



Office of the City Manager

CONSENT CALENDAR

April 1, 2014

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Jane Micallef, Director, Health, Housing & Community Services
Department

Subject: Transfer Tax Refund for the Berkeley Scattered Site Development

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to grant \$116,262 each to the Berkeley Housing Authority and Berkeley 75 Housing Partners, L.P., in the form of a total transfer tax refund of \$232,525, in support, respectively, of the operations of the Berkeley Housing Authority and the rehabilitation of the Berkeley Scattered Site development.

SUMMARY

On February 14, 2014, the Berkeley Housing Authority (“BHA”) and Berkeley 75 Housing Partners, L.P., a tax-credit limited partnership (“Developer”), closed acquisition and construction financing for the rehabilitation of the Berkeley public housing portfolio: 75 units on 15 separate parcels (“Berkeley Scattered Site development”; “Project”). In 2010, BHA had received approval from the U.S. Department of Housing and Urban Development (“HUD”) to sell the properties to a new developer/owner in order to bring much-needed resources to the rehabilitation effort through a tax credit syndication and tax-exempt bond application. The City of Berkeley supported this program with a \$300,000 predevelopment loan to BHA (Resolution No. 65,672-N.S., April 3, 2012), and a \$400,000 Housing Trust Fund loan to the Developer (Resolution No. 66,076-N.S., April 2, 2013). Because the improvements transferred from BHA to the Developer, at a value of \$15,501,685, the City’s transfer tax assessment, at 1.5% of value, equated to \$232,525, notwithstanding the fact that BHA reinvested approximately \$12 million of these proceeds in the Project through a seller carry-back loan. Standard industry practice is for sellers and buyers to split the transfer tax cost evenly. Assessment of this tax on the project and BHA would effectively cancel out a significant proportion of the City’s financial assistance to the parties and detract from the Developer’s rehabilitation scope and BHA’s operating capacity. The Developer and BHA seek the City’s continued assistance through a refund of the assessed transfer tax.

FISCAL IMPACTS OF RECOMMENDATION

The City’s General Fund would forego \$232,525 of revenue.

CURRENT SITUATION AND ITS EFFECTS

HUD currently values the aggregate capital improvement needs of the nation's public housing in excess of \$25 billion – the result of decades of inadequate funding for capital improvements by Congress. The Berkeley public housing portfolio has suffered from this chasm between available resources and capital needs. In 2009, BHA applied to HUD to sell the portfolio to a developer for the specific purpose of bringing resources to a rehabilitation project that were out of reach for BHA, and thus preserving the affordable housing asset for the long-term. HUD approved the sale in 2010, and BHA brought the Developer on in 2011.

While the Developer was able to secure a significant amount of funds for the Project acquisition and rehabilitation – total development costs, including acquisition, are approximately \$35.9 million – the project's rehabilitation needs are so extensive that the diversion of \$116,262 from rehab funding to transfer taxes will have a detrimental effect. This is approximately the value, for example, of repair work scheduled for the Project's off-street parking facilities.

With respect to BHA, the reason the Project financing works is that of the \$15.5 million in sales proceeds that it received, BHA is re-investing approximately \$12 million back into the Project and is covering another \$800,000 in the potential repayment of old loans to the State Department of Housing and Community Development. BHA will use the remainder, approximately \$2.65 million, to bolster the administration of its 2,000 Housing Choice Vouchers ("HCVs"). HCVs (or Section 8 certificates), which subsidize rents for low-income households, are a critical component of a larger effort to assist such households manage Berkeley's high-cost housing market. The diversion of \$116,262 from BHA's operating funding to transfer taxes would diminish its ability to effectively carry out its restructured mission.

BACKGROUND

The City implemented its Transfer Tax Ordinance (No. 5,061-N.S.) in 1978 for the purpose of raising General Fund revenue. In 1991, the City amended the Ordinance and raised the tax from 1% to 1.5% of value (No. 6,072-N.S.). The transfer tax is imposed on "all transfers of land, tenements, or other interest in real property located in the City of Berkeley..." (Berkeley Municipal Code Section 7.52.040).

The City has established a precedent for granting financial assistance to certain projects that it supports through transfer tax refunds: in 2010, it granted a transfer tax refund for both the YMCA's development of a new teen center at 2109-2111 Martin Luther King Jr. Way, and for the leasehold interest transfer associated with the Ed Roberts Campus.

ENVIRONMENTAL SUSTAINABILITY

As required by the Tax Credit Allocation Committee, the Project meets and exceeds CalGreen building mandates, which require measures that reduce water consumption, employ building commissioning to increase building system efficiencies, divert construction from landfills, and provide low pollutant-emitting finish materials. The Project's rehabilitation will achieve a 15.45% improvement in energy efficiency through

such measures as new and improved insulation; new, more efficient furnaces and water heaters; new dual-paned windows; Energy Star refrigerators; and improved indoor lighting features. The Project will comply with the City's RECO Ordinance.

RATIONALE FOR RECOMMENDATION

The City determined that financial assistance to both BHA and the Project was warranted in its approval of loans to each – \$300,000 to BHA and \$400,000 to the Project. A refund of the City's transfer tax will help to maintain the effectiveness of that assistance.

ALTERNATIVE ACTIONS CONSIDERED

Council could reject the transfer tax refund request and retain the \$232,525 for its general fund.

CONTACT PERSON

Kate Hartley, Sr. Community Development Project Coordinator, HH&CS (510) 981-5411

Attachments:

1: Resolution

Exhibit A: Legal Description of Property

RESOLUTION NO. ##,###-N.S.

AUTHORIZING THE CITY MANAGER TO GRANT \$116,262 TO THE BERKELEY HOUSING AUTHORITY TO SUPPORT ITS OPERATIONS AND \$116,262 TO BERKELEY 75 HOUSING PARTNERS, L.P., TO SUPPORT THE REHABILITATION OF THE BERKELEY SCATTERED SITE DEVELOPMENT, THROUGH A TRANSFER TAX REFUND IN THE AGGREGATE AMOUNT OF \$232,525

WHEREAS, in December 2010, the U.S. Department of Housing and Urban Development approved an application from the Berkeley Housing Authority ("BHA") to sell its public housing portfolio to a tax credit limited partnership for the purpose of maximizing available resources for a substantial rehabilitation of all 75 public housing units ("Project"); and

WHEREAS, BHA selected Related Companies of California and its affiliate, Berkeley 75 Housing Partners, L.P. ("Developer") as the Project Developer in 2011; and

WHEREAS, the City demonstrated its support for BHA and the Project through a \$300,000 predevelopment loan to BHA (Resolution No. 65,672-N.S.), and a \$400,000 loan to the Developer (Resolution No. 66,076-N.S.); and

WHEREAS, the Developer secured all additional financing required for the Project in 2013, including low-income housing acquisition and rehabilitation tax credits, tax-exempt bonds, and a seller carry-back loan from BHA in the approximate amount of \$12 million; and

WHEREAS, BHA and the Developer closed the acquisition and construction financing on February 14, 2014, which included the sale of the public housing improvements from BHA to the Developer for a total of \$15,501,685; and

WHEREAS, although BHA reinvested the bulk of the sale proceeds back into the Project through its seller carry-back loan, the transfer of the improvements triggered the City's transfer tax ordinance (Berkeley Municipal Code Chapter 7.52), which resulted in a total transfer tax of \$232,525, half of which is paid by the seller (\$116,262), and half of which is paid by the buyer (\$116,262); and

WHEREAS, BHA and the Developer have requested a refund of the transfer tax payments in order to support, respectively, public housing authority operations and the rehabilitation of the Project; and

WHEREAS, the City has established a precedent for providing grants through transfer tax refunds for projects it supports.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager may provide a grant to BHA in the amount of \$116,262, as a refund of the

transfer tax it paid at the Berkeley Scattered Site acquisition and construction closing for the purpose of supporting BHA's operations.

BE IT FURTHER RESOLVED by the Council of the City of Berkeley that the City Manager may provide a grant to Berkeley 75 Housing Partners, L.P., in the amount of \$116,262, as a refund of the transfer tax it paid at the Berkeley Scattered Site acquisition and construction closing for the purpose of supporting the rehabilitation of 75 housing units affordable to very low-, low-, and moderate-income households.

BE IT FURTHER RESOLVED that the City Manager, or her designee, is hereby authorized to execute all documents required to effectuate this action.

Exhibits

A: Legal Description of Property

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

TRACT ONE:

Parcel A, Parcel Map 4716, filed November 13, 1986, Book 164 of Parcel Map 4716, Pages 94 & 95, Alameda County Records.

EXCEPTING THEREFROM:

All minerals including, without limiting the generality thereof, oil, gas and other hydrocarbon substances, as well as metallic or other solid minerals, provided that Santa Fe shall not have the right to go upon or use the surface of said land, or any part thereof, for the purpose of drilling for, mining, or otherwise removing, any of said minerals. Santa Fe may, however, and hereby reserves the right to, remove any of said minerals from said land by means of wells, shafts, tunnel, or other means of access to said minerals which may be constructed, drilled or dug from other land, provided that the exercise of such rights by Santa Fe shall no way interfere with or impair the use of the surface of the land or any improvements thereon, as reserved in the Deed to the City of Berkeley, recorded June 26, 1980, under Recorder's Series No. 1980-108988, Alameda County Official Records.

APN: 056-1921-020

TRACT TWO:

Parcel A, Parcel Map 4715, recorded October 23, 1986 Book 164 of Parcel Maps, Pages 72 and 73 Alameda County Records.

Excepting there from all minerals as reserved in the Deed to City of Berkeley, recorded June 26, 1980 under Series No. 80-108988.

APN: 054-1783-034

TRACT THREE:

Lots 6, 7, 8, 9 and 10, Block 56, "Map of Tract B of the Berkeley L. T. I. Association", filed February 4, 1876, Map Book 19, Page 79, Alameda County Records.

APN: 059-2314-004

TRACT FOUR:

Parcel One:

Lot 6, Resubdivision Map of Block C, Janes Tract, filed September 6, 1982, Map Book 12, Page 55, Alameda County Records.

APN: 058-2175-026

Parcel Two:

Lot 5, Resubdivision Map of Block C, Janes Tract, Map Book 12, Page 55, Alameda County Records.

APN: 058-2175-025

TRACT FIVE:

Parcel One:

Portion of Lots 9, 10, 11, 12 and 17, and all of Lots 18 and 19, Block 26, Smith's Subdivision Part of Mathews Tract, filed November 18, 1887, Map Book 9, Page 10, Alameda County Records, described as follows:

Beginning at a point on the Northern line of Stuart Street, formerly Moss Street (now abandoned), distant thereon Westerly 106.00 feet from the point of intersection thereof with the Western line of Sacramento Street, formerly Lowell Street, as said streets are shown on the map hereinabove referred to; running thence Westerly along the said Northern line of Stuart Street 45.80 feet to a point on the Southwestern line of said Block 26; thence Northwesterly along the said last mentioned line 178.83 feet to a point on a line drawn parallel with the Southern line of Ward Street, formerly Butterworth Street, as said street is shown on said map and distant 100.00 feet Southerly there from, measured at right angles thereto; thence Easterly along the line so drawn 103.77 feet to a point on a line drawn Northerly from the point of beginning and parallel with the said line of Sacramento Street; thence Southerly along the line so drawn 170.00 feet to the point of beginning.

The above described parcel of land being also known as a portion of Block 26, Map of the Re-Subdivision of Smith's Subdivision of the Mathews Tract, filed October 18, 1889, Map Book 9, Page 40, Alameda County Records.

APN: 054-1734-012

Parcel Two:

Portion of Stuart Street, formerly Moss Street, (now abandoned), as said street is shown on the map entitled, Smith's Subdivision part of Mathews Tract, filed November 18, 1887, Map Book 9, Page 10, Alameda County Records, described as follows:

Beginning at the point of intersection of the Western line of Sacramento Street, formerly Lowell Street, with the Northern line of Stuart Street, formerly Moss Street, as said streets are shown on the map hereinabove referred to; running thence Southerly along the said Western line of Sacramento Street 30.00 feet to a point on the center line of said Stuart Street; thence Westerly along the said last mentioned line 141.56 feet to a point on the Northeastern line of the California & Nevada R. R., as said line is shown on said map; thence Northwesterly along the said last mentioned line 31.61 feet, more or less, to a point on the said Northern line of Stuart Street; thence Easterly along the said last mentioned line 151.80 feet to the point of beginning.

The above described parcel of land being also shown as a portion of Moss Street on the map entitled, Map of the Re-Subdivision of Smith's Subdivision of the Mathews Tract, filed October 19, 1889, Map Book 9, Page 40, Alameda County Records.

APN: 054-1734-011-01

Parcel Three:

Portion of Stuart Street, formerly Moss Street, as said street is shown on the Map entitled, Smith's Re-Subdivision Part of Mathews Tract, filed November 18, 1887, Map Book 9, Page 10, Alameda County Records, described as follows:

Beginning at the point of intersection of the Western line of Sacramento Street, formerly Lowell Street, with the Southern line of Stuart Street, formerly Moss Street, as said streets are shown on the map hereinafter referred to; running thence Northerly along the said Western line of Sacramento Street 30.00 feet to a point on the center line of said Stuart Street; thence Westerly along the said last mentioned line 141.56 feet to a point on the Northeastern line of the California & Nevada R. R., as said line is shown on said map; thence Southeasterly along the said Southern line of Stuart Street; thence Easterly along the said last mentioned line 131.32 feet to the point of beginning.

The above described parcel of land being also known as a portion of Moss Street on the map entitled, Map of the Re-Subdivision of Smith's Subdivision of the Mathews Tract, filed October 19, 1889, Map book 9, Page 40, Alameda County Records.

APN: 054-1734-011-02

TRACT SIX:

Parcel A, Parcel Map 4717, filed February 3, 1987, Book 165 of Parcel Maps, Pages 79 and 80.

Excepting there from:

The mineral rights (without surface rights) as reserved in the Deed from The Atchison, Topeka and Santa Fe Railway Company, Recorded June 26, 1980, Instrument No. 1980-108988, Official Records of Alameda County.

APN: 056-1922-032

TRACT SEVEN:

Parcel One:

Beginning at a point on the Western line of Grove, Formerly West Street, distant thereon Southerly, 86 feet 8 inches from the intersection thereof with the Southern line of Rose Street, as said Streets are shown on the Map herein referred to; running thence Southerly along said line of Grove Street, 40 feet; thence Westerly parallel with said line of Rose Street, 100 feet; thence Northerly parallel with said line of Grove Street, 40 feet; thence Easterly parallel with said line of Rose Street, 100 feet to the point of beginning.

Being portions of Lots 14 and 15, Block 9, "Map of the Jose Domingo Tract" Filed December 24, 1876 Map Book 5, Page 27 Alameda County Records.

Parcel Two:

Beginning at the point of intersection of the Western line of Grove Street with the Southern line of Rose Street, of said Streets are shown on the Map hereinafter referred to, and running thence Southerly along the Western line of said Grove Street, a distance of 86 feet, 8 inches; running thence Westerly and parallel with southern line of Rose Street, a distance of 100 feet; running thence Southerly and parallel with said Western line of Grove Street, a distance of 80 feet; running thence Westerly and parallel with said Southern line of Rose Street, a distance of 35 feet; thence Northerly and parallel with said Western line of Grove Street, a distance of 166

feet, 6 inches to its intersection with the Southern line of Rose Street; running thence Easterly along the said Southern line of Rose Street, a distance of 135 feet to the point of commencement.

Being Lot 13 and portions of Lots 14, 15 and 16, Block 9, "Map of the Jose Domingo Tract", filed December 24, 1867, Map Book 5, Page 27, Alameda County Records.

Excepting there from that portion conveyed by Phillips Petroleum Company to Law Dean Svendsgaard, etux, recorded July 1, 1968, Reel 2209, Image 433, Alameda County Records, described as follows:

Beginning at a point on the Southern line of Rose Street, distant thereon 135 feet Westerly from the Western line of Grove Street, said point also being the Western line of the parcel of land described in the Deed from Tidewater Oil Company, a Delaware corporation, dated August 23, 1956, in Book 8168, Page 595, Official Records, Instrument No. AL/105045; thence Southerly along said Western line 8168 OR 595, 126 feet, 8 inches to the true point of beginning of the parcel of land to be described; continuing thence along said Westerly line 8168 OR 895, 40 feet to the Southerly line of the aforementioned 8168 OR 595, Parcel; thence Easterly along said line, 35 feet; thence Northerly and parallel to the Western line of Grove Street, 40 feet; and Westerly and parallel to the Southern line of Rose Street, 35 feet to the point of beginning.

Being a portion of Lots 15 and 16, Block 9, "Map of the Jose Domingo Tract", filed December 24, 1876, Map Book 5, Page 27, Alameda County Records.

APN: 059-2270-004-03

TRACT EIGHT:

Lot 6, Block B, Map showing subdivision of Southerly portion of Harmon Tract, filed February 27, 1886, Map Book 6, Page 33, Alameda County Records.

APN: 052-1520-008

TRACT NINE:

Lot 10 and 11, Block C, Map of the Re-subdivision of Smith's Subdivision of the Mathews Tract, Oakland Township, filed October 18, 1889, Map Book 9, Page 40, Alameda County Records.

APN: 054-1730-014-00

TRACT TEN:

Lot 7, Block 2, Central Park at Alcatraz Station, Filed April 13, 1885, Map Book 6, Page 31, Alameda County Records.

APN: 052-1530-018

TRACT ELEVEN:

Parcel One:

Portion of Block 8, Amended Map and Re-subdivision of the Central Park, filed September 28, 1891, Map Book 12, Page 17, Alameda County Records, described as follows:

Beginning at a point on the Western line of Harper Street, distant thereon Southerly 165 feet from the intersection thereof with the Southern line of Ashby Avenue (formerly Mason Street) as said Streets are shown on the Map herein referred to; running thence Southerly along said line of Harper Street 40 feet; thence at right angles Westerly 122.4 feet to the Eastern boundary line of Hegen Street Homestead, as shown on said Map; thence at right angles Northerly along said boundary line, 40 feet; and thence at right angles Easterly 122.4 feet to the point of beginning.

APN: 053-1602-006

TRACT TWELVE:

Lot 20, Block 118, Map of Tract E of the Berkeley LTI Association, filed February 4, 1876, Book 19 of Maps, Page 79, Alameda County Records.

APN: 056-1970-015-07

TRACT THIRTEEN:

Parcel One:

Parcel A, as shown on Parcel Map 4718, filed July 1, 1986, in Book 161 of Parcel Maps, at Page 50, Alameda County Records.

EXCEPTING THEREFROM:

All Buildings and improvements situated thereon, which buildings and improvements are, and shall remain real property.

Parcel Two:

All buildings and improvements situated on the following described real property, which buildings and improvements are and shall remain real property:

Parcel A, as shown on the Parcel Map 4718, filed July 1, 1986, in Book 161 of Parcel Maps, at Page 50
Alameda County Records.

APN 054-1724-004

TRACT FOURTEEN:

Parcel One:

Parcel B, as shown on Parcel Map 4719, filed July 1, 1986, in Book 161 of Parcel Maps, at Page 52, Alameda County Record

EXCEPTING THEREFROM:

All Buildings and improvements situated thereon, which buildings and improvements are, and shall remain real property.

Parcel Two:

All buildings and improvements situated on the following described real property, which buildings and improvements are and shall remain real property:

Parcel B, as shown on the Parcel Map 4719 filed July 1, 1986, in Book 161 of Parcel Maps, at Page 52, Alameda County Records.

APN: 058-2129-016

TRACT FIFTEEN:

Parcel One:

Parcel A, as shown on Parcel Map 4719, filed July 1, 1986, in Book 161 of Parcel Maps, at Page 52, Alameda County Records.

EXCEPTING THEREFROM:

All Buildings and improvements situated thereon, which buildings and improvements are, and shall remain real property.

Parcel Two:

All buildings and improvements situated on the following described real property, which buildings and improvements are and shall remain real property:

Parcel A, as shown on Parcel Map 4719, filed July 1, 1986, in Book 161 of Parcel Maps, at Page 52, Alameda County Records.

APN: 058-2129-015

