

ATTACHMENT 5. LAND DEDICATION OPTION

I. Introduction

This attachment to the Revised Guidelines provides more information on how Developers may satisfy their inclusionary housing obligation by dedicating land to the City In Lieu of constructing the requisite Inclusionary Units within the Residential Development. Definitions for capitalized terms may be found in the Revised Guidelines and the IHO.

II. Criteria for Land Dedicated In Lieu of Providing Inclusionary Units (SJMC Section 5.08.530)

In order to satisfy the requirements of the IHO under this compliance option, the City Manager or their designee must determine that the acquisition of the site is in the best interests of the City. To inform that determination the City Manager or their designee will consider the following criteria:

The criteria for approving land dedication includes the following:

- A. The Developer has marketable fee title on the site proposed to be transferred or dedicated.
- B. The site has a General Plan designation that authorizes residential uses and is zoned for residential development at a density to accommodate at least the number of otherwise required Inclusionary Units (twenty percent (20%) of total dwelling units) within the Residential Development and conforms to City development standards.
- C. The site is suitable for development of Inclusionary Units in terms of configuration, physical characteristics, location, access, adjacent uses, and other relevant planning and development criteria including, but not limited to, factors such as the cost of construction or development arising from the nature, condition, or location of the site, including:
 1. The site is not located in a special hazard flood area; and
 2. The site is vacant and no demolition of structures is needed.
- D. Infrastructure to serve the site, including but not limited to streets and public utilities, must be available at the property line and have adequate capacity to serve the maximum allowable residential development pursuant to zoning regulations.
- E. Environmental review of the site has been completed for the presence of hazardous materials and geological review for the presence of geological hazards and all such hazards are or will be mitigated to the satisfaction of the City prior to acceptance of the site by the City.
- F. The value of the site prior to acquisition (as determined by a California Licensed

Residential Appraiser using the Comparable Approach Method) is equal to or greater than the amount otherwise due for the Residential Development's In Lieu Fee in effect at the date of the land dedication agreement.

- G. The dedicated site complies with the City's Affordable Housing Siting Policy, if any, or meets other City General Plan policies such as being located near transit.

If approved, the Developer and the City will enter into an agreement to transfer/dedicate the site to the City (or, at the City Manager's discretion, to a City-approved Affordable Housing Developer), prior to the issuance of Building Permits for the Residential Development. The Developer must then transfer/dedicate the site prior to the issuance of the first Certificate of Occupancy for the project.

III. Dedicating SB 35 Land (SJMC Sections 5.08.530.C-D)

Alternatively, Developers may propose dedicating land that meets the above criteria listed in Section II but does not otherwise meet the zoning or density standards, as long as such land is located within the City and meets all the criteria required under GC Section 65913.4 for SB 35 permit streamlining. Such criteria, at the time of adoption of the IHO and these Revised Guidelines, includes but is not limited to the requirement that the site is zoned for Residential Use or Residential Mixed-Use development.

If the City accepts the dedication of SB 35 eligible land but is unable to secure a construction contract with a qualified Affordable Housing Developer within two (2) years, or if construction has not begun within five (5) years, the City may sell, transfer, lease or otherwise dispose of the land as provided in SJMC Section 5.08.530.D. Any funds collected by the City through such disposition shall be deposited in the City's Inclusionary Fee Fund and used to provide housing affordable to income-qualified households.

IV. Affordable Housing Compliance Plan Application (SJMC Sections 5.08.120, 5.08.155, 5.08.320, 5.08.420, 5.08.530, 5.08.610)

Developers who elect this Land Dedication Compliance Option must provide the information required by Section 4 of the Revised Guidelines, as well as the following additional requirements:

- A. If the Developer intends to dedicate land to a City-approved Affordable Housing Developer, general information about the Affordable Housing Developer, including name, prior project experience, contact information, and intention for the site; and
- B. Detailed information about the proposed land to be dedicated, including:
 1. Parcel APN(s), site size, General Plan designation and Zoning designation,
 2. Preliminary Title Report showing the Developer as owner of the site and dated within 30 days of submittal,
 3. Recent Land/Site Surveys,

4. Geotechnical Report,
5. A current Phase I Environmental Report (must be current and for the benefit of the City), and a Phase II Environmental Report if hazardous materials are suspected in the Phase I Report including any reliance letters requested by the City,
6. Cost estimate for mitigation of any hazardous materials (which mitigation must be completed prior to the dedication),
7. Assessment of the proposed site's capacity (with existing zoning, occupancy, building, and use restrictions) to provide at least the number of otherwise required Inclusionary Units (20% of the total dwelling units of the Residential Development), with the same bedroom mix and substantially the same size,
8. Fair Market Value Appraisal to be completed to Uniform Standards of Professional Appraisal Practice Standards by qualified appraisers holding a California Certified General Appraisal License (issued by the Office of Real Estate Appraisers), preferably with a Member of the Appraisal Institute member designation (issued by the Appraisal Institute), and with experience valuing similar properties in the Bay Area, with provision for updating on the date of execution of the dedication agreement,
9. Infrastructure study by a licensed professional assessing the availability and capacity of infrastructure (sewer, utilities, water, light, street access and sidewalk) to support the proposed affordable housing project. If adequate infrastructure is not present, a third-party cost estimate of providing such infrastructure must be provided (which work must be completed prior to the dedication),
10. Schedule for transfer of the site to the City or a City-approved Affordable Housing Developer, including estimated dates for site clearance, lot division, and any other criteria consistent with Section II, above, and
11. Description of how the land dedication is consistent with the City's Affordable Housing Siting Policy (including the percentage low income residents in the proposed site's Census tract), or other General Plan policies, such as being located near transit.

V. Satisfaction of Conditions of Approval of Compliance Plan

The City Manager must determine that the site to be dedicated is acceptable in accordance with the IHO and Revised Guidelines and that the dedication is in the best interest of the City before approving the Compliance Plan Application. If the City's acceptance of the site is dependent on certain conditions being satisfied prior to the conveyance of the site, the City may identify such Conditions of Approval in the Compliance Plan and may also provide a letter to the Developer at any point at which based on the Developer's submittals, the need for such conditions becomes known, including after the compliance plan has been approved, in light of any new information discovered or changes in circumstances with respect to the site. At the City Manager's discretion, the City may proceed to execute the Inclusionary Housing Agreement and Land Dedication Agreement prior to the Developer satisfying the Conditions of Approval. However, all Conditions of Approval must be satisfied prior to recordation of the Inclusionary Housing Agreement and the issuance of building permits for construction of the Residential Development.

VI. Inclusionary Housing Agreement
(SJMC Sections 5.08.195, 5.08.420, 5.08.460, 5.08.600, 5.08.610, 5.08.710)

See the requirements of Section 5 of the Revised Guidelines. The Inclusionary Housing Agreement shall incorporate and include the approved Affordable Housing Compliance Plan, containing all information relating to the Land Dedication Agreement to further document the Developer's intent to dedicate land to the City. The Inclusionary Housing Agreement and Land Dedication Agreement will include a land dedication process including the requirement for recording of the grant deed for the dedicated parcel site acceptance. Note that City Council approval may be required for the City to accept the grant deed.

VII. Land Dedication Agreement; Timing

The City and the Developer will enter into a Land Dedication Agreement, or other transfer documentation, on a form prepared by the City Attorney. Entering into the Land Dedication Agreement is subject to a determination by the City Manager or their designee that the agreement satisfies the requirements of the IHO and Revised Guidelines. The Developer must convey the land prior to the issuance of the first Certificate of Occupancy, with all conditions set forth in the Inclusionary Housing Agreement and the Dedication Agreement having been satisfied or otherwise waived. If conditions are not satisfied and have not been waived, regardless of the reason, the Developer shall not be able to use such land dedication to satisfy its Inclusionary Housing Obligation and must satisfy the requirements of the program through another compliance option.

VIII. Transfer of Report(s) to the City

Concurrent with Developer's conveyance of the site, all entitlements, permits, preliminary engineering, architectural and any other reports or studies pertinent to the site shall similarly be transferred to the City.