



Memorandum

To: Honorable Members of the San Francisco Planning Commission
From: Michael Yarne, OEWD
Re: Brief Summary of DRAFT Parkmerced Development Agreement_10/21/10
Date: October 21, 2010

Pursuant to the request of the President of the Planning Commission, attached is a draft of the Parkmerced Development Agreement (DA), dated October 21, 2010. This draft represents all negotiations and language completed to date by the City Attorney and this office on behalf of all City Agencies that are party to this agreement, including the Planning Department, SFMTA, SFPUC, the San Francisco Rent Board, the Department of Public Works (DPW), the Mayor's Office of Housing (MOH) and the Department of the Environment. This draft is substantially complete but does not represent a final draft, as some provisions of the DA are still being refined with additional input from some of the affected agencies above, most notably SFMTA and SFPUC. Accordingly, OEWD and the Planning Department will distribute an updated redline version of this draft DA on November 4, two weeks in advance of the proposed November 18 public hearing on this document. The draft to be distributed on November 4 will highlight any new changes from this document in redline format and will include a cover memo describing the reason for any additional changes from this 10/21/10 draft. In addition, the November 4 draft DA will include a detailed Executive Summary, prepared in the conventional Planning Department format. We will also provide a public presentation at your November 4 hearing describing in detail all components of the DA, with an emphasis on the Community Improvements, rent-controlled housing replacement and tenant relocation program and the transit system improvements.

This brief memorandum summarizes the reasons for the City pursuing a DA with the Project Sponsor, Parkmerced Investors LLC, and highlights some of the key elements of the proposed DA in bullet format. Again, working with Planning Department staff, we will provide a more detailed Executive Summary of the DA in the packets distributed to the Planning Commission on November 4, two weeks in advance of the proposed November 18 hearing.

Why a Development Agreement?

A DA is a contract between a city and a developer – resulting in a legally binding promise for mutual benefits. The primary public policy intent of a DA is to provide greater certainty, flexibility and accountability to both the City and the Project Sponsor than exists under conventional California land use and entitlement laws. The state law authorizing DAs was enacted in 1979 and there are now more than 500 DAs throughout the state, ranging from 10,000-unit subdivisions to single buildings.

The state law permits virtually open-ended bargaining between developers and local governments. As a result, there is no need to follow traditional nexus laws (the state Mitigation Fee Act) or existing land use ordinances. The primary requirement is that a City must

demonstrate that the DA would result in greater public benefits than what could be achieved through application of existing ordinances and regulations. In exchange, the City gets a document that provides for far greater control over the type and delivery of public improvements and benefits than conventional land use approvals would allow.

Accordingly, local governments can be more creative when negotiating with developers than under conventional zoning procedures (e.g., enforcing a requirement that every existing rent-controlled unit at Parkmerced be replaced with a new rent-controlled unit, and that every existing tenant be provided with a replacement unit at a rent equal to their current their current rent, in a replacement unit of similar or greater size). In exchange, DAs provide developers with certainty and simplicity. They can be protected from subsequent changes in zoning or density or design guidelines.

DAs are most often used by local governments to ensure the orderly development of long-term, large-scale projects with substantial public benefit infrastructure investment and multi-phase build-outs, like Mission Bay. DAs provide local governments a legally sound vehicle to negotiate the scope and implementation of complex public benefit packages that are enforceable over a long time periods, through annual monitoring and other contract-based enforcement mechanisms, such as specific performance and default and cure rights.

In the case of Parkmerced, the DA provides the City with a powerful enforcement tool to shape the long-term transformation of a resource-intensive, auto-centered neighborhood into an environmentally sustainable, transit-oriented neighborhood, while securing substantial free infrastructure upgrades to the City's transit, bicycle and stormwater systems and guaranteeing one-for-one replacement of all rent-controlled units with new, upgraded units. These benefits would not be achievable absent the legal structure of a DA.

Brief Summary of the Contents of the Draft Parkmerced Development Agreement

The proposed DA grants a 30-year term, subject to extensions for excusable delays, for the Project Sponsor to build-out a detailed program of private and public uses on the Project Site. The Project will, upon implementation, increase residential density, provide a neighborhood core with new neighborhood-serving commercial and retail services, reconfigure the street network and public realm, improve and enhance the Project Site's open space amenities, modify and extend existing neighborhood transit facilities, and improve utilities, most notably the stormwater system, within the Project Site. At build-out, the Project would retain approximately half of the existing apartments as part of the final Project Site. The remaining half of the existing units would be demolished over time and replaced with the rent-controlled replacement units, and approximately 5,679 net new residential units would be added to the Project Site. In total, upon completion of the Project, there will be up to 8,900 units on the Project Site (1,683 existing-to-be-retained units + 1,538 newly constructed Replacement Units + 5,679 newly constructed units = 8,900 units). The Project Site would also be developed with approximately 290,000 sq-ft of mixed-use commercial development with accessory parking and loading.

The following is a bulleted list summarizing the primary Community Improvements that must be phased in over time in proportion to the pace of private development on the Project Site:

- One-for-one replacement of all 1,538 rent-controlled "garden court" dwelling units currently existing on the Project Site ("Existing Units") and proposed for eventual demolition with new rent-controlled units (i.e., units that are subject to the provisions of the San Francisco

Rent Ordinance), each with the same or greater number of bedrooms and bathrooms as the Existing Unit being replaced (“Replacement Units”).¹ All Existing Tenants shall be entitled to relocate to a Replacement Unit of approximately similar or greater size and with the same or greater number of bedrooms or bathrooms as their Existing Unit. The Developer is required to pay for the relocation of Existing Tenants to Replacement Units, with an initial rent and pass through charges equal to the rent and pass through charges charged to the Existing Tenant for their Existing Unit at the time of relocation to the Replacement Unit, with the right to remain in the Replacement Unit for an unlimited term subject to the eviction rules, procedures and protections set forth in the San Francisco Rent Ordinance, with no pass through added to rent of the Replacement Unit for the capital costs of the Project.

- Upon execution of this DA, the Developer is waiving all rights under the Costa-Hawkins Rental Housing Act and any successor law so that each Replacement Unit will be subject to rent control and other provisions and provisions protecting tenants under the San Francisco Rent Ordinance and each Inclusionary Unit will be subject to the City’s Affordable Housing requirements set forth in Planning Code Section 415 in perpetuity.
- Construction of two new SFMTA transit stations, relocation of an existing transit station (the SF State station at Holloway and 19th Avenue), and construction of a new rail system and alignment for the SFMTA light rail M-Oceanview, integrated into the existing SFMTA transit system, that will leave 19th Avenue at Holloway Avenue and proceed through the neighborhood core.
- Provision and ongoing operations of a low emissions shuttle bus from Parkmerced to the Daly City BART station and to the Stonestown retail center.
- Reconfiguration of the street grid within the Project Site to conform with San Francisco’s Better Streets design guidelines, including the realignment of existing streets and the creation of new publicly-owned streets and privately-owned but publicly-accessible streets that accommodate bicycles, pedestrians and motor vehicles.
- Improvement and reconfiguration of streets and intersections on the periphery of the Project Site to improve access and safety for all modes of transportation.
- Creation and implementation of a Transportation Demand Management (“TDM”) program, including but not limited to transit pass subsidies for residents and employees in the Project Site, to facilitate and encourage the use of transportation modes other than the private automobile, to minimize the amount of automobile traffic originating from Parkmerced and to improve traffic flow on adjacent roadways such as 19th Avenue and Brotherhood Way.
- Reconfiguration of the existing open space at Parkmerced to provide more usable open spaces and related public benefits such as a new park, athletic fields, an organic farm, walking and bicycling paths, and community gardens.
- Construction of a series of bio-swales, ponds, and other natural filtration systems to capture and filter stormwater runoff from buildings and streets. The filtered stormwater will either percolate into the groundwater that feeds the Upper Westside groundwater basin and Lake Merced or be released directly into Lake Merced. This feature of the Proposed Project will

¹ Although none of the Existing Units have washer or dryers, each Replacement Unit will have a washer and a dryer and a dish washer installed by Developer prior to occupancy.

reduce the amount of stormwater flows directed to the Oceanside Water Pollution Control Plant and help reduce combined sewage overflows to the ocean.

- Zoning of a parcel within the Project Site that does not principally permit any other use but a school, which may be publicly or privately owned and operated.

Some key concepts contained in the Development Agreement:

- Other than the existing City streets, the City owes no land within the Project Site and will, at the end of the build-out, own more land as a result of transfers of existing private property to the City to accommodate the reconfigured Better Streets system, as well as the new SFMTA light rail “M” line extension and stations. The City is paying nothing for these acquisitions.
- The City is expending no public funds for any physical component of the defined project scope. Any City Agency staff time and materials expended on preparation of the DA, and all subsequent City approval processes and technical reviews for implementation over the 30-year period will be reimbursed by the Developer.
- Because the City has no land or funds invested in the proposed Project, the DA does not require or mandate that any private development actually take place on the Project site, or that any Community Improvement be constructed. Instead, it requires that when private development does proceed, it must adhere to the detailed urban design and public realm guidelines set forth in the Parkmerced Design Standards and Guidelines, and all other associated Parkmerced Plan Documents.
- The document defines all negotiated “Community Improvements”—those benefits enforced by the DA above and beyond what normal City codes and CEQA mitigations would require—on page 7 of the draft DA. They are each specifically listed in the Phasing Plan, which is Exhibit E to the DA.
- All of Community Improvements are required to be phased-in over the period of the build-out of the Project, whether that build-out occurs in 10 or 30 years. Their phasing is based on a “Proportionality, Priority and Proximity Requirement” that requires that each Community Improvement be delivered commensurate with the added density and traffic generated by the Project. Specifically, the City has agreed to allow Developer flexibility in the order and timing of the proposed development included in the Project, including allowing discretion in what amount of net new development will be included in each Development Phase, but in return the City must approve each Development Phase Application to ensure that (1) the Community Improvements for each Development Phase are proportional to the cumulative amount of private development to occur in each Development Phase, (2) the Community Improvements are implemented in order of public policy priority as set forth in the Phasing Plan, and (3) to the extent that the priority requirement is satisfied, that any additional Community Improvements are provided in geographic proximity to the private development in each proposed Development Phase, and (4) the timing and phasing of the Community Improvements are consistent with the operational needs and plans of all affected City Agencies, and are phased in such a way as to not interfere with the utility and transportation systems operated and maintained by the City.
- With regard to Public Improvements subject to a DPW Street Improvement Permit that must be completed to obtain a first Certificates of Occupancy for a building, the Proportionality,

Priority and Proximity Requirement is effectively satisfied by virtue of the requirement that pursuant to existing Municipal Code requirements, all such improvements must be substantially complete prior to issuance of a First Certificate of Occupancy for each and every building within the Project.

- Every project within the Project Site, whether a private building or a Community Improvement, is subject to a Design Review Approval process that grants the Planning Department and all affected City Agencies the discretion to review and modify the submittal to ensure its consistency with all Municipal Codes in effect at the time the Application is submitted, consistent with the Parkmerced Plan Documents and more specifically the Parkmerced Design Standards and Guidelines. Each Design Review Approval serves as an entitlement under the DA. This process guarantees the City and the public right to review (and enforce) the incremental build-out and Community Benefits proposed in each Development Phase Approval, consistent with Proportionality, Priority and Proximity Requirements and the Parkmerced Plan Documents.
- The Developer is required to maintain all Community Improvements and Public Improvements that are not accepted by City for public maintenance. A map of the Project Site identifying all Community Improvements and Public Improvements subject to this on-going maintenance and operations obligation, and the respective land area of each sub-category of space (including, for example, the park and open space system, bio-swales, public sidewalk and streetscape areas, etc.) is attached to the DA as Exhibit H. The provisions of obligation survive the expiration of the DA. In order to ensure that the Community Improvements are maintained, the DA requires that the Developer record Covenants, Conditions, and Restrictions (“CC&Rs”) that include a requirement that a master home owner’s association (“Master HOA”) provide all necessary and ongoing maintenance and repairs at no cost to the City, with appropriate home owners’ dues to provide for such maintenance. The proposed budget for the on-going maintenance and operations of the Community Improvements shall be subject to the review and approval by OEWD and the Planning Department, based on a third-party consultant study verifying the commercial reasonableness of an initial and 20-year “build-out” budget. The CC&Rs shall be subject to the reasonable review and approval by the City Attorney, OEWD, and the Planning Department and provide the City a third party right to enforce these maintenance provisions.