To Our Clients and Friends

Memorandum

June 16, 2020

New York City Housing Authority Unveils "Transfer to Preserve" Program

Program Will Permit Transfers of Excess Development Rights from NYCHA Sites

The New York City Housing Authority ("NYCHA") recently announced the release of a Request for Expression of Interest (RFEI #110832) for developers who control property adjacent to NYCHA sites and are interested in purchasing unused development rights generated by those sites (the "RFEI"). The "NYCHA 2.0: Transfer to Preserve Program" (the "TTP Program") is a new opportunity for developers to acquire development rights that can be utilized in new construction projects or in enlarging existing buildings.

The TTP Program is limited to "as-of-right" transfers.[1] Accordingly, either the NYCHA site and the developer's "receiving" site must be combined into a single "zoning lot" (i.e., a developer's receiving site must be contiguous to the NYCHA site for a minimum of 10 linear feet) or the NYCHA site must be located in a "Special District" where as-of-right transfers include off-site transfers as permitted under the Special District regulations.

The RFEI states that NYCHA will evaluate proposals for the TTP Program principally on the amount of revenue generated from the sale of its excess development rights. NYCHA will also consider whether the proposed development benefits NYCHA and the City, the developer's team (i.e., experience completing similar developments), and how well the proposed development integrates into the surrounding area. A developer's proposal does not need to include any affordable housing.

The TTP Program is applicable to any NYCHA site that currently has excess development rights to sell, with two exceptions. One exception is where NYCHA is currently in the process of closing a sale of development rights, and the other is NYCHA Permanent Affordability Commitment Together ("PACT") sites that are currently under conversion.[2] As of the date of this memorandum, two (2) NYCHA sites have closed or are about to close a transaction for development rights – Hobbs Court (Manhattan) and Ingersoll Houses (Brooklyn) – and a number of other properties are in the process of negotiating air rights transactions (Fulton Houses, Howard Houses, and College Avenue - East 165th Street).

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1 NYCHA's RFEI states its assumption that the City's Uniform Land Use Review Procedure (ULURP) is not triggered by the disposition of NYCHA development rights, but may be required for other types of land use actions. Proposers may wish to seek further information regarding this assumption.

2 PACT sites are NYCHA properties/buildings where a private entity/developer finances the conversion/upgrade of a NYCHA building and then operates the renovated building under a ground lease. NYCHA maintains ownership of the building and land and serves as the Section 8 Administrator for the building.

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Application Materials and Process: In order to submit an application, developers must prepare required forms and supporting documentation.[3] Although architectural and urban design drawings are optional, NYCHA requests that the developer provide a general sense of a building program and estimates of building density and size.

If a proposal is selected, the developer and NYCHA will need to, among other things, complete an environmental review (pursuant to CEQR, SEQRA and NEPA) and prepare a Section 18 Application (for U.S. Department of Housing and Urban Development's (HUD) review and approval).[4] NYCHA's Board must vote and approve the sale of the development rights prior to closing.

NYCHA is accepting applications on a rolling basis through July 31, 2020.

If NYCHA is interested in moving forward with a proposed application, NYCHA estimates that it will take 8 to 14 months to close. Factors affecting the timing include the complexity of the proposed project and the accompanying environmental review, as well as the completeness of an application at submittal.

Developers interested in the TTP Program should contact us to discuss the RFEI.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its contents. If you have any questions about the contents of this memorandum, please call your regular Fried Frank contact or an attorney listed below:

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[3] A full list of the required documents can be found at RFEI #110832.

[4] The Section 18 Application also must include evidence of the developer's consultation with the NYCHA site's residents.