

REPORT TO CITY COUNCIL

DATE: JULY 9, 2008

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER

BY: MIKE KAMINO, DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT

SUBJECT: IN-LIEU FEE SCHEDULE RESOLUTION RELATED TO THE INCLUSIONARY HOUSING ORDINANCE (CASE NO. 08-ZOA-002)

The purpose of this item is to adopt a Fee Schedule (Attachment 1) related to the Inclusionary Housing Ordinance. On June 25, 2008, the City Council approved Zoning Ordinance Amendment No. 08-353, the Inclusionary Housing Ordinance (Attachment 2). The Ordinance requires that residential developers of projects of 10 or more units designate 15 percent of the units as affordable housing. The Ordinance also provides alternatives to constructing the required affordable units on the primary development site, at the discretion of the Planning Commission. Where the provision of affordable units onsite is determined to be economically infeasible, the Ordinance allows the following, in order of preference: 1) offsite construction of the affordable units; 2) donation of offsite land, the value of which is at least equal to the in-lieu amount that would be applied to the project; 3) in-lieu fee, as established by a fee schedule. The Ordinance states that the amount of the fee shall be calculated using the fee schedule established by resolution of the City Council.

The Ordinance further stipulates that one-half of the in-lieu fee shall be paid (or an irrevocable letter of credit posted) prior to issuance of a building permit for all or any part of the residential development, and that the remainder of the fee shall be paid before a certificate of occupancy is issued for any unit in the residential development. The fees collected would be deposited in the City's Inclusionary Housing Trust Fund for use exclusively for the development of housing units offsite that are affordable to very low-, low-, or moderate-income households in the City.

As with the Inclusionary Housing Ordinance, this Fee Schedule would not apply in the Redevelopment Project Area, where other provisions for affordable housing apply per the California Redevelopment Law.

RSG, Inc., the City's redevelopment housing consultant, prepared detailed data to demonstrate how the in lieu fee amount was derived in a report entitled, "Agoura Hills Inclusionary Housing Ordinance and In-Lieu Fee Update Memorandum Nexus Report" (Attachment 3). Rather than identify the developer's financial impact from providing the affordable units as being equal to the difference between the market rate sales prices or rents and the affordable sales or rental price for

the affordable units, the difference in the construction costs between the market rate and affordable units is used. The estimated construction funding gap for ownership units (primarily condominiums) is \$145,475 per unit, and is \$102,084 for rental apartments. This difference is referred to as the funding gap. The funding gap is then translated into the in-lieu fee amount that would have to be charged to provide the City with adequate funds to produce the required inclusionary units off site with a similar product type at another location in the City. RSG has calculated the in-lieu fee as \$21,821 for ownership units and \$15,313 for rental units. The total amount of fee is determined by applying these factors to the entire number of dwelling units proposed onsite (not just the portion of the units that are allocated as affordable). RSG evaluated these in-lieu fees with those of other cities, and found them to be comparable.

The Inclusionary Housing Ordinance provides that the fee formula be reviewed within 18 months from the date the resolution is adopted, and thereafter, for a minimum of every five years, coinciding with the Housing Element update.

The adoption of the resolution is not considered a project per the California Environmental Quality Act (CEQA). Consistent with CEQA Section 15378(b)(4), the resolution includes the creation of a government funding mechanism that does not involve any construction of a specific project that may result in a potentially significant impact on the environment.

The City Attorney has reviewed the resolution and has found it acceptable as to form. Jim Draughon of RSG will be present at the meeting to provide a presentation and respond to questions.

RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 08-1488, regarding the Inclusionary Housing Ordinance in lieu fee schedule, and adopt the In Lieu Fee Update Memorandum Nexus Report.

- Attachments:
1. Fee Schedule Resolution No. 08-1488
 2. Inclusionary Housing Ordinance (No. 08-353)
 3. Agoura Hills Inclusionary Housing Ordinance and In Lieu Fee Update Memorandum Nexus Report prepared by RSG (March 3, 2008)

RESOLUTION NO. 08-1488

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, ESTABLISHING A FEE SCHEDULE PURSUANT TO THE INCLUSIONARY HOUSING ORDINANCE

THE CITY COUNCIL OF THE CITY OF AGOURA HILLS HEREBY FINDS, RESOLVES, AND ORDERS AS FOLLOWS:

WHEREAS, the Inclusionary Housing Ordinance (Municipal Code section 9133 et seq.) requires developers of residential projects to include affordable housing units in the project or, in some cases, to pay a fee in-lieu of including the units; and

WHEREAS, Municipal Code Paragraph A of Subsection 9133.6 provides that the City Council shall adopt a resolution setting forth the amount of the fee. The fee shall reflect the average estimated cost of otherwise providing the required affordable housing units; and

WHEREAS, RSG Inc., a consulting firm commissioned by the City to study housing affordability in Agoura Hills, issued a study in March 2008 (“Agoura Hills Inclusionary Housing Ordinance and In-Lieu Fee Update Memorandum Nexus Study”) addressing the relatively high gap between market rate prices and rents for housing units in the City and prices and rents affordable to very low-, low-, and moderate- income households, as well as a detailed analysis for the estimated construction funding deficit (gap) related to constructing the affordable housing units on site. The study included a proposed per unit in-lieu fee amount for ownership projects and rental projects to reflect 100 percent of the identified housing affordability gap based on the estimated construction funding gap to develop the inclusionary units; and

WHEREAS, the fees will be placed in the City’s Inclusionary Housing Trust Fund and used exclusively for the development of affordable housing within the City; and

WHEREAS, there is a reasonable relationship between the need for affordable housing and the impacts of market-rate housing development within the City. There is also a reasonable relationship between the fee’s use and the impacts of market-rate housing development. Development of new market-rate housing encourages new residents to move to the City and place increased demands on services provided by both the public and private sectors. Some of the public and private sector workforce employees needed to meet the needs of the new residents earn incomes that only allow the employees to be able to afford very low-, low-, or moderate-income housing. This type of affordable workforce housing is in very short supply within the City. The fees will be used to help increase the supply of affordable workforce housing in the City; and

WHEREAS, a public hearing was duly held on July 9, 2008, at 7:00 p.m. in the Council Chambers of City Hall, 30001 Ladyface Court, Agoura Hills, California. Notice of the time, date, and place and purpose of the aforesaid was duly given; and

WHEREAS, evidence, both written and oral, was duly presented to and considered by the City Council at the aforesaid public hearing; and

WHEREAS, the provisions of the Municipal Code amendments and fee schedule resolution contained herein have been reviewed and considered by the City Council in accordance with the provisions of the California Environmental Quality Act (CEQA), as amended, and the CEQA Guidelines promulgated thereunder. This fee schedule resolution is not considered a project under CEQA, per Section 15378(b)(4), since it includes the creation of a government funding mechanism that does not involve any construction of a specific project that may result in a potentially significant impact on the environment.

NOW, THEREFORE, the City Council of the City of Agoura Hills resolves as follows:

1. Municipal Code section 9133 provides in part that the developer of a Residential Development of 10 or more units has the option of providing an affordable unit on site or paying an in-lieu fee. The amount of the in-lieu fee shall be based on the following per unit fee schedule. The total amount of the in-lieu fee is determined by identifying the total number of market rate units in the project multiplied by the applicable ownership or rental in-lieu fee amount.

Ownership Projects Fee Amount:	\$21,821 per Market Rate Unit
Rental Projects Fee Amount:	\$15,313 per Market Rate Unit

The foregoing formula and fee schedule shall also be used to determine the requisite value of land that may be donated as an alternative to providing the affordable units, in whole, on site pursuant to Municipal Code paragraph B of subsection 9133.6.

2. Municipal Code subsection 9133.6 provides that the inclusionary requirement may be fulfilled in whole or in part, by (B) donation of land, and (C) in-lieu fee payment. If the requirement is satisfied in part on site, the fee schedule for calculating the in-lieu fee payment for remaining requirement for the income category units not developed onsite shall be as follows:

Very Low-Income Rental Units:	\$149,350 per each required inclusionary unit.
Low-Income Rental Units:	\$132,935 per each required inclusionary unit.
Moderate-Income Rental Units:	\$8,215 per each required inclusionary unit.
Very Low-Income Ownership Units:	\$213,810 per each required inclusionary unit.
Low-Income Ownership Units:	\$145,337 per each required inclusionary unit.
Moderate-Income Ownership Units:	\$54,465 per each required inclusionary unit.

The foregoing fee schedule shall also be used to determine the requisite value of land that may be donated as an alternative to providing the affordable units, in part, on site pursuant to Municipal Code paragraph B of subsection 9133.6.

3. The foregoing formula will be reviewed and the in-lieu fee amounts re-established if necessary, within an eighteen (18) month period from the date this Resolution is adopted, and thereafter, a minimum of every five years, coinciding with the Housing Element update.

4. Effective Date. The fees specified in this Resolution shall take effect thirty (30) days following the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED, this 9th day of July, 2008, by the following vote to wit;

AYES: ()
NOES: ()
ABSENT: ()
ABSTAIN: ()

John M. Edelston, Mayor

ATTEST:

Kimberly M. Rodrigues, City Clerk

APPROVED AS TO FORM:

Craig A. Steele, City Attorney

ORDINANCE NO. 08-353

AN ORDINANCE OF THE CITY OF AGOURA HILLS REVISING REGULATIONS APPLICABLE TO THE PROVISION OF INCLUSIONARY HOUSING, AND AMENDING SECTION 9133 OF PART 4 OF CHAPTER 1 OF TITLE IX OF THE CITY OF AGOURA HILLS MUNICIPAL CODE

A. Recitals.

- (i) The purpose of this Ordinance is to amend the City's Municipal Code to update the regulations pertaining to the provision of inclusionary housing units in the City.
- (ii) On June 25, 2008, the City Council of the City of Agoura Hills conducted and concluded a duly noticed public hearing concerning the zoning code amendments contained herein as required by law.
- (iii) At the public hearing on June 25, 2008, the City Council received testimony from City staff and all interested parties regarding the proposed amendments.
- (iv) All legal prerequisites to the adoption of the Ordinance have occurred.

B. Ordinance.

NOW, THEREFORE, the City Council of the City of Agoura Hills hereby ordains as follows:

Section 1. The facts set forth in the Recitals, Part A of this Ordinance, are true and correct.

Section 2. The provisions of this Ordinance and the Municipal Code amendments contained herein have been reviewed and considered by the City Council in accordance with the provisions of the California Environmental Quality Act (CEQA), as amended, and the CEQA Guidelines promulgated thereunder. The City Council held a public hearing on June 25, 2008 to consider the Negative Declaration. Evidence, both written and oral, was duly presented to and considered by the City Council at this said hearing. The City Council finds that the Negative Declaration has been completed in accordance with the CEQA Guidelines, and there was adequate review given of the Draft Negative Declaration. The Negative Declaration adequately discusses all significant environmental issues, and reflects the independent judgment and analysis of the City. The City Council has considered the contents of the Negative Declaration in its decision-making processes of the Zoning Ordinance Amendment, and hereby adopts the Negative Declaration.

Section 3. Section 9133 of Part 4 of Chapter 1 of Title IX of the Agoura Hills Municipal Code is hereby repealed in its entirety.

Section 4. New Section 9133. Inclusionary Housing is hereby added to Part 4 of Chapter 1 of Title IX of the Agoura Hills Municipal Code.

**“Section 9133
INCLUSIONARY HOUSING**

Subsections:

- 9133.1 Purpose**
- 9133.2 Definitions**
- 9133.3 Applicability**
- 9133.4 Exemptions**
- 9133.5 Inclusionary Unit Requirements**
- 9133.6 Alternatives**
- 9133.7 Procedures**
- 9133.8 Standards**
- 9133.9 Enforcement**
- 9133.10 Regulations**
- 9133.11 Inclusionary Housing Trust Fund**
- 9133.12 Administrative Fees**
- 9133.13 Appeal**
- 9133.14 Taking Determination**

9133.1 Purpose

The provisions of this section establish standards and procedures that encourage the development of housing affordable to a range of households with varying income levels. The purpose of this section is to encourage the development and availability of such housing by ensuring that the addition of affordable housing units to the City’s housing stock is in proportion with the overall increase in new housing units and to provide standards and procedures to that effect.

9133.2 Definitions

As used in this section, the following terms shall have the following meanings:

“Adjusted for Household Size Appropriate for the Unit” means for a household of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

“Affordable Housing Cost” means the total housing costs paid by a qualifying household, which shall not exceed a specified fraction of its gross income, adjusted for household size appropriate for the unit, as follows:

- A. Very Low-Income Households, rental or for-sale units: thirty (30) percent of fifty (50) percent of the Los Angeles County median income.

- B. Low Income-Households, rental units: thirty (30) percent of sixty (60) percent of the Los Angeles County median income.
- C. Low Income-Households, for-sale units: thirty (30) percent of seventy (70) percent of the Los Angeles County median income.
- D. Moderate-Income Households, rental units: thirty (30) percent of one hundred and ten (110) percent of the Los Angeles County median income
- E. Moderate-Income Households, for sale units: thirty-five (35) percent of one hundred and ten (110) percent of the Los Angeles County median income.

“Developer” means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities, which seeks City approvals for all or part of a residential development.

“Development Agreement” means an agreement entered into between the City and a developer pursuant to Section 65864 of the California Government Code and Sections 9681 and 9682 of Division 1, Part 4 of Title IX of the City of Agoura Hills Municipal Code.

“Director” means the City’s Director of Planning and Community Development.

“Discretionary Approval” means any entitlement or approval pursuant to Section 9133 of the Municipal Code, including but not limited to a use permit, variance, design approval, and subdivision map.

“Dwelling Unit” One (1) or more rooms, designed, occupied, or intended for occupancy as separate living quarters, with full cooking, sleeping, and bathroom facilities for the exclusive use of a single household.

“HCD” The California Department of Housing and Community Development.

“HUD” The United States Department of Housing and Urban Development.

“Inclusionary Housing Agreement” means a legally binding agreement between a developer and the City, in form and substance satisfactory to the Director and City Attorney, setting forth those provisions necessary to ensure that the requirements of this section, whether through the provision of inclusionary units or through an alternative method, are satisfied.

“Inclusionary Housing Plan” means the plan referenced in paragraph “A” of Subsection 9133.8 and further described in the regulations, which sets forth the manner in which the requirements of this section will be implemented for a particular residential development.

“Inclusionary Housing Trust Fund” shall have the meaning set forth in subsection 9133.12.

“Inclusionary Unit” means a dwelling unit that will be offered for rent or sale to and for occupancy by very low, low and moderate-income households, at an affordable housing cost, pursuant to this section.

“In-Lieu Fee” A fee paid to the City by a developer instead of providing the required inclusionary units.

“Low-Income Households” means households whose gross income is greater than 50% and does not exceed eighty (80%) percent of the median income for Los Angeles County as determined annually by HCD based on household income data promulgated by HUD.

“Low-Income Units”; “Moderate-Income Units”; and “Very Low-Income Units” mean inclusionary units restricted for sale or rent to and for occupancy by low, moderate, or very low-income households, respectively, at an affordable housing cost.

“Market Rate Units” means those dwelling units in a residential development that are not inclusionary units.

“Moderate Income Households” means households whose gross income is greater than 80% and does not exceed one hundred and twenty (120%) percent of the median income for Los Angeles County as determined annually by HCD based on household income data promulgated by HUD.

“Off Site Construction” Erection of affordable housing units on land other than that on which the developer intends to place a project within the City.

“Redevelopment Agreement” means an Owner Participation Agreement, Disposition and Development Agreement, Affordable Housing Agreement, Regulatory Agreement or similar agreement entered into between the City of Agoura Hills Redevelopment Agency and a developer.

“Regulations” means the regulations adopted by the Agoura Hills City Council pursuant to Subsection 9133.11 for the implementation and enforcement of the provisions of this section.

“Residential Development” means the construction of projects consisting of ten (10) or more dwelling units.

“Substantial Rehabilitation” or “Substantially Rehabilitated” means the rehabilitation of a dwelling unit(s) for very low and low income households, which has substantial building and other code violations, and has been vacant for at least six (6) months, such that the unit is returned to the City’s housing supply as decent, safe, and sanitary housing, and the cost of such work exceeds Forty Thousand Dollars (\$40,000) per unit, as that amount may be adjusted for inflation pursuant to the Regulations.

“Total Housing Costs” means the total monthly or annual recurring expenses required of a household to obtain shelter. For a rental unit, total housing costs include the monthly rent payment and a reasonable allowance for utilities. For an ownership unit, total housing costs include the mortgage payment (principal and interest), mortgage insurance, property taxes, property insurance, utilities, homeowner’s association dues, and any other related fees and assessments.

“Very Low Income Households” means households whose gross income is equal to fifty (50%) percent or less of the median income for Los Angeles County as determined annually by HCD based on household income data promulgated by HUD.

9133.3 Applicability

This subsection shall apply to all residential developments, except those that are exempt pursuant to Section 9133.4, and excluding here from residential developments located in the Agoura Hills Redevelopment Project Area, which are separately subject to inclusionary housing requirements under the California Health and Safety Code Section 33000 et seq., and related regulations and policies of the Agoura Hills Redevelopment Agency.

9133.4 Exemptions

The following residential developments are exempt from the requirements of this Section:

A. Residential developments that obtain a variance, conditional use permit, or design review approval (pursuant to Sections 9676, 9673, and 9677 of Division 6 of Part 3 of Title IX of the Municipal Code, respectively) from the City prior to the effective date of this section, which obtain a building permit pursuant to that discretionary approval within one year of the effective date of this section, and which obtain a certificate of occupancy pursuant to that same discretionary approval.

B. Residential developments that are exempt from this section pursuant to state law, including, but not limited to, those for which the City enters into a development agreement.

C. Residential developments for which the Redevelopment Agency enters into a Redevelopment Agreement, so long as the Redevelopment Agreement is in full force and effect at the time the residential development would otherwise be required to comply with the requirements of this Section, and there is no uncured breach of the Redevelopment Agreement prior to the earlier of a) issuance of Certificate of Completion for the Redevelopment Agreement, or b) issuance of the first certificate of occupancy for the residential development.

9133.5 Inclusionary Unit Requirements

A. Affordable inclusionary units shall be reserved for very low, low and moderate income households. Such units shall be provided at affordable housing cost, as defined by California Health and Safety Code Section 50052.5 for owner-occupied units and Section 50053(b) for rental units, which calculates affordable housing rates for each applicable income category. At least fifteen percent (15%) of all newly constructed dwelling units in residential developments shall be developed, sold to or rented to, and occupied by very low, low and moderate-income households, at an affordable housing cost. A minimum of six percent (6%) of all the units shall be sold to or rented to very

low income households; the remaining nine percent (9%) shall be sold to or rented to low or moderate income households.

B. The City shall on an annual basis set the maximum allowable rents and sale prices for inclusionary units, adjusted for family size.

C. The inclusionary unit requirement set forth in Paragraph A of this subsection may be reduced as follows:

1. If very low-income units are provided in lieu of required low income units, a credit of 1.5 units shall be granted for every 1 unit actually provided.

2. If very-low income units are provided in lieu of required moderate income units, a credit of 2 units shall be granted for every 1 unit actually provided.

3. If low-income units are provided in lieu of required moderate income units, a credit of 1.5 units shall be granted for every 1 unit actually provided.

D. In calculating the required number of inclusionary units, fractional units of 0.50 or above will be rounded-up to a whole unit if the residential development consists of ten (10) or more units.

E. In setting priorities among eligible households, first priority shall be given to public safety employees and primary and secondary school teachers. Second priority shall be given to Agoura Hills' residents. Third priority shall be given to persons employed within Agoura Hills. Fourth priority shall be given to all other persons.

9133.6 Alternatives

As an alternative to developing the inclusionary units in the residential development pursuant to Subsection 9133.5, the requirements of this section may be satisfied at the Planning Commission's discretion by off-site development of required units, donation of off-site land, or an in-lieu fee payment. Where provision of affordable units onsite is determined to be economically infeasible, off-site units are preferred, followed by donation of off-site land, to payment of an in-lieu fee. If neither on site or off-site mitigation is feasible, an in lieu housing fee will be collected in accordance with procedures and standards set forth in the regulations.

A. Off-site units. Upon application by the developer and at the discretion of the Planning Commission, the developer may satisfy the requirement of providing inclusionary units as part of the residential development, in whole or in part, by constructing or substantially rehabilitating the required inclusionary units at a site different than the site of the residential development.

B. Land Donation. Upon application by the developer and at the discretion of the Planning Commission, the developer may satisfy the requirement of providing inclusionary units as part of the residential development, in whole or in part, by conveying land to the City for the construction of the required inclusionary units. The

donated land must at least be equal in value to the in lieu amount that would be applied to the project, vacant and suitable for development for affordable housing units, and fully served by utilities and related infrastructure improvements.

C. In-Lieu Fee. At the discretion of the Planning Commission, the developer may satisfy the requirement for providing inclusionary units as part of the residential development, in whole or in part, by paying a fee in lieu for all or some of the inclusionary units as follows:

1. The amount of the fee shall be calculated using the fee schedule established by resolution of the City Council.
2. One-half of the in-lieu fee required by this subsection shall be paid (or an irrevocable letter of credit posted) prior to issuance of a building permit for all or any part of the residential development. The remainder of the fee shall be paid before a certificate of occupancy is issued for any unit in the residential development.
3. The fees collected shall be deposited in the Inclusionary Housing Trust Fund for use exclusively for the development of housing units affordable to very low, low or moderate income households.

9133.7 Procedures

A. At the times and in accordance with the standards and procedures set forth in the regulations, developers shall:

1. Submit an inclusionary housing plan for approval by the Director, setting forth in detail the manner in which the provisions of this section will be implemented for the proposed residential development.
2. Execute and cause to be recorded an inclusionary housing agreement unless developer is complying with this section pursuant to paragraphs “B” (land donation) or “C” (in lieu fee) of Subsection 9133.6.

B. No discretionary approval shall be issued for all or any portion of a residential development subject to this section until the developer has submitted an inclusionary housing plan.

C. No building permit shall be issued for all or any portion of a residential development subject to this section unless the Director has approved the inclusionary housing plan, and the inclusionary housing agreement, if required, recorded.

D. No certificate of occupancy shall be issued for all or any portion of a residential development subject to this section unless the approved inclusionary housing plan has been fully implemented.

9133.8 Standards

A. All inclusionary units shall be:

1. Reasonably dispersed throughout the residential development.

2. Proportional, in number, bedroom size and location, to the market rate units.
3. Comparable with the market rate units in terms of the base design, appearance, materials and finished quality.

B. All inclusionary units in a residential development shall be constructed concurrently with or prior to the construction of the market rate units. In the event the City approves a phased project, the inclusionary units required by this section shall be provided within each phase of the residential development.

C. Inclusionary units shall be reserved for very low, low and moderate income households at the ratios established pursuant to California Health and Safety Code Section 33413(b)(2) and shall be provided at the applicable affordable housing cost.

1. An inclusionary unit that is for rent shall remain restricted for occupancy by the target income category at the applicable affordable housing cost for a period of not less than fifty-five (55) years.
2. An inclusionary unit that is for sale shall remain restricted for owner-occupancy the target income category at the applicable affordable housing cost for a period of not less than forty-five (45) years.

The occupancy and rents of the inclusionary units shall be governed by the terms of a deed restriction recorded with the property.

D. Notwithstanding paragraph C (2) of this Subsection 9133.8, if an inclusionary unit for-sale is sold to an above moderate income purchaser, the sale shall result in a recapture by the City or its designee of a financial interest in the unit equal to (1) the difference between the initial affordable sales price and the appraised “fair market” value of the unit at the time of the initial sale, and (2) a proportionate share of any appreciation, provided that there are no more restrictive agreements executed by and between the home owner and the City or Redevelopment Agency, in which case the more restrictive requirement will apply.

E. Where the developer contends that onsite provision of inclusionary units is economically infeasible, the developer may request that the Planning Commission review the proposed residential development for a determination of economic infeasibility. The developer is required to submit to the City all necessary documentation demonstrating economic infeasibility. Upon a determination of economic infeasibility by the Planning Commission, the units may then be provided at another location in the City’s jurisdiction at the Planning Commission’s discretion. Any such off-site inclusionary units shall be completed prior to the issuance of a certificate of occupancy for the market rate housing development. The occupancy and rents of any such off-site units shall be governed by the terms of a deed restriction similar to that used for onsite inclusionary units, as referenced in Paragraph C of Subsection 9133.8.

9133.9 Enforcement

A. Any violation of this section constitutes a misdemeanor.

B. The provisions of this Section shall apply to all Developers and their agents, successors and assigns proposing a Residential Development. All Inclusionary Units shall be rented or sold in accordance with this Section and any regulations adopted pursuant to this section.

C. Any individual who sells or rents an Inclusionary Unit in violation of the provisions of this Section shall be required to forfeit all monetary amounts so obtained. Recovered funds shall be deposited into the Inclusionary Housing Trust Fund.

D. The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Section, including but not limited to: (1) actions to revoke, deny or suspend any permit, including a building permit, certificate of occupancy, or discretionary approval; and (2) actions for injunctive relief or damages.

E. In any action to enforce this Section or an Inclusionary Housing Agreement recorded hereunder, the City shall be entitled to recover its reasonable attorney's fees and costs.

9133.10 Regulations

The City Council may by resolution establish additional regulations for the implementation of this section.

9133.11 Inclusionary Housing Trust Fund

There is an established separate fund of the City, known as the Inclusionary Housing Trust Fund. All monies collected pursuant to Paragraph "C" of Subsection 9133.6 shall be deposited in the Inclusionary Housing Trust Fund.

9133.12 Administrative Fees

The City Council may by resolution establish reasonable fees and deposits for the administration of this Chapter.

9133.13 Appeal

Within fifteen (15) calendar days after the date of the Director's decision, an appeal may be filed pursuant to Section 9804 of Division 4 of Part 1 of Chapter 8 of Title IX of the Municipal Code in which appeal procedures are set forth.

9133.14 Taking Determination

A. Commencing upon the approval or disapproval of the inclusionary housing plan by the Planning Commission pursuant to the regulations, and within fifteen (15) days

thereafter, a developer may request a determination that the requirements of this section, taken together with the inclusionary incentives, as applied to the residential development, would legally constitute a taking of property of the residential development without just compensation under the California or Federal Constitutions.

B. The developer has the burden of providing economic information and other evidence necessary to establish that application of the provisions of this section to the residential development would constitute a taking of the property of the proposed residential development without just compensation. The Director shall make the determination, which may be appealed in the manner and within the time set forth in Subsection 9133.13, except that the City Council shall serve as the review body.

C. In making the taking recommendation or determination, the decision maker shall assume each of the following:

1. Application of the inclusionary housing requirement to the residential development;
2. Application of the inclusionary incentives;
3. Utilization of the most cost-efficient product type for the inclusionary units; and
4. External funding where reasonably likely to occur.

D. If it is determined that the application of the provisions of this section would be a taking, the inclusionary housing plan shall be modified to reduce the obligations in the inclusionary housing component to the extent and only to the extent necessary to avoid a taking. If it is determined no taking would occur though application of this section to the residential development, the requirements of this section remain applicable.”

Section 5. On or before the date that is forty-two (42) months after the effective date of this Ordinance, the Director shall prepare and present to the City Council an evaluation of the effectiveness of Section 9133 during the first three (3) years of its implementation, and recommendations for changes (if any), to be followed thereafter with an annual summary report.

Section 6. If any section, subsection, sentence, clause, portion, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses, portions, or phrases of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, portion, or phrase without regard to whether any other section, subsection, sentence, clause, portion, or phrase of the Ordinance would be subsequently declared invalid or unconstitutional.

Section 7. The City Clerk shall certify the adoption of this Ordinance and cause its publication in accordance with applicable law.

PASSED, APPROVED AND ADOPTED this 9th day of July 2008, by the following vote to wit:

AYES: ()
NOES: ()
ABSENT: ()
ABSTAIN: ()

John M. Edelston, Mayor

ATTEST:

Kimberly M. Rodrigues, City Clerk

APPROVED AS TO FORM:

Craig A. Steele, City Attorney



INTELLIGENT COMMUNITY DEVELOPMENT

ROSENOW SPEVACEK GROUP INC.
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Via Electronic Mail

DATE: March 3, 2008

TO: Mike Kamino, Director of Planning and Redevelopment
CITY OF AGOURA HILLS

FROM: Jim Draughon, Housing Manager

SUBJECT: **AGOURA HILLS INCLUSIONARY HOUSING ORDINANCE AND IN-LIEU FEE
UPDATE MEMORANDUM NEXUS REPORT**

Rosenow Spevacek Group Inc. (RSG) prepared the following evaluation pertaining to updating the City of Agoura Hills (the "City") Inclusionary Housing Ordinance (Ordinance) and proposed revised in-lieu fee payment program. The Ordinance is to assist and encourage development of affordable housing in proportion with the overall increase in residential units in the City. The Ordinance provides developers with several options for fulfilling the defined affordable housing requirements, including the payment of an in-lieu fee. The purpose of this memorandum is to assist the City in updating its Inclusionary Housing Ordinance and in-lieu fee payment amount, which will allow the City to provide mixed-income housing in off-site locations under the Ordinance.

AFFORDABLE HOUSING OVERVIEW

The City's affordable housing needs fall within two categories, which include the citywide targets as reflected by the City's Regional Housing Needs Assessment (RHNA), as promulgated by the Southern California Association of Governments (SCAG) and incorporated in the City's Housing Element, and the obligations within the Agoura Hills Redevelopment Project Area (the "Project Area") as reflected in the Five-Year Implementation Plan. The 2006 RHNA numbers reflect a projected Citywide need for a total of 109 dwelling units including 66 affordable units, which are targeted to be produced over the period from 2006 to 2014. During the same period of time, the Redevelopment Implementation Plan estimates that a total of 661 dwelling units will be produced in the Project Area, which reflects a requirement for 100 affordable units to be produced pursuant to the California Health and Safety Code Section 33000 et seq. (California Redevelopment Law (the "CRL")).

The following table provides a summary of the total City and Agency needs per the RHNA and the CRL, as well as the surplus or deficit number of RHNA units which would result from the Agency's production of inclusionary housing units pursuant to the CRL.

REDEVELOPMENT PLANNING
REAL ESTATE ECONOMICS
HOUSING
FINANCING
REAL ESTATE ACQUISITION
ECONOMIC DEVELOPMENT
GOVERNMENT SERVICES

SUMMARY AFFORDABLE HOUSING NEEDS

Household Income Categories	Redevelopment Affordable Housing Units	2006 – 2014 RHNA Units	Citywide RHNA Production Surplus (Deficit)
Very Low-Income	40	29	11
Low-Income	30	18	12
Moderate-Income	30	19	11
Subtotal Affordable Units	100	66	34
Above Moderate-Income	561	43	518
TOTAL UNITS	661	109	555

Affordable housing activities in the City fall primarily under the Redevelopment Agency's responsibility due to its continuing legal obligations and access to the only reliable source of ongoing funding via statutory deposits to its Low and Moderate-Income Housing Set-Aside Fund (LMIHF). Agencies are required to deposit each year not less than 20% of the total annual tax increment from each project area into a separate low- and moderate-income housing set-aside fund, which may only be used for the purposes of increasing, improving and preserving the community's supply of low- and moderate-income housing. Units produced using LMIHF monies must be made available to and occupied by persons and families of very low-, low- and moderate-income at an affordable housing cost as defined under the CRL (see Attachment 1 – 2007 Los Angeles County Income Limits & Affordable Housing Cost Calculation).

LMIHF monies may be used citywide subject to a number of limitations on their expenditure under Redevelopment Law. The CRL also requires the proportional expenditure of LMIHF monies in accordance with the community's proportional housing needs for very low- and low-income households. Proportional housing needs are identified as those reflected in the City's RHNA targets, thus the Agency's expenditure limitations are governed by the City's RHNA income category distribution adjusted to reflect only the proportion of very low-, low- and moderate-income categories. The Agoura Hills Redevelopment Agency's proportion expenditure requirements, as reflected by the City's 2006 RHNA, is 43.9% for very low-income households, 27.3% for low-income households, and the remaining 28.8% available for distribution to moderate-income households or lower income categories.

SUMMARY FINANCIAL NEEDS ASSESSMENT

The Agency's Five Year Implementation Plan Mid-Term Review, adopted December 2007, estimated that the cumulative deposits to 2014 would result in approximately \$6.7 million available for very low-, low-, and moderate-income housing expenditures. The proportional expenditure allocation would reflect about \$2,948,875 (\$73,271 per unit) for very low-income, \$1,833,810 (\$61,127 per unit) for low-income, and \$1,934,570 (\$64,485 per unit) for moderate households. If LMIHF monies that are otherwise available for moderate-income units are applied to the very low-income units the amount available would increase to \$4,883,445 (\$122,086 per unit) for very low-income units, but require that the required moderate-income units in the Project Area be developed without public assistance.

The affordable housing gap funding analysis discussed below identifies that the gap funding assistance requirement (weighted average) for new construction affordable rental units (using 4% LIHTC) in the City is about \$144,965 for very low-income units and \$128,552 for low-income units. This would require over \$9.6 million to assist in constructing the required 70 very low- and low-income units identified in the Implementation Plan. In addition, the weighted average gap funding assistance requirement for new construction ownership condominium units about \$145,475 for moderate-income units, which would require over \$2.9 million to assist in developing the 30 moderate-income units identified in the Implementation Plan.

The foregoing indicates that only about 49 rental housing units could be assisted using LMIHF monies during the period to 2014. While the 49 units would meet a portion of the City's RHNA requirements (47 very low- and low-income units), it would reflect about 71% of the City's total RHNA target, and less than 50% of the Agency's total housing production obligation for the planning period. Additional funding resources will be required to assist the City and Agency if fulfilling their respective goals and obligations. The additional funding amount needed to assist the Agency's very low- and low-income requirements would be over \$2.8 million, with an additional amount of over \$2.9 million to provide assistance in developing the 30 moderate-income condominium units.

The attached draft Inclusionary Housing Ordinance and In-Lieu Fee program is intended to provide some additional measure of assistance to the City and the Agency towards achieving their respective affordable housing needs.

INCLUSIONARY HOUSING ORDINANCE REQUIREMENTS

The Ordinance requirements that must be considered in establishing an in-lieu fee amount are:

1. New for sale and rental housing projects must make at least 15% of the new, converted or substantially rehabilitated units available to very low-, low- and moderate-income households, of which at least 40% must be affordable to very low-income households. Inclusionary units that are produced within market rate projects must comply with the following requirements:
 - a. The units must be dispersed throughout the project.
 - b. The units must be proportional in number, bedroom size and location to the market rate units.
 - c. The units must be comparable with the market rate units in terms of design, materials, finish quality, and interior amenities.
 - d. The units must be comparable in infrastructure, including sewer, water and other utilities.
 - e. The units must be constructed and occupied concurrently with, or prior to, the construction and occupancy of market rate units.
 - f. Income and affordability covenants must remain in place for at least forty-five (45) years for ownership units and fifty-five (55) years for rental units.
2. The inclusionary housing requirements may be satisfied by payment of the in-lieu fee in an amount established by resolution of the City Council.
 - a. The in-lieu fees must be deposited in the City's dedicated affordable housing trust account to be held and administered separately from the Agency's LMIHF.

- b. The trust account will only be used to provide funding assistance for construction or retention of affordable housing, and for reasonable administration costs.
 - c. The trust account funds may be combined with LMIHF monies for developing affordable housing subject to City Council approval.
3. The inclusionary housing requirements may also be satisfied by an irrevocable dedication of land. The value of the land dedication cannot be less than the amount of the in-lieu fee that would be imposed on the project.

In-Lieu Fee Approach and Methodology

The majority of new residential developments within the City is expected to be comprised of "for sale" home subdivisions. However, it is possible that rental development may also occur. Recognizing that the project economics vary broadly between ownership and rental projects, and to avoid imposing too onerous requirements on development in the City, the RSG analysis evaluates both development types.

In evaluating the potential financial impact of the requirements under the proposed inclusionary ordinance, RSG first identified the difference between the affordable housing costs and the market rate rents or housing prices. An evaluation of local market conditions was made using information obtained from DataQuick.com, RealFacts.com, the LA County Recorder Office, and independent field investigations performed. The data was summarized and compared to the affordable housing costs, as defined under the CRL. According to DataQuick Information Systems (dqnews.com), the 2007 median single family home price in the City was about \$845,000, which reflects a market affordability gap of about \$787,225 for very low-income households, \$748,550 for low-income households, and \$635,800 for moderate-income households. Since the median price for single family homes in the City is fairly high, it was determined that the single family calculations would be based on ownership condominiums. The resulting average housing affordability gap for existing market rate condominiums was identified at \$289,285 per unit. In addition, based on the capitalization of the identified rent differential between market rate rents and affordable rents, the average affordability gap for existing apartments in the City was identified at \$209,385 per unit. Due to the relatively high affordability gap between existing market rate units and the affordable housing costs, it was determined that an evaluation of the cost of developing inclusionary condominium and apartment units would be made using the most feasible funding and financing means available.

The principal of substitution serves as the basis for evaluating the prospective cost associated with developing new condominiums and apartments in the City under the restrictions imposed by the Inclusionary Housing Ordinance. The approach is based on the premise that the City will, and needs to, limit its assistance in developing inclusionary housing units to projects that use a combination of local, federal and state financing mechanisms. Rather than identify the financial impact as being equal to the difference between the market rate sale prices or rents and the affordable price for the required income-restricted units, the estimated costs to develop comparable replacement units is calculated to identify the funding shortfall, if any, to produce the inclusionary unit. The difference is identified as the affordable housing "construction funding gap". The costs associated with developing in affordable units using a combination of higher development density, reduced developer fees and profits, and leveraging City funds with other local, state and federal assistance are generally lower than comparable market rate units. This serves to substantially reduce the need for City assistance, which serves to lower the related in-

lieu fee requirement accordingly. The estimated weighted average construction funding gap for condominiums is \$145,475 per unit (see Attachment 3) and \$102,084 per unit for apartments (see Attachment 4), which is about 50% lower than the market rate affordability gap for existing units.

The methodology for identifying the construction funding gap and determining the corresponding in-lieu fee is as follows:

1. Preparation of a detailed development financial pro forma for each product type using a comparable market building prototype to estimate direct and indirect construction costs including, but not limited to, financing cost and a base developer fee to identify the total estimated development costs.
2. Identification the total rents or sales revenue based on the maximum affordable sales price or rent limits, as defined under the affordability standards imposed by the Ordinance.
3. For ownership condominium units the difference between the affordable sale price per unit and the total estimated development cost per unit represents the affordable construction funding gap associated with each income category's affordable sale price.
4. For rental units, the difference between the total permanent loan amount per unit based on the supporting debt service derived from the unit's affordable rent and net operating income represents the affordable construction funding gap associated with each income category's affordable rent.
5. The weighted average of the three income categories comprising the inclusionary units is then calculated based on the income category's proportion of the total affordable units, as reflected in the City's current RHNA allocation, (i.e., very low-income (0.42 X very low-income gap) + low-income (0.28 X low-income gap) + moderate-income (0.30 X moderate-income gap) = weighted average affordable unit gap).
6. The weighted average construction funding gap for the inclusionary unit multiplied times the total number of units that must be income restricted. This represents the estimated effective cost to a developer of fulfilling the inclusionary housing requirements on site.
7. If a fee is going to be paid in-lieu of providing the inclusionary units on site, the total effective cost is divided by the total number of units in the project. This represents the in-lieu fee amount that can be justified per each market rate unit in the project based on the affordability gap associated with the Inclusionary Housing Ordinance requirements.

Household Income Limits

The Ordinance defines the income limits for very low-, low- and moderate-income households as defined in the California Health and Safety Code Section 50105 for very low-income, Section 50079.5 for low-income, and Section 50093 for moderate-income households. The income information is published by the State of California Housing and Community Development Department (HCD) annually. The income limits for Los Angeles County cities in 2007 are as follows:

<u>Household Size</u>	<u>Very Low-Income</u>	<u>Low-Income</u>	<u>Moderate Income</u>
1 Person	\$25,900	\$41,450	\$47,500
2 Person	\$29,600	\$47,350	\$54,200
3 Person	\$33,300	\$53,300	\$61,000
4 Person	\$37,000	\$59,200	\$67,800
5 Person	\$39,950	\$63,950	\$73,200
6 Person	\$42,900	\$68,650	\$78,600
7 Person	\$45,900	\$73,400	\$84,100
8 Person	\$48,850	\$78,150	\$89,500

(Note: Revised Income Limits for 2008 are due to be published by HCD in late March 2008.)

Affordable Housing Cost Calculation Methodology

The Ordinance identifies the affordable housing cost calculation as those imposed by the California Health and Safety Code, which provides the methodologies for calculating affordable housing costs for ownership units (Section 50052.5(b)), and for rental units (Section 50053(b)).

AFFORDABILITY GAP ANALYSIS - OWNERSHIP PROJECTS

Affordable Housing Cost Calculations

Calculation of affordable housing cost for ownership units pursuant to Section 50052.5(b) is performed based on household income adjusted for family size appropriate to the unit.

1. Household size incomes are applied based on unit sizes as follows:
 - a. 3-person households for two-bedroom units;
 - b. 4-person household for three-bedroom units;
 - c. 5-person-household for four-bedroom units; and
 - d. 6 person-household for five-bedroom units.
2. Affordable housing cost calculations are defined as follows:
 - a. For very low-income units, the affordable housing cost calculation is set at 30% X 50% of the Los Angeles County area median income (AMI);
 - b. For low-income units, the affordable housing cost calculation is set at the average of 30% X 70% AMI and, at the City's option, for household earning between 70% and 80% AMI an amount equal to 30% X the household's gross income; and
 - c. For moderate-income units, the affordable housing cost calculation is set at the average of 35% X 110% AMI and, at the City's option, for households earning between 110% and 120% AMI an amount equal to 35% X the household's gross income.

- d. The defined monthly affordable housing cost is adjusted to reflect housing related expenses. These expenses are defined as mortgage debt service payments, property taxes, homeowner fees, insurance costs and utility costs.
- e. The adjusted (net) monthly affordable housing cost reflects the maximum amount available for payment of monthly principal and interest and for purposes of calculating the maximum supportable loan amount for an inclusionary unit. The calculation is based on a 30-year fully amortizing mortgage at 6.25% interest rate.

Assuming the homebuyer makes a down payment equal to 5% of the affordable purchase price, the affordable purchase prices for the income-restricted units are summarized below. See Attachment 2 for complete analysis by income category, applicable income limits and unit sizes.

Very Low-Income Households	<u>One Bedrooms</u>	<u>Two Bedrooms</u>	<u>Three Bedrooms</u>	<u>Four Bedrooms</u>
Max Loan Amt.	\$ 41,123	\$ 44,026	\$ 50,097	\$ 52,186
+ 5% Down Payment.	<u>\$ 2,164</u>	<u>\$ 2,318</u>	<u>\$ 2,636</u>	<u>\$ 2,747</u>
Affordable Price	\$ 43,287	\$ 46,344	\$ 52,733	\$ 54,933
Low-Income Households	<u>One Bedrooms</u>	<u>Two Bedrooms</u>	<u>Three Bedrooms</u>	<u>Four Bedrooms</u>
Max Loan Amt.	\$ 72,092	\$ 110,011	\$ 123,715	\$ 133,002
+ 5% Down Payment.	<u>\$ 3,794</u>	<u>\$ 5,790</u>	<u>\$ 6,511</u>	<u>\$ 7,001</u>
Affordable Price	\$ 75,886	\$ 115,801	\$ 130,226	\$ 140,003
Moderate-Income Households	<u>One Bedrooms</u>	<u>Two Bedrooms</u>	<u>Three Bedrooms</u>	<u>Four Bedrooms</u>
Max Loan Amt.	\$ 162,434	\$ 192,958	\$ 215,912	\$ 232,493
+ 5% Down Payment.	<u>\$ 8,549</u>	<u>\$ 10,156</u>	<u>\$ 11,364</u>	<u>\$ 12,236</u>
Affordable Price	\$ 170,983	\$ 203,114	\$ 227,276	\$ 244,729

Funding/Affordability Gap Calculations

Calculation of the difference between the total construction costs and the maximum affordable purchase prices for inclusionary units identifies the construction funding gap. Assuming a project unit mix of 10% on bedroom units, 40% two bedroom units, 40% three bedroom units, and 10% four bedroom units, the weighted average construction funding gap is \$213,808 for very low-income units, \$145,377 for low-income units, and \$54,462 for moderate-income units (see Attachment 3 – For Sale Condominium Construction Funding Gap Analysis).

The weighted average construction funding gap amounts are then multiplied by the proportion of very low- (40%), low- (30%), and moderate income (30%) units required to identify the weighted average of the construction funding gap per the inclusionary housing unit requirements under the Ordinance. The weighted average housing affordability gap amount identified in Attachment 3 is \$145,475 per each affordable unit required, which is multiplied by the number of

inclusionary units required in a project to reflect the total inclusionary in-lieu fee amount for a project.

For Sale Units Inclusionary Housing Obligation Cost / In-Lieu Fee Amount

The Ordinance requires developers to allocate 15% of the units in an ownership project to moderate income households, thus for a 20-unit project, three (3) inclusionary units would be required onsite. If developed off site, the total in-lieu fee amount would be \$436,425 (3 X \$145,475). When the total \$487,797 in-lieu fee is distributed across all units in a project, the cost is equal to \$21,821 for each market rate unit developed ($\$436,425 / 20 \text{ units} = \$21,821$). To fully reflect total costs associated with developing the inclusionary units off site, payment of an in-lieu in the amount of \$21,821 per residential unit in a project is required ($\$21,821 / 15\% = \$145,475$).

AFFORDABILITY GAP ANALYSIS - RENTAL PROJECTS

Calculation of the affordable housing gap associated with inclusionary rental units is similar to that for ownership units. The construction funding gap, however, is determined by the difference between the supportable loan amount based on the net operating income from the affordable rents, as defined under the CRL, and the total projected cost to develop the affordable unit.

Affordable Housing Cost Calculations

Calculation of affordable housing cost for rental units pursuant to Section 50053(b) is performed based on household income adjusted for family size appropriate to the unit.

1. Household size incomes are applied based on unit sizes as follows:
 - a. 3-person household for two-bedroom units;
 - b. 4-person household for three-bedroom units;
 - c. 5-person household for four-bedroom units; and
 - d. 6-person household for five-bedroom units.
2. Affordable housing cost calculations for rental units are defined as follows:
 - a. For very low-income units, the income calculation limit is set at 30% X 50% of the Los Angeles County area median income (AMI);
 - b. For low-income units, the income calculation limit is set at the average of 30% X 60% AMI and, at the City's option, for households earning between 60% and 80% AMI an amount equal to 30% X the household's gross income; and
 - c. For moderate-income units, the income calculation limit is set at the average of 30% X 110% AMI and, at the City's option, for households earning between 110% and 120% AMI, an amount equal to 30% X the household's gross income.
3. The maximum allowable rent must be adjusted to an allowance for payment of utility cost. Based on the 2007 allowances provided by the Los Angeles County Housing Authority, the utilities are estimated at \$35 for studio units, \$50 per month for one-

bedroom units and \$65 per month for two-bedroom units, \$79 for three-bedroom units, and \$102 for four-bedroom units.

The maximum allowable 2007 affordable rents under the defined income categories are as follows:

Very Low-Income Households	<u>Studio/ Efficiency</u>	<u>One Bedrooms</u>	<u>Two Bedrooms</u>	<u>Three Bedrooms</u>
Monthly Housing Cost	\$ 495.00	\$ 565.00	\$ 636.25	\$ 706.25
- Utility Allowance	<u>\$ 35.00</u>	<u>\$ 50.00</u>	<u>\$ 65.00</u>	<u>\$ 79.00</u>
Affordable Rent	\$ 460.00	\$ 515.00	\$ 571.25	\$ 627.25
Low-Income Households	<u>Studio/ Efficiency</u>	<u>One Bedrooms</u>	<u>Two Bedrooms</u>	<u>Three Bedrooms</u>
Monthly Housing Cost	\$ 594.00	\$ 678.00	\$ 763.50	\$ 847.50
- Utility Allowance	<u>\$ 35.00</u>	<u>\$ 50.00</u>	<u>\$ 65.00</u>	<u>\$ 79.00</u>
Affordable Rent	\$ 559.00	\$ 628.00	\$ 698.50	\$ 768.00
Moderate-Income Households	<u>Studio/ Efficiency</u>	<u>One Bedrooms</u>	<u>Two Bedrooms</u>	<u>Three Bedrooms</u>
Monthly Housing Cost	\$1,089.00	\$1,243.00	\$1,399.75	\$1,553.75
- Utility Allowance	<u>\$ 35.00</u>	<u>\$ 50.00</u>	<u>\$ 65.00</u>	<u>\$ 79.00</u>
Affordable Rent	\$1,054.00	\$1,243.00	\$1,399.75	\$1,474.75

Funding/Affordability Gap Calculations

The calculation of the difference between the estimated total construction costs and the maximum supportable loan amount based on the available net operating income from the affordable rents for inclusionary units identifies the construction funding gap (see Attachment 4 – Mixed Income 4% LIHTC Apartments Construction Funding Gap Analysis). Assuming a project unit mix of 10% studio units, 40% one bedroom units, 40% two-bedroom units, and 10% three-bedroom units, the weighted average construction funding gap under a mixed-income 4% LIHTC project scenario is \$149,394 for very low-income units, \$132,935 for low-income units, and \$8,212 for moderate-income units.

The weighted average construction funding gap amounts are then multiplied by the proportion of the very low- (40%), low- (30%), and moderate income (30%) units to identify the weighted average of the housing affordability gap per the affordable unit requirements under the Ordinance. The weighted average housing affordability gap amount identified in Attachment 3 is \$102,084 per each affordable unit required, which is multiplied by the number of inclusionary units required in a project to reflect the total inclusionary in-lieu fee amount for a project.

Rental Units Inclusionary Housing Obligation Cost / In-Lieu Fee Amount

The Ordinance requires developers to allocate 15% of the units in a project to low and moderate-income households, thus for a 20-unit project, three (3) inclusionary units would be required onsite. If developed off site, the total in-lieu fee amount would be \$306,252 (3 X

\$102,084). When the \$102,085 construction funding gap amount is distributed across all units in a project, the cost is equal to \$15,313 per market rate unit ($\$15,313 / 20 \text{ units} = \$15,313$). To fully reflect total costs associated with developing the inclusionary units off site, payment of an in-lieu in the amount of \$15,313 per residential rental unit in a project is required ($\$15,313 / 15\% = \$102,084$).

SUMMARY 2007 MAXIMUM IN-LIEU FEES

As identified above, the housing affordability gap is determined to be reflected by the construction funding gap associated with developing new condominium or apartment units. The construction funding gap is translated into the in-lieu fee amount that would have to be charged to provide the City with adequate funds to produce the required inclusionary units off site with similar product types at another location in the City. Key assumptions used in setting the in-lieu fee amounts include the following:

1. The in-lieu fee is calculated at the 100% estimated construction funding gap.
2. The in-lieu fee is calculated independently for ownership housing units and for rental units to reflect current market factors and availability of financing and other funding sources.
3. The in-lieu fee should be updated at least annually to reflect current household income limits, affordable housing costs, and housing market conditions.

The 2007 maximum in-lieu fees that are supported by this analysis are as follows:

	<u>Ownership Projects</u>	<u>Rental Projects</u>
Per Affordable Unit	\$ 145,475.00	\$ 102,084.00
Per Market Rate Unit	\$ 21,821.00	\$ 15,313.00

IN-LIEU FEE COMPARISON ANALYSIS

To assist the City in setting the in-lieu fee payment amount, RSG reviewed information for over 180 other California jurisdictions that have inclusionary housing requirements including those that allow payment of in-lieu fees. Pursuant to emerging case law and best practices identified by HCD, many cities require the City Council to provide discretionary approval for a fee to be paid in-lieu of producing the affordable units. However, a number of cities calculate the in-lieu fee on a case-by-case basis, which has become legally problematic since the fees may not be uniformly applied within a jurisdiction.

For the cities that have established fee schedules, in-lieu fees are generally established by resolution of the City Council and calculated on the one of the following bases:

1. Per square foot of gross building area (GBA) included in the project;
2. Per the identified pricing difference between the market rate unit and the affordable unit;
3. Per funding or financing deficit for units developed in a market rate project; or
4. As a percentage of project construction value.

The review inclusionary ordinances in other cities are summarized below.

1. Inclusionary requirements are generally applied to all new residential (owner and rental) projects and require that 15% of the units be affordable.
2. Generally, projects with fewer than 10 units are exempt from the Inclusionary Housing Ordinance requirements, or where a city's ordinance requirements are applicable to a lower number of units, there is generally a lower fee charged to such units.
3. A separate (generally lower) fee is typically charged for apartment projects and a separate (generally higher) fee is charged for ownership projects, which may or may not make a distinction between single family detached and condominium units.

As can be seen, the methods for calculation of in-lieu fees the resulting in-lieu fees that are being charged by the surveyed cities vary widely. Moreover, since many cities negotiate the in-lieu fee on a case-by-case basis, it is very difficult to identify the "typical" in-lieu fee being charged by cities that are implementing inclusionary housing programs. However, based on the available information, the fees identified for Agoura Hills are comparable with the fees being charged by other Southern California cities.

IN-LIEU FEE RECOMMENDATIONS

As previously stated, the provision of an in-lieu fee payment as an option to producing the inclusionary housing units onsite may provide the City with greater flexibility in meeting its affordable housing requirements, particularly if developed in projects that receive additional federal or state funding assistance such as LIHTC's and tax-exempt bond financing. Identification of an in-lieu fee amount, however, requires several qualitative and quantitative judgments and decisions by the City. These judgments typically are based on a community's total housing needs and the level of community "buy-in" to achieving affordable housing objectives as having a beneficial economic impact in the community. To provide a framework for our in-lieu fee recommendations, RSG considered the following factors.

1. The City's primary objective is to attract sufficient housing to fulfill affordable housing requirements identified in the Redevelopment Project Area, as well as its RHNA targets.
2. The market characteristics in Agoura Hills strongly favor ownership single family detached housing development over condominium and/or rental development. Nevertheless, the potential exists to develop affordable housing on a more cost efficient basis in infill locations through development of attached townhomes, condominiums and/or apartment projects. If the City uses the revenues generated by the in-lieu fee to implement such a strategy, it would be financially beneficial and assist the City in meeting its housing objectives.
3. The estimated median sale price for single-family homes in Agoura Hills averages about \$845,000. The gap between the market price and the price that would be affordable to a moderate income household for a three bedroom home averages about \$635,800 with the average increasing to \$748,550 for low-income households, and to about \$787,225 for very low-income households. The affordability gaps at lower income levels are clearly too large to be filled by the inclusionary housing requirement.
4. The City has only limited financial resources that are available to assist in providing affordable housing citywide, while, as identified above, the Agency's LMIF monies are

insufficient to fund the number of affordable housing units that it is required produce in the Redevelopment Project Area. The funding deficiency is particularly critical in the Redevelopment Project Area since the affordable housing requirements are a legal mandate under the CRL, which must be fulfilled within defined time periods. This indicates that a large proportion of the units needed to fulfill the City's and Agency's affordable housing needs will have to be accomplished either through the production of inclusionary units onsite and/or assisted with revenues generated by inclusionary housing in-lieu fees coupled with LMIHF monies. Based on these factors, it is the RSG recommendation that the in-lieu fee be set to reflect 100% of the estimated construction funding gap.

Use of the in-lieu fees deposited into the City Affordable Housing Development Trust Account should be combined with the Agency's LMIHF monies to expand the funding resources available for developing very low- and low-income housing units when possible. This is particularly applicable to affordable housing units developed outside of the Redevelopment Project Area, since the CRL provides that a unit may be produced outside a project area but requires that two units must be produced outside the project area for each one unit required to be produced in the project area.

Based on the preceding analysis, RSG's conclusion is that the in-lieu fee could legitimately be set at as much as \$145,475 per affordable unit required in an ownership project, and \$102,084 per affordable unit required in a rental project. To better reflect the total per unit development cost for units not developed onsite, RSG recommends allocation of the affordable housing gap among all of the units developed in a project, which results in an in-lieu fee amount of \$21,821 per unit in an ownership housing project and \$15,313 per unit in a rental housing project.

RSG also recommends that the City establish a mechanism for re-evaluating the in-lieu fee amount on a periodic basis. RSG suggests that the re-evaluation be performed at least annually so that the in-lieu fee will keep pace with changes in affordable household income limits, the calculation of affordable housing costs, and the changes in the local housing market.

ADMINISTRATIVE FEE

CRL Section 33418(c) provides that an agency may establish and impose fees upon owners of properties monitored pursuant to its ongoing annual affordable housing compliance monitoring requirements. RSG surveyed cities with inclusionary housing ordinances to determine whether administrative fees are being charged to reimburse the cities for the staff time spent administering the program. RSG's review of inclusionary housing provisions for large and small cities failed to identify a city that currently charges an administrative fee. While the City of Pasadena has a provision in their ordinance that allows the City Council to set an administrative fee, to date the City continues to fund the staff time expenditures from the in-lieu fees generated by the inclusionary housing program and/or its redevelopment LMIHF monies. Nevertheless, since the annual affordable housing compliance monitoring responsibilities fall on the Redevelopment Agency, RSG recommends the City of Agoura Hills establish a fee to recover the cost related to the monitoring and administrative activities in order to mitigate future financial impacts to the Agency's LMIHF. The amount of the annual administrative fee should be established by resolution of the City Council, as it deems appropriate.

Mr. Mike Kamino, Planning and Redevelopment
CITY OF AGOURA HILLS
March 3, 2008
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LIST OF ATTACHMENTS

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Calculation**

Attachment 2 – 2007 Los Angeles County Affordable Ownership Price Calculations

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Attachment 1 - 2007 Los Angeles County Income Limits & Affordable Housing Cost Calculations

Los Angeles County - 2007 Affordable Rental Housing Cost Limits

Median Income	Utility Allowance	Section 8 Voucher	Very Low-Income		Low-Income		Moderate-Income			
			50% of Median		80% of Median		120% of Median			
			Qualifying Income Limit	Max. Rent 30% X 50%	Qualifying Income Limit	Maximum Rent Range 30% X 60%	Qualifying Income Limit	Maximum Rent Range 30% X 110%	30% X 120%	
\$39,600	\$35	\$789	\$25,900	\$460.00	\$41,450	\$559.00	\$1,001.25	\$49,700	\$1,054.00	\$1,207.50
\$45,200	\$50	\$952	\$29,600	\$515.00	\$47,350	\$628.00	\$1,133.75	\$56,800	\$1,193.00	\$1,370.00
\$50,900	\$65	\$1,189	\$33,300	\$571.25	\$53,300	\$698.50	\$1,267.50	\$63,900	\$1,334.75	\$1,532.50
\$56,500	\$79	\$1,597	\$37,000	\$627.25	\$59,200	\$768.50	\$1,401.00	\$71,000	\$1,474.75	\$1,696.00
\$61,000	\$102	\$1,921	\$39,950	\$660.50	\$63,050	\$813.00	\$1,474.25	\$76,700	\$1,575.50	\$1,815.50
\$65,500	\$117	\$1,921	\$42,900	\$701.75	\$68,650	\$865.50	\$1,599.25	\$82,400	\$1,694.25	\$1,943.00

Note: Maximum Rent reflects net rent amount after deduction for utility allowance per LA PHA 2006 Schedule.

Los Angeles County - 2007 Ownership Housing Cost Limits

Median Income	Utility Allowance	Section 8 Voucher	Very Low-Income		Low-Income		Moderate-Income			
			50% of Median		80% of Median		120% of Median			
			Qualifying Income Limit	Max. Rent 30% X 50%	Qualifying Income Limit	Affordable Housing Cost 30% X 70%	30% X 80%	Qualifying Income Limit	Affordable Housing Cost 35% X 110%	35% X 120%
\$39,600	\$60	n.a.	\$25,900	\$594.00	\$41,450	\$693.00	\$1,036.25	\$49,700	\$1,270.50	\$1,449.58
\$45,200	\$85	n.a.	\$29,600	\$678.00	\$47,350	\$791.00	\$1,183.75	\$56,800	\$1,450.17	\$1,656.67
\$50,900	\$110	n.a.	\$33,300	\$763.50	\$53,300	\$890.75	\$1,332.50	\$63,900	\$1,633.04	\$1,863.75
\$56,500	\$134	n.a.	\$37,000	\$847.50	\$59,200	\$988.75	\$1,480.00	\$71,000	\$1,812.71	\$2,070.83
\$61,000	\$173	n.a.	\$39,950	\$915.00	\$63,050	\$1,067.50	\$1,576.25	\$76,700	\$1,957.08	\$2,237.08
\$65,500	\$199	n.a.	\$42,900	\$982.50	\$68,650	\$1,146.25	\$1,716.25	\$82,400	\$2,101.46	\$2,403.33

Note: Affordable Housing Cost reflects gross amount available for housing before deductions for utility allowance, RE Taxes & Insurance, HOA and other fees.

Attachment 2 – Los Angeles County Affordable Ownership Housing Price Calculations

Agoura Hills 2007 Projected Affordable Housing Price Calculations - Ownership Units

SUMMARY	Very Low-Income (50% of median income)					Low-Income (80% of median income)					Moderate-Income (120% of median income)				
	2 person 1 Bedrooms	3 person 2 Bedrooms	4 person 3 Bedrooms	5 person 4 Bedrooms	6 person 5 Bedrooms	3 person 2 Bedrooms	4 person 3 Bedrooms	5 person 4 Bedrooms	6 person 5 Bedrooms	3 person 2 Bedrooms	4 person 3 Bedrooms	5 person 4 Bedrooms	6 person 5 Bedrooms		
Household Income Limits	\$29,800	\$33,300	\$37,000	\$39,950	\$42,900	\$53,300	\$59,200	\$63,050	\$68,650	\$83,900	\$71,000	\$76,700	\$82,400		
Households Size	2 person	3 person	4 person	5 person	6 person	3 person	4 person	5 person	6 person	3 person	4 person	5 person	6 person		
Dwelling Unit Size	1 Bedrooms	2 Bedrooms	3 Bedrooms	4 Bedrooms	5 Bedrooms	2 Bedrooms	3 Bedrooms	4 Bedrooms	5 Bedrooms	2 Bedrooms	3 Bedrooms	4 Bedrooms	5 Bedrooms		
Max. Monthly Housing Cost	\$678.00	\$763.50	\$847.50	\$915.00	\$982.50	\$1,111.63	\$1,234.38	\$1,321.88	\$1,431.25	\$1,748.40	\$1,941.77	\$2,087.08	\$2,252.40		
Less: Taxes (1.15%)	0.00	67.75	73.70	76.19	80.69	114.62	125.83	132.44	141.16	225.60	242.36	254.45	284.15		
Insurance (0.3%)	0.00	49.69	58.13	63.83	72.19	49.69	58.13	63.83	72.19	49.69	58.13	63.83	72.19		
HOA Fees & Other	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Utilities	65.00	110.00	134.00	173.00	198.00	110.00	134.00	173.00	198.00	110.00	134.00	173.00	198.00		
Other Fees & Assesms.	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Available For Debt Service	\$593.00	\$556.06	\$581.68	\$600.19	\$631.62	\$637.32	\$691.64	\$695.81	\$715.90	\$1,363.21	\$1,507.28	\$1,593.00	\$1,698.06		
Max. Loan Amount	\$96,310	\$97,062	\$94,472	\$97,478	\$102,593	\$138,997	\$148,638	\$154,423	\$163,644	\$221,402	\$244,801	\$258,723	\$275,786		
@ Interest Rate 6.25%	Amortized Years: 30														
Affordable Housing Price	\$91,645	\$99,444	\$102,608	\$107,992	\$114,319	\$156,672	\$162,550	\$174,362	\$233,055	\$257,686	\$272,340	\$290,301			
Reflects 5% Down Payment Requirement															

* Max. Low-Income Refracts Average 70% & 80% AMI

* Max. Moderate-Income Refracts Average 110% & 120% AMI

Attachment 3 – For Sale Condominium Construction Funding Gap Analysis

	Very Low-Income	Low-Income Units	Moderate-Income Units	Total	
Acres	0.29	0.21	0.21	3.9	
Est. Density (d.u./acre)	28	28	28	28	
Wt. Avg. Unit Size	974	974	974	974	
Wt. Avg. Unit Price	\$49,453	\$120,000	\$213,727		
Total Units	8 40%	6 30%	6 30%	20	
I. Revenue					
Total Gross Sale Revenue	\$395,624	\$720,000	\$1,282,362	\$2,397,986	
II. Costs					
		\$ Per	\$ Per	\$ Per	Cost
Directs		Bkda. SF	Bkda. SF	Bkda. SF	Per Unit
Site Work /Sq.Ft.	\$80,897	6.50	\$60,673	6.50	\$202,243
Residential Building	\$849,226	101.80	\$636,919	101.80	\$2,123,064
Garages/Parking Structure	\$85,958	24.42	\$64,469	24.42	\$214,896
Construction Contingency	6.0% \$60,965	7.82	\$45,724	7.82	\$162,412
General Conditions	3.5% \$35,563	4.56	\$26,672	4.56	\$88,907
Insurance & Bonds	3.5% \$35,563	4.56	\$26,672	4.56	\$88,907
Contractor Fee	5.0% \$50,804	6.52	\$38,103	6.52	\$127,010
Total Directs	\$1,198,976	153.87 58.9%	\$899,232	153.87 58.5%	\$2,997,439
Indirects					
A&E Fees	5.0% \$50,804	6.52	\$38,103	6.52	\$127,010
City Fees & Permits	5.7% \$68,000	8.73	\$51,000	8.73	\$170,000
Taxes	1.1% \$4,714	0.61	\$3,536	0.61	\$11,786
A&D Loan Fees	2.0% \$23,980	3.08	\$17,985	3.08	\$59,949
Construction Interest	7.0% \$83,928	10.77	\$62,946	10.77	\$209,821
Sales & Marketing	3% \$11,869	1.52	\$21,600	3.70	\$71,940
Builder G&A	1.5% \$17,985	2.31	\$13,488	2.31	\$44,982
Total Indirects	\$261,280	33.53	\$208,658	35.70	\$695,467
Subtotal Costs	\$1,460,255	187.40 69.3%	\$1,107,890	189.58 69.6%	\$3,692,906
Builder Profit	15.0% \$217,258	27.88 10.3%	\$162,943	27.88 10.2%	\$543,145
Land Value Allocation	\$428,571	55.00 20.3%	\$321,429	55.00 20.2%	\$1,071,429
Total Costs	\$2,106,085	270.29 100%	\$1,592,262	272.46 100%	\$5,307,479
Total Sale Revenue	395,624		720,000		2,397,986
Funding Excess (deficit)	(\$1,710,461)	(\$213,808) Per Unit	(\$872,262)	(\$145,377) Per Unit	(\$2,909,493)
	58.8%		30.0%		11.2%
Eligible Basis :	\$1,665,645		\$1,249,233		
TCAC Basis Limit :	\$1,889,206		\$1,416,904		
High Cost Area Adj. :	130%		130%		
Adjusted Basis :	\$2,165,338		\$1,624,003		
Applicable Fed. LIHTC Factor :	3.41%		3.41%		
Maximum Fed. LIHTC :	\$738,380		\$553,785		
Est. Net LIHTC Proceeds :	\$708,846		\$531,634		
Ⓢ \$0.96					
IN-LIEU FEE ANALYSIS					
Wt. Avg. Construction Funding Gap :	\$145,475	Per Affordable Unit Required			
Indicated In-Lieu Fee Amount :	\$21,821	Per Project Residential Unit			

Attachment 4 – Mixed Income 4% LIHTC Apartment Construction Funding Gap Analysis

	Very Low-Income	Low-Income Units	Moderate-Income Units	Total	
Acres	0.29	0.21	0.21	3.9	
Est. Density (d.u./acre)	28	28	28	28	
Wt. Avg. Unit Size	974	974	974	974	
Total Units	8 40%	6 30%	6 30%	20	
I. Revenue					
Annual Gross Schedule Rent	\$52,150	\$47,761	\$91,006	\$190,917	
Vacancy & Collection Loss 5.0%	\$2,607	\$2,388	\$4,550	\$9,546	
RE Taxes & Assessments 1.1%	\$0 <i>(exempt)</i>	\$0 <i>(exempt)</i>	\$0	\$0	
Annual Op. Exp. & Reserves	\$36,000	\$27,000	\$27,000	\$90,000	
Net Operating Income	\$13,542	\$18,373	\$122,557	\$154,472	
Max. Loan Amount 1.1 @ 6.5%	\$162,311	\$220,214	\$1,468,922	\$1,851,447	
II. Costs					
		\$ Per	\$ Per	\$ Per	Cost
Directs		Bldg SF	Bldg SF	Bldg SF	Per Unit
Site Work /Sq.Ft.	\$80,897	6.50	\$60,673	6.50	\$202,243 10,112
Residential Building	\$833,226	101.80	\$624,919	101.80	\$2,083,064 104,163
Garages/Parking Structure	\$85,958	24.42	\$64,469	24.42	\$214,896 10,745
Construction Contingency 6.0%	\$80,005	7.70	\$45,004	7.70	\$150,012 7,501
General Conditions 3.5%	\$35,003	4.49	\$26,252	4.49	\$87,507 4,375
Insurance & Bonds 3.5%	\$35,003	4.49	\$26,252	4.49	\$87,507 4,375
Contractor Fee 5.0%	\$50,004	6.42	\$37,503	6.42	\$125,010 6,251
Total Directs	\$1,180,096	151.45 58.3%	\$886,072	151.45 58.3%	\$2,960,239 \$147,512
Indirects					
A&E Fees 3.5%	\$35,003	4.49	\$26,252	4.49	\$87,507 4,375
City Fees & Permits 3.1%	\$36,000	4.62	\$27,000	4.62	\$90,000 4,500
Taxes 1.1%	\$0	0.00	\$0	0.00	\$0 0
A&D Loan Fees 1.5%	\$17,701	2.27	\$13,276	2.27	\$44,254 2,213
Construction Interest 6.5%	\$76,706	9.84	\$57,530	9.84	\$191,766 9,588
Sales & Marketing Allow	\$28,000	3.59	\$21,000	3.59	\$70,000 3,500
Builder G&A 1.5%	\$17,701	2.27	\$13,276	2.27	\$44,254 2,213
Total Indirects	\$211,112	27.09	\$158,334	27.09	\$527,760 \$26,389
Subtotal Costs	\$1,391,208	178.54 68.7%	\$1,043,406	178.54 68.7%	\$3,478,019 \$173,901
Builder Profit (TCAC) 15.0%	\$204,481	26.24 10.1%	\$153,361	26.24 10.1%	\$511,203 \$25,560
Land Value Allocation	\$428,571	55.00 21.2%	\$321,429	55.00 21.2%	\$1,071,429 \$53,571
Total Costs	\$2,024,260	259.79 100%	\$1,518,195	259.79 100%	\$5,060,651 \$253,033
Loan Proceeds (deficit)	(1,861,949)		(1,297,981)		(49,274) (3,209,203)
4% LIHTC Inv. Funds	\$667,158		\$500,369		\$0 \$1,156,068
Financing Excess (deficit)	(\$1,194,791)	(\$149,349) Per Unit 58.5%	(\$797,612)	(\$132,935) Per Unit 39.1%	(\$49,274) (\$8,212) Per Unit 2.4%

IN-LIEU FEE ANALYSIS

Wt. Avg. Construction Funding Gap : **\$102,084** Per Affordable Unit Required

Indicated In-Lieu Fee Amount : **\$15,313** Per Project Residential Unit