

**CITY OF OAKLAND
COUNCIL AGENDA REPORT**

OFFICE OF THE CITY CLERK
2005 JUN -2 AM 10:18

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community & Economic Development Agency
DATE: June 14, 2005

RE: A REPORT AND RESOLUTION AMENDING RESOLUTION 78359, GRANTING A NINE MONTH TIME EXTENSION FOR THE EXPENDITURE OF FUNDS PERTAINING TO THE LEONA QUARRY PROJECT CONDITION OF APPROVAL NO. 42, FOR A \$500,000 IN-LIEU PAYMENT FOR A SENIOR HOUSING PROJECT AT THE EASTMONT TOWN CENTER

SUMMARY

On February 17, 2004 the City Council approved Resolution 78359, which reapproved the Leona Quarry Residential Project and accepted the terms of a legal settlement agreement as part of the dismissal of Alameda Superior Court lawsuit, *Maureen Dorsey, et.al. v. City of Oakland, et.al.* (Case No. RG03077607). As part of the settlement agreement, the 50 unit affordable senior housing project was eliminated from the Leona Quarry Project. Instead, the agreement provided for a \$500,000 in-lieu cash contribution for another affordable senior project. The resolution stated that for a period not to exceed one (1) year, the \$500,000 will be set aside for an affordable senior housing project at the Eastmont Town Center. Thereafter, if an affordable senior housing project at the Eastmont Town Center does not move forward, the City Council has the authority to review and consider other similar projects to potentially redesignate the \$500,000 set aside to another affordable senior housing project.

The project managers at the Eastmont Town Center initially requested a six month extension to secure all their financing requirements for the proposed project. The request for extension has been increased to nine months based on the timelines mandated by CDLAC (California Debt Limitation Allocation Commission) and TCAC (Tax Credit Allocation Committee) funding application process -- and the project manager's successful completion of planning requirements for the City.

At the May 10, 2005 Rules Committee, staff was directed to also include two alternative actions for the Council's consideration, in addition to the six month extension. According to the authority included in the original Resolution 78359, the Council now has the option of choosing from the following two options, in addition to the six month extension: (a) grant a nine month extension and if the project developers do not receive the new tax credit they are applying for in July 2005, then the City Council can allocate the \$500,000 to the 2005-06 Housing Affordable Notice of Funding Availability (NOFA) or (b) redesignate the \$500,000 set aside to one of two alternative senior housing projects approved by the Council.

FISCAL IMPACTS

There is no direct fiscal impact to the City.

Item No. _____
CED Com
June 14, 2005

BACKGROUND

As part of the original approval of Leona Quarry, a 54 unit affordable senior housing project was approved as a single building at the base of Edwards Avenue. As part of the settlement of the *Dorsey v. Oakland* lawsuit, the Council was asked to consider in good faith certain modifications to the Leona Quarry project. The modifications to the Conditions of Approval for the Leona Quarry project were implemented through Resolution 78359 "Resolution Modifying Resolution No. 78358 Quarry Residential Project at 7100 Mountain Boulevard" (Attached).

One of the modifications to the conditions of approval for the Leona Quarry project included modification to the proposed senior housing component of this project (condition of approval no. 42). Specifically, the Gateway Senior Housing component of the Leona Quarry Project was excluded, and the area on which that component was to be constructed is instead to be landscaped for passive uses and improved for ride-sharing activities. In lieu of the senior housing component, the project applicants for Leona Quarry project contributed a Five Hundred Thousand Dollars (\$500,000) set aside for an affordable senior housing project at the Eastmont Town Center, for a period not to exceed one year from the passage of Resolution 78359, passed in February 2004. Resolution No. 78359 states that "*if an affordable senior housing project at the Eastmont Town Center does not move forward, the City Council shall review and consider other, similar projects and shall redesignate the funds to a specific project.*"

KEY ISSUES AND IMPACTS

The project managers at the Eastmont Town Center originally requested a six month extension to secure all their financing requirements for the proposed project. The request for extension has been increased to nine months based on the timelines mandated by CDLAC (California Debt Limitation Allocation Commission) and TCAC (Tax Credit Allocation Committee) funding application process. The project proponents will submit new application in July 2005, with award notification anticipated for November 2005.

The Eastmont senior housing project has an estimated total development cost of \$12.5 million. The current financing for the Eastmont project is identified in Table A.

Table A: Status of Originally Proposed Project Financing

Amount	Funding Source	Status
\$4.5 M	4% LIHTC equity	Approved
\$0.5 M	Leona Quarry set aside	
\$6.5 M	Tax-exempt bonds (CDLAC)	Approved
\$1.0 M	NOFA funds from City of Oakland	Apply in November 2005
\$12.5 M	Total Development Cost	

To date, the Eastmont project proponents provided documentation indicating the successful award of the 4% Low Income Housing Tax Credit (LIHTC) equity from TCAC, which would provide approximately \$4.5 million, and tax-exempt bonds from CDLAC totaling \$6.5 million for this project (see Table A). In addition the Eastmont project proponents have received the planning permits required from the City.

After a review of total development costs, as indicated in the attached letter dated May 24, 2005 and summarized in the Table A, the 4% LIHTC and tax-exempt bonds awarded to date, in addition to the Leona Quarry set aside, left the project with a funding gap of over \$1 million. Therefore, the project proponents are applying for a 9% LIHTC in July 2005, which could provide up to \$9.5 million in equity for this project (see Table B). This 9% tax credit would replace both the 4% equity form TCAC and the tax-exempt bonds approved by CDLAC. If the project proponents do receive the 9% tax credit award and still have access to the \$500,000 Leona Quarry set aside and a loan provided by SunAmerica/AGI bank for \$2.5 million to complete their funding, they can proceed with construction of this project. The project proponents will apply for the 9% tax credit in July 2005, with award notification anticipated for November 2005.

Table B: Status of Newly Proposed Project Financing

Amount	Funding Source	Status
\$2.5 M	Private loan from SunAmerica/AGI	Approved
\$0.5 M	Leona Quarry set aside	
\$9.5 M	9% LIHTC equity	Application submission scheduled for July 2005, with potential award date in November 2005
\$12.5 M	Total Development Cost	

On May 10, 2005, the Rules & Legislation Committee directed staff to also include two other alternatives for the Council’s consideration, in addition to the original six month extension request (Option 1):

Option 2. Grant an extension for a nine month extension through the second round of tax credit noticing (November 2005), and if not approved allocate the \$500,000 to the 2005-06 Housing NOFA:

Through this option the Council will allow the proponents of the Eastmont project to proceed through the TCAC application process for obtaining the 9% tax credit (see Table B). If they are *not* successful in receiving the 9% award, the Council can choose to take the \$500,000 set aside and include it in the general NOFA for 2005-06. The result of this action will require the proponents of the Eastmont project to apply for and receive \$1.5 million from the 2005-06 NOFA from the City to meet their total development costs if they wish to continue with this project. Staff is recommending this option.

Option 3. Develop and allocate to two alternative senior housing projects:

Resolution No. 78359 states that “*if an affordable senior housing project at the Eastmont Town Center does not move forward, the City Council shall review and consider other, similar projects and shall redesignate the funds to a specific project.*” Therefore, the City can provide funding for two (2) current senior developments, approved as part of the 2004-05 NOFA, the Altheim Senior Housing project and the Lincoln Court Senior Housing project. Neither of these projects are located in District 6 where the Leona Quarry project and the Eastmont Town Center are

located. At the direction of the Council, staff could substitute the \$500,000 Leona Quarry set aside for ORA funds at Altenheim and then put those ORA funds into the 2005-06 NOFA. At Lincoln the \$500,000 set aside can be used to cover unfunded costs related to unforeseen soil problems at the project.

SUSTAINABLE OPPORTUNITIES

Economic: This project will expand the affordable housing inventory for seniors in Oakland and generate construction and professional services contracts for small and local firms in Oakland.

Environmental: This project will provide housing near both major public transit corridors and satellite offices of various social and public health services utilized by seniors. By developing in such an area, this project will reduce dependency on automobiles and further reduce any adverse environmental impacts of development.

Social Equity: The proposed developments will provide affordable housing units for low and very low income senior citizens.

DISABILITY AND SENIOR CITIZEN ACCESS

All senior housing projects, whether at Eastmont or other location, as required by federal and state law, include accessibility features for disabled and senior citizens.

RECOMMENDATION AND RATIONALE

The six month extension (Option 1) request is not a feasible option at this time, due to the increased total development cost for the project and subsequent financing requirement. Staff recommends that the Council grant the nine month extension to November 2005 for the Eastmont Town Center Senior Housing Project (Option 2). Quite often such projects require more than a one year period to secure all funding sources. Staff further recommends that at the end of nine months, if the Leona Quarry set-aside funds are not designated for the Eastmont project, then they should be placed into the 2005-06 NOFA without the need for further City Council action.

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests the City Council adopt the attached resolution granting a nine month extension for the set aside of the Leona Quarry in-lieu housing funds for the Eastmont Town Center Senior Housing Project and further directing staff to place the in-lieu funds in the 2005-06 NOFA if the funds are not utilized by to the Eastmont project by the end of the nine month period.

Respectfully submitted,



Claudia Cappio
Development Director,
Community & Economic Development Agency

Prepared by:
Maziar M. Movassaghi
Community & Economic Development Agency

APPROVED AND FORWARDED TO THE
COMMUNITY & ECONOMIC DEVELOPMENT
COMMITTEE:



Office of the City Administrator

ATTACHMENTS:

- A: Resolution 78359 "Resolution Modifying Resolution No. 78358 Quarry Residential Project at 7100 Mountain Boulevard."
- B: Letters dated March 21, 2005 and May 24, 2005 from Eastmont Town Center (project Developers)

Approved as to Form and Legality
OFFICE OF THE CITY CLERK
Furman, Fay
City Attorney
2005 JUN -2 PM 12:50

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

INTRODUCED BY _____

A REPORT AND RESOLUTION AMENDING RESOLUTION 78359, GRANTING A NINE MONTH TIME EXTENSION FOR THE EXPENDITURE OF FUNDS PERTAINING TO THE LEONA QUARRY PROJECT CONDITION OF APPROVAL NO. 42, FOR A \$500,000 IN-LIEU PAYMENT FOR A SENIOR HOUSING PROJECT AT THE EASTMONT TOWN CENTER

WHEREAS, on February 17, 2004 the Council approved Resolution No. 78359 titled "RESOLUTION MODIFYING RESOLUTION NO. 78358 QUARRY RESIDENTIAL PROJECT AT 7100 MOUNTAIN BOULEVARD REGARDING THE LEONA" modifying the Leona Quarry project's conditions of approval, as set forth in the settle agreement for the case of *Dorsey v. Oakland, et. al.* (Case No. RG03077607); and

WHEREAS, one of the modifications contained in Resolution No. 78359 provided for a \$500,000 cash contribution for an affordable senior project be constructed at the Eastmont Town Center for a period not to exceed one (1) year from the date the resolution became effective, in lieu of the 50 unit affordable senior housing project originally proposed for construction at the Leona Quarry site; and

WHEREAS, Resolution No. 78359 authorized the City Council to review and consider other, similar projects and to redesignate the funds to a specific project if an affordable senior housing project at the Eastmont Town Center does not move forward within the allotted one year period; and

WHEREAS, the proponents of the affordable senior housing project at Eastmont Town Center have shown a good faith effort in moving the project forward by successfully applying for and receiving (1) the necessary permitting requirements from the City of Oakland, (2) 4% LIHTC equity from TCAC, which would provide approximately \$4.5 million, and (3) bonds from CDLAC totaling \$6.5 million for this project; and

WHEREAS, the proponents of the affordable senior housing project at Eastmont Town Center are also applying for a 9% tax credit from TCAC in July 2005 with an anticipated award notification in September 2005; and

WHEREAS, the proponents of the affordable senior housing project at Eastmont Town Center have requested a nine month extension to complete their financing requirements for the project; and

WHEREAS, the extension requested will not involve any new or more severe significant impacts and no substantial changes with respect to the circumstances under which the Leona Quarry project was approved; now, therefore, be it

NOW, THEREFORE, BE IT RESOLVED, that the Council for the City of Oakland grants a nine (9) month extension from February 2005 through November 2005 for the Eastmont Town Center Senior Housing Project, such that the project proponents will have adequate time to complete their application for a 9% tax credit from TCAC and receive notification of the decision from TCAC;

FURTHER RESOLVED, The Council directs staff that if the proponents of the senior housing project at Eastmont Town Center do not secure a 9% tax credit from TCAC, then the \$500,000 in-lieu funds amount should be placed into the 2005-06 Notice of Funding Availability, without the need for further City Council action.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2005

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND
PRESIDENT DE LA FUENTE
NOES-
ABSENT-
ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Attachment A:

Resolution No. 78359 titled "RESOLUTION MODIFYING RESOLUTION
NO. 78358 QUARRY RESIDENTIAL PROJECT AT 7100 MOUNTAIN
BOULEVARD REGARDING THE LEONA"

FILED
OFFICE OF THE CITY CLERK
OAKLAND

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OAKLAND CITY COUNCIL

RESOLUTION No. 78359 C.M.S.

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FILED
OFFICE OF THE CITY CLERK
OAKLAND

2005 JUN -2 PM 12:51

REVISED

INTRODUCED BY COUNCILMEMBER _____

78358

RESOLUTION MODIFYING RESOLUTION NO. REGARDING THE LEONA QUARRY RESIDENTIAL PROJECT AT 7100 MOUNTAIN BOULEVARD

WHEREAS, on July 30, 2001, in accordance with the California Environmental Quality Act ("CEQA"), City staff issued an Initial Study and Notice of Preparation ("NOP") indicating an intent to prepare an Environmental Impact Report for the Leona Quarry project, including the requested Zoning Boundary Line Adjustment ("ZBA"), Planned Unit Development ("PUD") permit, Vesting Tentative Map ("VTM"), Design Review, and Variances; and

WHEREAS, on August 8, 2001, the Planning Commission conducted a public hearing to solicit comments on the NOP; and

WHEREAS, on June 11, 2002, a Draft EIR ("DEIR"), State Clearinghouse No. 199904205, was released by the City for a 49-day public review and comment period, which reviewed and evaluated the environmental impact of both the original proposal to develop 564 residential units, an approximately 10,000 square foot commercial center, an approximately 6,000 square foot community center and related urban facilities and the "Modified Plan" which would develop 477 residential units and an approximately 2,300 square foot community center and related urban facilities; and

WHEREAS, on July 17, 2002, the Planning Commission conducted a public hearing to provide the public with an additional opportunity to comment on the DEIR; and

WHEREAS, on September 23, 2002, a document entitled "Leona Quarry Final Environmental Impact Report" ("FEIR"), which responded to comments received by the City on the DEIR and provided a more detailed analysis of the Modified Plan was released; and

WHEREAS, on October 2, 2002, the Planning Commission conducted a public hearing and took testimony regarding the Modified Plan, the DEIR and the FEIR; and

WHEREAS, on October 23, 2002, the Planning Commission conducted another public hearing on and took testimony regarding the Modified Plan, the DEIR and the FEIR; and

WHEREAS, at the Planning Commission hearing on October 23, 2002, the Planning Commission determined that the EIR (consisting of the DEIR, Responses to Comments and other information presented in the FEIR) was adequate for decision-making on the requested land use entitlements and certification of the EIR; and

WHEREAS, the Planning Commission, including the Design Review Committee of the Planning Commission and the Special Projects Committee of the Planning Commission, duly noticed and conducted a total of 7 public hearings and 4 study sessions sponsored by the project applicant regarding the proposed development of the Leona Quarry, including the requested land use entitlements, between April, 2001 and October 23, 2002; and

WHEREAS, on October 23, 2002, the Planning Commission recommended that the City Council approve the ZBA, certified the EIR, adopted CEQA Findings and a Statement of Overriding Considerations, adopted a Mitigation Monitoring and Reporting Program, adopted General Findings and adopted accompanying Conditions of Approval, approved a PUD permit, approved a VTM, approved Design Review and approved certain Variances; and

WHEREAS, on November 4, 2002, Maureen Dorsey filed an appeal (“Dorsey Appeal”) of the Planning Commission’s certification of the DEIR and FEIR, approval of the land use entitlements and recommendations and requested that the City Council reduce the density of the Modified Plan; and

WHEREAS, on November 15, 2002, the City Council duly noticed a public hearing at which all interested members of the public were allowed to voice their opinions on the Dorsey Appeal, Modified Plan land use entitlements, and proposed ZBA; and

WHEREAS, on December 3, 2002, the City Council conducted a public hearing on and took testimony regarding the Dorsey Appeal, Modified Plan, DEIR and FEIR and the proposed ZBA; and

WHEREAS, on December 3, 2002, the City Council, having fully reviewed, considered and evaluated the DEIR and FEIR, staff reports, public testimony and all documents and other evidence submitted on this matter, resolved to take certain actions; and

WHEREAS, on December 3, 2002, the City Council certified the DEIR and FEIR as adequate for the ZBA and Ordinance 12457, An Ordinance of the City of Oakland Adjusting the Zoning District Boundary Line for the Leona Quarry Property Located at 7100 Mountain Blvd., So That the R-50 (Medium Density Residential) Is Designated for the Lower Development Area Consistent with the Approved Planned Unit Development for the Leona Quarry Residential Project, was introduced and passed to print; and

WHEREAS, on December 3, 2002, the City Council adopted Resolution No. 77544, Resolution Denying the Appeal of Maureen Dorsey and Sustaining the Decision of the City Planning Commission in Approving the Applications of the DeSilva Group to Close the Leona Quarry, Reclaim It and Redevelop the Site for 477 Residential Units at 7100 Mountain Blvd., which Resolution certified the DEIR and FEIR as adequate for, and approved, a PUD permit, VTM, Design Review and Variance applications for the Modified Plan; and

WHEREAS, on December 17, 2003, Ordinance 12457 was enacted by the Council; and

WHEREAS, on January 2, 2003, a proceeding was initiated in the Alameda County Superior Court entitled *Dorsey v. City of Oakland*, Action No. RG-03077607 challenging CEQA compliance for Ordinance 12457 and Resolution 77544; and

WHEREAS, in the *Dorsey v. City of Oakland* proceeding, on August 5, 2003 the court entered final judgment on the CEQA claims by issuing an "Amended Judgment Granting Petition For Writ of Mandate" ("Amended Judgment") and on August 29, 2003 the court issued a "Second Amended Peremptory Writ of Mandate" ("Second Amended Writ" or "Writ"); and

WHEREAS, the Amended Judgment and Writ stayed the force and effect of Ordinance 12457 pending a showing that decisions arising from the subsequent EIR process require the Court to take further action; remanding the matter to the City Council; ordered the City to set aside certification of the EIR and set aside the approvals issued pursuant to Resolution 77544 until a subsequent EIR was prepared with regard to only that portion of the EIR dealing with hydrological issues; and ordered that, as to the Geology segment of the EIR, additional review was ordered only if changes arising out of matters related to hydrology resulted in changes to the geology analysis in accord with standards set forth in CEQA Guideline 15162; and

WHEREAS, Ordinance 12457 remains valid, but its force and effect has been stayed by the court in the *Dorsey v. Oakland* proceeding; and

WHEREAS, on August 18, 2003, City staff issued an NOP indicating an intent to prepare a Subsequent Environmental Impact Report ("SEIR") to comply with the Amended Judgment and Second Amended Writ; and

WHEREAS, on October 23, 2003, City staff issued a Notice of Availability of a Draft Subsequent Environmental Impact Report For The Leona Quarry Project (DSEIR), and solicited public comment during a comment period initially scheduled to conclude on December 8, 2003, and later extended to conclude on December 22, 2003; and

WHEREAS, on November 19, 2003, the Planning Commission conducted a public hearing to provide the public with an additional opportunity to comment on the DSEIR; and

WHEREAS, on January 14, 2004, a document entitled "Leona Quarry Final Subsequent Environmental Impact Report" ("FSEIR"), which responded to comments received by the City on the DSEIR was released; and

WHEREAS, the DEIR and FEIR, as revised and supplemented by the DSEIR and FSEIR, comprised the "EIR" for the PUD, VTM, Design Review and Variance that were approved in the Reapproval Resolution referenced below; and

WHEREAS, on January 21, 2004, the Planning Commission conducted another public hearing on and took testimony regarding the Leona Quarry Modified Plan, and the EIR, and made recommendations to the Council that it certify the EIR, and that it re-approve the PUD

permit, VTM, Design Review and Variance applications for the Modified Plan, all as revised by the mitigation measures in the EIR; and

WHEREAS, on February 17, 2004, the City Council conducted another public hearing on and took testimony regarding the Leona Quarry Modified Plan and the EIR; and

WHEREAS, on February 17, 2004, the City Council certified the EIR as revised and supplemented by the SEIR, and approved the PUD permit, VTM, Design Review and Variance applications for the Modified Plan, all as revised by the mitigation measures in the EIR in Resolution No. _____ (the "Re-approval Resolution"); and

78358 =

WHEREAS, the Project Applicant, the petitioners in the *Dorsey v. Oakland* proceeding and the City negotiated a settlement agreement ("Settlement Agreement") pursuant to which the City agreed to consider in good faith whether to modify the Leona Quarry project as set forth in that agreement, and the Council adopted Resolution 78285 authorizing the City Attorney to execute that agreement; and

WHEREAS, as documented in the staff report for this Council meeting, in the SEIR, and other evidence in the record before the Council, the project modifications proposed in the Settlement Agreement will not involve any new or more severe significant impacts, there are no substantial changes with respect to the circumstances under which the project was approved that involve new or substantially more severe significant environmental impacts, and no significant new information has come to light that would indicate new or more significant impacts, or substantially different or feasible mitigation measures or alternatives the project sponsor refuses to adopt; and

WHEREAS, the Project Applicant and all other interested parties were given opportunities to participate in all public hearings by submittal of oral and written comments

NOW, THEREFORE, BE IT RESOLVED that the City Council, modifies the conditions of approval of the PUD permit, VTM, Design Review and Variance adopted in the Re-approval Resolution to include the following:

Modification 1 Stormwater Management System.

The Project Applicant will provide on-site capacity for detention of storm water flows by increasing the detention capacity on the entire Project site to 25 acre-feet. Certain details regarding the detention basin are set forth in the attached Hydrology Exhibit, HYD- 1. The City will obtain from its peer reviewer for Project hydrology, Philip Williams and Associates, Ltd. (PWA), concurrence on how to use the 25 acre feet of detention capacity to reduce existing stormflows downstream from the Project site by meeting the following minimum standards, using parameters recommended by PWA in its reports dated November 20, 2002, and June 10, 2003, including modeling Ponds 1 and 2 as initially empty. The minimum standards are: post-project, 25-year, 24-hour peak flows from the site not to exceed 172 cfs; and post-project, 100-year, 24-hour peak flows from the site to be equal to or less than the existing peak flows from the site. The Project Applicant will implement the recommendations from PWA regarding use of the 25 acre feet of detention capacity, and the City will have PWA determine

whether these PWA recommendations have been implemented. Upon completion of the stormwater management system, the City will obtain a letter from PWA confirming that the system has been completed in substantial conformance with these PWA recommendations. Promptly after its receipt thereof, the City will provide copies of the PWA letter to Petitioners in the *Dorsey v. Oakland* proceeding and to the Project Applicant. This modified basin includes three acre-feet of water quality treatment capacity in addition to the 25 acre feet of detention capacity. This modification supersedes the portions of Condition of Approval 23a, Mitigation Measure F.1a and Alternate Mitigation Measure F.1a that (a) specify a 15.6 acre-foot detention capacity, (b) pertain to use of Ridgemont Pond for detention, and (c) that specify a 20.3 acre-foot detention capacity basin, to the extent this Resolution supersedes the Re-approval resolution.

Modification 2 Substitution Of Cash Contribution For Gateway Senior Housing Component; Unit Limitation.

(a) The Gateway Senior Housing component of the Project is excluded, and the area on which that component was to be constructed will be landscaped for passive uses and improved for ride-sharing activities as shown on the attached Gateway Area Exhibit, GW- 1. This area will not be utilized for housing or commercial uses. This modification makes Condition of Approval No. 42 and all other Conditions of Approval relating to the Gateway Senior Housing component moot, and the Project Applicant shall not be required to comply with those conditions.

(b) The number of residential units on the Lower Development Area (as that term is used in the FEIR) of the site is limited to the remaining 404 residential units included in the Lower Development Area. This provision shall not limit the ability to remodel or replace structures on the Project site.

(c) The Project Applicant will contribute Five Hundred Thousand Dollars (\$500,000.00) to support alternate senior affordable housing project(s) selected and approved by the City Council. The Project Applicant will fund the \$500,000.00 at the time the City has approved an alternate project consistent with this paragraph. Initially, for a period not to exceed one (1) year from the date this Resolution becomes effective, the \$500,000 will be set aside for an affordable senior housing project at the Eastmont Town Center, if such a project is approved by the City and pursued by the applicant. Thereafter, if an affordable senior housing project at the Eastmont Town Center does not move forward, the City Council shall review and consider other, similar projects and shall redesignate the funds to a specific project.

Modification 3 Emergency Vehicle Access (EVA) Improvements.

(a) Altura Place EVA: 1) The constructed EVA to Altura Place will be designed as a maintenance road for the development in order to discourage pedestrian and bicycle access to and from the Project and Altura Place. 2) The EVA roadway will be 12' wide following the alignment, configuration and details depicted in the attached EVA Exhibits: Altura Place, Exhibit EVA-1; Gate Detail, Exhibit EVA-2; Altura Photographs, Exhibit EVA-3; and Legal Description, Exhibit EVA-4. 3) The 12' wide gate will be 6' tall, and locked with a chain and padlock. 4) An Oakland Fire Department approved "Knox Box" will be attached to the gate. 5) The gate will abut the retaining wall as depicted in Exhibits EVA-1 and EVA-2 and will be

designed to discourage pedestrian and bicycle access between the gate and the wall. 6) The gate will be connected to the existing fence on the common property line to discourage pedestrian and bicycle access. 7) The limits of construction will be per Exhibit EVA-1. 8) All constructed improvements outside of the Leona Quarry will occur within the existing 50' City Right of Way of Altura Place. 9) Signage will be placed on both sides of the gate prohibiting access except in an emergency. 10) For all modifications on Altura Place, all vehicles, trucks and equipment will use the quarry entry and exit located on Mountain Blvd only. 11) No Project vehicles will use Altura Place or Leona Street to access or exit the project site during grading or construction.

(b) Northwestern EVA: 1) Within the Easement area on the Suchan property a 12' wide scored concrete road way will be constructed. 2) The roadway will follow the existing EVA alignment between the existing 6' fence and the existing drainage ditch all within the 20' existing easement. 3) A 6' sturdy cyclone fence will be erected to separate the Suchan property from the easement being used as the EVA, the length of the EVA between the gate at Leona Street, and the lower gate to the development. The dead apricot tree and the large rosebush that are in line with where the fence will go, will be cut down, and all such debris removed from the property. 4) All live trees will remain and be protected during construction. 5) Signage will be placed on the gates at the top and bottom of the easement area prohibiting access except in an emergency. 6) An Oakland Fire Department approved "Knox Box" will be attached to each gate. 7) For all modifications for the Northwestern EVA, all vehicles, trucks and equipment will use the Leona Quarry entry and exit located on Mountain Blvd only.

(c) For all modifications on Altura Place, and Leona Street, necessary to create secondary EVAs, all vehicles, trucks and equipment must use the quarry entry and exit located on Mountain Blvd.

(d) The Project Applicant will not allow vehicles to use Altura Place, or Leona Street, to enter or exit the Project site during grading or construction.

(e) The EVA Improvements will be maintained by the HOA or other similar entity.

Modification 4 Geology.

The City will obtain from its peer reviewer for geologic and geotechnical issues at the Project, Lowney Associates, concurrence on the appropriate steps to be taken to respond to the specific, numbered and itemized recommendations 1 and 2 made by Nicholas Sitar in a report dated November 15, 2003. The Project Applicant will implement the recommendations from Lowney Associates regarding the appropriate steps to be taken to respond to these recommendations of Sitar, and the City will have Lowney Associates determine whether these Lowney Associates' recommendations have been implemented. The Project Applicant will implement the recommendations of Sitar (Items 3-5 of the November 15, 2003, report) and Seidelman (November 16, 2003, email and December 30, 2002, report), as directed by Lowney Associates. The November 15, 2003, Sitar report, the November 16, 2003, Seidelman email and the December 30, 2002, Seidelman report are attached as Geology Exhibits, GEO 1-3 for reference purposes only. Upon substantial completion of grading for the Project, the City will obtain a letter from Lowney Associates confirming that the Project has been developed in

substantial conformance with these Lowney Associates recommendations. Promptly after its receipt thereof, the City will provide copies of the Lowney Associates letter to Petitioners in the *Dorsey v. Oakland* proceeding and to the Project Applicant.

Modification 5 Traffic Improvements.

(a) The Project Applicant will leave with the City any "credits" due the Project Applicant from the implementation of the Traffic Improvement Program related to the improvement work at intersections 1, 2, 4 and 8 (as numbered in the FEIR) rather than receiving said refunds. City will earmark, set aside and use such credits for the traffic mitigations at the three (3) intersections listed in (b) immediately below. Upon completion of the improvements related to the (b) intersections, the Project Applicant shall be entitled to return of any remaining "credits".

(b) Regarding Intersections #9 (Keller@Fontaine), #7 (Keller@Mountain), and #27 (Mountain@I580 West bound), the Project Applicant will obtain traffic studies of these intersections after the 200th unit has been occupied and after the 423rd unit has been occupied. In the event either of those traffic studies reveals that the traffic existing at the time of the study has caused the LOS levels at any of the above intersections to fall to Level of Service "E" ("LOS E") or worse, the Project Applicant will pay for and construct all of the traffic mitigations contained in the DEIR and FEIR for any of the three (3) intersections at LOS E or worse (i.e., #9, #7 and/or #27). The Project Applicant shall be entitled to utilize the credits it left with the City under subdivision (a) for this construction work.

(c) At the time of occupancy of the 150th unit, the Project Applicant will provide to the HOA a Van Pool vehicle in new condition with seating capacity of at least twelve (12) and with at least standard features.

(d) Signage at the Coliseum and Airport: The Project Applicant and City will cause signage to be placed in the area of the Oakland Airport and the Coliseum directing through traffic to use Seminary and 98th Ave. The City will require that the signage located at or near the Airport and Coliseum be placed in locations recommended by the City traffic engineer.

(e) The Project Applicant and Petitioners in the *Dorsey v. Oakland* proceeding will make a good faith effort to obtain permission from CALTRANS, and if approved, the Project Applicant will fund both installation of new signage on I580 and Highway 13 indicating that Seminary and 98th Ave are the exits for the Airport and the Coliseum, and removal of inconsistent existing signage on I580 and Highway 13.

Modification 6 Dedication of Open Space.

Condition of Approval No. 32, which requires dedication of an open space and conservation easement to the City concurrent with submittal of the last final map for the Project, is modified to add the requirement that the easement shall be perpetual in nature and shall constitute an interest in real property pursuant to Civil Code section 815.2. The HOA will be a co-grantee on the open space and conservation easement.

FURTHER RESOLVED: That this Resolution will not take effect until the court in the *Dorsey v. Oakland* proceeding lifts the stay of the force and effect of Ordinance 12457.

FURTHER RESOLVED: This Resolution shall supersede the Re-approval Resolution only for so long as this Resolution is not invalidated, vacated or set aside in whole or in part, and for only so long as the Settlement Agreement has not been terminated.

FURTHER RESOLVED: The City will not waive or modify the requirements of the project modifications specified in Modification 1 through Modification 6 above unless, upon a duly noticed public hearing, the City Council has made a finding that the waiver or modification is necessary due to overriding concerns of public health, safety or welfare.

FURTHER RESOLVED: That the Council finds and directs City staff to implement the project modifications specified in Modification 1 through Modification 6 as Conditions of Approval, and to incorporate, monitor and administer them as part of the documentation and requirements for the project.

FURTHER RESOLVED: That the Council finds and determines that this Resolution complies with CEQA and the Environmental Review Officer is directed to cause to be filed a Notice of Determination with the appropriate agencies.

FURTHER RESOLVED: That the recitals contained in this Resolution are true and correct and are an integral part of the City Council's decision.

In Council, Oakland, California, February 17, 2004

PASSED BY THE FOLLOWING VOTE:

AYES: *BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN, AND
PRESIDENT DELA FUENTE - 8*

NOES: *0*

ABSENT: *0*

ABSTENTION: *0*

ATTEST:



CEDA FLOYD

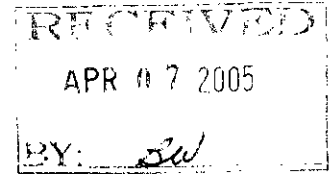
City Clerk and Clerk of the Council of the
City of Oakland, California

Attachment B:

Letters dated March 21, 2005 and May 24, 2005 from Eastmont Town
Center (Project Developers)



One Eastmont Town Center
7200 Bancroft Avenue
Oakland, California 94605-1907
(510) 632-1131
(510) 636-1727 Fax



March 21, 2005

Dan Vanderprien
Director of Redevelopment, Economic Development,
Housing and Community Development
250 Frank Ogawa Plaza
Oakland, CA 94612

Dear Dan,

RE: RESOLUTION 78359 AUTHORIZING A \$500,000 GRANT FOR SENIOR HOUSING
AT EASTMONT TOWN CENTER

As you know, on February 17, 2004, Eastmont Town Center was awarded a \$500,000 grant by the City Council to assist in the conversion of an existing 4-story office structure on site into the Nathan A. Miley Senior Housing Community. This 69 unit affordable senior housing project has been moving on our project timeline, but has exceeded the timeline set by the City Council one year ago for the closing of financing as set forth in City Council Resolution No. 78359.

This letter is to request a 6-month extension of the timeline to allow us the opportunity to receive an approval of our HUD 221-D3 Bond Enhancement application and close all the financing. This project has three funding sources other than the City's grant, deferred development fees and an approved subordinated residual receipts loan, those three other sources of funds are as follows:

- 1) California Tax Credit Allocation Committee (TCAC) Issued 4% Tax Credits - \$4.23 million
- 2) A California Debt Limit Allocation Committee (CDLAC) Issued Tax Exempt Bond - \$5,870,000
- 3) A FHA/HUD 221-D3 Guarantee of the CDLAC Issued Bonds that will enhance the value of the bonds resulting in a necessary increase in the proceeds from the sale of the bonds.

I am happy to report that we have successfully been awarded both the Tax Credits and the Bonds from the State (award letters attached). We have a commitment in hand from Washington Mutual for the direct purchase of the Bond funds (attached). We also recently received formal approval from the City of Oakland's Planning and Zoning Department (attached) and we are submitting 95% complete construction drawings to the City's Building Permit office next week for approval. We have completed the bid process for all sub-contractors and have a firm bid in hand from our General Contractor, M.A. Lindquist, that hits our budgeted amount for hard costs.

The last piece of the financing package left to confirm is the HUD 221 D-3 credit enhancement of the State Tax Exempt Bonds issued by CDLAC. We are working with CW Capital on this portion of the financing and following several in person meetings with staff from the local HUD Regional Office, we have recently submitted the required pre-application to HUD. We expect to submit our formal application at the end of April with final approval from HUD expected in mid-June 2005. Following HUD's final approval, we will begin to finalize all documentation for all the financing and construction contracts and close financing at the end of July and begin construction in early August 2005.

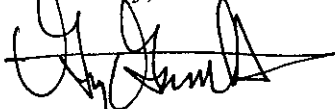
Our request for a 6-month extension from the February 17th 2005 deadline is based on the timelines mandated by CDLAC. We are required to close all financing for the project no later than 130 days following our March 16, 2005 award date. That "drop-dead" date is Monday, July 25, 2005. If we fail to close all financing by that date, we must forfeit our CDLAC Bond allocation and start the process over again (obviously, we do not intend to miss this date).

Understanding this request must go to the City Council for final approval, HUD requires a letter from City staff at this time that acknowledges that the our request is proceeding through the process leading to a City Council review and approval of the extension with a staff recommendation to approve our request. HUD requires this letter as part of our final application.

Therefore, if you approve of our requested extension, please present our request to the City Council's Rules Committee for scheduling to begin the process. Also, at your earliest convenience, please present us with a letter confirming that our request is moving through your process for review and approval by the Council with a staff recommendation for approval, and please include your best estimation of the expected timeline for that process to be completed.

I look forward to discussing our request with you soon and to receiving a letter that will be part of our formal HUD application to be submitted Monday, April 18, 2005. Thank you for your consideration and expedient handling of our request.

Sincerely,



Greg Garrett
General Manager

CC: Mayor Jerry Brown
Ignacio De la Fuente, Council President
Desley Brooks, Council Member
Claudia Cappio

Attachments



One Eastmont Town Center
7200 Bancroft Avenue
Oakland, California 94605-1907
(510) 632-1131
(510) 636-1727 Fax

COPY

May 24, 2005

Dan Vanderpriem, Director
Redevelopment, Economic Development,
Housing and Community Development
250 Frank Ogawa Plaza
Oakland, CA 94612

Dear Dan,

RE: NATHAN A. MILEY SENIOR HOUSING COMMUNITY AT EASTMONT TOWN
CENTER

This letter is an update to our letter of March 21, 2005 which requested an extension of the deadline for Eastmont to utilize the \$500,000 grant of funds from the Leona Quarry housing project. When we wrote that letter, we had been awarded the two primary funding sources needed for the project, those being \$5,850,000 of tax-exempt bonds and \$3,400,000 of 4% tax credits, both issued by the State of California (these funds were in addition to the \$500k Leona Quarry Grant). We also have approval from the City's Planning Department. To date, we have spent \$500,000 on pre-development expenses, funded primarily by a \$400,000 line of credit from the Community Bank of the Bay.

Given our success in being awarded the necessary financing to proceed, we were poised to submit our completed construction drawings to the City's Building Permit department so that we could begin construction. Two unfortunate factors have changed since the submission of our previous request to extend the grant funds.

1. Increased construction costs related to additional seismic retrofitting resulting from a new soil sample report. The report was commissioned late last year, but factors out of our control caused a delay in the drilling of soil samples, which ultimately led to a delay in the soils report.
2. Increased operating expenses resulting in decreased debt service capacity. We contracted with a new property management firm that analyzed our operating expenses, marketing and lease up expenses and per their recommendation, we increased those costs 5-10%.

The combined impact of increased construction costs and increased operating expenses caused a financing gap that could not be funded utilizing the former funding sources. In short, the tax exempt bonds are only eligible if the bond funds account for at least 50% of the total project costs, and since costs increased, and our ability to service debt decreased, we could not meet this 50% rule.

Regrettably, as a result of the two previously described issues, we were forced to sacrifice our previously awarded 4% tax credits and tax-exempt bonds. We consulted with several affordable

housing finance experts, namely SunAmerica/AIG and CW Capital, regarding alternative funding sources and both highly recommended we repackage our application for the July round of 9% Tax Credits. Combined, the two firms have closed over 2,000 tax credit deals and their analysis show that we score the maximum level of points possible and we also score extremely well in a tie breaker due to our low cost of funds requested per unit of housing combined with accessibility to vital services. The award of the 9% tax credits occurs in early October 2006

We are aware, however, of how competitive the application process is for 9% tax credits so we have an alternative to this funding source. If we are not awarded the 9% tax credits then we will submit an application for the City of Oakland Redevelopment Agency Housing NOFA. This process ends with announcements in January or February 2006, our intention would be to apply for \$1 million to close the financing gap. Our proforma requires that the \$500,000 of Leona Quarry grant funds are part of our financing sources in addition to the \$1 million we would apply for through the NOFA process

Therefore, if we are unsuccessful in being awarded the 9% tax credits in October 2006, our request is that the City extends the award of the \$500,000 Leona Quarry grant funds through the end of the City NOFA process in February 2006.

We know the City understands the reality that all affordable housing projects require significant contributions of equity and from multiple sources, and this is truer for a senior affordable project in East Oakland. With sufficient funding, we are ready to build. We have complete construction drawings ready for Building Permit submission; we have a strong development team comprised of local firms including our minority owned architectural firm, Michael Willis Architects; and we have a local General Contractor, MA Lindquist who has a proven commitment to hiring local sub-contractors and vendors.

Finally, Eastmont is the perfect location for a senior housing community. The on-site services bring convenience to any senior fortunate enough to locate here. A full-service grocery store, Center for Elder Independence, Meals on Wheels program, Golden Age Senior Center, County Department of Adult and Aging, County Department of In-home Support Services, Federal Social Security Administration offices, Oakland Public Library, A/C Transit Regional Bus Hub with direct BART Connection, East Oakland Police Precinct facility, and community serving retail shopping. This project is a natural fit for this site and a benefit to the East Oakland Community.

Thank you for your consideration of our request.

Sincerely,



Greg Garrett
General Manager

CC: Claudia Cappio
Sean Rogan