans, and deposits into Project reserves.

The \$2,000,000 component of the loan funded from 2003 Bonds will have to be changed to a grant as tax-exempt bonds cannot be used to make loans to private entities and there are no other Agency funds available that could be used to replace the 2003 Bonds as a source of funding the gap financing assistance to RCD. The proposed loan-to-grant conversion means that the Agency will not receive any repayments from surplus cash flow, if available, for this portion of its funding assistance. This issue is discussed in more detail in the *Key Issues and Impacts* section of this report, which describes in general terms how the Agency structures its gap financing assistance to affordable housing projects.

In addition, RCD is determining whether conversion of a portion of the loan to a grant will affect the calculation of available tax credits and the amount of potential equity investment that can be raised for the Project. If the loan-to-grant conversion yields fewer tax credits, RCD may return to the Agency to request additional funding assistance to cover any such shortfalls.

BACKGROUND

On November 19, 2004, pursuant to Resolution No. 2004-39 C.M.S., the City of Oakland, the Agency and the Coalition for Workforce Housing entered into a Cooperation Agreement to create additional community benefits from the development of the Uptown Project by Forest City Residential West, Inc. Pursuant to the Cooperation Agreement, the Agency agreed to reserve the Property for the development of at least 70 affordable housing units. The Agency also agreed to set aside gap financing in the amount of \$2,464,400. The Property and any related financial assistance would have otherwise been provided to Forest City as a part of the Uptown Project.

On December 8, 2005, pursuant to Agency Resolution No. 2005-0067 C.M.S., the Agency entered into a Disposition and Development Agreement (“DDA”) with RCD for the development of Fox Courts, an 80-unit affordable housing project, on the Property. According to the terms of the DDA and pursuant to the Cooperation Agreement, the Agency is providing a predevelopment and development loan (the “DDA loan”) in the amount of \$2,050,000, and an additional amount up to \$414,400 to pay for hazardous materials remediation costs, which amount will be added to the principal of the Agency predevelopment and development loan.

The Agency also agreed to make a portion of the loan in an amount of \$770,000 available to the developer as an unsecured loan to fund certain predevelopment expenses. The Agency’s loan is for a term of 55 years with no interest. Loan payments are deferred unless the Project generates any surplus cash flow after paying for operating costs, debt service on other loans, and deposits into Project reserves.

On March 7, 2006, pursuant to Agency Resolution No. 2006-0022 C.M.S. and the Notice of Funding Availability (“NOFA”) for affordable housing funding, the Agency authorized an affordable housing development loan in the amount of \$4,950,000 to RCD (the “NOFA loan”) for the development of the Project. The Agency’s loan is for a term of 55 years with no interest. Loan payments are deferred unless the Project generates any surplus cash flow.

On September 19, 2006, pursuant to Agency Resolution No. 2006-0067 C.M.S., the Agency Administrator accepted and appropriated a clean-up grant in the amount of \$200,000 from the United States Environmental Protection Agency under the Brownfields Program for environmental remediation of the Fox Courts Property. This clean-up grant for the Project may reduce the Agency's contribution of \$414,400 for hazardous materials remediation costs.

RCD has secured all financing commitments and is ready to submit for building permits and utility applications in time for a Project construction start in early August of 2007.

KEY ISSUES AND IMPACTS

The Loan-To-Grant Conversion

The Agency used \$2,000,000 from the 2003 Bonds for funding a portion of the predevelopment and development loan under the DDA to RCD. The 2003 Bonds, which can only be used for projects in the Central District Redevelopment Area and were previously designated for the Uptown Project, were the only available source available to the Agency for funding the loan. Staff has been advised that the Agency cannot use tax-exempt bond proceeds to make a loan to a non-governmental entity, such as RCD. Therefore, the 2003 Bond-funded portion of the Agency's subsidy to RCD must be converted from a loan to a grant as there are no other Agency funds available that could be used to replace the 2003 Bonds as a source of funding the gap financing assistance to RCD.

In February of 2001, CEDA staff reported to the Council on how the Agency provides its standard funding for affordable housing projects. The report explained that funding assistance, other than private mortgage financing to projects such as Fox Courts, is typically provided in the form of equity contributions, grants or deferred "surplus cash flow" loans, because these types of project financing do not require on-going debt service payments from operating cash flow. A project's inability to generate regular loan payments for the Agency or other "soft" loan providers is the result of the Agency's (and other financing sources) rent restrictions that apply to the full term of the loan and limit the amount of private mortgage financing that can be supported by a project. Consequently, most state and local housing programs provide grants or deferred loans for affordable housing development, which have either very generous or no repayment terms.

The City and Agency typically provide funding for affordable housing projects in the form of 55-year, low or no-interest, deferred residual receipts loans. These loans are not very different from grants as these projects seldom produce any surplus cash flow to repay the Agency after covering operating costs, debt service on private loans and deposits into project reserves. For example, RCD's latest cash flow analysis indicates that the Project will generate approximately \$240,000 in nominal residual receipts over

the loan term to repay the Agency. Any such surplus cash flow would first be applied to the Agency's \$4,950,000 NOFA housing development loan. Moreover, although loan principal is due at the end of the 55-year term, it is not certain that developers of affordable housing projects such as Fox Courts could refinance the Agency's loans, repay the Agency and still maintain the housing at affordable rents. It is therefore much more likely that RCD would seek loan extensions at that time, in return for agreeing to extend the use and affordability restrictions for the Project, which is in the interest of the Agency as it regularly seeks to extend affordability restrictions on such projects for as long as possible.

However, there are reasons for structuring affordable housing financing as a loan instead of a grant. By providing its financing as a loan secured by a deed of trust, the Agency can accelerate the loan (i.e., declare that the entire loan principal and interest is immediately due) and foreclose on the property as a standard monetary default in the event that the borrower defaults on its private mortgage, or on the non-monetary performance obligations such as property management and maintenance, or compliance with the Agency's rent and occupancy restrictions.

In the case of Fox Courts, the proposed conversion of the loan to a grant will not significantly jeopardize the Agency's ability to take over the Property in the event of a default by RCD, or to enforce RCD's performance obligations. As part of the \$4,950,000 NOFA and the \$464,000 non-NOFA loan, the Agency will place a deed of trust and a regulatory agreement on the Property to secure this loan. These liens and encumbrances will preserve the Agency's ability to foreclose on RCD in the event of a default and permit the Agency to negotiate extension for the use and affordability restrictions for the Project at the end of the loan term. The Agency also has reversionary rights under the DDA, i.e., the right to take back the Property from RCD if RCD defaults under its development obligations. Furthermore, it is possible that the grant will likely still be secured by a deed of trust on the property, and, if so, a failure by RCD to abide by the terms of the grant would result in a forfeiture of the grant and foreclosure of the deed of trust. RCD has asked that the Agency be given maximum flexibility when determining whether to secure its grant with a deed of trust. RCD is not certain if securitization of the Agency's grant might cause significant issues with their future equity investors, and they will not be able to address this matter with the Agency until they have secured a commitment from a tax credit investor. RCD does not expect to receive such a commitment until the end of May or early June.

The Development Loan to Predevelopment Loan Conversion

A portion of the Agency's DDA funding assistance to RCD in the amount of \$770,000 was structured as an unsecured predevelopment loan for architectural work and related costs to permit the developer to apply for funding from the State of California's Multi-family Housing Program (MHP), as well as to complete other design work. The

remaining \$1,280,000 of the Agency funding assistance was designated as a development loan. On June 26, 2006, RCD received an allocation of MHP funds. At this time, the Agency would like to make an amount of up to the remaining balance of the Agency funding assistance of \$1,280,000 available to the developer to pay for additional predevelopment activities required for moving the Project toward construction, which is scheduled to start in August of this year. Without additional predevelopment funds, RCD will not be able to complete the Project construction documents, obtain building permits, plan the hazardous materials remediation, and, ultimately, close all project financing and start construction.

While the Agency does not normally provide unsecured predevelopment loans or grants of the magnitude as the \$2,050,000 designated to RCD to a housing developer, Fox Courts represents a special set of circumstances:

Standard housing development loans that are awarded pursuant to the City and Agency's NOFA may be used to fund predevelopment activities prior to the closing of all project funding and the start of construction, as long as the developer can demonstrate having secured all other funding as necessary to develop the project. In those cases, the Agency or City's loan is secured by a deed of trust on the project site, which is usually controlled by the developer. In the case of Fox Courts, RCD has obtained all other project financing, but does not own the Property, which the Agency will not transfer until the imminent start of Project construction. Hence, the Agency's \$4,950,000 NOFA housing development loan cannot be funded until the Property is owned by RCD. This presents a dilemma for RCD. Non-profit developers, such as RCD, which by their nature do not have substantial amounts of working capital, are able to borrow funds for predevelopment costs if they own the project site and use it as security for a predevelopment loan. Since RCD has no such security at this time, RCD has requested that the Agency redesignate an amount up to the \$1,280,000 portion of the DDA funding now designated for development costs to predevelopment costs. Without these new predevelopment funds, RCD will not be able to pay for building permit and utility application fees, or complete the construction documents, and the Project would likely not move forward.

The DDA states that if the Agency does not transfer the site to RCD by January 1, 2008, RCD may terminate the agreement and the current predevelopment loan in the amount of \$770,000 will be forgiven. With the proposed conversion of the loan to a grant, RCD would still be required to repay any grant funds, including the additional \$1,280,000, if for example, RCD has not secured the necessary project financing as required in the DDA, unless the Agency is unable to deliver the site. However, it should be pointed out that RCD does not have the necessary assets to make such repayment.

At this time, it is anticipated that the Agency will transfer the Property to RCD in time for the start of Project construction in August of this year. The Agency has issued a relocation grant in the amount of \$1,700,000 to the Oakland School for the Arts (OSA), which will pay for the vacation of the Property by OSA. Moreover, RCD has secured all sources of financing and is ready to complete all remaining predevelopment activities to commence the construction phase in August. Hence, the Agency does not have any indication at this time that Fox Courts will not proceed as planned.

PROJECT DESCRIPTION

Fox Courts will include 80 units of rental housing, of which 79 will be affordable to individuals and households with incomes ranging from 30% of AMI to 60% of AMI, while one unit will be reserved for the on-site property manager. Specifically, the Project consists of 18 studio and loft units, 11 one-bedroom units, 11 two-bedroom units, 35 three-bedroom units, and 5 four-bedroom units, which range from 450 to 1,375 square feet in size. The building will have two separate main entrances, two large courtyards, and a 1,150 square-foot recreation room for the residents. The Project will also have 4,000 square feet of community retail space, including a Museum of Children's Art (MOCHA) and a childcare center administered by the Community Child Care Coordinating Council ("4C's") of Alameda County. In addition, up to 80 parking spaces will be provided in a partially subterranean garage.

SUSTAINABLE OPPORTUNITIES

RCD's Fox Courts will satisfy the "3 E's" of sustainability in the following ways:

Economic

Fox Courts will expand the supply of affordable housing in Oakland and provide rental housing for low and very low individuals and households with incomes ranging from 30% of AMI to 60% of AMI (which translates to approximately \$24,850 at 30% of AMI to \$49,680 at 60% of AMI for a family of four). The Project will also provide additional large family-sized units, including 35 three-bedroom units and 5 four-bedroom units.

RCD will comply with the City's contracting programs, including Small/Local Business Enterprise Construction and Professional Services Program ("L/SLBE") and the Local Employment Program. All of the workers performing construction work for the Project must be paid prevailing wage rates. RCD will also be subject to the Living Wage Ordinance.

Fox Courts will expand the affordable housing inventory for Oakland's workforce in the Central District. The Project will offer residential units for a range of low income individuals and households, and generate construction work and professional services contracts.

Environmental

Fox Courts will be at least 15% more energy efficient than the Title 24 energy code requires and will incorporate numerous green-building techniques and materials as defined by the Alameda County Waste Management Authority in their Multifamily Green Building Guidelines. Also, this Project will provide housing on an underutilized site and is near major public transit corridors. By developing in already built-up areas, this Project reduces the pressure to build on agricultural and other undeveloped land. The location of the Project site near mass transit enables residents to reduce dependency on automobiles and therefore contribute to lowering the emission of green-house gases.

Social Equity

Affordable Housing is a means of achieving greater social equity. Fox Courts will give low and very low income families affordable housing that is located in proximity to public transportation, employment opportunities and social services. The Project will offer several social services, including childcare, resident empowerment training, computer centers for residents, job training, and money management.

DISABILITY AND SENIOR CITIZEN ACCESS

RCD's Fox Courts will comply with the requirements of the Americans with Disabilities Act ("ADA"). The State's Title 24 and the ADA require consideration of persons with disabilities in design and construction of housing. In all rental units, those requirements include accessible units and facilities. Furthermore, the developer will be required to devise a strategy to effectively market housing units to the disabled community and present this strategy as part of their Affirmative Fair Housing Marketing Plan.

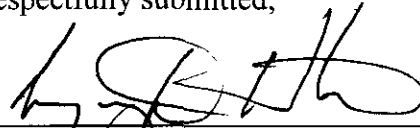
RECOMMENDATION(S) AND RATIONALE

Staff recommends approval of the proposed resolution to (1) convert a portion of the loan in the amount of \$2,000,000 to a grant; and (2) redesignate the \$1,280,000 portion of the funding now designated for development costs to predevelopment costs because this action will ensure that (a) the 2003 Bonds financing source for the Project is compatible with the terms of the Agency's gap financing assistance, and (b) RCD will be able to complete all necessary predevelopment activities in time for a Project construction start in August of 2007.

ACTION REQUESTED OF THE AGENCY

It is recommended that the Agency authorize the Agency Administrator or her designee to (1) convert a portion of the loan in the amount of \$2,000,000 to a grant; and (2) redesignate the \$1,280,000 portion of the funding now designated for development costs to predevelopment costs.

Respectfully submitted,



Gregory Hunter

Interim Director of Redevelopment,
Economic Development, Housing and
Community Development

Prepared by:

Jens Hillmer, Urban Economic
Coordinator

Redevelopment Division

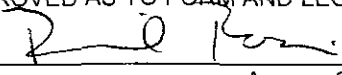
APPROVED AND FORWARDED TO
THE COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE:


Office of the Agency Administrator

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APPROVED AS TO FORM AND LEGALITY:

By: 
Agency Counsel

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION No. _____ C.M.S.

AN AGENCY RESOLUTION AMENDING AGENCY RESOLUTION NO. 2005-0067 C.M.S. AUTHORIZING A \$2,464,400 PREDEVELOPMENT AND DEVELOPMENT LOAN TO RESOURCES FOR COMMUNITY DEVELOPMENT FOR THE FOX COURTS AFFORDABLE HOUSING DEVELOPMENT LOCATED BETWEEN 18TH STREET, 19TH STREET, SAN PABLO AVENUE AND TELEGRAPH AVENUE, TO (1) CONVERT A PORTION OF THE LOAN IN THE AMOUNT OF \$2,000,000 TO A GRANT, AND (2) REDESIGNATE THE \$1,280,000 PORTION OF THE FUNDING NOW DESIGNATED FOR DEVELOPMENT COSTS TO PREDEVELOPMENT COSTS

WHEREAS, the Agency owns real property on the block bounded by San Pablo Avenue, 18th Street, 19th Street, and Telegraph Avenue, adjacent to the Fox Theater (the "Property"), located within the Central District; and

WHEREAS, on November 8, 2005, pursuant to Agency Resolution No. 2005-0067 C.M.S., the Agency entered into a Disposition and Development Agreement ("DDA") with Resources for Community Development ("RCD") for the development of Fox Courts (the "Project"), an 80-unit affordable housing development; and

WHEREAS, on November 8, 2005, pursuant to Agency Resolution No. 2005-0067 C.M.S., the Agency authorized a predevelopment and development loan for the Project in an amount not to exceed \$2,464,400 (the "loan"), of which \$770,000 was designated as a predevelopment loan to RCD with the remaining \$1,280,000 designated as a development loan; and

WHEREAS, the Agency desires to convert a portion of this predevelopment and development loan in the amount of \$2,000,000 to a grant; and

WHEREAS, the Agency further desires to redesignate the \$1,280,000 portion of the funding now designated for development costs to predevelopment costs; now, therefore, be it

RESOLVED: That Agency Resolution No. 2005-0067 C.M.S. is hereby amended to authorize the Agency Administrator to convert a portion of the predevelopment and development loan in the amount of \$2,000,000 to a grant to be used for the Project; and be it further

RESOLVED: That Agency Resolution No. 2005-0067 C.M.S. is hereby further amended to authorize the Agency Administrator or her designee to redesignate the \$1,280,000 portion of the funding now designated for development costs to be used instead for predevelopment costs of the Project; and be it further

RESOLVED: That the Agency hereby authorizes the Agency Administrator or her designee to determine, at her discretion and in consideration of the financial feasibility of the Project, whether to secure the grant with a deed of trust on the Property; and be it further

RESOLVED: That the Agency hereby appoints the Agency Administrator or his or her designee as agent of the Redevelopment Agency to negotiate and execute amendments to the DDA and the loan/grant documents, and to take any other action with respect to the Property, the Project, and the Agency funding consistent with this Resolution and its basic purpose.

IN AGENCY, OAKLAND, CALIFORNIA, _____, 2007

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND
 CHAIRPERSON DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
 LATONDA SIMMONS
 Secretary of the Redevelopment Agency
 of the City of Oakland