

CITY OF OAKLAND
AGENDA REPORT

OFFICE OF THE CITY CLERK
OAKLAND
2005 MAY 26 AM 7:19

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development
DATE: June 7, 2005

RE: WOOD STREET DEVELOPMENT PROJECT

Joint City and Agency Action on the Second Reading of (1) An Ordinance Adopting the Second Amendment to the Oakland Army Base Redevelopment Plan to Revise Land Use Designations for the 16th and Wood Street Subarea and to make various Text Changes; (2) An Ordinance Adopting the Wood Street Zoning District for 29.2 Acres in West Oakland Between 10th Street to the South, West Grand Avenue to the North, Wood Street to the East, and the I-880 Frontage Road to the West; (3) An Ordinance of the City of Oakland Rezoning Property into the Wood Street Zoning District Located in West Oakland between 10th Street to the South, West Grand Avenue to the North, Wood Street to the East, and the I-880 Frontage Road to the West; and to Approve Exhibit C-2, Conditions of Approval, of the Resolution Approving Five Separate Vesting Tentative Parcel Maps within the Wood Street Zoning District (Maps 8551, 8552, 8553, 8554, 8555)

SUMMARY

This report provides the revised language to Exhibit C-2, Conditions of Approval, an attachment to the Resolution approving the five separate vesting tentative parcel maps for the Wood Street Zoning District (Maps 8551, 8552, 8553, 8554, 8555) as directed by the City Council at the May 17, 2005 public hearing. These changes do not affect any of the text language of the four Resolutions approved on May 17, 2005, or the three Ordinances that are before the City Council this evening for second reading.

At the May 17, 2005 City Council public hearing for the Wood Street Development Project, the City Council denied the appeals of Arthur D. Levy and Margaretta Lin, sustained the March 16, 2005 Planning Commission actions, approved the four Resolutions for the project, adopted the three Ordinances and completed the first reading of the Ordinances, revised Condition of Approval Numbers 7A, 7B, 56B and 100 of Exhibit C-2, Conditions of Approval for the project, and scheduled the second reading of the Ordinances for June 7, 2005.

CHANGES TO THE CONDITIONS OF APPROVAL TO REFLECT THE CITY COUNCIL'S MAY 17, 2005 DIRECTION (EXHIBIT C-2)

Attached to this staff report are the proposed revisions to Condition of Approval 100 introduced by Councilmember Brunner at the May 17, 2005 public hearing (Exhibit A) and the revised

language for Conditions of Approval Numbers 7A, 7B, 56B and 100 that reflect the City Council’s May 17, 2005 direction (Exhibits B through E).

- 1) Conditions of Approval 7A and 7B include a paragraph that further clarifies the terms and conditions of the construction labor partner and the project labor agreement for City-subsidized work.
- 2) Condition of Approval 56B has been revised to add the phrase, “including CEQA compliance determination” to the additional information that the City Council can require when considering a request to demolish or alter the baggage wing (if the Baggage Wing Purchase Agreement and the Baggage Wing Funding Agreement are not executed within an 8 month period).
- 3) Condition of Approval 100 has been amended to reflect the City Council’s direction of May 17, 2005 which specifies that very low income households are defined as those that are less than or equal to **50%** of the Area Median Income.

RECOMMENDATIONS AND RATIONALE

Staff recommends final approval of the Ordinances listed below and the revised Conditions of Approval for the Wood Street Development Project.

ACTIONS REQUESTED BY THE CITY COUNCIL

1. Adopt the Ordinance amending the Oakland Army Base Redevelopment Plan;
2. Adopt the Ordinance approving the “Wood Street Zoning District,” with the attached version of the Wood Street Zoning District dated May 17, 2005; and
3. Adopt the Ordinance amending the zoning map and applying the Wood Street Zoning District.

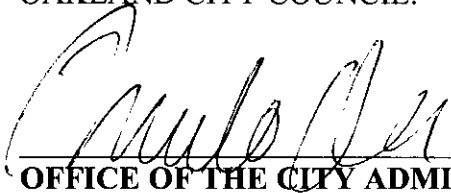
Respectfully submitted,



CLAUDIA CAPPIO
Community and Economic Development
Director of Development, Building
Services, and the Oakland Army Base
Reuse Authority

Prepared by:
Margaret Stanzione
Planner IV, Major Projects
Planning & Zoning

APPROVED AND FORWARDED TO THE
OAKLAND CITY COUNCIL:



OFFICE OF THE CITY ADMINISTRATOR

ATTACHMENTS

- A. Proposal for revisions to Condition of Approval 100 introduced by Councilmember Jane Brunner and distributed at the May 17, 2005 City Council public hearing
- B. Revised wording for Condition of Approval 7A
- C. Revised wording for Condition of Approval 7B
- D. Revised wording for Condition of Approval 56B
- E. Revised wording for Condition of Approval 100

**Wood Street Condition of Approval 100A
Proposed Revisions to May 17, 2005 Staff Report
Introduced by Councilmember Jane Brunner
at the May 17, 2005 ORA/Council Meeting**

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 (less than or equal to 60% AMI) 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.~~ BUILD shall provide notice to the Agency of its purchase option and the Agency shall exercise its purchase option within 60 days of the notice, for the purpose of providing housing at an affordable price to households at or below 60% AMI, and deed restrict the parcel as affordable housing for households at or below 60% AMI.

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 for purchase by persons and families of low or moderate income until the Close of Escrow Date (defined below) for such unit. At least six months prior to the anticipated completion date of each Reserved Unit by notice to, the applicable Project Sponsor shall notify the Agency, which notice shall include in writing of the anticipated completion date, the Purchase Price, and the address, and shall continue to reserve such Reserved Units until at least 90 days after unit completion, for possible purchase by persons and families of low or moderate income. (defined below), and the address of each such unit (the "Availability Notice"). The Agency Administrator shall have 60 days from receipt of the Availability Notice (the "Option Period") to provide written notice to the applicable Project Sponsor that the Agency has elected to participate in the purchase of such unit, either by providing the Additional Homebuyer Purchase Assistance (defined below) or by directly purchase the Reserved Unit (the "Agency Participation Notice"). The Agency Participation Notice need not specify whether the Agency will provide the Additional Homebuyer Assistance or purchase the unit; rather, it need only state it will do one or the other by the Close of Escrow Date for each unit. If the Agency Administrator does not provide the Project Sponsor with the Agency Participation Notice during the Option Period, the Agency Administrator shall inform the Agency Board of such inaction, but such information shall not extend the Option Period.

Close of escrow shall occur within 120~~165~~ days after completion of the unit a Reserved Unit ("Close of Escrow Date"). The Purchase Price for the Reserved Unit shall be comparable to that of similar unit types, and situations within the same phase and development, except that in the event the closing occurs more than 120 days after completion of the unit, an amount equal to the extra costs attributable to construction financing costs resulting from such delay shall be added to the Purchase Price. All Reserved Units shall contain the same quality level of finishes, appliances and amenities, and the same standardsstandard features as are included in the base price for the same market rate unit. During the first 30 days following 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 Reserved Unit completion, and should such closing occur more than 120 days after 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 theFewer than 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 built within the District.

BUILD or its designee shall commit at least \$2.5 million of mortgage assistance funding to assist 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 an affordable housing cost to 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 (the "Additional Homebuyer Purchase Assistance"). Should the Agency or City provide the ~~necessary funding~~ Additional Homebuyer Purchase Assistance, 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 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 also shall require that Reserved Units may be resold only to households with incomes at or below 100% AMI, at an affordable housing cost as defined by California Redevelopment Law, during the 45 year restricted affordability period, and 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~~ In the event the Agency fails to provide the Agency Participation Notice, then the Wood Street Project Sponsors shall have no obligation with respect to the sale of the Reserved Unit, ~~other than providing~~ Units, other than to reserve such units for purchase by persons and families of low or moderate income until the Close of Escrow Date and to provide the mortgage assistance from BUILD or its designee as 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 definition contained in Health & Safety Code § 50052.5, as further defined in 25 California Code of Regulations § 6924.
- “affordable rent” means the current definition contained in Health & Safety Code § 50053, as further defined in 25 California Code of Regulations § 6922.
- “low income” means the definition contained in Health & Safety Code § 50079.5, as further defined in 25 California Code of Regulations § 6928.
- “persons and families of low or moderate income” means the definition contained in Health & Safety Code § 50093, as further defined in 25 California Code of Regulations § 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.

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.

Wood Street Condition of Approval 7A Proposed Revisions to May 17, 2005 Staff Report

7A. Construction Labor Partner.

Prior to issuance of first demolition, grading or building permit and during all construction activity.

The Project Sponsor shall engage an experienced construction personnel training and evaluation individual or entity ("Construction Labor Partner") to solicit, interview and test, select, train and prepare for work, residents of West Oakland. If it appears there will not be enough West Oakland residents to fill likely construction employment positions at all of the construction employment positions at all of the construction projects planned within the Wood Street Zoning District, the Construction Labor Partner will extend the same services to other residents of the City of Oakland. The construction Labor Partner shall contact groups including but not limited to the Youth Employment Partnership, BACSIC, Men or Valor, and Cypress Mandela Training Center to assure a ready workforce. The engagement of the Construction Labor partner will commence no less than three months before the commencement of any construction activity on any parcel and will continue until the date of a Notice of Substantial Completion is filed for such construction activity.

The Project Sponsor shall require that its general contractor and all subcontractors (collectively, "Contractor") engaged to perform construction work on the site provide written notice) by facsimile, electronic mail or hand delivery) to the Construction Labor Partner and the Project Sponsor of Contractor's intent to hire employees at least six weeks prior to commencement of construction. The Project Sponsor shall require that in the event the Construction Labor Partner refers individuals ("Resident Construction Applicants") to Contractor for work within five business days of receipt of the written notice, Contractor shall interview and diligently consider for hire such Resident Construction Applicants prior to interviewing or hiring any other persons. If the work on the project is covered by a Project Labor Agreement or other agreement with a labor union, the Construction Labor partner shall refer the Resident Construction Applicant to the appropriate union for consideration for employment and/or apprenticeship.

The Project Sponsor shall require each Contractor to submit to the Project Sponsor, along with any request for payment, a monthly report of the Resident Construction Applicants interviewed and/or employed during the prior month, including the hours worked, and the name, address and California driver's license number (or other satisfactory identification) of such Residential Construction Applicants interviewed or employed.

Compliance with this condition shall be monitored by the Workforce Investment Manager through review of reports which shall be contained in the regular Job Performance Training Standards. Copies of all reports shall also be provided to the Development Director or his/her designee.

Each Project Sponsor (which, for purposes of this Condition of Approval includes any agent, heir, successor and/or assign of a Project Sponsor) voluntarily agrees to be bound by this Condition and waives any right that it may have to challenge this Condition on any grounds. This Condition shall not limit the right of City/Agency, in its discretion, to impose any term or condition on a decision to subsidize or otherwise participate in any portion of the project, including, without limitation, the right to apply City/Agency programs requiring local hiring, payment of prevailing wage, and equal benefits.

**Wood Street Condition of Approval 7B
Proposed Revisions to May 17, 2005 Staff Report**

7B. Project Labor Agreement for City-Subsidized Work.

Prior to issuance of first demolition, grading or building permit and during all construction activity.

In the event any portion of the development of Parcel 2 of VTPM 8554 or Parcel 3 of VTPM 8551 is financially subsidized by the City of Oakland or the Redevelopment Agency, the Project Sponsor of such parcel shall enter into a Project Labor Agreement for such construction. The City encourages the Project Sponsors of all other parcels within the Wood Street Zoning District to meet with the Building Trades Council.

Each Project Sponsor (which, for purposes of these Conditions of Approval includes any agent, heir, successor and/or assign of a Project Sponsor) voluntarily agrees to be bound by this Condition and waives any right that it may have to challenge this Condition on any grounds. This Condition shall not limit the right of City/Agency, in its discretion, to impose any term or condition on a decision to subsidize or otherwise participate in any portion of the project, including, without limitation, the right to apply City/Agency programs requiring local hiring, payment of prevailing wage, and equal benefits.”

Wood Street Condition of Approval 56B
Proposed Revisions to May 17, 2005 Staff Report

56B. Feasibility Determination If Funding Not Provided for Baggage Wing.
Prior to demolition or renovation of Baggage Wing.

In the event that the Baggage Wing Purchase Agreement and the Baggage Wing funding Agreement described in Condition 56A are not executed within the eight month period, the Project Sponsor shall submit for City Council review application to demolish the Baggage Wing or its application to alter the Baggage Wing. Any alteration of the Baggage Wing shall be consistent with the preservation, rehabilitation, and reuse recommendations contained in the *OARB Area Redevelopment Plan* (as amended by action concurrent with approval of the Wood Street Zoning District), the *City of Oakland General Plan* (as amended by action concurrent with approval of the Wood Street Zoning District), the Wood Street Zoning District, and Secretary of the Interior's Standards for the Treatment of Historic Buildings. Upon review of detailed pro forma information (amount invested, return on equity, financing options) and any other information requested by the City Council, including CEQA compliance determination, financing requirements and other pertinent information, the City Council shall approve, deny, or conditionally approve the application.

Wood Street Condition of Approval 100A
Approved Revision's to Councilmember Brunner's Proposal
at ORA/City Council Meeting May 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 (less than or equal to ~~60%~~50% of AMI) 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 BUILD shall provide notice to the Agency of its purchase option and the Agency shall exercise its purchase option within 60 days of the notice, for the purpose of providing housing at an affordable price to households at or below ~~60%~~50% of AMI, and deed restrict the parcel as affordable housing for households at or below ~~60%~~50% of AMI.

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") for purchase by persons and families of low or moderate income until the Close of Escrow Date (defined below) for such unit. At least six months prior to the anticipated completion date of each Reserved Unit, the applicable Project Sponsor shall notify the Agency in writing of the anticipated completion date, the Purchase Price (defined below), and the address of each such unit (the "Availability Notice"). The Agency Administrator shall have 60 days from receipt of the Availability Notice (the "Option Period") to provide written notice to the applicable Project Sponsor that the Agency has elected to participate in the purchase of such unit, either by providing the Additional Homebuyer Purchase Assistance (defined below) or by directly purchase the Reserved Unit (the "Agency Participation Notice"). The Agency Participation Notice need not specify whether the Agency will provide the Additional Homebuyer Assistance or purchase the unit; rather, it need only state it will do one or the other by the Close of Escrow Date for each unit. If the Agency Administrator does not provide the Project Sponsor with the Agency Participation Notice during the Option Period, the Agency Administrator shall inform the Agency Board of such inaction, but such information shall not extend the Option Period.

Close of escrow shall occur within 165 days after completion of a Reserved Unit ("Close of Escrow Date"). The Purchase Price for the Reserved Unit shall be comparable to that of similar unit types, and situations within the same phase and development, except that in the event the closing occurs more than 120 days after completion of the unit, an amount equal to the extra costs attributable to construction financing costs resulting from such delay shall be added to the Purchase Price. 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.

Fewer than 12.65% of the units within each for-sale project 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 built within the District.

BUILD or its designee shall commit at least \$2.5 million of mortgage assistance funding to assist 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 provide any additional funding necessary for a person or family of low or moderate income to purchase a Reserved Unit at an affordable housing cost to persons or families of low or moderate income, with an affordability level for all Reserved Units within each respective for-sale project at or below 100% of area

median income (the “Additional Homebuyer Purchase Assistance”). Should the Agency or City provide the Additional Homebuyer Purchase Assistance, 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 affordability 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 also shall require that Reserved Units may be resold only to households with incomes at or below 100% AMI, at an affordable housing cost as defined by California Redevelopment Law, during the 45 year restricted affordability period, and must be in the form of recorded covenants running with the land that are enforceable by the Redevelopment Agency or the City.

In the event the Agency fails to provide the Agency Participation Notice, then the Wood Street Project Sponsors shall have no obligation with respect to the sale of the Reserved Units, other than to reserve such units for purchase by persons and families of low or moderate income until the Close of Escrow Date and to provide the mortgage assistance from BUILD or its designee as 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 definition contained in Health & Safety Code § 50052.5, as further defined in 25 California Code of Regulations § 6924.
- “affordable rent” means the ~~current~~ definition contained in Health & Safety Code § 50053, as further defined in 25 California Code of Regulations § 6922.
- “low income” means the definition contained in Health & Safety Code § 50079.5, as further defined in 25 California Code of Regulations § 6928.
- “persons and families of low or moderate income” means the definition contained in Health & Safety Code § 50093, as further defined in 25 California Code of Regulations § 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.

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.