



COUNCIL AGENDA: 12/5/23
FILE: 23-1657
ITEM: 2.15

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Rosalynn Hughey
Rick Bruneau

SUBJECT: SEE BELOW

DATE: November 13, 2023

Approved

Date

11/20/23

COUNCIL DISTRICT: 2, 3, 5

SUBJECT: APPROVAL OF EXCEPTION TO THE CITY MULTIFAMILY HOUSING REVENUE BOND POLICY ALLOWING FOUR AFFORDABLE HOUSING DEVELOPMENTS TO USE AN ALTERNATE BOND ISSUER

RECOMMENDATION

Adopt a resolution:

- (a) Authorizing exceptions to the City Council's Multifamily Housing Revenue Bond Policy 1-16 for the issuance of Multifamily Housing Revenue Bonds due to special circumstances, thereby allowing the California Municipal Finance Authority to issue the bonds for the following developments:
 - (1) Villa Del Sol Apartments located at 1936 Alum Rock Avenue;
 - (2) Martha Gardens Apartments located at 802 South 1st Street;
 - (3) Monterey Road Apartments located at 4300-4310 Monterey Road; and
 - (4) 2880 Alum Rock Avenue Apartments located at 2880 Alum Rock Avenue.

- (b) Authorizing the Director of Finance to hold the Tax Equity and Fiscal Responsibility Act hearings for the Villa Del Sol Apartments, Martha Gardens Apartments, Monterey Road Apartments, and 2880 Alum Rock Avenue Apartments upon receipt of California Debt Limit Allocation Committee approval and debt allocations.

SUMMARY AND OUTCOME

Approval of this recommendation will enable four affordable housing developments to move forward with the California Municipal Finance Agency (CMFA) as their alternate bond issuer, collectively resulting in the development of up to 755 new affordable apartments and nine managers' units.

BACKGROUND

San José lacks a sufficient amount of affordable housing to meet residents' needs. The City's Regional Housing Needs Allocation for the 2023-2031 (sixth cycle) Housing Element is 62,200 housing units. Fifty-five percent of these units must be affordable (i.e., for extremely low-, very low-, low-, and moderate-income households). During the City's Regional Housing Needs Allocation for the 2014-2022 (fifth cycle) Housing Element, the City only created 26% of the affordable housing production goal. Staff's Housing Catalyst Work Plan incorporates programs and strategies to produce and preserve affordable housing in alignment with the 2023-2031 Housing Element.

The City adopted a Multifamily Housing Revenue Bond Policy (Bond Policy) in 2002 to provide guidance when the City acts as the issuer of multifamily housing revenue bonds. The Bond Policy requires that the City serve as the bond issuer for financing affordable housing developments unless the City Council approves an exception. The affordable housing developments in this memorandum meet the special circumstances for an alternate bond issuer allowed by the City's Bond Policy. An alternate bond issuer will be considered under the following circumstances:

- The project is one of multiple projects being financed by the project sponsor through such issuing conduit agency in the same California Debt Limit Allocation Committee (CDLAC) round; and
- If there are special circumstances merited by the needs of the project and the financing.

Additionally, staff typically recommends an alternate bond issuer only if the City is not making a grant or loan to the project. The Bond Policy also requires that the alternate issuer should assume full responsibility for issuance and ongoing compliance of the bond issue with federal tax and state laws.

The Affordable Housing Developments

Villa Del Sol

Villa Del Sol is located on a 1.49-acre site at 1936 Alum Rock Avenue in Council District 5. Pacific West Communities, Inc. is proposing to build 194 affordable rental homes, of which 20

apartments are reserved for extremely low-income households, 55 apartments are reserved for very low-income households, 117 apartments are reserved for low-income households, and two unrestricted managers’ units. The affordable housing development will comprise two five-story structures with four residential floors over a ground-floor podium parking structure. **Table 1** provides the affordability unit mix and area median income (AMI) levels. **Attachment A: Villa Del Sol Rendering** provides renderings of the project. Construction is expected to commence in May 2024 and continue through May 2026.

Table 1: Villa Del Sol Affordability Unit Mix and AMI Levels

Unit Size	30% AMI			50% AMI			60% AMI			70% AMI			Manager's Unit	Total
	Units	Max Income**	Rent Limits	Units	Max Income**	Rent Limits	Units	Max Income**	Rent Limits	Units	Max Income**	Rent Limits		
Studio	6	\$37,470	\$936	24	\$62,450	\$1,561	1	\$74,940	\$1,873	29	\$87,430	\$2,185		60
1-BD	8	\$40,155	\$1,003	24	\$66,925	\$1,673	1	\$80,310	\$2,007	47	\$93,695	\$2,342		80
2-BD	5	\$44,490	\$1,204	6	\$80,300	\$2,007	1	\$107,040	\$2,409	35	\$112,420	\$2,810		47
3-BD	1	\$51,390	\$1,391	1	\$92,775	\$2,319	1	\$119,910	\$2,783	2	\$129,885	\$3,247		5
Manager's Unit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	2	2*
Total	20			55			4			113			2	194

* Unrestricted Managers' Units

** Maximum Income limits are based upon Tax Credit Allocation Committee occupancy guidelines of 1.5 persons per bedroom

Martha Gardens

Martha Gardens is located on a 1.2-acre site at 802 South 1st Street in Council District 3. Pacific West Communities Inc. is proposing to build 166 affordable rental homes, of which 17 apartments are reserved for extremely low-income households, 17 apartments are reserved for very low-income households, 130 apartments are reserved for low-income households, and two unrestricted managers’ units. The six-story affordable housing development will consist of five residential floors over a ground-floor parking podium. **Table 2** provides the affordability unit mix and AMI levels. **Attachment B: Martha Gardens Rendering** provides renderings of the project. Construction is expected to commence in May 2024 and continue through May 2026.

Table 2: Martha Gardens Affordability Unit Mix and AMI Levels

Unit Size	30% AMI			50% AMI			60% AMI			70% AMI			Manager's Unit	Total
	Units	Max Income**	Rent Limits	Units	Max Income**	Rent Limits	Units	Max Income**	Rent Limits	Units	Max Income**	Rent Limits		
Studio	6	\$37,470	\$936	6	\$62,450	\$1,561	40	\$74,940	\$1,873	5	\$87,430	\$2,185		57
1-BD	9	\$40,155	\$1,003	9	\$66,925	\$1,673	20	\$80,310	\$2,007	46	\$93,695	\$2,342		84
2-BD	2	\$44,490	\$1,204	2	\$80,300	\$2,007	3	\$107,040	\$2,409	16	\$112,420	\$2,810		23
Manager's Unit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	2	2
Total	17			17			63			67			2	166

* Unrestricted Managers' Units

** Maximum Income limits are based upon Tax Credit Allocation Committee occupancy guidelines of 1.5 persons per bedroom

Monterey Road Apartments

Monterey Road Apartments is on a 2.29-acre site at 4300-4310 Monterey Road in Council District 2. Pacific West Communities, Inc. is proposing to build 240 affordable rental homes, of which 24 apartments are reserved for extremely low-income households, 24 apartments are reserved for very low-income households, 189 apartments are reserved for low-income households, and three unrestricted managers’ units. The affordable housing development will comprise of two five-story structures with four residential floors over a ground-floor podium parking structure. **Table 3** provides the affordability mix and AMI levels. **Attachment C: Monterey Road Apartments Rendering** provides renderings of the project. Construction is expected to commence in May 2024 and continue through May 2026.

Table 3: Monterey Road Apartments Affordability Unit Mix and AMI Levels

Unit Size	30% AMI			50% AMI			60% AMI			70% AMI			Manager's Unit	Total
	Units	Max Income	Rent Limits	Units	Max Income	Rent Limits	Units	Max Income	Rent Limits	Units	Max Income	Rent Limits		
1-BD	24	\$40,155	\$1,003	24	\$66,925	\$1,673	94	\$80,310	\$2,007	95	\$93,695	\$2,342		237
Manager's Unit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	3	3
Total	24			24			94			95			3	240

* Unrestricted Managers' Units

** Maximum Income limits are based upon Tax Credit Allocation Committee occupancy guidelines of 1.5 persons per bedroom

2880 Alum Rock Avenue

2880 Alum Rock Avenue is located on a 1.32-acre site at 2880 Alum Rock Avenue in Council District 5. Pacific West Communities, Inc. is proposing to build 164 affordable rental homes, of which 17 apartments are reserved for extremely low-income households, 17 apartments are reserved for very low-income households, 128 apartments are reserved for low-income households, and two unrestricted managers’ units. The affordable housing development will comprise of two six-story structures with five residential floors over a ground-floor podium parking structure. **Table 4** provides the affordability unit mix and AMI levels. **Attachment D: 2880 Alum Rock Avenue Rendering** provides renderings of the project. Construction is expected to commence in May 2024 and continue through May 2026.

Table 4: 2880 Alum Rock Avenue Affordability Unit Mix and AMI Levels

Unit Size	30% AMI			50% AMI			60% AMI			70% AMI			Manager's Unit	Total
	Units	Max Income	Rent Limits	Units	Max Income	Rent Limits	Units	Max Income	Rent Limits	Units	Max Income	Rent Limits		
Studio	10	\$37,470	\$936	10	\$62,450	\$1,561	50	\$74,940	\$1,873	22	\$87,430	\$2,185		92
1-BD	6	\$40,155	\$1,003	6	\$66,925	\$1,673	10	\$80,310	\$2,007	36	\$93,695	\$2,342		58
2-BD	1	\$44,490	\$1,204	1	\$80,300	\$2,007	1	\$107,040	\$2,409	9	\$112,420	\$2,810		12
Manager's Unit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	2	2
Total	17			17			61			67			2	164

* Unrestricted Managers' Units

** Maximum Income limits are based upon Tax Credit Allocation Committee occupancy guidelines of 1.5 persons per bedroom

ANALYSIS

The Bond Policy states that the City shall be the issuer of all bonds financing multifamily housing rental developments within the City, with specified exceptions. One of these exceptions allows an alternate issuer to issue bonds for an affordable housing development within the City when the needs of the development and the financing merit special circumstances. The special circumstances that support an exception in this case are (1) the developments do not have any City funding and (2) the lack of staff capacity to issue the bonds.

The Basis for Multifamily Housing Revenue Bonds Policy Exception

The following reasons are the basis for staff's recommendation for exceptions to the Bond Policy so that the four affordable housing developments can complete assembling their financing.

1. The City does not have any subordinate funding in these four developments.

The Bond Policy was implemented, in part, to protect the City's subordinate debt. The City does not have any subordinate funding in connection with the developments; therefore, City issuance is not necessary.

- The Villa Del Sol development applied for a \$59,000,000 bond allocation from the CDLAC on September 6, 2023. The developer requested \$12,000,000 of funding from the City's December 2021 Notice of Funding Availability and later decided that City funds were no longer needed. Therefore, the Housing Department will not seek a funding commitment for the development. A CMFA recycled bond was included as an additional source of construction financing for this development.
- The Martha Gardens development applied for a \$50,000,000 bond allocation from CDLAC on September 6, 2023. This development has not requested financing from the City. A CMFA recycled bond will be an additional source of construction financing for the development.
- The Monterey Road Apartments development applied for a \$63,500,000 bond allocation from CDLAC on September 6, 2023. This development has not requested financing from the City. A CMFA recycled bond will be an additional source of construction financing for the development.
- The 2880 Alum Rock Avenue Apartments development applied for a \$52,500,000 bond allocation from CDLAC on September 6, 2023. This development has not requested financing from the City. A CMFA recycled bond will be an additional source of construction financing for this development.

CMFA established a Tax-Exempt Multifamily Housing Bond Recycling Program in 2021, which has helped facilitate the financing of additional affordable rental housing in

the State of California, without obtaining new private activity bond volume cap. Recycled bond volume cap becomes available when borrowers prepay bonds that previously received private activity bond volume cap.

2. The City does not currently have the capacity to prepare for and manage the issuance of these bonds.

The City received 19 Notice of Funding Availability applications for multifamily new construction developments in December 2021 and awarded 11 developments. The City Council approved seven of these developments for funding commitments, totaling 692 housing units. Six of these developments co-applied with the City for their CDLAC bonds on August 9, 2022 and February 7, 2023. All six received a bond allocation award. The City closed financing on four of these developments in spring 2023. The remaining two applicants received their awards as announced on May 10, 2023. These two developments will need to close on construction financing by November 2023. Of the remaining five developments to close on their construction financing one development received its City Council commitment on March 14, 2023, and the four remaining Notice of Funding Availability proposers that will likely seek City Council approval for their City financing commitments. These five developments will be preparing for Round 1 or 2 CDLAC applications.

The Housing Department, City Attorney's Office, and Finance Department staff are at capacity with this current pipeline and will work on the remaining five multifamily housing revenue bond issuances throughout Fiscal Year 2023-2024. These transactions, generated by the December 2021 Notice of Funding Availability, will provide new revenue to the City. In consideration of the City's recently released \$50 million Notice of Funding Availability, CDLAC application rounds, and to manage the new construction affordable housing pipeline more efficiently, CMFA and the City have agreed to work proactively with better coordination so that CMFA can request these policy exceptions prior to submitting CDLAC applications.

The Alternate Bond Issuer: CMFA

The CMFA was established in 2004 under the California Government Code as a statewide Joint Powers Authority to provide local governments and private industry access to tax-exempt, low-interest financing to achieve public benefit goals. The Board of Directors of the California Foundation for Stronger Communities, a California non-profit public benefit corporation, acts as the Board of Directors for CMFA. CMFA shares a portion of its issuance fees with its member communities and donates a portion of issuance fees to the California Foundation for Stronger Communities to support local charities. It is expected that 25% of the CMFA issuance fee, or \$55,625, will be contributed by CMFA to the City's Housing Trust Fund to support the activities of the Homelessness Response Team.

In instances where the City is not the bond issuer for a development, the City's policy normally requires the issuer to assume full responsibility for issuance and ongoing compliance of the bond issue with federal and state tax laws. The City will hold the Tax Equity and Fiscal Responsibility Act (TEFRA) hearings for the CMFA issuance at a later date, during a regularly scheduled City Council meeting, after the projects receive CDLAC allocations.

TEFRA Hearings

Pursuant to Section 147(f) of the Internal Revenue Code of 1986, the issuance of the private activity bonds by CMFA requires the City's approval when developments are located within the territorial limits of the City. A qualified private activity bond is a bond issued to fund a development by a private entity that meets certain requirements under the Internal Revenue Code for the interest received by the bondholder to be excluded from gross income for federal income tax purposes. An "applicable elected representative" of the government unit must approve the bond issuance after a TEFRA public hearing. Because CMFA's board of directors is not an elected body, the Internal Revenue Code provides that a governmental unit with elected representatives and jurisdiction over the area in which the development to be financed is located, in this case, the City Council of San José, is an applicable elected representative with respect to the bond issue.

When the City of San José is the issuer of bonds, the TEFRA public hearing is conducted by the Director of Finance under San José Municipal Code Section 5.06.430. Staff recommends, due to the volume of exceptions being requested, that the City Council grant the Director of Finance delegated authority to conduct the TEFRA public hearing on behalf of the City Council for these four affordable housing developments. Staff will include these TEFRA public hearings in a separate section referencing the authorizing resolution so that they will be reported as part of the documentation submitted under San José Municipal Code Section 5.06.450. The TEFRA public hearings will need to be held prior to the issuance of the bonds, which, if awarded an allocation, will be within approximately six months from December 6, 2023.

EVALUATION AND FOLLOW-UP

The Housing Department posts periodic reports on the status of affordable properties undergoing rehabilitation or construction on its website, www.sjhousing.org. If the recommended actions are approved, the progress of the four developments will be included in these periodic production reports.

COST SUMMARY/IMPLICATIONS

Approving this recommendation will result in the City forgoing bond administration fees for this transaction. CMFA will contribute \$55,625 of its issuance fee to the City to be deposited into the Housing Trust Fund. The Bond Policy outlines the parameters for the administrative fees,

including the issuance fee, an amount equal to the sum of (a) 0.50% of the first \$10,000,000 issued and (b) 0.25% of the remaining par issued and the annual monitoring fee in an amount equal to 0.125% of the original principal loan amount which may be reduced at conversion, subject to a minimum fee of \$7,500, for the 55-year term of the regulatory period. Based on these parameters and a total collective issuance of \$225,000,000 for the four developments, the City will forgo approximately \$662,000 in issuance fees and \$281,250 in annual bond monitoring fees. These fees would be collected only if the City were issuing these bonds. **Table 5** provides the estimated foregone fee amounts.

Table 5: Estimated Foregone Fee Amounts

Development	Estimated Bond Amount	Issuance Fee	Annual Monitoring Fee
Villa Del Sol Apartments	\$59,000,000	\$172,000	\$73,750
Martha Gardens Apartments	\$52,500,000	\$156,250	\$65,625
Monterey Road Apartments	\$50,000,000	\$150,000	\$62,500
2880 Alum Rock Ave Apartments	\$63,500,000	\$183,750	\$79,375
Total	\$225,000,000	\$662,000	\$281,250

COORDINATION

Preparation of this memorandum was coordinated with the City Attorney's Office and the City Manager's Budget Office.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the December 5, 2023 City Council meeting.

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

HONORABLE MAYOR AND CITY COUNCIL

November 13, 2023

Subject: Approval of Exception to the City Multifamily Housing Revenue Bond Policy Allowing Four Affordable Housing Developments to Use an Alternate Bond Issuer

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CEQA

Villa Del Sol, 1936 Alum Rock Ave: File Nos. CP20-015 and ER20-092, Mitigated Negative Declaration for Villa Del Sol Mixed-Use Project (Planning Commission Resolution No. 21-002).

Martha Gardens, 802 South 1st Street: File Nos. PDC17-022, PD21-011, and ER21-130, South First/East Virginia Street Mixed-Use Development Project Initial Study and Mitigated Negative Declaration (Resolution No. 79906).

Monterey Road Apartments, 4300-4310 Monterey Road: Exempt from CEQA review per Public Resources Code Section 21080(b)(1) and CEQA Guidelines Section 15369, Ministerial Development pursuant to Government Code Section 65913.4, File No. ER20-150.

2880 Alum Rock Avenue Apartment, 2880 Alum Rock Ave: File Nos. CP20-025 and ER20-216, Mitigated Negative Declaration for 2880 Alum Rock Mixed-Use Project (Planning Commission Resolution No. 21-029).

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/
RICK BRUNEAU
Director of Finance

/s/
ROSALYNN HUGHEY
Deputy City Manager and
Acting Housing Director

The principal author of this memorandum is Shelsy Bass, Senior Development Officer. For questions, please contact Qianyu Sun, Deputy Director, Debt & Treasury Management at qianyu.sun@sanjoseca.gov or (408) 535-7832 or Ragan Henninger, Deputy Director, Housing Department, at ragan.henninger@sanjoseca.gov.

ATTACHMENTS:

Attachment A: Villa Del Sol Rendering
Attachment B: Martha Gardens Rendering
Attachment C: Monterey Road Apartments Rendering
Attachment D: 2880 Alum Rock Ave Rendering

ATTACHMENT A: Villa Del Sol Rendering



ATTACHMENT B: Martha Gardens Rendering



ATTACHMENT C: Monterey Road Apartments Rendering



ATTACHMENT D: 2880 Alum Rock Avenue Apartments Rendering

