

CITY OF OAKLAND

AGENDA REPORT

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community & Economic Development Agency
DATE: July 17, 2007

RE: **A Public Hearing and Consideration of Adoption of a Resolution Denying the Appeal and Upholding the Planning Commission Approval for Construction of 32 Dwelling Units over ground floor commercial at 5300 San Pablo Avenue, Oakland (Case Number DV06-220 & TPM-9153)**

SUMMARY

On April 18, 2007, the Planning Commission approved a Design Review and Minor Variance to construct a mixed use development containing 32 dwelling units over ground floor commercial (DV06-220)(Project).

On April 30, 2007, Charles Porter filed an appeal of the Planning Commission's Approval of the Project to the City Council (Attachment A).

The appellant is arguing that a Major Conditional Use permit is required because it is not clear if the zoning boundary measurements are correct and that the Minor Variance for street side setback should not be granted because it conflicts with sightline requirements in Municipal Code Section 10.60.010, and that it would preclude landscaping along the 53rd Street side of the project. The appellant is also arguing against design aspects of the building that it should not be five stories tall and that the commercial space should be taller than approved and that more parking should be provided. In addition, the appellant is arguing that a full soils investigation should be done because the site may be contaminated.

The arguments raised by the appellant are summarized below along with staff's response to each argument. Staff believes that the findings made for approval of the project as outlined in the April 18, 2007 Planning Commission staff report (Exhibit A of the proposed resolution) clearly state the reasons why the project complies with the applicable regulations. Staff believes that the stated information in the appeal documents do not depict any instance of "error" or "abuse of discretion" by the Planning Commission, or where its decision is not supported by substantial evidence in the record. Therefore, staff recommends that the Council deny the appeal, thereby upholding the Planning Commission's decision to approve the project.

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FISCAL IMPACT

The project involves a private development and does not request or require public funds and has no direct fiscal impact on the City of Oakland. If constructed, the project would provide a positive fiscal impact through increased property taxes, utility user taxes and business license taxes, while at the same time increasing the level of municipal services that must be provided.

BACKGROUND

PROJECT DESCRIPTION

The proposal is to construct a new mixed use building containing 32 residential condominiums and a ground floor commercial space. The proposed building will contain a five story portion at the San Pablo Avenue frontage and the rear portion of the building will be a maximum of four stories (stepping down to three stories). The proposed building will contain a 1000 square foot plus ground floor commercial space and ground floor parking which will have access off of 53rd Street. The parking will be tucked behind the commercial storefront and will be screened along 53rd Street.

PROJECT LOCATION AND ZONING

The subject site is a 15,695 square foot site containing frontages on the east side of San Pablo Avenue and the north side of 53rd Street. The existing project site is completely vacant except for a small service station structure that was relocated to the subject property in the past. The surrounding uses include commercial and residential uses.

The subject property is located within the C-30, District Thoroughfare Commercial Zone, which is intended to create, preserve, and enhance areas with a wide range of retail establishments serving both short and long term needs in convenient locations, and is typically appropriate along major thoroughfares. The rear 28 feet of the subject property lies within the R-40 Zone. Pursuant to Planning Code Section 17.102.070, "the owner or developer of such lot, or of a portion or combination of such lot or lots, may at his or her option assume that all of the regulations applying in any zone covering fifty (50) percent or more of the lot area apply to the entire lot or lots. However, this option shall not apply unless the entire lot or all such lots or parcel of land could be included in such zone by shifting the affected zone boundary by not more than thirty (30) feet, as measured perpendicularly to said boundary at any point". Since the portion of the lot within the R-40 Zone only accounts for 28 feet of the rear of the lot, the R-40 zone may be eliminated from consideration and the entire lot may be reviewed as a C-30 zoned development site.

The C-30 Zone allows for a maximum density of one dwelling unit per 450 square feet of lot area. Given the lot size of 15,695, the maximum number of dwelling units permitted under the Planning Code would be 34. The proposed 32 units are within the allowed density of the C-30 Zone.

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The Community Commercial General Plan area allows a Floor Area Ratio (FAR) of 5.0 and a residential density of one dwelling unit per 261 square feet of lot area. The project site would allow a maximum density of 60 dwelling units. The proposed density of 32 dwelling units is also consistent with the General Plan density.

CEQA DETERMINATION

The Planning Commission confirmed the determination that the project is exempt from CEQA pursuant to Section 15332 of the CEQA Guidelines (In Fill Development Projects), and, as a separate and independent basis, is also exempt pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning).

Specifically, as a separate and independent basis from the other CEQA findings, pursuant to CEQA section 21083.3 and Guidelines section 15183, the City Council will also find that if it approves the project that: (a) the project is consistent with the Land Use and Transportation Element (LUTE) of the General Plan, for which an EIR was certified in March 1998; (b) feasible mitigation measures identified in the LUTE EIR were adopted and have been, or will be, undertaken; (c) the EIR evaluated impacts peculiar to the project and/or project site, as well as off-site and cumulative impacts; (d) uniformly applied development policies and/or standards (Standard Conditions of Approval) have previously been adopted and found to, when applied to future projects, substantially mitigate impacts. To the extent that no such findings were previously made, the City Council hereby finds and determines (in approving the project) that the Standard Conditions of Approval substantially mitigate environmental impacts; and (e) substantial new information does not exist to show that the Standard Conditions of Approval will not substantially mitigate the project and cumulative impacts.

PLANNING COMMISSION REVIEW

At the April 18, 2007 hearing, the Oakland Planning Commission took public testimony from various interested parties including the appellant, as well as others who were in support of the project. At the conclusion of the public hearing on the item the Commission voted unanimously to approve the project (+5,-0).

KEY ISSUES AND IMPACTS

The appellant's letter is included as Attachment "A" and described below. The basis for the appeal, as contained in the appeal letter, is shown in bold text. A staff response follows each point in italic type.

1. **The appellant alleges that the zoning boundary for the subject C-30 Zone was an assumption by Planning Staff, and that the actual zone boundary may be more than**

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thirty feet from the rear property line in which case the R-40 Regulations would apply.

The location of the zoning boundary was not an assumption. Its location was determined by review of the City of Oakland's GIS zoning maps, and has been confirmed by the older hard copy. In both instances the C-30 Zone boundary extends in 100 feet from the San Pablo frontage of the property, thus leaving 28 remaining feet of the 128 foot deep lot that is zoned R-40. Because of this the zone boundary line may be shifted and the entire parcel may be reviewed under the C-30 regulations, pursuant to Planning Code Section 17.102.070. The appellant has not provided any evidence to support his position.

- 2. The appellant argues that the Planning Commission should not have granted the street side setback variance for the proposed building because the proposed building would conflict with Section 10.60.010 of the Oakland Municipal Code that requires clear sightlines at intersections, and because the reduced setback will preclude any vegetation and plant that should be provided along 53rd Street which is a low scale residential area.**

The appellant's argument about the "sightline" requirement is incorrect. The municipal Code section that was referenced does not apply to permanent buildings¹, and does not preclude a structure being built out to a zero lot line at an intersection. Many buildings have been constructed in this manner, both in the past as well as today.

The argument that the reduced setback would not allow any landscaping along 53rd Street is incorrect. The right of way reserved for the sidewalk along 53rd Street is eight feet wide, which is wide enough to accommodate a pedestrian walk as well as street trees and landscape areas.

- 3. The appellant argues that the Planning Commission abused its discretion by approving a proposal that is five stories in height, and that the proposed building should be less because the other buildings at the intersection are not as tall.**

The San Pablo Avenue corridor is designated as a "Grow and Change" area under the General Plan, and the proposed project not only meets the intent of the General Plan, but is also consistent with the height limits set forth in the current zoning regulations (and thus no height variance is required). The proposed building would be five stories at San Pablo Avenue and step back from four to three stories at the rear portion of the building.

¹ Oakland Municipal Code Section 10.60.010B.

- 4. The appellant alleges that the Commission abused its discretion by approving a project with a commercial space of less than 12 feet in floor to ceiling height, thus dooming the commercial space to fail.**

The appellant is correct that the typical requested floor to ceiling height in mixed use developments is generally 12 to 15 feet in height. However, this is generally applied to areas that are core retail shopping areas that would typically house retail establishments that locate in close proximity to each other. The subject property is located off of two areas on San Pablo Avenue that contain a large number of storefronts, and the project site will most likely not contain a large retailer because of a lack of continuous storefronts adjacent to the site (the block to the south contains a wall of fences from rear yards and across the street is Emery High School). Planning staff had consulted with the retail experts in the Economic Development Division and concluded that a ten foot ceiling height would be adequate for the type of uses that would most likely occupy the proposed space, such as an office, personal service, or food sales, all of which would be geared toward serving local community needs.

- 5. The appellant alleges that the subject property needs to go through a soil investigation because of potential hazardous materials in the ground because the site was formerly a gas station.**

Planning staff has not found any records indicating that the subject property contains or potentially contains hazardous materials. The site was formerly used as a wrecking yard, but the property is not located on any lists kept by the State, County or the City of Oakland for properties containing hazardous materials that could potentially impede reuse of the property for the proposed activities. The State (Cal EPA) keeps a list of sites that contain or have contained Underground Storage Tanks (UST's) and the subject property is not on that list. Moreover, Standard Conditions of Approval (Nos. 30-37 relating to hazards and hazardous materials) imposed on the Project require various investigative reports and compliance with performance measures and applicable legal requirements, including remediation, if hazardous materials are discovered.

- 6. The appellant claims that the proposed building will have an impact on sunlight in the neighborhood due to its height at five stories.**

The appellant provided photos showing the sun blockage at 7PM. When staff reviews potential solar impacts related to design, mid-day is generally used to gauge impacts, and staff analyzes what measures should be taken to lessen an impact. Staff does not look to protect direct sunlight at sunset or late afternoon, as most new buildings, regardless of height, would block a sunset because the sun is low in the sky at that time of day.

- 7. The appellant claims that the Commission abused its discretion by approving a project that does not contain more off street parking.**

The proposed project meets the Planning Code requirement of one off street parking space per dwelling unit. Furthermore, the property is located on a major transportation corridor that contains an AC Transit Rapid bus line, and more improvements by AC Transit are in the planning process. The site is located on a portion of San Pablo Avenue which is designated as a Regional Transit Street and a Grow and Change Area. Regional Transit Streets are areas that are ideal for future light rail or electric trolley lines to connect to major activity centers in Oakland and connect the area with other neighboring cities, and contain a high rate of transit service that would ideally provide at least one bus every seven minutes. The Grow and Change designation is used where growth will be focused to lead Oakland into the next century. Correlated with transportation and infrastructure improvements, grow and change areas will emphasize significant changes in density, activity, or use, which are consistent with the land use diagram. The City of Oakland has a transit first policy, and given the project's location along a major transportation corridor, the required parking should not exceed the minimum amount required of one off street parking space per dwelling unit. The transit first policy has related policies that recommend the reduction of required off street parking in areas well served by public transit to encourage its usage, rather than increasing the amount of off street parking as recommended by the appellant.

SUSTAINABLE OPPORTUNITIES

Economic: The project will expand the available housing inventory in the City of Oakland.

Environmental: Developing in already developed urban environments reduce pressure to build on agricultural and other undeveloped land. Sites near mass transit enable residents to reduce dependency on automobiles and further reduce adverse environmental impacts.

Social Equity: The project benefits the community and improves social equity by providing additional available housing to the City of Oakland as well as additional temporary jobs during the construction of the project.

DISABILITY AND SENIOR CITIZEN ACCESS

The Building Division of the Community and Economic Development Agency will require that the project conform to the Americans with Disability Act in all provisions to ensure equal access to this facility.

STAFF RECOMMENDATION AND RATIONALE

Staff recommends that the City Council adopt the attached Resolution denying the appeal thereby upholding the Planning Commission's approval of the project for the following reasons: 1) The Planning Commission's decision was based on a thorough review of all pertinent aspects of the project and consideration of the objections raised by the appellant; 2) The project and the approval of the project comply in all significant respects with applicable general plan policies and zoning regulations and review procedures; 3) The appellant has failed to demonstrate that there was an error or abuse of discretion in the Planning Commission's decision or that the Planning Commission's decision is not supported by substantial evidence in the administrative record; and 4) the project meets the CEQA In-Fill exemption requirements and there are no exceptions that would defeat the use of the exemption, and, as a separate and independent basis also exempt pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning).

ALTERNATIVE CITY COUNCIL ACTIONS

The City Council has the option of taking one of the following alternative actions instead of the recommended action above:

1. Uphold the appeal and reverse the Planning Commission's decision thereby denying the project. This option would require the City Council to continue the item to a future hearing so that Staff can prepare and the Council has an opportunity to review the proposed findings and resolution for denial.
2. Uphold the Planning Commission's decision, but impose additional conditions on the project and/or modify the project.
3. Continue the item to a future hearing for further information or clarification.
4. Refer the matter back to the Planning Commission for further consideration on specific issues/concerns of the City Council. Under this option, the item would be forwarded back to the City Council with a recommendation after review by the Planning Commission.

ACTION REQUESTED OF THE CITY COUNCIL

1. Affirm the Planning Commission's environmental determination that the project is exempt from CEQA review pursuant to CEQA Guidelines sections 15332 (In-Fill exemption) and, as a separate an independent basis, 15183 (projects consistent with community plan, general plan, or zoning).

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2. Adopt the attached Resolution denying the appeal, and thereby upholding the Planning Commission's approval of the project.

Respectfully submitted,



CLAUDIA CAPPIO

Development Director

Community & Economic Development Agency

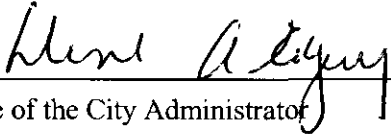
Prepared by:

Peterson Z. Vollmann, Planner III

Planning & Zoning

APPROVED AND FORWARDED

TO THE CITY COUNCIL:



Office of the City Administrator

ATTACHMENTS:

- A. Appellant's appeal application submitted April 30, 2007.

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July 17, 2007

ATTACHMENT A

City Council
1 Frank Ogawa Plaza,
Oakland, CA 94612
Subject: 5300 San Pablo Avenue
DV06220 & TMP 9153 Appeal

April 28, 2007

Dear Councilmembers:

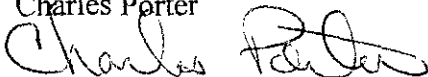
We are writing to you to formally appeal the April 18 decision of the Planning Commission concerning 5300 San Pablo Avenue. We feel that both Planning staff and the Planning Commission made errors and approved the project with grossly insufficient information. Additionally, we feel that Planning Staff and the Planning Commission refused to even consider some of the facts and questions raised by the surrounding neighbors and community and thus abused their discretion. The neighborhood believes that a Major Conditional Use Permit (CUP) is required resulting in additional limits and community dialog. If a Major CUP is required, many of the points considered, "by right" such as density, height, setback, are no longer automatic.

We hope that by appealing to you, that these issues will be addressed and our neighborhood will have a better development that can better "fit-in" the neighborhood with a viable commercial space.

If you have any questions, feel free to contact me.

Sincerely yours,

Charles Porter



Golden Gate Neighborhood Homeowners Association



CITY OF OAKLAND REQUEST FOR APPEAL OF DECISION TO PLANNING COMMISSION OR CITY COUNCIL

(REVISED 8/14/02)

PROJECT INFORMATION

Case No. of Appealed Project: 2406220

Project Address of Appealed Project: 5300 San Pablo Avenue

APPELLANT INFORMATION:

Printed Name: Charles Porter Phone Number: 510 547-2689

Mailing Address: 1079 53rd St Alternate Contact Number: 510 652-3978

City/Zip Code Oakland Ca 94608 Representing: Golden Gate Neighborhood Homeowners Assn

An appeal is hereby submitted on:

AN ADMINISTRATIVE DECISION (TO THE CITY PLANNING COMMISSION)

YOU MUST INDICATE ALL THAT APPLY:

- Approving an application for an Administrative Project
- Denying an application for an Administrative Project
- Administrative Determination or Interpretation by the Zoning Administrator
- Other (please specify) _____

Pursuant to the Oakland Municipal and Planning Codes listed below:

- Administrative Determination or Interpretation (OPC Sec. 17.132.020)
- Determination of General Plan Conformity (OPC Sec. 17.01.080)
- Design Review (OPC Sec. 17.136.080)
- Small Project Design Review (OPC Sec. 17.136.130)
- Minor Conditional Use Permit (OPC Sec. 17.134.060)
- Minor Variance (OPC Sec. 17.148.060)
- Tentative Parcel Map (OMC Section 16.304.100)
- Certain Environmental Determinations (OPC Sec. 17.158.220)
- Creek Protection Permit (OMC Sec. 13.16.450)
- Creek Determination (OMC Sec. 13.16.460)
- Hearing Officer's revocation/impose or amend conditions (OPC Secs. 15.152.150 & 15.156.160)
- Other (please specify) _____

A DECISION OF THE CITY PLANNING COMMISSION (TO THE CITY COUNCIL) Granting an application to: **OR** Denying an application to:

Downtown Development

(continued on reverse)

(Continued)

A DECISION OF THE CITY PLANNING COMMISSION (TO THE CITY COUNCIL)

YOU MUST INDICATE ALL THAT APPLY:

Pursuant to the Oakland Municipal and Planning Codes listed below:

- Major Conditional Use Permit (OPC Sec. 17.134.070)
- M.S.G.A. Major Variance (OPC Sec. 17.148.070)
- Design Review (OPC Sec. 17.136.090)
- Tentative Map (OMC Sec. 16.32.090)
- Planned Unit Development (OPC Sec. 17.140.070)
- Environmental Impact Report Certification (OPC Sec. 17.158.220F)
- Rezoning, Landmark Designation, Development Control Map, Law Change (OPC Sec. 17.144.070)
- Revocation/impose or amend conditions (OPC Sec. 17.152.160)
- Revocation of Deemed Approved Status (OPC Sec. 17.156.170)
- Other (please specify) _____

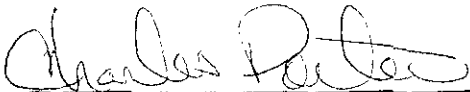
An appeal in accordance with the sections of the Oakland Municipal and Planning Codes listed above shall state specifically wherein it is claimed there was an error or abuse of discretion by the Zoning Administrator, other administrative decisionmaker or Commission (Advisory Agency) or wherein their/its decision is not supported by substantial evidence in the record, or in the case of Rezoning, Landmark Designation, Development Control Map, or Law Change by the Commission, shall state specifically wherein it is claimed the Commission erred in its decision.

You must raise each and every issue you wish to appeal on this Request for Appeal Form (or attached additional sheets). Failure to raise each and every issue you wish to challenge/appeal on this Request for Appeal Form (or attached additional sheets), and provide supporting documentation along with this Request for Appeal Form, may preclude you from raising such issues during your appeal and/or in court.

The appeal is based on the following: (Attach additional sheets as needed.)

See attached

Supporting Evidence or Documents Attached. (The appellant must submit all supporting evidence along with this Appeal Form.)



Signature of Appellant or Representative of
Appealing Organization

A-30-07

Date

Date/Time Received Stamp Below:

Below For Staff Use Only

Cashier's Receipt Stamp Below:

8/14/02

PTS100-01

UPDATE/QUERY PROJECT INFORMATION

4/30/07 13:32:42

Next Option: 101
Tract

Applic#* DV06220 Type: 1

Date Filed: 05/04/06 Complete By: 06/03/06 Disposition: GC GRANT/COND 04/18/07

NUMBER STREET NAME SUFFIX* SUITE ASSESSOR PARCEL#

Site addr: 1) 5300 SAN PABLO AV 013 -1186-013-03
2) 5310 SAN PABLO AV 013 -1186-013-02
3)

Zoning* C-30 R-40 GP Use 5CC Prcl Cond: X Cond Aprvl: Viol: X

Proj Descr: 32 unit multi-family development, minor variance for front yard setback.

Environ Rev: Exempt? (Y/N): Y Sect: 15332

EX ER Applic#:

Track:

Lic# Phone# Applicant

Owner: LOTTIE ROSE

(510)658-6509

Contractor:

Arch/Engr:

Agent: DOGTOWN DEVELOPMENT

(510)985-0764

X

Applicant Addr: 3294 LOUISE ST

No Fee:

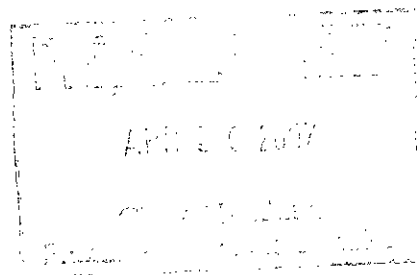
City/State: OAKLAND, CA

Zip: 94608

Other Related Applic#s: ZP050035 TPM9153

F3=Ext F5=Chg F6=Add F7=Fwd F8=Bck F11=Fnd F12=Prv F23=Dsc F24=Com

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City Council
1 Frank Ogawa Plaza,
Oakland, CA 94612
Subject: 5300 San Pablo Avenue
DV06220 & TMP 9153 Appeal

April 28, 2007

Dear Councilmembers:

We are writing to you to formally appeal the April 18 decision of the Planning Commission concerning 5300 San Pablo Avenue. We feel that both Planning staff and the Planning Commission made errors and approved the project with grossly insufficient information. Additionally, we feel that Planning Staff and the Planning Commission refused to even consider some of the facts and questions raised by the surrounding neighbors and community and thus abused their discretion. The neighborhood believes that a Major Conditional Use Permit (CUP) is required resulting in additional limits and community dialog. If a Major CUP is required, many of the points considered, "by right" such as density, height, setback, are no longer automatic.

We hope that by appealing to you, that these issues will be addressed and our neighborhood will have a better development that can better "fit-in" the neighborhood with a viable commercial space.

If you have any questions, feel free to contact me.

Sincerely yours,
Charles Porter

Golden Gate Neighborhood Homeowners Association

Errors or Abuse of Discretion by the Oakland Planning Department & Commission

Zoning Analysis (Dual Zoned Parcel-width of C-30 along San Pablo Avenue)

The Parcel is 128 feet deep from San Pablo Avenue and is zoned C-30 and R-30 along the rear of the lot. Oakland Municipal Code Section 17.102.070 allows the project to be designed only to C-30 standards, unless the R-40 portion of the parcel is 30 feet or wider. If the R-40 zone is 30 feet wide, the OMC requires a Major Conditional Use permit for the building. Planning staff assumes the C-30 zone is 100 feet wide. No research was done to find the ordinance that established the C-30 zone and its width along San Pablo Avenue. The Planning Commission approved the project with grossly insufficient information to make a finding that a Major Conditional Use Permit is not required.

Before this project moves forward someone must provide transparent documentation to prove that the staff analysis of the distance is accurate and the measurement from the rear of the property is in accordance with the ordinance creating the C-30 zoning. If the measurement is incorrect, all analysis and determinations of density allowed, amount of open space, etc. would have to be reevaluated and a major conditional permit would be required. This question is of paramount importance, and should be addressed immediately.

Recommendation: Provide transparent documentation that the distance of R-40 zone is less than 30 feet from rear property line.

Minor Setback Variance-Reducing the building setback along 53rd Street from 10 feet to zero feet

53rd Street is zoned R-40 and built-out with one and two-story single family dwellings. All of the homes, including the 3-story townhouses in Gateway Commons (at the San Pablo Avenue intersection) are setback from 5 feet to 15 feet. Maintaining a setback from the sidewalk for landscape screening is a critical design element to preserve the neighborhood's residential "corridor" character and to obscure the building mass for pedestrian traffic.

A setback will create a "sightline" safety zone at the project's driveway for vehicles exiting onto 53rd Street. Oakland Municipal Code Section 10.60.010 - Vision Obscurement at Intersections requires site-line setbacks at intersections for pedestrian and vehicle safety. For this reason, the existing cyclone fence surrounding the lot is angled-back at the corner.

Recommendation: The building must be setback.

Setbacks need to be made to the development to reflect neighborhood character and architecture, promote safety and livability. Trees and other plantings need to be on 53rd Street to reduce the harshness of the large-scale building. Residents of the project will enjoy open green space while residents of 53rd Street will simply have a wall. Currently, as approved, this project will have an overage of green space internally for its residents and the residents of 53rd Street will have a commercial building with nothing to take away the starkness of its size. The outside does nothing to enhance the larger neighborhood. This is the reason the minor variance zero setback should not be allowed.

Design Review—building height 5 stories

Two of the four corners of San Pablo Avenue intersections are built out (3 story Gateway Commons and Emeryville High School's athletic field). The proposed 5-story building will dwarf the adjoining townhouses and single-family residents. The building mass does not provide a stepped-down transition from the townhouses, athletic field, and the 1 story retail center at 54th Street. The building will literally "stick-out like a sore thumb".

Until the last two projects at 65th/San Pablo Avenue, maximum height along San Pablo Avenue is 4 stories. The townhouses across the street are only 3 stories tall. The project at 66th/San Pablo, with the last phase completed this year, are also 3 stories.

Recommendation: This project should be less than 5 stories.

Ceiling Height of Commercial Space

Developers, Planning staff, and the Planning Commission require a minimum ceiling height of 12 feet in commercial occupancies (15 feet or more is preferred) for all new mixed-used projects throughout Oakland and reflected in current demands for 15 feet or more ceilings in the adjacent Temescal area.

The California Building Code requires 8 feet clearance below all suspended obstructions (ventilation ducts, piping, fire sprinkler heads, etc.) for handicapped van access in the adjoining parking garage. The proposed ground-floor ceiling height for this project is too low, which will effectively prevent leasing space to viable commercial businesses. The Planning Commission approved the project with grossly insufficient consideration of these major design deficiencies. Staff is speculating at the growth of commercial activity in this area, and the requested change would reduce the amount of future potential residents.

C-30, District Thoroughfare Commercial Zone, "is intended to create, preserve, and enhance areas with a wide range of retail establishments serving both short and long term needs in convenient locations." This development is for all intensive purposes a residential development with a so-called commercial space built with limitations dooming it to fail as a commercial entity with little commercial appeal.

Recommendation: The ceiling height must be 12 feet, preferably higher.

Contaminated Soil-site formerly used as a gasoline station and wrecking yard

Until the 1960'ss, the site was used as a gasoline station, and subsequently used as an automobile wrecking yard until the 1970's. No records have been provided to confirm that the underground storage tanks (UST) were removed when the gasoline station was demolished. The developer has not provided (and Planning staff has not required) a preliminary soil investigation to determine whether or not subsurface petrochemical and hydrocarbon contamination is present. Oakland Municipal Code 16.04.030 requires that a Tentative Map be denied if corrosive or other detrimental soil conditions are present. The Planning Commission approved the project with grossly insufficient information and without making a finding for this life-safety issue.

Recommendation: A soil investigation must be completed.

Neighborhood Characteristics & Impact

Solar Access (Sunlight)

Calculations of how many hours of sunlight might be lost with the addition of a 5 story building next to a single story residence were asked for during the planning commission meeting. Staff incorrectly answered that the direction of the setting sun did not play a part of this project. However, directionally, any property adjacent will have an extreme impact cutting more than 2 hours of sun. We believe that this should be properly addressed. See Figures 1 and 2.

Recommendation: Lower height and step-backs that will allow better solar access.

Parking

Current conditions are such that there is limited parking. Many residences already do not have off-street parking. The proposed development not only does not adequately address its own parking needs but it will impact existing conditions by taking away existing parking spaces. 53rd Street is a signalized intersection (Emeryville High School is on the west side of San Pablo Avenue) and is a heavily used by both vehicles and pedestrians. 53rd Street is narrow (29 feet curb-to-curb with 5 feet sidewalks). See Figure 3.

Recommendation: More off-street parking should be provided.

Process Concerns:

Emeryville versus Oakland-building of Gateway Commons was a multi-year process involving multiple community meetings. Resulting development reflected the goals and the look of the surrounding neighborhood. All aspects of this development were addressed in a collaborative nature from beginning to end. *Although some commissioners felt Gateway Commons not appealing and ugly, it won national acclaim and has been highly received by the neighborhood.*

Attitude:

Commissioners comments inaccurately characterized the nature of San Pablo towards (height, crime, deservedness/worthiness of commercial growth, and ugliness of certain buildings). This attitude made those attending residents feel as though they live in a very 'seedy' area. The joking atmosphere tied together with the failure to mention some of the points made in residents' testimony and submitted materials showed they were not paying attention and didn't address the issues at hand. The decision was made without proper attention to duty. Commissioners voiced that the best the San Pablo area could expect would be office space, nail shops and things of that nature.

The Planning Commission approved the project with grossly insufficient consideration of these major deficiencies.



Figure 1-53rd Street facing west; 4-28-07 6:00 PM

This picture shows a setting sun at 7:00P.M (notice relative size of telephone pole and tree.) Addition of project will especially impact these two residences with regards to solar access and privacy.



Figure 2: Satellite picture of 53rd Street and San Pablo showing early afternoon solar shadows.



Figure 3-53rd Street facing west; 4-28-07 6:00 PM. These pictures shows evening parking situation.
(Top picture shows facing west, bottom picture shows facing east of San Pablo Avenue)

ATTACHMENT
DOCUMENTS SUBMITTED TO PLANNING COMMISSION

Oakland Planning Commission

5300 San Pablo Avenue

DV 06220 & TMP 9153

Zoning Analysis – page 4

The parcel is zoned both C-30 and R-40. The staff report incorrectly states that the R-40 zone may be eliminated from consideration because it only accounts for 26 feet of the rear of the lot. Because the depth of the of the C-30 zone is not defined by a City ordinance, this dimension was determined by scaling from an imprecise zoning map. The adjacent lots on 53rd Street are zoned R-40 and are 37.5 ft. wide. Logically the R-40 portion of 5300 would be 37.5 ft. Consequently, the planning Commission must make the finding that the project must conform to R-40 major conditional use permit requirements.

Design – page 5

The condition of approval offered by staff that will allow a reduction of ceiling height from 12' to 9'6" to 10' in the commercial space should not be granted. Staff is speculating at the growth of commercial activity in this area, and the requested change would reduce the amount of future potential tenants.

Environmental Determination – page 6

- 4) The traffic analysis only studied the traffic signal delays at the 53rd and San Pablo intersection. 53rd Street is only 29 feet wide from curb to curb (36 feet is the standard minimum street width). The driveway for the existing townhouses across the street will be directly in front of the new driveway. Only 32 parking spaces will be provided for 32 residential units. Both parking and traffic impacts on the neighborhood should be examined.

Findings For Approval – page 8

The Planning Commission must deny the project as proposed because the following **Design Review** findings cannot be made:

- A. The proposed design is **not** well related to the surrounding area. The project will be 5 stories tall. The townhouses across the street are only 3 stories tall, and the few tall residential/commercial buildings are 4 stories tall.
- B. The proposed design will **not** enhance desirable neighborhood characteristics. The houses behind this project are single story homes. This proposed high density condominium project might be more suitable on the west side of San Pablo Avenue between Alcatraz and 66th Street. Previously a mix of light industrial and residential, this becomes a more suitable place for these towering projects as it affects fewer homes.
- E. The proposed design does **not** conform in all significant respects with the Oakland Comprehensive Plan. A similar high-density project was originally proposed across the street for the townhouse project that is half in Oakland. It was **not** built because the Emeryville Planning Commission made the correct determination.

Oakland Planning Commission

**5300 San Pablo Avenue
DV 06220 & TPM 9153**

(Page 2)

The Planning Commission must deny the project as proposed because the following **Minor Variance** findings cannot be made:

- A.** The street side setback should **not** be waived. The Oakland Traffic Code requires site-line Setback at intersection for pedestrian and vehicle safety (Municipal Chapter 10.60 – Vision Obscurement At Intersection). The existing cyclone fence surrounding the lot is angled-back at the corner, and the townhouse on the opposite corner is also setback. For safety, the proposed building must be similarly setback. There is also the soothing effect that small trees and climbing vines can have adjacent to very tall buildings. It can remove the feelings of enormity, and is far better than just a wall.

- C.** The variance **will** adversely affect the character and livability of the abutting properties. **All** other residential buildings in the area , including the townhouses across the street, are setback from the sidewalk. There is also the soothing effect that small trees and climbing vines can have on pedestrians when passing tall buildings. It can remove the feelings of enormity, and is far better than a wall.

Slideshow

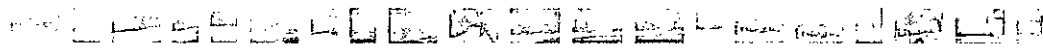
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Residential homes behind the proposed site.
Charles, 4/18/07

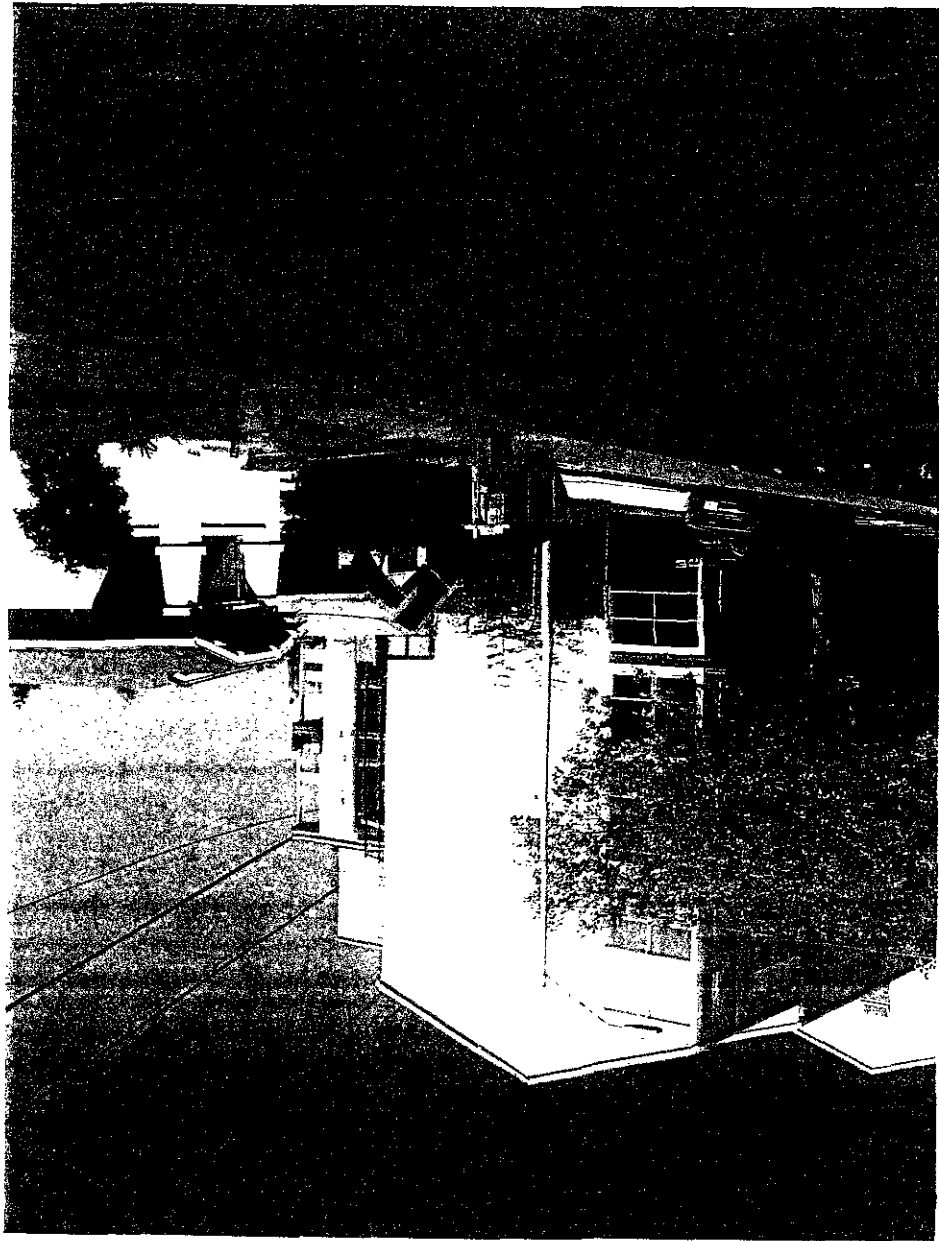
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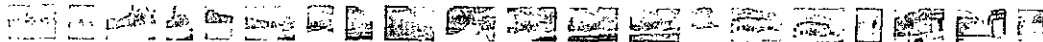
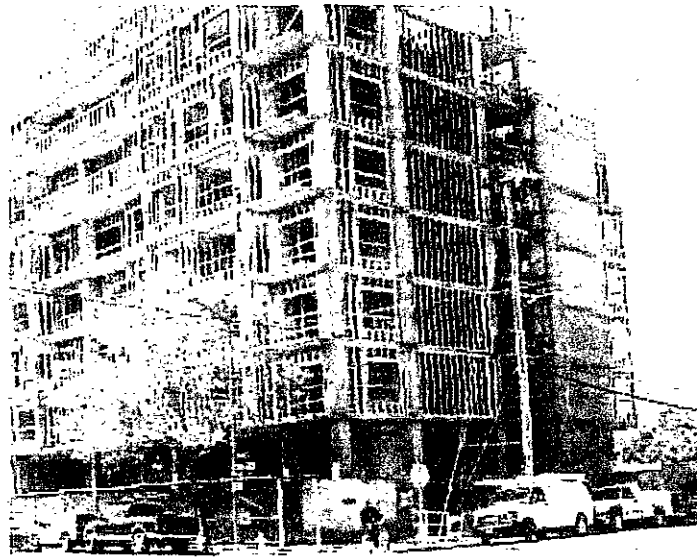
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Comments (1)

THIS TYPE OF HIGH RISE IS NOT COMPATIBLE WITH SINGLE STORY RESIDENTS.

Charles, 4/18/07

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OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER _____

Mark P. Ward

**RESOLUTION DENYING THE APPEAL AND UPHOLDING THE
PLANNING COMMISSION'S APPROVAL OF 32 RESIDENTIAL
CONDOMINIUMS OVER GROUND FLOOR COMMERCIAL AT 5300
SAN PABLO AVENUE, OAKLAND (CASE FILE NUMBER DV06-220
& TPM-9153)**

WHEREAS, the project applicant, Dogtown Development, filed an application on May 4, 2006, to construct a mixed use project containing 32 residential units and less than 3,000 square feet of commercial space at 5300 San Pablo Avenue (Case File No. DV06-220 and TPM-9153) (Project); and

WHEREAS, the Design Review Committee of the Planning Commission considered the design review aspects of the Project at a duly noticed public meeting on February 28, 2007; and

WHEREAS, the City Planning Commission took testimony and considered the project at its duly noticed public meeting of April 18, 2007. At the conclusion of the public hearing, the Commission deliberated the matter and voted (5-0-0) to approve the Project; and

WHEREAS on April 30, 2007, an appeal of the Planning Commission's approval and a statement setting forth the basis of the appeal was filed by Charles Porter; and

WHEREAS, after giving due notice to the Appellant, the Applicant, all interested parties and the public, the Appeal came before the City Council for a public hearing on July 17, 2007; and

WHEREAS, the Appellant, the Applicant, supporters of the application, those opposed to the application and interested neutral parties were given ample opportunity to participate in the public hearing by submittal of oral and/or written comments; and

WHEREAS, the public hearing on the Appeal was closed by the City Council on July 17, 2007;

Now, Therefore, Be It

RESOLVED: That, the City Council, having heard, considered and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Application, the Planning Commission's decision, and the Appeal, finds that the Appellants have **not** shown, by reliance on evidence already contained in the record before the City Council that the Planning Commission's Decision of April 18, 2007 was made in error, that there was an abuse of discretion by the Planning Commission or that the Commission's decision was not supported by substantial evidence in the record based on the April 18, 2007 Staff Report to the City Planning Commission (attached as Exhibit "A") and the July 17, 2007 City Council Agenda Report (attached as Exhibit "B"), hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeals are denied, the Planning Commission's approval is upheld, subject to the findings contained in Exhibits "A" and "B", each of which is hereby separately and independently adopted by this Council in full; and be it

FURTHER RESOLVED: That, in support of the Planning Commission's decision to approve the Project, the City Council affirms and adopts (i) the April 18, 2007 Staff Report to the City Planning Commission (including without limitation the discussion, findings, conclusions and conditions of approval (each of which is hereby separately and independently adopted by this Council in full)), attached as Exhibit "A"; and (ii) the July 17, 2007 City Council Agenda Report, attached hereto as Exhibit "B" (including without limitation the discussion, findings, and conclusions (each of which is hereby separately and independently adopted by this Council in full)); except where otherwise expressly stated in this Resolution; and be it

FURTHER RESOLVED: That, the City Council finds and determines that this Resolution complies with CEQA and the Environmental Review Officer is directed to cause to be filed a Notice of Exemption with the appropriate agencies; and be it

FURTHER RESOLVED: That, the record before this Council relating to this application and appeal includes, without limitation, the following:

1. the application, including all accompanying maps and papers;
2. all plans submitted by the Applicant and his representatives;
3. the notice of appeal and all accompanying statements and materials;
4. all final staff reports, final decision letters and other final documentation and information produced by or on behalf of the City, including without limitation and all related/supporting final materials, and all final notices relating to the application and attendant hearings;

5. all oral and written evidence received by the City Planning Commission and City Council during the public hearings on the appeals; and all written evidence received by relevant City Staff before and during the public hearings on the application and appeal;

6. all matters of common knowledge and all official enactments and acts of the City, including, without limitation (a) the General Plan; (b) Oakland Municipal Code (c) Oakland Planning Code; (d) other applicable City policies and regulations; and, (e) all applicable state and federal laws, rules and regulations; and be it

FURTHER RESOLVED: That, the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Community & Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, 2nd Floor, Oakland CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, CA; and be it

FURTHER RESOLVED: That, the recitals contained in this Resolution are true and correct and are an integral part of the City Council's decision.

In Council, Oakland, California, _____, 2007

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, KERNIGHAN, AND
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California

Exhibit A

[April 18, 2007 Planning Commission Staff Report]

Location:	5300 San Pablo Avenue (See map on reverse)
Assessors Parcel Number:	013-1186-013-02 & -013-03
Proposal:	New Construction of 32 residential condominium units over ground floor commercial.
Applicant:	Dogtown Development Co, LLC/ Kathy Kuhner (510)428-1714
Owner:	53 rd Street of San Pablo, LLC
Planning Permits Required:	Major Design Review for building in excess of 25,000 square feet, Minor Variance to encroach into the required street side setback (10'0" required; 0'0" proposed) and Tentative Parcel Map for new condominiums.
General Plan:	Community Commercial
Zoning:	C-30, District Thoroughfare Commercial Zone
Environmental Determination:	Exempt, Section 15332 of the State CEQA Guidelines; in fill development projects. Exempt, Section 15183 of the CEQA Guidelines; projects that conform to the General Plan.
Historic Status:	Vacant Lot
Service Delivery District:	2
City Council District:	1
Date Filed:	5/4/06
Action to be Taken:	Decision on Application
Staff Recommendation:	Decision on application based on staff report.
Finality of Decision:	Appealable to City Council
For Further Information:	Contact case planner Peterson Z. Vollmann at 510-238-6167 or by e-mail at pvollman@oaklandnet.com .

PROJECT DESCRIPTION

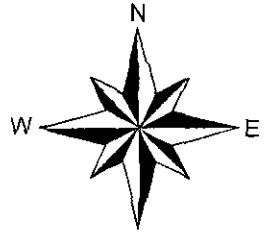
The proposal is to construct a new mixed use building containing 32 residential condominiums and a ground floor commercial space. The proposed building will contain a five story portion at the San Pablo Avenue frontage and the rear portion of the building will max out at four stories. The proposed building will contain a 1000 square foot plus ground floor commercial space and ground floor parking which will have access off of 53rd Street. The parking will be tucked behind the commercial storefront and will be screened along 53rd Street. The building will contain a large central open space between the upper portions of the building that will open onto 53rd Street to take advantage of the full southern exposure. This project had previously gone before the Design Review Committee on February 28th, 2007. The applicant's response to comments from that meeting will be outlined in the Design Review portion of this report.

Exhibit A

CITY OF OAKLAND PLANNING COMMISSION



Case File: CMD03-414 & TPM-9153
Applicant: Dogtown Development
Address: 5300 San Pablo Ave
Zone: C-30



PROPERTY DESCRIPTION

The subject site is a 15,695 square foot site containing frontages on the east side of San Pablo Avenue and the north side of 53rd Street. The existing project site is completely vacant except for a small service station structure that was relocated to the subject property in the past. The surrounding uses include commercial and residential uses.

GENERAL PLAN ANALYSIS

The subject property is located within the Community Commercial General Plan Land Use Classification. This land use classification is intended to 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 and centers. The Community Commercial districts may include Neighborhood Center uses and larger scale retail and commercial uses, such as auto related businesses, business and personal services, health services and medical uses, educational facilities, and entertainment uses. The Community Commercial General Plan area allows an FAR of 5.0 and a residential density of one dwelling unit per 261 square feet of lot area. The project site would allow a maximum density of 60 dwelling units. The proposed density of 32 dwelling units is consistent with the General Plan density.

The proposed development is consistent with the General Plan by filling in a large vacant lot with a new mixed use development that provides a residential density to support activities along the corridor as well as creating an active ground floor with the proposed commercial space. The primary concern with the proposed project from a land use standpoint has been the overall lack of any commercial activity at the ground floor. While the applicant has provided 1,095 square feet of ground floor commercial space, staff has concerns with the potential lack of floor to ceiling height for the space. Staff has included a condition of approval (#53) that will require an absolute minimum finished floor to ceiling height of 9'6" to 10'0" (which would include the finished ceiling of any drop ceiling if required). Staff is allowing the ceiling height to be below the normally desired 12'0" height because of the building's location off of the main stretch of commercial spaces in Emeryville to the south and concentration of shops on San Pablo in Oakland to the north, because this space will most likely accommodate a local office use or small scale neighborhood serving convenience service, which do not typically need the increased ceiling heights to make the space viable. In addition, the proposed building as proposed would be constructed with four stories of wood frame over a concrete podium. This construction type limits the height of a building to no more than 50 feet above grade. The applicant has made a concerted effort to not create a very large building at this site and has not asked for any exceptions to exceed the base zone density and develop to the much higher allowed density under the General Plan.

ZONING ANALYSIS

The subject property is located within the C-30, District Thoroughfare Commercial Zone, which is intended to create, preserve, and enhance areas with a wide range of retail establishments

servicing both short and long term needs in convenient locations, and is typically appropriate along major thoroughfares. The rear 26 feet of the subject property lies within the R-40 Zone, however, pursuant to Planning Code Section 17.102.070, the owner or developer of such lot, or of a portion or combination of such lot or lots, may at his or her option assume that all of the regulations applying in any zone covering fifty (50) percent or more of the lot area apply to the entire lot or lots. However, this option shall not apply unless the entire lot or all such lots or parcel of land could be included in such zone by shifting the affected zone boundary by not more than thirty (30) feet, as measured perpendicularly to said boundary at any point. Since the portion of the lot within the R-40 Zone only accounts for 26 feet of the rear of the lot the R-40 zone may be eliminated from consideration and the entire lot may be reviewed as a C-30 Zoned development site.

Allowed Density

The C-30 Zone allows for a maximum density of one dwelling unit per 450 square feet of lot area. Given the lot size of 15,695, the maximum number of dwelling units permitted under the Planning Code would be 34. The proposed project is within the allowed density of the C-30 Zone.

Open Space

The C-30 zone requires open space for dwelling units at a rate of 150 square feet per dwelling. Group open space may be substituted at a 2:1 ratio with private open space. The total open space requirement for the proposed 32 dwelling units is 4,800 square feet. The proposed units will all contain private open space which meets the requirements to fulfill the open space requirement at the 2:1 ratio (approximately 4000 square feet of private open space). In addition to the private open space, group open space is still required even with the full substitution with private open space at a rate of 30 square feet per unit, for a total of 960 square feet. The project proposes a large central group open space area in the amount of 2,700 square feet, thus meeting the open space requirement for the project.

Setback Variance

The subject property is adjacent to a key lot located within the R-40 Zone. Per the Planning Code a street side setback equal to half of the required front setback of the key lot is required. In this case the required front setback in the R-40 Zone is 20 feet, thus a 10 foot street side setback is required. It has been the general practice to grant a reduction to the required street side setback for properties that contain frontage on a commercial corridor so that the façade at the corner may be filled out and meet the street with ground floor commercial activities and a prominent architectural corner feature to fill out the intersection.

KEY ISSUES

Design

The proposed building is a modern design which main architectural features are provided by a natural wood screening that wraps the balcony and large window recesses on the buildings main façade along San Pablo Avenue. The design is a minimalist approach with a stucco façade that contains many straight lines and edges that are contrasted by the warm appearance of the natural wood (Condition of Approval #17 – relates to the maintenance of this proposed exterior wood). The base of the building contains a curved glass wall that will contain commercial space at the corner and screen the parking garage behind, and eventually connect to the residential entry lobby. The 53rd Street elevation contains a large visual break in the building for the courtyard open space that is flanked by the San Pablo Avenue wing that is five stories and the rear wing that is reduced to four stories.

The proposed project had gone before the Design Review Committee on February 28, 2007. At the meeting several design changes were recommended by staff and the Commissioners present at the meeting. At the meeting the following recommendations were made:

- Street Level Elevations – The building as proposed included a wavy concrete wall that would have been back lit from the interior garage, with a small commercial space at the corner. Staff had recommended that the commercial space at the ground floor be increased and emphasized as a more important element of the project. In response the applicant expanded the amount of square footage at the ground floor and changed the concrete wall to a glass wall. Staff feels that this is an acceptable modification, but is adding a condition of approval that will require an absolute minimum finished floor to ceiling height of 9'6" to 10'0". Staff is accepting the lower ceiling height that the usual recommended 12'0" because of the improvements and cost of materials put into the proposed ground floor façade, as well as the fact that the proposed building is off of the main stretch of two retail corridors and will most likely only be accommodating an office space or other very small local serving use, so that the higher ceiling is not necessarily mandated at this location.
- Upper Level Façade – At the Design Review Committee meeting the applicant had been requested to make modifications to the upper level of the San Pablo Avenue façade so that the top of the building would be better differentiated from the lower portion. Recommendations were made that included adding a cornice line, larger amounts of glazing, and differentiation in the color. The applicant has revised the upper portion of the building by stepping the top two stories back from the front façade of the building and using a different color than the lower portion of the building.
- Rear Façade – At the Design Review Committee meeting comments were made requesting that the applicant look into altering the rear elevation of the building at the upper levels to address comments made by the public about design compatibility with the adjacent lower scale buildings, such as adding pitched roofs at the rear, similar to the project constructed across 53rd Street. The applicant has opted not to accommodate this

request because of concerns of creating a design element that is not contextual with the entirety of the building design that has been chosen.

ENVIRONMENTAL DETERMINATION

For purposes of environmental review under the California Environmental Quality Act (CEQA), the project meets the criteria for a Categorical Exemption under Section 15332 of the CEQA Guidelines. The project also complies with Section 15183, of the CEQA Guidelines for projects that are consistent with the General Plan or Zoning. The criteria for a Categorical Exemption under Section 15332 of the CEQA guidelines are as follows:

- 1) The project is consistent with the applicable general plan designation and all general plan policies as well as with applicable zoning designation and regulations.**

The proposed project is consistent with the Community Commercial General Plan designation by creating a mixed use development that contains ground floor commercial activities with dense residential use above, and by meeting the required findings for the setback variances would meet the zoning regulations.

- 2) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.**

The development site is located within the Oakland City limits, is less than five acres and is completely surrounded by urban uses.

- 3) The project site has no value as habitat for endangered, rare, or threatened species.**

The project site has been previously developed and does not contain any habitat for endangered, rare, or threatened species.

- 4) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.**

The proposed project underwent a traffic analysis by a qualified traffic consultant, which regularly works with the City of Oakland. Often projects of this size do not warrant a traffic study, but due to concerns over the capacity of the intersection and the narrow nature of 53rd Street, staff requested a traffic study with a focus on the intersection at 53rd Street and San Pablo Avenue to determine whether or not retiming of the signal or any other mitigations would be necessary. The traffic study concluded that the trip generation from the proposed project would not decrease the existing level of service (LOS) of B, which is defined as a short traffic delay between 10 and 20 seconds. With implementation of standard conditions of approval related to construction management and noise reduction measures, the project would not result in any significant impacts on traffic, noise, air quality, or water quality.

5) The site can be adequately served by all required utilities and public services.

All required utilities are readily accessible on the surrounding streets, and the site will be adequately served by public services in the area.

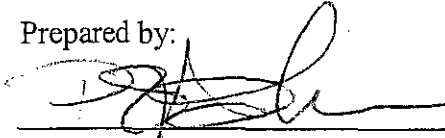
CONCLUSION

Staff feels that the proposed project is a good reuse of the vacant lot by providing an in-fill housing opportunity and ground floor commercial to an area readily accessible to public transit. The proposed project will enhance the successful operation of the corridor and not create any significant negative impacts onto surrounding properties.

RECOMMENDATIONS:

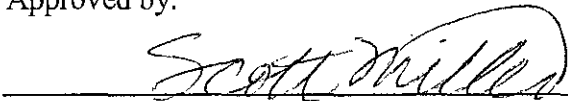
1. Affirm staff's environmental determination.
2. Approve the Major Design Review, and Minor Variance and Tentative Parcel Map subject to the attached findings and conditions.

Prepared by:



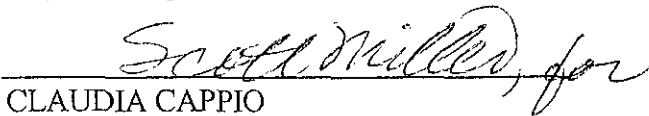
PETERSON Z. VOLLMANN
Planner III

Approved by:



SCOTT MILLER
Zoning Manager

Approved for forwarding to the
City Planning Commission:



CLAUDIA CAPPIO
Director of Development

ATTACHMENTS:

- A. Project Plans
- B. Findings for Approval
- C. Conditions of Approval

ATTACHMENT B

FINDINGS FOR APPROVAL

This proposal meets the required findings under Sections 17.136.070A (Residential Design Review Criteria) and 17.148.050 (Variance Criteria) of the Oakland Planning Code. This proposal does not contain characteristics that require denial pursuant to the Tentative Map Findings (Section 16.08.030) and meets the Lot Design Standards (Section 16.24.040) of the Oakland Subdivision Regulations. Required findings are shown below in **bold** type; explanations as to why these findings can be made are in normal type.

17.136.070A - DESIGN REVIEW CRITERIA:

- A. 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 proposed project will contain a mixed use structure containing ground floor commercial with 32 dwelling units above. The project site is located on San Pablo Avenue, which is a major transportation corridor and thoroughfare for the City of Oakland as well as the East Bay, and is designated as an area slated for growth and change under the General Plan. The General Plan vision for San Pablo Avenue is for a mixed use corridor with local and city wide serving commercial uses with high density housing above. The subject building is one of many larger buildings that are anticipated for the San Pablo Avenue corridor. The proposed design will use a cement plaster (stucco) exterior above the ground floor, which is seen in other buildings in the surrounding area. The upper level recesses of the building will be accented with a ipe wood screening (which is a highly durable wood material) to add visual interest and warmth to the building. The ground floor will contain a high amount of glazing to set the table for future ground floor commercial development.

- B. The proposed design will protect, preserve, or enhance desirable neighborhood characteristics.**

The proposed design will enhance the neighborhood character by filling in an existing underutilized lot with a new mixed use development that incorporates high density housing above ground floor commercial on a transit corridor. The use of high quality exterior materials at the ground floor will provide a strong example for future developments along the corridor.

- C. The proposed design will be sensitive to the topography and landscape.**

The subject area is flat.

- D. If situated on a hill, the design and massing of the proposed building relates to the grade of the hill.**

Not situated on a hill.

- E. 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 construction of a mixed use development containing 32 residential dwelling units over a ground floor commercial space is consistent with the vision of the General Plan Community Commercial designation, to add commercial activities and high density residential uses along the San Pablo corridor.

SECTION 17.148.050(a) - MINOR VARIANCE FINDINGS:

- A. That strict compliance with the specified regulation 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; or as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution improving livability, operational efficiency, or appearance.**

Strict compliance with the street side setback requirement would require that the building be stepped away from the corner at San Pablo Avenue and 53rd Street, which would create a non-desirable urban design. The granting of the variance is an effective design solution that improves the appearance of the building by allowing the structure to anchor the corner at the intersection.

- B. That strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation.**

The basic intent of the street side setback is to transition a buildings side yard setback to the front yard setback of the adjacent key lot. In the case of the subject property, the building would be located at a corner along a major corridor and the preferred design alternative is to contain a building that fully projects out to the corner to anchor the intersection. In addition, the adjacent key lot does not contain the required R-40 front setback of twenty feet, so the ten foot setback would not accommodate the intent of the regulation but would rather lead to lesser preferred design along the major corridor.

- C. 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.**

The granting of the reduced street side setback would not adversely affect the character, livability, or appropriate development of abutting properties, as the preferred design alternative for buildings that front onto major commercial corridors is to contain a strong corner element that is built out to the lot lines. The adjacent properties along 53rd Street do not contain the R-40 front setback requirement of twenty feet and the reduced street side setback would not adversely affect the character of the block.

- D. 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.**

The granting of the variance would not constitute a grant of special privilege, as minor variances are generally granted when proved to create a better design solution that does not defeat the intent of the applicable Code regulation, and limits impacts onto neighboring properties.

16.08.030 - TENTATIVE MAP FINDINGS (Pursuant also to California Government Code §66474 (Chapter 4, Subdivision Map Act))

The Advisory Agency shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, if it makes any of the following findings:

- A. That the proposed map is not consistent with applicable general and specific plans as specified in the State Government Code Section 65451.**

The proposal is consistent with the Community Commercial General Plan designation by creating 32 housing units and ground floor commercial on a transit corridor.

- B. That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.**

The proposal is consistent with the Community Commercial General Plan designation by creating 32 housing units and ground floor commercial on a transit corridor.

- C. That the site is not physically suitable for the type of development.**

The site is suitable for the proposed 32 units as it is located close to public utilities, transit, and contains ample open space and parking.

- D. That the site is not physically suitable for the proposed density of development.**

The proposed density is consistent with the General Plan density envisioned for the area.

- E. That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.**

This site has been previously developed and does not contain any wildlife habitat or waterways.

- F. That the design of the subdivision or type of improvements is likely to cause serious public health problems.**

There should be no adverse health effects. This is in a residential and commercial development located in an existing neighborhood and it will introduce no new use classifications that are incompatible with the surrounding neighborhood.

- G. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. (This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.)**

There are no easements on this property at present to allow the public access to anything.

- H. That the design of the subdivision does not provide to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision**

The project is specifically designed to be set up for solar panels on the rooftops.

SECTION 16.24.040 – LOT DESIGN STANDARDS

This is not applicable as the proposal will merge the existing lots for a one lot subdivision for condominiums.

ATTACHMENT C

CONDITIONS OF APPROVAL

STANDARD CONDITIONS:

1. Approved Use

a. Ongoing

- i. The project shall be constructed and operated in accordance with the authorized use as described in the application materials, letter and/or staff report, and the plans dated **March 24, 2007** and submitted on **March 26, 2007**, 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.
- ii. This action by the **City Planning Commission** ("this Approval") includes the approvals set forth below. This Approval includes: **Design Review, Minor Variances, and Tentative Parcel Map**

2. Effective Date, Expiration, Extensions and Extinguishment

a. Ongoing

Unless a different termination date is prescribed, this Approval shall expire **April 18, 2009** unless within such period all necessary permits for construction or alteration, 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.

3. Scope of This Approval; Major and Minor Changes

a. Ongoing

The project is approved pursuant to the Planning Code and Subdivision Regulations only and shall comply with all other applicable codes, requirements, regulations, and guide lines, including but not limited to those imposed by the City's Building Services Division, the City's Fire Marshal, and the Public Works Agency. 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.

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

a. Ongoing

- i. 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.
- ii. Violation of any term, Condition 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, after notice and public hearing, to revoke the Approvals or alter these Conditions or to initiate civil and/or criminal enforcement and/or abatement proceedings if it is found that there is violation of any of the Conditions or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance.

5. Signed Copy of the Conditions of Approval

a. With submittal of a demolition, grading, and building permit

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

6. Indemnification

a. Ongoing

- i. 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, an approval by the City, relating to a development-related application or subdivision. 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.
- ii. Within ten (10) calendar days of the filing of a claim, action or proceeding to attack, set aside, void, or annul, an approval by the City of a development-related application or subdivision, 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/ obligations shall survive termination, extinguishment, or invalidation of the approval.

7. Compliance with Conditions of Approval

a. 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 set forth below at its sole cost and expense, and subject to review and approval of the City of Oakland.

8. Severability

a. Ongoing

Approval of the project would not have been granted but for the applicability and validity of each and court of competent jurisdiction, these Approvals would not have been granted without requiring other valid conditions consistent with achieving the purpose and intent of such Approval.

9. Job Site Plans

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

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

a. Prior to issuance of a demolition 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.

11. Fire Services

a. Prior to issuance of water supply connection

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.

12. Underground Utilities

a. 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.

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

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

- i. The project applicant shall submit Public Improvement Plans for adjacent public rights-of-way (ROW) showing all proposed improvements and compliance with Conditions 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 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 with public ROW.

- ii. The project applicant shall submit public improvement plans that that comply City specifications. Review and confirmation of the street trees by the City's Parks and Recreation Division is required as part of this condition.
- iii. Planning and Zoning and the Public Works Agency will review and approve designs and specifications for the improvements. Improvements shall be completed prior to the issuance of certificate of occupancy.
- iv. Oakland Fire Department will review and approve fire crew and apparatus access, water supply availability and distribution to current codes and standards.

14. Payment for Public Improvements

a. *Prior to issuance of a certificate of occupancy.*

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

15. Compliance Plan

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

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

AESTHETICS

16. Lighting Plan

a. *Prior to the issuance of an electrical or building permit*

The project applicant will submit a plan for exterior lighting that is visible from the exterior of the building for review and approval by the City Electrical Services Division and Planning and Zoning. The plan shall include the design and location and specifications of all lighting fixtures or standards. The plan shall indicate lighting fixtures that are adequately shielded to a point below the light bulb and reflector and that prevent unnecessary glare onto adjacent properties. All lighting shall be architecturally integrated into the site.

17. Exterior Materials Details

a. *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 each building including colors. These details shall include the labeling of all the materials and treatments proposed for the exterior of each building. The applicant shall also provide a material and color board for review and approval of the Planning

and Zoning Division. All materials and treatments shall be of high quality that provides the building with significant visual interest. In particular, the exterior porch details shall be submitted for Zoning approval prior to issuance of any building permits. Windows shall be articulated to provide a three inch minimum recess from the exterior building façade in order to create a sufficient shadow line. The final window details shall be submitted for review and approval.

In addition the applicant shall provide information as to how the proposed wood screening shall be maintained in good condition. Such submittal shall be included in any deed restriction and/or CC&R's that are recorded along with the recordation of the Parcel Map for condominiums.

18. Landscape and Irrigation Plan

a. *Prior to issuance of building permit.*

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 or other qualified person. Such plan shall show all landscaping on the site maintained by an automatic irrigation system or other comparable system. The landscaping plan shall include a detailed planting schedule showing sizes, quantities, and specific common and botanical names of plant species. Fire and drought-resistant species are encouraged.

The applicant shall provide one street tree (24 inch box) per 25 feet of linear frontage of the project site for review and approval of species, size at time of planting, and placement in the right-of-way, subject to review and approval by the PWA Tree Division and Building Services.

19. Landscaping Maintenance

a. *Ongoing.*

All landscaping areas and 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, replaced with new plant materials to ensure continued compliance with all applicable landscaping requirements. All paving or other impervious surfaces shall occur only on approved areas.

AIR QUALITY

20. Asbestos Removal in Structures

a. *Prior to issuance of a demolition permit*

If asbestos is found to be present in building materials to be removed, demolition and disposal is required to be conducted in accordance with procedures specified by Regulation 11, Rule 2 (Asbestos Demolition, Renovation and Manufacturing) of Bay Area Air Quality Management District (BAAQMD) regulations.

21. Dust Control

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

During construction, the project applicant shall require the construction contractor to implement the following measures required as part of Bay Area Air Quality Management District's

(BAAQMD) basic and enhanced dust control procedures required for construction sites. These include:

BASIC (Applies to ALL construction sites)

- i. Water all active construction areas at least twice daily. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible.
- ii. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).
- iii. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- iv. Sweep daily (with water sweepers using reclaimed water if possible) all paved access roads, parking areas and staging areas at construction sites.
- v. Sweep streets (with water sweepers using reclaimed water if possible) at the end of each day if visible soil material is carried onto adjacent paved roads.

22. Construction Emissions

a. 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:

- i. 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, requires an authority to construct and permit 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.
- ii. 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.

TREE PERMITS

23. Tree Removal Permit

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

Prior to receiving building permits, the project applicant must secure a tree removal permit, and abide by the conditions of that permit, prior to removal of any trees located on the project site or in the public right-of-way adjacent to the project.

24. Tree Removal During Breeding Season

a. Prior to issuance of a tree removal permit

To the extent feasible, removal of the trees and other vegetation suitable for nesting of raptors shall not occur during the breeding season of March 15 and August 15. If tree removal must occur during the breeding season, all sites shall be surveyed by a qualified biologist to verify the presence or absence of nesting birds or raptors. If the survey indicates that potential presences of nesting birds or raptors, the results would be coordinated with the California Department of Fish and Game (CDFG) and suitable avoidance measures would be developed and implemented. Construction shall observe the CDFG avoidance guidelines which are a minimum 500-foot buffer zone surrounding active raptor nests and a 250-foot buffer zone surrounding nests of other birds. Buffer zones shall remain until young have fledged.

25. Tree Protection During Construction

a. 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. Measures deemed necessary by the Tree Services Division in consideration of the size, species, condition and location of the trees to remain may include any of the following:

- i. 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.
- ii. 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.

- iii. 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.
- iv. 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.
- v. 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.
- vi. 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.

CULTURAL RESOURCES

26. Archaeological Resources

a. Ongoing throughout demolition, grading, and/or construction

Pursuant to CEQA Guidelines 15064.5 (f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore, in the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist or paleontologist to assess the significance of the find. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified archaeologist would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Oakland. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and a report prepared by the qualified archaeologist according to current professional standards.

In considering any suggested measure proposed by the consulting archaeologist in order to mitigate impacts to historical resources or unique archaeological resources, the project applicant shall determine whether avoidance is necessary and feasible in light of factors such as the nature

of the find, project design, costs, and other considerations. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while measure for historical resources or unique archaeological resources is carried out.

Should an archaeological artifact or feature be discovered on-site during project construction, all activities within a 50-foot radius of the find would be halted until the findings can be fully investigated by a qualified archaeologist to evaluate the find and assess the significance of the find according to the CEQA definition of a historical or unique archaeological resource. If the deposit is determined to be significant, the project applicant and the qualified archaeologist shall meet to determine the appropriate avoidance measures or other appropriate measure, subject to approval by the City of Oakland, which shall assure implementation of appropriate measure measures recommended by the archaeologist. Should archaeologically-significant materials be recovered, the qualified archaeologist would recommend appropriate analysis and treatment, and would prepare a report on the findings for submittal to the Northwest Information Center.

27. Human Remains

a. Ongoing throughout demolition, grading, and/or construction

In the event that human skeletal remains are uncovered at the project site during construction or ground-breaking activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.

28. Paleontological Resources

a. Ongoing throughout demolition, grading, and/or construction

In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards (SVP 1995,1996)). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find under the criteria set forth in Section 15064.5 of the CEQA Guidelines. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.

GEOLOGY, SOILS AND SEISMICTITY

29. Geotechnical Report

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

A site-specific design level geotechnical investigation for each construction site within the project area shall be required as part of this project. Specifically:

- i. Each investigation shall include an analysis of expected ground motions at the site from known active faults. The analyses shall be in accordance with applicable City ordinances and polices, and consistent with the most recent version of the California Building Code, which requires structural design that can accommodate ground accelerations expected from known active faults.
- ii. The investigations shall determine final design parameters for the walls, foundations, foundation slabs, and surrounding related improvements (utilities, roadways, parking lots, and sidewalks).
- iii. The investigations shall be reviewed and approved by a registered geotechnical engineer. All recommendations by the project engineer, geotechnical engineer, will be included in the final design, as approved by the City of Oakland.
- iv. Recommendations that are applicable to foundation design, earthwork, and site preparation that were prepared prior to or during the project's design phase, shall be incorporated in the project.
- v. Final seismic considerations for the site shall be submitted to and approved by the City of Oakland Building Services Division prior to commencement of the project.

HAZARDS AND HAZARDOUS MATERIALS

30. Phase I and/or Phase II Reports

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

Prior to issuance of demolition, grading, or building permits the project applicant shall submit a Phase I environmental Site assessment report, and a Phase II report if warranted by the Phase I for the project site. The reports shall make recommendations for remedial action, if appropriate, and should be signed by a Registered Environmental Assessor, Professional Geologist, or Professional Engineer.

31. Lead-Based Paint/Coatings, Asbestos, or PCB Occurrence Assessment

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

The project applicant shall submit a comprehensive assessment report, signed by a qualified environmental professional, documenting the presence or lack thereof of asbestos-containing materials (ACM), lead-based paint, and any other building materials or stored materials classified as hazardous waste by State or federal law.

32. Environmental Site Assessment Reports Remediation

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

If the environmental site assessment reports recommend remedial action, the project applicant shall:

- i. Consult with the appropriate local, State, and federal environmental regulatory agencies to ensure sufficient minimization of risk to human health and environmental resources, both during and after construction, posed by soil contamination, groundwater contamination, or other surface hazards including, but not limited to, underground storage tanks, fuel distribution lines, waste pits and sumps.
- ii. Obtain and submit written evidence of approval for any remedial action if required by a local, State, or federal environmental regulatory agency.
- iii. Submit a copy of all applicable documentation required by local, State, and federal environmental regulatory agencies, including but not limited to: permit applications, Phase I and II environmental site assessments, human health and ecological risk assessments, remedial action plans, risk management plans, soil management plans, and groundwater management plans.

33. Lead-based Paint Remediation

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

If lead-based paint is present, the project applicant shall submit specifications signed by a certified Lead Supervisor, Project Monitor, or Project Designer for the stabilization and/or removal of the identified lead paint in accordance with all applicable laws and regulations, including but not necessarily limited to: Cal/OSHA's Construction Lead Standard, 8 CCR1532.1 and DHS regulation 17 CCR Sections 35001 through 36100.

34. Asbestos Remediation

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

If asbestos-containing materials (ACM) is present, the project applicant shall submit specifications signed by a certified asbestos consultant for the removal, encapsulation, or enclosure of the identified ACM in accordance with all applicable laws and regulations, including but not necessarily limited to: California Code of Regulations, Title 8; Business and Professions Code; Division 3; California Health & Safety Code 25915-25919.7; and Bay Area Air Quality Management District, Regulation 11, Rule 2.

35. Other Materials Classified as Hazardous Waste

a. 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.

36. Health and Safety Plan per Assessment

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

If the required lead-based paint/coatings, asbestos, or PCB assessment finds presence of lead-based paint, asbestos, and/or PCBs, 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.

37. Hazards Best Management Practices

a. 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:

- i. Follow manufacture's recommendations on use, storage, and disposal of chemical products used in construction;
- ii. Avoid overtopping construction equipment fuel gas tanks;
- iii. During routine maintenance of construction equipment, properly contain and remove grease and oils;
- iv. Properly dispose of discarded containers of fuels and other chemicals.
- v. 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

HYDROLOGY

EROSION & SEDIMENTATION CONTROL DURING CONSTRUCTION

38. Erosion and Sedimentation Control Plan [when grading permit required]

a. Prior to any grading activities

The project applicant shall obtain approval from the Building Services Division of 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 provide any obtain off-site permission or easements necessary for off-site work. to present written proof thereof to the Public Works Agency. 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.

b. Ongoing throughout grading and construction activities

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.

POST-CONSTRUCTION STORMWATER MANAGEMENT

Requirements in the following table apply to projects that create or replace 10,000 square feet or more of impervious surface.

39. Post-Construction Stormwater Pollution Management Plan

a. Prior to issuance of building permit (or other construction-related permit)

The applicant shall comply with the requirements of Provision C.3 of the National Pollutant Discharge Elimination System (NPDES) permit issued to the Alameda Countywide Clean Water Program. The applicant shall submit with the application for a building permit (or other construction-related permit) a completed Stormwater Supplemental Form for the Building Services Division. The project drawings submitted for the building permit (or other construction-related permit) shall contain a stormwater pollution management plan, for review and approval by the City, to limit the discharge of pollutants in stormwater after construction of the project to the maximum extent practicable. The post-construction stormwater pollution management plan shall include and identify the following:

- All proposed impervious surface on the site;
- Anticipated directional flows of on-site stormwater runoff;
- Site design measures to reduce the amount of impervious surface area and directly connected impervious surfaces;
- Source control measures to limit the potential for stormwater pollution; and
- Stormwater treatment measures to remove pollutants from stormwater runoff.

The following additional information shall be submitted with the post-construction stormwater pollution management plan:

- Detailed hydraulic sizing calculations for each stormwater treatment measure proposed; and
- Pollutant removal information demonstrating that any proposed manufactured/mechanical (i.e., non-landscape-based) stormwater treatment measure, when not used in combination with a landscape-based treatment measure, is capable of removing the range of pollutants typically removed by landscape-based treatment measures.

All proposed stormwater treatment measures shall incorporate appropriate planting materials for stormwater treatment (for landscape-based treatment measures) and shall be designed with considerations for vector/mosquito control. Proposed planting materials for all proposed landscape-based stormwater treatment measures shall be included on the landscape and irrigation plan for the project. The applicant is not required to include on-site stormwater treatment measures in the post-construction stormwater pollution management plan if he or she secures approval from the Planning and Zoning Division of a proposal that demonstrates compliance with the requirements of the City's Alternative Compliance Program.

Prior to final permit inspection

The applicant shall implement the approved stormwater pollution management plan.

40. Maintenance Agreement for Stormwater Treatment Measures

a. Prior to final zoning inspection

For projects incorporating stormwater treatment measures, the applicant shall enter into the "Standard City of Oakland Stormwater Treatment Measures Maintenance Agreement," in accordance with Provision C.3.e of the NPDES permit, which provides, in part, for the following:

- The applicant accepting responsibility for the adequate installation/construction, operation, maintenance, inspection, and reporting of any on-site stormwater treatment measures being incorporated into the project until the responsibility is legally transferred to another entity; and
- Legal access to the on-site stormwater treatment measures for representatives of the City, the local vector control district, and staff of the Regional Water Quality Control Board, San Francisco Region, for the purpose of verifying the implementation, operation, and maintenance of the on-site stormwater treatment measures and to take corrective action if necessary. The agreement shall be recorded at the County Recorder's Office at the applicant's expense.

41. Erosion, and Sedimentation, and Debris Control Measures

a. Prior to issuance of demolition, grading, or construction-related permit

The project applicant shall submit an erosion and sedimentation control plan for review and approval by the City. All work shall incorporate apply all applicable the "Best Management Practices (BMPsS) for the construction industry, and as outlined in the Alameda Clean Water Program pamphlets, including BMP's for dust, erosion and sedimentation abatement per Chapter Section 15.04 of the Oakland Municipal Code. The measures shall include, but are not limited to, the following:

BASIC (Applies to ALL construction sites)

- i. To ensure that sediment does not flow into the creek and/or storm drains, On sloped properties, the downhill end of the construction area must be protected with silt the project applicant shall install silt fencing (such as sandbags, filter fabric, silt curtains, etc.) and hay bales oriented parallel to the contours of the slope (at a constant elevation) to prevent erosion into the creek.
- ii. In accordance with an approved erosion control plan, the project applicant shall implement mechanical and vegetative measures to reduce erosion and sedimentation,

- including appropriate seasonal maintenance. One hundred (100) percent degradable erosion control fabric shall be installed on all graded slopes to protect and stabilize the slopes during construction and before permanent vegetation gets established. All graded areas shall be temporarily protected from erosion by seeding with fast growing annual species. All bare slopes must be covered with staked tarps when rain is occurring or is expected.
- iii. Minimize the removal of natural vegetation or ground cover from the site in order to minimize the potential for erosion and sedimentation problems. Maximize the replanting of the area with native vegetation as soon as possible.
 - iv. All work in or near creek channels must be performed with hand tools and by a minimum number of people. Immediately upon completion of this work, soil must be repacked and native vegetation planted.
 - v. Install filter materials (such as sandbags, filter fabric, etc.) at the storm drain inlets nearest to the creek side of the project site prior to the start of the wet weather season (October 15); site dewatering activities; street washing activities; saw cutting asphalt or concrete; and in order to retain any debris flowing into the City storm drain system. Filter materials shall be maintained and/or replaced as necessary to ensure effectiveness and prevent street flooding.
 - vi. Ensure that concrete/granite supply trucks or concrete/plaster finishing operations do not discharge wash water into the creek, street gutters, or storm drains.
 - vii. Direct and locate tool and equipment cleaning so that wash water does not discharge into the creek.
 - viii. Create a contained and covered area on the site for storage of bags of cement, paints, flammables, oils, fertilizers, pesticides, or any other materials used on the project site that have the potential for being discharged to the storm drain system by the wind or in the event of a material spill. No hazardous waste material shall be stored on site.
 - ix. Gather all construction debris on a regular basis and place them in a dumpster or other container which is emptied or removed on a weekly basis. When appropriate, use tarps on the ground to collect fallen debris or splatters that could contribute to stormwater pollution.
 - x. Remove all dirt, gravel, refuse, and green waste from the sidewalk, street pavement, and storm drain system adjoining the project site. During wet weather, avoid driving vehicles off paved areas and other outdoor work.
 - xi. Broom sweep the street pavement adjoining the project site on a daily basis. Caked-on mud or dirt shall be scraped from these areas before sweeping. At the end of each workday, the entire site must be cleaned and secured against potential erosion, dumping, or discharge to the creek.
 - xii. All erosion and sedimentation control measures implemented during construction activities, as well as construction site and materials management shall be in strict accordance with the control standards listed in the latest edition of the Erosion and Sediment Control Field Manual published by the Regional Water Quality Board (RWQB).

NOISE

42. Days/Hours of Construction Operation

a. Ongoing throughout demolition, grading, and/or construction

The project applicant shall require construction contractors to limit standard construction activities as required by the City Building Department.

- i. Construction activities (see below) are limited to between 7:00 a.m. AM and 7:00 p.m. PM Monday through Friday for all other cases, with pPile driving and/or other extreme noise generating activities greater than 90 dBA limited to between 8:00 a.m. and 4:00 p.m. Monday through Friday.
- ii. Any construction activity proposed to occur outside of the standard hours of 7:00 am to 7:00 pm Monday through Friday for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of resident's preferences for whether the activity is acceptable if the overall duration of construction is shortened and such construction activities shall only be allowed with the prior written authorization of the Building Services Division.
- iii. Construction activity shall not occur on Saturdays, with the following possible exceptions:
 - I. Prior to the building being enclosed, requests for Saturday construction for special activities (such as concrete pouring which may require more continuous amounts of time), shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of resident's preferences for whether the activity is acceptable if the overall duration of construction is shortened. Such construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division.
 - II. After the building is enclosed, requests for Saturday construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division, and only then within the interior of the building with the doors and windows closed.
- iv. No extreme noise generating activities (greater than 90 dBA) shall be allowed on Saturdays, with no exceptions.
- v. No construction activity shall take place on Sundays or Federal holidays.
- vi. Construction activities include but are not limited to: truck idling, moving equipment (including trucks, elevators, etc) or materials, deliveries, and construction meetings held on-site in a non-enclosed area.

43. Noise Control

a. Ongoing throughout demolition, grading, and/or construction

To reduce noise impacts due to construction, the project applicant shall require construction contractors to implement a site-specific noise reduction program, subject to city review and approval, which includes the following measures:

- i. Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible).

- ii. Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used where feasible, and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever feasible.
- iii. Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or other measures to the extent feasible.
- iv. If feasible, the noisiest phases of construction (such as pile driving) shall be limited to less than 10 days at a time.

44. Pile Driving and Other Extreme Noise Generators

a. Ongoing throughout demolition, grading, and/or construction

To further mitigate potential pier drilling, pile driving and/or other extreme noise generating construction impacts greater than 90dBA, a set of site-specific noise attenuation measures shall be completed under the supervision of a qualified acoustical consultant. Prior to commencing construction, a plan for such measures shall be submitted for review and approval by the City to ensure that maximum feasible noise attenuation will be achieved. This plan shall be based on the final design of the project. A third-party peer review, paid for by the project applicant, shall be required to assist the City in evaluating the feasibility and effectiveness of the noise reduction plan submitted by the project applicant. A special inspection deposit is required to ensure compliance with the noise reduction plan. The amount of the deposit shall be determined by the Building Official, and the deposit shall be submitted by the project applicant concurrent with submittal of the noise reduction plan. The noise reduction plan shall include, but not be limited to, an evaluation of the following measures. These attenuation measures shall include as many of the following control strategies as feasible:

- i. Erect temporary plywood noise barriers around the construction site, particularly along on sites adjacent to residential buildings;
- ii. Implement “quiet” pile driving technology (such as pre-drilling of piles, the use of more than one pile driver to shorten the total pile driving duration), where feasible, in consideration of geotechnical and structural requirements and conditions;
- iii. Utilize noise control blankets on the building structure as the building is erected to reduce noise emission from the site;
- iv. Evaluate the feasibility of noise control at the receivers by temporarily *improving the noise reduction capability* of adjacent buildings by the use of sound blankets for example; and

- v. Monitor the effectiveness of noise attenuation measures by taking noise measurements.

45. Noise Complaint Procedures

a. Ongoing throughout demolition, grading, and/or construction

Prior to the issuance of each building permit, along with the submission of construction documents, the project applicant shall submit to the City Building Department a list of measures to respond to and track complaints pertaining to construction noise. These measures shall include:

- i. A procedure and phone numbers for notifying the City Building Services Division staff and Oakland Police Department; (during regular construction hours and off-hours);
- ii. A sign posted on-site pertaining with permitted construction days and hours and complaint procedures and who to notify in the event of a problem. The sign shall also include a listing of both the City and construction contractor's telephone numbers (during regular construction hours and off-hours);
- iii. The designation of an on-site construction complaint and enforcement manager for the project;
- iv. Notification of neighbors and occupants within 300 feet of the project construction area at least 30 days in advance of pile-driving activities about the estimated duration of the activity; and
- v. A preconstruction meeting shall be held with the job inspectors and the general contractor/on-site project manager to confirm that noise measures and practices (including construction hours, neighborhood notification, posted signs, etc.) are completed.

46. Interior Noise

a. Prior to issuance of a building permit

If necessary to comply with the interior noise requirements of the City of Oakland's General Plan Noise Element and achieve an acceptable interior noise level, noise reduction in the form of sound-rated assemblies (i.e., windows, exterior doors, and walls) shall be incorporated into project building design. Final recommendations for sound-rated assemblies will depend on the specific building designs and layout of buildings on the site and shall be determined during the design phase.

TRAFFIC / TRANSPORTATION

47. Construction Traffic and Parking

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

The project applicant and construction contractor shall meet with the Transportation Services Division of the Public Works and other 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 City Transportation Services Division. The plan shall include at least the following items and requirements:

- i. 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.
- ii. Notification procedures for adjacent property owners and public safety personnel regarding when major deliveries, detours, and lane closures will occur.
- iii. Location of construction staging areas for materials, equipment, and vehicles (must be located on the project site).
- iv. 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.
- v. Provision for accommodation of pedestrian flow.
- vi. Provision for parking management and spaces for all construction workers to ensure that construction workers do not park in on-street spaces.

UTILITIES AND SERVICES SYSTEMS

48. Reduced Water Use

a. Prior to issuance of a building permit

As feasible and applicable, the project applicant shall implement the following water-efficient equipment and devices into building design and project plans, consistent with the Landscape Water Conservation section of the City of Oakland Municipal Code (Chapter 7, Article 10): low-, ultra-low, and dual flush flow toilets and showerheads; water efficient irrigation systems that include drip irrigation and efficient sprinkler heads; evapotranspiration (ET) irrigation controllers; drought-resistant and native plants for landscaping; and minimization of turf areas.

49. 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.

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

OMC 15.34 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 will implement the plan.

b. Ongoing

The ODP will identify how the project complies with the Recycling Space Allocation Ordinance, OMC 17.118, 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 Public Works for review and approval. Any incentive programs shall remain fully operational as long as residents and businesses exist at the project site.

50. Stormwater and Sewer

a. Prior to completing the final design for the project's sewer service

Confirmation of the capacity of the City's surrounding stormwater and sanitary sewer system and state of repair shall be completed by a qualified civil engineer with funding from the project applicant. The project applicant shall be required to pay mitigation additional fees to improve stormwater and sanitary sewer infrastructure if required by the City. Improvements to the existing sanitary sewer collection system shall specifically include, but are not limited to, mechanisms to control or minimize increases in infiltration/inflow associated with the proposed project. Additionally, the project applicant shall be responsible for payment of the required installation or hook-up fees to the affected service providers.

SPECIFIC PROJECT CONDITIONS

51. Meter Shielding

a. Prior to issuance of building permits.

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.

52. Tentative Parcel Map

a. Prior to issuance of a building permit

A Parcel Map shall be filed with the City Engineer within two (2) years from the date of approval of the Tentative Parcel Map, or within such additional time as may be granted by the Advisory Agency. Failure to file a Parcel Map within these time limits shall nullify the previous approval or conditional approval of the Tentative Parcel Map.

53. Ground Floor Commercial Space

a. Prior to issuance of a building permit

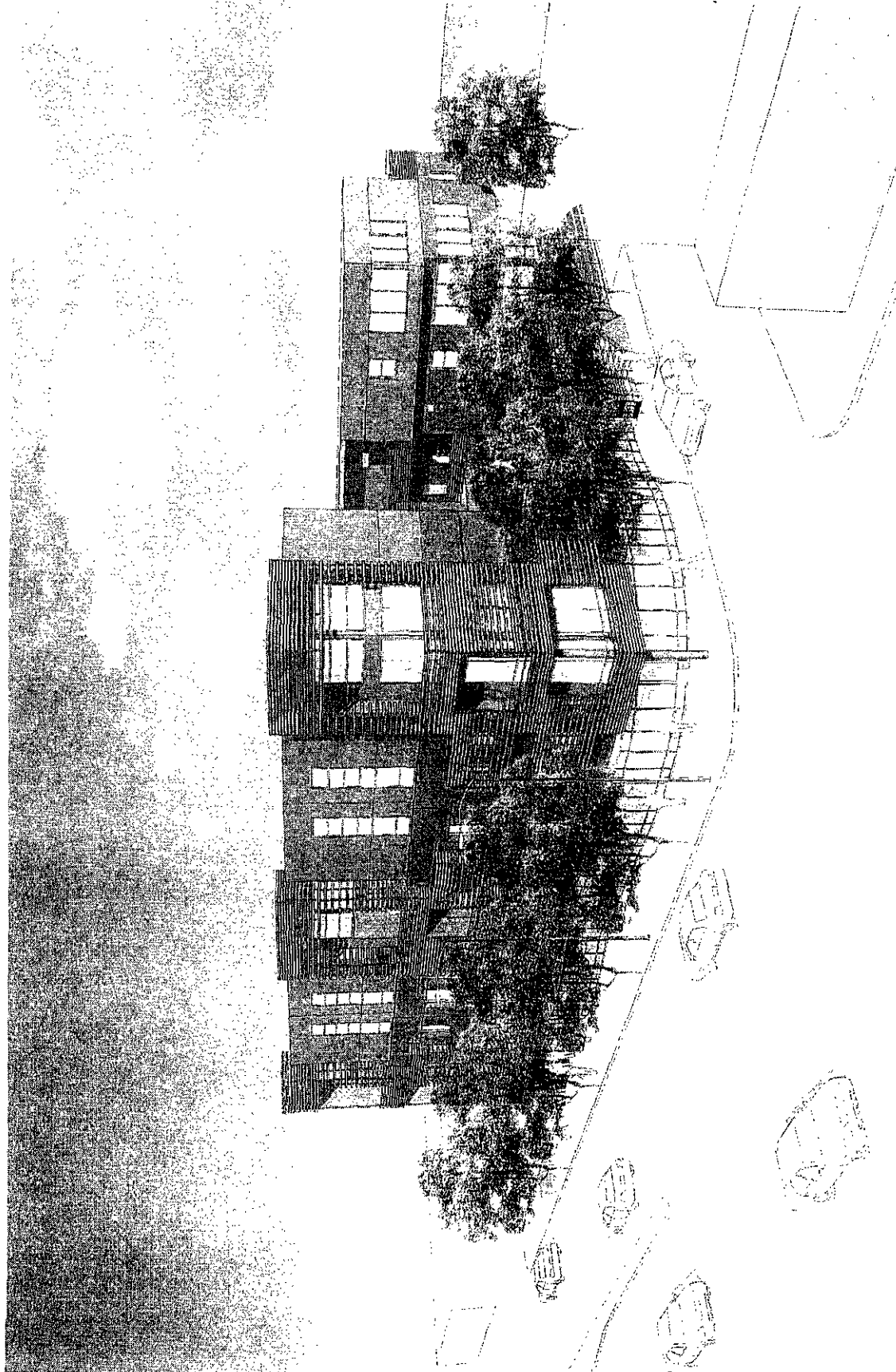
The ground floor commercial space shall contain a minimum finished floor to ceiling height of 9'6" to 10'0". This shall be clearly indicated in the building permit plan set. In addition, the exterior elevation shall show a base to the store front that is a highly durable material with a high quality and attractive exterior finish.

54. Interior Driveway Signage

a. Prior to Certificate of Occupancy

A warning sign or other indicator shall be provided, for occupants of the building, within the interior garage stating that the driveway narrows, and should only permit one car through at a time.

APPROVED BY: City Planning Commission: _____(date)_____ (vote)
City Council: _____(date)_____ (vote)



ATTACHMENT A

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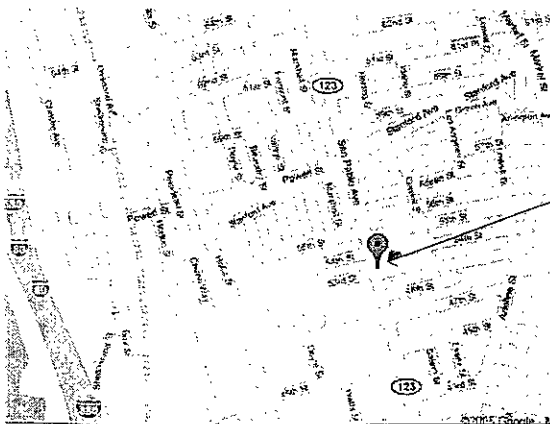
5300 SAN PABLO

O B K I P O D . C A 9 4 6 0 8

Perspective

03.28.2007

2a



PROJECT SITE



VICINITY MAP

AERIAL MAP

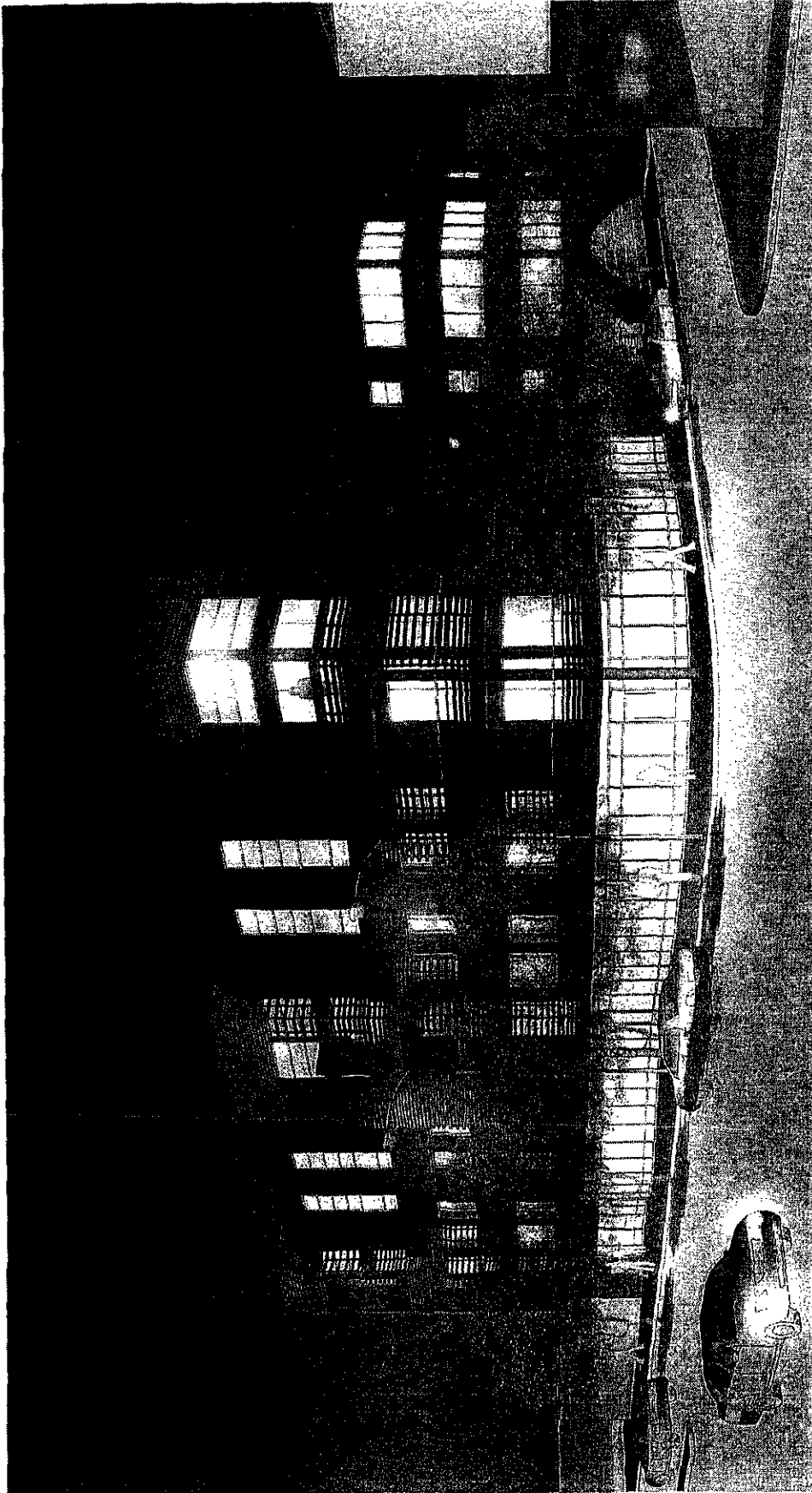
Fl.	Bldg. Area			Circulation			Units		Load factor		Parking		Open Space provided			
	Foot Print	excluding exterior circulation	Total*	Conditioned (exterior)	Unconditioned (interior)	Both	Area (sellable)	Number	(interior circulation area / bldg. area)	(Total circulation area / bldg. area)	Space	Ratio	Courtyard (s.f.)	Balconies (s.f.)	Total (s.f.)	(s.f.) per unit
1	14,242															
2		9,977	10,620	643	1,489	2,132	8,481	11	14.9%	21.4%	34	1.06	3056	1315	4371	3713.5
3		9,977	10,555	578	1,490	2,068	8,481	11	14.9%	20.7%			1200	1200	2400	600
4		10,293	10,812	519	1,383	1,902	8,781	10	13.4%	18.5%			1812	1812	3624	906
Total	14,242	30,247	31,987	1,740	4,362	6,102	28,743	32	14.4%	20.2%	34	1.06	3056	4327	7383	163.7

		Total	
SITE	ADDRESS	5300 San Pablo	5310 San Pablo
	APN	013_118601303	013_118601302
	SITE AREA (sq. acres)	3.185	12510
		0.074	0.289
ZONING (C-30/R-40)	SETSACK	San Pablo (front)	0'
		53rd St. (side)	10'
		Rear	10' (5' up to 9' ht.)
		Side	0'
	DENSITY		450 s.f. / unit
			35 units allowed
	FAR (non-residential)		2.25
	HEIGHT	-120' @ San Pablo, 30' @ Rear	
	OPEN SPACE		150 s.f. / unit
	Private open	1 s.f. of group space per 2 s.f. of private space	
	may be substituted		

- | | | |
|----------------------|----------------------------|------------------|
| 1. COVER | 11. SECOND FLOOR PLAN | 21-44 UNIT PLANS |
| 2a. PERSPECTIVE | 12. THIRD FLOOR PLAN | |
| 2b. PERSPECTIVE | 13. FOURTH FLOOR PLAN | |
| 3. PERSPECTIVE | 14. FOURTH FLOOR LOFT PLAN | |
| 4. PERSPECTIVE | 15. ELEVATION | |
| 5. SITE CONDITIONS | 16. ELEVATION | |
| 6. EXISTING PHOTOS | 17. ELEVATION | |
| 7. EXISTING PHOTOS | 18. ELEVATION | |
| 8. SITE SURVEY | 19. SECTION | |
| 9. SITE PLAN | 20a. SECTION | |
| 10. FIRST FLOOR PLAN | 20b. SECTION | |

PROJECT DATA

CONTENTS



2b

Perspective
Night view

03.28.2007

5300 SAN PABLO

OAKLAND, CA 94608

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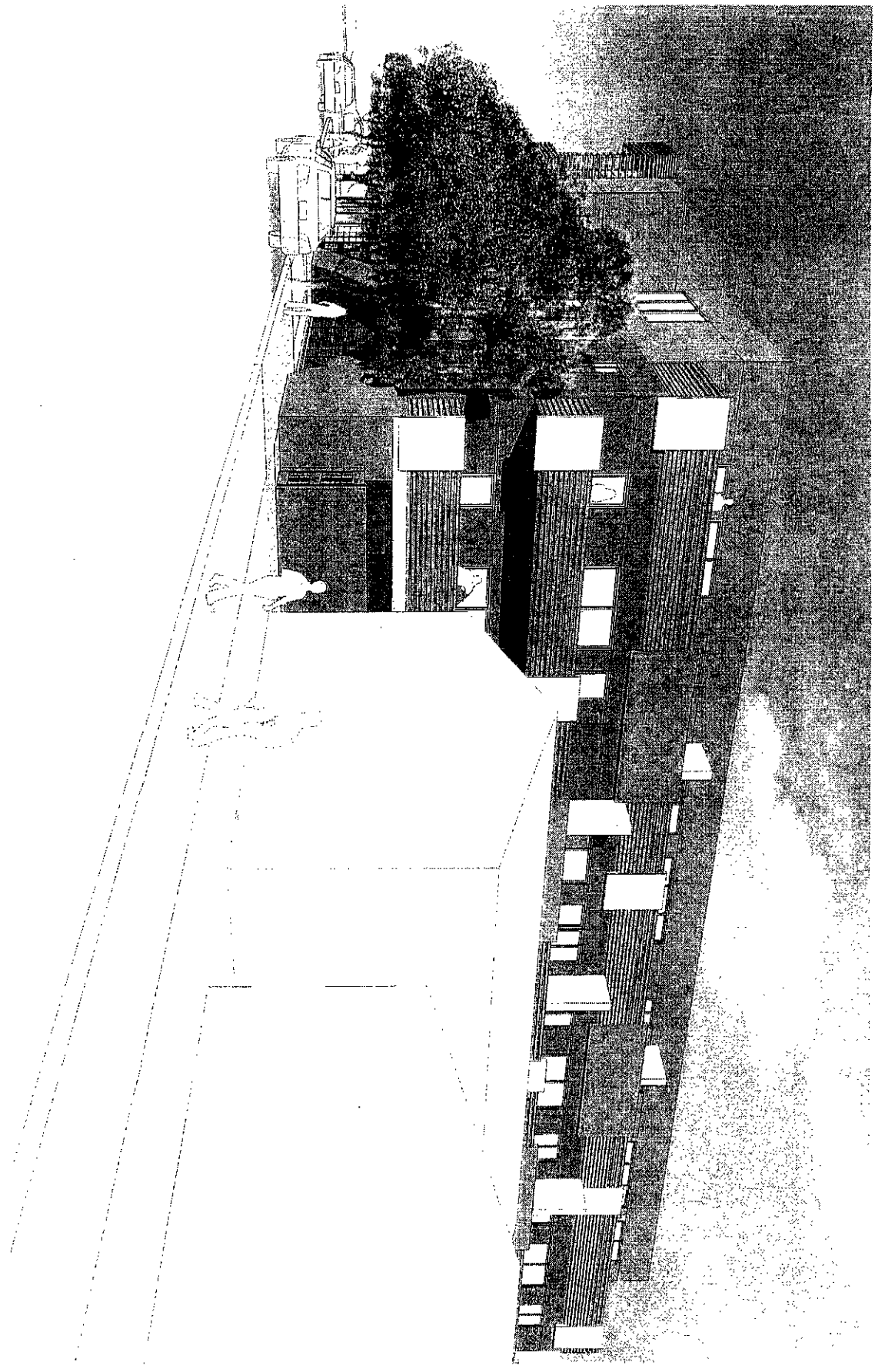
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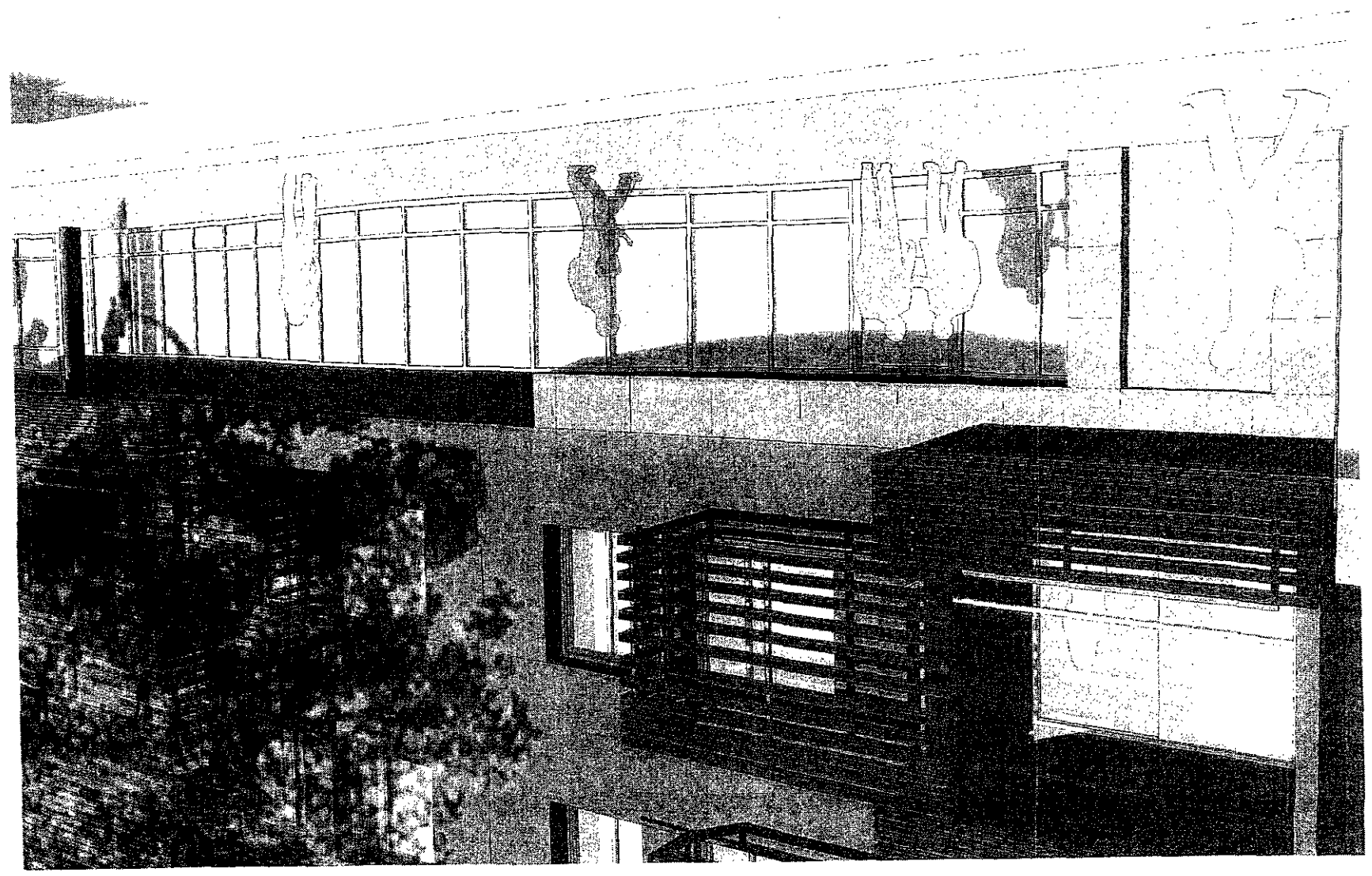
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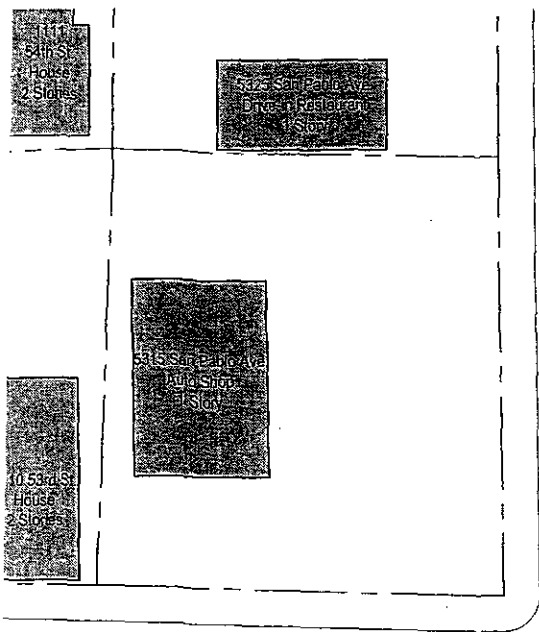
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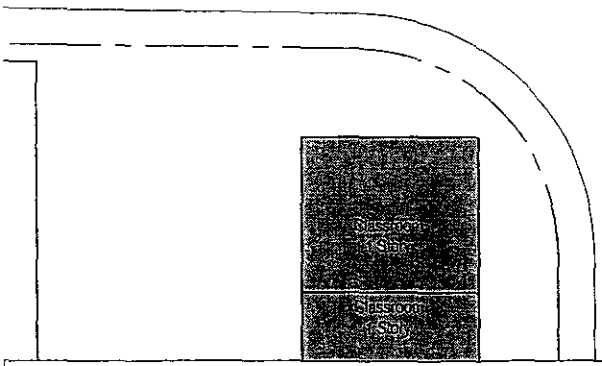


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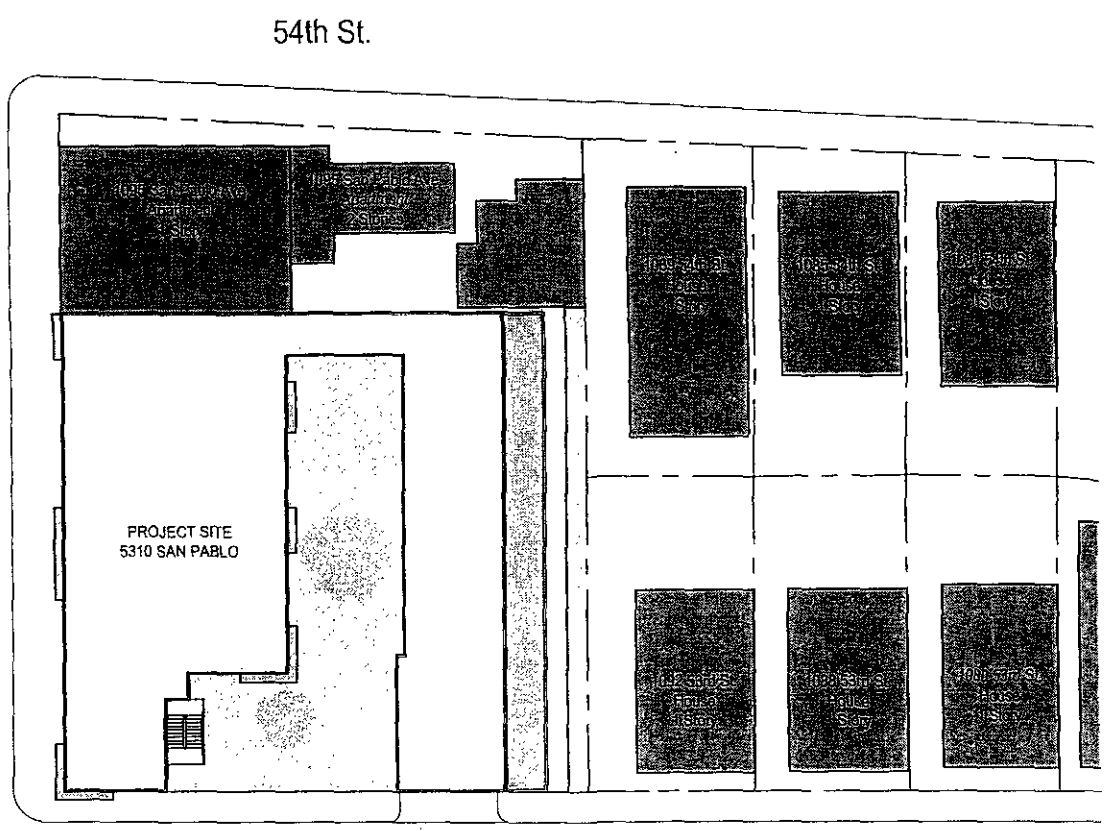




53rd St.

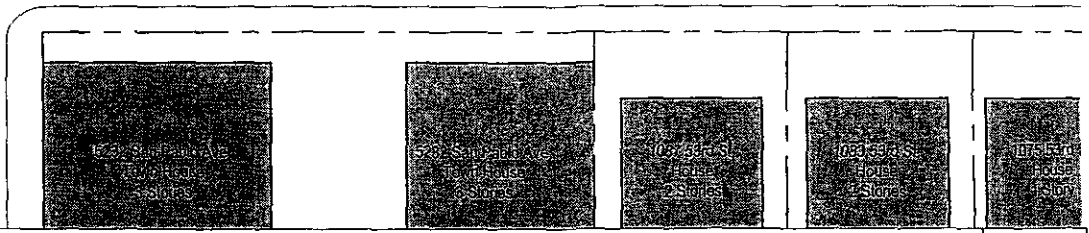


San Pablo Ave.



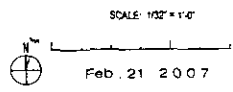
54th St.

53rd St.



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(E) Site Conditions



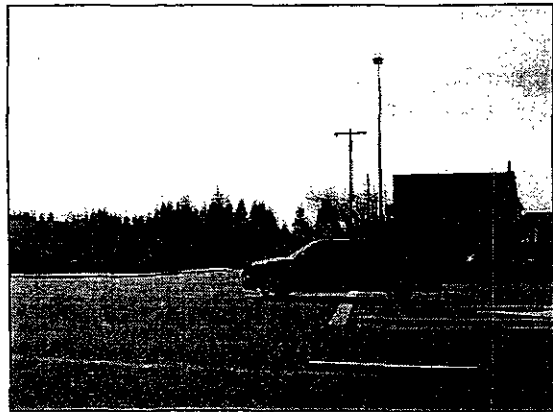
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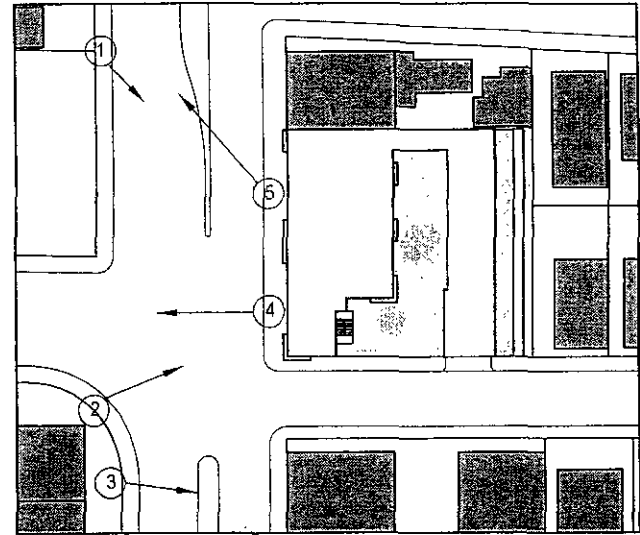
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Feb 21, 2007

Existing Photos



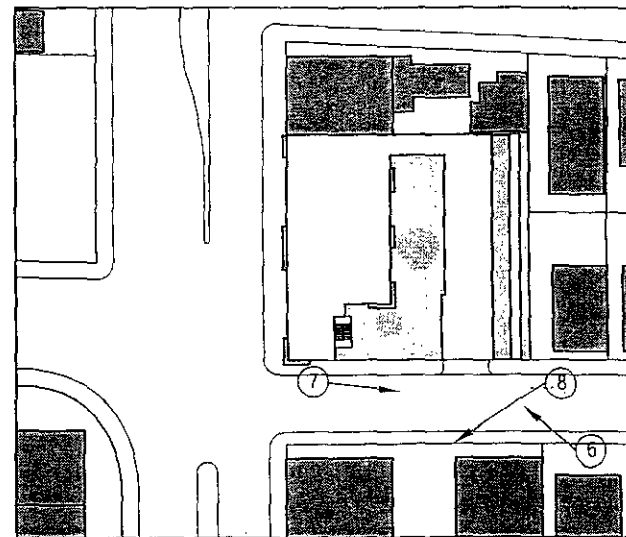
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Feb. 21 2007

Existing Photos

LEGEND	
⊙	FOUND MONUMENT
▭	EDGE OF BUILDING
▨	CONCRETE
▧	ASPHALT
- - -	CHAIN LINK FENCE
- -	IRON FENCE
S.S.	SANITARY SEWER
S.D.	STORM DRAIN
M.H.	MANHOLE
T.P.	TWO PIPE
T.C.	TWO OF CORR
F.C.	ONE LINE
S.W.	SPRINKLER
D.U.W.	OVER HANG WIRE
A/C	ASPHALT CONCRETE
P.L.	PROPERTY LINE
T.L.	TRAFFIC LIGHT
⊕	SET TACK #7/16 L.S. 7/10
⊕	SET F.C. #7/16 L.S. 7/10
()	RECORD DATA

NOTES:
 1. THIS MAP CORRECTLY REPRESENTS A FIELD SURVEY MADE IN THE
 MONTH OF JANUARY, 2008, BY THE SURVEYOR, AND THE MONUMENTS
 SHOWN THEREON ARE THE RESULT OF THE SURVEY.
 2. THE MONUMENTS SHOWN ON THIS MAP ARE THE RESULT OF THE SURVEY.
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 6. THE MONUMENTS SHOWN ON THIS MAP ARE THE RESULT OF THE SURVEY.

THESE ARE NOT PROTECTED
 TREES ON THE SITE.

COPIES
 100 COPIES OF THIS MAP
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 100 COPIES OF THIS MAP
 100 COPIES OF THIS MAP
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BASED ON BEARING
 OF 114° 30' 00" N
 DISTANCE OF 119.93 FT.
 MONUMENT AS SHOWN ON
 THIS MAP IS CORRECT
 PAGE THREE

THIS MAP CORRECTLY REPRESENTS A FIELD SURVEY MADE IN THE
 MONTH OF JANUARY, 2008, BY THE SURVEYOR, AND THE MONUMENTS
 SHOWN THEREON ARE THE RESULT OF THE SURVEY.
 I HEREBY CERTIFY THAT ALL EXISTING CHAINS AND CONTROLS
 WERE CORRECTLY LOCATED AND THAT THE MONUMENTS SHOWN ON
 THIS MAP ARE THE RESULT OF THE SURVEY.
 I HEREBY CERTIFY THAT THE MONUMENTS SHOWN ON THIS MAP
 ARE THE RESULT OF THE SURVEY.
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BOUNDARY & TOPOGRAPHIC SURVEY
 LOTS 1, 2 AND 3, BLOCK 2
 MAP OF PARKING GREEN GOLF TRACT 19 IN 20
 CITY OF OAKLAND, COUNTY OF ALAMEDA, CALIFORNIA
 FEBRUARY, 2008 SCALE 1" = 10'
BAY AREA LAND SURVEYING
 308 BAY AREA
 OAKLAND, CALIFORNIA
 415-752-0000
 SCALE: 1/2" = 1'-0"

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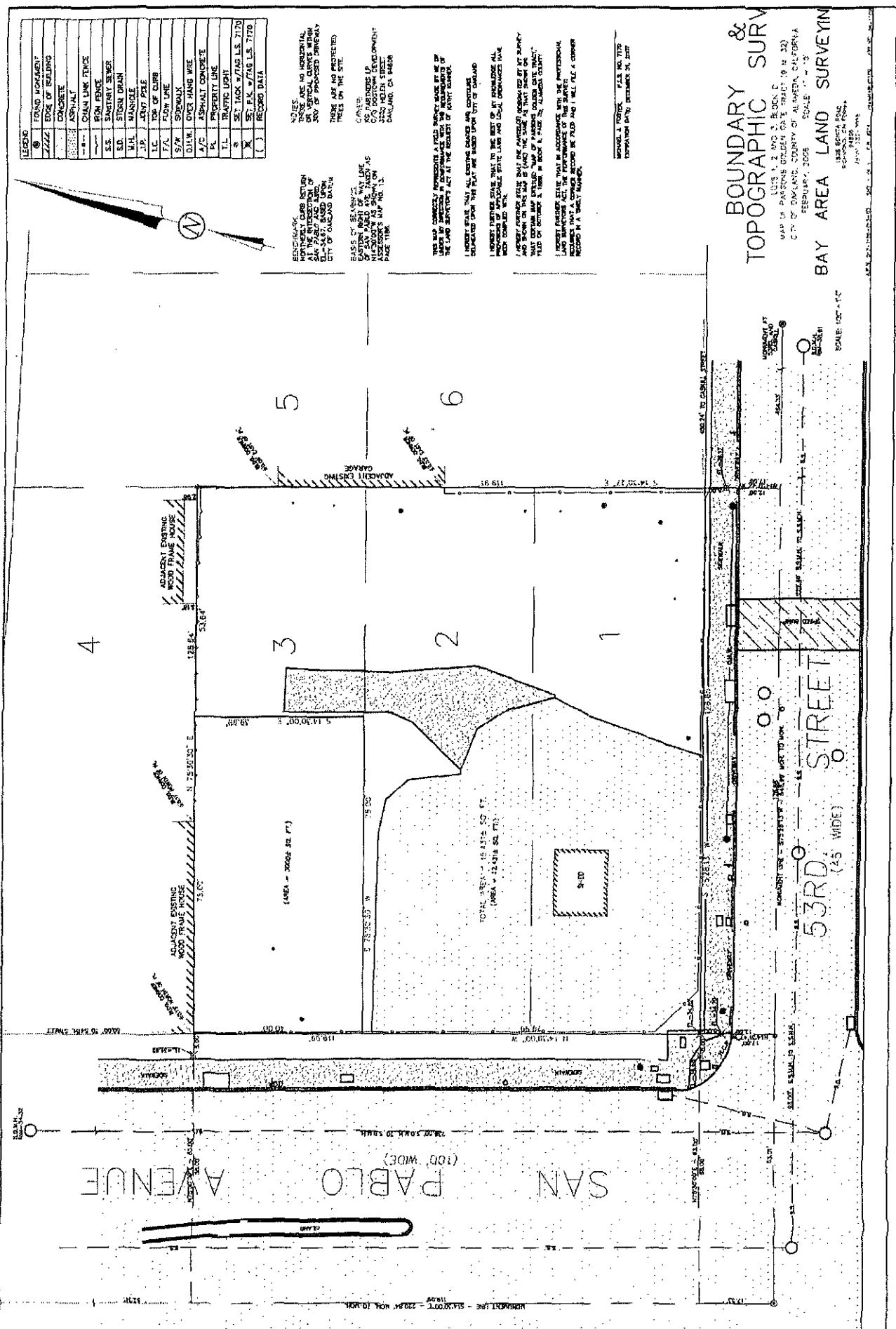
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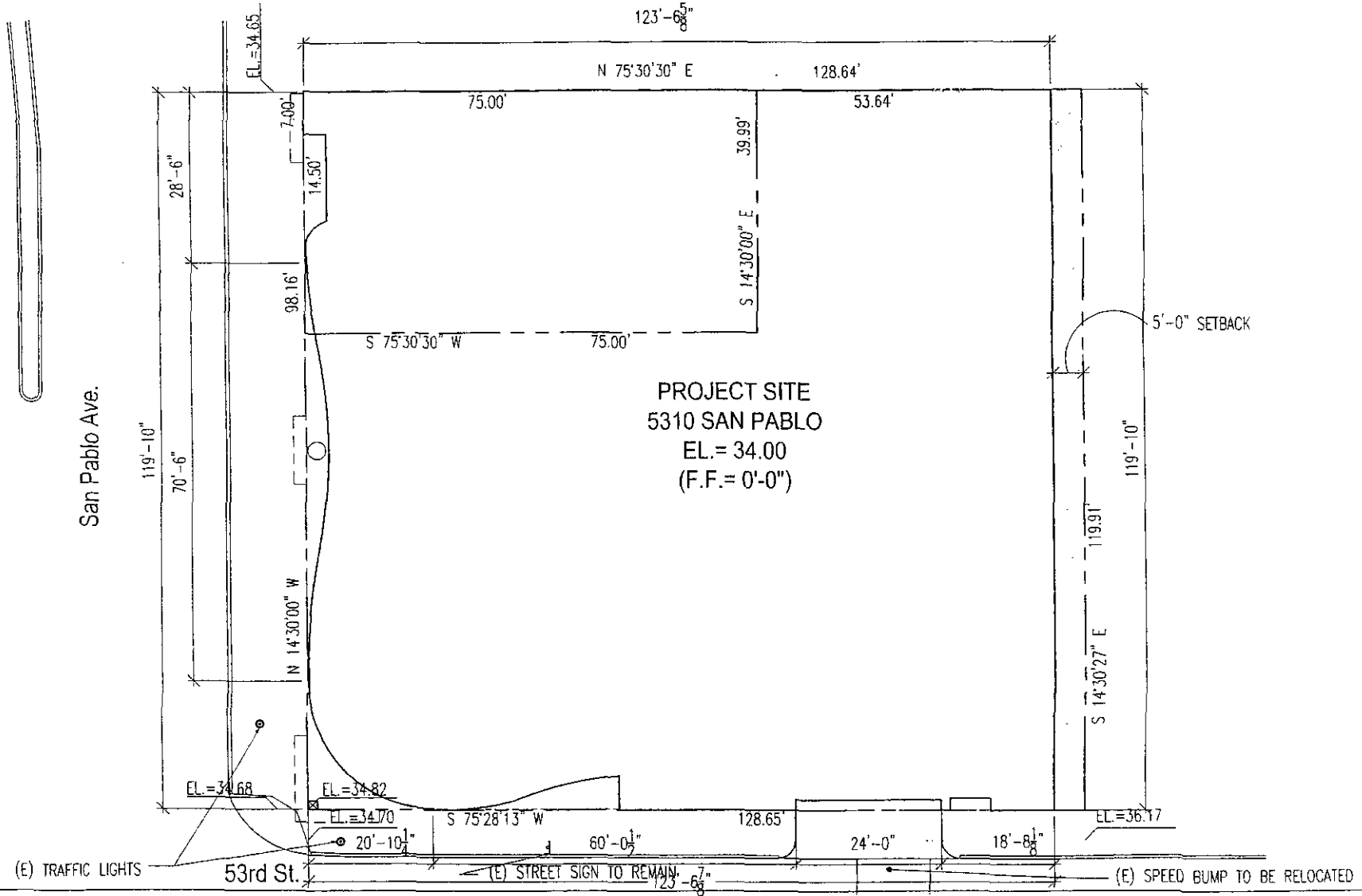
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PROJECT SITE
 5310 SAN PABLO
 EL. = 34.00
 (F.F. = 0'-0")

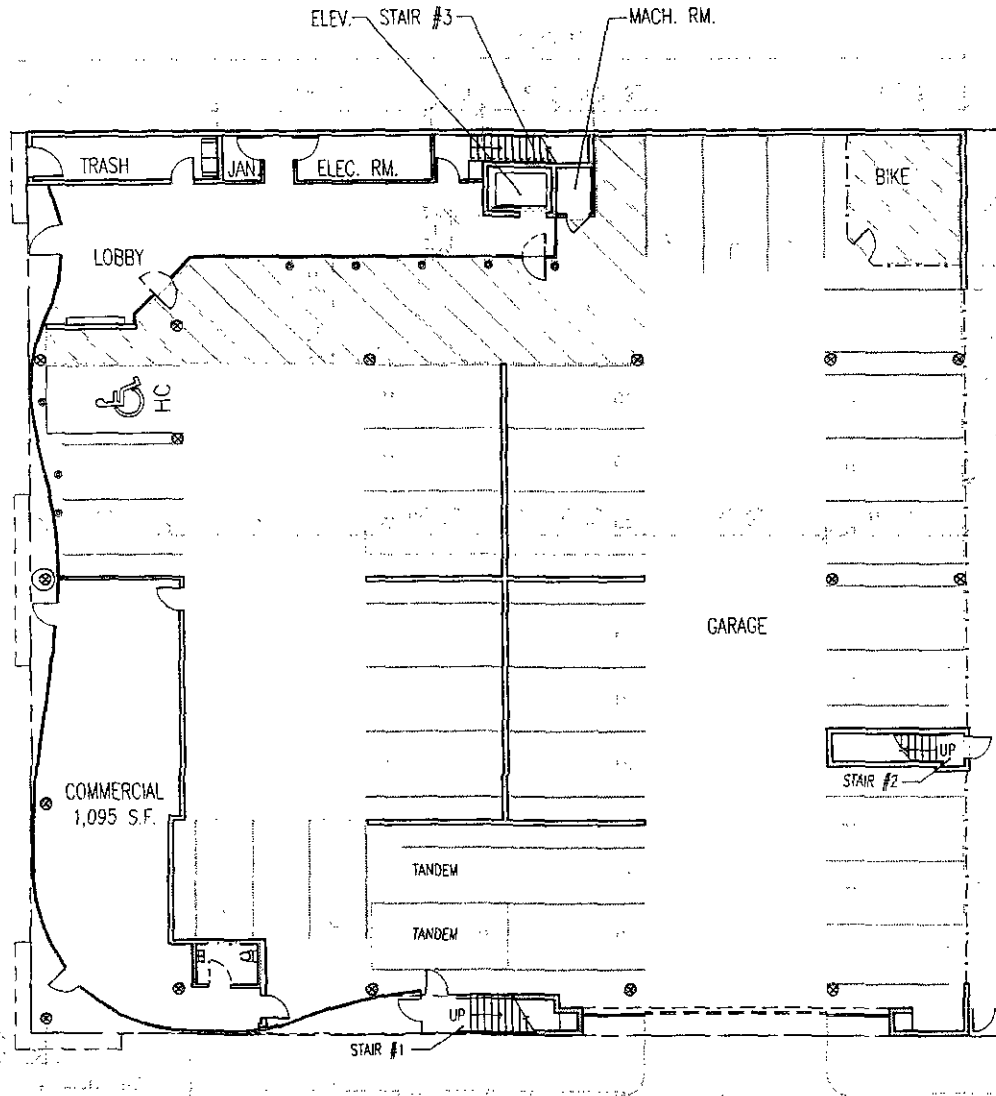
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 Oakland, CA 94608

SCALE 1/32" = 1'-0"
 Feb 21, 2007

Site Plan

MAIL BOX



TOTAL BLDG. FT. PRINT 14242 S.F.

PARKING SPACE	= 23 REGULAR
	= 11 COMPACT
	(32 DIRECT ACCESS)
TOTAL	= 34

WALL TYPES:	
	LOW WALL
	CONC SHEAR WALL
	2 HR FIRE RATED FULL HT WALL
	1 HR FIRE RATED FULL HT WALL

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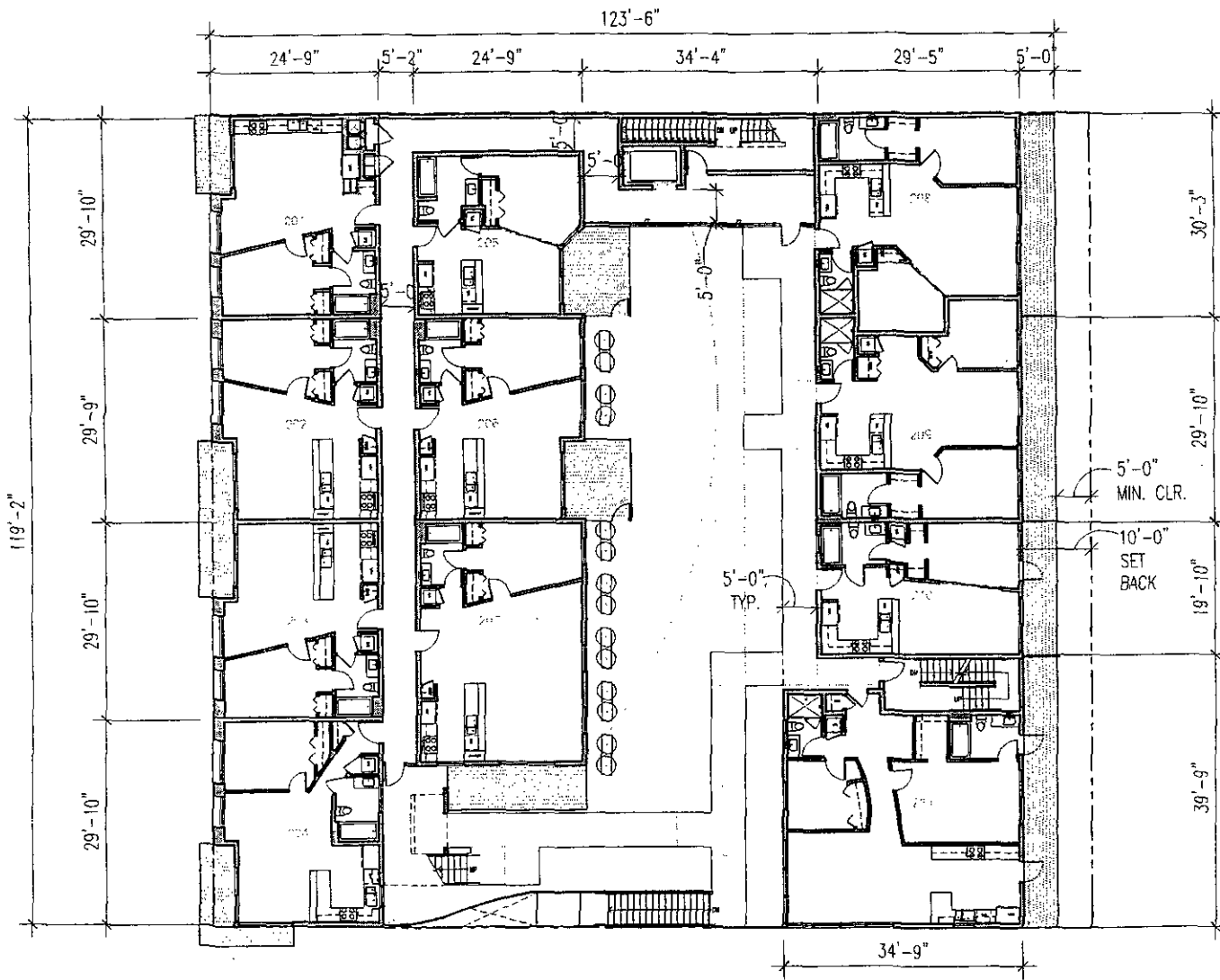
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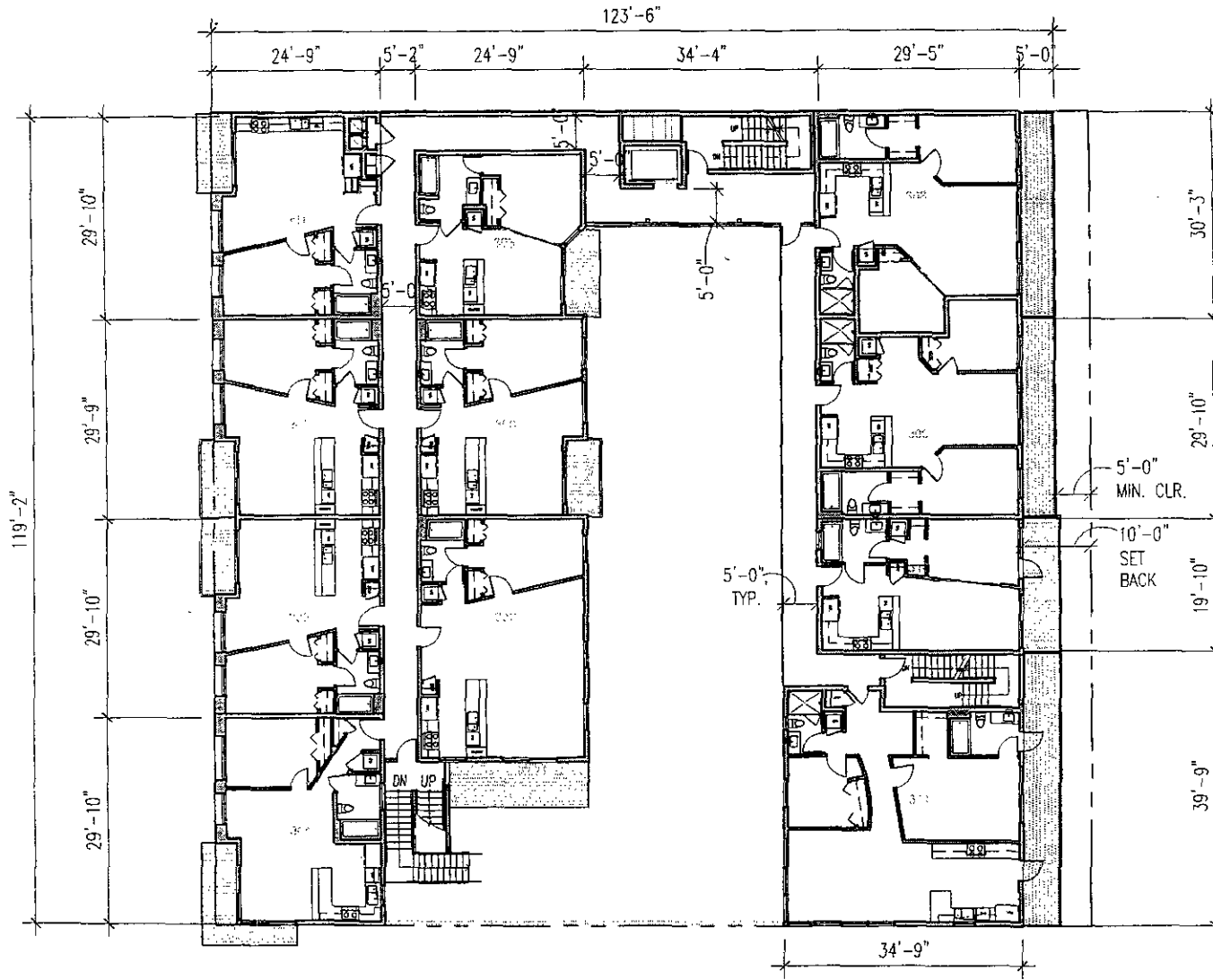
0 4' 8' 16' 24'

Feb. 21 2007

First Floor Plan

10

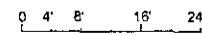




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 PHILIP BANTA & ASSOCIATES ARCHITECTURE
 6050 HOLLIS ST EMERYVILLE, CA 94608 510-854-3255

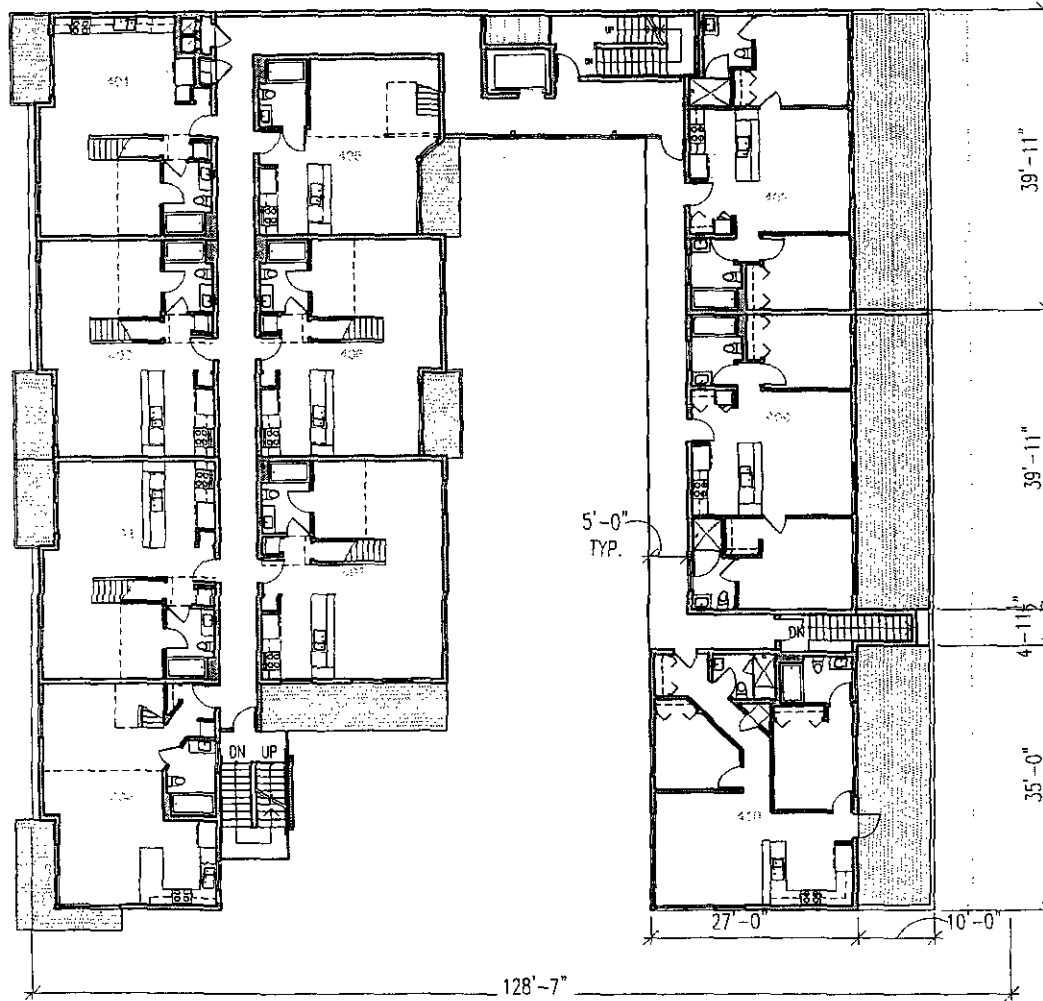
5300 SAN PABLO

Oakland, CA 94608



Feb. 21 2007

Third Floor Plan

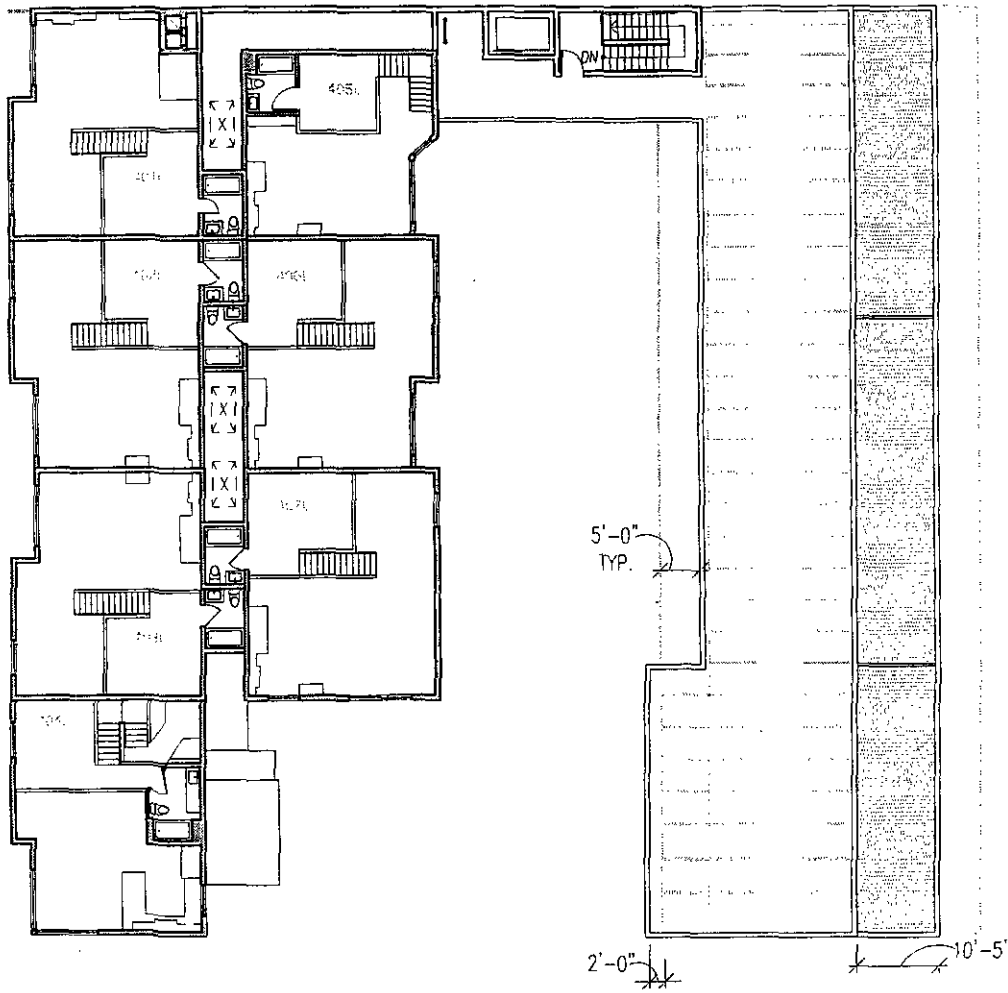


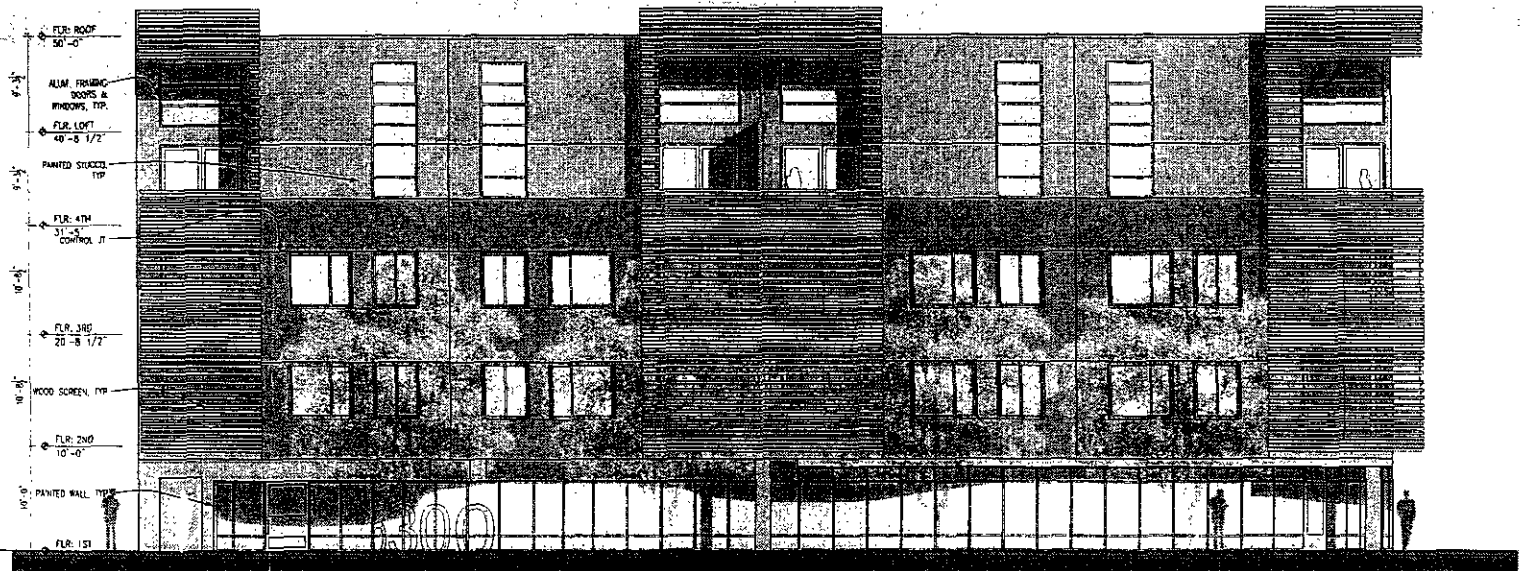
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5300 SAN PABLO
 Oakland, CA 94608

SCALE 1/16"=1'-0"
 0 4' 8' 16' 24'
 Feb. 21, 2007

Fourth Floor Plan





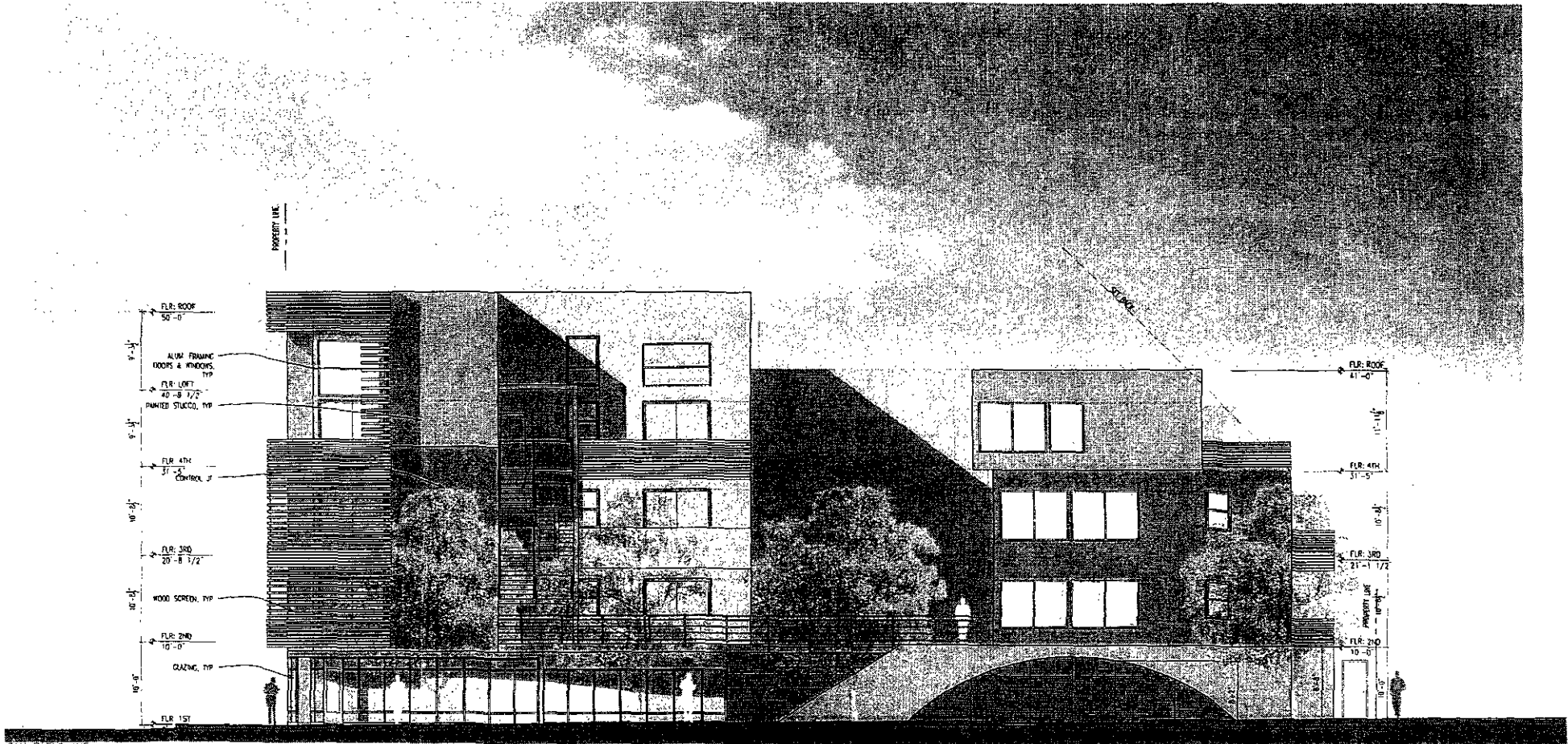
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 605D HOLLIS ST EMERYVILLE, CA 94608 510-654-3255

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 Oakland, CA 94608

03.26.2007

West Elevation

15

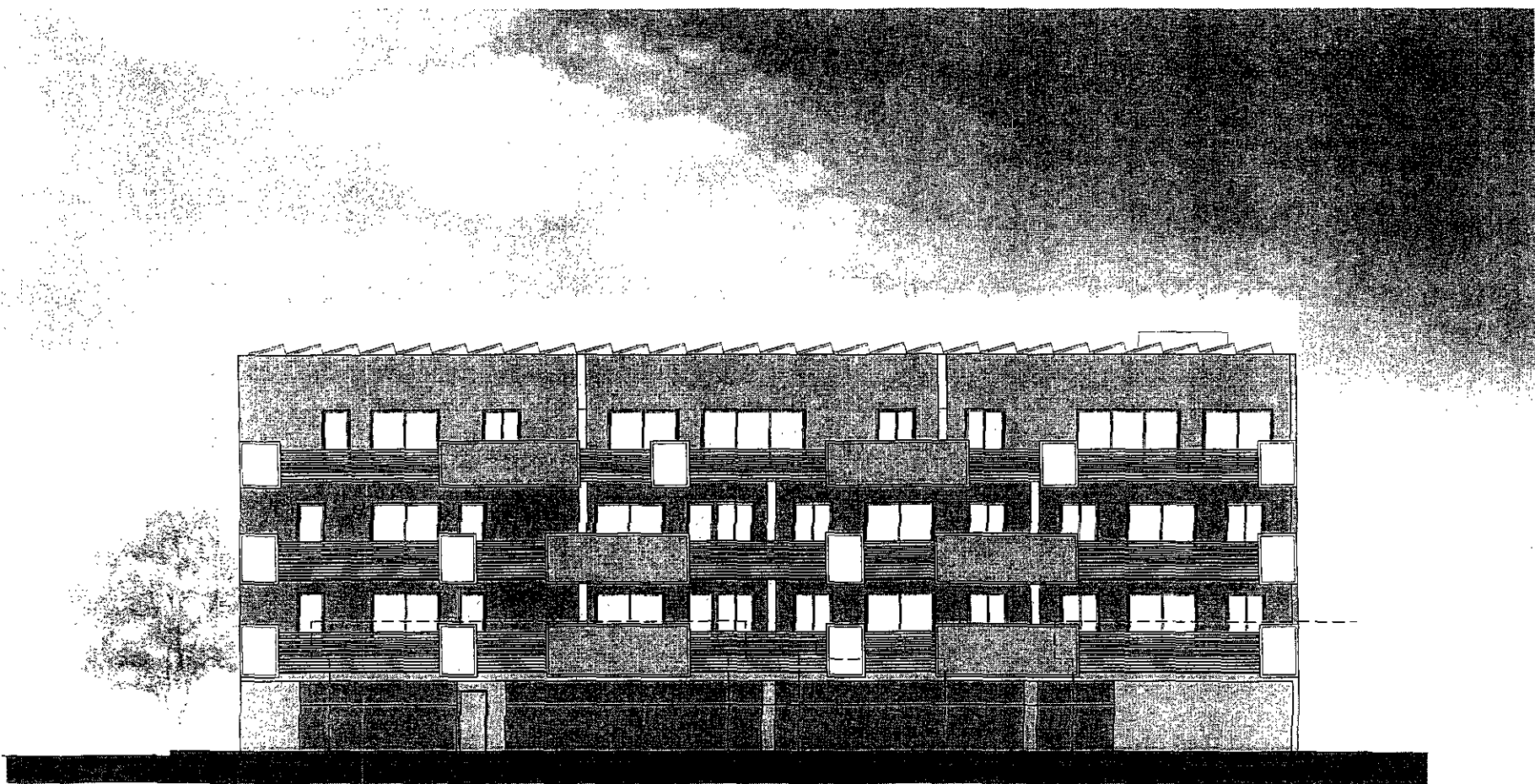


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 OAKLAND, CA 94608

03.28.2007

South Elevation



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6050 HOLLIS ST EMERYVILLE CA 94608 510-854-3255

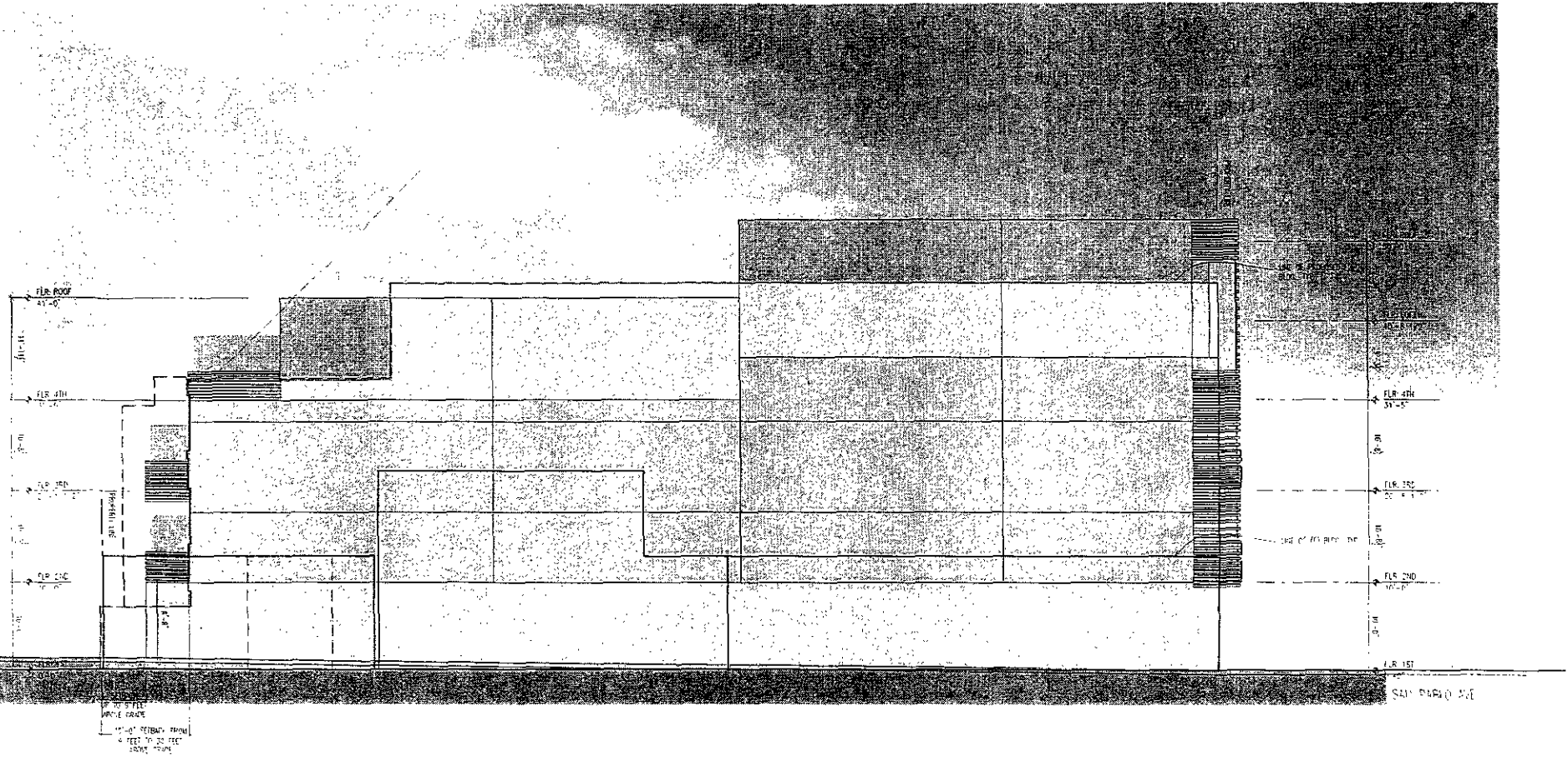
5300 SAN PABLO

Oakland, CA 94608

03.28.2007

East Elevation

17



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 Oakland, CA 94608

03.28.2007

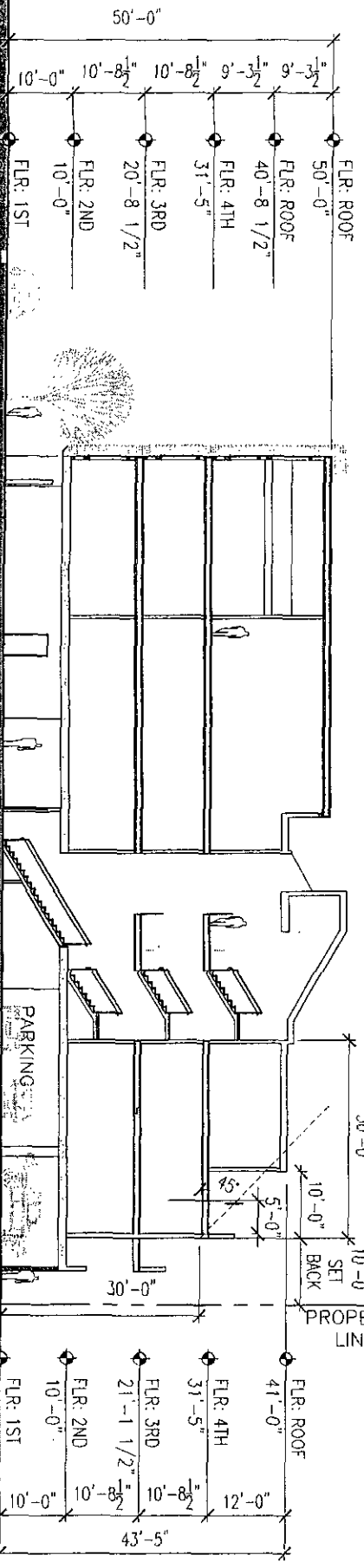
North Elevation

18

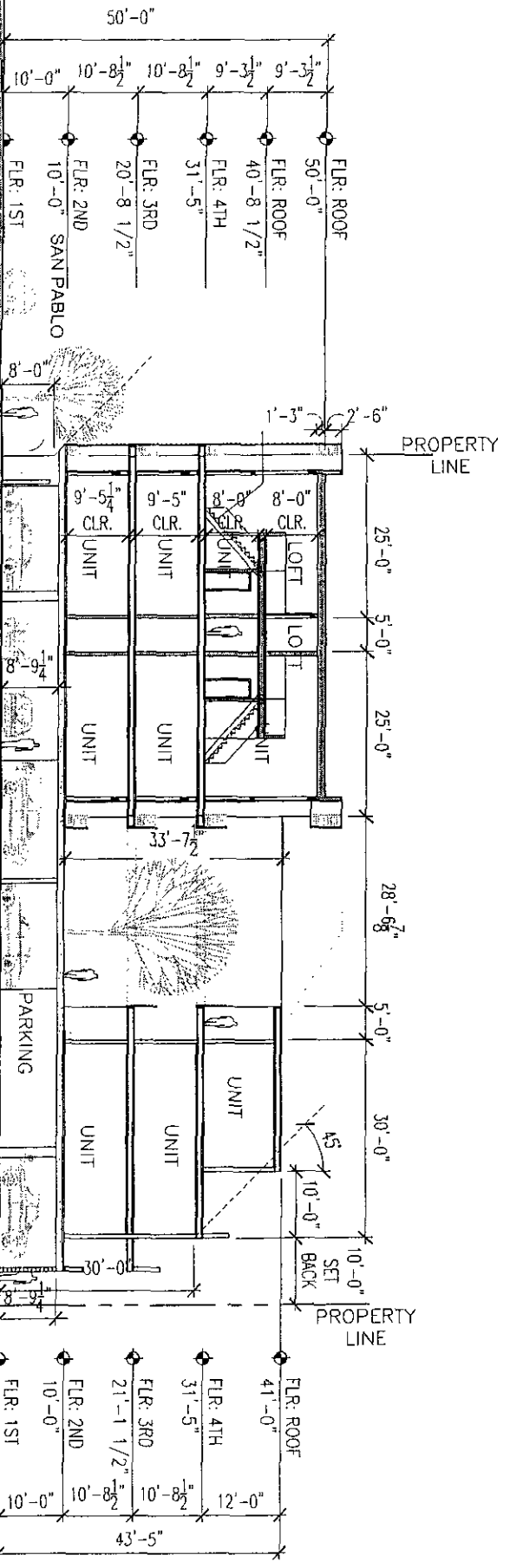
5300 SAN PABLO

0 4' 8' 16' 24'
 Feb. 21, 2007

Section

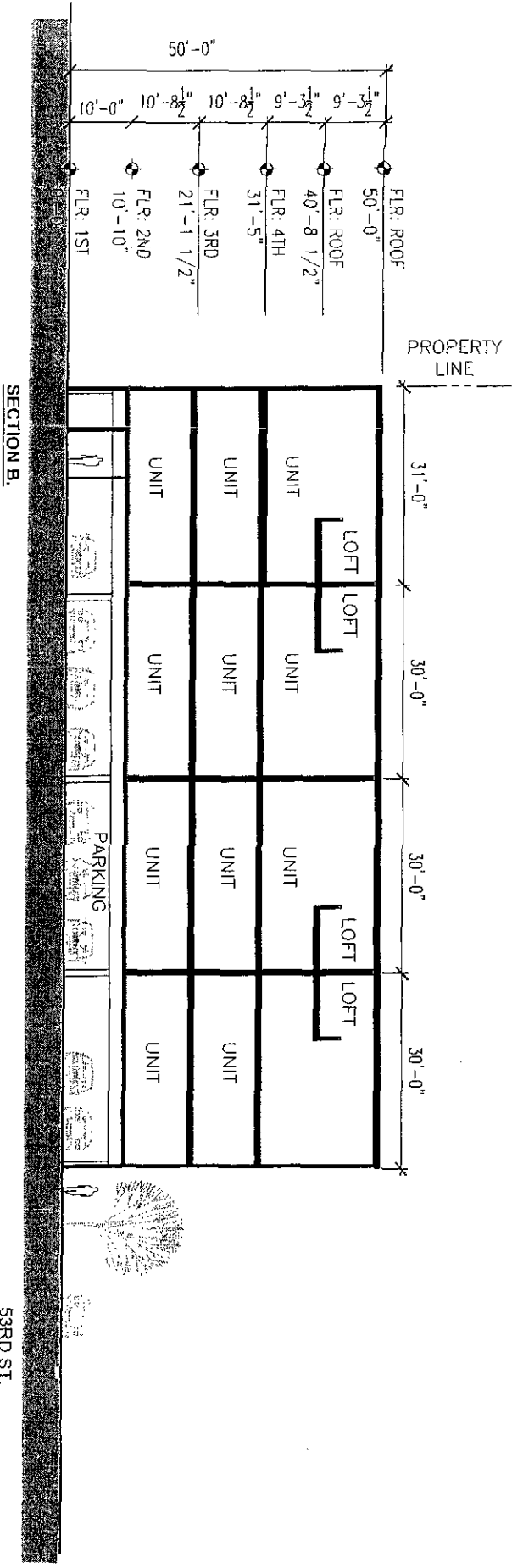


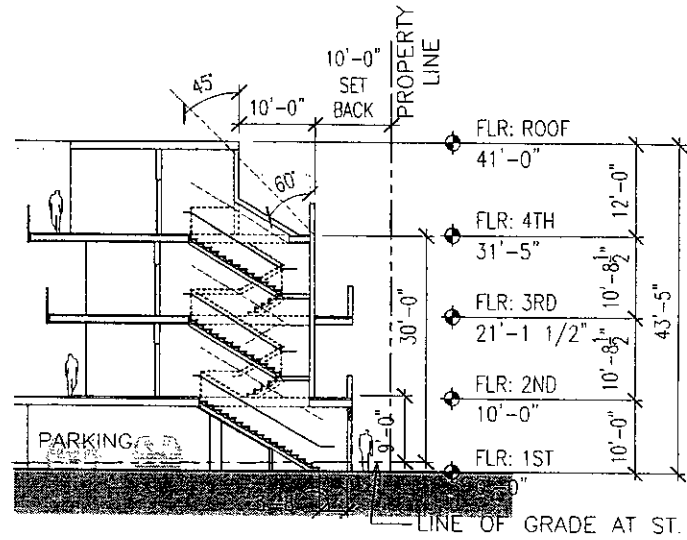
SECTION A.



5300 SAN PABLO
 OAKLAND, CA 94608

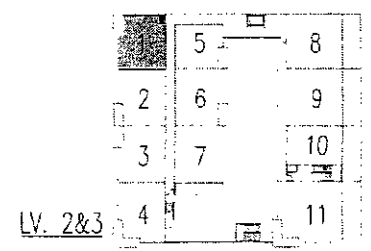
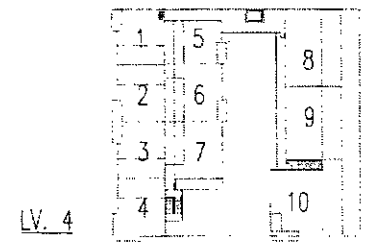
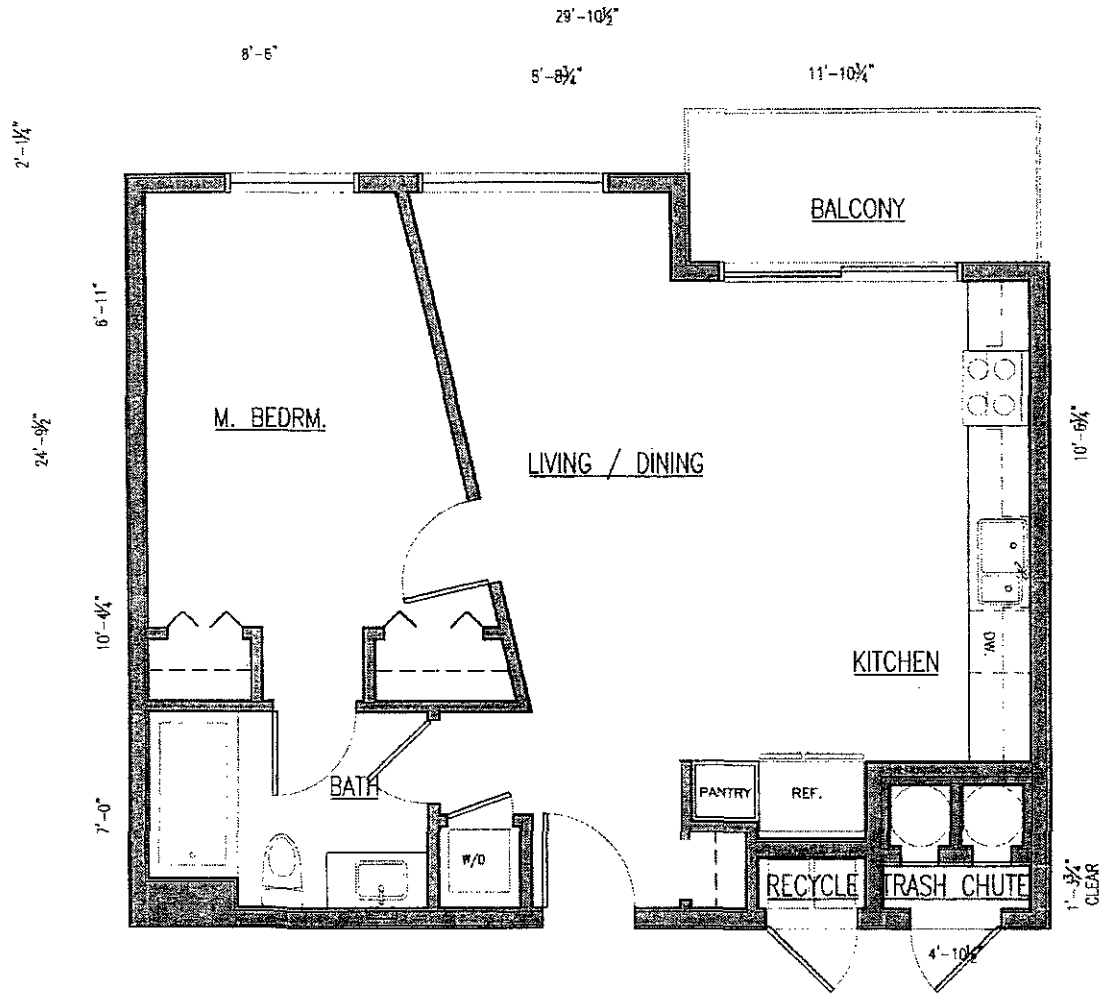
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 Feb. 21 2007 Section





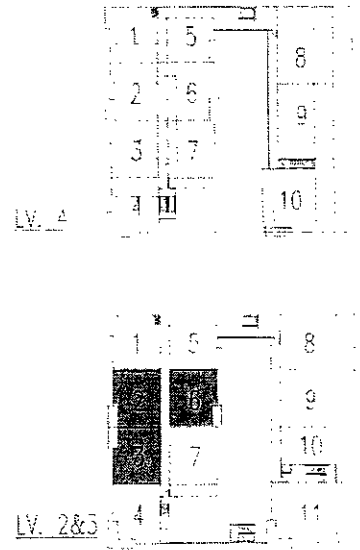
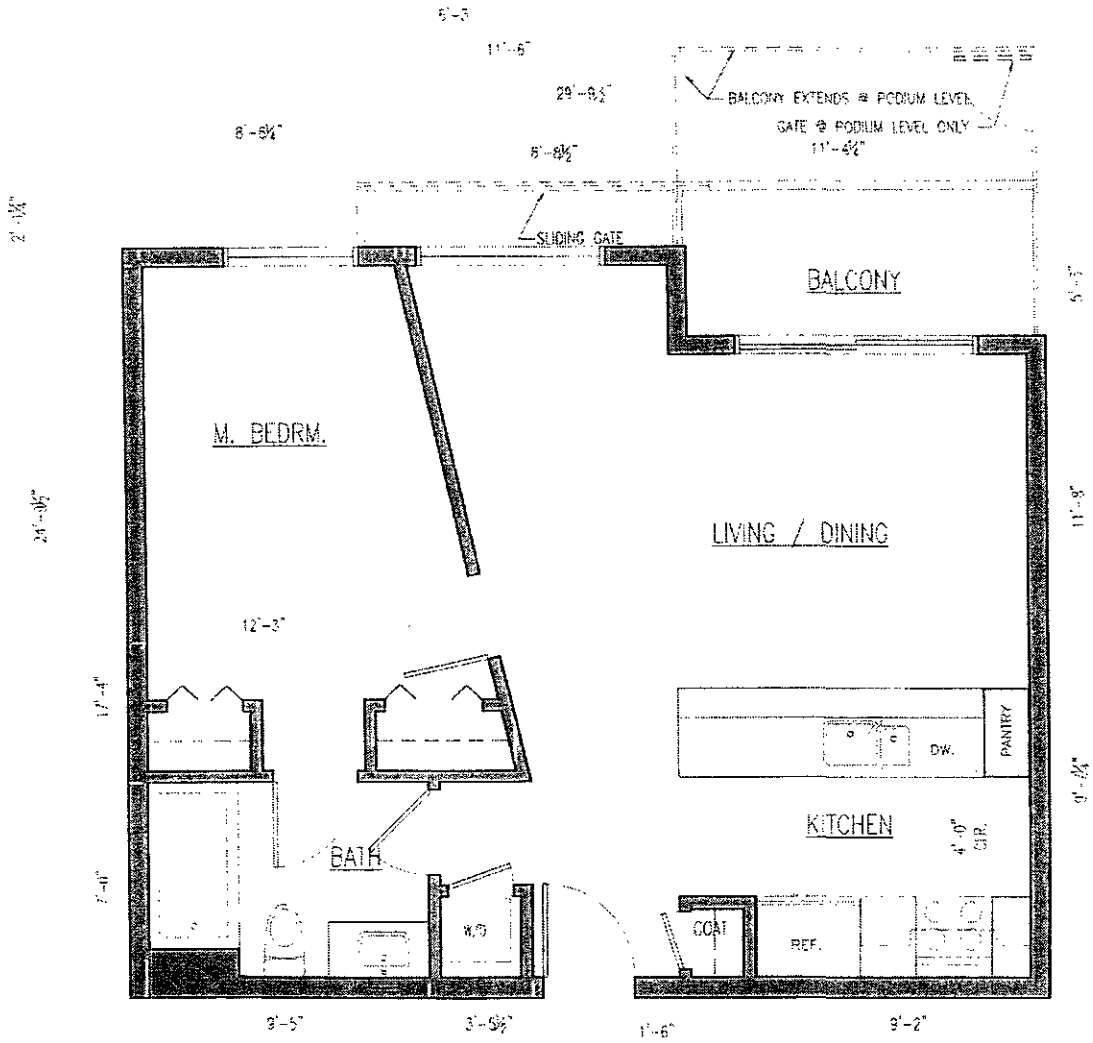
SECTIONS





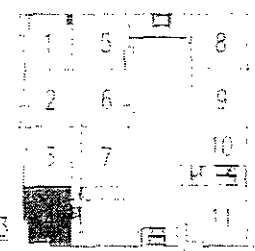
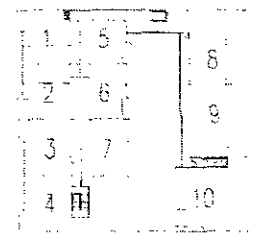
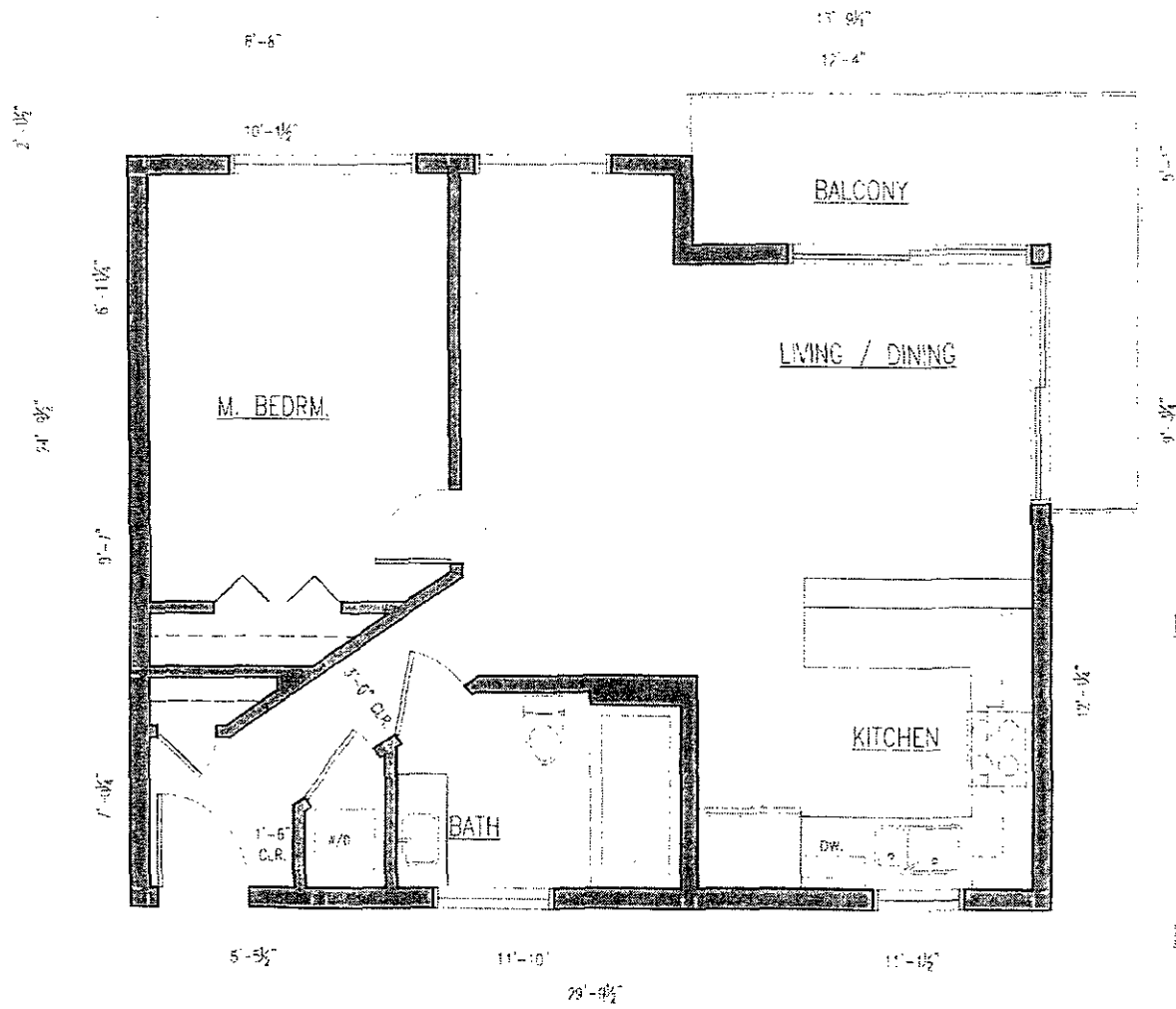
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25'X30' 680 S.F.

01.30.2007
5300
SAN PABLO
DALMEIDA CA



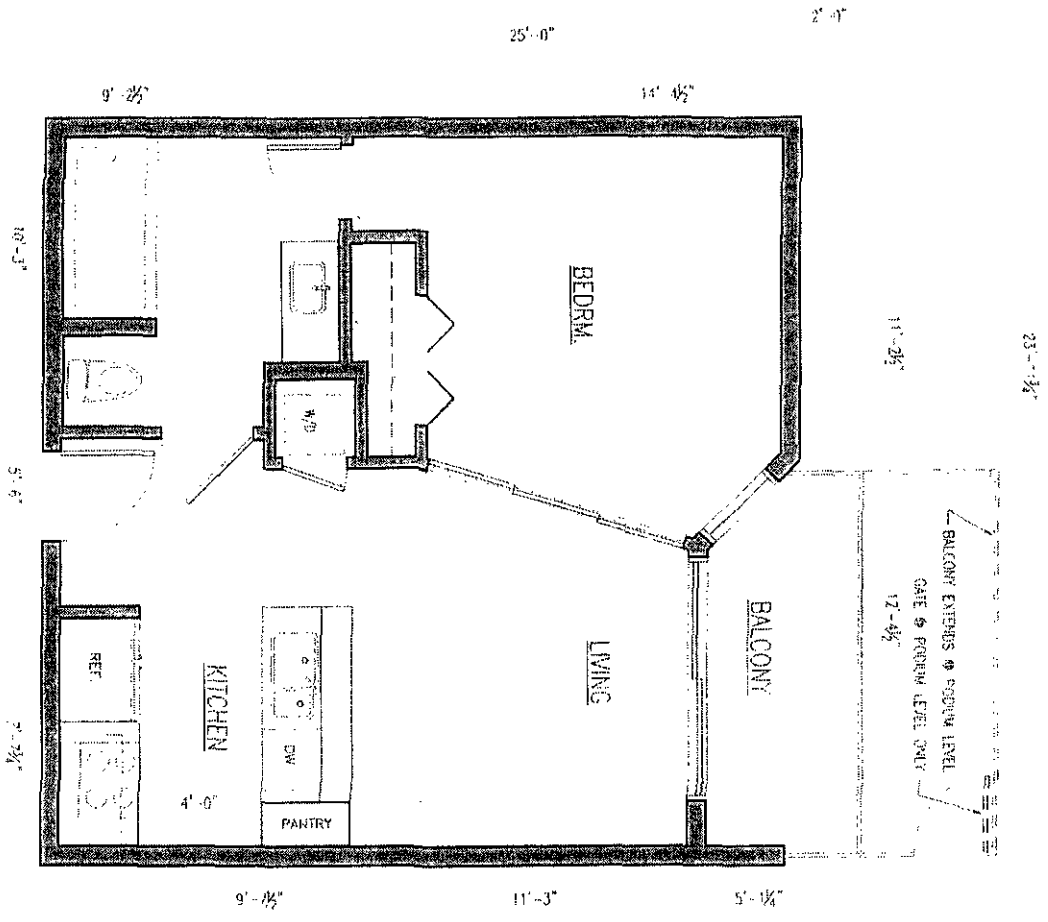
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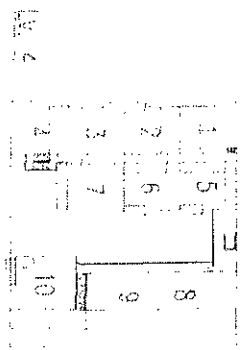
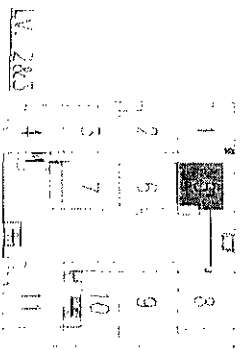


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 LOFT = 138 S.F.

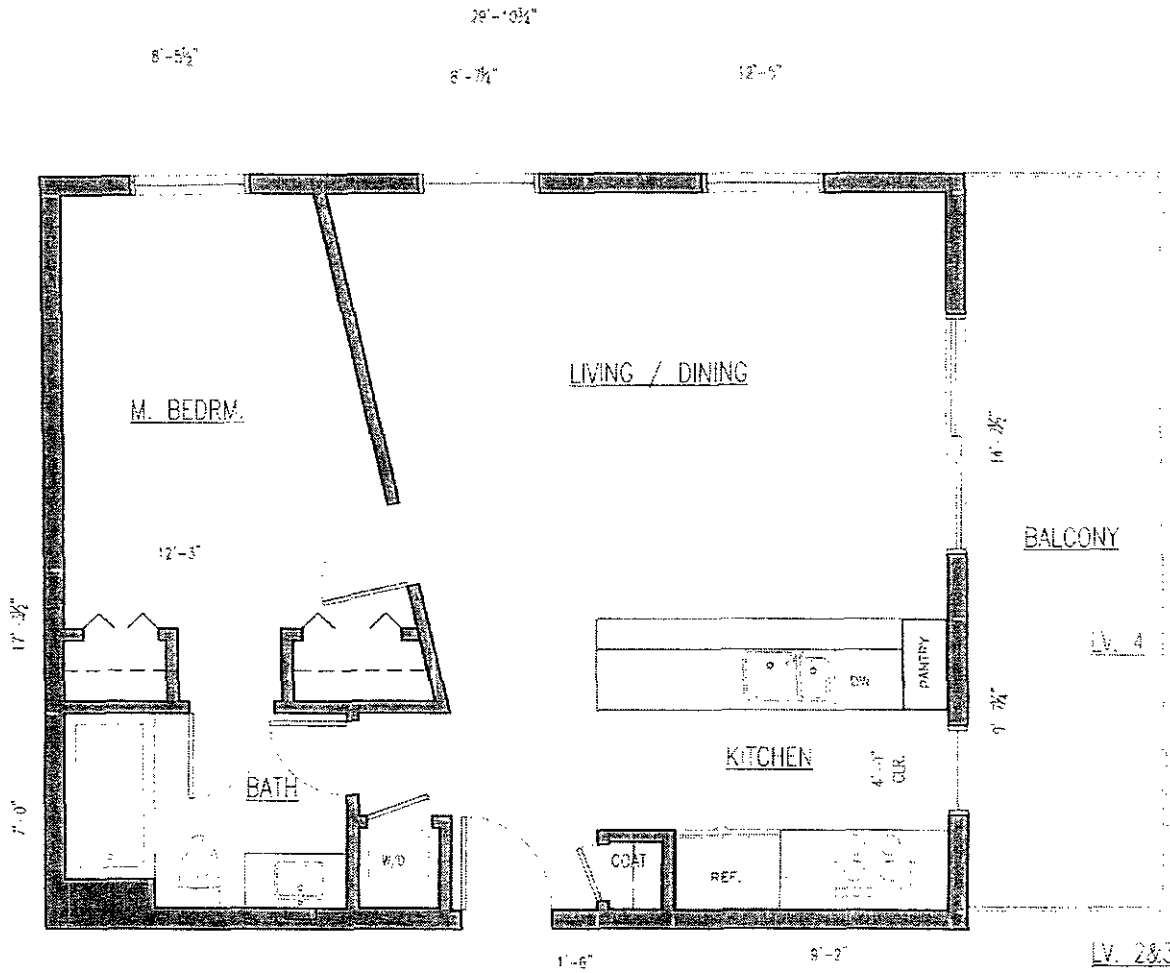
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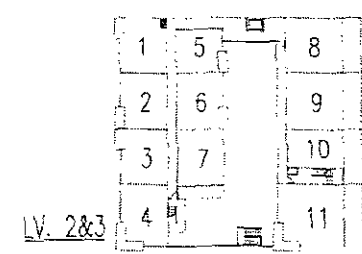
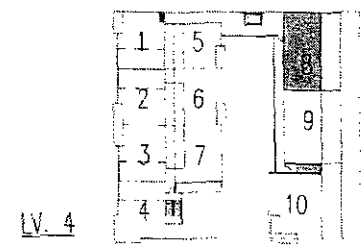
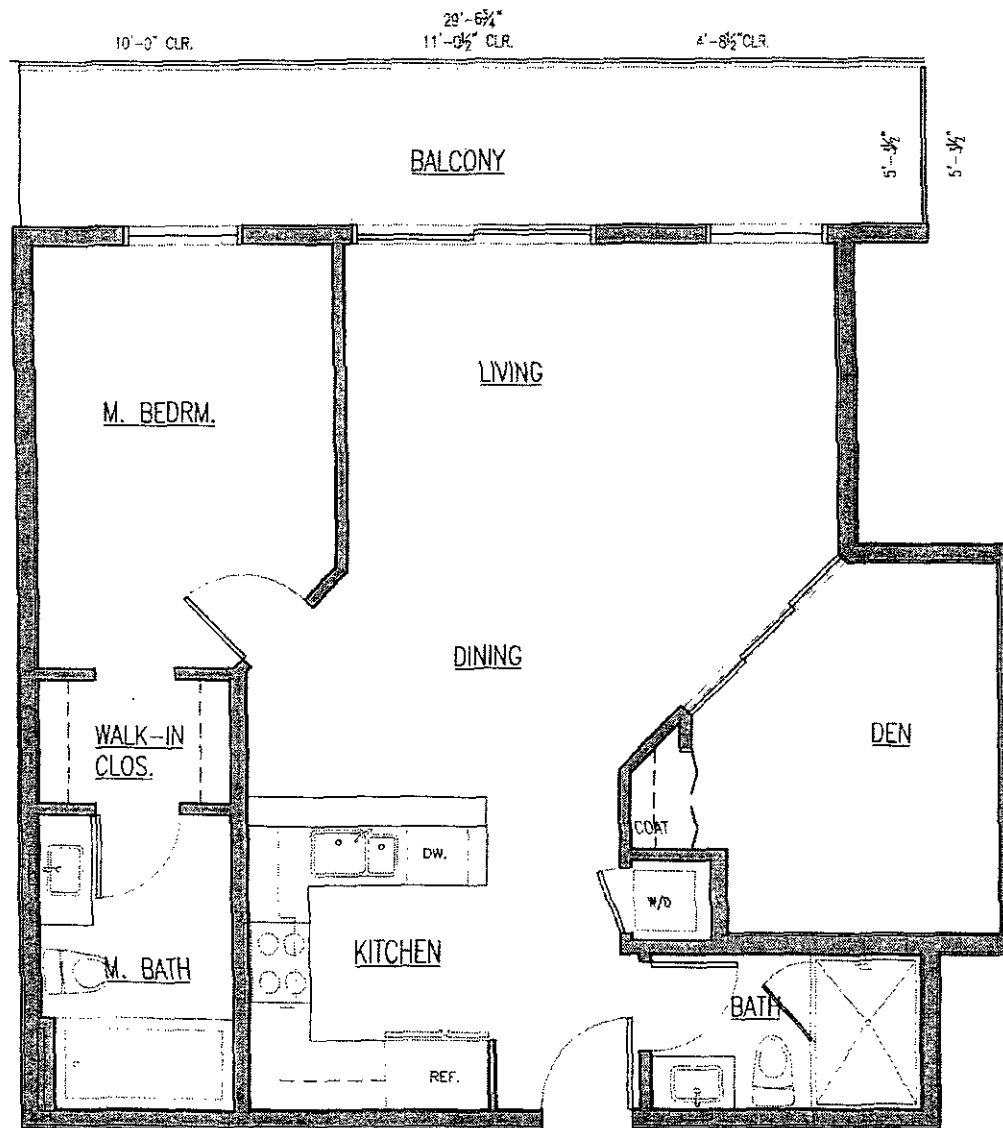


5300
 SAN PABLO
 DRAWING



UNIT TYPE: 1BD & STUDY or BD/ 1.5 BA
 25'X30' 743 S.F.

22.01.2007
 5300
 SAN PABLO
 Oakland, CA

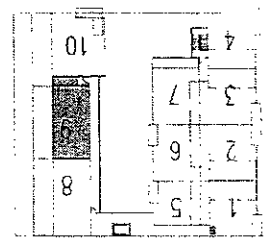
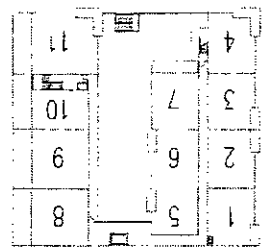
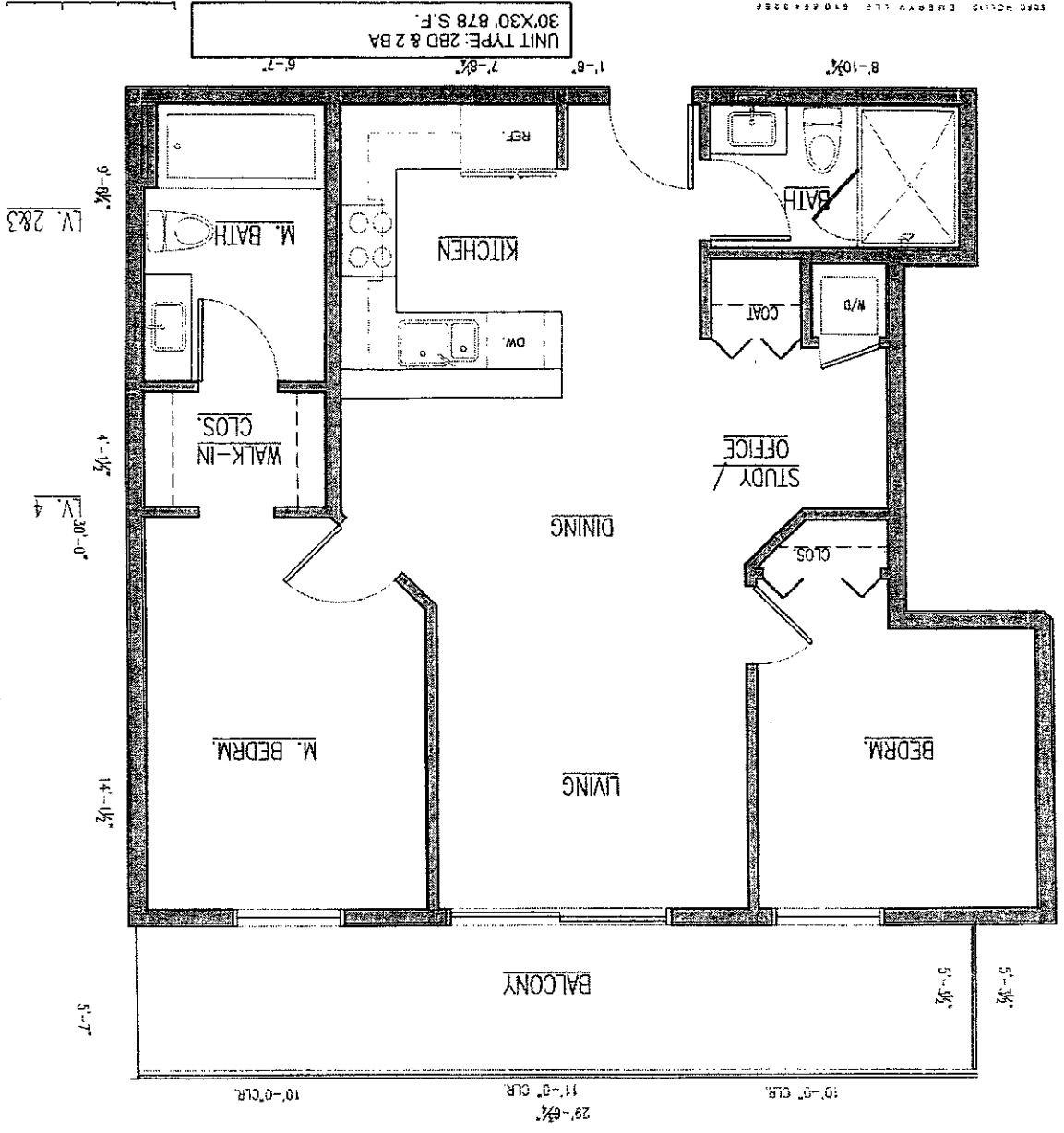


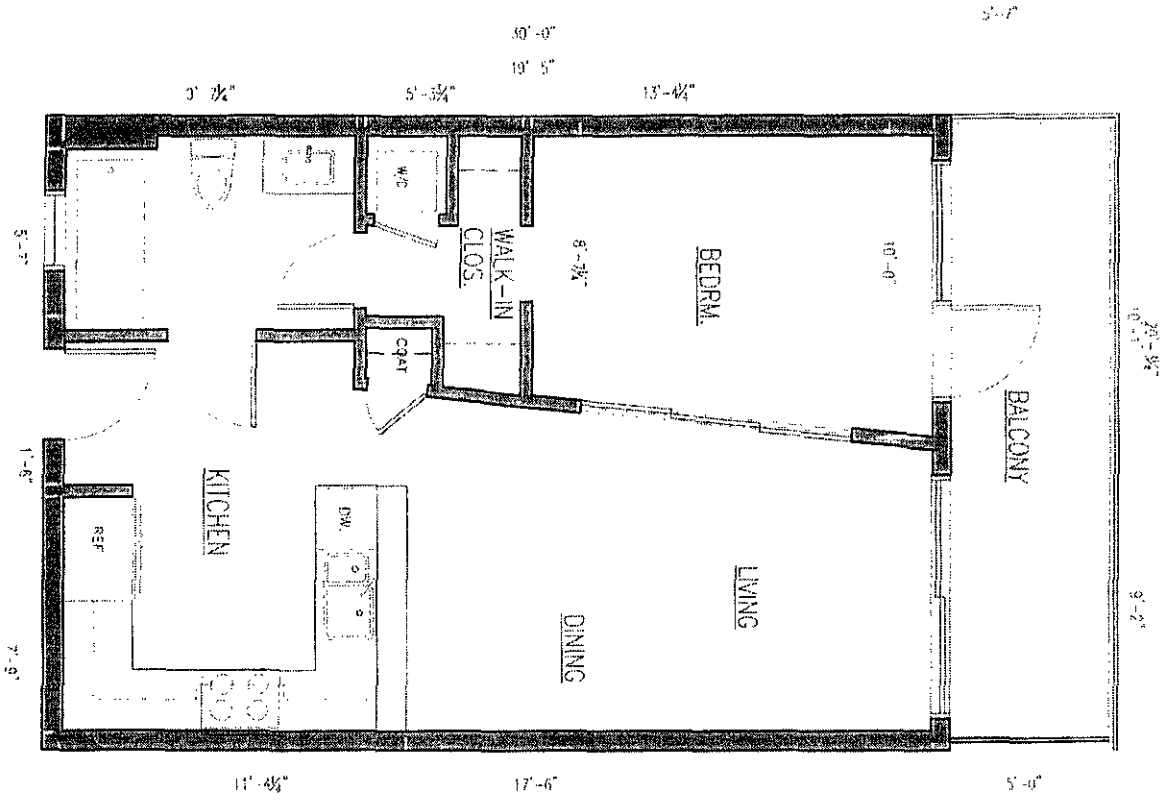
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Jan. 31 2007
5300
SAN PABLO
Oakland, CA

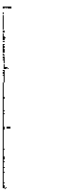
5300
SAN PABLO
DRAWING NO.

UNIT TYPE: 2BD & 2 BA
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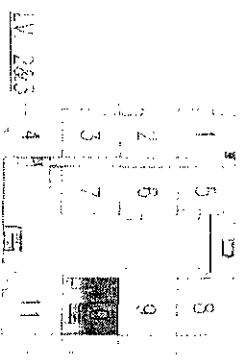


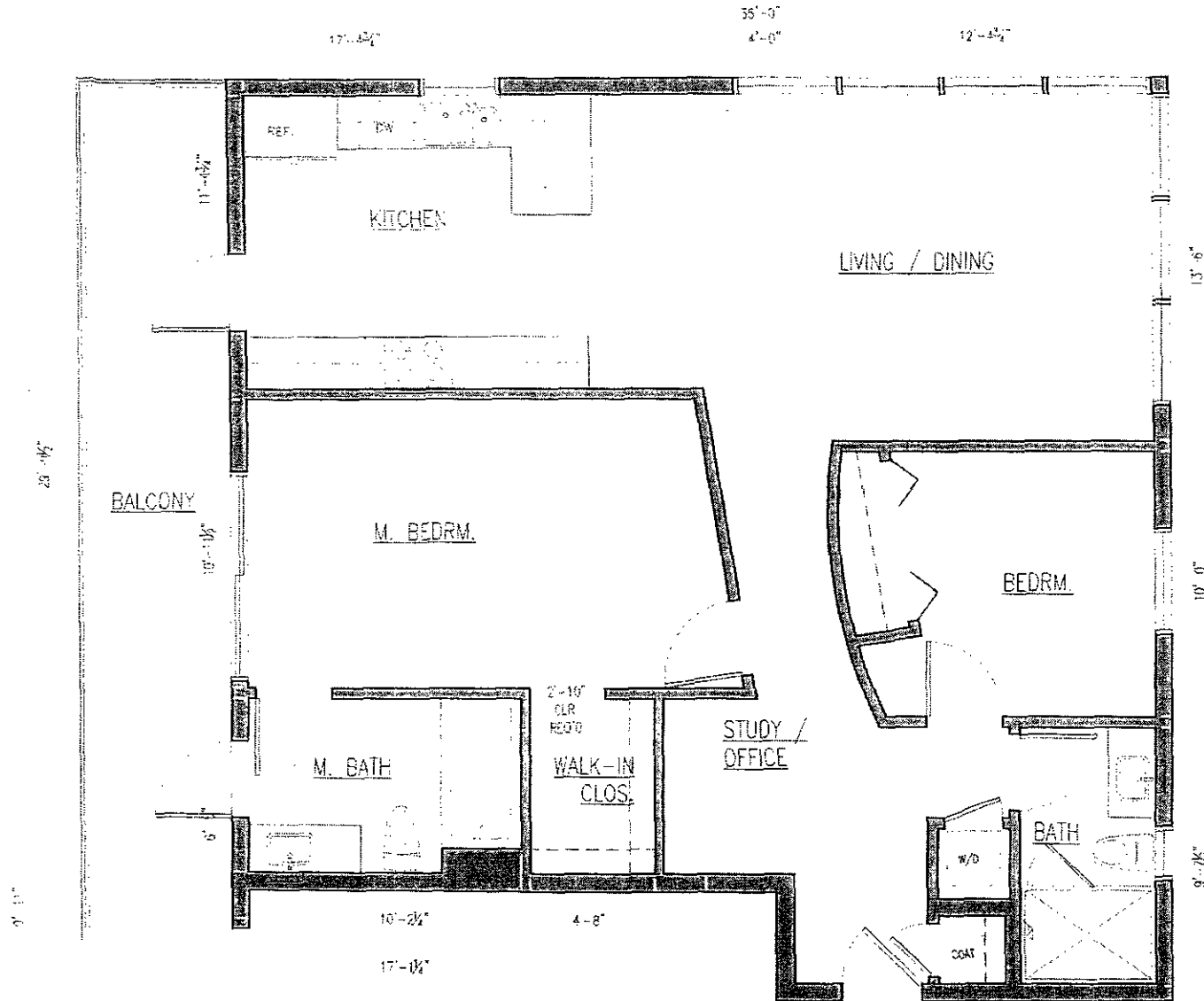


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 20'X30' 601 S.F.



EST. 1922
 5300
 SAN PABLO
 CALIF. CA





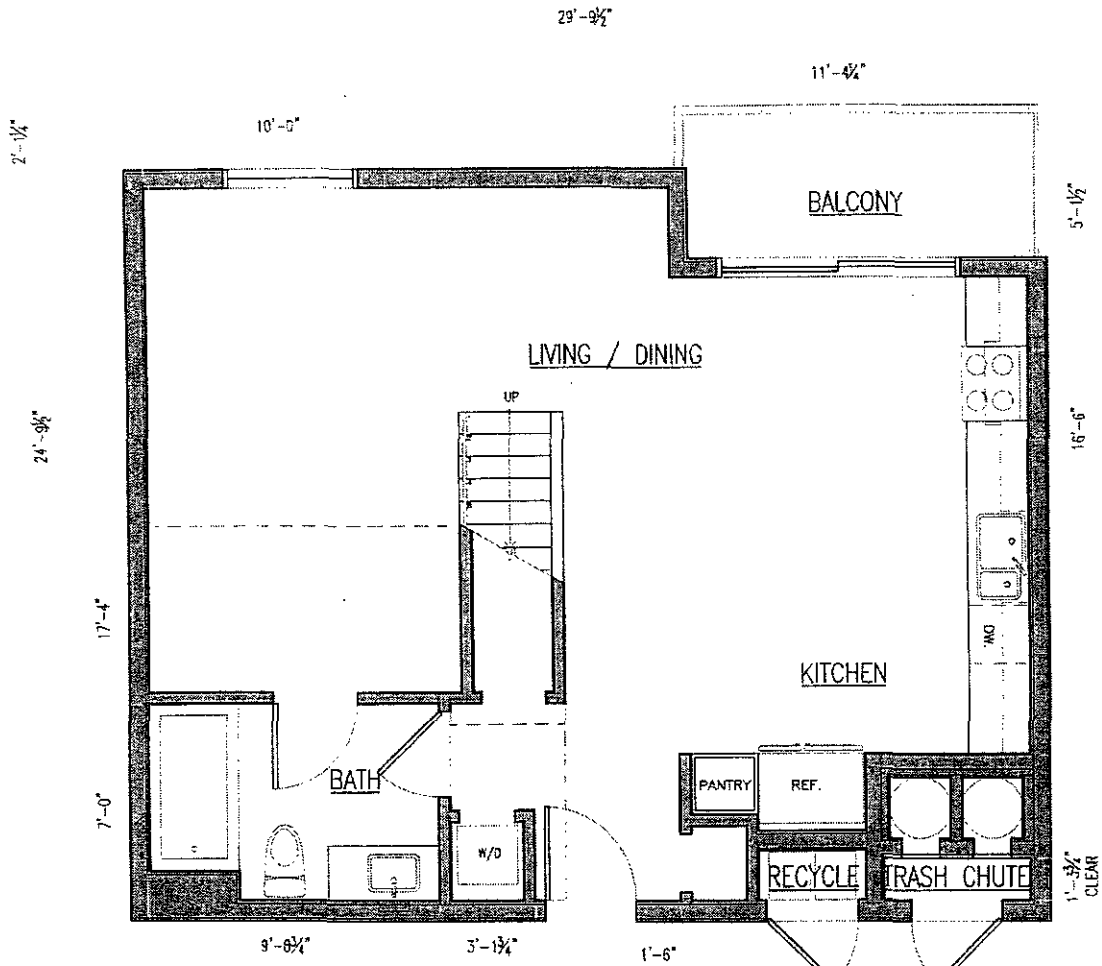
Equipment 2/05
 PHILIP SANTA & ASSOCIATES

8050 HOLDS BURNAY LLE 510-664-3255

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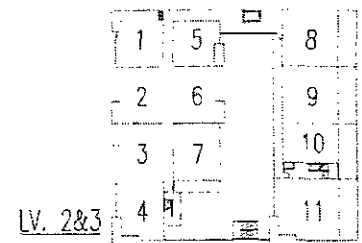
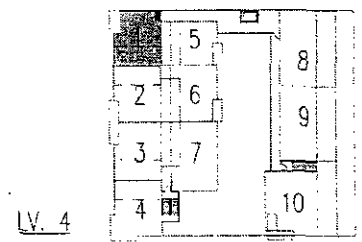
31.01.2007
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 SAN PABLO
 Del Norte, CA





OPEN SPACE = 546 S.F.
 LOFT = 182 S.F.

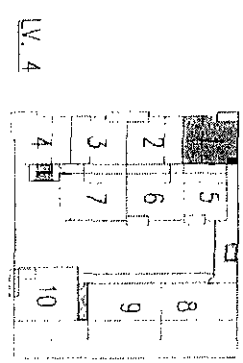
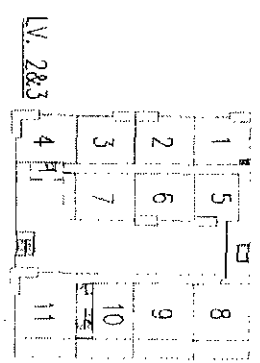
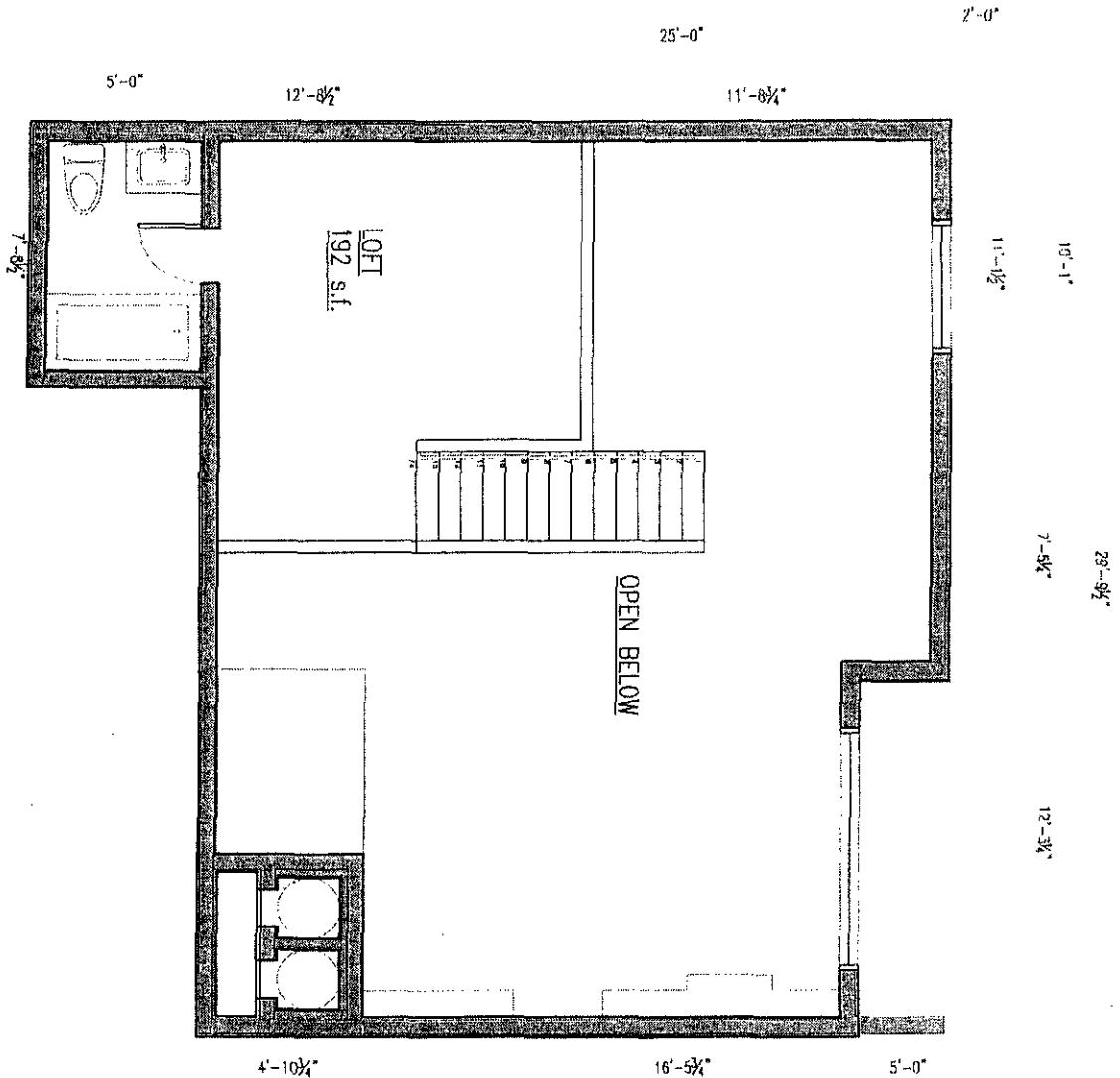
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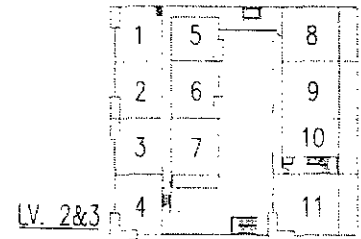
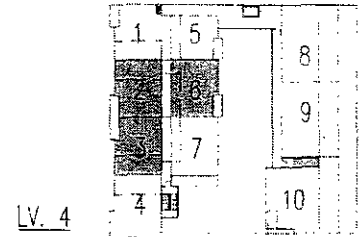
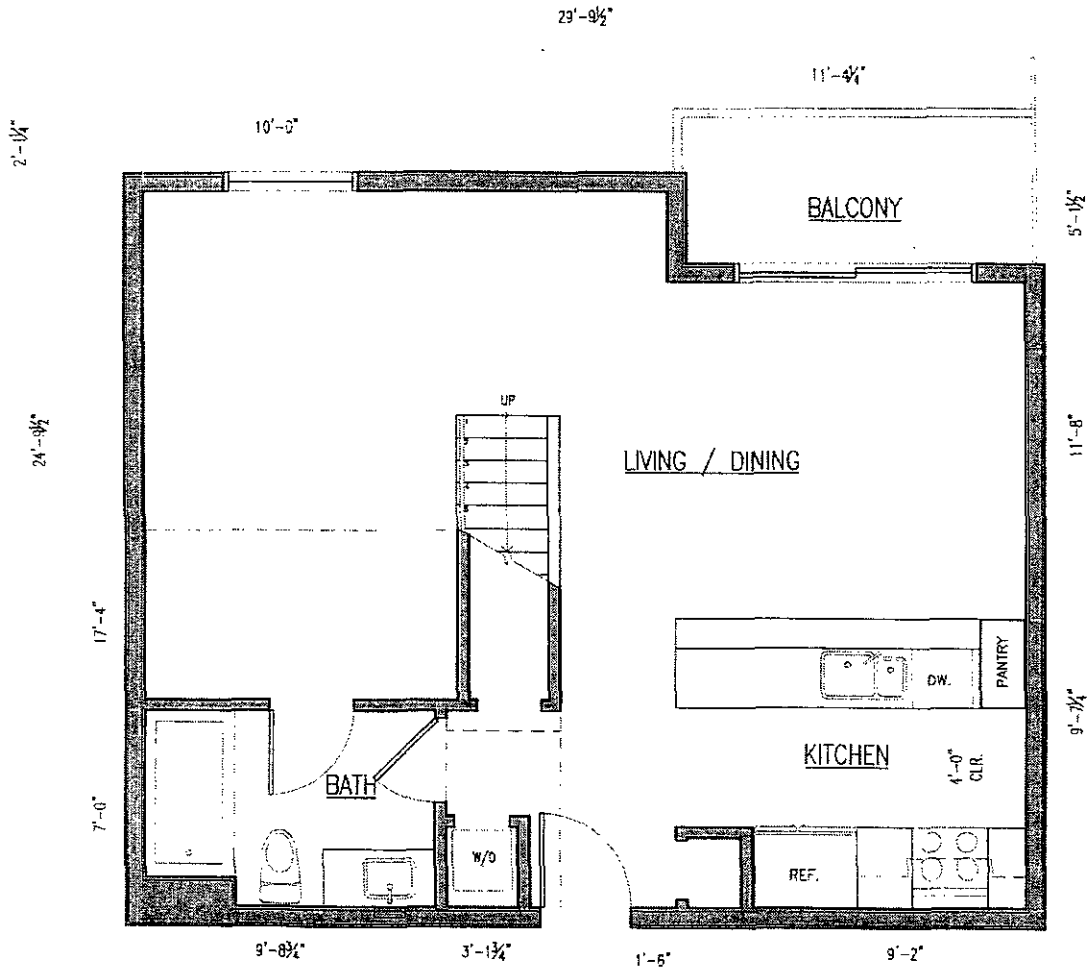


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25'X30' 680 S.F.



57' 6" 200'
5300
SAN PABLO
CALIF. CA
KA

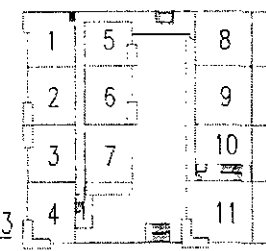
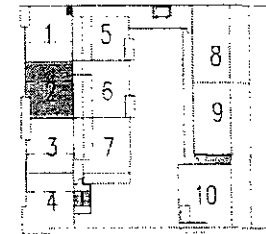
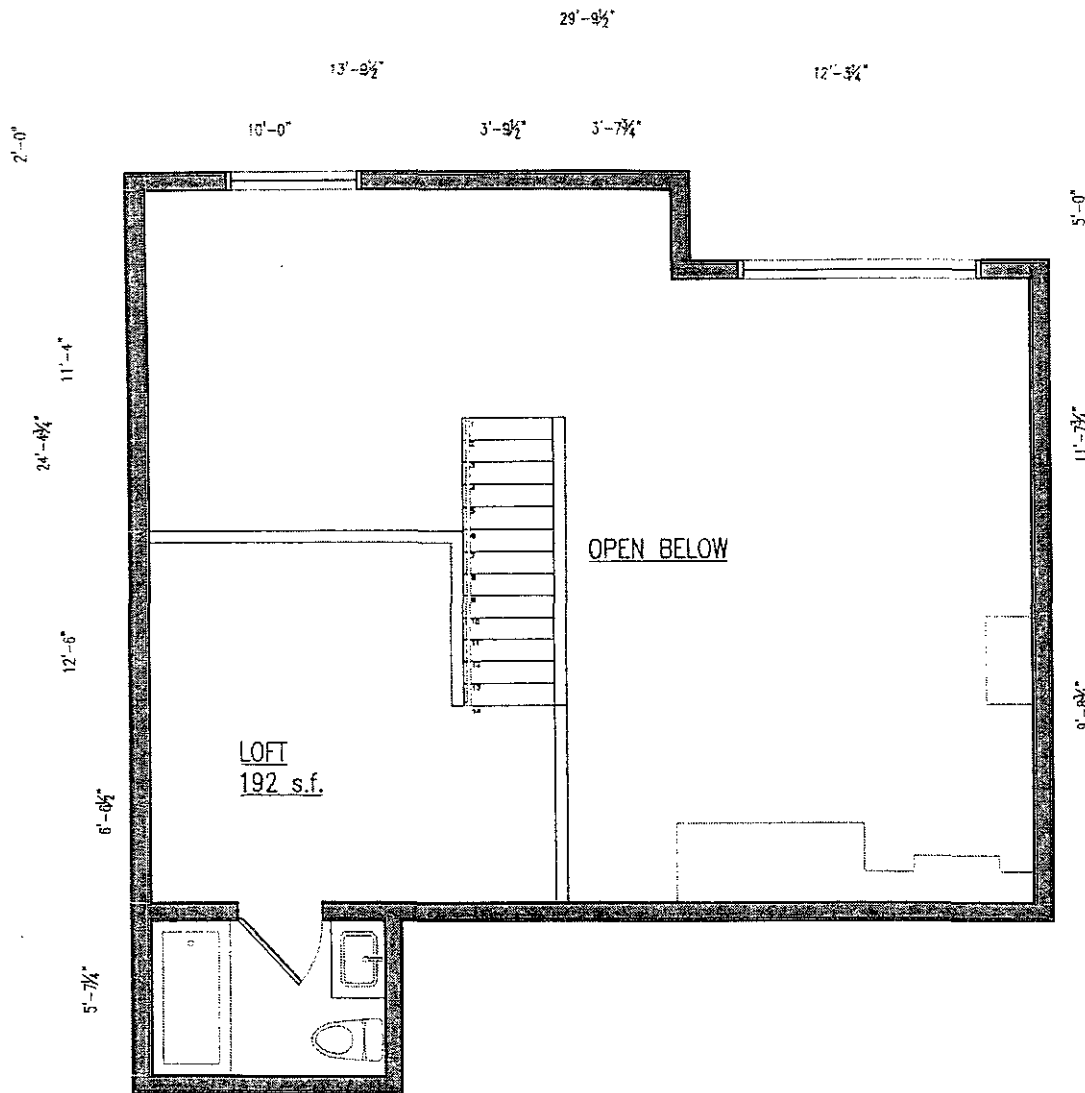




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 LOFT = 193 S.F.

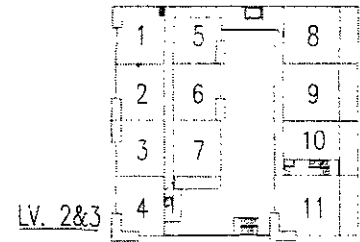
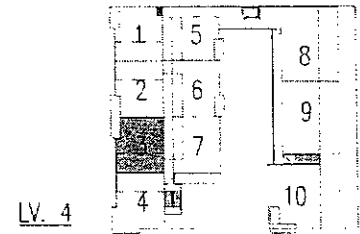
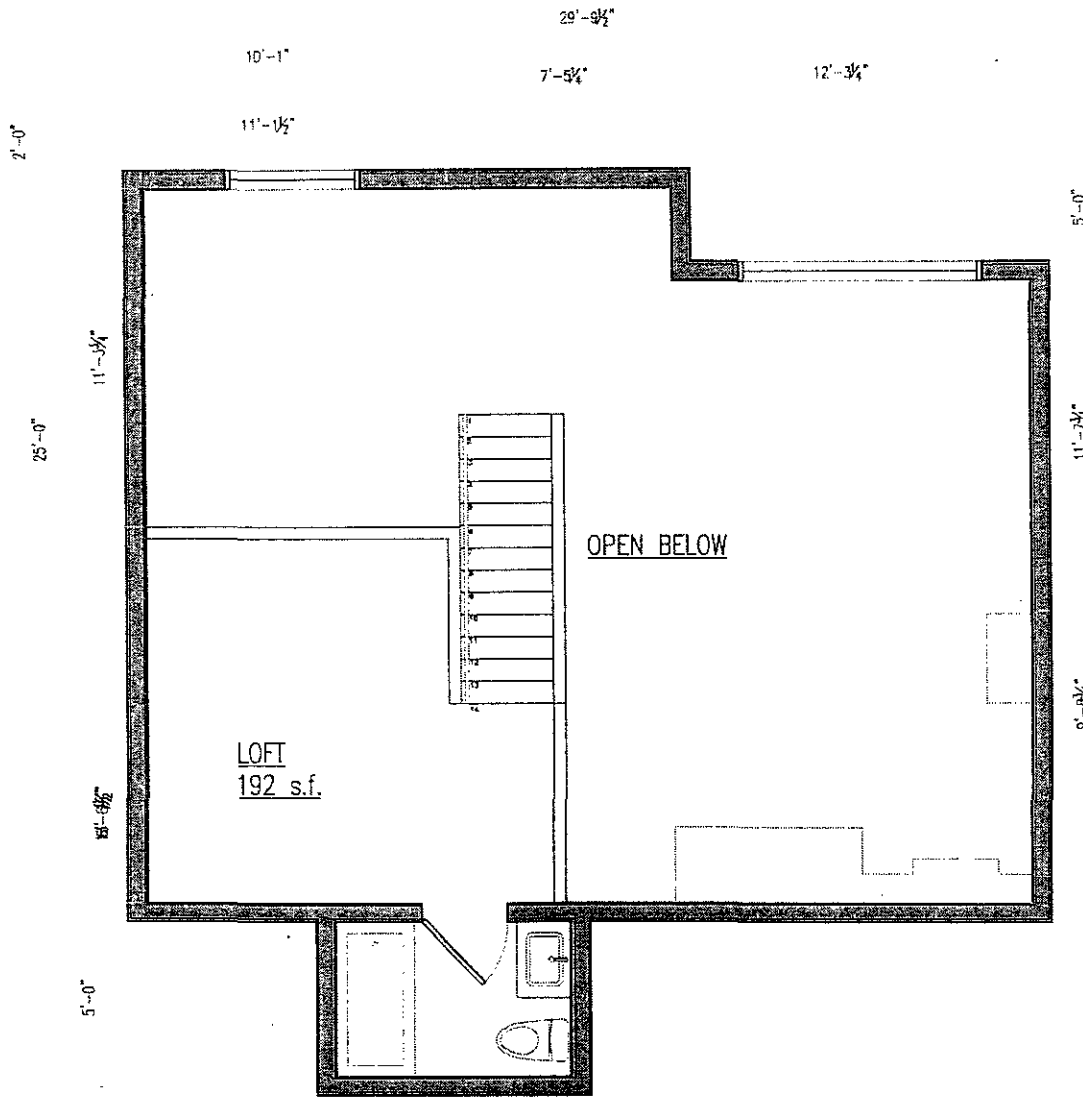
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 25'X30' 701 S.F.

22.01.2007
 5300
 SAN PABLO
 Oakland, CA



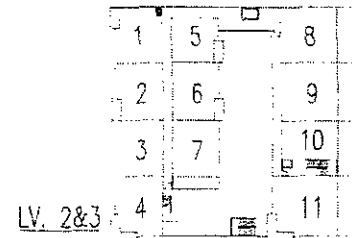
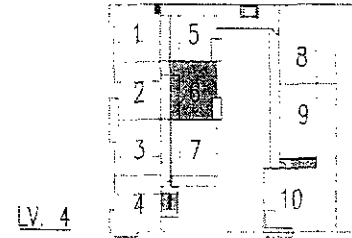
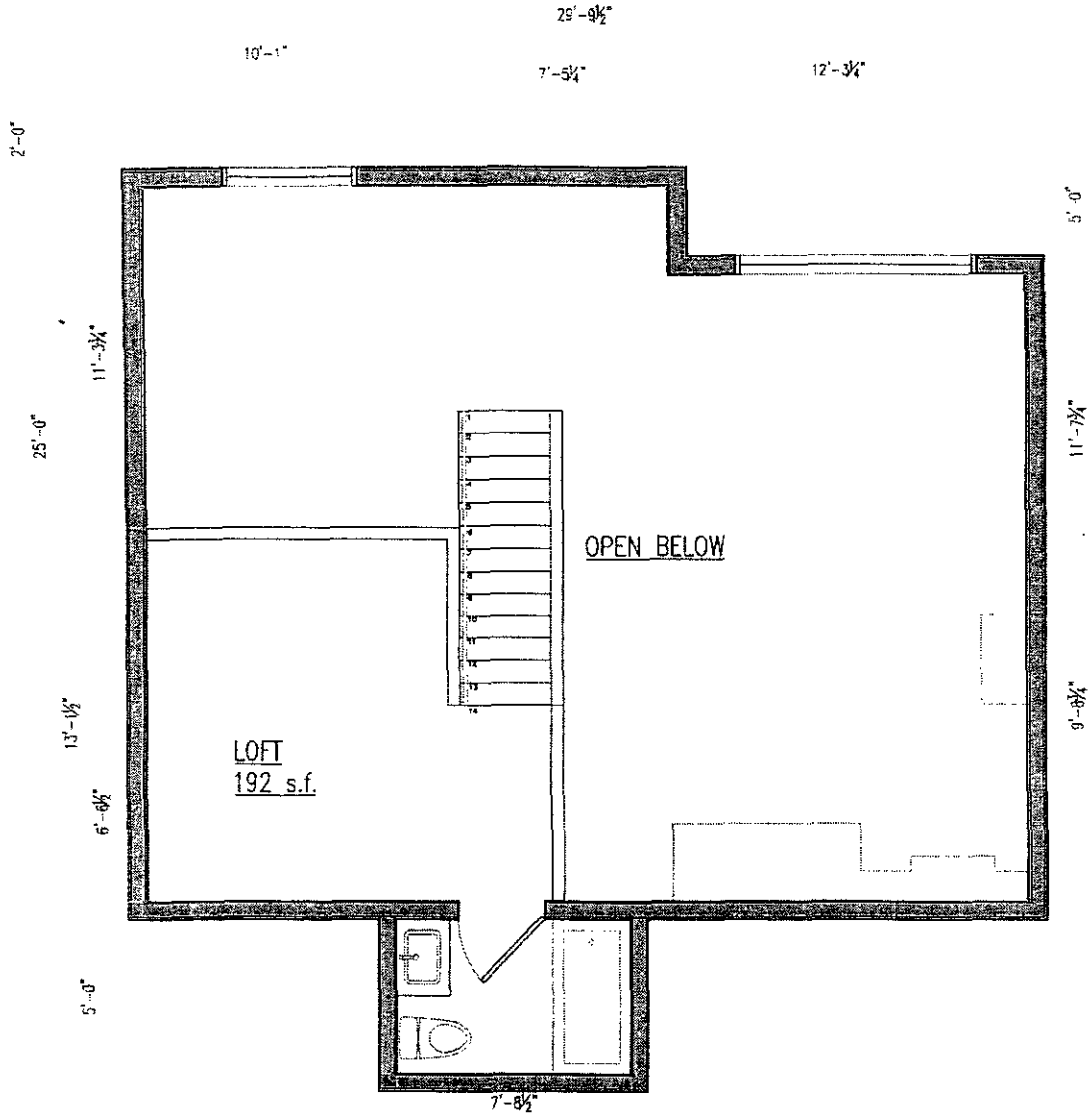
UNIT TYPE: 1BD & STUDY or BD/ 1.5 BA
25'X30' 701 S.F.





UNIT TYPE: 1BD & STUDY or BD/ 1.5 BA
25'X30' 701 S.F.



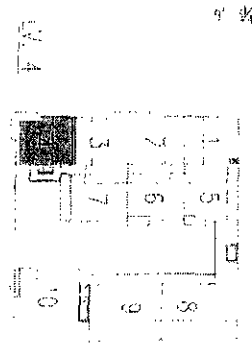
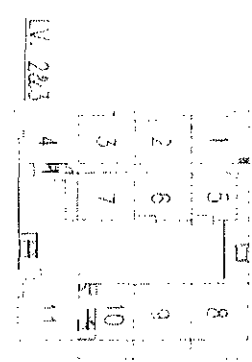
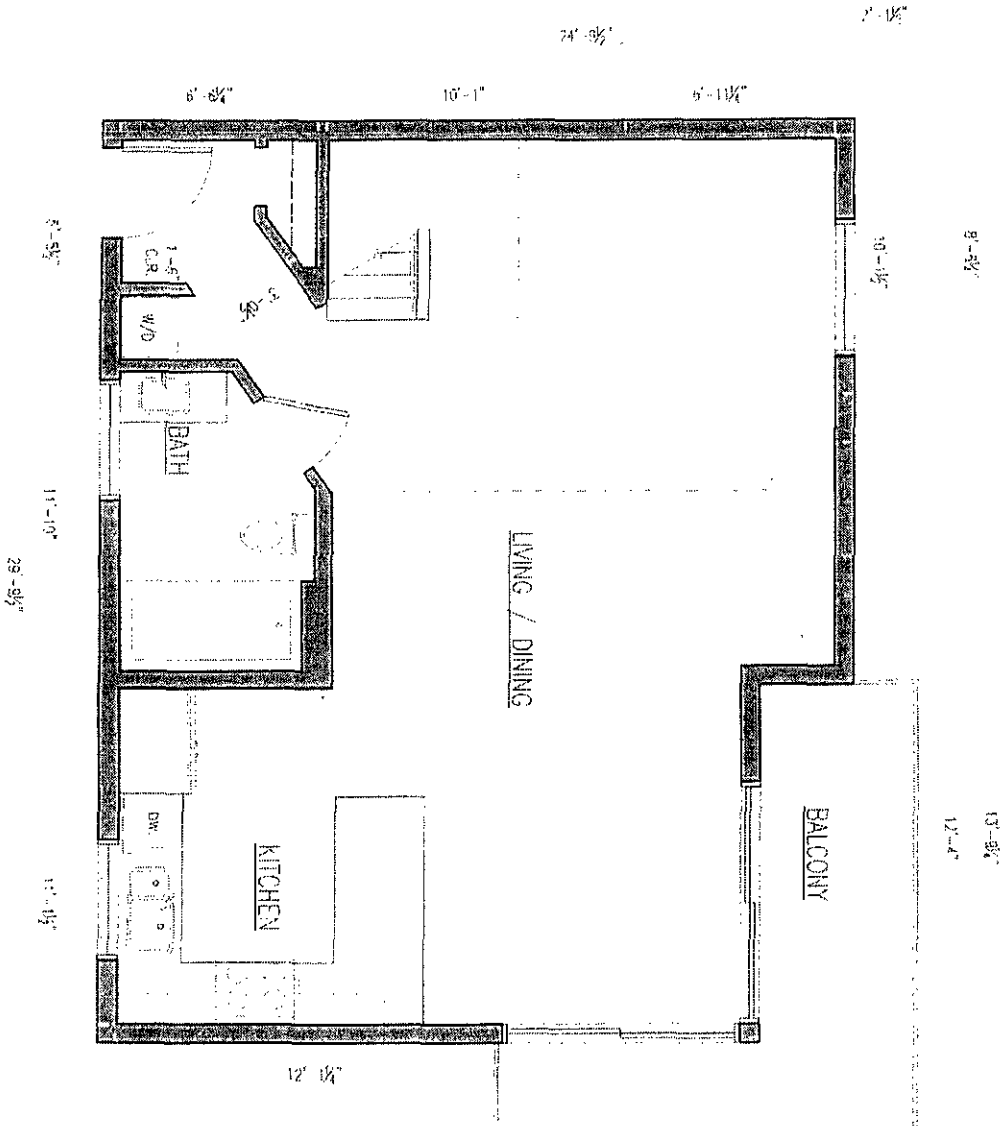


UNIT TYPE: 1BD & STUDY or BD/ 1.5 BA
 25'X30' 701 S.F.

UNIT TYPE: 1BD & STUDY or BD / 1.5 BA
 25'X30' 710 S.F.

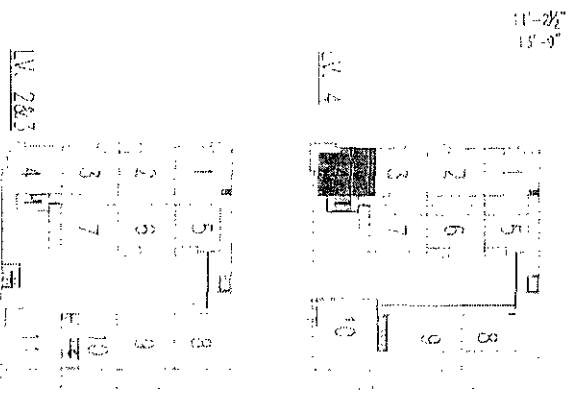
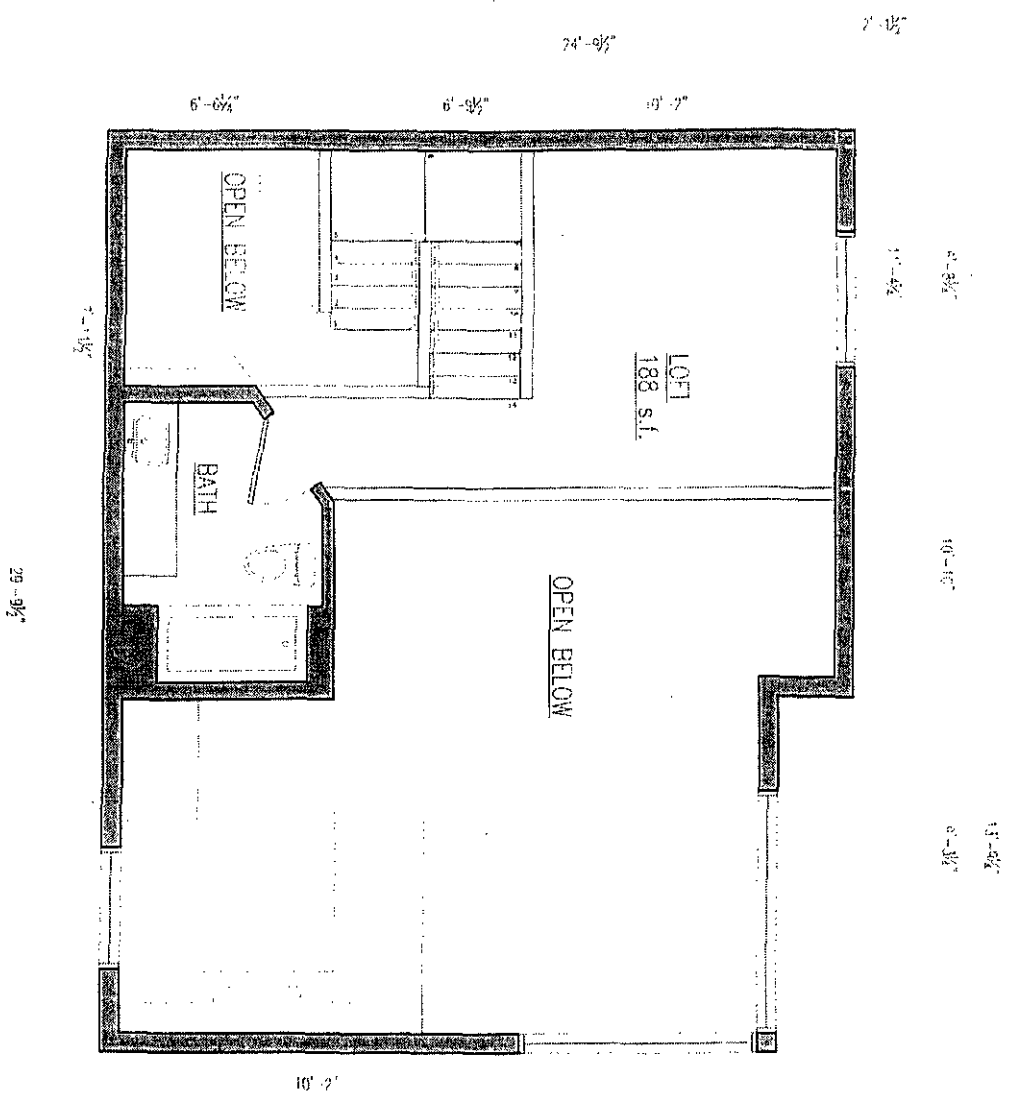
OPEN SPACE = 570 S.F.
 LOFT = 90 S.F.

5300^{PER}
 SAN PABLO
 CA



UNIT TYPE: 1BD & STUDY or BD/1.5 BA
 25X30' 710 S.F.

5300
 SAN PABLO
 Oakland, CA



1'-5"

11'-2 1/2"

15'-9"

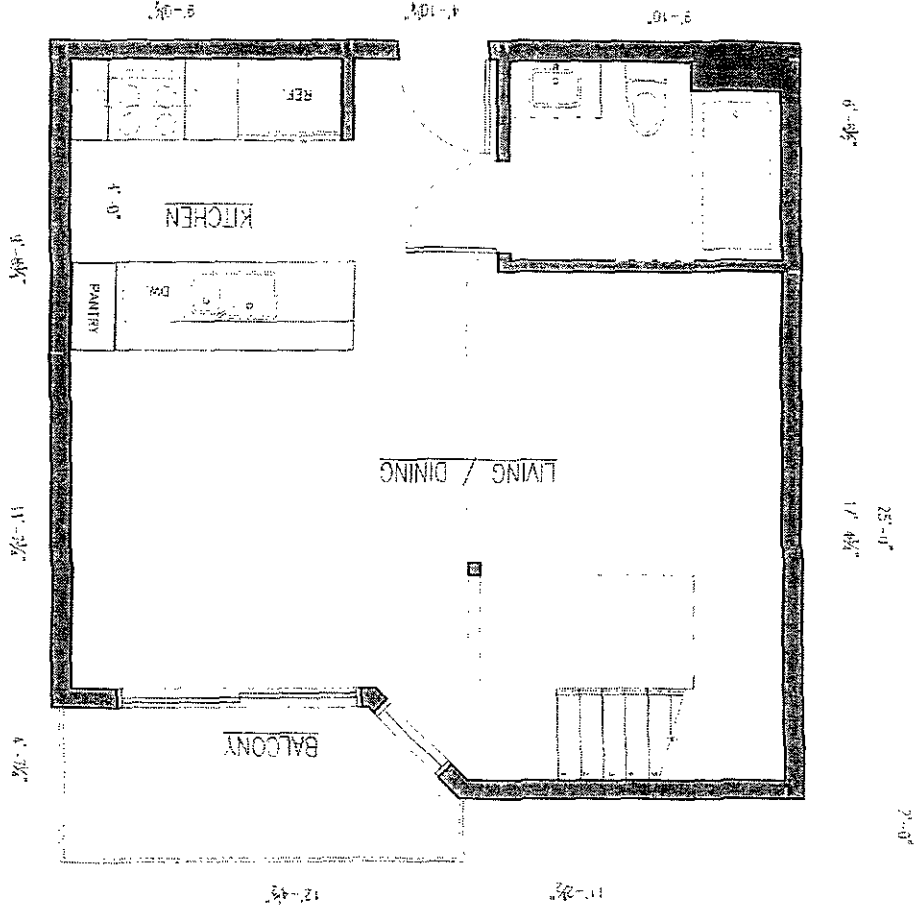
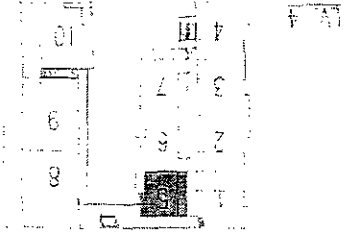
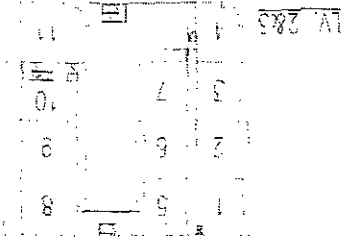
5300
SAN PABLO
DHWAL, CA

UNIT TYPE: 1BD / 1BA
25'X23' 555 S.F.

6057 HOLYER EMERYVILLE 94608-4225

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OPEN SPACE = 456 S.F.
LOFT = 152 S.F.



24'-3 1/4"

13'-4 1/4"

10'-0"

2'-0"

7'-1 1/2"

17'-4 1/4"

25'-0"

LOFT
152 s.f.

OPEN BELOW

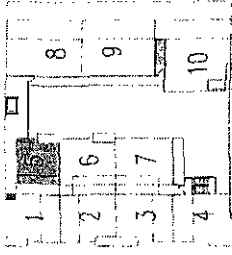
11'-7 1/4"

9'-0 1/4"

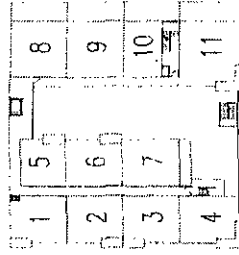
8'-5 1/4"

4'-8 1/4"

14'-2 1/4"



LV. 4



LV. 2&3

UNIT TYPE: 1BD / 1BA
25'X23' 555 S.F.



02.01.2007
5300
SAN PABLO
CALIFORNIA, CA

6015 HOLDS EMBRYVILLE 510-894-0216

PHILIP SANTA & ASSOCIATES

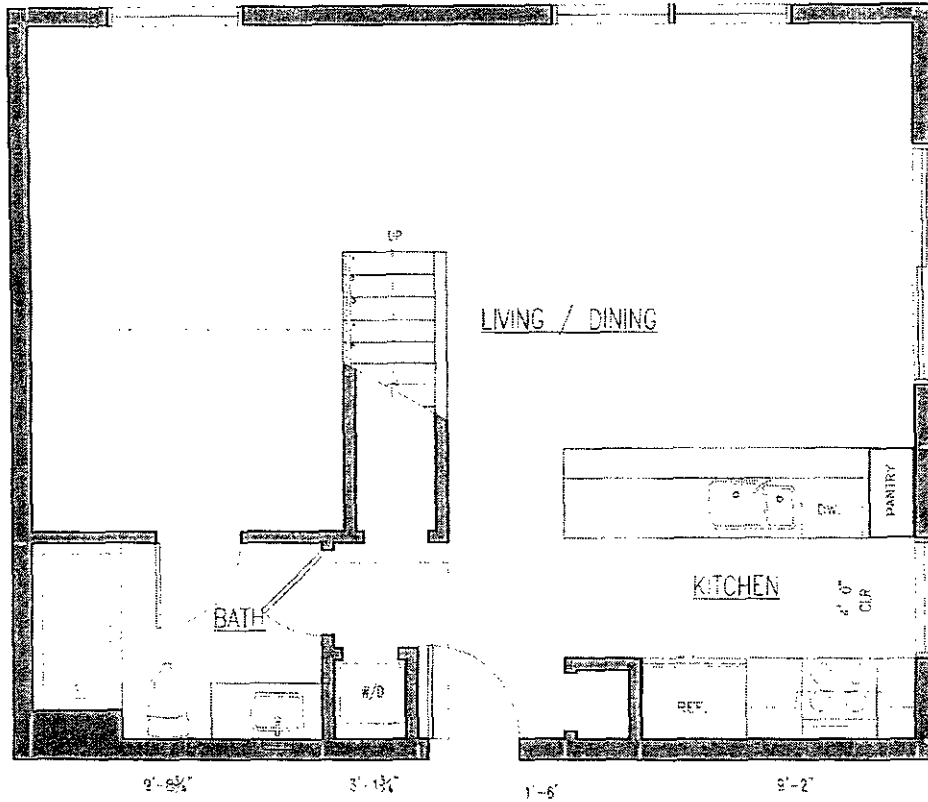
23'-9 1/2"

9'-0"

24'-4 1/2"

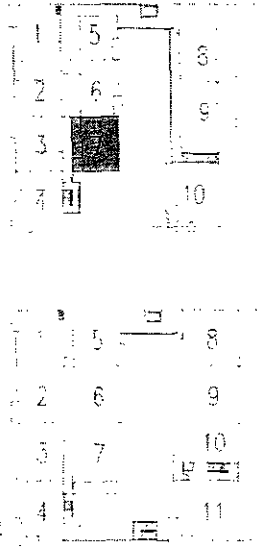
17'-4"

7'-0"



LV: 4

LV: 2&3



OPEN SPACE = 613 S.F.
LOFI = 204 S.F.

UNIT TYPE: 1BD & STUDY or BD/ 1.5 BA
25'X30' 743 S.F.



Exhibit B

[July 17, 2007 City Council Agenda Report]

CITY OF OAKLAND

AGENDA REPORT

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community & Economic Development Agency
DATE: July 17, 2007

RE: **A Public Hearing and Consideration of Adoption of a Resolution Denying the Appeal and Upholding the Planning Commission Approval for Construction of 32 Dwelling Units over ground floor commercial at 5300 San Pablo Avenue, Oakland (Case Number DV06-220 & TPM-9153)**

SUMMARY

On April 18, 2007, the Planning Commission approved a Design Review and Minor Variance to construct a mixed use development containing 32 dwelling units over ground floor commercial (DV06-220)(Project).

On April 30, 2007, Charles Porter filed an appeal of the Planning Commission's Approval of the Project to the City Council (Attachment A).

The appellant is arguing that a Major Conditional Use permit is required because it is not clear if the zoning boundary measurements are correct and that the Minor Variance for street side setback should not be granted because it conflicts with sightline requirements in Municipal Code Section 10.60.010, and that it would preclude landscaping along the 53rd Street side of the project. The appellant is also arguing against design aspects of the building that it should not be five stories tall and that the commercial space should be taller than approved and that more parking should be provided. In addition, the appellant is arguing that a full soils investigation should be done because the site may be contaminated.

The arguments raised by the appellant are summarized below along with staff's response to each argument. Staff believes that the findings made for approval of the project as outlined in the April 18, 2007 Planning Commission staff report (Exhibit A of the proposed resolution) clearly state the reasons why the project complies with the applicable regulations. Staff believes that the stated information in the appeal documents do not depict any instance of "error" or "abuse of discretion" by the Planning Commission, or where its decision is not supported by substantial evidence in the record. Therefore, staff recommends that the Council deny the appeal, thereby upholding the Planning Commission's decision to approve the project.

Exhibit B

Item: _____
City Council
July 17, 2007

FISCAL IMPACT

The project involves a private development and does not request or require public funds and has no direct fiscal impact on the City of Oakland. If constructed, the project would provide a positive fiscal impact through increased property taxes, utility user taxes and business license taxes, while at the same time increasing the level of municipal services that must be provided.

BACKGROUND

PROJECT DESCRIPTION

The proposal is to construct a new mixed use building containing 32 residential condominiums and a ground floor commercial space. The proposed building will contain a five story portion at the San Pablo Avenue frontage and the rear portion of the building will be a maximum of four stories (stepping down to three stories). The proposed building will contain a 1000 square foot plus ground floor commercial space and ground floor parking which will have access off of 53rd Street. The parking will be tucked behind the commercial storefront and will be screened along 53rd Street.

PROJECT LOCATION AND ZONING

The subject site is a 15,695 square foot site containing frontages on the east side of San Pablo Avenue and the north side of 53rd Street. The existing project site is completely vacant except for a small service station structure that was relocated to the subject property in the past. The surrounding uses include commercial and residential uses.

The subject property is located within the C-30, District Thoroughfare Commercial Zone, which is intended to create, preserve, and enhance areas with a wide range of retail establishments serving both short and long term needs in convenient locations, and is typically appropriate along major thoroughfares. The rear 28 feet of the subject property lies within the R-40 Zone. Pursuant to Planning Code Section 17.102.070, "the owner or developer of such lot, or of a portion or combination of such lot or lots, may at his or her option assume that all of the regulations applying in any zone covering fifty (50) percent or more of the lot area apply to the entire lot or lots. However, this option shall not apply unless the entire lot or all such lots or parcel of land could be included in such zone by shifting the affected zone boundary by not more than thirty (30) feet, as measured perpendicularly to said boundary at any point". Since the portion of the lot within the R-40 Zone only accounts for 28 feet of the rear of the lot, the R-40 zone may be eliminated from consideration and the entire lot may be reviewed as a C-30 zoned development site.

The C-30 Zone allows for a maximum density of one dwelling unit per 450 square feet of lot area. Given the lot size of 15,695, the maximum number of dwelling units permitted under the Planning Code would be 34. The proposed 32 units are within the allowed density of the C-30 Zone.

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The Community Commercial General Plan area allows a Floor Area Ratio (FAR) of 5.0 and a residential density of one dwelling unit per 261 square feet of lot area. The project site would allow a maximum density of 60 dwelling units. The proposed density of 32 dwelling units is also consistent with the General Plan density.

CEQA DETERMINATION

The Planning Commission confirmed the determination that the project is exempt from CEQA pursuant to Section 15332 of the CEQA Guidelines (In Fill Development Projects), and, as a separate and independent basis, is also exempt pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning).

Specifically, as a separate and independent basis from the other CEQA findings, pursuant to CEQA section 21083.3 and Guidelines section 15183, the City Council will also find that if it approves the project that: (a) the project is consistent with the Land Use and Transportation Element (LUTE) of the General Plan, for which an EIR was certified in March 1998; (b) feasible mitigation measures identified in the LUTE EIR were adopted and have been, or will be, undertaken; (c) the EIR evaluated impacts peculiar to the project and/or project site, as well as off-site and cumulative impacts; (d) uniformly applied development policies and/or standards (Standard Conditions of Approval) have previously been adopted and found to, when applied to future projects, substantially mitigate impacts. To the extent that no such findings were previously made, the City Council hereby finds and determines (in approving the project) that the Standard Conditions of Approval substantially mitigate environmental impacts; and (e) substantial new information does not exist to show that the Standard Conditions of Approval will not substantially mitigate the project and cumulative impacts.

PLANNING COMMISSION REVIEW

At the April 18, 2007 hearing, the Oakland Planning Commission took public testimony from various interested parties including the appellant, as well as others who were in support of the project. At the conclusion of the public hearing on the item the Commission voted unanimously to approve the project (+5,-0).

KEY ISSUES AND IMPACTS

The appellant's letter is included as Attachment "A" and described below. The basis for the appeal, as contained in the appeal letter, is shown in bold text. A staff response follows each point in italic type.

1. **The appellant alleges that the zoning boundary for the subject C-30 Zone was an assumption by Planning Staff, and that the actual zone boundary may be more than**

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thirty feet from the rear property line in which case the R-40 Regulations would apply.

The location of the zoning boundary was not an assumption. Its location was determined by review of the City of Oakland's GIS zoning maps, and has been confirmed by the older hard copy. In both instances the C-30 Zone boundary extends in 100 feet from the San Pablo frontage of the property, thus leaving 28 remaining feet of the 128 foot deep lot that is zoned R-40. Because of this the zone boundary line may be shifted and the entire parcel may be reviewed under the C-30 regulations, pursuant to Planning Code Section 17.102.070. The appellant has not provided any evidence to support his position.

- 2. The appellant argues that the Planning Commission should not have granted the street side setback variance for the proposed building because the proposed building would conflict with Section 10.60.010 of the Oakland Municipal Code that requires clear sightlines at intersections, and because the reduced setback will preclude any vegetation and plant that should be provided along 53rd Street which is a low scale residential area.**

The appellant's argument about the "sightline" requirement is incorrect. The municipal Code section that was referenced does not apply to permanent buildings¹, and does not preclude a structure being built out to a zero lot line at an intersection. Many buildings have been constructed in this manner, both in the past as well as today.

The argument that the reduced setback would not allow any landscaping along 53rd Street is incorrect. The right of way reserved for the sidewalk along 53rd Street is eight feet wide, which is wide enough to accommodate a pedestrian walk as well as street trees and landscape areas.

- 3. The appellant argues that the Planning Commission abused its discretion by approving a proposal that is five stories in height, and that the proposed building should be less because the other buildings at the intersection are not as tall.**

The San Pablo Avenue corridor is designated as a "Grow and Change" area under the General Plan, and the proposed project not only meets the intent of the General Plan, but is also consistent with the height limits set forth in the current zoning regulations (and thus no height variance is required). The proposed building would be five stories at San Pablo Avenue and step back from four to three stories at the rear portion of the building.

¹ Oakland Municipal Code Section 10.60.010B.

- 4. The appellant alleges that the Commission abused its discretion by approving a project with a commercial space of less than 12 feet in floor to ceiling height, thus dooming the commercial space to fail.**

The appellant is correct that the typical requested floor to ceiling height in mixed use developments is generally 12 to 15 feet in height. However, this is generally applied to areas that are core retail shopping areas that would typically house retail establishments that locate in close proximity to each other. The subject property is located off of two areas on San Pablo Avenue that contain a large number of storefronts, and the project site will most likely not contain a large retailer because of a lack of continuous storefronts adjacent to the site (the block to the south contains a wall of fences from rear yards and across the street is Emery High School). Planning staff had consulted with the retail experts in the Economic Development Division and concluded that a ten foot ceiling height would be adequate for the type of uses that would most likely occupy the proposed space, such as an office, personal service, or food sales, all of which would be geared toward serving local community needs.

- 5. The appellant alleges that the subject property needs to go through a soil investigation because of potential hazardous materials in the ground because the site was formerly a gas station.**

Planning staff has not found any records indicating that the subject property contains or potentially contains hazardous materials. The site was formerly used as a wrecking yard, but the property is not located on any lists kept by the State, County or the City of Oakland for properties containing hazardous materials that could potentially impede reuse of the property for the proposed activities. The State (Cal EPA) keeps a list of sites that contain or have contained Underground Storage Tanks (UST's) and the subject property is not on that list. Moreover, Standard Conditions of Approval (Nos. 30-37 relating to hazards and hazardous materials) imposed on the Project require various investigative reports and compliance with performance measures and applicable legal requirements, including remediation, if hazardous materials are discovered.

- 6. The appellant claims that the proposed building will have an impact on sunlight in the neighborhood due to its height at five stories.**

The appellant provided photos showing the sun blockage at 7PM. When staff reviews potential solar impacts related to design, mid-day is generally used to gage impacts, and staff analyzes what measures should be taken to lessen an impact. Staff does not look to protect direct sunlight at sunset or late afternoon, as most new buildings, regardless of height, would block a sunset because the sun is low in the sky at that time of day.

- 7. The appellant claims that the Commission abused its discretion by approving a project that does not contain more off street parking.**

The proposed project meets the Planning Code requirement of one off street parking space per dwelling unit. Furthermore, the property is located on a major transportation corridor that contains an AC Transit Rapid bus line, and more improvements by AC Transit are in the planning process. The site is located on a portion of San Pablo Avenue which is designated as a Regional Transit Street and a Grow and Change Area. Regional Transit Streets are areas that are ideal for future light rail or electric trolley lines to connect to major activity centers in Oakland and connect the area with other neighboring cities, and contain a high rate of transit service that would ideally provide at least one bus every seven minutes. The Grow and Change designation is used where growth will be focused to lead Oakland into the next century. Correlated with transportation and infrastructure improvements, grow and change areas will emphasize significant changes in density, activity, or use, which are consistent with the land use diagram. The City of Oakland has a transit first policy, and given the project's location along a major transportation corridor, the required parking should not exceed the minimum amount required of one off street parking space per dwelling unit. The transit first policy has related policies that recommend the reduction of required off street parking in areas well served by public transit to encourage its usage, rather than increasing the amount of off street parking as recommended by the appellant.

SUSTAINABLE OPPORTUNITIES

Economic: The project will expand the available housing inventory in the City of Oakland.

Environmental: Developing in already developed urban environments reduce pressure to build on agricultural and other undeveloped land. Sites near mass transit enable residents to reduce dependency on automobiles and further reduce adverse environmental impacts.

Social Equity: The project benefits the community and improves social equity by providing additional available housing to the City of Oakland as well as additional temporary jobs during the construction of the project.

DISABILITY AND SENIOR CITIZEN ACCESS

The Building Division of the Community and Economic Development Agency will require that the project conform to the Americans with Disability Act in all provisions to ensure equal access to this facility.

STAFF RECOMMENDATION AND RATIONALE

Staff recommends that the City Council adopt the attached Resolution denying the appeal thereby upholding the Planning Commission's approval of the project for the following reasons: 1) The Planning Commission's decision was based on a thorough review of all pertinent aspects of the project and consideration of the objections raised by the appellant; 2) The project and the approval of the project comply in all significant respects with applicable general plan policies and zoning regulations and review procedures; 3) The appellant has failed to demonstrate that there was an error or abuse of discretion in the Planning Commission's decision or that the Planning Commission's decision is not supported by substantial evidence in the administrative record; and 4) the project meets the CEQA In-Fill exemption requirements and there are no exceptions that would defeat the use of the exemption, and, as a separate and independent basis also exempt pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning).

ALTERNATIVE CITY COUNCIL ACTIONS

The City Council has the option of taking one of the following alternative actions instead of the recommended action above:

1. Uphold the appeal and reverse the Planning Commission's decision thereby denying the project. This option would require the City Council to continue the item to a future hearing so that Staff can prepare and the Council has an opportunity to review the proposed findings and resolution for denial.
2. Uphold the Planning Commission's decision, but impose additional conditions on the project and/or modify the project.
3. Continue the item to a future hearing for further information or clarification.
4. Refer the matter back to the Planning Commission for further consideration on specific issues/concerns of the City Council. Under this option, the item would be forwarded back to the City Council with a recommendation after review by the Planning Commission.

ACTION REQUESTED OF THE CITY COUNCIL

1. Affirm the Planning Commission's environmental determination that the project is exempt from CEQA review pursuant to CEQA Guidelines sections 15332 (In-Fill exemption) and, as a separate an independent basis, 15183 (projects consistent with community plan, general plan, or zoning).

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2. Adopt the attached Resolution denying the appeal, and thereby upholding the Planning Commission's approval of the project.

Respectfully submitted,



CLAUDIA CAPPIO

Development Director

Community & Economic Development Agency

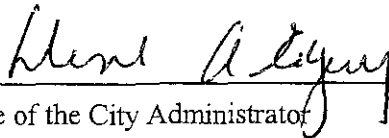
Prepared by:

Peterson Z. Vollmann, Planner III

Planning & Zoning

APPROVED AND FORWARDED

TO THE CITY COUNCIL:



Office of the City Administrator

ATTACHMENTS:

- A. Appellant's appeal application submitted April 30, 2007.