



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Community Services
Department No.: 055
For Agenda Of: April 19, 2016
Placement: **Administrative**
Estimated Time: N/A
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department George Chapjian, Director 568-2467
Director(s) Dinah Lockhart, Deputy Director 568-3523
Contact Info: Laurie Baker, Grants and Program Manager 568-3521

SUBJECT: Subordination of County Regulatory Agreements on Positano Apartments
(District 2)

County Counsel Concurrence

As to form: Yes

Other Concurrence: Risk Management

As to form: Yes

Auditor-Controller Concurrence

As to form: Yes

Recommended Actions:

- a. Approve and authorize the Chair of the Board of County Supervisors to execute the "HOME" Subordination Agreement (Attachment A), which will subordinate the County's "HOME" Regulatory Agreement to new senior debt, in the approximate amount of \$20 million, and related financing documents, ;
- b. Approve and authorize the Chair of the Board of County Supervisors to execute the "CDBG" Subordination Agreement (Attachment B), which will subordinate the County's "CDBG" Regulatory Agreement to new senior debt, in the approximate amount of \$20 million, and related financing documents,;
- c. Determine that the Recommended Actions are not a project under the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline section 15378(b)(4), finding that the activities are the creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (Attachment C).

Summary Text:

Staff is recommending that the Board approve a request by the Housing Authority of the County of Santa Barbara (Housing Authority) that the County subordinate its "CDBG" Regulatory Agreement and its "HOME" Regulatory Agreement to a new senior loan on Positano Apartments (Property). The Property is an 118 unit affordable rental housing development with one, two and three bedroom units

located at 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33 and 35 Camino de Vida, in (unincorporated) Santa Barbara County, 93111 (District 2).

The Property's ownership will be restructured into a limited partnership, Positano Apartments, L.P, a California limited partnership (LP). The Housing Authority will be the General Partner and the limited partner will be Union Bank. The LP will utilize tax-exempt bonds and low-income housing tax credits for the acquisition and rehabilitation of the Property. Financing of the debt will be provided by Berkeley Point Capital LLC through a Freddie Mac loan program for both the construction and permanent loan. A condition of Freddie Mac requires that the County's regulatory agreements be subordinated to the Deed of Trust securing the new loan.

Background:

In 1996, the County provided two loans, utilizing funds from the federal HOME Investment Partnerships (HOME) and Community Development Block Grant (CDBG) programs, to AMCAL Santa Barbara Fund Limited Partners for the acquisition and development of Positano Apartments, an 118 unit affordable rental housing development located at 11 Camino de Vida, in an unincorporated area of Santa Barbara County. Both loans have been repaid in full by AMCAL. The two Regulatory Agreements recorded against the Property remain in full force and effect.

The "HOME" Regulatory Agreement restricts the incomes and rents for 11 of the 118 units for a period of fifty-five (55) years following the issuance of a final Certificate of Occupancy for the Property. Household income is restricted to forty-six percent (46%) of the area median income published annually for the area by HUD, or \$36,892 for a family of four (2016 limit). The maximum rents for 2016 range from approximately \$750 to \$1,043 depending on the number of bedrooms in the units.

The "CDBG" Regulatory Agreement restricts the incomes and rents charged for all 118 units and uses the same income and rent limits as described above for the HOME Regulatory Agreement.

In August 2015, the County Board of Supervisors held a public hearing pursuant to the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and adopted a Resolution (Attachment D) approving the issuance of multifamily housing revenue bonds for Positano Apartments by the Housing Authority to acquire and rehabilitate the Property in conjunction with 4% low-income housing tax credits (LIHTC).

In September 2015 the Housing Authority closed escrow on the purchase of the Property. The Property ownership will be restructured into a limited partnership and the property will be sold/transferred by the Housing Authority to the newly-formed Positano Apartments, L.P. The Housing Authority will be the general partner, and the equity investor and limited partner will be Union Bank. In addition to the equity that Union Bank will provide by purchasing the tax credits, the bonds will be sold to Berkeley Point Capital LLC, which will then loan approximately \$20 million to Positano Apartments, L.P.. This is necessary to transfer ownership of the property and complete the rehabilitation. Closings on both the loan and the partnership agreement are scheduled for April 27, 2016.

The two regulatory agreements were recorded by the County in 1998 in conjunction with the County HOME and CDBG loans. Both loans have been repaid in full by the prior owner. However, the County Regulatory Agreements, regulating tenant income and rents charged pursuant to the HOME and CDBG

regulations, remain in full force and effect. Freddie Mac requires that these two regulatory agreements be subordinate to the Deed of Trust securing the new loan.

Performance Measure:

The Regulatory Agreements, restricting tenant income and rents charged at the Property, will remain in effect until the year 2053. County HCD staff will continue to monitor the property as required for the duration of the regulatory term. It is estimated that HCD will incur \$2,500 in annual costs to monitor the Property.

Fiscal and Facilities Impacts:

N/A

Fiscal Analysis:

N/A

Key Contract Risks:

The County's regulatory agreements will remain in full force until 2053. Execution of the subordination agreements will result in the County's rights under the regulatory agreements becoming subordinate to the lien of the lender's deed of trust. In the event of foreclosure and sale of the property, the County's regulatory agreements could be extinguished. The minimum regulatory periods required by the federal HOME program will be satisfied twenty (20) years following close-out of the County HOME loan in the federal Integrated Information and Disbursement System (IDIS) or until 2018. The federal CDBG program does not regulate minimum regulatory periods and the "National Objective" of the CDBG program has been met. Therefore, any risk the County may have in case of non-compliance with the HOME affordability term triggering repayment of HOME funds to HUD with non-federal funds will terminate in 2018.

HCD has evaluated the risks associated with the Project and determined that such risks are within industry standards and that there are safeguards in place to prevent or mitigate risks. HCD annually monitors both the financial capacity of the Project and owner, and County regulatory restrictions on occupancy by low-income households.

Berkeley Point Capital LLC, the new lender and Union Bank, the limited partner, have fully vetted and underwritten the financing for the Property and have determined that the new loan will not hinder the ability of the Property to generate sufficient revenue to operate successfully.

Staffing Impacts:

Current Housing and Development (HCD) staff will continue to monitor Positano Apartments for occupancy and rent requirements for the duration of the regulatory period.

Special Instructions:

1. Please call Lucy Graham at ext. 3533 for pick-up of the documents listed below. They are needed for delivery to an escrow company for a loan closing scheduled for April 27, 2016.
 - a. One copy of the "HOME" subordination agreement with original signatures; and
 - b. One copy of the "CDBG" subordination agreement with original signatures.
2. Please provide a copy of the minute order to Lucy Graham by email.

Attachments:

Attachment A: Subordination Agreement for the HOME Regulatory Agreement

Attachment B: Subordination Agreement for the CDBG Regulatory Agreement

Attachment C: CEQA NOE

Attachment D: Resolution No. 15-215