TO: HONORABLE CITY COUNCIL

FROM: CITY MANAGER

DEPARTMENT: PLANNING AND COMMUNITY ENVIRONMENT

DATE: SEPTEMBER 9, 2002

SUBJECT: RECOMMENDATION TO: ESTABLISH A BELOW MARKET RATE (BMR) PROGRAM EMERGENCY FUND TO PREVENT THE LOSS OF BMR UNITS, AND PROVIDE EMERGENCY LOANS FOR BMR UNIT OWNERS FOR SUBSTANTIAL MANDATORY ASSESSMENTS, AND APPROVAL OF LOAN PROGRAM CRITERIA AND LOAN TERMS; ADOPTION OF A BUDGET AMENDMENT ORDINANCE TO APPROPRIATE $150,000 FROM THE RESIDENTIAL HOUSING IN-LIEU FUND TO THE NEW BMR EMERGENCY FUND; AUTHORIZATION TO THE CITY MANAGER TO APPLY FOR A HOUSING ENABLED BY LOCAL PARTNERSHIPS (HELP) LOAN TO ASSIST IN FUNDING THIS PROGRAM; AND DIRECTION TO THE CITY MANAGER TO DEVELOP AND IMPLEMENT AN ASSIGNMENT FEE CHARGE ON THE RESALE PRICE OF BMR UNITS

REPORT IN BRIEF

Palo Alto’s Below Market Rate (BMR) program includes 169 ownership units, with 84 percent of the stock built before 1990. With the aging of this important affordable housing asset, challenging issues face the City and the BMR homeowners. These issues include the necessity at some developments for substantial special assessments for repairs to common areas. The preservation of the BMR unit housing stock by preventing loss through foreclosure or problems with the resale process is another issue that needs to be addressed. Homeowners’ associations at the Redwoods and the Abitare condominiums have recently approved large assessments. For those BMR owners with low incomes and limited assets, these assessments, which range from about $18,000 to $26,000, are a significant hardship. Staff proposes that a BMR Program Emergency Fund be established, with initial funding of $150,000 from City housing funds. Staff recommends that, through this Emergency Fund, the City provide deferred payment loans for the cost of these special assessments. Criteria for loan qualification will target BMR owners with the greatest need. Staff also proposes
that the City apply to the California Housing Finance Agency under its HELP program for funds for possible future assessment loans and for other expenses connected with the preservation of the City’s BMR housing units. The HELP program application is due by September 27, 2002. If a HELP program award is received, funds could be available by the end of the year.
RECOMMENDATION
Staff recommends that the City Council:

1. Direct the Director of the Administrative Services Department to establish a new special revenue fund named the Below Market Rate Program (BMR) Emergency Fund to provide a source of funds to prevent the loss of BMR ownership units and to provide emergency assistance to BMR unit owners facing substantial, mandatory condominium association assessments.

2. Approve the attached general criteria and terms for the emergency assessment loans and authorize the Director of Planning and Community Environment to finalize the criteria with the advice of the loan administrator.

3. Direct the City Manager to select a loan program administrator and, if it should be an outside agency, negotiate an agreement for loan administration services.

4. Adopt the attached Budget Amendment Ordinance to appropriate $150,000 from the Residential Housing In-Lieu Fund to the new BMR Emergency Fund for the initial funding of emergency assessment loans at Abitare and Redwoods and for loan administration costs.

5. Direct staff to deposit the net sales proceeds from the August 27th sale of the formerly City-owned BMR unit at 2464 West Bayshore Road into the new BMR Emergency Fund, for initial funding of BMR unit preservation costs.

6. Authorize the City Manager to submit a funding application to the California Housing Finance Agency (CHFA) for up to a $500,000 loan from the Housing Enabled by Local Partnership (HELP) Program and to return to Council prior to the September 27th application deadline for adoption of the formal resolution required as part of the HELP application.

7. Direct the City Manager to develop and implement an assignment fee charge on the resale price of BMR units to provide an ongoing source of revenue for the new BMR Emergency Fund.

8. Direct the City Manager to administer the emergency loan program and the preservation program for BMR units and the HELP Program loan, if awarded.

BACKGROUND
There are currently 152 BMR ownership units located in 38 different housing developments throughout Palo Alto. There are also 17 “discount units” in the Birch Court complex. Discount units were sold at a relatively small reduction from market but have the same deed restrictions as BMR units (see Attachment C for a list of the complete inventory). The oldest BMR units were built in 1975 and the typical development includes from one to four
BMR units. Only ten developments have more than five deed-restricted units. Fifty percent of the inventory (85 units) was built in the 1980’s, including Redwoods in 1983 and Abitare in 1985. Thirty-four percent (57 units) were built between 1975 and 1979.

The City and Palo Alto Housing Corporation (PAHC) initially became aware of the problems facing BMR owners in condominium projects facing large special assessments for capital repairs in February 2001. Owners at the 117-unit Redwoods complex at 4250 El Camino Real (located near the southern Palo Alto border) were asked to approve a $4.4 million construction project for repair and replacement of common walkways and stairs with per unit assessments ranging from $25,000 to $50,000. Many of the 12 BMR unit owners wrote letters to the City and contacted staff, the Human Relations Commission (HRC) and Council members to express their concerns about the hardship of paying the proposed assessment. An ad-hoc advisory group convened by City Planning staff met during the spring and summer of 2001 to review and analyze potential strategies and to explore possibilities for funding. BMR unit owners from the Redwoods spoke at an April 2001 Council meeting and the HRC discussed the problems facing the Redwoods residents and the broader implications of an aging BMR housing stock on several occasions. On August 6, 2001, Planning sent Council an informational report (CMR:339:01) summarizing the situation at the Redwoods, outlining general criteria for a City loan program and suggesting pursuing a unique, flexible housing assistance program offered by the State called HELP. The HELP program is discussed further under Alternatives and Resource Impacts.

Staff intended to return to Council in the fall of 2001, after the Redwood’s assessment was approved by the homeowners’ association, to request approval of a loan program and authority to pursue the State HELP program funding, but the Redwoods assessment was not finalized until very recently. The Redwoods homeowners’ association voted down the original construction proposal in February 2001 and then worked through mid-2002 redesigning the construction plans, completing a pilot project, obtaining new bids and then holding another vote of the owners. In July 2001, the owners approved a preliminary assessment of $4,080 per unit, payable over 12 months, to replenish reserves and fund the design, engineering and legal costs of the stair and walkway project.

In early August 2002, the owners approved a scaled-down construction project with a budget of $1.6 million and $13,675 assessments for each unit. The total of the two assessments for the Redwoods stair and walkway project equals $17,755 per unit, including the July 2001 initial assessment. The latest assessment is due October 1, 2002 in full; however, the association has arranged a five-year financing plan to allow all owners the option of paying off the current assessment in 60 monthly payments of $277, at eight percent interest. The Redwoods homeowners’ Board is also reviewing the current physical condition of the development, the adequacy of the reserves and is preparing a plan for further renovations. It is possible that further capital assessments could be necessary in the next few years for items such as siding repairs, roofing and landscaping.
Abitare BMR owners approached PAHC in the fall of 2001 with concerns about a forthcoming special assessment for extensive dry rot and water intrusion in common exterior areas. Abitare is a 44-unit, mixed-use condominium located on the block between Alma, High, University and Lytton. Twenty percent of the units (nine) are BMR units. Abitare was completed in late 1985 and was an innovative example of air rights development. The housing and retail complex was built over the former, Lot Q public parking lot. In return for development of the air rights, the developer constructed underground public parking with a net increase of 64 public spaces.

In late March 2002, the Abitare homeowners’ Board presented a construction plan and tentative cost estimates to the owners with copies to the City and PAHC. The work plan involves walkway, drainage, deck and stairway repairs, replenishment of depleted reserves and destructive testing to investigate causes of water damage to buildings from landscaping. The cost of the work is $1.155 million; assessments, based on unit size, range from approximately $21,800 to $26,400. The owners voted to approve the assessment in late May 2002. No long-term payment plan was offered to the owners, as at the Redwoods. The full assessment must be paid this year, with installments due August 15, October 15, and December 15, 2002. Similar to the Redwoods project there may be future assessments levied to pay for additional repairs resulting from the findings of the destructive testing.

Financial Survey of BMR Owners
Planning staff designed a financial survey and sent it to all 12 Redwoods BMR owners in June 2001. The same survey was sent to the nine Abitare owners this year. Owners were asked to complete the survey if they believed that the assessments would be a financial hardship and if they needed assistance to make the payments. Ten of the Redwoods owners responded and three of the Abitare owners. Two BMR owners at the Redwoods and six at Abitare did not submit surveys. Staff has no information about the two owners at Redwoods. However, three of the six at Abitare have placed their units up for resale through the program. Two Abitare owners were able to afford the payments and staff has no information about the other owner.

The surveys and personal communications from some of the BMR owners indicate that the following circumstances are common situations that create hardship in paying the assessments:

- Low or very-low household incomes
- Owner retired, disabled or ill and unable to work, or to work full-time
- Currently unemployed or underemployed
- Instability of current income due to poor health or the economy, so owners cannot take on additional debts or loans
- Lack of assets that can be converted to cash to pay the assessment
- Loss of assets due to stock market declines
- Overly burdened with personal debt
- Unit over-financed in excess of its BMR-restricted value
Inability to refinance with a new first mortgage loan, or obtain a home equity loan, in order to take out cash to pay the assessment in full due to:
  - Low level of equity build-up due to BMR appreciation formula of one-third of the Consumer Price Index per year
  - Lenders’ stringent 80 percent loan-to-value requirements on refinancing
- Owners lack of sufficient monthly income to cover higher loan payments

BMR Unit Resale Values and Mandatory Assessments
There has been much concern and confusion among the BMR owners regarding the language in the deed restrictions regarding the effect of mandatory assessments and the BMR units’ resale price calculation, both initially at the time the assessment is adopted, and later when a unit is sold. This confusion was compounded by a difference in the language in the original 1983 Redwood’s deed restrictions and more liberal language in the 1984 deed restrictions used for the Abitare sales and for resales at Redwoods. Seven of the 12 BMR owners at the Redwoods have the original 1983 deed restrictions. Staff has requested that the City Attorney review this aspect of the deed restrictions and determine if the Redwoods assessment qualifies as a substantial capital improvement, to be added in full to the units’ resale value. Staff has also requested a legal opinion to confirm staff’s interpretation that the assessment amounts must be depreciated, or the value appraised, at a later resale. The BMR owners want to recoup the cost of these assessments in full, even if they should sell their unit many years later.

However, both the 1983 and 1984 versions of the deed restrictions state that mandatory assessments for capital improvements are initially added to the BMR unit resale price. The City Attorney sent a letter in July to the Abitare owners confirming his opinion that the Abitare assessment qualifies as a capital improvement and offering to provide binding statements to lenders to assist BMR owners with refinancing or second mortgage applications. For the three Abitare BMR units currently offered for resale, the resale price has been increased to cover the exact amount of the assessment for each unit. The outstanding assessment amount will be paid in full at close of escrow. Essentially, this means that the new buyers are paying the assessments with a higher purchase price; however, they are able to finance it fully with their purchase mortgage loan.

Staff believes that mandatory condominium association assessments, regardless of the purpose, should be treated differently than capital improvements made by an owner, and should be added in full to the BMR units’ resale price with no depreciation or reduction over time. Staff thinks it is equitable to apply this standard to all BMR units, regardless of when purchased. The reason for this recommendation is that there will be expense, delay and lack of consistency in having to appraise the value of work done pursuant to these assessments over time, especially when the assessments cover a disparate variety of expenditures such as funding reserves, testing, and attorney fees, as well as actual repairs. The City Attorney may determine that an amendment to the deed restrictions is necessary to accomplish this policy.
DISCUSSION
Staff developed the basic structure of an assessment loan program a year ago (see CMR:339:01) but since then has focused on other affordable housing priorities pending the final resolution of the assessment amounts at the two projects. Staff was hopeful that with today’s favorable interest rates BMR owners would be able to secure bank financing, either through a second mortgage or a refinanced first mortgage, to pay these assessments. The Redwoods owners’ situation also turned out to be much less difficult than expected: originally estimates as high as $50,000 were discussed, compared with the final $17,755 for 2001 and 2002 assessments combined. The Redwoods owners also have the option of a five-year payment plan for the second $13,675 assessment. Nevertheless, for some BMR owners, bank financing or installment payments will not be possible or will cause financial hardships.

Staff proposes that an ongoing, permanent program be established to assist both those owners facing hardships at these two projects and owners at other housing developments that face similar situations in the future. Threshold standards are proposed so that loans will be made only in projects with relatively large assessments of $10,000 or more. Staff proposes that the City should provide assistance only in situations where assessments are large enough to present serious hardships. Staff believes that with carefully structured criteria, the loan program will serve the most needy owners and the total number of loans will be limited. Attachment B contains the proposed general criteria for the loan program. The criteria focuses on owners with the lowest incomes and the least assets, and provides preferences to the disabled, elderly, retired and those who are unemployed or unable to work. Owners are required to first attempt to secure bank financing before applying for a City loan. Staff envisions using a point system to rank applications on a needs scale, assuming that funds will probably be limited. Acceptance of loan applications is also dependent on sufficient housing funds and administrative resources being available. Additionally, all owners must be, and have been during their ownership, in full compliance with their deed restrictions. Units that have been financed in excess of the deed-restricted value are ineligible for loans.

Loan Terms
The assessment loans will be made at three percent interest and all payments of principal and interest will be deferred in five year increments until the BMR unit is sold, transferred or there is a refinancing of any debt secured by the unit. The loans will be secured by a deed of trust recorded against the unit.

Loan Administration, Processing and Procedures
The skills and capacity of the program administrator are an important consideration in deciding to establish this new program, despite the expectation that only 6 to 8 loans would initially be made. Even if the loans are offered on a one-time only basis, BMR owners in other complexes will view this as a precedent and pressure the City for similar assistance if their development faces a major assessment. Staff proposes that the program be established on an ongoing basis, so that assistance will be available on an equal basis to all BMR owners...
based on objective criteria. Possible solutions for program administration are discussed below.

Public agencies are not exempt from the various State and federal laws and procedures that apply to direct lending for owner-occupied housing. The loan applications from each homeowner need to be handled in a fair and professional manner that complies with applicable lending laws. Administering a homeownership loan program requires different training, expertise and skills than the rental housing development work currently done by City and PAHC staff. PAHC’s existing staff does not have the necessary single-family real estate and lending experience, however its staff does have experience with handling the income verification process. PAHC’s Board has indicated that it is not interested in taking on this additional work. Current City staff does not have the proper experience or expertise either. While City staff could acquire this expertise; the training time needed would delay implementation of the loan program. There are also important staff workload concerns. City housing staff consists of one person with a full workload of high priority assignments. Real Property Division staff consists of one part-time person, whose time is fully committed, including time spent on some aspects of the BMR program administration. If no other option for administration can be successfully developed, then the current Real Property Division staff will handle the initial loans at the Redwoods and Abitare. If Council approves the establishment of the assessment loan program, staff will make further attempts to locate and contract with an outside entity to administer the program. A flat fee per each loan application processed would be the model. At this time, staff does not have an estimate of the compensation that will be necessary to interest an outside contract administrator in this work. Based on a review of the time involved, staff may need to request Council approval as part of the 2003-04 budget for additional staff resources to continue the program.

Another possibility for program administration would be for the City to contract with a nearby public jurisdiction that currently operates a single-family housing rehabilitation loan program or a down payment assistance program to act as the program administrator. The difficulty with this approach is that the jurisdiction needs to have excess staff capacity to be interested in taking on outside work. It may take longer to make contract arrangements with another public entity than with a local lending institution. Staff has not had the time to contact any other jurisdictions about contracting for this work.

Staff believes that the most appropriate program administrator would be one or more local lending institutions(such as a bank or local credit union), including those that presently participate in the BMR program. Since the proposed program rules require that owners first seek bank financing or refinancing before applying for a City loan, it would be efficient for the lender to also process the City loan application. The lender’s loan officers have the necessary skills and experience. PAHC and City staffs have made limited exploratory contacts with a few local banks. One bank contact expressed some interest in performing this service for the City and agreed to discuss the program further with the bank’s decision-makers. Staff also met with the Palo Alto Credit Union, and its manager expressed interest in providing these services to the City on a contract basis. Credit unions do provide home
mortgages and thus should have the necessary expertise. They may also be better able to accommodate a small volume program than the banks.

The program administrator (whether internal City staff or an outside contractor), would be responsible for the following steps in the loan application and review process:

- Distribute application forms and information (the City and PAHC could also assist with this step)
- Review applications for completeness
- Order and review credit reports and title reports
- Evaluate back-up documents to determine factors used in criteria, including gross income, salary and investment income, household size, amount of assets, equity in real property, monthly housing costs, qualification for points for being elderly, retired or disabled
- Determine amount of loan needed (some owners may only need a loan for a portion of the assessment)
- Provide debt counseling and offer refinancing of existing home loans, possibly on favorable terms
- Package information for review by the Loan Review Committee

A Loan Review Committee composed of representatives of Planning, Administrative Services, the City Attorney’s office and PAHC would make the actual decision on each loan by reviewing the documentation package submitted by the program administrator. The decision of the Loan Review Committee would be final.

**Use of Emergency Fund to Preserve BMR Unit Stock**

The 169 BMR and discount ownership units represent an extremely valuable asset in the City’s affordable housing program. This public asset needs to be protected and preserved for the future so that these units continue to be used in compliance with the goals of the BMR program serving the City’s affordable housing needs. Council and staff have consistently pursued a policy of vigorous enforcement of the City’s rights under the deed restrictions, including legal action when appropriate, to preserve and protect every unit in the program. Generally, when owners are found in violation of the deed restrictions, the situation has been remedied or the owners agree to resell the unit through the program. In two situations, the City was involved in litigation and had to purchase units at the deed-restricted price to prevent loss through foreclosure. While the City should receive early notice of a pending foreclosure, that has not always happened. The City does not have a ready source of funds in the amounts necessary to purchase a BMR unit on short notice to prevent a loss through an unexpected foreclosure sale. Situations may also occur where the City needs to acquire a unit quickly to prevent loss through expiration of the resale time deadlines specified in the deed restrictions. Other past needs for emergency funding occurred in unusual resale situations, in which relatively small amounts of funds from the City could have been used effectively to avoid potential litigation or to facilitate the resale process. In some cases, the seller was unwilling, or unable, to offer the unit for sale in an
acceptable state of repair and condition or to perform the normal seller’s responsibilities in the transaction.

In the past, Council approved BAOs for the costs of purchasing and holding specific units that otherwise would have been lost through foreclosure. However, this funding needs to be independent of a specific property and available at reasonable levels continuously so that staff can respond quickly to needs as they arise. The lead-time to obtain Council action on a BAO is now over six weeks, plus the time to draft a complete staff report. These internal review requirements do not provide staff with the needed flexibility to respond to these urgent situations. The availability of this emergency fund would result in savings of staff time. The time involved in preparing BAOs would be eliminated. Staff would also be able to act quickly, when needed, to protect the BMR units; this could result in lower legal expenses. Council could be kept informed through periodic information memos explaining the situation with each unit and summarizing the fund’s expenditures.

In the past, the expenses for acquiring and preserving BMR units have been recouped upon resale. The formula resale price under the deed restriction is, in almost all cases, sufficiently low so that preservation expenses can be added to the sales price to the next buyer. The units will still be priced well within the low to moderate-income affordability range and also attractive compared to market rate prices for similar units in the development. Thus the Emergency Fund will normally be reimbursed for preservation expenses upon resale of the BMR unit.

**ALTERNATIVES TO STAFF RECOMMENDATIONS**

There is a range of alternatives to the staff recommendations. The key alternatives are listed and briefly discussed below:

1) No financial assistance to BMR owners: Council could continue past practice and policy and not provide assistance to BMR owners with special assessments or any other costs of ownership. Should Council select this alternative, staff recommends that the BMR Emergency Fund still be established to provide ongoing funding to preserve the BMR housing unit stock.

2) Do not provide any direct financial assistance to BMR owners, but revise the BMR unit appreciation formula to provide greater accumulation of equity: Some BMR owners have advocated strongly for this approach. While staff intends to survey formulas used in other communities and to assess the effect of allowing greater appreciation than the current one-third of the change in the Consumer Price Index formula, this analysis will be done as part of other planned revisions to the deed restrictions to improve enforcement. Staff does not believe that allowing greater appreciation will help most of the BMR owners that are having the greatest difficulty paying their assessments. Increased equity does not help an owner, if the owner does not have the income to afford higher debt payments.
3) Provide assessment loans, but revise the loan qualification criteria to further limit assistance to those owners experiencing the greatest hardship.

4) Provide loans, but expand the loan qualification criteria to offer assistance to a greater number of BMR owners.

5) Seek HELP program funds to provide assessment loans, but do not use City housing funds for assessment loans: Another option would be to seek the HELP program funds to provide the assessment loans and supplement City housing funds for BMR unit preservation, instead of using City housing funds for the loans. If Council selects this alternative, the $150,000 BAO would not be necessary. Assessment loans would only be available to Abitare and Redwoods owners if the HELP application was successful. Loans would be available by mid-December at the earliest. The City would still need to provide administrative support or funding for outside administration of the HELP loans.

**RESOURCE IMPACT**
Staff has reviewed possible sources of funding for the loan program and the ongoing emergency fund. For immediate funding to be available a Budget Amendment Ordinance (BAO) must be adopted. Staff investigated using federal Community Development Block Grant (CDBG) funds, but HUD informed the City that assessment loans were not an eligible use of CDBG funds. Staff recommends that the funding source for the BAO should be the Residential Housing In-Lieu Fund. The Residential Fund is composed of in-lieu fees from residential developers where the project is too small to require actual BMR units or where the City has agreed to accept fees in-lieu of units. It is appropriate to utilize the Residential Fund for these purposes. The Fund’s current available balance is approximately $1.4 million.

If Council supports utilizing the Residential Fund, staff proposes $150,000 for the initial seed funding for the assessment loans. Staff also proposes that the sales proceeds from the resale of the BMR unit at 2464 West Bayshore Road (due to close escrow by the end of August 2002) be placed in the new fund to initially fund the ongoing preservation of the BMR unit stock. Staff’s initial concept is that the BMR Emergency Fund would be split into two sub-accounts, one for the assessment loans and the other for expenses connected with the preservation of the physical housing stock. The primary purpose of the sub-accounts would ensure that sufficient funds were maintained and available at all times for the acquisition of BMR units to prevent loss as explained above.

At one of the Human Relations Commission meetings on the assessment issue a proposal was made to increase the resale price of all BMR units by a fixed amount per unit, have the City collect this amount and transfer it to the new Emergency Fund. This would create an ongoing source of revenue for both future assessment loans and preservation of the BMR unit housing stock. Staff supports this proposal and recommends that resale prices be increased by $20,000 per unit. However, the adjusted resale price will be capped at the low income affordable housing price. This would be structured as a fee for assigning the City’s
right to purchase and would be payable to the City at close of escrow. It would increase the sales price of each unit but would not reduce the seller’s net proceeds. Over the last 10 years, the average annual number of unit resales has ranged from a low of two units to a high of six units. At $20,000 per unit, it would take some time to build the fund to a satisfactory level. Repayments of the assessment loans will also be returned to the fund, as will the sales proceeds on units the City acquires. The City Attorney has reviewed this proposal and believes that it can be implemented within the structure of the existing deed restrictions and resale process. Staff will do further analysis of the actual mechanics of this concept in the context of the resale procedures before beginning implementation.

**Alternative or Supplemental Funding Plan – HELP Loan:** The California Housing Finance Agency (CHFA) has a very flexible housing program that provides ten-year loans to localities to support affordable housing programs. The award would be provided to the City as an unsecured loan for up to 10 years at three percent simple interest per annum. HELP funds could initially fund the Emergency Fund until the proceeds from the resale price surcharge could repay CHFA. Repayments of assessment loans could also repay the CHFA funds. CHFA awards funds on a competitive basis two times per year. A funding competition is in process now, with applications due on September 27, 2002. City staff has had several conversations with CHFA staff to determine the likelihood of success for an application. CHFA staff has expressed support and encouragement of an application from the City; and it appears that there is a reasonable chance of success since most assessment loan recipients would meet CHFA’s goal of serving households with very low or low-incomes. However, if this funding round were highly competitive, the City’s application might fail because having an adopted and State-certified Housing Element is the tiebreaker in the evaluation. Previously, the City could not apply for the HELP program because the magnitude of the assessment problems was not known. If Council authorizes the submittal of the HELP application, staff will return to Council prior to the September 27th deadline for adoption of the State’s required formal resolution regarding the application and loan agreement. A commitment of City funds would still be necessary to supplement the CHFA funds, as some local funding and support is required. Staff would propose in the application to CHFA that the City’s funding of administration, legal costs and funding for some of the BMR unit preservation expenses would be the local contribution.

HELP program awards will be announced in late November. At the earliest, the grant agreement could be executed and loans funds disbursed by mid-December. The City could only drawn down HELP funds as actually needed to make loans to BMR owners or to preserve BMR units. HELP funds cannot be used to reimburse the City for loans made prior to execution of the grant agreement between the City and CHFA. In order to fund the loans to the owners at Abitare and Redwoods, the owners would need to find an interim method of temporarily paying their assessments.

**POLICY IMPLICATIONS**

While the actions recommended in this report relate to the Council’s “Top Five” emphasis on affordable housing, some represent new City policy. The Comprehensive Plan and the
Housing Element address the conservation, rehabilitation and maintenance of the City’s affordable housing stock in broad terms under Goal H-2. The draft Housing Element, approved by the Planning and Transportation Commission on June 26, 2002, includes Policy H-9 that supports maintaining the current supply of BMR rental units. Staff recommends that the text of Policy H-9 in the Draft Housing Element be revised to clearly state that preservation of the stock of BMR ownership units is also a City policy. This would be consistent with past Council support for legal action and financial outlays of housing funds to preserve the City’s rights under the deed restrictions and prevent the loss of BMR units through foreclosure.

However, the Comprehensive Plan does not contain any specific program supporting direct City financial assistance to lower income homeowners or to BMR unit owners in particular. City practice has been that the BMR owners must bear the responsibilities and costs of homeownership in the same manner as any market-rate owner; however, there is precedence for City assistance to lower income homeowners facing home maintenance costs that they cannot afford. From the mid-1970’s to about 1990, the City provided rehabilitation loans under the Housing Improvement Program (HIP) on very favorable terms to lower income, single-family homeowners whose homes needed major repairs. The source of funding for the loans was CDBG program funds. The HIP program required one full-time staff person for its administration and was discontinued when the demand for loans became too low to justify the staffing expense. Staff’s position is that substantial mandatory assessments were not anticipated when the BMR program was conceived. Staff believes that the City should offer a loan program to prevent undue hardship to owners that meet objective need criteria, but only in these specific situations. Should Council direct staff to proceed with the proposed assessment loans program, a new, supportive program should be added to the draft Housing Element.

**TIMELINE**

Below is a list of key milestones to establish the assessment loan program:

- Council approves BAO, authorizes submittal of HELP application, approves loan eligibility criteria & loan terms  
  Sept. 9, 2002
- Staff returns to Council for approval resolution required for HELP application  
  Sept. 23, 2002
- Determine program administrator & prepare agreement  
  Sept – Oct 2002
- HELP application due  
  Sept. 27, 2002
- Redwoods assessment payments begin  
  Oct 2002
- Loan applications accepted & processing to begin  
  During Oct. 2002
- Loans closed & funds paid to BMR owners (if City funds used)  
  Mid-Nov. 2002
- Report to Council on proposal for ongoing funding  
  November 2002
- HELP awards announced  
  Late Nov. 2002
- Execute HELP agreement (if award is received)  
  Dec. 2002
- HELP funds available for loans  
  Dec or Jan 2003
- Final payment due on Abitare assessments  
  Dec. 15, 2002
ENVIRONMENTAL REVIEW
The establishment of the proposed BMR Emergency Fund and the use of this fund to provide assessment loans to BMR owners and to fund costs related to preserving BMR units in the program stock are actions that are statutorily exempt from the California Environmental Quality Act (CEQA) under Sections 15267 – Financial Assistance to Low or Moderate Income Housing and Section 15326 – Acquisition of Housing for Housing Assistance Programs.

ATTACHMENTS
A. Budget Amendment Ordinance
B. Criteria for Emergency Loans for Major Mandatory Assessments on Below Market Rate (BMR) Units
C. BMR Unit Inventory
D. Fact Sheet on Assessments at Abitare and Redwoods Condominiums

PREPARED BY: _________________________________________
Catherine Siegel, Housing Coordinator

DEPARTMENT HAD REVIEW: ____________________________
Steve Emslie
Director of Planning and Community Environment

CITY MANAGER APPROVAL: ____________________________
EMILY HARRISON
Assistant City Manager

cc: Human Relations Commission
    Palo Alto Housing Corporation
    BMR unit owners at Redwoods Condominiums and Abitare Condominiums
GENERAL CRITERIA FOR EMERGENCY LOANS FOR MAJOR MANDATORY ASSESSMENTS ON BELOW MARKET RATE (BMR) UNITS

General Threshold Standards for City to Accept and Consider Loans for BMR Units in a Development

1) Purpose of Assessments
   - The primary purpose of the assessment(s) must be to fund substantial capital improvements or major repairs to the project, including improvements and repairs to common areas and / or to individual units in the project, that are the responsibility of the Homeowners Association. Regular monthly homeowners dues do not qualify for these loans.

2) Amount of Assessment(s)
   - The amount of the assessment (or the sum total of a series of related assessments occurring with a five-year period) shall be equal to, or greater, than $10,000.

3) Funding Available
   - City has secured an award of funding from an outside source or has sufficient City housing funds available for the loans. No General Funds will be used for these loans.

4) Program Administration
   - City has identified sufficient and qualified in-house staff, or outside contract staff or a financial institution, to administer the loan program. General Funds may be used for staff or administrative costs.

Specific Criteria for Loans to Individual BMR Owners

A) Threshold Criteria for All BMR Owners to be Eligible to Apply for a Loan:

1) Owner Occupancy: BMR unit must have been occupied by all adults on title, and remain occupied during the term of the loan, in compliance with the deed restrictions during the entire time the current owner(s) own the unit.

2) No Rental of Unit without City Consent: BMR units that have been or are rented without the City’s prior written consent are not eligible for a loan.
4) **Condition of Title:** No unauthorized title transfers shall have occurred, or if any title transfers not in compliance with the deed restrictions have occurred, they shall be corrected prior to loan approval.

5) **Compliance with Other Requirements of the Deed Restrictions:** The owner and BMR unit shall be in compliance with all other requirements of the deed restrictions.

6) **No Over-Financed Units:** The original total loan amount of all financing secured by the property, as of the date of the owner’s application for a City loan, shall not exceed 95% of the current BMR unit’s value as restricted by the resale price calculation in the unit’s deed restriction (owner’s original purchase price plus applicable Consumer Price Index formula for appreciation). Substantial improvements installed by owner shall **not** be considered in the determination of whether the unit is over-financed.

7) **Permission for Refinancing:** If applicable per Unit’s Deed Restrictions, any refinancing shall have had the City’s permission.

**B) Mandatory Criteria Used to Determine “Need” for a Loan:**

1) Total monthly Housing Costs exceed **30%** of monthly Gross Income

2) Owner has applied for, and been denied, or informed in writing that they are ineligible for a bank or credit union loan sufficient to finance the assessment without having their monthly Housing Costs exceed 30% of monthly gross income.

**Note:** Owners are required to attempt to secure both a refinancing of their existing first mortgage debt and the assessment, and to attempt to obtain a second mortgage or line of credit loan. If an owner can obtain bank financing for a portion of the assessment but not the entire amount, then the owner may apply for a City loan for the remainder not covered by the bank loan.

3) Credit Rating and History: A credit report will be required of all loan applicants. Credit history and rating will be considered; the primary evaluation will be on the owner’s credit record regarding their mortgage payments and other housing-related payments, specifically homeowners dues and property taxes.
C) **Priority for a “Need” for a City Loan (see attached definitions):**

1) **Income Level** (in order of priority):

   Extremely low household income  
   Very low household income  
   Low household income  
   Moderate household income

2) **Assets:**

   Very Limited Assets  
   Limited Assets

3) **Inability to Be Gainfully Employed Preference:**

   Disabled  
   Elderly  
   Retired  
   Temporary disability, sickness or unemployment

**Definitions:**

1) **Income Levels**

   Extremely low income: Less 30% of HUD median income adjusted by household size  
   Very low income: Less 50% of HUD median income adjusted by household size  
   Low income: Less 80% of HUD median income adjusted by household size  
   Moderate income: Less 100% of HUD median income adjusted by household size

2) **Elderly:** 65 years or older

3) **Retired:** Of normal retirement age (55 years or older) and receiving social security, a pension, or living off of investment income

4) **Disabled:** Physical or mental disability that prevents one of the adult owners of the unit from working and results in a significantly reduced household income.

5) **Definition of Total Monthly Housing Costs as a Percentage of Monthly Gross Household Income:**

   - **Total Monthly Housing Costs to be included in this calculation are:**
Mortgage payments, including private mortgage insurance (PMI) for the original purchase loan, or a replacement loan that did not exceed the amount of the original loan
Real property taxes and assessments (average monthly payments)
Regular monthly homeowners association dues
Homeowners insurance (average monthly payments)
Monthly payments on any loan to pay previous mandatory assessments
Extended installment payments (that exceed one year) if available from the homeowners association for a mandatory assessment

6) Definition of Gross Income:
- Income will be calculated in the same manner as income is calculated to determine eligibility to purchase a BMR unit.
- Income from savings and investments will be the actual income received and will be considered part of gross income

7) Assets include:
- Cash in savings and checking accounts
- Current value of stocks, mutual funds, etc
- Savings and investments that are in the name of the owner and that the owner can access to pay the assessment even if a withdrawal penalty will have to be paid
- Equity in other real property

8) Assets do not include:
- Equity in the BMR unit
- Deferred compensation account funds or other types of employer retirement or savings plans that are inaccessible to the employee until retirement or job termination
- Autos or other personal property

9) Very Limited Assets: Total value of assets is less than 2 times the amount of the assessment

10) Limited Assets: Total value of assets is less than 3 times the amount of the assessment
<table>
<thead>
<tr>
<th>Homeownership Units Development</th>
<th>Year Initial of Sale/Rent</th>
<th>Number of Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foothill Green</td>
<td>1975</td>
<td>4</td>
</tr>
<tr>
<td>Villas de San Alma</td>
<td>1975</td>
<td>8</td>
</tr>
<tr>
<td>Greenhouse II</td>
<td>1976</td>
<td>10</td>
</tr>
<tr>
<td>Channing Place</td>
<td>1976</td>
<td>2</td>
</tr>
<tr>
<td>410 Sheridan</td>
<td>1977</td>
<td>5</td>
</tr>
<tr>
<td>Villas de la Plazas</td>
<td>1978</td>
<td>4</td>
</tr>
<tr>
<td>Vista Townhouses</td>
<td>1979</td>
<td>2</td>
</tr>
<tr>
<td>San Antonio Village</td>
<td>1979</td>
<td>2</td>
</tr>
<tr>
<td>Barron Square</td>
<td>1979</td>
<td>6</td>
</tr>
<tr>
<td>Palo Alto Greens</td>
<td>1981</td>
<td>4</td>
</tr>
<tr>
<td>Colorado Place</td>
<td>1981</td>
<td>2</td>
</tr>
<tr>
<td>Palo Alto Redwoods</td>
<td>1983</td>
<td>12</td>
</tr>
<tr>
<td>Oregon Green (Offsite)</td>
<td>1984</td>
<td>1</td>
</tr>
<tr>
<td>Birch Court - BMR Units</td>
<td>1984</td>
<td>5</td>
</tr>
<tr>
<td>Birch Court - Discount Units</td>
<td>1984</td>
<td>17</td>
</tr>
<tr>
<td>Palo Alto Central</td>
<td>1984</td>
<td>7</td>
</tr>
<tr>
<td>Loma Verde Village</td>
<td>1985</td>
<td>4</td>
</tr>
<tr>
<td>Loma Verde Townhomes</td>
<td>1985</td>
<td>2</td>
</tr>
<tr>
<td>Channing Court</td>
<td>1985</td>
<td>1</td>
</tr>
<tr>
<td>Ashby Duplex</td>
<td>1985</td>
<td>2</td>
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### CITY OF PALO ALTO
### INVENTORY OF BELOW MARKET RATE PROGRAM UNITS (September 2002)

<table>
<thead>
<tr>
<th>Homeownership Units Development</th>
<th>Year Initial of Sale/Rent</th>
<th>Number of Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abitare</td>
<td>1985</td>
<td>9</td>
</tr>
<tr>
<td>Ortega Duplex</td>
<td>1986</td>
<td>2</td>
</tr>
<tr>
<td>Talisman Duplex</td>
<td>1987</td>
<td>2</td>
</tr>
<tr>
<td>Bautista Duplex</td>
<td>1987</td>
<td>2</td>
</tr>
<tr>
<td>The Hamlet</td>
<td>1988</td>
<td>6</td>
</tr>
<tr>
<td>Terrace Bay Homes</td>
<td>1988</td>
<td>2</td>
</tr>
<tr>
<td>The Rosewalk</td>
<td>1988</td>
<td>4</td>
</tr>
<tr>
<td>Ramona Courts</td>
<td>1989</td>
<td>1</td>
</tr>
<tr>
<td>Charleston Village</td>
<td>1990</td>
<td>2</td>
</tr>
<tr>
<td>737 Loma Verde (Christensen Court)</td>
<td>1992</td>
<td>1</td>
</tr>
<tr>
<td>Camino Place</td>
<td>1992</td>
<td>4</td>
</tr>
<tr>
<td>Spanish Villas</td>
<td>1993</td>
<td>1</td>
</tr>
<tr>
<td>Jacobs Court</td>
<td>1993</td>
<td>3</td>
</tr>
<tr>
<td>Promenade</td>
<td>1994</td>
<td>7</td>
</tr>
<tr>
<td>Everett Townhomes</td>
<td>1997</td>
<td>1</td>
</tr>
<tr>
<td>Silverwood - 435 Sheridan Ave.</td>
<td>1999</td>
<td>3</td>
</tr>
<tr>
<td>Classics at Barron Park (Driscoll Pl)</td>
<td>2000</td>
<td>4</td>
</tr>
<tr>
<td>Wisteria Townhomes</td>
<td>2000</td>
<td>1</td>
</tr>
</tbody>
</table>

**TOTAL OWNERSHIP UNITS**  
169
<table>
<thead>
<tr>
<th>BMR RENTAL UNITS:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Southwood Apartments Middlefield Road</td>
<td>1985</td>
<td>10</td>
</tr>
<tr>
<td>1100 Welch Road Apartments</td>
<td>1987</td>
<td>11</td>
</tr>
<tr>
<td>Mayfield Apartments - 345 Sheridan Ave</td>
<td>1987 &amp; 1989</td>
<td>12</td>
</tr>
<tr>
<td>Montage Apartments - 4020 El Camino</td>
<td>1998</td>
<td>5</td>
</tr>
<tr>
<td>Stanford West Apartments: Sand Hill Rd</td>
<td>2000-01</td>
<td>63</td>
</tr>
</tbody>
</table>

| Total Below Market Units                      |        | 270 |

**CITY OF PALO ALTO**
**INVENTORY OF BELOW MARKET RATE PROGRAM UNITS (September 2002)**
## ATTACHMENT D: FACT SHEET ON ASSESSMENTS AT ABITARE & REDWOODS

### Effect on BMR Unit Owners

**July 24, 2002**

<table>
<thead>
<tr>
<th>Redwoods Condos at 4250 El Camino Real</th>
<th>Abitare Condos at Alma &amp; High</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Number of Units in Project:</strong></td>
<td>117</td>
</tr>
<tr>
<td><strong>Total Number of BMR Units:</strong></td>
<td>12</td>
</tr>
<tr>
<td><strong>Year Built:</strong></td>
<td>1983</td>
</tr>
<tr>
<td><strong>Amount of Assessment(s) &amp; Date:</strong></td>
<td>$4,080 7/2001</td>
</tr>
<tr>
<td></td>
<td>$13,675 August 2002</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total Known Assessments</strong></td>
<td>$17,755 (There may be future assessments for other work.)</td>
</tr>
<tr>
<td><strong>First Payment Due Date</strong></td>
<td>$4,080 assessment was due in full by July 2002 Payments on the $13,675 begin on 10/1/02 $277 per month installment plan available</td>
</tr>
<tr>
<td><strong>Number of BMR Owners Responding to City Survey</strong></td>
<td>10</td>
</tr>
<tr>
<td><strong>No. of Very Low Income</strong></td>
<td>6</td>
</tr>
<tr>
<td><strong>No. of Low Income</strong></td>
<td>3</td>
</tr>
<tr>
<td><strong>No. of Moderate Income</strong></td>
<td>1</td>
</tr>
<tr>
<td><strong>BMR Owners That Did Not Respond to Survey</strong></td>
<td>2</td>
</tr>
</tbody>
</table>