



DATE: November 14, 2023

TO: Mayor and City Council
Housing Authority Board

FROM: Housing Authority Executive Director/City Manager

SUBJECT: Third Amendment to Disposition, Development, and Loan Agreement with Habitat for Humanity East Bay to Modify the Conditions of Transfer for the Property Located at 123-197 A Street (A & Walnut/Sequoia Grove) and Affirming the Mitigated Negative Declaration which was Prepared for the Project in Accordance with the Requirements of the California Environmental Quality Act (CEQA) as Adopted by City Council on January 27, 2015

RECOMMENDATION

That the Housing Authority Board adopt a resolution (Attachment II) authorizing the execution of a Third Amendment to Disposition, Development, and Loan Agreement with Habitat for Humanity East Bay/Silicon Valley, Inc. to modify the conditions of transfer for the property located at 123-197 A Street (A & Walnut/Sequoia Grove).

SUMMARY

The Housing Authority entered into a Disposition, Development, and Loan Agreement (DDLA) with Habitat in 2014, providing a \$600,000 loan and outlining the terms of the sale of the property located at 123-197 A Street, for the development of a 10-unit, for-sale affordable townhome project known as Sequoia Grove. Soil contamination found at the site of the project and other delays for various reasons beyond Habitat's control caused the project to lose secured state funding in 2018, widening the project's funding gap and hindering development of the project. Despite the unforeseen challenges, Habitat continued to address the soil contamination and to pursue funding for the project. In 2021, Habitat was awarded \$1,002,500 from the California Department of Housing and Community Development Department CalHome Program. In 2022, Habitat received \$3,736,990 from various federal and state agencies, including an additional \$200,000 from the City's Inclusionary Housing Fund to fully fund the project. Around the time Habitat was able to finally secure full funding for the project, the entitlements expired for the project and Habitat had to reapply for entitlements on April 6, 2023 which were reapproved by the Planning Commission on September 28, 2023. This project has overcome many challenges and is now fully entitled and funded. Staff is proposing modifying the DDLA to allow early transfer of the property to Habitat which would facilitate the start of grading and allow Habitat to address soil mitigation and apply for building permits at the same time to keep this project moving forward.

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BACKGROUND

In June of 2009, the then City of Hayward Redevelopment Agency (the “former RDA”) used Low and Moderate-Income Housing funds to acquire from the City a 0.7-acre parcel of land located at 123-197 A Street for the sum of \$705,000 for the purpose of developing affordable housing.

On July 26, 2011, Council authorized staff to negotiate a Disposition and Development Agreement (DDA) with Habitat for Humanity East Bay/Silicon Valley, Inc. (“Habitat”) to develop 10 for-sale housing units for low-income purchasers.

On June 24, 2014, the Housing Authority of the City of Hayward (the “Authority”) in its capacity as the successor agency for the former RDA, approved a Disposition, Development, and Loan Agreement (DDLA) authorizing a \$600,000 loan of Authority funds and outlining the terms for the sale of the land to Habitat. Under the DDLA, Habitat performed an environmental review of the site and identified contaminants. To address the identified contaminants, Habitat began working with the State Department of Toxic Substance Control (DTSC) and various consultants to prepare a Remedial Action Workplan to clean up the site.

The mitigation measures required to address the soil contaminants delayed development and increased project costs. In 2018, the development delays also caused the project to lose state funding that Habitat had secured early on for the project due to inability to meet expenditure deadlines. Despite the unforeseen challenges, Habitat continued to identify funding sources to address the funding gap in the project.

To provide Habitat time to secure financing for the project, the DDLA was amended in 2018, 2022, and 2023 to extend the term and performance milestones through February 28, 2026. In 2021, Habitat was awarded \$1,002,500 from the California Department of Housing and Community Development Department CalHome Program. In 2022, Habitat received \$2,500,000 in funding from the Alameda County Measure A1 Homeowner Housing Development Fund, \$1,000,000 from the Federal Community Project Funding, \$236,990 from the Federal Home Loan Bank Affordable Housing Program, and an additional \$200,000 from the City’s Inclusionary Housing Fund as authorized under Resolutions 21-072, 22-085, and HA 22-02 to complete the financing requirements and fully fund the project. Sourcing all of these funds took longer than expected and, with the COVID-19 pandemic causing additional delays, the entitlements for the project expired during this period.

With funding secured, Habitat re-applied for entitlement approvals on April 6, 2023 with no substantive changes except those needed to bring the project into compliance with current state and municipal code requirements since the project was originally entitled in 2015. The Planning Commission approved the re-application for the project on September 28, 2023.

DISCUSSION

Despite unexpected delays and additional project costs, Habitat has remained diligent in pursuing fulfillment of its obligations under the DDLA and committed to providing affordable, for-sale housing in Hayward.

Sequoia Grove is a proposed 10-unit, for-sale townhome project containing three- and four-bedroom units. All units will be deed-restricted in perpetuity to households that qualify as low-income, or those earning at-or-below 80% of the area median income (AMI). The project will contain shared amenities that include common areas, barbeque and picnic tables, and a communal garden. To make its homes affordable, Habitat utilizes a successful “sweat equity” model wherein homebuyers spend approximately 500 hours helping to build their new homes in lieu of having to make a traditional downpayment. Habitat also helps the homebuyers secure 30-year fixed-rate mortgages prior to purchase.

Habitat for Humanity has requested modification of the DDLA to allow early transfer of the property to Habitat to facilitate the start of grading at the site while finalizing the Removal Action Workplan (RAW) with DTSC and concurrently applying for building permits. Under the DDLA, conditions of transfer include:

1. Obtaining all governmental approvals,
2. Approval of final drawings and construction documents,
3. Approval of financing proposal and plan
4. Obtaining building permits
5. Approval of Construction Contract (since Habitat for Humanity is the General Contractor this condition applies to any subcontractor hired)
6. Obtaining a construction bond
7. Providing evidence of insurance
8. Approval of the tentative map

Habitat’s request would require that the DDLA be modified to defer the requirements for obtaining all government approvals, permits, and approval of construction contracts until after the transfer of the property. Specifically, the project would require approval of the RAW by DTSC to obtain building permits from the City after transfer. Habitat has already initiated the approval process and plans to provide an oversight letter to the City of intent and conditional RAW approval from DTSC prior to transfer. The project is fully entitled and funded and the proposed modifications would allow Habitat to concurrently obtain approval of the RAW while pursuing building permits and starting grading on clean soil to keep the project moving forward. The Authority will incorporate reasonable performance milestones to give Habitat sufficient time to meet the obligations under the DDLA with construction expected to begin no later than May 2024 and the project completed by May 2026. In the event that Habitat is not able to meet the agreed upon obligations, the Authority would have the right to exercise a reversionary clause and ownership of the property would revert back to the Authority. Staff recommends modifying the Conditions of Transfer in the DDLA to allow early transfer to facilitate the start of grading at the site while finalizing the soil mitigation plan with DTSC and concurrently applying for building permits. Staff further recommends amending the DDLA to make changes necessary to comply with the terms of the City’s Affordable Housing Ordinance, Chapter 10, Article 17 of the Hayward Municipal Code.

Environmental Impact

The City prepared and by Resolution No. 15-019 approved the Mitigated Negative Declaration studying the environmental effects under the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) ("CEQA"). No subsequent review is necessary for this amendment to the DDLA pursuant to 14 California Code of Regulations Section 15162 because there have not been substantial changes: (1) in the improvements proposed to be funded under the DDLA; or (2) with respect to the circumstances under which the proposed project is being implemented, and (3) there has not been the appearance of new information which was not known and could not have been known as of the date of the DDLA.

ECONOMIC IMPACT

The project would contribute to the neighborhood by redeveloping a vacant infill site allowing for the development of ten ownership homes available to low-income first-time homebuyers. Such development would contribute to the character and revitalization of the neighborhood. Residential development of higher densities (e.g., small lot, single-family homes) will generate higher overall land value than older traditional large lot detached single-family developments typical of this neighborhood.

Social research indicates that access to affordable housing can improve educational outcomes, increase health and wellbeing, boost economic activity, and lower the costs for state and local governments to provide emergency housing, mental health crisis services, emergency medical care, and other services to assist the homeless or families and individuals with a housing crisis.

FISCAL IMPACT

There is no fiscal impact associated with this agenda item.

STRATEGIC ROADMAP

This agenda item supports the Strategic Priority of Preserve, Protect & Produce Housing. This item is not specifically related to a project identified in the Strategic Roadmap but City Council has expressed support to increase homeownership opportunities in Hayward. This project would facilitate the development of diverse housing types and increase housing stock for all Hayward residents and community members, including the expansion of affordable housing opportunities.

SUSTAINABILITY FEATURES

Habitat will incorporate green building materials and techniques in its construction practices above what is required by building code, so each home will be energy efficient and will provide a healthy environment for its residents. Green elements will include photovoltaic solar panels, radiant-barrier roof sheathing, double-pane, low-e windows, raised heel trusses,

and recycling or reuse of more than 90% of construction waste. All of the landscaped areas will have drought tolerant and/or native landscaping. Habitat intends to get the homes certified as sustainable through Build-It-Green's Green Point Rated Program.

PUBLIC CONTACT

On June 18, 2012, staff and Habitat held a community meeting to present the proposed project and Habitat's qualifications to the Burbank Neighborhood Forum. The proposal was well received by the attendees who expressed their appreciation to City and Habitat staff for the opportunity to comment on a new development in their neighborhood. On November 24, 2014, 288 notices about the proposed project were sent to all property owners and residents within a 300-foot radius of the project site and a public hearing notice was published in The Daily Review newspaper on January 17, 2015.

On April 12, 2023, the Planning Division mailed 122 Notices of Receipt of Application (NOR) for the proposed project to the owners and occupants of all property within a 300-foot radius of the project site, as well as to the Burbank Task Force and other interested parties. Staff was contacted by one neighboring property owner residing along B Street in favor of the project in response to the NOR.

On September 14, 2023, a total of 129 public hearing notices were mailed to the owners and occupants of all properties within a 300-foot radius of the project site, as well as the same neighborhood group and other interested parties that received the NOR that was mailed on April 12, 2023. A public hearing notice was also published in The Daily Review newspaper on the same date.

On September 28, 2023, the proposed project was presented for entitlement reapprovals at the Planning Commission meeting. During the meeting, two members of the public made positive comments in favor of the project.

NEXT STEPS

Staff will prepare an amendment to the DDLA in line with the modifications outlined.

Prepared by: Doris Tang, Management Analyst

Recommended by: Christina Morales, Housing Division Manager
Sara Buizer, Development Services Director

Approved by:



Kelly McAdoo, Executive Director