



Contra  
Costa  
County

To: Board of Supervisors

From: John Kopchik, Director, Conservation & Development Department

Date: July 12, 2016

Subject: Approval of HOME and HOPWA Legal Documents for the Virginia Lane Apartment Project in Concord

### **RECOMMENDATION(S):**

In the matter of making a loan of \$500,000 in HOME Investment Partnerships Act and \$1,000,000 in Housing Opportunity for Persons with HIV/AIDS funds to VL, L.P., a California limited partnership, to acquire and rehabilitate the Virginia Lane Apartments in Concord:

1. FIND that this project is categorically exempt per Section 15301 of the California Environmental Quality Act (CEQA);
2. APPROVE and AUTHORIZE the Conservation and Development Director, or designee, to execute legal documents to effect the loan;
3. DIRECT the Director of Conservation and Development to file a Notice of Exemption for the Virginia Lane Apartment project with the County Clerk; and
4. DIRECT the Director of Conservation and Development, or designee, to arrange for payment of the \$50 handling fee to the County Clerk for filing such Notice of Exemption.

### **FISCAL IMPACT:**

No General Fund impact. HOME Investment Partnerships Act funds are provided to the County on a formula allocation basis through the U.S. Department of Housing and Urban

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **07/12/2016** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

#### **VOTE OF SUPERVISORS**

AYE: Candace Andersen, District II  
Supervisor  
Mary N. Piepho, District III  
Supervisor  
Karen Mitchoff, District IV  
Supervisor  
Federal D. Glover, District V  
Supervisor

ABSENT: John Gioia, District I  
Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: July 12, 2016

David Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: Kara Douglas 925  
674-7880

cc:

Development (HUD). CFDA #14.239. Housing Opportunities for Persons with HIV/AIDs funds are provided to the County on a formula allocation basis through the City of Oakland CFDA# 14.241.

## BACKGROUND:

In 1999, the County loaned \$290,000 in HOME Investment Partnerships Act (HOME) funds to Eden Housing to acquire and rehabilitate the Maplewood and Golden Glen apartments located at 1121 and 1140 Virginia Lane in Concord. The development is now known as Virginia Lane Apartments. On December 8, 2015, the Board of Supervisors allocated \$1,000,000 in Housing Opportunities for Persons with HIV/AIDS (HOPWA) funds, and on March 1, 2016, the Board of Supervisors allocated \$500,000 in additional HOME funds to Eden Housing Inc. for the rehabilitation of Virginia Lane Apartments. The apartments located at 1121 Virginia Lane were built in 1970, and those located at 1140 Virginia Lane were built in 1964. The additional HOME and HOPWA funds are needed to assist in correcting significant deterioration of exterior and interior building components. The rehabilitation will include partial or full reskinning of the buildings, seismic reinforcement, correction of drainage and sewage problems, and path of travel and unit accessibility improvements. HOME and HOPWA funds will be used for soft costs, including pre-development, closing costs, permits and fees. The development consists of 91 apartments, which are affordable to families earning less than 60 percent of the area median income.

A new limited partnership, VL, L.P. will purchase Virginia Lane Apartments. The general partner of VL, L.P. is VL LLC with Eden Development Inc. as the sole member. The limited partner will be the tax credit equity investor.

In addition to the HOME and HOPWA loans, the project will be funded with low income housing tax credits and tax-exempt bond financing. The County is the issuer for the tax-exempt bonds. The City of Concord has an existing \$3.4 million loan, which will be assigned to the new owner. The City will also make an additional loan of \$1.3 million. The new funds will be used to payoff an existing mortgage and to rehabilitate the property.

The HOME loan from 1999 will be modified. The accrued interest as of the date of the loan modification will be added to the original principal for a new loan principal of approximately \$438,000. The interest rate will be the applicable federal rate, which is 2.24 percent as of June 2016. The new HOME funds will be provided in the form of a 20-year, residual receipt loan with a three percent interest rate. HOPWA funds will be provided as a 10-year fully deferred loan with no interest. The County will have an additional regulatory agreement to ensure that the 4 HOME, 10 HOPWA and 20 County-assisted units remain affordable following the expiration of the HOME and HOPWA affordability terms. The total term of affordability for the County-assisted units is 55 years. Affordability and use restrictions are incorporated into the County loan documents.

The County legal documents are attached and include a modification agreement and promissory note for the existing HOME funds, a new promissory note for the new HOME/HOPWA loan, a loan agreement, a deed of trust and security agreement, a regulatory agreement, and an intercreditor agreement. There may be some annual loan

payments if the project has surplus cash flow. Otherwise, the loan is deferred for 55 years. The loan documents are attached in their substantially final form and will be executed in a form approved by County Counsel. The County will also be requested to subordinate to the bank loan and may be requested to sign estoppel agreements. Through this action, the DCD Director is authorized to execute subordination agreements that are consistent with the subordination terms included in the Loan Agreement.

HOPWA funds are provided to the County through the City of Oakland. Pursuant to an agreement with the City of Oakland, the County must expend the HOPWA funds by July 15, 2016. The HOME and HOPWA legal documents are scheduled to be executed on July 13, 2015 and recorded on July 15, 2016 along with legal documents from the other lenders as part of the "Construction Close". If the Construction Close is delayed, the HOME and HOPWA documents will still be executed, but will not be recorded until the Construction Close. HOPWA funds will be used to reimburse Eden Development Inc for predevelopment costs prior to the Construction Close and Eden Development Inc will guarantee the unsecured HOPWA funds. If the Construction Close does not occur by September 15, 2016, HOPWA funds will be repaid to the County.

National Environmental Policy Act (NEPA): HOME and HOPWA projects are subject to NEPA and 24 CFR Part 58 review. The NEPA review for this project has been completed and the developer must remediate lead-based paint and asbestos. This project is categorically exempt from CEQA pursuant to Section 15301; it is repair of an existing facility.

Due to the high construction costs and limited revenue from the restricted rents, the total amount of the financing provided to the project will likely exceed the value of the completed project. Even though the proposed equity investment from low income housing tax credits is substantial compared to the amount of long term debt, the partnership agreement will have numerous safe guards of the investor's equity. These safe guards essentially subordinate the County's debt to the investor's equity. Therefore, the County funds may not be fully secured through the value of the property.

#### CONSEQUENCE OF NEGATIVE ACTION:

Without the approval and execution of the HOME and HOPWA legal documents, the acquisition and rehabilitation will not be done, and the property will continue to suffer from deferred maintenance. VL L.P. must close on the HOME and HOPWA funds by July 15, 2016, or the HOME and HOPWA funds may be recaptured by HUD.

#### CHILDREN'S IMPACT STATEMENT:

The Virginia Lane Apartment project supports indicator number 3: Families are Economically Self-Sufficient.

#### ATTACHMENTS

Virginia Lane HOPWA Loan Agreement

Virginia Lane HOPWA Promissory Note

Virginia Lane Regulatory Agreement

Virginia Lane HOME HOPWA Deed of Trust

Virginia Lane Intercreditor Agreement

Virginia Lane Assignment Agreement

Virginia Lane HOME Loan Promissory Note

Virginia Lane HOME HOPWA Regulatory Agreement

Virginia Lane HOME HOPWA Loan Agreement