



COMMUNITY DEVELOPMENT DEPARTMENT

Council Meeting Date: May 6, 2008

Staff Report #: 08-058

Agenda Item #: D3

CONSENT CALENDAR: Adoption of a Resolution Authorizing Submittal of an Application to the State Department of Housing and Community Development for Transit Oriented Development Housing Program Infrastructure Grant Funding Associated with the Derry Mixed Use Project Located at 550-580 Oak Grove Avenue and 540-570 Derry Lane.

RECOMMENDATION

Staff is recommending that the Council approve a resolution authorizing submittal of an application to the State Department of Housing and Community Development (HCD) for Transit Oriented Development (TOD) Housing Program infrastructure grant funding associated with the revised Derry mixed use project. The resolution is included as Attachment A.

BACKGROUND

The revised Derry project is a proposal for the development of 108 residential units and 24,925 square feet of commercial space on property located on the north side of Oak Grove Avenue immediately west of the Caltrain right-of-way and approximately 150 feet east of El Camino Real. The project is currently undergoing review.

In association with the Derry project, the City has submitted two separate and distinct applications for grant funding; one to the City/County Association of Governments (C/CAG) for a transportation project grant, and one to HCD for a TOD Housing Program infrastructure grant. Submittal of the grant applications is independent from the review of the Derry development proposal. The two grant applications are described in more detail below, although the HCD grant application is the focus of this report.

City/County Association of Governments (C/CAG) Grant

At its meeting of February 26, 2008, the City Council adopted a resolution authorizing the submittal of an application to C/CAG for a transportation project grant associated with the revised Derry project. The purpose of the grant is to support TOD development by providing funding to the City for a transportation project. The transportation project is not required to be associated with the Derry project and may be used for an unrelated transportation project in the city. A specific transportation project will be identified at a

later date through the City's project priority process. The grant is noncompetitive, meaning that all jurisdictions with an eligible TOD project will receive a proportionate share of the grant funds. The maximum funding amount for any one project is based on the number of bedrooms and level of affordability in the project. The maximum grant amount for the Derry revised project is \$422,000. The grant applications are currently under review by C/CAG.

HCD Transit Oriented Development (TOD) Housing Program Infrastructure Grant

The TOD Housing Program infrastructure grant was first introduced to the Council as an Information Item at its March 4, 2008 meeting. The staff report included a description of the purpose and objectives of the TOD Housing Program, possible uses of the grant funds, criteria on which projects would be evaluated, and an explanation by the Derry project sponsors of the need for the grant funding. The March 4, 2008 report is included as Attachment B.

Preliminary applications for the grant funding were due to the State by March 7, 2008. As indicated in the March 4, 2008 report, staff submitted the preliminary application to the State within the mandated deadline. The preliminary application is available for review at the Community Development Department. The filing of the preliminary application essentially established a "placeholder" for the Derry project, thereby allowing additional time for completion of required supplemental information, including the adoption of a City resolution authorizing the filing of the application and submittal of supplemental financial information by the project sponsor. The resolution and supplemental financial information are discussed in more detail in the Analysis section of the report.

ANALYSIS

The primary objectives of the State TOD Housing Program are to increase the overall supply of housing, increase the supply of affordable housing, increase public transit ridership, and minimize automobile trips. The program seeks to accomplish these objectives by providing financial assistance for the development of housing and related infrastructure near public transit stations.

Under the program, low-interest loans are available as gap financing for rental housing projects that include affordable units and as mortgage assistance for homeownership developments. In addition, grants are available to cities, counties and transit agencies for infrastructure improvements necessary for the development of specified TOD housing developments, or to facilitate connections between these developments and transit stations. The infrastructure grant funding is intended to assist private housing projects that might not otherwise be financially feasible. Projects must demonstrate that the grant will not result in developers realizing a profit that exceeds the commercially reasonable range for other developments of similar size and level of risk. The applicant must show that program funds are reasonably necessary for project feasibility through

submittal of market studies, construction contracts and other project economic information and that no other source of compatible funding is reasonably available.

The Derry project sponsors have stated that the combination of project revisions and changes in the housing market have created a risk to the financial feasibility of the project, resulting in a likely need for the infrastructure grant funding. The project plans currently under review include the following specific infrastructure projects that would be eligible for the grant funding:

- Construction of the proposed Derry Lane along the eastern boundary of the project site, including approximately 1,000 linear feet of new public street improvements and associated utilities;
- Improvements to Oak Grove Avenue, including new curb, gutter, sidewalk, street trees and underground utilities; and
- Construction of a submerged parking garage.

The infrastructure funding is a competitive grant process, with the maximum possible award based on the total number of units and number of low- and moderate-income units in the housing development. At \$35,000 per market rate unit (92 units) and \$50,000 per below market rate unit (16 units), the Derry project would be eligible for a maximum award of \$4,020,000. Staff would comment that this is different than the \$3,780,000 stated in the March 4, 2008 staff report. At that time, the calculation for the below market rate units had not been clarified and so was not included in the preliminary calculation. The grant funding would be provided to the City on a cost reimbursement basis. The City would then forward funding on to the developer, who is responsible for the infrastructure improvements associated with the project.

At the time staff prepared and presented the previous staff report on the proposed grant funding, the State had indicated that the City resolution to authorize the filing of the application and detailed financial information verifying the need for the grant funding could be submitted at a later date. Based on this, staff intended to review the financial information as a part of the Council's consideration of the resolution.

Subsequent to the March 4, 2008 Council meeting, the State clarified that although the City resolution authorizing the filing of the application is required to be submitted by May 7, 2008 the detailed financial information will not be required until such time that the State has reviewed the preliminary applications and selected the grant recipients. The State is requiring that the financial information be submitted just prior to the award of the grants. The timing of the submittal is intended to ensure that the information reflects final conditions just prior to release of the grant funds.

Given this updated information from the State, the resolution being considered by the Council is a statement that verifies that the City is an eligible applicant under the TOD Housing Program and that the Derry project meets the basic project eligibility requirements, including being a high density project with a minimum of 40 units per net acre with a minimum of 15 percent of the units affordable to households at low- and moderate-income levels and located within one-quarter mile of a Caltrain station.

The resolution is not a statement or verification of the financial need of the project. It will be the State's responsibility to determine the financial feasibility of the project and the need for the grant funding. Given the State's responsibility for the review of the financial information and its review process and timeline, it would be premature for the City to review financial information that will likely change prior to final submittal to the State. Once the information is submitted to the State, it will be part of the public record on the grant application and available for review upon request to HCD.

The Derry project meets the basic eligibility requirements regarding density, affordability and location near a Caltrain station. Staff would comment that the State has yet to determine the exact level of affordability that will be required for 15 percent of the units. It is possible that the State will require a level of affordability that is lower than currently proposed in the Derry project. If this is the case, the Derry project sponsors have indicated a willingness to reduce the affordability component of the project from moderate to low income levels in order to continue to qualify for the grant funding. Staff intends to include a condition of approval for the Council's consideration during review of the Derry development proposal that would allow staff to approve this change in affordability of the Below Market Rate units.

IMPACT ON CITY RESOURCES

The grant application process is directly related to the Derry project therefore staff time related to the grant application process is fully recoverable through fees charged to the applicant. If the grant is awarded, there will be minor staff time necessary to administer the grant. Staff intends to include a condition of approval for Council consideration during the review of the Derry project that would require the project sponsors to reimburse the City for staff time to administer the grant.

POLICY ISSUES

The adoption of the resolution authorizing submittal of the application for infrastructure grant funding does not represent any change to City policy.

ENVIRONMENTAL REVIEW

Application for grant funds is not a project under the current California Environmental Quality Act Guidelines. A Final EIR for the development project has been certified and an Addendum has been prepared and is currently under review by the City.

Arlinda Heineck
Community Development Director
Report Author

PUBLIC NOTICE

Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting. In addition, the staff report was posted on the Derry Mixed-Use Project webpage on the City's website, and an email bulletin was sent to all subscribers to the page.

ATTACHMENTS

- A. Resolution authorizing submittal of a TOD Housing Program application to HCD for the Derry mixed use project
- B. Council staff report, dated March 4, 2008

v:\Staff Reports\CC\2008\050608 - HCD TOD application for Derry.doc

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
AUTHORIZING SUBMITTAL OF A TRANSIT ORIENTED DEVELOPMENT HOUSING
PROGRAM APPLICATION TO THE CALIFORNIA DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT FOR THE DERRY MIXED USE PROJECT**

WHEREAS, the State of California, Department of Housing and Community Development (the "Department") has issued a Notice of Funding Availability ("NOFA") under its Transit-Oriented Development ("TOD") Housing Program issued on December 11, 2007; and

WHEREAS, the City of Menlo Park wishes to obtain from the Department a TOD Housing Program grant for the development of infrastructure supporting the accessibility of an ownership housing development to transit; and

WHEREAS, the City of Menlo Park is an Eligible Applicant under the TOD Housing Program; and

WHEREAS, the proposed Derry project is a high density housing project of 40 units per net acre, including 15 percent of the units affordable to households at low-and moderate-income levels, and is located within one-quarter mile of a Caltrain station;

WHEREAS, the Department has the responsibility for review of detailed financial information, including market studies, construction contracts and other project economic information to ensure that program funds are reasonably necessary for project feasibility and that no other source of compatible funding is reasonably available.

NOW, THEREFORE, IT IS RESOLVED, that the City of Menlo Park is hereby authorized to submit an application to request a grant amount not to exceed \$4,020,000 (the "TOD Grant") in connection with the Department's grant of funds to the City pursuant to the Notice of Funding Availability (NOFA) issued on December 11, 2007 for use with the Derry Mixed Use project.

I, Sherry Kelly, City Clerk of the City of Menlo Park, do hereby certify that the above and foregoing Resolution was duly and regularly passed and adopted at a regular meeting held by said Council of the City of Menlo Park on the 6th day of May, 2008 by the following vote:

AYES: Council Members:
NOES: Council Members:
ABSENT: Council Members:
ABSTAIN: Council Members:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of the City of Menlo Park, this _____ day of _____.

Sherry Kelly
City Clerk



COMMUNITY DEVELOPMENT DEPARTMENT

Council Meeting Date: March 4, 2008

Staff Report #: 08-033

Agenda Item #: H1

INFORMATION: Submittal of an Application to the State Department of Housing and Community Development for Transit Oriented Development Housing Program Infrastructure Grant Funding Associated with the Derry Mixed Use Project Located at 550-580 Oak Grove Avenue and 540-570 Derry Lane.

This is an information report. Council action is not required at this time.

BACKGROUND

The revised Derry project is a proposal for the development of 108 residential units and 24,925 square feet of commercial space on property located on the north side of Oak Grove Avenue immediately west of the Caltrain right-of-way and approximately 150 feet east of El Camino Real. The project is currently undergoing review. A separate staff report related to the review process, and specifically to the Development Agreement, for the Derry project is also on the March 4, 2008 Council agenda.

At its meeting of February 26, 2008, the City Council adopted a resolution authorizing the submittal of an application to the City/County Association of Governments of San Mateo County (C/CAG) for a transportation project grant associated with the revised Derry project. The grant provides funding to the City for an as yet unidentified transportation project. The transportation project is not required to be associated with the Derry project and may be used for an unrelated transportation project in the city. The subject of this staff report is consideration of a second grant related to the Derry project. The proposed grant is unrelated to the grant application recently submitted to C/CAG.

ANALYSIS

Transit Oriented Development Housing Program

The Transit Oriented Development (TOD) Housing Program of the State Housing and Community Development Department (HCD) was funded by Proposition 1C, the Housing and Shelter Trust Fund Act of 2006. Its primary objectives are to increase the overall supply of housing, increase the supply of affordable housing, increase public transit ridership, and minimize automobile trips. The program seeks to accomplish these objectives by providing financial assistance for the development of housing and related infrastructure near public transit stations. A total of \$285 million will be made

available over approximately three years. The first funding cycle was recently announced, offering \$95 million for eligible TOD projects in California. Additional information on the grant program is available through the HCD website at <http://www.hcd.ca.gov/fa/tod/>.

Under the program, low-interest loans are available as gap financing for rental housing projects that include affordable units and as mortgage assistance for homeownership developments. In addition, grants are available to cities, counties and transit agencies for infrastructure improvements necessary for the development of specified TOD housing developments, or to facilitate connections between these developments and transit stations.

The program outlines eligibility requirements that must be met in order to be considered for a grant award. Specifically, an eligible project must consist of a minimum of 50 new or substantially rehabilitated units, be located in an urbanized area and within close proximity to a transit station, include a minimum of 15 percent affordable units, and have a minimum net density (Floor Area Ratio) approaching 150 percent.

The program also outlines additional eligibility criteria for the infrastructure grant funding. Specifically, the infrastructure grant funding is intended to assist private housing projects that might not otherwise be financially feasible. Projects must demonstrate that the grant will not result in developers realizing a profit that exceeds the commercially reasonable range for other developments of similar size and level of risk. The applicant must show that program funds are reasonably necessary for project feasibility through submittal of market studies, construction contracts and other project economic information and that no other source of compatible funding is reasonably available.

The infrastructure projects that may be considered are those required by a local government as a condition to the development of the project, such as sewer or water system upgrades, street improvements, and drainage improvements, and/or improvements that substantially enhance public pedestrian or bicycle access from the housing development to the transit station.

Funds will be allocated through a competitive process based on the merits of individual development projects. The application selection criteria focuses on traditional concerns of housing projects, such as affordability and readiness, and on the extent to which developments realize the program objectives of reducing automobile trips and increasing transit ridership.

Submittal of Grant Funding Application

The Derry project sponsor is interested in pursuing a TOD Housing Program infrastructure grant, stating that the combination of project revisions and changes in the housing market are a risk to the feasibility of the project. The project sponsor has specifically noted that a construction loan will be needed to finance the project and that

construction lenders have minimum financial thresholds which must be met as a condition of providing construction financing. According to the project sponsor, at the time the Settlement Agreement between O'Brien Homes LLC and Menlo Park Tomorrow was negotiated in May 2007, the project profitability and other financial metrics were reduced to levels at or below the minimum levels required by construction lenders. The project sponsor asserts that this is as a result of the 20 percent reduction in the residential density while maintaining the quality of building materials and finishes and the supplemental payment of two million dollars to the City in addition to all normally required fees. Since that time, the residential market has not improved, construction costs have not dropped, and the lending environment has tightened considerably due to the sub-prime mortgage issue and related credit crunch. Consequently, the project sponsor has determined that there is a significant risk that the Derry project will not be viable without TOD Housing Program funding if an attempt to obtain construction financing for the project is made in the current marketplace.

HCD has stated that due to the short timeline between announcement of the grant funding and deadline for submittal of an application, it will be accepting preliminary applications by the deadline of March 7, 2008, with detailed financial information to follow at a later date. A future Council action to approve a City resolution supporting the filing of the application would also be required to be submitted within 60 days of the filing of the preliminary application. Staff will review the more detailed financial information as a part of preparing the resolution for Council consideration.

The infrastructure grant funding requires that the application be submitted by the City on behalf of a specified housing project. A 20 percent match of the grant funds is also required. The Derry project sponsor would be completing the application materials for review by staff and would be providing the 20 percent matching funds.

The infrastructure grant funding is based on the total number of units in the housing development. At \$35,000 per unit, the Derry project with 108 units would be eligible for a maximum of \$3,780,000. To provide some perspective for the grant funding, the current project valuation is estimated at \$34 million. The grant funding would be provided to the City on a cost reimbursement basis. The City would then forward funding on to the developer, who is responsible for the infrastructure improvements associated with the project.

All funding from the State is contingent on the grant being necessary to make the project financially feasible. If conditions in the residential real estate market or construction lending market change in a favorable direction prior to the award of the grant such that the project is viable without the TOD Housing funds, then such funds would no longer be necessary or available.

It is staff's intent unless directed otherwise to file the preliminary application. This would create a "placeholder" and allow the Derry project sponsor adequate time to prepare the complete application with detailed financial information. Staff has also contacted a representative of Menlo Park Tomorrow to advise them of the request for the City to file

the preliminary application on behalf of the Derry project. Staff would return to Council within the next 60 days for review of the complete application, including detailed financial information, and consideration of a resolution supporting the application. If the Council opts to not adopt the resolution at that time, the City would withdraw the preliminary application.

IMPACT ON CITY RESOURCES

The grant application process and potential funding is directly related to the Derry project, therefore all staff time related to the grant application process is fully recoverable through fees charged to the applicant.

POLICY ISSUES

The filing of a preliminary application does not represent any change to City policy, but creates a placeholder to allow for consideration of a resolution supporting the filing of the application at a later date.

ENVIRONMENTAL REVIEW

Application for grant funds is not a project under the current California Environmental Quality Act Guidelines. A Final EIR for the development project has been certified and an Addendum is currently being prepared.

Arlinda Heineck
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Report Author

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ATTACHMENTS

None