



DATE: August 24, 2021
CATEGORY: New Business
DEPT.: Community Development
TITLE: **Lot 12 Development**

RECOMMENDATION

1. Adopt a Resolution of the City Council of the City of Mountain View Determining and Declaring the City-Owned Site Located at 907, 929, and 941 California Street and 424, 428, 444, 454, 460, and 468 Bryant Street, Referred to Collectively as "Lot 12," to be Exempt Surplus Land Pursuant to Government Code Section 54221(f)(1)(A), to be read in title only, further reading waived (Attachment 1 to the Council report).
2. Approve the key negotiated business terms by and between the City and the developer, Alta Housing and Related Management Company, for the funding, development, and long-term lease of the Lot 12 site.
3. Authorize the City Manager or designee to execute a Lease Disposition, Development, and Loan Agreement with Alta Housing and Related Management Company consistent with the described key deal terms, if the City Manager or designee determines the project is exempt from review under the California Environmental Quality Act pursuant to Senate Bill 35 or other applicable exemption.
4. Provide direction on the project design and architecture.
5. Authorize Alta Housing and Related Management Company to submit a formal planning application after making the design revisions identified in this report and as directed by Council, as confirmed by staff, and after full execution of the Lease Disposition, Development, and Loan Agreement.

PURPOSE

The purpose of this item is for the City Council to authorize the joint Lot 12 developer team of Related Management Company and Alta Housing (Developer) to submit a formal

planning application. The Developer intends to use the provisions under Senate Bill (SB) 35 to submit an application that requires the City to review and approve the project within 90 days of submittal.

As the owner of the property, City approval is required to authorize the Developer's submittal of an SB 35 application. Because the Developer will be applying under SB 35, there will be limited, more streamlined review once authorization is provided and the application is submitted. Therefore, Council approval of the key Lot 12 deal terms and direction on project design is also requested at this time.

If Council wishes design changes to be made, including, but not limited to, those recommended in subsequent sections of this report, those changes must be directed to occur before the SB 35 application is submitted.

BACKGROUND

In 2019, the City initiated a two-step process for the redevelopment of the 1.5-acre Lot 12 site, currently a City-owned, 160-space public parking lot one block north of City Hall, into a residential mixed-use project. The first step began with a Request for Qualifications (RFQ) followed by a Request for Proposals (RFP) process that began December 2019 and closed March 2, 2020. The RFQ/RFP process concluded on May 19, 2020, when the City Council selected the joint developer team of Related Companies of California and Alta Housing as the preferred developer. On October 13, 2020, Council held a Study Session to discuss remaining Lot 12 priorities, including making the initial determination that all 160 public parking spaces be replaced off-site within the downtown area, that Measure A funding for rapid rehousing units would be supported, and that child care was supported as a potential commercial use but was not required.

After the October 2020 City Council meeting, the City team worked with the Developer to execute an Exclusive Right to Negotiate Agreement (ERNA) and commence the negotiation process for development of Lot 12, with the following key milestones that have been reached to keep the process moving forward:

- January to February 2021 – Submittal for first round of informal project review, including Development Review Committee (DRC) review.
- February 2021 – Execution of the ERNA.
- March to April 2021 – Initiation and completion of tribal consultation process as required by SB 35.

- April 13, 2021 – Council approval of a \$1.3 million predevelopment loan to help pay for upfront project costs. This amount is part of, not in addition to, the City’s total subsidy contribution to the project that will be discussed later in this report.
- End of May to June 2021 – Resubmittal for second round of informal review, including second DRC meeting.
- June 22, 2021 – Closed Session held for Council to provide direction on price and terms of payment.

The above represents an expedited timeline with iterative review and substantial coordination between each milestone. Concurrent with the above efforts, the City and Developer have been negotiating on key deal terms for the Lease Disposition, Development, and Loan Agreement (LDDLA).

Project Description

Lot 12 is a 1.5-acre, City-owned surface parking site located at 907/929/941 California Street and 424/428/444/454/460/468 Bryant Street consisting of eight existing parcels. Council previously established the priority for development of Lot 12 with affordable housing, as well as a nominal amount of nonresidential/commercial uses to facilitate an active, pedestrian-oriented environment, and to create a sense of place for both on-site residents and the broader community. Council also determined this would not be a revenue-generating project and identified several more specific development objectives and criteria.

Development Objectives

Key development standards and objectives that apply to the project include:

- Must comply with Area C of the Downtown Precise Plan except for deviations, incentives, concessions, and/or waivers as approved by the City and authorized by State Density Bonus Law.
- Must incorporate excellent architecture and design with sensitive massing that enhances the public realm and pedestrian experience and provides an effective interface with the adjacent neighborhood.
- Must be sensitive to adjacent uses, particularly the existing residential community located west of Lot 12 with provision of appropriate transitions, such as setbacks, step-backs, screenings, etc.

- Must meet the City's sustainability policies and comply with adopted City codes, including newly adopted Building and REACH Codes.
- Must incorporate robust Transportation Demand Management (TDM) strategies and parking innovations.

Residential

Residential components of the project, based on RFP objectives and funding requirements include:

- One hundred twenty (120) total units, including one manager's unit and 119 affordable units comprised of:
 - Twenty (20) rapid rehousing (RRH) units (up to 30% of Area Median Income (AMI)), which is a primary focus of Measure A funding.
 - Twenty (20) extremely low-income (ELI), non-RRH units (up to 30% AMI), which is a primary focus of Measure A funding.
 - Forty (40) very low-income (VLI) units (30% AMI to 50% AMI).
 - Thirty-nine (39) low-income (LI) units (50% AMI to 80% AMI).
- Affordable rents will be based on 30% of income inclusive of utility allowance using income limits adjusted for assumed household size based on unit size. Household income limits and affordable rents will be established using California State Tax Credit Allocation Committee (TCAC) regulations, except for approximately 50% of the units. For the remaining units, the household incomes and affordable rents will be established using California Department of Housing and Community Development (HCD) limits pursuant to State Density Bonus Law, SB 35, and rules applicable to units funded with Successor Agency Low- and Moderate-Income Housing Asset Funds.
- Minimum of 55 years for the term of affordability.
- Fifty percent (50%) of the units will be two- and three-bedroom units to serve families.

Nonresidential/Commercial

The proposed project includes approximately 2,200 square feet of nonresidential, community-serving commercial uses on the ground floor. The purpose of this space is to allow building uses that will help activate the pedestrian environment, create a sense of place, and provide a retail-commercial amenity for the on-site residents as well as for the broader community. The proposed retail-commercial tenant space is located at the corner of California Street and Bryant Street.

An additional 800 square feet of space will be included as part of the Lot 12 development to be used as a flex space for both the on-site residents and the broader community. The intent is for the space to be available for use by community groups or the City for meetings or events or as a “maker” space that provides a collaborative work environment for start-ups, entrepreneurs, workshops, classes, etc.

Parking

Lot 12 is currently a City-owned parking lot with 160 spaces. Council previously supported the replacement of these spaces off-site. The Developer proposes to make a \$10.1 million upfront ground lease payment that the City can use to pay for the costs of replacing the spaces elsewhere in the downtown area.

The project proposes at-grade parking within the building envelope, including 90 residential parking spaces (inclusive of guest parking) and five parking spaces for the retail uses, for a total of 95 parking spaces proposed. Seventy-nine (79) of the 95 residential parking spaces are independently accessible spaces in puzzle lift systems/stackers. One on-site loading space is located within the parking garage. The project also proposes 120 long-term bicycle parking spaces, which are located at three separate, ground-floor bicycle storage rooms located throughout the site and 18 short-term bicycle parking racks. The project meets the bicycle and vehicle parking standards of the Downtown Precise Plan and State Density Bonus Law, respectively.

ANALYSIS

Project Design

Site Location

The 1.5-acre site is located on the west side of Bryant Street, between Mercy Street and California Street, in the P-19 (Downtown) Precise Plan. The property is surrounded by one- to two-story multi-family and single-family residences to the west; six- to 11-story commercial-office buildings to the east (across Bryant Street); existing City facilities (City Hall/Center for the Performing Arts and City Library) to the south, principally the two underground garage entrances and one surface driveway for these facilities; and a vacant parcel as well as a three-story residential development to the north (across California Street).

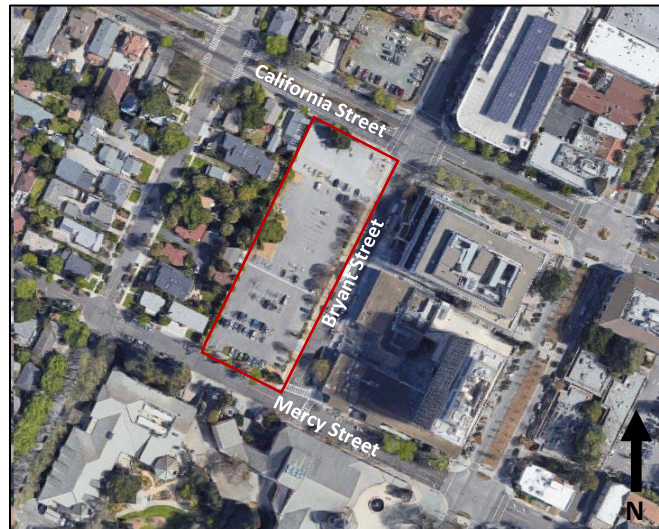


Figure 1: Aerial Vicinity Map

There are multiple transportation options accessible from the site. Valley Transportation Authority (VTA) Bus Route 21 is located along the project frontage on California Street. The Mountain View Transit Center is located within one-half mile of the project site, allowing access to Caltrain commuter rail services, VTA and local bus transit services, and the VTA light rail transit station. The MVgo Shuttle, Mountain View Community Shuttle, and VTA Bus Routes 40 and 52 are also located within one-half mile of the project site.

Project Description

The 120-unit residential mixed-use development includes 18 studio units, 42 one-bedroom units, 30 two-bedroom units, and 30 three-bedroom units spread across three different three- to five-story building areas. The project includes two five-story buildings fronting on Bryant Street, California Street, and Mercy Street, wrapping around an at-grade parking garage podium. The five-story buildings step down to three stories next to lower-intensity residential properties located west of the project site. A two-story townhome building is located above the parking podium level along the west property line. The townhome building is separated from the five-story buildings by a central

courtyard for residents, also located on top of the parking podium. One vehicular entrance/exit to the at-grade parking level is located off Bryant Street, near the California Street intersection.



Figure 2: Illustrative Site Plan

The project also incorporates multiple, publicly accessible open spaces that are meant to serve both residents and the broader community, including a “retail” plaza located at the Bryant Street/California Street corner, a midblock courtyard fronting Bryant Street between the residential lobby and garage entries, a small “bike” plaza at the Bryant Street/Mercy Street corner (next to one of the project bike rooms), and a midblock garden located along the project’s west property line. The midblock garden is anticipated to be open to the public during daytime hours only, but a final public access plan has not been determined to balance public access with private resident use of common amenities.

Density Bonus Request

The project includes a density bonus request under the State Density Bonus Law. As a 100% affordable development located within one-half mile of a major transit stop, the project is eligible for the maximum 80% density bonus. The project includes a 60% density bonus request to allow the proposed 120-unit development (80 dwelling units per acre) in lieu of the 75 units (50 dwelling units per acre) otherwise allowed on the property by the Precise Plan.

State law allows density bonus projects to request concessions, waivers/reductions of development standards, and reduced parking ratios to help the project achieve the density bonus. Unlimited waivers or reductions in applicable development or design requirements (i.e., height, setbacks, etc.) are allowed as needed to construct the density bonus project. The project is requesting the following waivers and concessions:

- The applicant is requesting two waivers to allow the proposed five-story (maximum) building height, in lieu of the Precise Plan's three-story height maximum, and additional floor area (2.65 floor area ratio (FAR)), exceeding the Precise Plan maximum of 1.4 FAR.
- State law also allows affordable projects providing low- to very low-income units within one-half mile of a major transit stop to have a lower parking requirement of 0.5 space per unit. The project is proposing a parking ratio of 0.87 space per unit, including parking available for retail-commercial customers, which exceeds the State density bonus parking requirements.

Staff has requested additional information from the Developer to justify the density bonus waiver requests. This information will need to be provided by the Developer and approved by staff prior to executing the LDDLA and the Developer's submittal of the SB 35 application.

Architecture and Design

The proposed building architecture has evolved since the RFP selection process, with staff encouraging the applicant to devise a more distinctive building style to address Council's desire for project placemaking and given Precise Plan objectives for high-quality design. The contemporary design includes a distinctly residential vernacular, with porch-like entries to ground-floor units and a repeating pattern of asymmetrical, gabled roof forms. This roof form is given a unique twist by tying the roof eave line into a projecting "frame" around upper-floor building walls, and, on the side elevations of each frame, the shingle roofing transitions into shingle siding on the building walls.

Building materials create a simple, agrarian feel through the use of horizontal wood composite siding, cementitious vertical shiplap and shingle siding, stained wood screens, and cement plaster. Board-formed concrete and porcelain tile accented with corten-colored corrugated metal awning features are used to form the retail-commercial storefront portion of the ground level along Bryant Street, while residential stoops on Bryant Street are accented with a raked cement tile. Overall, staff and the DRC find the concept to strike an appropriate balance between the more urban, contemporary office

buildings to the east and the residential neighborhood areas to the north and west of the project site.



Figure 3: Rendering of the California Street/Bryant Street Corner

The DRC reviewed preliminary project plans in February and June 2021, and the applicant updated the project plans to address as much DRC and multi-department staff feedback as possible ahead of this hearing. However, many of the proposed changes were made shortly before this report deadline and have not been thoroughly reviewed, while other items are not yet fully addressed.

Staff recommends the following additional design refinements based on placemaking/urban design objectives identified by Council and Design Guidelines outlined in the Precise Plan. **Staff is recommending that the applicant make the design revisions and submit them for City approval prior to submitting the formal SB 35 ministerial application:**

- **Pedestrian Environment and Placemaking: Staff and the DRC recommend: (i) expanded planting areas around unit entries and commercial frontages to improve the pedestrian experience and unit livability; (ii) placing additional trees in residential buffer areas; (iii) updating the midblock courtyard design to incorporate increased area (under second floor of building); and (iv) incorporating additional decorative furnishings, special paving, etc., into the on-site streetscape design, especially the Bryant Street/Mercy Street corner.**



Figure 4: Rendering of the Midblock Courtyard and Main Residential Entries

- **Ground-Floor Treatment – Commercial:** The ground-floor commercial storefront through the midblock residential lobby is largely defined by board-formed concrete columns and full-height storefront glazing. The applicant has begun to incorporate more warm-colored materials and distinctive accents, such as decorative lighting, porcelain tile, and additional “corten” metal awnings along the frontage. Staff is generally supportive of these recent modifications as their application adds material texture, warmth, and visual interest to the building base, making the pedestrian environment more enjoyable.

Staff recommends increasing the wainscot height of the warm-toned porcelain tile and enhancing the detailing on storefront facades to meet Precise Plan objectives.

- **Ground-Floor Treatment – Residential:** The project includes residential stoops providing direct access to ground-floor units from all project street frontages. Each entry is now framed by a trellis with a corten-colored corrugated metal roof and ornamental railing. Since DRC review, the applicant has added more decorative railings and introduced vertical siding and raked cement tile on the exterior walls of most ground-floor units. Staff finds the application of these accent materials to be more successful at defining the building base, creating a more inviting environment for residents, and providing more visual interest to pedestrians passing by.

Staff is recommending that the applicant submit the required revisions for more detailed review, prior to the formal SB 35 ministerial application submittal, to

ensure the materials are installed in all recommended areas and proposed colors are effective in delineating the ground floor of the building.



Figure 5: Rendering of the Mercy Street/Bryant Street Corner and Unit Entries

- Windows: The project uses a varied, yet semiregular, window pattern. Staff and the DRC are generally supportive of the variety provided by the proposed window design. The applicant team has been working with staff on the window design, particularly for the shingle-sided elevations, where there are larger expanses of relatively flat, darkly colored wall areas in prominent locations. The window treatment has been improved by providing more recessed windows featuring projecting silver frames as “trim.”

Staff is recommending additional revisions to the proposed window locations/sizes to ensure an adequate balance of solid wall and window area as well as further refinement of the frame/“trim” detail to create a more unique corner appearance, particularly at the California Street/Bryant Street corner.

- Public Art: Given the project’s placemaking goals, staff has discussed with the Developer opportunities to incorporate public art in the final project design. The Developer believes in the value of public art, understands the City’s interest regarding placemaking, and has experience incorporating public art in other

projects. Although the City had been in the process of developing a public art strategy, it was paused due to a shift in priorities and constraints on staff capacity as a result of the pandemic. Therefore, while public art is an important goal, the priority for Lot 12 is ensuring that the affordable housing gets built and should not be held up if public art proves to be challenging with this project. As such, the LDDLA includes a requirement that the Developer make a good-faith effort to incorporate public art into the project, with a priority on local artists reflecting positive local historical, cultural, and/or other community values and assets. During the informal project review, staff and the DRC identified the potential to include public art and/or distinctive tree planting in the public plaza(s) and midblock courtyard.

Staff is seeking Council direction on whether public art should be included in either one or both of the locations noted above or if distinctive tree planting would be adequate to address placemaking considerations.

- Code Compliance: The project includes projecting bay windows on the second floor of the two-story portion of the building along Mercy Street and California Street. These projections improve the massing of the building but do not comply with side setback requirements. Because the project will follow an SB 35 ministerial application process, the City does not have any discretion to allow a side setback exception. The project must fully comply with applicable standards, excluding any concession resulting in actual cost reductions to provide for affordable housing costs or waiver or reduction of development standards deemed necessary to construct the density bonus project. These projections are not needed to build the density bonus project and do not reduce the cost of providing affordable housing, so modifications must be made to remove the bay projections.

Staff recommends further modifications be studied to break up the two-story massing in lieu of the proposed projections and in compliance with Precise Plan standards. Options could include alternate window design, expanded ground-level porches/features, and/or color and material enhancements.

As noted earlier, the SB 35 application process is an expedited review and approval process that is nondiscretionary. **Staff is seeking Council direction on the recommendations listed in bolded text in the above discussion.** The applicant would then be required to submit the recommended revisions to City staff for approval, which may include DRC review, prior to the submission of a formal application.

Trees

The project proposes to remove five Heritage trees (Hollywood juniper, Canary Island date palm, evergreen ash, and Coast live oak) and will replace the five Heritage trees with a total of 10 replacement trees to be located around the perimeter of the site. Staff is working with the applicants to find additional locations for tree plantings, such as at the midblock courtyard and corner plaza areas, in order to increase overall tree canopy on the project site and replace non-Heritage trees to be removed. With the exception of the date palm and evergreen ash, preserving these trees would require significant modifications to the building envelope and would impact the number of units that can be provided on-site. The date palm and evergreen ash are located in the proposed garden and are currently proposed for removal. Staff is working with the applicant to determine the feasibility of preserving these two trees by redesigning the midblock garden as the trees are in good health and would provide a nice amenity to residents and the public.

Entitlement Requirements

If the Lot 12 development does not proceed under the expedited (ministerial) SB 35 application process, required discretionary permits would include a Planned Community Permit, Development Review Permit (including the Density Bonus Request), a Provisional Use Permit for ground-floor residential uses, and a Heritage Tree Removal Permit. SB 35 projects are statutorily exempt from environmental review under the California Environmental Quality Act (CEQA).

Key Deal Terms of the Lease Disposition, Development, and Loan Agreement

This subsection of the report summarizes the key deal terms in the LDDLA. This discussion will first provide background on the current funding challenges that are impacting affordable housing projects throughout the region and State. These challenges have been an important part of the negotiations with the Developer and discussions with the City's external partners and have informed the key deal points below.

Background – Current Funding Challenges

The economics of affordable housing development have been significantly impacted by the COVID-19 pandemic, continued rising costs of construction, and timing and availability of external funding. This has been a widespread issue, impacting not only Lot 12 but also other projects in the City's development pipeline as well as throughout the region and State. These factors were identified during the October 2020 Study Session. These dynamic conditions resulted in an additional \$16 million funding gap between the time of the Developer's submittal of its RFP proposal in early 2020 and the

June 2021 Closed Session item regarding key Lot 12 deal terms. This additional gap includes the \$4.25 million City contribution to the project requested by the Developer.

Since the Closed Session, staff has actively worked with the Developer and key external public partners to close the \$16 million gap. In particular, staff has worked closely with the County's Office of Supportive Housing (OSH) and the Santa Clara County Housing Authority (Housing Authority) to discuss the opportunity to increase Measure A funding as well as allocating project-based vouchers (PBVs) for Lot 12. As a result of these discussions, the Developer is assuming a Measure A contribution of approximately \$9.75 million and 25 PBVs. County and Housing Authority staff are generally supportive of these preliminary assumptions, which will be subject to the underwriting and approval processes of both agencies.

Additionally, in partnership with and through the leadership of State Senator Josh Becker, \$8.0 million from the State's General Fund has been appropriated to the City through SB 129 (the Budget Act of 2021) for the Lot 12 affordable housing project. Details on the timing and disbursement of the funding are still pending and may come through additional legislation, but it will not occur prior to September 30, 2021 as stipulated by SB 129.

Table 1 summarizes the most current information on the primary funding sources for Lot 12.

Table 1: Summary of Primary Funding Sources

Funding Sources	Amount
Federal Tax Credit	\$44,664,000
State Funding	\$27,500,000
City of Mountain View (including SB 129 funds)	\$12,250,000
Permanent Financing (permanent debt)	\$11,241,000
County of Santa Clara	\$9,750,000
Permanent Financing (project-based vouchers)	\$7,462,000
Deferred Developer Fee	\$1,500,000

Through the above collaborative efforts and based on current financing assumptions and economic conditions, the \$16 million gap has been closed. However, note that there will be a period of time between now, entitlement, and building permit approvals and when the project financing has been finalized and ready to close. Therefore, the financing assumptions and economic conditions may continue to change. This is typical of any project. Staff will continue to work closely with the Developer and external partners to

move the project forward expeditiously and to address potential changes in funding that may arise. The LDDLA will include a requirement for the Developer to submit an updated financing plan that must be approved by the City.

City Subsidy – Uses, Sources, and Loan Terms

As noted, the Developer has requested \$4.25 million in City subsidy, of which \$2.6 million is for the affordable housing component and \$1.65 million is for the nonresidential/commercial component. Staff supports this request and recommends the additional provisions as follows:

- Of the \$2.6 million affordable housing component, \$1.0 million will come from the City's Successor Agency funds, and the remaining \$1.6 million will come from the City's housing impact fees.
- Funding for the \$1.65 million nonresidential/commercial component will come from the City's General Fund.
- The \$4.25 million City subsidy will be provided to the Developer as a loan. The loan term will be 55 years with a 3% simple interest. If needed for project feasibility, the Developer may make a request to the City to reduce the interest rate but which shall not be less than 1.5%. As part of such a request, the Developer must demonstrate need, make good-faith efforts to obtain comparable interest rate reductions from other public agency lenders, and agree that any loan provided by the Developer's general partners or affiliates will not earn interest at a rate higher than the rate of the City's loan. For the first fifteen (15) years of the loan, 50% of the project's residual receipts shall be paid to the City and other project lenders that have provided residual receipts loans on a pro rata basis in proportion to each lender's financial contribution. Beginning in the sixteenth (16th) year, the City's share of residual receipts shall increase to the City's pro rata share of 75% of residual receipts.

Additional Funding via SB 129

As noted above, SB 129 appropriates \$8 million from the State's General Fund for an affordable housing project in Mountain View. Information on the timing and process for City receipt of the funds is not yet available. Staff's understanding is that the funding will be a grant to the City. Staff is currently working under the assumption that these funds will be available to be used for both the residential and nonresidential uses of the Lot 12 project and that the City will receive the funds this fiscal year.

Staff recommends that the LDDLA include a provision that the \$8 million would be provided to the Developer in the form of a City loan, contingent upon receipt of these funds from the State. With these funds, in addition to the original \$4.25 million request, a total of \$12.25 million would be provided by the City with the same loan terms stipulated above. Given the limited information known at this time about the SB 129 funding, it is recommended that the LDDLA provide some flexibility regarding timing, amount, and use of the City loan pending new information.

Upfront Payment

The priority of Lot 12 is for affordable housing and is not a revenue-generating project for the City. To facilitate the viability of the project, the City is contributing a portion of the value of the land, and the Developer proposes to pay the City a \$10.1 million one-time, upfront payment instead of replacing the 160 public parking spaces within the project. This payment is based on a portion of the value of the City's land contribution to the project. The value of Lot 12 is estimated at up to \$20 million. Therefore, the value of the land contribution to the project is approximately \$10 million (i.e., value of the land (\$20 million) minus the upfront payment (\$10.1 million)).

In the October 2020 Study Session, Council supported having all 160 parking spaces be replaced somewhere else in the downtown area and indicated that the upfront payment could be applied toward the cost of building a new parking facility for that purpose. The timing and location of a new downtown parking garage is not part of the Lot 12 project and is being addressed separately as part of an evaluation of a Downtown Parking Garage Framework (which is a separate item on tonight's Council meeting agenda).

Ground Lease Duration

The Developer's intent is to maintain the project as affordable housing for the long term. The Developer requests an initial ground lease term of 65 years plus an extension of 10 years at the Developer's option. This initial term with a Developer's extension option is required to secure project financing from external lenders. After 75 years, the Developer will have another option to extend the ground lease for 24 years for a total lease term of 99 years if certain conditions are met, and the City would receive ground lease payments out of residual receipts from cash flow in an amount equal to City's pro rata share of 75% of residual receipts. Subject to the float-up provision described below, affordability restrictions will be extended to match the term of the ground lease, including any extensions of the lease duration.

No Encumbrance of City's Fee Interest in the Land

The LDDLA and the Ground Lease provide that the City's fee interest in the land cannot be encumbered but allow rent restriction agreements to be recorded against the City's fee interest in order to comply with applicable State of California program regulations.

Subordination

In the past, cities often subordinated their regulatory agreement to help the developer secure external construction and/or permanent funding. In the event a developer defaults on its loans and a lender needs to foreclose, cities would forfeit their regulatory restrictions for the affordable units as well as potentially other rights/payments. In recent years, cities have increasingly adopted policies providing that affordability restrictions will not be subordinated. In addition to such local policies, State statutes, including State Density Bonus Law and SB 35, impose statutorily mandated affordability requirements that cannot be subordinated, and lenders have become increasingly willing to exclude affordability restrictions from their subordination requests.

For Lot 12, the City will not subordinate its regulatory agreement with the Developer to any construction or permanent financing. The City will also not subordinate its fee ownership in the Property, meaning the City will continue to own the property in the event of a default or foreclosure. In such an event, the foreclosing lender or its successor would become the lessee under the ground lease and would continue to be subject to its terms. The City would permit subordination of its Deed of Trust if required to secure commercial financing for the project.

"Float-Up" Provision

Although, as noted above, lenders are increasingly willing to allow affordability restrictions to remain unsubordinated, many lenders request the addition of a rent "float-up" provision that would allow rents to increase in the event of foreclosure.

The Developer has requested that the City allow rents for extremely low-income units (30% AMI) to be permitted to increase to up to 60% AMI if a loss of rent or operating subsidy or other circumstances result in a cash flow shortfall that makes continued operation infeasible. The City has permitted a similar rent "float-up" provision for other recent projects, subject to applicable funding regulations and the requirement that the Developer diligently pursue other sources of funding. Any increase in rent levels would be limited to what is necessary to restore feasibility as reasonably determined by the City, thereby limiting the number of units that would have rent increases and the length of time when this would occur.

In addition, the Developer has requested that the City's loan documents include a similar "float-up" provision if project financing fails to meet the "true debt test." The true debt test is a financial projection prior to loan closing to determine whether all loans (including the City's loan) can be repaid or refinanced at loan maturity. If float-up is not allowed and the true debt test cannot be met, then the Developer is unlikely to get an investor to provide the necessary tax credit equity funding, causing the Lot 12 project to be economically infeasible.

Staff recommends allowing the float-up provision as requested in order to facilitate the financing of the project such that the City does not subordinate its regulatory agreement with the Developer.

Possessory Interest Tax

The Developer will be required to pay all assessments, taxes, and other charges applicable to the property and the improvements. Unless and to the extent the project qualifies for a welfare property tax exemption, the Developer will be required to pay all possessory interest or property taxes assessed on the property and improvements as applicable.

The City anticipates that the project will be eligible for a property tax exemption once occupied by lower-income households given its long-term regulatory restrictions for affordable housing. The Developer will be responsible for filing all reports and documents to secure a welfare property tax exemption.

Property Management and Service Provision

Related Management Company will serve as the property manager, and Alta Housing will coordinate social services. The City has the right to approve marketing and management plans and any modifications to these entities and plans.

Payment and Performance Bond

The LDDLA will require the Developer to provide payment and performance bonds to ensure completion of the project, including any and all public improvements required as a condition of project approval.

Public Art

Council direction on public art has been discussed in the Design section of the Council report.

Performance Milestones

The LDDLA includes various performance milestones the Developer must meet to keep the project moving forward in a timely manner. These milestones include the following:

- Secure land use entitlements, anticipated to occur by the end of 2021/early 2022, pending the Developer's submittal of the SB 35 application.
- Prepare State funding applications, anticipated to occur during 2022 to early 2023.
- Prepare required submittals to secure building permit and other City approvals, anticipated to be submitted during 2022 to early 2023.
- Secure all necessary building permit approvals and satisfy all of the conditions described in the LDDLA, including closing for all sources of project construction financing, and execution of a ground lease and related documents, anticipated to occur by fall 2023, depending on how quickly funding can be secured.
- Construction start in fall 2023 and completion in summer/fall 2025, depending on how quickly funding can be secured.

Although the above is a target set of milestones, the ability to achieve them is dependent on how quickly the Developer can resolve remaining project design elements based on Council direction and how quickly the LDDLA can be executed after this Council meeting; when the Developer actually submits the SB 35 application; the timing, availability, and the Developer's ability to successfully secure the external funding sources; and when the Developer submits a building permit application and the actual duration of the building approval process. While the timing and availability of external funding sources are not within the Developer's control, the Developer can help facilitate the building permit approval process by submitting to the City a high-quality building permit application package and being timely and responsive to requests for follow-up information.

Given the different variables that can impact the timeline, the LDDLA provides that as an outside date, the Developer will commence construction within four years of the date the LDDLA is signed (i.e., by fall 2025), with the ability to extend that deadline by up to two years with City Manager approval if, despite diligent efforts, the Developer has been unable to secure all necessary financing.

Surplus Land Act

The State recently adopted changes to the Surplus Land Act (the “Act”), Government Code Section 54220, *et seq.*, to promote affordable housing development on unused or underutilized public land throughout the State as a response to the affordable housing crisis. The Act now requires public agencies, including charter cities, to follow certain procedures to dispose of “surplus land” or to declare land to be “exempt surplus land” at a public hearing, supported by written findings, prior to disposition. The proposed resolution (Attachment 1) includes the required findings to determine and declare Lot 12 to be exempt surplus land as defined in Government Code Section 54221(f)(1)(A). This Section provides that “exempt surplus land” means and includes surplus land that is transferred pursuant to Government Code Section 37364, which authorizes a city, subject to certain conditions, to sell, lease, exchange, quitclaim, convey, or otherwise dispose of real property to provide housing affordable to persons and families of low or moderate income. The terms of the disposition, development, and lease of Lot 12 under the proposed LDDLA qualify this transfer as one that will provide affordable housing to low-income persons and families and, therefore, as “exempt surplus land” under the affordable housing provisions of the Act.

NEXT STEPS

It is recommended that Council approve the key LDDLA deal terms and direct staff to work with the Developer on remaining project design elements, noted above, and to authorize the Developer to submit an SB 35 application upon successful resolution of Council’s input. This process would include the following near-term steps after this Council meeting: (1) staff’s written determination affirming that Council’s input on design has been addressed; and (2) execution of the LDDLA between the City (via City Manager’s delegated authority) and the Developer. As preconditions to the Developer’s submittal of an SB 35 application, the LDDLA must be executed, and staff must make the written determination regarding project design.

After the Developer submits the SB 35 application, the City will have 90 calendar days to approve the project. After project approval, staff will begin working with the Developer on the various performance milestones as noted in the Analysis section above. Prior to disbursement of City funds (other than the previously approved predevelopment loan), the Developer will need to satisfy all of the conditions described in the LDDLA, including closing for all sources of project construction financing, the receipt of building permits or permit-ready letter, and execution of the ground lease and related documents. City funding will be provided as described in this report and in accordance with the terms set forth in the LDDLA.

FISCAL IMPACT

As discussed in the key deal terms subsection above, the \$4.25 million City subsidy amount will be composed of the City's Successor Agency funds and housing impact fees for the affordable housing component and the City's General Fund for the nonresidential/commercial component.

Regarding the \$2.6 million portion of the City subsidy for affordable housing, this is a per-unit subsidy of \$22,000, which is significantly lower than the City's average subsidy contribution across all projects (\$175,000 per unit) and significantly lower than recent projects (\$210,000 per unit to \$320,000 per unit). Even if the value of the land contribution (approximately \$10 million) is included as part of the City's affordable housing subsidy for Lot 12, the average subsidy per unit would be just \$105,000 per unit. Furthermore, \$1 million in Successor Agency funds have already been reserved for Lot 12 and must be used to meet State expenditure requirements for the fund. Otherwise, the funds will be lost. Overall, the City's affordable housing subsidy contribution for Lot 12 significantly leverages external funding sources, which will allow the City to build more affordable units across its project pipeline.

Regarding the City's \$1.65 million subsidy for the nonresidential/commercial use, this amount will come from the General Fund. Staff has evaluated this funding request and has determined that this amount is reasonable based on comparable construction costs and the provision of a new community amenity via the flex/maker space.

It is anticipated that the \$8.0 million in SB 129 funding will be a grant from the State to the City. The City would then provide the funding to the Developer as a loan together with the \$4.25 million, for a total City loan of \$12.25 million. As the loan is repaid over time, the City will be able to use the funds to provide funding for future affordable housing projects (pending additional information regarding SB 129 funding, including potential restrictions, if any).

CONCLUSION

The Lot 12 developer was selected by Council in May 2020, which concluded the Lot 12 RFQ/RFP process. Since that time, staff has worked closely with the Developer to move this important affordable housing project forward. The purpose of this meeting is for Council to approve the project's key deal terms, provide direction on project design, and authorize the Developer to submit the SB 35 application after this Council meeting upon completing modifications to the project design and execution of the LDDLA. The City will have 90 days to approve the SB 35 application once submitted and, because SB 35 applications are a ministerial approval, the project will be approved at the staff level with

no further public hearings required. Once approved, staff will work with the Developer on performance milestones to continue moving the project forward.

ALTERNATIVES

1. Provide additional direction to modify key deal terms and/or project design. If there are substantive modifications regarding key deal terms and/or project design that Council wishes to review again, do not authorize the Developer to submit the SB 35 application following this Council meeting. Instead, direct staff to work with the Developer on the items Council has identified and to return to Council for further deliberations and to consider at that time authorizing the Developer to submit the SB 35 application.
2. Provide other direction.

PUBLIC NOTICING

Agenda posting and one-quarter mile radius courtesy notice mailing.

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