

**CITY OF TEMECULA
AGENDA REPORT**

TO: City Manager/City Council

FROM: Matt Peters, Interim Director of Community Development

DATE: November 4, 2024

SUBJECT: Approve Subordination Agreement Required for a Refinancing/Permanent Loan for the Las Haciendas Project (Which Pays Off the Existing Construction Loan Coming Due) (At the Request of Subcommittee Members Kalfus and Schwank)

PREPARED BY: Haide Urias, Housing Analyst

RECOMMENDATION: That the City Council adopt a resolution entitled:

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
TEMECULA APPROVING A SUBORDINATION
AGREEMENT WITH NEWPOINT REAL ESTATE CAPITAL,
LLC, FOR ITS LOAN TO LAS HACIENDAS HOUSING
ASSOCIATES, L.P. TO REFINANCE AND PAY OFF ITS
EXISTING CONSTRUCTION LOAN

BACKGROUND: Pursuant to a Loan Agreement dated May 26, 2020, the City made a loan of \$718,445 of Development Impact Fees (DIF) and a construction loan of \$8,910,698 of low/moderate housing set aside funds (as successor to the assets of the former Redevelopment Agency) to Las Haciendas Housing Associates, L.P. (“Borrower”) repayable from a percentage of net cash flow/residual receipts. The loan was to help finance a 77-unit apartment project (“Project”) with 37 units restricted to low-income households at affordable rent by a recorded agreement with the City (“Regulatory Agreement”).

Section 3.4 of the Loan Agreement authorizes the City to execute subordination agreements that subordinate the deed of trust securing the City’s loan to the deed of trust securing any Senior Project Loan if necessary for the borrower to obtain the applicable Senior Project Loan. Section 1.1.26 of the Loan Agreement defines “Senior Project Loan” as the initial construction loan (from a third-party lender) and any financing used to refinance such loan that does not exceed outstanding principal of the loan being refinanced plus refinancing loan closing costs.

The existing construction loan for the Project is coming due on November 7, 2024. The Borrower has negotiated with NewPoint Real Estate Capital LLC, an approved Freddie Mac Multifamily

lender, to secure a new loan. This new loan, originated by NewPoint Real Estate Capital LLC and backed by Freddie Mac, will be used to pay the existing construction loan. Subsequently, Freddie Mac will pool this loan with other similar loans and securitize them, issuing mortgage-backend securities to investors. This process enables Freddie Mac to provide stable and long-term financing for affordable housing projects like Las Haciendas. Counsel for the new lender has provided the attached form of Freddie Mac Subordination Agreement as a document required from the City in order for the new loan to be made, and after repeated discussions with counsel to Freddie Mac, Freddie Mac counsel has reportedly said that no changes can be made to it because the loans in the securitization pool must have standard documentation (they can't make special disclosures to securities purchasers regarding legal differences for certain loan documentation, like the Subordination Agreement).

RECOMMENDATION:

The problem faced by the City is that the Federal Home Loan Mortgage Corporation, Freddie Mac, insists upon an unlimited “standstill” clause that limits the City’s remedies in the event of a default of the Regulatory Agreement. If Freddie Mac were more reasonable, and did not insist on an unlimited standstill clause, all would be good for the City. Now the City is caught between approving the proposed subordination agreement that limits its rights and a collapse of Las Haciendas Housing Associates financing of the Project.

Staff recommends that the Council adopt Resolution No. 2024-___ approving the proposed Subordination Agreement, recognizing that: (1) it contains an unlimited “standstill” clause with certain impacts on the City’s rights under the Loan Agreement; (2) the refinancing lender in question requires that form of Subordination Agreement with unlimited standstill in order to make its new loan; (3) according to the attached Memo Regarding Las Haciendas Subordination Agreement from Developer, the owner/borrower is not able to get acceptable loan terms (amount; use; interest rate) from any other lender that would not require an unlimited standstill provision; and (4) since the City’s deed of trust is currently subordinate to the construction loan deed of trust, if the construction loan is not timely repaid by refinancing, the existing senior construction loan deed of trust could be foreclosed, extinguishing the City’s junior/subordinate deed of trust.

FISCAL IMPACT: There are no fiscal impacts to the City.

ATTACHMENTS:

1. Resolution
2. Subordination Agreement
3. Memo Regarding Las Haciendas Subordination Agreement from Developer