



MEMORANDUM

DATE: November 8, 2007

TO: Chris Westlake, Deputy Director; Russ Schmunk, Assistant Deputy Director; Eugene Lee, Multifamily Housing Manager – Department of Housing and Community Development

CC: Kevin Griffith, BRIDGE Housing; Geoffrey Morgan, First Community Housing; Orlando Alfaro, Hudson Housing Capital; Susan Baldwin, SANDAG; Craig Adelman, AF Evans Development; Fran Wagstaff, Mid-Peninsula Housing; Stephanie Reyes and Kristal Ip, Greenbelt Alliance; Jim Silverwood, Affirmed Housing; Shiloh Ballard, Silicon Valley Leadership Group; David Esselman, NationalCORE; Arjun Nagarkatti, AMCAL Housing; Leslye Krutko, Linn Warren, Kristen Clements, Melissa Whatley and Dan Lopez, City of San Jose; Kasey Burke, Meta Housing; Andrew Michael, Bay Area Council; Geoffrey Brown, USA Properties Fund; Peter Carey, Self-Help Enterprises; Jay Stark, Phoenix Realty Group; John Shirey, California Redevelopment Association; Alex Sanchez, Housing Authority of Santa Clara County; Taylor Dial, Housing Trust of Santa Clara County; Susan Smartt, Forest City Development; Paul Peninger, Non-Profit Housing Association of NorCal; Jeff Levin, City of Oakland; Elizabeth Tracey, Washington Mutual; HCD Director Lynn Jacobs; CHC Policy Leadership Task Force; CHC Board of Directors

FROM: Jeff Loustau, Executive Director

RE: **CHC Infill Set-Aside Stakeholders' Meeting**

On behalf of the Consortium I want to thank you all for participating in Tuesday's Infill Set-Aside Stakeholders' Meeting. We very much appreciate Chris, Russ, and Eugene joining us on the heels of two weeks of public hearings on this topic around the state. Their report on comments received to date as well as lingering questions certainly helped foster a wide-ranging dialogue.

We are also grateful for the hospitality of Leslye Krutko and her team (Linn, Dan, Melissa) at the City of San Jose Housing Department in allowing us to use their cloud-level conference room. The venue was conducive to a broad discussion and creative thinking as we contemplate putting this unprecedented public funding to use.

The purpose of this memo is to provide a brief overview of the stakeholder meeting and reiterate CHC's pledge to assist HCD as it formulates guidelines in the coming weeks, and through a December public comment period, in order to put out an initial NOFA in January.

Jeff began the meeting by summarizing the genesis of the infill set-aside as the result of a bi-partisan effort 18 months ago to include housing on the ballot among a host of infrastructure measures. Following the passage of PROP 1C a year ago, in February of this year CHC convened member roundtables in Northern and Southern California in order to elicit input on the required enabling legislation for this \$850MM Infill Development Set-Aside. In the spring CHC advocated before the legislative leadership a series of proposals organized around some key concepts, namely: that site eligibility be determined according to density thresholds appropriate to urban/suburban/rural jurisdictions; that developers be allowed to apply for the funding (in addition to local government entities); that a list of delineated housing-related infrastructure uses beyond water, sewer, and utilities be incorporated into the legislation (including brownfield clean-up, demolition, public transit linkages attributable to new housing); that a minimum affordability threshold of 15% be established (as there had been no affordability provision in the ballot language); that funding be allocated proportionally across the diverse regions of the state, that ownership and rental housing be eligible for funding, that there be a distinction between ‘infill areas’ and ‘infill projects’; and that there be a series of ranking criteria created to guide the application selection process (including density, affordability, proximity to transit, and local support/leverage).

Russ provided a quick synopsis of some of the feedback he and the HCD team received in their recent public hearings. We then proceeded to consider (6) various elements to be incorporated into programmatic guidelines, including: Site Eligibility, Applicant Eligibility, Use of Funds, Affordability, Allocation of Pots, and Ranking Criteria. We followed a matrix which drew information from SB86, the enabling legislation itself signed by Governor Schwarzenegger this fall.

Infill Areas vs. Infill Projects

Considerable discussion ensued over how to allocate funding between qualified infill areas and project-specific applications. There was general consensus that the focus of the program should be on expanding the production of housing – and that therefore project-specific requests should garner the majority of the funding as opposed to large area proposals envisioned to be phased over several years. It would probably be realistic to establish separate ranking criteria for ‘area’ vs ‘project’ proposals in order to compare respectively such factors as density, affordability, readiness, etc.

Concern was raised that this new money not simply supplant local or privately-financed infrastructure funding for projects already underway. Rather, the funding should be awarded to eligible projects that ‘but for’ this funding would not proceed – for example, projects on eligible sites where the burden of required infrastructure investment exceeds a more traditional development. Examples would include the conversion of sites that may once have contained commercial or industrial uses and now required clean-up, demolition, and new housing-related infrastructure.

Applicant Eligibility

With respect to the possibility of private housing developers applying for this set-aside funding, some participants worried that the infrastructure grants could be ‘give-aways’ to housing projects that may well be feasible without this subsidy. There was agreement that the funding should be awarded to those projects for whom the unusual infrastructure needs represent the primary impediment to development.

The point was made that weighing ‘performance based standards’ (e.g., density, affordability, public benefit with respect to transit linkages, reduced parking, etc) would be more appropriate than ‘policing profitability’. Given the diversity of regions and development circumstances it would be difficult to define project feasibility with respect to market returns. A possible ‘check and balance’ approach might be to encourage joint-venture partnerships between developers and public entities to access this infrastructure funding.

On a related note, there was considerable discussion for when costs associated with parking infrastructure should be included as an eligible use. Whereas one convenient rule of thumb that only replacement public parking be eligible, some developers expressed their concern that often times the amount of housing they are permitted to develop on a site is directly related to how much parking they can provide. Providing on-site parking presents substantial cost implications for which these developers see this infill set-aside funding as being appropriate.

On the other hand, this viewpoint elicited a lot of concern over how allowing parking costs beyond simply the replacement of existing public parking as an eligible use could severely limit the effectiveness of this infill funding to generate more housing units. With a keen interest on demonstrating to the voters the catalytic effect of this funding on housing production, the concern was expressed that allowing, housing-related parking’ as an eligible use represented a ‘slippery slope’. It was clear at some of the recent public hearings that localities and transit agencies would dearly love to access this funding for their pressing parking needs that they would attribute to new housing being developed.

Affordability

There was discussion about how best to encourage affordability beyond the minimum 15% threshold. For some non-profit developers, the mixed-income focus of the funding seems to deviate from the message of the PROP 1C campaign to assist low- and very-low income households; others supported the mixed-income approach saying that without this kind of public leverage market-rate developers are not tackling difficult sites that are otherwise located conveniently to jobs and transit.

One concept mentioned by CHC in the spring meetings with legislators was to perhaps consider an ‘affordability cap’ whereby point for affordability under the ranking criteria would not accrue beyond, say, 40% of a project’s total units. The thinking behind this was that developers interested in mixed-income housing scenarios may do tax-exempt bond deals electing to set aside 20% of the units at 50% AMI or 40% of the units up to 60% AMI. The ‘cap’ would not be intended to discourage 100% affordable infill projects from applying for the funding but such projects would not have a competitive advantage beyond a 40% set aside for tax credit affordability.

Reaction to this concept was mixed. Some participants felt that increased affordability was a positive achievement that should be rewarded without a ‘cap’. Others felt that the fact that the Infill Set-Aside funding could be used in conjunction with a other sources used for 100% affordable deals – 9% tax credits, tax-exempt bonds – meant that affordability could be enhanced effectively without needing to make it a significant element of project ranking.

One interesting recommendation was that perhaps this Infill Set-Aside funding opportunity could indeed serve as a catalyst for more mixed-income housing if scoring under an affordability ranking criteria could encourage commitments to a moderate-income rental tier. In other words, points could be garnered for committing a certain % of a project's units to, say, rents in the 60-80% AMI levels – or, under an ownership scenario, for prices between, say, 120-150% AMI. As reaching these moderate levels of affordability would no doubt require a special subsidy (most likely from a local public entity), joint public-private partnership projects might be encouraged.

Prevailing Wage Requirements

While there was little doubt that the use of these infill set-aside funds administered through HCD would trigger prevailing wage requirements, of particular interest to CHC is that guidelines make clear that the funding is limited to the housing-related infrastructure component itself. As in the period following the implementation of the 2003 prevailing wage requirements, participants agreed that a challenge to the applicability of prevailing wage for an entire project will likely be forthcoming.

Nevertheless, there was general consensus among the CHC members that without delineating the infrastructure component specifically, a blanket assumption of prevailing wage requirements would mean that for Southern California and the Central Valley in particular, this Infill Set-Aside funding would not be attractive. (Participants agreed, of course, that any project utilizing other HDC funding such as MHP would by definition trigger prevailing wage requirements for the entire project.)

One approach to mitigating this concern may once again be to encourage more public-private partnerships in infill housing developments. Here perhaps the housing-related infrastructure component could be the specific responsibility of the local public entity and hence considered a 'public works' project; the housing component, by contrast, would be the specific contractual responsibility of the housing developer.

Local Match/Support

There was general agreement that local public entities would have to affirm their support for a specific infill housing development – beyond the entitlement and building permit approvals, perhaps some entities could produce a general letter of support. Some participants expressed concern that requiring such letters of local legislative bodies could prove problematic, however.

In addition to local political support, however, there was discussion that local financial support (e.g., grants, deferred-and-accrued loans, land donations, fee waivers) should also be considered among the ranking criteria as additional funding leverage.

Award Amounts

How best to define a range of per unit and/or per project funding minimums and maximums presented a conundrum to the various stakeholders. Some suggested that as minimums, perhaps the \$25-35,000 per unit levels contemplated under the TOD program would be appropriate. From a local government perspective, some participants pointed out that traffic mitigation costs associated with infill development (e.g., street widening, curb cuts, freeway on-ramps) could push the per project limits up. At the same time, the point was made that the \$50k per project limit contemplated under the TOD guidelines meant that only a fortunate few large-scale developments could benefit.

It was agreed that more consideration was in order to better define the range of housing-related infrastructure costs associated with infill sites across varying jurisdictions.

The meeting adjourned at 1pm with Eugene Lee encouraging CHC stakeholders to help the Department develop appropriate infill set-aside guidelines focused around clearly defining 'unmet need' – in other words, to best assess those projects who's housing-related infrastructure burdens represent the primary impediment to development. This will help the Department to direct the funding catalyzing those worthy infill housing projects that otherwise will not get done.

Chris Westlake thanked the participants and explained that the Department plans to issue 'draft' guidelines on the \$850MM Infill Set-Aside within the next couple of weeks and seek public comment in December. The expectation is that guidelines can be completed and ready in time for an initial Notice of Funding Availability in late January. The Department has committed to awarding \$240MM in funding by June 30, 2008.