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2005 MAY -6 PM 3:43

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TO: President de la Fuente and
Members of the City Council

FROM: Claudia Cappio *cc*
Director of Development

DATE: May 6, 2005

SUBJECT: Corrections to the Joint City Council/Redevelopment Agency May 17,
2005 Staff Report for the Wood Street Development Project

The following two items are corrections to the information included in the May 17, 2005 City Council Agenda packet for the Wood Street Development Project (Item 27). Both items are corrections to Exhibit C-2, Conditions of Approval.

1. Revised Condition of Approval 100. Affordable Housing (Page 50 of 62)
2. Revised Figure 2, which was not included in the packet. This should be the last page of Exhibit C-2, the Conditions of Approval.

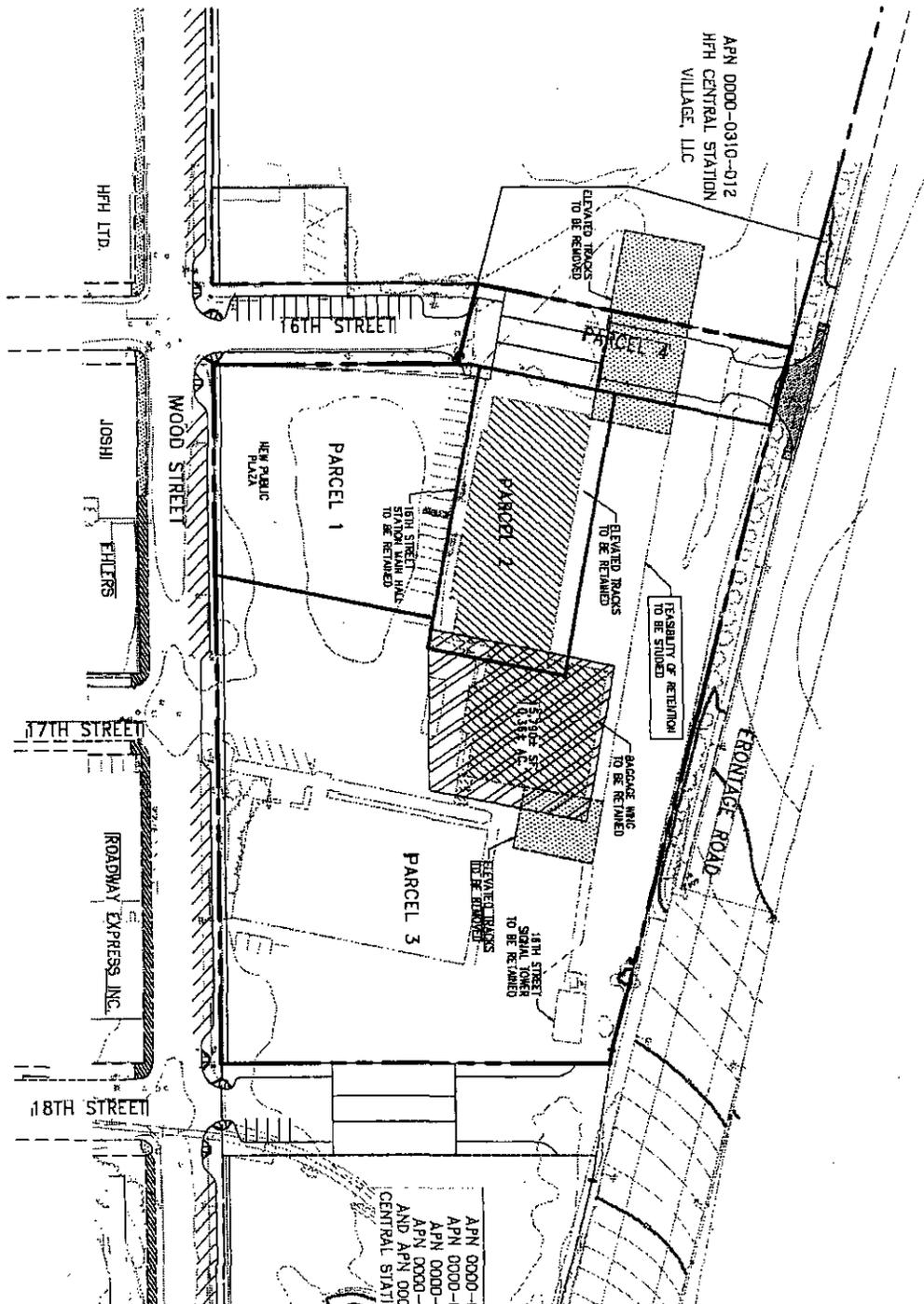


Figure 2 (Revised)
 to
EXHIBIT C
WOOD STREET VTPM CONDITIONS OF APPROVAL
 As amended by the Planning Commission on 3/16/05 and by Staff on 4/21/05

ERRATA

Set forth below are clerical corrections added to Condition 100 after the Council Agenda Packet was printed. The redlines noted below compare the changes added on 5/6/2005 to the version included in the Agenda Packet printed on 5/5/2004 for the City Council Meeting on 5/17/2005

100. Affordable Housing

Prior to the issuance of the first building permit.

a. In order to assist the Redevelopment Agency to meet the obligations of Health and Safety Code Section 33413 and the Redevelopment Plan to make available units affordable to very low income households, BUILD shall set aside Parcel 3 of VTPM 8551, which Parcel is approximately 1.5 acres (the "Affordable Housing Parcel") for a period of no less than one year from the City Council's approval of the District. During this period, the Affordable Housing Parcel shall be reserved for purchase by a nonprofit housing developer chosen by BUILD for the purpose of developing at least 94 rental units, including as many as thirty percent (30%) 3-bedroom units, if feasible, affordable to very low income households (the "Very Low Income Units"): During this period (1) BUILD and the nonprofit housing developer shall negotiate in good faith to enter into an agreement for the nonprofit housing developer to purchase the Affordable Housing Parcel for the Purchase Price, as defined below (the "Purchase Agreement"), within said one year period and (2) the nonprofit housing developer and the Redevelopment Agency or the City shall negotiate in good faith to enter into an agreement for the Agency or City to provide the financial assistance necessary to make such an affordable housing project economically feasible (the "Funding Agreement"). BUILD shall apply for such funding through the 2005 Notice of Funding Availability (NOFA) process. The Funding Agreement shall (1) provide for City/Agency funding under terms and conditions consistent with the City/Agency's affordable housing development guidelines and standard practices in the field of affordable housing finance; (2) provide that the nonprofit housing developer shall seek funding from non-Agency and non-City sources (including state and federal housing subsidy programs, low income housing tax credits, and private lenders) as appropriate; (3) require the nonprofit developer to commence construction of the project within three years from the date it acquires the site; and (4) provide for restrictions on the rental of the Very Low Income Units <at an affordable rent >only to very low income households for at least 55 years, in accordance with Health and Safety Code Section 33413 (contingent on adequate Agency funding necessary to make the Very Low Income Units affordable to very low income households), with the restrictions in the form of recorded covenants running with the land that are enforceable by the Redevelopment Agency or the City.

For purposes of the above, the "Purchase Price" for the Affordable Housing Parcel shall be the lesser of (1) Fair Market Value, or (2) the Acquisition/Holding/Entitlement Costs. "Fair Market Value" shall mean the purchase price that an unrelated party negotiating at arm's length would pay to purchase such property unrestricted by affordable housing requirements, taking into account all then current market factors, including without limitation the quality, design, condition and location of the property including the extent and condition of the construction completed to date, if any, the amount of any and all

liens, mortgages, and encumbrances against the property, environmental remediation costs, and the value of the existing improvements to such party.

“Acquisition/Holding/Entitlement Costs” shall mean (1) the actual price initially paid for the Affordable Housing Parcel by BUILD, calculated on the basis of the overall purchase price paid by BUILD for developable acres within the Wood Street Zoning District and prorated on a square footage basis to the Affordable Housing Parcel, plus (2) actual costs incurred by BUILD in holding, maintaining and entitling the Affordable Housing Parcel (calculated on a developable square footage basis prorated to the Affordable Housing Parcel), including taxes, carrying costs (which shall be defined as the investment return BUILD’s investor, CalPERS, has received on investments in similar projects in the Cal PERS CURE program (California Urban Real Estate) since its inception in 1997, but not to exceed 10%), insurance, maintenance, and other out-of-pocket payments by BUILD to third parties for holding, maintaining and entitling the property, but not including BUILD’s administrative or staff costs. The Acquisition/Holding/Entitlement Costs shall be determined by an independent cost certification obtained by BUILD. BUILD shall submit its determination of Acquisition/Holding/Entitlement Costs, along with the independent cost certification, and its determination of Fair Market Value to the Redevelopment Agency within three months of the City Council’s approval of the District. If the Agency disputes BUILD’s determination either of Fair Market Value or Acquisition/Holding/Entitlement Costs, or both, as contained in BUILD’s notice, the Agency shall notify BUILD in writing within 30 calendar days of its receipt of BUILD’s determination, which notice shall set forth the Agency’s determination of the Fair Market Value and/or cost of Acquisition/Holding/Entitlement. The Agency and BUILD shall thereupon attempt to resolve their differences within 10 days following BUILD’s receipt of the Agency’s notice. If the Agency and BUILD cannot agree on Fair Market Value during such 10-day period, the Agency and BUILD shall each appoint an appraiser who shall be an M.A.I. and a California licensed appraiser experienced in appraising commercial and residential real estate in Alameda County, and give notice of such appointment to the other within 10 calendar days after the foregoing 10-day period. Such appraisers shall, within 30 calendar days after the appointment of the last of them to be appointed, complete their written determinations of Fair Market Value and furnish the same to the Agency and BUILD. Each party shall pay the fees and costs of the appraiser appointed by it. If the valuations vary by ten percent (10%) or less of the higher value, the Fair Market Value shall be the average of the two valuations. If the valuations vary by more than ten percent (10%) of the higher value, the two appraisers shall, within ten (10) calendar days after submission of the last appraisal report, appoint a third disinterested appraiser who shall be an M.A.I. and a California licensed appraiser with the experience described above. If the two appraisers are unable to agree in a timely manner on the selection of the third appraiser, then either appraiser, on behalf of both, may request appointment of such third disinterested M.A.I. appraiser by the presiding judge of the Superior Court of Alameda County. Such third appraiser shall, within 15 calendar days after appointment, make a determination of Fair Market Value by selecting one of the prior appraisals. The third appraiser shall have no right to select a Fair Market Value other than as determined by one of the prior appraisals. If the Agency and BUILD cannot agree on Acquisition/Holding/Entitlement Costs during such 10-day period, the Agency and BUILD shall submit the issue to binding arbitration.

If, after good faith negotiations, BUILD and the nonprofit housing developer have not entered into a Purchase Agreement for the Affordable Housing Parcel within the one-year period, or the Agency and the nonprofit housing developer have not entered into a Funding Agreement within the one-year period, then the Agency or the Agency's designee shall have the option of purchasing the Affordable Housing Parcel for the Purchase Price. The Agency or its designee shall give written notice of its exercise of said option to BUILD (or the then-current owner of the Affordable Housing Parcel) within 60 calendar days after the end of the one-year period.

Upon exercise of the Agency's option, BUILD shall deliver title to the Affordable Housing Parcel to the Agency or its designee free and clear of any junior liens, leases, mortgages, or encumbrances, except those liens, mortgages, or encumbrances that have been specifically approved by the Agency in writing. Escrow for the sale of the Affordable Housing Parcel shall close and BUILD shall execute and deliver to the Agency or its designee a grant deed or deeds to the Affordable Housing Parcel no later than 180 calendar days after exercise of the option, at which time the Purchase Price shall be paid by the Agency or its designee to BUILD. Prior to the close of escrow, BUILD shall take all necessary steps to ensure that a title company will be able to issue to the Agency or its designee, upon close of escrow, a standard CLTA owner's policy of title insurance, in an amount equal to the Purchase Price, showing title to the Affordable Housing Parcel vested in the Agency or its designee, with only the following exceptions:

- Liens for property taxes not yet due and payable;
- Any other lien or encumbrance approved in writing by the Agency in its sole discretion;
- Conditions restricting use of the property to the development of the Very Low Income Units for rental only to very low income households.

At any time following the Agency's notice of its election to exercise the option, the Agency or its designee and its agents may enter the Affordable Housing Parcel for purposes of inspection, survey, tests, or other actions reasonably related to acquisition of the property by the Agency. The Agency or its designee shall indemnify and defend BUILD for any liability, claims or damages arising from such entry. The Agency may assign the option to purchase the Affordable Housing Parcel to any other entity in its sole discretion.

If after good faith negotiations either the Purchase Agreement or the Funding Agreement have not been entered into within the one-year period, and if the Agency or its designee has declined to exercise its option to purchase the Affordable Housing Parcel as set forth above, then BUILD shall have no further obligations with respect to affordable housing development on the Affordable Housing Parcel.

- b. Each of the Wood Street Project Sponsors shall reserve <at least >12.65% of the units within each for-sale project <but no fewer than 9% of the total number of residential

units built within the District (the "Reserved Units") at least six months prior to the anticipated completion date of each Reserved Unit by notice to the Agency, which notice shall include the anticipated completion date, the Purchase Price, and the address, and shall continue to reserve such ~~units~~ Reserved Units until at least 90 days after ~~unit~~ Reserved Unit completion, for possible purchase by persons and families of low or moderate income. Close of escrow shall occur within 120 days after completion of the unit. The Purchase Price for the Reserved Unit shall be comparable to that of similar unit types, and situations within the same phase and development. All Reserved Units shall contain the same quality level of finishes, appliances and amenities, and the same standard features as are included in the base price for the same market rate unit. During the first 30 days following ~~unit~~ completion of the Reserved Unit, the Agency Administrator shall have the right to exercise an option for Agency purchase of the Reserved Unit for the Purchase Price, with the close of escrow on the Agency option >contingent upon a qualified low ~~or~~ >moderate income buyer not closing escrow on the Reserved Unit within 120 days of unit completion. Close of escrow of the Agency option shall be within 165 days of the ~~unit~~ Reserved Unit completion, and should such closing occur more than 120 days after ~~unit~~ Reserved Unit completion an amount equal to the extra costs attributable to construction financing costs resulting from such delay shall be added to the Purchase Price. If the Agency Administrator does not exercise the contingent option to purchase the Reserved Unit ~~,~~ > the Agency Administrator shall inform the Agency Board of such action, but such notice shall not extend the option period.

Regarding the 12.65% of the units within each for-sale project, fewer units may be reserved if the Project Sponsor demonstrates to the Agency Administrator's satisfaction that the total number of Reserved Units to be built within the District, when combined with the Very Low Income Units described in paragraph a, will equal or exceed 15% of the total number of residential units ~~be~~ built within the District.

BUILD or its designee shall commit at least \$2.5 million of mortgage assistance funding to assist ~~such~~ persons or families of low or moderate income in qualifying to purchase the Reserved Units. This assistance will be provided in the form of a loan of up to \$25,000 per borrower as a second mortgage with 4% interest-only payments for the first five years, and the remaining payments amortized over 15 years at 4% interest. Such funds will be available consistent with the conditions imposed upon the provider of the assistance by the source of the funds (i.e., per unit maximums, credit criteria, etc.).

The Redevelopment Agency or City may at its option provide any additional funding necessary for a person or family of low or moderate income to purchase a Reserved Unit at ~~a cost~~ an affordable housing cost to ~~families or persons earning~~ persons or families of low or moderate income, with an average affordability level for all Reserved Units within each respective for-sale project at or below > 100% of area median income. Should the Agency or City provide the necessary funding, the Wood Street Project Sponsors shall cooperate with the Agency and the City to record restrictions on the Reserved Units restricting resale only to persons and families of low or moderate income at an affordable housing cost, with an average affordability ~~rate~~ level of all Reserved Units > at 100 % of area median income within each respective for-sale project, for at

least 45 years, in accordance with Health and Safety Code Section 33413. Such restrictions must be in the form of recorded covenants running with the land that are enforceable by the Redevelopment Agency or the City.

Should the Agency or City decline to provide the funding necessary for a person or family of low or moderate income to purchase a Reserved Unit at an affordable housing cost during the reservation period, or ~~decline to~~ exercise its option for Agency purchase of the Reserved Unit, then the Wood Street Project Sponsors shall have no obligation with respect to the sale of the Reserved Unit, other than providing the mortgage assistance from BUILD or its designee specified above.

c. The Project Sponsor shall establish a Homeownership Center in West Oakland no later than January, 2006, and shall provide operating funding for the Center for at least two years at no less than \$60,000 per year. The Center shall provide information on housing opportunities within the Project to prospective very low, low and moderate income homebuyers, and shall employ the services of home counseling agencies and financial institutions to assist such households.

d. Although the units built within the Wood Street Zoning District will be exempt from the provisions of Oakland's Just Cause Eviction Ordinance because they will be new construction, the Wood Street developers will agree to voluntarily incorporate and abide by provisions in tenant leases which would require cause before a tenant could be evicted from rental units within the Wood Street Zoning District.

e. The following terms are defined as follows:

- "affordable housing cost" means the ~~current~~ definition contained in Health & Safety Code § 50052.5, as further defined in 25 California Code of Regulations § ~~6920.~~6924.
- "affordable rent" means the ~~current~~ definition contained in Health & Safety Code § 50053, as further defined in 25 California Code of Regulations § ~~6918.~~6922.
- ~~• "current" when used in connection with statutory provision, means as of the Date of Approval of these Conditions of Approval by the City Council.~~
- ~~• "extremely low income" means the current definition contained in Health & Safety Code § 50106.~~
- "low income" means the ~~current~~ definition contained in Health & Safety Code § 50079.5, as further defined in 25 California Code of Regulations ~~§§~~§ ~~6928 and 6932.~~6928
- "persons and families of low or moderate income" means the ~~current~~ definition contained in Health & Safety Code § 50093, as further defined in 25 California Code of Regulations ~~§§ 6930 and 6932, provided however, that the Reserved Units shall be affordable to, and occupied by, households with incomes that do not exceed 100% of the Area Median Income for Oakland.~~§ 6930.

- “monitor” means the collection of information about the continued affordability of a dwelling unit and taking steps to insure that affordability is maintained as required by law, pursuant to the provisions of the California Community Redevelopment Law, including but not limited to Health & Safety Code §§ 33418 and 33334.3.
- “very low income” means the ~~current~~ definition contained in Health and Safety Code § 50105, as further defined in 25 California Code of Regulations ~~§§ 6926 and 6932. The Agency shall monitor, on an ongoing basis, the affordable rental housing units by requiring the then current owner to submit an annual report to the Agency containing all information required by Health & Safety Code § 33418, including but not limited to annual compliance reports, operating budgets and a fair housing marketing plan. The annual compliance report will include information as to the family size, household income and affordable rent calculation. Additionally, the then current owner shall allow for on site inspections of tenant records and tenant units~~ <§ 6926 >.

f. The Agency shall monitor, on an ongoing basis, the affordable rental housing units by requiring the then current owner to submit an annual report to the Agency containing all information required by Health & Safety Code § 33418, including but not limited to annual compliance reports, operating budgets and a fair housing marketing plan. The annual compliance report will include information as to the family size, household income and affordable rent calculation. Additionally, the then current owner shall allow for on site inspections of tenant records and tenant units. As to the ownership units, the Agency shall monitor the initial and subsequent sales of the affordable units for compliance with all affordability resale restrictions as defined by California <Community >Redevelopment Law, including but not limited to an affordable housing cost calculation. The units are to be sold to owner occupants only.

~~g. The terms “affordable housing cost,” “affordable rent,” “very low income households” “low income households” and “persons and families of low or moderate income” shall be as defined under the Community Redevelopment Law.~~

~~h. All Reserved Units shall contain the same quality level of finishes and appliances and the same standard features as are included in the base price for the same market rate unit.~~