



Good Neighbors

San Diego
Housing Commission

REPORT

DATE ISSUED: November 3, 2006

REPORT NO: HAR 06-024

ATTENTION: Chair and Members of the Housing Authority
Council President and Members of the City Council

SUBJECT: Preliminary Items Pursuant to Issuing Multifamily Housing Revenue Bonds for Merrill Gardens at Banker's Hill (Council District 2)

REQUESTED ACTION:

Take the initial steps to issue Housing Authority mortgage revenue bonds to fund the development of an 84-unit, mixed-income senior housing facility located in Bankers Hill. Borrower would develop the property and restrict rents on 20% of the units below market; issuance of bonds would require Housing Authority approval at a later date.

STAFF RECOMMENDATION:

- A. Housing Authority approve a bond inducement resolution (a "declaration of official intent") for up to \$35 million in multifamily housing revenue bonds for development of the Merrill Gardens at Bankers Hill by Merrill Gardens at Banker's Hill, LLC ("Merrill Gardens");
- B. Housing Authority approve an application (and subsequent applications if necessary) to the California Debt Limit Allocation Committee ("CDLAC") for an allocation of authority to issue tax-exempt "private activity bonds" in an amount up to \$35 million for the Merrill Gardens at Banker's Hill project; and,
- C. City Council hold a public hearing (*known as a TEFRA hearing -Tax Equity and Fiscal Responsibility Act*) and adopt a resolution approving the issuance of tax-exempt bonds in an amount up to \$35 million by the Housing Authority for Merrill Gardens at Banker's Hill located at 222 Laurel Street in the City of San Diego.

SUMMARY

The Project

Merrill Gardens at Banker's Hill is being planned as a complete senior residential community. The project will include independent and assisted living units and a host of on-site services and amenities. The proposed project would be located on the northeast corner of 2nd Avenue and Laurel Street in close proximity to Balboa Park and downtown San Diego (See attachment 1 for a site map).

Merrill Gardens recently purchased the site from a limited liability corporation headed by Peter Janopaul and is currently working on the design of the project. Preliminary plans call for 84 dwelling units in a four to six story structure with one level of underground parking. Common area amenities would include a large outdoor courtyard, commercial dining room, library, activity room, beauty salon and wellness center.

Detailed design plans and a development permit application will be submitted to the City's Development Services Department in early 2007. The bond inducement and TEFRA actions described



November 3, 2006

Preliminary Bond Items for Merrill Gardens at Banker's Hill

Page 2

in this report are being undertaken at this time in order to preserve the opportunity to issue tax exempt housing revenue bonds for the project in the future; these items do not grant any authority from the City of San Diego to construct the proposed project.

Housing Affordability

Merrill Gardens at Banker's Hill will include 18 studios, 46 one-bedroom units, and 20 two-bedroom units. 20% of the units (17 units) will be restricted at 50% area median income (AMI) (\$27,600 for a family of two). The remaining units will be rented at market rates. In addition to paying for rents, tenants would also make payments for services, such as meals, transportation, housecleaning, and varying levels of medical and personal care. Rent and income restrictions for the project are outlined in the chart below. The proposed rents do not include payments for services which will be charged in addition to the proposed rents.

Type	AMI	Number of Units	Restricted Rent (including utility allowance)
Studio	50% AMI	4	\$604
Studio	Market	14	\$900*
One Bedroom	50% AMI	9	\$690
One Bedroom	Market	37	\$1,300*
Two Bedroom	50% AMI	4	\$776
Two Bedroom	Market	16	\$1,750*
Total		84	

*Estimated market rents

The Developer

The project is being developed by Merrill Gardens at Banker's Hill, LLC a partnership of Merrill Gardens and SRM Development. The developer's Statement for Public Disclosure and most recent financials are included as Attachments 2 and 3. Merrill Gardens is a subsidiary of the R.D. Merrill Company, a private holding company formed in the early 1890's by timber pioneer R.D. Merrill. The R.D. Merrill Company formed Merrill Gardens in 1993 to provide an alternative to traditional retirement housing.

In its thirteenth year of operation, Merrill Gardens has grown from 8 employees to 2,700. Merrill Gardens currently owns and operates 70 communities in 23 states, including California. Merrill Gardens owns and operates 17 senior communities in the following California locations:

Apple Valley	Oceanside	Stockton
Citrus Heights	Rohnert Park	Vacaville
Fremont	Sacramento	Vallejo (North Bay)
Hemet	San Ramon	Vallejo (Central)
Lancaster	Santa Maria	Whittier
Manteca	Sonoma	

SRM Development (SRM) is a privately funded real estate development company primarily focused on the development of high quality multi-family, retirement, and mixed-use communities. SRM has over \$500 million of projects in development throughout Washington, Arizona, Oregon, Idaho, and California. In

November 3, 2006

Preliminary Bond Items for Merrill Gardens at Banker's Hill

Page 3

addition, SRM and Merrill Gardens are partners on nine retirement communities in California and Washington.

In downtown San Diego, SRM has recently completed two projects: Entrada and Market Street Village. Entrada is a 172-unit apartment project located at 13th Street and Island Avenue that includes 40 affordable units. Of the 40 affordable units, 22 are restricted at 70% AMI (\$48,300 for a family of four) and 18 are restricted at 100% AMI (\$64,900 for a family of four). Market Street Village, located at 14th Street and Market Street, is a mixed-use development that includes 225 apartments and a 43,000 square-foot Albertson's supermarket.

Proposed Housing Bonds

The Housing Commission utilizes the Housing Authority's tax-exempt borrowing status to pass on lower interest rate financing (and make federal tax credits available) to developers of affordable housing. The Housing Authority's ability to issue bonds is limited under the U.S. Internal Revenue Code. To issue bonds for a project, the Housing Authority must first submit an application to CDLAC for a bond allocation. Prior to submitting applications to CDLAC, projects are brought before the Housing Commission, Housing Authority, and City Council. Housing Authority bond inducement resolutions must be obtained prior to application submittal and City Council TEFRA resolutions must be secured no later than 30 days after application submittal.

The action item for the Housing Authority will be to approve a bond inducement resolution for the project. The bond inducement resolution establishes a date after which (and up to 60 days prior to which) costs incurred can be reimbursed from bond proceeds. Merrill Gardens purchased the site for the proposed project on October 2, 2006. For the site acquisition cost to be an eligible use of bond proceeds, the Housing Authority must approve the bond inducement resolution by December 1st. It is important to maintain the land cost as a reimbursable bond expense for the proposed senior facility because expenses such as the commercial kitchen and dining and laundry facilities cannot be paid for from bond proceeds. In order to meet the December 1st deadline, this item will be docketed for consideration by the Housing Authority on November 21st.

Approval of the bond inducement resolution by the Housing Authority and the TEFRA resolution by the City Council would also permit staff to submit an application to CDLAC in 2007 for an allocation of bond issuing authority. If the project moves forward as proposed, it is anticipated that bonds would be issued in late 2007. A general description of the Multifamily Bond Program and actions that must be taken by the Housing Authority and by the City Council to initiate and finalize proposed financings are described in Attachment 4.

The total development cost of the project is estimated to be approximately \$40 million. In addition, to housing revenue bonds, the project will also be financed with developer equity. At present, no Housing Commission loan funds are proposed for the project.

The developer currently proposes to issue the bonds through a public offering. The bonds would meet all the requirements of the Housing Commission's Multifamily Housing Revenue Bond Program policy and would fully comply with the City's ordinance on bond disclosure.

November 3, 2006

Preliminary Bond Items for Merrill Gardens at Banker's Hill

Page 4

FISCAL CONSIDERATIONS:

There are no fiscal impacts to the Housing Commission, City, or Housing Authority associated with the requested actions. Approval of the bond inducement and TEFRA resolutions do not commit the Housing Authority to issue bonds. The bonds would not constitute a debt of the City of San Diego. If bonds are ultimately issued for the project, the bonds will not financially obligate the City, the Housing Authority or the Housing Commission because security for the repayment of the bonds will be limited to specific private revenue sources. Neither the faith and credit nor the taxing power of the City or the Authority would be pledged to the payment of the bonds. The developer is responsible for the payment of all costs under the financing, including the Housing Commission's annual administrative fee.

PREVIOUS HOUSING AUTHORITY And/Or COMMITTEE ACTIONS: None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The developer anticipates presenting an informational item to the Uptown Planners on November 15, 2006. Uptown Planners will also hear an action item on the project once a development permit application is submitted.

ENVIRONMENTAL REVIEW:

The proposed bond inducement and TEFRA items are not subject to review under the California Environmental Quality Act (CEQA) per Section §15060(C)(2) of the CEQA Guidelines. The issuance of any bonds for the project will be contingent upon proper environmental review of the project under CEQA by the City of San Diego.

KEY STAKEHOLDERS & PROJECTED IMPACTS:

Seniors are the intended residents of the project. Merrill Gardens at Banker's Hill, LLC is the developer of the project. The owners of Merrill Gardens at Banker's Hill, LLC are listed in Attachments 2. CSG Advisors and Stradling Yocca Carlson and Rauth have been selected to represent the Housing Authority as financial advisor and bond counsel.

Respectfully submitted,

Approved by,

Cissy Fisher
Director of Housing Finance & Development

Elizabeth C. Morris
President & Chief Executive Officer

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- Attachments:
1. Site Map
 2. Merrill Gardens' Disclosure Statement*
 3. Merrill Gardens' Financial Statement*
 4. Multifamily Bond Program Summary

* Distribution of the attachment is limited. A copy is available for review at the Housing Commission office located at 1625 Newton Avenue

**HOUSING COMMISSION MULTIFAMILY
HOUSING REVENUE BOND PROGRAM
Summary**

General Description: The multifamily housing bond program provides below-market financing (based on bond interest being exempt from income tax) for developers willing to set aside a percentage of project units as affordable housing. Multifamily housing revenue bonds are also known as “private activity bonds” bonds because the projects are owned by private entities, often including nonprofit sponsors and for-profit investors.

Bond Issuer: Housing Authority of the City of San Diego. There is no direct legal liability to the City, the Housing Authority or the Housing Commission in connection with the issuance or repayment of bonds; there is no pledge of the City’s or the Housing Authority’s faith, credit or taxing power. The bonds do not constitute a general obligation of the issuer because security for repayment of the bonds is limited to specific private revenue sources, such as project revenues. The developer is responsible for the payment of costs of issuance and all other costs under each financing.

Affordability: Minimum requirement is that at least 20% of the units are affordable at 50% of Area Median Income (AMI). Alternatively, a minimum of 10% of the units may be affordable at 50% AMI with an additional 30% of the units affordable at 60% AMI. The Housing Commission requires that the affordability restriction be in place for a minimum of 15 years. In practice, projects financed by multifamily housing bonds are affordable for a minimum of 30 years. Bonds may also be combined with other financing sources to create deeper affordability and longer terms of restriction.

Rating: Generally “AAA” or its equivalent with a minimum rating of “A” or, under conditions that meet IRS and Housing Commission requirements, bonds may be unrated for private placement with institutional investors (typically, large banks). Additional security is normally achieved through the provision of outside credit support (“credit enhancement”) by participating financial institutions that underwrite the project loans and guarantee the repayment of the bonds. The credit rating on the bonds reflects the credit quality of the credit enhancement provider.

Approval Process:

- **Inducement Resolution:** The bond process is initiated when the issuer (Housing Authority) adopts an “Inducement Resolution” to establish the date from which project costs may be reimbursable from bond proceeds (if bonds are later issued) and to authorize staff to work with financing team to perform a due diligence process. The Inducement Resolution does not represent any commitment by the Housing Commission, Housing Authority, or the developer to proceed with the financing.
- **TEFRA Hearing and Resolution (Tax Equity and Fiscal Responsibility Act of 1982):** To assure that projects making use of tax-exempt financing meet appropriate governmental purposes and provide reasonable public benefits, IRS Code requires that a public hearing be held and that the issuance of bonds be approved by representatives of the governmental unit with jurisdiction over the area in which the project is located (City Council). This process does not make the City financially or legally liable for the bonds or for the project.

[Note: It is uncommon for the members of the City Council to be asked to take two actions at this stage in the bond process---one in their capacity as the City Council (TEFRA hearing and resolution) and another as the Housing Authority (bond inducement). Were the issuer (Housing Authority) a more remote entity, the TEFRA hearing and resolution would be the only opportunity for local elected officials to weigh in on the project.]

- **Application for Bond Allocation:** The issuance of these “private activity bonds” (bonds for projects owned by private developers, including projects with nonprofit sponsors and for-profit investors) requires an allocation of bond issuing authority from the State of California. To apply for an allocation, an application approved by the Housing Authority and supported by an adopted inducement resolution and by proof of credit enhancement (or bond rating) must be filed with the California Debt Limit Allocation Committee (CDLAC). In addition, evidence of a TEFRA hearing and approval must be submitted prior to the CDLAC meeting.
- **Final Bond Approval:** The Housing Authority retains absolute discretion over the issuance of bonds through adoption of a final resolution authorizing the issuance. Prior to final consideration of the proposed bond issuance, the project must comply with all applicable financing, affordability, and legal requirements and undergo all required planning procedures/reviews by local planning groups, etc.
- **Funding and Bond Administration:** All monies are held and accounted for by a third party trustee. The trustee disburses proceeds from bond sales to the developer in order to acquire and/or construct the housing project. Rental income used to make bond payments is collected from the developer by the trustee and disbursed to bond holders. If rents are insufficient to make bond payments, the trustee obtains funds from the credit enhancement provider. No monies are transferred through the Housing Commission or Housing Authority, and the trustee has no standing to ask the issuer for funds.

Bond Disclosure: The offering document (typically a Preliminary Offering Statement or bond placement memorandum) discloses relevant information regarding the project, the developer, and the credit enhancement provider. Since the Housing Authority is not responsible, in any way, for bond repayment, there are no financial statements or summaries about the Housing Authority or the City that are included as part of the offering document. The offering document includes a paragraph that states that the Housing Authority is a legal entity with the authority to issue multifamily housing bonds and that the Housing Commission acts on the behalf of the Housing Authority to issue the bonds. The offering document also includes a paragraph that details that there is no pending or threatened litigation that would affect the validity of the bonds or curtail the ability of the Housing Authority to issue bonds. This is the extent of the disclosure required of the Housing Authority, Housing Commission, or the City. However, it is the obligation of members of the Housing Authority to disclose any material facts known about the project, not available to the general public, which might have an impact on the viability of the project.