

MEMORANDUM

February 16 2015

TO: City Attorney and Staff
FROM: R. Zachary Wasserman
RE: 12th Street Remainder Parcel Surplus land Issues

When the RFP for the 12th Street Remainder Parcel was issued by the City, the property was owned by the Oakland Redevelopment Agency ("RDA")– which had acquired it from the City of Oakland and therefore the Surplus Land requirements under Government Code Section 54220, *et seq.* did not apply. Between that time and the time the City Council approved an ENA with Urban Core Development for this property, the California Controller's Office had determined that the sale of the property to the RDA was not proper and needed to be "Clawed Back." and the property was ultimately re-purchased by the City from the Redevelopment Agency.

When the City sold the property to the RDA, the City determined that the property was appropriate for development and should not be treated as surplus property. This decision was based on both long practice and a set of City Ordinances, including Ordinance 10142, Establishing Procedures for the Sale and Lease of City-Owned Real Property Which is Not Surplus Property (enacted in 1981), and Chapter 2.41 of the OMC, adopted in 2013, governing disposition of City owned property. The reversal of the transaction between the City and RDA caused by the Controller's decision required the City to reacquire the property and pay the money back to the RDA. This decision did not reverse or affect the City's underlying decision that the property should be developed and was not surplus property.

There is no mention of the Surplus Land requirements or affordable housing goals in the RFP for the 12th Street property, or in the ENA or any staff report supporting the ENA. It appears that the City must have made some determination that this property was not covered by those requirements. It is possible that this was just overlooked at the time but that does not change the basic decision by the City that the property should be developed for market rate housing and not treated as surplus property. This decision was further reinforced by the letter from Patrick Lane to James Vann on November 18, 2014, stating the intention of the City to utilize this property for market rate housing – which has received no response from Mr. Vann or his group.

UrbanCore entered into the ENA in good faith and has expended a considerable amount of money in its efforts to fulfill the terms of the ENA and develop this property according to the

City's requirements. Since AB 2135 does not increase or change the requirements regarding how and to whom surplus properties should be offered, it does not affect the decision the City made to enter into the ENA in July 2013. While the ENA does not obligate the City to sell the Property to UrbanCore, the City should not ignore fairness or due process in proceeding with UrbanCore as provided in the ENA.

It is important to note that Government Code Section 54230.5 provides that "The failure by a local agency to comply with this article shall not invalidate the transfer or conveyance of real property to a purchaser or encumbrancer for value." While no legal transfer has yet occurred, this section clearly indicates that the requirements of Government Code Section 54220 *et seq.* are not absolute. The project proposed by UrbanCore is consistent with the Lake Merritt Specific Plan and will further the goals of the City in this area. The City should proceed with the process outlined in its letter of December 18, 2014.

There has been some suggestion that AB 2135 creates a new requirement to offer the 12th Street Remainder Parcel to affordable housing developers, government agencies and open space sponsors. This is not correct. AB 2135, which took effect this year, creates new requirements for affordable housing that apply to properties that are offered to affordable housing developers – including the amount of affordable housing, the length of time restrictions apply, the length of time to pay for such property and certain requirements if negotiations with the original affordable housing developer are not successful. This bill does not expand or modify the basic requirement to offer surplus properties to the listed set of entities.

In balancing both the equities involved in the current situation as well as reasonable liabilities and responsibilities, the City should act to confirm its decision that the 12th Street property is not surplus property and continue with the ENA and the DDA process.

RZW/rzw



Opening doors to the future®

February 16, 2015

Mr. Patrick Lane
Manager of Project Implementation Division
Economic & Workforce Development Dept.
City of Oakland
250 Frank H. Ogawa Plaza, Suite 5313
Oakland, CA 94612

Dear Mr. Lane:

This letter will acknowledge that it is the intent of UDR, Inc. to enter into partnership with UrbanCore Development to form a Joint Venture that plans to acquire and develop the 12th Street Remainder Parcel. UDR or an affiliate intends to provide 97.5% of the equity needed during predevelopment and 100% of the equity to construct the project. UDR is grateful for the opportunity to partner with the City of Oakland and UrbanCore Development to develop what we expect will be an exciting and successful project.

UDR, Inc. (NYSE:UDR), an S&P 400 company, is a leading multifamily real estate investment trust with a demonstrated performance history of delivering superior and dependable returns by successfully managing, buying, selling, developing and redeveloping attractive real estate properties in targeted U.S. markets. As of December 31, 2014, UDR owned or had an ownership position in 51,293 apartment homes including 1,387 homes under development.

Thank you,

A handwritten signature in black ink, reading "Donald D. MacKenzie", written in a cursive style.

Donald D. MacKenzie
Vice President

CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 5313 • OAKLAND, CALIFORNIA 94612-2034

Economic & Workforce Development Department
Project Implementation Division

(510) 238-3015
FAX (510) 238-3691
TDD (510) 839-6451

December 18, 2014

Mr. Michael E. Johnson
President & CEO
UrbanCore Development, LLC
457 – 10th Street
San Francisco, CA 94103

RE: Lake Merritt Boulevard Apartments (LMA) for the “12th Street Remainder Parcel”

Dear Mr. Johnson:

As you know, the City’s Exclusive Negotiating Agreement (ENA) with UrbanCore-Integral, LLC expires January 2, 2015. In your email, dated November 30, 2014, you requested an extension to the ENA to afford you more time to meet its requirements and standards. City staff does not have authority to extend the ENA without seeking City Council approval. However, we do realize that the delays in meeting all of your ENA deliverables are, in part, due to delays caused by the City. Specifically, these include City Council adoption of the Lake Merritt Station Area Plan, the associated Environmental Impact Report (EIR), and the associated zoning and General Plan amendments. These delayed approvals affected the timely completion of your California Environmental Quality Act (CEQA) review and clearance for your proposed project. Therefore, this letter is to confirm that City staff will continue to negotiate with you, after January 2, 2015, while you satisfy the remaining requirements needed for staff to recommend a Disposition and Development Agreement (DDA) to City Council for approval in early 2015.

In order for staff to recommend to Council that they authorize a DDA with UrbanCore Development LLC for your proposed project, we will require, at a minimum, that the project has CEQA clearance. Therefore, we estimate that the earliest staff can seek City Council authorization for a DDA is **April 21, 2015**, assuming the following schedule is met:

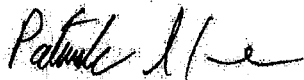
Pre-DDA Milestone	Due Date
New zoning adopted by City Council on Dec 9 effective in 30 days if not challenged	Jan 8, 2015
Appraisal Report Draft #1 to City	Dec 12, 2014
Screencheck Draft of CEQA analysis ("Categorical Exemption Memo") from environmental consultant LSA	Dec 15, 2014
Final CE Memo, incorporating any last comments from City, etc.	Jan 5, 2014
Draft #1 of DDA terms to UrbanCore for review	Dec 30, 2014
Community Meeting #2 – to be hosted by UrbanCore to present latest design proposal and findings of environmental studies	Jan 2015
Parks and Recreation Advisory Committee ("PRAC" meets 2nd Weds of the month) – to review proposed park improvement plan for City-owned park adjacent to LMA.	Feb 11, 2015
UrbanCore to submit updated information on development team's experience & financial capacity and project's financial feasibility (see attached checklist)	Jan - Feb 17, 2015
Design Review Committee of Planning Commission (4th Weds)	Feb 25, 2015
Planning Commission (1st or 3rd Weds of month)	Mar 18, 2015
Community Economic Development (CED) Committee of City Council for DDA approval (meets 4th Tues of the month)	Mar 24, 2015
City Council for DDA approval – 1 st hearing (meets 2 nd /5th Tues of the month)	Mar 31, 2015
City Council for DDA approval – 2 nd hearing, required for Ordinance (meets 2 nd /5th Tues of the month)	Apr 21, 2015

This letter also acknowledges your email dated April 16, 2014 in which you asked to assign the ENA from UrbanCore-Integral, LLC (UCI) to just UrbanCore Development, LLC (UC). While staff could not grant this request because we had authority to contract with only UCI for the ENA, staff will seek City Council authorization to contract with UC for the DDA. This requires that you submit certain updated information to demonstrate that UC and its team members have the experience, capacity, and financial resources to successfully develop the LMA.

See the attached list of information required of developers in response to the City's standard RFP, some of which you submitted as part your initial RFP response and some of which you updated during our ENA period. In preparation for your DDA with the City, we are now asking you to submit on behalf of UrbanCore those items that pertain to project team description, experience, financial capacity and project feasibility. You should submit these to Hui-Chang-Li before **February 17, 2015** which is the internal administrative deadline for the staff report to the CED Committee of the City Council.

If you have any questions, please contact me at pslane@oaklandnet.com or Hui-Chang Li at hli@oaklandnet.com or 510-238-6239.

Sincerely,



PATRICK LANE
Acting Project Implementation Manager
Economic & Workforce Development Department

Cc: Rachel Flynn, Neil Gray

Checklist of Submittals Required for DDA

Submit the following no later than **February 17, 2015** for City Council approval of a DDA (note: this deadline assumes this agenda item will be scheduled for CED hearing on March 24, 2015 and City Council hearings on March 31, 2015 and April 21, 2015.)

A. Development Team Description

1. Developer(s)

- a. Developer Entity:** Identify and describe the legal entity or entities that will develop the Property. Include each entity's name, mailing address, email address, contact phone number, type of organization (i.e. 501(c)3, LLC, etc.), anticipated role, and anticipated percentage ownership in the proposed project.
- b. Authorized Personnel:** Identify person(s) with the authority to represent and make legally binding commitments for the entity.
- c. Key Personnel:** Identify and describe the key personnel for each developer entity, including the person in charge of negotiations. Provide a resume for each individual, as well as each individual's name, title, role on the proposed project, address, telephone number, and email address.

2. Design Team

- a. Lead Architect/Architects:** It is expected that development teams will include a lead architect for the design of the proposed project. Identify the firm and provide information about the lead architect, including, but not limited to, a resume, telephone number and email address, that will design the project.
- b. Key Personnel:** Identify and describe the key personnel of the architectural firm that will assist the lead architect during design, permitting and construction administration. Provide a resume for each individual, as well as each individual's title, role in the proposed project, address, telephone number and email address.

3. Other Members of the Development Team

- a. Description:** Identify any other critical partners, contractors, and consultant proposed for this project. Include the name of the firm, the firm's role in the project, and the lead person with each firm.
- b. Key Personnel:** Provide a resume for each key personnel for each firm, as well as each individual's title, role in the proposed project, address, telephone number and email address.

4. Oakland Local/Small Local Business Enterprise Participation

Discuss plans to include LBEs and SLBEs as partners, consultants and contractors. Please indicate whether the development team includes any LBE or SLBE equity partners and, if so, what percent of capital investment each is anticipated to contribute.

5. Disclosures

Please provide answers to the following questions on official letterhead paper, signed by the authorized personnel for the development entity:

- a. **Litigation or Disputes:** Is the development entity, proposed guarantor, or any named individual to be involved in the DDA involved in any litigation, administrative proceeding, investigations or disputes (actual or pending, or which have occurred in the last five years) that could result in a financial settlement having a materially adverse effect on the ability to execute a project? If yes, please explain.
- b. **Competing Projects:** Is the development entity currently involved with the development of competing project in the Project Area? If so, please identify the project and its status.
- c. **Bankruptcy or Foreclosure:** Has the development entity, proposed guarantor, or any named individual ever filed for bankruptcy or had projects that have been foreclosed, or transferred to a creditor in lieu of foreclosure, or projects where the developer renegotiated or refinanced permanent project debt which resulted in a relaxation of either financial or other covenant or other terms and conditions of existing debt on the project? If yes, please list the dates and circumstances.
- d. **Suspension:** Indicate whether the development entity or individuals within the development entity have been suspended from performing work for any governmental agency within the past five years. If so, please explain the nature of the suspension.
- e. If the response is yes to any of these questions, the City may follow-up for additional information from the Developer.

B. Developer Experience

For each developer entity, please provide the following:

1. A list of all projects developed by development team over the last 5 years, with an indication of the current status of each project.
2. Describe a minimum of three (3) projects comparable to the proposed urban infill project completed within the last ten (10) years. Include dates of completion, location, size of project, size of development site (acreage), construction type, total development cost, financing sources, target resident population (if applicable), the role of the developer in each development (such as contractor, developer, consultant, etc.), and references (including names, affiliations, and phone numbers). Photographs of past or current projects may be included, but are not required. Provide evidence of project experience with local governments and other public agencies. Demonstrate success in maintaining and operating high quality, efficiently operated projects.
3. List all current projects in the design or development phase.
4. Discuss experience with meeting local and small business sub-contracting goals on other projects.

C. Architect Experience

For each architectural firm on the team, provide the following:

1. **Comparable Projects:** Describe a maximum of three (3) recently completed urban-infill developments that are comparable to the proposed project, including dates completed and client contact information for each. (If the Architect was not the sole architect, please describe the Architect's role in the project.).
2. **Photographs of Comparable Projects:** Submit three (3) photographs of the interiors and exteriors of the comparable projects listed above to display architectural design features, relationships of buildings and relationships with adjacent uses (other buildings, streets, etc).
3. **"Green" Building Experience:** Describe green building design experience and evidence of current LEED professionals among the Key Personnel, if any.

D. Developer's Financial Capacity and Capability; Guarantor(s)

For questions under Section "1." through "7.", please answer on official letterhead paper, signed by the authorized personnel for the development entity.

1. **Financial Statements:** In order to demonstrate access to equity and debt capital and other financing resources to carry out the proposed project, developer must provide in a separate submittal (marked "confidential"), one set (not bound or stapled) of audited financial statements for the past two years for each principal and joint venture partner, including statement of changes in financial position and statements of any parent organizations and any materially relevant subsidiary units. Each developer entity that is part of the development team must submit separate financial statements.

Developer must clearly designate those financial submittals which they in good faith determine to be a trade secret or confidential proprietary information protected from disclosure under applicable law. To the extent permitted by law, staff will attempt to maintain the confidentiality of financial submittals marked confidential and/or proprietary, provided that the City has no obligation to expend any funds to do so. In accordance with the Sunshine Ordinance (Admin. Code Sec. 67.24(e)), responses and other communications from Developer must be open to inspection by the public upon request immediately after a DDA is executed.

2. **Real Estate Portfolio:** Provide a composition of the real estate portfolio of completed projects either owned or managed by each principal partner or joint venture participant, listing the following for each project: project name, type, location (city, state), project size (rentable area), date completed, value, debt, role (developer, operator, property manager, etc.), ownership interest, and occupancy rate. Identify any projects with negative cash flows, amount of developer's recourse debt, any non-performing loans, and the amount of guarantees and/or contingent liabilities.
3. **History of Financing Commitments:** Submit a recent history (last 2-3 years) of obtaining financing commitments from debt and equity providers. Include the type of project, dates of commitment, name of financing source, amounts committed, etc.
4. **Pipeline Projects:** List and describe all projects currently in the pipeline, including status, development budget, schedule and financial commitment required of developer, a detailed description of the project financing methods, sources and amounts. Indicate any working relationship on other projects with members of the current development team for the proposed project.
5. **Sources of Capital:** Identify specific sources of debt/equity capital, including relationship of lender/investor to the developer (outside lender, parent company, etc.) and contact information. *(See attached form)*

6. **Availability of Capital:** Provide a written statement from each financing source that the equity and/or debt capital is available or will be made available for funding the proposed project, and that the proposed project is consistent with the source's investment criteria for a project of this type and size. In lieu of these letter(s), Developer may submit written statements from their financing source(s) describing past projects which the source has financed for the Developer. Such written statements shall detail the amount of capital, the size of the proposed project and any other pertinent information which will assist the City in determining the availability of equity or debt capital to fund the proposed.
7. **Proposed Guarantor Entity:** Identify the proposed guarantor entity that will execute a Completion Guaranty for the Project. Include financial details to demonstrate that the guarantor has the financial capacity to ensure Project completion including, without limitation, the financial information described in Section D(1.) above. If the guarantor will be identified later, indicate your acknowledgement that the City both requires a guarantor and that the City must approve the guarantor's financial capacity to complete the Project.

E. Project Financial Feasibility

Provide detailed written information regarding the financial aspects of the proposed project.

1. **Project Feasibility:** Submit project pro-forma(s) for pre-development, construction and operations:

- Development Budget
- Operating Budget
- 10-Year Operating Cash Flow - include a chart of gross and rentable square footage for residential units and commercial space, etc..
- Lease Up Schedule
- Development Schedule - indicate time frame the project will be completed.

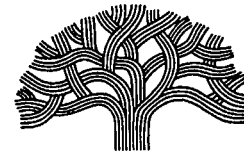
Note: depending on the completeness of your proforma submittal, the City may request that you provide this information on templates created by the City.

Project Name:

Attach commitment letters or letters of interest for all private sources listed.

Construction Financing						
Name of Lender/ Source	Address	Contact Name, Phone	Amount of Funds	Type of Financing (eg. Loan, grant, or equity)	Interest Rate	Term, Months
TOTAL Construction Funds			\$			
Permanent Financing						
TOTAL Permanent Funds			\$			

CITY OF OAKLAND



250 FRANK H. OGAWA PLAZA, SUITE 5313 • OAKLAND, CALIFORNIA 94612-2034
Economic & Workforce Development Department (510) 238-2229

October 30, 2014

Mr. James Vann
Oakland Tenants Union
P.O. Box 10573
Oakland, CA 94610

Re: Lake Merritt Boulevard Apartments for the "12th Street Remainder Parcel"

Dear Mr. Vann:

This letter is in response to your e-mail dated September 10, 2014 and your letter dated April 16, 2014. We have summarized the concerns you raised into three main areas, as follows:

1. **Concern # 1:** Pursuant to Oakland's Condominium Conversion Ordinance (OMC 16.36), this new condominium development project could generate "condominium conversion rights" if the developer agrees to restrict the new condo units as rental units for 7 years. Then these "condominium conversion rights" could be sold to owners of existing rental property to convert existing rental units to condos, thereby removing that number of rental units from the housing market.

City Response: Staff raised this concern with Michael Johnson, principal of UrbanCore, and Mr. Johnson has agreed to restrict UrbanCore's proposed development, referred to as Lake Merritt Boulevard Apartments, on the City-owned "12th Street Remainder Parcel", from generating "condo conversion rights". The language necessary to restrict this project's ability to generate condo conversion rights will be included in the Disposition and Development Agreement ("DDA"), currently under negotiation between the City and UrbanCore subject to City Council approval in its sole and absolute discretion.

2. **Concern # 2:** The proposal for Lake Merritt Boulevard Apartments does not include any affordable units.

City Response: The City issued a Request for Proposals (RFP) in 2012 and did not include a requirement for affordable housing in the project. The reason is that the City-owned parcel is considered a market-rate deal, not a subsidized deal, due to lack of City funds to provide such subsidy. As a result, UrbanCore was not required to include affordable housing when they entered into an Exclusive Negotiating Agreement (ENA) with the City. While this parcel has been created as a result of Measure DD-funded improvements, as you noted, the City will sell it at appraised value, based on the fair market value for the parcel's the highest and best use. If the City required inclusion of affordable housing, this would not only reduce the appraised value of the site, it might also negatively affect UrbanCore's ability to secure financing for the project, which has been underway for 16+ months as a market-rate development.

While this particular project will not include affordable housing units, the City remains committed to affordable housing through direct subsidies and through new policies, such as the recent decision by the Administration and City Council to direct 25% of "boomerang" funds to

affordable housing and the decision to conduct an Impact Fee Nexus Study for affordable housing. Attached, you will find a list of recent projects that the City has subsidized through local, state and/or federal funds it has available. As you know, the elimination of redevelopment funding has seriously affected our ability to subsidize as many projects as we would have normally done in the past.

3. **Concern # 3:** What other community benefits will this project offer?

City Response: Per the DDA currently under negotiation and subject to City Council approval in its sole and absolute discretion, UrbanCore has agreed to provide off-site improvements and ongoing maintenance of the adjacent City-owned park (0.91 acres) with an existing water treatment basin. Per the recommendations of Measure DD Coalition, CALM and City staff (and pending approval by the Parks and Recreation Advisory Commission), these improvements will include the installation of natural landscaping and will function as a passive open green space consisting mostly of native plantings, groundcover, shrubs and trees. The groundcover will be low maintenance grasses and wildflowers requiring mowing once or twice a year. Temporary irrigation will be used for two or three years to establish the trees and shrubs. All plantings will adhere to Bay friendly practices and adhere to the State's Water Efficient Landscape Ordinance.

In addition, UrbanCore's proposal includes a 2,000-square-foot café located at the ground level, accessible by the public. The café will include an outdoor terrace and plaza with views towards Lake Merritt and the Lake Merritt Channel.

If you have additional comments or questions about this project, feel free to contact Patrick Lane at pslane@oaklandnet.com or 510-238-7362.

Sincerely,



Rachel Flynn, AIA
Acting Director of Economic & Workforce Development

Enclosures

cc: Jean Quan, Mayor of Oakland
Richard Cowan, Chief of Staff, Office of Mayor Jean Quan
Pat Kernighan, City Council President, District 2
Henry Gardner, City Administrator
Arturo Sanchez, Assistant City Administrator
Michele Byrd, Director, Housing & Community Development Department
Patrick Lane, Redevelopment Manager, Project Implementation Division
Hui-Chang Li, Urban Economic Analyst II, Project Implementation Division
Neil Gray, Planner III, Planning & Building Department
Kiran Jain, Office of the City Attorney
Jeffrey P. Levin, Policy Director, EBHO
Michael Johnson, UrbanCore

Li, Hui Chang

From: jamesevann@aol.com
Sent: Wednesday, September 10, 2014 8:23 AM
To: Cowan, Richard
Cc: Quan, Jean; Office of the Mayor; Gardner, Henry; officeofthecityadministrator@oaklandnet.com; Flynn, Rachel; Byrd, Michele; Hunter, Gregory
Subject: Urgent Request for High Level Administrative Decision (or Meeting) Regarding the Lake Merritt Blvd "Remainder Parcel"
Attachments: OTU-LettToMayorRe-LMBldApts(2)-16Ap-10Se14.rtf

10 September 2014

To: Richard Cowan, Chief of Staff & Policy Director, Office of Mayor Jean Quan

cc: Jean Quan, Mayor of Oakland
Henry Gardner, City Administrator
Rachel Flynn, Director, Planning & Building
Michele Byrd, Director, Housing & Community Development
Gregory Hunter, Office of Neighborhood Development & Improvement

Fr: James E Vann, for Oakland Tenants Union & Coalition to Protect Rental Housing

Subject: **Urgent Request for High Level Administrative Decision (or Meeting)
Regarding the Lake Merritt Blvd "Remainder Parcel"**

This is a urgent request for a critical administrative determination at the earliest possible date (or a meeting with pro-housing stakeholders) on an urgent issue of time-sensitive importance relating to the sale and development of the Measure DD-created "remainder parcel" at Lake Merritt Boulevard and E 12th Street.

Communications have been exchanged among several pro-housing organizations -- including Oakland Tenants Union, East Bay Housing Organizations, Causa Justa Just Cause, Coalition to Preserve Rental Housing, 1200 Lakeshore Tenants Association, Measure DD Community Coalition, Tenant Justice Campaign, among others -- that share a common concern for possible loss of scarce and urgently needed rental housing and mass eviction of many long term Oakland residents, possibly to result from anticipated development of the city-created, Measure DD funded parcel at Lake Merritt Boulevard & E 12th Street -- unless a critical decision and urgent action are swiftly implemented.

Pro-housing organizations are highly concerned with a number of issues about the proposed development. However, the highest priority concern is the possibility that Urban Core Partners is planning to incorporate in its financial plan the award of "condominium conversion credits" for a proposed 298 apartment development at the "remainder parcel." (*An outdated section of the City's Condominium Conversion Ordinance awards "condo conversion credits" to unassisted developments that agree to rent their new condo units for the first seven (7) years. It should be noted that 113 [38%] of the units are ultra-small studio units.*)

Of equal concern -- considering ABAG's unmet need for Oakland of 14,765 new housing units by 2022 -- none of Urban Core Partner's 298 apartments on the City-owned, Measure DD-financed and improved parcel will be "affordable" for the majority of Oakland residents, despite the fact that significant uncompensated public assistance (detailed in attached April 16 letter) has been incorporated in creation and development of the City-owned parcel

As the selected proposed developer under a current ENA (recently extended to early 2014), Urban Core Partners is proceeding with design, planning, and financial preparations for execution of a DDA with the City in early 2015. It is therefore extremely critical that a determination prohibiting "conversion credits" be made NOW to enable appropriate and timely instructions to the developer.

Since the early 1980's, multi-housing developments that benefit from land gifts or public assistance are subject to "Regulatory Agreements" that prohibit accrual of "condo conversion credits." The rationale for this sensible provision is

MAJOR HOUSING PROJECTS IN OAKLAND WITH PUBLIC SUBSIDY IN PROGRESS, 2013-14

City Council District	Project	# of Affordable Units	Total Development \$	Developer
1	MacArthur Transit Village	90	\$43 mil	Bridge Housing
2	Lakeside Senior – 1507 Second Ave	92	\$40 mil	Oakland Housing Authority
3	Cathedral Gardens	100	\$40 mil	EAH
	1701 MLK Way	26	\$11 mil	Resources for Comm Dev
	California Hotel Rehab	137	\$36 mil	EBALDC
	The Savoy	102	\$28 mil	AHA
	460 Grand Avenue	68	\$30 mil	Bridge Housing/OHA
4	Civic Center Apts – 632 14 th Street	40	\$19 mil	Meta Housing Assoc
	Redwood Hill – 4856 Calaveras Ave	28	TBD	Satellite Aff Hsg
5	St. Joseph's Apartments	62	\$30 mil	Bridge Housing
	Fruitvale Village II	275	TBD	Unity Council
7	Lion Creek Crossing, Phase V	128	\$35 mil	EBALDC/OHA
	MacArthur Apartments – 9800 MacArthur Avenue	32	\$11 mil	AMCAL
	Brookfield Court	12	\$5 mil	Habitat for Humanity
	Coliseum Transit Village	116	TBD	Urban Core/OEDC
Total Units		1308		

Oakland Tenants Union

P.O. Box # 10573 / Oakland CA 94610 / (510) 704-5276 or 763-0142 / www.oaklandtenantsunion.org

16 April 2014 (updated 10 September 2014)

Jean Quan, Mayor
City of Oakland
1 Frank Ogawa Plaza
Oakland CA 94607

Rachel Flynn, Director
Planning, Development & Building
250 Frank Ogawa Plaza
Oakland CA 94607

Gregory Hunter, Director
Community Development & Improvement
250 Frank Ogawa Plaza
Oakland CA 94607

CC: Henry Gardner, City Administrator
Michele Byrd, Director, Housing & Community Development

Subject: **Critical Concern re Proposed Apartment Development on the New "Remainder Parcel" at Lake Merritt Boulevard & E 12 Street, and Possible Impact of Condominium Conversion**

Oakland Tenants Union (OTU), in concert with several Oakland organizations, writes to address a critical issue related to proposed development of the newly created "remainder parcel" at E 12th Street and Lake Merritt Boulevard, and how the proposed development may relate to the City's Condominium Conversion Ordinance.

OTU was an early endorser and co-campaigner with CALM (*Coalition of Advocates for Lake Merritt*), the civically-engaged organization that conceived-envisioned-designed-promoted, and obtained City Council approval and incorporation of the redesign of 12th Street -- now Lake Merritt Boulevard -- into the Lake Merritt Master Plan). OTU is aware of the designated developer team -- Urban Core Partners, a combination of local, San Francisco, and Atlanta-based investors -- who were selected for a one-year tentative 'Exclusive Negotiating Agreement' (ENA) after a closed proposal process open to only two potential developers.

At the outreach meetings, OTU presented positive review comments on the developer's proposed 24-story, 298-unit rental development that were mostly ignored. **OTU was, and is greatly disappointed that no affordable units will be included in the proposed development. We subsequently learned an equally horrendous disclosure that the proposed developer intends to utilize a "loophole" in the City's Condominium Conversion Ordinance to evict the rental tenants after 7 years, and convert the proposed Lake Merritt Apartments complex into luxury condominiums.** (The Condominium contains an extremely harmful and long outdated provision -- "a loophole" -- under which "condominium conversion credits" are awarded to residential developers on a one-to-one ratio if their new condominium units are operated for 7 years as rental apartments.)

The "conversion credits" loophole will allow automatic and immediate eviction in 7 years of the 298 renters from the remainder parcel development, and in addition would give the Lake Merritt Blvd Apts developer the "right" to cause the removal and conversion into condominiums of an equal number of currently rented apartments elsewhere in Oakland. It is obvious that this horrendous loophole could have disastrous impact on the lives of 298 long-term Oakland households, who would face immediate disruption and eviction from their current and likely affordable rental homes. Through use of the loophole, several present rental buildings could be emptied, converted, and sold off as high priced condominiums that the former occupants could never afford. This could mean that the 298 extremely small (113 are minimum-sized studios), newly constructed units of the Lake Merritt Apts could "by right" automatically displace a total of 596 households (298 LMA residents + 298 current Oakland

that projects which benefit from public assistance should not also profit by accruing, using, or selling "conversion credits" to cause conversion and displacement of (in this case up to 298) current residents from existing and typically affordable rental housing.

Oakland Tenants Union submitted a letter dated April 16 outlining various concerns of the "conversion credits" problem, and detailed some of the many and tangible financial contributions of public assistance to the "remainder parcel" – financially-valued assistance and contributions that are not able to be captured in a market-valued appraisal. (The April 16 letter is attached.)

The pro-housing community strongly contends that the many uncompensated public contributions to the "remainder parcel" -- envisioned by CALM, the original conceptual designer, as an important product of Measure DD -- mandates that the condo-prohibiting language of the City's Regulatory Agreement be incorporated into the Disposition and Development Agreement (DDA) for the "remainder parcel."

The needed decision is a straightforward administrative determination: As a city-created parcel that benefits from an atypical assemblage of public improvements, the conditions of development that apply to all publicly-assisted residential developments must also equally apply to development of the Lake Merritt Boulevard Remainder Parcel, and must therefore be incorporated into the "Disposition and Development Agreement (DDA)" governing the parcel's sale and development.

Additional Important Considerations:

1. The Lake Merritt Boulevard "Remainder Parcel" is a unique creation of the Measure DD Bond Election of 2002, approved by 80% majority and being paid for by Oakland voters, and benefiting from a broad assemblage of public financial assistance.
(See attached OTU letter, dated April 16.)
2. CALM -- the civically-active organization that conceived-envisioned-designed-promoted and gained City Council approval of Lake Merritt Boulevard improvements and their incorporation into the Lake Merritt Master Plan -- never anticipated that their dedicated achievement might become the rationale to displace 298 current tenants households in addition to the eviction of another 298 seven-year renter households.
3. A goal of the Condominium Conversion Ordinance is "no net decrease" in the City's rental inventory. "Conversion credits" would authorize displacement of 298 existing rental units by 298 non-equal condominiums -- a net decrease of 298 units from the scarce rental inventory.
4. Urban Core Partners has stated that the planned 298 apartment development will NOT include ANY affordable housing units. This statement is in stark opposition to Mayor Quan's goal to attain at least 25% affordable in each new residential development, as well as to the intent and goal of every other publicly-assisted development in the City for the last 44 years -- which are ALL mandated to include a generous percentage of affordable housing.
5. As with other publicly-assisted developments, the "remainder parcel" development should be disqualified from accruing or receiving "condominium conversion credits" and utilizing the "7-year rental provision" to escape the City's Just Cause Eviction Ordinance.
6. Finally, serious moral issues are raised if development of a City-owned and created Parcel, that required massive public expenditures toward its readiness for development, should become the vehicle that not only makes NO CONTRIBUTION to the City's critical affordable housing need, but which could also cause the DEVASTATING EVICTION of 298 current City households, in addition to another 298 "temporary renter households" of the new City-assisted and -sponsored development.

Such an abomination would be directly counter to all City goals and objectives, and is one that need not, and must not be permitted to occur. The appropriate language already exists in the City's "Regulatory Agreements." To avert a devastating calamity that should not, must not, and does not need to occur, this same language from the City's "Regulatory Agreements" must be incorporated into the "Disposition and Development Agreement" for the "Remainder Parcel."

renter households) within a relatively short period, at lucrative profits to the developer, and with the loss of 298 generally larger and irreplaceable existing apartments. By any account, such disruptive displacement and removal would be a devastating blow to Oakland's critically deficient rental housing supply.

OTU is aware that what CALM envisioned was the popular citywide regional attraction that became the beautiful new Lake Merritt Boulevard and environs, and that CALM never had a thought that the new "remainder parcel" envisioned in their conceptual design could become the impetus for unjust displacement of some 298 Oakland households -- households who enthusiastically passed the \$198 Million Measure DD bond that financed the Lake Merritt Master Plan and Lake Merritt Boulevard improvements, which made the "remainder parcel" possible.

The City's Disposition & Development documents and Regulatory Agreements of the CEDA Division prohibit developments that receive city, county, federal, or public (financial) assistance from accruing "conversion credits."

As detailed below, OTU contends that development of the 12th Street "remainder parcel" benefits heavily from local, state, and federal financial & public assistance and should accordingly be disqualified from receiving "conversion credits" and from utilization of the "7-year rental provision."

Some of the public financial assistance provided to the "remainder parcel" includes at least the following measures:

1. The "remainder parcel" is an integral element of the 12th Street (Lake Merritt Boulevard) reconstruction project, partially financed by the 80% vote of the Oakland electorate in passing the \$198 Million Measure DD bond election, which provided the parcel.
2. The "Lake Merritt Boulevard" project, together with adjoining parks and landscaped areas, roadways, pedestrian walks & bikeways, estuary channel improvements, and creation of the "remainder parcel" constitute a Measure DD expenditure of \$47 Million, augmented by approximately \$25 Million in federal, state, and county financial grants.
3. The "remainder parcel" was non-existent prior to implementation of the Lake Merritt Master Plan by Measure DD. Creation of the "remainder parcel" required a variety of atypical actions financed by the City, including abandonment of a public arterial (formerly E 12 Street); re-zoning from a public street, environmental analysis & toxic remediation; surveying and plotting; installation of sewer and sewerage systems; grading and drainage; water treatment facilities; and reconstruction of the new E 12th Street arterial on a new alignment, most of which is not covered by the typical transaction that determines the land cost.
4. Installation of new roadway paving; curbs and gutters; fire hydrant and water line, sidewalks; street lights; traffic light systems and signalization, all of which specifically service the "remainder parcel," and which are atypical cost inputs not covered by the typical transaction that determines the land cost.
5. Installation of street trees, landscaping, plantings, and irrigation systems that specifically service the "remainder parcel," also atypical cost inputs not covered by the typical transaction that determines the land cost.
6. Finally, as a condition of selling the land, the City should not permit the owner-developer to sell or use conversion credits because this proposed new development's housing should not be considered "replacement housing" as other rental units may be considered that legally convert to condominiums.

For these reasons among others, by virtue of massive public investments and direct and indirect financial assistance to the parcel's creation, the City is strongly urged to determine that residential development on the "remainder parcel" at E 12th Street and Lake Merritt Boulevard is disqualified from receiving or exercising "conversion credits."

In addition to the potential threat to rental housing throughout the City, the proposed Lake Merritt Apartments literally stand in the shadow of, and would pose a very real threat to the 172 spacious rentals of the 1200 Lakeshore Apartments building. Even then, the devastation would not be finished as another 126 rental units around the City could still be automatically taken out of rental service for conversion to condominiums. This is not the outcome that the CALM organization so fervently fought for and so admirably achieved. I trust that the City finds this potential revelation to be disturbing, objectionable, and firmly against City policy.

If there are questions or if additional discussion or information is desired, please contact James Vann by phone: 510-763-0142, or by email <jamesevann@aol.com>.