



## SUMMARY REPORT

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**Agenda Date:** 5/11/2021

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**To:** Board of Supervisors

**Department or Agency Name(s):** County Administrator's Office

**Staff Name and Phone Number:** Christel Querijero, (707) 565-7071

**Vote Requirement:** Majority

**Supervisory District(s):** Countywide

**Title:**

Renewal Enterprise District Housing Fund and Joint Powers Authority Agreement

**Recommended Action:**

- A) Authorize the Chair of the Board of Supervisors to execute the First Amendment to Renewal Enterprise District Agency Joint Exercise of Powers Agreement.
- B) Receive an update and information about the proposed Renewal Enterprise District (RED) Housing Fund.
- C) Consider policy options related to the County's \$10 million contribution to the Renewal Enterprise District Housing Fund and provide direction to staff.
- D) Authorize the County Administrator, in consultation with County Counsel, to execute a non-binding term sheet that reflects the Board's direction to staff and that will form the basis of the future, binding funding agreement and related documents.
- E) Authorize the County Administrator, in consultation with County Counsel, to execute a funding agreement and other related documents for the \$10 million contribution with the Renewal Enterprise District Housing Fund.

**Executive Summary:**

RED Amendment. The 2017 wildfires exacerbated an already existing housing crisis in the County. The urgent need to rebuild lost units and address the severe housing shortage gave rise to the concept of the Renewal Enterprise District (RED). In December 2018, the County and the City of Santa Rosa established the RED as a joint powers authority (JPA) to implement a shared vision for regional housing development and to accelerate the production of mid to high-density infill housing in transit rich areas. The RED Board includes two representatives from the County Board of Supervisors (currently Supervisors Rabbitt and Coursey) and two representatives from the City of Santa Rosa City Council (currently Councilmembers Jack Tibbetts and Victoria Fleming).

The joint powers agreement establishing the RED requires the RED Board of Directors to review of the joint powers agreement terms and efficacy of the RED, and to consider adding new members after the initial two years. Based on this review, the RED Board recommended and approved an amendment to the joint powers agreement to clarify that the RED may add new members as well as the protocols for adding new members. Under the terms of the joint powers agreement, both the County and City of Santa Rosa must also approve the amended agreement.

RED Housing Fund. On October 6, 2020, the Board of Supervisors allocated \$10 million from PG&E settlement funds to the Renewal Enterprise District. The Board's commitment was contingent on the City of Santa Rosa making an equal commitment to fund housing development through the RED. On March 2, 2021, the Santa Rosa City Council approved \$10 million from its PG&E settlement funds for housing development through the RED. The RED proposes formation of a new RED Housing Fund to administer a financing program for new housing development that meets adopted RED Project Criteria. The RED Housing Fund would be seeded with the County's and City's respective \$10 million contributions, with the intent that those initial public sector contributions will attract other private and public investment.

This item provides information to your Board on the contemplated RED Housing Fund and the status of fund formation. It also outlines several policy options for the Board's consideration and seeks Board direction to staff to finalize a funding agreement for Housing Fund capitalization.

**Discussion:**

**RED JOINT POWERS AGREEMENT (JPA) AMENDMENT**

As required by the JPA, the RED Board of Directors held a public meeting two years from the formation of the RED to review the terms and conditions of the JPA and to discuss whether any amendments are necessary or advisable, including the addition of New Members.

As set forth in Section 3.05 of the agreement, on December 17, 2020, the RED Board reviewed the terms and conditions of the agreement and the efficacy of RED and the JPA, and considered the addition of New Members. "New Member" is defined as "any incorporated city or town within Sonoma County that may subsequently join this Agency with the authorization of the Board, pursuant to Section 4.02 of this Agreement." Section 4.02(a), New Members, provides that "[a]fter two (2) years from formation of the Agency, upon submittal of an application for membership, New Members shall be admitted to the Agency so long as: (1) the New Member is an incorporated city or town located within the jurisdictional boundaries of the County of Sonoma; and (2) the New Member agrees to the terms of this Agreement." Section 4.02(a) further provides that once an application is accepted by the Board of Directors, the joint powers agreement shall be amended to add the New Member.

The RED Board discussed retaining flexibility to consider the addition of New Members and RED staff noted that it would return with a proposed amendment to the joint powers agreement to confirm this approach. RED staff also prepared draft protocols for the consideration of New Members.

First Amendment to Joint Powers Agreement

Based on the December 2020 RED Board discussion, on February 24, 2021, RED staff proposed and the RED Board approved a clarifying amendment to the agreement to confirm that New Members "may," rather than "shall," be admitted to the RED. This change allows for flexibility in considering and adding New Members in accordance with adopted protocols and is consistent with provisions of the joint powers agreement that require RED Board authorization for approval of New Members. The February 24, 2021 RED Board staff report re the First Amendment to Renewal Enterprise District Agency Joint Exercise of Powers Agreement (JPA) and Protocols for New Members is included as Attachment A.

The change is minor and shown below:

**Section 4.02 - New Members.** After two (2) years from formation of the Agency, upon submittal of an application for membership, New Members ~~shall~~<sup>may</sup> be admitted to the Agency so long as: 1) the New Member is an incorporated city or town located within the jurisdictional boundaries of the County of Sonoma; and 2) the New Member agrees to the terms of this Agreement.

#### Protocols for Adding New Members

RED staff also prepared draft protocols for considering New Members consistent with the terms of the JPA. The protocols require an interested entity to contact RED staff and request to present their qualifications and interest to the RED Board. An interested entity must meet the requirements in the JPA and be (1) an incorporated city or town located within the jurisdictional boundaries of the County of Sonoma; and (2) agree to the terms of the joint powers agreement. New Members must also agree to contribute financially to the RED. The protocols provide that the RED Board shall consider the request of an interested entity and that any entity approved to join RED must obtain a resolution from its governing body. Lastly, any approved New Member must execute the JPA. The First Amendment to Joint Powers Agreement is included as Attachment B.

#### **RED HOUSING FUND - BOARD POLICY OPTIONS**

Litigation by the Sonoma County Board of Supervisors against Pacific Gas & Electric to recover damages related to the 2017 Sonoma Complex Fires (2017 Fires) resulted in an allocation of \$149.3 million. On October 6, 2020, your Board allocated \$10 million towards housing through the Renewable Enterprise District, contingent on an equal commitment by the City of Santa Rosa. The Santa Rosa City Council approved \$10 million from its PG&E settlement funds for housing development through the RED in March 2021.

Staff has been engaged in preliminary discussions regarding the terms of the County's contribution and the formation of the RED Housing Fund with RED staff, the RED's consultant Forsyth Street Advisors, and City of Santa Rosa staff, and has identified several policy options for Board consideration. The RED's consultants prepared a draft term sheet (Attachment C) to outline proposed terms. The term sheet is non-binding and is intended to outline the general terms and conditions under which the County will enter into binding agreements related to its \$10 million contribution to the future RED Housing Fund.

**Loan of PG&E settlement funds to RED Housing Fund.** Although it was staff's initial understanding that the County contribution would be structured as a grant because your Board did not expect the County contribution funds to be repaid, both the County's and the City's \$10 million commitments are now contemplated to be structured as 20-year loans to the future RED Housing Fund. City staff has indicated that the City's contribution will be a loan. The RED's consultants Forsyth Street Advisors have indicated that there may be tax complications if the County's contribution is structured as a grant rather than a loan, and staff understands that the Housing Fund concept was designed with the assumption that the public sector contributions would be loans. The draft term sheet provides that loans will not be finalized until the Housing Fund entity is established.

There is a risk that the County's loan to the RED Housing Fund could be wholly or partially wiped out. As outlined in the draft term sheet, the City's and County's contributions to the Housing Fund will be subordinate

to all other debt raised by the Housing Fund from private and philanthropic sources. In the event that the Fund incurs losses attributable to its lending and/or investing activities, these losses would be allocated first to the City's and County's contributions.

In February 2020, the RED's Board of Directors adopted criteria for evaluating applications for RED project funding. The RED Project Criteria (Attachment D) acknowledge the goals and purpose of the RED as articulated in the joint powers agreement creating the RED, including incentivizing higher density, infill, and transit-oriented development in areas already designated for such development. A project must meet each of the four threshold criteria summarized below to qualify for consideration as a RED project.

1. The project must be located on an infill site, as defined;
2. The project must provide mid- to high-density development, as defined;
3. The project must be located entirely within a Transit Priority Area, Priority Development Area, Rural Community Investment Area, Specific Plan Area, High Quality Transit Corridor, or Qualified Opportunity Zone, as defined; and
4. The project must be residential or mixed-use residential, as defined.

**Project limitations.** Staff requests direction from the Board on the following issues:

- Geographic/jurisdictional limitations. May County funds directed to the RED Housing Fund be used to finance projects in downtown Santa Rosa? As indicated in the draft term sheet provided with this item (Attachment C), City of Santa Rosa staff preliminarily indicated that City funds may only be used for projects within its jurisdiction. While there are currently limited opportunity areas in the unincorporated County that would meet the threshold RED Project Criteria above, areas within the pending Airport Specific Plan and Springs Specific Plan areas would be eligible for RED Project consideration if those plans are adopted, assuming that individual projects meet the other threshold criteria. Some potential sites identified in the Rezoning Sites for Housing Draft EIR may also meet the threshold RED Project Criteria if future proposed projects meet the density and development criteria. Staff are engaged in discussions with City staff regarding options to explore options for regional affordable housing initiatives, including options sharing or shifting credit toward achieving Regional Housing Need Allocation. Formalizing such an agreement would be a lengthy process involving regional and state entities and may not be possible at this juncture in the state housing element cycle, but a preliminary commitment to exploring these options could be memorialized by the County and City through a memorandum of understanding.
- Market rate projects. May the RED Housing Fund use County funds to finance market-rate projects in downtown Santa Rosa? For purposes of this discussion, "market rate" means a residential project with units that are not restricted as to amount of rent or income of residents. The RED Project Criteria do not require an affordable component to qualify, and RED's Executive Director has indicated that the bulk of its initially interested projects are market rate projects in downtown Santa Rosa. Market rate housing projects in downtown Santa Rosa have unusually low inclusionary (on-site) affordable housing requirements. For rental projects in the downtown area, the inclusionary percentage requirement is 4% of units available to low income households, or 3% affordable to very low income households. The

requirement for downtown for-sale projects is 5% of units affordable to moderate income households. It is staff's understanding that the City is not adding an affordability requirement to its contribution to the Housing Fund.

- Mixed use projects. May County funds be loaned to mixed use projects? The threshold RED Project Criteria allow for mixed-use projects, provided that 75% of the total building square footage consists of residential use.
- Short-term rentals. Should projects receiving County-funded financing be limited from converting to short-term rentals (vacation/transient occupancy rentals occupied for less than 30 days) or hotel use? If so, for how long? City staff has indicated that the City intends to require some limit on conversion to short-term rental use.
- Entitled projects. May County funds be committed to projects that have not yet received major land use entitlements? The RED Project Criteria give the RED Board discretion to make RED funding commitments contingent on project readiness, which may be demonstrated by showing that any predicate legislative actions (e.g., rezoning) have been approved, that CEQA review is completed, and/or that major entitlements have been granted.) Staff recommends that use of County funds be limited to projects that have received all applicable major entitlements; this will help to ensure that County funds are used most efficiently and may also help to ensure that the Housing Fund is repaid quickly, allowing funds to be recycled to support projects elsewhere in the County.

**Administrative costs.** Staff also seeks direction from the Board on the type of costs for which County funds may be used. Issues for Board consideration include:

- Administrative costs of the RED Housing Fund. As proposed, interest and origination fees would generate revenue needed for the RED Housing Fund to become self-sustaining and cover its ongoing costs. Repayments of principal would not be used for administrative costs of the Housing Fund. Staff requests direction regarding limits on administrative costs of the Housing Fund, including on use of initial loan principal for operating costs until the Housing Fund begins to generate revenue.
- Administrative costs of the RED. May principal or interest on County funds be used to pay for administrative costs of the RED?
- Project soft costs. May County funds be used to finance project "soft costs" (such as permit fees and fees for professional project management, architecture, engineering, accounting, and legal)? For market rate projects, staff recommends that County funds be limited to financing construction costs, particularly if the Red Housing Fund may provide financing to projects that are not fully entitled. See the option discussion above regarding entitled projects. For affordable projects, which often have a funding gap, allowing for soft costs could make a critical difference in getting projects built.

## **RED HOUSING FUND STRUCTURE**

The RED Executive Director has engaged Forsyth Street Advisors (Forsyth Street) to consult on developing and testing possible financing approaches for feasibility. Forsyth Street is an advisory and asset management firm focused on assisting municipal and philanthropic clients with creating new funds for affordable housing.

Forsyth's initial scope of work included:

- Exploring the landscape for infill development in downtown Santa Rosa and other urban areas across the County;
- Developing and testing financing methods for catalyzing this type of development;
- Screening models for financing infill development for their feasibility in the downtown Santa Rosa market and other urban, infill areas of the City and County; and
- Evaluating whether a new fund or financing program could be implemented to support mid-to-high density infill development near transit.

Forsyth Street's Options and Feasibility Assessment (July 22, 2020) is included with this item as Attachment E.

The RED Executive Director along with Forsyth Street are providing an update to your Board on project progress and dynamics, capital raising, and Housing Fund formation.

#### **NEXT STEPS**

With the County and City's \$20 million loan commitment, the RED will continue working towards developing a Housing Fund that would pool financial resources to address funding gaps in infill housing. As directed, County staff will implement the Board's policy decisions. If authorized, the County Administrator, in consultation with County Counsel, will execute a non-binding term sheet and a funding agreement and other related documents with the Renewal Enterprise District Housing Fund.

#### **Prior Board Actions:**

10/6/2020 The Board of Supervisors voted to provide a \$10 million loan as seed capital for the Renewal Enterprise District Housing Fund, on the condition that City of Santa Rosa matches the investment.

#### **FISCAL SUMMARY**

| <b>Expenditures</b>                | <b>FY 20-21<br/>Adopted</b> | <b>FY21-22<br/>Projected</b> | <b>FY 22-23<br/>Projected</b> |
|------------------------------------|-----------------------------|------------------------------|-------------------------------|
| Budgeted Expenses                  |                             |                              |                               |
| Additional Appropriation Requested |                             |                              |                               |
| <b>Total Expenditures</b>          |                             |                              |                               |
| <b>Funding Sources</b>             |                             |                              |                               |
| General Fund/WA GF                 |                             |                              |                               |
| State/Federal                      |                             |                              |                               |
| Fees/Other                         |                             |                              |                               |
| Use of Fund Balance                |                             |                              |                               |
| Contingencies                      |                             |                              |                               |

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| <b>Total Sources</b> |  |  |  |
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**Narrative Explanation of Fiscal Impacts:**

None.

| <b>Staffing Impacts:</b>                       |  |                               |                               |
|--|--|-------------------------------|-------------------------------|
| <b>Position Title (Payroll Classification)</b> | <b>Monthly Salary Range<br/>(A-I Step)</b> | <b>Additions<br/>(Number)</b> | <b>Deletions<br/>(Number)</b> |
|  |  |                               |                               |
|  |  |                               |                               |
|  |  |                               |                               |

**Narrative Explanation of Staffing Impacts (If Required):**

None.

**Attachments:**

Attachment A - RED JPA Staff Report 02-24-2021

Attachment B - RED JPA First Amendment

Attachment C - RED County Term Sheet Draft

Attachment D - RED Criteria

Attachment E - Options and Feasibility Assessment Report

Attachment F - Presentation

**Related Items "On File" with the Clerk of the Board:**

None.