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# AGENDA REPORT

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Mark Sawicki  
Director, EWD

**SUBJECT:** 500 Kirkham DDA Amendment

**DATE:** August 30, 2019

City Administrator Approval

Date:

9/11/19

## RECOMMENDATION

**Staff Recommends That The City Council Adopt An Ordinance To Amend Ordinance No. 13368 C.M.S. To Authorize A First Amendment To The Disposition And Development Agreement Between The City of Oakland And 500 Kirkham, LLC To (1) (a) Change The Project Definition To Allow Development Consisting Of Three Buildings And 1,032 Residential Units, (b) Adjust The Affordable Housing Requirement To Include 85 Very Low Income Units On-Site And A \$7.1 Million Payment To The Affordable Housing Trust Fund, (c) Allow The Project Schedule To Be Extended Annually For Up To Ten Years If Payment Of Extension Fees Are Made According To The Extension Schedule Shown In Exhibit A, And (d) Require Evidence Of A Funding Commitment For The West Oakland Shuttle, And (2) Make The Determination That An Addendum Pursuant To CEQA Guidelines Section 15164 Is Appropriate And Alternatively, The Project Is Exempt From CEQA Pursuant To CEQA Guidelines Sections 15168, 15183, and 15183.3.**

## EXECUTIVE SUMMARY

The City of Oakland (the City) and, an affiliate of Panoramic Interests, LLC, 500 Kirkham, LLC (Developer), as assignee of TL Partners V, L.P. (the Original Developer), are parties to a Disposition and Development Agreement dated as of October 24, 2016 (the DDA) for the development of a transit-oriented mixed-use residential and commercial development (the Project) on property located at 500 Kirkham Street in West Oakland (the Property). The Project Schedule attached as Exhibit B to the DDA provides that the Project must be completed by December 1, 2022 (the Outside Date). The original Project authorized under the DDA includes 417 residential units, 31 of which (7.4 percent) were to be set aside as below market rate housing for Moderate Income households. The DDA also required the Developer to make a \$3.15 Million payment to the City's Affordable Housing Trust Fund (AHTF) and a \$1 Million payment to the City for a workforce training fund for local residents, and to build and maintain open space on the Property to be made available to the public.

Under the proposed DDA amendment, the Developer is seeking (a) to extend the Outside Date by 10 years to December 1, 2032 and (b) authorization for a new Project, summarized in **Table**

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1 below, containing 1,032 residential units, 85 of which, or 8 percent of the total units, will be set aside as affordable to Very Low Income (VLI) households, to be built over three phases, exceeding the City's housing impact requirement for 5 percent of onsite units to be affordable to VLI households. The City will require that the Developer increase its contribution to the AHTF to \$7.1 Million. In addition, staff is recommending the City allow the Outside Date to be extended annually for ten (10) years if Developer makes the required annual extension fee payments according to an extension fee schedule provided in **Table 2** below. Lastly, staff is recommending that the proposed DDA amendment includes a requirement for Developer to submit evidence of a written commitment to provide funding for the launch of the West Oakland shuttle (the "Shuttle Funding Commitment"). The Shuttle Funding Commitment will be due prior to completion of construction of Building 1.

All other terms in the DDA, including the requirement for privately constructed and maintained public open space on the Property and a \$1 Million Developer contribution for workforce training, remain the same. Per Section 7.2 of the DDA, the \$1 Million contribution is due to the City or to an entity or entities designated by the City Administrator to provide job training for local residents, at the time of the first building/construction permit application of the Project.

## **BACKGROUND / LEGISLATIVE HISTORY**

The Property was formerly California Department of Transportation (Caltrans) excess land following removal of the former Cypress Freeway. In 2012-13, Caltrans offered the Property for lease or sale to a public agency for a public purpose; and the City responded to the offer with a request to purchase the Property for development as a transit-oriented mixed-use project, thereby satisfying the public purpose requirement.

On May 17, 2016, the City Council adopted Ordinance No. 13368 C.M.S which authorized the City Administrator to exercise an option to purchase the Property from Caltrans pursuant to an Option to Purchase-Cash Sale (Option Agreement) and to negotiate and execute a DDA to sell the Property to the Original Developer under a double escrow for the same amount of \$4,253,977 to build a transit-oriented mixed-use residential and commercial development consistent with the West Oakland Specific Plan (WOSP). The City entered into the DDA with the Original Developer on October 24, 2016. Pursuant to the Option Agreement, the purchase price was \$3,271,325, plus \$10,681 for each unit entitled to be developed on the Property over 325 units.

The original Project that was entitled and approved under the existing DDA consisted of 417 residential units. Staff negotiated the following community benefits under the DDA: (a) 15 percent affordable housing (which is in excess of the City housing impact fee requirement) to be met by (i) 7.4 percent of the original Project's on-site units (31 units) affordable to Moderate-Income households and (ii) a \$3.15 Million payment to the AHTF which could fund 31 units off-site at an average subsidy of \$100,000 per unit; (b) a local jobs requirement to be met with a \$1 million payment to the City or to an entity or entities to be designated by the City Administrator to provide job training for local residents; and (c) a requirement for open space on the Property to be built, maintained and made available to the public.

When the Original Developer had difficulty attracting investor commitments for the approved 417 unit Project, it asked the City to consent to the assignment of the DDA to Developer, who was ready to purchase the Property with its own funds before the Caltrans purchase deadline and was also willing to pursue Planning approval for a scope of development that it believed would be consistent with the WOSP but have a better chance of getting financed and built in the current economic climate. The City Council approved the DDA's assignment to Developer on March 28, 2017, pursuant to Ordinance No. 13423 C.M.S. On April 12, 2017, Developer acquired the Property from Caltrans via a double escrow sale with the City acting as a "middle-man". Since then, the Developer has acquired an adjacent corner lot located at 1255 7th Street (the 7<sup>th</sup> Street Property) to expand the development footprint of the Property and held six community meetings and pursued Planning approvals and California Environmental Quality Act (CEQA) review for the Project on the larger development footprint comprised of the Property and the 7<sup>th</sup> Street Property (collectively, the Development Site).

**ANALYSIS AND POLICY ALTERNATIVES**

Staff recommends approval of the larger Project, with Developer contributing \$7.1 Million to the AHTF. When Developer assumed the DDA from the Original Developer in 2017, its stated intention was to obtain a new project entitlement and approval under the DDA. Except for the reduced number of parking spaces, Developer's larger Project conforms to the project description under the DDA, which is defined as: "a transit-oriented mixed-use residential and commercial development with a minimum of 400 residential units, a minimum of 28,100 square feet of commercial space including retail, live-work, incubator space, and other commercial uses, approximately 264 parking spaces and approximately 72,354 square feet of open space."

Table 1 below summarizes how Developer's larger Project compares with the original project.

**Table 1: Larger Project vs Original Project**

	LARGER PROJECT				ORIGINAL PROJECT	PROJECT CHANGE
	Building 1	Building 2	Building 3	Total Buildings 1, 2, & 3		
Studio	0	0	0	0	44	-44
1 BR (420 SqFt)	7	0	28	35	295	-260
2 BR (425 SqFt)	129	125	0	254	78	+176
2 BR Suite (660 SqFt)	126	102	242	470	0	+470
3 BR (600 SqFt)	7	14	0	21	0	+21
4 BR (665 SqFt)	42	24	155	221	0	+221
5 BR (880 SqFt)	0	0	31	31	0	+31
<b>Total Unit Count</b>	<b>311</b>	<b>265</b>	<b>456</b>	<b>1,032</b>	<b>417</b>	<b>+615</b>
	30%	26%	44%	100%	100%	
On-Site Affordable Units	25	22	38	85	31	+54
AHTF Contribution	\$2,139,632	\$1,823,159	\$3,137,209	\$7,100,000	\$3,150,000	+\$3,950,000
Parking Spaces	(59 Temporary)	(59 Temporary)	59 Permanent	59 Permanent	264	-205
Commercial/Flex Space (SqFt)	16,956	14,445	3,650	35,051	21,961	+13,090
Residential Open Space (SqFt)	9,449	7,006	10,570	27,025	22,246	+4,779
Public Open Space (SqFt)				40,088	19,500	+20,588
Stories	9	8	32	n/a	8	

Staff supports the larger Project because it offers:

- more housing;
- more on-site affordable units at deeper affordability, with no government subsidy;
- \$7.1 Million for AHTF;
- and phasing which allows a portion to be financed and built sooner, subject to approval of subdivision of the Development Site.

Staff also recommends that the DDA amendment include a 10-year extension on the DDA Project Schedule to allow the Project to be built over three phases (with full build-out by December 2032) if Developer makes the required annual extension fee payments, beginning the year after the original construction completion deadline (December 1, 2022), according to the agreed-upon Extension Fee Schedule, as shown in **Table 2** below. If the buildings are completed at a slower pace, partially, or not at all, then the fee increases accordingly. Staff estimates the annual extension fee could range between \$25,000 and \$363,000 by Year 10, depending on the number of buildings completed.

**Table 2: Annual DDA Extension Fee Schedule for 10 Years**

500 Kirkham Extension Fee Schedule										
Year	1	2	3	4	5	6	7	8	9	10
<i>Due January 15,</i>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2030</u>	<u>2031</u>	<u>2032</u>
If No Building Started Construction	\$53,000	\$63,000	\$74,000	\$114,000	\$128,000	\$143,000	\$286,000	\$311,000	\$337,000	\$363,000
If Building 1 Started Construction	\$25,000	\$25,000	\$25,000	\$77,000	\$86,000	\$96,000	\$234,000	\$255,000	\$277,000	\$298,000
If Building 1 & 2 Completed, Building 3 Started Construction	\$0	\$0	\$0	\$25,000	\$25,000	\$25,000	\$129,000	\$141,000	\$153,000	\$164,000

Staff also recommends the DDA amendment include the requirement for Developer to submit the Shuttle Funding Commitment at completion of construction of Building 1.

**FISCAL IMPACT**

Developer acquired the Property on April 12, 2017 and was responsible for all acquisition costs. No City funds were spent on this transaction other than the staff time required to facilitate the land transfer and negotiate the Option Agreement, DDA, and now the DDA amendment. The investment of Economic and Workforce Development (EWD) Department staff time on this opportunity site will result in a Developer payment of \$7.1 Million to the AHTF (an increase from \$3.15 Million in the original agreement), up to \$1 Million to the City for a workforce training fund for local residents, and funding for a West Oakland shuttle service. Compared to the original Project, adoption of the proposed legislation will result in greater ongoing fiscal benefits to the City in the form of property tax, sales tax, and business license tax. Staff estimates the total ongoing property tax revenue to City will be over \$1.3 Million at full build-out. Also, the City will have the ability to receive funds in the form of extension fees from the Developer.

## **PUBLIC OUTREACH / INTEREST**

Since acquiring the Property in 2017, the Developer has hosted six community meetings to present its larger Project proposal to the West Oakland community. In addition, it has held over 40 meetings with interested neighborhood groups, businesses, and stakeholders. The larger Project was heard three times at the Design Review Committee (DRC) in 2018 and was heard and approved by the Planning Commission at its meeting on August 21, 2019.

## **COORDINATION**

This report has been prepared by the staff in the Public Private Development Division of EWD Department in consultation with the Council District 3 Office, City Attorney's Office, Planning and Building Department, the Department of Transportation and the City Administrator's Office.

## **SUSTAINABLE OPPORTUNITIES**

***Economic:*** The Project will transform contaminated, vacant and underutilized land into a dense transit-oriented mixed-use development that will provide much-needed housing units, including very-low income housing units, neighborhood-serving retail, and further stimulus to the local economy. Development of the Development Site will produce hundreds of construction jobs and 175 permanent jobs. The property tax revenue generated to the City is projected to be approximately \$378,000 from Building 1, \$332,000 from Building 2, and \$584,000 from Building 3, which all together total close to \$1,300,000 in annual property taxes to the City projected at full build out.

***Environmental:*** As a City infill project with high density use, the Project reduces the pressure to construct on agricultural and other undeveloped land, and thereby contributes to the prevention of urban sprawl. Remediating a contaminated site and bringing it into productive use contributes greatly to the revitalization of West Oakland. The Project's low parking ratio, establishment of a West Oakland shuttle service, and the location of the project in proximity to major public transportation nodes will likely encourage residents and retail customers to use BART and AC Transit and reduce automobile reliance, which will decrease the use of fossil fuels and resulting greenhouse gas emissions.

***Social Equity:*** In addition to the Project's 85 units that will be set aside as affordable to Very Low-Income households, the Developer is committing to a \$7.1 Million payment to AHTF (which exceeds the City housing impact fee requirement) and a \$1 Million contribution for a City workforce development fund for local residents.

**California Environmental Quality Act (CEQA)**

A detailed CEQA analysis was published for the Project and made publicly available on April 26, 2019. That analysis concluded that the Project satisfies each of the following CEQA Guidelines:

- Section 15164 – Addendum to EIRs;
- Section 15168 – Prior EIRS and Redevelopment Projects;
- Section 15183 – Projects Consistent with Community Plan, General Plan, or Zoning; and
- and Section 15183.3 – Qualified Infill Projects.

Each of the foregoing provides a separate and independent basis for CEQA compliance. The CEQA analysis document may be viewed at the Bureau of Planning Offices, located at 250 Frank Ogawa Plaza, 2<sup>nd</sup> Floor or online as Item #85 at

<http://www2.oaklandnet.com/government/o/PBN/OurServices/Application/DOWD009157>

The Project and CEQA determination was heard and approved by the Planning Commission on August 21, 2019. By adopting the proposed Ordinance, the City Council is adopting the CEQA Addendum (CEQA Guidelines Section 15164) and CEQA exemptions (CEQA Guidelines Sections 15168, 15183, and 15183.3) and making the determination that no further environmental review is required for development of the Project.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That The City Council Adopt An Ordinance To Amend Ordinance No. 13368 C.M.S. To Authorize A First Amendment To The Disposition And Development Agreement Between The City of Oakland And 500 Kirkham, LLC To (1) (a) Change The Project Definition To Allow Development Consisting Of Three Buildings And 1,032 Residential Units, (b) Adjust The Affordable Housing Requirement To Include 85 Very Low Income Units On-Site And A \$7.1 Million Payment To The Affordable Housing Trust Fund, (c) Allow The Project Schedule To Be Extended Annually For Up To Ten Years If Payment Of Extension Fees Are Made According To The Extension Schedule Shown In Exhibit A, And (d) Require Evidence Of A Funding Commitment For The West Oakland Shuttle, And (2) Make The Determination That An Addendum Is Exempt From CEQA Pursuant To CEQA Guidelines Section 15164 Is Appropriate And Alternatively, The Project Is Exempt From CEQA Pursuant To CEQA Guidelines Sections 15168, 15183, and 15183.3.

For questions regarding this report, please contact Hui-Chang Li at [hli@oaklandca.gov](mailto:hli@oaklandca.gov) or 510.238.6239.

Respectfully submitted,



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