



Office of the City Manager

CONSENT CALENDAR
November 7, 2023

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Lisa Warhuus, Director, Health, Housing, and Community Services
 Subject: Northern California Land Trust – 2321 Tenth Street Housing Trust Fund Reservation

RECOMMENDATION

Adopt a Resolution:

1. Reserving an additional \$1,703,585 in Housing Trust Fund program funds for a development loan for Northern California Land Trust (NCLT)'s 2321-2323 Tenth Street and:
 - a) waiving Sections I.A.1 and IV.C.1 of the Housing Trust Fund Guidelines;
 - b) applying the Small Sites Program standards to the project's development and operating budgets; and
 - c) requiring partial repayment of the loan through the energy efficiency rebates NCLT pursues.
2. Authorizing the City Manager or her designee to execute all original or amended documents or agreements to effectuate these actions.

FISCAL IMPACTS OF RECOMMENDATION

The attached resolution would reserve an additional \$1,703,585 for NCLT's 2321 Tenth Street property. There are currently sufficient funds in the Housing Trust Fund (HTF) program to fund the request. Staff will determine the exact mix of funds from the HTF closer to the loan closing; which could include the following funds: Affordable Housing Mitigation Fee (Fund #120), Inclusionary Housing Fee (Fund #122), Condo Conversion Fee (Fund #123), and Commercial Housing Mitigation Fee (Fund #331). Funding is subject to appropriations in the HTF FY 2024 budget.

CURRENT SITUATION AND ITS EFFECTS

In July 2023, the Health, Housing, and Community Services Department (HHCS) received a funding request to support urgent rehab needs from NCLT for its Tenth Street property. 2321-2323 Tenth Street is an 8-unit occupied project that NCLT acquired in 2019. The City Regulatory Agreement restricts occupancy to households earning up to 80% area median income. Since taking ownership, NCLT's inspections

revealed that the property's rehabilitation needs are significantly more extensive than initially known. The property has deferred maintenance, and the rehabilitation work completed by the prior owner was substandard. There are structural and habitability issues that need to be addressed, and the original budget is insufficient.

NCLT requested \$1,703,585 in new funding, and proposed repaying the City up to \$324,225 through energy efficiency upgrade rebates after the renovation is complete. NCLT estimates the project will be eligible for up to \$324,225 in rebates, though the actual amount will be based on the final rehab scope and results of post-rehab energy efficiency testing. The balance of the loan not repaid through rebates would be repaid through the project's ongoing residual receipts, as is standard for the City's development loans.

NCLT originally applied for funding through the City's 2019 HTF Request for Proposals process, and was awarded \$1,620,640 to support predevelopment, acquisition, and renovation activities at this property. Like many acquisitions of occupied, unsubsidized housing, this is an anti-displacement project, and NCLT converted the property to long-term, deed-restricted affordable housing. With the proposed funding, the project's total City subsidy would be \$3,324,225.

BACKGROUND

The HTF Guidelines allow consideration of funding for at-risk projects outside of a competitive funding process. As a previously funded project with urgent health and safety needs, 2321 Tenth Street meets the definition of at-risk (HTF Guidelines V.D.1).

Renovations always have some inherent risk, as the full extent of a property's condition is not revealed until after acquisition and construction has started. In their requests for funding, NCLT provided property reports and a detailed scope and budget. Staff reviewed the submissions to ensure that NCLT's budget would address the major scope items identified in the inspections. The City also requires that renovation projects include a 15% construction contingency to help cover any new issues identified during the course of construction. While NCLT pursued other funding opportunities to leverage the City's contribution, there are limited resources available to projects of this size.

NCLT does not technically meet the HTF Guidelines threshold (I.A.1) for developer experience; which requires applicants to have completed three comparable projects within the past ten years. To award funding, Council would need to approve a waiver of this section. The City will require a third-party construction inspector to review pay apps and provide monthly reports to the City on construction progress. If the City is concerned about NCLT's construction management, staff may require NCLT to hire a third-party construction manager.

The recommendation also includes a condition to apply the Small Sites Program budget standards to the project, as those standards are tailored to smaller projects with limited cash flow and resources.

If the additional funding is approved, the City would be providing the majority (62%) of the project's funding; exceeding the subsidy limit in the HTF guidelines (Section IV.C.1) which caps the City's contribution at 40% of a project's total development costs. The project also exceeds the Small Sites Program limits, which caps City subsidy at \$375,000 per unit, or \$3M for an 8-unit project. Therefore, a waiver of Section IV.C.1 is also required.

These waivers and requirements are consistent with Council's actions related to their 2019 approvals of funding for NCLT's project.

On September 7, 2023, the Housing Advisory Commission took the following action:

Action: M/S/C (Ortiz-Cedeño/ Rodriguez) to recommend that City Council reserve \$1,703,585 in housing trust funds for NCLT's 2321 Tenth Street property and waive Sections I.A.1 and IV.C.1 of the HTF Guidelines; apply the Small Sites Program standards to the project's development and operating budgets; and require partial repayment of the loan through the energy efficiency rebates NCLT pursues.

Vote: Ayes: Braslaw, Fain, Mendonca, Ortiz-Cedeño, Rodriguez. Noes: None. Abstain: None. Absent: Calavita (unexcused), Johnson (excused), Potter (excused), Simon-Weisberg (excused).

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

To the extent feasible, NCLT will incorporate energy and water efficiency upgrades that will benefit ongoing operations for NCLT and its residents and support the City's environmental sustainability goals. NCLT will be taking advantage of programs that provide financial incentives for deep energy and emissions savings and has applied for rebates incentivizing energy efficiency upgrades and California Energy Commission's EPIC grant.

RATIONALE FOR RECOMMENDATION

The project is considered at-risk under the HTF Guidelines (V.D.1), and approving additional funds supports the City's goal of preserving affordable housing and funding the rehab of an occupied, affordable housing projects. Without this City funding, NCLT would not be able to address the project's capital needs, including urgent health and safety issues.

ALTERNATIVE ACTIONS CONSIDERED

The City could opt not to provide additional funding, which would leave the property with unaddressed habitability and structural needs that NCLT does not have other funding to support.

NCLT 2321 Tenth Street Housing Trust Fund Reservations

CONSENT CALENDAR
November 7, 2023

CONTACT PERSONS

Asavari Devadiga, Community Development Project Coordinator, HHCS, 510-981-5426
Jenny Wyant, Senior Community Development Project Coordinator, HHCS, 510-981-5228

Attachments:

1: Resolution

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

APPROVAL OF THE FUNDING RESERVATION FOR THE 2321-2323 TENTH STREET PROJECT

WHEREAS, City Council established a Housing Trust Fund (HTF) program to assist in the development and expansion of housing affordable to low- and moderate-income persons who either work or reside within the City of Berkeley, and authorized the City Manager to implement the HTF program; and

WHEREAS, City Council adopted guidelines (HTF Guidelines) as revised on January 19, 2021, and authorized the City Manager to implement the HTF program in accordance with the Guidelines; and

WHEREAS, on October 29, 2019 by Resolution No. 69,163-N.S., Council approved \$50,000 in predevelopment funding for Northern California Land Trust's (NCLT) acquisition and renovation of 2321-2323 Tenth Street; and

WHEREAS, on December 10, 2019 by Resolution No. 69,231-N.S., Council approved \$1,570,640 for 2321-2323 Tenth Street; applied the City's Small Sites Program standards to the project; and waived Section III.A.1 (now, I.A.1) of the HTF Guidelines approving NCLT as an eligible developer and Section V.B.7 (now, IV.C.1) of the HTF Guidelines approving HTF funds in excess of 40% of project costs; and

WHEREAS, the City's HTF Guidelines allow funding requests to be submitted at any time for projects at imminent risk, including previously funded projects with urgent health and safety needs; and

WHEREAS, the City received a funding request on July 20, 2023 from NCLT for 2321-2323 Tenth Street, a project that meets the HTF Guideline's definition of at-risk; and

WHEREAS, on September 7, 2023, the Housing Advisory Commission recommended Council approve NCLT's funding request of \$1,703,585 for 2321-2323 Tenth Street; and

WHEREAS, the Housing Advisory Commission's motion included recommendations to waive certain sections of the Housing Trust Fund Guidelines in order to fund NCLT's project; and

WHEREAS, the Housing Advisory Commission's motion included a recommendation to apply the City's Small Sites Program Standards to 2321-2323 Tenth Street, since that program includes development and operating budget requirements designed to support the long-term viability of smaller multifamily projects with limited cash flow.

November 7, 2023

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council approves the \$1,703,585 development funding reservation of HTF funds for 2321-2323 Tenth Street.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley waives the requirements of Section I.A.1 of the HTF Guidelines and approves Northern California Land Trust as an eligible developer with demonstrated capacity to complete the rehabilitation of 2321-2323 Tenth Street, though NCLT has not completed the number of projects required by the developer eligibility criteria.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley waives the requirements of Section IV.C.1 of the HTF Guidelines and approves HTF funds in excess of 40% for NCLT's 2321-2323 Tenth Street project, due to the nature and urgency of the development and unavailability of alternative financing.

BE IT FURTHER RESOLVED that Small Sites Program operating and development budget standards will be applied to 2321-2323 Tenth Street.

BE IT FURTHER RESOLVED that funds shall be reserved for a period of no more than 24 months from the date of this Resolution, contingent on NCLT obtaining all required City approvals and securing commitments for project funding that the City Manager or her designee deems sufficient within the reservation period.

BE IT FURTHER RESOLVED that the funding reservation is conditioned upon the completion of the environmental review process, except as authorized by 24 CFR, Part 58, and that should HOME and/or CDBG funds constitute a portion of the funding for any project, a final commitment of HOME and/or CDBG funds shall occur only upon the satisfactory completion of the appropriate level of environmental review and also upon the receipt of approval of the request for release of funds and related certification from the U.S. Department of Housing and Urban Development, when applicable. The funding reservation for any of the HOME and/or CDBG funded projects is conditioned upon the City of Berkeley's determination to proceed with, modify, or cancel the project based on the results of subsequent environmental review under the National Environmental Policy Act.

BE IT FURTHER RESOLVED that the making of the loan shall be contingent on and subject to such other appropriate terms and conditions as the City Manager or her designee may establish.

BE IT FURTHER RESOLVED the City Manager, or her designee, is hereby authorized to execute all original or amended documents or agreements to effectuate this action; a signed copy of said documents, agreements and any amendments will be kept on file in the Office of City Clerk.