



Memorandum

TO: HONORABLE MAYOR

FROM: Rosalynn Hughey
Jim Shannon

SUBJECT: SEE BELOW

DATE: March 12, 2024

Approved 

Date
3/13/24

COUNCIL DISTRICTS: 5, 9

SUBJECT: ACTIONS RELATED TO LOAN COMMITMENTS AND LAND PURCHASES FOR KOOSER APARTMENTS LOCATED AT 1371 KOOSER ROAD AND 525 NORTH CAPITOL AVENUE FOR THE DEVELOPMENT OF TWO NEW AFFORDABLE RENTAL HOUSING DEVELOPMENTS

RECOMMENDATION

(a) Adopt a resolution:

(1) Approving a combined Construction-Permanent Loan commitment of up to \$39,551,066 and a combined land acquisition loan or acquisition funding commitment of up to \$16,200,000 in Low- and Moderate-Income Housing Asset Funds, Measure E Funds, and Inclusionary Fee Funds, or such other special funds as the City may designate to the following developments:

- i. Affirmed Housing Group or an affiliated development entity for the Kooser Apartments, located at 1371 Kooser Road, which is being developed to provide 189 affordable rent-restricted apartments, and two unrestricted manager's homes.
 - (a) A total Construction-Permanent loan commitment of up to \$19,551,066 with \$5,912,450 in Low- and Moderate-Income Housing Asset Funds and \$13,638,616 in Inclusionary Fee Funds; and
 - (b) A land acquisition loan or acquisition funding commitment of up to \$9,700,000 in Inclusionary Fee Funds.
- ii. Community Development Partners or an affiliated development entity for the 525 North Capitol affordable housing development located at 525 North Capitol Avenue, which is being developed to provide 158 affordable rent-restricted apartments, and two unrestricted manager's homes.
 - (a) A total Construction-Permanent loan commitment of up to \$20,000,000 with \$14,920,000 in Measure E Funds and \$5,080,000 in Inclusionary Fee Funds;

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and

- (b) A land acquisition loan or acquisition funding commitment of up to \$6,500,000 in Inclusionary Fee Funds.
 - (2) Authorizing a loan-to-value ratio of greater than 100% for the developments;
 - (3) Authorizing the Director of Housing, the Acting Director of Housing, or their designee to acquire 1371 Kooser Road from Affirmed Housing Group for a price not to exceed \$9,700,000 at the time of transfer, to accept the grant deed, and to enter into a long-term ground lease of the site to the developer for the development;
 - (4) Authorizing the Director of Housing, the Acting Director of Housing, or their designee to acquire 525 North Capitol from Community Development Partners for a price not to exceed \$6,500,000 at the time of transfer, to accept the grant deed, and to enter into a long-term ground lease of the site to the Community Development Partners or an affiliated development entity for the development;
 - (5) Authorizing the Director of Housing, the Acting Director of Housing, or their designee to negotiate and execute documents and document amendments related to the acquisition and development of the sites, the ground leasing of the sites, and any riders to the ground leases required by government entities;
 - (6) Authorizing the loan terms to allow an increase in the rents and income restrictions up to 60% of Area Median Income for new tenants in Project-Based Voucher subsidized apartments in the event of expiration or termination of Project-Based Vouchers and for all tenants in the event of foreclosure, to the extent the City has determined such increase is needed for the feasibility of the above developments and allowed by other funds;
 - (7) Authorizing the Director of Housing, the Acting Director of Housing, or their designee to negotiate and execute loan documents and all other documents, including any amendments thereto, related to City financing for the developments;
 - (8) Making a determination that, consistent with Government Code Section 37364, after acquisition, the sites are to be leased by the City to the respective developers without first offering the site to the public for any other use, since the sites will be restricted so as to provide housing affordable to persons and families of low or moderate income, as defined by Section 50093 of the Health and Safety Code or as defined by the United States Department of Housing and Urban Development or its successors, and that this use is in the City's best interests.
- (b) Adopt the following Fiscal Year 2023-2024 Appropriation Ordinance amendments in the General Fund:
- (1) Decrease the Measure E – 40% Extremely Low-Income Households Reserve by \$1,670,000;
 - (2) Decrease the Measure E – 30% Low-Income Households Reserve by \$13,250,000;
 - (3) Increase the Measure E – 40% Extremely Low-Income Households City-Wide Expenses appropriation to the Housing Department by \$1,670,000; and
 - (4) Increase the Measure E – 30% Low-Income Households City-Wide Expenses appropriation to the Housing Department by \$13,250,000.

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(c) Adopt the following Fiscal Year 2023-2024 Appropriation Ordinance amendments in the Low- and Moderate-Income Housing Asset Fund:

- (1) Decrease the Housing Project Reserve appropriation by \$5,912,450; and
- (2) Increase the Committed Projects Reserve appropriation to the Housing Department by \$5,912,450.

SUMMARY AND OUTCOME

In response to the \$150 million Notice of Funding Availability (NOFA) released on December 20, 2021, Affirmed Housing Group (Affirmed) and Community Development Partners (CDP) submitted development proposals for two affordable housing developments creating a total of 351 homes for extremely low-, very low-, and low-income individuals and families. The summary of the two developments includes:

- 121 units for extremely low-income households;
- 90 units for very low-income households;
- 136 units for low-income households;
- 277 units with two or more bedroom for families;
- 130 units will be set-aside for subsidy assisted individuals and households, of which 20 homes are intended for rapid rehousing for individuals and families who have experienced homelessness;
- 95 units will be supported by Project-Based Vouchers (PBV) for at least 20 years, of which 25 units are for veterans; and
- 70 homes will be for permanent supportive housing, including 25 units specified for supportive housing for veterans.

Approval of the recommended actions will enable Affirmed and CDP to assemble the financing for the development of the two affordable housing developments:

- Kooser Apartments, located at 1371 Kooser Road, see *Attachment A – Kooser Apartments Site Map*; and
- 525 North Capitol located at 525 North Capitol Avenue, see *Attachment B – 525 North Capitol Site Map*.

Approval will also allow the developers to move forward with joint Low-Income Housing Tax-Exempt Bond Allocation applications to the California Debt Limit Allocation Committee (CDLAC) and California Tax Credit Allocation Committee (CTCAC) on April 23, 2024. In the event of foreclosure or loss of PBVs, approval of staff's recommended action will also allow the developments to increase rents and income restrictions (but not to exceed 30% of 60% of area median income (AMI) to ensure the continued financial feasibility of the development.

Both increases will apply to new tenants in PBV-subsidized units in the event of expiration or termination of subsidy contracts, and for all tenants in the event of foreclosure.

BACKGROUND

San José lacks a sufficient amount of affordable housing to meet residents' needs. The City's Regional Housing Needs Allocation for the 2023-2031 (sixth cycle) Housing Element is 62,200 housing units. Fifty-five percent of these units must be affordable (i.e., for extremely low-, very low-, low-, and moderate-income households). During the City's Regional Housing Needs Allocation for the 2014-2022 (fifth cycle) Housing Element, the City only achieved 26% of the affordable housing production goal. The City's Housing Catalyst Work Plan incorporates programs and strategies to produce and preserve affordable housing in alignment with the 2023-2031 Housing Element.

On December 20, 2021, under the City Council's direction, the Housing Department issued a \$150 million NOFA for the development of affordable housing for extremely low-, very low-, and low-income individuals and families. The NOFA prioritized the construction of affordable multifamily rental housing developments that will provide housing for extremely low-, very low-, and low-income individuals and families, with 45% of the allocated funding prioritized for extremely low-income housing.

The City received 19 NOFA applications for the construction of affordable multifamily rental housing developments in December 2021 and awarded 11 developments. The City Council approved seven of these developments for funding commitments, totaling 692 affordable homes. Six of these developments have co-applied with the City for their CDLAC bonds, and all six were awarded. The City closed financing on the six developments throughout 2023. Additional details regarding the Housing Department's progress on 2021 NOFA awarded developments is attached to this memorandum as ***Attachment C: Updated 2021 NOFA Pipeline Report***.

In response to the NOFA, the developers submitted their proposals and received conditional Intent to Award letters for the developments in the amount of \$34,251,066. However, due to reduced anticipated funding from the County of Santa Clara (County), higher interest rates, and increased construction costs, the developers have requested an additional \$15,000,000 in Construction-Permanent financing to cover the resulting financing gaps and an additional \$6,500,000 of acquisition funding for the City to purchase the sites. The developments will be funded through the City's Low and Moderate-Income Housing Asset Fund, Measure E funds, Inclusionary Fee funds, and City-issued Multifamily Housing Revenue Bonds, as well as County Measure A funds, County of Santa Clara No Place Like Home (NPLH) funds, Low Income Housing Tax Credits, and senior bank loans. See ***Table 1*** below for a summary of the City's proposed funding commitments to the developments.

Table 1 – City Funding Commitment by Source and Development

Development	Source	Award
Kooser Apartments	Low and Moderate-Income Housing Asset Fund	\$5,912,450
Kooser Apartments	Inclusionary Fee Funds	\$23,338,616
525 North Capitol	Measure E Funds	\$14,920,000
525 North Capitol	Inclusionary Fee Funds	\$11,580,000
Total		\$55,751,066

ANALYSIS

This analysis section describes more details of the affordable housing developments intended to be funded by the City pursuant to the 2021 NOFA. See **Table 2** for a summary of City funding and cost details for both developments.

Table 2 – Summary of City Funding and Cost for Kooser Apartments and 525 North Capitol Avenue

Development Name	City Loan Request	Per Unit Allocation	Total Units	PSH *	RRH *	PBV	Total Development Cost	Cost/Unit
Kooser Apartments	\$29,251,066	\$153,147	191	30	20	30	\$164,974,001	\$863,738
525 North Capitol	\$26,500,000	\$165,625	160	40	0	65	\$126,969,500	\$793,559
Total	\$55,751,066		351	70	20	95		
Average	\$27,875,533	\$159,386					\$145,971,751	\$828,649

*PSH (permanent supportive housing), RRH (rapid rehousing)

The descriptions below highlight outside funding commitments for each development. Should the developers receive a City loan commitment to move forward with their respective developments, the developers plan to apply for tax credit funding in the April 2024 State Tax credit and the CDLAC joint application funding round. If the requested state allocations are granted, the City plans to issue City of San José Tax-Exempt Multi-Family Housing Revenue Bonds (City Bonds) for each development. As part of consideration for the City’s funding, the developers will record an affordability covenant on the site. The affordability restriction will not be subordinated to any deeds of trust or instruments with a power of sale. The recording of affordability restrictions determines which apartments are eligible for rent to households and individuals, based on specified AMI levels at an affordable housing cost.

Kooser Apartments (1371 Kooser Road, Affirmed)

Development Description

Affirmed proposes to develop, own, and manage the Kooser Apartments, a new family affordable housing development consisting of 191 units on a 1.62-acre site located at 1371 Kooser Road. The development will consist of the construction of a new seven-story building with five levels of residential units over two levels of parking and up to 147 parking spaces for vehicles. The building will include on-site resident services, a community room, a computer lab, laundry facilities, a food pantry, an outdoor courtyard with seating, and a youth center that opens out to outdoor play structures and a community garden.

There will be demolition of an existing vacant commercial building that currently occupies the site. As the building is vacant, there is no relocation benefits required of the developer. The City will require that the developer provide a no relocation certificate and indemnify the City.

Affordability Unit Mix/AMI Levels

The development targets large families and consists of 189 affordable units and two managers’ units. The affordable units are comprised of 75 studio units (40%), 18 one-bedroom units (10%), 48 two-bedroom units (25%), and 48 three-bedroom units (25%). Of the 189 affordable homes, 50 homes will be reserved for extremely low-income households earning up to 30% AMI, 65 homes will be reserved for very low-income households earning up to 50% AMI, and 74 homes will be reserved for low-income households earning up to 60% AMI. **Table 3** provides details of Kooser Apartments development’s unit mix and associated income and rent limits.

Additionally, 30 homes will be reserved for permanent supportive housing to help chronically homeless individuals and families obtain and maintain permanent housing and 20 homes will be reserved for rapid rehousing to help individuals and families at risk of homelessness.

Table 3 – Kooser Apartments Maximum Income and Rent Limit Unit Mix

UNIT SIZE	30% AMI			50% AMI			60% AMI			MGR UNIT	TOTAL
	Units	Max Income *	Rent Limits	Units	Max Income *	Rent Limits	Units	Max Income *	Rent Limits		
Studio	11	\$37,470	\$936	39	\$62,450	\$1,561	25	\$74,940	\$1,873		75
1-BD	12	\$40,155	\$1,003	3	\$66,925	\$1,673	3	\$80,310	\$2,007		18
2-BD	13	\$48,180	\$1,204	11	\$80,300	\$2,007	24	\$96,360	\$2,409		48
3-BD	14	\$55,665	\$1,391	12	\$92,775	\$2,319	22	\$111,330	\$2,783	2	50
Total	50			65			74			2	191

*Maximum income limits are based on CTCAC occupancy guidelines of 1.5 persons per bedroom.

Assisted Units

Affirmed intends to submit an application to the Santa Clara County Housing Authority for 30 PBVs to support the permanent supportive housing units for chronically homeless individuals and families. If approved, Affirmed will enter a Housing Assistance Payment Contract that has an initial term of 20 years. Within two years of the conclusion of the initial contract term, it is Santa Clara County Housing Authority’s normal procedure to analyze the development to determine whether it is eligible for an extension term of up to 20 additional years.

Of the proposed 189 affordable homes, 30 homes for extremely low-income households earning up to 30% AMI will be supported by Section 8 PBVs from Santa Clara County Housing Authority. Refer to **Table 4** to view the details of Kooser Apartments’ voucher supported unit mix.

Table 4 – Kooser Apartments Voucher Supported Unit Mix

UNIT SIZE	PBV
	30% AMI
Studio	0
1-Bedroom	10
2-Bedroom	10
3-Bedroom	10
Total	30

Construction-Permanent Financing

The Kooser Apartments development’s construction period financing sources include \$30,849,888 in federal and state tax credit equity, \$3,500,000 in County NPLH funds, a tax-exempt construction loan of \$83,858,207, and a taxable construction loan of \$19,222,029.

Permanent financing includes a \$54,275,099 in federal tax credit equity, \$33,867,439 in state tax credit equity, \$448,417 in Solar Tax Credit equity, \$4,000,000 in County NPLH funds, and a first mortgage permanent loan of \$37,451,980.

The City’s Construction-Permanent loan will be up to \$19,551,066, composed of \$5,912,450 in Low- and Moderate-Income Housing Asset Funds and \$13,638,616 in Inclusionary Fee Funds. The City’s commitment as a gap lender will fill the Kooser Apartments development’s financing need of up to \$29,251,066, including the acquisition funding of \$9,700,000. See **Attachment D – Kooser Apartments Sources and Uses** for the Kooser Apartments development’s financing details.

The additional construction-permanent funding request of \$10,000,000 will be needed to cover the funding gap created by the absence of the state funding commitment from the California

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Department of Housing and Community Development Super NOFA. At the time of the City’s December 2021 NOFA, Affirmed anticipated receiving a \$10,000,000 funding commitment from the California Department of Housing and Community Development Super NOFA. Due to a competitive funding round and the timing of the application, Affirmed did not receive an award from California Department of Housing and Community Development’s March 2023 Super NOFA. See **Table 5** for the Kooser Apartments development’s increased total funding request from the City’s original December 2021 NOFA funding request.

Table 5 – Kooser Apartments Development City Construction-Permanent Funding Summary

Development Name	City Initial NOFA Loan Request (dd. 12/2021)	Additional City Construction -Perm Funding Request	Total City Construction -Perm Funding Request	City Acquisition Funding	Total Commitment with Acquisition
Kooser Apartments	\$9,551,066	\$10,000,000	\$19,551,066	\$9,700,000	\$29,251,066

Site Acquisition

Staff recommends approval of land acquisition funding through a City purchase and sale agreement up to \$9,700,000 in Inclusionary Fee Funds, the amount paid by Affirmed to purchase the site. If a City-engaged third-party appraisal yields a lower value in a future appraisal prior to City loan or purchase and sale agreement closing, the funding will be for the lesser amount. Acquisition funding facilitates long-term ground lease structures in accordance with the City’s 2021 Ground Lease Policy (Section 8 of the City of San José’s Multi-Family Underwriting and Compliance Manual). This policy provides that when a development seeks funding from the City, the City will hold the fee interest in the site and ground lease to the developer, ensuring long-term affordability. The City will acquire the site shortly before the start of construction. **Table 6** illustrates the City’s total funding commitment for the Kooser Apartments development, with construction-permanent financing and acquisition funding combined.

Table 6 – Kooser Apartments Development City Funding Commitment with Acquisition

Development Name	City Construction-Perm Funding	City Acquisition Funding	Total City Commitment	Funding/Unit with Acquisition
Kooser Apartments	\$19,551,066	\$9,700,000	\$29,251,066	\$153,147

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Ground Lease

The City's December 2021 NOFA, to which Affirmed submitted a funding proposal, required that Affirmed enter into a long-term ground lease with the City for the development of affordable housing at 1371 Kooser Road. The City's regular use of land acquisition and ground leases allows the City to have greater control over the long-term provision of affordable housing developments in key locations. In addition, the use of ground leases enhances developments' competitiveness for additional funding sources. Ground leases also result in smaller debt burdens for developments, which improves the repayment ability of the City's construction-permanent loans.

Staff's recommended actions in this memorandum will enable the City to take ownership of the site and enter into a long-term, low-rent ground lease agreement for the Kooser Apartments development. It is anticipated that the ground lease term will be 58 years, with an option to extend for another 15 years. At the end of the lease term, the City will own the land and the building.

This memorandum requests authority for the Director of Housing, the Acting Director of Housing, or their designee to negotiate and execute documents and amendments that will be needed or helpful in connection with the City's acquisition, ownership, and long-term lease of the site for the Kooser Apartments development. These may include, but are not limited to, option agreements, grant deed acceptance, rights of entry, purchase and sale agreements, the ground lease, and any required lease riders.

Certain state agencies have additional requirements associated with their funding that apply when a city owns land and ground leases it for a development. For instance, CTCAC will require the City, as the owner of the land, to record a lease rider after conversion to permanent financing and prior to CTCAC's final approval of the Kooser Apartments development's tax credits. The CTCAC rider requires the City to provide warranties regarding, amongst other things, the current status of the City's title, the current compliance of the developer's physical improvements to the property with local, state, and federal law, and agreements with public entities. CDP will be required to provide an updated title report and to execute an estoppel agreement prior to the execution of any lease riders to provide the City with sufficient basis for executing the riders.

525 North Capitol (525 North Capitol Avenue, CDP)

Development Description

CDP or its affiliate proposes to develop, own, and manage the 525 North Capitol development, a new multigenerational affordable housing development consisting of 160 homes on a 0.96-acre site located at 525 North Capitol Avenue. The 525 North Capitol development will consist of the construction of a new five-story residential building consisting of a ground-floor common area with a commercial kitchen, food pantry, and four stories of residential floors. CDP intends to lease the commercial kitchen to Veggielution. Veggielution has offered to provide residents with

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on-site meal access, meal preparation and hands-on training, an on-site weekly farm stand/food pantry with local organic produce, raised herb beds for harvesting and educational opportunities, and additional programs from other partnerships with local organizations in close proximity.

Additional on-site amenities include a conference room, a computer lab, laundry facilities on each residential floor, outdoor courtyards with outdoor seating (on the ground-floor podium and second-floor podium of the building), gardening boxes, and tables to support food distribution.

Furthermore, a partnership with EngAGE for Life will provide on-site resident services which incorporate events and activities focused on creative arts, lifelong learning, and well-being.

Affordability Unit Mix/AMI Levels

The 525 North Capitol development consists of 158 affordable units and two managers’ units. The affordable homes are comprised of 60 studio units (38%), 64 one-bedroom units (40.5%), 26 two-bedroom units (16.5%), and eight three-bedroom units (5%). Of the 158 affordable homes, 71 homes will be reserved for extremely low-income households earning up to 30% AMI, 25 homes will be reserved for very low-income households earning up to 50% AMI, and 62 homes will be reserved for low-income households earning up to 60% AMI. Refer to **Table 7** to view the details of 525 North Capitol development’s unit mix and associated income and rent limits.

Table 7 – 525 North Capitol Maximum Income and Rent Limit Unit Mix

UNIT SIZE	30% AMI			50% AMI			60% AMI			MGR UNIT	TOTAL
	Units	Max Income *	Rent Limits	Units	Max Income *	Rent Limits	Units	Max Income *	Rent Limits		
Studio	31	\$37,470	\$936	0	\$62,450	\$1,561	29	\$74,940	\$1,873		60
1-BD	11	\$40,155	\$1,003	25	\$66,925	\$1,673	28	\$80,310	\$2,007		64
2-BD	21	\$48,180	\$1,204	0	\$80,300	\$2,007	5	\$96,360	\$2,409	2	28
3-BD	8	\$55,665	\$1,391	0	\$92,775	\$2,319	0	\$111,330	\$2,783		8
Total	71			25			62			2	160

*Maximum income limits are based on CTCAC occupancy guidelines of 1.5 persons per bedroom.

Assisted Units

Of the proposed 158 affordable homes, a total of 65 homes will be assisted by voucher subsidies. Twenty-five homes for extremely low-income households earning up to 30% AMI will be supported by Section 8 PBVs from the Santa Clara County Housing Authority, 15 homes proposed to be permanent supportive housing to help chronically homeless individuals and families obtain and maintain permanent housing will also be supported by PBVs, and 25 homes proposed to be for homeless veterans will be supported by Housing and Urban Development Veterans Affairs Supportive Housing vouchers. Refer to **Table 8** to view the details of 525 North

Capitol’s voucher supported unit mix.

Table 8 – 525 North Capitol Voucher Supported Unit Mix

UNIT SIZE	PBV	Veterans Affairs Supportive Housing	TOTAL
	30% AMI	50% AMI	
Studio	0	0	0
1-BD	11	25	36
2-BD	21	0	21
3-BD	8	0	8
Total	40	25	65

Construction-Permanent Financing

The 525 North Capitol development’s construction period financing sources include \$9,989,367 in federal tax credit equity, \$2,368,089 in state tax credit equity, and a tax-exempt construction loan of \$65,764,281, of which \$5,987,468 will be paid off prior to completion with \$59,776,813 remaining during the construction period.

Permanent financing includes \$39,957,470 in federal tax credit equity, \$9,472,355 in state tax credit equity, and a first lien position mortgage permanent loan of \$27,250,000. Eight million dollars in County of Santa Clara Measure A funds and \$4,000,000 in California Department of Housing and Community Development Infill Infrastructure Grant funds will provide financing through construction to permanent.

The City’s Construction-Permanent loan will be up to \$20,000,000, composed of \$14,920,000 in Measure E Funds and \$5,080,000 in Inclusionary Fee Funds, and will be secured by a deed of trust in second lien position. The City’s commitment as a gap lender will fill the 525 North Capitol development’s financing need of up to \$26,500,000, including the acquisition funding of \$6,500,000. See **Attachment E – 525 North Capitol Sources and Uses** for the 525 North Capitol development’s financing details.

The additional construction-permanent funding request of \$5,000,000 will be needed to cover the funding gap created by decreased funding availability from the County NPLH funds. At the time of the City’s December 2021 NOFA, CDP anticipated receiving a \$9,000,000 NPLH funding award along with a \$6,500,000 in Measure A funding award from the County. However, by December of 2023, the County could only commit to \$4,000,000 in funding from Measure A funds and \$4,000,000 in funding from Affordable Housing for Intellectually and Developmentally Disabled funds. The total County funding for the 525 North Capitol development decreased by \$7,500,000. As a result, CDP is requesting the City provide gap funding for \$5,000,000.

See **Table 9** for the 525 North Capitol development’s increased total funding request from the City’s original December 2021 NOFA funding request.

Table 9 – 525 North Capitol Development City Construction-Permanent Funding Summary

Development Name	City Initial NOFA Loan Request (dd. 12/2021)	Additional Gap Funding for County NPLH Fund	Total City Construction-Perm Funding Request	City Acquisition Funding	Total Commitment with Acquisition
525 North Capitol	\$15,000,000	\$5,000,000	\$20,000,000	\$6,500,000	\$26,500,000

Site Acquisition

Staff recommends approval of land acquisition funding through a City purchase and sale agreement up to \$6,500,000 in Inclusionary Fee Funds, the amount to be paid by CDP to purchase the site. If a City-engaged third-party appraisal yields a lower value in a future appraisal prior to City loan or purchase and sale agreement closing, the funding will be for the lesser amount.

Acquisition funding facilitates long-term ground lease structures in accordance with the City’s 2021 Ground Lease Policy (Section 8 of the City of San José’s Multi-Family Underwriting and Compliance Manual). This policy provides that when a development seeks funding from the City, the City will hold the fee interest in the site and ground lease to the developer, ensuring long-term affordability. The City will acquire the site shortly before the start of construction. **Table 10** illustrates the City’s total funding commitment for the 525 North Capitol development, with construction-permanent financing and acquisition funding combined.

Table 10 – 525 North Capitol Development City Funding Commitment with Acquisition

Development Name	City Construction-Perm Funding	City Acquisition Funding	Total City Commitment	Funding/Unit with Acquisition
525 North Capitol	\$20,000,000	\$6,500,000	\$26,500,000	\$165,625

Ground Lease

The City’s December 2021 NOFA, to which CDP submitted a funding proposal, required that CDP enter into a long-term ground lease with the City for the development of affordable housing at the 525 North Capitol. The City’s regular use of land acquisition and ground leases allows the City to have greater control over the long-term provision of affordable housing developments in key locations. In addition, the use of ground leases enhances developments’ competitiveness for

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other additional funding sources. Ground leases also result in smaller debt burdens for developments, which improves the repayment ability of the City's construction-permanent loans.

Staff's recommended actions in this memorandum will enable the City to take ownership of the site and enter into a long-term, low-rent ground lease agreement for the 525 North Capitol development. It is anticipated that the ground lease term will be 58 years, with an option to extend for another 15 years. At the end of the lease term, the City will own the land and the building.

This memorandum requests authority for the Director of Housing, the Acting Director of Housing, or their designee to negotiate and execute documents and amendments that will be needed or helpful in connection with the City's acquisition, ownership, and long-term lease of the site for the 525 North Capitol Avenue development. These may include, but is not limited to, option agreements, grant deed acceptance, rights of entry, purchase and sale agreements, the ground lease, and any required lease riders.

Certain state agencies have additional requirements associated with their funding that apply when a city owns a land and ground leases it for a development. For instance, CTCAC will require the City, as the owner of the land, to record a lease rider after conversion to permanent financing and prior to CTCAC's final approval of the 525 North Capitol Avenue development's tax credits. The CTCAC rider requires the City to provide warranties regarding, amongst other things, the current status of the City's title, the current compliance of the developer's physical improvements to the property with local, state, and federal law, and agreements with public entities. CDP will be required to provide an updated title report and to execute an estoppel agreement prior to the execution of any lease riders to provide the City with sufficient basis for executing the riders.

Affordable Housing Siting Policy Analysis

The City Council approved the Affordable Housing Siting Policy¹ on December 6, 2022. The adopted policy seeks to reverse the impacts of segregation in San José when it comes to building affordable housing. Affordable Housing Expansion Areas reflect parts of San José where affordable housing can provide residents access to more economic opportunities and neighborhoods associated with upward mobility, educational attainment, and positive outcomes for children. Continued Investment Areas reflect parts of San José where the City will continue investing in affordable housing due to severe shortage of available housing for existing residents. The Kooser Apartments development is located within an Affordable Housing Expansion Area, and the 525 North Capitol development is located within a Continued Investment Area.

¹ San José Affordable Housing Siting Policy: <https://www.sanjoseca.gov/your-government/departments-offices/housing/developers/affordable-housing-plans-policies/affordable-housing-siting-policy>

Loan to Value Ratio

The City's Loan to Value (LTV) policy requires that the combined LTV ratio (all the loans divided by the appraised value of the property) not exceed 100%. While the appraised value of the property is not known at this time, the appraisal that will be prepared for the senior lender before construction closing is expected to result in a combined LTV ratio that significantly exceeds 100%, which is the City's Delegation of Authority LTV policy threshold.

The LTV policy was intended to reduce the City's risk of loss associated with its loans; however, the City now builds more deeply affordable developments than it did in the 1990s and early 2000s. The deeper affordability of a development increases the need for public subsidies, while decreasing the development's market value, leading to an increased LTV ratio. An elevated LTV ratio above 100% is not uncommon for public lenders in the affordable housing industry. Developments that have a high LTV ratio are considered acceptable by City staff if the development's projected operating income is expected to be at least 1.15 times the required permanent mortgage payment. This is a common standard for assessing the financial feasibility of affordable housing developments.

Both developments have 30-year cash flow projections resulting in debt service coverage ratio of 1.15 in the first year and increasing year over year.

- Kooser Apartments – Year 2 Debt Service Coverage Ratio:1.18
- 525 North Capitol – Year 2 Debt Service Coverage Ratio:1.17

Surplus Lands Act Findings

Under the Surplus Lands Act and its guidelines, the City must follow certain procedures in selling or ground leasing of City-owned property which require the offering of that property to the public, unless the sale or lease falls under an exemption. Once 1371 Kooser Road and 525 North Capitol Avenue sites are acquired by the City, they will become City property. The Kooser Apartments and 525 North Capitol sites to be leased after acquisition will be restricted for the term of the lease to provide housing affordable to persons and families of low or moderate income as defined by Section 50093 of the California Health and Safety Code or as defined by the United States Department of Housing and Urban Development or its successors. Based on the description of the development sites provided in this memorandum and the affordability required by the City funding, staff recommends that the City Council make a determination as part of these recommended actions that the development sites will be used for housing affordable persons and families of low or moderate income and that these uses will be in the City's best interest.

Climate Smart San José Analysis

The recommendation in this memorandum aligns with one or more of Climate Smart San José energy, water, or mobility goals.

Kooser Apartments

The Kooser Apartments development is designed to achieve LEED Gold Certification and include numerous sustainability features to improve resident experience and be in line with San José's Climate Smart goals.

- *Transitioning to a Renewable Energy Future:* The Kooser Apartments building will maximize the usage of the rooftop to fit solar panels. The building is all-electric with no new natural gas connections.
- *Walkable Neighborhood:* The Kooser Apartments development is located in the Kooser/Meridian Urban Village and is the first new construction affordable housing development planned in this urban village. All residents will have access to a Santa Clara Valley Transportation Authority transit pass to further encourage use of public transportation. Two Santa Clara Valley Transportation Authority bus stops are within a ¼ mile from the site. Many amenities, including parks, schools, grocery, pharmacy and retail are within a ½ mile from the property.
- *Charging Stations and Bike Storage:* The Kooser Apartments development will have a 1:1 Bicycle parking ratio, including a family bicycle room with larger spaces for more bikes and equipment. Seventy percent of the parking spaces will be wired for electric vehicle charging, including 33 spaces electric vehicle ready and 17 spaces installed with chargers at development completion.
- *Embracing Our Californian Climate:* The ground floor of Kooser Apartments will be landscaped with over 8,000 square feet of common open space for residents, including native landscaping along Stanwood Drive and Dellwood Way. The third floor will be a large 13,873 square foot courtyard with ample greenery and bench seating as well as group seating to encourage community building. Sitting in the middle of the courtyard will be a youth center structure that spills out to outdoor play structures and a community vegetable garden area with raised planters. The third-floor laundry room will be accessible to the courtyard to facilitate active uses of the courtyard amenities for residents.
- *Tight Building Envelope:* The Kooser Apartments building will have highly efficient indoor air ventilation, including the use of passive and active ventilation in each unit. Highly rated windows will improve energy efficiency within the units. MERV 16 Filters will be used in units facing the nearby gas station in an abundance of caution for added indoor air quality protection measures.

525 North Capitol

The 525 North Capitol development is designed to achieve Greenpoint Rated Gold verification and will have Energy Star Appliances and meet CTCAC construction requirements with Title 24 of the California Energy Code.

- *Transitioning to a Renewable Energy Future:* The 525 North Capitol development will use electrical power as the sole energy source for the building and will not have

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a natural gas connection. Solar photovoltaic panels will be mounted on the roof to offset building energy use from the grid.

- *Walkable Neighborhood:* The 525 North Capitol development is located 0.2 miles from the Santa Clara Valley Transportation Authority's orange line light rail station. Additionally, a public park, library, grocery store, public schools, medical clinic, and pharmacy are all located within one mile from the property.
- *Bike Storage:* The 525 North Capitol development will include a secured bike room within the parking garage for residents to store bikes.

Next Steps

If the developers are able to obtain all necessary funding commitments for their developments, the City will facilitate their respective applications for a CDLAC Low-Income Housing Tax-Exempt Bond Allocation in April 2024. If the developers are unable to obtain funding commitments to close all funding gaps, the City will not move forward with the CDLAC process. If the developments are successful, CDLAC award allocations for such developments are anticipated to be announced on August 7, 2024.

For these developments, construction is estimated to initiate by the first quarter of 2025 and conclude between 2027-2028. To view details of the development timelines and future milestones, see *Attachment F - Kooser Apartments Anticipated Development Timeline* and *Attachment G - 525 North Capitol Anticipated Development Timeline*.

By the authority delegated under section 5.06.335 of the San José Municipal Code (Authority to negotiate and execute council-approved loans, grants and programs), the Director of Housing, the Acting Director of Housing, or their designee will negotiate additional terms and execute documents for these loans in accordance with the City Council's approval, if granted, for both developments.

EVALUATION AND FOLLOW-UP

The Housing Department produces quarterly information memoranda regarding the use of the Director of Housing's Delegation of Authority under the San José Municipal Code; therefore, final loan business terms will be summarized in those memoranda. In addition, the Housing Department posts periodic reports on the status of its affordable properties undergoing rehabilitation or construction to its website, <https://www.sanjoseca.gov/your-government/departments-offices/housing>. If the recommended actions are approved and the two developments successfully close construction financing, they would be included in these periodic reports.

COST SUMMARY/IMPLICATIONS

1. ESTIMATED COSTS:

Funding Sources and Uses	Construction/ Permanent	Acquisition	Total
Low and Moderate-Income Housing Asset Fund	\$5,912,450	\$0	\$5,912,450
Inclusionary Fee Fund	\$18,718,616	\$16,200,000	\$34,918,616
Measure E (extremely low-income)	\$1,670,000	\$0	\$1,670,000
Measure E (low-income)	\$13,250,000	\$0	\$13,250,000
Total	\$39,551,066	\$16,200,000	\$55,751,066

2. SOURCE OF FUNDING: General Fund – Measure E – 40% Extremely Low Income Reserve and 30% Low Income Households Reserve; Low and Moderate Income Housing Asset Fund; and Inclusionary Fee Fund.
3. FISCAL IMPACT: Funding in the amount of \$39,551,066 is available in the General Fund (Measure E), Low and Moderate-Income Housing Asset, and Inclusionary Fee Funds to encumber and draw upon when construction is initiated. Funding in the amount of \$16,200,000 is available in the Inclusionary Fee Fund for the acquisition of the two sites. Budget actions within the General Fund and Low and Moderate-Income Housing Asset Fund are recommended as part of this memorandum to commit the necessary funding for these sites within these funds.

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BUDGET REFERENCE

The table below identifies the funds and appropriations to fund the actions recommended as part of this memorandum.

Fun d #	Appn #	Appn Name	Total Appn	Recom. Budget Action	Amount for Project	2023-2024 Adopted Operating Budget Page	Last Budget Action (Date, Ord. No.)
001	8744	Measure E – 40% Extremely Low-Income Households Reserve	\$40,758,924	(\$1,670,000)	\$0	959	10/17/2023 30966
001	8745	Measure E – 30% Low- Income Households Reserve	\$43,730,040	(\$13,250,000)	\$0	959	10/17/2023 30966
001	224L	Measure E – 40% Extremely Low-Income Households	\$25,611,581	\$1,670,000	\$1,670,000	915	6/20/2023 30933
001	224M	Measure E – 30% Low- Income Households	\$28,369,285	\$13,250,000	\$13,250,000	915	6/20/2023 30933
346	8437	Housing Project Reserve	\$23,200,000	(\$5,912,450)	\$0	1024	10/17/2023 30966
346	8520	Committed Projects Reserve	\$316,413	\$5,912,450	\$5,912,450	1024	6/20/2023 30933
451	8520	Committed Projects Reserve	\$40,000,000	\$0	\$34,918,616	1020	10/17/2023 30966

COORDINATION

This memorandum has been coordinated with the City Attorney's Office.

PUBLIC OUTREACH

This memorandum will be posted on the City’s Council Agenda website for the March 26, 2024 City Council meeting.

In addition, outreach initiatives were conducted for these two developments. These outreach efforts are described below.

Kooser Apartments

Affirmed based its community engagement strategy on developing collaborative partnerships, community input, and providing solutions to local needs to contribute to the community at-large. The public outreach and community engagement plan for Kooser Apartments includes three phases to engage local stakeholders and inform the community on any development updates.

- Phase 1, from December 2021 to August 2022, gathered stakeholder information to confirm an outreach list so that interested parties were presented development concepts and information.
- Phase 2, from September 2022 to April 2023, hosted a community meeting to present the vision for the development and receive public feedback. Partnerships with local affordable housing supportive organizations such as Destination:Home and Catalyze SV were developed to foster local needs-based solutions.
- Phase 3, currently ongoing, keeps community leaders and elected officials up to date about the development timeline and maintains updated information on the development's website.

525 North Capitol

CDP partnered with a community engagement consultant, CivicMakers, to maximize inclusion, diversity, equity, and empowerment in its community engagement efforts. The public outreach and community engagement plan for 525 North Capitol highlighted four phases to engage the residents and businesses surrounding 525 North Capitol Avenue as well as the broader San José community.

- Phase 1, from September to December 2021, presented development information to anyone interested, invited interested parties and gathered feedback to improve design and community engagement.
- Phase 2, from December 2021 to March 2022, held a community meeting to present the vision for the development and receive public feedback. A public facing website was also developed to provide development details, development timeline, and upcoming engagement opportunities.
- Phase 3, in April 2022, focused on broad community engagement to promote the development and showcase the conceptual design. An inclusive design workshop with disabled persons was facilitated to gather feedback and recommendations on building design.
- Phase 4, currently ongoing, keeps community leaders and elected officials up to date about the development timeline and maintains updated information on the development's website.

HONORABLE MAYOR AND CITY COUNCIL

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COMMISSION RECOMMENDATION AND INPUT

This item was not heard by the Housing and Community Development Commission, as approvals of affordable development financing do not fall under the functions, powers, and duties of the Commission delineated in Section 2.08.2840 of the San José Municipal Code.

CEQA

Exempt per Public Resources Code Section 21080(b)(1) and CEQA Guidelines Section 15369, Ministerial Project pursuant to Government Code Section 65913.4, File No. ER20-109.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/

ROSALYNN HUGHEY
Deputy City Manager and
Acting Housing Director



JIM SHANNON
Budget Director

The principal authors of this memorandum are Michael Jun, Senior Development Officer and Shelsy Bass, Senior Development Officer. For questions, please contact Ragan Henninger, Deputy Director, Housing Department, at ragan.henninger@sanjoseca.gov.

ATTACHMENTS

Attachment A: Kooser Apartments Site Map

Attachment B: 525 North Capitol Site Map

Attachment C: Updated 2021 NOFA Pipeline Report

Attachment D: Kooser Apartments Sources and Uses

Attachment E: 525 North Capitol Sources and Use

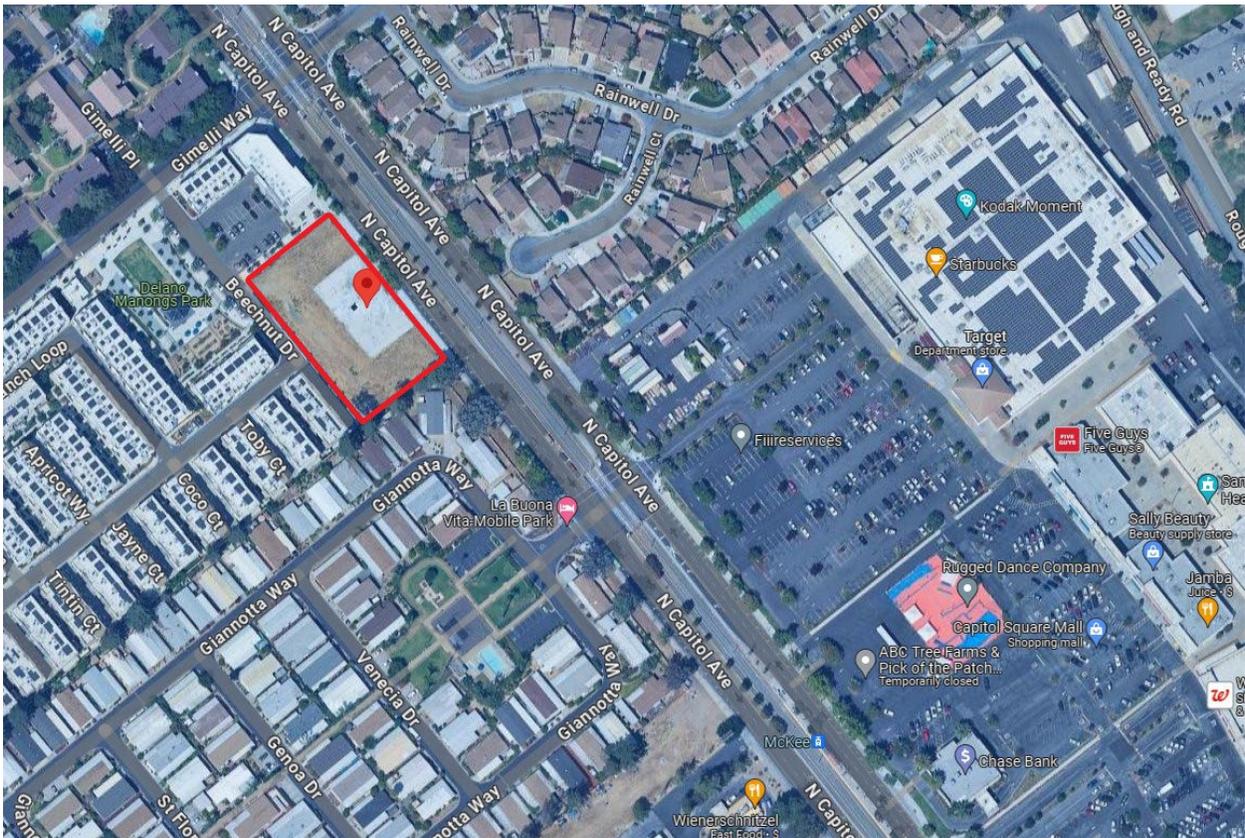
Attachment F: Kooser Apartments Anticipated Development Timeline

Attachment G: 525 North Capitol Anticipated Development Timeline

ATTACHMENT A: Kooser Apartments Site Map



ATTACHMENT B: 525 North Capitol Site Map



ATTACHMENT C: Updated 2021 NOFA Pipeline Report

2021 Round 1 & 2 NOFA PIPELINE REPORT

City Council Approved Commitments								
Development Name	District #	Total # of Units	Original NOFA Funds Requested	Updated Amount of NOFA Funds Requested	Increase in NOFA request	Total Development Cost	Per Unit Cost	Development Stage
Parkmoor Community Apartments	6	81	\$10,175,000	\$16,826,688	\$6,651,688	\$77,880,350	\$961,486	Construction began January 2024
Dry Creek Crossing	9	64	\$9,450,000	\$14,650,000	\$5,200,000	\$61,630,513	\$962,977	Construction began January 2024
777 W San Carlos	6	154	\$19,125,000	\$22,247,500	\$3,122,500	\$138,030,091	\$896,299	Construction began July 2023
1860 Alum Rock Multifamily	5	60	\$7,500,000	\$8,087,753	\$587,753	\$58,879,963	\$981,333	Construction began July 2023
Tamien Station	3	135	\$14,125,000	\$17,250,000	\$3,125,000	\$133,192,614	\$986,612	Construction began July 2023
The Charles (551 Keyes)	3	99	\$9,675,885	\$9,675,885	\$0	\$88,453,887	\$893,474	Construction began July 2023
797 Almaden	3	99	\$12,250,000	\$24,940,000	\$12,690,000	\$110,380,539	\$1,114,955	CDLAC application August 2024
SUBTOTAL		692	\$82,300,885	\$113,677,826	\$31,376,941			

Conditional Commitments - Awaiting Council approval								
Development Name	District #	Total # of Units	Original NOFA Funds Requested	Updated Amount of NOFA Funds Requested	Increase in NOFA request	Total Development Cost	Per Unit Cost	Development Stage
525 North Capitol	5	160	\$15,000,000	\$26,500,000	\$11,500,000	\$126,969,500	\$793,559	CDLAC application April 2024
VTA 605 Blossom Hill	10	89	\$10,875,000	\$17,675,000	\$6,800,000	\$71,483,828	\$803,189	Projected Increase. CDLAC application 2025
2080 Almaden Apartments	6	80	\$9,750,000	\$18,750,000	\$9,000,000	\$55,619,833	\$695,248	Projected Increase. CDLAC application 2024
Kooser Apts	9	191	\$19,251,066	\$29,251,066	\$10,000,000	\$164,974,001	\$863,738	CDLAC application April 2024
SUBTOTAL		520	\$54,876,066	\$92,176,066	\$37,300,000			

ATTACHMENT C: Updated 2021 NOFA Pipeline Report

June 2021 Round 1 Original NOFA	\$75,000,000
Total NOFA Applicant Request	\$20,000,000
December 2021 Round 2 Original NOFA	\$150,000,000
Total NOFA Applicant Request	\$237,376,951
Original Total December 2021 NOFA Award	\$145,101,951
Original NOFA requests to date	\$82,300,885
Council Approved NOFA requests to date	\$113,677,826
Council Approved NOFA Increase Total to date	\$31,376,941
% Increase	38%

ATTACHMENT D: Kooser Apartments Sources and Uses

Construction Period Sources	Construction Period Amounts
Federal + State LIHTC	\$30,849,888
City of San José	17,000,000
City of San José Acquisition	9,700,000
Santa Clara County NPLH	3,500,000
Tax-exempt Construction Loan	83,858,207
Taxable Construction Loan	19,222,029
Total	\$164,130,124

Permanent Sources	Permanent Amounts
Federal LIHTC	\$54,275,099
State LIHTC	33,867,439
Solar Tax Credit Equity	448,417
City of San José	19,551,066
City of San José Acquisition	9,700,000
Santa Clara County NPLH	4,000,000
Permanent Loan	37,451,980
Deferred Developer Fee	5,680,000
Total	\$164,974,001

Uses	Amounts
Acquisition	\$10,805,659
Construction	122,850,604
Soft Costs	3,779,759
Other Development Costs	5,794,103
Construction Period Interest	5,450,000
Financing Costs	5,150,000
Bond Related Costs	300,000
Capitalized Reserves at Conversion	843,876
Developer Fee	10,000,000
Total	\$164,974,001

ATTACHMENT E: 525 North Capitol Sources and Uses

Construction Period Sources	Construction Period Amounts
Federal LIHTC	\$9,989,367
State LIHTC	2,368,089
City of San José	20,000,000
City of San José Acquisition	6,500,000
Santa Clara County Measure A	4,000,000
Santa Clara County I/DD	4,000,000
HCD Infill Infrastructure Grant	4,000,000
Tax-exempt Construction Loan	59,776,813
Developer Fee	15,449,675
Total	\$126,083,944

Permanent Sources	Permanent Amounts
Federal LIHTC	\$39,957,470
State LIHTC	9,472,355
City of San José	20,000,000
City of San José Acquisition	6,500,000
Santa Clara County Measure A	4,000,000
Santa Clara County I/DD	4,000,000
HCD Infill Infrastructure Grant	4,000,000
Permanent Loan	27,250,000
Deferred Developer Fee	11,789,675
Total	\$126,969,500

Uses	Amounts
Acquisition	\$6,708,079
Construction	84,203,278
Soft Costs	5,305,916
Other Development Costs	6,595,004
Construction Period Interest	6,583,180
Financing Costs	814,757
Bond Related Costs	424,055
Capitalized Reserves at Conversion	885,556
Deferred Developer Fee	15,449,675
Total	\$126,969,500

ATTACHMENT F: Kooser Apartments Anticipated Development Timeline

Development Milestone	Date
Apply for CDLAC/CTCAC Bond and Tax Credit Allocation	April 2024
CDLAC/CTCAC Allocation Award	August 2024
Close Financing	February 2025
Start Construction	March 2025
Complete Construction (26 months)	May 2027

ATTACHMENT G: 525 North Capitol Anticipated Development Timeline

Development Milestone	Date
Apply for CDLAC/CTCAC Bond and Tax Credit Allocation	April 2024
CDLAC/CTCAC Allocation Award	August 2024
Close Financing	February 2025
Start Construction	March 2025
Complete Construction (24 months)	March 2027