

# PDC

## PORTLAND DEVELOPMENT COMMISSION

**DATE:** May 27, 2009

**TO:** Board of Commissioners

**FROM:** Bruce A. Warner, Executive Director

**SUBJECT:** Report Number 09-61  
Recommendation to City Council for Preliminary and Final Approval of Multifamily Housing Revenue Refunding Bonds, Series 2009 in the Amount of \$15,000,000 for the Village at Lovejoy Fountain

### EXECUTIVE SUMMARY

#### BOARD ACTION REQUESTED

Adopt Resolution No. 6706

#### ACTION SUMMARY

The Portland Development Commission (PDC) has received a request for approval of economic development revenue bonds in the amount of \$15 million dollars for the refunding of the existing bond issue for the 198-unit apartment project, the Village at Lovejoy Fountain, located at 245 SW Lincoln Street (the Project). The applicant and Project owner is VLF, LLC (VLF). The issuance of the economic development revenue bonds is considered a conduit financing arrangement because, although the bonds are issued by the City of Portland (the City), they are not obligations of the City. The City does not guarantee the bonds and is not subject to liability for their repayment. VLF, through a loan agreement with the City, will be solely responsible for debt service on the bonds.

Pursuant to Chapter 5.72 of the Code of the City of Portland (City Code), PDC staff has reviewed the proposed bond issue and has determined that it conforms with the guidelines contained in Chapter 5.72 of the Code and is making a recommendation to City Council that the City authorize issuance of the bonds.

In accordance with City Code, this action will designate K&L Gates LLP as bond counsel for PDC and the City.

Through this action, PDC will make a recommendation to the City Council for preliminary and final approval of the bond issue for the Project. If the PDC Board of Commissioners (the Board) approves this action, the City Council will take preliminary and final action on the bond issuance in early June 2009, thereby allowing the bond financing to close on July 1, 2009.

#### PUBLIC BENEFIT

By its approval of the original bond financing in 1997 under Resolution No. 5026, the Board found that the Project conformed to City of Portland policies and goals. Staff has confirmed that the Project does not conflict with any newly adopted plans or policies of the City and

continues to be an “economic development project” within the meaning of Chapter 5.72.020 of the City Code and ORS 280.140 by providing high density, mixed-income housing close to public transit in central Portland. Staff confirmed that more than 85% of the units are available at rents affordable to households below 150% median family income (MFI) as required under City Code.

There are several housing regulatory agreements associated with the Project. The most restrictive stipulates that 40 units remain affordable at 50% MFI until 2029 and this requirement will survive after refunding. Conformance with the agreements is monitored annually by PDC, and the Project is in compliance.

**This action will support the following PDC goals:**

- Sustainability and Social Equity
- Healthy Neighborhoods
- A Vibrant Central City
- Strong Economic Growth and Competitive Region
- Effective Stewardship over our Resources and Operations, and Employee Investment

**PUBLIC PARTICIPATION AND FEEDBACK**

There was public participation when the City originally issued its Multifamily Housing Revenue bonds, Series 1997 for the Village at Lovejoy Fountain Project. As this action supports the initial project goals and does not result in any material changes to the Project, additional public participation has not been solicited.

**COMPLIANCE WITH ADOPTED PLANS AND POLICIES**

This action conforms to City Code Chapter 5.72 “Economic Development Projects.”

This action conforms to PDC’s Cost Recovery Policy providing full reimbursement for PDC’s tasks as described in the following section.

**FINANCIAL IMPACT**

There is no adverse financial impact to PDC by this action. The original financing of the project included a subordinate loan from PDC using “Housing Investment Funds.” The PDC loan was originated in the amount of \$1,050,000 and has been paid in full.

Section 5.72.100 of City Code sets the administrative fee structure for a bond issue at \$7.00 per \$1,000. The Code also provides for a waiver or reduction of the fee in cases of bond refunding to correspond to the decreased due diligence required in a refunding. As set forth in the Fee Letter attached to the Resolution, staff recommends that the fee be reduced by 40% to \$63,000 to reflect the decreased work load in contrast to an initial bond funding.

## **RISK ASSESSMENT**

The new financing structure is superior to the existing in at least two ways:

- (1) The new enhancement will be for the remaining life of the bonds, and will not have to be periodically renewed, as the bank letter of credit did; and
- (2) Federal Home Loan Mortgage Corporation (Freddie Mac) carries a higher credit rating than does KeyBank.

Together, these factors may decrease credit and operating risk for the Project through lower interest rates on the bonds and corresponding lower debt service payments on the first position mortgage.

## **WORK LOAD IMPACT**

Work is being performed by existing staff.

## **ALTERNATIVE ACTIONS**

The Board could decide to recommend against this refunding. This would result in non-compliance for the Project given KeyBank's unwillingness to extend the credit enhancement required of the bond issue, the requirement for credit enhancement, and the language of the original bond documents that impedes the insertion of a substitute credit enhancer.

## **CONCURRENCE**

The Portland Office of Management and Finance concurs with this recommendation.

## **BACKGROUND**

### **Project Description**

By adopting Resolution No. 4809 (January 17, 1996) and Resolution No. 5026 (October 1, 1997), the Board recommended approvals to City Council of housing revenue bonds in an amount not to exceed \$15 million dollars for the development of The Village at Lovejoy Fountain as a 198-unit mixed income, multifamily housing complex in downtown Portland. The original financing consisted of 4% Section 42 tax credits, \$15 million pursuant to tax exempt bonds issued through the City of Portland, \$6.5 million in taxable bonds, Developer equity, and a subordinate loan from PDC using Housing Investment Funds in the amount of \$1,050,000. Attachment "B" provides the staff report for the final approval of the original bond funding in 1997.

The \$15 million dollar bonds issued through the City of Portland in 1997 are variable rate demand bonds requiring credit enhancement through a bank letter of credit. To date this credit enhancement has been provided by KeyBank. Recently, KeyBank announced its intention to discontinue credit enhancement activities and will not renew the letter of credit; forcing VLF to seek alternative credit enhancement. VLF is obtaining new credit enhancement from Freddie Mac.

The original plan was to replace the KeyBank credit enhancement with the Freddie Mac credit enhancement, which would not have involved any refunding of bonds. However, due to specific language in the wording of the original bond issue, this substitution process proved to be very difficult, if not impossible. As a result, the solution is a refunding of these bonds, even though this current refunding, for the same amount and with a term ending on the same date as the original issuance, is nothing more than a substitute for typical credit enhancement.

### **Development Team**

VLF is a limited liability company operated by Oregon Pacific Investment and Development Company, a locally owned and privately held real estate investment, development and management firm. The project team includes Wells Fargo Institutional Securities, LLC/ Wells Fargo Brokerage Services, LLC, (Underwriter/Private Placement Agent), U.S. Bank National Association (Trustee), Freddie Mac (Credit Enhancement), and Standard and Poor's (Rating Agency).

### **Determination of Eligibility for Tax-Exempt Private Activity Bond Financing**

Pursuant to Section 5.72.070 of the City Code, the PDC Board must approve or disapprove an application for bond financing, including refunding, and recommend a preliminary and final approval to City Council. There are numerous criteria set forth in 5.72.060 and 5.72.090 which must be considered in making the decision. Staff has reviewed the Project with respect to its conformity with City Code and finds the Project to be eligible for preliminary and final approvals based on the following findings:

1. Bond documents comply with IRS Regulations, the Oregon Revised Statutes and the rules and policies of the City Code: Based on review by K&L Gates LLP, bond counsel for PDC and the City of Portland, staff finds that the bond documents comply with identified rules and policies governing the issuance. VLF has executed a Letter of Intent and Indemnification and Compensation Agreement with PDC and the City. The bonds will be sold through a private placement by Wells Fargo Brokerage Services, LLC, with accredited investors who certify that they have the financial knowledge and experience in financial matters to evaluate the investment.

2. Applicant financial strength and capacity to carry out its obligations: Staff finds that VLF is financially responsible, and capable and willing to fulfill its obligations consistently with the purposes of the City Code. The Project is in good physical condition with no known deferred maintenance or repairs. The Project has market-level vacancy rates and stable revenues and expenses, providing adequate debt coverage for the bonds.

3. Bond issue is financial feasibility: PDC has worked with VLF, bond counsel, bond underwriter/private placement agent, and VLF's financial advisor to structure the bond financing. City of Portland \$15,000,000 Multifamily Housing Revenue Refunding Bonds Series 2009 will be used to refinance the outstanding principal amount of the City of Portland Multifamily Housing Revenue Bonds Series 1997, also \$15 million dollars. After review of the bond market, and the terms and conditions of the proposed issue, staff finds the bond issue to be financially feasible.

4. Conformance with City of Portland housing policies and goals: See the “Public Benefit” section of this Report.

**ATTACHMENTS:**

- A. Project Summary
- B. Historical project information: Report No. 97-29 for PDC Resolution No. 5026, October 1997

## PROJECT SUMMARY

- Project Name:** Village at Lovejoy Fountain
- Description:** 198 units
- Location:** 245 SW Lincoln Street (at SW Second Avenue and Lincoln Street)
- URA:** not in an Urban Renewal Area at this time
- Current Phase:** Refunding of Multifamily Revenue Bonds
- Next Milestone:** City Council hearing in early June 2009
- Completion Target:** Bond Issuance on July 1, 2009
- Outcome:** Issuance of Multifamily Housing Revenue Refunding Bonds, Series 2009 (\$15 million dollars) to effect the refunding of the Multifamily Housing Revenue Bonds, Series 1997 (\$15 million dollars)
- Site/Project Map:**



*View of Tower Homes*

**PORTLAND DEVELOPMENT COMMISSION**

Portland, Oregon

DATE: October 1, 1997  
TO: The Commissioners  
FROM: Felicia Trader  
REPORT NO. 97-29  
SUBJECT: **Recommendation to City Council for Final Approval of Economic Development Revenue Bonds for the Village at Lovejoy Fountain Project for an Amount not to exceed \$15,000,000 for the Development and Construction of New Housing Units and Parking**

The Commission has received a request for final approval of economic development revenue bonds for the proposed Village at Lovejoy Fountain Project (the "Project"). The applicant is Oregon Pacific Investment Company, an Oregon development company (the "Applicant"). On January 17, 1996, by Resolution No. 4809, the Commission granted preliminary approval of housing revenue bonds in an aggregate principal amount not to exceed \$20,000,000 to finance the construction of approximately 195 units (which has subsequently been increased to 198 units) of housing to be located at SW Second and Hall Street in Portland. This final approval, if granted by the Commission, will proceed to City Council for approval in October, thereby allowing the bond financing to close and construction commencement to proceed.

**Background: bond approval**

Through the City of Portland's authority to issue tax-exempt revenue bonds, the Commission is charged with the responsibility to process applications for private activity housing revenue bonds as defined in City Code, Chapter 5.72. These bonds are called "conduit financing" because they are issued by the City of Portland; however, the bonds are not obligations of the City, nor does the City guarantee repayment. Responsibility of debt service on the bonds is assumed by the Borrower through a loan agreement with the Commission and the City.

The bond approval process consists of a preliminary and a final approval stage; this is the final approval stage for the Project. At this stage, specifics of the Project's overall financial structure, construction budget, and bond structure have been reviewed by Staff against the bond guidelines, contained in Chapter 5.72.020 of the Code of Portland. Specifically, staff have: (1) reviewed the application for conformance with bond eligibility standards; (2) worked with the developer to structure the project's financing, including the bond financing; and (3) reviewed the Project to ensure the transaction meets

City housing policies and goals. Based on staff's review, the Commission's recommendation to move forward is then presented to City Council. The Village at Lovejoy Fountain is eligible for final approval under the three standards indicated below:

**(1) Conformance with bond eligibility standards**

The Commission has received a formal application for up to \$15,000,000 in housing revenue bond financing from Oregon Pacific Investment Company. In addition, staff have received all requested and relevant bond documents as required by City Code. Based on staff review of the bond documents, and review by Ater Wynne, bond counsel for the City of Portland, the Project meets bond eligibility standards.

Contained in this criterion is staff's consideration of whether the Applicant is financially responsible and fully capable and willing to fulfill its applications under the terms of its agreement with the City. A Letter of Intent and Indemnification and Compensation Agreement has been executed between Oregon Pacific Investment Company, the Commission, and the City of Portland. This document describes the general character and structure of the potential housing revenue bonds for the project as well as outlining the responsibilities of the parties involved.

**(2) Conformance with financial feasibility standards**

Staff requested, on the developer's behalf, a volume cap allocation from the State of Oregon Private Activity Bond Committee, and was rewarded \$15,000,000 in tax-exempt bond financing in April. The total development cost of the project is estimated to be \$26,532,537. Staff have been working with the development team over the last year and a half to structure this project; there have been numerous conversations with Key Capital Markets, the bond underwriter, Oregon Pacific, Oregon Pacific's professional advisors, and Shiels Obletz Johnsen, the project manager, and staff to develop a financially feasible project. The financial structure includes federally tax-exempt bond financing and a taxable adjustable rate note (the "TARN"), federal low income housing tax credits, a direct loan from the Housing Investment Fund, and considerable developer's equity. This approach's use of a variety of funding sources has allowed leverage of public funds.

The bonds shall be comprised of the federally tax-exempt issue in the approximate amount of \$15,000,000 (designated Series 1997). Key Bank will provide credit enhancement for the bond issue.



**Summary of Loan Structure:**

<i>Permanent:</i>	
Tax-exempt bonds:	\$15,000,000
Taxable bonds/TARN:	\$ 6,526,185
PDC Loan:	\$ 1,000,000
Sale of tax credits:	\$ 749,693
<u>Developer's equity:</u>	<u>\$ 3,256,659</u>
<b>TOTAL:</b>	<b>\$26,532,537</b>

Sources during construction will be the same; Key Bank is providing a letter of credit for the bond proceeds during construction and for five years thereafter.

**(3) Conformance with City of Portland housing policies and goals**

The Village at Lovejoy Fountain Project (the "Project") will provide much-needed high density, mixed-income housing in downtown Portland, and will help complete the development of the South Auditorium neighborhood in the Central City. The Village at Lovejoy Fountain is Phase II of the existing Parkside Plaza Apartments, owned by an affiliate of Oregon Pacific. It will provide a total of 198 units, including 144 one-bedroom units, and 44 two-bedroom units. Tenants of the Village will have access to the community recreation facilities of Parkside Plaza, which include a pool, spa, and exercise room. All units will be adaptable for handicapped tenants, and four units will be completely wheelchair accessible.

The Project, which is five stories of housing over two levels of structured parking, is located between SW 2<sup>nd</sup> and SW 3<sup>rd</sup> Avenues at Lincoln in the South Auditorium neighborhood, next door to the 208-unit Parkside Plaza Apartments. After construction of the Village at Lovejoy Fountain, the 2.3 acre parcel will provide a total of 406 units of much-needed mixed-income downtown housing, which is an average of 176 units per acre. Of the 198 units associated with the Village at Lovejoy, 40 of the units will be affordable to tenants earning 50% or less of area median income (AMI). Of the remaining units, it is the developer's intention to market these units at rents affordable to households earning 80-120% of median income. One hundred of these units have projected pro forma rents that would be affordable to tenants earning 80% to 100% of AMI.

There will be an approximate total of 156 parking spaces available for Village at Lovejoy Fountain tenants. The total number of parking spaces provided by the two levels of structured parking will be approximately 342; the remaining spaces will be used by tenants of the existing Parkside Plaza Apartments. Because this project replaces a surface parking lot formerly used by Parkside Plaza tenants, it was necessary to replace those lost spaces. Parkside Plaza will make lease payments in the amount of \$300,000/year for seven years to compensate for the construction cost of these additional spaces.

The Village at Lovejoy Fountain will fulfill many public benefits outlined as goals of the following policies:

*State-wide Planning Goal:*

- The State-wide Land Use Planning Goal, obligates cities to accommodate housing for all incomes, including affordable households. With its focus on affordable and middle income housing, the Project strongly meets these policy objectives.
- Goal #14 (Urban Development) mandates efficient use of urban lands. The project's density and transit orientation toward buses, light rail, and pedestrian malls meets these objectives.
- Oregon's Transportation Planning Rule mandates reduced reliance on the automobile, through measures such as high density, transit-supportive development. For the same reasons that the Project fulfills the other State goals, as well as its low parking ratios, the Project reduces reliance on automobiles and fulfills this policy.

*Metro's 2040 Framework Plan:*

- Metro's 2040 Framework Plan calls for infill development. The Project will replace a surface parking lot, thus adding value to this underutilized site with architecture that enhances the pedestrian street-scape and respects other buildings. Replacement of the parking lot will help further revitalize the South Auditorium area of the Central City.
- High density housing is crucial for the City to meet Metro 2040 Plan growth management goals. The Project helps the City of Portland fulfill its commitment to add 70,000 housing units within the Urban Growth Boundary by locating high-density housing close to public transportation and the Central City, as well utilizing existing urban services.

*City Goals:*

The Village at Lovejoy Fountain meets a number of the criteria for housing development as outlined in the following policies and plans: the Livable City Housing Initiative, Comprehensive Plan Housing Policy, the Central City Plan, and the Downtown Housing Policy and Plan. Again, some of the project's attributes which meet the objectives of these policies include: affordable and mixed-income housing near employment centers, infill redevelopment, growth management, economic development, density and transit-orientation.

Because the Project provides affordable and moderate housing, and because its high density nature fulfills a number of growth management goals for the City, the Project conforms with housing policy.

**Staff Assessment**


The final application meets the requirements of Ch.5.72.080, Code of Portland, and the proposed project is consistent with adopted City rules and policies.

**RECOMMENDATION:**

Adopt the accompanying Resolution recommending to City Council final approval of the Economic Development Revenue bonds in an amount not to exceed \$15,000,000.

**ACTION:**

Approved October 1, 1997  
Resolution No. 5026

  
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Felicia Trader, Executive Director