


REPORT TO CITY COUNCIL

DATE: DECEMBER 9, 2009

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER 

BY: MIKE KAMINO, DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT *MK*

SUBJECT: REQUEST FOR APPROVAL TO AMEND CONDITIONAL USE PERMIT CASE NOS. 98-CUP-007 AND 03-CUP-010, AND OAK TREE PERMIT CASE NO. 98-OTP-011, TO ALLOW FOR A ONE-YEAR EXTENSION FOR THE DEVELOPMENT OF TWO SINGLE-FAMILY RESIDENTIAL TRACTS TOTALING 24 UNITS; AND A REQUEST FOR PAYMENT OF AN IN-LIEU FEE FOR THE PROJECT'S INCLUSIONARY HOUSING REQUIREMENT (CHARLES COHEN FOR RIOPHARM USA, INC., APPLICANT)

The item before the City Council is to conduct a public hearing to consider a request to amend Conditional Use Permit Case Nos. 98-CUP-007 and 03-CUP-010, and Oak Tree Permit Case No. 98-OTP-011, to allow for a one-year extension for the development of two single-family residential tracts totaling 24 units. The applicant, Charles Cohen for Riopharm USA, Inc., is also requesting the City Council consider their request to pay an in-lieu fee for the project's inclusionary housing requirement. The project hillside site includes two vacant residential tracts located on the south side of Agoura Road, east of Calle Montecillo and west of Liberty Canyon Road.

The applicant for these cases, Riopharm USA, Inc., originally requested approval to develop a total of 27 single-family detached residences on two recorded residential tracts. The Planning Commission held four public hearings and denied the requests for the Conditional Use Permits and Oak Tree Permit on December 1, 2005. The applicant appealed the Planning Commission's action to the City Council. After conducting public hearings for consideration of the appeal on February 22, 2006, September 13, 2006, and October 11, 2006, the City Council overturned the Planning Commission's decision on a 2-1 vote (Councilmember Kuperberg opposed, Councilmembers Koehler and Schwarz abstained), and approved the amended requests to construct 11 single family residences on Tract 48901, and 13 single-family residences on Tract 48312, for a total of 24 units.

Pursuant to the provisions in the Zoning Ordinance and the project conditions of approval, the Conditional Use Permits and Oak Tree Permit were valid for an initial two (2)-year period (to October 11, 2008). The applicant submitted building plans and grading plans into plan check and, as allowed by the Zoning Ordinance and the project conditions of approval, requested and received a one (1)-year administrative extension of the Conditional Use Permits and Oak Tree Permit. The building plans and grading plans have been approved, but are subject to fee payments prior to issuance. The applicant is now requesting a second, one-year extension of his permits, which the Zoning Ordinance allows to be considered by the Planning Commission. However, since the City

Council took final action on the project's entitlement, staff is requesting the City Council to take action on the one-year extension request.

The project has not substantially changed from its original approval and all conditions of approval would remain valid. A copy of the last Report to City Council and adopted resolutions and conditions of approval are attached for reference. As stated above, the project has essentially completed the plan check review process and the applicant desires to begin grading shortly.

The City Oak Tree Consultant has reviewed the original conditions of approval and has found the project to be in general keeping with the original scope of approved work. Although the number of necessary oak tree removals for the project has increased from 33 to 44, after conducting on-site inspections, the City Oak Tree Consultant and staff have found the removals to be necessary for the required infrastructure and grading of the two tracts. The Oak Tree Permit amendment to increase the number of tree removals was approved administratively, as reflected in the attached amended Oak Tree Permit conditions, subject to required mitigation that includes more on-site and off-site planting of oak trees and payment of an in-lieu fee. For the City Council's consideration of the one-year extension request, the City Oak Tree Consultant feels that no additional conditions are needed at this time and recommends approval of the time extension for the Oak Tree Permit.

The City Engineer has also reviewed the request and the previously approved conditions of approval, and finds all project requirements and conditions of the Engineering/Public Works Department to still be current. It was determined that no additional or amended conditions from the Engineering/Public Works Department are needed for the applicant's time extension request.

Staff finds the extension request to be consistent with the project described in the Mitigated Negative Declaration (MND) that was adopted pursuant to the California Environmental Quality Act (CEQA). Upon review of the mitigation measures included in the Final MND, staff has determined that impacts would still be reduced to less than significant levels. Therefore, no further review under CEQA is required for the time extension request.

If the City Council supports the time extension request, the applicant is seeking the City Council's approval to pay an in-lieu fee to meet the City's Inclusionary Housing Ordinance requirements of this project. When the two housing tract projects were approved, the applicant was required to comply with the City's Inclusionary Housing Ordinance, which applies to residential tracts of 10 or more units, by providing 15% of the single-family units within each 11-unit and 13-unit tract for affordable housing. Thus, one affordable unit is required within each tract. The units may be sold to or rented to, and occupied by, very low-income, low-income, and moderate-income households at affordable housing costs. As noted in his letter, Mr. Cohen, on behalf of the applicant, is requesting payment of an in-lieu fee, which may be considered by the City Council, instead of providing the affordable units on-site. The project site is not in the Redevelopment Agency (RDA) project area and it's likely to be the only vacant piece of land in the City that the non-RDA Inclusionary Housing Ordinance would apply.

The City Council updated the Inclusionary Housing Ordinance and adjusted (increased) the in-lieu fee requirements in June and July of 2008. The alternatives to on-site construction of

affordable units, per the ordinance in order of preference, are: (1) off-site development, (2) donation of land of an equivalent value, and (3) payment of in lieu fee. The current in-lieu fee requirement, as adopted by Resolution, is \$21,821 per unit. In this instance, the required in-lieu fee would be \$240,031 for the 11-unit tract, and \$286,673 for the 13-unit tract. One-half of the in-lieu fee would be required to be paid prior to issuance of a building permit and the remainder of the fee is required to be paid prior to occupancy. Inclusionary housing in-lieu fees, if accepted, would be set aside by the City in a dedicated fund for development of future affordable housing sites within the City. Staff would note that the in-lieu fee is required to be updated within 18 months from adoption (by January, 2010), and every five years thereafter.

The purpose of the Inclusionary Housing Ordinance is to encourage the development of housing that is affordable to a range of households with varying income levels by assuring that the addition of affordable housing units to the City's housing stock is in proportion with the overall increase in new housing units. The current Inclusionary Housing Ordinance also allows projects "in the pipeline," such as the subject project, to pay the old in-lieu fee of \$6,277 per unit if a project has obtained a building permit by July 9, 2009, and obtained a certificate of occupancy. In this instance, the applicant has not yet obtained a building permit and is, therefore, subject to the current Ordinance requirements. Attached is the applicant's written request and supporting documentation for consideration of a reduced in-lieu fee payment.

There are several options for the City Council to consider regarding the inclusionary housing in-lieu fee request. Staff recommends the City Council consider and provide direction to the staff and the applicant from the following options:

1. Deny the applicant's request for payment of an in-lieu fee and require the affordable units to be constructed on-site.
2. Approve the applicant's request at the current rate of \$21,821 per unit as specified in the Inclusionary Housing Ordinance.
3. Direct staff to update the in-lieu fee prior to taking action on the request. It is not known at this time whether the updated fee would be higher or lower than the current fee and a study would be necessary. The City Council may also request the applicant pay for the cost of the update since it is the only residential project the fee update study would apply to at this time.
4. Direct the applicant to file a Zoning Ordinance Amendment application to extend the time period for the project to be exempt from the current in-lieu fee rate, thereby allowing the previous in-lieu fee of \$6,277 per unit, which equates to \$69,047 and \$81,601 for the two tracts, to apply to the project. A proposed Zoning Ordinance Amendment would be subject to public hearings conducted by the Planning Commission, and subsequently by the City Council for final action.

Based on the direction given by the City Council, staff will return with a request for final action to be taken by the City Council regarding the inclusionary housing in-lieu request. Staff would

note that the applicant has the option of paying 50% of the current in-lieu fee in order to obtain building permits and begin construction, and requesting a possible reduction in the fee at a later date.

RECOMMENDATION

Staff respectfully recommends the City Council conduct a public hearing and adopt Resolution No. 09-1569, approving an amendment to Conditional Use Permit Case Nos. 98-CUP-007 and 03-CUP-010, and Oak Tree Permit Case No. 98-OTP-011, granting a one-year time extension that would expire on October 11, 2010, subject to conditions. Staff also requests the City Council provide direction to staff regarding the applicant's request for payment of an in-lieu to meet the project's inclusionary housing requirement.

Attachments: Resolution No. 09-1569
Applicant's Requests
Applicant's Supporting Documentation

- Cost Estimates for Riopharm Development
- Ventura County Star: "Home prices dip slightly, but market seems stable"
- The Press Enterprise: "Cities, agencies cut developer fees"
- The Wall Street Journal: "Ten Questions on the Volatile Housing Market"
- Letter from Department of Housing and Community Development
- Thousand Oaks City Council Staff Report Regarding Inclusionary Housing Fees

Resolution Nos. 06-1404, 06-1405, and 06-1406
City Council Meeting Minutes (October 11, 2006)
Report to City Council (October 11, 2006)

RESOLUTION NO. 09-1569

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, APPROVING AN AMENDMENT TO CONDITIONAL USE PERMIT CASE NOS. 98-CUP-007 AND 03-CUP-010, AND OAK TREE PERMIT CASE NO. 98-OTP-011, FOR THE PURPOSE OF GRANTING A ONE-YEAR TIME EXTENSION

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

Section 1. An application was duly filed by Charles Cohen for Riopharm USA, Inc., with respect to real property located on the south side of Agoura Road, east of Calle Montecillo, and west of Liberty Canyon Road (A.P.N. 2061-014-(007-015), (018-020), (023-042); and 2061-015-008)), requesting for approval of a one (1)-year time extension for two previously approved Conditional Use Permits which allow for the construction of 11 single-family residences on Tract 48312, and 13 single-family residences on Tract No. 48901, and a one (1)-year time extension for an approved Oak Tree Permit which allows for removal of 44 oak trees for the proposed construction. A public hearing was duly held on December 9, 2009, at 7:00 p.m. in the City Council Chambers of City Hall, 30001 Ladyface Court, Agoura Hills, California. Notice of the time, date, place and purpose of the aforesaid hearing was duly given.

Section 2. Evidence, both written and oral, was duly presented to and considered by the City Council at the aforesaid public hearing.

Section 3. The City Council finds that the request for a time extension is acceptable given that there are no substantial changes that are proposed to the project and that there are no significant changes to the site, to the surrounding area and to the regulations that affect the site. The City Council, pursuant to the Agoura Hills Zoning Ordinance, finds that the findings contained in City Council Resolution No. 06-1404, 06-1405, and 06-1406, approved on October 11, 2006, are still valid and are attached hereto.

Section 4. Upon review of the mitigation measures included in the adopted Mitigated Negative Declaration previously prepared for the project, the City Council determines that impacts would still be reduced to less than significant levels. Therefore, the City Council hereby finds that no further review under the California Environmental Quality Act is required.

Section 5. Based upon the aforementioned findings, the Planning Commission hereby approves Conditional Use Permit Case No. 98-CUP-007 Amendment, 03-CUP-010 Amendment, and Oak Tree Permit Case No. 98-OTP-011 Amendment, with respect to property described in Section 1 hereof, subject to the attached Conditions of Approval.

PASSED, APPROVED and ADOPTED this 9th day of December, 2009, by the following vote to wit:

AYES: (0)
NOES: (0)
ABSENT: (0)
ABSTAIN: (0)

William D. Koehler, Mayor

ATTEST:

Kimberly M. Rodrigues, City Clerk

CONDITIONS OF APPROVAL
CASE NOS. 98-CUP-007 (AMENDMENT); 03-CUP-010 (AMENDMENT)
AND 98-OTP-011 (AMENDMENT)

STANDARD CONDITIONS

1. This action shall not be effective for any purpose until the applicant has agreed in writing at the applicant is aware of and accepts all conditions of this permit with the Department of Planning and Community Development.
2. Except as modified herein, the approval of this action is limited to and requires complete conformation to the project plans as approved by the City Council on October 11, 2006.
3. It is hereby declared to be the intent that if any provision of this permit is held or declared to be invalid, the permit shall be void and the privileges granted hereunder shall lapse.
4. It is further declared and made a condition of this action that is any condition herein is violated, the Permit shall be suspended and the privileges granted hereunder shall lapse; provided that the applicant has been given written notice to cease such violation and has failed to do so for a period of thirty (30) days.
5. The applicant shall obtain a building permit and commence construction before October 11, 2010, or the entitlement will become void.
6. All Conditions of Approval in City Council Resolution No. 06-1404, except as modified herein, are valid and shall remain valid for the life of the project. The Conditions of Approval in City Council Resolution No. 06-1404 are amended as follows:

“12. Unless Conditional Use Permit Case No. 03-CUP-010 Amendment is used ~~within two (2) years from the date of City approval by October 11, 2010~~, the permits will expire. ~~A written request for a one year extension may be considered prior to the expiration date.~~”
7. All Conditions of Approval in City Council Resolution No. 06-1405, except as modified herein, are valid and shall remain valid for the life of the project. The Conditions of Approval in City Council Resolution No. 06-1405 are amended as follows:

“12. Unless Conditional Use Permit Case No. 98-CUP-011 Amendment is used ~~within two (2) years from the date of City approval by October 11, 2010~~, the permits will expire. ~~A written request for a one year extension may be considered prior to the expiration date.~~”

8. All Conditions of Approval in City Council Resolution No. 06-1406, except as modified herein, are valid and shall remain valid for the life of the project. The Conditions of Approval in City Council Resolution No. 06-1406 are amended as follows:

“9. The applicant is permitted to remove up to ~~thirty-three (33)~~ forty-four (44) oak trees to construct the project as approved, as shown on the approved plans. At least four (4) replacement trees shall be planted to mitigate the loss of each tree removed. The replacement trees planted for each tree removed shall include at least one (1) thirty-six (36”) box size oak tree and at least two (2) twenty-four inch (24”) box size oak trees for each tree removed. The total diameter of mitigation trees planted shall be at least equal to that of the trees removed. The estimated requirement is ~~six hundred ninety-three (693)~~ seven hundred twelve (712) inches. The final mitigation program shall be ~~approved~~ reviewed by the City Oak Tree Consultant and approved by the Director of Planning and Community Development.”

END

Applicant's Requests

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Attachment No. 1 to Master Planning Application

Description of the Proposed Project:

Seek one year time extension of Conditional Use Permit Case Nos. 98-CUP-007 and 03-CUP-010 and Oak Tree Permit Case No. 98-OTP-011 for Tracts 48312 and 48901. In addition, we request modification of Condition No. 84 of 03-CUP-010 and Condition No. 83 of 98-CUP-007 to allow payment of an in-lieu fee due to economic infeasibility of providing affordable units on- or off-site. Our request includes imposition of a fee amount commensurate to the fee amount then in effect when the two CUPs were approved by the City Council in October, 2006. The applicant has been diligently pursuing the plan check process since then and is now in the final stages. The City Council adopted a new affordable housing ordinance in July, 2008 which resulted in a fee increase from \$150, 648 (this fee amount is based on the Inclusionary Housing Ordinance fee schedule adopted in 2000 and in effect when the project was approved in October, 2006. The amount does not include ordinance provided CPI adjustments for inflation) to \$523,704, a 350% increase (\$21,821 x 24 market rate dwelling units). Since the adoption of the 2008 ordinance, home prices have plummeted dramatically where prices of some market rate units have fallen nearly to "affordable" rates. Thus, the 2008 fee schedule does not realistically reflect the current state of the housing market. Also, and finally, the fee amount which the project sought to pay in 2006, was budgeted and accounted for. A fee adjustment of such magnitude upward renders the project infeasible.

Applicant's Supporting Documentation

COST ESTIMATES FOR RIOPHARM DEVELOPMENT
OF
TRACTS 48901 AND 48312

COSTS PAID TO DATE, including		
Architect fees, Plan Check & Building/Grading Permit fees, Legal and other consultants' fees, Water district fees, Bonds, CA DFG fees, Miscellaneous other costs		4,500,000
COSTS TO BE PAID:		
FEES: Plan Check and Building & Grading Permit fees	97,000	
School fees	216,000	
Fire District fees	67,000	
Fuel Modification fees	38,000	
Public Works TIF fees	59,000	
Miscellaneous other fees	20,000	497,000
OFF SITE CONSTRUCTION COSTS:		
Caissons and Walls	1,737,000	
Grading	400,000	
Dirt and Backfill	300,000	
Storm Drains	493,000	
Drainage, Basin	264,000	
Water	205,000	
Sewer	166,000	
Dry Utilities	190,000	
Street Improvements (Private Streets)	104,000	
Street Improvements (Agoura Road)	73,000	
Asphalt	200,000	
Waterproofing	160,000	
Contingency	700,000	4,992,000
ON SITE CONSTRUCTION COSTS:		
Tract #48901 (27,691' + 5,140' garages)		
Tract #48312 (44,961' + 8,309' garages)		11,906,000
OTHER COSTS:		
Landscaping	400,000	
Oak Tree costs	300,000	
Surveyor fees	135,000	
Inspection fees	75,000	
Oak Tree & Environmental Monitoring	35,000	
Insurance and Bonds	351,000	
Erosion Control	65,000	
Fencing & Miscellaneous rentals	75,000	
Maintenance	27,000	
Construction Interest	1,050,000	
Property taxes	225,000	
Supervision	211,000	
Contractor fees	507,000	
Administrative costs	300,000	3,756,000
SELLING COSTS		1,440,000
TOTAL COSTS		27,091,000
SALES PRICE		25,065,000
NET PROFIT (LOSS)		(2,026,000)

Home prices dip slightly, but market seems stable

By Allison Bruce

Originally published 10:40 a.m., November 17, 2009

Updated 10:08 p.m., November 17, 2009

October home sales were up from a year ago in Ventura County, but the median sales price declined 2.7 percent to \$365,000.

The median for new and existing homes and condominiums declined for the second month after rising each month since March, MDA DataQuick, a real estate information firm, reported Tuesday.

Sales totaled 879 last month, up

9.6 percent from a year ago.

For Southern California, sales were up, but the median price — the point at which half the homes sold for more and half for less — was down 6.7 percent at \$280,000.

DataQuick said that year-over-year decline was the smallest in two years, which could indicate the housing market is firming up because of fewer homes for sale and government and industry efforts to build demand and curb foreclosures.

"The government is playing a huge role in stabilizing and, to some extent, reinvigorating the housing market," John Walsh, MDA DataQuick president, said in a statement.

He attributed the boost in sales to low mortgage rates, low down-payment financing, the now-extended federal tax credit and programs aimed at reducing foreclosures.

"The real question now is how well can the market perform next year as some of the government stimulus disappears?" Walsh said.

Congress passed an extension through April for the federal homebuyer tax credit of up to \$8,000, which was set to expire this month.

"Certainly, the tax credit being extended has kept people interested who may have thought they missed that opportunity," said Linda Fisher-Helton, community relations

manager for the Area Housing Authority of Ventura County.

While that might help the market, there is concern about what will happen after it ends — or even before. In March, the Federal Reserve's program to purchase mortgage securities will come to a close, which could drive up mortgage rates, said Michael Fratantoni, vice president for single-family research and policy development for the Mortgage Bankers Association.

"If we were to see a substantial rise in mortgage rates, it could offset the tax credit," he said.

Steve Carrigan of Carrigan Financial Group in Camarillo said the market is going to have to sustain itself when the government steps away from the table.

"Interest rates are going to go up. It's not a matter of will they go up ... it's a matter of how fast and how high," he said.

He also worries that Ventura County's market is benefiting from an artificial shortage of inventory caused by banks avoiding foreclosures. He said he talks with people weekly who haven't made mortgage payments in a year or two but still aren't in foreclosure.

Eventually that "shadow inventory" is going to hit the market and have an effect, he said.

Buyer interest has increased as housing has become more affordable.

The Area Housing Authority of Ventura County, which puts on first-time homebuyer educational workshops, has seen more interest as home prices have declined in the county, Fisher-Helton said.

She's found people are more cautious about the information they receive — the housing authority does not allow promotion or selling in the workshops.

"People are in desperate need for information from somebody who's not going to sell them a product," Fisher-Helton said.

Homes have grown more affordable this year, but buying challenges remain.

Carrigan, who provides instruction at the workshops, said first-time buyers are often frustrated because they're being squeezed out by cash buyers, people with large down payments and speculators.

"First-time buyers are struggling right now," he said.

For the third quarter, affordability for first-time homebuyers in Ventura County dipped slightly to 56 percent from 59 percent in the second quarter, but was still higher than

the 53 percent rate from a year ago, the California Association of Realtors reported last week.

The affordability index gives the percentage of households that can afford to purchase an entry-level home — estimated at \$385,910 in Ventura County, with a monthly payment of about \$2,260. The association reports the minimum income to afford that payment would be \$67,800.

The association bases its median home price on the sale of existing single-family homes, which often skews higher than the DataQuick median.

Last week, the Mortgage Bankers Association reported that mortgage applications to purchase a home were down to the lowest level since December 2000 and down 11.7 percent from the week before. At the same time, refinancing mortgages increased.

The main driver for purchases is affordability, which is made up of three factors: mortgage rates, home prices and household incomes, Fratantoni said.

"The real weak spot is what's going on with household income," he said.



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THE WALL STREET JOURNAL

WSJ.com

REAL ESTATE | NOVEMBER 17, 2009

Ten Questions on the Volatile Housing Market

Lower Prices Have Spurred Home Sales, but Looming Foreclosures and High Unemployment Are Clouding the Outlook

By JAMES R. HAGERTY

The U.S. housing market has been in a slump for the past four years. When will it ever end?

In recent years, real estate has proven as jittery and unreliable as any other market. The average U.S. home price nearly doubled between January 2000 and April 2006, according to the First American LoanPerformance index. Since then, the average has fallen about 30%. The drop has been 53% in the Las Vegas metropolitan area and 39% in Miami, where about a quarter of all households with mortgages are behind on their payments or in foreclosure. The value of your home might be determined more by whether the neighbors keep their jobs than whether the house has ample light and closet space.

Here is a guide to navigating a fractured and volatile market:

1. Is the housing market getting better?

It has shown some signs of healing this year, but the much-touted recovery is tentative and fragile.

Home sales have increased from the severely depressed levels of 2008. The inventory of unsold homes listed for sale all over the country is down. Bidding wars are breaking out for foreclosed homes in the sorts of neighborhoods (near jobs and decent schools) that attract both first-time buyers and investors seeking rental properties.

But more than 6.7 million U.S. households with mortgages, or about 13%, are behind on their payments or are in the foreclosure process, according to the Mortgage Bankers Association. Eventually, many of them will lose those homes, sending more supply onto the market. Unemployment has continued to rise, and the housing market is unlikely to show a sustained recovery until job growth resumes.

While the supply of middle-class homes on the market has declined somewhat, it remains ample in most places. And there is a huge glut of high-end houses for sale in many areas. That means prices of high-end homes might still have a long way to fall.

2. When will housing bottom out?

There probably won't be any clear turning point. Monthly indicators, such as home sales and prices, tend to bounce erratically from month to month, making it hard to discern the underlying trend. And the housing bust will end at different times in different places. House prices already might have bottomed out in the coveted Virginia suburbs with short commutes into Washington, D.C., for instance. But it probably will be years before all of the unsold condos find buyers in parts of Florida.

Generalizations about states or metropolitan areas don't say much about what is happening in your neighborhood. In Summit, N.J., known for good schools and an easy, 45-minute train commute to Manhattan, the median home price in September was up 1.2% from a year earlier, according to Otteau Valuation Group, an appraisal company. In Atlantic City, N.J., which suffers from too much speculative building of condominiums and weak demand for vacation homes, the median price is down about 12% from a year ago.

3. What signals should I watch to determine whether my local market is improving?

One way to get a sense of supply is to ask a good local real estate agent for stats on how many homes are listed for sale in your town and how many months it would take at the current sales rate to absorb that supply. Anything over about six months generally is considered high, meaning that sellers might have to cut prices. Another way to get a sense of a neighborhood's health is to count the number of for-sale signs and vacant houses. If there are more than a couple vacant homes in a block, that might be a bad sign, particularly if no one is taking care of them.

The supply of homes listed for sale has fallen very sharply in some areas. But the supply is likely to balloon again in many areas with a renewed surge in foreclosures. Many local newspapers provide information on foreclosure filings.

Demand depends heavily on the job market. The U.S. Bureau of Labor Statistics provides unemployment rates by metropolitan area. In September, they ranged from 2.9% in Bismarck, N.D., to 30% in El Centro, Calif. State and local agencies provide job-market data, too. Celia Chen, a housing economist at Moody's Economy.com, says help-wanted signs can be a useful local indicator; if you start seeing more of them around your neighborhood, that is a sign that business in your area could be starting to recover.

4. How can I figure out the value of my home?

You never know for sure what a home will fetch until you put it on the market, and then it is partly a matter of luck. Will the eager buyer who shares your taste in home style and neighborhood show up on day one or day 200?

Some Web sites -- including Zillow.com, HomeGain.com and Cyberhomes.com -- provide estimates of individual home values. These estimates are largely based on recent sales of nearby homes, and in some cases they are wildly off the mark. But they often provide a ballpark idea of a home's value.

You might come closer to the real value by talking to a local agent and looking at recent prices for homes that you know are very similar to yours. If you want to be more scientific and don't mind paying a few hundred dollars, hire a professional appraiser.

5. Does it matter whether I'm "under water"?

At least you have plenty of company. About 20% of owners of single-family homes with mortgages owe more than the current estimated value of their homes, according to Zillow.com.

If you can afford your monthly payment and don't need to move soon, that might not be a big problem. But it is hard, and sometimes impossible, to refinance a mortgage if you are under water, and you will take a bath if you have to sell the home now. Some people who can afford to make their monthly mortgage payments are deciding it doesn't make sense to do so because they don't expect their home values ever to recover to past peaks, and they could rent similar houses for much lower monthly costs.

6. If I lose my home to foreclosure, how long will it take to repair my credit record?

It probably will be three to five years before you can qualify for a home mortgage insured by the government, depending on your circumstances, and that assumes you have re-established a record for paying your bills on time. The foreclosure will remain a blot on your credit record for seven years, likely raising your interest costs even if you do get another loan. If you pay bills on time, keep your credit-card balances low and don't apply for too many cards, you can make a "slow,

gradual improvement" in your credit score, says Tom Quinn, a vice president at Fair Isaac Corp., which provides tools for analyzing credit records.

7. *If I'm renting, is now a good time to buy a house?*

It may well be. Prices in most areas are well below their peaks, even if they haven't hit bottom. Don't kid yourself that you can time the bottom of the market perfectly. But don't feel any pressure to buy in a hurry, because the supply of housing is likely to remain ample for years in many areas.

Generally, it doesn't make sense to buy unless you expect to remain in the house for at least four or five years, because the transaction costs -- including commissions for real estate agents and mortgage fees -- are heavy.

But now is clearly a good time to rent. Many landlords need tenants badly. The national apartment-vacancy rate in the third quarter was 7.8%, the highest in 23 years, according to Reis Inc., a New York research firm. So landlords are cutting rents and offering such sweeteners as free flat-screen televisions or several months of free rent to retain or attract tenants. Some owners of condos will "cut their throats to get some kind of rental income to cover part of their expenses," says Jack McCabe, a real estate consultant in Deerfield Beach, Fla.

8. *Can I get a tax credit if I buy a home now?*

Under an expanded and extended program approved by Congress earlier this month, tax credits are available to many people who buy or sign a contract to buy a principal residence by April 30 and complete the purchase by June 30. The tax credit is up to \$8,000 for first-time home buyers and \$6,500 for people who already have owned a home for at least five consecutive years during the previous eight years. The credit is available for individual taxpayers with annual incomes of up to \$145,000 or joint filers with incomes up to \$245,000.

9. *Can I get a mortgage on attractive terms?*

Only if you have a good credit record, a moderate amount of debt in relation to your income and the ability to fully document your income. That last requirement is fairly easy for people who work for a salary and have had the same employer for more than two years, but it can be tough for self-employed people with incomes that vary substantially from year to year.

A borrower with a strong credit score of 740 or higher (on the scale of 300 to 850) and the ability to make a down payment of at least 20% could get an interest rate of about 5% with no origination fees on a 30-year fixed-rate mortgage, says Lou Barnes, a mortgage banker in Boulder, Colo. But if your credit score is 680, the rate jumps to about 5.5%.

People who can't make a down payment of at least 20% generally are being funneled into loans insured by the Federal Housing Administration. That means paying extra fees for the FHA insurance.

Borrowing costs are steeper at the high end of the housing market. For so-called jumbo loans -- those above \$729,750 in areas with the highest housing costs or \$417,000 in places with the lowest costs -- interest rates on 30-year fixed-rate mortgages last week averaged 5.95%, according to HSH Associates, a financial publisher.

10. *Should I invest in foreclosed homes?*

Probably not. A lot of investors chase these properties, and only the most experienced know how to deal with all of the pitfalls. Homes auctioned at trustee or sheriff sales are sold on an as-is basis, and there is no provision for an inspection before you take ownership. If after buying you find out that termites have been treating the floor joists as an all-you-can-eat buffet, that is your problem. You must pay for the full price within a day or two, so you need a lot of cash or access to special short-term loans for investors that come with interest rates of around 18%. This is a pursuit best left to people with a lot of time, nerve, cash and knowledge of the local market.

Write to James R. Hagerty at bob.hagerty@wsj.com

Printed in The Wall Street Journal, page A21

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Cities, agencies cut developer fees



10:27 PM PST on Sunday, November 15, 2009

By AARON BURGIN
The Press-Enterprise

A number of Inland municipalities, desperate to revive the dormant economy, are giving developers a big break on fees.

From Corona to Adelanto, governments are slashing the amount of money that builders have to pay for future road improvements, parks, libraries and sewer and water systems. They say that lowering the fees will spur development and put people back to work in the construction industry, the backbone of the region's economy.

"Our recovery, whether you like it or not, will not occur until we get construction up and going," said Inland economist John Husing, who is credited for initially suggesting the fee breaks to stimulate the economy.

Opponents, however, say the price the region will pay in the loss of dollars critical to improving the region's underwhelming infrastructure is too steep.

"This is money that we can't get back," Wildomar Councilwoman Sheryl Ade said. "And when it comes time to widen our roads and improve our infrastructure, we won't be able to do it."

Several cities in Riverside County adopted lower fees for at least a year, starting in May with Corona, which reduced its fees by 40 percent for two years. The city also allowed developers to pay fees when buildings are occupied, rather than when the city issues permits. For new homes, developers now pay \$7,000 instead of \$11,000 and \$1.03 per square foot of commercial space rather than \$1.40.

Menifee has approved the largest cuts, reducing fees for single-family homes by 65 percent to \$1,815 until June 30, 2010, or after 500 permits are issued. Menifee officials said they have seen an uptick in homebuilding since the fee reduction: Nearly 60 home building permits have been issued since July 1.

"Reagan and Kennedy got it right: You lower taxes and it stimulates the economy," Menifee Councilman Scott Mann said after a recent Wildomar meeting. "It is working for us."

Perris, Moreno Valley and Riverside County also have cut their fees. In San Bernardino County, only Adelanto and Victorville have made the cuts. Regionally, members of the Western Riverside Council of Governments voted to lower a regional development fee that pays for large projects such as widening freeways.

The Inland area's building industry associations have called for other cities to cut their fees. Association officials contend that, while the cost of construction has fallen, fees have remained at pre-recession levels, which make the cost of building prohibitive.

Husing was commissioned by several regional agencies to analyze the housing market meltdown's effect on Riverside county and make policy recommendations to get the county out of the recession. He made three suggestions: allow builders to build smaller homes, shrink the size of the lots upon which homes are built and lower the fees builders pay for development.

"Doing these things are going to allow us to get out of the recession sooner than later," Husing said.

Opponents, however, question whether the breaks will spur development when the stagnant credit market is the biggest roadblock for builders. Murrieta is the only city to vote against the Western Riverside Council's regional fee decrease.

"It doesn't pass the common-sense test," Murrieta Councilman Rick Gibbs said.

Cities cannot recover the fees from developers when times get better, which means that valuable infrastructure projects might be delayed, opponents said. In Wildomar, where officials still are debating the fee breaks, a 50-percent reduction would result in a \$384,000 shortfall of fees.

Others question the prudence of reviving residential and commercial construction when homes are going into foreclosure and shopping centers and office buildings remain vacant. In Riverside County, for example, nearly one in seven commercial buildings and one in four office spaces are empty, according to real estate and commercial retail reports.

"We have to absorb the oversupply before we can turn things around," said Christopher Thornberg from Los Angeles-based Beacon Economics. "If you build a new home, or a new shopping center, is someone going to live in it or relocate to it?"

Opponents of the breaks also worry that focusing the region's economic recovery on construction will hinder efforts to diversify the economy, which they believe is the only way to soften the blows of future recessions.

Husing agreed with two of opponents' arguments: the cuts can't be recovered and the county's economy needs to diversify in the long-term.

"The counter-argument is that you have a 15-percent unemployment rate," Husing said. "The fact of the matter is we don't have an option of a different type of recovery because we don't have a different kind of labor force. Anyone who thinks we are going to overnight transform into a white-collar region is simply dreaming."

Reach Aaron Burgin at 951-375-3733 or aburgin@PE.com

GIVING BREAKS

A number of Inland cities and agencies are granting developers temporary reductions on impact fees.

CORONA: 40 percent reduction of commercial, residential and industrial impact fees for two years and deferral of payment to the time of occupancy rather than the time a permit is issued.

MENIFEE: 65 percent reduction in single-family residential fees until June 30 or until 500 building permits are issued.

PERRIS: 50 percent reduction in impact fees for one year, followed by a six-month, 25 percent reduction.

MORENO VALLEY: 50 percent reduction of impact fees for one year.

WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS: a 10 percent reduction in the Transportation Uniform Mitigation Fee, a temporary 50 percent reduction in the fee until Dec. 31, 2010.

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NOVEMBER 17, 2009

Ten Questions on the Volatile Housing Market

Lower Prices Have Spurred Home Sales, but Looming Foreclosures and High Unemployment Are Clouding the Outlook

By JAMES R. HAGERTY

The U.S. housing market has been in a slump for the past four years. When will it ever end?

In recent years, real estate has proven as jittery and unreliable as any other market. The average U.S. home price nearly doubled between January 2000 and April 2006, according to the First American LoanPerformance index. Since then, the average has fallen about 30%. The drop has been 53% in the Las Vegas metropolitan area and 39% in Miami, where about a quarter of all households with mortgages are behind on their payments or in foreclosure. The value of your home might be determined more by whether the neighbors keep their jobs than whether the house has ample light and closet space.

Here is a guide to navigating a fractured and volatile market:

1. Is the housing market getting better?

It has shown some signs of healing this year, but the much-touted recovery is tentative and fragile.

Home sales have increased from the severely depressed levels of 2008. The inventory of unsold homes listed for sale also is down. Bidding wars are breaking out for foreclosed homes in the sorts of neighborhoods (near jobs and decent schools) that attract both first-time buyers and investors seeking rental properties.

But more than 6.7 million U.S. households with mortgages, or about 13%, are behind on their payments or are in the foreclosure process, according to the Mortgage Bankers Association. Eventually, many of them will lose those homes, sending more supply onto the market.

Unemployment has continued to rise, and the housing market is unlikely to show a sustained recovery until job growth resumes.

While the supply of middle-class homes on the market has declined somewhat, it remains ample in most places. And there is a huge glut of high-end houses for sale in many areas. That means prices of high-end homes might still have a long way to fall.

2. When will housing bottom out?

There probably won't be any clear turning point. Monthly indicators, such as home sales and prices, tend to bounce erratically from month to month, making it hard to discern the underlying trend. And the housing bust will end at different times in different places. House prices already might have bottomed out in the coveted Virginia suburbs with short commutes into Washington, D.C., for instance. But it probably will be years before all of the unsold condos find buyers in parts of Florida.

Generalizations about states or metropolitan

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areas don't say much about what is happening in your neighborhood. In Summit, N.J., known for good schools and an easy, 45-minute train commute to Manhattan, the median home price in September was up 1.2% from a year earlier, according to Otteau Valuation Group, an appraisal company. In Atlantic City, N.J., which suffers from too much speculative building of condominiums and weak demand for vacation homes, the median price is down about 12% from a year ago.

3. *What signals should I watch to determine whether my local market is improving?*

One way to get a sense of supply is to ask a good local real estate agent for stats on how many homes are listed for sale in your town and how many months it would take at the current sales rate to absorb that supply. Anything over about six months generally is considered high, meaning that sellers might have to cut prices. Another way to get a sense of a neighborhood's health is to count the number of for-sale signs and vacant houses. If there are more than a couple vacant homes in a block, that might be a bad sign, particularly if no one is taking care of them.

The supply of homes listed for sale has fallen very sharply in some areas. But the supply is likely to balloon again in many areas with a renewed surge in foreclosures. Many local newspapers provide information on foreclosure filings.

Demand depends heavily on the job market. The U.S. Bureau of Labor Statistics provides unemployment rates by metropolitan area. In September, they ranged from 2.9% in Bismarck, N.D., to 30% in El Centro, Calif. State and local agencies provide job-market data, too. Celia Chen, a housing economist at Moody's Economy.com, says help-wanted signs can be a useful local indicator; if you start seeing more of them around your neighborhood, that is a sign that business in your area could be starting to recover.

4. *How can I figure out the value of my home?*

You never know for sure what a home will fetch until you put it on the market, and then it is partly a matter of luck. Will the eager buyer who shares your taste in home style and neighborhood show up on day one or day 200?

Some Web sites -- including Zillow.com, HomeGain.com and Cyberhomes.com -- provide estimates of individual home values. These estimates are largely based on recent sales of nearby homes, and in some cases they are wildly off the mark. But they often provide a ballpark idea of a home's value.

You might come closer to the real value by talking to a local agent and looking at recent prices for homes that you know are very similar to yours. If you want to be more scientific and don't mind paying a few hundred dollars, hire a professional appraiser.




Associated Press

For-sale signs were displayed outside new condominiums in Lincoln Park, Mich., in April.

5. *Does it matter whether I'm "under water"?*

At least you have plenty of company. About 20% of owners of single-family homes with mortgages owe more than the current estimated value of their homes, according to Zillow.com.

If you can afford your monthly payment and don't need to move soon, that might not be a big problem. But it is hard, and sometimes impossible, to refinance a mortgage if you are

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under water, and you will take a bath if you have to sell the home now. Some people who can afford to make their monthly mortgage payments are deciding it doesn't make sense to do so because they don't expect their home values ever to recover to past peaks, and they could rent similar houses for much lower monthly costs.

6. If I lose my home to foreclosure, how long will it take to repair my credit record?

It probably will be three to five years before you can qualify for a home mortgage insured by the government, depending on your circumstances, and that assumes you have re-established a record for paying your bills on time. The foreclosure will remain a blot on your credit record for seven years, likely raising your interest costs even if you do get another loan. If you pay bills on time, keep your credit-card balances low and don't apply for too many cards, you can make a "slow, gradual improvement" in your credit score, says Tom Quinn, a vice president at Fair Isaac Corp., which provides tools for analyzing credit records.

7. If I'm renting, is now a good time to buy a house?

It may well be. Prices in most areas are well below their peaks, even if they haven't hit bottom. Don't kid yourself that you can time the bottom of the market perfectly. But don't feel any pressure to buy in a hurry, because the supply of housing is likely to remain ample for years in many areas.

Generally, it doesn't make sense to buy unless you expect to remain in the house for at least four or five years, because the transaction costs -- including commissions for real estate agents and mortgage fees -- are heavy.

But now is clearly a good time to rent. Many landlords need tenants badly. The national apartment-vacancy rate in the third quarter was 7.8%, the highest in 23 years, according to Reis Inc., a New York research firm. So landlords are cutting rents and offering such sweeteners as

free flat-screen televisions or several months of free rent to retain or attract tenants. Some owners of condos will "cut their throats to get some kind of rental income to cover part of their expenses," says Jack McCabe, a real estate consultant in Deerfield Beach, Fla.

8. Can I get a tax credit if I buy a home now?

Under an expanded and extended program approved by Congress earlier this month, tax credits are available to many people who buy or sign a contract to buy a principal residence by April 30 and complete the purchase by June 30. The tax credit is up to \$8,000 for first-time home buyers and \$6,500 for people who already have owned a home for at least five consecutive years during the previous eight years. The credit is available for individual taxpayers with annual incomes of up to \$145,000 or joint filers with incomes up to \$245,000.

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Write to James R. Hagerty at bob.hagerty@wsj.com Printed in The Wall Street Journal, page A21

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
OFFICE OF THE DIRECTOR**

1800 Third Street, Room, 450
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www.hcd.ca.gov



November 18, 2009

Mr. Sandy E. Smith
Government Relations Director
Alston & Bird
2801 Townsgate Road, Suite 215
Westlake Village, CA 91361

Dear Mr. Smith:

Thank you for your recent inquiry regarding inclusionary ordinances. The Department is pleased to provide information on the requirements of State law and its policy. For your information, neither State law nor Department policy requires the adoption of any local inclusionary ordinance in order to secure approval of a jurisdiction's housing element. State law does require incentives for voluntary inclusionary development (State density bonus law), pronounces housing element law neutral relative to enactment of mandatory local inclusionary provisions, and circumscribes the responsibilities of local governments which do enact inclusionary policies. The relevant sections of the Government Code are described below.

Government Code Section 65915-17, State density bonus law, requires local governments to make incentives available to residential developers that voluntarily propose to reserve specified portions of a proposed development for occupancy by low- or moderate-income households, and indicates that local governments are not to undermine implementation of this provision. Every local government is required to adopt an ordinance establishing how it will implement State density bonus law, including setting forth the incentives the local government will provide.

State housing element law requires jurisdictions to plan for their existing and projected housing needs, identify adequate sites to accommodate their share of the regional housing need, and, among other things, analyze local policies, regulations or requirements that have the potential to constrain the development, maintenance or improvement of housing for all income level. The law also requires programs to "assist in the development of adequate housing to meet the needs of low- and moderate-income households".

Many local governments adopt mandatory inclusionary programs as one component of a comprehensive affordable housing strategy and have demonstrated success in increasing the supply of housing affordable to low- and moderate-income households. However, some inclusionary programs may have the potential to negatively impact the overall development of housing. As a result, local governments must analyze mandatory inclusionary policies as potential governmental constraints on housing production when adopting or updating their housing elements, in the same way that other land-use regulations must be evaluated as potential constraints.

Mr. Sandy E. Smith
Page 2

For example, local governments must analyze whether inclusionary programs result in cost shifting where the cost of subsidizing the affordable units is underwritten by the purchasers of market-rate units in the form of higher prices. Such increases can be a barrier to some potential homebuyers who already struggle to qualify for a mortgage, and earn too much to qualify for government assistance. Local governments must also analyze their inclusionary policies to evaluate whether sufficient regulatory and financial incentives are offered to facilitate compliance with the requirements.

In addition, it is important to note that the adoption of mandatory inclusionary zoning programs do not address housing element adequate sites requirements to accommodate the regional housing need for lower-income households. Inclusionary programs are not a substitute for designating sufficient sites with appropriate zoning, densities and development standards as required by Government Code Section 65583(c)(1).

Finally, Government Code Section 65589.8 specifies that nothing in housing element law shall be construed to expand or contract the authority of a local government to adopt an ordinance, charter amendment, or policy requiring that any housing development contain a fixed percentage of affordable housing units. It further states that a local government which adopts such a requirement shall permit a developer to satisfy all or a portion of that requirement by constructing rental housing at affordable monthly rents, as determined by the local government.

California has been for many years in the midst of a severe housing crisis; there are simply not enough homes for the number of residents who need them. Continued undersupply of housing threatens the State's economic recovery, its environment, and the quality of life for all residents. Effectively addressing this crisis demands the involvement and cooperation of all levels of government and the private sector. Both the public and private sector must reexamine existing policies, programs and develop new strategies to ensure they operate most effectively and provide an adequate housing supply for all Californians. The Department is committed to working with its public and private sector partners in this effort for the benefit of California's growing population.

If you need additional information, please call me at (916) 445-4775 or Cathy Creswell, Deputy Director, Division of Housing Policy Development, at (916) 323-3177.

Sincerely,



Lynn L. Jacobs
Director



M E M O R A N D U M

City of Thousand Oaks • Thousand Oaks, California

Community Development Department

TO: Scott Mitnick, City Manager

FROM: John C. Prescott, Community Development Director

DATE: May 5, 2009

SUBJECT: **Adjustment of Inclusionary Housing In-lieu and Nonresidential Linkage Fees**

RECOMMENDATIONS:

- 1) Adopt Resolution (Attachment #1) adjusting the City's Inclusionary Housing In-lieu Fee as follows:
 - a. Detached Single Family Dwelling – \$0/dwelling unit
 - b. Townhouse/Condo - \$0/dwelling unit

- 2) Adopt Resolution (Attachment #2) setting the City's Nonresidential Linkage Fee Program fees as follows:
 - a. Commercial/Retail - \$0.00/s.f.
 - b. Office - \$0.00/s.f.
 - c. Hotel/Lodging - \$0.00/s.f.
 - d. Industrial - \$0.00/s.f.
 - e. Research & Development Flex Space - \$0.00/s.f.

- 3) Direct staff to return prior to June 30, 2010 to provide an update on market conditions and a new recommendation on fee adjustments.

FINANCIAL IMPACT:

No Additional Funding Requested. Adoption of the recommended action could result in a loss of potential new fees collected through the affordable housing programs and deposited in the Housing Trust Fund. Based on projects which already have entitlements and are subject to the fee, and if they obtained building permits during the next fiscal year this figure would be approximately \$375,000. There would be no impact to the General Fund.

BACKGROUND:

Program Background

The Affordable Housing Ordinance had been contemplated since the City's 2000-2005 Housing Element. An inclusionary housing program and a nonresidential development linkage fee program were seen as reliable long-term sources of revenue for affordable housing production. This source of revenue for affordable housing was viewed as important due to the escalating cost of housing, and the fact that the Redevelopment Agency (Agency) was the City's largest source of affordable housing funding, and the ability of the Agency to collect tax increment will eventually end. In addition, this funding source was seen as a vital tool in helping the City meet its Regional Housing Needs Allocation.

May 2007 - the City retained a consultant, Bay Area Economics (BAE) to analyze the ability to implement various housing programs including an inclusionary housing and nonresidential linkage fee program as directed by City Council during a March 2006 workshop. Part of the analysis involved looking at various scenarios for establishing an inclusionary housing requirement with the option of paying an in-lieu fee and a nonresidential linkage fee, and evaluating the financial feasibility of these fees on specific types of residential and non residential development.

November 2007 - The results of BAE's analysis were presented in the "Affordable Housing Program Analysis", dated November 15, 2007 ("BAE Study"). The results of the BAE Study were presented to City Council, at which time the City Council initiated the Municipal Code Amendments for these programs, as well as a Density Bonus program, and referred the matter to the Planning Commission for review and recommendation. A copy of the Executive Summary from that report is attached (Attachment #3).

July 2008 - The draft Affordable Housing Ordinance was presented to City Council for consideration. A copy of staff report is attached (Attachment #4). City Council introduced the Affordable Housing Ordinance. However, in doing so, City Council expressed concern regarding the changes in the residential market place that had occurred from the time the BAE Study was completed, and the time City Council took action on the Ordinance. As part of the action introducing the Ordinance, City Council directed staff to come back with a report in six to eight months time with status of market conditions and recommendation on analysis to evaluate current fee levels adopted.

September 2008 - City Council second reading and adoption of the Affordable Housing Ordinance.

October 2008 - The Affordable Housing Ordinance took effect.

Basis for Setting Fee Amounts

1. Inclusionary Housing In-lieu Fees

The Affordable Housing Ordinance adopted by City Council in September 2008 was designed to provide flexibility by allowing a developer to satisfy the requirements of the City's Inclusionary Housing Program by either constructing the required percentage of affordable units onsite, or by paying an in-lieu fee. The method for establishing the fee amounts is described in detail below. The fees were intended to be set at a level that was supportable by project type, but not so high as to act as a deterrent to housing production.

The in-lieu fees established for the inclusionary housing program were set by using a two-tiered methodology. First, the difference in cost between a market rate unit and an affordable unit, termed the "gap", was established. This "gap" is intended to represent the "true" cost to mitigate affordable housing costs. After the "gap" was established the fee was tested for financial feasibility using five prototype residential products to see the effect on the expected return on cost. The "gap" in-lieu fee was inputted into each of the pro formas to see its effect on the financial feasibility of a project, which had been defined as a 12% return on cost. In simple terms, the process entailed backing the fee amount into the various pro formas until the 12% return on cost figure was breached. Using the various pro formas this resulted in supportable fee amounts that differed by product type, resulting in the two fee amounts adopted by City Council as follows:

1. Detached single-family dwelling - \$9,000/dwelling unit
2. Townhouse/condo - \$25,000/dwelling unit

2. Nonresidential Linkage Fees

The linkage fees established for the Nonresidential Linkage Fee Program were arrived at by using a two-tiered methodology similar to the approach taken for the Inclusionary Housing Program. The first step was a nexus analysis. This quantified the true cost to mitigate the housing need for each Use Category. Using employment density and salary levels the approximate total cost to mitigate housing need in each Use Category was established. This figure is intended to represent the "true" cost to mitigate affordable housing costs and is defined as the "nexus cost".

Once the nexus cost was established, the second step was to conduct a feasibility analysis to determine a fee level that would not impact the financial feasibility of the nonresidential prototypes. This process is similar to that described for the Inclusionary Housing in-lieu fee. The nexus cost for each Use Category was tested for financial feasibility on one of five representative nonresidential prototype projects for its effect on the expected return, which was defined as a 10% return on cost. In simple terms, the process entailed backing the fee amounts into the various pro formas until the 10% return on cost figure was breached. This resulted in supportable fee amounts that differed by Use category from \$4.50/s.f. to \$0. The specific fees for each Use Category

based on the nexus analysis and the fees established by the feasibility analysis are presented in the table below:

	Results of Linkage Fee Nexus Study and Feasibility Analysis				
	<u>Office</u>	<u>Retail/ Commercial</u>	<u>Industrial</u>	<u>R&D/ Flex Space</u>	<u>Lodging</u>
Max Per Sq. Ft. Fee per Nexus Study	\$106.85	\$114.40	\$47.36	\$78.93	\$40.60
Max. Per Sq. Ft. Fee per Feasibility Analysis (a)	\$2.50	\$4.50	\$0.00	\$0.00	\$2.50

DISCUSSION/ANALYSIS:

At the time the Affordable Housing Ordinance was introduced in July 2008, sales prices had decreased approximately 20% on a year over year basis. Part of staff's rationale for recommending the fee amounts in the BAE Study was the belief that the market would begin to stabilize and rebound in mid - 2009. Since the time the inclusionary housing and nonresidential linkage fees were introduced in July 2008, the residential market has continued to weaken significantly. In addition to the residential real estate market, there has been deterioration in the commercial real estate market since mid-2008, significant deterioration since the fourth quarter of 2008.

Current Market Conditions

The following discussion addresses current residential and commercial market conditions, and possible methods for adjusting the Inclusionary Housing in-lieu and nonresidential linkage fee amounts.

1. Residential

According to the most recent available statistics from February 2009, State-wide foreclosures accounted for a large percentage of sales, 58% in February, this compared with 33% from the year ago period. From March 2008 to March 2009, the median home price in California dropped 38% from \$358,000 to \$233,000. However, the drop in sales prices resulted in a 42% increase in sales activity across the State. In Ventura County, the median home price in March declined 24% from \$430,000 to \$326,000 year over year. Sales activity increased by 41% during the same time frame. In Thousand Oaks, the median home price declined by 15% from \$500,000 to \$423,000 from March 2008 to March 2009. Sales activity increased by 39%. Since the time the Affordable Housing Program study was completed in September 2007, the cumulative decline in the median sales price has been approximately 36% from \$663,000 to \$423,000. By comparison, at the height of the real estate market during summer 2006, the median home price in the State was \$505,000, Ventura County reached \$620,000, and in Thousand Oaks the median home price reached \$728,000.

Affordable Housing Program Fee Adjustments

May 5, 2009

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It is worth noting that from February 2009 to March 2009 the median price declined by only \$1,000 or .07% in Ventura County, and by \$4,500 or 1.1% in Thousand Oaks. This moderation in the rate of decline could signal the beginning of price stabilization, but more time is needed to establish a trend.

Foreclosures are projected to continue increasing, and it is widely held that sales prices will not begin to increase until foreclosure activity has decreased. Continuing tight credit standards are also aggravating the situation in the housing market, as is uncertainty about employment trends.

2. Nonresidential

At the time the Nonresidential Linkage Fee Program was presented for consideration in July 2008 public hearing, according to reports the commercial (nonresidential) real estate market in the Conejo Valley was just beginning to see signs of weakening. East County, and in particular the Conejo Valley, had held up relatively well to that point. According to data presented at the Ventura County Commercial Real Estate Symposium in January 2009, by CB Richard Ellis, commercial real estate vacancies surged in the fourth quarter of 2008 across all segments of the market in the County. The retail sector had vacancies increase from 3 percent to 7.2 percent year over year. The office markets had vacancies increase from 11.7 percent to 19.3 percent, and industrial vacancies increase from 6.3 percent to 8.9 percent.

Staff obtained lease rate data from a local brokerage firm in January 2009. Staff took weighted averages for each subcategory such as new construction versus existing, the size of space, class types, and different types of retail center, to arrive at a composite lease rate for each Use Category on which the linkage fees are based to measure the change in lease rates from the time the Affordable Housing Study was completed. At that time, retail/commercial lease rates had declined by approximately 32% from \$3.50/s.f. to \$2.37/s.f., while office lease rates had declined by approximately 15% from \$2.50/s.f. to \$2.13/s.f.

An article in the April 13, 2009 issue of the San Fernando Valley Business Journal indicated that vacancy rates in the Conejo Valley stood at 19.8% for office (a vacancy rate for retail was not cited in the article). Specific information regarding lease rates in the Conejo Valley were not provided, however the article indicated that prices and lease rates had been driven down due to an overabundance of property.

The outlook for commercial real estate through the balance of 2009 continues to be negative due to several factors including continuing tight credit conditions, increasing unemployment, decreased consumer spending, and generally negative economic conditions. There is much debate regarding when a turnaround can be expected. The UCSB Economic Forecast Project, predicts that a turnaround in commercial markets should not be expected until mid - 2010. The retail market is closely tied to consumer spending, while the office and industrial markets are more closely tied to employment.

Possible Methods for Adjustment of Fee Amounts

Given continuing adverse conditions in both the residential and commercial real estate markets, staff believes that an adjustment to the fees is warranted. Staff looked at three methods for possible adjustment of the fees:

Recreating the Original Process Used to Establish the Fees

This process would recreate the process used in the BAE study, developing new pro formas based on current market conditions and using focus groups to discuss assumptions used. This would result in a detailed feasibility analysis with new fee recommendations. The downside in this process is the time and cost involved in conducting the study, and the fact that, like the previous study, it would be a "snap shot" in time.

Adjusting the Fees Based on Changes in Market Conditions

This method would make use of sales data and lease rates to gauge changes in the residential and commercial markets. Fees could be adjusted based on the rate of change since the time the Affordable Housing Study was concluded in November 2007. Staff believes this is a fairly quick and reasonable method in assessing current market conditions. However, this method is probably most effective when there is a degree of certainty about the real estate cycle we are in and longer-term trends.

Temporarily Setting the Fees to Zero

This method would temporarily set both the Inclusionary Housing In-lieu fee and the Nonresidential Development Linkage Fee to \$0. The reason that this is considered a reasonable option is that, as described in the market condition sections of this report, there has been a steep and protracted decline in both the residential and commercial real estate markets, and there is no firm evidence that a recovery in the general economy or the real estate markets is forthcoming in the near-term. Adjusting the fees to \$0 would give substantial relief to developments that were clearly feasible at the current fee levels when the BAE Study was performed but, are not feasible under current market conditions. In this case, staff would recommend adjusting the fees to \$0 until the end of fiscal year 2009-2010 (June 30, 2010). This time frame would give a little over a year for market conditions to stabilize and longer-term market trends to emerge. Staff would monitor and analyze market conditions during this time. This would then allow City Council to be in a better position to establish a more sustainable fee structure at that time, or conversely if market conditions had not begun to change or had deteriorated further the fees could remain at \$0.00 for an additional period of time. Given the state of the overall economy and the real estate markets, staff believes this to be the best option at this time.

Housing Production Survey

While deliberating on the introduction of the Affordable Housing Ordinance, the City Council discussed the wide variance in in-lieu fee amounts among other cities that have such a fee and the possible effect on housing production in those cities with higher fee amounts. In response to Council's inquiry, in January 2009, staff surveyed 10 cities with higher in-lieu fees regarding to housing production and in-lieu fees collected. The City of Oxnard which has a fairly low in-lieu fee was included for comparative purposes. This survey data is included as Attachment #5.

CONCLUSION:

It is clear from anecdotal evidence and market data that both the residential and the commercial real estate markets have had significant protracted declines. Part of staff's rationale for recommending the fee amounts from the Affordable Housing Study when the Ordinance was introduced to City Council in July 2008 was the belief that the market would begin to rebound in mid - 2009. Clearly this is not likely to be the case. While the residential market is likely closer to a bottom, it is still unclear when prices will stabilize. Commercial real estate tends to be closely tied to employment, and thus is a lagging indicator during economic downturns. Commercial markets will likely not stabilize until credit markets ease and unemployment begins to drop. Therefore, staff is recommending that both the Inclusionary Housing in-lieu fee categories and the Nonresidential Development Linkage fee categories be adjusted to \$0.00 until June 30, 2010.

Staff also recommends returning to City Council prior to June 30, 2010 with an updated status report on the residential and commercial real estate markets. Staff believes that adjusting the fee amounts to \$0.00 and waiting a year to gauge market conditions will hopefully yield greater clarity in understanding longer-term market trends, and allowing an adjustment to fee amounts to more sustainable levels.

It should be noted that both the Inclusionary Housing In-lieu fees and the Nonresidential Development Linkage fees are payable at building permit. So projects that have been, or will be, approved and are subject to these programs, would pay whatever fee is in effect at the time they pulled their building permits. To date no projects have paid either the Inclusionary Housing In-lieu fees or the Nonresidential Development Linkage fee.

Meets Council Goals B & I:

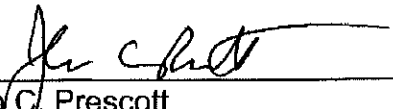
- B. Operate City government in a fiscally and managerially responsible and prudent manner to ensure that the City of Thousand Oaks remains one of California's most desirable places to live, work, visit, recreate, and raise a family.
- I. Implement high quality redevelopment projects within Thousand Oaks Boulevard Redevelopment Project Area and Newbury Road Project Area; Develop a pedestrian-oriented, viable and self-sustaining "Downtown"; and continue to produce long-term affordable housing.

Affordable Housing Program Fee Adjustments

May 5, 2009

Page 8

Submitted by:



John C. Prescott
Community Development Director

Prepared by:



Bill Hatcher
Senior Planner

CC: Doug Tapking, Executive Director, Area Housing Authority
Rick Schroeder, Executive Director, Many Mansions

Attachments :

1. - Inclusionary Inclusionary Housing In-lieu Fee Resolution
2. - Nonresidential Development Linkage Fee Resolution
3. - Executive Summary from BAE Study
4. - City Council Staff Report dated July 22, 2008
5. - Housing Production and Fee Survey

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF THOUSAND OAKS MODIFYING THE
INCLUSIONARY HOUSING IN-LIEU FEE UNTIL
JUNE 30, 2010 AND RESCINDING RESOLUTION
NO. 2008-094

WHEREAS, the Affordable Housing Ordinance, Title 9, Chapter 10, Article 3, of the Thousand Oaks Municipal Code provides that a developer of a residential project, subject to the provisions of the Inclusionary Housing Program, may satisfy the requirement by paying a fee in-lieu of constructing inclusionary units; and

WHEREAS, Section 9-10.306 provides that the Council shall adopt a resolution establishing the inclusionary in-lieu fee rates; and

WHEREAS, the City had an analysis prepared entitled "Housing Programs Analysis" ("Study"), dated November 15, 2007, which among other things analyzed the ability to establish an inclusionary housing in-lieu fee and considered the financial effect of imposing such a fee on residential development; and

WHEREAS, on November 27, 2007, the City Council conducted a public meeting, wherein the Council considered the findings of the Study; and

WHEREAS, on July 22, 2008, the City Council conducted a public hearing and adopted Resolution No. 2008-094 establishing an Inclusionary Housing In-lieu Fee; and

WHEREAS, Resolution No. 2008-094 set the Inclusionary Housing In-lieu fee at the following amounts: \$9,000 per detached single family dwelling unit and \$25,000 per attached townhouse/condominium dwelling unit; and

WHEREAS, since the time the fee was adopted, the residential real estate market has entered a prolonged slump due to a recession that started in December 2007, the resulting tight credit market and unprecedented number of home foreclosures; and

WHEREAS, a component of establishing such a fee was an analysis of its financial effect on residential development; and

WHEREAS, an adjustment to the fee amounts is warranted given the negative changes in the residential real estate market since the fees were adopted; and

WHEREAS, Council finds that there is continuing uncertainty regarding the depth and duration of the downturn in the residential real estate market, and the general state of the overall economy, which makes setting the fees at an appropriate level commensurate with economic conditions difficult.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Thousand Oaks that:

1. The following Inclusionary Housing In-lieu Fee Amounts are hereby adopted and shall be levied at the following rates:

- a. Condominium/Townhouse \$0/ per dwelling unit
- b. Single Family Detached \$0/ per dwelling unit

2. Reducing these fees to \$0 until June 30, 2010 will allow for more time in determining the future state of the residential real estate market and setting fees at appropriate levels.

3. Resolution No. 2008-094 is hereby rescinded and superseded by this Resolution.

* * * * *


PASSED AND ADOPTED

Thomas P. Glancy, Mayor
City of Thousand Oaks, California

ATTEST:

Linda D. Lawrence, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney



Amy Albano, City Attorney

APPROVED AS TO ADMINISTRATION:



Scott Mitnick, City Manager

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF THOUSAND OAKS MODIFYING THE
NONRESIDENTIAL DEVELOPMENT LINKAGE
FEES AND RESCINDING RESOLUTION NO. 2008-
095

WHEREAS, the Affordable Housing Ordinance, Title 9, Chapter 10, Article 4 of the Thousand Oaks Municipal Code, provides that a developer of a nonresidential project, subject to the provisions of the Nonresidential Linkage Fee Program, shall satisfy the requirement by paying a nonresidential linkage fee; and

WHEREAS, Section 9-10.408 of the Thousand Oaks Municipal Code provides that the Council shall adopt a resolution establishing the nonresidential linkage fee rates; and

WHEREAS, Section 9-10.405 provides that the City Council shall adopt a resolution assigning specific land uses to each Nonresidential Use Category; and

WHEREAS, the City has had an analysis prepared entitled "Housing Programs Analysis" ("Study"), dated November 15, 2007, which established a rationale and methodology for the initial fee amounts and also analyzed the nexus for imposing a nonresidential development linkage fee on nonresidential development, and

WHEREAS, on November 27, 2007, the City Council conducted a public meeting, wherein the Council considered the findings of the study, which among other things found that the amount of housing demand attributable to accommodating the needs of employees in nonresidential development would justify fees that could be significantly higher than the fee imposed herein;

WHEREAS, on July 22, 2008, the City Council held a Public Hearing, duly noticed by law, and adopted the Nonresidential Development Linkage fee.

WHEREAS, Resolution No. 2008-095 set the Nonresidential Development Linkage fees at the following amounts:

- | | |
|---------------------------|-------------|
| a. Retail/Commercial | \$4.50/s.f |
| b. Office | \$2.50/s.f |
| c. Lodging | \$2.50/s.f. |
| d. Industrial | \$0.00/s.f |
| e. Research & Development | \$0.00/s.f |

WHEREAS, since the time the fee was adopted, the commercial real estate market has entered a prolonged slump due to a recession that started in December 2007, the resulting tight credit market, reduction in consumer spending and high unemployment rate; and

WHEREAS, a component of establishing such a fee was an analysis of its financial effect on nonresidential development; and

WHEREAS, an adjustment to the fee amounts is warranted given the negative changes in the commercial real estate market since the fees were adopted; and

WHEREAS, Council finds that there is continuing uncertainty regarding the depth and duration of the downturn in the commercial real estate market, and the general state of the overall economy, which makes setting the fees at an appropriate level commensurate with economic conditions difficult.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Thousand Oaks that:

1. The Nonresidential Development Linkage Fee Amounts are hereby adopted and shall be levied at the following rates per square foot of building area:

a. Retail/Commercial	\$0.00/s.f
b. Office	\$0.00/s.f
c. Lodging	\$0.00/s.f.
d. Industrial	\$0.00/s.f
e. Research & Development	\$0.00/s.f

2. Specific uses in the zoning ordinance and specific plans are assigned to a Nonresidential Use Category per the attached Exhibit "A".

3. Reducing these fees to \$0 until June 30, 2010 will allow for more time to determine the future state of the commercial real estate market and set fees at appropriate levels.

4. Resolution No. 2008-095 is hereby rescinded and superseded by this Resolution.


PASSED AND ADOPTED

Thomas P. Glancy, Mayor
City of Thousand Oaks, California

ATTEST:

Linda D. Lawrence, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney



Amy Albano, City Attorney

APPROVED AS TO ADMINISTRATION:

 for:

Scott Mitnick, City Manager

EXHIBIT "A"
Nonresidential Use Category Classifications

ID	Type	Retail / Comm	Office	Lodging	Industrial	R & D	Other	Exempt
2	Agricultural, floriculture, and horticulture							x
532	Airfields, airports, helicopter fields or ports							x
184	Ambulance services		x					
746	Amusement and recreational facilities	x						
35	Animals and fowl including livestock feeding pens					x		
60	Antique stores	x						
207	Arcades	x						
559	Art and crafts studios	x						
768	Art Galleries	x						
239	Auction businesses	x						
701	Audiovisual equipment rental service	x						
517	Auto body repair independent					x		
202	Automatic washing facilities for automobiles	x						
615	Automobile sales and leasing	x						
109	Automobile service stations	x						
62	Bakeries	x						
405	Banks and similar businesses	x						
687	Banquet/Catering facilities	x						
47	Barber shops, beauty shops, or newsstands	x						
129	Baths, Turkish and similar types	x						
133	Billiard and pool halls	x						
66	Bird and pet shops	x						
418	Blacksmith shops					x		
36	Boardinghouses			x				
420	Boat building, except ship building					x		
67	Bookstores	x						
568	Botanical gardens	x						
421	Bottling plants					x		
191	Bowling lanes	x						
693	Branch libraries							x
423	Cabinet and carpenter shops					x		
570	Camera and video sales and repair store	x						
494	Carnivals and circuses	x						
424	Carpet cleaning, dry cleaning, and laundry plants					x		
17	Cemeteries, columbariums, crematories, and mausoleums							x
780	Charitable and philanthropic institution		x					
626	Clubhouse and facilities	x						
619	Commercial	x						

EXHIBIT "A"
Nonresidential Use Category Classifications

ID	Type	Retail / Comm	Office	Lodging	Industrial	R & D	Other	Exempt
654	Commercial artistic and cultural activities	x						
763	Commercial office		x					
205	Commercial recreation facilities	x						
5	Commercial stables and riding academies	x						
719	Communications facilities, including radio and television stations				x			
695	Concession facilities	x						
390	Concrete products manufacture				x			
70	Confectionery stores	x						
696	Conference and training facilities	x						
533	Control towers, hangars, cargo terminal facilities, repair and servicing facilities				x			
656	Day care centers	x						
754	Disinfecting and exterminating services				x			
8	Dog kennels and veterinary	x						
427	Drayage, freight, and trucking terminals				x			
74	Dry goods and notions stores	x						
577	Electrical appliance sales and repair stores	x						
631	Employment park (SP 7)		x					
642	Entertainment retail commercial	x						
536	Flood control facilities							x
78	Florist shops	x						
9	Food and dairy products processing, manufacturing, and packaging and selling or distributing				x			
25	Food cooperatives				x			
79	Fruit and vegetable stores	x						
80	Furniture stores	x						
472	Furniture warehouses				x			
151	Garages for the storage and repair of motor vehicles	x						
92	Garden centers	x						
92	Garden centers	x						
625	Golf Course	x						
700	Graphics supplies	x						
152	Grocery stores	x						
403	Gymnasiums, health clubs/studios and dance studios	x						
83	Hardware stores	x						
537	Historical landmarks, sites, memorials, and monuments							
661	Home entertainment and electronics stores	x						
662	Home furnishings home decors and housewares stores	x						
548	Hospitals						x	
155	Hotels and motels			x				

EXHIBIT "A"
Nonresidential Use Category Classifications

ID	Type	Retail / Comm	Office	Lodging	Industrial	R & D	Other	Exempt
474	Ice and cold storage plants				x			
634	Industrial				x			
84	Interior decorating establishments	x						
85	Jewelry stores	x						
115	Junior department stores	x						
500	Labor supply camps					x		
714	Light Industrial				x			
229	Light manufacturing				x			
87	Liquor stores	x						
121	Live entertainment	x						
665	Luggage stores	x						
436	Machine shops				x			
742	Mail order houses				x			
721	Manufacturing Apparel and related products				x			
724	Manufacturing Bakery products				x			
722	Manufacturing Drugs, pharmaceuticals, perfumes, cosmetics				x			
723	Manufacturing Electrical and electronic machinery, equipment and supplies				x			
728	Manufacturing Furniture and cabinet manufacture				x			
735	Manufacturing Glass products made of purchased glass				x			
749	Manufacturing Industries of Household appliances				x			
750	Manufacturing industries of Transmission and distribution equipment and industrial apparatus				x			
725	Manufacturing Instruments for measuring, analyzing, or controlling;				x			
726	Manufacturing Jewelry, silverware and plated ware				x			
727	Manufacturing Leather and leather products				x			
729	Manufacturing Musical instruments, including pianos and organs				x			
730	Manufacturing Office, computing and accounting machines;				x			
731	Manufacturing Pens, pencils and other office and artists' materials;				x			
732	Manufacturing Personal goods				x			
733	Manufacturing Photographic, medical and optical goods; watches and clocks				x			
734	Manufacturing Printing, publishing and related industries				x			
760	Manufacturing space				x			
736	Manufacturing Toys and amusement, sporting and athletic goods				x			
415	Manufacturing, processing or treating of products				x			
88	Meat markets	x						
45	Medical and dental clinics and laboratories	x						
550	Mental hygiene facilities						x	
90	Millinery shops	x						
206	Mini-storage buildings, limited to public use and rental				x			

EXHIBIT "A"
Nonresidential Use Category Classifications

ID	Type	Retail / Comm	Office	Lodging	Industrial	R & D	Other	Exempt
437	Motion picture studios				x			
690	Museums and exhibit halls						x	
20	Natural resources development					x		
120	Nightclubs and dancing establishments	x						
46	Office buildings for professional and business uses		x					
758	Office space		x					
668	Office supplies and stationary stores	x						
11	Offices, business and professional		x					
591	Offices, professional, medical, dental		x					
698	On site food catering service	x						
672	Optical stores	x						
439	Paint mixing plants				x			
440	Paper and paper products manufacturing				x			
691	Parking structures							x
648	Performing Arts Center						x	
12	Petroleum products, storage of				x			
674	Pharmacies	x						
441	Planing mills				x			
397	Plastics manufacture				x			
169	Plumbing shops	x						
541	Police and fire stations and training facilities							x
170	Printing shops	x						
542	Public administration buildings		x					
539	Public utility facilities						x	
502	Race tracks						x	
95	Radio and television retail sales and repair stores	x						
737	Recording studios and sound stages				x			
52	Religious facilities, convents, monasteries, and other places of worship						x	
752	Rental and leasing of durable goods	x						
738	Repair and reconditioning services of Electrical and electronic machinery and equipment				x			
739	Repair and reconditioning services of Instruments, including musical instruments	x						
740	Repair and reconditioning services of Office, computing, and accounting machines	x						
741	Repair and reconditioning services of Photographic and optical goods	x						
759	Research space					x		
516	Resource collection centers				x			
36	Rest homes						x	
285	Restaurants and cafes	x						
179	Retail stores or businesses	x						

EXHIBIT "A"
Nonresidential Use Category Classifications

ID	Type	Retail / Comm	Office	Lodging	Industrial	R & D	Other	Exempt
551	School - Public and private grammar and high schools and colleges						x	
443	Sheet metal shops				x			
444	Shoe manufacture				x			
98	Shoe repair shops	x						
676	Shoe stores	x						
745	Sign painting and lettering shops	x						
197	Skating rinks, indoor	x						
21	Slaughter for sale of poultry and animals				x			
677	Specialty gift health and vitamin stores	x						
679	Sporting goods stores	x						
445	Steam-electric generation stations				x			
446	Storage garages				x			
447	Storage yards for transit and transportation equipment				x			
761	Support space See SP 16 (8-94PC)		x					
680	Surf shops	x						
755	Swap meets	x						
100	Tailor shops	x						
176	Taxidermists	x						
601	Telephone answering services		x					
448	Textile manufacture				x			
399	Theaters, open air and drive-in	x						
449	Tire rebuilding, recapping, and retreading				x			
682	Toy stores	x						
382	Trade and training schools and college and university extension	x						
400	Transit mix concrete plants				x			
554	Transportation facilities				x			
683	Travel agency		x					
82	Variety stores	x						
684	Vending carts retail kiosks and food pavilions	x						
111	Veterinary offices	x						
685	Video stores	x						
103	Wearing apparel stores	x						
451	Wholesale businesses, storage buildings, and warehouses				x			

Executive Summary

I. Background and Purpose of Study

Thousand Oaks has experienced dramatic increases in home sale prices over recent years. However, incomes have failed to keep pace with these rising values. As a result, many households find themselves increasingly priced out of the local market. This trend impacts the City's economic development efforts, as high housing costs pose challenges to companies in recruiting and retaining employees. Moreover, workers are forced to live in outlying areas, increasing congestion and commute times. Thus, the need for affordable housing in Thousand Oaks has become even more acute.

In recognition of this ongoing need, the City Council directed staff to evaluate the feasibility of implementing a series of affordable housing programs including:

- An Affordable Housing Trust Fund;
- An inclusionary housing program ;
- A commercial/industrial linkage fee program;
- Extending the local affordable housing preference program to certain "vital occupations" and rental housing; and
- A density bonus ordinance.

The Redevelopment Agency contracted with Bay Area Economics (BAE) in May 2007 to provide technical support on each of these items.

The purpose of this study is to:

- Evaluate the financial effect of an inclusionary housing program on residential development in Thousand Oaks, and recommend a financially feasible set of inclusionary housing requirements, including an in-lieu fee. This analysis is conducted using pro-formas of prototype projects in the City.
- Prepare a "nexus study" for the proposed linkage fee. The nexus study is a legal requirement for impact fees under California case law and the Mitigation Fee Act. California jurisdictions are required to show through a nexus study that (1) the proposed development is in fact creating an impact and (2) the fee is proportional to the impact. In the case of a linkage fee, the nexus study calculates the number of affordable housing units needed by workers in a new commercial/industrial development, estimates the cost to supply this housing, and applies this cost to new commercial/industrial development on a per square foot basis as a linkage fee. The resulting fees are the *maximum* fee amount that the City may assess.
- Scale the linkage fees down to a level that accommodates projects' financial feasibility, based on a pro-forma analysis of prototype projects in the City.

- Outline key provisions of inclusionary housing and linkage fee ordinances.
- Describe the possible formation and legal implications of a Housing Trust Fund to serve as a repository for fees generated by the inclusionary housing and linkage fee programs.

II. Inclusionary Housing Analysis

Methodology

Inclusionary Housing Requirement. Inclusionary programs require market rate residential developers to reserve a certain portion of units in a project for income-restricted affordable housing. Some programs also allow developers to satisfy inclusionary housing requirements through payment of an in-lieu fee, off-site construction, and/or partnerships with affordable developers.

To evaluate the feasibility of an inclusionary housing program in Thousand Oaks, BAE formulated pro-formas based on five prototype projects replicating typical residential development in the City. These prototypes are:

- Large-lot single-family home
- Small-lot single-family home
- Townhouse
- Condominium
- Multifamily rental apartment

The characteristics of the prototype projects, including density, lot and unit size, parking, revenue and cost assumptions, and other details, were formulated with input from local developers, City staff, evaluation of comparable projects in Thousand Oaks, and various technical resources. The details of these prototypes are discussed in Section 4.1.

By applying varying inclusionary housing requirements to these baseline pro-formas, this analysis identified how much of a requirement could be supported by each project while still remaining financially feasible. These findings serve as the basis for the City's potential inclusionary housing requirements. The analysis builds off the recommendations from the Affordable Housing Ad Hoc Committee, and examines the feasibility of a moderate income inclusionary housing requirement for for-sale units and a low income requirement for rental projects.

For the purposes of this analysis, the standard of feasibility was determined to be a 12 percent developer profit on cost. The 12 percent threshold was selected based on data from the National Association of Homebuilders (NAHB) 2006 Cost of Doing Business study, as well as discussions with the Inclusionary Housing Focus Group. The NAHB report indicates that 10 to 12 percent profit on cost is a reasonable feasibility threshold. For the purposes of this analysis, 12 percent was chosen as it represents a fairly conservative threshold.

In-Lieu Fee. This report presents three possible methods for calculating an in-lieu fee, an alternative means of compliance with the inclusionary housing program (see Section 4.2). These options were examined to allow the City to evaluate the pros and cons of various fee levels, and to identify a fee that would effectively replace the unit that would otherwise have been built by the market rate developer. The three methods are presented below. In calculating the fee per market rate unit, a 10 percent inclusionary housing requirement is assumed:

- **Method 1. Affordability Gap:** Difference between the cost to build a market-rate unit (net of developer profit) and the sale price affordable to moderate income households. Results in an in-lieu fee of \$31,200/market rate unit.
- **Method 2. Affordable Unit Financing Gap:** Difference between the cost to build an affordable unit and the supportable construction loan that an affordable housing developer can obtain. Results in an in-lieu fee of \$31,200/market rate unit.
- **Method 3. City/RDA Subsidy per Affordable Unit:** The per unit subsidy that the City and its RDA has provided local affordable housing developers in recent years for new construction, acquisition and rehabilitation, and land acquisition. Results in an in-lieu fee of \$6,700/market rate unit.

In reviewing the three in-lieu fee options, the City should select a method that effectively represents the cost to construct the unit that would have been built by the market rate developer. Methods 1 and 2 both meet this standard and can be considered valid in-lieu fee methods. Method 3, however, fails to consider that City/RDA subsidies represent a small portion of the total dollars needed to construct an affordable unit. Affordable housing developers use the City's contribution to leverage multiple funding sources. As such, Method 3 cannot be considered a valid in-lieu fee option.

As a next step in setting an in-lieu fee, a feasibility analysis, using the same pro-formas of the residential prototypes outlined above, was used to scale these fees to a level that allows for financially feasible development. Again, a 12 percent developer profit on cost was assumed as the financial feasibility threshold. The findings from the feasibility analysis, and the resulting fees, are presented below.

Key Findings

Inclusionary Housing Requirement. In sum, the financial feasibility analysis indicates that while some types of residential development in Thousand Oaks can absorb the cost of an inclusionary housing requirement, others cannot. Specifically, townhomes and condominium projects would support a 10 percent moderate income inclusionary requirement, achieving returns on cost above 12 percent (see Table A). However, neither single-family prototype supports an inclusionary requirement. Both show returns on cost below 12 percent. This finding is largely a function of the higher densities of the townhouse and condominium projects. These densities allow the cost of land – which

can make up between 30 to 40 percent of total costs -- to be spread among a greater number of units.

Table A: Summary of Inclusionary Housing Feasibility Analysis

	Developer Profit as % of Total Development Cost (a)				
	Large Lot SFR For-Sale	Small Lot SFR For-Sale	Townhouse For-Sale	Condo For-Sale	Multifamily Rental
1- Baseline - No Affordable Units	12.9%	13.7%	19.7%	18.6%	33.7%
2- 10% Moderate	6.7%	7.5%	13.6%	13.5%	
3- 15% Moderate	4.5%	5.4%	11.5%	11.7%	
4- 20% Moderate	2.2%		9.4%	10.0%	

Note:

(a) Project feasibility is defined as a developer profit on cost of at least 12%.

Shaded cells indicate prototypes where developer profit as percent of cost is less than 12%, and is therefore not considered financially feasible.

Source: BAE, 2007.

As shown in Table A, the analysis also indicates that new apartment development in Thousand Oaks currently does not produce positive returns under today's land values, rents, and construction costs. The general lack of new market rate apartment projects in recent years in the City supports this finding. Therefore, an inclusionary housing ordinance should only target for-sale housing at present. Regular review of the ordinance would allow for a reevaluation of this policy, as market conditions change, and new apartment development potentially becomes profitable in the future.

In-Lieu Fee Amount. The feasibility analysis indicates that large-lot and small-lot single-family homes can absorb in-lieu fees of \$8,600 and \$8,500 per market rate unit, respectively. Townhouses and condominiums can absorb in-lieu fees of \$28,000 and \$20,300 per market rate unit, respectively (see Table B). A 10 percent inclusionary housing requirement was assumed as part of this analysis, the maximum that any of the prototypes could support.

Table B: Summary of In-Lieu Fee Feasibility Analysis

Prototype	Maximum In-Lieu Fee (a) (b)
Large Lot SFR	\$8,600
Small Lot SFR	\$8,500
Townhouse	\$28,000
Condominium	\$20,300

Note:

(a) Fees that allow a minimum developer profit of 12 percent on cost.

(b) Assumes a 10% inclusionary housing requirement.

Source: BAE, 2007.

A preliminary study, done in conjunction with the current Housing Element update, provides an estimate of the City's housing capacity, based on remaining vacant

residential land in Thousand Oaks and the reuse of certain key sites. Unit capacity was estimated in two ways: (1) using existing zoning conditions, and (2) assuming some possible General Plan Land Use amendments and rezoning to accommodate the City's RHNA requirement.

The analysis suggests that an in-lieu fee of \$8,500 per market rate unit would generate approximately \$8.8 million to \$13.7 million through the buildout of the City. This estimate only considers sites that can accommodate five or more units, based on a conservative assumption that projects with fewer than five units would be exempt from the inclusionary housing program. Again, these estimates should be considered preliminary, and are intended to offer a general sense of scale for potential in-lieu fee revenue.

III. Commercial/Industrial Linkage Fee

Methodology

The term "linkage fee" refers to the link between new commercial/industrial development and the resulting need for affordable housing to serve new employees generated by this development. The fee is assessed on new commercial/industrial uses on a per square foot basis and revenue is used to support affordable housing activities in the City.

The analysis for establishing a recommended linkage fee in Thousand Oaks contains three steps, outlined below:

Identify Subject Land Uses. To identify the land uses in Thousand Oaks to be considered as candidates for a linkage fee, BAE interviewed local developers and commercial brokers regarding the types of commercial/industrial products being built in the City. Next, BAE and City staff surveyed vacant land in Thousand Oaks by General Plan land use category to gain perspective on future development potential in the City. Finally, BAE considered land uses with distinct employment densities, and which would therefore require their own linkage fee rate. For example, industrial uses such as warehouses and logistics facilities generally have far fewer employees per square foot than office or retail development, and would consequently need a distinct linkage fee.

Based on this research, the following Land Use Types were identified as candidates for a linkage fee in Thousand Oaks.

- Office – includes professional and medical offices
- Retail/Commercial – including retail in a shopping center format, stand-alone stores, and a mixed-use format
- Industrial – including warehouses, logistics, storage, and other similar facilities
- R&D/Flex Space – including light manufacturing, R&D, and laboratory uses
- Lodging – including hotels and motels, including extended stay facilities

Conduct Nexus Study. California case law requires that linkage fees be “reasonably related” to the demand for affordable housing generated by new commercial/industrial development. In effect, the nexus study calculates the *maximum* linkage fee that the City could charge, based on the cost to house new workers generated by the Land Use Types identified above.

The nexus study determines the cost to house workers generated by 100,000 square-foot “prototypes” of each Land Use Type. This cost is then divided by 100,000 to calculate the maximum linkage fee that the City may assess on new development in Thousand Oaks (see Section 5.1). The steps involved in the nexus study are as follows:

- Step 1: Estimate the number of employee households generated by each Land Use Type
- Step 2: Estimate number of these new employee households that will live in the City
- Step 3: Estimate employee household distributions for very low, low, and moderate incomes for each Land Use Type
- Step 4: Estimate the number of affordable housing units needed to serve very low, low, and moderate income households generated by each Land Use Type
- Step 5: Estimate the total cost to house very low, low, and moderate income households generated by each Land Use Type
- Step 6: Translate total cost into a per square foot linkage fee for each Land Use Type

Perform Feasibility Analysis. Following completion of the nexus study, a feasibility analysis similar to the process undertaken for the inclusionary housing analysis was performed. A project’s financial feasibility is tested by applying various fee levels beginning with the maximum allowable amount established by the nexus study to the “baseline” prototypes to see how return on cost would be affected. The fee is adjusted until the feasibility threshold is met. This establishes a financially feasible fee for each land use type.

As the first step of this feasibility analysis, a series of prototypes projects were developed based on typical commercial/industrial projects in the City. The prototypes reflect the Land Use Types described above. The characteristics of these prototypes, as well as baseline revenue and cost assumptions, were formulated through input from local developers and brokers, City staff, the City’s current zoning regulations, and a variety of other technical resources (see Section 5.2)

A pro-forma analysis was then performed on these “baseline” prototypes to establish how much of a linkage fee each prototype could support, while still remaining financially viable. For the purposes of this study, a 10 percent profit on cost was used as the threshold for determining financial feasibility. This threshold was established based on discussions with Linkage Fee Focus Group members who stated that they typically seek returns on cost ranging from 8.0 to 10 percent. BAE’s 20 years of experience reviewing

financial packages from a wide range of commercial projects throughout California also supports this assumption.¹

Key Findings

Table C summarizes the results of the nexus study and feasibility analysis. The feasibility analysis indicates that certain land use types would support a linkage fee, while others would not. Specifically, new office development would support a commercial/industrial linkage fee of up to \$2.50 per square foot, new retail/commercial development would support a fee of up to \$4.50 per square foot, and lodging projects would support a fee of up to \$2.50 per square foot.

Table C: Results of Linkage Fee Nexus Study and Pro-Forma Analysis

	Office	Retail/ Commercial	Industrial	R&D/ Flex Space	Lodging
Max Per Sq. Ft. Fee per Nexus Study	\$106.85	\$114.40	\$47.36	\$78.93	\$40.60
Max. Per Sq. Ft. Fee per Pro-Forma Analysis (a)	\$2.50	\$4.50	\$0.00	\$0.00	\$2.50

Notes:

(a) Various fee levels tested. Analysis assumes project must achieve developer profit of 10% or more, as % of cost.
Source: BAE, 2007.

In contrast, neither the industrial nor the R&D/flex space projects are financially feasible under current economic conditions. As such, neither would support any level of linkage fee. The Commercial Market Overview analysis prepared by BAE for this report supports this finding, as little to no new industrial or R&D/flex space has occurred in Thousand Oaks recently, with the exception of developer-owner build-to-suit projects (see Section 3). This finding appears to suggest that land costs in Thousand Oaks are currently too high to support lower value land uses such as industrial facilities.

Applying the fee rates above to estimates of future development in Thousand Oaks suggests that a linkage fee program would result in approximately \$8.4 million to \$10.0 million in funds for affordable housing activities through buildout of the City. As a caveat, this projection is based on the City's parcel database, and mainly includes revenues generated by the development of *vacant* land in Thousand Oaks, though the reuse of some key properties with existing development is also considered. As another caveat, the revenue projections do not consider any potential exemptions to the linkage fee ordinance, such as projects under a certain size.

¹ This feasibility threshold varies from the 12 percent threshold used in the inclusionary housing analysis because commercial and residential projects operate with different development economics and risk profiles. The City's relatively strong market for office and retail space helps developers accept a lower return, assuming a lesser degree of risk. In contrast, uncertainty in the regional housing market compels housing developers to seek a higher return for their projects.

IV. Housing Trust Fund

The City has been considering establishment of a formal housing trust fund (HTF) as a discrete fund to place existing fees and other fees collected for the purpose of developing affordable housing. An HTF ordinance can be relatively simple, limited to establishing the fund; segregating linkage and in-lieu fees and other sources of funds; stating the fund's purpose and in a broad sense the type of eligible expenditures; and, if desired, designating a body to allocate the funds or to advise the City Council. Priorities for expenditure of funds and other administrative requirements can be set forth in a companion set of guidelines that are typically adopted by resolution.

The following points are recommendations regarding adoption of a City Housing Trust Fund (HTF).

- Make the HTF part of the City's budget process to facilitate regular review of revenues and expenditures.
- Designate the City Council as the oversight body.
- Revenue sources should be comprised of existing negotiated affordable housing funds collected by the City, linkage fees, inclusionary housing in-lieu fees, interest earnings, and any other housing funds received by the City that are restricted in nature (i.e., grants & bond proceeds).
- Segregate linkage fees and report expenditures and revenues separately.
- Develop Guidelines, adopted by resolution, for the administrative operation of the HTF.

V. Conclusion

An Inclusionary Housing Program with an Inclusionary housing requirement is not a recommended option given that the single-family housing types would not financially support this requirement. However, the four profitable housing types would support a housing in-lieu fee between \$8,500 and \$28,000. Given current market conditions Apartments would not support an Inclusionary requirement or a fee.

There is justification for implementing a Commercial/Industrial Linkage Program, and 3 of 5 Land Use types, Office, Commercial/Retail, and Lodging would support linkage fee amounts of \$2.50 and \$4.50 square foot. Given current market conditions, Industrial and R&D/Flex space land use types would not support a fee.

With the limited amount of developable land remaining in the City, the widespread application of either program will be limited barring a significant shift in local land use regulations or the large scale reuse of built parcels. However, both programs could be expected to generate a reasonable amount of revenue that could be an effective

compliment to existing to sources of funding that will support affordable housing production in Thousand Oaks. The revenue generated by these programs could take on added importance in the future, as the RDA's ability incur and repay debt from tax increment expires between 2031 and 2036 for the Thousand Oaks Boulevard Project Area, and in 2037 for the Newbury Road Redevelopment Project Area.²

² Precise limits for the Thousand Oaks Blvd. Project Area are 2031 for original project area, 2034 for 1st Amendment, and 2036 for 2nd Amendment.



M E M O R A N D U M
City of Thousand Oaks • Thousand Oaks, California
Community Development Department

TO: Scott Mitnick, City Manager
FROM: John C. Prescott, Community Development Director
DATE: July 22, 2008
SUBJECT: **Municipal Code Amendments 2007-70727, 70728, 70729 & 70730 (Affordable Housing Ordinance), In-lieu Inclusionary Housing Fee, Nonresidential Development Linkage Fee**

RECOMMENDATIONS:

- 1) Approve the Negative Declaration;
- 2) Ordinance to be read in title only, further reading be waived, and if no objection, introduced;
- 3) Adopt resolution establishing an In-lieu Inclusionary Housing Fee;
- 4) Adopt resolution establishing a Nonresidential Development Linkage Fee; and
- 5) Adopt resolution establishing Affordable Housing Program Guidelines.

Planning Commission Recommendation

The Planning Commission recommends (5-0) that the City Council approve the Negative Declaration and adopt the ordinance approving Municipal Code Amendments 7-70727, 70728, 70729 & 70730 establishing an Affordable Housing Ordinance as proposed. The fee resolutions and guidelines were not the subject of Planning Commission review.

Staff had recommended that the Planning Commission recommend approval of the ordinance. Findings to support the recommendation are included in the ordinance.

FINANCIAL IMPACT:

No Additional Funding Requested. \$123,000 was approved as part of the FY 2006-07 Operating Budget for the cost of the Affordable Housing Program Consultant, Professional Services Contract No. 8102-2007, that was approved by the City Council on May 15, 2007, which cost includes drafting the Affordable Housing Ordinance.

Adoption of an Inclusionary Housing Program and a Nonresidential Linkage Fee are viewed as a long-term funding source for affordable housing, and it is estimated that

these two programs could generate approximately \$28.6 to \$42.4 million, depending on density and development type.

BACKGROUND:

The draft affordable housing ordinance contained in this report is the result of input from the public, consultants, staff and the City Council over approximately the past five years. The first step in the process was preparation of an Affordable Housing Opportunities Assessment by Cotton/Bridges Associates in 2003. An Ad Hoc affordable housing committee was then appointed by the City Council to review and recommend certain programs from the various affordable housing program options set out in that study. The Ad Hoc committee met on a regular basis for a year from 2003 to 2004, and its recommendations were considered at two City Council study sessions in November, 2005 and March, 2006. At the second study session the City Council directed staff to proceed with establishment of a Housing Trust Fund, Inclusionary Housing Program, and Linkage Fee Program.

The City subsequently retained a consultant, Bay Area Economics (BAE) to analyze the ability to implement these programs and to make specific recommendations relative to adoption of an affordable housing ordinance. This analysis took place from May to November 2007. The results of this analysis are contained in a study entitled "Affordable Housing Program Analysis", dated November 15, 2007 ("BAE Study"), a copy of which is provided to Council by separate cover.

The results of this Study were presented to the City Council in November, 2007, at which time the City Council initiated the Municipal Code Amendments for the three programs, as well as a Density Bonus program, and referred the matter to the Planning Commission for review and recommendation. The material was presented to the Planning Commission on two occasions. The first, April 28, 2008, was a study session presenting background material and the BAE Study. At the second, on June 23, 2008, the Negative Declaration and draft ordinance were presented to the Commission for public hearing and recommendation. Following the public hearing, the Commission recommended that the City Council adopt the Negative Declaration, and the Affordable Housing Ordinance (see Attachment "6" - Planning Commission Resolution No. 29-2008).

DISCUSSION/ANALYSIS:

In response to Council direction, staff has drafted an Affordable Housing Ordinance, and is recommending that the City Council adopt two companion fees, an in-lieu inclusionary housing fee, and a nonresidential development linkage fee, Housing Trust Fund Guidelines, and a set of informational guidelines to assist staff and members of the public in interpreting and implementing the Affordable Housing Ordinance. Each of these components is discussed in more detail below.

Affordable Housing Ordinance

The City Council initiated separate Municipal Code Amendments for each of the four programs which constitute the affordable housing ordinance. At the time, it was envisioned that each program would be structured as a stand-alone ordinance. These amendments were subsequently structured as a single ordinance, as all of the topics relate to affordable housing. The proposed Ordinance creates a Chapter (Affordable Housing) in Title 9 (Planning and Zoning) of the Municipal Code. This Chapter contains six articles.

Article 1 - General Provisions

This article contains general citations and definitions specific to this chapter, and doesn't require additional discussion.

Article 2 - Affordable Housing Trust Fund

The Affordable Housing Trust Fund will serve as a repository for funds collected through the proposed housing programs, and other funds designated by City Council to be used for affordable housing.

Funds deposited into the Housing Trust Fund are solely for use in augmenting the City's supply of affordable housing, and cannot be transferred or loaned to the City's general fund without repeal of the ordinance. The funds would generally be used for any activity that furthers the goal of acquiring, developing, rehabilitating or otherwise preserving affordable housing within the City of Thousand Oaks. Housing Trust Fund Guidelines that further articulate certain requirements such as eligibility, and allowable expenditures have been developed and are attached hereto as Attachment "4".

Article 3 - Inclusionary Housing Program

a. Applicability

The Inclusionary Housing Program would apply to any residential development involving the construction of six (6) or more dwelling units, or the conversion of apartments to condominiums involving six (6) or more units. A project subject to the requirements of this ordinance can satisfy its obligation by either providing units on site, or by paying an in-lieu fee pursuant to a fee schedule.

1. Construction of units

If a developer elects to provide inclusionary housing on site, the requirement is to provide 10% of the total number of units at a price affordable to moderate income households (110% of County Area Median Income).

2. In-Lieu Fees

A developer may elect to satisfy the requirements of the Inclusionary Housing Program by paying an in-lieu fee

b In-lieu Fee Adjustments and timing

The Ordinance specifies that after the initial fee is set, it may be adjusted biennially using the Engineering News Record/McGraw-Hill Construction Weekly construction cost index for Los Angeles. The Ordinance also makes allowance for future study and analysis of fees.

c Exemptions

The following residential developments are recommended to be exempt from the provisions of the Inclusionary Housing Program.

1. Projects containing 5 or fewer units
2. Vesting Tentative Maps which are deemed complete prior to enactment of the Inclusionary Housing Program
3. Residential projects subject to terms of a Development Agreement.
4. Residential projects or portions of projects that can be rented but not sold.
5. Reconstruction of units destroyed by natural acts that do not add six or more additional units

The following sections would only apply if a developer elects to satisfy the requirements by constructing inclusionary units

d. Inclusionary Housing Plan

This section establishes the submittal requirements for demonstrating compliance with the Inclusionary Housing Program.

e. Standards for Inclusionary Units

This section establishes that inclusionary units constructed in a project would have to comply with three standards: 1) they will have to be comparable in exterior appearance and quality to market-rate units, 2) they will have to be physically located in the development in a manner acceptable to the City, and 3) they will have to be constructed concurrently with market-rate units in a project

f Inclusionary Housing Incentives

This section establishes that subject to approval of the City, a 20% reduction in the square footage of an inclusionary unit relative to market rate units in the same development may be allowed, and in certain cases a reduction in the number of

bedrooms. The Inclusionary Units could also have less expensive interior finishes and different features than the market-rate units.

g. General Requirements for Inclusionary Units

This section establishes that inclusionary units would be subject to compliance procedures contained in Article 6 of the ordinance

Article 4 - Nonresidential Linkage Fee Program

a. Applicability

Certain nonresidential developments involving 7,500 square feet of floor area would be subject to the payment of a linkage fee to benefit affordable housing as follows:

1. New construction and additions to existing projects.
2. A change from one Use Category to another more intense Use Category.
3. Conversion of an existing residential use to a Nonresidential Use.

b. Exemptions

The following nonresidential developments would be exempted from the requirements of this Program:

1. Projects that have already received the discretionary approvals from the City necessary to construct the project.
2. Public agency projects for public purposes.
3. Exterior alterations and improvements
4. Reconstruction of any structures destroyed by acts of nature that do not result in an increase in gross floor area of 7,500 square feet or more.
5. Nonresidential developments otherwise exempt by law.

c. Nonresidential Use Categories

This section establishes the various use categories that are the bases for establishing the linkage fee amount to be charged. The use categories are broad, and based on a combination of development typical to Thousand Oaks, and employment demand.

The five Nonresidential Use Categories are as follows:

1. Retail/Commercial
2. Office
3. Lodging
4. Industrial
5. Research & Development

The linkage fee amounts, which will be proposed to City Council via separate resolution, were based on the nexus analysis in the BAE Study

d. Assignment of Specific Uses to Nonresidential Use Categories

This section establishes the procedures for assigning uses in the zoning ordinance and specific plans to the various Nonresidential Use Categories. As part of the fee resolution adopting the linkage fees, the City Council will adopt a list designating the assignment of specific uses to each Nonresidential Use Category. In the event that a specific use has not been placed in a Nonresidential Use Category or is not listed in the Resolution adopted by City Council, the Community Development Director will have the authority to determine the appropriate Nonresidential Use Category based on the characteristics of a given use. There is also a provision that would allow for partitioning a project when it is determined that a project contains multiple use categories.

e. Method of Calculation

The assessment of fees is based on the gross square footage of a use as defined in the Zoning Ordinance.

f. Fee Determination and Timing of Payment

The amount of fees paid will be those in effect at the time building permits are issued, or where no permit is required, at the time a Certificate of Occupancy is issued.

g. Adjustment and Review of Fees

This section establishes that after the initial fees are set, they may be adjusted biennially using the Engineering News Record/McGraw-Hill Construction Weekly construction cost index for Los Angeles. The Ordinance also makes allowance for future study and analysis of fees if the City Council deems it appropriate.

h. Use of Nonresidential Linkage Fees

Nonresidential Linkage Fees are required to be deposited into the Affordable Housing Trust Fund. Linkage fees can only be expended on programs or projects that would clearly benefit employees of projects that have paid fees. For example, it would be difficult to justify expending funds on homeless activities or certain types of supportive housing, since it would be difficult to make a nexus between these types of expenditures and developments that will have paid Nonresidential Linkage Fees. Funds collected under this Program will be put into a separate account in the Affordable Housing Trust Fund for tracking purposes.

Article 5 - Density Bonus Program

A density bonus is essentially the granting of additional units above the maximum density permitted by the zoning and General Plan Land Use Designation on a given parcel. State law requires the granting of a density bonus on certain circumstances and also provides that, if requested, a certain number of incentives, modifications, concessions, or waivers (collectively referred to as "exceptions") must be granted to a project in conjunction with the award of a density bonus. The rationale for granting these exceptions appears to be twofold: 1) to offset the cost of providing affordable housing units in a project, and 2) to facilitate the physical placement of additional density bonus units above what zoning standards would typically allow.

The basis for adopting a Density Bonus program is found in California Government Code §65915 *et. seq.* (Attachment "D"), which states, "All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented." It is also important to note that California Government Code §65915 *et. seq.* does not afford jurisdictions much flexibility in adopting the provisions of the State's Density Bonus Law. A copy of the Government Code Section has been included in this report as Attachment "8". The one area where the City has some latitude is in the type of incentives that are offered.

a. Eligibility for Bonus

The requirements of this section are dictated by State Law.

b. Incentives

The requirements of this section are generally dictated by State law; however, as indicated there is some discretion afforded the City in developing the process for granting incentives.

State law provides that when an applicant seeks a density bonus and requests specific incentives, the City must grant the requested incentives based on the percentage of units affordable to very low, lower, or moderate income households incorporated into a residential development. The number of incentives that a given development would be entitled to based on the percentage of affordable units provided are listed in Table 1 below:

Table 1: Relationship between Affordable Units and Incentives

Income Category	Percentage of Units Needed to Qualify for Incentives		
Very Low Income (rental)	5%	10%	15%
Lower Income (rental)	10%	20%	30%
Moderate Income (for-sale common interest development only)	10%	20%	30%
Allowable Number of Incentive(s)	1	2	3

State law does not require that incentives have to be granted by the City for senior citizen housing developments that qualify for a density bonus.

For purposes of the proposed City Ordinance, incentives have been placed in two categories

1. Permitted Incentives

This category is a set of exceptions to development standards that were developed in consultation with Planning Division staff, with the exception of the parking standards, which are dictated by State law. The permitted incentives include reductions in certain setback requirements, common open space areas, building coverage, private yard standards, separation between structures, gross lot calculations for for-sale units, and a reduction in parking standards. The specific incentives are enumerated in Section 9-10.503 (b). These incentives would be granted by right, unless it could be shown that the granting of an incentive would result in an adverse impact on any real property that is listed in the California Register of Historical Resources

2 Incentives, Concessions, Modifications and Waivers Requiring Financial Pro Forma from Applicant

This category of exceptions encompasses any exception not specifically enumerated in the Permitted Incentives section. Any exception requested in this category will require that an applicant submit a financial pro forma as outlined in Section 9-10.506(a)(6), demonstrating that the requested exception is necessary to make the residential project economically viable. The City will then have the ability to have the pro forma independently analyzed. In addition, certain written findings as contained in Section 9-10.507(c) would have to be made by the decision-making body, to grant this category of exception

c. Density Bonus or Incentive for Child Care Facility

This section defers to the requirements set forth in Government Code §65915(i).

d. Density Bonus or Incentive for Condominium Conversions

This Section defers to the requirements set forth in Government Code §65915.5

e. Density Bonus Plan

This section would establish the submittal requirements for demonstrating compliance with the Density Bonus Program, and specifying any exceptions requested

f. City Review and Approval of Density Bonus Plan

This section establishes the review procedures for evaluating the density bonus plan, and procedures and findings for denial or approval of incentives, concessions,

modifications and waivers. The Density Bonus Plan is considered in conjunction with a discretionary application for a project

g General Requirements for Density Bonus Units

Affordable Units provided to satisfy this Program would be subject to compliance procedures contained in Article 6 of the Ordinance

Article 6 - Compliance Procedures

This article sets forth certain administrative and procedural requirements such as how units are restricted, implementation, monitoring, and enforcement procedures, and procedures for requesting a waiver.

Affordable Housing Program Guidelines

To assist the public and staff with the implementation and administration of this program, a set of informational guidelines has been developed. With the exception of the section on the Affordable Housing Trust Fund, which will be adopted by City Council Resolution, the remainder of the guidelines are informational and do not require action by the City Council. A copy of the Guidelines is attached hereto as Attachment "5".

In-lieu Inclusionary Housing Fee Resolution

The methodology for the Inclusionary Housing Program Analysis involved two basic steps, an Inclusionary Analysis to determine the feasibility of incorporating a certain percentage and income level of affordable housing units into market rate projects (the "Inclusionary Requirement"), and an In-lieu fee analysis to determine an appropriate fee level that could be assessed on a per unit basis. Since the methodology and findings of the analysis were presented to City Council in detail last November, this discussion will summarize the conclusions of the analysis. The complete discussion and details of the analysis are contained in Chapter 4 of the BAE Study, and also in the November 27, 2007 City Council staff report which is an Attachment to the Planning Commission staff report included as Attachment "7".

The BAE Study concluded that given market conditions at the time of the analysis, rental housing is not feasible. Not all housing prototypes would support an inclusionary requirement. Specifically, the large-lot and small-lot single-family prototypes would not support an inclusionary requirement given current market conditions. However, the Townhouse and Condominium prototypes would support a 10% moderate income Inclusionary housing requirement. Since not all housing types could support an inclusionary requirement, it was recommended that an inclusionary requirement not be mandatory, and that the payment of an in-lieu fee be considered as an alternative.

The feasibility analysis yielded that there is a wide variance between supportable in-lieu fee amounts by housing prototype. The single family product types supported a lower

in-lieu fee, \$8,500 and \$8,600, while the townhouse and condo product types supported relatively higher fees of \$28,000 and \$20,300 respectively.

Supportable In-lieu Fees by Prototype	
Housing Prototype	In-lieu Fee Amount
Large lot single family	\$8,600/per unit
Small lot single family	\$8,500/per unit
Townhouse	\$20,300/per unit
Condominium	\$28,000/per unit

The BAE Study also recommended that it would be practical for ease of implementation and administration to establish two fee amounts, one fee for detached single-family units, and another fee for townhouse and condominium units.

When the analysis was presented to City Council in November 2007, it was recommended that two fee amounts be established - \$9,000 per detached single-family dwelling, and \$25,000 for each condominium/townhome constructed. Council preliminarily endorsed those amounts when they initiated the Municipal Code Amendment for the Inclusionary Housing Ordinance. Staff is recommending that the fee amounts be adopted as initially recommended per the attached Resolution

The In-lieu fees would take effect upon the effective date of the Affordable Housing Ordinance and would be payable at time of building permit issuance for each applicable unit

It is estimated that an inclusionary housing program based on the number of vacant sites, that could be developed with six or more units could result in a revenue generation of between \$20.2 million to \$34 million. The total revenue generated is dependent on the density and housing type at which the vacant land is developed

Nonresidential Development Linkage Fee Resolution

The process for analyzing the nonresidential linkage fee was a two step process. The first step was to perform a nexus analysis. Because Linkage fees are a type of impact fee they need to be based on the *impact* created by new nonresidential development on the need for affordable housing. The second step is to perform a feasibility analysis to determine an appropriate linkage fee amount by nonresidential prototypes.

Since the methodology and findings of this analysis were also presented to City Council in detail, this discussion will summarize the conclusions of the analysis. The complete discussion and details of the analysis are contained in Chapter 5 of the BAE Study, and also in the November 27, 2007 City Council staff report which is included in Attachment "7". The nexus study determined the cost to mitigate the affordable housing need generated for each 100,000 square-feet of each land use type. This cost represented an estimate of the "true" cost or maximum linkage fee amount that the City could reasonably assess on new development in Thousand Oaks based on the defined

impact. The resulting fees for each land use category are expressed in the table on the following page.

Maximum Justifiable Linkage Fee Amounts	
Use Classification	Linkage Fee Amount
Retail/Commercial	\$114.40/square foot
Office	\$106.85/square foot
Lodging	\$40.60/square foot
Industrial	\$47.36/square foot
R&D/Flex-space	\$78.93/square foot

As previously indicated, this level of fee represents the estimated true cost to mitigate housing demand for employees in very-low, low and moderate income categories by land use type. To levy fee of this magnitude would be onerous and affect a project's financial feasibility by rendering it unprofitable to develop. Therefore, a feasibility analysis was conducted to determine a reasonable fee amount that could be assessed against each use classification while maintaining a certain level of profitability. The pro forma analysis revealed that two of the Use Classifications, Industrial and Research & Development/Flex space would not support a fee at any level. The remaining three Use Classification types (retail/commercial, retail, and lodging) would support a linkage fee ranging from \$2.50 to \$4.50 per square foot of floor area. These amounts are shown in the table below

Supportable Linkage Fee Amounts	
Use Classification	Linkage Fee Amount
Retail/Commercial	\$4.50/square foot
Office	\$2.50/square foot
Lodging	\$2.50/square foot
Industrial	No fee at this time
R&D/Flex-space	No fee at this time

It should be noted that while Industrial and Research & Development/Flex Space Use Classifications do not presently support a fee, the proposed Ordinance contains a provision that City Council can direct that a new analysis be prepared to reassess the ability to levy a fee on the Use Classifications.

City Council preliminarily endorsed the above Nonresidential Development Linkage Fee amounts when it initiated the Municipal Code Amendment for the Nonresidential (Commercial/Industrial) Linkage Fee Program. Staff is recommending that the fee amounts be adopted as initially recommended per the attached Resolution (Attachment "3").

It is estimated that a linkage fee program would generate approximately \$8.4 million based on estimates of future development on vacant and underutilized parcels.

Current Market Conditions

In concluding this report, a discussion on changes in the residential real estate market and the proposed affordable housing ordinance is warranted. Based on median sales price data available from Dataquik, the year over year change for Thousand Oaks from May 2007 to May 2008 was a *decline* of 18.25%. The median sales price data used in the BAE study was from the period April to June 2007. This is a fairly significant decline, and if the suggested fee amounts are considered solely relative to sales price, then an argument could be made that the fee levels should be reconsidered and adjusted commensurately. However, there are several factors that need to be considered before such a conclusion is reached.

In establishing an in-lieu fee amount one of the steps involved was testing the financial feasibility of a project. This was done by taking the in-lieu fee and inputting it into the pro formas for each housing type to see the effect of such a fee on the financial feasibility of a project, which was defined as a 12% return on cost. Basically the process entailed adjusting the fee amount until the 12% return on cost figure was reached.

The following table from the BAE Study illustrates this process.

In-Lieu Fee Amount Per Mkt Rate Unit)	Developer Profit as % of Total Development Cost			
	Large Lot SFR For-Sale	Small Lot SFR For-Sale	Townhouse For-Sale	Condo For-Sale
Baseline - No Fee	12.9%	13.7%	19.7%	18.6%
\$8,500	12.0%	12.0%	17.3%	15.7%
\$8,600	12.0%	11.9%	17.2%	15.7%
\$8,700	11.9%	11.9%	17.2%	15.7%
\$20,300	10.8%	9.6%	14.0%	12.0%
\$20,400	10.6%	9.6%	14.0%	11.9%
\$28,000	9.8%	8.1%	12.0%	9.6%
\$29,000	9.7%	7.9%	11.7%	9.3%

While a decline in sales prices would have a negative effect on a project's rate of return, there are several other variables that are used in the pro formas to establish project costs and rates of return. These include land costs, construction costs, on and off-site improvement costs, fees, "soft" costs, financing costs, and fees (see Table 4.1.1, page 24, BAE study). All of these factors are variable and have a bearing on a project's rate of return and they do not necessarily vary in the same direction. There is evidence, for instance, that land and some construction costs have begun to decline, which would have a positive effect on a projects' rate of return and partially offset a decline in sales. This is not meant to imply that land costs and construction costs have declined by a corresponding amount to sales prices, but without conducting a new study it is difficult

to accurately gauge the cumulative effects of these changes on a project's rate of return. It should also be pointed out that if a lower feasibility threshold is used, for example 10% of return on cost, a project could absorb a higher in-lieu fee amount.

While the current residential market conditions are difficult, the historic trend in real estate is cyclical. While the market is in a significant downtrend right now, in time the decline will moderate, and an uptrend will eventually occur. It is likely that new projects seeking entitlements or recording maps, and therefore subject to the payment of the in-lieu fee, will likely not occur until market conditions start to improve and projects are able to command higher sales prices. Therefore, staff believes that it would be inappropriate to set fee amounts based on conditions during a market decline, and that the approach taken in the BAE study represents a more long-term, pro-active stance towards addressing the City's affordable housing need

Lastly, the proposed fee structure is at the lower range of the scale relative to other cities in the region and of comparable size. Staff has contacted the cities listed in Attachment "11" on whether they plan any type of fee adjustment, and has found that none of the cities plan to make adjustments specifically due to current market conditions. However, it should be noted that Oxnard and Santa Paula's Ordinances are based on a percentage of sales price, and therefore, the fee reacts to changes in market conditions automatically

CONCLUSION:

The proposed Affordable Housing Ordinance would be pivotal in helping the City to continue to provide for the affordable housing needs of its citizens by providing additional funding sources. Up to this point, Redevelopment Agency low and moderate income set aside funds generated have provided the majority share of funding devoted to affordable housing programs. However, the two redevelopment project areas where the set aside funds originate are set to expire between 2031 and 2037, and the cap on the Agency's total allowable tax increment in the project areas will likely be reached within the next 11 or 12 years. Thus, adoption of an Inclusionary Housing Program and a Nonresidential Linkage Fee are particularly important as a long-term replacement funding source for affordable housing, and it is estimated that these two programs could generate an estimated \$28.6 to \$42.4 million. By way of comparison, the Redevelopment Agency has expended approximately \$52.8 million on affordable housing production and programs since 1973. Assuming a leverage ratio of 4:1, meaning funds collected from these proposed programs would be combined with other funding sources to be expended on affordable housing, and a cost of production of approximately \$400,000 per affordable unit, funding generated from the programs could be expected to add between 286 and 424 affordable units

Meets Council Goal I:

- I. Implement high quality redevelopment projects within Thousand Oaks Boulevard Redevelopment Project Area and Newbury Road Project Area, Develop a pedestrian-oriented, viable and self-sustaining "Downtown", and continue to produce long-term affordable housing.

Submitted by.



John C. Prescott
Community Development Director

Prepared by:



Bill Hatcher
Senior Planner

CC Doug Tapking, Executive Director, Area Housing Authority
Rick Schroeder, Executive Director, Many Mansions

Attachments .

- 1 - Draft Affordable Housing Ordinance
- 2 - Resolution adopting an In-lieu Inclusionary Housing Fee
- 3 - Resolution adopting a Nonresidential Development Linkage Fee
- 4 - Resolution adopting Housing Trust Fund Guidelines
- 5 - Affordable Housing Program Guidelines
- 6 - Planning Commission Resolution No. 29-2008
- 7 - Planning Commission Staff Report date June 23, 2008
- 8 - California Government Code Section 65915 – Density Bonus
- 9 - Comparison survey of cities with Linkage Fee Programs
- 10 - Comparison survey of cities with Inclusionary Housing Ordinances
- 11 - Selected survey of cities regarding in-lieu fee adjustments
- 12 - Letter received from Los Robles Hospital dated June 20, 2008

CDD 620-21\bh\COMMON\Housing & Redevelopment\AFFORDABLE HOUSING PROGRAM CONSULTANT SERVICES
(2007)\CC 07 22 08\July 22\DRAFT SR CC 07 22 08 AHO (06 30 08) doc

NOTE: Attachments to this report not provided.

Housing Production and Fee Survey

Jurisdiction	Year Adopted	Total Housing Units (1)	Inclusionary Units (1)	% Requirement	In-lieu Fee	In-Lieu Fee Collected (1)	Population (2)	Median Income (3)	Median Sales Price (4)	Contact
Atascadero	2003	1,001	54	20%	5% of the construction valuation of the structure.	\$492,296.08	28,590	\$54,827	\$257,500	Kelly Gleason (805) 481-5000 x3436 kgleason@atascadero.org
Calabasas	1998	722	0	5-20%	\$17,713 per rental unit. \$44,947 per condo unit. \$62,500 per single family dwelling unit.	\$2,000,000	23,725	\$104,935	\$562,500	Talyn Mirzakhanian (818) 224-1712 tmirzakhanian@cityofcalabasas.com
Carlsbad	1993	12,000	1,668	15%	\$4,515 per market rate unit.	\$894,244	103,811	\$82,009	\$517,500	Courtney Enriquez (760) 434-2812 cenni@ci.carlsbad.ca.us
Davis	1987	2,790	1,073	25% Ownership 25-35% Rental	\$37,500 per affordable unit.	\$152,255	65,814	\$56,512	\$523,500	Danielle Foster (530) 757-5602 dfoster@cityofdavis.org
Mountain View	1999	534 Permits (in 2006-2007)	7	10%	3% of actual sale price and 3% of appraised value of all rental.	\$8,000,000	73,932	\$82,904	\$540,000	Adriana Garefalos (650) 903-6379 adriana.garefalos@mountainview.gov
Oxnard	1999	6,429	1,150	10% Citywide 15% Redevelopment	1% of sales price.	\$11,400,000	194,905	\$55,716	\$272,500	Ernie Whitaker (805) 385-7400 ernest.whitaker@ci.oxnard.ca.us
Pasadena	2001	3,563	468	15%	Ownership: \$40.55 to \$26.68 per sq foot. Rental: \$1.07 to \$29.88 per sq foot.	\$18,046,190	148,126	\$61,269	\$473,500	Kermit Mahan (626) 744-8315 KMahan@cityofpasadena.net
San Bruno	2003	916	325	15%	About \$39,500 (New fee schedule as of November 28, 2008)	\$1,500,000	43,444	\$72,869	\$479,500	Mark Sullivan (650) 616-7053 msullivan@ci.sanbruno.ca.us
Santa Paula	2004	306	6	15%	Difference of market price unit and affordable unit price multiplied by the number of inclusionary units.	\$400,000	29,639	\$44,564	\$229,000	Elisabeth V. Amador (805) 525-0626 eamador@ci.santa-paula.ca.us
Sunnyvale	1980	3,259	157	12.5% Ownership 15% Rental	Ownership: Difference between market value & affordable price. Rental: Difference between market rent & affordable rent capitalized over 55 years, based on CPI.	\$0	137,538	\$82,622	\$475,000	Ernie DeFrenchi (408) 730-2784 edefrenchi@ci.sunnyvale.ca.us
West Hollywood	1986	491	37	10%	\$11.29 to \$24.20 per sq foot. Project over 10 units must produced units.	\$10,350,000	37,563	\$49,082	\$455,000	Jeff Skorneck (323) 848-6460 jskorneck@weho.org

(1) Permitted or constructed units from 1999 to 2008. Data provided by cities.
 (2) CA Dept of Finance State/County Population Estimates 1/2008
 (3) US Census Bureau's Population Estimates 2007
 (4) dqnews.com February 2009

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Home prices dip slightly, but market seems stable

By Allison Bruce
Posted November 17, 2009 at 10:40 a.m. , updated November 17, 2009 at 10:08 p.m.

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October home sales were up from a year ago in Ventura County, but the median Michael Fratantoni, vice president for single-family research and policy development sales price declined 2.7 percent to \$365,000. for the Mortgage Bankers Association.

The median for new and existing homes and condominiums declined for the second month after rising each month since March, MDA DataQuick, a real estate information firm, reported Tuesday.

Steve Carrigan of Carrigan Financial Group in Camarillo said the market is going to have to sustain itself when the government steps away from the table.

9.6 percent from a year ago. "Interest rates are going to go up. It's not a matter of will they go up ... it's a matter of how fast and how high," he said. For Southern California, sales were up, but the median price — the point at which half the homes sold for more and half for less — was down 6.7 percent at \$280,000. He also worries that Ventura County's market is benefiting from an artificial shortage

of inventory caused by banks avoiding foreclosures. He said he talks with people DataQuick said that year-over-year decline was the smallest in two years, which weekly who haven't made mortgage payments in a year or two but still aren't in could indicate the housing market is firming up because of fewer homes for sale and foreclosure. government and industry efforts to build demand and curb foreclosures.

Eventually that "shadow inventory" is going to hit the market and have an effect, he said. "The government is playing a huge role in stabilizing and, to some extent, reinvigorating the housing market," John Walsh, MDA DataQuick president, said in a statement. Buyer interest has increased as housing has become more affordable.

He attributed the boost in sales to low mortgage rates, low down-payment financing, The Area Housing Authority of Ventura County, which puts on first-time homebuyer the now-extended federal tax credit and programs aimed at reducing foreclosures, educational workshops, has seen more interest as home prices have declined in the county, Fisher-Helton said.

"The real question now is how well can the market perform next year as some of the government stimulus disappears?" Walsh said. She's found people are more cautious about the information they receive — the housing authority does not allow promotion or selling in the workshops. Congress passed an extension through April for the federal homebuyer tax credit of up to \$8,000, which was set to expire this month. "People are in desperate need for information from somebody who's not going to sell them a product," Fisher-Helton said. "Certainly, the tax credit being extended has kept people interested who may have thought they missed that opportunity," said Linda Fisher-Helton, community relations manager for the Area Housing Authority of Ventura County.

Carrigan, who provides instruction at the workshops, said first-time buyers are often frustrated because they're being squeezed out by cash buyers, people with large down payments and speculators. mortgage securities will come to a close, which could drive up mortgage rates, said

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"First-time buyers are struggling right now," he said.

For the third quarter, affordability for first-time homebuyers in Ventura County dipped slightly to 56 percent from 59 percent in the second quarter, but was still higher than the 53 percent rate from a year ago, the California Association of Realtors reported last week.

The affordability index gives the percentage of households that can afford to purchase an entry-level home — estimated at \$385,910 in Ventura County, with a monthly payment of about \$2,260. The association reports the minimum income to afford that payment would be \$67,800.

The association bases its median home price on the sale of existing single-family homes, which often skews higher than the DataQuick median.

Last week, the Mortgage Bankers Association reported that mortgage applications to purchase a home were down to the lowest level since December 2000 and down 11.7 percent from the week before. At the same time, refinancing mortgages increased.

The main driver for purchases is affordability, which is made up of three factors: mortgage rates, home prices and household incomes, Fratantoni said.

"The real weak spot is what's going on with household income," he said.

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RESOLUTION NO. 06-1404

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, OVERTURNING THE PLANNING COMMISSION'S DENIAL AND APPROVING CONDITIONAL USE PERMIT CASE NO. 03-CUP-010 AND ADOPTING A MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING PROGRAM

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

Section 1. An application was duly filed by Riopharm USA, Inc., with respect to the real property located within Tract 48901 (known as "Agoura I"), on the south side of Agoura Road, east of Calle Montecillo (Assessor's Parcel Nos. 2061-014-(007-015)(018-020)(023-026)), requesting approval of a Conditional Use Permit to allow the development of fourteen (14) detached single-family residential units. Public hearings were duly held by the Planning Commission on August 4, 2005, September 15, 2005, November 17, 2005, and December 1, 2005, at 6:30 p.m. in the City Council Chambers, City Hall, 30001 Ladyface Court, Agoura Hills, California. Notice of the time, date, place and purpose of the aforesaid public hearings was duly given. Evidence, both written and oral, was duly presented to and considered by the Planning Commission at the aforesaid public hearings. On December 1, 2005, the Planning Commission denied Conditional Use Permit Case No. 03-CUP-010 on a 5-0 vote, per Resolution No. 836

Section 2. An appeal of the Planning Commission's denial of Conditional Use Permit Case No. 03-CUP-010 was filed by Riopharm USA, Inc., on December 15, 2005 with respect to property described in Section 1 hereof. Public hearings on the appeal to the City Council were duly held and public testimony was given on February 22, 2006, September 13, 2006 and October 11, 2006, at 7:00 p.m., in the City Council Chambers of City Hall, 30001 Ladyface Court, Agoura Hills, California. The project was revised to eleven (11), detached, single-family homes consisting of seven (7) single-story and four (4) two-story units which the City Council considered at its October 11, 2006 meeting. Notice of the time, date, place and purpose of the aforesaid public hearings was duly given.

Section 3. Evidence, both written and oral, was duly presented to and considered by the City Council at the aforesaid public hearings.

Section 4. Pursuant to Section 9673.2.E of the Agoura Hills Zoning Ordinance, the City Council finds that:

A. The proposed use, as conditioned, is consistent with the objectives and provisions of the Zoning Ordinance and the purposes of the land use district in which the use is located. The property zoning designation and General Plan Land Use designation allows

for development of single-family residential units on the property. The purpose of the Residential-Medium Density (RM) zone, as stated in the Zoning Ordinance, is for residential development standards for the RM-CD-FC (Residential-Medium Density – Cluster Development Overlay – Freeway Corridor Overlay) relative to building height, lot coverage and landscape coverage. Consideration was appropriately given to the placement of the proposed single-family homes and their proximity to adjacent existing residential communities.

B. The proposed use, as conditioned, is compatible with the surrounding properties. The proposed residential use is allowed within the RM-CD-FC zones. The single-story and two-story designs of the proposed homes are compatible with existing neighboring homes to the west. The proposed detached houses are situated on the property as to preserve views, light, air and open space to neighboring properties. The proposed houses meet all yard area, lot coverage and building height requirements, of the RM zone. The building elevations are articulated on all sides through the use of varied roof lines and varied building façades that reduce the scale of the buildings.

C. The proposed use, as conditioned, and the condition in which it will be operated or maintained, will not be detrimental to the public health, safety, or general welfare. Access to the property will be via a single driveway on Agoura Road and sufficient on-site parking will be provided within the subdivision. The varied roof lines of the buildings and its proximity to neighboring residences will preserve the light, air, privacy and open space to the surrounding neighboring parcels. The project, as conditioned, meets the maximum building coverage standards for the RM zone.

D. The proposed use, as conditioned, will comply with each of the applicable provisions of the Zoning Ordinance. The proposed single-story and two-story homes meet the 35-foot building height limitation for structures within the zone. Building lot coverage is below the maximum allowed for the zone and the applicant will provide for landscaping within the tract.

E. The distance from other similar and like uses is sufficient to maintain the diversity of the community. Although subdivision abuts developed single-family residential homes to the west, the property is located approximately 1,400 feet from the nearest developed single-family residential tract to the east. The proposed project will be consistent and compatible with the neighboring residential community.

F. The proposed use, as conditioned, is consistent with the goals, objectives and policies of the General Plan. The project will provide for new housing opportunities and will meet the requirements of the City's Inclusionary Housing Ordinance to provide for affordable housing opportunities within the City, as called for in the General Plan Housing Element.

G. The applicant has revised the plans from what was denied by the Planning Commission by reducing the number of proposed single-family units within the tract to eleven (11); incorporating single-story units within the tract; reducing the sizes of the units; and increasing the yard areas for the residential lots.

Section 5. In accordance with the California Environmental Quality Act, the City has provided public notice of the intent to adopt a Mitigated Negative Declaration for this project. Based upon the initial study, public comments and the record before the City Council, the City Council finds that the Mitigated Negative Declaration identifies potentially significant environmental effects for which feasible mitigation measures have been identified which will avoid or substantially lessen such effects. The City Council has reviewed the information contained in the Mitigated Negative Declaration in considering the application and finds that the Mitigated Negative Declaration was prepared pursuant to the California Environmental Quality Act. The City Council hereby adopts the attached Mitigated Negative Declaration and Mitigation Monitoring Plan.

Section 6. Based on the aforementioned findings, the City Council hereby overturns the Planning Commission's denial and approves Conditional Use Permit Case No. 03-CUP-010 as shown in the revised plans submitted to the City Council on October 11, 2006, subject to the attached conditions, with respect to the property described in Section 1 and the revised project described in Section 2 hereof.

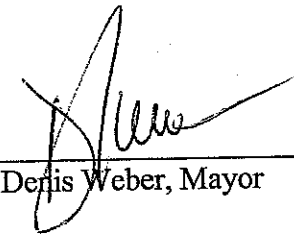
PASSED, APPROVED, and ADOPTED this 11th day of October, 2006, by the following vote to wit:

AYES:	(2)	Weber, Edelston
NOES:	(1)	Kuperberg
ABSTAIN:	(2)	Koehler, Schwarz
ABSENT:	(0)	

ATTEST:



Kimberly Rodrigues, City Clerk



Denis Weber, Mayor

CONDITIONS OF APPROVAL
(Case No. 03-CUP-010)

STANDARD CONDITIONS

1. This action shall not be effective for any purpose until the applicant has agreed in writing that the applicant is aware of, and accepts all Conditions of Approval of this Permit with the Department of Planning and Community Development. Any conditions on such acceptance or challenges, including the filing of legal action, relating to the permit or the conditions, shall be treated as a failure to meet this Condition and shall nullify and void this permit.
2. Except as modified herein, the approval of this action is limited to and requires complete conformation to the labeled exhibits approved by the Planning Commission: Site Plan, Building Elevation Plans, Floor Plans, Roof Plans, Grading Plans, Landscape Plans, and exterior building material samples.
3. It is hereby declared to be the intent that if any provision of this Permit is held or declared to be invalid, the Permit shall be void and the privileges granted hereunder shall lapse.
4. It is further declared and made a Condition of this action that if any Condition herein is violated, the Permit shall be suspended and the privileges granted hereunder shall lapse; provided that the applicant has been given written notice to cease such violation and has failed to do so for a period of thirty (30) days.
5. All requirements of the Zoning Ordinance and of the specific Zoning of the property must be complied with unless set forth in the Conditional Use Permit.
6. No occupancy shall be granted for any new building until all Conditions of Approval have been complied with as determined by the Director of Planning and Community Development.
7. If required, the applicant shall provide road markers opposite the existing or proposed fire hydrants serving the property to the satisfaction of the City Engineer.
8. A minimum of fifteen (15) public parking spaces shall be provided within the tract and shall be striped per City standards. All homes shall include garages that include a minimum 20-foot by 20-foot interior clear space.
9. The applicant shall comply with all applicable Public Health Statutes, Ordinances and Regulations related to the disposal of sewage.

10. All structures shall conform with the requirements of the Division of Building and Safety of the City of Agoura Hills.
11. The applicant shall comply with the requirements of the Los Angeles County Fire Department prior to the issuance of Building or Grading Permits. The Forester and Fire Warden shall be consulted to ascertain the required fire flows and fire hydrants to accommodate the proposed development.
12. Unless Conditional Use Permit Case No. 03-CUP-010 is used within two (2) years from the date of City approval, the permit will expire. A written request for a one-year extension may be considered prior to the expiration date.
13. The applicant shall provide a paved all-weather access from the parking area to the street, as required by the City Engineer.
14. Prior to the issuance of Grading Permit or Building Permits, the applicant shall comply with the school impact fee requirements of the Las Virgenes Unified School District. The current fee is \$2.63/gross square foot for residential construction. Actual fees will be determined at the time of building permit issuance.
15. The applicant shall pay to the City the applicable Fire District Developer Fee prior to the issuance of Building Permits. The current fee is \$0.3877/gross square foot for residential construction. Actual fees will be determined at the time of building permit issuance.
16. Prior to the issuance of a Building Permit, the applicant shall submit a letter to the Director of Planning and Community Development agreeing to suspend construction in the vicinity of a cultural resource encountered during development of the site, and leave the resource in place until a qualified archaeologist can examine them and determine appropriate mitigation measures. All fees and expenses for the retaining of a qualified archaeologist shall be paid by the applicant and shall not be at City expense. The applicant shall agree to comply with mitigation measures recommended by the archaeologist and approved by the Director of Planning and Community Development.

LANDSCAPING CONDITIONS

17. The final landscape design shall comply with the corridor standards of the Freeway Corridor (FC) zoning overlay. The planting scheme shall be designed to preserve and enhance the scenic quality of the freeway corridor. Naturalistic and native landscaping, particularly native oaks, shall be emphasized throughout the development. Any unsightly uses shall be completely screened.
18. Plant material shall be considered compatible with Sunset Zone 18. No plant material considered invasive in the Santa Monica Mountains may be utilized in the plant palette.
19. Prior to the approval of building permits, the applicant shall submit three (3) sets of landscape plans for review by the City Landscape Consultant and approval by the Director of Planning and Community Development that meet the following requirements:
 - a. A California-licensed landscape architect shall prepare, stamp and sign the plans.
 - b. All plans shall be legible and clearly drawn.
 - c. Plans shall not exceed thirty inches (30") by forty-two inches (42") in size. Plans shall be a minimum of twenty-two inches (22") by thirty-six inches (36") in size.
 - d. A true north arrow and plan scale shall be noted. The scale shall be no smaller than one inch equals twenty feet (1"=20'), unless approved by the City Landscape Consultant.
 - e. A title block shall be provided, indicating the names, addresses and telephone numbers of the applicant and landscape architect.
 - f. The project identification number shall be shown on each sheet.
 - g. The plans shall accurately and clearly depict the following existing and proposed features:
 - * Landscape trees, shrubs, ground cover and any other landscaping materials
 - * Property lines
 - * Streets, street names, right-of-ways, easements, driveways, walkways, bicycle paths, and any other paved areas
 - * Buildings and structures
 - * Parking areas, including lighting, striping and wheel stops
 - * General contour lines

- * Grading areas, including tops and toes of slopes
 - * Utilities, including street lighting and fire hydrants
 - * Natural features, including watercourses, rock outcroppings
- h. The Planting Plan shall indicate the botanical name and size of each plant.
20. Plant symbols shall depict the size of the plants at maturity.
21. Plant container sizes and/or spacing shall be provided. Minimum sizes shall be acceptable to the City Landscape Consultant and the Director.
22. Plantings in all common areas and rights-of-way shall be of adequate size at planting to achieve screening the project upon installation.
23. The landscape plans shall prominently display the following notes:
- a. All plant material shall conform to the most recent edition of ANSI Z60.1 - American Standard for Nursery Stock.
 - b. All trees shall also conform to the California Department of Forestry and Fire Protection "Standards for Purchasing Containers - Grown Landscape Trees."
 - c. Prior to scheduling an inspection of the landscape installation with the City, the applicant's landscape architect shall certify in writing that the installation is in conformance with the approved landscape plans.
24. Proposed light standard locations shall be depicted on the planting plan. Any conflicts between light standard and tree locations shall be resolved to the satisfaction of the City Landscape Consultant.
25. The Irrigation Plan shall be provided separate from but utilizing the same format as the Planting Plan.
26. The irrigation design shall provide adequate coverage and sufficient water for the continued healthy growth of all proposed plantings with a minimum of waste and over spray on adjoining areas.

27. The Irrigation Plan shall be concise and accurate and shall include the manufacturer, model, size, demand, radius, and location of the following, as appropriate:
 - a. Design and static pressures
 - b. Point of connection
 - c. Backflow protection
 - d. Valves, piping, controllers, heads, quick couplers
 - e. Gallon requirements for each valve
28. Three (3) copies of details and specifications shall be provided, addressing but not limited to, planting, soil preparation, tree staking, guying, installation details, and post installation maintenance.
29. One copy of each of the following approved plans shall be submitted with the initial landscape plan check:
 - a. Site Plan
 - b. Elevations
 - c. Grading Plan
 - d. Conditions of Approval
30. A complete Landscape Documentation package is required at the time of initial plan check submittal, prepared in accordance with Article IX, Section 9658.6 – Water Efficient Landscaping, contained in the Zoning Code.
31. All landscaping shall be irrigated and maintained in perpetuity in accordance with the approved Landscape Plan.
32. Poor landscape practices such as topping, hedging and “lollipoping” shall not be permitted and may require that plant materials be replaced with like size materials at the discretion of the City Landscape consultant.
33. To the extent feasible, decorative landscape mounding shall be provided in the planters along Agoura Road in accordance with Article IX, Section 9373.7 – Required Landscaping, to the satisfaction of the City Landscape.
34. Any new perimeter walls shall be decorative with a height of six feet (6’), subject to review and approval by the City Landscape Consultant and the Director.

PUBLIC WORKS/ENGINEERING DEPARTMENT CONDITIONS

General

35. All improvement plans, including, but not limited to, street, grading, sewer, storm drain, and striping/signage plans, for the entire project must be submitted as one package. This package must also include all supporting studies. All improvement plan sheets shall be 24" x 36" and must have the City's standard signature blocks and be legibly drawn to ensure proper reproduction and adequate record keeping. All lettering on plans shall be a minimum of 80 CL (.08 inch) in size to ensure proper reproduction and microfilming. All original plans shall be drawn in ink. All plans shall be prepared and signed by a California State Registered Civil Engineer.
36. For construction within public right-of-way, an encroachment permit is required in accordance with Agoura Hills Municipal Code. All required applicable fees, securities, and insurance must be posted prior to issuance of the encroachment permit.
37. The applicant shall acquire and obtain and pay all costs of acquiring any off-site real property and/or easements required in connection with this project prior to issuance of a grading permit.
38. All Record Drawings ("As-Built" drawings) and supporting documentation shall be submitted to the Engineering Division prior to issuance of the final Certificate of Occupancy.
39. All block walls and retaining walls shall be limited to six feet in height.
40. A title report is required to be submitted with the project plans. The plans shall show all proposed and existing easements.
41. All necessary lot line adjustments (LLA's), if proposed, shall be submitted to the City Engineer prior to the issuance of a grading permit. All LLA's shall be recorded with the LA County Recorder prior to issuance of any Certificate of Occupancy.

Grading

42. All grading shall conform to City's Grading Ordinance, Chapter 33 of the Uniform Building Code, as modified.

43. A site paving/drainage/grading plan shall be submitted for review and acceptance by the City Engineer. The plans, among other details, shall show proposed utilities, existing and proposed easements, stormwater facilities and facilities for the handicapped. The grading plan shall be accompanied by a Soils Report prepared in accordance with the Agoura Hills Guidelines for geotechnical/geological reports.
44. Prior to the issuance of a grading permit the following must be satisfied; the grading plan has been reviewed and accepted by the City Engineer, the applicable plan check, inspection and permit fees have been paid and the grading security has been posted.
45. For any grading operations conducted between October 1 and April 15 of each year, the applicant shall submit a wet weather erosion control plan for review and acceptance by the City Engineer.

Drainage

46. A drainage study shall be prepared by a California State Registered Civil Engineer for the review and acceptance by the City Engineer. Hydraulic design shall conform to the current Hydraulic Design Manual of the Los Angeles County Department of Public Works (LACDPW).
47. Prior to the issuance of a grading permit, the applicant shall file a Notice of Intent (NOI) and Storm Water Pollution Prevention Plan (SWPPP) with the State Water Resources Control Board, and provide written documentation thereof to the City Engineer.
48. The SWPPP shall be prepared in compliance with the Development Construction Model Program for Stormwater Management within the County of Los Angeles, and shall be subject to approval by the City Engineer. The SWPPP shall identify pollutant sources, and shall include design and recommend construction and implementation of stormwater pollution prevention measures in order to reduce pollutants in stormwater discharges from the construction site during the construction period, and after construction as required.
49. Prior to issuance of a grading permit, the applicant shall prepare a Standard Urban Stormwater Mitigation Plan (SUSMP), as outlined in the Development Planning Model Program for Stormwater Management within the County of Los Angeles, subject to approval by the City Engineer. The plan will demonstrate treatment of the first 3/4" of rainfall, as required by the Model Program.

50. A City-provided Best Management Practice (BMP) Covenant and Deed Restriction shall be prepared and recorded with the Los Angeles County Recorder's Office by the applicant upon completion of the drainage and grading improvements.
51. Prior to issuance of a grading permit, MTD 1406 hydrology, plans and necessary easements shall be submitted to and approved by the City Engineer and LACDPW.
52. Prior to issuance of a grading permit, MTD 1596 hydrology, plans and necessary easements shall be submitted to and approved by the City Engineer and LACDPW.
53. Prior to issuance of a grading permit, SUSMP hydrology and plans shall be submitted to and approved by the City Engineer.
54. Prior to issuance of a grading permit, all necessary storm drain easements shall be recorded with the LA County Recorder.
55. Prior to issuance of any Certificate of Occupancy, the applicant shall provide written documentation from LACDPW that the storm drain facilities are acceptable for transfer to the County for maintenance purposes.
56. Drainage improvements on private property not transferred to the LACDPW for maintenance shall be continually maintained, repaired and replaced by the property owner(s).

Streets/Traffic

57. Agoura Road is a secondary arterial roadway with 100 feet of right-of-way (ROW). The half-roadway improvements shall be designed and constructed to transition the existing improvements to the west and accommodate a 12-foot traffic lane, 8-foot bike lane, and curb and gutter. The remaining portion of the public ROW shall consist of landscaping, irrigation and a 5-foot-wide meandering sidewalk, subject to review and approval of the City Engineer.
58. New landscaping and irrigation within Agoura Road ROW shall be maintained in perpetuity by the Homeowner's Association.
59. Based upon the Preliminary Plot Plan for this Tract and the City of Agoura Hills Municipal Code, the project's Transportation Improvement Fee will be \$26,840 (\$2,440/home x 11 homes).

60. On-site access shall be approved by the LA County Fire Department prior to issuance of a grading permit.
61. On-site circulation shall be approved by the LA County Fire Department prior to issuance of a building permit.

Utilities

62. Water facilities shall be designed and constructed by the applicant in accordance with the standards of Las Virgenes Municipal Water District (LVMWD). Prior to issuance of a building permit, the applicant shall provide documentation from LVMWD that all improvement requirements have been met, including fee payment.
63. Sanitary sewer plans shall be reviewed and approved by the City Engineer, Las Virgenes Municipal Water District, and the Los Angeles County Public Works Department. The applicant shall provide evidence that all connection fees have been paid prior to issuance of a building permit.
64. The applicant shall submit evidence from the Los Angeles County Fire Department for approval of location and spacing of fire hydrants prior to issuance of a grading permit.
65. The existing aboveground utilities within the southerly half of Agoura Road's public ROW shall be undergrounded within the project limits.

FIRE DEPARTMENT CONDITIONS

66. The applicant shall comply with all conditions of the Los Angeles County Fire Department prior to the issuance of a building permit.

PLANNING DEPARTMENT/SPECIAL CONDITIONS

67. A pre-construction conference shall be held prior to the issuance of a grading permit with all construction personnel involved with the grading operations. A procedure shall be established to handle any complaints received from the surrounding property owners or residents of the City during the grading and construction operations. Applicant shall deposit funds with the City necessary to cover costs of the City hiring an environmental mitigation monitor.

68. Signage for the tract shall comply with the City Sign Ordinance and shall be subject to review and approval by the Director of Planning and Community Development.
69. Security gates are prohibited within the tract.
70. On-site decorative paving shall be provided at the driveway entrance serving the site and on the pedestrian pathways located between the buildings within the parking areas. The color, materials, length and location of the decorative paving shall be subject to review and approval by the Director of Planning and Community Development.
71. Prior to the submittal of plans into plan check for a Grading Permit or Building Permit, the applicant shall comply with the project recommendations of the City Geotechnical Consultant and the City Geological Consultant.
72. All outstanding fees owed to the City, if any, shall be paid by the applicant within thirty (30) days from the date of this approval.
73. The applicant shall comply with all building material samples approved by the City Council. Prior to final painting and final application of stone veneer on the buildings, the applicant shall provide color samples on the building wall for review and approval by the Director of Planning and Community Development.
74. Location and design details for all proposed walls and fences shall be provided for review and approval by the Director of Planning and Community Development, prior to the issuance of a grading permit. Garden walls and retaining walls shall be of split-face block.
75. The Grading Plan shall specify proposed paving materials and include a note that refers to the Landscape Plan for specific landscape materials shown on the Grading Plan.
76. Prior to the issuance of a building permit, the applicant shall submit the location and screening details of all ground-mounted mechanical equipment for review and approval by the Director of Planning and Community Development.

77. The applicant shall comply with all mitigation measures within the Mitigation Monitoring Program prepared for the adopted Mitigated Negative Declaration adopted for the project. The applicant shall pay for all mitigation review and monitoring completed by outside consultants such as the City Arborist, City-approved biologist or other consultants needed to ensure compliance with the Mitigation Monitoring Plan as determined by the Director of Planning and Community Development.
78. Prior to the starting construction, the site shall be temporarily fenced and screened on all sides for the duration of the construction project. The height of the fence shall be six (6) feet and fence material shall be overlaid on the exterior with a dark, opaque vinyl screen, or other equivalent fencing and screening material as approved by the Director of Planning and Community Development. Temporary construction fencing and gates shall be maintained in good order at all times.
79. Prior to the issuance of a building permit, the applicant shall prepare and submit CC&R's for the tract for review and approval by the Director of Planning and Community Development and the City Attorney. The CC&R's shall establish the obligations of each property owner to maintain the private streets, common space and front yard landscaped areas of each home. The CC&R's shall also require the homeowners to pay for all required brush clearance/fire zone fuel modification related to the public and private open space areas.
80. All room or patio additions shall be restricted to the rear yard area. A maximum 10% additional lot coverage will be allowed.
81. All fences within the tract shall be subject to approval by the Director of Planning and Community Development.
82. The common recreational area within Tract 48901 shall include playground equipment for young children and shall be subject to review and approval by the Director of Planning and Community Development.
83. Street lights proposed for the private streets within the tract shall be subject to review and approval by the City Engineer and the Director of Planning and Community Development.

84. The applicant shall comply with the City Inclusionary Housing Ordinance (Municipal Code Section 9133) by providing at least fifteen percent (15%) of all homes within the tract to be made available to low and moderate-income households.

SOLID WASTE MANAGEMENT CONDITIONS

85. To ensure that solid waste generated by the project is diverted from the landfill and reduced, reused, or recycled, the applicant shall submit a "Waste Reduction & Recycling Plan" to the City for review and approval. The plan shall provide for at least 50% of the waste generated on the project to be diverted from the landfill. Plans shall include the entire project area, even if tenants are pursuing or will pursue independent programs. The plan shall be submitted to and approved by the Department of Planning and Community Development prior to issuance of a building permit. The plan shall include the following information: material type to be recycled, reused, salvaged, or disposed; estimated quantities to be processed, management method used, and destination of material including the hauler name and facility location. The City's Waste Reduction & Recycling Plan form or a similar format shall be used.
86. The project shall comply with the plan and provide for the collection, recycling, and/or reuse of materials (i.e. concrete, wood, metal, cardboard, green waste, etc.) and document results during demolition and/or construction of the proposed project. After completion of demolition and/or construction, the applicant shall complete a Waste Reduction & Recycling Summary Report and provide legible copies of weight tickets, receipts, invoices or letters of verification for materials sent to disposal or reuse/recycling facilities. For other discarded or salvaged materials, the applicant shall provide documentation, on the disposal facility's letterhead, identifying where the materials were taken, type of materials, and tons or cubic yards disposed, recycled or reused and the project generating the discarded materials. The Waste Reduction & Recycling Summary Report shall be submitted and approved prior to issuance of a certificate of occupancy.
87. The applicant shall arrange for materials collection during construction, demolition, and occupancy with a City permitted hauling company, or shall arrange for self-hauling to an authorized facility.

END

RESOLUTION NO. 06-1405

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, OVERTURNING THE PLANNING COMMISSION'S DENIAL AND APPROVING CONDITIONAL USE PERMIT CASE NO. 98-CUP-007 AND ADOPTING A MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING PROGRAM

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

Section 1. An application was duly filed by Riopharm USA, Inc. with respect to the real property located within Tract 48312 (known as "Agoura II), on the south side of Agoura Road, east of Calle Montecillo (Assessor's Parcel Nos. 2061-014-(027-042) and 2061-015-008), requesting approval of a Conditional Use Permit to allow the development of thirteen (13) detached single-family residential units. Public hearings were duly held by the Planning Commission on August 4, 2005, September 15, 2005, November 17, 2005, and December 1, 2005 at 6:30 p.m. in the City Council Chambers, City Hall, 30001 Ladyface Court, Agoura Hills, California. Notice of the time, date, place and purpose of the aforesaid hearing was duly given. Evidence, both written and oral, was duly presented to and considered by the Planning Commission at the aforesaid public hearings. On December 1, 2005, the Planning Commission denied Conditional Use Permit Case No. 98-CUP-007 on a 5-0 vote, per Resolution No. 837

Section 2. An appeal of the Planning Commission's denial of Conditional Use Permit Case No. 98-CUP-007 was filed by Riopharm USA, Inc., on December 15, 2005 with respect to property described in Section 1 hereof. Public hearings on the appeal were duly held and public testimony was given on February 22, 2006, September 13, 2006 and October 11, 2006, at 7:00 p.m., in the City Council Chambers of City Hall, 30001 Ladyface Court, Agoura Hills, California. Notice of the time, date, place and purpose of the aforesaid public hearings was duly given.

Section 3. Evidence, both written and oral, was duly presented to and considered by the City Council at the aforesaid public hearings.

Section 4. Pursuant to Section 9673.2.E of the Agoura Hills Zoning Ordinance, the City Council finds that:

A. The proposed use, as conditioned, is consistent with the objectives and provisions of the Zoning Ordinance and the purposes of the land use district in which the use is located. The property zoning designation and General Plan Land Use designation allows for development of single-family residential units on the property. The purpose of the Single-Family Residential (RS) zone, as stated in the Zoning Ordinance, is for residential development consisting of small lot subdivisions. The proposal meets the development

standards for the RS-CD-FC (Single-Family Residential – Cluster Development Overlay – Freeway Corridor Overlay) relative to building height, lot coverage and landscape coverage. Consideration was appropriately given to the placement of the proposed single-family homes and their proximity to adjacent existing residential communities.

B. The proposed use, as conditioned, is compatible with the surrounding properties. The proposed residential use is allowed within the RS-CD-FC zones. The single-story and two-story designs of the proposed homes are compatible with existing neighboring homes to the west. The proposed detached houses are situated on the property as to preserve views, light, air and open space to neighboring properties. The proposed houses meet all yard area, lot coverage and building height requirements, of the RS zone. The building elevations are articulated on all sides through the use of varied rooflines and varied building façades that reduce the scale of the buildings.

C. The proposed use, as conditioned, and the condition in which it will be operated or maintained, will not be detrimental to the public health, safety, or general welfare. Access to the property will be via a single private street on Agoura Road and sufficient on-site and street parking will be provided within the subdivision. The varied roof lines of the buildings and its proximity to neighboring residences will preserve the light, air, privacy and open space to the surrounding neighboring parcels. The project, as conditioned, meets the maximum building coverage standards for the RS zone.

D. The proposed use, as conditioned, will comply with each of the applicable provisions of the Zoning Ordinance. The proposed single-story and two-story homes meet the 35-foot building height limitation for structures within the zone. Building lot coverage is below the maximum allowed for the zone and the applicant will provide for landscaping within the tract.

E. The distance from other similar and like uses is sufficient to maintain the diversity of the community. Although a portion of the subdivision abuts developed single-family residential homes to the west, the property is located approximately 1,300 feet from the nearest developed single-family residential tract to the east. The proposed project will be consistent and compatible with the neighboring residential community.

F. The proposed use, as conditioned, is consistent with the goals, objectives and policies of the General Plan. The project will provide for new housing opportunities and will meet the requirements of the City's Inclusionary Housing Ordinance to provide for affordable housing opportunities within the City, as called for in the General Plan Housing Element.

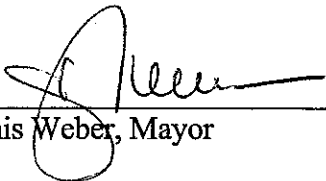
G. The applicant has revised the plans from what was denied by the Planning Commission by reducing incorporating single-story units within the tract; reducing the sizes of the units; and increasing the yard areas for the residential lots.

Section 5. In accordance with the California Environmental Quality Act, the City has provided public notice of the intent to adopt a Mitigated Negative Declaration for this project. Based upon the initial study, public comments and the record before the City Council, the City Council finds that the Mitigated Negative Declaration identifies potentially significant environmental effects for which feasible mitigation measures have been identified which will avoid or substantially lessen such effects. The City Council has reviewed the information contained in the Mitigated Negative Declaration in considering the application and finds that the Mitigated Negative Declaration was prepared pursuant to the California Environmental Quality Act. The City Council hereby adopts the attached Mitigated Negative Declaration and Mitigation Monitoring Plan.

Section 6. Based on the aforementioned findings, the City Council hereby overturns the Planning Commission's denial and approves Conditional Use Permit Case No. 98-CUP-007 as shown in the revised plans submitted to the City Council on October 11, 2006, subject to the attached conditions, with respect to the property described in Section 1 hereof.


PASSED, APPROVED, and ADOPTED this 11th day of October, 2006, by the following vote to wit:

AYES: (2) Weber, Edelston
NOES: (1) Kuperberg
ABSTAIN: (2) Koehler, Schwarz
ABSENT: (0)

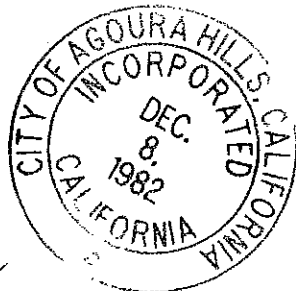


Denis Weber, Mayor

ATTEST:



Kimberly Rodrigues, City Clerk



CONDITIONS OF APPROVAL
(Case No. 98-CUP-007)

STANDARD CONDITIONS

1. This action shall not be effective for any purpose until the applicant has agreed in writing that the applicant is aware of, and accepts all Conditions of Approval of this Permit with the Department of Planning and Community Development. Any conditions on such acceptance or challenges, including the filing of legal action, relating to the permit or the conditions, shall be treated as a failure to meet this Condition and shall nullify and void this permit.
2. Except as modified herein, the approval of this action is limited to and requires complete conformation to the labeled exhibits approved by the Planning Commission: Site Plan, Building Elevation Plans, Floor Plans, Roof Plans, Grading Plans, Landscape Plans, and exterior building material samples.
3. It is hereby declared to be the intent that if any provision of this Permit is held or declared to be invalid, the Permit shall be void and the privileges granted hereunder shall lapse.
4. It is further declared and made a Condition of this action that if any Condition herein is violated, the Permit shall be suspended and the privileges granted hereunder shall lapse; provided that the applicant has been given written notice to cease such violation and has failed to do so for a period of thirty (30) days.
5. All requirements of the Zoning Ordinance and of the specific Zoning of the property must be complied with unless set forth in the Conditional Use Permit.
6. No occupancy shall be granted for any new building until all Conditions of Approval have been complied with as determined by the Director of Planning and Community Development.
7. If required, the applicant shall provide road markers opposite the existing or proposed fire hydrants serving the property to the satisfaction of the City Engineer.
8. All homes within the tract shall include garages that include a minimum 20-foot by 20-foot interior clear space.
9. The applicant shall comply with all applicable Public Health Statutes, Ordinances and Regulations related to the disposal of sewage.
10. All structures shall conform with the requirements of the Division of Building and Safety of the City of Agoura Hills.

11. The applicant shall comply with the requirements of the Los Angeles County Fire Department prior to the issuance of Building or Grading Permits. The Forester and Fire Warden shall be consulted to ascertain the required fire flows and fire hydrants to accommodate the proposed development.
12. Unless Conditional Use Permit Case No. 98-CUP-007 is used within two (2) years from the date of City approval, the permit will expire. A written request for a one-year extension may be considered prior to the expiration date.
13. The applicant shall provide a paved all-weather access from the parking area to the street, as required by the City Engineer.
14. Prior to the issuance of Grading Permit or Building Permits, the applicant shall comply with the school impact fee requirements of the Las Virgenes Unified School District. The current fee is \$2.63/gross square foot for residential construction. Actual fees will be determined at the time of building permit issuance.
15. The applicant shall pay to the City the applicable Fire District Developer Fee prior to the issuance of Building Permits. The current fee is \$0.3877/gross square foot for residential construction. Actual fees will be determined at the time of building permit issuance.
16. Prior to the issuance of a Building Permit, the applicant shall submit a letter to the Director of Planning and Community Development agreeing to suspend construction in the vicinity of a cultural resource encountered during development of the site, and leave the resource in place until a qualified archaeologist can examine them and determine appropriate mitigation measures. All fees and expenses for the retaining of a qualified archaeologist shall be paid by the applicant and shall not be at City expense. The applicant shall agree to comply with mitigation measures recommended by the archaeologist and approved by the Director of Planning and Community Development.

LANDSCAPING CONDITIONS

17. The final landscape design shall comply with the corridor standards of the Freeway Corridor (FC) zoning overlay. The planting scheme shall be designed to preserve and enhance the scenic quality of the freeway corridor. Naturalistic and native landscaping, particularly native oaks, shall be emphasized throughout the development. Any unsightly uses shall be completely screened.

Conditions of Approval

Case Nos. 98-CUP-007

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18. Plant material shall be considered compatible with Sunset Zone 18. No plant material considered invasive in the Santa Monica Mountains may be utilized in the plant palette.
19. Prior to the approval of building permits, the applicant shall submit three (3) sets of landscape plans for review by the City Landscape Consultant and approval by the Director of Planning and Community Development that the meet the following requirements:
 - a. A California-licensed landscape architect shall prepare, stamp and sign the plans.
 - b. All plans shall be legible and clearly drawn.
 - c. Plans shall not exceed thirty inches (30") by forty-two inches (42") in size. Plans shall be a minimum of twenty-two inches (22") by thirty-six inches (36") in size.
 - d. A true north arrow and plan scale shall be noted. The scale shall be no smaller than one inch equals twenty feet (1"=20'), unless approved by the City Landscape Consultant.
 - e. A title block shall be provided, indicating the names, addresses and telephone numbers of the applicant and landscape architect.
 - f. The project identification number shall be shown on each sheet.
 - g. The plans shall accurately and clearly depict the following existing and proposed features:
 - * Landscape trees, shrubs, ground cover and any other landscaping materials
 - * Property lines
 - * Streets, street names, right-of-ways, easements, driveways, walkways, bicycle paths, and any other paved areas
 - * Buildings and structures
 - * Parking areas, including lighting, striping and wheel stops
 - * General contour lines
 - * Grading areas, including tops and toes of slopes
 - * Utilities, including street lighting and fire hydrants
 - * Natural features, including watercourses, rock outcroppings
 - h. The Planting Plan shall indicate the botanical name and size of each plant.
20. Plant symbols shall depict the size of the plants at maturity.

21. Plant container sizes and/or spacing shall be provided. Minimum sizes shall be acceptable to the City Landscape Consultant and the Director.
22. Plantings in all common areas and rights-of-way shall be of adequate size at planting to achieve screening of the project upon installation.
23. The landscape plans shall prominently display the following notes:
 - a. All plant material shall conform to the most recent edition of ANSI Z60.1 - American Standard for Nursery Stock.
 - b. All trees shall also conform to the California Department of Forestry and Fire Protection "Standards for Purchasing Container -- Grown Landscape Trees."
 - c. Prior to scheduling an inspection of the landscape installation with the City, the applicant's landscape architect shall certify in writing that the installation is in conformance with the approved landscape plans.
24. Proposed light standard locations shall be depicted on the planting plan. Any conflicts between light standard and tree locations shall be resolved to the satisfaction of the City Landscape Consultant.
25. The Irrigation Plan shall be provided separate from but utilizing the same format as the Planting Plan.
26. The irrigation design shall provide adequate coverage and sufficient water for the continued healthy growth of all proposed plantings with a minimum of waste and over spray on adjoining areas.
27. The Irrigation Plan shall be concise and accurate and shall include the manufacturer, model, size, demand, radius, and location of the following, as appropriate:
 - a. Design and static pressures
 - b. Point of connection
 - c. Backflow protection
 - d. Valves, piping, controllers, heads, quick couplers
 - e. Gallon requirements for each valve
28. Three (3) copies of details and specifications shall be provided, addressing but not limited to, planting, soil preparation, tree staking, guying, installation details, and post installation maintenance.

Conditions of Approval

Case Nos. 98-CUP-007

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29. One copy of each of the following approved plans shall be submitted with the initial landscape plan check:
 - a. Site Plan
 - b. Elevations
 - c. Grading Plan
 - d. Conditions of Approval
30. A complete Landscape Documentation package is required at the time of initial plan check submittal, prepared in accordance with Article IX, Section 9658.6 – Water Efficient Landscaping, contained in the Zoning Code.
31. All landscaping shall be irrigated and maintained in perpetuity in accordance with the approved Landscape Plan.
32. Poor landscape practices such as topping, hedging and “lollipoping” shall not be permitted and may require that plant materials be replaced with like size materials at the discretion of the City Landscape consultant.
33. To the extent feasible, decorative landscape mounding shall be provided in the planters along Agoura Road in accordance with Article IX, Section 9373.7 – Required Landscaping, to the satisfaction of the City Landscape.
34. Any new perimeter walls shall be decorative with a height of six feet (6’), subject to review and approval by the City Landscape Consultant and the Director.

PUBLIC WORKS/ENGINEERING DEPARTMENT CONDITIONS

General

35. All improvement plans, including, but not limited to, street, grading, sewer, storm drain, and striping/signage plans, for the entire project must be submitted as one package. This package must also include all supporting studies. All improvement plan sheets shall be 24" x 36" and must have the City's standard signature blocks and be legibly drawn to ensure proper reproduction and adequate record keeping. All lettering on plans shall be a minimum of 80 CL (.08 inch) in size to ensure proper reproduction and microfilming. All original plans shall be drawn in ink. All plans shall be prepared and signed by a California State Registered Civil Engineer.

36. For construction within public right-of-way, an encroachment permit is required in accordance with Agoura Hills Municipal Code. All required applicable fees, securities, and insurance must be posted prior to issuance of the encroachment permit.
37. The applicant shall acquire and obtain and pay all costs of acquiring any off-site real property and/or easements required in connection with this project prior to issuance of a grading permit.
38. All Record Drawings ("As-Built" drawings) and supporting documentation shall be submitted to the Engineering Division prior to issuance of the final Certificate of Occupancy.
39. All block walls and retaining walls shall be limited to six feet in height.
40. A title report is required to be submitted with the project plans. The plans shall show all proposed and existing easements.
41. All necessary lot line adjustments (LLA's) shall be prepared for submitted to the city Engineer prior to issuance of a grading permit. All LLA's shall be recorded with the LA County Recorder prior to issuance of any Certificate of Occupancy.

Grading

42. All grading shall conform to City's Grading Ordinance, Chapter 33 of the Uniform Building Code, as modified.
43. A site paving/drainage/grading plan shall be submitted for review and acceptance by the City Engineer. The plans, among other details, shall show proposed utilities, existing and proposed easements, stormwater facilities and facilities for the handi-capped. The grading plan shall be accompanied by a Soils Report prepared in accordance with the Agoura Hills Guidelines for geotechnical/geological reports.
44. Prior to the issuance of a grading permit the following must be satisfied; the grading plan has been reviewed and accepted by the City Engineer, the applicable plan check, inspection and permit fees have been paid and the grading security has been posted.
45. For any grading operations conducted between October 1 and April 15 of each year, the applicant shall submit a wet weather erosion control plan for review and acceptance by the City Engineer.

Conditions of Approval

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Drainage

46. A drainage study shall be prepared by a California State Registered Civil Engineer for the review and acceptance by the City Engineer. Hydraulic design shall conform to the current Hydraulic Design Manual of the Los Angeles County Department of Public Works (LACDPW).
47. Prior to the issuance of a grading permit, the applicant shall file a Notice of Intent (NOI) and Storm Water Pollution Prevention Plan (SWPPP) with the State Water Resources Control Board, and provide written documentation thereof to the City Engineer.
48. The SWPPP shall be prepared in compliance with the Development Construction Model Program for Stormwater Management within the County of Los Angeles, and shall be subject to approval by the City Engineer. The SWPPP shall identify pollutant sources, and shall include design and recommend construction and implementation of stormwater pollution prevention measures in order to reduce pollutants in stormwater discharges from the construction site during the construction period, and after construction as required.
49. Prior to issuance of a grading permit, the applicant shall prepare a Standard Urban Stormwater Mitigation Plan (SUSMP), as outlined in the Development Planning Model Program for Stormwater Management within the County of Los Angeles, subject to approval by the City Engineer. The plan will demonstrate treatment of the first $\frac{3}{4}$ " of rainfall, as required by the Model Program.
50. A City-provided Best Management Practice (BMP) Covenant and Deed Restriction shall be prepared and recorded with the Los Angeles County Recorder's Office by the applicant upon completion of the drainage and grading improvements.
51. Prior to issuance of a grading permit, MTD 1406 hydrology, plans and necessary easements shall be submitted to and approved by the City Engineer and LACDPW.
52. Prior to issuance of a grading permit, MTD 1596 hydrology, plans and necessary easements shall be submitted to and approved by the City Engineer and LACDPW.
53. Prior to issuance of a grading permit, SUSMP hydrology and plans shall be submitted to and approved by the City Engineer.

Conditions of Approval

Case Nos. 98-CUP-007

Page 8

54. Prior to issuance of a grading permit, all necessary storm drain easements shall be recorded with the LA County Recorder.
55. Prior to issuance of any Certificate of Occupancy, the applicant shall provide written documentation from LACDPW that the storm drain facilities are acceptable for transfer to the County for maintenance purposes.
56. Drainage improvements on private property not transferred to the LACDPW for maintenance shall be continually maintained, repaired and replaced by the property owner(s).

Streets/Traffic

57. Agoura Road is a secondary arterial roadway with 100 feet of right-of-way (ROW). The half-roadway improvements shall be designed and constructed to transition the existing improvements to the west and accommodate a 12-foot traffic lane, 8-foot bike lane, and curb and gutter. The remaining portion of the public ROW shall consist of landscaping, irrigation and a 5-foot-wide meandering sidewalk, subject to review and approval of the City Engineer.
58. New landscaping and irrigation within Agoura Road ROW shall be maintained in perpetuity by the Homeowner's Association.
59. Based upon the Preliminary Plot Plan for this Tract and the City of Agoura Hills Municipal Code, the project's Transportation Improvement Fee will be \$31,720 (\$2,440/home x 13 homes).
60. On-site access shall be approved by the LA County Fire Department prior to issuance of a grading permit.
61. On-site circulation shall be approved by the LA County Fire Department prior to issuance of a building permit.

Utilities

62. Water facilities shall be designed and constructed by the applicant in accordance with the standards of Las Virgenes Municipal Water District (LVMWD). Prior to issuance of a building permit, the applicant shall provide documentation from LVMWD that all improvement requirements have been met, including fee payment.

63. Sanitary sewer plans shall be reviewed and approved by the City Engineer, Las Virgenes Municipal Water District, and the Los Angeles County Public Works Department. The applicant shall provide evidence that all connection fees have been paid prior to issuance of a building permit.
64. The applicant shall submit evidence from the Los Angeles County Fire Department for approval of location and spacing of fire hydrants prior to issuance of a grading permit.
65. The existing aboveground utilities within the southerly half of Agoura Road's public ROW shall be undergrounded within the project limits.

FIRE DEPARTMENT CONDITIONS

66. The applicant shall comply with all conditions of the Los Angeles County Fire Department prior to the issuance of a building permit.

PLANNING DEPARTMENT/SPECIAL CONDITIONS

67. A pre-construction conference shall be held prior to the issuance of a grading permit with all construction personnel involved with the grading operations. A procedure shall be established to handle any complaints received from the surrounding property owners or residents of the City during the grading and construction operations. Applicant shall deposit funds with the City necessary to cover costs of the City hiring an environmental mitigation monitor.
68. Signage for the tract shall comply with the City Sign Ordinance and shall be subject to review and approval by the Director of Planning and Community Development.
69. Security gates are prohibited within the tract.
70. On-site decorative paving shall be provided at the street entrance serving the site, adjacent to Agoura Road. The color, materials, length and location of the decorative paving shall be subject to review and approval by the Director of Planning and Community Development and the City Engineer.
71. Prior to the submittal of plans into plan check for a Grading Permit or Building Permit, the applicant shall comply with the project recommendations of the City Geotechnical Consultant and the City Geological Consultant.

72. All outstanding fees owed to the City, if any, shall be paid by the applicant within thirty (30) days from the date of this approval.
73. The applicant shall comply with all building material samples approved by the Planning Commission. Prior to final painting and final application of stone veneer on the buildings, the applicant shall provide color samples on the building wall for review and approval by the Director of Planning and Community Development.
74. Location and design details for all proposed walls and fences shall be provided for review and approval by the Director of Planning and Community Development, prior to the issuance of a grading permit. Garden walls and retaining walls shall be of split-face block.
75. The Grading Plan shall specify proposed paving materials and include a note that refers to the Landscape Plan for specific landscape materials shown on the Grading Plan.
76. Prior to the issuance of a building permit, the applicant shall submit the location and screening details of all ground-mounted mechanical equipment for review and approval by the Director of Planning and Community Development.
77. The applicant shall comply with all mitigation measures within the Mitigation Monitoring Program prepared for the adopted Mitigated Negative Declaration adopted for the project. The applicant shall pay for all mitigation review and monitoring completed by outside consultants such as the City Arborist, City-approved biologist or other consultants needed to ensure compliance with the Mitigation Monitoring Plan as determined by the Director of Planning and Community Development.
78. Prior to the starting construction, the site shall be temporarily fenced and screened on all sides for the duration of the construction project. The height of the fence shall be six (6) feet and fence material shall be overlaid on the exterior with a dark, opaque vinyl screen, or other equivalent fencing and screening material as approved by the Director of Planning and Community Development. Temporary construction fencing and gates shall be maintained in good order at all times.

79. Prior to the issuance of a building permit, the applicant shall prepare and submit CC&R's for the tract for review and approval by the Director of Planning and Community Development and the City Attorney. The CC&R's shall establish the obligations of each property owner to maintain the private streets and common space and shall require the homeowners to pay for all required brush clearance/fire zone fuel modification related to the public and private open space areas.
80. The applicant shall sign a written agreement approved by the City Attorney which dedicates the south portion of the tract within the Open Space zone to the City or other public agency as determined by the City for open space. Said areas shall be preserved in its natural state. No development or agricultural uses shall be allowed within the open space areas.
81. All room or patio additions shall be restricted to the rear yard area. A maximum 10% additional lot coverage will be allowed.
82. Street lights proposed for the private streets within the tracts shall be subject to review and approval by the City Engineer and the Director of Planning and Community Development.
83. The applicant shall comply with the City Inclusionary Housing Ordinance (Municipal Code Section 9133) by providing at least fifteen percent (15%) of all homes within the tract to be made available to low and moderate-income households.

SOLID WASTE MANAGEMENT CONDITIONS

84. To ensure that solid waste generated by the project is diverted from the landfill and reduced, reused, or recycled, the applicant shall submit a "Waste Reduction & Recycling Plan" to the City for review and approval. The plan shall provide for at least 50% of the waste generated on the project to be diverted from the landfill. Plans shall include the entire project area, even if tenants are pursuing or will pursue independent programs. The plan shall be submitted to and approved by the Department of Planning and Community Development prior to issuance of a building permit. The plan shall include the following information: material type to be recycled, reused, salvaged, or disposed; estimated quantities to be processed, management method used, and destination of material including the hauler name and facility location. The City's Waste Reduction & Recycling Plan form or a similar format shall be used.

85. The project shall comply with the plan and provide for the collection, recycling, and/or reuse of materials (i.e. concrete, wood, metal, cardboard, green waste, etc.) and document results during demolition and/or construction of the proposed project. After completion of demolition and/or construction, the applicant shall complete a Waste Reduction & Recycling Summary Report and provide legible copies of weight tickets, receipts, invoices or letters of verification for materials sent to disposal or reuse/recycling facilities. For other discarded or salvaged materials, the applicant shall provide documentation, on the disposal facility's letterhead, identifying where the materials were taken, type of materials, and tons or cubic yards disposed, recycled or reused and the project generating the discarded materials. The Waste Reduction & Recycling Summary Report shall be submitted and approved prior to issuance of a certificate of occupancy.
86. The applicant shall arrange for materials collection during construction, demolition, and occupancy with a City permitted hauling company, or shall arrange for self-hauling to an authorized facility.

END

RESOLUTION NO. 06-1406

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, OVERTURNING THE PLANNING COMMISSION'S DENIAL AND APPROVING OAK TREE PERMIT CASE NO. 98-OTP-011

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

Section 1. An application was duly filed by Riopharm USA, Inc. with respect to the real property located within Tract 48901 and 48312, on the south side of Agoura Road, east of Calle Montecillo (Assessor's Parcel Nos. 2061-014-(007-015)(018-020)(023-042) and 2061-015-008), requesting approval of an Oak Tree Permit to remove thirty-three (33) Oak trees and to encroach within the protected zone of fifteen (15) oak trees through contiguous grading for the construction of eleven (11) single-family homes within Tract 48901 and thirteen (13) single-family homes within Tract 48312. Public hearings were duly held by the Planning Commission on August 4, 2005, September 15, 2005, November 17, 2005, and December 1, 2005 at 6:30 p.m. in the City Council Chambers, City Hall, 30001 Ladyface Court, Agoura Hills, California. Notice of the time, date, place and purpose of the aforesaid hearing was duly given. Evidence, both written and oral, was duly presented to and considered by the Planning Commission at the aforesaid public hearings. On December 1, 2005, the Planning Commission denied Oak Tree Permit Case No. 98-OTP-011 on a 5-0 vote, per Resolution Nos. 836 and 837.

Section 2. An appeal of the Planning Commission's denial of Oak Tree Permit Case No. 98-OTP-011 was filed by Riopharm USA, Inc., on December 15, 2005 with respect to property described in Section 1 hereof. Public hearings on the appeal were duly held and public testimony was given on February 22, 2006, September 13, 2006 and October 11, 2006, at 7:00 p.m., in the City Council Chambers of City Hall, 30001 Ladyface Court, Agoura Hills, California. Notice of the time, date, place and purpose of the aforesaid public hearings was duly given.

Section 3. Evidence, both written and oral, was duly presented to and considered by the City Council at the aforesaid public hearings.

Section 4. Pursuant to Section 9657 of the Agoura Hills Zoning Ordinance, the City Council finds that:

A. The continued existence of the impacted Oak trees prevents the development of the two recorded tract maps.

B. The proposed construction will be accomplished without endangering the health of the remaining trees on the subject property that are not approved for removal.

C. The removal of the Oak trees and the proposed encroachment will not result in soil erosion through the diversion or increased flow of surface waters which cannot be satisfactorily mitigated.

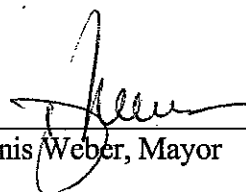
D. The proposed removal of the Oak trees and the proposed encroachment is necessary because the continued existence at their present locations prevents the planned improvement of the subject property to such an extent that alternative development plans cannot achieve the same permitted density. The existing location of the Oak trees also interferes with necessary street improvements to serve the project and no reasonable alternative to such interference exists other than removal of the trees and encroachment within the protected zone of the trees.

E. Measures have been implemented to mitigate the loss of oak trees through the requirement to provide for at least four (4) replacement Oak trees for each Oak tree removed from the property and that the trees include one (1) 36-inch box size Oak tree and at least two (2) 24-inch box size Oak trees. The total diameter of the mitigation trees planted will be at least equal to the total diameter of the trees removed.


Section 5. Based on the aforementioned findings, the City Council hereby overturns the Planning Commission's denial and approves Oak Tree Permit Case No. 98-OTP-011 as shown in the revised plans submitted to the City Council on October 11, 2006, subject to the attached conditions, with respect to the property described in Section I hereof.

PASSED, APPROVED, and ADOPTED this 11th day of October, 2006, by the following vote to wit:

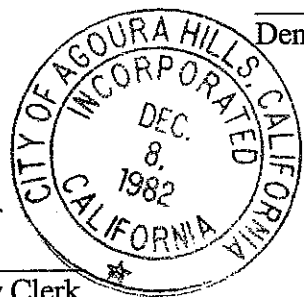
- AYES: (2) Weber, Edelston
- NOES: (1) Kuperberg
- ABSTAIN: (2) Koehler, Schwarz
- ABSENT:



Denis Weber, Mayor

ATTEST:


Kimberly Rodrigues, City Clerk



CONDITIONS OF APPROVAL
(Case No. 98-CUP-011)

STANDARD CONDITIONS

1. This action shall not be effective for any purpose until the applicant has agreed in writing that the applicant is aware of, and accepts all Conditions of Approval of this Permit with the Department of Planning and Community Development. Any conditions on such acceptance or challenges, including the filing of legal action, relating to the permit or the conditions, shall be treated as a failure to meet this Condition and shall nullify and void this permit.
2. Except as modified herein, the approval of this action is limited to and requires complete conformation to the labeled exhibits approved by the Planning Commission: Site Plan, Grading Plans, and Landscape Plans.
3. It is hereby declared to be the intent that if any provision of this Permit is held or declared to be invalid, the Permit shall be void and the privileges granted hereunder shall lapse.
4. It is further declared and made a Condition of this action that if any Condition herein is violated, the Permit shall be suspended and the privileges granted hereunder shall lapse; provided that the applicant has been given written notice to cease such violation and has failed to do so for a period of thirty (30) days.
5. All requirements of the Zoning Ordinance and of the specific Zoning of the property must be complied with unless set forth in the Conditional Use Permit.
6. No occupancy shall be granted for any new building until all Conditions of Approval have been complied with as determined by the Director of Planning and Community Development.
7. Unless Oak Tree Permit Case No. 98-CUP-011 is used within two (2) years from the date of City approval, the permit will expire. A written request for a one-year extension may be considered prior to the expiration date.
8. This permit is valid upon issuance of an approved Grading Plan for both Tracts 48901 and 48312.
9. The applicant is permitted to remove up to thirty-three (33) oak trees to construct the project as approved, as shown on the approved plans. At least four (4) replacement oak trees shall be planted to mitigate the loss each tree removed. The replacement trees planted for each tree removed shall include at least one (1) thirty-six inch (36") box size oak tree and at least two (2) twenty-four inch (24") box size oak trees for each tree removed. The total diameter of mitigation trees planted shall be at least equal to that of the trees removed. The estimated

requirement is six hundred ninety-three (693) inches. The final mitigation program shall be approved by the City Oak Tree Consultant.

10. If all of the required oak trees cannot be planted within the subject site, the applicant shall develop an alternative mitigation program that is consistent with the Development Code, to be approved by the Director.
11. The applicant is permitted to encroach within the protected zone of up to fifteen (15) oak trees, as shown on the approved plans, to complete the project as proposed.
12. During final project design, the applicant shall work with the City Oak Tree Consultant to complete minor design modifications to reduce oak tree impacts to the extent feasible.
13. The applicant shall provide a forty-eight (48) hour notice to the City and the applicant's oak tree consultant prior to the start of any approved work within the protected zone of any oak tree.
14. Prior to the start of any work or mobilization at the site, each oak tree to be preserved shall be fenced at the edge of the protected zone or at the approved work limits, in accordance with Article IX, Appendix A, Section V.C.1.1. The City Oak Tree Consultant shall approve the fencing locations.
15. No vehicles, equipment, materials, soil or other items shall be used or placed within the protected zone of any oak tree at any time, except as specifically required to complete the approved work. No pruning of live branches is authorized by this permit.
16. All approved excavation performed within the protected zone of any oak tree shall be performed with hand tools under the direction of the applicant's oak tree consultant.
17. No irrigation or planting shall be installed within the drip line of any oak tree unless specifically approved by the City Oak Tree Consultant and the Director of Planning and Community Development.
18. At the completion of construction, the applicant shall place three inches (3") of an approved mulch throughout the dripline of each oak tree to remain.

Conditions of Approval
Case No. 98-OTP-011
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19. Within ten (10) days of the completion of work, the applicant's oak tree consultant shall submit written certification to the City. The certification shall describe all work performed and whether such work was performed in accordance with the above permit conditions.
20. The applicant shall provide each original homeowner within both tracts with an "Oak Tree Information Package." The package, to be approved by the Director of Planning and Community Development, shall address the importance of the Oak trees, their protected status, and care and maintenance practices.

END

MINUTES
REGULAR MEETING OF THE
AGOURA HILLS CITY COUNCIL
Civic Center – Council Chambers
30001 Ladyface Court, Agoura Hills, CA 91301
October 11, 2006 at 7:00 p.m.

The meeting was called to order at 7:05 p.m.

The flag salute was led by Eagle Scout Brandon Leafman.

Present were: Mayor Denis Weber, Mayor Pro Tem Dan Kuperberg, Councilmember John Edelston, Councilmember William Koehler, and Councilmember Harry Schwarz.

Also Present were: City Manager Greg Ramirez, Assistant to the City Manager Nathan Hamburger, Assistant to the City Manager Louis Celaya, City Attorney Craig Steele, Planning and Community Development Director Mike Kamino, Assistant Planning and Community Development Director Doug Hooper, Senior Planner Allison Cook, Oak Tree/Landscape Consultant Kay Greeley, City Engineer Ken Berkman, Community Services Director Amy Brink, Recreation Manager Donna Conlin, Recreation Supervisor Meredith Petit, and City Clerk Kimberly Rodrigues.

REPORT OF CLOSED SESSION

No Closed Session was held.

APPROVAL OF AGENDA

On a motion by Mayor Pro Tem Kuperberg, second by Councilmember Edelston, the Agenda was approved without objection.

ORAL COMMUNICATIONS

The following persons spoke about their concerns with an incident on Eaglebrook Drive:

Ilene Lipton, Agoura Hills (submitted a letter and photographs)
David Brandolino, Agoura Hills
Yolanda Brizendine, Agoura Hills
Liz Cangelosi, Agoura Hills
Kathy Terndrup, Agoura Hills
Laura and Liana Moss, Agoura Hills

Carl Olson, Woodland Hills, representing State Department Watch (submitted a handout)

PRESENTATIONS

Mayor Weber presented a Certificate of Recognition to Brandon Leafman honoring his two Eagle Scout projects for the City of Agoura Hills; the installation of new recycle bins at all six parks and a new set of benches at the Agoura Hills Recreation Center.

Mayor Weber introduced the 2006 Miss Reyes Adobe Pageant Winners: Hayley Wank, Littlest Miss Reyes Adobe; Blake Makenna Weireter, Pre-Teen Miss Reyes Adobe; Kayla Randazzo, Teen Miss Reyes Adobe; and Starlene Early, Miss Reyes Adobe.

INTERGOVERNMENTAL, SPECIAL PURPOSE COMMITTEE & DEPARTMENTAL REPORTS

Recreation Manager Donna Conlin provided an update on the various Reyes Adobe Days events scheduled for October 13-15, 2006. Constance Jocular and Randi Fowler unveiled and presented the commemorative 2006 Reyes Adobe Days poster, designed by Michael Lang, to the City Council.

Melissa Reinhardt provided an update from the Conejo/Las Virgenes Future Foundation and presented a DVD of the recent colloquium, "A Day in Your Life", and invited the City Council to attend the Sixth Annual CLvFFie Awards, recognizing individuals and/or organizations serving the Conejo Valley region, on November 5, 2006.

Councilmember Schwarz reported that he, Councilmember Edelston, and City Engineer Ken Berkman attended the North Santa Monica Bay Watershed Task Force Executive Committee meeting.

City Engineer Berkman provided an update on the Bacteria Total Maximum Daily Load (TMDL) regulations for the Malibu Creek Watershed and indicated a report would be brought back for Council information in December.

CONSENT CALENDAR

On a motion by Councilmember Edelston, second by Councilmember Schwarz, the Consent Calendar was approved 5-0.

1. Approve Minutes of the Regular City Council Meeting of September 27, 2006

ACTION: Approved 5-0

2. Approve Minutes of the Special City Council Meeting of September 27, 2006

ACTION: Approved 5-0

3. Approve Demand Warrant Register No. 549

ACTION: Approved 5-0

4. Approve Treasurer's Report for July 2006

ACTION: Approved 5-0

5. Approve Treasurer's Report for August 2006

ACTION: Approved 5-0

6. Adopt **Resolution No. 06-1431**; A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, AUTHORIZING AND DIRECTING THE CITY CLERK TO DESTROY CERTAIN CITY RECORDS AND DOCUMENTS PURSUANT TO THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA (ADMINISTRATION, BUILDING AND SAFETY, CITY CLERK, FINANCE AND PUBLIC WORKS DEPARTMENTS)

ACTION: Approved 5-0

7. Adopt **Ordinance No. 06-338**; AN INTERIM ZONING ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, PROHIBITING THE ESTABLISHMENT OF MARIJUANA DISPENSARIES IN ANY ZONING DISTRICT WITHIN THE CITY

ACTION: Approved 5-0

PUBLIC HEARING/ACTION

8. Conduct a Public Hearing and Consider the Adoption of **Resolution Nos. 06-1404, 06-1405, and 06-1406**, Regarding an Appeal of the Planning Commission's Denial of Conditional Use Permit Case Nos. 03-CUP-010 and 98-CUP-007, Oak Tree Permit Case No. 98-OTP-011, which was a Request to Develop 27 Detached Single-Family Residences on Two Recorded Residential Tracts, to Remove 33 Oak Trees and Encroach within the Protected Zone of 15 Oak Trees for the Proposed Construction on the South Side of Agoura Road, East of Calle Montecillo and West of Liberty Canyon Road, and Adoption of a Mitigated Negative Declaration (Riopharm USA, Inc., Applicant) – *This Public Hearing was continued from the Regular City Council meeting of June 28, 2006*

Councilmember Koehler and Councilmember Schwarz, having previously heard this item as Planning Commissioners, recused themselves from the discussion and abstained from participation in the appeal.

Councilmembers Koehler and Schwarz left the meeting at this point.

Following presentation of the staff report, Mayor Weber opened the Public Hearing.

Prior to the City Council meeting, a letter was received from Mary Altmann today, dated October 10, 2006, and copies were distributed to the City Council and to the applicant and his attorney.

Public Comment in Opposition of the Project:

Mary Altmann, Agoura

Speaking on behalf of the Applicant:

Charles (Chuck) Cohen, Westlake Village, representing the Applicant, Riopharm, USA, Inc.

Yael Lir, Agoura Hills, Landscape Architect

Mayor Weber asked if there were other speakers who wished to be heard. There being none, the Public Hearing was closed.

City Attorney Steele and City staff rebutted the comments made in Ms. Altmann's letter.

ACTION: Following discussion, the motion by Councilmember Edelston to approve the project, including the updated Condition 22 and amended Condition No. 79 of Resolution Nos. 06-1404 and 06-1405, and adopt Resolution Nos. 06-1404, 06-1405, and 06-1406, was seconded by Mayor Weber, and approved on a roll call vote of 2-1, with Councilmember Edelston and Mayor Weber in favor; Mayor Pro Tem Kuperberg opposed; and, Councilmembers Koehler and Schwarz abstaining.

COUNCIL, STAFF COMMENTS

City Attorney Steele reported that the California Court of Appeals invalidated the countywide National Pollution Discharge Elimination System (NPDES) permit issued by the Regional Water Quality Control Board. He noted that, although the City of Agoura Hills was not a party to the lawsuit, the invalidation was a victory for the number of cities who challenged the permit.

Mayor Pro Tem Kuperberg noted that the Reyes Adobe Days would kick off this Friday.

Mayor Weber announced that the Agoura Hills Leaflet, the City's newsletter, was distributed to the residents today.

REPORT TO CITY COUNCIL

DATE: OCTOBER 11, 2006

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER

BY: MIKE KAMINO, DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT *mk*

SUBJECT: CONDUCT A PUBLIC HEARING AND CONSIDER THE ADOPTION OF RESOLUTION NOS. 06-1404, 06-1405, AND 06-1406, REGARDING AN APPEAL OF THE PLANNING COMMISSION'S DENIAL OF CONDITIONAL USE PERMIT CASE NOS. 03-CUP-010 AND 98-CUP-007, OAK TREE PERMIT CASE NO. 98-OTP-011, WHICH WAS A REQUEST TO DEVELOP 27 DETACHED SINGLE-FAMILY RESIDENCES ON TWO RECORDED RESIDENTIAL TRACTS, TO REMOVE 33 OAK TREES AND ENCROACH WITHIN THE PROTECTED ZONE OF 15 OAK TREES FOR THE PROPOSED CONSTRUCTION ON THE SOUTH SIDE OF AGOURA ROAD, EAST OF CALLE MONTECILLO AND WEST OF LIBERTY CANYON ROAD, AND ADOPTION OF A MITIGATED NEGATIVE DECLARATION (RIOPHARM USA, INC., APPLICANT) – CONTINUED FROM SEPTEMBER 13, 2006

The request before the City Council is to conduct a public hearing to consider an appeal by the applicant of the Planning Commission's denial of Conditional Use Permit Case Nos. 03-CUP-010 and 98-CUP-007 and Oak Tree Permit Case No. 98-OTP-011, and to adopt Resolution Nos. 06-1404, 06-1405, and 06-1406. The applicant for these cases, Riopharm USA, Inc., requested approval to develop a total of 27 single-family detached residences on two recorded residential tracts. The vacant hillside property is located on the south side of Agoura Road, east of Calle Montecillo and west of Liberty Canyon Road.

The Planning Commission denied the requests for the Conditional Use Permits and Oak Tree Permit on December 1, 2005. The applicant appealed the Planning Commission's action to the City Council. An appeal hearing was held on February 22, 2006 and Council Members Koehler and Schwarz abstained from participating. The City Council expressed concerns with the proposed development, specifically in regard to the proposed density of the Agoura I tract, the sizes of the homes, the desire for more single-story units and larger yard areas, and the desire to minimize oak tree impacts. The City Council continued the public hearing to May 24, 2006 to allow the applicant an opportunity to revise the plans based on issues raised by the Council during the hearing. A second continuance was granted by the City Council, at the request of the applicant, to the June 28, 2006 City Council Meeting to allow for additional time to prepare project exhibits. The applicant subsequently requested a third continuance to the September 13, 2006 City Council Meeting to

again allow for additional time to prepare project exhibits.

Revised plans were considered by the City Council at the September 13, 2006 public hearing. After receiving testimony from staff, the applicant and the public, the City Council continued the public hearing to October 11, 2006, and requested that the applicant consider additional revisions to the project, specifically within the smaller, Agoura I tract.

The applicant has revised the project plans and submitted an attached written summary of the project changes. The following is a summary of the changes that are now proposed for Agoura I:

1. The proposed density within the tract has been reduced from 12 units, as proposed at the last City Council hearing for this project, to 11 units.
2. Lot Nos. 11 and 12, which are visible from Agoura Road and were previously proposed as two-story units, are proposed to be merged to accommodate one, 2,775 square foot, single-story residence with a 600 square foot garage. The garage door is oriented toward the west side of the lot.
3. The number of single-story units within the tract has increased from 6 to 7. Thus, the tract now is proposed to consist of 7 single-story, and 4 two-story units.
4. The proposed two-story unit Lot No. 7, near the southwest corner of the tract, has decreased in height from 26 feet to 22 feet.
5. Permeable, brick pavers are proposed at the main driveway entrance, within each guest parking space on the street, and within each residential driveway.
6. Seven (7) parallel, guest parking spaces are proposed within the north and east private streets, in place of 8 head-in parking spaces that were previously proposed on the north private street, adjacent to Agoura Road. The total number of proposed guest parking spaces is 15.

For information about these and other changes and clarifications, please refer to the attached written narrative submitted by the applicant.

The City Environmental Analyst has reviewed the revised project plans and finds the revisions to be consistent with the analysis used in preparation of the project Mitigated Negative Declaration (MND). The City Environmental Analyst has incorporated the latest project description and modified Mitigation Monitoring Program as an addendum to the MND. If the City Council denies the Conditional Use Permit for the project, CEQA does not require the City to adopt the MND prepared for the project.

RECOMMENDATION

It is recommended the City Council conduct a public hearing to consider an appeal of the

Planning Commission's denial of Conditional Use Permit No. 03-CUP-010 and 98-CUP-007, and Oak Tree Permit Case No. 98-OTP-011. Should the City Council wishes to overturn the Planning Commission's denial and approve the project, it is requested the City Council adopt attached Resolution Nos. 06-1404, 06-1405 and 06-1406, subject to conditions.

Attachments: Summary Sheet of Project Changes (Submitted by the Applicant)
 Resolution No. 06-1404 and Conditions of Approval (for Case No. 03-CUP-010)
 Resolution No. 06-1405 and Conditions of Approval (for Case No. 98-CUP-007)
 Resolution No. 06-1406 and Conditions of Approval (for Case No. 98-OTP-011)
 September 13, 2006 City Council Meeting Minutes
 Reduced Copies of the Project Plans
 September 13, 2006 City Council Staff Report