

FILED
OFFICE OF THE CITY CLERK
OAKLAND

**REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND
AGENDA REPORT**

2009 DEC -3 PM 5: 12

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: December 15, 2009

RE: **An Agency Resolution Accepting and Appropriating a \$77,500 Payment from Courthouse Associates, LLC, to the Broadway/MacArthur/San Pablo Façade Improvement Program**

SUMMARY

This item is a request for Redevelopment Agency approval of a resolution authorizing the acceptance and appropriation of a \$77,500 payment from Courthouse Associates, LLC to the Broadway/ MacArthur/ San Pablo Façade Improvement Program. This contribution was a Condition of Approval in the planning entitlements for the approved development project at 2935 Telegraph Avenue and the demolition of the former Courthouse Athletic Club building for this project. These funds will be used as matching grants for individual façade improvement projects within the Broadway/MacArthur/San Pablo redevelopment project area.

FISCAL IMPACT

As directed by the Budget office, once approved by the Agency, funds will be appropriated in ORA Grants Fund (9213), Redevelopment Projects Organization (88669), in a Project to be determined. The funds will be added to the existing budget for the Broadway/MacArthur/San Pablo Façade Improvement Program. This appropriation will have no negative impact on the General Fund.

BACKGROUND

On August 1, 2007, the Planning Commission approved the Trammel Crow Residential (Courthouse Associates, LLC) project proposal, to demolish the surface parking lot and existing building located at 2935 Telegraph Avenue to construct a 280,000 square foot mixed-use building. Because the project required the demolition of an historic building, the former Courthouse Athletic Club, several Mitigation Measures and Conditions of Approval were required in the planning approvals. Condition of Approval #43 and Mitigation Measure A.1d is a "Financial Contribution to the Telegraph Avenue Façade Improvement Program" prior to issuance of the demolition and building permits. The amount of the contribution was to be determined by the City of Oakland based on the level of impact of the proposed project. The Planning Commission Report on the Courthouse project is included here as *Attachment A*.

Item: _____
CED Committee
December 15, 2009

On August, 1, 2007, the Planning Commission approved staff's recommendation to set the financial contribution to the Façade Improvement Program at \$77,500 based on the City's standard formula to determine the amount of façade improvement grant funding allowed for a building - \$10,000 for the first 25 linear feet and an additional \$2,500 for each additional 10 linear feet. The combined linear feet of the proposed Courthouse Athletic Club building demolition, including both the Telegraph Avenue and 29th Street façades, is 280 linear feet.

The Façade Improvement Program is an incentive program that offers one-to-one matching grants to business and property owners to rehabilitate the exterior of their buildings along commercial corridors in Oakland. The goal of this program is to help address blighted properties by providing incentives to property and business owners to improve the condition of their buildings. Telegraph Avenue is a target corridor for this program.

KEY ISSUES AND IMPACTS

The proposed project at 2935 Telegraph Avenue is located in the Broadway/MacArthur/San Pablo Redevelopment Project Area. The Façade Improvement Program in this area is referred to as the Broadway/MacArthur/San Pablo Façade Improvement Program and includes Telegraph Avenue. The financial contribution of \$77,500 from Courthouse Associates, LLC will be used for grants under this program.

On September 25, 2009, the Redevelopment Agency received a check in the amount of \$77,500. Staff is now asking the Agency for permission to appropriate these funds to this program. These funds will be used for the elimination of blight and the rehabilitation of historic façades in the Broadway/MacArthur/San Pablo redevelopment project area.

PROGRAM DESCRIPTION

Broadway/MacArthur/San Pablo Façade Improvement Program

The Broadway/MacArthur/San Pablo FIP offers one-to-one matching grants for property and business owners to improve storefronts and visible exterior portions of their buildings along target commercial corridors. Eligible improvements include: new paint, storefront systems, windows, doors, lighting, signage and landscaping. Grants are based on linear feet of building façade and are capped at \$30,000. The program also provides free architectural assistance of up to \$5,000 per project to help ensure quality design.

This report requests Agency authorization to accept and appropriate a \$77,500 payment from Courthouse Associates, LLC to the Broadway/ MacArthur/ San Pablo Façade Improvement Program.

SUSTAINABLE OPPORTUNITIES

Economic: Appropriating these funds to the Façade Improvement Program will help to improve the physical and economic health of Oakland's commercial districts by providing financial assistance to property and business owners to make improvements to their properties.

Environmental: Appropriating these funds to the Façade Improvement Program will help stimulate increased usage of underutilized properties in the redevelopment project area.

Social Equity: This appropriation will provide additional opportunities for business and property owners to utilize funds offered by the Façade Improvement Program to help rehabilitate their properties.

DISABILITY AND SENIOR CITIZEN ACCESS

All new construction that occurs on properties that participate in the Façade Improvement Program is required to comply with city, state, and federal ADA requirements.

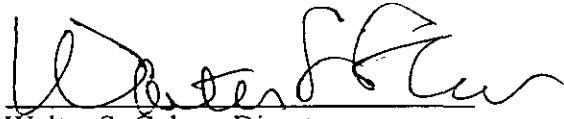
RECOMMENDATION(S) AND RATIONALE

Staff recommends that the Redevelopment Agency authorize the acceptance and appropriation of a \$77,500 payment from Courthouse Associates, LLC to the Broadway/MacArthur/San Pablo Façade Improvement Program. This contribution will be added to the existing Façade Improvement Program budget for grants and will assist with the rehabilitation of properties in the Broadway/MacArthur/San Pablo project area and with the elimination of blight.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the Agency adopts the attached resolution authorizing the acceptance and appropriation of a \$77,500 payment from Courthouse Associates, LLC to the Broadway/MacArthur/San Pablo Façade Improvement Program.

Respectfully submitted,



Walter S. Cohen, Director

Community and Economic Development
Agency

Reviewed by:

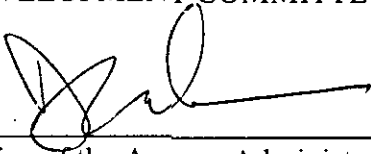
Gregory Hunter, Deputy Director

Economic Development and Redevelopment

Prepared by:

Christine Lebron, Urban Economic Analyst II
Redevelopment Division

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE:



Office of the Agency Administrator

Item: _____
CED Committee
December 15, 2009

Oakland City Planning Commission

STAFF REPORT

Case File Number VMD06-441; ER06-0012

August 1, 2007

7.	Location: 2935 Telegraph Avenue (APN's 009-0698-001-00; 009-0698-002-01; 009-0698-002-02; 009-0698-002-03; 009-0698-030-00)
	Proposal: To demolish the surface parking lot and existing building on the site, and to construct +/-280,000 sq. ft., five-story building, including up to 142 residential units, 2,900 square feet of ground floor retail, open space areas and on-site parking (below ground and at ground level) for approximately 204 automobiles.
	Applicant: TCR Northern California 1, Inc.
Contact Person/Phone Number:	Dan Garibaldi (650)349-1224
Case File Number:	VMD06-441; ER06-0012
Planning Permits Required:	Major Design Review and Variances for reduction of required rear yard setback, reduction of required off-street loading berths.
General Plan:	Community Commercial/Urban Residential
Zoning:	C-40 – Community Thoroughfare Commercial; R-80 – High-rise Apartment Residential
Environmental Determination:	A Draft Environmental Impact Report which focuses on Historic Resources and Transportation/Traffic was circulated for a 45-day Public Review Period from March 20, 2007 through May 3, 2007; all other impacts have been reduced to less than significant levels. A Final Environmental Impact Report was prepared and released for public review on July 19, 2007.
Historic Status:	City of Oakland Historic Resource for purposes of CEQA with An Oakland Cultural Heritage Preliminary Field Rating of B+3 (of major importance, not in an area of primary or secondary importance). Most recently used as the Courthouse Athletic Club, and previously a mortuary remodeled from a residence..
Service Delivery District:	North Oakland 2
City Council District:	3 – Nancy Nadel
Status:	The proposal was reviewed for Design Review by the Planning Commission sub-committee on March 28 and May 23, 2007 and by the Landmarks Preservation Advisory Board on April 9 and July 9, 2007. A Draft Environmental Impact Report which focuses on Historic Resources and Transportation/Traffic was released on March 20, 2007; a Final Environmental Impact Report was released on July 19, 2007.
Action to be Taken:	Certify Final Environmental Impact Report and approve project including Major Design Review and Variance, subject to the Findings and Conditions of Approval, including Mitigation Measures and Mitigation Monitoring Plan.
Finality of Decision:	<i>Appealable to City Council</i>
For Further Information:	Contact case planner Joann Pavlinec at (510) 238-6344 or by email: jpavlinec@oaklandnet.com

#7

SUMMARY

TCR Northern California I, Inc. has filed an application for review and consideration of a mixed-use project in the Central/Chinatown planning area of Oakland. The applicant proposes to demolish the surface parking lot and existing building on the site (building is an historic resource for purposes of environmental review), and to construct a +/-280,000 sq. ft., five-story building, including up to 142 residential units, 2,900 square feet of ground floor retail, open space areas and on-site parking (below ground and at ground level) for approximately 204 automobiles.

Environmental Review

An Initial Study (IS) was prepared which concluded that all environmental impacts, except historic resources and traffic, would have less than significant impacts with the City's standard conditions of approval. A Draft Environmental Impact Report (DEIR) has been completed for this proposal, focusing on historic resources and traffic. The DEIR finds one Significant and Unavoidable Environmental Impact: The project would result in the demolition of the former Courthouse Athletic Club at 2935 Telegraph Avenue, a building that qualifies as a historic resource as defined in CEQA Section 15064.5. The DEIR did not find any traffic impacts that could not be reduced to less than significant with adoption of the City's standard conditions of approval.

A Feasibility Analysis of fiscal impacts of the alternatives outlined in the DEIR has been completed. The report concludes that two of the Alternatives presented in the DEIR would generate an economic loss to the developer if completed as designed, and two would generate small net profits that would provide return on cost margins that would be below the required investment return criteria of any for-profit residential developers and investors and would not satisfy the underwriting criteria necessary to obtain construction or permanent financing. Thus, these alternatives are considered to be economically infeasible.

Required Planning Permits

In addition to Environmental Review, the project requires major design review and variance for reduction of required rear yard setback..

The Planning Commission Design Review Sub-committee (Sub-committee) reviewed the project on March 28 and May 23, 2007. The Landmarks Preservation Advisory Board (LPAB) reviewed the project for design on April 9 and July 9, 2007. Many of the design comments suggested by the Sub-committee and the LPAB have been incorporated into the design. At the July 9, 2007 LPAB meeting, there was consensus for recommendation of design review approval to the Planning Commission.

The LPAB also considered and discussed the required Historic Preservation Policy 3.5 Findings with respect to discretionary permit approvals involving the complete demolition of Potential Designated Historic Properties. The LPAB vote on a recommendation to the Planning Commission that Policy 3.5 finding #2, *that the public benefits of the proposed project outweigh the benefit of retaining the original structure*, was split two yes and two no. Staff finds, however, based on the Feasibility Analysis, and the overwhelming number of General Plan Policies in support of this project that there are public benefits that outweigh the loss of this resource.

Staff recommends Approval of the proposal.

PROJECT DESCRIPTION

The project proposal intends to demolish the building and the surface parking lot on the site and to construct up to a maximum of 142 residential units, 2,900 square feet of ground floor retail, open space totaling approximately 24,500 square feet, and on-site parking for approximately 204 automobiles, in a five-story building (four stories of residential construction above a two-level parking garage; first parking level is lined along 29th and 30th Streets with residential units accessed by individual street frontage entries; first level parking is lined along Telegraph Avenue with two commercial spaces at each corner, community and Home Owners Association spaces and the entry lobby to residential units; one level of parking would be below ground accessed by an internal ramp from the ground level parking). The maximum height of the building would be approximately 50 feet, measured to the top of the roof. The development would be about 280,000 square feet in size.

The proposed building would be constructed on a concrete mat foundation that would not require pile driving or drilled piers. A two-level concrete podium encompassing the basement and ground floor levels would support wood frame construction above. The character of the proposed architecture is contemporary, incorporating cement plaster, cementitious board siding, metal mesh railings (primed and painted) and fiberglass framed windows. The building would overall be built to the lot line at the ground floor with intermittent setbacks in the form of courtyards at the podium level along 29th and 30th Streets and the site rear.

PROPERTY DESCRIPTION

Existing Site Conditions

The project site is approximately 1.4 acres on the eastern two-thirds of the block bounded by 29th Street, Telegraph Avenue, 30th Street and Interstate I-980. The site is currently occupied by a two-story building, a former residence dating from the turn of the nineteenth century that was transformed into a mortuary in the 1940s and most recently was remodeled into a fitness club in the early 1980s. The fitness club closed in fall 2006 and the building is currently vacant. The building is considered to be an historic resource under CEQA {preliminarily (field) rated B+3 [of major importance, not in an area of primary or secondary importance by the Oakland Cultural Heritage Survey (OCHS)]}. There is also a surface parking lot on the site which can accommodate approximately 93 automobiles. The site includes two groups of mature redwood trees located toward the west and south portions of the site.

Surrounding Area

A mix of institutional, commercial and residential uses characterizes the project vicinity, located approximately six blocks north of the Central Business District. Residential uses, mostly two-story, single-family detached, with a few three to five-story multi-family residential buildings, front the proposal along 29th and 30th Streets. Primarily commercial uses front along Telegraph Avenue. Land use in the Telegraph corridor is influenced by the nearby "Pill Hill" area, Oakland's largest concentration of hospitals and medical services. At least one of the residential buildings to the rear of the project is being used as medical offices. Medical retail and office uses occupy many of the retail spaces. Additionally, Alta Bates Summit Medical Center on the corner of 30th Street and Telegraph Avenue is diagonally across Telegraph from the site. A former church and mortuary on the northwest corner of 30th Street and Telegraph is also currently used as a medical office building. Other uses include St. Augustine's Episcopal Church, a City of Oakland Historical Landmark on the southwest corner of 29th Street and Telegraph Avenue. The remainder is interspersed with small restaurants, cafes and food markets. The I-980 is located approximately 160 feet west from the western edge of the project site.

Historic Background

As indicated above and detailed in the DEIR: (1) the OCHS field rating for the Courthouse Athletic Club is 'B+3' (B = Major Importance; 3 = Not in a historic district) and it is thus considered a CEQA historic

resource; (2) although there are other historic resources nearby, they will not be adversely impacted by the proposed project; and (3) although there is a potential funeral home district, the proposed demolition does not affect its eligibility for a future API.

GENERAL PLAN ANALYSIS

General Plan Classifications

The General Plan Land Use and Transportation Element classifies the project site as located in both the 'Community Commercial' and the 'Urban Residential' areas.

The eastern third of the site, fronting along Telegraph Avenue, falls with the "Community Commercial" land use designation. The intent of the "Community Commercial" designation is to identify, create, maintain, and enhance areas suitable for a wide variety of commercial and institutional operations along the City's major corridors and in shopping districts or centers. The maximum FAR for this classification is 5.0. Maximum residential density is 125 units per gross acre or 166.67 units per net acre (261 square feet of site area per principal unit). The total FAR, (which excludes parking and open space areas) is 2.9. Based on the maximum residential density, 232 units would be allowed; 142 are proposed.

The rear (western) two-thirds of the project site falls with the "Urban Residential" land use designation. The intent of the "Urban Residential" designation is to create, maintain, and enhance areas of the city that are appropriate for multi-unit, mid-rise or high-rise residential structures in locations with good access to transportation and other services. There is not a maximum FAR for this classification. Maximum allowable density in these areas is 125 units per gross acre or 166.67 units per net acre (261 square feet of site area per principal unit). Based on the maximum residential density, 232 units would be allowed; 142 are proposed.

General Plan Policy

The following policies of the General Plan support the proposed project:

Land Use and Transportation Element of the General Plan (LUTE)

Policy I/C3.4 Strengthening Vitality: The vitality of existing neighborhood mixed use and community commercial areas should be strengthened and preserved.

Policy T2.3 Promoting Neighborhood Services: Neighborhood-serving commercial development should be promoted within one-quarter to one-half mile of established transit routes and nodes.

Policy T6.2 Improving Streetscapes: The City should make major efforts to improve the visual quality of streetscapes. Design of the streetscape, particularly in neighborhoods and commercial centers, should be pedestrian-oriented and include lighting, directional signs, trees, benches, and other support facilities.

Policy N1.1 Concentrating Commercial Development: Commercial development in the neighborhoods should be concentrated in areas that are economically viable and provide opportunities for smaller scale, neighborhood-oriented retail.

Policy N1.8 Making Compatible Development: The height and bulk of commercial development in "Neighborhood Mixed-Use Center" and "Community Commercial" areas should be compatible with that which is allowed for residential development.

Policy N3.1 Facilitating Housing Construction: Facilitating the construction of housing units should be considered a high priority for the City of Oakland.

Policy N3.2 Encouraging Infill Development: In order to facilitate the construction of needed housing units, infill development that is consistent with the General Plan should take place throughout the City of Oakland.

Policy N3.5 Encouraging Housing Development: The City should actively encourage development of housing in designated mixed housing type and urban housing areas through regulatory and fiscal incentives, assistance in identifying parcels that are appropriate for new development, and other measures.

Policy N3.8 Required High-quality Design: High-quality design standards should be required of all new residential construction. Design requirements and permitting procedures should be developed and implemented in a manner that is sensitive to the added costs of those requirements and procedures.

Policy N3.9 Orienting Residential Development: Residential developments should be encouraged to face the street and to orient their units to desirable sunlight and views, while avoiding unreasonably blocking sunlight and views for neighboring buildings, respecting the privacy needs of residents of the development and surrounding properties, providing for sufficient conveniently located on-site open space, and avoiding undue noise exposure.

Policy N3.10 Guiding the Development of Parking: Off-street parking for residential buildings should be adequate in amount and conveniently located and laid out, but its visual prominence should be minimized.

Policy N6.2 Increased Home Ownership: Housing developments that increase home ownership opportunities for households of all incomes are desirable.

Policy N9.7 Creating Compatible but Diverse Development: Diversity in Oakland's building environment should be as valued as the diversity in population. Regulations and permit processes should be geared toward creating compatible and attractive development, rather than "cookie cutter" development.

Policy N9.8 Preserving History and Community: Locations that create a sense of history and community within the City should be identified and preserved where feasible.

Policy N9.9 Respecting Architectural Integrity: The City encourages rehabilitation efforts which respects the architectural integrity of a building's original style.

Open Space, Conservation and Recreation Element (OSCAR)

Policy OS-4.1 provision of Useable Open Space: Continue to require new multifamily development to provide usable outdoor open space for its residents.

Policy OS-10.2, Minimizing Adverse Visual Impacts: Encourage site planning for new development which minimizes adverse visual impacts and takes advantage of opportunities for new vistas and scenic enhancement.

Policy OS-11.1, Access to Downtown Open Space: Provide better access to attractive, sunlit open spaces for persons working or living in downtown Oakland. The development of rooftop gardens is encouraged, especially on parking garages.

Historic Preservation Element of the General Plan (HPE)

Per Historic Preservation Element Policy 3.8, the Courthouse Athletic Club is considered a historic resource for Environmental Review purposes. The Historic Preservation element goals also are applicable to this proposal as follows:

HPE Goal 2: To preserve, protect, enhance, perpetuate, use, and prevent the unnecessary destruction or impairment of properties or physical features of special character or special historic, cultural, educational, architectural or aesthetic interest or value.

HPE Policy 3.1: Avoid or minimize adverse historic preservation impacts related to Discretionary City actions.

Policy 3.7: Property Relocation Rather than Demolition as Part of Discretionary Projects: As a condition of approval for all discretionary projects involving demolition of existing or Potential Designated Historic Properties, the City will normally require that reasonable efforts be made to relocate the properties to an acceptable site.

Policy 1.2 Potential Designated Historic Properties: The City considers any property receiving an existing or contingency rating from the Reconnaissance or Intensive Surveys of "A" (highest importance), "B" (major importance), or "C" (secondary importance) and all properties determined by the Surveys to contribute or potentially contribute to an Area of Primary or Secondary Importance to warrant consideration for possible preservation.

Policy 3.1: Avoid or Minimize Adverse Historic Preservation Impacts Related to discretionary City Actions: The City will make all reasonable efforts to avoid or minimize adverse effects on the Character-Defining Elements of existing or Potential Designated Historic Properties which could result from private or public projects requiring discretionary City Actions.

Policy 3.5: Historic Preservation and Discretionary Permit Approvals: For any project involving complete demolition of Heritage Properties or Potential Designated Historic Properties requiring discretionary City permits, the City will make a finding that:

- (1) the design quality of the proposed project is at least equal to that of the original structure and is compatible with the character of the neighborhood; or
- (2) the public benefits of the proposed project outweigh the benefit of retaining the original structure; or
- (3) the existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.

Staff Response/Recommendation

The Historic Preservation Element does not mandate preserving the structure. Rather, the City has complied with the Historic Preservation Policies because it has made reasonable efforts to preserve the resource, considered alternatives to demolition and has considered other competing general plan policies. These competing policies must be considered and balanced in review of this entire proposal, also taking into consideration the environmental analysis, the feasibility analysis, zoning analysis, and public comment. The Feasibility Study demonstrates that preservation of even a small portion of the historic resource, although bringing in a small return, would be below the required investment return criteria of any for-profit residential developers and investors and would not satisfy the underwriting criteria

necessary to obtain construction or permanent financing. In addition there are numerous policies in both the Land Use and Open Space General Plan Elements in support of the proposal.

Staff finds that the project will further the overall objectives of the General Plan. The project would be generally consistent with the LUTE policies because it would provide new infill housing near the downtown and close to transit routes at densities consistent with the General Plan. The project would also include on-site parking to serve residents and the parking would be visually concealed behind the commercial and residential frontages. The project design would be generally consistent with the OSCAR policies because it would provide accessible and useable group open space within the proposed development. The project design would be compatible with the surrounding area such that parking and loading as well as mechanical units would be screened from view and from key vantage points along Telegraph Avenue.

ZONING ANALYSIS

The project is located in the C-40 Community Thoroughfare Commercial Zone and the R-80 High-Rise Apartment Zone. The C-40 Zone exists in the front (east) portion of the project site along Telegraph Avenue with the rear (west) portion of the site filling in the R-80 Zone.

The C-40 zone is intended to “create, preserve, and enhance areas with a wide range of both retail and wholesale establishments serving both short and long term needs in convenient locations, and is typically appropriate along major thoroughfares.”

The R-80 zone is intended to “create, preserve, and enhance areas for high-rise apartment living at high densities in desirable settings, and is typically appropriate to areas near major shopping and community centers and rapid transit stations.”

Development Standards	C-40 - Community Thoroughfare Commercial	R-80 – High-rise Apartment Residential	Proposal	Comments
Land Use	A variety of residential, civic, commercial, custom manufacturing, and off-street parking serving activities. Conditionally permitted activities also include light manufacturing, and agricultural and extractive activities.	High-rise apts./high densities. A variety of residential and civic activities. Conditionally permitted activities also include commercial activities.	Multi-family residential/ Commercial	Complies
Floor Area Ratio/ Residential Density	Non-res. FAR = 3.0 + 10% for corner lots Max. res. density - R-70 = 1 du/450 sf of lot area + 10% increase on corner lots. (142 res. units permitted)	FAR 3.5 + 10% for corner lots Density = 1du/300sf of lot area + 10% increase on corner lots. (224 res. units permitted)	Non-res.FAR +.04 Max. res. Units = 142	Complies
Front Yard	None	N/A	Overall – 1’-6”	Complies
Street Side Yard	None	None	Varies – 2’-0” to 10’-0” at pkg. entry	Complies
Interior Side Yard	None	None	Varies 1’-0” to 8’-0”	Complies
Courts	Min. horizontal depth = to height of wall (1:1 ratio)	Same requirements	1:1 ratio	Complies

Rear Yard	10 feet for all residential facilities	10 feet	1'-0" to 8'-0"	Variance Required
Building Height	No max. ht.	No max ht.	50'-0" – T. O. Roof	Complies
Open Space	R-70 - group = 150 sf/du; private = 75sf/du	group = 150 sf/du; private = 75sf/du	Group Max. Req'd. = 21,300 sf Proposed 24,530 sf	Complies
Parking	One space/du Comm. - Most restrictive = 1/200 Least restrictive = no parking reqd. for min. of 3,000 sf of flr area.	One space/du	Res. Req'd. 142 Comm. - Most restrictive 15 Total Req'd. 157 Proposed 204	Complies
Loading	Floor area of facilities occupied - Res. Activities – 50,000-149,999 sf – one berths	Same requirements	One space for 137,300 sf	Complies
Bicycle Parking	Res. - long term = 71 - short term = 14 Com.- long term = 2 -short term = 2	Same requirements	Long term 90 Short term – not shown on site plan	Condition of Approval #31 For short term
Minimum Lot Size	4,000 sf Min. lot width = 25 ft.		1.4 acres	Complies
Recycling Space	2 cubic feet of space per unit, and per 1,000 sf of commercial space	Same requirements	Cubic feet req.d - 290 Trash room = 231 sf	Complies

Required Variance

Per the analysis in the above table, the following variance is required:

- o per Sections 17.30.170D and 17.54.160D – Minimum Yards and Courts – Rear Yard, a variance to permit rear yard setbacks varying from approximately 1'- 0" to 8'-0", where a 10 foot rear yard setback is required.

Although staff's original review of this proposal found that two off-street loading spaces were required, based on further clarification, calculating floor areas to be included in the total square footage, staff has determined that per Section 17.116.120 - Off Street Loading – Residential Activities, the total floor area of facilities occupied, one loading space is required because the proposal includes a total gross unit area of 137,300 square feet, and one loading space is required for 50,000 to 149,000 square feet.

Staff Response/Recommendation

The courtyard design concept presents dimensional limitations in order to meet zoning requirements for the width to height ratio of one to one, of the courts with living room windows facing the court. This constraint coupled with the owner's goal of a 50 foot maximum height building, and spans of the structural system, require additional length to the building. The 10 foot rear yard setback requirement could create the loss of a minimum of two/units/level and the first floor corner units, mid-block along 29th and 30th Streets for a total of ten units. Also, there are no negative impacts created as shadows are limited to early morning shadows, the building proposal adjacencies are driveways, and the design locates primarily podium height space along the rear property line. Where there has been an issue, the neighbor and applicant have reached an agreement (fully discussed under Key Issues).

Design Review

Per the Zoning Regulations (R-80) 17.30.040 and (C-40) 17.54.040 – Design review is required for Mixed Use Developments under the design review procedure in Chapter 17.136. Regular design review applies to new construction of three or more dwelling units per 17.136.040.A4. The detail Design findings are attached to the report.

The table below outlines design direction and modifications as the project was reviewed by the LPAB and the Planning Commission Design Review Sub-committee. The applicant has addressed suggestions made by the both the Planning Commission Design Review Sub-committee and the Landmarks Preservation Advisory Board (LPAB). At the most recent LPAB meeting, it was the overall consensus of the LPAB that the proposed design was a high quality design, satisfactorily addressing all of the issues raised in previous reviews, and that an advisory recommendation for design review approval be forwarded to the Planning Commission.

The required findings for Historic Preservation, Policy 3.5 are attached to the report (fully discussed under Key Issues).

	LPAB – April 9, 2007	LPAB – July 9, 2007	Planning Commission Sub-committee - March 28, 2007	Planning Commission Sub-committee - May 23, 2007	Current Submittal
Massing	<ul style="list-style-type: none"> o The building articulation and modulation to step back and provide courtyards in order to fit it into the neighborhood is good; o Courtyards are good; 	Consensus on Recommendation for Design Review Approval to the Planning Commission	The height would work better if some height was added to Telegraph Avenue and the rear portion of the proposal stepped down toward the existing neighborhood;	The sub-committee felt that the height transition to the west worked, as originally proposed, since the R-80--High Rise Apartment Residential zone had no height limit and a maximum FAR of 3.5.	Massing not modified;
Material	<ul style="list-style-type: none"> o Use of materials is good; wood adds warmth; o Wood or wood-like material is good; there should be more of it along 29th Street, across from the church; 	Consensus on Recommendation for Design Review Approval to the Planning Commission	Wood belongs on 29 th and 30 th Streets, but not on Telegraph Avenue; Limit the width of wood areas to 12 to 15 feet as an accent along Telegraph Avenue;	<p>Applicant responded to March 28, 2007 material comments along Telegraph Avenue with the substitution of a wood-like cementitious material.</p> <p>The sub-committee had further concerns about the Telegraph Avenue façade:</p> <ul style="list-style-type: none"> o incorporate more glazing into the Telegraph Ave. corners and integrate the balconies into the mass (not as attached elements); o Telegraph Ave. - standardize the width of the two recessed areas to each side of the cementitious areas, in order to place more focus on the central entry area; o add color to these two recessed areas in order to further break up the 	<ul style="list-style-type: none"> o more glazing has been added; upper level balconies @ Telegraph Ave. corners have been eliminated; o two recessed areas to each side of the cementitious areas, on Telegraph have been reduced and standardized to emphasize the entry bay; o color is being studied;

				Telegraph Ave. façade;	
29th & 30th Street facades	<ul style="list-style-type: none"> o Stoops are good; o Modify square windows across from the church and the service entrance across from the church; o Modify the termination of the balconies in the courtyards; 	Consensus on Recommendation for Design Review Approval to the Planning Commission	The buildings along 29 th and 30 th are too flat as they turn the corner; create more residential character along 29 th and 30 th Streets; treat the blank wall areas along 29 th and 30 th differently;	<ul style="list-style-type: none"> o The 29th and 30th Street facades (near Telegraph Avenue) were modified to incorporate a fenestration more in keeping with the Telegraph Avenue fenestration, which reduced flat and blank wall areas by eliminating the square windows with the replacement of larger windows; o vines were added to the podium walls at the parking garage entries; <p>The sub-committee had further concerns about the residential character of 29th and 30th Streets and requested that the design:</p> <ul style="list-style-type: none"> o modify the character from a housing project or institutional feel by: o modifying the wire woven material at the balconies; o including more wood-like areas along these facades, especially 30th Street; o provide direct access to the courtyard units from the sidewalk; 	<ul style="list-style-type: none"> o balcony material - perforated metal, primed and painted o more wood-like material added; o access to courtyards from sidewalk not modified; this would create safety issues and would require elimination of first floor units;
Retail Space Height	<ul style="list-style-type: none"> o Takes issue with height of retail; lose a few feet elsewhere and get retail up; o Recommends that that corners of retail spaces be increased in height; corner units directly above may have to lose some square footage; <p>Agrees about retail</p>	Consensus on Recommendation for Design Review Approval to the Planning Commission		Make retail spaces 12 foot minimal interior height (while this was suggested the commenter did recognize the conflict between the building code construction type height limits and the desire to provide tall retail height spaces);	Retail height not modified;

	height, but not strictly;				
Policy 3.5 Findings	<ul style="list-style-type: none"> o Not convinced building needs to be demolished; o Not convinced building should be saved as a stand alone structure, but as part of a group of mortuaries in the neighborhood, it might warrant retention; 	Discussed under Key Issues; Motion to make finding 3.5 -2 resulted in a 'lost' vote 2 – yes; 2-no	The Planning Commission sub-committee felt that it is a difficult decision to recommend demolition of the Courthouse Athletic Club;	<ul style="list-style-type: none"> o Two members of the sub-committee believed that with the overall General Plan Policy for housing and development of underutilized parcels, finding #2 could be made. o One member felt that the Courthouse Athletic Club contributes to the sense of place and therefore was uncertain as to whether the Policy 3.5 findings could be made. 	

ENVIRONMENTAL DETERMINATION

An Initial Study (IS) was prepared which concluded that all environmental impacts, except historic resources and traffic, would have less than significant impacts with the City’s standard conditions of approval. A Draft Environmental Impact Report (DEIR) has been completed for this proposal, focusing on historic resources and traffic. The DEIR finds one Significant and Unavoidable Environmental Impact: The project would result in the demolition of the former Courthouse Athletic Club at 2935 Telegraph Avenue, a building that qualifies as a historic resource as defined in CEQA Section 15064.5. The DEIR did not find any traffic impacts that could not be reduced to less than significant with adoption of the City’s standard conditions of approval.

Although mitigations measures are included for the impact to historic resources, the demolition of a historical resource would remain a significant and unavoidable impact on the environment. The EIR outlines the following Mitigation Measures:

- A.1a: Archival Documentation
- A.1b: Interpretive Materials
- A.1c: Relocation
- A.1d: Financial Contribution to the Telegraph Façade Improvement Program. Staff

recommends a contribution of \$77,500 and the applicant has agreed.

The EIR analysis also found that there would be no impacts to nearby historic structures and there would no cumulative impacts.

Five alternatives are studied in the DEIR, as follows:

- Alternative 1A: No Project/Site and Existing Building Remain Vacant
- Alternative 1B: No Project/Reasonably Foreseeable Development (i.e, reuse of the existing building for a gym or other commercial use)
- Alternative 2: Partial Preservation/Lower Density Alternative
- Alternative 3: Partial Preservation/Higher Density Alternative
- Alternative 4: Full Preservation/Higher Density Alternative

A Feasibility Analysis (Attachment D) of the Alternatives was prepared by CBRE Consulting. In addition to the DEIR Alternatives, a new alternative - a variant of Alternate 2 which was not described in the DEIR or the FEIR, preservation of only the very front façade of the existing building is analyzed. The report finds that two of the alternatives (2 and 2A) would generate small net profits that would provide insufficient returns to the developer and that two (3 and 4) would generate significant economic losses if completed as designed. Thus, the alternatives are considered financially infeasible. In addition, alternatives 1A and 1B did not meet any other project sponsor's objectives and are thus also rejected as infeasible.

The Planning Commission is asked to certify the EIR for the Courthouse Condominium Project. Certification does not imply endorsement of the proposed project, nor that the permit application(s) for the project will be approved. Rather, in certifying the EIR, the Commission must generally find that:

- The discussion in the EIR represents a good faith effort to disclose all the City reasonably can regarding the physical impacts which may result from the Project;
- There is an adequate consideration and evaluation of conditions, measures and changes to the Project that would eliminate or lessen the potentially significant physical impacts associated with the Project;
- The process for considering the EIR complied with all applicable provisions of CEQA and the Municipal Code; and
- The significant environmental issues raised in the comments received about the DEIR were adequately responded to in the FEIR.

Specific findings required by CEQA to certify the EIR and to apply it to approval of the project are found in Attachment C. Included in these findings are specific statements pertaining to the completeness of analysis and procedure under CEQA, a rejection of alternatives to the project due to infeasibility and statements of overriding consideration for the significant impact that was found to be unavoidable and could not be mitigated to a less than significant level. In reviewing these findings, the Planning Commission must determine that the alternatives to the project were deemed infeasible. For the impact that cannot be mitigated to a less than significant level (particularly demolition of the historic resource) the Commission must find that other benefits of the project outweigh this impact. Staff believes the CEQA findings can be met.

KEY ISSUES AND IMPACTS

1) **LPAB Recommendation to the Planning Commission on Historic Preservation Policy (HPE) 3.5 Findings - Historic Preservation and Discretionary Permit Approvals**

Based upon comments from the LAPB and Design Review Committee, a revised project was presented to the Board at their July 9, 2007 meeting for further discussion and deliberations on the HPE 3.5 findings. Only one of three possible 3.5 Findings is required. Although there was consensus for recommendation of design review approval to the Planning Commission, the LPAB Action on a Motion to make Finding 3.5 – 2 was a split vote.

Finding (1): the design quality of the proposed project is at least equal to that of the original structure and is compatible with the character of the neighborhood;

Staff Response/Recommendation:

Staff finds that the proposal design, with modifications incorporated, is compatible with the character of the neighborhood. Staff finds, however, that while the proposed design can meet design review findings and is compatible with the neighborhood, the design does not rise to the *exceptional* level of design quality that

would make it a future potential designated historic property. Thus, the design is not at least equal to that of the original structure. Rather, the proposed design – although attractive -- is a typical, mixed-use, corridor development similar to other such developments in Oakland and throughout the Bay area.

Staff notes that both the Landmarks Board and the Planning Commission have had difficulty with the proposed demolition of the Courthouse Athletic Club. This issue may be accentuated in this specific case due to the fact that the Historic Resource is a very small percentage of the site area, and it is difficult to justify its demolition because retaining it would not cause a significant reduction of the number of units the project proposes.

Staff further notes that comments and statements by Board and Commission members and the public point to issues related to the design quality of the historic architecture and to the neighborhood urban design quality provided by this building. While some comments have focused on the uncharacteristic Oakland architecture the Courthouse presents, it is precisely this uniqueness that neighborhood residents have cited that make it a ‘place-making’ and memorable contribution to this specific neighborhood, a ‘landmark’ with a lower case ‘l’. Retaining it would provide precisely what gives Oakland character that stands apart from the homogeneity of much suburban development today. In this sense, it provides identity and value to this neighborhood. On a slightly broader context it is linked to the history of the Pill Hill neighborhood, with its concentration of medical facilities, funerary homes and supporting accessory uses such as floral shops. Although it may have been altered over time, and some may find a lack of exceptional quality, the Courthouse does provide a piece of the neighborhood history puzzle and provides a current ‘sense of place’ urban design element. In this sense, the Courthouse Athletic Club is “a conspicuous and familiar feature in the context of the neighborhood,” where a typical resident of the neighborhood would notice and remember it, due to its unique design in terms of Oakland architecture. It has clearly identifiable visual design value.

Thus, staff does not believe finding # 1 can be made.

Finding (3): the existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.

Staff Response/Recommendation:

Staff finds as discussed above that the proposal design, with modifications incorporated, is compatible with the character of the neighborhood.

However, based on statements in the staff response to Finding (1), staff cannot find that the existing design is undistinguished and does not warrant retention.

Finding (2): the public benefits of the proposed project outweigh the benefit of retaining the original structure.

The discussion at the LPAB meeting of July 9th focused on Finding (2) - the public benefits of the proposed project outweighs the benefit of retaining the original structure. Members supporting this finding stated the following:

- the location of the housing is in a place that makes sense for infill development in Oakland and also for the larger bay area due to proximity to transit and other services;
- the proposal:
 - i. replaces the vacant lot which is an eyesore to the neighborhood;
 - ii. is sustainable land use;
 - iii. provides much needed housing;
 - iv. is a well designed proposal;
- the Courthouse Athletic Club has lost integrity;

Members who could not make this finding stated the following:

- The two goals of housing and historic preservation are not mutually exclusive;
- Questioned if combining a portion of the existing historic resource with the new building wouldn't provide a better urban design;
- Retaining the historic resource is important to the people who might live in the new development and to the current neighborhood;
- Called attention to the continuous loss of a finite number of historic resources which could not be replaced in balance with housing units that could be located in many areas and locations in Oakland;

A Motion to make Finding (2) - the public benefits of the proposed project outweighs the benefit of retaining the original structure, was made by Board Member Tavernier and seconded by Board Member Kahn. Motion was lost due to a split vote: Yes – Tavernier, Kahn; No – Peterson, Prevost. The Feasibility Analysis was not available to the Board at the July 9th meeting.

Staff Response/Recommendation:

Given the numerous public benefits of the project (as detailed in the Statement of Overriding Considerations and which include achieving numerous General Plan Land Use policies for housing, mixed use, development of vacant underutilized lots, infill development and home ownership in conjunction with the Feasibility Analysis (which demonstrates that the cost to renovate and retain the existing structure make it economically infeasible to do) -- staff finds that Finding (2) can be made, as detailed in the findings section of the report.

2) Adjacent property at 535 30th Street/Property Line/ADA Parking

The adjacent neighbor has utilized a portion of the proposal property for accommodation of a wider driveway. This neighbor currently uses a walker and anticipates that as her condition deteriorates she will need to use a wheel chair. The neighbor was not aware, until she recently had her own property surveyed, that the land she thought was her property and part of what she understood to be her driveway is actually on the proposal property.

The applicant's Civil consultant has prepared an Exhibit to illustrate the location of the property line with respect to the neighbor's driveway width, the existing Courthouse Athletic Club building wall, and the proposed building location. Please see Attachment E. The distance between this neighbor's projecting bay window (the narrowest area of the driveway width) and the property line is 11 feet. Currently the Courthouse existing building wall is 3.5 feet further from the bay, for a total width of 14.5 feet that the neighbor is currently using. The proposed building location wall will be located 1.8 feet from the property line, for a total distance of 12.8 feet between the neighbor's bay window and the wall of the proposal.

The Planning Commission's Design Review Subcommittee requested staff and the applicant to follow-up on this issue.

The applicant is currently meeting with the neighbor to negotiate an agreement to allow use of this additional 1.8 feet for the remainder of her ownership of the property. This would provide a driveway width at the most narrow point of 12.8 feet. The typical ADA parking space is 8 feet wide with an adjacent 5 feet for an access aisle, a total of 13 feet. The minimum width of a residential driveway permitted by the City for a single family residence is 9 feet; the maximum is 19 feet.

Staff finds that either an agreement between the neighbor and applicant for utilization of this additional 1.8 feet during her ownership of her property would be appropriate, or the applicant record an easement. While the total width provided is slightly less than required for a space conforming to ADA regulations, the width is so close (within inches) that with some maneuvering, more easily accomplished at a private residence, staff believes the neighbor's need would be accommodated. Staff discussed this issue with the City's ADA coordinator, who commented that this width would accommodate an average width auto/van and a wheel chair. Condition of Approval #45 requires that the applicant and the neighbor come to a mutual agreement on this, or the applicant record a limited, revocable easement prior to sign off of the building permit by Planning staff.

SUMMARY

The proposal has had extensive public review, LPAB and Planning Commission Review, focusing on Environmental Review with particular focus on the proposed demolition of the historic resource and Design Review.

The proposed design has progressed with the design incorporating design changes that have addressed concerns of the Planning Commission, Landmarks Board, staff and public comments. These changes to 29th and 30th Streets - fenestration and materials changes and the addition of landscaping - have rendered 29th and 30th Streets more residential in character. Materials have been modified for greater durability, wood siding to cementitious (wood-like) boards. The courtyard massing scheme is a strong component of the design that all have recognized as an important element which permits the scale of the project to fit into the existing neighborhood and provides high quality residential units with greater exposure to light and air. A landscape plan, incorporating neighborhood plant materials and theme variations for the individual courtyards, has enhanced the proposal. Street trees and trellised landscaping at blank wall areas have enhanced the urban design of the proposal and buffered blank walls adjacent to current development.

While the LPAB Motion to make the General Plan, Historic Preservation Element, Policy 3.5 finding #2 - *that the public benefits of the project outweighs the retention of the historic resource* - was evenly split, the Feasibility Study - which was not available at the time of the LPAB meeting - shows that the project would have only a small return on only two alternatives and a loss on two alternatives. And, the small return would not be sufficient to attract investors or to get lending. Based on the Feasibility Analysis in conjunction with the numerous public benefits listed in the Statement of Overriding Considerations, staff finds that the Policy 3.5 finding #2 can be met.

Based on the analysis in this report, the Environmental Impact Report and elsewhere within the administrative record, staff believes that the proposed project provides appropriate land uses for this location, providing residential units with high quality spaces that maximize availability of light and air, and lining the Telegraph Avenue corridor with first floor commercial spaces, in an attractively designed urban infill project that will further the overall objectives of the General Plan.

RECOMMENDATIONS:

1. Hold a Public Hearing to receive public comment on the Environmental Impact Report and the project;
2. Certify the Environmental Impact Report, including:
 - a. Adoption of the CEQA Findings Certifying the Final Environmental Impact Report, and
 - b. Rejection of the alternatives as being infeasible, and

- c. Adoption of the Statement of Overriding Considerations, finding that the benefits of the proposed project outweigh the significant and unavoidable adverse environmental impact pertaining to historic resources; and
 - d. Adoption of the attached Mitigation Monitoring and Reporting Program.
3. Approve the Major Design Review and Variances, subject to the attached Findings and Conditions of Approval.

Prepared by:

Joann Pavlinec
Planner IV

Approved by:

GARY PATTON
Deputy Director of Planning and Zoning
Major Projects Manager

Approved for forwarding to the
City Planning Commission:

CLAUDIA CAPPIO
Development Director

ATTACHMENTS:

- A. Plans and Elevations, Landscape Plans
- B. Mitigation Monitoring and Reporting Program
- C. CEQA Findings and Statement of Overriding Considerations
- D. Courthouse Condominiums-Alternative Programs Feasibility Analysis prepared by DBRE Consulting - July 2007
- E. Plan – Illustrating Key Issue #2

Draft Environmental Impact Report – March 19, 2007 previously distributed under separate cover;
Copies available at the City of Oakland, 250 Frank Ogawa Plaza, Suite 3315

Final Environmental Impact Report – July 19, 2007 distributed under separate cover;
Copies available on the City of Oakland website at:

<http://www.oaklandnet.com/government/ceda/revised/planningzoning/MajorProjectsSection/courthouse.html>

FINDINGS FOR APPROVAL

This proposal meets the required findings under Section 17.136.050(A) (Residential Design Review), Section 17.136.050(C)(2) (Design Review for demolition of Local Register Properties) and Section 17.148.050(A) (Major Variance) of the Oakland Planning Code; and Historic Preservation Policy 3.5. Required findings are shown in bold type below; explanations as to why these findings can be made are in normal type and are also contained within other sections of this report and the administrative record.

Section 17.136.050A (Regular design review criteria. – For Residential Facilities):

- (1) That the proposed design will create a building or set of buildings that are well related to the surrounding area in their setting, scale, bulk, height, materials and textures;**

The courtyard massing scheme is a strong component of the design that all have recognized as an important element which permits the scale of the project to fit into the existing neighborhood. Design modifications to address issues along the 29th and 30th Street facades, including elimination of the square windows and replacement with larger residential windows, the addition of a greater percentage of the wood-like cementitious material, and the addition of landscaping to soften the podium walls, have all worked to give the proposal less blank wall area and a more residential feel along these two street frontages. The originally proposed wood siding has also been replaced with a wood-like material that will better guaranty the appearance of the building over time due to its greater durability. The landscape design also incorporates some of the neighborhood landscape palette into the design.

- (2) That the proposed design will protect, preserve, or enhance desirable neighborhood characteristics;**

The proposed design will enhance the neighborhood because it is a well designed development with respect to massing – the courtyard concept - and the character of the proposed residential exterior materials – stucco and wood-like siding - that will take the place of a vacant parking lot, an underutilized parcel. The project has been designed to line Telegraph Avenue with commercial uses in a highly transparent façade on the first floor and housing units above, to line both 29th and 30th Streets with first floor units accessed from the sidewalk through an articulated contemporary entry marked by a 2nd level projecting window and an entry porch and fence, all of which will significantly increase the ‘eyes on the street’ concept. The development conceals parking behind these street frontages, yet provides an abundant number of parking spaces that will ensure that street parking in the neighborhood is not impacted. The proposal will add street trees along all three streets, and landscaping along 29th and 30th Streets, thereby enhancing the urban design features of the neighborhood.

- (3) That the proposed design will be sensitive to the topography and landscape;**

The site is overall a flat site. The proposed landscape plan has incorporated a plant palette of existing neighborhood plant materials. Also, the proposal will add street trees along three street frontages.

- (4) That, if situated on a hill, the design and massing of the proposed building relates to the grade of the hill;**

Not applicable.

- (5) That the proposed design conforms in all significant respects with the Oakland Comprehensive Plan and with any applicable district plan or development control map which has been adopted by the City Council.**

The proposal conforms with many Policies of the General Plan, as detailed in the staff report, including the following:

- Improving Streetscapes by improving the visual quality of the streetscape with trees and a well designed new development that will add to the visual quality of Telegraph Avenue through the large expanse of continuous floor to ceiling glass along the facades of these retail spaces, that continues as the building turns the corner, which will provide a high level of pedestrian transparency into the spaces which will help to activate the street and will create a feeling of a larger space from within;
- Creating a vibrant, mixed use development along a transit corridor
- Creating Compatible but Diverse Development by designing a development with extensive outdoor space at locations along the residential street frontages in order to be compatible with the neighborhood massing and to provide a new mixed development building concept typology, rather than “cookie cutter” development;
- Provision of Useable Open Space by providing not only an abundant amount of outdoor open space for its residents, but a high quality landscape plan that contributes and enhances the neighborhood plant palette;
- Orienting Residential Development to face the street and to orient their units to desirable sunlight and views.

Section 17.136.050C.2 (Regular design review criteria. – For demolition of Local Register Properties):

2. That for demolition or removal,

a. The affected structure or portion thereof is not considered irreplaceable in terms of its visual, cultural, or educational value to the area or community;

The EIR finds that building is one of five period revival-style funerary buildings in this area of Oakland. Therefore, at least two-thirds of these funerary buildings would remain and continue to be eligible for an API. Also, the EIR states that the Courthouse Athletic Club is one of two remaining period revival funerary buildings designed by Miller & Warnecke, and the remaining Grant Miller Mortuary may be viewed as a superior work by these architects. or

b. The structure or portion thereof is in such condition that it is not architecturally feasible to preserve or restore it;

It would be architecturally, but not economically, feasible to preserve or restore the historic resource. or

c. Considering the economic feasibility of preserving or restoring the structure or portion thereof, and balancing the interest of the public in such preservation or restoration and the interest of the owner of the property in the utilization thereof, approval is required by considerations of equity.

The Feasibility Analysis provides documentation that the preservation of the structure is not economically feasible. The Statement of Overriding Considerations provides evidence of important benefits of the proposed project and that the specific economic, legal, social, technological, environmental and other considerations and the benefits of the Project separately and independent outweigh significant, adverse impacts associated with demolition of the historic resource. Considering these factors, approval of the project is required by considerations of equity.

General Plan, Historic Preservation Element, Policy 3.5: Historic Preservation and Discretionary Permit Approvals (Requires one of three findings):

For any project involving complete demolition of Heritage Properties or Potential Designated Historic Properties requiring discretionary City permits, the City will make a finding that:

- (1) the design quality of the proposed project is at least equal to that of the original structure and is compatible with the character of the neighborhood; or
- (2) the public benefits of the proposed project outweigh the benefit of retaining the original structure;

The Feasibility Analysis provides documentation that the preservation alternatives are financially infeasible. The Statement of Overriding Considerations provides evidence of important benefits of the proposed project and finds that the specific economic, legal, social, technological, environmental and other considerations and the benefits of the Project separately and independent outweigh significant, adverse impacts associated with demolition of the historic resource. or

- (3) the existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.

Section 17.48.050 Major Variance Findings Required

- (1) That strict compliance with the specified regulations would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations, due to unique physical or topographic circumstances or conditions of design;

Variance for Sections 17.30.170D and 17.54.160D – Minimum Yards and Courts – Rear Yard, a variance to permit rear yard setbacks varying from approximately 1'- 0" to 8'-0", where a 10 foot rear yard setback is required.

Strict compliance with the specified regulations would result in practical difficulty inconsistent with the zoning regulations due to conditions of design. The design concept is a building type that breaks up the massing by providing nine separate courtyards. The zoning code requires the width of courtyards (with living room windows) to be equal to the height of the adjacent walls and therefore this standard sets dimensional limitations. As stated earlier in these findings this courtyard concept is critical to neighborhood compatibility. The courtyard concept also provides a higher quality of life for the residents as more rooms within each unit have a greater amount of access to light and air. The applicant also wishes to maximize the number of units in the development while keeping the height of the proposal to the 50' limit for this Building Code type. Therefore the efficiency of the layout involves the resolution of these two constraints along with a structural system span. The 10 foot rear yard setback could create the loss of a minimum of two units/level and the first floor corner units, mid-block along 29th and 30th Streets for a total of ten units. As documented in the Feasibility Analysis, the loss of twelve units would contribute significantly to the infeasibility of the project. Therefore, strict compliance with the regulations precludes an effective design solution.

- (2) That strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property;

Variance for Sections 17.30.170D and 17.54.160D – Minimum Yards and Courts – Rear Yard, a variance to permit rear yard setbacks varying from approximately 1'- 0" to 8'-0", where a 10 foot rear yard setback is required.

This is an unusually large, primarily vacant and irregularly shaped site in this area and therefore is not similar to most parcels in the near vicinity. Strict compliance with the regulations would result in a typical mixed use development of continuous facades along the residential street frontages and rear property line with open space located at the center of the development on the podium level, not visible from the street. The current development proposal, the courtyard concept, creates dimensional limitations (see discussion above) which require additional length in order to accommodate the same number of units. However, by proposing this design concept, the result is a better neighborhood massing,

smaller more usable open space areas, and higher quality residential units with better access to air and light. Therefore, strict compliance with the regulations precludes an effective design solution.

- (3) **That the variance, if granted, will not adversely affect the character, livability or appropriate development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy;**

Variance for Sections 17.30.170D and 17.54.160D – Minimum Yards and Courts – Rear Yard, a variance to permit rear yard setbacks varying from approximately 1'-0" to 8'-0", where a 10 foot rear yard setback is required.

The rear yard variance will not affect the character, livability or development of abutting properties or the surrounding area, or be detrimental to public welfare because the design has located primarily the podium height (+/-13'-6") open space areas along this edge. Also, the adjacent spaces are driveways and therefore provide a greater distance between the development and existing properties. The shadow studies also illustrate that the design took into consideration the location of the one five story area along the rear of the project, located centrally along the rear property line. The location of this five story portion at the middle of the rear property line reduces any shadows along the walls of the adjacent structures. And, shadows to the rear affect adjacent properties only in the am hours. Also, trellised vines are proposed along these podium level walls to add visual interest to the walls for the adjacent existing neighbors. This is not contrary to adopted plans because the proposal has been designed taking into consideration the reduced setbacks, as discussed above. There is not a height limit for this zone, and therefore a much taller building could be permitted at the 10 foot required setback.

Additionally, where an adjacent neighbor has indicated a problem with the development, the applicant is working to accommodate a wider parking driveway width by granting use of 1.8' of the proposal property for the time that the owner lives at that location. This accommodation by the applicant would permit the owner to have additional space for an ADA width parking space and an adjacent access aisle.

- (4) **That the variance will not constitute a grant of special privilege inconsistent with limitations imposed on similarly zoned properties or inconsistent with the purposes of the zoning regulations;**

Variance for Sections 17.30.170D and 17.54.160D – Minimum Yards and Courts – Rear Yard, a variance to permit rear yard setbacks varying from approximately 1'-0" to 8'-0", where a 10 foot rear yard setback is required.

The reduction of the required rear yard setback would not grant a special privilege as other variances have been granted on similarly zoned properties and such is not inconsistent with the purposes of the zoning regulations. The design concept primarily locates the podium open space areas along this edge. The height of the podium is approximately 10 feet with a 3'-6" railing. Eight foot fences are permitted in a rear yard setback. Twelve foot high garages are permitted in the rear yard setback. There are not any height limits in this zone and therefore a much taller building would be permitted without variances, 10 feet from the property line. Where there is a portion of the five story building at the rear yard setback, it is located adjacent to an open area in order to not impact views and sunlight into the adjacent existing buildings. As stated above, projections into the rear yard setback permit the courtyard concept, a benefit to the neighborhood.

COURTHOUSE CONDOMINIUMS CONDITIONS OF APPROVAL/MITIGATION MONITORING PROGRAM

Modifications made at the Planning Commission meeting of August 1, 2007 are shown in additions and -deletions-.

1. Conditions of Approval/Mitigation Monitoring and Reporting Program

All mitigation measures and standard conditions of approval identified in the 2935 Telegraph Avenue, (Courthouse Condominiums) EIR are included in the Mitigation Monitoring and Reporting Program (MMRP) which is included in these conditions of approval and are incorporated herein by reference, as Attachment B, as conditions of approval of the project. The MMRP, in certain instances, has been further refined and/or clarified by the conditions of approval contained herein. To the extent that there is an inconsistency between the MMRP and the conditions, the more restrictive conditions shall govern. The project sponsor (also referred to as the Applicant or TCR Northern California 1, Inc.) shall be responsible for compliance with all applicable mitigation measures adopted and with all conditions of approval set forth below at its sole cost and expense, and subject to the review and approval of the City of Oakland. The MMRP identifies the time frame and responsible party for implementation and monitoring for each mitigation measure. Overall monitoring and compliance with the mitigation measures will be the responsibility of the Planning and Zoning Division.

2. Approved Use

Ongoing

- a) The project shall be constructed and operated in accordance with the authorized use as described in the application materials, staff report, and the to scale plans dated June 5, 2007, the spiral bound colored plans both stamped 'Received' July 23, 2007, and the landscape plans (LD1.1, LD1.2, and two pages of photos) dated June 12, 2007 and 'Received, July 23, 2007 (included with spiral bound colored architectural plans) and as amended by the following conditions. Any additional uses or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval. Any deviation from the approved drawings, Conditions of Approval or use shall required prior written approval from the Director of City Planning or designee.

- b) This action by the City Planning Commission ("this Approval") includes the approvals set forth below. This Approval includes: **Approval of 2935 Telegraph Avenue, Courthouse Condominiums, VMD06-441, ER06-0012 - Major Design Review and Variances for reduction of required rear yard setback and Certification of the Environmental Impact Report.**

3. Effective Date, Expiration, Extensions and Extinguishment

Ongoing

CONDITIONS OF APPROVAL

Unless a different termination date is prescribed, this Approval shall expire two years from the approval date, unless within such period all necessary permits for construction or alteration have been issued, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit for this project may invalidate this Approval if the said extension period has also expired.

4. Scope of This Approval; Major and Minor Changes

Ongoing

The project is approved pursuant to the Planning Code only. Minor changes to approved plans may be approved administratively by the Director of City Planning or designee. Major changes to the approved plans shall be reviewed by the Director of City Planning or designee to determine whether such changes require submittal and approval of a revision to the approved project by the approving body or a new, completely independent permit.

5. Conformance with other Requirements

Prior to issuance of a demolition, grading, P-job, or other construction related permit

- a) The project applicant shall comply with all other applicable federal, state, regional and/or local codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Building Services Division, the City's Fire Marshal, and the City's Public Works Agency.
- b) The applicant shall submit approved building plans for project-specific needs related to fire protection including, but not limited to automatic extinguishing systems, water supply improvements and hydrants, fire department access, and vegetation management for preventing fires and soil erosion.

6. Conformance to Approved Plans; Modification of Conditions or Revocation

Ongoing

- a) The City of Oakland reserves the right at any time during construction to require certification by a licensed professional that the as-built project conforms to all applicable zoning requirements, including but not limited to approved maximum heights and minimum setbacks. Failure to construct the project in accordance with approved plans may result in remedial reconstruction, permit revocation, permit modification or other corrective action.
- b) Violation of any term, Condition of Approval/Mitigation Measure or project description relating to the Approvals is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approvals or alter these Conditions/Mitigation Measures if it is found that there is violation of any of the Conditions/Mitigation Measures or the provisions of the Planning Code or Municipal

Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement actions.

7. Signed Copy of the Conditions/Mitigation Measures

With submittal of a demolition, grading, and building permit

A copy of the approval letter and Conditions/Mitigation Measures shall be signed by the property owner and submitted with each set of permit plans submitted for this project.

8. Indemnification

Ongoing

- a) The project applicant shall defend (with counsel reasonably acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and their respective agents, officers, and employees (hereafter collectively called the City) from any claim, action, or proceeding (including legal costs and attorney's fees) against the City to attack, set aside, void or annul this Approval, or any related approval by the City. The City shall promptly notify the project applicant of any claim, action or proceeding and the City shall cooperate fully in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding. The project applicant shall reimburse the City for its reasonable legal costs and attorney's fees.

- b) Within ten (10) calendar days of the filing of a claim, action or proceeding to attack, set aside, void, or annul this Approval, or any related approval by the City, the project applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations and this condition of approval. This condition/obligation shall survive termination, extinguishment, or invalidation of this, or any related approval. Failure to timely execute the Letter Agreement does not relieve the project applicant of any of the obligations contained in 7(a) above, or other conditions of approval.

9. Compliance with Conditions of Approval

Ongoing

The project applicant shall be responsible for compliance with the recommendations in any submitted and approved technical report and all the Conditions of Approval and all applicable adopted mitigation measures set forth below at its sole cost and expense, and subject to review and approval of the City of Oakland.

10. Severability

Ongoing

Approval of the project would not have been granted but for the applicability and validity of each and every one of the specified conditions and/or mitigations, and if any one or more of such conditions and/or mitigations is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid conditions and/or mitigations consistent with achieving the same purpose and intent of such Approval.

11. Job Site Plans

Ongoing throughout demolition, grading, and/or construction

At least one (1) copy of the approved plans, along with the Approval Letter and Conditions of Approval

and mitigations, shall be available for review at the job site at all times.

12. Special Inspector/Inspections, Independent Technical Review, Project Coordination and Management

Prior to issuance of a demolition, grading, and/or construction permit

The project applicant may be required to pay for on-call special inspector(s)/inspections as needed during the times of extensive or specialized plancheck review, or construction. The project applicant may also be required to cover the full costs of independent technical and other types of peer review, monitoring and inspection, including without limitation, third party plan check fees. The project applicant shall establish a deposit with the Building Services Division, as directed by the Building Official, Director of City Planning or designee.

13. Underground Utilities

Prior to issuance of a building permit

The project applicant shall submit plans for review and approval by the Building Services Division and the Public Works Agency, and other relevant agencies as appropriate, that show all new electric and telephone facilities; fire alarm conduits; street light wiring; and other wiring, conduits, and similar facilities placed underground. The new facilities shall be placed underground along the project applicant's street frontage and from the project applicant's structures to the point of service. The plans shall show all electric, telephone, water service, fire water service, cable, and fire alarm facilities installed in accordance with standard specifications of the serving utilities.

14. Improvements in the Public Right-of-Way (General)

Approved prior to the issuance of a P-job or building permit

- a) The project applicant shall submit Public Improvement Plans for adjacent public rights-of-way (ROW) showing all proposed improvements and compliance with the conditions and mitigations and City requirements including but not limited to curbs, gutters, sewer laterals, storm drains, street trees, paving details, locations of transformers and other above ground utility structures, the design specifications and locations of facilities required by the East Bay Municipal Utility District (EBMUD), street lighting, on-street parking and accessibility improvements compliant with applicable standards and any other improvements or requirements for the project as provided for in this Approval. Encroachment permits shall be obtained as necessary for any applicable improvements-located within the public ROW.
- b) Review and confirmation of the street trees by the City's Tree Services Division is required as part of this condition and mitigations.
- c) The Planning and Zoning Division and the Public Works Agency will review and approve designs and specifications for the improvements. Improvements shall be completed prior to the issuance of the final building permit.

- d) The Oakland Fire Department will review and approve fire crew and apparatus access, water supply availability and distribution to current codes and standards.

15. Improvements in the Public Right-of Way (Specific)

Approved prior to the issuance of a grading or building permit

Final building and improvement plans shall include the following components:

- a) Remove and replace any existing driveway that will not be used for access to the property with new concrete sidewalk, curb and gutter.
- b) Corners on Telegraph Avenue will be required to include ADA ramps.

16. Payment for Public Improvements

Prior to issuance of a final inspection of the building permit.

The project applicant shall pay for and install public improvements made necessary by the project.

17. Compliance Plan

Prior to issuance of a demolition, grading, or building permit

The project applicant shall submit to the Planning and Zoning Division and the Building Services Division a Conditions/ Mitigation Measures compliance plan that lists each condition of approval and mitigation measure, the City agency or division responsible for review, and how/when the project applicant has met or intends to meet the conditions and mitigation measures. The compliance plan shall be organized per step in the plan check/construction process unless another format is acceptable to the Planning and Zoning Division and the Building Services Division. The project applicant shall update the compliance plan and provide it with each item submittal.

18. Construction Emissions

Prior to issuance of a demolition, grading or building permit

To minimize construction equipment emissions during construction, the project applicant shall require the construction contractor to:

- a) Demonstrate compliance with Bay Area Air Quality Management District (BAAQMD) Regulation 2, Rule 1 (General Requirements) for all portable construction equipment subject to that rule. BAAQMD Regulation 2, Rule 1 provides the issuance of authorities to construct and permits to operate certain types of portable equipment used for construction purposes (e.g., gasoline or diesel-powered engines used in conjunction with power generation, pumps, compressors, and cranes) unless such equipment complies with all applicable requirements of the "CAPCOA" Portable Equipment Registration Rule" or with all applicable requirements of the Statewide Portable Equipment Registration Program. This exemption is provided in BAAQMD Rule 2-1-105.
- b) Perform low- NOx tune-ups on all diesel-powered construction equipment greater than 50 horsepower (no more than 30 days prior to the start of use of that equipment). Periodic tune-ups (every 90 days) should be performed for such equipment used continuously during the construction period.

19. Construction Traffic and Parking

Prior to the issuance of a demolition, grading or building permit

The project applicant and construction contractor shall meet with appropriate City of Oakland agencies to determine traffic management strategies to reduce, to the maximum extent feasible, traffic congestion and the effects of parking demand by construction workers during construction of this project and other nearby projects that could be simultaneously under construction. The project applicant shall develop a construction management plan for review and approval by the appropriate City of Oakland agencies. The plan shall include at least the following items and requirements:

- a) A set of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak traffic hours, detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes.
- b) Notification procedures for adjacent property owners and public safety personnel regarding when major deliveries, detours, and lane closures will occur.
- c) Location of construction staging areas for materials, equipment, and vehicles (must be located on the project site).
- d) A process for responding to, and tracking, complaints pertaining to construction activity, including identification of an onsite complaint manager. The manager shall determine the cause of the complaints and shall take prompt action to correct the problem. Planning and Zoning shall be informed who the Manager is prior to the issuance of the first permit issued by Building Services.
- e) Provision for accommodation of pedestrian flow.
- f) Provision for parking management and spaces for all construction workers to ensure that construction workers do not park in on-street spaces.

20. Hazards Best Management Practices

Prior to commencement of demolition, grading, or construction

The project applicant and construction contractor shall ensure that construction best management practices are implemented as part of construction to minimize the potential negative effects to groundwater and soils. These shall include the following:

- a) Ensure that construction would not have a significant impact on the environment or pose a substantial health risk to construction workers and the occupants of the proposed development. Soil sampling and chemical analyses of samples shall be performed to determine the extent of potential contamination beneath all UST's, elevator shafts, clarifiers, and subsurface hydraulic lifts when on-site demolition, or construction activities would potentially affect a particular development or building. The applicant is responsible to avoid, eliminate delays with the unexpected discovery of contaminated soils with hazardous materials.

21. Waste Reduction and Recycling

The project applicant will submit a Construction & Demolition Waste Reduction and Recycling Plan (WRRP) and an Operational Diversion Plan (ODP) for review and approval by the Public Works Agency.

Prior to issuance of demolition, grading, or building permit

Chapter 15.34 of the Oakland Municipal Code outlines requirements for reducing waste and optimizing construction and demolition (C&D) recycling. Affected projects include all new construction, renovations/alterations/modifications with construction values of \$50,000 or more (except R-3), and all demolition (including soft demo). The WRRP must specify the methods by which the development will divert C&D debris waste generated by the proposed project from landfill disposal in accordance with current City requirements. Current standards, FAQs, and forms are available at www.oaklandpw.com/Page39.aspx or in the Green Building Resource Center. After approval of the plan, the project applicant shall implement the plan.

Ongoing

The ODP will identify how the project complies with the Recycling Space Allocation Ordinance, (Chapter 17.118 of the Oakland Municipal Code), including capacity calculations, and specify the methods by which the development will meet the current diversion of solid waste generated by operation of the proposed project from landfill disposal in accordance with current City requirements. The proposed program shall be implemented and maintained for the duration of the proposed activity or facility. Changes to the plan may be re-submitted to the Environmental Services Division of the Public Works Agency for review and approval. Any incentive programs shall remain fully operational as long as residents and businesses exist at the project site.

22. Tree Removal Permit

Prior to issuance of a demolition, grading, or building permit

Prior to removal of any protected trees, per the Protected Tree Ordinance, located on the project site or in the public right-of-way adjacent to the project, the project applicant must secure a tree removal permit, and abide by the conditions of that permit.

23. Tree Protection During Construction

Prior to issuance of a demolition, grading, or building permit

Adequate protection shall be provided during the construction period for any trees which are to remain standing, including the following, plus any recommendations of an arborist:

- a) Before the start of any clearing, excavation, construction or other work on the site, every protected tree deemed to be potentially endangered by said site work shall be securely fenced off at a distance from the base of the tree to be determined by the City Tree Reviewer. Such fences shall remain in place for duration of all such work. All trees to be removed shall be clearly marked. A scheme shall be established for the removal and disposal of logs, brush, earth and other debris which will avoid injury to any protected tree.
- b) Where proposed development or other site work is to encroach upon the protected perimeter of any protected tree, special measures shall be incorporated to allow the roots to breathe and obtain water and nutrients. Any excavation, cutting, filing, or compaction of the existing ground surface within the protected perimeter shall be minimized. No change in existing ground level shall occur within a distance to be determined by the City Tree Reviewer from the base of any protected tree at any time. No burning or use of

equipment with an open flame shall occur near or within the protected perimeter of any protected tree.

- c) No storage or dumping of oil, gas, chemicals, or other substances that may be harmful to trees shall occur within the distance to be determined by the Tree Reviewer from the base of any protected trees, or any other location on the site from which such substances might enter the protected perimeter. No heavy construction equipment or construction materials shall be operated or stored within a distance from the base of any protected trees to be determined by the tree reviewer. Wires, ropes, or other devices shall not be attached to any protected tree, except as needed for support of the tree. No sign, other than a tag showing the botanical classification, shall be attached to any protected tree.
- d) Periodically during construction, the leaves of protected trees shall be thoroughly sprayed with water to prevent buildup of dust and other pollution that would inhibit leaf transpiration.
- e) If any damage to a protected tree should occur during or as a result of work on the site, the project applicant shall immediately notify the Public Works Agency of such damage. If, in the professional opinion of the Tree Reviewer, such tree cannot be preserved in a healthy state, the Tree Reviewer shall require replacement of any tree removed with another tree or trees on the same site deemed adequate by the Tree Reviewer to compensate for the loss of the tree that is removed.
- f) All debris created as a result of any tree removal work shall be removed by the project applicant from the property within two weeks of debris creation, and such debris shall be properly disposed of by the project applicant in accordance with all applicable laws, ordinances, and regulations.

24. Erosion and Sedimentation Control Plan

Prior to any grading activities

- a) The project applicant shall obtain a grading permit if required by the Oakland Grading Regulations pursuant to Section 15.04.780 of the Oakland Municipal Code. The grading permit application shall include an erosion and sedimentation control plan. The erosion and sedimentation control plan shall include all necessary measures to be taken to prevent excessive stormwater runoff or carrying by stormwater runoff of solid materials on to lands of adjacent property owners, public streets, or to creeks as a result of conditions created by grading operations. The plan shall include, but not be limited to, such measures as short-term erosion control planting, waterproof slope covering, check dams, interceptor ditches, benches, storm drains, dissipation structures, diversion dikes, retarding berms and barriers, devices to trap, store and filter out sediment, and stormwater retention basins. Off-site work by the project applicant may be necessary. The project applicant shall obtain permission or easements necessary for off-site work. There shall be a clear notation that the plan is subject to changes as changing conditions occur. Calculations of anticipated stormwater runoff and sediment volumes shall be included, if required by the Director of Development or designee. The plan shall specify that, after construction is complete, the project applicant shall ensure that the storm drain system

shall be inspected and that the project applicant shall clear the system of any debris or sediment.

Ongoing throughout grading and construction activities

- b) The project applicant shall implement the approved erosion and sedimentation plan. No grading shall occur during the wet weather season (October 15 through April 15) unless specifically authorized in writing by the Building Services Division.

25. Soils Report

Required as part of the submittal of a Tentative Tract or Tentative Parcel Map.

A preliminary soils report for each construction site within the project area shall be required as part of this project. The soils reports shall be based, at least in part, on information obtained from on-site testing. Specifically the minimum contents of the report should include:

A. Logs of borings and/or profiles of test pits and trenches:

- a) The minimum number of borings acceptable, when not used in combination with test pits or trenches, shall be two (2), when in the opinion of the Soils Engineer such borings shall be sufficient to establish a soils profile suitable for the design of all the footings, foundations, and retaining structures.
- b) The depth of each boring shall be sufficient to provide adequate design criteria for all proposed structures.
- c) All boring logs shall be included in the soils report.

B. Test pits and trenches

- a) Test pits and trenches shall be of sufficient length and depth to establish a suitable soils profile for the design of all proposed structures.
- b) Soils profiles of all test pits and trenches shall be included in the soils report.

C. A plat shall be included which shows the relationship of all the borings, test pits, and trenches to the exterior boundary of the site. The plat shall also show the location of all proposed site improvements. All proposed improvements shall be labeled.

D. Copies of all data generated by the field and/or laboratory testing to determine allowable soil bearing pressures, sheer strength, active and passive pressures, maximum allowable slopes where applicable and any other information which may be required for the proper design of foundations, retaining walls, and other structures to be erected subsequent to or concurrent with work done under the grading permit.

E. Soils Report A written report shall be submitted which shall but is not limited to the following:

- a) Site description
- b) Local and site geology
- c) Review of previous field and laboratory investigations for the site
- d) Review of information on or in the vicinity of the site on file at the Information Counter, City of Oakland, Office of Planning and Building.

CONDITIONS OF APPROVAL

- e) Site stability shall be addressed with particular attention to existing conditions and proposed corrective attention to existing conditions and proposed corrective actions at locations where land stability problems exist.
 - f) Conclusions and recommendations for foundations and retaining structures, resistance to lateral loading, slopes, and specifications, for fills, and pavement design as required.
 - g) Conclusions and recommendations for temporary and permanent erosion control and drainage. If not provided in a separate report they shall be appended to the required soils report.
 - h) All other items which a Soils Engineer deems necessary.
 - i) The signature and registration number of the Civil Engineer preparing the report.
- F. The Director of Planning and Building may reject a report that she/he believes is not sufficient. The Director of Planning and Building may refuse to accept a soils report if the certification date of the responsible soils engineer on said document is more than three years old. In this instance , the Director may be require that the old soils report be recertified, that an addendum to the soils report be submitted, or that a new soils report be provided.

26. Other Materials Classified as Hazardous Waste

Prior to issuance of any demolition, grading or building permit

If other building materials or stored materials classified as hazardous waste by State or federal law is present, the project applicant shall submit written confirmation that all State and federal laws and regulations shall be followed when profiling, handling, treating, transporting and/or disposing of such materials.

27. Health and Safety Plan per Assessment

Prior to issuance of any demolition, grading or building permit

If the required lead-based paint/coatings, asbestos, or PCB assessment finds presence of such materials, the project applicant shall create and implement a health and safety plan to protect workers from risks associated with hazardous materials during demolition, renovation of affected structures, and transport and disposal.

28. Stormwater Pollution Prevention Plan (SWPPP)

Prior to and ongoing throughout demolition, grading, and/or construction activities

The project applicant must obtain coverage under the General Construction Activity Storm Water Permit (General Construction Permit) issued by the State Water Resources Control Board (SWRCB). The project applicant must file a notice of intent (NOI) with the SWRCB. The project applicant will be required to prepare a stormwater pollution prevention plan (SWPPP). At a minimum, the SWPPP shall include a description of construction materials, practices, and equipment storage and maintenance; a list of pollutants likely to contact stormwater; site-specific erosion and sedimentation control practices; a list of provisions to eliminate or reduce discharge of materials to stormwater; Best Management Practices (BMPs), and an inspection and monitoring program. Prior to the issuance of any construction-related permits, the project applicant shall submit a copy of the SWPPP and

evidence of approval of the SWPPP by the SWRCB to the Building Services Division. Implementation of the SWPPP shall start with the commencement of construction and continue through the completion of the project. After construction is completed, the project applicant shall submit a notice of termination to the SWRCB.

ADDITIONAL PROJECT SPECIFIC CONDITIONS

29. Window and Door Details

Prior to issuance of building permit

The applicant shall submit to the Planning and Zoning Division for review and approval, a window and door schedule, including manufacturer's cut-sheets, cross-sections and elevations, and final architectural details of all exterior window and door types including the storefront system and garage doors. Details shall show material, window/door operation/type, color, etc. As indicated fiber-glass or metal windows are approved for the project. All details shall be reviewed for approval by Planning Staff. Sliding windows are not proposed.

30. Exterior Materials Details.

Prior to issuance of building permit.

The applicant shall submit for review and approval of the Planning and Zoning Division, plans that show the details of the exterior of the building, including approved material, cementitious board and stucco, lighting fixtures, colors, non-corrosive railings, balcony details including details of the upper balcony termination in the courtyards, etc. These details shall include the labeling of all the materials and treatments proposed for the exterior on the building permit set of drawings. Colors shall match those provided on the materials and color board. The applicant shall also provide final samples including material and color of the proposed railing for review and approval by staff. All materials and treatments shall be of high quality that provides the building with significant visual interest. All material at ground level shall be made of durable material that can be maintained in an urban environment.

31. Bicycle Parking

Prior to the issuance of first certificate of occupancy

The applicant shall submit for review and approval of the Planning and Zoning Division, plans that show bicycle storage and parking facilities to accommodate at least 73 of long-term bicycle parking spaces 16 on public sidewalk, consistent with the City of Oakland Bicycle Master Plan (July 1999). The plans shall show the design and location of bicycle racks within the secure bicycle storage areas. The applicant shall pay for the cost and installation of any bicycle racks in the public right of way.

32. Encroachment Permit

Prior to issuance of any building permit

The applicant shall obtain any encroachment permits, privately constructed public improvements, waiver of damages or other approvals required by the Building Services Division, prior to grading permit and building permit issuance for location of any permanent or temporary elements located in the public right-of-way.

- 33. **Demolition Permit for Demolition of Historic Resource**
Concurrent Approval with Building Permit Application Approval
A demolition permit to demolish the historic resource, Courthouse Athletic Club, shall not be issued prior to building permit approval and commencement of the actual construction. Historic resource shall be protected during grading, review and approval of protection during grading by qualified Historic Architect.

- 34. **Landscape and Irrigation Plan**
Prior to Building Permit sign-off by Planning Staff
The applicant shall submit for review and approval by the Planning and Zoning Division, a detailed landscape and irrigation plan prepared by a licensed landscape architect. The plan shall include all plant materials including the specific common and botanical names of plant species (location, number and size at the time of planting), lighting, irrigation details, cut sheets for any pots, trellises, etc. Such plan shall show all landscaping on the site maintained by an automatic irrigation system or other comparable system. Fire and drought-resistant species are encouraged. All landscape plans shall be submitted with the building permit set of drawings.

- 35. **Landscaping Maintenance**
Ongoing
All landscaping areas related irrigation shown on the approved plans shall be permanently maintained in neat and safe conditions, and all plants shall be maintained in good growing condition and, whenever necessary, replaces with new plant materials to ensure continued compliance with all applicable landscaping requirements. All landscaping shall be served by an automatic irrigation system. All paving or other impervious surfaces shall occur only on approved areas.

- 36. **Installation of Landscaping and Bonding**
Prior to issuance of certificate of occupancy
The applicant shall install all proposed landscaping indicated on the approved landscape plan prior to the issuance of a certificate of occupancy, unless bonded pursuant to the provisions of Section 17.124.50 of the Oakland Planning Code. The amount of such bond or cash deposit shall equal 125% of the estimated cost of the required landscaping, based on a licensed contractor's bid, amount to be reviewed and approved by Development Director.

- 37. **Street Trees**
Prior to issuance of a building permit
The applicant shall provide street trees as shown on the approved plans and reviewed and approved by the City's Tree Supervisor with respect to species, size at time of planting, placement in the right-of-way, street tree grates, and tree protection.

- 38. **Meter Shielding/Rooftop Equipment/Utilities**
Prior to issuance of a building permit
The applicant shall submit for review and approval by the Planning and Zoning Division, plans showing the location of any and all utility meters, transformers and the

like located within a box set within the building, located on a non-street facing elevation or screened from view from any public right-of-way. All rooftop equipment/utilities shall be setback from building edges so as to be out of the line of site from the pedestrian level. All rooftop equipment/utilizes shall be screened, screening design to be reviewed and approved by Planning and Zoning staff.

39. **Parking Lot Lighting**

Prior to issuance of a building permit

The applicant shall submit a photometric study of the lighting of the parking lot, to be reviewed by Police to determine that lighting levels are sufficient to encourage Crime Prevention Through Environmental Design.

40. **Master Signage Plan**

Prior to issuance of a sign permit

The applicant shall submit a Master Signage Plan for review and approval by the Planning and Zoning Division, showing areas of all proposed signage and establishing parameters for each tenant signage. Other than a project identification sign, the only exterior sign permitted shall be for ground floor tenants.

41. **Visual Access**

Ongoing

The applicant shall keep first floor commercial windows clear of visual obstructions including, but not limited to signage beyond 10 percent window coverage, any advertising displays, chip/product racks, refrigerated equipment, cardboard, trash, wire mesh/security bars, reflective coatings, or other materials. The property shall maintain good site lines in and out of the spaces to allow police to monitor activity inside and to allow store staff to monitor and discourage inappropriate activity in front of the spaces.

42. **Tentative Parcel Map**

Prior to Issuance of building permit

An application for a Tentative Parcel Map and all applicable fees shall be submitted for review and approval by the Planning and Zoning Division and any other relevant City Departments to establish a condominium map on the projects site, pursuant to the Subdivision Map Act and the Oakland Subdivision Regulations.

43. **Financial Contribution to the Telegraph Avenue Façade Improvement Program**

Prior to issuance of a building permit

The project applicant shall fund the Redevelopment Agency's "Façade Improvement Program" to improve and rehabilitate potential designated historic commercial buildings, located in the Central/Chinatown area of Oakland in the amount of \$77,500.

44. **Driveway Agreement with Adjacent Neighbor at 535 30th Street**

Prior to issuance of a building permit

The applicant shall finalize an agreement with the adjacent neighbor/property owner at 535 30th Street to allocate the additional +/- 1.8' between the proposal's west property line and the wall of the new proposal for use by the neighbor, during her ownership of

her property, in order to accommodate a space that would allow an average size car and an adjacent access aisle. If no agreement is reached, the applicant shall grant an easement. The agreement/easement shall be submitted to the Planning Department for review and approval. The approved agreement/easement shall be recorded with the Alameda County Recorder's Office. Proof of recordation shall be submitted to the Project Planner and maintained with the project files.

45. **Compliance with Policy 3.7 of the Historic Preservation Element (Property Relocation Rather than Demolition) (This replaces Mitigation Measure A1.c) Prior to issuance of a demolition permit**

The project applicant shall make a good faith effort to relocate the building located at 2935 Telegraph Avenue to a site acceptable to the City. Good faith efforts include, at a minimum, the following:

- a) Advertising the availability of the building by: (1) posting of large visible signs (such as banners, at a minimum of 3'x6' size or larger) at the site; (2) placement of advertisements in Bay Area news media acceptable to the City ;and (3) contacting neighborhood associations and for-profit and not-for-profit housing and preservation organizations;
- b) Maintaining a log of all the good faith efforts and submitting that along with photos of the subject building showing the large signs (banners) to the Planning and Zoning Division;
- c) Maintaining the signs and advertising in place for a minimum of 90 days; and
- d) Making the building available at no or nominal cost (the amount to be reviewed by the Oakland Cultural Heritage Survey) until removal is necessary for construction of a replacement project, but in no case for less than a period of 90 days after such advertisement.

APPROVED BY:

City Planning Commission: August 1, 2007 (Vote: Yes – 3: Boxer, Colbruno, Lee. No – 1: Zayas-Mart. Abstain – 0.)

City Council: _____ (date) _____ (vote)

Applicant and/or Contractor Statement

I have read and accept responsibility for the Conditions of Approval, as approved by Planning Commission action on August 1, 2007. I agree to abide by and conform to these conditions, as well as to all provisions of the Oakland Zoning Code and Municipal Code pertaining to the project.

Signature of Owner/Applicant: _____

(date)

Signature of Contractor

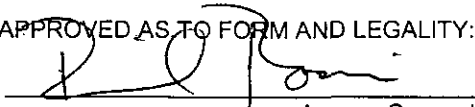
(date)

CONDITIONS OF APPROVAL

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 DEC -3 PM 5:12

APPROVED AS TO FORM AND LEGALITY:



Agency Counsel

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION No. _____ C.M.S.

AN AGENCY RESOLUTION ACCEPTING AND APPROPRIATING A \$77,500 PAYMENT FROM COURTHOUSE ASSOCIATES, LLC TO THE BROADWAY/MACARTHUR/SAN PABLO FAÇADE IMPROVEMENT PROGRAM

WHEREAS, on August 1, 2007, the Planning Commission approved a mixed-use development project at 2935 Telegraph Avenue in the Broadway/MacArthur/San Pablo Redevelopment Project Area; and

WHEREAS, the approved project requires the demolition of an historic structure, the former Courthouse Athletic Club building, and several Conditions of Approval and Mitigation Measures were required to be met before demolition or building permits would be granted for this project; and

WHEREAS, Condition of Approval #43 and Mitigation Measure A.1d is a "Financial Contribution to the Telegraph Avenue Façade Improvement Program"; and

WHEREAS, staff of the Community and Economic Development Agency has been implementing a Façade Improvement Program that provides incentives to business and property owners to rehabilitate their buildings along Telegraph Avenue and other commercial corridors in the Broadway/MacArthur/San Pablo Redevelopment Project Area; and

WHEREAS, a financial contribution toward this program will assist with the rehabilitation of buildings and the elimination of blight in the Broadway/MacArthur/San Pablo Project Area; and

WHEREAS, the Façade Improvement Program is consistent with and will further the purposes of the Broadway/MacArthur/San Pablo Redevelopment Plan and its Five Year Implementation Plan; and

WHEREAS, on September 25, 2009, the City of Oakland received a check from Courthouse Associates, LLC in the amount of \$77,500 for the Façade Improvement Program and the developer was issued a demolition permit; and

WHEREAS, Redevelopment Agency authorization is required to accept and appropriate a financial contribution; now therefore be it

RESOLVED: That the Agency hereby accepts and appropriates a \$77,500 payment from Courthouse Associates, LLC to the Broadway/MacArthur/San Pablo Façade Improvement Program (ORA Grant Fund 9213, Org. 88669, Project TBD) for the ongoing implementation of this program; and be it

FURTHER RESOLVED: That the Agency authorizes the Agency Administrator or his designee to make grants and negotiate and execute all grant contracts and design contracts under this Program within the budget available for these purposes without returning to the Agency, and to take other actions with respect to this Program and the grants consistent with this Resolution and its basic purposes.

IN AGENCY, OAKLAND, CALIFORNIA, _____, 2010

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, AND
CHAIRPERSON BRUNNER

NOES-

EXCUSED-

ABSTENTION-

ABSENT-

ATTEST: _____
LATONDA SIMMONS
Secretary of the Redevelopment Agency
of the City of Oakland, California