

CITY OF OAKLAND
AGENDA REPORT

2007 JUN 19 10:13

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community & Economic Development Agency
DATE: June 19, 2007

RE: **A Public Hearing and Adoption of a Resolution Denying the Appeal and Upholding the CEQA Determination of a Categorical Exemption for Case Number CD06-604 (Construction of 6 Dwelling Units Over Ground Floor Commercial at 5253 College Avenue)**

SUMMARY

On February 28, 2007, the Zoning Manager approved a minor conditional use permit, minor variance, and design review for this project, to construct a 6 unit development over ground floor commercial (CDV06-604). The Zoning Manager also determined that the project was exempt from the California Environmental Quality Act (CEQA) under sections 15303 (new construction of small structures) and 15183 (projects consistent with community plan, general plan, or zoning).

On March 9, 2007, Bert Verrips filed an appeal of the Zoning Manager's approval to the Planning Commission.

On May 2, 2007, the appeal was heard before the Planning Commission (Attachment D), in which the appeal was denied with respect to the CEQA determination, the minor CUP and design review. At the Planning Commission hearing the applicant agreed to drop the minor variance that the Zoning Manager had granted to allow 100% of the open space to be located on the roof top of the building. In addition, the Planning Commission amended conditions of approval that require the rear yard fencing to be at least ten feet in height, and limit any rooftop group open space at the back portion of the building. On May 10, 2007, Bert Verrips filed an appeal of the CEQA Determination to the City Council, pursuant to Section 21151(c) of the CEQA Guidelines [Attachment A, including original appeal documents (Attachment B & C)].

The only issue before the City Council on appeal is the validity of the CEQA determination. The appellant asserts that the CEQA Determination of a Categorical Exemption is invalid because of potential cumulative impacts, potential significant impacts because of unique circumstances existing at the property, and because the project does not conform with the General Plan. Staff responses to the grounds for appeal are discussed in the Key Issues and Impacts section of this report. Staff recommends that the Council uphold the Planning Commission's approval of this project and deny the appeal.

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FISCAL IMPACT

The project involves a private development and does not request or require public funds and has no fiscal impact on the City of Oakland. The appellant submitted all required appeal fees. If constructed, the project would provide a positive fiscal impact through increased property taxes, utility user taxes and business license taxes.

BACKGROUND

PROJECT DESCRIPTION

This request would provide for the demolition of the existing one story commercial building, and construct a three (3) story mixed use building with commercial space and parking located on the ground floor, and six residential dwelling units above (Attachment E). The parking would be accessed off of a driveway easement that runs along the back side of other properties, and enters at approximately the middle of the site. All parking will be located within enclosed garages served off of the central parking court. This driveway configuration allows the proposal to have a continuous commercial ground floor with no sign of parking facilities from College Avenue. The front commercial space would be used for any use permitted under the C-31 Zone¹, and the rear commercial space, which does not contain any street frontage or display windows, would be used as an architecture firm, which was granted a Conditional Use Permit since it is located at the ground floor and is classified as a “non-retail” use in the C-31 Zone.

PROJECT LOCATION AND ZONING

The subject lot is approximately 6,255 square feet in size, located on College Avenue just to the north of the Broadway/College intersection. The site is currently developed with a one-story commercial building that is approximately 1,700 square feet, with auto access off of the aforementioned driveway easement that enters from Hemphill Place.

The site is located in the College Avenue commercial district. The site is bordered by commercial uses with some upper level housing on College Avenue and lower intensity residential uses along the back streets. Single family homes border on the west and south of the project site.

The site is located in the C-31 Special Retail Commercial Zone. According to the Zoning Regulations, the C-31 Zone is intended to create, preserve, and enhance areas with a wide range of retail establishments serving both short and long term needs in attractive settings oriented to pedestrian comparison shopping, and is typically appropriate along important shopping streets having a special or particularly pleasant character.

¹ Oakland Municipal Code (OMC), Title 17, Section 17.48.030

CEQA DETERMINATION

Planning staff determined that the project is exempt from CEQA pursuant to Section 15303 of the CEQA Guidelines, New Small Structures. This exemption covers new buildings that contain six or fewer living units and 10,000 square feet or less of commercial square footage in urbanized areas. In addition, staff also determined that the project was not subject to CEQA review under CEQA Guidelines Section 15183, Projects Consistent with a Community Plan, General Plan, or Zoning. This section states that "projects that are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require additional environmental review, except as might be necessary to examine whether there are project specific significant effects which are peculiar to the project or its site".

PLANNING COMMISSION REVIEW

On May 2, 2007, the Planning Commission heard the Appeal of the Administrative approval for a minor CUP, minor variance and design review. At the hearing the appeal was denied and CEQA determination, minor CUP and design review were upheld. At the hearing the applicant had withdrawn his minor variance request to allow all of the required group open space to be located on the rooftop (Attachment F). In addition to the change in the open space, other design modifications were made by the Planning Commission as amended Conditions of Approval, such as a solid ten foot wall along the rear of the property to improve privacy to neighbors, and a restriction on any rooftop open space at the rear portion of the building.

KEY ISSUES AND IMPACTS

The appellant's letter is included as Attachment "A". 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. Because the City Council's review is limited to the CEQA determination, the staff responses also are limited to the issues raised regarding the CEQA determination.

- 1. The appellant argues that there would be cumulative impacts related to the project that would exclude the use of a Categorical Exemption under CEQA.**

Specifically the appellant cites issues related to increased noise (from the proposed roof deck and outdoor open spaces), traffic impacts and parking, and increased density.

Staff Response: The proposed project would create six dwelling units over less than 3,000 square feet of commercial space. Open space would be provided for the tenants in private balconies, a rear yard, and a roof deck at the front portion of the property facing out onto College Avenue. Parking would be provided at one off street parking stall per dwelling unit and no parking will be provided on site for the proposed commercial space.

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The argument that the project would create a cumulative impact to noise from this project is incorrect. The noise related to the project would be no different from that that would be emitted from neighboring residential properties, and the commercial component would be no different than that of what exists today (an office/retail use). Specific circumstances were cited such as potential for parties at the subject property, but this would be no different from any other nearby residence that were to have a party within the back yard of such residence. Additional comments were made with regard to noise that could emanate from a roof deck, which would essentially be the same as if another private residence were to build a new deck in their backyard. The City would not require an EIR for construction of a deck within the rear yard of a private residence.

The argument about increased traffic impacts onto the side streets is incorrect. The project trip generation from the residential units would be approximately three to four peak hour trips from the project site, which would have no noticeable effect on traffic conditions. To put the issue in context, the City typically does not require a traffic study for a project in areas outside of downtown unless trip generation has 10 to 30 peak hour trips to any one single intersection. As a result, the impacts of this project are so minimal as to not even warrant a traffic study. The trip generation from the commercial establishments would not impact the side streets through the driveway because the commercial units will not be providing any on site parking for those uses (as it is not required for such a small commercial development), and parking would typically occur at metered locations along College Avenue just as any other commercial use in the area including any patrons of the commercial uses that currently operate at the existing building.

The appellant's claim regarding CEQA impacts associated with parking demand do not warrant upholding the appeal, as parking has been determined by the courts to be a policy issue not a CEQA issue.

Finally the issue of increased density is not warranted because the applicant is only proposing half of the number of dwelling units that are outright permitted under the C-31 Zoning. The site would allow for a maximum of 12 dwelling units, and the applicant is only requesting development of six (6) units. Furthermore, the project density is much less than the maximum density called out within the General Plan Neighborhood Center Mixed Use classification in which an absolute maximum density of 23 units could be created.

2. The appellant argues that there would be significant impacts related to unique circumstances with the project site that would preclude the use of a Categorical Exemption under CEQA.

Specifically the appellant cites issues related to health impacts from the proposed demolition of the building, limited emergency access along the driveway easement, water run off from the project site, potential toxic substances at the project site, visual character degradation, solar access, light pollution, increased crime rate, demolition of a historic resource, and treatment of sewage.

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Staff Response: The issues cited above are often issues that are related to any proposed development and are not unique circumstances. The reasons that the above issues are not unique are as follows:

- *Building Demolition – The proposed building demolition does not present any unique circumstances. Any property that proposes demolition of any structure is required to obtain a building permit and the Building Services division monitors demolition and issues best management practices established by the Bay Area Air Quality Management District (BAAQMD) that are required to be followed. Under the appellant's argument any demolition of any structure within the State of California could not be exempt from CEQA and theoretically, could require an Environment Impact Report.*
- *Limited Emergency Access – Emergency access will specifically be called along the driveway easement. However, no parking will occur along the easement. The subject property fronts on College Avenue which is a public street with adequate emergency access.*
- *Water run off from the project site – The subject property is a typical urban in-fill site and the water run off would not be difficult to control. As with any other development proposal water run off needs to be reviewed and measures taken to ensure that water run off does not flow directly onto adjacent properties. The issue raised by the appellant applies when subject properties are of an extreme slope (typically in excess of 20%), which is not the case here.*
- *Potential Toxic Substances on site – There is no evidence of unique circumstances relating to potential toxic substances. Both the City of Oakland's database and the State's list of toxic sites provide extensive background information on contaminated properties in Oakland, and the subject property is not listed in the City of Oakland's database or on any State list of toxic sites. The site presents no circumstances warranting preparation of a toxic contaminants study, nor evidence of any potential significant environmental effect.*
- *Visual Degradation of the area – The proposed building is of an architectural style that is compatible with period buildings along College Avenue and would not degrade the character of Rockridge.*
- *Solar Access – The project will not substantially impair solar access. As with any new building over one story in height there will always be some shadow in the winter months when the sun is lower in the sky. However, given that the building is only three stories in height (35 feet) a shadow study is not warranted. The City of Oakland's Thresholds for Significance state that a significant shadow impact would be a shadow that substantially impairs the beneficial use of any public or quasi-public park, lawn, garden, or open space. There is no public park nearby that this building would cast shadow upon.*

- *Light Pollution – The project would not present nor contribute to any substantial light or glare. The project lighting used for the proposed building is standard for a residential building, and the lighting associated with the commercial uses would be little if at all different than what exists at the site today. Standard City requirements take into account the roof top open space that may contain lighting and the requirement is to shield any fixture to a point below the bulb to avoid any off site glare. This requirement is typically used on any commercial project or project with large outdoor open space and is not a unique circumstance.*
- *Increased Crime Rate – There is no evidence of unique circumstances relating to crime in the project area, nor that the project would bear any relationship to increased crime. In any event, it is not an environmental issue under CEQA.*
- *Demolition of a Historic Resource – The project would not affect any historic resources. The subject property is not a federal, state or local historic resource, and is not listed as a Potentially Designated Historic Property (PDHP) in the City of Oakland’s Historic Survey.*
- *Treatment of Sewage – The claims made by the appellant that the sewage could potentially spill over the site is unsupported. There are no unique circumstances related to sewage associated with the project or the vicinity. The site is located in a developed urban environment with an existing sewer system, to which the existing building is connected, and would not be substantially affected by the project. The proposed development would be required to tie into the system just as any other new development.*

3. The appellant argues that the project can not be Categorical Exempt from full environmental review under CEQA because the appellant claims that the project is not consistent with the General Plan.

Staff response: The appellant asserts that the proposed project is not consistent with the General Plan and therefore may not be exempt from CEQA. The appellant argues that the use of Section 15183 of the CEQA Guidelines is inapplicable because the General Plan EIR does not specifically list College Avenue in the report.

Contrary to the appellant’s assertions, Section 15183 does not require a general plan EIR to cite the specific density of a project’s location. Section 15183 states that “projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require further environmental review, except as might be necessary to examine whether there are project-specific environmental effects which are peculiar to the project or its site. This project falls within the Section 15183 criteria with respect to consistency with zoning and the general plan, thereby making section 15183 applicable.

This project is consistent with the applicable densities, and an EIR was prepared for the zoning and general plan policies. The Land Use and Transportation Element (LUTE) of the General

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Plan was an element of the EIR. In the LUTE the subject property is identified in an area designated as Neighborhood Center Mixed Use.

The subject property is located within the Neighborhood Center Mixed Use General Plan classification, which in the table for "Best Fit" Zones cites the C-31 Zone as a potential zone. The subject property is located within the C-31 Zone and is consistent with the C-31 Zone Regulations.

The General Plan Conformity Guidelines list three items for determining General Plan Conformity as follows:

- ***Is the proposed activity and facility type permitted under the General Plan?*** – *The proposed activities (residential, retail) are permitted in the Neighborhood Center Mixed Use General Plan area, and a Consultative and Financial activity is silent, in which case you defer to the underlying Zoning of C-31, which requires a Conditional Use permit for the use to be located at the ground floor. The subject project received a conditional use permit for such activity. Residential and non-residential facilities are both permitted under the Neighborhood Center Mixed Use General Plan classification.*

- ***Is the proposed intensity or density less than or equal to the maximum permitted under the General Plan?*** – *The Neighborhood Center Mixed Use General Plan area allows residential density equal to one dwelling unit per 261 square feet of lot area and commercial development equal to a FAR (Floor Area Ratio) of 4.0. This would permit up to 23 residential dwelling units or 25,020 square feet of commercial space. The proposed six units and 2,800 square feet of commercial space is well under this maximum.*

- ***Is the project consistent with Relevant General Plan policies?*** – *In order to answer this question the Guidelines refer you to "Checklist 4" of the document, which states the relevant policies, which are:*
 - ***Policy 3.9 – Orienting Residential development – Residential developments should be encouraged to face the street and to orient their units to desirable sunlight and views, while avoiding unreasonably blocking sunlight and views for neighboring buildings, respecting the privacy needs of residents of the development and neighboring properties, providing for sufficient conveniently located open on-site open space, avoiding undue noise exposure.***

The proposed development faces College Avenue, it does not unreasonably block sunlight to adjacent properties, and the area is not one that would be considered to have significant views (this is restricted to properties that contain a site slope of greater than 20%). Privacy and noise impacts would be no different than any other residential development that contains windows, and open space will be provided at individual units, on a roof deck, and in the rear yard. Conditions of approval have been incorporated into the project that limit the impact on privacy by requiring that the roof deck not expand to the rear portion of the property. The

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rear portion of the building has been stepped back to reduce the bulk when viewed from adjacent residential properties.

- ***Policy N7.1 – Ensuring Compatible Development – New residential development in Detached Unit and Mixed Housing Type areas should be compatible with the density, scale, design, and existing or desired character of surrounding development.***

The subject property is not located within the Detached Unit or Mixed Housing Type areas, hence the citation is inappropriate.

- ***Policy 7.2 – Defining Compatibility – Infrastructure availability, environmental constraints and natural features, emergency response and evacuation times, street width and function, prevailing lot size, predominant development type and height, scenic values, distance from public transit, and desired neighborhood character are among factors that could be taken into account when developing and mapping zoning designations or determining compatibility. These factors should be balanced with the citywide need for additional housing.***

The subject property is not located in an undeveloped area of the Oakland Hills, but is located within a developed urban area of the City, which contains existing infrastructure, streets, and pre-existing lot patterns. The proposed development is compatible with other mixed use developments on College Avenue and contains a design style that is contextual with the predominant period architecture on College Avenue, and the site is located directly on a transit line (AC Transit 51 line).

- ***Policy 8.2 – Making Compatible Interfaces Between Densities – The height of development in Urban Residential and other higher density residential areas should step down as it nears lower density areas to minimize conflicts at the interface between the different types of development.***

The subject property is not located within one of the Urban Residential areas, which are usually zoned R-70, R-80, and R-90 Zones, and which typically do not contain a set height limit. The subject property is located within the Neighborhood Center Mixed Use area, which contains a higher density than the adjacent Mixed Housing Type area. The C-31 Zone allows a maximum height of 35 feet above grade, and requires that the rear of the property step down to 30 feet if adjacent to a lower intensity zone. The adjacent R-35 Zone allows a maximum height of 30 feet above grade. This zoning provision was created specifically to address this issue of interfaces between densities and was adopted as part of the C-31 Zone in 1974, which replaced the previous C-30 Zone on College Avenue which had an extremely tall height limit. It would not make sense to require that a development on a commercial corridor step down to match the existing one story height of buildings that are in the adjacent zone, especially

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when those buildings could be modified in the future to be larger than their existing state. The C-31 zoning was created with a restructured height limit, and the approved project satisfies that limit.

- ***Policy 4.2 – Protection of Residential Yards – Action 4.2.1 – Lot Coverage Limits – Prepare a study of lot coverage or floor area ratio limits for single family residential zoning districts, with assistance from local architects, builders, and residents.***

The subject property is not located within a single family residential district.

Based upon the above analysis and the analysis provided as part of the original project approval, the subject project is consistent with the Neighborhood Center Mixed Use General Plan designation, and is therefore consistent with the General Plan. In addition, the proposed project is consistent with the C-31 Zoning district and its applicable regulations.

Categorical Exemption

Section 15303 of the CEQA Guidelines states that a project is Categorically Exempt from Environmental Review if a project includes new construction of a building of no more than six dwelling units in an urbanized zone, and a commercial space of not more than 10,000 square feet. The proposed project contains six units and the proposed commercial space is far less than 10,000 square feet.

Section 15300.2 of the CEQA Guidelines provides the following Exceptions to the use of any Categorical Exemption:

- a) ***Location. A class “3” exemption applies in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state or local agencies.***

The project location is not located in an area that has been specifically identified as an environmentally sensitive area.

- b) ***Cumulative Impacts. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.***

The existing base C-31 Zoning recognizes and permits this type of mixed use development, and recently there have not been a large number of proposed mixed use developments along this stretch of College Avenue. A much larger nearby project is proposed at 5175 Broadway, which is currently undergoing an Initial Study pursuant to CEQA. The potential cumulative impacts argued by the appellant about rooftop open space are unwarranted as an exception/variance is not required to allow rooftop open space, it is only

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required when it is proposed as a complete substitution for the location of required group open space as discussed earlier in this staff report. The claim that outdoor open space would lead to noise impacts would preclude any outdoor activities in residential neighborhoods as well. The noise from an outdoor space from an apartment building would be the same noise that would emanate from any other multi-unit building and would be subject to the same noise ordinances. The appellant argues that there would be cumulative impacts to parking and traffic in the area. Parking has been determined not to be considered an environmental impact by the courts. The proposed six unit building would not create a significant number of trips to even be considered in the discussion of cumulative impacts as six units and the small proposed commercial space would not generate the peak hour trips that would potentially degrade the existing Level of Service of any nearby intersections. Traffic impacts are typically studied further by larger development proposals that could potentially be a Class 32 In-Fill exemption, which identify traffic impacts as an area of needed review. The appellant also argues that there would be cumulative impacts caused by increasing the density of the College Avenue area, which is designated as "Maintain and Enhance" in the General Plan. As stated earlier in this staff report the project is not proposing an increase of density over what is permitted in the C-31 Zone, and the proposal would only contain one-half of the permitted density under the existing base C-31 Zone.

- c) Significant Effect. A Categorical Exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.**

The appellant argues that due to the location of the project site there are unusual circumstances that would create significant impacts, specifically identifying occupants of the proposed building looking into windows of adjacent neighbors, parking, traffic, and noise. The claims against parking, traffic and noise are discussed in the previous section under cumulative impacts, and privacy is not an environmental impact, and it is unreasonable to expect no contact with adjacent neighbors when living in an urban environment. The same alleged impact would then be true of any of the existing homes in the area which are only required to be set back five feet from side property lines. No setback variances or height variances have been granted for the project.

- d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources within a highway officially designated as a state scenic highway.**

The subject property is not located on a scenic highway nor would it cause any visual degradation from any scenic highway.

- e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.**

The subject property is not on any of these lists.

- f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significant of a historic resource.**

The subject property is not an historic resource.

It should be noted that the project is exempt from CEQA on other grounds not addressed in this report. For example, Section 15332 of the CEQA Guidelines, in-fill development projects also applies based on the following:

- a) 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 Neighborhood Center Mixed Use General Plan designation and the C-31 Zoning, as outlined in this staff report.

- b) 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.

- c) 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.

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

The trip generation from the residential units would be approximately three to four peak hour trips from the project site, which is not significant enough to warrant a traffic study as 10 to 30 peak hour trips to any one single intersection is the standard typically used in areas outside of downtown, and would therefore not pose a threat to degrade the Level of Service of any nearby intersections. The noise from the site would be no different than other nearby residential activities. With standard conditions of approval the project would not result in any significant impacts related to air quality or water quality.

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e) 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.

SUSTAINABLE OPPORTUNITIES

This section describes the sustainable opportunities that are being addressed or will be implemented as part of the item, such as:

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

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.

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.

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 upholding the Planning Department's CEQA Determination and project approval and denying the appeal. This recommendation is based upon the information and analysis provided in this staff report.

ALTERNATIVE CITY COUNCIL ACTIONS

The City Council also has one other option in addition to the recommended action above. If the City Council finds the CEQA determination inadequate, the City Council should uphold the appeal. In that event, the minor CUP and design review would be invalidated, and the City Council should refer the application back to staff for review and full reconsideration and preparation of appropriate CEQA documentation in accordance with City Council direction.

ACTION REQUESTED OF THE CITY COUNCIL

Adopt the attached Resolution upholding the Planning Department's CEQA Determination and denying the appeal.

Respectfully submitted,

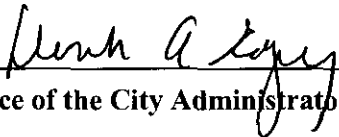


CLAUDIA CAPPIO
Development Director
Community & Economic Development Agency

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 May 10, 2007.
- B. Appellant's supporting evidence, submitted with previous appeal to Planning Commission.
- C. Appellant's letter submitted at Planning Commission Hearing of May 2, 2007.
- D. Planning Commission Staff Report.
- E. Project Plans.
- F. Revised Plans & letter submitted by Applicant at Planning Commission Meeting of May 2, 2007.



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: A07-090 (CDV06-604)

Project Address of Appealed Project: 5253 College Ave.

APPELLANT INFORMATION:

Printed Name: Bald Verrips Phone Number: 510-652-1666

Mailing Address: 5248 Desmond St. Alternate Contact Number: 510-652-3634

City/Zip Code Oakland, CA 94618 Representing: SELF

Heila H. Markash, Attorney for Appellant - (510) 482-0390 ext. 2

An appeal is hereby submitted on: 5707 Redwood Rd., STE 10, Oakland, CA 94619

AN ADMINISTRATIVE DECISION (TO THE CITY PLANNING COMMISSION

YOU MUST INDICATE ALL THAT APPLY:

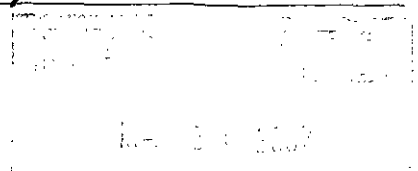
- Approving an application for an Administrative Project
- Denying an application for an Administrative Project
- Administrative Determination or Interpretation by the Zoning Administrator
- Other (please specify) _____

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)
- 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:

appeal, challenging the city's exemption determinations under Guidelines §§ 15303 and 15183 (CEQA)



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)
- 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) City's CEQA determinations

CEQA Guideline §§ 15303 & 15183

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 a buse 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.)*

The City abused its discretion by making the above-determinations. The appeal is based upon the documents and videotape already in the record and further evidence to be produced before and during the appeal before the Oakland City Council.

- Supporting Evidence or Documents Attached. *(The appellant must submit all supporting evidence along with this Appeal Form.)* The evidence & documents have been previously submitted.

[Signature]
Signature of Appellant or Representative of
Appealing Organization

May 9, 2007
Date

Date/Time Received Stamp Below:

Below For Staff Use Only

Cashier's Receipt Stamp Below:

DONNA M. VENERUSO
LEILA H. MONCHARSH

LAW OFFICES
VENERUSO & MONCHARSH
5707 REDWOOD RD., STE 10
OAKLAND, CALIFORNIA 94619
TELEPHONE (510) 482-0390
FACSIMILE (510) 482-0391

March 9, 2007

Planning Commission
City Hall
One Frank Ogawa Plaza
Oakland, CA 94612

RE: Project No. CDV06-604; 5253 College Ave. 3 story six unit residential over first floor commercial

Dear Planning Commissioners:

In the City's staff report, you will find the sterile description of the proposed project. What you will not see mentioned are the incredible impacts that this largely residential project will have on the neighborhood. Attached to this letter is a photograph that best summarizes the behemoth size of this project compared with the adjacent residences. While the City has been "pushing density" like nobody's business lately, the developer of this project has absolutely no legal right to impose his elephant sized building on the neighbors. The moral argument and the legal one are completely on the neighbors' side this time, as discussed below.

Unlike many projects that come before the Planning Commission, this one is located in the "Maintain and Enhance" area of Oakland as described in the Oakland General Plan; it is **not** in the "Grow and Change" area. The difference between the two areas is monumental – in the first the City must strive to fight increases in density; in the latter, the City looks toward increasing density.

Also unlike most if not all project descriptions that have come before the Planning Commission, you will notice that there is absolutely not one word, let alone any analysis of how this project complies with the Oakland General Plan. Most of you will well remember the many, many projects for which the City has shouted "General Plan" in defense of a project's higher than acceptable density. This time, the City barely whispers the words "General Plan" anywhere in its report until the very last design review paragraph and then with no specifics. To read the City's findings one would think that the General Plan was nothing more than an unnecessary document; not a plan with legally binding policies.

As shown below the General Plan is key to why the Planning Commission should deny the conditional use permit and the variance for this project. Moreover, given that the project violates the General Plan in many significant aspects, the City should deny the project application in total.

ATTACHMENT B

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A. The City's findings do not support granting the conditional use permit for allowing non-retail ground floor use in the C-31 commercial retail zone.

1. The project violates the Oakland General Plan designation of "Maintain and Enhance" applicable to the project site.

The City's first finding regarding the project's compatibility and harmony with the surrounding neighborhood completely ignores the General Plan requirement that the College Ave. commercial area remain low density since it is in the "Maintain and Enhance" portion of Oakland.¹ On page 218 of the General Plan, College Ave. is specifically designated as a "Maintain and Enhance" area. Similarly on page 122, the Strategy Diagram demonstrates that College Ave. is in the "Maintain and Enhance" area. On the following page (124), the General Plan defines "Maintain and Enhance" in relevant part:

This designation is used in areas where the predominant established uses and densities will continue – changes in use and density will be small. Implementation actions will emphasize enhancement and improvement, and where needed, strategies to discourage or prohibit intensification. Development to a higher density will be the exception, except in the areas where the character and condition of the buildings in lower intensity use are suffering. ...² [Emphasis added.]

The neighbors have submitted substantial evidence showing that the proposed three-story project is completely out of scale and looms over residences in its immediate environs. Not only does the proposed elephant sized project violate the General Plan's intent to maintain the low density of College Ave., but it also violates the plan's intent to insure that new projects are consistent with other low density structures:

Consistent with the Policy Framework, the maintain/enhance designation is compatible with preserving the character of established neighborhood housing areas and neighborhood activity centers while providing for development of infill sites that is compatible with its surroundings...
[Emphasis added.]

The City's first finding also ignores other General Plan policies designed to avoid intensification of density in the College Ave. area. These policies include provisions preventing new projects from interfering with other property owners' use and enjoyment of their own residences.

¹ The first finding is found under "A" on page 9 of the staff report.

² The proposed project does not replace any blighted or dilapidated structures.

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Specifically, we refer the Planning Commission to the following policies:

Compatibility of Development: **Neighborhoods should be protected** from incompatible types of development;

Policy N1.5 Designing Commercial Development: Commercial development should be **designed in a manner that is sensitive to surrounding residential uses**;

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

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

The proposed project’s impacts as demonstrated by the neighbors in their letters, include height that is considerably taller than other adjacent and nearby structures, bulk and mass that are much greater than neighboring properties, use of a roof top for open space leading to loss of privacy for the neighbors since the roof top would allow visibility into windows of other houses and increased noise. Given these impacts, so carefully detailed as inappropriate by the General Plan, there simply is no way that the City could make a legal finding that the project meets the first test for granting a conditional use permit.

As to the second finding (B), the City again failed to apply the General Plan policies or even focus on the livability issues required for this finding. Instead the City meanders along focusing on purely the commercial aspect of a project that is predominantly residential. There are no facts stated that would contradict the written statements of neighbors regarding the impacts mentioned above.

Again in response to finding C, the City merely provides a one-sentence description of the project! There is no response to the citizen complaints about the impacts on functional living that were brought to the City’s attention through numerous letters.

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Contrary to the City's obvious reading of Finding E, it does not require that a project comply with just one nebulous policy in the General Plan but rather that it comply "in all significant respects" with the General Plan. The finding by the City merely states the obvious, that the project is a mixed-use project. The City does nothing to substantiate how the project complies with the policies enumerated above all of which apply to it. The same criticism applies to the City's analysis of Finding H under C-31 zoning and Finding E under Design Review.

For the Planning Commission to grant the requested permits when the project does not comply with the General Plan amounts to an abuse of discretion.

C. The developer and the City have failed to produce the necessary evidence to support findings necessary for the grant of a variance for 80% of the open space requirement to be fulfilled on the roof.

The community is very concerned about the use of the roof for recreational opportunities because loss of privacy and increased noise will result. The proposed project is so tall that anyone standing on the roof will have a direct view into the windows of the houses located nearby. The very close proximity of the project and its rooftop is of particular concern to the neighbors due to the strong potential for the proposed dwelling units to become rental units with the current downturn in the condominium market and the impending glut of condominiums in North Oakland (where over 1,500 condominium units are in various stages in the City's approval process). The applicant himself has on several occasions stated that it is possible that the project's residential units could be rentals instead of condominiums.

Due to the high demand for student housing in the area, there is a high likelihood that these units would be rented to groups of students who would be very likely to hold frequent rooftop parties. The neighbors endured a similar situation with a group student rental house on Desmond Street until 2001 when it burned down during a party resulting in the tragic loss of life of one young man. For years before that fire, there were frequent late night parties which continued until all hours despite repeated visits from police (as soon as the officers would leave, the partying would resume).

As such, despite the 10 p.m. curfew stipulated in the Staff's conditions of approval, the neighbors believe that it will be problematic to enforce this curfew at best. Even during the hours permitted in the conditions, rooftop noise would be clearly audible and annoying to nearby residents due to the acoustical properties of this block interior, where noise generated from even slightly elevated locations tends to travel throughout the block. As discussed in the neighbors' comment letters, attached, noise from even

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occasional outdoor parties by existing residents can be very audible and annoying to other residents.

The City is using the wrong test for determining whether to grant the variance. Under Oakland's Planning Code, the General Plan takes precedence over the Planning Code.³ The test for granting variances of any kind under the General Plan is:

Policy N11.3 Requiring Strict Compliance with Variance Criteria.

As variances are exceptions to the adopted regulations and undermine those regulations when approved in large numbers, they should not be granted lightly and without strict compliance with defined conditions, including evidence that hardship will be caused by unique physical or topographic constraints and the owner will be deprived privileges enjoyed by similar properties, as well as the fact that the variance will not adversely affect the surrounding area nor will it grant special privilege to the property....

Therefore, the City's attempt to use the conflicting Planning Code minor variance test is improper. However, even under the "weaker" test utilized by the City, the variance fails because the City can't produce evidence to support its grant. Whether or not the open space is more deleterious on the ground or the roof, there is no other building nearby or in the same zone that has received the "special privilege" of having open space on the rooftop. The statement that the City has "generally allowed" roof top open space does **not** meet the test of where in relation to the proposed project any other property has enjoyed the same privilege. In fact, none have. The middle of a single-family residential neighborhood is a weird place to put rooftop open space and has a strong potential to be unnecessarily disturbing for the rest of the neighborhood.

If the City actually intended to prevent loss of privacy and increased noise, it could have required much more stringent conditions than allowing use of the roof top from 8:00 a.m. to 10:00 p.m. Instead, the condition does nothing to correct the privacy and potential daytime and evening noise problem. The community has requested that the roof top be unavailable to anyone, leaving project residents to party and recreate indoors or at the ground level where the noise and privacy impacts would be much lower. In summary, the variance not only fails to meet the hardship requirement that would justify it, but in fact creates a hardship on the neighbors through an unwarranted grant of privilege.

D. The City has not made any findings or otherwise demonstrated why the claimed CEQA exemptions apply or that the exceptions cited by the community did not apply.

³ Planning Code §§ 17.01.030 and 17.01.05.

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1. Guideline § 15183 exemption is inapplicable because the General Plan EIR doesn't even remotely say a thing about College Ave.

Previously, the community placed into the administrative record evidence of various environmental impacts and showed that the exceptions to the claimed exemptions preclude their use. They also showed that the exemptions did not apply. This evidence is provided in the comment letter on the project submitted by Bert Verrips et al., dated January 12th, 2007, which is attached hereto and incorporated into this appeal letter by reference.

As to the City's claimed exemption under Guideline § 15183, this exemption only applies when the City has certified an EIR for a general plan and the proposed project is consistent with that plan. Here, we have already shown that the proposed project is not consistent with Oakland's General Plan.

Further, since we last communicated with the City regarding this exemption, we obtained a copy of the Draft and Final EIR for the Oakland General Plan. This document indicates on page I-1 that it was primarily required because of the City's intent to increase density in the Coliseum and Downtown areas of Oakland – nowhere near College Ave. On page I-3, the EIR preparer specifies that the City can claim an exemption IF the project is consistent with the Oakland General Plan policies analyzed in the EIR. Again, as shown above, this project is not consistent with the enumerated General Plan policies.

The EIR primarily evaluates the effect of changes to the classification system of various areas in Oakland starting on page III.A-6. It then discusses the potential significant impacts and on page III. A-12, lists mitigations mostly requiring updating of the zoning codes, none of which was ever done over the last nearly ten years. There is nothing in this section addressing any issues raised by the instant project.

Similarly, on page III.A-24, the Draft EIR focuses on North Oakland of which College Ave. is a part. However, this section deals with analyzing whether there are any significant impacts from changing density designations in various parts of North Oakland, but not including College Ave. or the project site where density was to remain the same. In any event, the EIR merely recites mitigations that again required changes and updates to zoning, none of which ever occurred.

The only language that by stretching it considerably might conceivably relate to the College Ave. area is on page III.A-30 of the EIR discussing the General Plan's placement of greater emphasis on mixed use development. The EIR noted mixing uses could cause more density than the existing land use patterns. However, the EIR

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concluded that the potential impacts such as siting and design conflicts would be precluded through the application of Plan policies requiring that: "Mixed use should be sensitive to the surrounding character and design of existing buildings... (EIR pg. III A-31; Policy W8.4.)"⁴ However, in the case of the proposed project these mitigative policies have not been applied, as discussed above, and therefore the project impact is not mitigated through measures identified in the General Plan EIR. Therefore, the project is not eligible for this exemption since the General Plan policies which would preclude the demonstrable project impact have been ignored in this case.

2. CEQA Guideline exemption 15303 does not apply because the community has shown that there is a reasonable possibility the project will have a significant effect on the environment. (Guideline § 15300.2 (a))

In the prior referenced correspondence to the City the community provided legal support showing that the small structure exemption did not apply because there are two exceptions that in effect "cancel" the exemption. The first is that there are unusual circumstances inherent with the proposed project including the topography that allows people on the proposed building to look into windows of neighboring buildings, the vast difference in scale between the proposed project and the rest of the neighborhood and the extremely close proximity of the project to the neighboring homes, the hillside contours and enclosed nature of the block that would cause noise from a rooftop to reverberate around the neighborhood and the failure of the project to comply with the General Plan.

In addition, the project would result in significant traffic and parking impacts to the neighborhood. The sole vehicular access to the project's residential and business uses would be via a long narrow easement at the end of Hemphill Place, which is itself a cul-de-sac. All project traffic would funnel up and down Hemphill Place which is a very quiet residential street. Due to larger access and circulation deficiencies inherent in the street system in the vicinity of the Broadway/College intersection, project traffic would be directed to back streets such as Desmond, Coronado and Glendale resulting in potential vehicular and pedestrian conflicts on residential streets which are not designed or intended to accept such traffic loads. These are significant impacts which result from the unusual circumstances surrounding the local street system.

In addition, the project would add to the already extremely congested parking conditions along these streets. While the requirement for only one on-site parking space per unit is intended to encourage transit and non-auto-ownership, in reality the owners of the residential units would likely have multiple vehicles per household. In addition, the employees of the on-site retail space and professional office would have no on-site

⁴ Again, this language relates to the Mixed Use Waterfront policies, not policies applicable to College Ave., although the policies seem identical as to intent with the policies that do apply to College Ave. and are enumerated above.

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parking, and therefore those who elect not to be transit riders would compete with neighborhood residents for scarce on-street parking. In large part, the parking impacts would result due to the unusual circumstances of being located so close to a major retail commercial corridor as well as the California College of the Arts.

As mentioned, there are three distinct types of cumulative impacts that would invoke the "cumulative impact" exception. First, in the staff report the City claims that it often allows people to use rooftops for recreational purposes as a way of avoiding ground level compliance with open space requirements. To the extent that the City can demonstrate that that policy has been effectuated anywhere in the area of the proposed project (which we believe it cannot), the policy has the potential for increasing cumulative noise impacts from this project and future projects where the City evidently intends to promote rooftop recreation. Nowhere in the staff report does the City direct us to when and where an EIR or any other environmental documentation was prepared for this very interesting policy that is apparently written nowhere.

The second cumulative impact that would occur from the several proposed and known forthcoming projects in the immediate vicinity is increased traffic impacts and parking congestion. The additional projects would further exacerbate the traffic congestion and the potential for vehicle and pedestrian conflicts, as well as parking burdens endured by neighborhood residents.

The third cumulative impact problem that follows from the City's staff report is that apparently, the City doesn't have any intention of complying with the General Plan's policies as enumerated above (or even acknowledging the existence of these policies in the staff report!). To the extent that the City is now following a new policy, again unwritten, to increase density around the project site in the College Ave. area, then it must require an EIR to evaluate the many cumulative effects that result from intensification of development, particularly in an area that is already quite densely developed. Density is a recognized environmental impact and the City can't just begin increasing it in the College Ave. "Maintain and Enhance" area without environmental review. Otherwise, the cumulative impacts of this unwritten "increase density" policy will result in environmental impacts related to present and future projects which are not properly disclosed or mitigated, as required under CEQA.


The community has further elaborated on the CEQA analysis in my letter of January 26, 2007 to the City, which is also attached hereto and incorporated by reference. This analysis provides substantial evidence supporting neighbors' position that the proposed project is subject to an exception to the CEQA exemption claimed by Staff for this project. As such, it is the City's duty to prepare an environmental document on the proposed project which fully discloses its impacts and identifies mitigations for those impacts.

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The purpose of this letter was to respond to the City and to briefly summarize for the Planning Commission the many legal reasons why the project application should be denied in total and why the CEQA exemptions are inapplicable.

Thank you for considering our comments.

Very truly yours,



Leila H. Moncharsh
Veneruso & Moncharsh, J.D., M.U.P.

LHM:lm

cc: Clients

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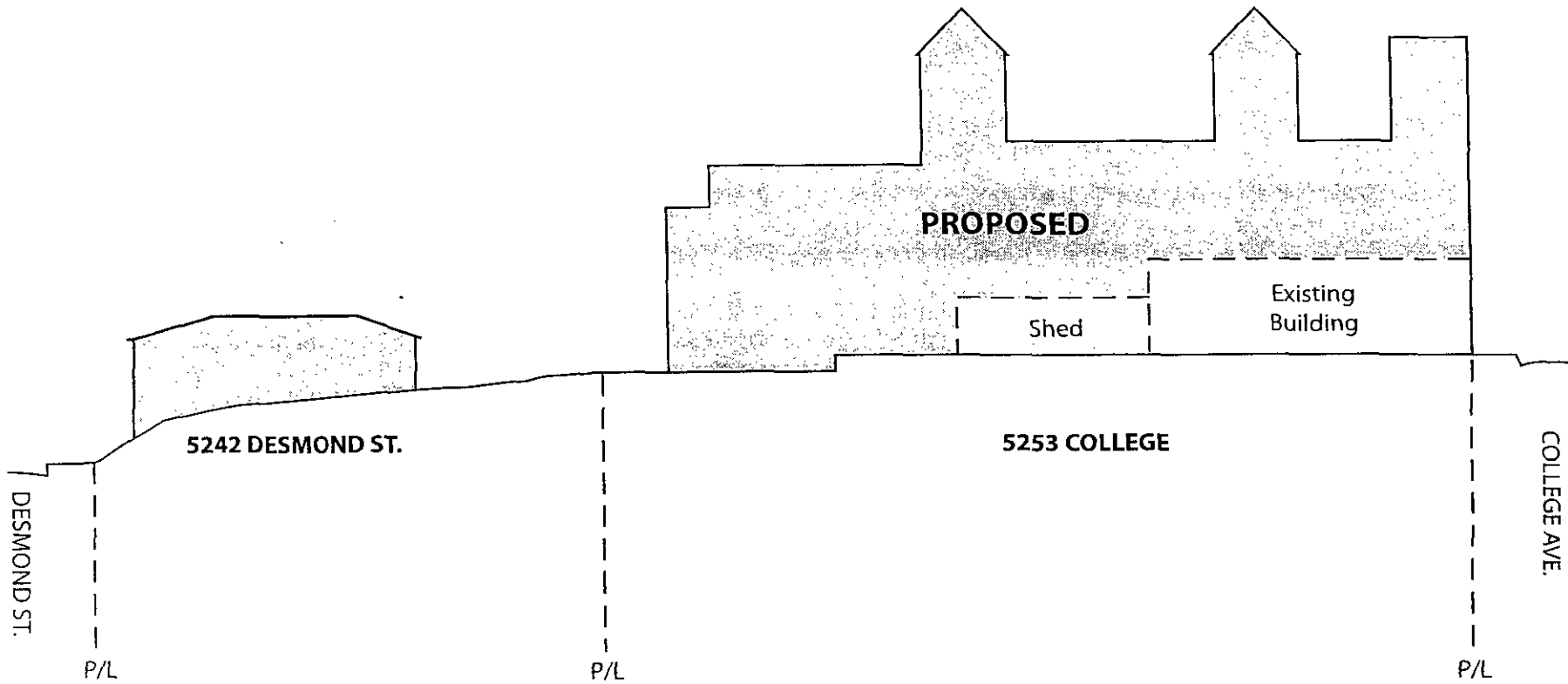
ATTACHMENTS

- Letter to Mr. Vollman from Leila H. Moncharsh, dated January 26, 2007
- Draft EIR for General Plan, dated 10/31/98
- Guidelines dated 5/6/98
- C-31 Planning Code
- General Plan excerpts, 1998 version
- List of neighbors in support of appeal
- Letter to Mr. Vollman from neighbors, dated January 12, 2007
- Letter to Mr. Vollman from neighbors, dated January 26, 2007
- Letter to Mr. Vollman from Bert Verrips, dated January 26, 2007
- Letter to Mr. Vollman from neighbors, dated February 16, 2007
- Email to Mr. Vollman from Deborah Konar, dated January 2, 2007
- Email to Mr. Vollman from Nancy Morton, dated January 6, 2007
- Letter to Mr. Vollman from Grace Fisher, dated January 12, 2007
- Letter to Mr. Vollman from Linda Collins, dated January 12, 2007
- Email to Mr. Vollman from Kim Lenox, dated January 12, 2007
- Email to Mr. Vollman from Judith Paquette, dated January 12, 2007
- Letter to Jane Brunner and Scott Miller from Judy Sneider, dated – no date
- Letter to Mr. Vollman from Mitch Ferguson, no date

EXHIBIT 1

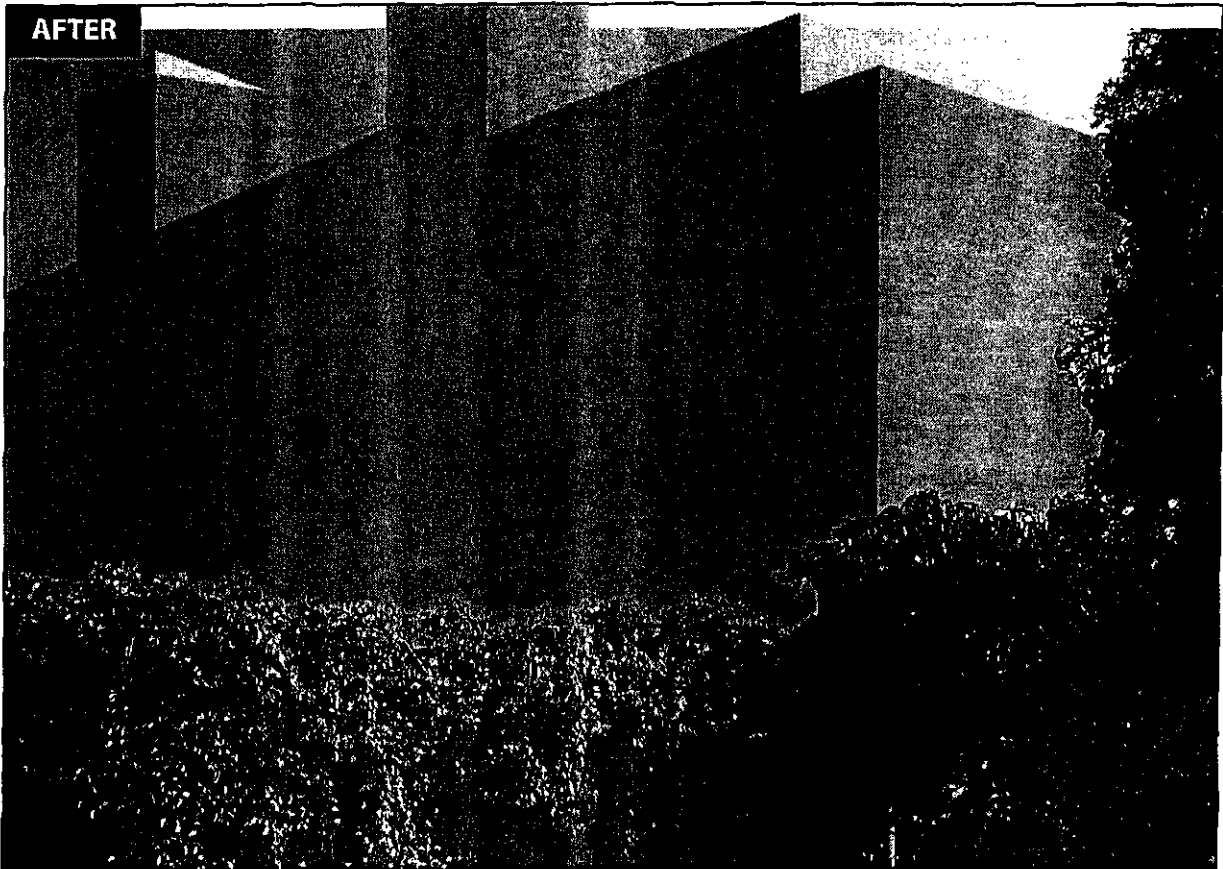
WEST

EAST



Cross-Section of 5200 Block of College Avenue

EXHIBIT 2



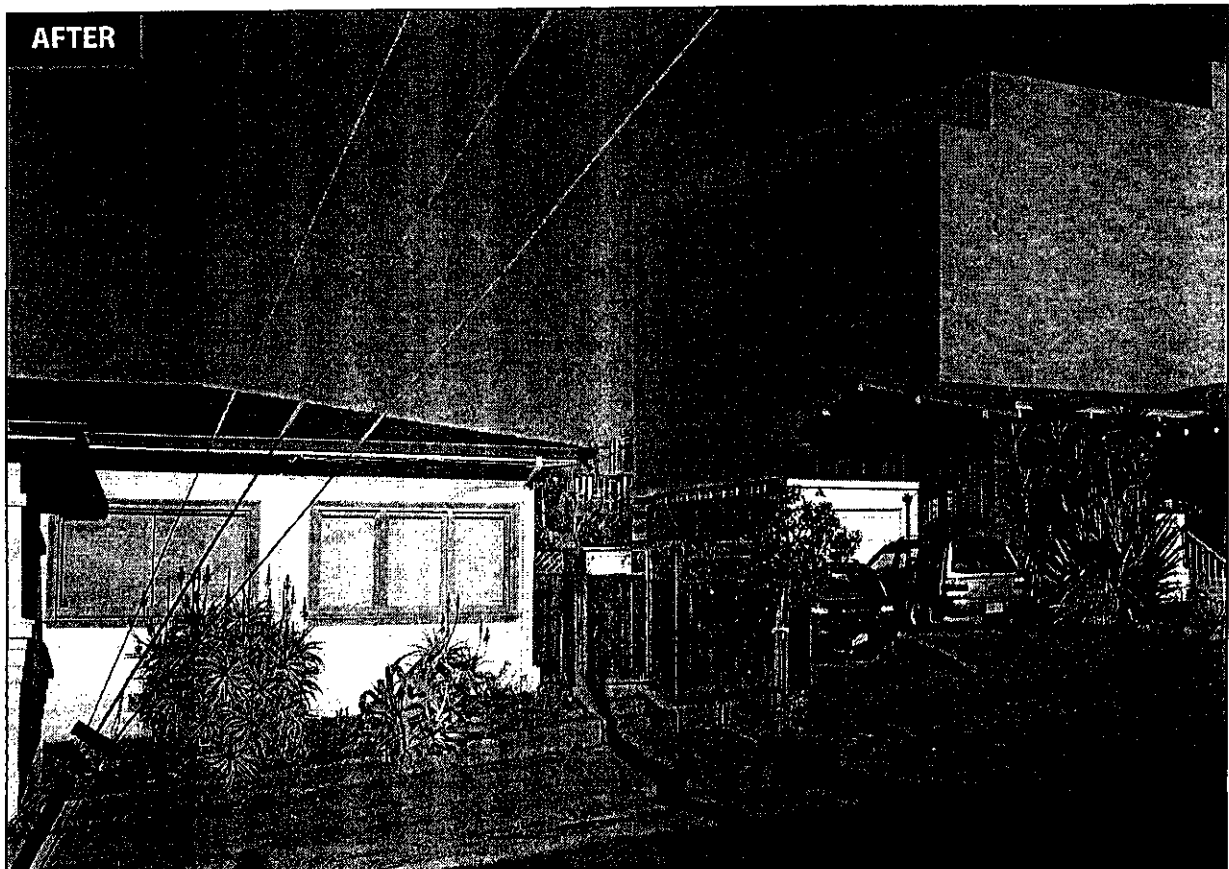
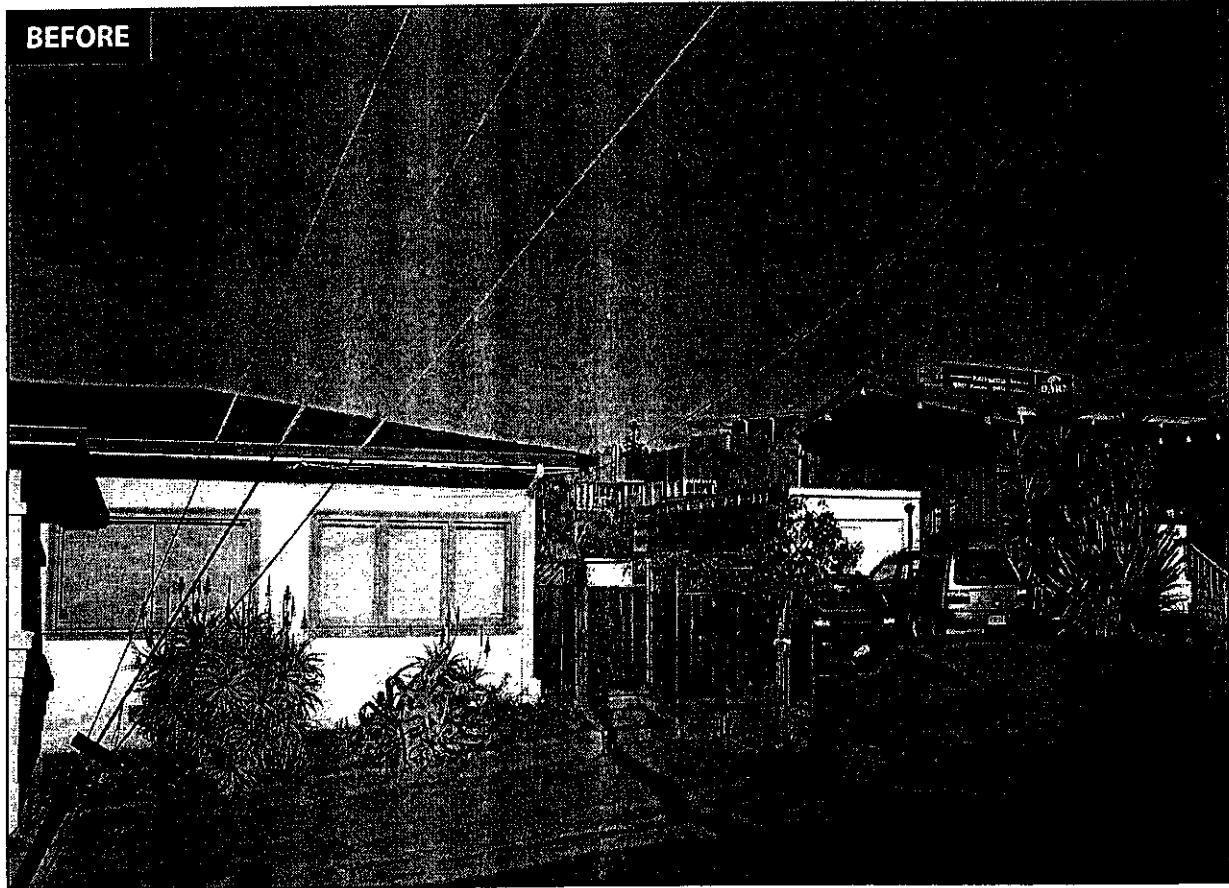
Southeastward View of Project from Rear of 5248 Desmond

EXHIBIT 3



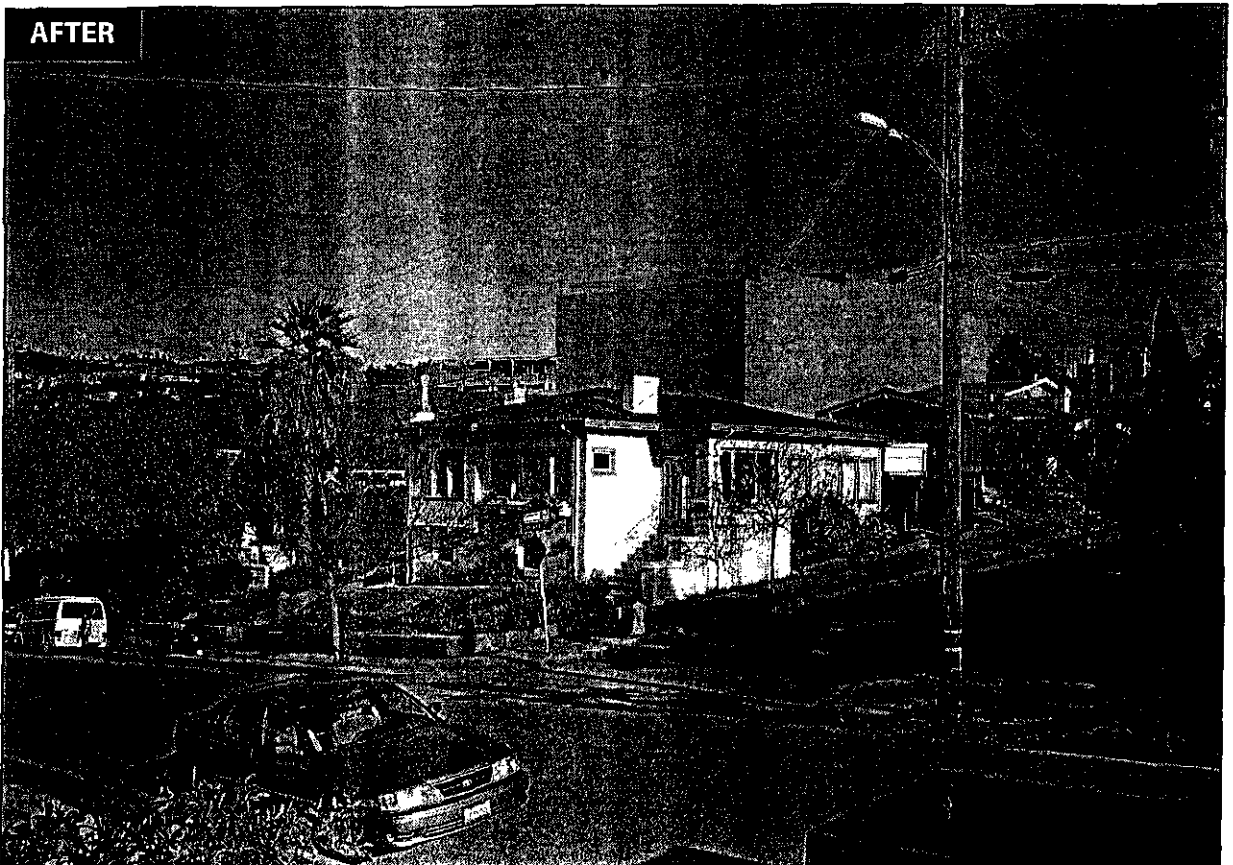
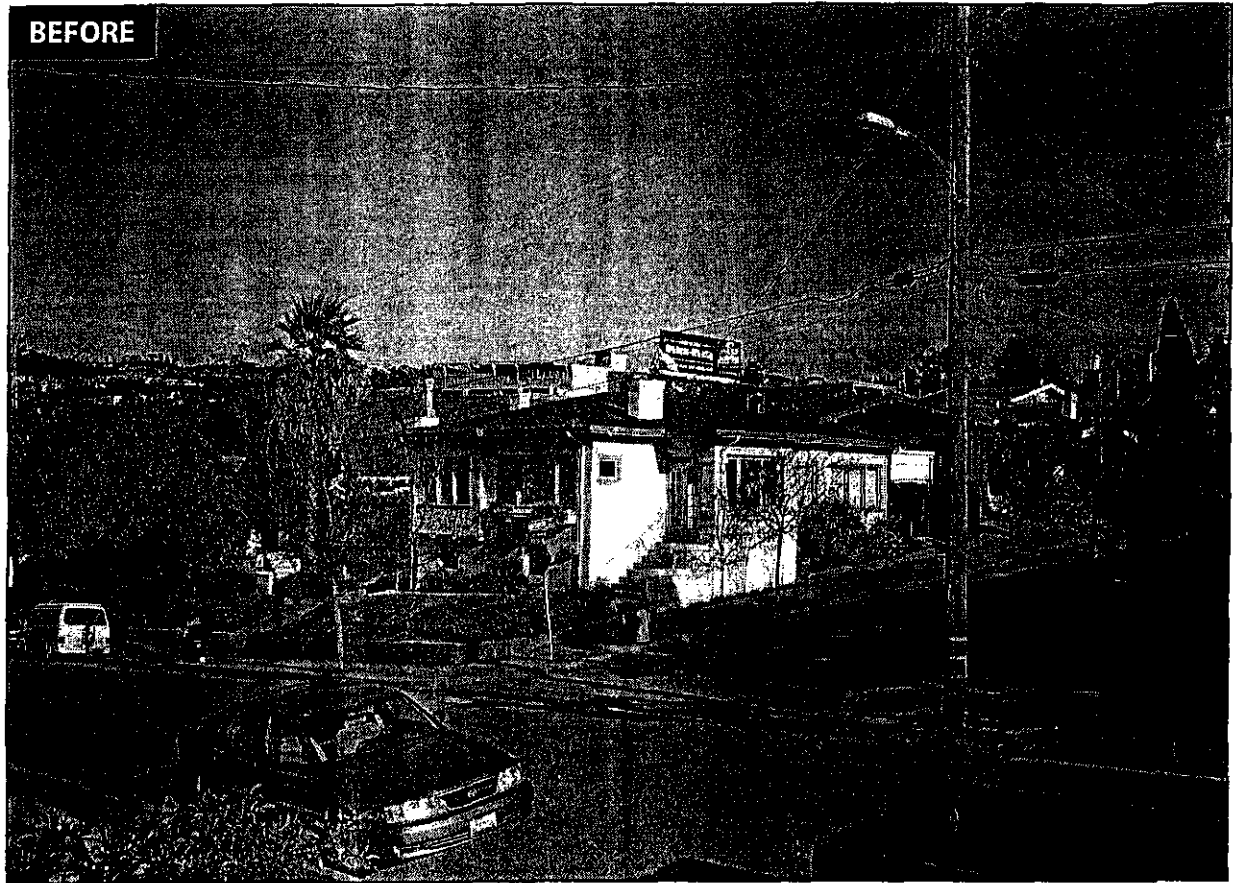
Eastward View of Project from 5242 Desmond

EXHIBIT 4



Northeastward View Across Hemphill from 5220 Desmond

EXHIBIT 5



Northeastward View of Project from 2019 Desmond, at Foot of Hemphill

EXHIBIT 5

BEFORE



AFTER



Northeastward View of Project from 2019 Desmond, at Foot of Hemphill

DONNA M. VENERUSO
LEILA H. MONCHARSH

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January 26, 2007

Mr. Peter Vollmann
Planner III
CEDA – 2nd Floor
250 Frank Ogawa Plaza
Oakland, CA 94612

RE: Project No. CDV06-604; 5253 College Ave. 3 story six unit residential over first floor commercial

Dear Mr. Vollmann:

Our law firm has been retained by Bert Verrips, Grace Fisher and their neighbors regarding the above-entitled project. This letter supplements those already submitted by the neighbors residing near the proposed project.

In summary, there is no legal basis for the City of Oakland to grant the requested variance and the proposed project violates Oakland's General Plan policies in several ways not previously enumerated by the neighbors. Further, under all of the circumstances, the City cannot legally take advantage of the two CEQA exemptions cited on the public notice for the project, attached as Exhibit A.

A. There is no substantial evidence nor can the developer or City produce such evidence to support the grant of a variance.

1. The correct legal test for granting the variance is contained in Oakland's General Plan.

Prior to this project coming before the planning department, I have noticed a number of projects in which the City has been using a minor variance test contained in the Oakland Planning Code §§ 17.148.101 et seq. When challenged on other projects, the City Attorney has taken the position that use of the Oakland minor variance test under these municipal planning code sections is allowable since Oakland is a charter city and immune from Government Code § 65906 dictating when variances of any kind can be granted. The City Attorney has overlooked several legal provisions including those contained in Oakland's own General Plan and Planning Code.

While it is true that charter cities enjoy "home rule" under some circumstances, Oakland has adopted the state standards regarding grants of variances through its own

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ordinances. Under Government Code § 65803, a charter city can adopt by charter or by ordinance provisions a state regulation that otherwise would not apply to a charter city. Here, Oakland's ordinance directs that the General Plan prevails over its zoning code:

17.01.030 Conformity with General Plan required.

Except as otherwise provided by Section 17.01.040, no activities or facilities shall be established, substituted, expanded, constructed, altered, moved, painted, maintained, or otherwise changed, and no lot lines shall be created or changed, except in conformity with the Oakland General Plan. To the extent that there is an express conflict between the Oakland General Plan and the Zoning Regulations, this requirement shall supersede the requirement for conformity with the Zoning Regulations stipulated in Section 17.07.060 (formerly Section 17.02.060).
(Ord. 12054 § 2 (part), 1998)

17.01.050 General Plan prevails over Planning Code and Subdivision Regulations.

Until the Planning Code is updated, land use designations, zoning controls and subdivision controls specified by the Planning Code and Subdivision Regulations shall apply, except where such action would expressly conflict with the Oakland General Plan. Where an express conflict does arise, the General Plan policies and land use designations shall apply. An "express conflict" shall be deemed to be any situation where a proposal clearly conforms with the General Plan but is not permitted by the Zoning and/or Subdivision Regulations, or where a proposal clearly does not conform with the General Plan but is permitted or conditionally permitted by the Zoning and/or Subdivision Regulations. The provisions of Sections 17.01.060 through 17.01.080 shall be used to determine whether an express conflict exists and the provisions of Sections 17.01.100 through 17.01.120, as applicable, shall then be followed.
(Ord. 12054 § 2 (part), 1998)

These two ordinances prevent construction of a project that does not conform with the General Plan. Oakland has now gone eight years without updating its zoning code so that it conforms with the General Plan. As a result, these two ordinances cited above are still in effect and dictate that the General Plan provisions prevail over the zoning code. The General Plan, in turn, uses the same variance test as the contained in Government Code § 65906. On page 114 of the Oakland Land Use and Transportation Element (LUTE) of the General Plan, the test adopted by Oakland for granting variances states in relevant part:

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Policy N11.3 Requiring Strict Compliance with Variance Criteria.

As variances are exceptions to the adopted regulations and undermine those regulations when approved in large numbers, they should not be granted lightly and without strict compliance with defined conditions, including evidence that hardship will be caused by unique physical or topographic constraints and the owner will be deprived privileges enjoyed by similar properties, as well as the fact that the variance will not adversely affect the surrounding area nor will it grant special privilege to the property....

Furthermore, the minor variance adopts major portions of Government Code § 65906. Even with the weakened language under the Oakland code, the developer is still required to show that “3. 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 and; 4. That the variance will not constitute a grant of special privilege inconsistent with limitations imposed on similarly zoned properties or inconsistent with the purposes of the zoning regulations.” (Oakland Planning Code § 17.148.050 A.

We have previously shown that the project **will** have a substantial negative impact on the neighborhood. As discussed above, its grant would violate our General Plan test for grants of variances as discussed above. Not only has the developer failed to produce any evidence of why he cannot build his project without a variance, he also has failed to demonstrate that he is not receiving “special privilege” if the City grants the variance.

2. The developer has not and cannot meet the variance test.

California appellate courts have distilled the variance test down to the following elements:

(1) there must be special circumstances applicable to the property; (2) by reason of which the strict application of the zoning ordinance would deprive such property of privileges enjoyed by other property in the vicinity under identical zoning classification; and (3) any variance granted shall be subject to such conditions as will assure that the adjustment is not a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the property is located. *Miller v. Board of Supervisors* (1981) 122 Cal. App. 3d 539, 544.

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In this instance there is absolutely no evidence supporting findings covering the first two elements. There are no buildings with roof top open space within the vicinity of the proposed project let alone within the same zone. Therefore, there are no "privileges enjoyed by other property in the vicinity under identical zoning classification" even remotely similar to the privileges sought by the developer of the proposed project. If the City grants the variance for the roof top open space, it will amount to a grant of special privilege to this developer that is not provided to similar property owners in the area of the project.

There is nothing about the property where the proposed project is located that would cause the developer to be unable to enjoy the same zoning rights as other owners along College Ave. without receiving an open space variance.

The Planning Department should appreciate that granting this open space variance has two long term effects on the greater College Ave. community: 1. It sets precedence for the next application down the road where a developer wants to violate zoning limitations that drove putting open space on the roof to begin with. This developer will be able to argue that there is another property enjoying privileges that the new applicant should also be able to enjoy; and 2. Granting this variance destroys the peace and quiet of the College Ave. residential area located intimately close to the proposed project

That is why the court vigorously reviews the grant of variances. The courts intend to prevent the City from engaging in quasi-rezoning through grants of variances. Moreover:

...courts must meaningfully review grants of variances in order to protect the interests of those who hold rights in property nearby the parcel for which a variance is sought. A zoning scheme, after all, is similar in some respects to a contract; each party forgoes rights to use its land as it wishes in return for the assurance that the use of neighboring property will be similarly restricted, the rationale being that such mutual restriction can enhance total community welfare. [Citations.] If the interest of these parties in preventing unjustified variance awards for neighboring land is not sufficiently protected, the consequence will be subversion of the critical reciprocity upon which zoning regulation rests. [Cites omitted.] *Stolman v. City of Los Angeles* (2003) 114 Cal. App. 4th 916, 923.

It is highly deleterious to the College Ave. neighborhood to allow one developer to have such a huge impact on the nearby area.

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B. The proposed project violates several provisions of the General Plan.

Besides the General Plan provisions already discussed by the neighbors in their correspondence, we find several other policies which prevent approval of the proposed project. For example, the neighbors have eloquently pointed out that the project will cause them to lose their privacy, suffer noise and reduced light from the monster very close to their small single level homes and in other ways the project will destroy the neighborhood.

According to the LUTE "Land Use Diagram," the proposed project is located in an area designated Neighborhood Center Mixed Use. On page 149 of the LUTE, there is a partial list of policies relevant for this classification. They include policies beginning with N3, N9 and N11 (the variance section is discussed in this policy category). According to N3.9 on page 107, the proposed project's defects are fatal to approval:

Policy N3.9 Orienting Residential Development.

Residential developments should be encouraged to face the street and to orient their units to desirable sunlight and views, **while avoiding unreasonably blocking sunlight and views for neighborhood buildings, respecting the privacy needs of residents of the development and surrounding properties, providing for sufficient conveniently located on-site open space, and avoiding undue noise exposure.** [Emphasis added.]

The neighbors have submitted statements and photos showing just how much the proposed project will be an "elephant in the room" for the neighborhood. The developer has made no attempt to downscale the project such that it will fit within the daily living habits of the greater neighborhood. Instead this project is destined to be highly disruptive to the neighbors.

The Public Notice for this project does not mention the proposed square footage. However, reviewing the photos submitted by the neighbors it is blatantly obvious this project is NOT for six units of condos. The photos alone suggest that this structure, once up, is going to be subdivided inside, legally or not, for multiple apartments further adding to noise and lack of privacy for the greater neighborhood.

Not only does the project violate the General Plan's proscriptions against projects that can only create disturbances for neighbors, but it also appears to be one of many "cookie cutter" projects that have been described as part of Oakland's "condo mania." For examples, the proposed projects at 4700 Telegraph Ave., 4225 Broadway and High & MacArthur all look very similar to the proposed project here. (See, Exhibit B attached.) They are all multi-level buildings in the 1950s style with various pieces of architecture

Mr. Peter Vollmann
250 Frank Ogawa Plaza
Oakland, CA 94612
Re: CDV06-604
January 26, 2007
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jutting out from the front of the buildings. Oakland's General Plan policies dictate avoiding having buildings that look like "just another MacDonald's" within the city.

Policy N9.7 Creating Compatible but Diverse Development.

Diversity in Oakland's built environment should be valued as the diversity in population. Regulations and permit processes should be geared toward creating compatible and attractive development, rather than "cookie cutter" development.

The proposed project is completely incompatible with the structures and architecture of the area and yet conforms perfectly to the cookie cutter type projects spreading quickly all over Oakland. The proposed project adds nothing to the architecture of the community and as shown by the neighbors actually deters from some of the extant historic aspects of the neighborhood - - another aspect frowned upon in the General Plan:

Policy N9.8 Preserving History and Community.

Locations that create a sense of history and community within the City should be identified and preserved where feasible.

Besides reviewing the General Plan, your department should also re-consider your use of the two exemptions shown in the Public Notice. Neither exemption applies due to the peculiar circumstances of this project and the muddle Oakland has created by allowing eight years to elapse without bringing its zoning code into conformity with its General Plan.

C. CEQA Guidelines Exemption 15183 does not apply because the project does not conform with the General Plan density absent a variance and the project presents peculiar, significant negative impacts not contemplated in the General Plan EIR.

In the Public Notice, your department has mis-identified the test for when the 15183 exemption applies when you state: "Projects consistent with a community plan, general plan or zoning." That is an incorrect reading of Guideline § 15183 that actually requires that the project be consistent in development density with zoning or with a general plan for which an EIR was certified. This is a section that is designed to streamline the permit process when there's already been environmental review for a zoning ordinance or general plan **and** when the EIR covers impacts specific to the proposed project.

I am presuming that the City decided upon this exemption based on the EIR that was certified in 1998 when the General Plan was adopted. However, this proposed project does not conform with the General Plan in all of the particulars listed above, but particularly regarding the variance which would allow increased density by putting open space on the

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roof. Therefore, regardless of what is contained in the EIR the City cannot legally use the 15183 exemption.

Moreover, the 15183 exemption is not a fail safe escape from CEQA review even if the project had been consistent with the General Plan because the City still must determine whether the EIR for the General Plan also encompassed the project-specific effects peculiar to the proposed project. Subsection (a) allows you to rely on the prior EIR for the General Plan as to development density without further environmental review "except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site." The neighbors have provided a multitude of negative impacts falling within CEQA that no doubt were not addressed anywhere in the EIR for the General Plan. That EIR would only have evaluated the impacts for the "development density" proposed for Neighborhood Center Mixed Use.

To the extent that your analysis of the 15183 relied upon an EIR for the zoning code, there are two problems. First, that EIR would now be defunct having been certified too many years ago to still have any legal effect. Second, your zoning code defers to the General Plan as part of interim procedures as shown above. For the last eight years, your zoning code has deferred to the General Plan as to specifics where the zoning code and the General Plan don't conform with one another.

The City should be mindful that the real intent of the 15183 exemption is to avoid duplicate EIRs. If a proposed project, such as this one, presents environmental impacts not covered in the General Plan EIR the City has to study those potential impacts. Subsection (b) requires an initial study or other analysis into the environmental effects peculiar to the project or the parcel where the project will be constructed. While the City doesn't have to review impacts already covered in the EIR, the City would need to look at significant off-site impacts and cumulative impacts that were not discussed in that document. Also, the City must analyze impacts which were identified in the prior EIR but because of substantial information not known when the EIR was certified actually will cause more impacts than contemplated in the EIR.

The California appellate court has noted that the purpose of environmental documents applicable to general plans "should be general when they cover general possibilities and specific when the specifics of a project are reasonably foreseeable.... Also, when a specific plan is proposed for [a] location, its details will be presented to City for approval and City will be required to conduct another preliminary review to determine what additional environmental review, if any, is necessary for CEQA compliance. (See *No Oil, Inc. v. City of Los Angeles* (1987) 196 Cal. App. 3d 223, 237...." *Wal-Mart Stores, Inc. v. City of Turlock* 138 Cal. App. 4th 273, 295-296. (See also, Public Resources Code § 21083.3.)

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250 Frank Ogawa Plaza
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Here, the City no doubt obtained an EIR that very generally discussed the impacts related to the General Plan, but did not go into specifics of any one project. That analysis needs to be completed at this time. Under the "Fair Argument" standard, the neighbors have shown substantial negative impacts that are "peculiar" to the proposed project site and their neighborhood. For example, they have shown that the configuration of their neighborhood allows noise to travel as if they were in a canyon unlike other commercial and residential mixed neighborhoods. They have shown that the topography of their street is different for elsewhere along College Ave. in that the proposed project will of necessity lord over other properties allowing the project residents to look into their windows.

Most peculiar as in "one of a kind" the neighbors have shown that the proposed elephant of a project is completely out of scale with their little neighborhood houses and commercial structures. Their photos amply demonstrate the problem.

Not only is the 15183 exemption inapplicable, but the same is true for Guideline exemption 15303.

D. CEQA Guideline Exemption 15303 does not apply because "there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." Guideline § 15300.2 (a).

The 15303 exemption is intended to avoid environmental review for small structures, including apartment buildings with six or less units. It is hard to imagine what court is going to believe that this behemoth of a project really is **just** six units given the number of bedrooms and baths per unit along with what we suspect is going to be substantial square footage.¹ However, assuming that the court is blind to reality and accepts that this project is accurately described as six condo units, there nevertheless is an applicable exception to its use.

The neighbors have outlined the unusual circumstances inherent with

¹ At the time of writing this letter, the neighbors did not have any plans with real measurements but rather what appeared to be rather simply drawn sketches of the project.

Mr. Peter Vollmann
250 Frank Ogawa Plaza
Oakland, CA 94612
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Very truly yours,

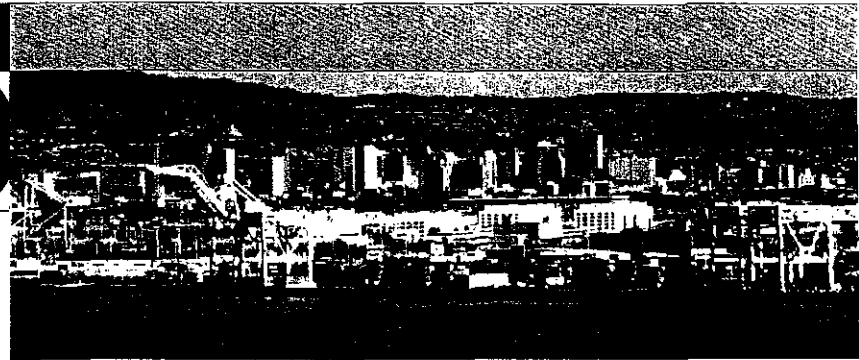
A handwritten signature in black ink, appearing to read "Leila H. Moncharsh". The signature is fluid and cursive, with a prominent initial "L" and a long, sweeping tail.

Leila H. Moncharsh. J.D., M.U.P.
Veneruso & Moncharsh

LHM:lm

cc: Council Member Jane Brunner

ENVISION OAKLAND



CITY OF OAKLAND GENERAL PLAN

LAND USE
AND TRANSPORTATION ELEMENT

MARCH 1998

Policy N1.4 Locating Large-Scale Commercial Activities.

Commercial uses which serve long term retail needs or regional consumers and which primarily offer high volume goods should be located in areas visible or amenable to high volumes of traffic. Traffic generated by large scale commercial developments should be directed to arterial streets and freeways and not adversely affect nearby residential streets.

Policy N1.5 Designing Commercial Development.

Commercial development should be designed in a manner that is sensitive to surrounding residential uses.

Policy N1.6 Reviewing Potential Nuisance Activities.

The City should closely review any proposed new commercial activities that have the potential to create public nuisance or crime problems, and should monitor those that are existing. These may include isolated commercial or industrial establishments located within residential areas, alcoholic beverage sales activities (excluding restaurants), adult entertainment, or other entertainment activities.

Policy N1.7 Locating Hotels and Motels.

Hotels and motels should be encouraged to locate downtown, along the waterfront, near the airport, or along the I-880 corridor. No new hotels or motels should be located elsewhere in the city; however, the development of "bed-and-breakfast" type lodgings should be allowed in the neighborhoods, provided that the use and activities of the establishment do not adversely impact nearby areas, and parking areas are screened.

→ Policy N1.8 Making Compatible Development.

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

Policy N1.9 Locating Major Office Development.

While office development should be allowed in commercial areas in the neighborhoods, the City should encourage major office development to locate in the downtown.

units, and not be prohibitive in their requirements. Accessory units should be allowed when a new primary residence is being constructed or maybe added to properties with an existing residence. (See also Policy N7.2 "Defining Compatibility")

Policy N3.4 Constructing Housing on Orphan Lots.

Construction of housing units on "orphan lots" in residential areas (i.e. lots that are substandard in area but which cannot be increased in size because existing development is located on all sides) should be allowed where the proposed unit meets other applicable standards.

Policy N3.5 Encouraging Housing Development.

The City should actively encourage development of housing in designated mixed housing type *and urban housing areas through regulatory and fiscal incentives, assistance in identifying parcels that are appropriate for new development, and other measures*

Policy N3.6 Encouraging Retention of Dwellings.

The City strongly encourages the moving of dwellings which might otherwise be demolished onto vacant lots, where appropriate and economically feasible, such as onto infill lots.

Policy N3.7 Allowing Rebuilding.

Legal non-conforming residential structures in residential areas may be allowed to rebuild at the original density in the case of catastrophic damage or destruction. However, such rebuilding should be subject to development standards and should address other neighborhood concerns, as appropriate.

Policy N3.8 Required High-Quality Design.

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

Policy N3.9 Orienting Residential Development.

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

Goals for Oakland's Neighborhoods

"Successful neighborhoods provide fundamental, unique qualities and places that are essential in thriving cities. In such an environment, residents gain a sense of place and pride in where they live. The basic elements vary in their completeness throughout Oakland's neighborhoods. An overriding objective of this Plan is to conserve, expand, and enhance these qualities to improve the city as a whole."

- Art Clarke, General Plan Congress, 1997

The Policy Framework for neighborhoods is geared toward strengthening and expanding the framework of healthy, cohesive, and identifiable neighborhoods throughout the City. Below are the principle goals for Oakland's neighborhood areas, followed by a discussion of each policy theme.

- ◆ Foster healthy, vital, and distinctive neighborhoods with adequate open space. (See also the Open Space, Conservation, and Recreation Element of the General Plan.)
- ◆ Encourage quality housing for a range of incomes in Oakland's neighborhoods.
- ◆ Encourage thriving, diverse, and attractive shopping districts in Oakland's neighborhoods that provide a variety of goods, services, and entertainment, and which are oriented to and well served by public transit, pedestrian, and bicycle facilities.
- ◆ Design neighborhoods that encourage and support alternative transportation types.

Neighborhood Identity: A sense of community is derived from strong neighborhood identity. Neighborhood policies are directed toward strengthening the character of Oakland's neighborhoods through compatibility of design and land uses, through local improvement programs, and by recognizing neighborhood patterns when establishing city service areas.

Neighborhood Conservation: Residential neighborhoods occupy the largest percentage of land in Oakland, and provide housing, character, a sense of community, and diversity. Policies seek to preserve areas that are predominantly low density and to ensure that infill development is compatible. (Refer also to the Housing and Historic Preservation Elements of the General Plan.)

Neighborhood Activity Centers: Local shopping districts should serve as cultural, civic, social, and economic centers for each neighborhood and should be served by transit. Customer-based and community-based public services such as post offices, senior centers, branch libraries, and homework centers should locate in designated activity centers.

Targeted Growth: Neighborhood policies direct new moderate and higher density housing away from lower density neighborhoods, toward parts of the City that are accessible by transit, such as areas near transit stations and transit corridors, downtown, and the waterfront.

Compatibility of Development: Neighborhoods should be protected from incompatible types of development. In areas where incompatibilities exist, policies prescribe ways to buffer the negative

impacts of conflicting land uses which cause a degradation in the quality of life.

Objectives and policies in this section address all physical aspects of neighborhoods: housing areas, neighborhood activity centers, civic and institutional uses, and open space. Locations where housing areas should be maintained and enhanced, and those where housing should be added are addressed in policies in this section and shown in the Strategy Diagram in Chapter 3. Other issues addressed include land use incompatibilities and availability of public facilities and services.

Readers who are interested in more data and policies relating to programs for housing conservation, affordability and opportunity should consult the General Plan Housing Element. For more detailed information on parks and open space, consult the Open Space, Conservation, and Recreation Element, and for preservation of historic resources, the Historic Preservation Element.

Neighborhood Objectives and Policies

Commercial activity is essential to vital and dynamic neighborhoods. The Policy Framework calls for neighborhood commercial areas in the neighborhoods to be concentrated, neighborhood-oriented and pedestrian oriented, thereby creating activity centers that are accessible and friendly to nearby residents. Long commercial corridors are to be divided into areas of distinct activity, with housing segments linking designated commercial areas.

Commercial Areas

Objective N1

Provide for healthy, vital, and accessible commercial areas that help meet local consumer needs in the neighborhoods.

Policy N1.1 Concentrating Commercial Development.

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

Policy N1.2 Placing Public Transit Stops.

The majority of commercial development should be accessible by public transit. Public transit stops should be placed at strategic locations in Neighborhood Activity Centers and Transit-Oriented Districts to promote browsing and shopping by transit users.

Policy N1.3 Locating Parking Facilities.

Wherever feasible, and desired by merchants and residents, the City should construct strategically located, safe, and attractive parking facilities in Neighborhood Activity Centers. Use of in lieu fees, parking assessment districts, or other programs to pay for these facilities should be explored.

PERMITTING/ENFORCEMENT**Objective N11**

Develop and implement regulations, permitting procedures, and enforcement procedures that allow an open, fair, timely, and fully informed process which involves public participation. These regulations and procedures should be created with the intent of maintaining or establishing a high quality living and a thriving business environment, while reducing barriers to development.

While the General Plan provides the policy foundation for future development in Oakland, it largely becomes realized through the creation of Zoning Regulations and implementation of permitting procedures. In an effort to respect the extensive community-based effort that led to the development of the General Plan, the plan mandates consistency between the General Plan and Zoning Regulations. The Plan also discourages the granting of variances which may undermine the integrity of the plan. In terms of enforcement, continued diligence will be needed to reduce public nuisances and activities that violate the General Plan or Zoning Regulations.

Policy N11.1 Required Zoning Consistency.

Consistency between the General Plan and Zoning Regulations should be provided within a reasonable time period of adoption of the final elements (i.e., Housing, Safety, or Noise elements) in the 1990s' General Plan update. (See the Implementation Agenda item B.)

Policy N11.2 Streamlining Permit Procedures.

The City of Oakland should review, streamline, modernize, and simplify its permit review procedures to facilitate new construction.

Policy N11.3 Requiring Strict Compliance with Variance Criteria.

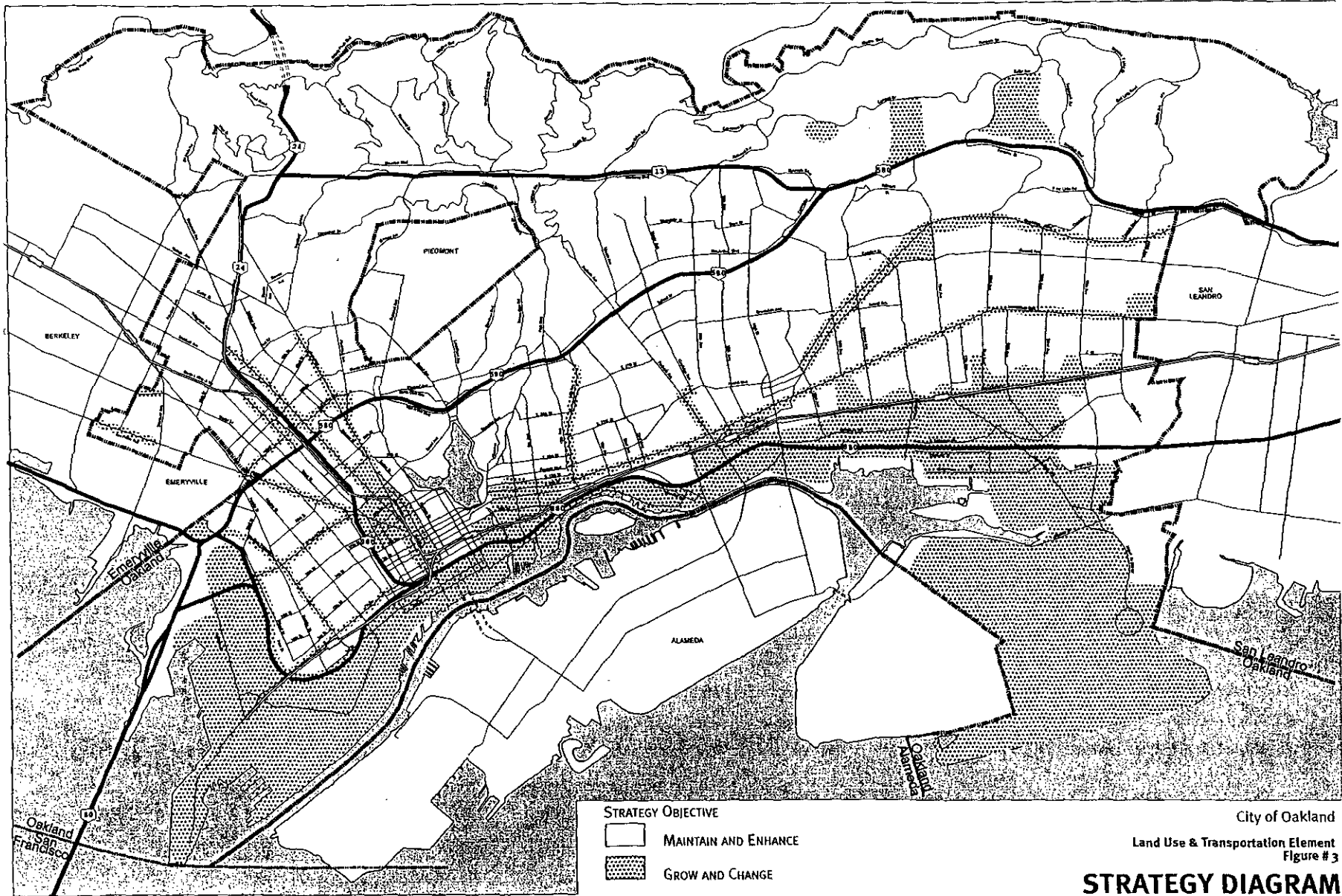
As variances are exceptions to the adopted regulations and undermine those regulations when approved in large numbers, they should not be granted lightly and without strict compliance with defined conditions, including evidence that hardship will be caused by unique physical or topographic constraints and the owner will be deprived privileges enjoyed by similar properties, as well as the fact that the variance will not adversely affect the surrounding area nor will it grant special privilege to the property. In those instances where large numbers of variances are being requested, the City should review its policies and regulations and determine whether revisions are necessary.

Policy N11.4 Alleviating Public Nuisances.

The City should strive to alleviate public nuisances and unsafe and illegal activities. Code Enforcement efforts should be given as high a priority as facilitating the development process. Public nuisance regulations should be designed to allow community members to use City codes to facilitate nuisance abatement in their neighborhood.

Policy N11.5 Relying on Local Resources.

City departments involved in rehabilitation and property maintenance should utilize local community members and groups as resources in their efforts where ever possible.



STRATEGY OBJECTIVE
 [White Box] MAINTAIN AND ENHANCE
 [Hatched Box] GROW AND CHANGE

City of Oakland
 Land Use & Transportation Element
 Figure # 3

STRATEGY DIAGRAM

CEDA, MARCH 1998



Maintain and Enhance

This designation is used in areas where the predominant established uses and densities will continue – changes in use and density will be small. Implementation actions will emphasize enhancement and improvement, and where needed, strategies to discourage or prohibit intensification. Development to a higher density will be the exception, except in the areas where the character and condition of the buildings in lower intensity use are suffering. The Maintain and Enhance designation is not intended to be interpreted on a parcel-specific basis, but rather as a guidepost when evaluating areas of the city. Other considerations, such as availability of transit traffic, parking, emergency services, and/or environmental constraints may also play a part in determining treatment for an area. Consistent with the Policy Framework, the maintain/enhance designation is compatible with preserving the character of established neighborhood housing areas and neighborhood activity centers while providing for development of infill sites that is compatible with surroundings. More information and guidance may also be found in the Area View section of the Elements.

Grow and Change

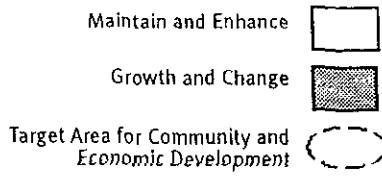
This designation is used where growth will be focused to lead Oakland into the next century, enhance the transition of the city and its economy, and allow the city to meet challenges and changes ahead. Correlated with transportation of infrastructure improvements, growth and change areas will emphasize significant changes in density, activity, or use, which are consistent with the Land Use Diagram, Transportation Diagram, and the Policy Framework and other Elements of the General Plan. Growth and change areas include areas with many parcels or, in some cases, larger sites, that can accommodate significant increases in intensity. Growth and change can be achieved through a number of strategies, including re-use of existing built space, construction on vacant infill sites or site in short-term use such as surface parking lots, additions to built space to expand floor area, or replacement of existing structures with new ones.

Some areas will transition from one single use to new uses, such as Leona Quarry, where over the life of the Plan quarrying operations will cease and commercial development, housing, and open space reservation are envisioned. Also included are locations characterized by an existing mix of land uses that the General Plan is designating for a single use. For example, some areas have industrial/housing conflicts that will be resolved through strategies to phase out one use or the other, to establish a stronger and more coherent single environment. Projects for sites that have not

Outlook for Population and Employment:

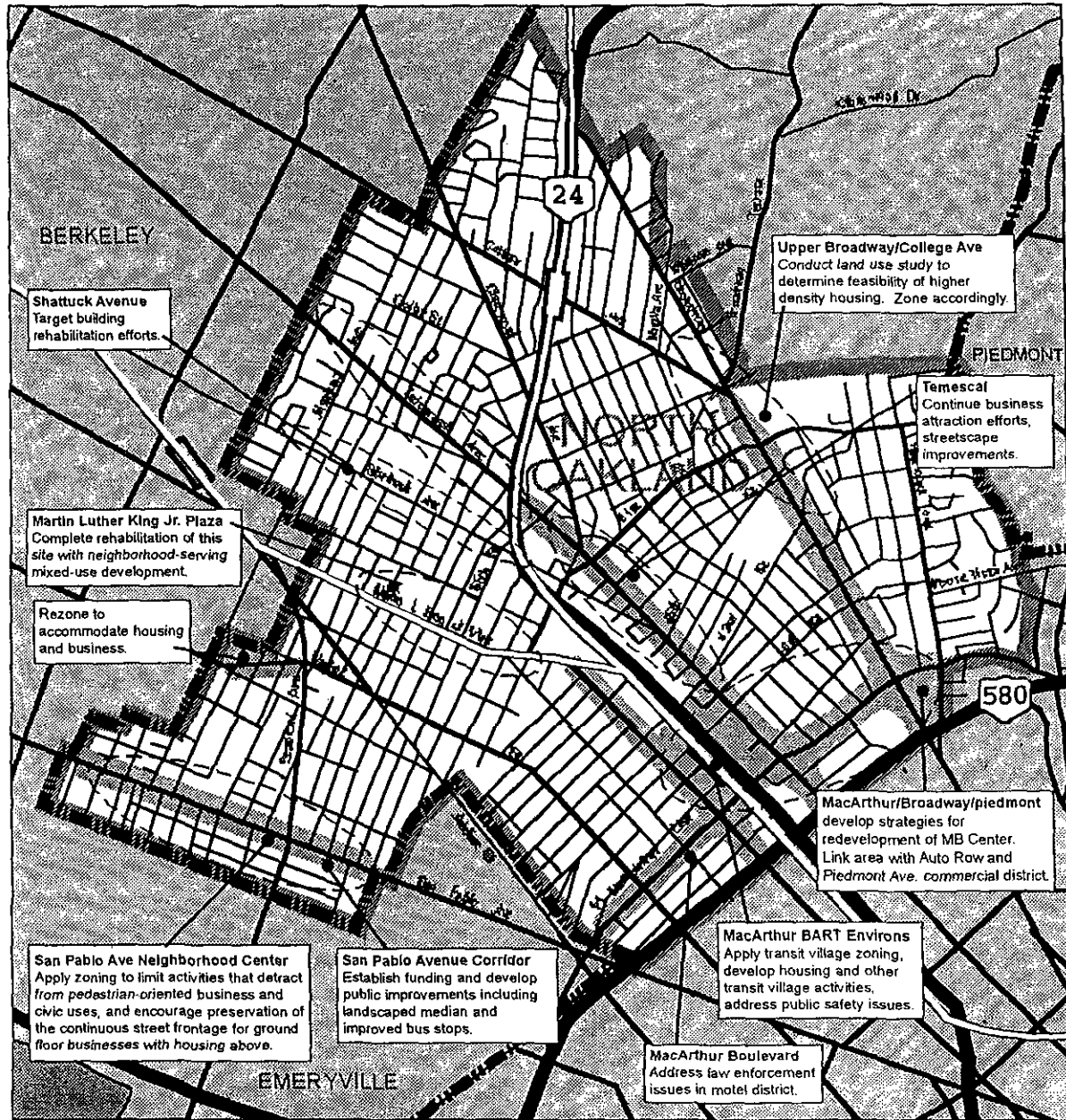
The Jobs and Housing Summary table indicates relatively low growth in both population (4% over the 20 year period) and total employment.

While jobs are projected to increase only about 3% through 2015, sectoral change is notable. As in other areas of the city, projected job loss in the manufacturing sector will be more than compensated for by projected gains in retail and service employment.



City of Oakland
Land Use and Transportation Element

Figure 10
**IMPROVEMENT STRATEGIES
NORTH OAKLAND**



February 16, 2007

HAND DELIVERED

Mr. Peterson Z. Vollman, Planner III
CEDA – Planning & Zoning
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

RE: **CDV 06-604** – PROPOSED DEVELOPMENT PROJECT
5253 COLLEGE AVENUE – PETERSON

Dear Mr. Vollman:

In addition to the many concerns raised in our group comment letter submitted to you on January 12th, we are submitting the following additional comments on the proposed project. This letter is intended to supplement, amplify, and clarify our previous comments and does not include new issues that have not previously been raised.

As you know, we believe the project, as proposed, would be completely out of scale with the neighboring homes. For the record, we have prepared a detailed description of the specific project changes that we believe would reflect and respect the scale and character of the single-family dwellings situated adjacent to the project site. These are the same changes we proposed to the applicant in meetings on January 30th and February 16th. The applicant is currently considering our proposed project modifications, which are as follows:

- The rear building wall should be set back 30 feet from west property line, and 15 feet from south property line (west of the driveway easement) to reflect the corresponding setbacks on the adjacent residential properties. This would still allow from 95 to 115 feet of lot depth for development, or double the depth of the existing building.
- A 10-foot high solid continuous wall (the maximum fence height permitted in the C-31 zone) should be constructed along the west and south property lines in order to provide visual and noise screening from the proposed project, and also to provide some protection in case of fire. (There is already a fire wall along the north property line.) (In our meeting with the applicant of February 16th, he indicated some receptiveness to including the 10-foot boundary wall in the project.)
- The third floor of the proposed project should be eliminated in order to reflect the one and two-story character of the surrounding residential and commercial development adjacent to the project.

- The second story of the building should be stepped back from rear building wall by an additional 15 feet, or a total of 45 feet from the west property boundary. The intent is to minimize visual intrusion from the second floor units into the rear yards and bedrooms of the adjacent homes to the west and south.
- Residential and commercial owners and tenants of the project should be prohibited from gaining access to any roof surface of the building, including the first floor roof at the rear of the building, for any purposes other than maintenance and repair. No area of the rooftops should be designated or used for private or common open space. The setback areas at the rear and side of the building would provide ample open space.
- The roof should not include any non-essential structural projections such as stairwell towers or windmills. Low-profile solar panels would be appropriate.

In summary, the above modifications would still allow the applicant to triple the amount of floor area currently on the site, while reducing impacts to the adjacent single-family residences. We believe that this is an equitable and appropriate approach to the planning and design of the applicant's property.

Please note that this letter concerns only design matters which pertain largely to our concerns with visual impacts, privacy, shadows and blockage of solar access, and some sources of noise. Our other significant concerns with the project are undiminished. As discussed in our previous letters, these concerns include mechanical and other operational noise sources, trash pickup, lighting and glare, drainage and toxic runoff, fire hazard, unwanted traffic, noise and hazards associated with the substandard driveway easement (which runs directly adjacent to an existing residence, with no setback), substantially increased traffic on Hemphill Place, Desmond Street, and the alley connecting Coronado and Hemphill (along which there are also two residences with minimal setbacks from the alley), neighborhood parking impacts, and construction impacts, among other things.

In addition, it is our understanding that the ground floor commercial proposed for the rear of the building is proposed to be occupied by Peterson's architectural firm. However, we understand that the occupancy of this space is likely to change with time. We believe that a low-intensity commercial use such as an architectural office would likely be compatible with the neighboring residences. However, we wish to register our opposition to a Conditional Use Permit which would allow any other form of commercial activity at the rear of the building. As such, we strongly suggest that the Conditional Use Permit be worded to specify that the ground floor use at the rear of the building be strictly limited to low-intensity professional office only, with all other forms of commercial activity (e.g., personal service, business office, retail, restaurant, etc.) specifically prohibited from occupying the building. If it is not possible for the Conditional Use Permit to strictly limit the use of this space to professional office, then the only other acceptable use for this space would be residential.

Please note: The undersigned represent all of the residential neighbors whose homes are in the same block as the proposed project and therefore would be most adversely affected by the project. The signers do not include all of the other very concerned and supportive neighbors who live nearby and would also be affected by the project.

Sincerely,

Bert Verrips
Karen Johnson
Grace Fisher
Steve Kruszynski
Sandra Olsen
Frank Castro
Hannah Davis
Mark Davis
Diane McCleod
Maria Isaacs
Matthias Frank
Lucy Schneider
Mitch Ferguson
Bruce Henrikson

January 26, 2007

JAN 26 PM 3:25
HAND DELIVERED

Mr. Peterson Z. Vollman, Planner III
CEDA – Planning & Zoning
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

RE: **CDV 06-604** – PROPOSED DEVELOPMENT PROJECT
5253 COLLEGE AVENUE – PETERSON

Dear Mr. Vollman:

Please consider this as our formal request to receive copies of all notices, decisions, permit applications, permits, staff reports, and documents relating to the above project. We anticipate that such items may include, but not be limited to, the following:

- Planning Director's decision on the project, including findings on CUP and Variance.
- Conditions of Approval.
- Design Review Approval.
- Staff Reports.
- Any environmental documents prepared under CEQA, plus any Mitigation Monitoring and Reporting Plan (MMRP)
- Notice of Planning Commission hearings on the project.
- Notice of City Council hearings on the project.
- Notice of Exemption.
- Notice of Determination.
- Engineering Permits or Approvals.
- Demolition Permit Application, Demolition Notice, and Demolition Permit.
- Building Permit Applications and Building Permits.
- Tentative and Final Subdivision Maps.
- Occupancy Permits.
- Any other notices, decisions, permit applications, permits, and documents not listed above.

We have enclosed 15 stamped and self-addressed envelopes for the above. Please contact us if you need additional mailing envelopes or postage.

We also request to receive electronic versions of the above items, via email, upon their issuance, release, or availability.

Please let us know if there will be any problem in honoring this request.

Thank you,

Bert Verrips and Karen Johnson

cc. Scott Miller

5248 Desmond Street
Oakland, CA 94618
510/652-1666
bverrips@aol.com

Subj: **5253 College Ave. project**
Date: 1/2/2007 4:42:26 PM Pacific Standard Time
From: debzik@att.net
To: pvollman@oaklandnet.com.

Dear Mr. Vollman,

My husband and I have owned and lived in the home at 5255 Desmond St., within a block of 5253 College Ave., since 1980.

I most emphatically object to approval of the project at 5253 College Ave., or to any variance from the current zoning at this address, for the following reasons:

- This project will seriously degrade the property value and quality of life of all of its neighbors, in order to profit one person, the owner of 5253 College. The neighbors, including many long-term homeowners, have invested and based their lives in Rockridge because of the unique and special quality of the neighborhood. As Oakland taxpayers, they have a right to protection from the whims of one property owner.
- Rockridge is an asset which attracts people to Oakland precisely because the residents have fought over many years to protect its zoning and maintain its special character. *If we do not continue to protect this character, it will be a great loss to the city as a whole as well as to the local residents.*
- Because Rockridge so appealing, there is great and constant pressure to permit new developments which are too big to conform with the character of the neighborhood. There is a great temptation for the city to continue approving any project that will increase the tax base, but to do so is very short-sighted and will destroy the very character which attracted people in the first place.

Thank you for your serious consideration of this matter.

Sincerely,

Deborah Z. Konar

Subj: **Proposed Kirk Peterson Project**
Date: 1/6/2007 7:12:12 PM Pacific Standard Time
From: nmorton@earthlink.net
To: pvollman@oaklandnet.com
CC: BVerrips@aol.com

Like many of my neighbors I want to voice my concern about the proposed project. While I was not able to attend the meeting at the Library, my understanding of the project is such that I am concerned about the height of the buildings and the proximity to the adjacent properties; but primarily I am concerned about the insufficient parking. I urge you to reconsider approval of the project as it stands.

Sincerely,

Nancy Morton
5216 Desmond Street

HAND DELIVERED

January 12, 2007
CEDA — Planning & Zoning
250 Frank H. Ogawa Plaza, Ste 2114
Oakland, CA 94612

RE: CDV 06-604—Proposed Development Project at 5253 College Avenue

Dear Mr. Vollman:

While we are signatories to a broader and more detailed letter regarding this project, we wanted to submit our personal statement expressing our strong objections to the development project at the proposed location. We urge the City to deny its approval for reasons of safety, health, and welfare of the neighborhood. In allowing exemptions to the CEQA §§15303 and 15183, we believe the staff is ignoring the legislative intent behind said CEQA regulations, which provides a low threshold requirement to afford the “fullest possible protection to the environment” (West’s Ann Cal Pub Res Code §21000). It further states that “major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian.”

We respectfully request that you deny the proposed plan, demand an Environmental Impact Report (EIR) for the reasons listed below and require a new proposal that addresses the health, safety and welfare concerns of the neighborhood, and is in balance with the size and scale of surrounding residential neighborhood buildings.

We further request that the City take a complete view of what is happening in Rockridge, one of the city’s most prosperous, tax-generating neighborhoods: We currently have three development projects on tap in a very small radius (51st and Telegraph, Broadway and Coronado, and the above project on College Ave). In particular, those of us residing on Clifton, Hemphill, Cavour, Glendale, Coronado, and Desmond would likely have two major projects under construction at roughly the same time. Given the impact of these two projects and those pending in other locations along and near the south end of College Avenue, we ask that the City consider the cumulative environmental and social impacts on the neighborhood. Those of us who have lived here for years and those recently transplanted place great value on the family-centered, close-knit nature of this neighborhood community. The majority of the single family dwellings are owner occupied; many of us work at home. Our young children and pets play on the sidewalks, while we adults gather to share our lives. And while we welcome future neighbors, we feel it is essential that communal fabric of these streets remain intact. These projects, representing an influx of mid-to high end luxury condos and apartments, threaten to rent this vital communal fabric.

1. THE PROPOSED PROJECT THREATENS THE HEALTH OF THE SURROUNDING NEIGHBORHOOD

A. Absence of Inquiry Regarding Potential Health Hazards of the Demolition of Existing Structure is Unacceptable

The proposed project would involve the demolition of a building many decades old. The asbestos building materials, lead-based paint, and mold that are most likely part of this structure would certainly become airborne and settle into neighboring yards and into our homes. In a time of increasing awareness of environmental sensitivities, and the known hazards and health risks of such airborne contaminants, it would seem that the City, given its commitment to environmentally-friendly practices, has an obligation to protect the health of its citizens, especially its young children who live in the adjacent homes. It seems reasonable to expect the City to uphold the intent of the California legislatures and require an EIR for this building project.

B. Undue Personal Hardship Would be Levied by the Demolition of Existing Building and Construction of Proposed Project

In the past year, my husband and I undertook several small home improvement projects involving cement, stucco and the moving of moldy dirt. During these projects, the impact from the cement dust, mold and stucco, individually and cumulatively, wrecked havoc on my body. I suffered migraine headaches, depression, general malaise, nausea, and chronic fatigue. I sought help from acupuncturists and other clinicians, who identified the offending chemicals and particles, to assist in dealing with these environmental sensitivities. While my symptoms could be mitigated slightly, there were stretches of time that I was unable to live in our house for these health reasons. While away from the house, my health was excellent. The proposed project, with its release of toxins during the demolition, combined with construction dust, concrete dust and stucco particles that would be released,, would effectively render it impossible for me to live in my house during the many months of construction. This is an untenable hardship. Who will bear the burden of paying for alternative housing during the long months of construction? If this project is approved, I would be forced to endure a serious threat to my health, along with the inconvenience of having to reside outside my home for an extended period, and the expense incurred for such alternative housing. I would consider such action to be a City-brokered gift of my physical, emotional, and financial well-being to the cause of unwarranted levels of profit to the developer. Does the City really expect its tax-paying citizens to subsidize the profits of developers in this manner. If so, we believe this represents a recklessly irresponsible action on the part of the City, which would be unacceptable and repugnant. The City needs to properly and carefully consider all of the costs and consequences of its decisions, and act accordingly.

II. THE PROPOSED PROJECT THREATENS THE SAFETY OF THE NEIGHBORHOOD THROUGH AN INCREASE IN TRAFFIC AND THE LACK OF ACCESS THE 10 FT EASEMENT AFFORDS EMERGENCY VEHICLES.

A. The Proposed Project Would Result In A Tremendous Increase in Traffic Volume

Currently, cars whiz up and down Desmond between Clifton and 51st. Two years ago our dog was hit and nearly killed by one such driver speeding down the hill on Desmond, a cut-through route taken to avoid the signal at College and Broadway. On a daily basis neighbors fear their young children may meet the same fate. The proposed development would only exacerbate this problem by creating more traffic; the cars of residents, and cars of guests visiting residents. The proposed project offers one parking space per unit. It was reported at the community meeting on Thursday January 4th, that students at CCAC and no doubt Cal Berkeley students would be targeted for the 2 and 3 bedroom apartments. This could result in potentially six individuals per unit. Where will these extra cars park? There is already an existing parking squeeze, such that residents are unable to park within several blocks of their homes during business hours. And how will the extra traffic be managed? We know from experience in the neighborhood that a request for speed bumps can take up to three years to be actualized. Traffic jams would most certainly occur on Hemphill, the small cul-de-sac which would provide the single ingress and egress to the project. Such an influx of cars will overwhelm this street and spill onto Desmond, Glendale, Clifton and other streets increasing the danger for all pedestrians.

B. Access for Emergency Vehicles Would be Impaired By the Limited Width of the Easement

This neighborhood is fire sensitive. The firestorms of 1991 resulted in the loss of life because a blocked car impeded the progress of emergency vehicles and blocked the only escape route for residents. In 1999, a young man died in a fire on Desmond, in a house rented over many years to partying college students. Therefore, it is with great concern that we look at this project in terms of what would happen in the event of an earthquake and/or fire. The width of the easement does not allow for emergency vehicles to pass. If there is a fire in the rear part of the building and a fire truck is unable to fit down the narrow ten foot passage that serves as the only access to the proposed project, What will happen? It is easy to imagine the fire will travel the five or ten feet into the neighboring yards and threaten our homes and our lives. What will happen if a car blocks the long and narrow driveway easement to the project or the narrow passage of Hemphill? How many houses will be lost? How many lives? Surely, this City, given its tragic experiences with fires and earthquakes, would privilege the safety of its citizens over the material gains of the developer.

III. THE PROPOSED PROJECT THREATENS THE WELFARE OF THE SURROUNDING NEIGHBORHOOD.

A. The Size and Scale of the Project Threatens the Welfare of the Surrounding Neighborhood Through Increased Noise, Invasion of Privacy and Blockage of Solar Access

“Welfare” speaks to general well being and happiness. This project, when examined to scale given the downslope of the neighborhood, would tower almost 70 ft from certain neighbors’ yards. Our property is one of these yards. The proposed project, with its roof deck, elevator shaft and windmills, would effectively block out most of our solar access, especially during the winter months when the sun travels low in the sky. This is just one of the ways the proposed project would greatly diminish our general well-being and happiness and have a significant environmental impact.

Not only would we lose our view of the sky, and exposure to the sun, we would have up to 36, if not more, neighbors ten feet from our back yard, thirty feet or so from our back door. Again, as reported in the 1/4/7 meeting, the intention is rent to students at nearby colleges. The prospect of having 36 college students behind our house is indeed cause for alarm, particularly given the neighborhood’s experience with the college dorm-like house on Desmond. That house created noise at all hours, parties, rowdy football games in the street, and loud, often drunken BBQs. The police were repeatedly called to reign in their obnoxious behaviors, with most of the calls occurring well past midnight. The situation improved only after the tragic loss of life. The public open space for this proposed project is on the roof. Imagine, if you would, the noise generated from a college roof-top party. At the 1/4/7 meeting the architect stated that no one really uses roof decks. A reasonable request was then made to remove it from the plans. He declined. We find it hard to believe that the only public common space available to these units that would afford a spectacular view of the city, the two bridges and beyond would not be utilized, regardless of the age of its occupants. The noise generated from this roof top venue would be untenable. The acoustics of this space where the back yards converge are unique: to put it mildly, sound travels well. A normal conversation in one yard can be heard clearly in the bedroom of another house. Thus, the impact of the noise from this proposed project would greatly hamper our sense of well-being and comfort in our homes and amount to a significant environmental impact.

Our privacy would also be invaded. In blocking our solar access, the developer is replacing it with a wall of stuccoed cement. Regardless of the elegant architectural details that may be added to the façade, our entire backyard view will be of this building and its potential occupants. Potential occupants would see directly into our backyard, kitchen and our bedroom. This indeed qualifies as a significant, unacceptable, and seemingly unexamined impact of this proposed building.

B. The Proposed Project Would Result in Significant Impact from Stormwaters and General Runoff from the Paving Over of Clay Soils.

Nowhere in the proposed plans is the issue of drainage addressed. As downslope neighbors we already suffer from an overflow of water run-off during the rainy season. The proposed building will cover over 80 percent of the lot with impervious building and paved surfaces. This drastic reduction in soil availability to absorb the water would result in significant increases of water flow to the downslope houses. How would this be mitigated? Such waters would likely cause damage to our houses and the increased moisture affords mold spores a place to thrive, thereby once again, threatening the health of the neighborhood. We feel the City should require the developer to produce drainage plans, prior to project approval, which clearly shows how the impact of the increased water and run-off would be mitigated.

Also missing from the plans are the ways in which the sewage will be handled. If a sump pump would be used to force the flow of sewage back up to College, what steps would be taken to avoid spillage and the oozing of such waste into our yards in the event of an earthquake or pump failure?

Likewise, how would the developer address concerns regarding waste removal? Would garbage trucks travel down the narrow easement to empty bins? And if so, how then would the problems of ingress and egress be addressed? Further, the noise of these trucks passing so closely to our homes would indeed have a significant impact on our welfare.

C. Undue Financial Burden to Adjacent Neighbors Resulting From Proposed Project with Regards to a Decrease in Property Values.

Given the large scale of the project, relative to its residential neighbors, and the subsequent loss of solar access, privacy and livability, our property values would no doubt be diminished. Given the nature of the "noticing" of this project over the holidays period and even with the seven day extension time for comments, we were unable to have the property assessed and obtain an estimation of the property values once such a structure of this magnitude would be in place. While we are unable to supply specific percentages of the decrease, we feel it is important to note for the record our objection to what feels like an unjust enrichment on behalf of the developer. His property value with the proposed edifice will soar, while the adjacent neighbors will suffer not only in the reduction of privacy and light, the increase in noise and traffic, but financially, as the overall livability of our homes would be greatly compromised and our property values diminished. Furthermore, we would be unable to sell our homes during the construction period which could last for up to two years or more. We feel this is an unreasonable burden to place on the immediate residential neighbors.

In closing, we believe the City must deny the proposal for the project. Too many health and safety issues have been left unaddressed. We encourage the City to require an EIR; to afford its citizens the full legislated environmental protection with oversight and management of this project. This city has suffered from its reputation for crime and homicides. Its commitment to green building practices and infill of urban areas is laudable and indeed brings needed positive attention to our city. We only ask that you do not advance the development and changing nature of Oakland at the expense of her residents. A city cannot thrive without healthy neighborhoods. If the City rushes this project through without pause to consider its impact and the overall impact of other projects in close proximity, it threatens the very fabric of what makes Oakland, and in particular Rockridge, a place people want to call home.

Respectfully,

Grace Fisher
Steven Kruszynski

5242 Desmond St.
Oakland, CA 94618

cc: Zac Wald
Jane Brunner

Linda Collins and Regina Stroud
5247 Desmond Street
Oakland, CA 94618
(510) 547-3719
reginastroud@sbcglobal.net Lccollins@sbcglobal.net

January 12, 2007

Mr. Peterson Z. Vollman, Planner III
CEDA-Planning & Zoning
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

RE: CDV 6-604 – Proposed Development Project at 5253 College Avenue

Mr. Vollman,

Our home is located on Desmond Street and will face the back of the proposed building. We enjoy the quiet and friendly character of the Rockridge neighborhood. Our immediate access to College Avenue shops is something we value as Rockridge residents.

We appreciate the potential development of the southern end of College Avenue, and some of the style and design elements of the proposed building which are sensitive to the period details and style of the surrounding area – particularly in comparison to the project being proposed for Broadway and Coronado. However, we are concerned that the Peterson project—particularly if considered in conjunction with the additional proposed projects in the vicinity—will negatively impact neighborhood noise levels, privacy, safety and traffic flow. We are also concerned that the size of the building is out-of-scale with the surrounding residential homes and is situated too close to the adjacent homes along its back perimeter. The Peterson the project does not transition or blend well with the single family homes characteristic of the neighborhood to the rear of the property.

We are concerned that there has not been sufficient opportunity for neighborhood input and that variances are being considered for the property that exacerbate the above concerns.

We are requesting:

- The completion of an Environmental Impact Report;
- An extended timeline and process for review of the project;
- Further examination of the access and egress for safety vehicles in the rear of the proposed property

- Specification of additional precautions to minimize dust, toxicities and irritants released during demolition and construction;
- Reconsideration of the current plan to build property so close to the neighbor's backyards;
- Architectural solutions that address privacy concerns;
- Redesign of the building to address concerns about appropriate transition and blending with the surrounding residential neighborhood.

Thank you for your consideration of our concerns.

Linda Collins and Regina Stroud
5247 Desmond Street
Oakland, CA 94618

Subj: =?WINDOWS-1252?Q?CDV_06-604_96_PROPOSED_DEVELOPMENT_PROJECT__52?= =?
WINDOWS-1252?Q?53_COLLEGE_AVENUE_96_PETERSON__?=

Date: 1/12/2007 4:14:18 PM Pacific Standard Time

From: kimlenox@mac.com

To: pvollman@oaklandnet.com

CC: BVerrips@aol.com, jbrunner@oaklandnet.com, nmorton@earthlink.net, elsimag@aol.com,
howell5150@sbcglobal.net, guadalupe1977@yahoo.com, curtis@sfsu.edu,
kchun@murakaminelson.com, marc.bowman@celera.com, rick@ninthwavecg.com,
lesleya7@sbcglobal.net

RE: CDV 06-604 – PROPOSED DEVELOPMENT PROJECT
5253 COLLEGE AVENUE – PETERSON

TO:
Mr. Peterson Z. Vollman, Planner III
CEDA – Planning & Zoning
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

Dear Mr. Vollman,

We are adding our names to the letter written by Bert Verrips and Karen Johnson of 5248 Desmond Street regarding the oversized 3 story apartment complex proposed at 5253 College Ave. This letter was hand delivered to your office today, January 12, 2007 by Bert Verrips.

Our primary concerns are regarding the inappropriate size (too large and not in keeping with the current neighborhood aesthetic), fire safety and the additional traffic and parking needs for the apartments. This building needs to be considered as part of the entire neighborhood development plan related to additional *development being planned for the vacant lot on Broadway and Coronado Avenue*. These 2 plans combined as they are currently proposed, make the Desmond/Hemphill/Coronado neighborhood inhospitable and thrusts our quiet neighborhood tree-lined streets into high-traffic, high-noise hustle and bustle. If we wanted to live in those conditions we would have purchased a home in San Francisco. We chose Oakland's Rockridge Neighborhood specifically because of the quiet and relaxed atmosphere in close proximity to College Ave amenities. The 2 proposed apartment complexes as currently proposed with adversely affect the neighborhood and the resale value of our homes. If we wanted high-traffic hustle and bustle we would have bought a cheaper place on 51st Street or some other major thoroughfare.

We are personally not opposed to high-density housing on College and/ or Broadway. However, we vehemently oppose both projects as currently proposed. Please work with the Desmond/Hemphill/Coronado neighbors to reduce the volume of these to 2 proposed apartment complexes to be in keeping with the current neighborhood feel.

Thank you,

Kim Lenox & Daniel C. Hunt
5223 Coronado Avenue
Oakland, CA 94618
510-655-2087=

Subj: **FW: Case CDV 06-604**
Date: 3/5/2007 4:06:48 PM Pacific Standard Time
From: J.Paquette@ehdd.com
To: BVerrips@aol.com
CC: J.Paquette@ehdd.com

Bert:

I am forwarding (per your e-mail request) a copy of the comments I sent to Mr. Vollman regarding Kirk Petersen's project.

Judith

-----Original Message-----

From: Judith Paquette
Sent: Friday, January 12, 2007 11:24 AM
To: 'pvollman@oaklandnet.com'
Cc: Judith Paquette
Subject: Case CDV 06-604

Dear Mr. Vollman,

I am writing to voice my concerns about plans to construct a 4 story building at 5253 College Avenue. While I share my neighbors' concerns (particularly those on Desmond Street) about the mass & height of the building (and I am not swayed as some residents seem to be by the exterior detailing), I will focus on 2 specific issues having to do with access & parking, and trash.

My house is directly across from the easement in question, on the corner of Hemphill Place and the easement/alley that leads to Coronado. As you may or may not know, this little one-block street is heavily impacted by day parkers who are going to CCA, using the laundromat, going to Sabuy Sabuy (the restaurant), and working in nearby buildings including Mr. Peterson's.

An easement is not synonymous with a private driveway which is what Mr. Peterson is proposing. Not only will the proposed building result in 6 cars going up and down this narrow easement but one can anticipate that at least some of the tenants/owners of the residential units will have more than one car. In addition, two commercial spaces are proposed, creating additional traffic, congestion, and parking misery. Mr. Peterson who often keeps one or two vehicles parked in the easement at present will be parking on the street as does his staff.

Mr. Peterson was quite dismissive at the recent open meeting sponsored by Council member Brunner regarding the question of trash removal. His answer was that the trash receptacles would be placed "on the street" at the end of the easement. Clearly the easement itself would have to be left clear for cars to go in and out. That places the trash receptacles where? In front of my neighbors house? Lined up somehow late at night in the small parking area used by the restaurant & the laundromat? What a mess!

This is a small, tight little area. Already it is difficult for the larger garbage & recycling trucks to make their way up and around Hemphill and Coronado. It is strained by the parking pressure of the nearby businesses and CCA. About a year ago there were rumors that Sabuy Sabuy would be torn down (hallelujah!) and a new (unspecified) building constructed. If the Planning Department has any knowledge of a prospective project on that site, it is critical that both the Peterson project and it be looked at together.

Having said that, I urge the Planning Department, as well as other agencies involved in the review process, to look at this area holistically and not piecemeal. The project at 5175 Broadway and the Peterson project both impact Hemphill and Coronado, as well as the other neighboring streets. Unlike the Broadway project, Mr. Peterson's is far from thought through.

I have no doubts that Mr. Peterson has carefully maximized everything possible about this lot. This does not mean however that it's a good project for that site or the neighborhood. I urge you to carefully consider the consequences of this project on this particular neighborhood.

Thank you.

Judith Paquette
315 Hemphill Place
510-595-9325
EHDD Architecture
415-285-9193
j.paquette@ehdd.com

To: Jane Brunner: jbrunner@oaklandnet.com
Scott Miller: smiller@oaklandnet.com
cc: Zachary Wald: zwald@oaklandnet.com
Pete Vollman: pvollman@oaklandnet.com

From: Lucy Schneider
324 Hemphill Place
Oakland, CA 94618
510-655-6790
lucysch12@yahoo.com

Dear Ms. Brunner and Mr. Miller,

I am a resident of Rockridge that will be heavily impacted by the development at 5253 College Ave. (CDV 06-604) if it goes forth as planned. In effect, I have already been impacted by stress and time spent commenting to make sure my concerns are heard and addressed. I would like to take the time now to address you and your office, first to give a whole-hearted thank you for giving us a public meeting on a project that did not require it by the current standards, second, to voice concerns about the current development planning process and environment.

A bit about my background, I worked for six years at the consulting firm Carter & Burgess in their Denver Office of Transportation Planning, Environmental Planning and Urban Design. While there, I attended more public meetings than I can remember as a representative for cities and developers. After attending the public meeting at the Rockridge Public Library on January 4, 2007, I was troubled by how the two projects presented were trying to achieve maximum density and also by the perceived pro-developer attitude by the City Planner. I do not mean this letter to attack a single person, more the process and the attitude that I, and others, picked up on from the planner point of view.

Both projects I saw included "exceptions" to maximize space even above the current ordinances. The project at 5175 Broadway allowed the developer to flip the building which also allowed it to be taller as it was set back further from the apartment building next door. The developer of the project at 5253 College Avenue is asking for a special variance to allow for all group open space to be put on the roof. What is wrong with having open space at the ground level in a lot that is completely surrounded by the backyards of single-family homes?

Rockridge is a nice neighborhood. It doesn't need a personality overhaul. Why try to change it by overloading every empty lot with the maximum density that the lot will support, pushing the limits of zoning laws and ordinances? I am all for development as long as it fits within the existing neighborhood. The push to make everything as large as possible is not smart growth. Do we want Rockridge to look like Emeryville?

The developer of 5253 College Avenue, Kirk Peterson, and the City Planner, Pete Vollman, joked about working on this plan for years. There's no doubt they have a friendly working relationship. That's great for them, but who is my representative? I felt as if the City Planner was representing the developer as a proponent or "seller" of the plans. Shouldn't the City Planner be

guiding the developer to make good decisions for the neighborhood as opposed to showing him how to get the biggest bang for his buck? And one of the most troubling aspects of all, concerned residents were told their best bet was to talk to the developer and voice our concerns. Did the City Planner advise the developer to talk to the surrounding neighbors before submitting his plan? He could have, I don't know. But this plan was pushed in before the ordinance will change for more notice, was pushed through over the Christmas holiday, the developer did not talk to neighbors and came up with a plan of ONLY 6 very large units to be under the unit count that would require an extra step of approval. I feel like it's all a game to submit the largest plans possible so neighboring residences will approve the 2nd draft of plans that are a tiny bit smaller. No one should play games when dealing with people's homes and day to day lives.

I sincerely thank you for listening to my concerns.

Lucy Schneider
324 Hemphill Place
Oakland, CA 94618
510-655-6790

To:
Pete Vollman: pvollman@oaklandnet.com
Scott Miller: smiller@oaklandnet.com
Zachary Wald: zwald@oaklandnet.com

From: John Mitchell Ferguson & Lucy Schneider
324 Hemphill Place
Oakland, CA 94618
510-655-6790

Case File Number: CDV 06-604
Location: 5253 College Avenue (APN: 014-1240-004-00)

We are completely against the above mentioned project as proposed for the reasons listed below:

1. Noise

We already have an existing noise problem from the large apartment across College which is much farther away than this proposed building. Even inside our house, we have noise problems while all windows closed and trouble sleeping if people are outside talking in neighboring properties at ground level. This project proposes roof access for group open space which would make our house unlivable. We are also concerned that having a new structure so close to all the surrounding houses will only serve to amplify the noise.

We also are scared there could be addition noise from new heating, ventilation, garage doors and an electric access gate.

2. Safety Due to Inadequate Access

The easement, which is the only access to this property, is inadequate. It is not a proper driveway or access point. It is long and narrow, only wide enough for one-way traffic and not even wide enough for some cars let alone construction or emergency vehicles. It's often blocked by people from the laundromat. This easement, which would act as a driveway for residents of the new building and also construction trucks and more importantly, emergency vehicles, is totally inadequate for the size of this project.

The footprint is also too close to surrounding property lines. How will a fire truck or emergency personnel be able to access the rear of this property that only has a 5-10 foot buffer from the back fences of surrounding properties?

3. Traffic & Parking

Hemphill Place is a small street. Our moving truck could not even make the turn up the street and had to park on Desmond and move furniture up the sidewalk.

There are only 5 houses and 5 driveways on Hemphill Place. This project has six large units with six parking spaces (more if they have tandem parking, as mentioned in meeting of 1/4/07). This effectively at least doubles the traffic on Hemphill Place which is already extremely busy due to being across from the CCA campus. And the project would need the easement to stay clear when currently there are at least two cars parked there daily.

4. Scale of Project

This is a quiet neighborhood full of modest single-story, cottage-style homes. A three and a half story condo complex smack in the middle of this neighborhood is unattractive and out of balance with surrounding area. It will be an overbearing blemish that will dominate and transform the ambiance of the neighborhood.

The footprint and height of the building are out of scale for the lot. Apart from emergency access, it doesn't fit in with the surrounding homes. The commercial zoning for this property is fine for the College Avenue half of lot but completely inappropriate for the half that is surrounded by small residential houses.

5. Privacy & Five foot buffer from our back fence to new building

Since our backyard faces the side of the building, we do not benefit from the 45 degree back-off rule that the properties to the rear of the building receive. The planned development has a three story building only five feet from our property line. Yikes! This is straight up from our backyard and filled with windows and overlooking balconies.

6. Destruction of View

Our backyard isn't very big but we currently benefit from a view of the Berkeley Hills. We even can see it from our kitchen. This planned property will obliterate that view and will replace it with the side of a three story building with windows and balconies looking right back at us.

7. Overdevelopment of Condos and Rentals in Residential Neighborhood

There are at least four planned condo/apartment developments within a four block radius of this project. Rockridge is currently a small family residential area. As more and more condos are built and people don't see this as a place geared toward the single family, homeowners will begin to rent out houses. Do we want Rockridge to turn into another Emeryville where retail rules and condos and rentals are the only residents?

8. Compounding Impacts from Larger Project at 5175 Broadway, less than a block away

The simultaneous development of the much larger project less than a block away is troubling. The larger project at 5175 Broadway must go through a slightly longer comment process and many of the same issues pertain to this project. For one thing, the alley behind Wendy's discussed in the meeting as possibly changing to one-way, is the connection point of both projects. The impact studies on one project will pertain to the other. For example, both projects will impact traffic and parking on the same streets in a 2-block radius. The project at 5253 College should not be approved before findings, comments and public meetings are completed on the 5175 Broadway project.

9. Property Value

Because of all of the issues listed above, our house will dramatically lose property value. This project directly profits one developer while directly taking it from at least eight other families. The zoning and community planning organizations are supposed to protect against this sort of inequality. However, the City Planner seems more interested in reaching maximum capacity of the zoning laws, even asking for a variance to put group open space a.k.a. "party deck with San Francisco view" on the roof.

In conclusion, we welcome redevelopment of the area, as long as environmental impacts are addressed and if the scale of project fits with existing neighborhood.

Thank you,

John Mitchell Ferguson & Lucy Schneider
324 Hemphill Place
Oakland, CA 94618
510-655-6790

January 26, 2007

HAND DELIVERED

Mr. Peterson Z. Vollman, Planner III
CEDA – Planning & Zoning
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

RE: **CDV 06-604** – PROPOSED DEVELOPMENT PROJECT
5253 COLLEGE AVENUE – PETERSON

Dear Mr. Vollman:

In addition to the group comment letter submitted to you on January 12th, we are submitting the following information, comments, and requests. This letter is intended to supplement, amplify, and clarify our previous comments and does not include new issues that have not previously been raised.

1. Site Contamination Studies Are Required Prior to Project Approval

Due to the presence of suspected environmental contamination on the site (i.e., soil contamination from previous uses of the property; lead paint and asbestos building materials) which may result in significant adverse public health effects, sampling and testing must be conducted prior to project approval in order to determine the extent of the contamination and to identify appropriate mitigation measures. In other words, such studies may not be deferred to some future date after project approval. This principle has been firmly established in a long line of CEQA cases beginning with *Sundstrom v. County of Mendocino* in 1988. As such, the applicant must prepare Phase I and Phase II Environmental Site Assessments, as well as lead paint and asbestos surveys, per regulatory agency and professional protocols, in order to identify any site contamination, and if necessary, coordinate with the responsible agencies to develop effective remediation plans.

Other environmental conditions identified in the January 12th letter, particularly the poor site drainage, should be studied and an effective drainage control plan should be prepared prior to project approval. Finally, since the demolition of the existing structure may result in the destruction of a significant historic resource, as defined by the State of California, an Historic Property Survey Report should be prepared to evaluate this potential impact, and CEQA would require that this evaluation occur prior to project approval.

2. An Initial Study is Required to Evaluate Potentially Significant Project Impacts

In order to provide a proper evaluation of the potentially significant impacts of the proposed project, City staff should prepare an Initial Study per CEQA which would provide a systematic framework for identifying potentially significant impacts associated with the project. As discussed in our January 12th comment letter, these potentially significant impacts could involve aesthetics, air quality, drainage, hazardous and toxic materials, historic resources, noise, public safety, shadows and solar access, traffic, parking, and cumulative impacts. An Initial Study needs to be undertaken to determine which impacts are likely to be significant, which technical studies may be needed to analyze impacts and identify

mitigations, and which form of environmental documentation is appropriate under CEQA (i.e., Mitigated Negative Declaration or EIR). Without performing an Initial Study, it will not be possible for the City make a determination that the project would have no impacts under CEQA.

3. The Following Mitigation Measures Must Be Included in Conditions of Approval for Any Site Development

In the absence of a staff report or any available list of mitigations which staff intends to impose as conditions of project approval, we request that the following conditions be imposed, at a minimum, to address the impacts of any project approved at 5253 College Avenue:

- a. The project construction contractor shall be provided with contact information for all adjacent residents, and shall notify adjacent residents of the project construction schedule at least 10 days prior to commencement of any site preparation, demolition, grading, and construction activity.
- b. All available and technically feasible dust suppression methods shall be employed during demolition, grading, and construction, in order to avoid the generation of airborne dust. This shall include, but not be limited to: regular watering of exposed soils at intervals necessary to keep soil moist; placement of solid and continuous construction fencing at least 8 feet high around the project perimeter; placement and maintenance of continuous dust netting on the exterior portions of uncompleted structure throughout the construction period.
- c. Construction vehicles and equipment on the site or in the vicinity shall be turned off when not in use. No vehicles shall be allowed to idle for more than five minutes, in accordance with state law.
- d. The construction contract shall specify the use of non-diesel powered equipment and vehicles. The selected vehicles and equipment shall have the lowest emissions ratings available.
- e. Throughout project demolition, grading, and construction, air samples shall be taken by a qualified contractor on a weekly basis and tested for elevated levels of particulates, toxic air contaminants from equipment exhaust, lead, and asbestos. Such sampling shall occur randomly and shall not be announced in advance. If elevated levels of these toxic constituents are detected in the air samples, all site activity shall cease until the source is identified and remediated.
- f. The construction contract shall specify the use of quietest available equipment and vehicles, especially compressors and generators. While in use on the project site, such noise generating equipment shall be located as far as possible from adjacent residences, and shall be screened with temporary noise barriers.
- g. The construction contract shall specify that each construction worker at the site shall be notified that the project is in a noise-sensitive residential area, and that accordingly loud talking and playing of media, and any other loud noises, must be avoided.

- h. No site preparation, demolition, grading, construction or related on-site activity shall take place prior to 8 AM or later than 6 PM. Construction may occur on weekdays only, and shall not be permitted on Saturdays, Sundays, or legal holidays.
- i. The construction contract shall specify that a notice is to be posted at the front of the project indicating that on-site personnel may be contacted regarding noise, dust or other complaints, and a telephone number for a designated on-site contact person shall be included in the notice. The construction contractor shall make every effort possible to eliminate the source of the complaints.
- j. Permanent noise generating equipment, such as HVAC systems, sump pumps, and other mechanical equipment, shall be placed as far from neighboring residential properties as possible, shall be enclosed within the building or screened by solid barriers for noise abatement, and shall be selected on the basis of lowest available manufacturers' noise ratings. Prior to building permit issuance, the cumulative noise levels from the simultaneous operation of specified mechanical equipment shall be evaluated by a qualified acoustical consultant to confirm compliance with the City of Oakland noise ordinance.
- k. The project shall include a continuous 10-foot high solid masonry wall along the common boundaries with all neighboring residential properties.
- l. Upon project completion and occupancy, the future building manager shall contact adjacent residents and inform them how she/he may be contacted to address noise complaints or other nuisance conditions as may arise.
- m. The interior and exterior lighting for the project shall be designed and directed such that the light intensity measured at all external property boundaries shall be 0 foot-candles. Prior to issuance of building permits, this performance standard for lighting shall be demonstrated on a photometric plan based on as-built construction drawings and specifications.

4. Second Request for a Meeting with Staff to Discuss Proposed Project.

In the closing of our January 12th group comment letter, we requested a meeting with staff to discuss our many concerns about the proposed project. We want to reiterate our request for a meeting, specifically to discuss the above conditions/mitigations, and also to discuss ways in which the project can be modified to address our many concerns about its proposed design.

Thank you,

Bert Verrips, AICP

cc. Scott Miller

5248 Desmond Street
Oakland, CA 94618
510/652-1666
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Neighborhood Supporters of Appeal

Bert Verrips and Karen Johnson
5248 Desmond Street

Sarah and Eric Ortman
331 Clifton Street

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5242 Desmond Street

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318 Hemphill Place

Diane McCleod
5230 Desmond Street

Judith Paquette
315 Hemphill Place

Frank Matthias and Maria Isaac
5230 Desmond Street

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5219 Desmond Street

Mitch Ferguson and Lucy Schneider
324 Hemphill Place

Nancy Morton
5216 Desmond Street

Phillip Fitzwater and Leslie Pulaski
327 Hemphill Place

Deborah Curtis
5153 Desmond Street

Mark and Hannah Davis
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Sandra Olson and Frank Castro
5256 Desmond Street

Shannon and Jackie Vincent
5124 Desmond Street

Deborah and Som Konar
5255 Desmond Street

Jenifer Schwarz
5122 Desmond Street

Monica DiPerna and Kathleen Willard
5251 Desmond Street

Debbie Kelly
5119 Desmond Street

Cat Haglund and Andy Collison
321 Glendale Avenue

Jim and Evelyn Clevenger
5107 Desmond Street

Barbara Havenar and Patrick Daughton
327 Glendale Avenue

Michele Tompkins and Peter Simack
328 Glendale Avenue

Luke Lucas and Brian Henderson
330 Clifton Street

HAND DELIVERED

January 12, 2007

Mr. Peterson Z. Vollman, Planner III
CEDA – Planning & Zoning
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

RE: CDV 06-604 – PROPOSED DEVELOPMENT PROJECT
5253 COLLEGE AVENUE – PETERSON

Dear Mr. Vollman:

We object in the strongest possible terms to the development of the project at its proposed location, and we emphatically urge the City to deny approval of the project as proposed for the many valid reasons stated below. We also strongly believe that the staff erroneously determined that this project is exempt from environmental review under the California Environmental Quality Act (CEQA). We believe that CEQA requires that an Environmental Impact Report (EIR) be prepared on this project, for reasons discussed in detail below.

I. THE PROPOSED PROJECT RESULTS IN A SIGNIFICANT LAND USE CONFLICT, AND VIOLATES CITY POLICIES AND REGULATIONS WHICH MANDATE COMPATIBLE NEIGHBORHOOD DEVELOPMENT

A. The Project Height and Bulk is Grossly Out of Scale with its Neighboring Single-Family Homes

The City's nominal height requirement for the project is 35 feet, with a minor step back required for the upper floor from the rear property line. However, since the eastern side of the site is 4 feet higher than the west side, the total height of the building would be closer to 40 feet when viewed from the residences to the rear. Additional and substantial structures, including an elevator tower, and two stairwell towers (all of which would have pitched roofs) would project from the top of the building, resulting in a total structure height almost 60 feet, as measured from the rear of the building. It is important to note that the commercial properties in this block slope from College Avenue downward to the west, resulting in a grade deferential of about 5 feet between the proposed building and the adjacent dwellings to the west. Thus, from these neighboring residences, the building and projecting structures would appear to be 65 feet high, or higher than

a 6-story building! This is grossly out of scale with the adjacent residential buildings, which are one and two stories high. The proposed building itself (not including the structures and projections on top) is also substantially higher than its neighboring commercial buildings, with the result that the building façade on College Avenue is also substantially out of scale with its commercial neighbors. In other words, the proposed height and scale of the project is clearly incompatible with the height of the surrounding buildings, both residential and commercial.

As a point of comparison, the proposed project would be **roughly equivalent to the height and building mass of the CCA student housing building at 5276 Broadway** (at Broadway Terrace). The curblin in front of the CCA building represents the equivalent distance (10 feet) from the proposed building to the neighbors' fence lines at the rear of the proposed project; and the proposed project **building setback from the neighboring homes to the west would be equivalent to the distance from the CCA building to the centerline of Broadway** (40 feet) – the neighboring homes to the south would be even closer at 25 feet! This is clearly shown in Exhibits 1 through 5, attached, which include a cross-section and four sets of before-and-after photos showing the effects of the proposed building mass in the context of its neighboring homes.

The project applicant has included architectural detailing to the façades of the proposed project which seems to appeal to many observers. However, the building height, mass and bulk must be considered in the absence of these surface features. It is apparent that some observers may be overly distracted by the surface architecture, so much so that it seems to be clouding their perception of what lies beneath. The attached exhibits are intended to show this massing and scale, without the diverting details.

The City's own residential design guidelines were promulgated specifically to require projects to be designed in sympathy with neighboring homes, and to avoid precisely the kind of insensitivity to adjacent properties that is displayed in the design of the proposed project. Since this is a largely residential project located adjacent to an existing residential neighborhood, we believe the City should consider the proposed project in light of the principles established in its own residential design guidelines. And, as discussed below, we believe that the City's General Plan mandates this approach.

B. The Proposed Building Density and Lot Coverage Are Far Too Intense Given the Proposed Project's Close Proximity to Existing Single-Family Homes

In addition to being much too high, the proposed building would be massive and would cover 80 percent of its parcel. The existing commercial buildings on this block of College are clustered near the street frontage, with the rear yards of those properties providing an appropriate buffer with the neighboring residential

properties. From the vantage point of the homes immediately to the south and west, this project would be equivalent to placing an apartment building in the middle of the block, within the area that currently serves as a buffer area from the commercial uses. This represents a significant land use conflict with the existing neighbors. In other words, a project of this magnitude simply does not fit into this neighborhood.

C. The Proposed Project Would Result in Severe Invasions of Privacy to Existing Single-Family Homes in the Vicinity

There are eight single-family homes along Desmond Street and Hemphill Place which would be severely affected by this massive building, and a number of additional dwellings a short distance away which would also be adversely affected. The residential lots in this neighborhood are relatively small, and the rear yards range in depth from as little as 15 feet to 30 feet. The project would have a minimal rear yard setback of 10 feet and a paltry side yard setback of 5 feet. At the nearest home on Hemphill, the south façade of the proposed building would be less than 25 feet from the rear wall of the house! From the other adjacent homes, this separation would only be 30 to 40 feet, which also far too close. And because the proposed project would consist of residential units on the second and third floors, with numerous windows facing south and west, the future project residents would have direct and close-up views into the rear yards and bedrooms of the adjacent homes. This would have a severely adverse effect on the privacy and livability of the adjacent residential properties.

In addition, the upper floor and proposed rooftop open space would be so high that future project residents would have views over the roofs of the adjacent homes and into the homes on the south side of Hemphill and the west side of Desmond Street. Therefore, the privacy of these residents would also be compromised, along with their quality of life. Given the widespread and severe impact that the proposed project would have on the privacy of a number of adjacent and surrounding homes, we do not believe that the approval of this project can be justified on any grounds. We believe we have a right to retain the existing privacy of our homes and yards, and as tax-paying citizens, we believe the City has a duty to help us protect that privacy, and not act as an instrument in its destruction.

D. The Proposed Rooftop Open Space Area Would Result in Significant Noise Intrusion and Severe Invasion of Privacy and Livability

The project applicant proposes to place "open space" on the roof of the building, at a height of 35 feet. More incredibly, this rooftop open space is proposed on the west side of the building where it would be closest to the adjacent single-family homes! (This rooftop open space would also be higher in elevation than the rooftops of all of the adjacent homes!) Apart from the additional and

Mr. Peterson Z. Vollman

January 12, 2007

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unacceptable invasion of privacy, this raises the specter of noise intrusion into the surrounding residential yards and bedrooms. In this context, it is important to understand that unique acoustical characteristics of the interior area of this block. Due to the solid row of commercial buildings to the east, and the tightly spaced homes and accessory structures on the other frontages, the interior of this block is currently very quiet. So much so that people speaking in normal conversational tones can be heard clearly from one end of the block to the other, particularly from properties which are elevated relative to the others. Even under current conditions this acoustical effect can be annoying. So it is alarming to imagine future residents of the proposed project having free access to the roof for socializing and rooftop parties, at any time of the day or night. Even more alarming is the prospect of having groups of college students (from CCA or Cal) living in the proposed project. As the applicant has admitted, this is a distinct possibility if he cannot sell the units as condominiums. Given that there are over 1,300 condominium projects that are pending or have been approved in North Oakland alone, and considering the current health of the housing market in general, we believe there is no doubt that many of these units will be occupied by students. The Desmond Street neighbors became painfully aware of the consequences of uncontrolled student housing with the frequent and noisy late-night parties that took place in the former rental house at 5247 Desmond. In 2001, that house was destroyed by fire due to the negligence of its student residents, resulting in the tragic loss of life of a young man. When that house was rebuilt, the neighbors fought hard to prevent the house from returning to what essentially had been a student dormitory. We believe there is a strong probability that the proposed project could result in a similar nuisance to the neighborhood. The intrusive noise generated at the proposed rooftop open space would be extremely annoying and disruptive, and would cause an unacceptable reduction in the livability of the adjacent residential properties. We consider this to be a significant adverse effect of the proposed project.

In the face of this obvious impact to neighborhood privacy and livability, we find it incredible that the City staff would entertain a Variance to allow all of the required group open space to be on the rooftop terrace. We strongly object to the granting of this Variance, and instead urge the City to disallow any access or use of the roof by the future residents of the building. This is precisely what would be required under the City's Residential Design Guidelines, and we strongly believe it should be required here as well. In addition to the probable nuisance conditions mentioned above, we believe that to do otherwise would result in unequal application of the City's design principles, which would result in unfair and unjust treatment of the adjoining residents.

E. The Proposed Project Violates Several General Plan Policies Which Mandate Compatible Development

The City's General Plan Land Use and Circulation Element contains several goals and policies which mandate that design of the project reflect sensitivity to its residential neighbors. The most pertinent of these goals and policies are listed below:

Goals for Oakland's Neighborhoods

Compatibility of Development: *Neighborhoods should be protected from incompatible types of development.* (Emphasis added.)

Neighborhood Objectives and Policies

Policy NI.5 Designing Commercial Development. *Commercial development should be designed in a manner that is sensitive to surrounding residential uses.* (Emphasis added.)

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

We believe that the proposed project violates the above General Plan policies which mandate design sensitivity to surrounding residential uses and protection from incompatible development, for the many reasons stated above.

F. Approval of the Proposed Project Would Violate the Design Review Criteria of the City's Planning Code

The proposed project is subject to the Design Review Criteria found in Section 17.136.070 of the Planning Code. For residential facilities, the first two criteria are as follows:

1. That the proposed design will create a building or set of **buildings that are well related to the surrounding area in their setting, scale, bulk, height, materials, and textures.** (Emphasis added.)
2. That the proposed design will **protect, preserve, or enhance desirable neighborhood characteristics.** (Emphasis added.)

As demonstrated in the preceding discussion, it is clear that the proposed project will in fact result in the opposite effect from that required in the applicable

design review criteria. As demonstrated, the proposed project would relate very poorly to the surrounding area, and would greatly damage the existing character of this neighborhood. As such, we believe that the City cannot, in good faith, approve the design of the proposed project.

G. Approval of the Proposed Project Would Violate the General Use Permit Criteria of the City's Planning Code

In order for the proposed project to be approved, it must meet the General Use Permit Criteria set forth in Section 17.134.050 of the City's Planning Code. General Use Permit criterion "A" requires the following:

"That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development." (Emphasis added.)

As demonstrated in the preceding discussion, the project clearly does not meet this criterion for use permit approval. (We also believe that this project does not meet any of the other required criteria set forth under this section of the Planning Code.) The proposed project is clearly not compatible with the abutting properties, and will certainly have an adverse effect on the livability of the neighborhood. As such, the City cannot, in good faith, make a finding that the project conforms to the General Use Permit criteria, as required. We believe that the project's failure to meet this provision of the Planning Code mandates that it be denied.

H. Approval of the Conditional Use Permit for the Proposed Project Would Not Meet Applicable Use Permit Criteria of the C-31 Zone

The basic intent of the C-31 zone is to provide for retail uses on the ground floor. The ground floor of the proposed project includes retail along the property frontage but also proposes 6 garages and a professional office to the rear. We believe that the ingress and egress of future residents' vehicles from the ground floor garages would result in noise impacts to surrounding neighbors due to engine starts, door slams, beeper alarms, loud voices, and tires screeching on smooth pavement, not to mention the proposed entrance gate (which would likely include a loud warning buzzer). As such, ground floor parking is an inappropriate use in such close proximity to existing residences. The proposed professional offices are also inappropriate for the rear of the property, where they would be within 25 to 40 feet of neighboring houses. The proposed office area includes an

outdoor open space area accessible by three French doors. Clearly, the intent is to make heavy use of the outdoor area. Given that the proposed outdoor use area would be less than 30 feet from the nearest existing homes, and directly adjacent to the rear yards of these homes, the noise of ongoing conversations from the project would greatly disturb the ambience of the neighborhood and would significantly impair the neighbors' quiet enjoyment of their homes. (See item "IV.B." below for further discussion of these noise impacts.) In order to qualify for a conditional use permit, the proposed project must satisfy several criteria, as stipulated in Section 17.48.100 of the Planning Code. Criterion "A" requires: "[t]hat the **proposal will not detract from the character desired for the area.**" (*Emphasis added.*) There are numerous policy statements, permit criteria, design criteria, and required findings which identify protection of neighborhood quality of life as a "character desired for the area." As such, we do believe that the City cannot, in good faith, make the findings required for approval of the Conditional Use Permit, given that such approval would clearly be detrimental to the adjacent residents and the neighborhood.

I. The Findings Required for Approval of the Proposed Variance Cannot Be Made In Good Faith

The proposed project includes an application for a variance to allow more than 20 percent of the group open space requirement to be fulfilled by the proposed rooftop terrace. In fact, the project proposes to place 100 percent of the group open space on the rooftop. As discussed above under item "I. D." above, the proposed rooftop terrace would be extremely invasive to the privacy of the adjoining residents, and as such it would not be permitted under the City's own residential design guidelines. Setting aside the question of how a five times increase in the minimum requirement (i.e., changing the minimum from 20 percent of the open space to be allowed the roof to 100 percent) constitutes a "minor" variance, the findings required in the Planning Code for approval of this Variance cannot be made in good faith. At the most basic level, variances are provided for in order to relieve a property owner of some hardship that would result from strict adherence to the zoning requirements. This required finding, which is set forth in Section 17.148.050 (A) (1) of the Planning Code, cannot conceivably apply to this project. The only effect that would result from strict compliance with the 20 percent requirement is a minor redesign of the project, which hardly qualifies as a hardship. The more important finding is contained in subsection (A)(3), which states: "[t]hat a **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." (*Emphasis added.*) As discussed above, the proposed rooftop open space would most emphatically have an adverse effect on the character and livability of the adjoining residences. Instead of allowing the proposed project to expand the amount permitted rooftop open space, the future project residents should be

barred from access and use of the rooftop altogether. As discussed below, it is well within the City's discretionary review authority to impose such a prohibition on use of the rooftop by future residents.

J. The Zoning Standards Do Not Confer a Right to Develop to the Maximum Building Envelope; Project Must be Designed In Accordance with City's Design Criteria

The zoning code sets forth certain standards for maximum density and building height, and minimum setbacks from property boundaries, as so forth. The same standards are applied to many different situations within the same zoning district. In some cases, such as this one, zoning standards can become blunt instrument which can actually result in land use conflicts instead of avoiding them, as intended. It is well recognized that zoning standards, in themselves, are not an adequate basis upon which to judge the appropriateness of a proposed project, especially when it is located in a unique context such as this one. Fortunately, *there is much more to the applicable zoning regulations than the simple application of its mathematical building standards.* Proposed **projects must also conform to design review criteria and be able to satisfy the findings required for project approval.** As is fully demonstrated in this case, the blind adherence to zoning standards relating to maximum permitted densities and heights, and to the minimum allowed setbacks, can result in overly massive development that is inappropriate to the existing neighborhood context. The checks and balances provided by the design review and use permit processes are intended to prevent this from occurring, but there is no evidence in the project design that these checks and balances have in fact been considered here. Instead, the project design, and the City staff's apparent support of it, seems to imply that there is some kind of right on the part of the property owner to develop the maximum size project that would be permitted by blind adherence to the zoning standards. However, there is no such right; and if there were, there would be no need for discretionary project approval. But the project is indeed subject to discretionary approval, and the City has the authority to deny the project outright or to approve a project which can meet its well-articulated design principals and requirements. For the City to approve a project which does not adhere to its own development policies, regulations and guidelines would be an abuse of its discretion.

The principle that projects must be designed with sensitivity to their surroundings, regardless of the maximum building envelope that might result from application of zoning standards alone, is amply demonstrated in the City's own Residential Design Criteria and Review Guidelines. These guidelines include detailed guidance for avoiding view impacts and solar access impacts to neighboring properties, as well as precluding projects which would result in privacy impacts, and include other measures which are protective of existing residences. Since it is the City's articulated policy and practice to avoid these kinds of impacts to existing residents, we cannot understand why the staff did not apply these

standards and protective design guidelines, or at the very least, even the most basic principles embodied by them, to the proposed project.

Staff is not required to apply the residential design guidelines to the project under strict interpretation of the zoning standards; however, the design guidelines and use permit findings which do apply to this project, as discussed above, clearly indicate that the principles contained in the Residential Design Guidelines should be applied here. For example, under the Residential Design Guidelines, a rooftop terrace would not be permitted for the proposed project because it would be invasive of the adjacent neighbors' privacy. Similarly, a building design in which the upper story windows directly overlook the primary living areas of abutting residences, as planned for the proposed project, would not be permitted under the Guidelines. Clearly, the proposed project could not be approved under the Guidelines, and we see no valid reason why the basic and sound planning and design principles sought to be implemented by the design guidelines should not also be applied to protect our homes from privacy impacts. Since the City has so painstakingly established mechanisms for protecting other existing homes from these impacts, we believe that if we are denied these basic protections, we will be subject to unequal and unfair treatment by the City.

K. Due to the Intense Public Controversy Over This Project, It Should be Referred to Planning Commission for a Public Hearing

Under Section 17.134.040 of the Zoning Code, the Director of City Planning has the discretion to refer the application for a use permit to Planning Commission. In light of the many vehement objections that the neighboring residents have to this project, we believe that this project should be referred to Planning Commission for a public hearing. This would provide for a full public airing of our grievances concerning the project, and would allow us the right of appeal to City Council, who we believe should be the final decision-makers in this case given the controversial nature of the project. At the very least, this project should be subject to a duly noticed Administrative Hearing, pursuant to Section 17.136.060(B) of the Planning Code.

II. THE PROPOSED PROJECT WOULD RESULT IN SIGNIFICANT VISUAL AND SOLAR ACCESS IMPACTS TO THE SURROUNDING RESIDENTIAL PROPERTIES

A. The Visual Impacts of the Proposed Project Would be Significant and Unmitigable

The proposed project would place 35 to 40 foot high walls (as viewed from the ground floors of the adjacent homes) within 25 to 40 feet of existing homes. The placement of the proposed project in such close proximity to existing residents

would result in a severe visual intrusion into the settings of these residential properties. Such a massive building would also cast shadows over the adjoining properties for part of each day and would blot out much of the sky at other times of day. Under the California Environmental Quality Act (CEQA) Guidelines, Appendix G, a project would result in a significant visual impact if it would “[s]ubstantially degrade the existing visual character or quality of the site and its surroundings.” The visual impacts of the proposed project clearly represent a significant impact under CEQA. Moreover, the significance of these impacts cannot be reduced to less-than-significant levels by the project as proposed.

It is also important to note that while the existing neighborhood residents would be subject to negative visual impacts, the residents of the proposed project would receive expansive views from their elevated units and the rooftop terrace. Thus the visual amenities enjoyed by the proposed project would come at the direct expense of the adjoining residents who would be adversely affected. This is clearly not an acceptable trade-off to the affected residents, and it emphatically *should not be an acceptable tradeoff to the City.*

B. Story Poles Should be Erected on the Site So All Interested Parties Can Obtain a Realistic Sense of the Proposed Project’s Magnitude

Story poles are pieces of lumber that are erected at the corners and other critical locations of a proposed building. The height of the poles is equal to the proposed height of the building at the pole location, with flags placed on top of the poles to clearly indicate height. Story poles are required in many jurisdictions for projects involving concerns with visual impacts, scale and height, and impacts to privacy and solar access. The proposed project is precisely the kind of situation where story poles would be typically required by other jurisdictions. We believe story poles should be required here in order to allow all those concerned, especially *City staff and decision-makers, to judge first-hand the scale and magnitude of the proposed project within the context of its surrounding residential neighbors.*

C. The Project Would Block Solar Access to Adjoining Residences

Due to the height and close proximity of the proposed project to the adjacent residential properties, it will block solar access to those homes, especially in winter when it is most needed. It is important to note that most of the adjacent homes are located to the west of the project. These homes receive direct sunlight only in the morning and late afternoon since the adjacent homes to the south block southern exposure, especially in the winter. As such, the proposed project would block most of the solar access available to these properties. This would result in a severe and adverse effect on the livability and enjoyment of these properties. It would also result in higher heating costs, and place constraints on the feasibility of installing solar collectors at the adjacent properties. This represents a

significant impact of the project, particularly in an era of increasing concern with energy conservation and growing emphasis on alternative energy sources.

The blockage of solar access is another condition that the City's residential design guidelines seek to avoid, although there is no effort to avoid this impact in evidence here. On the other hand, the proposed project would have abundant solar access; so much so, that rooftop solar collectors are proposed. The future project residents would also enjoy virtually unlimited passive solar access to their dwellings. Once again, the benefits that would accrue to the proposed project would be inversely proportional to the adverse effect on the neighbors. The enhanced solar access on the applicant's property would come at the expense of the adjacent neighbors, whose solar access would be reduced by the project. This is not an acceptable tradeoff to the affected residents, and the City should not knowingly be a party to such an inequitable tradeoff.

D. The Project Would Result in Significant Lighting Impacts to Adjacent and Surrounding Residences

The project will include six large residential units on two upper floors, which will include numerous windows facing west and east. In the evenings, the interior lighting from these units will cast light pollution into the neighboring properties and living spaces. Given the high incidence of crimes against property and persons in this neighborhood, it is highly likely that the building will be surrounded with security lighting, which will create additional and more intense light pollution. Since these light sources will be as near as 20 to 30 feet from the adjacent residences, with many bedrooms directly exposed, and with the security lighting likely to be kept on all night, this would represent a significant lighting impact upon the adjacent and surrounding residents.

To date, the City staff has not required the applicant to submit lighting plans which would address this impact. Since it is unlikely that any such plans will be submitted prior to the January 12th comment deadline on this project, we are not confident that this issue will be properly addressed without input from neighboring residents who would be adversely affected. Given the lack of any lighting plans for the project or any evidence that the City intends to require project lighting to be controlled such that it would not adversely affect adjacent and nearby residents, we consider the light pollution that would be created by the project to be a significant impact.

III. THE PROPOSED PROJECT WOULD RESULT IN SIGNIFICANT TRAFFIC, CIRCULATION, AND PARKING IMPACTS TO THE NEIGHORHOOD

A. Vehicular and Emergency Access to the Proposed Project is Inadequate

Instead of a project driveway on College Avenue, the proposed access to the project would be via a long 100-foot driveway easement at the end of Hemphill Place, which itself is a cul-de-sac. The easement is only 10 feet wide, which is *substandard for passenger vehicles in that it only allows for one-way travel*. Given the length of the easement, this would result in awkward ingress and egress at best, and potentially dangerous situations in the event of blocked access. More importantly, this driveway would be impassible by emergency vehicles which require substantially more than 10 feet of roadway width. Thus, in the event of a structure fire in the rear portions of the building, fire fighters would only have access via College Avenue. Incredibly, most of the building would not be accessible by hook and ladder trucks, which would be *essential for fighting fires* on the upper rear portions of the building. The prospect of having an uncontrolled fire raging in a building located as close as 25 feet from nearby residential homes is unnerving, particularly given the high likelihood of such an event during an earthquake. Given also that fire crews would be stretched very thin in the event of mass emergency such as an earthquake, the potential for such a fire to spread to surrounding properties cannot be dismissed. This lesson was painfully learned in 1991 Firestorm when the rapidity with which the fire jumped from property to property was startling. With the 5247 Desmond fire in 2001, we also learned first-hand how quickly even the most accessible building can be destroyed by fire, with tragic loss of life. We also observed how fire can jump to neighboring buildings, even when there is a quick response by the Fire Department and the affected buildings are fully accessible by fire trucks and personnel.

We believe that this lack of adequate fire access poses a grave and unnecessary risk to neighboring properties and represents a significant impact to public safety. In light of this recent and disastrous history of fires in Rockridge, it is unimaginable that the proposed project would meet the access requirements of the Fire Department, or would be acceptable to the Department in any way. We find it appalling that the Fire Department and other emergency service providers apparently have not yet been asked to review this proposal. We would object in the strongest terms to the City's approval of the project in the face of its obvious *and serious risk to the safety of the neighboring residents*.

B. Project-Generated Traffic Would Adversely Affect Neighborhood Safety and Livability

According to the trip generation rates published by the Institute of Transportation Engineers (ITE), the project would generate a total of 40 vehicle trips per day.

The project traffic would enter and leave via Hemphill Place and Desmond Street. Both of these streets have very low volumes of traffic under existing conditions, and the addition of project traffic would represent a substantial increase in street traffic. A number of the families living along Hemphill and Desmond Street include small children who are not accustomed to street traffic. An additional 42 trips per day on our streets compromises the safety of our families, and the overall livability of our neighborhood. Given the very limited carrying capacity of these local streets, in terms of residential livability, we believe the traffic generated by the project would result in a significant traffic and circulation impact. This traffic impact would be exacerbated by the nearby 19-unit project proposed at 5175 Broadway, and other forthcoming projects in the immediate vicinity, which will also rely on Desmond and other local streets for vehicular access.

Also, the project would generate significant traffic on Hemphill and Desmond during construction. In addition to numerous haul truck trips, as discussed below, the many construction workers traveling to the site each day would generate more traffic on these local streets.

C. The Proposed Project Would Result in Parking Impacts to the Neighborhood

Under current conditions, the neighborhood streets surrounding the project are faced with intense demand for parking from the nearby commercial uses and the California College of Arts. It is very difficult to find a parking space on Desmond, Hemphill, Glendale, and the upper portions of Clifton during normal business hours. Since there is no district parking in this area, neighborhood residents must compete with non-residents for scarce parking spaces.

The proposed project includes only one on-site parking space per dwelling unit. However, future residents of the project would likely own an average of two vehicles per unit, and this is reflected in the parking requirements of most jurisdictions, which require at least two off-street parking spaces per unit. In fact, if most of the units are rented to college students, as expected, the average number of vehicles per unit could be even higher. Since the project residents would be forced to use the surrounding streets to park their additional vehicles, this would effectively reduce the supply of on-street parking available existing neighborhood residents. We strongly believe that this places an unnecessary and unwarranted burden on the neighborhood. Given the very high demand for parking in the area, we believe that it is irresponsible for the project to include only one space per unit, when the actual project demand would likely be double that amount. In short, we believe the parking impacts of the project would be significant.

Also, the many construction workers traveling to the project site during construction would place additional strain on the very limited supply of parking in this neighborhood.

TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

Significant Impact	Mitigation Measures	Significance After Mitigation
B. SIGNIFICANT BUT MITIGABLE IMPACTS		
	A.2f: Develop an incentive program to encourage the relocation of non-conforming industrial/ commercial businesses or residential uses to more appropriate locations in the City.	
B. <u>Transportation and Circulation</u>		
B.3: Development of Downtown Showcase District projects would result in degradation of intersection levels of service.	B.3: The impacts at the intersection of 12 th Street and Brush Street can be mitigated by increasing the cycle length to 120 seconds.	LS
B.4: Development of the Coliseum Showcase District projects would result in degradation of intersection levels of services.	B.4a: Install a traffic signal at the intersection of 66th Avenue and I-880 southbound ramps and restripe the lanes of the southbound off-ramp. This intersection meets the Caltrans peak hour signal warrants under PM peak hour conditions. B.4b: Install a traffic signal at the intersection of 66th Avenue and I-880 northbound ramps. This intersection meets the Caltrans peak hour signal warrants under PM peak hour conditions. B.4c: Install a traffic signal at the intersection of 66th Avenue and Oakport Street and widen Oakport Street to provide a through and turn lane in each direction. This intersection meets the Caltrans peak hour signal warrants under PM peak hour conditions.	LS

LS = Less than Significant

TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

Significant Impact	Mitigation Measures	Significance After Mitigation
B. SIGNIFICANT BUT MITIGABLE IMPACTS		
	<p>B.4d: Widen the northbound approach at the High Street and Coliseum Way intersection to provide an additional left-turn lane or restripe the eastbound approach to provide double left-turn lanes and a shared through/right-turn lane. This intersection may be subject to changes in traffic patterns as a result of the current studies being conducted to reconfigure the High Street and 42 Street intersection. The identified mitigation measure should be implemented only after the reconfiguration of the High Street and 42nd Street intersection is approved.</p>	
C. <u>Population, Housing, and Employment</u>		
<p>C.1: The Land Use and Transportation Element would alter the amount of land available for new employment uses, increasing the acreage in some categories and decreasing it in others. A net increase in employment development potential would be created through policies and land use designations, including the promotion of redevelopment on over 1,100 acres at three military bases (OKNH, FISCO, and OAB) and 6,500 acres in the Coliseum Area. While the land supply for commercial development would not change significantly, the policy emphasis on Downtown and corridor redevelopment, coupled with airport and harbor expansion and a number of specific developments "in the pipeline," would result in substantially higher employment in the retail, service, and government sectors. Projected employment will be significantly higher than the quantity anticipated by ABAG, creating a demand for new housing and increasing Oakland's jobs:housing ratio.</p>	<p>C.2: The City should maintain a data base of vacant and underutilized parcels in a form that is accessible to all departments. The City should assist developers of affordable and market rate housing in locating appropriate sites for their developments and identifying potential neighborhood concerns.</p>	<p align="center">LS</p>

LS = Less than Significant

TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

Significant Impact	Mitigation Measures	Significance After Mitigation
B. SIGNIFICANT BUT MITIGABLE IMPACTS		
D. Public Services		
<p>D.1-2: Increased water demand would require localized improvements to the water delivery system and could require the addition of new infrastructure such as pumps and storage facilities in areas where major redevelopment or new development is proposed. These areas include the military bases, Downtown, the waterfront, transit station areas and transit corridors.</p>	<p>D.1-2: Review major new development proposals to determine projected water, wastewater, and storm drainage loads compared with available water, sewer, and storm drain capacity. Where appropriate, determine appropriate capital improvement requirements, fiscal impacts, and funding sources prior to project approval.</p>	LS
<p>D.2-2: Increased sanitary sewer flows would require localized improvements to the sewage collection system and could require the addition of new laterals and collection mains and upgraded pumps, lift stations, and other wastewater infrastructure. This impact would be most pronounced in areas where major redevelopment or new development is proposed, including the military bases, Downtown, along the waterfront, around transit stations and along transit corridors.</p>	<p>D.2-2: Review major new development proposals to determine projected water, wastewater, and storm drainage loads compared with available water, sewer, and storm drain capacity. Where appropriate, determine appropriate capital improvement requirements, fiscal impacts, and funding sources prior to project approval.</p>	LS
<p>D.3-2: The proposed Land Use and Transportation Element would allow continued buildout of hill area subdivisions and additional development of vacant land in the Oakland Hills, an area with acknowledged drainage problems.</p>	<p>D.3-2a: Review major new development proposals to determine projected water, wastewater, and storm drainage loads compared with available water, sewer, and storm drain capacity. Where appropriate, determine appropriate capital improvement requirements, fiscal impacts, and funding sources prior to project approval.</p>	LS

LS = Less than Significant

TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

Significant Impact	Mitigation Measures	Significance After Mitigation
B. SIGNIFICANT BUT MITIGABLE IMPACTS		
<p>D.4-1: New development consistent with the proposed Land Use and Transportation Element would increase the demand for solid waste services. Because of the higher population and employment forecasts contained in the Element, demand would increase at a faster rate than it would under the current General Plan.</p>	<p>D.3-2b: Require major new developments to include a combination of on-site and off-site drainage improvements to ensure that such projects do not create downstream erosion or flood hazards, or adversely impact the City's ability to manage stormwater runoff.</p> <p>D.3-2c: Address hill area drainage needs and develop additional drainage policies in the updated Safety Element.</p> <p>D.3-2d: Prepare a comprehensive study of hill area drainage needs and identify policies, programs, and capital improvements to address these needs in the future.</p> <p>D.4-1a: Continue to implement programs that reduce the amount of solid waste generated in the City by encouraging recycling, composting, and other activities consistent with the City's Source Reduction and Recycling Element.</p> <p>D.4-1b: Support solid waste collection, recycling, and disposal rates that are sufficient to cover the cost of adequate, efficient service delivery.</p> <p>D.4-1c: Establish guidelines and incentives for the recycling of construction and demolition debris and the use of recycled concrete and other recycled products in the construction of new buildings, roads, and infrastructure.</p>	LS

LS = Less than Significant

TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

Significant Impact	Mitigation Measures	Significance After Mitigation
B. SIGNIFICANT BUT MITIGABLE IMPACTS		
<p>D.5-1: Development consistent with the proposed Land Use and Transportation Element would result in higher levels of population and employment, thereby increasing the demand for police services. The need for staff, facilities, and equipment would increase in the Downtown, waterfront, military base, and transit corridor neighborhoods.</p>	<p>D.5-1a: In reviewing major land use or policy decisions, consider the availability of police and fire protection services, park and recreation services, schools, and library services in the affected areas, as well as the impact of the project on current service levels.</p> <p>D.5-1b: Develop target ratios of police officers and firefighters to population for annual budgeting purposes. These ratios should be used to assess the feasibility and merits of service fees on new development which finance additional police officers and fire fighters.</p> <p>D.5-1c: Increase police foot patrols and cruisers in high visibility downtown areas and locate funding sources to support them.</p> <p>D.5-1d: Analyze the distribution of services provided by the public and privately operated civic and institutional uses, identify underserved areas of the City and increase services in those areas.</p> <p>D.5-1e: Solicit comments from the Oakland Police and Fire Departments on major new development proposals to ensure that law enforcement and fire protection impacts are appropriately addressed and mitigated.</p>	<p>LS</p>

LS = Less than Significant

TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

Significant Impact	Mitigation Measures	Significance After Mitigation
B. SIGNIFICANT BUT MITIGABLE IMPACTS		
<p>D.6-1: Development consistent with the proposed Land Use and Transportation Element would result in higher levels of population and employment, thereby increasing the demand for fire protection and emergency medical services. The need for staff, facilities, and equipment would increase in the Downtown, waterfront, military base, transit corridor and other residential neighborhoods as redevelopment occurred.</p>	<p>D.6-1a: In reviewing major land use or policy decisions, consider the availability of police and fire protection services, park and recreation services, schools, and library services in the affected areas, as well as the impact of the project on current service levels.</p> <p>D.6-1b: Develop target ratios of police officers and firefighters to population for annual budgeting purposes. These ratios should be used to assess the feasibility and merits of service fees on new development which finance additional police officers and fire fighters.</p> <p>D.6-1c: Retain the existing Fire Stations at all three military bases to facilitate the provision of adequate public services to users of these sites as well as to surrounding properties.</p> <p>D.6-1d: Solicit comments from the Oakland Police and Fire departments on major new development proposals to ensure that law enforcement and fire protection impacts are appropriately addressed and mitigated during project planning and design.</p>	LS
<p>D.7-1: Development consistent with the proposed Land Use and Transportation Element could increase the number of students served by the Oakland Unified School District (OUSD). The greatest impacts would be Downtown and in the Waterfront area.</p>	<p>D.7-1a: Mitigation measures available to the School District to reduce overcrowding include:</p> <ol style="list-style-type: none"> 1) reassigning students among district schools to account for changing population and new development; 2) continuation and expansion of year-round school; 	LS

LS = Less than Significant

TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

Significant Impact	Mitigation Measures	Significance After Mitigation
B. SIGNIFICANT BUT MITIGABLE IMPACTS		
	<ol style="list-style-type: none"> 3) more efficient use of underutilized and/or abandoned school facilities; 4) addition of portable classrooms; and 5) <i>the busing of students to less crowded schools.</i> <p>If these measures do not reduce overcrowding, OUSD may have to expand existing schools or construct new schools. All of these measures would require varying amounts of funding.</p> <p>If current sources of funding including the City of Oakland school mitigation fees, increases in property taxes and sales tax revenues, and increases in state funding are insufficient to pay for the cost of these mitigating overcrowding, the OUSD should formulate and implement specific measures to raise additional funds. Funding sources which may be considered by OUSD include:</p> <ol style="list-style-type: none"> 1) adjustments of school mitigation fees on commercial and residential development; 2) the creation of special assessment or Mello Roos districts or annexation to a Community Facilities District; 3) sale of surplus OUSD property; and 	

LS = Less than Significant

TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

Significant Impact	Mitigation Measures	Significance After Mitigation
B. SIGNIFICANT BUT MITIGABLE IMPACTS	<p>4) any other funding mechanisms available to the OUSD by state law or local ordinances, including those measures identified in the OUSD's 1996 Developer Fee Justification Study.</p> <p>D.7-1b: In reviewing major land use or policy decisions, the City will consider the availability of police and fire protection services, park and recreational services, schools, and library services in the affected areas and the impact of the project on the current service levels.</p> <p>D.7-1c: Support the School District's efforts to use local bond issues and voter approved assessment districts as a means of providing adequate school facilities.</p> <p>D.7-1d: Where feasible and appropriate, encourage the inclusion of child care centers in major residential and commercial developments near transit centers, community centers, and schools.</p> <p>D.7-1e: Continue to assist the Oakland Unified School District in securing all of the fees, grants, and other financial resources possible.</p> <p>D.7-1f: Work with the School District to coordinate land use and school facility planning and continue efforts by the City to collect impact fees and monitor the school capacity impacts of new development.</p>	

LS = Less than Significant

TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

Significant Impact	Mitigation Measures	Significance After Mitigation
B. SIGNIFICANT BUT MITIGABLE IMPACTS		
	<p>D.7-1g: The Office of Parks and Recreation, Real Estate Division of the Office of Public Works, and the Oakland Unified School District should assess the use of City and school-owned parcels for use as civic, institutional, or recreational facilities.</p> <p>D.7-1h: Support state and federal legislation to promote affordable, safe, high-quality child care, including children with special needs.</p>	
<p>D.8-1: Development consistent with the proposed Land Use and Transportation Element could result in an increased number of patrons at the Main and branch libraries. The greatest impacts would be in the South Hills, where there are presently no library facilities; along the waterfront, where there are no library facilities; and along the transit corridors, where libraries generally exist but are too small to meet projected patronage requirements.</p>	<p>D.8-1: In reviewing major land use or policy decisions, consider the availability of police and fire protection services, park and recreation services, schools, and library services in the affected areas, as well as the impact of the project on current service levels.</p>	LS
E. Air Quality		
<p>E.4: Proposed General Plan map changes to allow a mix of commercial and residential uses (Urban Residential, Neighborhood Center Commercial, and Community Commercial designations) could result in odor nuisance problems at residential receptors.</p>	<p>E.4: Where residential development would be located above commercial uses, parking garages, or any other uses with a potential to generate odors, the odor-generating use should be properly vented (e.g., located on rooftops) and designed (e.g., equipped with afterburners) so as to minimize the potential for nuisance odor problems.</p>	LS

LS = Less than Significant

TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

Significant Impact	Mitigation Measures	Significance After Mitigation
B. SIGNIFICANT BUT MITIGABLE IMPACTS		
<p><i>E.5: Construction activities associated with downtown projects in the Downtown Showcase District would generate dust (including the respirable fraction known as PM₁₀) and combustion emissions.</i></p>	<p><i>E.5a: The following Basic Control Measures shall be implemented at all construction sites:</i></p> <ul style="list-style-type: none"> • Water all active construction areas at least twice daily. • Cover all trucks hauling soil, sand, and other loose debris or require all trucks to maintain at least two feet of freeboard. • 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. • Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites. • Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets. <p><i>E.5b: The following enhanced control measures shall be implemented at all construction sites when more than four acres are under construction at any one time:</i></p> <ul style="list-style-type: none"> • Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more). • Enclose, cover, water twice daily or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.) • Limit traffic speeds on unpaved roads to 15 mph. 	LS

LS = Less than Significant

TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

Significant Impact	Mitigation Measures	Significance After Mitigation
B. SIGNIFICANT BUT MITIGABLE IMPACTS		
	<ul style="list-style-type: none"> • Install sandbags or other erosion control measures to prevent silt runoff to public roadways. • Replant vegetation in disturbed areas as quickly as possible. <p>E.5c: BAAQMD dust control measures would be implemented by contractors of future development projects as outlined in BAAQMD <i>CEQA Guidelines</i> (1996) or any subsequent applicable BAAQMD updates. They are as follows:</p> <ul style="list-style-type: none"> • Any stationary motor sources (such as generators and compressors) to be located within 100 feet of any residence or school (sensitive receptors) would be equipped with a supplementary pollution control system on its exhaust as required by Bay Area Air Quality Management District (BAAQMD) and California Air Resources Board (CARB). • To minimize construction equipment emissions, low- NOx tune-ups should be performed on all construction equipment. Contractors should be required to utilize equipment with recent (within 30 days) low- NOx tune-ups to minimize NOx emissions. This would apply to all diesel-powered equipment greater than 50 horsepower and periodic tune-ups (every 90 days) would be required for equipment used continuously for construction of a specific development. 	

LS = Less than Significant

TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

Significant Impact	Mitigation Measures	Significance After Mitigation
B. SIGNIFICANT BUT MITIGABLE IMPACTS		
E.9: E.9: Construction activities associated with projects in the Coliseum Showcase District would generate dust (including the respirable fraction known as PM ₁₀) and combustion emissions.	E.9: Implement Mitigation Measures E.5a, E.5b, and E.5c.	LS
F. <u>Visual and Aesthetic Conditions</u>		
F.2: The Land Use and Transportation Element encourages high-rise development in Downtown Oakland. Such development could potentially block views, cast shadows, appear visually incongruous with adjacent low-rise development, and block views of the City skyline from surrounding neighborhoods.	<p>F.2a: Develop guidelines or a "step back" ordinance for height and bulk for new development projects in the downtown area. Projects should be encouraged to be designed at pedestrian-scale on the street-side, with high towers or strong vertical elements stepping back from the street.</p> <p>F.2b: Analyze the desired height of downtown office development and develop zoning regulations that support the preferred skyline design.</p> <p>F.2c: Define view corridors and, based upon these views, designate appropriate height limits and other requirements. Views of Lake Merritt, the Estuary, and architecturally or historically significant buildings should be considered.</p>	LS

LS = Less than Significant

TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

Significant Impact	Mitigation Measures	Significance After Mitigation
B. SIGNIFICANT BUT MITIGABLE IMPACTS		
<p>F.3: The Land Use and Transportation Element would set in place policies and land use designations that encourage mid-rise, pedestrian-scale mixed use development along approximately 20 miles of transit-oriented corridors within the City. Although existing General Plan designations and zoning already permit this scale and mix of development in most instances, the policy emphasis on these areas could create additional momentum for development. Development of the scale proposed by the Plan would generally have positive visual impacts but could interrupt views and create the potential for architecturally incompatible development.</p>	<p>F.3a: Develop standard design guidelines for all Neighborhood Commercial areas that require continuous or nearly continuous storefronts located along the front yard setback, promote small scale commercial activities rather than large scale establishments at the ground level, restrict front yard parking lots and driveways, require small scale pedestrian-oriented signage, have a relatively low height limit, and promote the development of pedestrian friendly amenities at the street level. The standard design guidelines may be expanded to capture the unique or desired character of certain areas.</p> <p>F.3b: Ensure that structures and sites are designed in an attractive manner which harmonizes with or enhances the visual appearance of the surrounding environment by preparing and adopting industrial and commercial design guidelines.</p> <p>F.3c: Develop design guidelines for parking facilities of all types.</p>	LS
G. Cultural and Historic Resources		
<p>G.2: Excavation of development sites consistent with the Land Use and Transportation Element could unearth archaeological resources. Some of these remains could have scientific or cultural importance.</p>	<p>G.2: Establish criteria and interdepartmental referral procedures for determining when discretionary City approval of ground-disturbing activities should be subject to special conditions to safeguard potential archaeological resources.</p>	LS

LS = Less than Significant

TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

Significant Impact	Mitigation Measures	Significance After Mitigation
B. SIGNIFICANT BUT MITIGABLE IMPACTS		
<p>G.3: Many of the City's historic resources are located Downtown and along transit corridors. Higher density uses are proposed in these areas and redevelopment is encouraged. This could have direct impacts by increasing the pressure to remove or demolish older buildings, including some historic structures.</p>	<p>G.3a: Amend the Zoning Regulations text to incorporate the new preservation regulations and incentives.</p> <p>G.3b: Develop and adopt design guidelines for Landmarks and Preservation Districts.</p>	LS
L. Noise		
<p>L.3: Proposed General Plan map changes to allow a mix of commercial and residential uses (Urban Residential, Neighborhood Center Commercial, and Community Commercial designations) could pose noise compatibility problems between residential and commercial uses.</p>	<p>L.3a: Establish design requirements for large-scale commercial development that requires adequate buffers from residential uses. Use of open space, recreation space, or transit installations as buffers should be encouraged.</p> <p>L.3b: Mixed residential/ non-residential neighborhoods should be rezoned after determining which should be used for residential, mixed, or non-residential uses. Some of the factors that should be considered when rezoning mixed use areas include the future intentions of the existing residents or businesses, natural features, or health hazards.</p>	LS

LS = Less than Significant

TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

Significant Impact	Mitigation Measures	Significance After Mitigation
B. SIGNIFICANT BUT MITIGABLE IMPACTS		
L.4: Proposed General Plan map changes to allow higher residential densities could pose noise compatibility problems between future residential development and existing, lower density residential uses within the same land use category.	L.4: Where high density residential development would be located adjacent to existing lower density residential development, new development shall be designed to minimize noise impacts on any existing residential uses due to increased traffic on local roadways and increased parking activities.	LS
L.5: Proposed General Plan map changes to allow live-work and other forms of housing in transitional industrial areas could pose future noise compatibility problems.	L.5a: The City should develop distinct definitions for home occupation, live/work and work/live operations; define appropriate locations for these activities and performance criteria for their establishment; and create permitting procedures and fees that facilitate the establishment of those activities which meet the performance criteria.	LS
	L.5b: Avoid proliferation of existing incompatible uses by eliminating, through appropriate rezoning actions, pockets of residential zoning within predominantly industrial areas.	
	L.5c: Establish performance-based standards which designate appropriate levels of noise, odors, light/glare, traffic volumes, or other such characteristics for industrial activities located near commercial or residential areas.	
	L.5d: Develop performance zoning regulations which permit industrial and commercial uses based upon their compatibility with other adjacent or nearby uses.	

LS = Less than Significant

TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

Significant Impact	Mitigation Measures	Significance After Mitigation
B. SIGNIFICANT BUT MITIGABLE IMPACTS		
L.7: Implementation of the proposed Land Use and Transportation Element could result in future transportation improvements that could create or aggravate noise compatibility problems with sensitive receptors.	L.7: Future transit improvements shall be designed sufficiently so that future noise levels along these streets can be adequately estimated and considered in the design of future residential or other noise-sensitive developments.	LS
M. <u>Hazardous Materials</u>		
M.5: Remediation efforts at an identified hazardous waste site could expose workers and the public to hazardous substances.	M.5: Hazards to construction workers and the general public during demolition and construction shall be mitigated by the preparation and implementation of site-specific health and safety plans, as recommended by the Occupational Safety and Health Administration.	LS

LS = Less than Significant

TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

Significant Impact	Mitigation Measures	Significance After Mitigation
B. LESS THAN SIGNIFICANT IMPACTS		
A.3: Implementation of the Land Use and Transportation Element would place a greater emphasis on mixed use development and would require development of mixed use zoning designations. The emphasis on mixed use development could create a greater likelihood for conflicting uses within projects or between projects and adjacent sites.	None required.	LS
A.4: Implementation of the proposed Land Use and Transportation Element could result in future transportation improvements that could have land use impacts.	None required.	LS
B. <u>Transportation and Circulation</u>		
B.2: Development that would occur under the Land Use and Transportation Element would increase transit demand.	None required.	LS

LS = Less than Significant

TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

Significant Impact	Mitigation Measures	Significance After Mitigation
B. LESS THAN SIGNIFICANT IMPACTS		
C. <u>Population, Housing, and Employment</u>		
<p>C.1: The Land Use and Transportation Element would increase housing capacity in Oakland by providing greater allowances for higher density housing in commercial areas than those that already exist and by reclassifying several transit corridors for urban-density housing. Additionally, the Plan reflects emerging plans and development proposals for housing Downtown, at Oak Knoll Naval Hospital, along the Oakland Estuary, and at several BART Stations. The increase in land supply, coupled with specific development projects, are projected to result in a higher number of households in Oakland by the Plan's horizon year of 2015.</p>	None required.	LS
<p>C.3: The Land Use and Transportation Element would redesignate approximately 45 acres on the Land Use Diagram from residential use to "Housing-Business Mix." Although the intent of this designation is to acknowledge the existing pattern and create areas where residential and industrial uses can co-exist harmoniously, rezoning consistent with the General Plan could lead to further encroachment of industrial uses in these areas. This could lead to a loss of housing stock in some locations.</p>	None required.	LS

LS = Less than Significant

TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

Significant Impact	Mitigation Measures	Significance After Mitigation
B. LESS THAN SIGNIFICANT IMPACTS		
D. <u>Public Services</u>		
D.1-1: Development consistent with the proposed Land Use and Transportation Element would result in an increase in water demand.	None required.	LS
D.2-1: Development consistent with the proposed Land Use and Transportation Element would result in an increase in flows to the regional wastewater treatment plant.	None required.	LS
D.3-1: Implementation of the proposed Land Use and Transportation Element would result in increased development activity Downtown, along transit corridors and around transit stations, along the waterfront, near the Coliseum, and on former military bases. Since these areas are already developed, the increased amount of impervious surface would be marginal and the amount and rate of runoff would not change significantly. The quality of runoff could be impacted by construction, soil disruption, and by the change in land uses in redevelopment areas. However, the shift would generally be away from manufacturing to more service-oriented industry and commerce.	None required.	LS

LS = Less than Significant

**TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES**

Significant Impact	Mitigation Measures	Significance After Mitigation
B. LESS THAN SIGNIFICANT IMPACTS		
<p>D.9-1: Development consistent with the proposed Land Use and Transportation Element would increase the demand for park services, particularly in areas targeted for reuse and intensification. All of these areas, including Downtown, the waterfront, the transit stations and corridors, and the military bases, are located in areas that are already deficient in local-serving parkland. Further development would place even greater demands on the limited park acreage in these neighborhoods, unless additional park area was provided.</p>	None required.	LS
E. Air Quality		
<p>E.2: The proposed Land Use and Transportation Element would be consistent with <i>Clean Air Plan</i> Transportation Control Measures (TCMs).</p>	None required.	LS
<p>E.3: Implementation of the proposed Land Use and Transportation Element would result in traffic increases along roadways in the City which could result in localized air quality impacts.</p>	None required.	LS
<p>E.7: Cumulative development of projects in the Downtown Showcase District would result in traffic increases that could result in long-term, localized air quality impacts.</p>	None required.	LS

LS = Less than Significant

TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

Significant Impact	Mitigation Measures	Significance After Mitigation
B. LESS THAN SIGNIFICANT IMPACTS		
E.8: Cumulative development of downtown projects would result in increased stationary source emissions associated with heating and electricity consumption.	<i>None required.</i>	LS
E.11: Cumulative development of projects in the Coliseum Showcase District would result in traffic increases that could result in localized air quality impacts.	<i>None required.</i>	LS
E.12: Cumulative development of Coliseum projects would result in increased stationary source emissions associated with heating and electricity consumption or other uses.	<i>None required.</i>	LS
F. <u>Visual and Aesthetic Conditions</u>		
F.1: Development consistent with the Future Land Use Diagram could degrade or destroy existing scenic resources in the City, including hillsides, ridges, canyons, trees and riparian areas. However, adoption of the Element alone would not increase the potential for impacts. Existing policies in the OSCAR Element provide general mitigation of visual impacts.	<i>None required.</i>	LS

LS = Less than Significant

CHARTS, TABLES AND CHECKLISTS

TABLE 2: LAND USE	GENERAL PLAN LAND USE CLASSIFICATIONS														
ZONING ACTIVITY AND FACILITY TYPES ✓ Conforms w/ General Plan GP Silent or Unclear X Clearly Does not Conform	Hillside Residential	Detached Unit Residential	Mixed Housing Type Residential	Urban Residential	Neighb. Center Mixed Use	Community Commercial	Regional Commercial	Business Mix	Gen. Industrial	Institutional	Central Business District	Mixed-Use Water f (See Table 5A)	Housing Bus. Mix***	Open Space:RCA	Open Space (Other)
Residential Activities:															
Permanent	✓	✓	✓	✓	✓	✓	✓	X	X	✓	✓		✓		
Semi-Transient	X	X	X				X	X	X					X	X
Civic Activities:															
Essential Service															
Limited Child-Care								X	X						
Nursing Home								X	X	✓				X	X
Community Assembly	✓	✓	✓	✓	✓	✓	✓	X	X	✓	✓		✓		
Community Education	✓	✓	✓	✓	✓	✓		X	X	✓	✓		✓		
Non-Assembly Cult.	✓	✓	✓	✓	✓	✓	✓		X	✓	✓		✓		
Administrative					✓	✓	✓			✓	✓		✓		
Residential Care								X	X	✓				X	X
Health Care						✓		X	X	✓				X	X
Utility and Vehicular															
Extensive Impact															
Commercial Activities:															
General Food Sales	✓	✓	✓	✓	✓	✓	✓				✓		✓		
Convenience Market						✓			X					X	X
Fast-Food Restaurant	X	X	X											X	X
Alcohol Bev. Sales															
Convenience Sale/Sv.				✓	✓	✓			X		✓			X	X
Mech. or Elect. Games														X	X
Medical Service						✓		✓	X	✓				X	X
General Retail Sales	✓	✓	✓	✓	✓	✓	✓		X		✓			X	X
General Personal Svc.					✓	✓	✓		X					X	X
Consult. Finan Svc.	X	X				✓	✓		X		✓			X	X
Consmr Laundry/Rep.	X	X				✓	✓	✓						X	X
Group Assembly	X	X				✓	✓				✓			X	X
Administrative	X	X			✓	✓	✓		X		✓		✓	X	X
Business/Communic.	X	X			✓	✓	✓	✓	✓					X	X
Retail Business Sup.	X	X				✓	✓	✓	✓					X	X
Research Service	X	X						✓	✓					X	X

TABLE 2: LAND USE	GENERAL PLAN LAND USE CLASSIFICATIONS														
ZONING ACTIVITY AND FACILITY TYPES ✓ Conforms w/ General Plan GP Silent or Unclear X Clearly Does not Conform	Hillside Residential	Detached Unit Residential	Mixed Housing Type Residential	Urban Residential	Neighb. Center Mixed Use	Community Commercial	Regional Commercial	Business Mix	Gen. Industrial	Institutional	Central Business District	Mixed-Use Water f (See Table 5A)	Housing Bus. Mix***	Open Space:RCA	Open Space (Other)
Gen. Wholesale Sales	X	X	X	X	X			✓	✓					X	X
Trans Habitation/B&B							✓		X		✓			X	X
Construct Sale/Serv.	X	X	X	X	X					X				X	X
Auto Sale/Rent/Deliv.	X	X	X	X		✓	✓	✓					X	X	X
Automotive Servicing	X	X	X			✓	✓							X	X
Auto Repair/Cleaning	X	X	X	X	X	✓			✓		X		X	X	X
Auto Fee Parking	X	X	X								✓		X	X	X
Transport/Warehouse	X	X	X	X	X			✓	✓		X			X	X
Animal Care															
Undertaking Service	X	X	X											X	X
Scrap Operation	X	X	X	X	X	X	X	✓	✓	X	X			X	X
Manufacturing Activ.:															
Custom	X	X	X	X	X			✓	✓	X			✓	X	X
Light	X	X	X	X	X			✓	✓	X			✓	X	X
General	X	X	X	X	X	X	X	✓	✓	X	X		X	X	X
Heavy	X	X	X	X	X	X	X		✓	X	X		X	X	X
Agricultural/Extract.:															
Plant Nursery														X	X
Crop/Animal Raising														X	X
Mining and Quarrying														X	X
Residential Facilities:															
One-Family Dwelling	✓	✓	✓					X	X				✓		
One-Fam. /Secondary	✓	✓	✓					X	X					X	X
One-Fam. w/ Second	✓	✓	✓					X	X					X	X
Two-Family Dwelling	X	X	✓					X	X				✓	X	X
Multi-Family Dwelling	X	X	✓	✓	✓	✓	✓	X	X	✓	✓		✓	X	X
Rooming House								X	X					X	X
Mobile Home								X	X					X	X
Downtown Live Work *	X	X	X	✓	✓	✓	X	X	X	✓	✓		X	X	X
Nonresidential Facil.:															
Enclosed				✓	✓										
Open															
Drive-In	X	X	X											X	X

TABLE 2: LAND USE	GENERAL PLAN LAND USE CLASSIFICATIONS														
ZONING ACTIVITY AND FACILITY TYPES ✓ Conforms w/ General Plan GP Silent or Unclear X Clearly Does not Conform	Hillside Residential	Detached Unit Residential	Mixed Housing Type Residential	Urban Residential	Neighb. Center Mixed Use	Community Commercial	Regional Commercial	Business Mix	Gen. Industrial	Institutional	Central Business District	Mixed-Use Water f (See Table 5A)	Housing Bus. Mix***	Open Space:RCA	Open Space (Other)
Sidewalk Cafe				✓	✓	✓	✓				✓			X	X
Shopping Center**	X	X	X	X		✓	✓							X	X
Drive-Through	X	X	X		X	✓	✓							X	X
Signs:															
Residential														X	X
Special															
Development														X	X
Realty														X	X
Civic															
Business															
Advertising														X	X
Telecommunications															
Micro															
Mini															
Macro															
Monopole															
Tower														X	X
Accessory Activ./Facil.															
Live/work			✓							X	✓*		✓	X	X

* Downtown building conversions to Live/Work are governed by a June 1999 ordinance which regulates and designates a specific downtown area for this type of conversion, regardless of General Plan Land Use Classification. See "Residentially-Oriented Live Work" regulations.

** "Shopping Center" is defined as a Non-residential facility type, but is not listed as permitted or conditionally permitted in any zone. This definition is used in conjunction with 1000' foot rule for Fast-Food Restaurants (Section 17.102.210(E)(1)).

***The permitted, conditionally permitted, and prohibited activities of a site in the Housing and Business Mix General Plan designation rely on its zoning designation.

The Mixed Use Waterfront Classification is superseded by the Estuary Policy Plan Land Use Classifications. See Table 2A.

TABLE 2A: ESTUARY POLICY PLAN LAND USE CLASSIFICATIONS

TABLE 2A: ESTUARY LAND USE ZONING REGULATIONS ACTIVITY AND FACILITY TYPES ✓ = Clearly conforms = is silent or not clear X = Clearly does not conform	Jack London District								0-9	San Antonio/Fruitvale										
	Light Indust. 1	Off Price Retail 1	Ret. Dine, Entert 1	Ret. Dine, Entert 2	Produce Market	W. Commrc. Rec. 1	Mixed Use Dist.	W. Mixed U. Dist.	W. Warehouse Dist.	Plan. W. Devel. -1	W. Commrc. Rec. 2	Light Indust 2	Plan. W. Devel. 2	Resid. Mixed U.	Heavy Ind.	Gen. Commerce. 1	Plan. W. Dist. 3	Gen. Commerce. 2	Light Indust. 3	
RESIDENTIAL USE																				
Permanent		✓	X	✓	✓	X	✓	✓	✓	✓	X	✓	✓	X	X	X	X	X	X	X
Semi-Transient		✓	X	✓	✓	X	✓	✓	✓	✓	X	✓	✓	X	X	X	X	X	X	X
All Residential Care categories		✓	X	✓	✓	X	✓	✓	✓	✓	X	✓	✓	X	X	X	X	X	X	X
CIVIC USE																				
Essential Service																				
Limited Child Care											X	X		X		X			X	
Community Assembly						✓				✓		X		X		X			X	
Community Education			X	X	X					✓	X	X		X	X	X	X	X	X	X
Non-Assembly Cultural			✓	✓	✓	✓				✓										
Administrative																				
Health Care	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Utility and Vehicular			X	X	X	X		X	X	X	X		✓	X	✓		✓		✓	✓
Extensive Impact																				
Telecommunications																				
COMMERCIAL USE																				
General Food Sales		✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓		✓			✓		
Convenience Market												✓	✓							
Fast-Food Restaurant			*	*																
Alcoholic Beverage Sales																				
Convenience Sales and Service																				
Mechanical or Electronic Games																				
Medical Service												X		X	X	X	X	X	X	X
Gen. Retail Sales		✓	✓	✓	✓	✓	✓	✓	✓	✓			✓		✓		✓		✓	
Gen. Personal Service		✓	✓	✓	✓	✓	✓	✓	✓	✓					✓		✓		✓	
Consult./Financial Service				✓		✓									✓	✓	✓		✓	
Consumer Laundry/Repair Svc.												✓								✓
Group Assembly			✓	✓		✓				✓					✓		✓		✓	
Administrative			✓	✓	✓	✓		✓		✓					✓	✓	✓		✓	

* See Estuary Policy Plan: Policy JL 1.2 for a description of allowable uses.

TABLE 2A: ESTUARY LAND USE ZONING REGULATIONS ACTIVITY AND FACILITY TYPES ✓ = Clearly conforms = is silent or not clear X = Clearly does not conform	Light Indust.1	Off Price Retail 1	Ret. Dine, Entert 1	Ret. Dine, Entert 2	Produce Market	W. Commrc. Rec. 1	Mixed Use Dist.	W. Mixed U. Dist.	W. Warehouse Dist.	Plan. W. Devel. -1	W. Commrc. Rec. 2	Light Indust 2	Plan. W. Devel. 2	Resid. Mixed U.	Heavy Ind.	Gen. Commerce. 1	Plan. W. Dist. 3	Gen. Commerce. 2	Light Indust. 3
	Business/Communications Svc.												✓				✓	✓	✓
Retail Bus. Supply												✓				✓	✓	✓	✓
Research Service																	✓		✓
Gen. Wholesale Sales		✓	X	X	✓	X	✓	X	✓			✓	✓	X	✓	✓	✓	✓	✓
Transient Habitation/B&B		✓	✓		✓					✓	✓		X		X	✓			
Construction Sales/Service			X	X		X		X					✓		✓	✓	✓	✓	✓
Auto (Boat) Sales/Rental/Delivery				X		X		X		✓			✓	X		✓		✓	✓
Auto (Boat) Servicing				X		X		X				✓	✓	X	✓	✓		✓	✓
Auto (Boat) Repair/Cleaning						X	X	X	X			✓	✓	X	✓	✓	X	✓	✓
Auto (Boat) Parking - Fee						X		X					✓	X		✓		✓	✓
Transport/Warehousing	✓		X	X	✓	X		X				✓	✓	✓	✓	✓	✓	✓	✓
Animal Care																			
Undertaking Service																			
Scrap Operation	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X
MANUFACTURING																			
Custom Manufacturing	✓				✓		✓		✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
Light Manufacturing	✓		X	X	✓	X	✓	X	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
General Manufacturing		X	X	X	X	X	X	X	X		X		✓	X	✓				
Heavy Manufacturing	X	X	X	X	X	X	X	X	X	X	X	X	✓	X	✓	X	X	X	X
AGRICULTURAL/EXTRACTIVE																			
Plant Nursery																			
Crop and Animal Raising	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Mining/Quarrying	X	X	X	X	X	X	X	X	X	X	X	X		X		X	X	X	X

Table continues on next page.

TABLE 2A: ESTUARY LAND USE ZONING REGULATIONS ACTIVITY AND FACILITY TYPES ✓ = Clearly conforms = is silent or not clear X = Clearly does not conform	Light Indust.1	Off Price Retail 1	Ret. Dine, Entert 1	Ret. Dine, Entert 2	Produce Market	W. Commrc. Rec. 1	Mixed Use Dist.	W. Mixed U. Dist.	W. Warehouse Dist.	Plan. W. Devel. -1	W. Commrc. Rec. 2	Light Indust 2	Plan. W. Devel. 2	Resid. Mixed U.	Heavy Ind.	Gen. Commerce. 1	Plan. W. Dist. 3	Gen. Commerce. 2	Light Indust. 3	
	RESIDENTIAL FACILITIES																			
One Family Dwelling	✓	✓	X	✓	✓	✓	✓	✓	✓		X	✓	X	✓	X	X	X	X	X	X
One Family Dwelling/Secondary	✓	✓	X	✓	✓	✓	✓	✓	✓		X	✓	X	✓	X	X	X	X	X	X
One Family Dwelling/Second	✓	✓	X	✓	✓	✓	✓	✓	✓		X	✓	X	✓	X	X	X	X	X	X
Two Family Dwelling	✓	✓	X	✓	✓	✓	✓	✓	✓		X	✓	X	✓	X	X	X	X	X	X
Multi-Family Dwelling	✓	✓	X	✓	✓	✓	✓	✓	✓		X	✓	X	✓	X	X	X	X	X	X
Rooming House											X		X		X	X	X	X	X	X
Downtown Live/Work*	✓	✓	X	✓	✓	X	✓	X	✓	X	X	X	X	X	X	X	X	X	X	X
Mobile Home	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
NON-RESIDENTIAL FACILITIES																				
Enclosed																				
Open			✓	✓		✓				✓										
Drive-In					X		X		X											
Sidewalk Café		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		X		X					
Shopping Center/Fast Food					X		X													
Drive Through					X		X		X											
SIGNS																				
Residential			X			X					X				X	X	X	X	X	X
Special																				
Development																				
Realty																				
Civic																				
Business																				
Advertising																				
TELECOMMUNICATIONS FAC.																				
Micro																				
Mini																				
Macro																				
Monopole																				
Tower																				
ACCESSORY ACTIVITY/FACILITY																				
Live/Work	✓	X	✓	✓	X	✓		✓	✓	X	✓				X	X	X	X	X	X

TABLE 2A: ESTUARY LAND USE ZONING REGULATIONS ACTIVITY AND FACILITY TYPES ✓ = Clearly conforms = is silent or not clear X = Clearly does not conform	Light Indust.1	Off Price Retail 1	Ret. Dine, Entert 1	Ret. Dine, Entert 2	Produce Market	W. Commrc. Rec. 1	Mixed Use Dist.	W. Mixed U. Dist.	W. Warehouse Dist.	Plan. W. Devel. -1	W. Commrc. Rec. 2	Light Indust 2	Plan. W. Devel. 2	Resid. Mixed U.	Heavy Ind.	Gen. Commerce. 1	Plan. W. Dist. 3	Gen. Commerce. 2	Light Indust. 3	
	RESIDENTIAL FACILITIES																			
One Family Dwelling	✓	✓	X	✓	✓	✓	✓	✓	✓		X	✓	X	✓	X	X	X	X	X	X
One Family Dwelling/Secondary	✓	✓	X	✓	✓	✓	✓	✓	✓		X	✓	X	✓	X	X	X	X	X	X
One Family Dwelling/Second	✓	✓	X	✓	✓	✓	✓	✓	✓		X	✓	X	✓	X	X	X	X	X	X
Two Family Dwelling	✓	✓	X	✓	✓	✓	✓	✓	✓		X	✓	X	✓	X	X	X	X	X	X
Multi-Family Dwelling	✓	✓	X	✓	✓	✓	✓	✓	✓		X	✓	X	✓	X	X	X	X	X	X
Rooming House											X		X		X	X	X	X	X	X
Downtown Live/Work*	✓	✓	X	✓	✓	X	✓	X	✓	X	X	X	X	X	X	X	X	X	X	X
Mobile Home	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
NON-RESIDENTIAL FACILITIES																				
Enclosed																				
Open			✓	✓		✓				✓										
Drive-in					X		X		X											
Sidewalk Café		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		X		X					
Shopping Center/Fast Food					X		X													
Drive Through					X		X		X											
SIGNS																				
Residential			X			X					X				X	X	X	X	X	X
Special																				
Development																				
Realty																				
Civic																				
Business																				
Advertising																				
TELECOMMUNICATIONS FAC.																				
Micro																				
Mini																				
Macro																				
Monopole																				
Tower																				
ACCESSORY ACTIVITY/FACILITY																				
Live/Work		✓	X	✓	✓	X	✓		✓	✓	X	✓			X	X	X	X	X	X

TABLE 3

GENERAL PLAN LAND USE CLASSIFICATIONS	MAXIMUM INTENSITY ALLOWED				
	Nonresidential	Residential*			
	Maximum Floor Area Ratio	Maximum Density in Principal Units per Gross Acre	Assumed Net- to-Gross Ratio*	Maximum Density in Principal Units per Net Acre	Minimum Square Feet of Site Area per Principal Unit
Hillside Residential	N/A	5	75%	6.67	6,530
Detached Unit Residential	N/A	11	75%	14.67	2,969
Mixed Housing Type Residential**	N/A	30**	75%	40.0**	1,089**
Urban Residential	N/A	125	75%	166.67	261
Neighborhood Center Mixed Use	4.0	125	75%	166.67	261
Community Commercial	5.0	125	75%	166.67	261
Regional Commercial	4.0	125	75%	166.67	261
Business Mix	4.0	N/A	N/A	N/A	N/A
General Industrial & Transportation	2.0	N/A	N/A	N/A	N/A
Institutional	8.0	125	75%	166.67	261
Central Business District	20.0	300	60%	500.0	87
Mixed Use Waterfront District	See Table 3A	See Table 3A	See Table 3A	See Table 3A	See Table 3A
Housing & Business Mix	<u>The maximum FAR and density of a site are determined by its zoning designation.</u>				
Resource Conservation	N/A	N/A	N/A	N/A	N/A
Urban Park & Open Space	N/A	N/A	N/A	N/A	N/A

* If it appears in any given situation that the net-to-gross ratio is significantly different than given here, an individual calculation should be made for the site in question, following the procedure explained in the Density/Intensity Section (C2) of this report.

** In the Mixed Housing Type Residential classification, no project can have a higher density than allowed by its current zoning without a major variance or a rezoning. Under no situation can a project exceed the maximum density permitted under the General Plan, even if the density allowed by the current zoning is greater than the General Plan.

NA = Not Applicable

TABLE 3A: DENSITY/INTENSITY	MAXIMUM INTENSITY ALLOWED				
	Nonresidential	Residential*			
ESTUARY POLICY PLAN LAND USE CLASSIFICATIONS	Maximum Floor Area Ratio	Maximum Density in Principal Units per Gross Acre	Assumed Net-to-Gross Ratio*	Maximum Density in Principal Units per Net Acre	Minimum Square Feet of Site Area per Principal Unit
Light Industrial - 1	2.0	30	75%	40.0	1,089
Off Price Retail - 1	2.0	30	75%	40.0	1,089
Retail, Dining Entertainment (Phase 1)	Avg. 3.5 over area	NA	NA	NA	NA
Retail, Dining, Entertainment (Phase 2)	7.0 per parcel	125	75%	166.67	261
Produce Market	1.0 per parcel	30	75%	40.0	1,089
Waterfront Commercial Recreation - 1	Avg. 3.0 over area	NA	NA	NA	NA
Mixed Use District	5.0 per parcel	125	75%	166.67	261
Waterfront Mixed Use	2.0 per parcel	40	75%	53.33	817
Waterfront Warehouse District	5.0 per parcel	100	75%	133.33	327
Planned Waterfront Development - 1	1.0 per private parcel, Avg. 1.0 on remaining	30 per private, Avg. 30 on other	75%	40.0	1,089
W. Commercial Rec. 2	Avg. 1.0	NA	NA	NA	NA
Light Industrial - 2	2.0 per parcel	30	75%	40.0	1,089
Plan. Water Devel. - 2	2.0 per parcel	40	75%	53.33	817
Resid. Mixed Use - 1	1.0 per parcel	40	75%	53.33	817
Resid. Mixed Use - 1	<u>The maximum FAR and density of a site are determined by its zoning designation.</u>				
Heavy Industrial - 1	0.75 per parcel	NA	NA	NA	NA
Gen. Commercial - 1	1.0 per parcel	NA	NA	NA	NA
Plan Water District 3	0.5 per parcel	NA	NA	NA	NA
General Commercial - 2	1.0 per parcel	NA	NA	NA	NA
Light Industrial - 3	0.5 per parcel	NA	NA	NA	NA

* If it appears in any given situation that the net-to-gross ratio is significantly different than given here an individual calculation should be made for the site in question, following the procedure explained in the Density/Intensity Section (C2) of this report.

NA = Not Applicable

TABLE 5: BEST FIT ZONES FOR THE GENERAL PLAN LAND USE CLASSIFICATIONS

ZONES THAT CORRESPOND TO GENERAL PLAN LAND USE CLASSIFICATIONS ● = "Best Fit" Zones ○ = Other Possible Zones	Hillside Residential	Detached Unit Residential	Mixed Housing Type Residential	Urban Residential	Neighb. Center Mixed Use	Community Commercial	Regional Commercial	Business Mix	General Industrial	Institutional	Central Business District	Mix-use Waterf.: See TABLE 5A	Housing/ Bus. Mix*	Open Space: RCA	Open Space : Other
OS (RCA) OS (Rsrce Cons)														●	
OS (*) Open Space (All)															●
R-10 Estate	●	○	○	○									○		
R-20 Low Density	●	○	○	○									○		
R-30 One-Family		●	○	○	○								○		
R-35 Special One Family			●	○	○								○		
R-36 Small Lot			●	○	○								○		
R-40 Garden Apartment			●	○	○								○		
R-50 Medium Density			●	○	○								○		
R-60 Medium High density				●	○	○									
R-70 High Density				●	○	○									
R-80 High-Rise Apartment				●	○	○									
R-90 Downtown Apartment					●						●				
C-5 Neighborhood			●	○	●								○		
C-10 Local Retail			●	○	●								○		
C-20 Shopping Center					○	○							○		
C-25 Office				●	○	○									
C-27 Village				○	●										
C-28 Commercial Shopping				○	●										
C-30 District Thoroughfare						○									
C-31 Special Retail				○	●										
C-35 District Shopping															
C-36 Boulevard Service						●	●								○
C-40 Community Thorough						●	●								○
C-45 Community Shopping						●	●								○
C-51 Central Business															●
C-52 Old Oakland															●
C-55 Central Core															●
C-60 City Service								●	○						
M-10 Special Industry								●					○		
M-20 Light								●					○		
M-30 General								○	●						
M-40 Heavy								○	●						
S-1 Medical Center						○				●					
S-2 Civic Center										●	○				
S-3 Research center								●							
S-4 Design Review															
S-13 Mixed Use													●		
S-15 Transit Oriented Devel.				●	○	○									

*The development standards of a site in the Housing and Business Mix designation is determined by its zoning designation.

TABLE 5A: BEST FIT ZONES FOR THE ESTUARY PLAN LAND USE CLASSIFICATIONS

ZONES THAT CORRESPOND TO ESTUARY PLAN LAND USE CLASSIFICATIONS ● = "Best Fit" Zones ○ = Other Possible Zones	Jack London District								O-9	San Antonio/Fruitvale										
	Light Indust. 1	Off Price Retail 1	Ret. Dine, Entert 1	Ret. Dine, Entert 2	Produce Market	W. Commrc. Rec. 1	Mixed Use Dist.	W. Mixed U. Dist.	W. Warehouse Dist.	Plan. W. Devel. -1	W. Commrc. Rec. 2	Light Indust. 2	Plan. W. Devel. 2	Resid. Mixed U. **	Heavy Ind.	Gen. Commerce. 1	Plan. W. Dist. 3	Gen. Commerce. 2	Light Indust. 3	
OS (RCA) OS (Rsrce Cons Area)																				
OS (*) Open Space (All other)	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○
R-10 Estate																				
R-20 Low Density																				
R-30 One-Family																				
R-35 Special One Family																				
R-36 Small Lot																				
R-40 Garden Apartment														●						
R-50 Medium Density													●							
R-60 Medium High density																				
R-70 High Density																				
R-80 High-Rise Apartment																				
R-90 Downtown Apartment																				
C-5 Neighborhood																				
C-10 Local Retail																				
C-20 Shopping Center													⊕							
C-25 Office																				
C-27 Village					●			●	●											
C-28 Commercial Shopping Dist.		●							●											
C-30 District Thoroughfare																				
C-31 Special Retail		●			●				●											
C-35 District Shopping		●				●				○						○				
C-36 Boulevard Service																○				
C-40 Community Thoroughfare		○								●						●		●		
C-45 Community Shopping			●	●	○	●	●	●	●	●	●				○		○			
C-51 Central Business Service																				
C-52 Old Oakland																				
C-55 Central Core																				
C-60 City Service										●							●		●	
M-10 Special Industry	●	●			○	●		●	●		●	○	⊖			●		○		
M-20 Light	●	●							●	○	●	○	⊖	○		●		●		
M-30 General	○										●	●	⊖	●		●		●		
M-40 Heavy												●		●		○				
S-1 Medical Center																				
S-2 Civic Center																				
S-3 Research center																	●			
S-4 Design Review			●	●	●	●	●	●	●											
S-13 Mixed Use	●	●			○	●		●	●		●	●	⊖							
S-15 Transit Oriented Devel.																				
(S-16 Industrial/Residential Transition)														●						

*All water's edge properties have an Open Space Designation. See Estuary Policy Plan Figures II-3 and II-4 and policies.

***The development standards of a site in the Residential Mixed Use designation is determined by its zoning designation.

**TABLE S-1
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES**

Significant Impact	Mitigation Measures	Significance After Mitig
A. SIGNIFICANT UNAVOIDABLE IMPACTS		
B. <u>Transportation</u>		
B.1: Development pursuant to the updated Land Use and Transportation Element would result in the degradation of the level of service on several roadway segments.	B.1: Implement roadway improvements and transit improvements to reduce congestion on arterial roadways.	SU
D. <u>Public Services</u>		
D.6-2: Development consistent with the proposed Land Use and Transportation Element would result in higher levels of population in areas where fire fighting and evacuation constraints presently exist. These constraints include narrow street widths, insufficient turning radii, steep slopes, distant fire stations, and an emergency water supply that is vulnerable to disruption in the event of an earthquake or power failure.	D.6-2: Proceed with construction of a fire station in the North Oakland Hills to reduce the identified service deficiency in this area, to reduce response times, and to minimize the risk of catastrophic wildfire.	SU
E. <u>Air Quality</u>		
E.1: Implementation of the proposed Land Use and Transportation Element would not be consistent with population and VMT assumptions used in air quality planning, and would result in increased regional emissions of criteria air pollutants.	E.1: To the extent permitted by law, large new development within the City shall be required to implement Transportation Control Measures (TCMs) as recommended by the Bay Area Air Quality Management District (listed under Mitigation Measure E.6).	SU

SU = Significant and Unavoidable

TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

Significant Impact	Mitigation Measures	Significance After Mitigation
A. SIGNIFICANT UNAVOIDABLE IMPACTS		
E.6: Cumulative development of projects in the Downtown Showcase District would result in long-term traffic increases and associated air pollutant emissions, which would adversely affect regional air quality.	E.6: The the extent permitted by law, downtown projects should be required to implement Transportation Control Measures (TCMs) to reduce mobile source emissions. Many of these measures already would be part of the downtown projects due to the proximity of these projects to existing local and regional transit facilities and existing limitations on parking availability.	SU
E.10: Cumulative development of projects in the Coliseum Showcase District would result in traffic increases and associated air pollutant emissions, which would adversely affect regional air quality.	E.10: Implement Mitigation Measure E.6.	SU
L. Noise		
L.8: Development of the downtown projects would generate short-term increases in noise and vibration due to construction.	L.8: The City shall require the project sponsors to implement noise control techniques to minimize disturbance to adjacent or nearby sensitive noise receptors during project construction.	SU
L.11: Construction of projects in the Coliseum Showcase District would generate short-term increases in noise and vibration, and potential noise increases would be the same as described under Impact L.8 above for the Downtown Showcase District.	L.11: The City shall require the project sponsors to implement noise control techniques to minimize disturbance to adjacent or nearby sensitive noise receptors during project construction.	SU

SU = Significant and Unavoidable

TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

Significant Impact	Mitigation Measures	Significance After Mitigation
A. SIGNIFICANT UNAVOIDABLE IMPACTS		
N. <u>Wind</u>		
N.1: Adoption of the Element could result in development that would change wind speeds at locations in the Downtown Showcase District.	N.1: The City shall require the project sponsors to incorporate specific design elements in the final siting and designs for the high rises that could reduce ground-level winds within the Downtown Showcase District.	SU
O. <u>Consistency with Adopted Plans and Policies</u>		
O.3: The proposed Land Use and Transportation Element would be consistent with regional policies and programs except for the Clean Air Plan.	O.3: Implement Mitigation Measures E.1 and E.6.	SU

SU = Significant and Unavoidable

TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

Significant Impact	Mitigation Measures	Significance After Mitigation
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B. SIGNIFICANT BUT MITIGABLE IMPACTS

A. Land Use

A.1: Implementation of the proposed Land Use and Transportation Element would alter the Oakland General Plan land use classifications, changing the densities that are allowed in various residential designations and restructuring the commercial and industrial designations to reflect a broader range of industry and business than anticipated in the 1980 Plan. Development consistent with the new definitions could result in a broader range of commercial and industrial uses in some areas.

A.1a: Establish performance based standards which designate appropriate levels of noise, odors, light/glare, traffic volumes, or other such characteristics for industrial activities located near commercial or residential areas.

LS

A.1b: Develop "performance" zoning regulations which permit industrial and commercial uses based upon their compatibility with other adjacent or nearby land uses.

A.1c: Develop strategies to mitigate conflicts associated with live/ work and home occupation uses.

A.1d: During the revision of the zoning ordinance and map, develop zoning district definitions and map boundaries to protect enclaves of lower density residential development that may be designated for more inclusive density categories on the Land Use and Transportation Diagram. Use the General Plan Strategy Diagram as a means of making these determinations.

A.1e: During the revision of the zoning ordinance, develop a one acre minimum lot size zoning district. Consistent with the recommendations of the OSCAR Element, apply this district to appropriate areas of the Oakland Hills as a means of maintaining and enhancing neighborhood character.

LS = Less than Significant

TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

Significant Impact	Mitigation Measures	Significance After Mitigation
B. SIGNIFICANT BUT MITIGABLE IMPACTS		
<p>A.2: <i>Land Use Diagram</i> changes could facilitate the redevelopment of large parts of the City, including military bases, transit corridors, the Coliseum area, the Estuary shoreline, and Downtown. Implementation of the proposed <i>Land Use and Transportation Element</i> would change the allowable land uses in a number of locations within the City. Subsequent zoning changes could result in designations that are inconsistent with the existing uses. Zoning changes consistent with the proposed <i>Element</i> could render some uses non-conforming.</p>	<p>A.2a: Establish design requirements for large-scale commercial development that requires adequate buffers from residential uses. Use of open space, recreation space, or transit installations as buffers should be encouraged.</p> <p>A.2b: Develop distinct definitions for home occupation, live/work and work/live operations; define appropriate locations for these activities and performance criteria for their establishment; and create permitting procedures and fees that facilitate the establishment of those activities which meet the performance criteria.</p> <p>A.2c: Ensure that structures and sites are designed in an attractive manner which harmonizes with or enhances the visual appearance of the surrounding environment by preparing and adopting industrial and commercial development guidelines.</p> <p>A.2d: Establish performance-based standards which designate appropriate levels of noise, odors, light/glare, traffic volumes, or other such characteristics for industrial activities located near commercial or residential areas.</p> <p>A.2e: Develop performance zoning regulations which permit industrial and commercial uses based upon their compatibility with other adjacent or nearby uses.</p>	<p>LS</p>

LS = Less than Significant

IV. THE PROPOSED PROJECT WOULD RESULT IN SIGNIFICANT NOISE AND AIR QUALITY IMPACTS TO THE SURROUNDING RESIDENTIAL PROPERTIES

A. Noise Generated by Construction Equipment and Vehicles Would be Significant

The demolition of the existing building, and grading and construction for the proposed project would involve an array of heavy construction equipment such as graders, backhoes, concrete pumps, compressors, and pneumatic tools and other very noisy equipment for a number of months. Because of the large volume of demolition material and surface rubble that would need to be removed from the site and the large amount of construction material that would need to be brought to the site, project construction would also generate hundreds of trips to and from the site by haul trucks. Due to access constraints on College Avenue, it is likely that much of this construction traffic would access the site via Desmond Street and Hemphill Place. Since these are quiet local streets, this construction traffic would result in significant noise impacts to the adjacent residences.

B. Operational Noise Generated After Project Completion Would Be Significant

Upon completion, the project would include a number of noise sources, in addition to the noise emanating from the rooftop open space, as discussed above. There are also balconies on the east and west facades where residents would be expected to gather and converse. There is also an area of open space adjacent to the rear property line where employees of the ground floor commercial would gather. Again, given the unfavorable acoustical conditions at the site, the neighboring residents would be regularly subjected to these very annoying noise sources. In addition, the project includes mechanical equipment such as heating and air conditioning equipment, which can generate very high levels of noise. (We believe that it is unlikely that the project HVAC equipment could meet the noise reduction standards of the City's Noise Ordinance in this location.) Other common noise sources associated with this type of development include noise from vehicles such as engine starts, door slams, and car alarms. There would also be a gate at the project driveway entrance, which would typically include a loud warning buzzer. These noise sources, individually and cumulatively, would result in significant noise impacts to the adjacent single-family homes, which is another strong indication that the proposed project is clearly not appropriate for this location.

In addition, there is a potential that two sump pumps could be located along the western property boundary. Since storm drainage and sewage lines naturally drain by gravity to the west, sump pumps could be required to pump collected stormwater and wastewater back up to storm drain and sanitary sewer mains in College Avenue. Given the size of the project, these sump pumps could be large

and noisy. However, to date no utility plans have been submitted which would indicate whether sump pumps will in fact be proposed, or if an engineering solution will be put forward to avoid such pumps. In the absence of any plans that can be reviewed and commented on, there is a potential that the project would include sump pumps which would generate noise levels which are objectionable to the adjacent residents.

C. Construction Dust and Airborne Contaminants Would Have a Significant Impact on the Neighbors

The proposed project would involve demolition and construction activities that would generate substantial quantities of dust, a good portion of which would settle on the adjacent residential properties and migrate into the homes. Given the age of the existing commercial building, it is highly likely that it contains asbestos building materials and lead-based paint. While abatement would be required as a matter of routine, we do not believe that it is possible for any abatement program to be 100 percent effective, and that some of these toxic materials would unavoidably be released into the atmosphere during demolition. Given that these substances are extremely toxic, especially to the young children living in the adjacent homes, we believe that the proposed building demolition would result in significant and unacceptable public health impacts.

It is also important to note that there is one adult resident, who lives directly west of the project site, who suffers from extreme environmental sensitivity to concrete and stucco dust, and molds. The symptoms of even mild exposure include severe headaches, nausea, extreme fatigue, depression, and general malaise and incapacitation. This person cannot remain in her home even during small home improvement projects without becoming severely ill. It is highly unlikely that release of airborne construction dust can be sufficiently controlled to allow this person to remain in her home for the many months required for project construction. This represents a severe impact to this individual's quality of life and wellbeing, and must be avoided.

D. Construction Equipment and Vehicles Would Generate Significant Quantities of Diesel Particulate, a Recognized Toxic Air Contaminant

Most of the haul trucks and pieces of construction equipment would be expected to be diesel fueled. In addition to the annoying and unhealthy diesel fumes, these engines would also emit large quantities of particulate matter, especially since diesel engines are subject to far less stringent emission controls than gasoline powered engines. Diesel particulate is recognized by the California Air Resources Board and the Bay Area Air Quality Management District as a toxic air contaminant (TAC) because it is strongly correlated with lung cancer and other serious and chronic respiratory illnesses. We believe that the concentration of construction equipment and large number of haul trips by diesel trucks in such

close proximity to existing homes would place the nearby residents at an undue public health risk due to diesel TACs. We consider this to be a significant and unacceptable impact of the project, and one more reason why it is not appropriate for this location.

V. THE PROPOSED PROJECT WOULD RESULT IN SIGNIFICANT DRAINAGE AND WATER QUALITY IMPACTS TO THE DOWNSLOPE RESIDENTIAL PROPERTIES

A. The Project Would Result in a Significant Increase in Stormwater Drainage Onto Downslope Properties

Under current conditions, adjacent properties along Desmond Street are subject to drainage impacts to their properties as a result of stormwater flows originating at the proposed project site. The local soils in the area are composed of hard pan clay which underlie a thin layer of topsoil. Consequently, downward percolation of rainwater into the soil is interrupted by the hard clay layer which causes the drainage to seep laterally toward the adjacent properties located downslope. This often results in oversaturated soil conditions and localized ponding throughout the rainy season, and has resulted in basement flooding. The proposed project would result in coverage of 80 percent of the site with impervious building and paved surfaces. The reduction in permeable soil on the site would reduce the area available for percolation and would increase the amount and concentration of runoff leaving the proposed project site. This would have the effect of exacerbating the already unacceptable volume of stormwater which is received by the downslope residential properties from the project site. To date, the City staff has not required the applicant to submit drainage plans which would address this problem. In other jurisdictions, projects are not approved until plans are submitted and reviewed which show how all drainage and similar site conditions will be adequately mitigated. It currently appears that City staff intends to approve the project without addressing this potentially serious drainage problem. (In a recently constructed commercial upgrade project adjacent to the proposed project, the City did not require this adverse drainage problem to be corrected, leaving it to the adjacent downslope residents to negotiate with the developer to install a mutually acceptable drainage system.) It also appears that the residences downslope of the proposed project will be directly and adversely affected by concentrated and potentially uncontrolled drainage from the proposed project. Since it is unlikely that drainage plans will be submitted prior to the January 12th comment deadline on this project, the affected residents will not have an opportunity to review those drainage plans when they are submitted at a later date. Considering the City staff's apparent lack of concern with the drainage problem on the adjacent site, we are not confident that this problem will be addressed in conjunction with this project, in the absence of input from neighboring residents who would be adversely affected. Given the lack of any drainage plans for the

project or any evidence that the City intends to require project drainage to be controlled such that it would not adversely affect downslope properties, we consider increased stormwater runoff to be a significant impact of the project.

B. The Proposed Project Could Result in Potential Toxic Runoff From Potential Contaminated Soil on the Project Site

It is well known among nearby residents that the commercial property adjacent to the proposed project site on the north was once the site of a machine shop and metal plating operation. Until recent decades these operations were largely unregulated, and the toxic slag from this particular operation was randomly dumped at the southwest corner of the property near its boundary with the proposed project site. This slag likely contained the residue of acids, solvents, and heavy metals such as chromium which are highly persistent and remain toxic for many years. While much of the dumped material was recently removed from the adjacent commercial property, it is suspected that over time some of the toxic residue has migrated with the groundwater seepage described above. As such, it is believed that the soils in the vicinity of this dumpsite may contain elevated levels of these toxic residues.

It is not known whether the proposed project site was also the site of an earlier operation which produced toxic waste, or whether the toxic residue from the adjacent property may have migrated onto the project site; however, the possibility that either event may have occurred cannot be dismissed, especially given length of time that these properties have been in use, and the persistence of the suspected hazardous materials. Therefore, we believe that there is a potential for soils of the project site to include contaminants which could be carried to adjacent residential properties in runoff. There is also a possibility that, if present, such toxic residues could pose a health hazard to construction workers and neighborhood residents, if such contaminants are exposed during site grading and trenching for foundations and utilities. Unless this suspected contamination is investigated and addressed, we believe there is a potential for the project to result in a significant risk of hazardous waste contamination impact to adjacent properties.

C. Project Grading Could Adversely Affect Adjoining Properties

As with the drainage issue discussed above, there are concerns with grading on the proposed project site. The western portions of the site have been filled with uncontrolled earth fill and rubble, such that site grades along the western boundary are elevated relative to the neighboring properties to the west. The adjoining neighbors have concerns about how this loose fill will be dealt with and how the grade transitions on the proposed project site will be handled. It is not known whether a retaining wall is planned at or near the common property

boundary, or whether a smooth grade transition is planned. The planned grading along the common property boundaries could adversely affect the adjoining properties, and the existing fencing. (These concerns are not unfounded, given the neighbors' recent experience with an adjacent project, mentioned above. In that case, loose fill had been placed to a height of four feet against the common boundary fence, a condition which was not even noticed, much less addressed by the City staff prior to approval of permits for that project.) For the proposed project, no grading plans have been required or submitted to date that would indicate the nature of terrain alteration envisioned for the western or southern portions of the proposed project site. In the absence of any grading plans that can be reviewed prior to the cutoff date for public comment, we consider the grading impacts of the project to be potentially significant.

D. There is a High Potential for Sewage Generated by the Project to Spill and Cause a Public Health Hazard

As discussed above, no utility plans for the project have been required or submitted to date, so it is unknown whether project wastewater flows will be directed to the sanitary main in College Avenue or whether the sewage will flow by gravity to the western end of the site and pumped back to College Avenue. In the absence of any utility plans, a worst-case assumption must be made for purposes of these comments. If on-site sewer lines are designed to flow by gravity to a sump pump near the western site boundary, there is a potential that these pumps could fail resulting in an overflow of raw sewage onto neighboring properties. This could occur as a result of an equipment failure, a power failure, or a natural disaster such as an earthquake. The resulting overflow would create a public health hazard on the project site and neighboring properties. It is important to note, that until relatively recently, the City of Oakland did not allow the use of sump pumps due to their vulnerability to failure, and required all private sewer lines to flow by gravity without mechanical assistance. Given the potential for public health hazard posed by such an on-site sewage system, we consider the potential public health impacts resulting from a potential uncontrolled release of raw sewage from the project to be significant.

VI. THE CUMULATIVE IMPACTS OF THE PROJECT, COMBINED WITH THE OTHER PROPOSED PROJECT NEARBY, WOULD BE SIGNIFICANT

Currently, there is another mixed residential-commercial project proposed at 5175 Broadway, one block south of the proposed project. If both projects were approved at roughly the same time, it is highly likely that both would be under construction in the summer of 2007. Thus the construction impacts to the neighborhood would double, at least. This includes increased construction noise and dust, increased heavy truck traffic, and increased parking impacts from construction workers arriving each day. Given the very poor vehicular access to

both sites, most of the traffic generated by these projects would use local streets such as Desmond, Hemphill, and Coronado to enter and leave the area. This would occur both during construction and after occupancy. We believe that the resulting traffic impacts would be significant on a project-specific basis, and would be further exacerbated under cumulative conditions with the combined traffic from both projects.

In addition, there are also reports of potential future condominium projects within a one block radius of the proposed project, including one at 5231 College (Sabuy Sabuy Restaurant) and another at 5291 College (Germany's Best auto garage). While these projects would be completed in the future, they would nonetheless add to the cumulative impacts in the immediate project vicinity. We believe that these cumulative impacts would be significant and would further intensify the cumulative effects of the two nearby projects currently under review.

We are also very concerned about the cumulative impacts resulting from the 26 known projects in north Oakland which would add over 1,300 dwelling units, and at least 2,600 new residents to the area. In addition to the cumulative traffic impacts, we believe that these projects would result in many other cumulative impacts, particularly to the provision of public services such as police protection. The Rockridge neighborhood has an unacceptably high crime rate, and the City of Oakland has not committed adequate police resources to address this problem in our area. Given that service levels are currently inadequate, the addition of numerous new residents would have the effect of further degrading police and other services. We believe these cumulative impacts need to be studied and adequately addressed prior to the approval of so much cumulative development.

VII. THE PERMANENT ADVERSE LAND USE AND ENVIRONMENTAL IMPACTS TO ADJACENT PROPERTIES THAT WOULD RESULT FROM THE PROPOSED PROJECT WOULD RESULT IN A SUBSTANTIAL REDUCTION IN PROPERTY VALUES OF SURROUNDING RESIDENTIAL PROPERTIES

With such a massive and intrusive project looming over the adjacent properties, the nearby homes would become much less desirable in the resale market, and thus would lose substantial value. Meanwhile, the value of the applicant's property would increase many times over from the huge increase in site development intensity. Therefore, if the City approves the proposed project, it will essentially be transferring value from the neighboring residential properties to the applicant's property. In other words, the profit that the applicant would gain would come directly from the pockets of the neighboring residents. Stated differently, the City would in effect become the instrument by which the existing homeowners would subsidize the applicant's project. We strongly believe that there is no compelling community or social need served by the proposed project

that would justify placing such an onerous burden on the neighboring residents. Conversely, and as discussed at length above, it is the clearly articulated intent of the City, as expressed in its land use policies, regulations and design guidelines, to avoid these situations by ensuring compatible developments which do not adversely affect property values and undermine neighborhood integrity. The residents of this area have fought hard over the years to prevent inappropriate development from destroying the fabric of the neighborhood. It is time that the City recognized and honored these efforts to protect and enhance neighborhood livability and integrity instead of acquiescing to inappropriate development that would undermine and destroy it.

VIII. THE DEMOLITION OF THE EXISTING BUILDING WOULD RESULT IN SIGNIFICANT IMPACTS TO A POTENTIALLY HISTORIC BUILDING AND HISTORIC DISTRICT

The existing building on the proposed project site is well over 50 years old. Although the City staff has determined that the building is not a potentially designated historic property under the City's criteria, it may still meet the eligibility criteria for listing in the *California Register of Historical Resources*. If so, its proposed demolition would constitute a significant impact under the California Environmental Quality Act (CEQA). This is discussed in detail below.

A. The Existing Building on the Proposed Project Site May Be Eligible for Listing In the California Register of Historical Resources

To be eligible for listing in the California Register, a building must meet one of several criteria enumerated in Section 21084 of the California Public Resources Code. We believe that the existing building at 5253 College Avenue meets Criterion 2, which reads: "...embodies the distinctive characteristics of a type, period, region, or method of construction..." This building is approximately 90 years old, and appears to have undergone minimal external alteration over the years. The other buildings along this block face of College Avenue are of similar age and condition, and thus they represent one of the only, if not the only complete blocks along College Avenue to retain its historic commercial character. As such, we believe that the building at 5253 College Avenue may individually qualify for listing in the California Register, and that the entire row of buildings in the block may also collectively qualify as an Historic District under the applicable provisions of the Public Resources Code.

B. If the Existing Building is Determined to be Eligible for the California Register of Historical Resources, Its Demolition Would Constitute a Significant Impact Under CEQA

Under the California Environmental Quality Act (CEQA), “[a] project that may cause a substantial adverse change to the significance of an historical resource is a project that may have a significant effect on the environment. For purposes of this section, an historical resource is a resource listed in, or determined to be eligible for listing in, the California Register of Historical Resources” (Public Resources Code Section 21084.1). If the building is eligible for listing in the California Register, and the building is removed to make way for the proposed project, this would constitute a significant impact which cannot be mitigated to less-than-significant levels under CEQA. In order to determine whether the building is eligible for listing, an historic property survey report must be prepared by a qualified architectural historian. Until such a study is conducted, we believe that a strong potential exists that this project will result in a significant unmitigated impact to an historic resource.

IX. THE ABSENCE OF ANY ENVIRONMENTAL REVIEW OF THE PROPOSED PROJECT, IN THE FACE OF ITS NUMEROUS SIGNIFICANT IMPACTS, CONSTITUTES A VIOLATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Although the City staff determined that this proposed project qualifies for an exemption from state-mandated environmental review under two separate provisions of the CEQA Guidelines, this determination is not valid in either case. The reasons why the project does not in fact qualify for any exemption are discussed below. Given that the project does not qualify for an exemption from the requirement for environmental review under CEQA, and that it would result in numerous significant environmental impacts, as discussed above, it is clear that an Environmental Impact Report (EIR) must be prepared for the proposed project.

A. The Project Does Not Qualify for an Exemption Under Section 15303 of the CEQA Guidelines

Section 15303 of the CEQA Guidelines does indeed provide a Categorical Exemption for new construction of small structures, but only if “the surrounding area is not environmentally sensitive” (CEQA Guidelines Section 15303(c)). This is consistent with Section 15300.2(c) of the Guidelines, which lists Exceptions to the Categorical Exemption provisions, and which states: “[a] **categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.**” We believe that we have amply demonstrated that

there is more than a “reasonable possibility” that the project will have a significant effect on the environment. We also believe that the proposed construction of a grossly out-of-scale project proposed in close proximity to an established single-family neighborhood in violation of applicable General Plan policies, design criteria, and zoning requirements for findings is indeed an unusual circumstance. Therefore, the project does not qualify for a Categorical Exemption. In addition, there is no evidence in the City’s project file to indicate that any analysis was performed on the eligibility of the project for an exemption under CEQA, as required.

B. The Project Does Not Qualify for an Exemption Under Section 15183 of the CEQA Guidelines

This second cited provision of CEQA relied upon by City staff falls under Article 12– Special Situations, under which it states that projects which are consistent with “existing zoning, community plan, or general plan policies for which an EIR was certified shall not require additional environmental review, except as may be necessary to examine whether there are project-specific significant impacts which are peculiar to the project or its site” (CEQA Guidelines Section 15183)(emphasis added). We believe that this “exemption” does not apply since the project clearly violates several General Plan policies and zoning requirements, as discussed previously in this letter, and therefore cannot be considered to be consistent with the General Plan or zoning. The General Plan EIR properly assumed that the policies on neighborhood protection would be implemented as written, and did not evaluate the impacts of projects which are not consistent with these policies. In addition, we believe that the proposed project does indeed result in significant impacts which are peculiar to this site, as discussed at length above. There is no evidence that these project-specific impacts have been evaluated in any previous environmental document.

Moreover, as discussed above, the design guidelines which are applied in other similar situations in the City have not been applied to this project, as discussed above. Therefore, it cannot be claimed that the significant visual and privacy impacts of the project would be mitigated through operation of the residential design guidelines, or even the basic principles embodied by the guidelines. While a counter argument may be that these guidelines simply do not apply to the proposed project, they do however represent a further expression of the design criteria required to be applied to all use permit applications, as discussed above (i.e., proposed developments will be “compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density...” Thus the residential design guidelines are in fact evidence under CEQA of a higher development design standard (than evidenced by the proposed project) which the City applies with respect to visual and privacy impacts to existing neighboring residences, and which represents an effective

mechanism for mitigating such impacts. Under CEQA, the fundamental urban design principles embodied in these guidelines represent community standards which cannot be arbitrarily applied to one situation but not another. In other words, the City's adoption and implementation of residential design guidelines demonstrates that it is the City's intent to mitigate the impacts of inappropriate project design which is not sensitive to its surrounding residential land uses. It would be arbitrary to acknowledge and mitigate an impact in one instance and not *acknowledge and mitigate the same impact in a similar situation*. The application of CEQA principles would require that the same mitigations be implemented wherever these visual impacts occur. However, since this is evidently not the case in the present proposal, as indicated by the project's total disregard for neighborhood context, it cannot be claimed that such significant visual impacts would be mitigated through normal operation of City plans and regulations. Therefore, the City cannot claim a CEQA exemption under this section of the CEQA Guidelines.

In claiming the CEQA exemptions, we also believe the staff is ignoring the legislative intent behind the CEQA statutes, which state that "major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian" (Public Resources Code §21000(g)).

C. An Environmental Impact Report (EIR) for the Project is Required Under CEQA

Given that the project does not qualify for an exemption from the requirement for environmental review under CEQA, and that it would result in numerous significant environmental impacts, as discussed above, it is clear that an Environmental Impact Report (EIR) must be prepared for the proposed project. Further authority for this assertion is contained in Section 15064(f)(1) of the CEQA Guidelines, which states: "...**if an agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR** even though it may also be presented with substantial evidence that the project will not have a significant effect" (emphasis added). It is important to also bear in mind that the CEQA Guidelines specifically recognize that the significance of an impact will vary with the setting, such that impacts which may not be significant in some settings would be significant in more sensitive settings such as residential neighborhoods. We believe that we have not merely presented a "fair argument" but indeed provided substantial evidence that the proposed project would result in numerous significant impacts to the nearby residents. In other words, it is clear that the CEQA Guidelines mandate the preparation of an EIR on the proposed project; and conversely, that not doing so would be a violation of CEQA.

X. THE LEVEL OF INFORMATION PROVIDED ON THE PROJECT IS INSUFFICIENT AS A BASIS FOR A PLANNING DECISION

A. Additional Project Plans Must Be Submitted to Properly Evaluate Its Impacts

As discussed in the preceding pages, there are many unknowns and uncertainties surrounding this project which must be resolved to allow a proper evaluation of its impacts. As discussed, the following plans should be submitted:

1. Grading Plans
2. Drainage Plans
3. Utility Plans
4. Lighting Plans
5. HVAC Plans
6. Construction Staging and Haul Route Plans

These plan submittals are routinely required in other jurisdictions before decisions on project approval and conditioning are made. It is baffling that at least conceptual plans for grading, drainage and utilities are not also required for projects in Oakland prior to planning approval. Moreover, in cases like the proposed project, where the approval of the project in the absence of such plans could preclude the imposition of mitigative conditions, it is essential that such plans be submitted and reviewed prior to planning approval. We strongly object to the lack of availability of such plans, particularly since we will be precluded from commenting on any such plans that may be submitted at a later date.

B. Studies Are Needed to Address the Impacts of the Proposed Project Before the Project is Considered for Approval

Based on the many significant impacts that would likely result from the proposed project, as discussed in detail above, technical studies prepared by qualified professionals are needed to address these issues. At a minimum, such studies should include the following:

Visual/Photo Renderings and Sightline Studies – To address the significant visual and privacy impacts of the project.

Shadow and Solar Access Studies – To address the shading and significant reduction of sunlight to neighboring properties.

Noise Impact Study – To address the impacts of the project's many noise sources in the context of the unique acoustical characteristics of this block.

Traffic, Circulation, Parking, and Pedestrian Safety Studies – To address the increased traffic, the circulation problems posed by project access, the project's impact on neighborhood parking supply, and the safety hazards posed by increased traffic on these local streets. The cumulative impacts resulting from the proposed project at 5175 Broadway and other pending and foreseeable projects in the vicinity should also be considered in these studies.

Air Quality Study – To address the generation of dust and toxic particulates by construction equipment and trucks. The cumulative impacts resulting from the proposed project at 5175 Broadway and other pending and foreseeable projects in the vicinity should also be considered in these.

Site Contamination Studies – To address the potential for soil contamination from previous industrial uses, as well as hazards from asbestos building materials and lead-based paint.

Drainage and Water Quality Studies – To address the impact of project runoff upon downslope properties and the potential for transport of soil contaminants to adjacent properties.

Historic Property Survey Report – To determine whether the property is eligible for listing in the California Register of Historical Resources, so that the historic impacts of the project can be determined prior to proposed demolition of the existing building.

XI. TO JUSTIFY APPROVAL OF THE PROJECT, IT MUST BE SHOWN THAT THE GREATER COMMON GOOD TO BE SERVED BY THE PROJECT OUTWEIGHS THE SIGNIFICANT IMPACTS THAT WOULD BEFALL ITS NEIGHBORING RESIDENTS

The numerous significant and unmitigated impacts that would result from the project are discussed in detail throughout this letter. In the face of these impacts to the neighborhood residents, the City should demonstrate that the greater good that would be served by approving the proposed project justifies and overrides these significant impacts. The project would include six residential units and would replace existing an existing retail operation and professional office. Thus the net gain would be six residential units.

It is well known that there are currently 26 pending and approved projects which would add over 1,300 housing units in north Oakland alone. And additional residential projects will certainly be proposed in the foreseeable future. The project applicant himself acknowledges that there may not be a market for the proposed condominium units and that some units would likely become rentals.

This does not demonstrate an overriding need for housing in the area. On the contrary, it provides evidence that there will likely be an oversupply of condominium units for the foreseeable future. Under these conditions, the six units that would be added by the proposed project cannot be claimed to be needed to supply an unmet need for housing in the community. In fact, it is more likely that such additional units would be superfluous and may even have a dampening effect on condominium values, particularly under current market conditions.

In summary, we cannot understand how a project with such severe impacts to its neighbors can even be remotely justified on public policy grounds. Moreover, we believe the City has a duty to acknowledge that the project cannot be justified as proposed, and to deny its approval.

XII. SINCE AN EIR IS REQUIRED FOR THE PROPOSED PROJECT, THE DECISION TO APPROVE OR DENY THE PROJECT MUST BE MADE BY THE PLANNING COMMISSION AT A PUBLIC HEARING

Although the City staff claims that this proposed project qualifies for an exemption from state-mandated environmental review under two separate provisions of the CEQA Guidelines, this claim is in fact not valid, as discussed above. Since the proposed project would result in significant and unmitigable impacts (in particular, the visual impacts cannot be mitigated to less-than-significant levels with the project as proposed), an Environmental Impact Report would be required for the project under CEQA. Pursuant to Sections 17.136.060 and 17.158.340 of the City's Planning Code, projects which require the preparation of an EIR must be considered at a public hearing before the Planning Commission.

Given the numerous impacts associated with this project, and the intense controversy that its proposal has created in the surrounding neighborhood, it is not appropriate that this project be subject to approval at the staff level with no public hearing. The affected neighbors deserve and should have a right to a full and public airing of their concerns and grievances. The analysis presented in this letter demonstrates that this is not only appropriate, but required for this project.

XIII. THE PUBLIC NOTICE FOR THE PROPOSED PROJECT WAS INADEQUATE BECAUSE IT FAILED TO MENTION DEMOLITION OF THE EXISTING BUILDING

The City's public notice on the project contained minimal information on the development proposed; but more importantly, it completely failed to disclose the proposal to demolish the existing building. Given that notice itself precludes the raising of new issues after the comment deadline, this could have the effect of blocking any public comment on the demolition issue prior to project approval. Had the neighborhood residents not learned of the proposed demolition by chance, we

Mr. Peterson Z. Vollman
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would have been barred from voicing our concerns on the significant issues that arise from building demolition in close proximity to existing residences. As such, we strongly believe that the City's notice of this project was incomplete, improper and not legally adequate.

SUMMARY

In this comment letter, we believe we have provided reasoned analysis and substantial *evidence that a project of the scale and magnitude of that proposed is inappropriate* for this location, and that a proper and good faith application of **all** of the relevant City policies, regulations, and guidelines would arrive at the same conclusion. We also believe we have provided abundant supporting discussion and evidence for our contention that the City erroneously claimed that this project is eligible for an exemption under CEQA. In addition, there are numerous environmental impacts which would result from this project, some of which cannot be mitigated to less-than-significant levels. As such, an EIR is required to be prepared for the project under CEQA.

REQUEST FOR A MEETING WITH CITY STAFF

We believe that there is a strong potential for this proposed project to become the center of a protracted dispute. This could result in the expenditure of significant *amounts of time, energy, and resources*. In an effort to avoid such a senseless waste of effort and resources, we strongly urge the City staff to consider holding a meeting with neighborhood representatives to discuss the possibilities for redesigning the project in a way that would address our concerns. We are requesting this meeting in good faith and hope that you will give it serious consideration.

Thank you,

Bert Verrips and Karen Johnson
5248 Desmond Street

Grace Fisher and Steve Kruszynski
5242 Desmond Street

Diane McCleod
5230 Desmond Street

Matthias Frank and Maria Isaac
5230 Desmond Street

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January 12, 2007
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Mitch Ferguson and Lucy Schneider
324 Hemphill Place

Phillip Fitzwater and Leslie Pulaski
327 Hemphill Place

Mark and Hannah Davis
5250 Desmond Street

Sandra Olson and Frank Castro
5256 Desmond Street

Deborah and Som Konar
5255 Desmond Street

Monica DiPerna and Kathleen Willard
5251 Desmond Street

Nancy Morton
5216 Desmond Street

Cat Haglund and Andy Collison
321 Glendale Avenue

Barbara Havenar and Patrick Daughton
327 Glendale Avenue

Michele Tompkins and Peter Simack
328 Glendale Avenue

Luke Lucas and Brian Henderson
330 Clifton Street

Sarah and Eric Ortman
331 Clifton Street

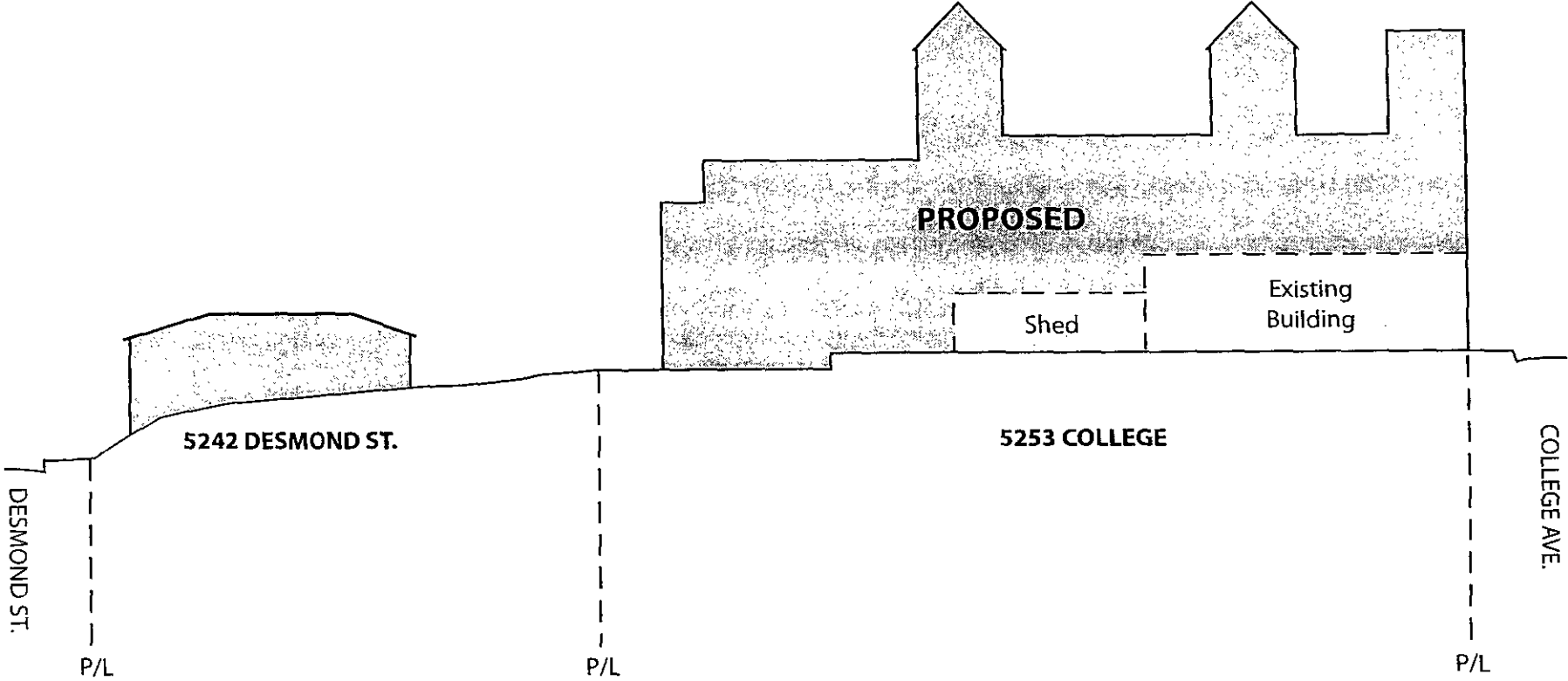
Copies sent via email to:

Councilmember Jane Brunner
Zac Wald, Assistant to Councilmember Brunner
Scott Miller, City of Oakland Zoning Manager
Jessica Pitt, Chair, RCPC Board of Directors
Hiroko Kurihara, Chair, RCPC Land Use Committee

EXHIBIT 1

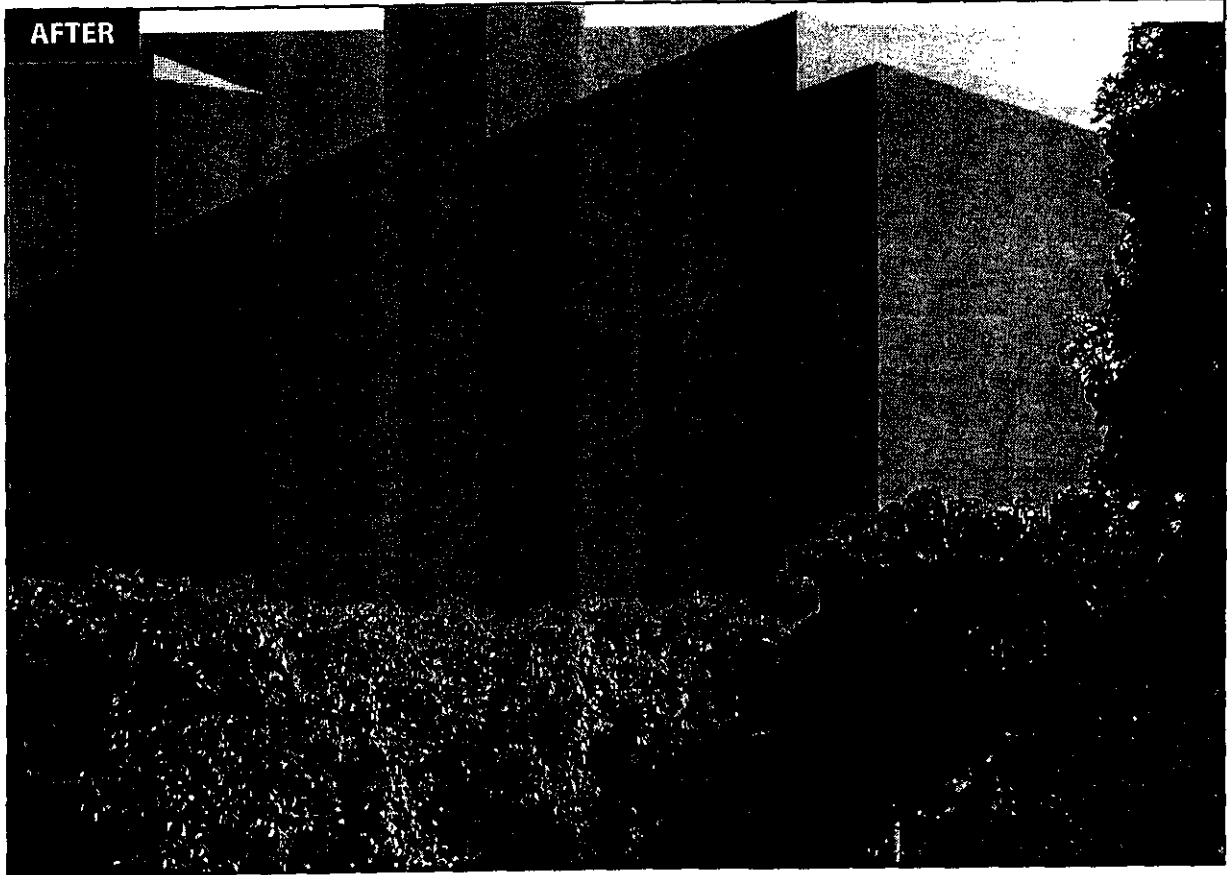
WEST

EAST



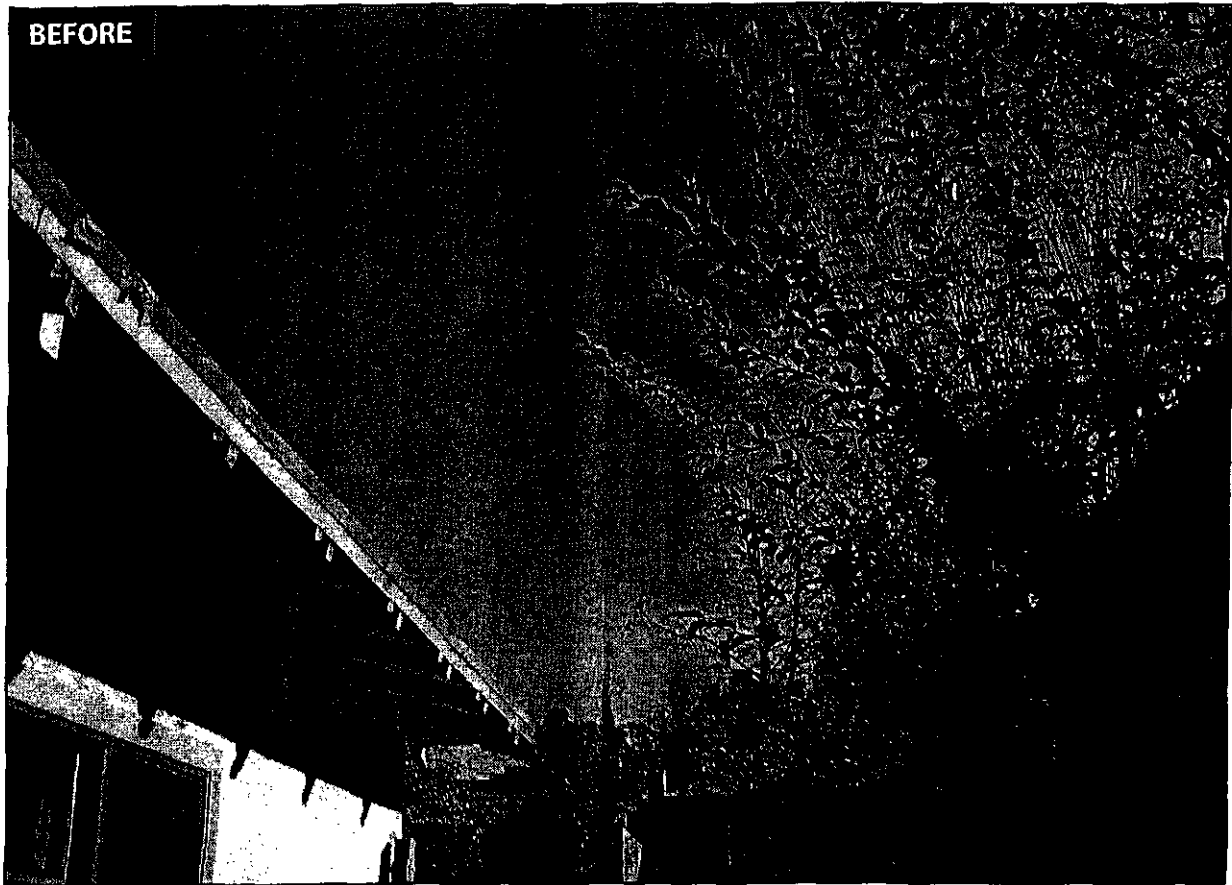
Cross-Section of 5200 Block of College Avenue

EXHIBIT 2



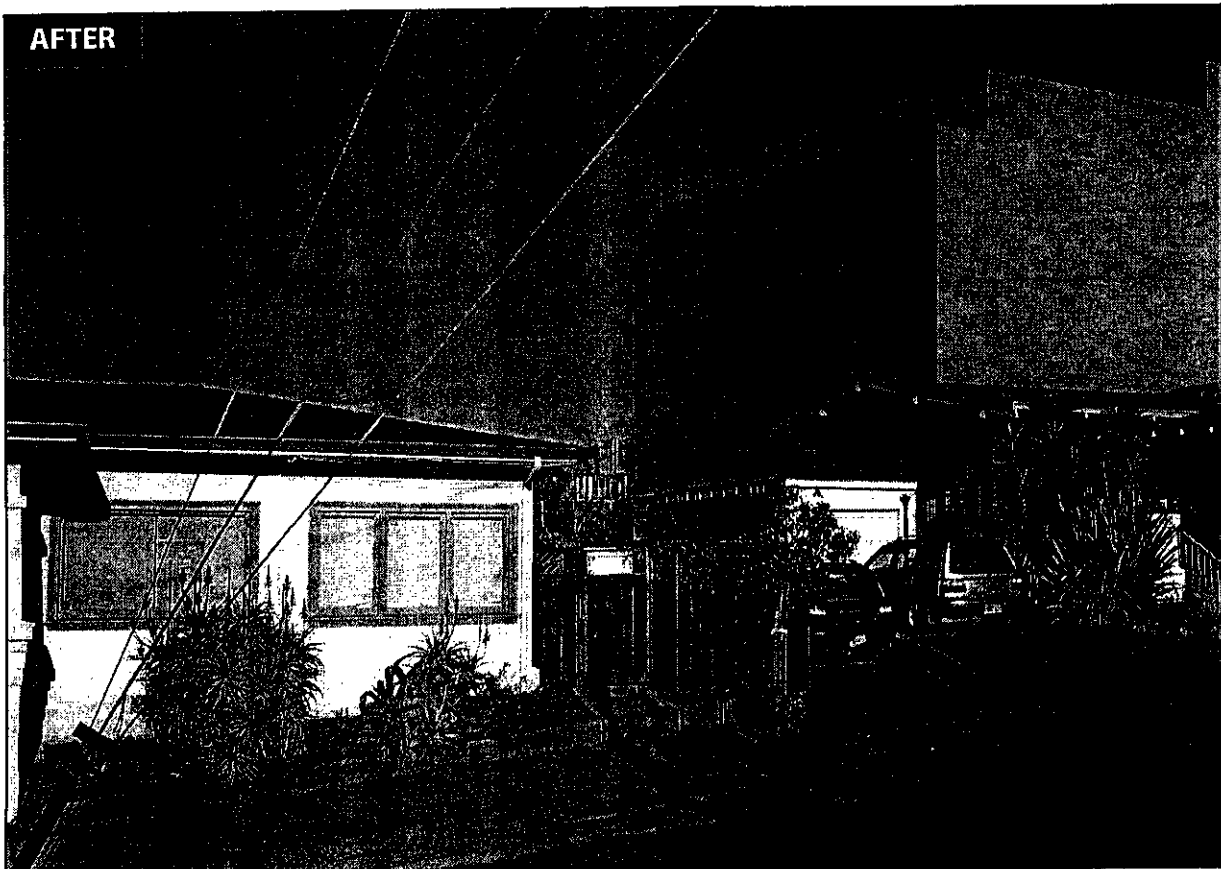
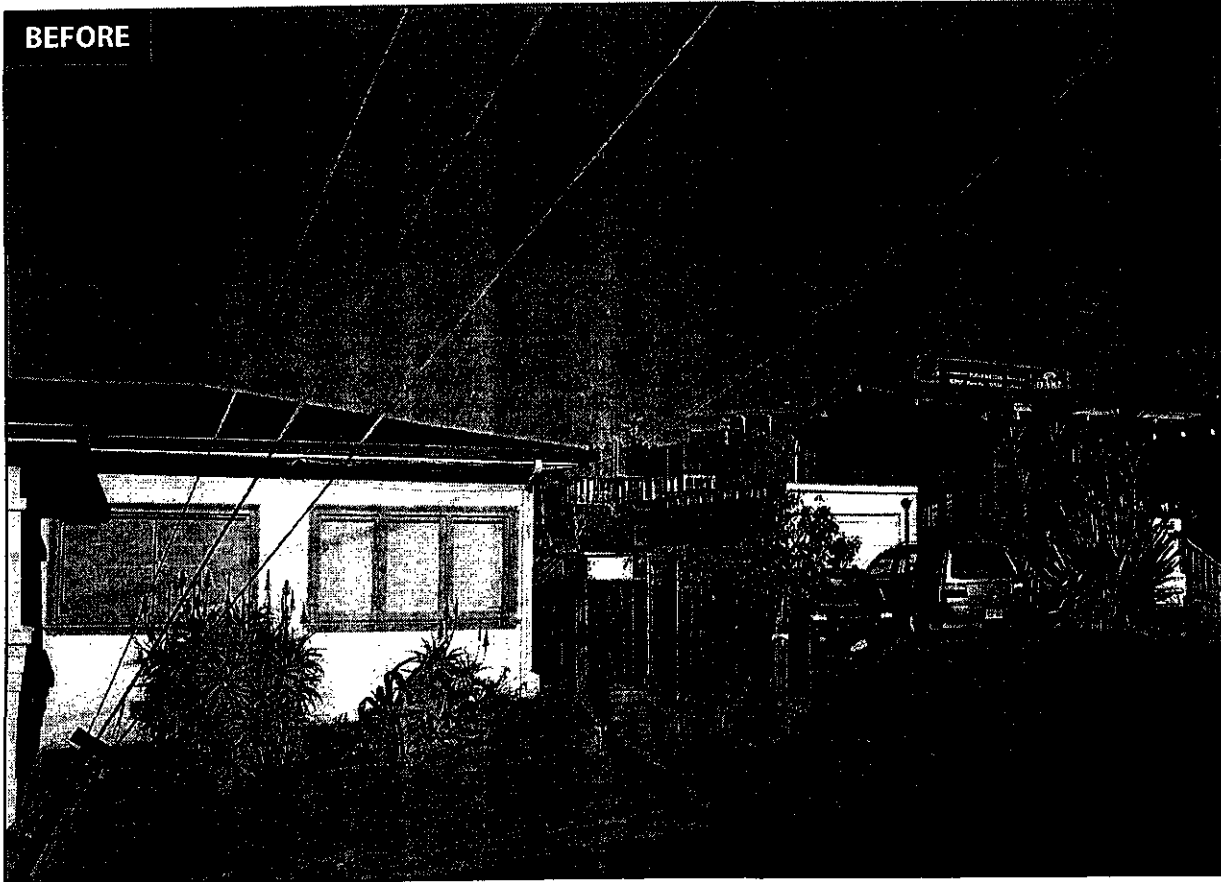
Southeastward View of Project from Rear of 5248 Desmond

EXHIBIT 3



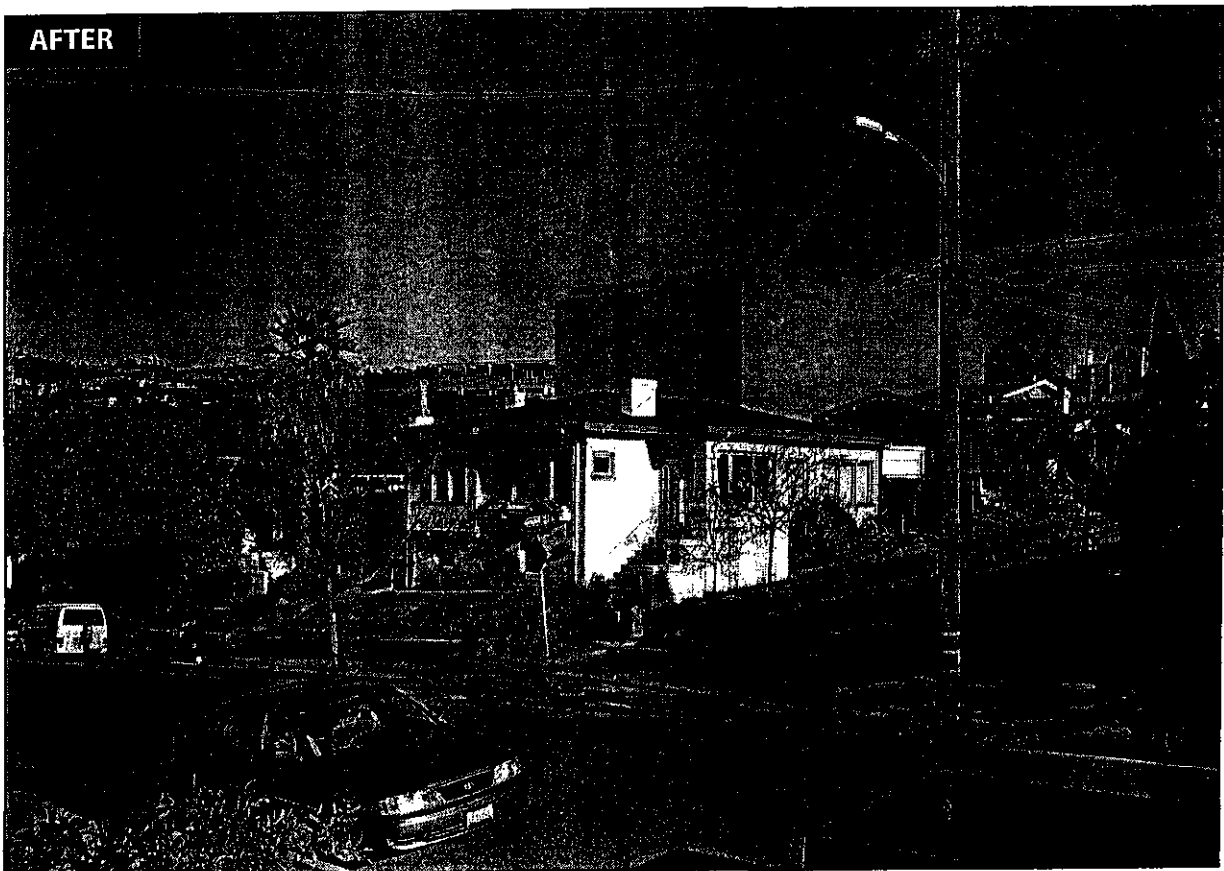
Eastward View of Project from 5242 Desmond

EXHIBIT 4



Northeastward View Across Hemphill from 5220 Desmond

EXHIBIT 5



Northeastward View of Project from 2019 Desmond, at Foot of Hemphill

Title 17 PLANNING**Chapter 17.48 C-31 SPECIAL RETAIL COMMERCIAL ZONE REGULATIONS**

17.48.010 Title, purpose, and applicability.

17.48.020 Design review for construction or alteration.

17.48.030 Permitted activities.

17.48.040 Conditionally permitted activities.

17.48.050 Permitted facilities.

17.48.060 Conditionally permitted facilities.

17.48.070 Restrictions on ground-level uses.

17.48.080 Special regulations applying to Commercial and Manufacturing Activities.

17.48.090 Special regulations applying to the demolition of a facility containing rooming units or to the conversion of a living unit to a nonresidential activity.

17.48.100 Use permit criteria.

17.48.110 Limitations on Signs, marquees, and awnings.

17.48.120 Minimum lot area, width, and frontage.

17.48.130 Maximum residential density.

17.48.140 Maximum height.

17.48.150 Minimum yards and courts.

17.48.160 Minimum usable open space.

17.48.170 Buffering.

17.48.180 Special regulations for mini-lot and planned unit developments.

17.48.190 Other zoning provisions.

17.48.010 Title, purpose, and applicability.

The provisions of this chapter shall be known as the C-31 special retail commercial zone regulations. The C-31 zone is intended to create, preserve, and enhance areas with a wide range of retail establishments serving both short and long term needs in attractive settings oriented to pedestrian comparison shopping, and is typically appropriate along important shopping streets having a special or particularly pleasant character. These regulations shall apply in the C-31 zone. (Prior planning code § 4475)

17.48.020 Design review for construction or alteration.

No building, Sign, or other facility shall be constructed or established, or altered or painted a new color in such a manner as to affect exterior appearance unless plans for such proposal shall have been approved pursuant to the design review procedure in Chapter 17.136, or for signs pursuant to the sign regulations in Chapter 17.104 and the design review procedure in Chapter 17.136, or for Micro Telecommunications Facilities pursuant to the telecommunications regulations in Chapter 17.128 and the design review procedure in Chapter 17.136. However, design review approval is not required for Realty Signs, Development Signs, holiday decorations, and displays behind a display window; and it is not required, except as otherwise provided in Section 17.114.110C, for mere changes of copy, including cutouts, on signs the customary use of which involves periodic changes of copy. (Ord. 12606 Att. A (part), 2004; Ord. 11904 § 5.62 (part), 1996; prior planning code § 4477)

17.48.030 Permitted activities.

The following activities, as described in the use classifications in Chapter 17.10, are permitted, subject where applicable to the provisions of Section 17.48.070:

A. Residential Activities:

Permanent

Residential Care occupying a One-Family Dwelling Residential Facility

B. Civic Activities:

Essential Service

Limited Child-Care

Community Assembly

Community Education

Nonassembly Cultural

Administrative

Health Care

Telecommunications

C. Commercial Activities:

Convenience Sales and Service

Medical Service

General Retail Sales

General Personal Service

Consultative and Financial Service

Consumer Laundry and Repair Service

Administrative

Business and Communication Service

Retail Business Supply

(Ord. 12138 § 5 (part), 1999; Ord. 11904 § 5.30 (part), 1996; prior planning code § 4478)

17.48.040 Conditionally permitted activities.

The following activities, as described in the use classifications in Chapter 17.10, may be permitted upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134:

A. Residential Activities:

Residential Care, except when occupying a One-Family Dwelling Residential Facility

Service-Enriched Permanent Housing

Transitional Housing

Emergency Shelter

B. Civic Activities:

Utility and Vehicular

Extensive Impact

Special Health Care Civic Activities

C. Commercial Activities:

General Food Sales

Convenience Market

Fast-Food Restaurant

Alcoholic Beverage Sales
 Mechanical or Electronic Games, subject to the provisions of Section 17.102.210C
 Group Assembly
 Research Service
 General Wholesale Sales
 Automotive Fee Parking
 Animal Care
 D. Manufacturing Activities:
 Custom
 E. Agricultural and Extractive Activities:
 Plant Nursery
 Crop and Animal Raising
 F. Off-street parking serving activities other than those listed above, subject to the conditions set forth in Section 17.102.100.
 G. Additional activities which are permitted or conditionally permitted in an adjacent zone, on lots near the boundary thereof, subject to the conditions set forth in Section 17.102.110.
 (Ord. 12450 § 7, 2002; Ord. 12138 § 5 (part), 1999; prior planning code § 4479)

17.48.050 Permitted facilities.

The following facilities, as described in the use classifications in Chapter 17.10, are permitted, subject where applicable to the provisions of Section 17.48.070:

A. Residential Facilities:
 One-Family Dwelling
 Two-Family Dwelling
 Multifamily Dwelling
 B. Nonresidential Facilities:
 Enclosed
 Sidewalk Cafes, subject to the provisions of Section 17.102.335
 C. Signs:
 Residential
 Special
 Development
 Realty
 Civic
 Business
 D. Telecommunications Facilities:
 Micro, except as provided in Chapter 17.128 and Section 17.134.020(A) (23)
 (Ord. 12224 § 4 (part), 2000; Ord. 11904 § 5.34 (part), 1996; prior planning code § 4480)

17.48.060 Conditionally permitted facilities.

The following facilities, as described in the use classifications in Chapter 17.10, may be permitted upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134:

A. Nonresidential Facilities:
 Open
 B. Telecommunications Facilities:
 Mini
 Macro
 Monopole
 (Ord. 12224 § 3 (part), 2000; Ord. 11904 § 5.38 (part), 1996; prior planning code § 4481)

17.48.070 Restrictions on ground-level uses.

A. Parking and Loading at Ground Level. No off-street parking or loading area or driveway shall be located on any portion of the ground level of any lot except upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134.
 B. Nonretail Uses on the Ground Floor. No Residential Activity; Limited Child Care, Community

Assembly, Community Education, Administrative, or Health Care Civic Activity; or Medical Service, Consultative and Financial Service, Group Assembly, Administrative, or Business and Communication Service Commercial Activity shall be located on the ground floor of any building, except upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134 and except that incidental pedestrian entrances which lead to such an activity elsewhere in the building are permitted.

(Ord. 12138 § 6 (part), 1999; Ord. 12016 § 2 (part), 1997; prior planning code § 4482)

17.48.080 Special regulations applying to Commercial and Manufacturing Activities.

The total floor area devoted to Commercial or Manufacturing Activities by any single establishment shall not exceed seven thousand five hundred (7,500) square feet, except that a greater floor area may be permitted upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134. See also Section 17.102.210.

(Prior planning code § 4483)

17.48.090 Special regulations applying to the demolition of a facility containing rooming units or to the conversion of a living unit to a nonresidential activity.

See Section 17.102.230.

(Prior planning code § 4484)

17.48.100 Use permit criteria.

A conditional use permit for any use under Section 17.48.040, 17.48.060, 17.48.070, or 17.48.080 may be granted only upon determination that the proposal conforms to the general use permit criteria set forth in the conditional use permit procedure in Chapter 17.134 and to the following use permit criteria:

- A. That the proposal will not detract from the character desired for the area;
- B. That the proposal will not impair a generally continuous wall of building facades;
- C. That the proposal will not weaken the concentration and continuity of retail facilities at ground level, and will not impair the retention or creation of an important shopping frontage;
- D. That the proposal will not interfere with the movement of people along an important pedestrian street;
- E. That no driveway shall connect directly with the area's principal commercial street unless:
 - 1. Vehicular access cannot reasonably be provided from a different street or other way, and
 - 2. Every reasonable effort has been made to share means of vehicular access with abutting properties;
- F. That the amount of off-street parking, if any, provided in excess of the requirements of this code will not contribute significantly to an increased orientation of the area to automobile movement;
- G. That the proposal will conform in all significant respects with any applicable district plan which has been adopted by the City Council.

See also Section 17.102.210.

(Prior planning code § 4486)

17.48.110 Limitations on Signs, marquees, and awnings.

A. General Limitations. All Signs shall be subject to the applicable limitations set forth in Section 17.104.020. (Ord. 12606 Att. A (part), 2004; prior planning code § 4488)

17.48.120 Minimum lot area, width, and frontage.

Every lot containing a Residential Facility shall have a minimum lot area of four thousand (4,000) square feet and a minimum lot width of twenty-five (25) feet, except as a lesser area or width is allowed by Section 17.106.010. No minimum lot area or lot width is prescribed for any lot which does

not contain a Residential Facility. Every lot shall have a minimum frontage of twenty-five (25) feet upon a street, except as this requirement is modified by Section 17.106.020. (Prior planning code § 4489)

17.48.130 Maximum residential density.

Residential uses shall be subject to the same maximum density and other, related regulations as are set forth in Section 17.28.120 for the R-70 zone. (Prior planning code § 4490)

17.48.140 Maximum height.

Except as otherwise provided in Sections 17.108.020, 17.108.030 and Chapter 17.128, the maximum height of commercial buildings and other facilities shall be thirty-five (35) feet. However, the height of facilities shall be further limited, as applicable, by the provisions of Section 17.108.010 on lots lying along a boundary of the R-10, R-20, R-30, R-35, R-40, or R-50 zone. See Section 17.48.110 for maximum height of Signs, and Section 17.108.130 for maximum height of facilities within minimum yards and courts. (Ord. 11904 § 5.51, 1996: prior planning code § 4494)

17.48.150 Minimum yards and courts.

No yards or courts are generally required except as indicated below. The following minimum yards and courts shall be provided unobstructed except for the accessory structures or other facilities allowed therein by Section 17.108.130:

A. Front Yard. A front yard shall be provided, as prescribed in Section 17.108.040, in certain situations where part of the frontage on the same side of a block is in a residential zone.

B. Side Yard--Street Side of Corner Lot. A side yard shall be provided, as prescribed in Section 17.108.070, on the street side of a corner lot in certain situations where a lot to the rear of the corner lot is in a residential zone.

C. Side Yard--Interior Lot Line.

1. A side yard shall be provided along an interior side lot line, when and as prescribed in Section 17.108.080, for Residential Facilities.

2. A side yard shall be provided, as prescribed in Section 17.108.090, along an interior side lot line lying along a boundary of any of certain other zones.

D. Rear Yard.

1. A rear yard with a minimum depth of ten feet shall be provided for all Residential Facilities, except as a lesser depth is allowed by Section 17.108.110.

2. A rear yard shall be provided, as prescribed in Section 17.108.100, along a boundary of any of certain other zones.

E. Courts. On each lot containing a Residential Facility, courts shall be provided when and as required by Section 17.108.120. (Prior planning code § 4495)

17.48.160 Minimum usable open space.

Usable open space shall be provided for Residential Facilities in accordance with the same requirements as are set forth in Section 17.28.160 for the R-70 zone. (Prior planning code § 4496)

17.48.170 Buffering.

All uses shall be subject to the applicable requirements of the buffering regulations in Chapter 17.110 with respect to screening or location of parking, loading, and storage areas; control of artificial illumination; and other matters specified therein. See also Section 17.48.070. (Prior planning code § 4497)

17.48.180 Special regulations for mini-lot and planned unit developments.

A. Mini-Lot Developments. In mini-lot developments, certain of the regulations otherwise applying to individual lots in the C-31 zone may be waived or modified when and as prescribed in Section

17.102.320.

B. Planned Unit Developments. Large integrated developments shall be subject to the planned unit development regulations in Chapter 17.122 if they exceed the sizes specified herein. In developments which are approved pursuant to said regulations, certain uses may be permitted in addition to those otherwise allowed in the C-31 zone, and certain of the other regulations applying in said zone may be waived or modified. (Prior planning code § 4498)

17.48.190 Other zoning provisions.

A. Parking and Loading. Off-street parking and loading shall be provided as prescribed in the off-street parking and loading requirements in Chapter 17.116.

B. Home Occupations. Home occupations shall be subject to the applicable provisions of the home occupation regulations in Chapter 17.112.

C. Nonconforming Uses. Nonconforming uses and changes therein shall be subject to the nonconforming use regulations in Chapter 17.114.

D. General Provisions. The general exceptions and other regulations set forth in Chapter 17.102 shall apply in the C-31 zone.

E. Recycling Space Allocation Requirements. The regulations set forth in Chapter 17.118 shall apply in C-31 zone. (Amended during 1997 codification; Ord. 11807 § 3 (part), 1995; prior planning code § 4499)

[<< previous](#) | [next >>](#)



**Guidelines for Determining Project Conformity
With the General Plan and Zoning Regulations**

Adopted by the
City of Oakland
City Planning Commission

May 6, 1998

ATTACHMENT D

Amended November 3, 1999 (100-31)
Amended August 8, 2001
Amended December 5, 2001
Amended July 15, 2003
typographical changes May 28, 2004

Policy OS-10.2:

Encourage site planning for new development which minimizes adverse visual impacts and takes advantage of opportunities for new vistas and scenic enhancement.

Mitigation Measure F.1: None required.

EFFECTS OF HIGH-RISE BUILDINGS ON VIEWS AND VISTAS

Impact F.2: The Land Use and Transportation Element encourages high-rise development in Downtown Oakland. Such development could potentially block views, cast shadows, appear visually incongruous with adjacent low-rise development, and block views of the City skyline from surrounding neighborhoods. This impact is less than significant due to proposed policies addressing urban design and visual impacts in the Land Use and Transportation Element and the additional measures included in this EIR.

The “Central Business District” designation allows residential densities as high as 300 units per acre and office intensities as high as FAR 20. The Plan’s “vision” for Downtown calls for continued office growth, additional high-rise development, and creation of an attractive skyline. Redevelopment of vacant and underutilized land is encouraged. The policy emphasis on downtown, coupled with policies which discourage high-rise development elsewhere in the City, could channel more development into the downtown area. Visual impacts could be experienced both on a “micro” scale (i.e, new development could be architecturally incompatible with adjacent older buildings) and on a “macro” scale (views of the Oakland skyline could be altered, and some bay, hill, or lake views from the neighborhoods could be blocked).

The policies identified below are intended to address visual impacts resulting from the development of downtown high-rise housing and office development anticipated by the proposed Land Use and Transportation Element. Impacts are to be avoided by channeling the most intense development to the “Broadway spine,” requiring development to step back in height and intensity from adjacent open space and lower density development areas, and adopting design guidelines. The following policies are included in the project:

Policy D2.1:

Downtown development should be visually interesting, harmonize with its surroundings, respect and enhance important views in and of the downtown, respect the character, history, and pedestrian orientation of the downtown, and contribute to an attractive skyline.

Policy D81:

New large scale office development should primarily be located along the Broadway corridor south of Grand Avenue, with concentrations at 12th Street and 19th Street BART stations. The height of office development should respect the Lake Merritt edge. Small

scale offices should be allowed throughout the downtown, including in the downtown neighborhoods, when compatible with the character of surrounding development.

Policy D10.3:

Downtown residential areas should generally be within the urban and Central Business District density range. The height and bulk should be reflective of existing and desired district character, the overall city skyline, and the existence of historic structures or areas.

Policy D10.5:

Housing in the downtown should be safe and attractive, of high quality design, and respect the downtown's distinct neighborhoods and identity.

Policy D12.5:

Art should be part of the fabric of Downtown, located in public and private facilities, and in public spaces.

The policies listed above may not fully mitigate Impact F.2 to a less-than-significant level. The following additional measures are proposed to ensure that the impacts are less than significant.

Mitigation Measure F.2a: Develop guidelines or a "step back" ordinance for height and bulk for new development projects in the downtown area. Projects should be encouraged to be designed at pedestrian-scale on the street-side, with high towers or strong vertical elements stepping back from the street.

Mitigation Measure F.2b: Analyze the desired height of downtown office development and develop zoning regulations that support the preferred skyline design.

Mitigation Measure F.2c: Define view corridors and, based upon these views, designate appropriate height limits and other requirements. Views of Lake Merritt, the Estuary, and architecturally or historically significant buildings should be considered.

Impact F.2 Level of Significance After Mitigation: Less Than Significant

SCALE OF CORRIDOR MIXED USE DEVELOPMENT

Impact F.3: The Land Use and Transportation Element would set in place policies and land use designations that encourage mid-rise, pedestrian-scale mixed use development along approximately 20 miles of transit-oriented corridors within the City. Although existing General Plan designations and zoning already permit this scale and mix of development in most instances, the policy emphasis on these areas could create additional momentum for development. Development of the scale proposed by the Plan would generally have positive visual impacts but could interrupt views and create the potential for architecturally incompatible development. Potential impacts are mitigated to a less than

significant level by the proposed policies in the Land Use and Transportation Element and the additional measures identified in this EIR.

Adoption of the Element would encourage the conversion of existing commercial or vacant corridor sites to high density residential development. The impacts are generally less significant because the existing commercial and industrial uses in the corridor are less sensitive to visual change than residential uses. However, the development could be incompatible with adjacent residential uses, particularly on blocks characterized by single family homes. Larger, more dense development could obstruct views and change the character of low density residential areas.

The following proposed Land Use and Transportation Element policies address visual issues associated with future development. These policies recommend design and development review practices which ensure that new development is visually compatible with its surroundings and does not obstruct views.

Policy N1.8:

The height and bulk of commercial development in Neighborhood Center and Community Commercial areas should be compatible with that which is allowed for residential development.

Policy N3.8:

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

Policy N3.9:

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

Policy N3.10:

Off-street parking for residential buildings should be adequate in amount and conveniently located and laid out, but its visual prominence should be minimized.

Policy N8.2:

The height of development in Urban Residential and other higher density residential areas should step down as it nears lower density residential areas so that the interface between the different types of development are compatible.

The policies listed above may not fully mitigate Impact F.3 to a less-than-significant level. The following additional measures are proposed to ensure that the impacts are less than significant.

Mitigation Measure F.3a: Develop standard design guidelines for all Neighborhood Commercial areas that require continuous or nearly continuous storefronts located along the front yard setback, promote small scale commercial activities rather than large scale establishments at the ground level, restrict front yard parking lots and driveways, require small scale pedestrian-oriented signage, have a relatively low height limit, and promote the development of pedestrian friendly amenities at the street level. The standard design guidelines may be expanded to capture the unique or desired character of certain areas. (Neighborhood Working Group)

Mitigation Measure F.3b: Ensure that structures and sites are designed in an attractive manner which harmonizes with or enhances the visual appearance of the surrounding environment by preparing and adopting industrial and commercial design guidelines. (Industry and Commerce Working Group)

Mitigation Measure F.3c: Develop design guidelines for parking facilities of all types. (Transportation Working Group)

Impact F.3 Level of Significance After Mitigation: Less than Significant

CHAPTER V

IMPACT OVERVIEW

SIGNIFICANT ENVIRONMENTAL EFFECTS THAT CANNOT BE AVOIDED IF THE PROPOSED PROJECT IS IMPLEMENTED

According to CEQA Guidelines Section 15126(b), an EIR should contain a discussion of significant environmental effects that cannot be mitigated to a level of insignificance if the proposed project is implemented. This discussion should include a description of the implications related to each impact and why the project is being proposed.

Implementation of the Oakland Land Use and Transportation Element may result in unavoidable significant or potentially significant environmental effects in the following areas:

- transportation;
- public services;
- air quality;
- noise;
- wind; and
- policy consistency.

TRANSPORTATION

Development pursuant to the updated Land Use and Transportation Element would result in degradation of level of service on several roadway links. In 2015, traffic that would be generated by land uses anticipated to develop under the proposed Element would result in poor service levels at the following locations:

- Embarcadero - Oak Street to 5th Avenue (AM/PM)
- Hegenberger Road - I-880 to Doolittle Drive (AM/PM)
- Hegenberger Road - I-580 to I-880 (AM/PM)
- International (E. 14th) Boulevard - High Street to Hegenberger Road (AM/PM)
- San Pablo Avenue - I-580 to Grand Avenue (PM)
- Grand Avenue - Harrison Street to I-580 (AM/PM)

Although mitigation has been identified for some of the above roadways, some impacts could not be feasibly mitigated. Impacts on the Embarcadero segment could be mitigated through improvements planned for the Estuary area. The other roadway segments are all designated as Regional or Local Transit Streets. Improvements to transit service could result in substantially improved traffic conditions. However, there is no certainty that these improvements will be made due to the uncertainty of the availability of state and federal road improvement funds. In

the interest of a conservative assessment of environmental impacts, these impacts are considered significant and unavoidable.

PUBLIC SERVICES

Implementation of the proposed Element would result in additional development in areas where road widths, water supply and fire flows, and vegetation management provisions may be insufficient to prevent future urban wildfires. Given the combination of terrain, vegetation, urban development, climate, and earthquake hazards, future wildfires are likely. Narrow winding roads, an emergency water supply that is vulnerable to disruption, and the loss of a funding source for vegetation management mean that the potential for property damage and loss of life will remain a risk in the hill neighborhoods. This risk will become greater as additional development consistent with the Land Use and Transportation Element occurs in this area.

AIR QUALITY

The projected total population resulting from the implementation of the proposed Element may exceed ABAG's 2015 population by 7,815 persons. Since the Clean Air Plan (CAP) is based on ABAG population projections, an exceedance of ABAG projections also is an exceedance of the population values used in the CAP. With a greater population projection under the proposed Element, the population-based emissions would be greater than that assumed in the CAP. Consequently, attainment of State air quality standards would be delayed. Therefore, the proposed Element is not consistent with regional air quality planning.

Cumulative development of projects in the Downtown Showcase District and the Coliseum Showcase District would exceed Bay Area Air Quality Management District (BAAQMD) significance thresholds. Although Transportation Control Measures (TCMs) could be adopted to reduce the pollutant emissions associated with these projects, the amount of pollutant emissions would continue to exceed BAAQMD significance thresholds.

NOISE

Construction of projects in the Downtown Showcase District and the Coliseum Showcase District would generate short-term increases in noise and vibration. Although compliance with the City Noise Ordinance and implementation of noise reduction techniques would reduce these impacts, it is still possible that some noise-sensitive receptors in the immediate vicinity of specific projects in the Downtown Showcase District or the Coliseum Showcase District would experience short-term noise levels exceeding 70 dBA.

WIND

Development of high rises in the Downtown Showcase District would change wind speeds at various locations and winds would exceed the hazard criterion. Although wind speeds could be

reduced through the final siting and design of these high rises in the Downtown Showcase District, the wind-related impacts could still exceed the significance threshold.

CONSISTENCY WITH ADOPTED PLANS AND POLICIES

As described above under Air Quality, the proposed Element is not consistent with regional air quality planning (Clean Air Plan) since the population projections under the proposed Element exceed the ABAG population projections.

SIGNIFICANT IRREVERSIBLE ENVIRONMENTAL CHANGES WHICH WOULD BE INVOLVED IF THE PROPOSED ACTION IS IMPLEMENTED

Development facilitated by the proposed Land Use and Transportation Element would require an irreversible commitment of material or natural resources for building construction, such as wood, metal, petroleum, and stone. It would result in the irretrievable commitment of energy and water to support planned land uses. Development permitted by the Element would result in changes to traffic flow patterns and impacts to circulation. Additional vehicle trips due to implementation of the Element would contribute to future cumulative air quality impacts from increases in nitrogen dioxides and particulate matter.

GROWTH-INDUCING IMPACTS

Section 21100(g) of CEQA requires that an EIR assess the growth-inducing impacts of a proposed project. According to the CEQA Guidelines, the discussion should focus on the “ways in which the proposed project could foster economic or population growth, or the construction of additional housing either directly or indirectly, in the surrounding environment.”

As mentioned throughout this EIR, adoption of the Land Use and Transportation Element would induce higher levels of population and housing growth than are forecast by Association of Bay Area Governments (ABAG). The Element would serve to facilitate redevelopment Downtown, along the waterfront, at the military bases, and along transit corridors and around transit stations. Adoption of “mixed use categories” and application of these categories to more than 4,300 acres of land will provide greater flexibility for the private sector and could thereby induce development. Adoption of policies which aggressively court private investment in Oakland and state a clear commitment to Downtown and Waterfront revitalization could directly induce growth in these areas.

Up to 12,000 new households and 42,000 new jobs would be accommodated through the proposed Element. The employment growth in particular would create economic benefits for Oakland and would increase the tax base in a manner that could positively affect City services. Short-term increases in construction employment would create economic benefits and job opportunities for Oakland residents.

Although growth would occur throughout the City of Oakland, most development would occur within the roughly 5,300 acres of “change areas” designated in the Element. These areas are already urbanized and the infrastructure that serves them is largely viewed as underutilized. Some local street improvement and infrastructure (water, sewer, storm drain) replacement would be undertaken in these areas, and investment in street trees and landscaping could serve to induce additional growth. This would be considered a desirable outcome of the proposed Element, and is fully consistent with its objectives.

Many of the transportation improvements envisioned by the Element would be growth-inducing. For instance, construction of light-rail along the San Pablo Avenue/International Boulevard and Telegraph Avenue/Foothill Boulevard corridors could induce higher density housing development along these corridors. This is precisely the outcome desired by the Element, as reflected by the land use designations along the corridors. Construction of any of the transportation improvements described in the Element along I-880, the Oakland Estuary, and International Boulevard could induce growth in these areas. The benefit of preparing the Land Use Plan and Transportation Plan concurrently is that the land use designations in these areas anticipate and respond to the transportation improvements, and vice versa.

Secondary impacts associated with higher population and employment growth could result. It is conceivable that less growth could occur in Emeryville, Berkeley, San Leandro, and other nearby communities as Oakland captures a larger share of the region’s growth. Similarly, a faster growth rate in Oakland could also have “spillover” effects into neighboring communities. Secondary impacts also could include the displacement of manufacturing jobs in formerly industrial areas, and increased pressure for new housing as more jobs are created within the City. Oakland’s proposed policies direct most new housing into higher density units Downtown and along the transit corridors. Since these areas are not “traditional” residential neighborhoods, it is conceivable that there would be increased pressure to allow more housing and higher densities in the more established residential areas, in spite of the fact that the Plan recommends “maintaining and enhancing” these areas. Future land use conflicts could result as Oakland’s appeal becomes broader and the demand for residential land in established neighborhoods becomes higher.

Increased employment and shopping opportunities in Oakland and increased recognition of the waterfront as a recreational attraction and tourist amenity could increase Oakland’s appeal to visitors. This could further attract new residents to the area, and could increase traffic in and around Downtown and the Estuary. Attendant increases in the demand for City services could result.

CUMULATIVE EFFECTS

Section 15130 of the CEQA Guidelines requires the EIR to discuss significant cumulative impacts associated with the project. These include impacts that would result from the project when considered in conjunction with other projects already occurring or planned in the vicinity.

In Oakland, most cumulative impacts would be related to increases in traffic and the overall efficiency of the transportation system. As individual projects are proposed in Oakland, the City should remain cognizant of their impacts on adjacent cities and counties. Likewise, as development is proposed in adjacent jurisdictions, Oakland should remain apprised of potential impacts on its own environment and its ability to implement its General Plan.

According to the CEQA Guidelines, an analysis of cumulative impacts requires a list of past, present, and anticipated projects, or a summary of projections contained in an adopted general plan or related planning document which is designed to evaluate regional conditions. The analysis in this EIR is based on growth projections for the City of Oakland derived from the policy language in the draft Land Use and Transportation Element, as well as ABAG projections of growth for other East Bay and Bay Area communities. In this regard, the entire analysis is cumulative, in that no one specific project is analyzed in detail. Thus, cumulative impacts been considered throughout this EIR and are summarized below.

LAND USE

Cumulative land use impacts of the Element would be limited, since the Element emphasizes infill and redevelopment of already urbanized land, rather than development of open space or farmland. When viewed in a regional context, the cumulative land use impacts would be positive. By encouraging a more compact, transit-oriented development pattern, and by focusing development on underutilized land, less land would be required for urban development within the Bay Area. The Element would contribute to regional efforts to promote "sustainable" development and is generally consistent with the general plans of neighboring communities in its emphasis on revitalization, transit-oriented development, and conservation of open space.

TRANSPORTATION

Increased population and employment in Oakland would contribute to traffic volumes on local and regional roadways and would contribute to degradation of levels of service on roadway segments and at key intersections. The development contemplated under the Land Use and Transportation Element would primarily be urban infill and would, in general, generate relatively less vehicle traffic and relatively greater use of transit and other alternative travel means than would comparable development in less dense regions of the Bay Area. Nevertheless, the higher-intensity land use that would occur under the proposed Element in many of the "change areas" would contribute to increased traffic congestion and delay.

POPULATION, HOUSING, AND EMPLOYMENT

The Plan could have a significant cumulative impact on population, housing, and employment, but the magnitude of this impact is difficult to predict. ABAG's Year 2015 projections currently indicate that Oakland will capture 6.4 percent of the 350,000 jobs to be added in the East Bay

between 1995 and 2015. As a result of the policies in the proposed Element, Oakland could capture a greater share of the East Bay's population and employment growth, or the East Bay could add more people and jobs because of Oakland's growth, or the entire region could grow faster than expected, with other communities also growing faster than ABAG projected. Under the proposed Element, Oakland's job capture rate could rise to 12 percent, or the total number of jobs could rise to 372,000 (with Oakland capturing 42,000 jobs) or more. Similar impacts could occur for housing, although the difference between the ABAG projections and Oakland's projections is much smaller.

PUBLIC SERVICES

Oakland's growth represents a portion of the growth anticipated within the East Bay Municipal Utility District (EBMUD) water and sewer service area and the Alameda County Waste Management Authority solid waste service area. Oakland's plans to add jobs and housing must be considered in the context of other communities' plans within these service areas. The impact of the proposed Element and other plans would be cumulatively significant if they presented population and employment forecasts that were greater than EBMUD's or Alameda County's projected capacity. *Based on the analysis contained in the EIR text, this does not appear to be the case.* However, water conservation and solid waste recycling are essential if projected service demand is to be met.

Other services analyzed in the EIR, including drainage, police, fire, schools, libraries, and parks are provided at the local level. Cumulative impacts could result if, in addition to the proposed Element, other plans and programs draw an increasing number of residents, workers, and visitors to Oakland. *Mitigation measures for such plans and programs would need to consider the projections established by this EIR and determine whether they fall within the assumed increment of growth.* Although extensive mitigation measures are called for in this EIR, additional and more specific measures may be needed as projects are proposed.

AIR QUALITY

Because of the increase in the number of vehicle trips expected as a result of development under the proposed Element, the amount of vehicular emissions of criteria air pollutants also would increase. In conjunction with other development in the Bay Area, development pursuant to the Land Use and Transportation Element would contribute to increases in criteria air pollutants within the air basin. This could impede attainment of state and federal air quality standards. Cumulatively, the projects within the Downtown Showcase District would contribute to increases in emissions of criteria air pollutants in downtown Oakland. This is considered to be a significant impact of the proposed Element.

VISUAL AND AESTHETIC CONDITIONS

The cumulative impact of the proposed Element and other plans in the region would be that Oakland would be visually perceived as a more urban place. Its skyline would be more pronounced, its waterfront would be more visually distinctive, and its gateways would be more memorable. With high-density development, its corridors would take on a visual character that would more clearly distinguish Oakland from other cities in the East Bay. Even with these changes, because Oakland is largely built out, the changes in visual quality would be incremental. *Because the Plan does not proposed urbanization of large open space areas, there would not be cumulative impacts associated with urban sprawl. The impacts would be related to increasing density rather than urbanization of open land.*

CULTURAL AND HISTORIC RESOURCES

Impacts to historic and archaeological resources are occurring throughout the region and would continue to occur as long as growth and redevelopment occur within the Bay Area. Oakland contains a large share of the region's historic resources, and the loss of these resources could be regarded as significant within a regional as well as local context. The City's plans and policies emphasize the preservation and restoration of historic resources.

VEGETATION AND WILDLIFE

Development consistent with the Land Use and Transportation Element would occur concurrently with development throughout the Bay Area. The cumulative effect of this development on vegetation and wildlife would be to reduce the amount of habitat and increase the potential for the loss of rare, threatened, and endangered species. Mitigation measures in this EIR emphasize a regional approach to habitat management, including coordination with other jurisdictions on habitat conservation. Because Oakland is already substantially built out, the City's contribution to regional effects on vegetation and wildlife would be relatively small.

HYDROLOGY AND WATER QUALITY

Water quality impacts can be regional in nature, particularly concerning water quality of San Francisco Bay and other "receiving" waters that receive storm water runoff. Runoff from Oakland would contribute to effects on the Bay.

ENERGY

Implementation of the Element would contribute to the cumulative use of energy in the Bay Area and the depletion of non-renewable resources. Although the patterns of development encouraged by the Plan are relatively energy-efficient, compared to suburban development that is less well-served by transit, population and employment growth will inevitably result in larger amounts of overall energy consumed.

GEOLOGY AND SEISMICITY

Geologic concerns are largely site- or area-specific. The primary regional effect would be the increased population (both resident and employee) that would be subject to earthquake hazards, particularly those associated with the Hayward Fault. Regional growth, with or without implementation of the Land Use and Transportation Element, will continue to increase the number of persons in the Bay Area who could be subject to earthquake-induced property damage, injury, and death.

NOISE

Urban noise effects are generally relatively localized, resulting from traffic and from particular land uses, such as industrial facilities. Development that would occur under the Land Use and Transportation Element would increase traffic noise on key roadways within Oakland, and would contribute, albeit in a relatively incremental manner, to vehicle noise on regional roadways and freeways.

HAZARDOUS MATERIALS

Enhanced business activity under the Land Use and Transportation Element could increase both the use and disposal of hazardous materials. This would incrementally increase potential for accidental exposure, and would also incrementally increase demand for disposal sites, particularly for construction debris such as asbestos-containing materials.

EFFECTS FOUND NOT TO BE SIGNIFICANT

The following impacts were determined to be less than significant, based on the analysis contained in this EIR. The chapters referenced below provide the reasons and discuss the determination:

- Mixed use development could create a greater likelihood for conflicting uses within projects or between projects and adjacent uses (A.3);
- Future transportation improvements could have land use impacts (A.4);
- Development consistent with the proposed Element would increase transit demand (B.2);
- Development consistent with the proposed Element will result in a higher number of households than are projected by ABAG (C.1)
- Redesignation of 45 acres to Housing-Business Mix could result in displacing some housing units (C.3);
- Development consistent with the proposed Element would increase the demand for water in Oakland (D.1-1);

- Implementation of the Element would increase flows to the wastewater treatment plant (D.2-1);
- Implementation of the Element would require drainage improvements within already developed flatland neighborhoods (D.3-1);
- Development consistent with the proposed Element would increase the demand for park services (D.9-1);
- Implementation of the Element would be consistent with *Clean Air Plan* Transportation Control Measures (E.2);
- Implementation of the Element would result in traffic increases along roadways in the City which could result in localized air quality impacts (E.3);
- Cumulative development of projects in the Downtown Showcase District would result in traffic increases that could result in long-term, localized air quality impacts (E.7);
- Cumulative development of downtown projects would result in increased stationary source emissions associated with heating and electricity consumption (E.8);
- Cumulative development of projects in the Coliseum Showcase District would result in traffic increases that could result in long-term, localized air quality impacts (E.11);
- Cumulative development of Coliseum projects would result in stationary source emissions associated with heating and electricity consumption (E.12);
- The proposed Element allows development that could alter existing scenic resources (F.1);
- Development facilitated by the Element could affect paleontologic resources (G.1);
- The proposed Element could result in development that has an indirect affect on historic buildings (G.4);
- Live-work development encouraged by the Element could impact historic structures (G.5);
- Development consistent with the Element could damage or remove potential habitat for special status animal species (H.1);
- Development consistent with the Element could result in greater levels of noise, traffic, lighting, urban runoff, and human activity on lands adjacent to areas that have wildlife habitat (H.2);
- Development consistent with the Element could damage or remove potential habitat for special status plant species as well as mature trees (H.3);
- The proposed Element would result in increased development activity at various locations throughout the City, including locations adjacent to creeks and waterways, which could result in water quality impacts during construction (I.1);
- The proposed Element would result in increased development activity that could alter drainage patterns, could increase impermeable surfaces leading to increased volume of runoff, and could potentially affect quality of stormwater runoff (I.2);

- Development consistent with the Element would result in a marginal increase in energy consumption (J.1);
- Existing soil conditions at various locations throughout the City could cause structural damage to new and existing buildings unless properly constructed (K.1);
- Development consistent with the Element would occur in areas subject to geologic hazards including steep slopes, high erosion potential, and landsliding and mudsliding (K.2);
- Grading during construction of individual projects in hillside areas could increase the potential for erosion and could cause clogging of local culverts, decrease downstream channel capacity, and degrade water quality (K.3);
- In the event of an earthquake, damage could occur to structures, foundations, and underground utilities from surface fault rupture (K.4);
- In the event of an earthquake, damage could occur to structures, foundations, and underground utilities as a result of strong ground shaking or ground failure (liquefaction, densification, or landsliding) (K.5);
- Implementation of the proposed Element would increase noise levels along streets throughout the City (L.1);
- Redesignation of some segments of major transportation corridors from commercial to urban density residential uses could pose noise compatibility problems for residential uses (L.2);
- Proposed General Plan map changes could allow development of light manufacturing, wholesale, business, commercial or mixed uses in areas designated for "Housing Business Mix," posing potential future noise compatibility problems (L.6);
- Implementation of the downtown projects would result in noise increases along local roadways serving the proposed project (L.9);
- Future (2005) cumulative noise levels along downtown streets could increase to levels that are considered conditionally acceptable for retail commercial, office, and residential uses (L.10);
- Development of projects in the Coliseum Showcase District would result in noise increases along local roadways serving the proposed project (L.12);
- Depending on proximity of future development to I-880 and selected roadways in the Coliseum area, noise levels could be conditionally acceptable for retail commercial or office uses (L.13);
- Proposed land use changes include a change to mixed uses that would allow housing as well as commercial operations that may use of hazardous materials (M.1);
- Development under the proposed Element could result in an increase in the quantities of hazardous substances used, stored, and transported (M.2);
- The proposed Element would increase the potential for demolition and renovation activities of buildings that could contain hazardous building materials and demolition or

renovation could result in exposure to hazardous building materials, such as asbestos, lead, mercury or PCBs, with associated public health concerns (M.3);

- The proposed Element could result in construction activities that encounter contaminated soil or groundwater (M.4);
- The proposed Element would be consistent with federal policies and programs (O.1);
- The proposed Element would be consistent with state policies and programs (O.2); and
- The proposed Element would be consistent with policies and programs of adjoining jurisdictions (O.4).

The following impacts were determined to be less than significant, based on the City's Initial Study (see Appendix 1):

- *major changes in topography or ground surface relief features (2);*
- *changes in deposition or erosion that change siltation (7);*
- *change in climate (11);*
- *change in groundwater quality (12);*
- *introduce new species of plants and animals (15);*
- *deteriorate existing aquatic habitat (16); and*
- *produce new light and glare (19).*

Because the prior designations set no upper limit on development intensity, and because the “Commercial” designation allowed the same mix of uses as the new designation, the effect of this change would not be significant.

The corridors would generally be reclassified from unbroken commercial strips to “Urban Residential,” “Neighborhood Center Mixed Use,” and “Community Commercial” segments. Depending on how zoning is structured, some existing commercial uses (such as automotive services) could eventually become non-conforming. In a limited number of areas, including parts of the major transit corridors, the range of allowable uses in areas redesignated as Neighborhood Centers could be more narrowly defined than it is presently. The arrival of new urban residential development on commercial corridors could create land use compatibility conflicts and increase the demand for public services and transit along the corridors.

Most of the shopping centers on major transit corridors would be reclassified as “Community Commercial;” those on regional transportation corridors would be reclassified as “Regional Commercial.” The effect would not be significant, as the complement of allowable uses would not change under the new designation. Shopping “districts” away from the corridors, such as Montclair and Grand-Lakeshore, would be designated as “Neighborhood Center Mixed Use.” Again, the changes would not be significant unless substantial provisions for new housing were made in the revised zoning designations for these areas.

Commercial land around the Airport Gateway would be reclassified as “Regional Commercial” and “Business Mix.” The Regional Commercial areas would correspond to the Coliseum and Hegenberger Corridor, while the Business Mix areas would correspond to the business parks and quasi-industrial areas along 98th Avenue. The change would not significantly impact existing or planned commercial uses, as both the Business Mix and Regional Commercial categories are defined broadly enough to accommodate all of the existing commercial uses in this area.

Floor area ratios are specified in all of the proposed General Plan designations, while no floor area ratios were included in the old General Plan “commercial” category. Although the environmental impact of this change is less than significant, it does have implications for future zoning of these areas.

Manufacturing or Wholesaling

Most of the areas designated as “Manufacturing or Wholesaling” on the 1980 General Plan map are being reclassified as “Business Mix,” “Housing and Business Mix,” “Waterfront Mixed Use,” and “General Industrial/ Transportation.” The proposed changes will distinguish different types of industrial land based on relative impacts and compatibility with other uses, particularly residential uses.

Most of the manufacturing areas in West Oakland have been redesignated as “Business Mix”, although a few areas are designated “Housing/ Business Mix.” Zoning consistent with this designation could limit the range of heavy manufacturing uses allowed in these areas but would allow greater flexibility for commercial use and place a greater emphasis on buffering and performance standards. Areas designated as “Housing/ Business Mix” could accommodate additional residential and live-work development. Zoning changes that implement the Housing/Business Mix designation would include standards that avoid future conflicts and mitigate existing conflicts where industry and housing abut one another.

Manufacturing/wholesale areas along the waterfront have been replaced with a ‘Waterfront Mixed Use designation.’ Because this classification allows residential and commercial uses, potential land use conflicts could arise in the future. Moreover, the emphasis on mixed uses (and gradual transition of this area to higher-value land uses) could create economic pressures which make it more costly for industry to operate in the waterfront area. These conditions are specifically addressed through Plan policies.

Transportation

The “Transportation” classification in the 1980 Plan is being replaced with a “General Industry/ Transportation” classification. The uses allowed are substantially the same (General industry is an accepted use in the “Transportation” category). The new category includes a floor area ratio limit, but this limit is not expected to change the type or intensity of development that occurs in industrial and transportation areas. The new category will be applied not only to those areas formerly designated for “Transportation” but to many of the areas formerly designated for “Manufacturing and Wholesaling.” Impacts of this change are less than significant.

Institutional and Open Space Areas

The 1980 General Plan category for “Institutional or Government” land will be replaced with a new “Institutional” category. *The categories are basically the same and are being applied to the same general areas.* A floor area ratio limit, which did not exist previously, will be established, but the effect is not significant. The 1980 General Plan category for “Park, Recreation, or Natural Area, or Watershed” will be replaced with an “Park and Urban Open Space” category and a “Resource Conservation Area” category. The change is consistent with the adopted OSCAR Element of the Oakland General Plan and is a less-than-significant impact.

Land Use and Transportation Element Policies

The “project” evaluated in this EIR includes both the map changes described above and the goals, objectives, and policies contained within the Draft Element. Potentially significant impacts relating from the new land use classification system are generally precluded by the

goals, objectives, and policies. Policies and “area view” maps in the Element describe the character and type of development envisioned in various parts of the City, and propose zoning revisions that implement the Plan’s “maintain and enhance” strategies for various areas. The following specific policies address this issue:

Policy I/C4.1:

Existing industrial, residential, and commercial activities and areas which are consistent with long-term land use plans for the City should be protected from the intrusion of potentially incompatible uses.

Policy W12.7:

The existing residential communities within and adjacent to the waterfront should be supported and enhanced.

Policy N1.8:

The height and bulk of commercial development in Neighborhood Center and Community Commercial areas should be compatible with that which is allowed for residential development.

Policy N3.8:

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

Policy N7.1:

New residential development in Detached Unit and Mixed Housing Type areas should be compatible with the density, scale, design, and existing or desired character of surrounding development.

Policy N7.2:

Infrastructure availability, environmental constraints and natural features, emergency response and evacuation times, street width and function, prevailing lot size, predominant development type and height, scenic values, distance from public transit, and desired neighborhood character are among the factors that could be taken into account when developing and mapping zoning designations or determining compatibility.

Policy N7.3:

Require at least 8,000 square feet of lot area per dwelling unit when land in the hill area is being divided. Lots smaller than 8,000 square feet may be created only when this ratio is being maintained for the parcel being divided.

Priority Implementation Agenda Item b1:

The zoning ordinance should be revised to implement the land use and transportation policies and to reflect the new land use diagram and classification system. Undertaking this action will require the development of criteria and standards which address and mitigate the potential for land use conflicts and compatibility problems.

Priority Implementation Agenda Item c2:

Economic development strategies are recommended in the waterfront, airport, downtown, Coliseum area, and seaport areas. Each of these strategies would contain more specific detail on business retention and attraction in these areas.

The policies listed above may not fully mitigate Impact A.1 to a level of insignificance. The following additional measures are proposed to ensure that the impacts are less than significant.

Mitigation Measure A.1a: Establish performance based standards which designate appropriate levels of noise, odors, light/glare, traffic volumes, or other such characteristics for industrial activities located near commercial or residential areas. (Industry and Commerce Working Group)

Mitigation Measure A.1b: Develop “performance” zoning regulations which permit industrial and commercial uses based upon their compatibility with other adjacent or nearby land uses. (Industry and Commerce Working Group)

Mitigation Measure A.1c: Develop strategies to mitigate conflicts associated with live/ work and home occupation uses. (Downtown Working Group)

Mitigation Measure A.1d: During the revision of the zoning ordinance and map, develop zoning district definitions and map boundaries to protect enclaves of lower density residential development that may be designated for more inclusive density categories on the Land Use and Transportation Diagram. Use the General Plan Strategy Diagram (Figure 3) as a means of making these determinations.

Mitigation Measure A.1e: During the revision of the zoning ordinance, develop a one acre minimum lot size zoning district. Consistent with the recommendations of the OSCAR Element, apply this district to appropriate areas of the Oakland Hills as a means of maintaining and enhancing neighborhood character.

Impact A.1 Level of Significance After Mitigation: Less Than Significant

CHANGES TO THE OAKLAND GENERAL PLAN MAP

Impact A.2: Land Use Diagram changes could facilitate the redevelopment of large parts of the City, including military bases, transit corridors, the Coliseum area, the Estuary shoreline, and Downtown. Implementation of the proposed Land Use and Transportation Element would change the allowable land uses in a number of locations within the City. Subsequent zoning changes could result in designations that are inconsistent with the existing uses. Zoning changes consistent with the proposed Element could render some uses non-conforming. This would be a less-than-significant impact, since it is mitigated by proposed policies in the Land Use and Transportation Element and the additional measures identified in this EIR.

Land Use Diagram Map changes for each Planning Area are summarized in Tables III.A-2 through III.A-7. These changes are further discussed in the paragraphs below. Eight specific types of potential land use impacts associated with Impact A.2 have been identified. These are referenced in the table (as Impacts A.2a through A.2h) and are discussed in greater detail at the end of this section. Each type of impact is mitigated by policies in the Draft Plan.

West Oakland/Harbor

Major land use designation changes in West Oakland are summarized in Table III.A-2. The map reduces the General Plan density in most West Oakland neighborhoods to be more consistent with existing densities. Allowable density would be increased only in those areas where high density development already exists (for instance, at Acorn and Peralta Village). The most significant map changes are the redesignation of part of the Army Base to Business Mix, the change of several blocks formerly designated as "Manufacturing/ Wholesaling" to "Mixed Housing Type Residential," the redesignation of portions of the San Pablo corridor from "Commercial" to "Urban Density Residential," and the classification of some formerly industrial areas as "Housing/ Business Mix." Table III.A-2 indicates those areas where the proposed change reflects existing land uses and areas where the proposed change reflects a policy decision to encourage a new land use.

The potential impacts associated with these changes have been classified in eight categories and are discussed at the end of this section (Impacts A.2a through A.2h). In each category, Plan policies mitigate potentially significant impacts.

Central/Chinatown

The primary land use impacts in Central/ Chinatown are associated with the application of the more general "Central Business District" and "Waterfront Mixed Use" designations to the areas south of Grand Avenue. Five residential enclaves have been redesignated from Urban Density Residential to Central Business District. Plan policies direct the City to protect these areas from intrusion by incompatible uses. In the Jack London area, former manufacturing and commercial

**TABLE III.A-2
POTENTIAL LAND USE IMPACTS ADDRESSED BY PLAN POLICIES IN WEST OAKLAND/ HARBOR**

Area	Map Legend #	1980 Plan designation	Existing Zoning	Existing Land Use (1997)	Proposed Plan designation	Potential Impacts to be addressed by Plan Policies	Comments
Vacant Industrial land west of East Bay Bridge Shopping Center	1	Manufacturing/Wholesaling	M-40	Vacant	Regional Commercial	See A.2e	Same GP change also applies to East Bay Bridge Ctr., reflecting existing development.
Area bounded by 32nd, 580, Mandela and Adeline, excluding area south of 33rd from Hollis to Mandela.	2	Industrial	M-30	Mostly industrial, scattered res/vacant land	Housing-Business Mix	See A.2c	Area south of 33rd b/w Hollis and Mandela to remain residential
San Pablo Avenue - from 30th Street to 580	3	Commercial	C-30,-40	Commercial/ indus.	Urban Density Residential	See A.2a	
- from 26th Street to 980	4	Commercial	C-30,-35	Mostly commercial	Urban Density Residential	See A.2a	
Martin Luther King Jr Way - from 29th Street to 580	5	Medium Density Residential	R-50	Mixed single family and 2-4 unit res	Urban Density Residential	See A.2b	
Martin Luther King Jr Way - from 29th Street to 980	6	Commercial	C-30,-35	Mostly commercial, some multi-family	Urban Density Residential	See A.2a	
Martin Luther King Jr Way - w/ side street, Grand to 21st	7	Manufacturing	R-50	Commercial, vacant industry, residential	Mixed Housing Res	See A.2e	
Adeline Street, 28th to 32nd	8	Manufacturing	M-20/ R-36	Mfg on w/ side Res on e/ side	Mixed Housing Res	See A.2e	
Market Street, West Grand to 28th St	9	Manufacturing on w/ side of strt. Commercial on e/ side of street	M-20/ C-30	Commercial and residential, with industry b/w Filbert and Myrtle	Mixed Housing Res	See A.2e	

TABLE III.A-2 (Continued)
POTENTIAL LAND USE IMPACTS ADDRESSED BY PLAN POLICIES IN WEST OAKLAND/ HARBOR

Area	Map Legend #	1980 Plan designation	Existing Zoning	Existing Land Use (1997)	Proposed Plan designation	Potential Impacts to be addressed by Plan Policies	Comments
<i>Other West Oakland proposed land use changes with less than significant impacts (not mapped):</i>							
Finger piers at FISCO	--	Transportation	M-40	Military Base Wharves	Parks/ Urban Open Space	None	Access, toxics issues to be covered by FISCO EIR
EBMUD Wastewater plant	--	- Institutional	M-40	Wastewater Plant	-Gen.Ind/Trans	None	No land use changes are proposed in these areas.
EBMUD Grand Ave facilities		- Institutional	M-20	Maint Yd/ Offices	- Business Mix		
Post Office Bulk Mail facility		- Institutional	S-2	Bulk Mail Facility	- Business Mix		
Oakland Army Base	--	Transportation	M-40	Military Base	Business Mix Gen Industry/ Transportation	None	Separate environmental review process underway.

SOURCE: CEDA, 1997

**TABLE III.A-3
POTENTIAL LAND USE IMPACTS ADDRESSED BY PLAN POLICIES IN CENTRAL / CHINATOWN**

Area	Map Legend #	1980 Plan designation	Existing Zoning	Existing Land Use (1997)	Proposed Plan designation	Potential Impacts to be addressed by Plan Policies	Comments
Jack London Waterfront		Manufacturing/	M-20, M-	Manufacturing,	Waterfront	See A.2c	Estuary Plan subject to separate environmental review process
- Off-price retail area	1	Wholesaling	30, M-45	wholesaling, off-price retail, loft housing, office	Mixed Use		
- Produce district/ Loft housing area	2						

SOURCE: CEDA, 1997

**TABLE III.A-4
POTENTIAL LAND USE IMPACTS ADDRESSED BY PLAN POLICIES IN SAN ANTONIO/ FRUITVALE/ LOWER HILLS**

Area	Map Legend #	1980 Plan designation	Existing Zoning	Existing Land Use (1997)	Proposed Plan designation	Potential Impacts to be addressed by Plan Policies	Comments
International Blvd, 15th Av to 22nd Av	1	Commercial	C-28	Mostly comm., some res. and ind.	Urban Density Res	See A.2a	
Foothill Blvd, 33rd Av to High St	2	Commercial	C-30	Mostly comm, SF res, some MF res	Urban Density Res	See A.2a	
MacArthur Blvd, Lincoln to Midvale	3	Commercial and Medium Density Residential	C-25	Mixed SF/ MF residential and some commercial	Urban Density Res	See A.2a	
Oakland School District land, 1st Av to 3rd Av between E 12th and E 10th	4	Institutional	S-2/ S-4	Admin offices, warehouses, maint. yards	Urban Density Res	See A.2a	
Estuary Shoreline, Tidal Channel to 9th Avenue Terminal	5	Transportation	M-40	Marine terminals, industry, live-work, commercial	Waterfront Mixed Use	See A.2c	Estuary Plan subject to separate environmental review process
Estuary Shoreline, 22nd Ave to East Creek Slough	6	Manufacturing or Wholesaling	M-40	Mostly industry, some res/comm	Waterfront Mixed Use	See A.2c	Estuary Plan subject to separate environmental review process
<i>Other San Antonio- Fruitvale- Lower Hills proposed land use changes with less than significant impacts (not mapped):</i>							
E.12th St. to SPRR, 2nd Av to 14th Av	--	mix of Mfg., Comm, High Density Res.	Mix of C-30, C-40, R-50	Mostly industrial, heavy commercial, scattered residential	Housing Business Mix	None	Change reflects existing land use pattern
San Leandro St. to SPRR, Fruitvale to 37th Av	--	High Density Residential	R-50	Very intermixed housing, industry	Housing-Business Mix	None	Change reflects existing land use pattern

SOURCE: CEDA, 1997

**TABLE III.A-5
POTENTIAL LAND USE IMPACTS ADDRESSED BY POLICIES IN EAST OAKLAND (INCLUDING ELMHURST AND AIRPORT)**

Area	Map Legend #	1980 Plan designation	Existing Zoning	Existing Land Use (1997)	Proposed Plan designation	Potential Impacts to be addressed by Plan Policies	Comments
Bancroft to Bond, between 42nd and High Foothill Blvd	1	Low-Medium Density Res	R-40	Mostly residential	Community Commercial	See A.2f	
- S.side, High St. to 50th Av	2	Commercial	C-30	Mostly commercial	Urban Density	See A.2a	
- S.side, Cole to Avenal	3	Commercial	C-30	Mixed comm/ res	Res		
- S.side, 60th to Camden	4	Commercial	C-30	Mostly MF/ some commercial			
International Blvd.							
- 47th to 54th Av	5	Commercial	C-40	Commercial	Urban Density	See A.2a	
- E. Side, 62nd to 67th Av	6	Commercial	C-40	Comm, some res	Res		
- 75th Av to 81st Av	7	Commercial	C-40	Comm, some res			
- 84th Av to 90th Av	8	Commercial	C-40	Commercial			
85th to 90th Av, b/w E and G St.	9	Manufacturing/ Wholesaling	M-20	2 blocks housing, 3 blocks industry	Housing-Business Mix	See A.2c	
San Antonio Villa and adjacent manufacturing building (on the north)	10	High Density Residential and Mfg/ Whosal.	R-70/ M-30	Public housing/ industrial building	Housing-Business Mix	See A.2c and A.3d	
Pippin St, Stone to Moorpark	11	Low Medium Density Res	R-50	Mostly SF res	Housing-Business Mix	See A.2d	
Coliseum BART Parking Lot	12	Institutional	M-20	Parking Lot	Community Commercial	See A.2g	
Area between High Street and PG&E Oakport Service Center west of I-880	13	Manufacturing/ Wholesaling	M-40	Tidewater Business Park (industry)	Waterfront Mixed Use	See A.2c	Estuary Plan subject to separate environmental review process
PG&E and EBMUD properties on Oakport, north of 66th Av	14	Manufacturing/ Wholesaling	M-40	Utility operations/ maintenance yards	Waterfront Mixed Use	See A.2g	Estuary Plan subject to separate environmental review process

TABLE III.A-5 (Continued)
POTENTIAL LAND USE IMPACTS ADDRESSED BY POLICIES IN EAST OAKLAND (INCLUDING ELMHURST AND AIRPORT)

Area	Map Legend #	1980 Plan designation	Existing Zoning	Existing Land Use (1997)	Proposed Plan designation	Potential Impacts to be addressed by Plan Policies	Comments
7.7 acres at northwest corner of I-880 and 66th Avenue	15	Park, Recreation, Natural Area	M-40	Vacant land	Waterfront Mixed Use	See A.2g	Estuary Plan subject to separate environmental review process
<i>Other East Oakland proposed land use changes with less than significant impacts (not mapped):</i>							
MacArthur Blvd. - Parker to Castlemont High - Castlemont to 89th Av - 92nd to 96th Av - Warner to Foothill	--	Commercial Commercial Commercial Commercial	R-50/C-10 R-50 R-50 R-50	MF Res, commer. Comm, residential Comm, res, vacant Motels, MF res	Urban Density Residential	None	New plan designation is consistent with already approved changes in Elmhurst-MacArthur study and rezonings
45th to 47th Av, between International Blvd and Foothill	--	Low Medium Density Residential	R-70	MF Residential	Urban Density Residential	None	New designation reflects existing uses
International Blvd - 104th Av to San Leandro City	--	Manufacturing/Wholesaling	M-20	Auto plant converted to retail and live-work	Community Commercial	None	New designation reflects existing uses
Oakland Coliseum	--	Institutional	C-36	Oakland Coliseum	Regional Commercial	None	Change anticipates future retail-entertainment use
South side Hegenberger between railroad and Baldwin	--	Manufacturing/Wholesaling	C-40	Light industry/institutional	Regional Commercial	None	New designation reflects existing use

SOURCE: CEDA, 1997

**TABLE III.A-6
POTENTIAL LAND USE IMPACTS ADDRESSED BY PLAN POLICIES IN NORTH AND SOUTH HILLS**

Area	Map Legend #	1980 Plan designation	Existing Zoning	Existing Land Use (1997)	Proposed Plan designation	Potential Impacts to be addressed by Plan Policies	Comments
Oak Knoll Naval Hospital	1	Institutional	R-30	Naval Hospital, housing, and open space	Institutional, Hillside Res, Commercial, Urban Park, and RCA	--	Separate environmental review underway for re-use plan. Analysis not included in Land Use and Transportation Element
Base of Leona Quarry	2	Park, Recreation, or Natural Area	R-50	Quarry	Regional Commercial	See A.2h	Separate project-level environmental impact analysis to be required for this site.
<i>Other North and South Hills proposed land use changes with less than significant impacts (not mapped):</i>							
Open Space Acquisitions:	--						
- Upper Claremont Canyon		Suburban	R-30	All sites listed are undeveloped hillside open space	Resource Conservation Area	None	Map change reflects City acquisition of these properties as parkland
- Grizzly Peak Estates		Residential or	R-10				
- Beaconsfield Canyon		Low Density	R-30				
- Meyer and Boyle properties		Residential	uninc.				
- Leona Open Space			R-30				
- Ridgemont Open Space			R-30				
- Dunsmuir Ridge			R-30				
EBMUD tank site adjacent to Dunsmuir Ridge	--	Commercial	S-4	EBMUD reservoir and open space	Resource Conservation	None	Change reflects existing land use
Neighborhood Centers							
- Clarewood at B'way Terrace	--	Low Density Residential	C-10	Neighborhood retail centers	Neighborhood Center Mixed Use	None	Change reflects existing neighborhood centers not acknowledged on 1980 Plan Map.
- Thornhill at Grisborne			C-20				
- Joaquin Miller at Mountain			C-20				

SOURCE: CEDA, 1997

**TABLE III.A-7
POTENTIAL LAND USE IMPACTS ADDRESSED BY PLAN POLICIES IN NORTH OAKLAND**

Area	Map Legend #	1980 Plan designation	Existing Zoning	Existing Land Use (1997)	Proposed Plan designation	Potential Impacts to be addressed by Plan Policies	Comments
Martin Luther King Junior Way							
- West MacArthur to I-580	1	Commercial	C-40	Mixed res/ comm	Urban Density	See A.2a	
- 42nd St to 47th St	2	Commercial	C-10/ C 30	Mostly comm	Residential		
Shattuck Av							
- E Side, Hwy 24 to 52nd	3	Med Dens Res	R-70	Residential	Neigh Ctr	See A.2f	
- W. Side, Hwy 24 to Telegraph	4	Med Dens Res	R-50/ R-70	Mixed Commercial and Residential	Mixed Use Neigh Ctr Mixed Use	See A.2f	
Telegraph Ave, 63rd to MacAuley	5	Commercial	C-28	Mixed commercial and residential	Urban Density Residential	See A.2a	Map changes on other portions of Telegraph reflect existing conditions.
40th Street, Webster to Opal	6	Commercial	C-30	Commercial, public	Urban Density Residential	See A.2a	
MacArthur BART parking lot	7	Institutional	R-70	Parking lot	Neigh Ctr Mixed Use	See A.2g	
<i>Other North Oakland proposed land use changes with less than significant impacts (not mapped):</i>							
West side of College Avenue, City of Berkeley to Chabot Rd	--	High Density Residential	C-31	Commercial	Neigh Ctr Mixed Use	None	Map change reflects existing conditions
Telegraph Av - 59th to Aileen St - Highway 24 to Claremont - W/ side, Shattuck to 40th	--	Commercial High Dens Res. Med Dens Res.	C-28 C-28/R-70 C-28	Mostly MF res Mostly Comm Commercial	Urb. Dens Res Comm. Comm. NC Mixed Use	None	Map change reflects existing conditions

SOURCE: CEDA, 1997

areas have been designated Waterfront Mixed Use. These areas are identified in Table III.A-3. In the area north of Grand Avenue, the major changes are density reductions in Adams Point and Richmond Boulevard areas.

The potential impacts associated with these changes have been classified in eight categories and are discussed at the end of this section (Impacts A.2a through A.2h). In each category, Plan policies mitigate potentially significant impacts.

San Antonio/Fruitvale/Lower Hills

Most of the map changes are proposed in the area between International Boulevard and the Estuary shoreline. The most significant proposed change is the redesignation of the application of a "mixed use" designation on several hundred acres along the shoreline previously designated as "Manufacturing or Wholesaling." The most probable effect of this change would be the introduction of housing and commerce into previously industrial or maritime areas. Some of the corridor between I-880 and International Boulevard, currently developed with commercial and manufacturing uses with pockets of residential uses, has been reclassified as "Housing-Business Mix." Segments of the Foothill, MacArthur, and International Boulevard corridors--each about eight blocks in length--have been redesignated from "Commercial" to "Urban Density Residential." Table III.A-4 summarizes these changes and indicates those areas where the proposed change reflects existing land uses and those areas where the change reflects a policy decision to encourage a new land use.

In addition to the changes shown in the Table, the proposed Map would lower the allowable density in large parts of San Antonio, Fruitvale, and the Lower Hills. Portions of the Rose Garden neighborhood, Highland Hospital area, South Dimond Park area, Fruitvale corridor, and the area east of Franklin School would be redesignated from High Density Residential to Mixed Housing Type Residential. Some of the areas previously designated for Low-Medium Density Residential development, including parts of Glenview, China Hill, Brookdale Park, Laurel, and Dimond, would be redesignated for Detached Unit Residential development.

The potential impacts associated with these changes have been classified in eight categories and are discussed at the end of this section (Impacts A.2a through A.2h). In each category, Plan policies mitigate potentially significant impacts.

East Oakland, including Elmhurst and Airport

The principal land use impacts in East Oakland are the redesignation of several corridors from "Commercial" to "Urban Density Residential" uses and the application of the Housing-Business Mix category to a number of residential and industrial areas. Map changes are proposed on a number of specific large sites, including the Oakland Coliseum (changed from "Institutional" to

“Regional Commercial”) and the PG&E/ EBMUD facilities on Oakport (changed from “Institutional” to “Waterfront Mixed Use.”)

Table III.A-5 summarizes the changes in East Oakland. The table indicates those areas where the proposed change reflects existing land uses and those areas where the change reflects a policy decision to encourage a new land use. Approximately 30 blocks of MacArthur Boulevard frontage and 20 blocks of International Boulevard frontage (in disconnected segments) are to be redesignated from Commercial to Urban Density Residential. The MacArthur Boulevard changes reflect zoning map revisions that were made several years ago. The International Boulevard changes would promote residential uses in areas that are now primarily commercial. On the eastern edge of the San Leandro Street industrial corridor, a number of areas presently characterized by a mix of residential and industrial uses will be redesignated as “Housing-Business Mix.”

The potential impacts associated with these changes have been classified in eight categories and are discussed at the end of this section (Impacts A.2a through A.2h). In each category, Plan policies mitigate potentially significant impacts.

North and South Hills

Proposed changes in General Plan designation in the North and South Hills are summarized in Table III.A-6. The most significant changes are the redesignation of the base of Leona Quarry and Oak Knoll Naval Hospital. The designation at the base of Leona Quarry would be changed from “Park, Recreation or Natural Area” to “Regional Commercial.” The designation at Oak Knoll would change from “Institutional” to a combination of “Institutional,” “Commercial,” “Hillside Residential,” “Urban Park,” and “Resource Conservation Area.” Designations would match the proposed master plan for the site.

Elsewhere in the North Hills, most of the designation changes reflect open space acquisitions by the City or recognition of existing neighborhood commercial centers that were not acknowledged in the previous General Plan. The other noteworthy change is that all nearly all of the residential areas are collectively classified as “Hillside Residential” whereas the 1980 Plan differentiated between “Suburban” and “Low Density” Residential areas. Plan policies direct the City to zone these areas in a manner which retains the existing character of the neighborhoods.

The potential impacts associated with these changes have been grouped in eight categories and are discussed at the end of this section (Impacts A.2a through A.2h). In each category, Plan policies and additional measures mitigate potentially significant impacts.

North Oakland

The primary map changes in North Oakland are the redesignation of several corridor segments from Commercial to Residential uses. Specifically, segments of Telegraph and Shattuck Avenues, West MacArthur Boulevard, and Martin Luther King Junior Way are to be redesignated from "Commercial" to "Urban Density Residential." In addition, the Telegraph Avenue corridor between Shattuck and 40th is proposed for reclassification from "Medium Density Residential" to "Neighborhood Center Mixed Use", and the area around the Claremont/Telegraph intersection is proposed for reclassification from "High Density Residential" to "Community Commercial." Most of these changes reflect existing land uses and are not significant. The MacArthur BART Station would be redesignated from Institutional to "Neighborhood Center Mixed Use." These changes are summarized in Table III.A-7. The table indicates those areas where the proposed change reflects existing land uses and those areas where the change reflects a policy decision to encourage a new land use.

Substantial reductions in General Plan density are proposed in parts of North Oakland, namely in the Rose Garden neighborhood, in parts of the Piedmont Avenue neighborhood, and along Claremont and Alcatraz Avenues. These areas, designated as "High Density Residential" in the 1980 Plan, would be redesignated as "Mixed Housing Type." In most cases, the change will bring General Plan designations closer in line with existing development.

The potential impacts associated with these changes have been grouped in eight categories and are discussed at the end of this section (Impacts A.2a through A.2h). In each category, Plan policies mitigate potentially significant impacts.

Specific Impact Type A.2a: Proposed General Plan map changes would redesignate some segments of major transportation corridors from a "Commercial" to "Urban Density Residential" land use classification. Adverse impacts could occur in areas which currently have high concentrations of general commercial and auto-oriented businesses. Proposed policies in the Element and the additional measures specified in this EIR mitigate these impacts.

The particular areas where this type of change is proposed are noted in Tables III.A-2 through III.A-7. The change would create opportunities for high-density residential development on vacant or underdeveloped sites formerly designated for commercial use. Over time, existing one and two-story vacant buildings or underutilized commercial land uses could be phased out. The corridors could redevelop with new high density residential buildings, some with ground floor commercial uses.² Redevelopment could result in temporary compatibility problems. Typical land use conflicts could include exposure of residents in new units to noise and air pollution associated with traffic on the arterials, localized parking and localized traffic problems

² In most cases, existing commercial zoning on the corridors allows densities equivalent to Oakland's R-70 district. This equates to approximately 97 units per acre, which is slightly less than the proposed General Plan density of 125 units per acre.

associated with high density residential development, and nuisances (odors, noise, etc.) arising from existing commercial businesses operating in close proximity to new residences. Some existing commercial uses on the corridors, such as auto dismantlers, body shops, and other “heavy commercial” uses, could be rendered non-conforming. The policies listed at the end of this section, accompanied by the additional measures in this EIR, mitigate these potential impacts.

Specific Impact Type A.2b: Proposed General Plan map changes would allow significant increases the allowable General Plan density in some areas now designated for low or medium density residential use. Proposed policies in the Element and the additional measures identified in this EIR mitigate these impacts.

The particular areas where this type of change is proposed are noted in Tables III.A-2 through III.A-7. Vacant or underutilized land in the designated areas could be expected to develop or redevelop with high density residential uses. In most cases, the referenced areas are already developed with high density residential use and the map change reflects existing development rather than desired future change. In a number of cases, the referenced areas contain vacant land or existing single family development. Higher density development on these parcels could create localized land use conflicts such as parking problems, view blockage, shadows, noise, loss of privacy, and perceived negative effects on neighborhood character. In some instances, existing low density structures might be displaced by higher density structures. A number of the policies listed at the end of this section specifically address this issue and contain language which will avoid adverse impacts in the future.

Specific Impact Type A.2c: Proposed General Plan map changes would redesignate several active industrial areas to new General Plan categories which are more restrictive or which allow live-work and other forms of housing. Depending on future zoning changes, new residential or higher value commercial/ light industrial uses could potentially locate in close proximity to existing business and industry, creating the potential for land use conflicts and making certain types of heavy commercial and industrial activities more difficult to carry out. Zoning changes could also render certain heavy industries in these areas non-conforming. Proposed policies in the Element and the additional measures in this EIR mitigate this impact.

This impact would take place in those areas which are being redesignated from “Manufacturing or Wholesaling” to “Waterfront Mixed Use,” and “Housing Business Mix.” Subsequent zoning changes could make certain types of heavy industrial uses more difficult to carry out. If higher value industries (biotechnology, R&D, etc.) are attracted to these areas, existing heavy industry could be subject to a growing number of complaints regarding noise, dust, odor, visual quality, hours of operation, truck traffic, and various industrial processes and operations. The possibility of new live-work housing could raise added concerns about the exposure of future residents to the industrial activities going on in the area. The policies and the additional mitigation measures listed at the end of this section limit the potential for future adverse impacts.

Specific Impact Type A.2d: Proposed General Plan map changes would change several areas now developed with residential uses to new categories which acknowledge their close proximity to industrial uses. Depending on future zoning changes, new manufacturing, wholesale, or business uses could locate in close proximity to residential uses, creating the potential for land use conflicts. Proposed policies in the Element and the additional measures in this EIR mitigate this impact.

In a limited number of areas, noted in Tables III.A-2 through III.A-7, the proposed General Plan map would change the land use designation from a residential category (usually “Low-Medium Density Residential”) to “Housing Business Mix.” The impact of this change will be less than significant in most cases since it reflects an established pattern in which residential and industrial uses are located adjacent to one another. In other cases, the change affects residentially zoned blocks or pockets of housing that are surrounded by industry. Land use conflicts for existing residents will be avoided by Plan policies that require buffering and performance standards within Housing-Business Mix areas and prohibit high impact business uses.

Specific Impact Type A.2e: Proposed General Plan map changes would redesignate several areas from industrial designations to exclusively residential designations. This is a less than significant impact.

Three small pockets of West Oakland designated “Manufacturing/ Wholesaling” on the current Plan are to be redesignated for “Mixed Housing Type” Residential on the proposed Plan. The areas are currently developed with a mix of residential and older manufacturing and commercial uses. The map change could result in additional residential development adjacent to existing industries, with the attendant potential for land use conflicts. However, most of the land in the areas in question is fully developed. The areas are generally considered unsuitable for heavy industrial use, and the existing industrial and commercial buildings in the area include large amounts of vacant floor space or storage yards.

Specific Impact Type A.2f: Proposed General Plan map changes would reclassify some residentially designated land for commercial or mixed uses. This impact is less than significant due to proposed policies in the Element that address land use compatibility.

On a handful of locations now developed with housing, the proposed Plan would apply new commercial or mixed use designations, including “Neighborhood Center Mixed Use,” “Community Commercial,” and “Central Business District.” These areas are identified in Tables III.A-2 through III.A-7. Vacant or underutilized sites in these areas could develop with commercial projects, mixed use projects, and higher density residential projects. In the absence of Plan policies, this could result in land use conflicts, including the encroachment of commercial uses on residential streets and into residential structures, the loss of housing units, changed neighborhood character, increased traffic, noise, loss of privacy, odors, and adverse visual effects. The potential for these conflicts is minimal in most cases, as the proposed map change is generally limited to areas that contain very little vacant land and that are already

developed with a mix of residential and commercial uses. Moreover, Plan policies direct the City to protect residential uses from encroachment by incompatible commercial development.

Specific Impact Type A.2g: Proposed General Plan map changes would reclassify several Institutional sites to commercial General Plan categories. This is a less than significant impact.

The sites in question are various EBMUD and PG&E facilities, the BART parking lots and the Oakland Coliseum. The current designations on these sites is Institutional. The proposed designation is specified in Tables III.A-2 through III.A-7 but involves a commercial component in each case. Under existing (1980) General Plan policies and zoning designations, institutional sites can already be developed with commercial uses. Therefore, the new General Plan designation will not significantly change the allowable use or result in potential land use conflicts or compatibility problems.

Specific Impact Type A.2h: Proposed General Plan map changes would reclassify two areas now designated as "Park, Recreation, or Natural Area" to a commercial development category. The land could subsequently be developed without a General Plan amendment. This a less than significant impact.

The two instances where this is proposed are at the base of Leona Quarry and on EBMUD land at 66th Avenue and Oakport Drive. In both cases, the 1980 Plan designation reflected assumptions about open space dedication or acquisition in these areas. These acquisitions occurred (or are now planned to occur) in slightly different locations than originally expected. The amount of open space and recreation land city-wide is increased in the Land Use and Transportation Element compared to the 1980 Plan.

Land Use and Transportation Element Policies

Potential impacts resulting from the map changes are generally precluded by the goals, objectives, and policies in the Draft Element. The City will consider Plan policies in concert with the Land Use Diagram when making any future land use decision. The following specific policies address the eight specific impacts described in the previous section:

Policy I/C4.1:

Existing industrial, residential, and commercial activities and areas which are consistent with long-term land use plans for the City should be protected from the intrusion of potentially incompatible uses.

Policy I/C4.2:

The potential for new or existing industrial or commercial uses, including seaport and airport activities, to create nuisance impacts on surrounding residential land uses should be minimized through efficient and appropriate implementation and monitoring of environmental and development controls.

Policy D10.7:

Locational and performance criteria should be developed for live-work developments.

Policy W1.2:

Land uses and impacts generated from such activities should be sensitive to one another and appropriate buffering should minimize the incompatibility of uses.

Policy W2.2:

Appropriate buffering measures for heavy industrial uses and transportation uses on adjacent residential neighborhoods should be developed.

Policy W3.2:

The function, design and appearance, and supplementary characteristics of all uses, activities, and facilities should enhance and not detract from or damage the quality of the overall natural and man-made environment along the waterfront.

Policy W7.1:

Outside the seaport and airport, land should be developed with a variety of uses that benefit from the close proximity to the seaport and airport and...which can buffer adjacent neighborhoods from impacts related to such activities.

Policy W8.7:

Developments in this area (Jack London) should be designed to enhance direct access to and along the water's edge, maximize waterfront views and vistas, and make inviting public pedestrian access and spaces. Development and amenities must be sensitive to the surrounding character of pedestrian-oriented activities with focus on cultural and retail entertainment. Traditional and historic buildings and structures are character defining and should be preserved, adapted for new uses, or integrated into new development, where feasible.

Policy W9.6:

Development in this area, (Embarcadero Cove) should be designed to enhance direct access to and along the water's edge, maximize the water front views and vistas, and make the public pedestrian access and spaces inviting. Development and amenities must be sensitive to immediate surroundings.

Policy W10.7:

Development in this area (Fruitvale) should be designed to enhance direct access to and along the water's edge, maximize waterfront views and vistas, and make public pedestrian access and spaces inviting. Development and amenities must be sensitive to immediate surroundings.

Policy W10.5:

Since this area (Fruitvale waterfront) is and may continue to be an area that has a variety of uses, including industrial, incompatibilities should be mitigated through appropriate site planning and buffering.

Policy N1.5:

Commercial development should be designed in a manner that is sensitive to surrounding uses.

Policy N2.7:

Site design, architecture, and operating practices of community facilities should be compatible with the area's desired character.

Policy N3.9:

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

Policy N5.1:

Residential areas should be buffered and reinforced from conflicting uses through the establishment of performance-based regulations, the removal of non-conforming uses, and other tools.

Policy N8.2:

The height of development in Urban Residential and other higher density residential areas should step down as it nears lower density residential areas so that the interface between the different types of development are compatible.

Policy N12.6:

Prior to submitting required permit applications, project sponsors of medium and large scale housing developments should be encouraged to meet with established neighborhood groups, adjacent neighbors, and other interested local community members, hear their concerns regarding the proposed project, and take those concerns into consideration.

The policies listed above may not fully mitigate Impact A.2 to a level of insignificance. The following additional measures are proposed to ensure that the impacts are less than significant.

Mitigation Measure A.2a: Establish design requirements for large-scale commercial development that requires adequate buffers from residential uses. Use of open space, recreation space, or transit installations as buffers should be encouraged. (Neighborhood Working Group)

Mitigation Measure A.2b: Develop distinct definitions for home occupation, live/work and work/live operations; define appropriate locations for these activities and performance criteria for their establishment; and create permitting procedures and fees that facilitate the

establishment of those activities which meet the performance criteria. (Neighborhood Working Group)

Mitigation Measure A.2c: Ensure that structures and sites are designed in an attractive manner which harmonizes with or enhances the visual appearance of the surrounding environment by preparing and adopting industrial and commercial development guidelines. (Industry and Commerce Working Group)

Mitigation Measure A.2d: Establish performance-based standards which designate appropriate levels of noise, odors, light/glare, traffic volumes, or other such characteristics for industrial activities located near commercial or residential areas. (Industry and Commerce Working Group)

Mitigation Measure A.2e: Develop performance zoning regulations which permit industrial and commercial uses based upon their compatibility with other adjacent or nearby uses. (Industry and Commerce Working Group)

Mitigation Measure A.2f: Develop an incentive program to encourage the relocation of non-conforming industrial/ commercial businesses or residential uses to more appropriate locations in the City. (Neighborhood Working Group)

Impact A.2 Level of Significance after Mitigation: Less Than Significant

APPLICATION OF MIXED USE DISTRICTS

Impact A.3: Implementation of the Land Use and Transportation Element would place a greater emphasis on mixed use development and would require development of mixed use zoning designations. The emphasis on mixed use development could create a greater likelihood for conflicting uses within projects or between projects and adjacent sites. This impact is less than significant due to proposed policies in the Land Use and Transportation Element that address mixed use development.

The Draft Land Use and Transportation Element acknowledges the many benefits of mixed use development and emphasizes its application along corridors, Downtown, along the waterfront, and in areas with mixed residential and industrial uses. The Element acknowledges that without sensitive design, mixed use development can create the potential for incompatible uses within a project, such as late night retail or entertainment activity below residential uses. In many cases, mixed use projects would also be more intense or dense than the existing land use pattern, creating the potential for siting and design conflicts. The Plan precludes such impacts through the following policies:

Policy W8.4:

Mixed use should be sensitive to the surrounding character and design of existing buildings as well as the desire to have the shoreline fully accessible to the public.

Policy W8.4:

The character of this area (Jack London) should be mixed use. Higher density housing, single use housing, and live/work lofts and units are appropriate within the area and developments. Mixed use should be sensitive to the surrounding character and design of existing buildings as well as the desire to have the shoreline fully accessible to the public.

Policy W9.4:

The mixed use character for this area (Embarcadero Cove) should incorporate a variety of uses throughout, including artist residential use, where appropriate.

Policy W10.4:

The mixed use characteristics for the area (Fruitvale) should incorporate office, commercial, and industrial uses, with recreation facilities and housing where appropriate and feasible.

Policy W12.3:

Mixed use and residential development should be sensitive to adjacent properties and designed to enhance the existing and unique characteristics of the waterfront and immediate surroundings.

In addition to the policies listed above, the policies and actions identified as mitigation for Impacts A.1 and A.2 also would apply.

Mitigation Measure A.3: None required.

LAND USE IMPACTS OF TRANSPORTATION PROJECTS

Impact A.4: Implementation of the proposed Land Use and Transportation Element could result in future transportation improvements that could have land use impacts. This impact is less than significant due to proposed policies in the Land Use and Transportation and because CEQA review would be required for subsequent transportation projects.

The proposed designation of San Pablo Avenue, International Boulevard, Telegraph Avenue, Foothill Boulevard, and MacArthur Boulevard as "Regional Transit Streets" could have long-range impacts on the type and intensity of development that occurs along these streets. All of these streets will be considered candidates for light rail or electric trolley bus service. More intense development along these streets is called for by the Element. In addition, the Element supports designation of transit centers at Eastmont Mall and several BART Stations, shopper shuttle services at Fruitvale, Coliseum, and downtown BART Stations, and water taxis to

Alameda. Improvement of transportation infrastructure and service at these locations could induce long-term land use changes.

The Element specifically identifies the I-880 Corridor, 73rd Avenue Corridor, and Oakland-Alameda corridors as target areas for transportation improvements. Ingress and egress changes to I-880 could impact the existing land use pattern and potentially displace existing uses or create new development sites along the freeway. Similarly, improvements to the 73rd Avenue corridor or the Webster and Posey Tubes to Alameda could potentially impact East Oakland and Downtown neighborhoods, depending on the nature and location of these improvements.

Substantial transportation improvements at the Harbor and Airport are endorsed by the Element. The Element's directives in these areas are consistent with long-range plans of the Port of Oakland and have been (or will be) addressed in separate environmental analyses. The Airport Expansion Plan, Joint Intermodal Terminal, and Cross-Airport Roadway have potential significant land use impacts that have been addressed in other planning documents.

The following policies from the Draft Element are intended to address potential land use impacts resulting from the recommended transportation improvements:

Policy T1.5:

Truck services should be concentrated in areas adjacent to freeways near the seaport and airport.

Policy T1.6:

An adequate system of roads connecting port terminals, warehouses, freeways, and regional arterials, and other important truck designations, should be designated. *This system should rely upon arterial streets away from neighborhoods.* (Emphasis added)

Policy T2.2:

Transit oriented development should be pedestrian-oriented, encourage day and night time use, provide the neighborhood with needed goods and services, contain a mix of land uses, and be designed to be compatible with the character of surrounding neighborhoods.

Policy T5.2:

A system to rank capital improvement program projects should be developed. Ranking criteria should include public safety, equity to different neighborhoods in Oakland, consistency with "transit first" principles, system maintenance cost, travel convenience, travel cost savings, environmental impacts, and reduced public expenditures.

Policy T6.2:

Design of the streetscape, particularly in neighborhoods and commercial centers, should be pedestrian oriented.

Mitigation Measure A.4: None required.

F. VISUAL AND AESTHETIC CONDITIONS

This section of the EIR describes the impact of the Proposed Land Use and Transportation Element on visual and aesthetic conditions in the Oakland Planning Area. The analysis includes a summary of Oakland's existing visual and aesthetic setting, a description of impacts resulting from adoption of the Element, and measures to mitigate these impacts.

SETTING

Oakland's visual character is a byproduct of the natural landscape and built environment. The City is framed by the ridgeline of the Oakland-Berkeley Hills on the east and the estuary shoreline and Bay on the west. Between these edges, individual neighborhoods and districts are defined by creeks, ridges, canyons, and hills, and also by railroads, freeways, and major thoroughfares. Topography has had dramatic effects on the overall form of the City. The land use pattern generally follows a series of parallel strips, beginning at the shoreline and extending to the hills. The areas that could be developed most economically were generally developed first, with growth creeping into the hills as vacant land in the flatland neighborhoods became more scarce.

Views and vistas of some sort are afforded from almost everywhere in Oakland. With a distance of just five miles from the shoreline to the crest of the hills, the abundance of ridges and canyons, and the prominence of distant landmarks, the City's setting provides a variety of interesting view opportunities. On open hillsides and from roadside clearings, the viewer can see as far south as the Santa Cruz Mountains, as far north as the Napa Valley, and as far west as the Farallones Islands. Along Skyline Ridge, the views are east to Mount Diablo and the rolling hills of the regional parks and watershed lands. From flatland neighborhoods, views take in the broad sweep of hillside on the eastern horizon and features across the water like Mount Tamalpais and San Francisco. Between the shoreline and the hills, there are panoramic views afforded by the City's gently rolling terrain.

More intimate or enclosed views are provided from many locations in the City. These include views to and from Lake Merritt and downtown, across canyons and slopes in the hills, to Alameda and Government Island from the shoreline, across low ridges in places like Ivy Hill, Maxwell Park, and Millsmont, and across bowl-shaped areas such as the Rose Garden.

Much of Oakland's visual character is a product of its architecture and urban form. During its first 60 years as a City, development was largely confined to the flat neighborhoods between downtown and Berkeley and the small hamlets along what is now International Boulevard. Early settlers typically imposed the architectural styles of the East Coast and Midwest. Between 1910 and 1930, the City's population nearly doubled. Architecture and neighborhood form became more expressive of California during this era, with romantic villas built on the slopes and bungalows built in the flatter areas. While Oakland's bungalows embraced a broad variety of

architectural styles, a handful of styles (Craftsman, Norman, Tudor, Mediterranean, etc.) were predominant and continue to characterize the City today. Between 1930 and 1950, thousands of simple wood or stucco cottages were built in East Oakland. These homes often lacked the architectural detail of their predecessors. The post-war period saw yet other forms of development emerge in the City, including suburban-scale tract housing, "California ranch" homes, and steep hillside housing.

During the decades following the 1930s, single family homes in many parts of the City were demolished to make way for higher density flats and apartments. As a result, the visual pattern in much of Oakland today is one of mixed single and multi-family development. The quality of the apartment construction is highly variable. The visual character of development in large parts of the City has been further affected by social and economic conditions, including the decline in manufacturing and resulting large number of vacant buildings, the loss of retail trade to the suburbs and resulting large number of empty storefronts and underutilized commercial land, and urban problems such as poverty, blight, and graffiti. Those neighborhoods that have fared best tend to be those with consistent or unique architecture, street trees, interesting topography or views, a clear street pattern, separation from other areas by physical features, or proximity to a landmark or focal point.

There are strong distinctions in Oakland between the visual issues faced by flatland neighborhoods and hill neighborhoods, and by residential areas versus non-residential areas. In the older residential neighborhoods, the issues relate to the compatibility of higher density development with single family housing, the compatibility of additions and new buildings with prevailing architectural styles, the quality of front yard landscapes and streetscapes, and the impact of blighting influences such as incompatible industrial or commercial uses.

In the hills, views are intricately linked to neighborhood character and are part of the reason the neighborhoods were developed in the first place. Primary issues include the impact of new development (including additions) on views, the removal of trees to restore views, and changes in topography (i.e., grading) associated with new development. These changes become citywide visual issues when they also affect views of the hills from the flatlands. Reconstruction in the fire damaged area has brought a whole new set of visual issues, some related to specific concerns such as view protection and others related to more general concerns about the neighborhood's character.

In commercial areas, issues pertain to the design and appearance of buildings, parking areas, and signs. In many areas, the primary concern is the scale and compatibility of auto-oriented development with the pedestrian-oriented fabric of the established neighborhood. In some areas, expanses of parking and "big box" development have imposed a very different scale of development than what existed originally. Along the waterfront, visual character varies from intense maritime activities at the Port of Oakland to pastoral scenes along San Leandro Bay.

Overall, Oakland's waterfront has an industrial character, reflecting its long history for shipping, manufacturing, military, and aviation use. Construction of the airport, harbor, and Nimitz Freeway effectively divided the City from the waterfront, creating a physical and visual barrier that persists in many areas today.

A number of Oakland's physical and built features are visual landmarks and contribute to the City's character and sense of place. Significant built features include the Claremont Hotel, the Mormon Temple, the Bay Bridge, the County Courthouse, Leona Quarry, container cranes at the Port, the Coliseum, factory towers at Con Agra, Nabisco, and the former Safeway headquarters, Highland Hospital, the Kaiser and Ordway Buildings, the Federal Building, City Hall, the Tribune tower, and the APL tower. Clusters of office buildings on Pill Hill and near Oakland Airport also provide visual landmarks within the City.

Significant natural landmarks in the City include Lake Merritt, Dimond and Leona Canyons, the Emeryville Crescent and San Leandro Bayshore, the ribbons of eucalyptus trees along creek courses, and the redwood groves of the hills. The hills as a whole provide orientation but appear as a monolithic "wall" from the flatlands below rather than a discrete landmark. Individual peaks and knolls are perceivable from some neighborhoods. These include the "Sugarloaf" beside Merritt College, Dunsmuir Ridge, and the King Estates "mound." Some of the most identifiable Oakland landmarks are not in the City at all but are visible from many neighborhoods and trafficways. These include the UC Berkeley campanile, the cluster of high-rise buildings in Emeryville, the San Francisco skyline, Mount Tamalpais, Treasure Island, and Alcatraz.

The City's visual features also include a number of "gateways," including the Bay Bridge, the Caldecott Tunnel, the Alameda tunnels and bridges, and freeways entering the City from Emeryville and San Leandro. Other gateways include Hegenberger Road at Oakland Airport and *many of the City's arterial streets which enter Oakland from Berkeley on the north and San Leandro on the south.* The visual quality of these gateways has been an on-going issue, as it defines impressions of Oakland and the image imparted to visitors. The visual quality and extent of gateways into individual neighborhoods within the City is another on-going issue. Some are distinct and dramatic, others are unimpressive or non-existent.

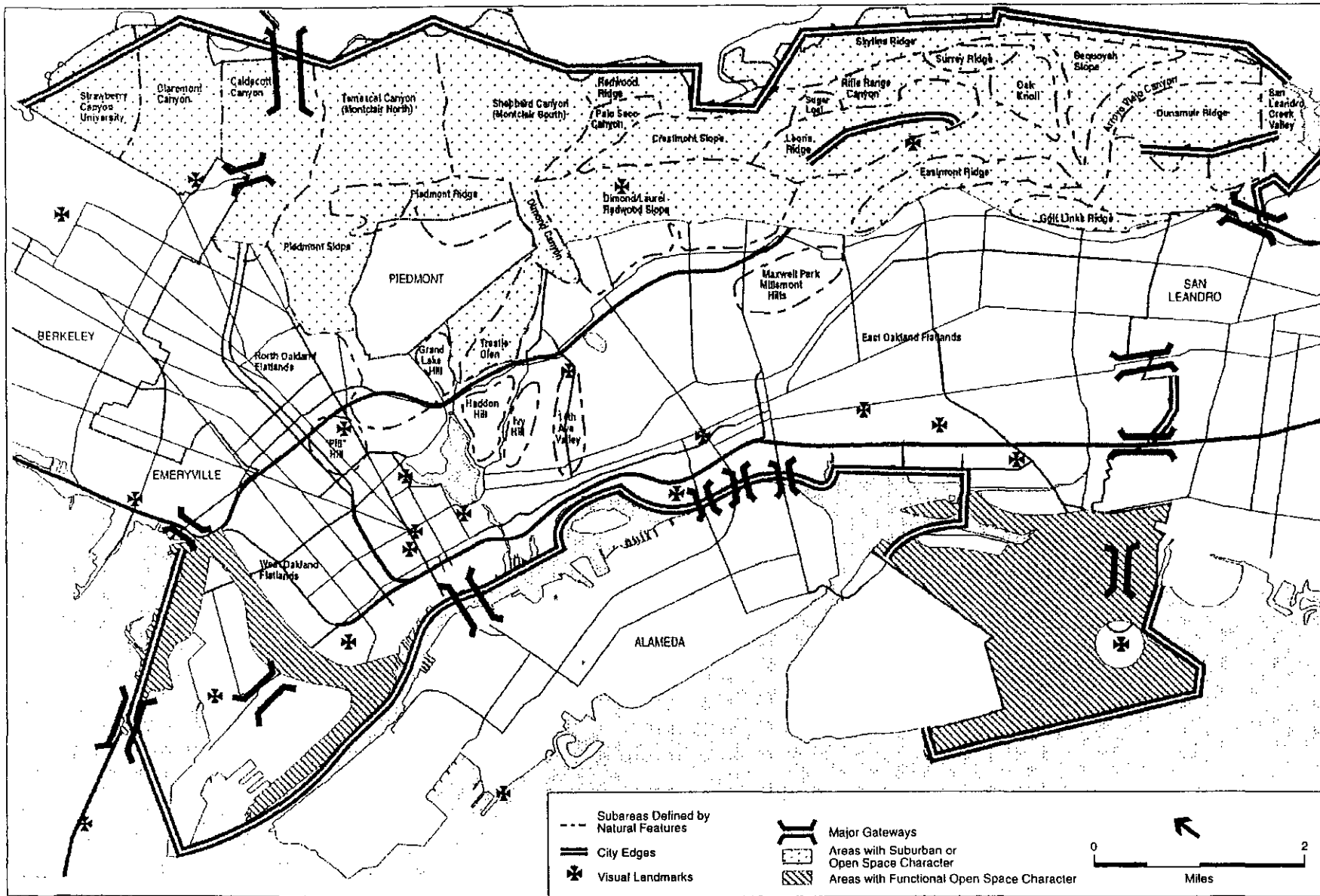
Gateways, edges, and landmarks are illustrated in Figure III.F-1.

VISUAL CHARACTER OF "CHANGE AREAS"

Central Business District

Visual quality in Downtown Oakland varies from block to block. There are many fine buildings and visual landmarks, but there are also many buildings that are vacant and boarded up. Some blocks appear vibrant and attractive, others appear depressed and deteriorating. Visual and

III.F-4



SOURCE: CEDA

City of Oakland General Plan Land Use and Transportation Element EIR / 970224 ■

Figure III.F-1
Visual Features and Urban Form
of the City of Oakland

aesthetic quality tends to be highest at City Center and in the cluster of office buildings near Lake Merritt. Chinatown is visually chaotic but presents a robust, prosperous image. The Gold Coast is visually attractive, with a high concentration of stately apartments and street trees. On the other hand, the Broadway corridor and some of the downtown edges--particularly on the northwest side of downtown--appear to be in a deteriorating condition. The northwest quadrant of downtown is characterized by large surface parking lots, vacant buildings (including the Fox Theater), residential hotels, and low-rise residential and commercial buildings, including some still awaiting repair following the 1989 earthquake. Similarly, the southwest side of Downtown includes a large number of very old residential and commercial buildings, some in poor condition. Restoration at Old Oakland and new residential construction around Housewives Market convey a much more positive visual impression.

Estuary Shoreline

The portion of the waterfront targeted for the greatest change in the General Plan (i.e., Jack London Square to High Street) has a mostly industrial character. There are pockets of commercial development at Jack London Square and Embarcadero Cove. Although individual areas contain unique buildings and high street activity, the overall impression is still visually chaotic. Visual quality tends to be highest at the foot of Broadway and in the four or five blocks of shoreline that have been redeveloped. Following the shoreline to the southeast, the water's edge includes a mix of parking lots, open storage, marine uses, houseboats, and industrial buildings that do not take full advantage of the water's presence. The Fruitvale waterfront, extending southeast from Brooklyn Basin to High Street, is more solidly industrial in character, with uses like a concrete batch plant and flour mill defining the visual profile.

Military Bases

Of Oakland's three military bases, two (OAB and FISCO) have a largely industrial character, while one (Oak Knoll) has a more residential and campus-like character. The Army Base consists of large open storage areas, warehouse buildings dating mostly from the 1930s and 1940s, and small office buildings. The base includes a large percentage of open land, ranging from wharves and paved open storage yards to a ballfield. FISCO's dominant visual features are its enormous warehouses, arranged on a regular grid of streets within the Base and uniform in size, shape, and color. Like the Army Base, the prevailing character is industrial and there are sweeping views across the water. Oak Knoll's visual character derives from its hillside setting and the low-rise scale of the development on the base. The most prominent visual feature is the hospital itself, which appears to be a large mid-rise office or institutional building. Much of the site consists of open space, recreational lands, and the wooded channel of Rifle Range Creek. The scale of development is low and blends in with the suburban-density neighborhood on the perimeter.

Coliseum Area (San Leandro Street industrial corridor)

The primary visual features of the Coliseum area are the Coliseum itself, the Hegenberger commercial corridor, the industrial area west of San Leandro Street, and the mixed residential and industrial area east of San Leandro Street and along Edes Avenue. The Coliseum complex includes major visual landmarks, including the stadium and the arena, both surrounded by large expanses of parking. The Hegenberger corridor (east of I-880) consists primarily of auto-oriented large-scale retailers and fast-food restaurants. The industrial area includes a number of architecturally unique buildings and interesting views and vistas, although much of the area has a visually depressing quality. The same is true in those areas where residential and industrial uses are mixed. In the latter case, much of the housing is in deteriorating condition and much of the industry consists of non-descript corrugated steel or concrete block sheds. Auto storage and scrap yards, as well as open storage yards and barbed wire fencing, give some blocks an inhospitable feel. On the other hand, within the area are a number of blocks of well-kept homes which appear to be holding their own despite the predominance of industry nearby.

Leona Quarry

The quarry is one of Oakland's most visually distinguishing features, dramatically different in color and texture than the adjacent slopes of the Oakland hills. While other west facing slopes are either wooded, grassy, or dotted with low density housing, the quarry is immediately recognizable as an extensive mining operation. Past excavation activities have left a broad, visible "scar" on the hillside.

Transit Corridors

The corridors targeted for reuse and intensification are highly urbanized and consist mostly of commercial development. The visual quality of development varies enormously from one location to the next. Generalizations about visual conditions on a citywide scale are difficult to make. Portions of the commercial strips appear quite prosperous; others are tired and run-down with high concentrations of vacant or dilapidated buildings. Some portions, such as Upper Telegraph, are fairly dense and pedestrian-oriented. A larger percentage, however, are auto-oriented and consist mostly of one and two story buildings, interspersed with parking lots, vacant land, and storage yards. Most of the corridors contain at least some residential use, sometimes on second or third floors above commercial space and sometimes in apartments, or even in single family homes. Some of the corridors, particularly San Pablo and International Boulevard, are intermixed with industrial or heavy commercial (auto repair, etc.) buildings. MacArthur Boulevard has a large number of motels.

The predominance of large signs, drive-up businesses, parking and storage lots, and vacant gaps between buildings make many of the corridors visually uninviting. Although some sections

include street trees, many do not. On some streets, the width of the street and volume of cars, coupled with the absence of trees, creates an inhospitable environment for pedestrians. On the other hand, large segments of the corridors, such as International Boulevard in Clinton Park and Fruitvale, appear to be thriving. These areas appear to be dynamic and in transition, with visible evidence of Oakland's growing immigrant population.

BART Transit-Oriented Development

The four transit stations targeted for change (MacArthur, West Oakland, Fruitvale, and Coliseum) share the common visual quality of being surrounded by large surface parking lots. The dominant visual feature at MacArthur is Highway 24, with surrounds the station on both sides. Adjacent areas contain older retail and medium density residential development, in buildings ranging from good to poor condition. The character around West Oakland is more solidly residential, with a mostly single family neighborhood located on two sides of the station and multi-family housing across the street. The station provides a visual transition between the South Prescott neighborhood and the industrial area east of Mandela Parkway and south of Seventh Street. The visual character at Fruitvale is more commercial, with an active retail district just a block away on International Boulevard and extensive business activity on the perimeter. The scale of development is generally low, with buildings in the one to three-story range. At the Coliseum BART Station, the visual character is defined by an adjacent residential area to the east, the industrial uses along San Leandro Street, and the Oakland Coliseum located just across the skybridge.

SIGNIFICANCE CRITERIA

According to the CEQA Guidelines, a project will normally have a significant impact on the environment if it would have a "substantial, demonstrable negative aesthetic effect," including obstruction of a scenic view or public view, or impairment of an existing view by introducing an aesthetically offensive visual feature.

It is important to note that most of the impacts listed below would also result through continued implementation of the existing General Plan. The reason they are highlighted here is because the proposed Plan includes a policy emphasis to encourage redevelopment in targeted geographic areas. Generally, the proposed Plan would have a lesser visual impact than the existing Plan, as it designates fewer acres for urban uses and designates some of the City's more visually sensitive areas for resource conservation.

IMPACTS AND MITIGATION MEASURES

IMPACTS TO SCENIC RESOURCES

Impact F.1: Development consistent with the Future Land Use Diagram could degrade or destroy existing scenic resources in the City, including hillsides, ridges, canyons, trees and riparian areas. However, adoption of the Element alone would not increase the potential for impacts. Existing policies in the OSCAR Element provide general mitigation of visual impacts. Thus, this impact is less than significant.

The visual impacts of the proposed *Element* will be limited to those areas identified for “change” on the Strategy Diagram. Impacts will be positive or less than significant in those areas where the policy emphasis is to “maintain and enhance” existing neighborhood character. Even in those areas targeted for change, the type of development that could occur in most cases is development that is already permitted by the current land use designation (i.e, high-rise office buildings in the downtown area). Impacts are generally associated with the specific sites where redevelopment is being encouraged, including the military bases, the quarry, and the waterfront. Visual impacts associated with projects in these areas will continue to be monitored on a case by case basis as development applications are received.

The following specific policies in the adopted OSCAR Element provide mitigation for future visual impacts:

Policy OS-10.1:

Protect the character of existing scenic views in Oakland, paying particular attention to: (a) views of the Oakland Hills from the flatlands; (b) views of downtown and Lake Merritt; (c) views of the shoreline; and (d) panoramic views from Skyline Boulevard, Grizzly Peak Boulevard, and other hillside locations.

Policy OS-9.1:

Design new development to preserve natural topography and terrain. Enhance prominent topographic features where appropriate by parks, plazas, or architectural expressions.

Policy OS-9.2:

Use open space and natural features to define City and neighborhood edges and give communities within Oakland a stronger sense of identity. Maintain and enhance City edges, including the greenbelt on the eastern edge of the City, the shoreline, and San Leandro Creek. Use creeks, parks, and topographical features to help define neighborhood edges and create neighborhood focal points.

Policy OS-9.3:

Enhance neighborhood and City identity by maintaining or creating gateways. Maintain view corridors and enhance the sense of arrival at the major entrances to the City, including freeways, BART lines, and the airport entry. Use public art, landscaping, and signage to create stronger City and neighborhood gateways.

**TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES**

Significant Impact	Mitigation Measures	Significance After Mitigation
B. LESS THAN SIGNIFICANT IMPACTS		
G. Cultural and Historic Resources		
G.1: Excavation of development sites consistent with the Land Use and Transportation Element could unearth paleontologic remains. Some of these remains could have scientific importance. However, adoption of the proposed Element would not significantly affect these resources.	None required.	LS
G.4: Increased development and more intense development in areas with high concentrations of older structures could have indirect impacts on these structures by changing their context and setting. Even if left intact, the integrity of older buildings could be compromised as larger, modern buildings are erected on adjoining properties.	None required.	LS
G.5: The Element's emphasis on adaptive re-use and live-work development could result in alteration of older buildings and historic structures in a manner that is architecturally incompatible with the structure.	None required.	LS
H. Vegetation and Wildlife		
H.1: Development consistent with the Land Use and Transportation Element could damage or remove potential habitat for special status species on undeveloped parcels within the City, particularly at the military bases, along the Estuary, and at Leona Quarry.	None required.	LS

LS = Less than Significant

TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

Significant Impact	Mitigation Measures	Significance After Mitigation
B. LESS THAN SIGNIFICANT IMPACTS		
H.2: Development consistent with the Land Use and Transportation Element could trigger impacts on adjacent lands designated for Resource Conservation. Greater levels of noise, traffic, lighting, urban runoff, and human activity on lands adjacent to waterfront parks could reduce the value of these areas as wildlife habitat.	None required.	LS
H.3: Development consistent with the Land Use and Transportation Element could affect the habitat of certain special status plants and result in the loss of special status plant species, and could result in the loss of mature trees on new development sites.	None required.	LS
I. Hydrology and Water Quality		
I.1: Implementation of the proposed Land Use and Transportation Element would result in increased development activity at various locations throughout the City, including locations adjacent to creeks and waterways, which could result in water quality impacts during construction.	None required.	LS

LS = Less than Significant

TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

Significant Impact	Mitigation Measures	Significance After Mitigation
B. LESS THAN SIGNIFICANT IMPACTS		
<p>I.2: Implementation of the proposed Land Use and Transportation Element would result in increased development activity that could alter drainage patterns, could increase impermeable surfaces leading to increased volume of runoff, and could potentially affect quality of stormwater runoff. However, since the areas proposed for the greatest change are already developed with similar uses, the changes in runoff patterns, volume and quality would be negligible.</p>	None required.	LS
J. Energy		
<p>J.1: Development consistent with the Land Use and Transportation Element would result in a marginal increase in energy consumption.</p>	None required.	LS
K. Geology and Seismicity		
<p>K.1: Adoption of the Plan could result in development on existing soil conditions at various locations throughout the City that could cause structural damage to new and existing buildings unless properly constructed.</p>	None required.	LS
<p>K.2: Adoption of the Plan could result in development of many areas that are subject to geologic hazards including steep slopes, high erosion potential, and landsliding and mudsliding.</p>	None required.	LS

LS = Less than Significant

TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

Significant Impact	Mitigation Measures	Significance After Mitigation
B. LESS THAN SIGNIFICANT IMPACTS		
K.3: Adoption of the Plan would result in development that requires grading and earthmoving activities. Grading during construction of individual projects in hillside areas could increase the potential for erosion. This could cause clogging of local culverts, decrease downstream channel capacity, and degrade water quality.	None required.	LS
K.4: In the event of an earthquake, damage from surface fault rupture could affect structures, foundations, and underground utilities that could be developed as a result of Plan adoption.	None required.	LS
K.5: In the event of an earthquake, damage from strong ground shaking or ground failure (liquefaction, densification, or landsliding) could affect structures, foundations, and underground utilities that could be developed as a result of Plan adoption. Human injury and life also could be risked.	None required.	LS
L. Noise		
L.1: Implementation of the proposed Land Use and Transportation Element would increase noise levels along streets throughout the City.	None required.	LS
L.2: Proposed General Plan map changes would redesignate some segments of major transportation corridors from commercial to urban density residential uses, which could pose noise compatibility problems for residential uses.	None required.	LS

LS = Less than Significant

TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

Significant Impact	Mitigation Measures	Significance After Mitigation
B. LESS THAN SIGNIFICANT IMPACTS		
L.6: Proposed General Plan map changes could allow development of light manufacturing, wholesale, business, commercial or mixed uses in areas designated for "Housing Business Mix," posing potential future noise compatibility problems.	None required.	LS
L.10: Future cumulative noise levels along downtown streets could increase to levels that are considered conditionally acceptable for retail commercial, office, and residential uses.	None required.	LS
L.12: Development of projects in the Coliseum Showcase District would result in noise increases along local roadways serving the proposed project.	None required.	LS
L.13: Depending on proximity of future development to I-880 and selected roadways in the Coliseum area, noise levels could be conditionally acceptable for retail commercial or office uses.	None required.	LS
M. <u>Hazardous Materials</u>		
M.1: Proposed land use changes for the Central Business District, Military Bases, Coliseum Area, and BART Transit Villages include a change to mixed uses that may allow housing as well as commercial operations that may use of hazardous materials. In addition, land use changes within the transit corridors would allow commercial land uses transitioning to urban residential uses.	None required.	LS

LS = Less than Significant

**TABLE S-1 (Continued)
SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES**

Significant Impact	Mitigation Measures	Significance After Mitigation
B. LESS THAN SIGNIFICANT IMPACTS		
M.2: Adoption of the proposed Land Use and Transportation Element could encourage new business and expansion of existing businesses within the areas designated for change, with associated potential increases in the quantities of hazardous substances used, stored and transported, increasing the potential for accidents or spills and increasing the potential for exposure to workers, the public and the environment.	None required.	LS
M.3: Adoption of the proposed Land Use and Transportation Element would increase the potential for demolition and renovation activities within the areas designated for change. Many of these buildings could contain hazardous building materials and demolition or renovation could result in exposure to hazardous building materials, such as asbestos, lead, mercury or PCBs, with associated public health concerns.	None required.	LS
M.4: Adoption of the proposed Land Use and Transportation Element would increase the potential for construction activities within the areas designated for change, which could increase the likelihood of encountering contaminated soil or groundwater and potentially expose workers and the community to hazardous substances.	None required.	LS
<u>O. Consistency with Adopted Plans and Policies</u>		
O.1: The proposed Land Use and Transportation Element would be consistent with federal policies and programs.	None required.	LS

LS = Less than Significant

OAKLAND GENERAL PLAN LAND USE AND TRANSPORTATION ELEMENT

Draft Environmental Impact Report

October 31, 1997

ER No. 97-18

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Prepared for:

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CHAPTER I

INTRODUCTION

This Program Environmental Impact Report (EIR) describes the environmental consequences of adopting the proposed Oakland General Plan Land Use and Transportation Element (Element). The report has been prepared by the City of Oakland (the "Lead Agency") pursuant to all relevant sections of the California Environmental Quality Act (CEQA).¹ It is intended to inform City officials, responsible agencies, and the public of the proposed Element's environmental effects.² The EIR is intended to publicly disclose those impacts that may be significant and adverse, describe possible measures that mitigate or eliminate these impacts, and describe a range of alternatives to the project.

As part of the proposed Element, the City of Oakland intends to concentrate development within two areas that are identified in this EIR as the Downtown Showcase District and the Coliseum Showcase District. This EIR identifies specific impacts that would occur as a result of development in these two areas as a first tier analysis of these projects. To also more fully understand the environmental consequences of the Element, the EIR includes additional analysis of the cumulative effects of planned developments in the Downtown and Coliseum areas of Oakland. Using a projected development size and use for six anticipated projects in the Downtown area and two anticipated projects in the Coliseum area, the EIR provides additional evaluation of potential cumulative impacts of implementation of the Element policies in the areas of traffic, air quality, noise, and downtown wind.

BACKGROUND

California Government Code Section 65300 requires each city and county in California to adopt a comprehensive, long-range general plan for its physical development. The plan consists of development policies, a land use diagram, and text framing the major proposals. The Government Code requires that General Plans contain seven mandatory elements: land use, circulation, housing, open space, conservation, noise, and safety. Optional elements may also be included in the plan.

The City of Oakland has consolidated some of the State-mandated elements to eliminate redundancies and establish a more integrated approach to long-range planning. Open Space and

¹ CEQA Guidelines define the "Lead Agency" as the public agency that has the principal responsibility for carrying out or approving a project. The City of Oakland is the Lead Agency for preparation of this EIR.

² CEQA Guidelines define "Responsible Agencies" as those which have discretionary approval power over aspects of the project for which the Lead Agency has prepared an EIR.

Conservation, along with an optional recreation plan, have been merged into an Open Space, Conservation, and Recreation Element, or "OSCAR." Land Use and Circulation, previously separate elements, are proposed for consolidation into a single "Land Use and Transportation Element." Other elements of the General Plan, including housing, noise, safety, and historic preservation, remain separate documents.

Oakland is in the process of comprehensively updating its General Plan for the first time since the 1970s. The Historic Preservation Element was adopted in 1995 and the OSCAR Element was adopted in 1996. Housing, Safety, and Noise Elements are programmed to be updated during the next two years. The Land Use and Transportation Element Update has perhaps the most far-reaching consequences of the overall effort, as it includes the updating of the City's Land Use and Transportation Diagram (the map guiding future development decisions) and the City's policies regarding growth and development. The Land Use and Transportation Element will also provide the basis for updating the Oakland zoning ordinance, including the zoning map.

GENERAL PLANS AND CEQA

The adoption of a general plan or a general plan element constitutes a "project" under CEQA. However, since general plans are by their very nature "general," CEQA recognizes that the level of specificity in the EIR need not be as detailed as an EIR for a specific development proposal. Section 15146(b) of the State CEQA Guidelines states that an EIR for a project of this type should focus on the secondary effects that can be expected to follow from adoption. These effects (residential, commercial, and industrial development in various parts of Oakland) include impacts associated with land use changes, traffic increases, added demands on municipal services, and similar impacts. Without specific project information and a development time frame, it is not possible to adequately address all of the specific impacts that could occur as development consistent with the Element takes place. Additional environmental documentation will be required to assess the impacts of development projects that implement the General Plan.

This EIR does assume development of certain projects that are known to be in the planning stages in the downtown area and in the vicinity of the Oakland-Alameda County Coliseum Complex. These projects are described at a general level, for purposes of analyzing their cumulative effects and in anticipation of subsequent project-specific environmental documents, in Chapter II (Project Description).

CEQA further requires that an EIR for a general plan amendment (including an Element Update) describe the significant impacts of the revised policies and map designations *on the existing setting*, even if the amendment would result in a reduced level of impact from the previous plan. Therefore, even where the proposed Land Use and Transportation Element reduces the degree of potential environmental impacts associated with growth and change from those anticipated under the current (1980) Plan, these reduced impacts may still be considered significant.

PROGRAM EIR SCOPE AND FORMAT

This EIR has been formulated as a "Program EIR" under the authority of Section 15168 of the CEQA Guidelines. A Program EIR is a CEQA-authorized device that is especially appropriate for addressing the anticipated environmental consequences of City decisions to carry out a new governmental program or adopt new policies or regulations. The Program EIR enables the City to examine the overall effects of the proposed course of action and take steps to avoid unnecessary adverse environmental effects.

The CEQA Guidelines stipulate that a Program EIR may be prepared for a series of related actions that can be characterized as one project. These actions must be related geographically; as a logical part of a sequence; in connection with plans, regulations, or a continuing program; or as individual activities carried out under the same statutory or regulatory authority and having generally similar effects. The proposed Element meets all four of these criteria.

A Program EIR may also be used to simplify the task of preparing environmental documents on later projects that may occur as a result of the program. When individual projects are proposed in Oakland in the future, the City will be required to examine these activities during the normal environmental review process. During that process, this EIR can be used to determine whether the project's effects have already been analyzed to a satisfactory level. Thus, this EIR will provide the basis for:

- determining the level of significant effects associated with subsequent projects;
- presenting information that can be incorporated by reference in the subsequent project-specific environmental documents to address cumulative effects, growth-inducing effects, alternatives, and other secondary effects related to the community as a whole; and
- focusing specific project environmental documents on more direct impacts (such as site-specific wildlife impacts and local traffic) that are not considered on a site-specific level in this EIR.

If the proposed subsequent project activities are consistent with the Element's policies and would have no effects beyond those analyzed in this EIR, the City may assert that the activities are part of the approved General Plan Update program and that no further CEQA compliance is required.

The Program EIR scope includes all environmental issues to be resolved and all areas of controversy known to the City, including those identified by the City in its Initial Study of the proposed action, and those identified by individuals and agencies responding to the City's Notice of Preparation. The format of the EIR is that prescribed by CEQA. For each topic addressed, the text describes the existing setting, the probable impacts, and suggested mitigation measures. Most of these mitigation measures are included in the proposed project, or in other elements of the General Plan that have already been adopted. Additional measures may not currently be included but are identified to further reduce adverse impacts.

REQUIRED LEGISLATIVE APPROVALS

Implementation of the proposed Land Use and Transportation Element will require approval of a General Plan Amendment by the Oakland City Planning Commission and City Council. State law (Government Code Section 65351) requires that the Planning Commission and City Council each hold at least one public hearing on the amendment before they take formal action.

Comments received at the public hearing will be considered by each body before taking formal action to adopt or revise the Element. The Final EIR must be certified prior to adoption of the Element.

INTENDED USES OF THE EIR

The City of Oakland is acting as the Lead Agency for all environmental review associated with the Land Use and Transportation Element Update. This EIR has been prepared to serve as the CEQA-required environmental documentation for City consideration of the update and to assist the Oakland City Planning Commission and City Council in their review of the document. These bodies will use this EIR along with other information in determining whether to approve, deny, or modify the proposed Element.

The EIR may also be used at a future date by the Planning Commission and City Council to evaluate the environmental impacts of subsequent actions that are consistent with the Land Use and Transportation Element or are intended to implement the Land Use and Transportation Element. The environmental review for future actions may rely solely on this EIR, may reference information in this EIR for a plan or project specific environmental document, or use this EIR as a "first tier" document for subsequent or supplemental environmental documentation. Examples of subsequent actions for which this EIR may be used include:

- Amendment of the Zoning Ordinance and Zoning Map for General Plan consistency;
- Adoption of area plans or additional policies intended to implement the Land Use and Transportation Element, such as the Oakland Estuary Plan;
- Development projects that are consistent with the Land Use and Transportation Element, such as those described in Tables II-5 and II-6; and
- Adoption of additional General Plan elements, such as the Safety Element, the Noise Element and the Housing Element.

As the Lead Agency, the City also intends to use this EIR as the required documentation for approvals that may be required by other responsible agencies, such as the East Bay Municipal Utility District, the Bay Conservation and Development Commission, Caltrans, the state Department of Fish and Game, and other agencies not identified at this time.

The EIR is also intended for use as a first tier environmental review document for the projects listed in Tables II-5 and II-6. Where appropriate, the information presented in this EIR will be

incorporated by reference in the environmental documentation required for each project under CEQA. The analysis of cumulative impacts, growth inducing impacts, and other secondary effects in this document may also be used to meet CEQA requirements for these projects.

ANTICIPATED CHANGES TO THE PROJECT

The formal public review process may lead to changes in the Draft Element. These changes will be made before the Final EIR is certified. If these modifications involve new potentially significant impacts, revision and recirculation of the EIR could be required. If the modifications do not involve new significant impacts or impacts that can be mitigated through the measures laid out in this EIR, then recirculation would not be required.

ORGANIZATION OF THE EIR

Pursuant to Sections 15140 and 15143 of the CEQA Guidelines, an EIR should be organized and written in a manner that allows decision makers and the public to understand the material contained in the document. The focus should be on the significant effects of the project on the environment. Accordingly, this EIR focuses on the information necessary to make an informed decision regarding project approval. The EIR is organized into the following sections:

Summary of Impacts and Mitigation: This Summary highlights the significant environmental impacts that would result from implementation of the proposed Element and lists the mitigation measures needed to reduce the effects to a less-than-significant level.

I. Introduction: This section explains the purpose of the EIR and its organization.

II. Project Description: This section describes the major recommendations of the proposed Land Use and Transportation Element and presents quantitative and qualitative data on the project. The text discusses policy changes, map changes, land use definition changes, and anticipated projects in specific areas of the City..

III. Setting, Impacts, and Mitigation: This section presents an impact analysis for all of the topics identified in the Initial Study as being potentially affected by the proposed Element. The following topic areas are addressed:

- A. **Land Use**, including land use compatibility issues and the potential effects of the Element and its associated map changes on long-term land use and development patterns in Oakland.
- B. **Transportation and Circulation**, including the effects of project-facilitated land use changes and housing and employment growth on local and regional traffic conditions.
- C. **Population, Employment and Housing**, including anticipated impacts of the Element on *population, employment, and housing* growth; the balance between jobs and housing; and the displacement of housing by new development.

- D. **Public Services**, including the impact of project-facilitated change on Oakland's water system, sewer system, storm drainage system, solid waste capacity, police and fire services, schools, libraries, and parks.
- E. **Air Quality**, including the potential air quality impacts of the land use and transportation changes and the population growth facilitated by the project.
- F. **Visual and Aesthetic Conditions**, including the effect of the Element on urban design, views, and visual character in Oakland neighborhoods.
- G. **Cultural and Historic Resources**, including the impact of the Element on historic, archaeological, and paleontological resources in Oakland.
- H. **Vegetation and Wildlife**, including the potential vegetation and wildlife impacts of projects facilitated by the new Element, particularly on sensitive habitats and rare, endangered, or threatened species.
- I. **Hydrology and Water Quality**, including the impact of project-related development on urban runoff and local water quality conditions.
- J. **Energy**, including the impact of the Element on fossil fuel consumption and gas and electric infrastructure.
- K. **Geology and Seismicity**, including the relationship of long-range development patterns facilitated by the Element to local seismic conditions, geologic hazards, and soil resources.
- L. **Noise**, including impacts related to the traffic increases projected by the Element and impacts associated with existing and projected noise sources.
- M. **Hazardous Materials**, including the increased risk of exposure to hazardous substances or incidents resulting from project-facilitated development.
- N. **Wind**, describing the impacts that could occur within the Downtown Showcase District as a result of known development projects.
- O. **Consistency with Adopted Plans and Policies**, describing the relationship between this Element and other plans and programs guiding land use and transportation decisions in the Oakland area, including the Alameda County General Plan, the General Plans of adjoining cities, and plans prepared by the Port of Oakland, East Bay Regional Park District, Alameda County Airport Land Use Commission, Association of Bay Area Governments, Metropolitan Transportation Commission, Alameda County Congestion Management Agency, and other regional, state, and federal agencies.

IV. Alternatives Analysis: This section compares the project (the "preferred alternative") to other alternatives, including a "no project" alternative that would leave the current Land Use and Transportation Elements in place.

V. Impact Overview: This section describes the growth-inducing effects of the project, the cumulative effects of this project and others underway in the City and region, and the *unavoidable or irreversible impacts* of the project. The "unavoidable" impacts are those that would remain significant even after mitigation measures are applied.

**TABLE II-4
CORRELATION BETWEEN PROPOSED AND EXISTING LAND USE CATEGORIES**

Proposed Category	Description	1980 Equivalent
Hillside Residential	Existing and planned detached unit residential neighborhoods in the Oakland Hills. Maximum allowable density is 5 units per gross acre but actual density should vary depending on environmental, access, and safety constraints.	Replaces the "Suburban Residential" category in the 1980 Plan; also incorporates the low end of the density range allowed by the "Low Density" category. "Suburban" currently allows roughly 3.5 units per gross acre and "Low" allows roughly 7 units per gross acre.
Detached Unit Residential	Low density, mostly single family housing areas. Maximum allowable density is 11 principal units per acre.	Replaces the "Low Density Residential" category; also incorporates part of the density range allowed by the "Low-Medium Density Residential" category. "Low Medium" allows roughly 14 units per gross acre.
Mixed Housing Type Residential	Areas characterized by a mix of detached unit homes, 2-4 unit buildings, and townhomes. Maximum allowable density is 30 principal units per acre.	Replaces the "Low-Medium" and "Medium Density Residential" categories. "Medium" allows about 25 units per gross acre.
Urban Residential	Neighborhoods dominated by apartments and condominiums, excluding the downtown area (which has its own category and allows higher densities). Maximum allowable density is 125 units per acre.	Replaces the "Urban Density Residential" category in the old Plan. There is presently no density limit for this category.
Neighborhood Center Mixed Use	Pedestrian-oriented shopping districts with a mix of retail, housing, office, restaurants, services, entertainment, and community facilities. Maximum FAR is 4.0. Maximum allowable density is 125 units per acre.	Included in the "Commercial" designation. No FAR or density limit is established in the definition, but a policy discouraged FARs above 4.0.
Community Commercial	Similar land use mix as Neighborhood Centers, but more inclusive. This category also accommodates larger scale retail and service uses, and auto-oriented as well as pedestrian uses. Maximum FAR is 4.0. Where housing is included, maximum density is 125 units per acre.	Included in the "Commercial" designation. No FAR or density limit is established in the definition, but a policy discouraged FARs above 4.0.
Housing and Business Mix	Transitional areas between industrial and residential neighborhoods characterized by a mix of housing, light industry and manufacturing, live-work space, commercial uses, and service businesses. Performance standards are to be used to improve land use compatibility in these areas. Maximum FAR is 1.0; maximum housing density is 30 units per acre.	No equivalent in the 1980 Plan. Most of these areas were either designated as Industrial or Low-Medium Density Residential.
Central Business District	High intensity mixed uses, including large-scale office, high-rise residential, institutional, arts and entertainment, retail, service, and visitor-serving uses. Maximum FAR is 20.0. Maximum housing density is 300 units per acre.	Included in the "Commercial" designation. No FAR or density limit was established.

TABLE II-4 (Continued)
CORRELATION BETWEEN PROPOSED AND EXISTING LAND USE CATEGORIES

Proposed Category	Description	1980 Equivalent
Regional Commercial	Land uses serving a regional market for shopping, entertainment, sports, arts, associated residential, and visitor services. Maximum FAR is 5.0.	Included in the "Commercial" designation
Business Mix	A mix of light industrial, biotechnology, research and development, office, warehouse and distribution, commercial, and compatible uses. Live-work is allowed in some areas. Maximum FAR is 4.0.	No equivalent in 1980 Plan. About an equal number of these areas were previously designated for industrial and commercial uses. The land use mix is probably more closely aligned with the "Industrial" category.
General Industrial/ Transportation	Industrial and transportation uses with impacts that limit their compatibility with other uses. Includes the Airport and Harbor, existing heavy industry and <i>manufacturing areas, and transportation-related business areas.</i> Maximum FAR is 3.0	Replaces both the "Industrial" and "Transportation" categories in the previous Plan, although the lighter industries correspond more closely to the "Business Mix" category.
Institutional	Cultural and institutional uses, medical uses, educational uses, and other uses of similar character. Maximum FAR is 11.0 to acknowledge that there are existing high-rise hospitals with this designation.	Replaces the "Institutional/ Governmental" category in the 1980 Plan. In the 1980 Plan, this category included cemeteries; these are now proposed as Urban Open Space.
Waterfront	Mixed use district designed to showcase Oakland's identity as a waterfront city. Allows a full range of urban activities, including commercial, industrial, and residential uses. Compatibility is to be ensured through performance standards. Maximum FAR is 5.0 and maximum residential density is 125 units per acre. The Oakland Estuary Plan currently being developed will provide a more detailed land use distribution for the Waterfront area.	No equivalent in the 1980 Plan. Most of the areas with this designation were previously designated as Industrial, with Commercial or Transportation uses in areas closest to downtown.
Resource Conservation Areas	Undeveloped areas with high natural resource and scenic value. These areas are in public ownership or are slated for public ownership.	Replaces the "Park, Recreation, Natural Area, or Watershed" designation on ecologically sensitive areas along the shoreline and in the hills.
Parks and Urban Open Space	Golf courses, cemeteries, and City and regional parks characterized by a mix of active and passive recreation, including recreational facilities.	Replaces the "Park, Recreation, Natural Area, or Watershed" designation on active recreation parks. Cemeteries were formerly designated Institutional.

NOTE: Most of the land use categories also include provisions for compatible Community Facilities such as schools and churches. The residential categories also allow accessory housing units where certain conditions are met.

SOURCE: Barry Miller, AICP, 1997

Major changes are summarized below:

1. Residential designations will be changed to correlate with housing type rather than square feet of land per unit. The 1980 Land Use Element used five residential categories, each corresponding to a different range of land area per unit. The 1997 Element uses includes four residential categories. Although each one has an associated density range, the categories are distinguished by the types of units: hillside homes, single family detached homes, mixed housing types, and urban housing. The density ranges in these categories are different than the categories of the 1980 Land Use Element.
2. The one commercial designation in the 1980 Land Use Element will be replaced by three primary commercial categories (neighborhood center, community, and regional) and several categories in which commercial uses are mixed with other uses, including residential or industrial uses.
3. While the 1980 Element stratified Industrial and Transportation uses into two separate categories, the new Element will combine General Industrial and Transportation uses in a single category and separate lighter industrial and other business uses into a new category called "Business Mix."
4. The new Element will include several new designations that reflect the function of areas within the City rather than their primary land use. Specifically, "Waterfront" and "Central Business District" categories will be created. A diverse range of uses is allowed in both areas. An Estuary Plan to be adopted as part of the General Plan in early 1998 will provide further land use guidance for the "Waterfront" area.
5. The new Element will include a category that acknowledges the existing mix of housing and business in some Oakland neighborhoods and is designed to provide areas for low-impact businesses and residential uses. Through performance standards to be adopted subsequently, this category will also be used to enhance transitions and buffers between residential and industrial areas.
6. Open space designations will distinguish between "urban" open spaces like City parks and cemeteries and "wildland" open spaces, including wetlands and large natural areas in the hills.
7. Maximum Floor Area Ratios (FARs) are expressly stated for each commercial and industrial category. The prior Land Use Element addressed FAR in policy language, but did not set a maximum FAR for its commercial or industrial categories. The 1980 Land Use Element indicated that commercial FARs should not exceed 4.0 outside the Central District; no limit was set for industrial uses or land within the Central District. The new categories call for limits ranging from 3.0 to 5.0 in most employment-based districts, but allow FARs of up to 11.0 in Institutional areas and 20.0 in the Central Business District.²
8. A maximum density of 300 units per acre is established downtown. The previous Land Use Element described housing as an acceptable use downtown, but did not specify a maximum density.

² Floor area ratio is the relationship between area within a building and the area of the lot. Thus, a three story building that occupies one-half of a lot has a FAR of 1.5:1, while a five-story building occupying an entire lot has a FAR of 5.0:1.

CHAPTER III

ENVIRONMENTAL SETTING, IMPACTS AND MITIGATION MEASURES

A. LAND USE

This section of the EIR describes existing land use within the Oakland Planning Area, the potential impacts of the proposed Land Use and Transportation Element on land use, and mitigation measures to address any potentially significant adverse impacts.

SETTING

A description of Oakland's location and overview of its physical characteristics may be found in the Project Description of the EIR. In 1997, the City encompassed approximately 56 square miles of land, or about 35,650 acres. The City is comprised of approximately 103,000 parcels of land.

CONTEXT

Land use patterns in Oakland reflect the City's evolution from a gold-rush era settlement to a major industrial, maritime, and population center. Oakland's central street grid was laid out in 1850, two years prior to the City's incorporation. Completion of the transcontinental railroad in 1869 raised the City to national significance. Growth was rapid through the latter part of the 1800s, a result of both neighborhood expansion and annexation. By 1900, much of the area around downtown, in West Oakland, and just east of Lake Merritt had been developed. In the aftermath of the 1906 earthquake and fire, 150,000 people sought refuge in Oakland. Many did not return to San Francisco and were housed in new neighborhoods to the north and east of Downtown. Downtown became Oakland's civic, cultural, and retail center, with a large concentration of high-rise buildings established by 1920.

Buildout of most of Oakland's flat lands occurred during the 1930s and 1940s. Among the major physical changes of this era were the filling of large areas west of the City for construction of military bases and shipbuilding terminals, completion of the Bay Bridge, and expansion of Oakland Airport. During World War II, the City's population topped 400,000 as thousands of military and industrial workers migrated to Oakland. The post-war era marked the start of a long period of economic decline. This decline was accompanied by land use and transportation changes, including the clearing of neighborhoods for interstate highways and urban renewal projects and the closure of major manufacturing operations. Although large areas of the hills

developed in the post-war era, most of the land use pattern was already well established when the City adopted its first General Plan in 1959.

Oakland's first zoning map was adopted in 1935. For the most part, the zones reflected existing development patterns. However, in West Oakland, industrial and multi-dwelling zoning was mapped upon large areas of existing single family homes. This set the stage for conflicts between residential and industrial uses that continue today. In much of the City, single family neighborhoods were zoned to allow much higher density housing, creating a pattern of mixed single and multi-family housing which persists today in much of North and East Oakland. In East Oakland, single family zones directly abutted heavy industrial zones, establishing "edge" conditions which continue to be a problem in some locations. Nearly all of the waterfront was zoned for heavy industry, and most of the arterial streets were zoned for commercial uses. Over the years, the zoning ordinance has been expanded and amended to respond to land use conflicts, the established pattern, and goals for reshaping Oakland's form.

Table III.A-1 summarizes the results of a land use inventory conducted by the City in 1995 for more than 103,000 parcels. Approximately 40 percent of the City is comprised of residential uses, including more than 10,000 acres of single family residences and 3,000 acres of attached or multi-family housing. Transportation and utility uses, including the airport and much of the harbor, comprise another 20 percent of the City. Industrial and commercial uses each represent 4 percent of Oakland. Public and institutional uses comprise 9 percent of the City. The remainder of the City -- or about 23 percent of its area -- is open space. This includes nearly 3,000 acres of permanent open space (parks, cemeteries, golf courses, etc.) and more than 3,700 acres of vacant land.

These land uses are distributed in a pattern which reflects natural features such as the waterfront and hills, transportation improvements, and the various stages of Oakland's development. Transportation and utility uses are concentrated at the harbor and airport. Industrial uses are generally located in West Oakland and in a broad corridor extending along the Southern Pacific Railroad from West Oakland to San Leandro. Commercial uses are located in activity "nodes" such as downtown and in "strips" along the City's arterial streets. Residential uses occupy most of the remainder of the City, with densities generally decreasing towards the hills. The highest residential densities are found Downtown and in the neighborhoods around Lake Merritt.

PLANNING AREA LAND USES

A summary of land uses in each of the City's major planning areas is provided below:

West Oakland/ Harbor

The West Oakland Planning Area is one of Oakland's oldest communities and contains a mix of residential and industrial uses. The Harbor Planning Area is entirely non-residential and consists

III. ENVIRONMENTAL SETTING, IMPACTS AND MITIGATION MEASURES

A. LAND USE

**TABLE III.A-1
EXISTING LAND USE BY PLANNING AREA, 1996 (IN ACRES)**

	West Oakland/ Harbor	Central/ Chinatown	San Antonio/ Fruitvale/ Lower Hills	East Oakland/ Airport ^a	North and South Hills	North Oakland	TOTAL ^a
1 Unit Residential	140	50	2,250	2,330	3,800	700	9,270
2-4 Unit Residential	150	60	790	440	40	340	1,820
5 + Unit Residential	90	150	320	200	40	120	920
Public/Civic/ Institutional	70	120	220	530	1,780	120	2,840
Park/Open Space	340	130	80	380	1,800	30	2,760
Retail/ Service/ Entertainment	40	130	160	240	30	110	710
Office	10	100	50	70	10	30	270
Automotive	30	50	50	80	0	30	240
Parking Lots	20	110	20	30	10	10	200
Hotel/ Motel	0	10	10	30	20	5	75
Light Industry	260	100	140	610	0	30	1,140
Heavy Industry	80	0	70	210	120	10	490
Utility/ Transportation	4,230	110	120	1,040	110	10	5,620
Vacant	130	50	140	640	2,360	50	3,370
TOTAL	5,580	1,170	4,420	6,830	10,130	1,590	29,720

^a Acreage figures exclude streets and portions of Oakland International Airport. Addition of these areas brings the total city area to approximately 35,500 acres.

SOURCE: Alameda County Assessor's Office data, updated to 1993 and supplemented by Oakland CEDA Staff, 1997.

mostly of maritime terminals, railyards, and former military bases on land filled during the 1930s. The two areas comprise 5,571 acres, or about 17 percent of the City. More than three-quarters of this acreage is presently in transportation or utility use. About 7 percent is residential, and 6 percent is industrial. The residential areas are characterized by Italianate and Victorian homes on very narrow lots, intermixed with duplexes, tri-plexes, and fourplexes. A number of large public or subsidized housing projects, including Campbell Village, Peralta

Villages, and Acorn, are located in the area. As a result of historic zoning patterns, many blocks in West Oakland contain a mix of residential, industrial, and commercial uses. The area lacks a distinct commercial center, although there are remnants of once active commercial districts along Seventh Street and San Pablo Avenue.

Central/ Chinatown

The Central/ Chinatown Planning Area includes Downtown Oakland, Chinatown, Pill Hill, the Jack London Waterfront, and the residential neighborhoods of Adams Point, Richmond Boulevard, and the Gold Coast. At 1,170 acres, it is one of the smallest planning areas in the City. However, it is Oakland's primary employment and civic center and its transportation hub. About 23 percent of the area is residential, 9 percent is industrial, and 9 percent consists of transportation or utility uses. Commercial uses, including more than 13 million square feet of office space, comprise 32 percent of the area.

San Antonio/ Fruitvale/ Lower Hills

This Planning Area extends from the east side of Lake Merritt to High Street and includes the mostly single family residential neighborhoods east of Piedmont between Highways 580 and 13. The area covers 4,417 acres, or about 13 percent of the City's area. Although three quarters of the land area is residential, this is one of the most diverse parts of the City in its land use mix. Some 51 percent of the area consists of one-family homes and 25 percent consists of attached and multi-family housing. Most of the higher density housing is located in San Antonio and Fruitvale, often in a land use pattern in which single family homes and apartments are mixed on the same blocks. Concentrations of high density housing are located on the eastern edge of Lake Merritt and along Foothill and Park Boulevards.

Commercial uses comprise 6 percent of the Planning Area. The area's commercial uses are primarily located in "strips" along arterials such as MacArthur Boulevard, International Boulevard, Fruitvale Avenue, and East 12th Street. Industrial uses comprise 5 percent of the area and are mostly located near the waterfront and along East 12th Street.

East Oakland

This Planning Area encompasses Central East Oakland, Elmhurst, and the International Airport. Its 6,700 acres represent 20 percent of Oakland's land area. The Airport, including runways, aprons, and clear zones, constitutes about a third of the area. Residential uses comprise another third. About 80 percent of the residential acreage consists of single family housing. Although portions of the area are exclusively single family, large portions contain mixes of single and multi-family dwellings. East Oakland also includes more than 800 acres of industry, 500 acres of public and institutional uses, 300 acres of parkland, and 400 acres of commercial land use. Industrial uses are generally located in a corridor along San Leandro Street extending from High

Street to 98th Avenue, while commercial uses are located along arterial streets and in business parks adjacent to Oakland Airport. The separation between industrial and residential uses is more distinct here than it is in West Oakland, although there are land use conflicts at some of the edge locations where the two uses meet.

North and South Hills

This is the largest Planning Area in size, extending more than 12 miles from Berkeley to San Leandro and encompassing 30 percent of Oakland's land area. Nearly half of this area consists of parks, open space, and vacant land. The remainder is mostly developed with single family homes. Commercial uses are limited to Montclair Village, neighborhood shopping centers, and special uses such as the Claremont Hotel and Peralta Oaks Business Park. The area includes Leona Quarry, Oak Knoll Naval Hospital, Merritt and Holy Names Colleges, Mountain View Cemetery, and the Knowland Park Zoo. The land use pattern reflects the area's steep terrain and its development during more recent times than the flatlands. Average lot size is 9,000 square feet in the North Hills and 14,000 square feet in the South Hills. The combination of large lots, winding roads built to rural standards, and dense tree cover create a rural character in much of the area.

North Oakland

At 1,588 acres, North Oakland comprises about 5 percent of Oakland's land area. Some 73 percent of this area is residential, including more than 700 acres of single family residences. The area also contains 337 acres of duplexes, triplexes, and fourplexes, and 123 acres of multi-family housing. These varied housing types can be found on almost every block in North Oakland, creating a very diverse housing mix in a relatively small area. Commercial uses represent 11 percent of North Oakland's area and are concentrated along the San Pablo, Telegraph, College, Piedmont, MacArthur, and Broadway Corridors. Several of these corridors contain continuous street walls and are pedestrian-oriented. Residential uses are common on the upper floors of commercial buildings. Industrial uses represent just 3 percent of North Oakland and are concentrated along the Emeryville border and along a former railroad line parallel to Market Street. Seven percent of the Planning Area is in public or institutional use.

SIGNIFICANCE CRITERIA

The State CEQA *Guidelines* indicate that a project may have a significant effect on land use if it would disrupt or divide the physical arrangement of an established community; conflict with established recreational, educational, religious, or scientific uses in an area; or convert prime agricultural land to urban use. The Guidelines further indicate that a significant land use impact may occur if a project results in a substantial alteration of the present or planned land use. The latter circumstance may result from adoption of the Land Use and Transportation Element. The discussion below describes this impact in greater detail and emphasizes potential land use

conflicts resulting from the proposed land use designations and application of the Element's policies in various parts of the City.

IMPACTS AND MITIGATION MEASURES

CHANGES TO CLASSIFICATION SYSTEM

Impact A.1: Implementation of the proposed Land Use and Transportation Element would alter the Oakland General Plan land use classifications, changing the densities that are allowed in various residential designations and restructuring the commercial and industrial designations to reflect a broader range of industry and business than anticipated in the 1980 Plan. Development consistent with the new definitions could result in a broader range of commercial and industrial uses in some areas. This would be a less-than-significant impact, as it is mitigated by policies in the Land Use and Transportation Element and the additional measures identified in this EIR.

The proposed Land Use and Transportation Element (also referred to here as the "proposed Plan") would result in a complete revision of the City's General Plan Map classifications. A tabular comparison between the classifications used in the 1980 Plan and the proposed Plan is included in the Project Description. The 1980 Plan used five residential classifications (stratified by density), one commercial classification, one industrial classification, one transportation classification, one public classification, and one open space classification. The proposed Plan uses four residential classifications (corresponding to different densities than the 1980 Plan designations), two commercial classifications, one combined industrial/ transportation classification, two open space classifications, and five mixed use classifications. The introduction of mixed use classifications would mark a major shift in Oakland land use policy. Mixed use classifications have been applied to 12 percent of the City's land area; most of these areas were previously designated as Commercial or Manufacturing/Wholesaling.

The classification changes are summarized below, by major land use headings.

Residential

The previous Land Use Plan established the following categories:

- Suburban Residential required 10,000 square feet of land per unit (which equates to a gross density of about 3.5 units per acre).
- Low-Density Residential required 5,000-9,999 square feet of land per unit (which equates to a gross density of 3.5 to 7 units per acre).
- Low-Medium-Density Residential required 2,500-4,999 square feet of land per unit (which equates to a gross density of 7 to 14 units per acre).

- Medium-Density Residential required 1,500-2,499 square feet of land per unit (which equates to a gross density of 14 to 23 units per acre).
- High-Density Residential required less than 1,500 square feet of land per unit, with no limit on the maximum density.

The proposed Plan would establish replace these categories as follows. The new categories specify a maximum density per acre rather than a land area requirement per unit.

- Hillside Residential allows a maximum gross density of 5 units per gross acre.
- Detached Unit Residential allows a maximum gross density of 11 units per gross acre.
- Mixed Housing Type Residential allows a maximum gross density of 30 units per gross acre.
- Urban Residential allows a maximum gross density of 125 units per gross acre.

All of the areas presently designated as “Suburban Residential” would be redesignated as “Hillside Residential.”¹ This change would impact more than half of the privately-owned land in the North and South Hills. Policies in the Draft Plan direct the City to zone this land in a manner which considers environmental conditions, neighborhood character and infrastructure availability. Further, the Strategy Diagram indicates that the City’s development policies should “maintain and enhance” these areas. Thus, it is unlikely that the allowable density will increase; in some instances, it may actually decrease.

The areas designated “Low-Density Residential” on the 1980 Plan would receive new designations of either “Hillside Residential” or “Detached Unit Residential,” depending on their location. Property in the Oakland Hills would generally be reclassified as Hillside Residential. This would effectively reduce the allowable density from 7 to 5 units per acre. Zoning consistent with the General Plan could make it more difficult to split or subdivide lots, particularly in areas like Montclair and Piedmont Pines. The development potential of some unsubdivided sites in the hills could be slightly reduced. “Low-Density Residential” areas in the flatter parts of the City would see an increase in allowable General Plan density from 7 to 11 units per acre. This change is proposed in Upper Rockridge, Trestle Glen/ Crocker Highlands, Lower Oakmore, and in parts of Redwood Heights, Millsmont, and Toler Heights. However, policies in the Plan encourage zoning designations which maintain the character of these neighborhoods and discourage increases in density. Policy N7.1 requires development in Detached Unit and Mixed Housing Type areas to be compatible with the density, scale, design, and existing or desired character of surrounding development. The Strategy Diagram indicates that these areas will be “maintained and enhanced,” reducing the potential for increased density.

¹ This excludes “Suburban Residential” land shown on the 1980 Plan that has since been acquired as open space.

Areas designated “Low-Medium-Density Residential” on the 1980 Plan include the majority of East Oakland, San Antonio-Fruitvale, and North Oakland. About 3,000 acres with this designation will be reclassified as “Detached Unit Residential” with an attendant decrease in allowable General Plan density from 14 to 11 units per acre. Most of these areas are located in Central East Oakland and Elmhurst and in the Dimond, Laurel, and Glenview Districts. Most of the residential areas in North Oakland, San Antonio, and Fruitvale will be reclassified to “Mixed Housing Type Residential,” with an attendant increase in General Plan density from 14 to 30 units per acre. Zoning revisions would only allow density increases where compatible with neighborhood character, consistent with policies in the General Plan, and consistent with the Strategy Diagram. Zoning would reflect the City’s strategy to “Maintain and Enhance” its established residential neighborhoods.

Areas designated “Medium-Density Residential” on the 1980 Plan are generally located around existing concentrations of “garden apartment” housing in West Oakland, parts of Adams Point, the MacArthur, Foothill, and Fruitvale Corridors, and along the corridors in North Oakland. In West Oakland, Adams Point, and in parts of North Oakland and the Lower Hills, these areas are being reclassified as “Mixed Housing Type.” Along the corridors, they are generally being reclassified as “Urban Residential.” In both cases, the maximum density specified by the proposed Land Use and Transportation Map is higher than the existing General Plan density to reflect existing conditions or the policy emphasis on higher density corridor housing.

Most areas designated “High Density Residential” on the 1980 Plan are being reclassified as “Mixed Density Residential” or “Urban Residential.” The proposed map designations reflect the existing pattern more closely than the 1980 Plan. Thus, smaller portions of West Oakland, Adams Point, and the Piedmont Avenue area are being shown for the highest density residential categories. The Gold Coast and Chinatown areas, both designated High Density Residential in the 1980 Plan, are to be reclassified as “Central Business District.” This will not significantly impact the allowable uses or densities.

Commercial

The 1980 Plan has one commercial classification. The Land Use and Transportation Element has three commercial classifications and the CBD classification. Areas designated “Commercial” in the 1980 General Plan include most of Downtown Oakland, the Jack London waterfront, the Airport Gateway, and the corridors along San Pablo, Martin Luther King, Telegraph, College, Broadway, Piedmont, MacArthur, Grand, Foothill, and International Boulevards. Most of the City’s shopping centers (Lincoln Square, Foothill Square, Eastmont, etc.) and districts are also commercially designated. The proposed Plan would reclassify these areas into the new commercial categories, mixed use categories, or the urban residential category.

Downtown commercial areas would be reclassified as “Central Business District.” A floor area ratio limit of 20.0 would be set and a maximum density of 300 units per acre is established.

PTS100-01

UPDATE/QUERY PROJECT INFORMATION

3/09/07 14:46:24

Next Option: 101

Applic#* A07090 Type:

Date Filed: 03/09/07 Complete By: 04/08/07 Disposition:

NUMBER STREET NAME SUFFIX* SUITE ASSESSOR PARCEL#

Site addr: 1) 5253 COLLEGE AV 014 -1240-004-00

2)

3)

Zoning* C-31 S-18 GP Use 3NC Prcl Cond: X Cond Aprvl: Viol:

Proj Descr: Appeal of Planning Approval to Planning Commission
containing 6 dwelling units over ground floor commercial.
Use permit for ground floor parking & variance for rooftop

Environ Rev: Exempt? (Y/N): Y Sect: 15301 EX ER Applic#:

Track: Lic# Phone# Applicant

Owner: KIRK PETERSON (510)547-0275

Contractor:

Arch/Engr:

Agent: BERT VERRIPS (510)652-1666 X

Applicant Addr: 5248 DESMOND STREET No Fee:

City/State: OAKLAND, CA Zip: 94618

Other Related Applic#s: ZP040021 ZP060207 CDV06604

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

Applic#* A07090 Type:

Date Filed: 03/09/07 Complete By: 04/08/07 Disposition:

	NUMBER	STREET NAME	SUFFIX*	SUITE	ASSESSOR	PARCEL#
Site addr: 1)	5253	COLLEGE	AV		014	-1240-004-00
2)						
3)						

Zoning* C-31 S-18 GP Use 3NC Prcl Cond: X Cond Aprvl: Viol:

Proj Descr: Appeal of Planning Approval to Planning Commission containing 6 dwelling units over ground floor commercial. Use permit for ground floor parking & variance for rooftop

Envirn Rev: Exempt? (Y/N): Y Sect: 15301 EX ER Applic#:

Track:	Lic#	Phone#	Applicant
Owner: KIRK PETERSON		(510)547-0275	X
Contractor:			-
Arch/Engr:			-
Agent:			-

Applicant Addr: 5253 COLLEGE AVE No Fee: _

City/State: OAKLAND, CA Zip: 94618

Other Related Applic#s: ZP040021 ZP060207 CDV06604

ENTER=Update F3=Cancel

F13=Print F23=Dsc F24=Com

826 **Extended Description changed

PTS100-01

UPDATE/QUERY PROJECT INFORMATION

3/09/07 14:41:09

Next Option: 101

Applic#* A07090 Type:

Date Filed: 03/09/07 Complete By: 04/08/07 Disposition:

	NUMBER	STREET NAME	SUFFIX*	SUITE	ASSESSOR	PARCEL#
Site addr: 1)	5253	COLLEGE	AV		014	-1240-004-00
2)						
3)						

Zoning* C-31 S-18 GP Use 3NC Prcl Cond: X Cond Aprvl: Viol:

Proj Descr: Appeal of Planning Approval to Planning Commission
containing 6 dwelling units over ground floor commercial.
Use permit for ground floor parking & variance for rooftop

Environ Rev: Exempt? (Y/N): Y Sect: 15301 EX ER Applic#:

Track:	Lic#	Phone#	Applicant
Owner: KIRK PETERSON		(510)547-0275	X

Contractor:

Arch/Engr:

Agent:

Applicant Addr: 5253 COLLEGE AVE

No Fee:

City/State: OAKLAND, CA

Zip: 94618

Other Related Applic#s: ZP040021 ZP060207 CDV06604

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

POSTING LOCATIONS

Community & Economic Development Agency

Requestor: Bert Verrips ADDRESS: 5253 College Ave CASE NO.: A07-090(CD)06-62
OFFICER: _____

DATE: 4/2/07 TIME: _____
DRAFT

Posting for the above case were made in the following locations:

1. At sites
2. Cifton/Desmond
3. Glendale/Desmond
4. Desmond
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____
16. _____
17. _____
18. _____
19. _____
20. _____

PTS100-01

UPDATE/QUERY PROJECT INFORMATION

3/09/07 14:46:24
Next Option: 101

Applic#* A07090 Type:

Date Filed: 03/09/07 Complete By: 04/08/07 Disposition:

	NUMBER	STREET NAME	SUFFIX*	SUITE	ASSESSOR	PARCEL#
Site addr: 1)	5253	COLLEGE	AV		014	-1240-004-00
2)						
3)						

Zoning* C-31 S-18 GP Use 3NC Prcl Cond: X Cond Aprvl: Viol:

Proj Descr: Appeal of Planning Approval to Planning Commission
containing 6 dwelling units over ground floor commercial.
Use permit for ground floor parking & variance for rooftop

Envirn Rev: Exempt? (Y/N): Y Sect: 15301 EX ER Applic#:

Track:	Lic#	Phone#	Applicant
Owner: KIRK PETERSON		(510)547-0275	

Contractor:

Arch/Engr:	Agent:	Phone#	
	BERT VERRIPS	(510)652-1666	X

Applicant Addr: 5248 DESMOND STREET No Fee:

City/State: OAKLAND, CA Zip: 94618

Other Related Applic#s: ZP040021 ZP060207 CDV06604

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

PTS113-CPD

UPDATE/QUERY APPLICATION FEE RECORD

3/09/07 14:41:4

Next Option: 106

Appl#: A07090 Pmt#: 001 Disp: Type: Filed: 03/09/07
 Address: 5253 COLLEGE AV Unit: Parcel: 014 -1240-004-0
 Descr: Appeal of Planning Approval to Planning Commission
 Other Related Applic#s: ZP040021 ZP060207 CDV06604

Envirn Rev Determ: EX Date: 03/09/07 Sect#: 15301 ER Appl#:
 Site Area Sq. Ft.: PUD-Prelim/Final (P/F):
 PUD Floor Area Sq. Ft.: Condo Conversion? (Y/N):
 S-11 Nbr of Dwelling Units: S-11 Map Review? (Y/N):
 Des Rev-New Constr? (Y/N): Des Rev Value > \$150,000? (Y/N):
 Nbr Subdivision Lots: Invstg: Nbr Trees Review:

Payment Type*	FIL	APPL FILING PAYMENT (PLNG PERMITS)						
Applic	234.00	Exempt		Appeal		Eng-Svcs		
Notific	385.00	Special		Notific		Other		
		Tch Enh	32.50	Rcd Mgt	58.81	Invstg		
Total	710.31	Effctv	03/09/07	Init JM	Paid	Rg	Rcpt	
NSF				Refunded		Amount		

Dlnq Notice

Comment:

F1=Hlp F3=Ext F5=Chg F6=Add F7=Fwd F8=Bck F9=Del F11=Fnd F12=Prv F24=Com
 801 RECORD CHANGED

C I T Y O F O A R L A N D
Community & Economic Development Agency
258 Fremont, Oakland CA, 94612
Phone: (510)238-4587 FAX: (510)238-2263

PAYMENT RECEIPT

Application: A07090 Payment#: 801
Application Fee - PLANNING \$204.00
NOTIFICATION \$85.00
RECORDS MANAGEMENT FEE \$56.81
TECHNOLOGY ENHANCEMENT FE \$32.50
Subtotal: \$718.31

Sales Tax: \$4.00
***** TOTAL PAID: \$718.31
Check Payment: \$718.31

Payor: LAMBERTUS VERRIPS 7670
Date: 03/09/07 Time: 14:52:16
By: DLR Register RB2 Receipt# 100057

ORIGINAL RECEIPT REQUIRED FOR REFUND

notice of PLANNING COMMISSION PUBLIC HEARING

Location: 5253 College Avenue (APN: 014-1240-004-00)
Proposal: Appeal of an Administrative decision to approve a mixed use development containing six dwelling units over ground floor commercial.
Appellant: Bert Verrips
Applicant/Phone Number: Kirk Peterson - (510) 834-6600
Owner: Kirk Peterson
Case File Number: A07-090 (CDV06-604)
Planning Permits Required: Design Review for new construction, Minor Variance to allow more than 20% of the required group open space on the rooftop, and Conditional Use permits for ground floor parking and re-establishment of the existing non-retail ground floor use (Financial and Consultative – Architecture firm).
General Plan: Neighborhood Center Mixed Use
Zoning: C-31, Special Retail Commercial Zone
Environmental Determination: Exempt, Section 15303 of the State CEQA Guidelines, New construction of small structures
Exempt, Section 15183 of the State CEQA Guidelines, Projects consistent with a community plan, general plan, or zoning
Historic Status: Not a Potentially Designated Historic Property; rating: X
Service Delivery District: 2
City Council District: 1
Status: The application was approved by the Zoning Manager on February 28, 2007. The approval was subsequently appealed by the appellant on March 9, 2007.
Action to be Taken: Decision on appeal based on Staff Report and Public Testimony
Finality of Decision: Final Decision
For Further Information: Contact case planner **Peterson Z. Vollmann** at (510) 238-6167 or by email: pvollman@oaklandnet.com.

The public hearing will be heard on Wednesday, May 2, 2007, at Oakland City Hall, Hearing Room One, 1 Frank H. Ogawa Plaza, Oakland, California 94612. The public hearing will be heard at 6:30 p.m.

If you challenge the public hearing in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the Community and Economic Development Agency on, or proper to, the public hearing. If you wish to be notified of the decision of this case, please indicate the case number and submit a self-addressed stamped envelope for each to the Community and Economic Development Agency/Zoning Division, 250 Frank H. Ogawa Plaza, 2nd floor, Oakland, California 94612-2031. Please telephone (510)238-3781 for further information.

AT SUCH HEARING, FACTS MAY BE PRESENTED FAVORING OR OPPOSING THIS PROPOSAL

IT IS UNLAWFUL TO ALTER OR REMOVE THIS NOTICE on or before the hearing date indicated above. Such an act is punishable by fine or imprisonment or by both fine and imprisonment.

**SECRETARY, City Planning Commission
City Hall, Oakland, California 94612**

PTS100-01

UPDATE/QUERY PROJECT INFORMATION

3/09/07 14:41:09

Next Option: 101

Applic#* A07090 Type:

Date Filed: 03/09/07 Complete By: 04/08/07 Disposition:

NUMBER STREET NAME SUFFIX* SUITE ASSESSOR PARCEL#

Site addr: 1) 5253 COLLEGE AV 014 -1240-004-00
2)
3)

Zoning* C-31 S-18 GP Use 3NC Prcl Cond: X Cond Aprvl: Viol:

Proj Descr: Appeal of Planning Approval to Planning Commission
containing 6 dwelling units over ground floor commercial.
Use permit for ground floor parking & variance for rooftop

Invirn Rev: Exempt? (Y/N): Y Sect: 15301 EX ER Applic#:

Track: Lic# Phone# Applicant
Owner: KIRK PETERSON (510)547-0275 X

Contractor:

Arch/Engr:

Agent:

Applicant Addr: 5253 COLLEGE AVE

No Fee:

City/State: OAKLAND, CA Zip: 94618

Other Related Applic#s: ZP040021 ZP060207 CDV06604

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

DONNA M. VENERUSO
LEILA H. MONCHARSH

LAW OFFICES
VENERUSO & MONCHARSH
5707 REDWOOD RD., STE 10
OAKLAND, CALIFORNIA 94619
TELEPHONE (510) 482-0390
FACSIMILE (510) 482-0391

May 2, 2007

Planning Commission
City Hall
One Frank Ogawa Plaza
Oakland, CA 94612

RE: Project No. CDV06-604; 5253 College Ave. 3 story six unit residential over first floor commercial

Dear Planning Commissioners:

This letter is in rebuttal to the City's staff report of May 2, 2007 in which the City amply demonstrates its lack of understanding of its own General Plan and CEQA.

A. Contrary to the staff report the Planning Commission's decision is not "Final."¹

It has been at least four years since the state legislature changed the procedures for CEQA appeals related to a city's exemption determination. Under Public Resources Code § 21151, "If a nonelected decisionmaking body of a local lead agency ... determines that a project is not subject to this division, that...determination may be appealed to the agency's elected decisionmaking body, if any." The Oakland Planning Commission is a non-elected body and therefore under state law, the appellant is allowed to have his appeal heard by the Oakland City Council. Since legally the approval of the project is dependent upon the CEQA determination, the entire matter is appealable to the Oakland City Council.

B. The Oakland General Plan is not tied to zoning instead of projects.

The City staff cites no authority or language in the General Plan even remotely supporting their position that the policies quoted by the community in their appeal, including the "Maintain and Enhance" section only apply to zoning and are not specific to projects.² Their contention is belied by the City's own document, "Guidelines for Determining Project Conformity With the General Plan and Zoning Regulations." The entire document describes the process by which a planner should preliminarily decide whether a project conforms with zoning **and** with the General Plan. The Guidelines require the planner to review the same policies cited by the community in this appeal when determining if the project conforms with the General Plan and warns that there are

¹ See page one of the staff report under "Finality of Decision"

² Staff report, page 5 under "Staff Response."

Planning Commission
One Frank Ogawa Plaza
Oakland, CA 94612
Re: 5253 College Ave.
May 2, 2007
Page 2

other policies in the General Plan to also review but not cited in the Guidelines. (See pages 10 – 11, “D. General Plan Policy.”)³

On page 8 of the Guidelines, the planner is required to go through a three-step process in considering a project after reviewing applicable General Plan policies. If a project does not conform with the General Plan “Even if the project is permitted by zoning, it is not allowed.” The box on page 8 describes to the planner what he should do if the project does not conform with various General Plan policies. The options include modifying the project so that it conforms to the General Plan’s policies – the very request made by the immediate neighbors. They wanted the project reduced in height so that it was not at 29 feet looming above their houses which are located a postage stamp sized yard away from the proposed building. (In this context, it is important to note that the development intensity of the proposed project represents an eight-fold increase over the building that currently exists on the site. If only net floor area is considered [e.g., usable commercial floor area and habitable dwelling space] the development intensity is 6.5 times greater than existing on-site development.)

Furthermore, there is absolutely no language in the “Maintain and Enhance” section of the General Plan supporting the City’s contention that it can approve a project with higher density than the surrounding structures as long as the project “respects” zoning.⁴ Such an interpretation would mean that the City would not even need to consider the General Plan Maintain and Enhance policy or other policies cited by the community since it would be sufficient if a project complied with applicable zoning. Yet, the language on page 122 of the General Plan clearly directs the planner to consider the area of the proposed project with an eye to preserving the character of the neighborhood and providing for compatibility with the project site’s surrounds.

To accept the staff report interpretation, all the City would need to do is look at how many the applicant could have asked for under zoning, irrespective of the General Plan policies – exactly what apparently happened here. Instead of applying the policies listed in the Guidelines and in the General Plan, the City incorrectly concluded that these policies only applied to whether or not downzoning should occur and did not consider the policies in light of the project.

Having admittedly ignored the applicable General Plan policies the City callously concluded that it was the neighbors’ own damn fault if they bought property so close to a commercially zoned property. By the City’s calculations, the neighbors are lucky the developer doesn’t want to build 12 units and an even more invasive project! Under this logic, it would be best if nobody bought any Oakland residential property next to a

³ Attached are cited excerpts from the Guidelines; the appellant requests that the entire Guidelines document go into the administrative record.

⁴ Staff report, page 5 under “Staff Response.”

Planning Commission
One Frank Ogawa Plaza
Oakland, CA 94612
Re: 5253 College Ave.
May 2, 2007
Page 3

commercially zoned property. To avoid such an absurdity, the General Plan policies protect home buyers from projects that are highly destructive of their privacy and the quiet enjoyment of their own homes – regardless of whether the project technically matches the maximum building envelope under the zoning. The General Plan, however, does require a human with some level of common sense to actually apply the policies when considering a proposed project.

Furthermore, the City's implication that the applicant could have had a much larger project with twelve units is disingenuous in any event. To comply with the C-31 zoning the applicant could only pack more units into the same maximum building envelope as allowed under the zoning. (This, of course, then raises the question of why the applicant can't build six units in a much smaller scale building that complies with the relevant General Plan policies!)

In the only apparent claim of mitigation for the project's incompatibility with the adjacent residences, the staff report states: "...the height of the building steps away from the rear of the lot as mandated by the Planning Code." This is an apparent reference to the small stepback at the top of a 29-foot wall (located 10 feet from the neighbors' fences and 40 feet from their bedroom windows). It defies logic that a five-foot step back at the top of an otherwise unbroken wall is genuinely intended to provide a meaningful density transition between the overly massive project proposed and its neighboring single-family properties.

Under these circumstances, for the Planning Commission to deny the appeal and grant the project application would be an abuse of discretion. Not only has the City failed to even try applying the General Plan policies to the instant project, but they also have done nothing to protect an entire neighborhood from rooftop noise, visual impacts, or severe invasions of privacy.⁵

C. The General Plan variance policy applies to the project.

While it was gracious of the City to consider in a vacuum with no consultation from the immediate neighbors whether parties should occur on the ground level or on the rooftop – directly next to or on top of the neighbors, the fact remains that granting a variance required a showing of hardship. Page 149 of the General Plan demonstrates that the hardship requirement applies to the proposed project site. Policies falling within N11 are listed as applicable to the Neighborhood Center Mixed Use area where the project is located.

⁵ Staff report, page 6, second bolded sentence.

Planning Commission
One Frank Ogawa Plaza
Oakland, CA 94612
Re: 5253 College Ave.
May 2, 2007
Page 4

Regardless of the City again refusing to apply the General Plan, the minor variance test relied upon in the staff report also requires a showing of hardship, not just that the planner in his infinite wisdom deems rooftop parties a “better design solution” than parties located in the backyard. There is nothing in the staff report supporting the necessary hardship finding.

Even the applicant has concluded a couple of days ago that the variance hasn't a chance of passing muster with the court and has informed the community he intends to drop it. That still leaves the issue of why the City isn't requiring as a condition that there be no rooftop activities. Given that the applicant no longer is seeking a variance for all of the open space requirement on the roof top and given that he now proposes to put 80% of the open space on the ground, there is no reason why the City cannot condition the use permit on no recreational use of the roof top. Further, the City should require reducing the amount of space allowed for rooftop activities and fence it since 80% of the open space is now on ground level.

D. The City failed to make required findings for the Conditional Use Permit

Section 17.134.050 (A) of the Planning Code requires that the following finding be made for the approval of a Minor Conditional Use Permit (which is required in this case for allowing ground-floor parking and non-retail space on the ground floor). The required condition states, in part:

“That the location, size, design, and operating characteristics of the proposed development will be compatible with, and will not adversely affect, the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density:...”

The staff report states that the neighbors' claim that the proposed project is not compatible with the adjacent lower intensity homes behind the project site “is not valid, because the subject property is located on College Avenue, which is a mixed use commercial district, and not within the rear low intensity single family zone. When reviewing development proposals on commercial streets staff looks to have a building that is contextual with the commercial district...” The City contention that its consideration of a project's effects must stop at the zone boundary is shocking, not only because of its insensitivity and ignorance of basic planning and environmental principals, but also its cavalier interpretation of the required finding, the principal point of which is to consider a projects effects on abutting properties. It certainly does not limit that consideration of effects to the zone that the project itself is located in.

Planning Commission
One Frank Ogawa Plaza
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The City dismisses impacts to neighboring residences without addressing any of the specific and well-founded concerns raised in the neighbors' appeal letter and comment letters. But more critically, the City failed to make any finding on neighborhood compatibility whatsoever in its Conditional Use Permit findings, as required, even in the face of numerous expressions of concern and overwhelming evidence that such a finding could not, in good faith, be made for the project as proposed.

As is often the case when a City fails to apply General Plan policies and even with the applicant dropping the variance on his own, there are substantial environmental issues negating the City's ability to hide behind exemptions. As with the law applicable to the General Plan, the City also is unaware of the law relevant to the neighbors' CEQA claim.

E. The City erroneously assumed that the EIR for the General Plan also covered all projects regardless of potential environmental impacts.

As was the case with the City failing to understand its own General Plan, similarly the City doesn't understand its environmental requirements under CEQA.

Nobody is suggesting that Guideline § 15183 requires a General Plan EIR to cite density for specific projects – that's absurd. Nor is anyone challenging the EIR for the General Plan. The issue is whether the City can rely on a General Plan EIR such that it need not review the environmental effects of a specific project. The answer to that question relies upon not just the Guideline section, but a reading of the Public Resources Code and the applicable cases previously cited in my last letter.

Under Public Resources Code § 21083.3 (a) the City was still required to review the project for environmental effects "which are peculiar to the parcel or to the project and which were not addressed as significant effects in the prior environmental impact report, or which substantial new information shows will be more significant than described in the prior environmental impact report." The staff report reflects that the City simply stopped after determining "that the project falls within the criteria of zoning and the general plan."⁶

The EIR for the General Plan pretty much covered the waterfront and downtown areas. It cannot be relied upon to somehow get around the City's duty to review the environmental impacts of the instant project.

⁶ Staff report, page 7, "Staff Response." (Actually we now know that the City did NOT determine whether the project conformed with the General Plan policies as earlier admitted in their report and discussed above.)

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Furthermore, the City again demonstrates its lack of understanding of the General Plan and the EIR accompanying it by stating: "The Land Use and Transportation Element (LUTE) of the General Plan was an element of the EIR."⁷ The LUTE was an element of the General Plan, not the EIR. All General Plans consist of several elements, including a housing element. The EIR is the environmental document reviewing significant impacts related to the adoption and implementation of the General Plan.

Because the City didn't understand the relationship between the General Plan and the EIR for the General Plan, it becomes obvious why the City failed to review the instant project for environmental impacts. However, it remains that the City abused its discretion by just assuming that since a General Plan EIR existed, there was no obligation to review the project for significant environmental impacts.

Further, whether the project is proposed to the maximum density permitted in the zone is not a substitute for evaluating potential environmental impacts that were not covered in the General Plan EIR. The City still was required to look at the environmental impacts raised by the neighbors including noise from the rooftop, aesthetic concerns due to placement of windows, loss of views, etc.

E. The City erroneously assumed that an environmental impact is negated by zoning rights.

Whether the zoning allows rooftop outdoor activities or not, the City was still required to consider the project's environmental impacts. CEQA does not somehow become moot because something is allowed under zoning!! Once the City determined that the project required governmental approval for the use permit, the project fell within the CEQA rules and the City was required to evaluate whether there were negative environmental impacts.

Similarly, whether there are other people in the neighborhood engaged in outdoor activities or whether Oakland has a noise ordinance is completely irrelevant to the issue of the City's obligation to consider negative environmental impacts. The neighbors already demonstrated in their letters that the nature of the topography where they live is such that noise from a rooftop travels all over the neighborhood. They discussed another experience with rooftop parties that caused major disturbances for the neighbors. With that evidence in the record, the City is not privileged to just ignore it and conclude that there are no mitigations needed to avoid the noise impacts. The neighbors met the "fair argument" test.

⁷ Staff report, page 7 second paragraph below "Staff Response."

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F. The City should have viewed noise as an environmental impact.

In my letter of January 26, 2007, I described the various environmental impacts the City should have evaluated in an Initial Study. The City's position is incorrect – noise is one of the environmental impacts listed in the Guidelines checkboxes. Section XI NOISE, subsection (a) asks whether the project will result in: “Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies.”

Oakland's noise ordinances are located in Municipal Code §§ 17.120.010 et seq. and in the nuisance sections 8.18.010 et seq. These sections specify the noise standards. The neighbors are not complaining about normal noise from people being outside in a neighborhood; they are complaining about noise that reverberates around the entire neighborhood from putting recreational activities on a rooftop due to the topography. They wrote letters explaining their experience with rooftop noise in the past. As such, the noise issue related to the topography should be examined in an Initial Study.

Similarly, Checklist box (d) asks whether the project will result in a “substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project.” Instead of “guessing” about conditions to mitigate night-time party activities, the City should have evaluated this potential impact in light of the neighbors' statements concerning rooftop noise.

G. Conclusion

The City treats this project as if it is a little “nothing” 6 unit structure; therefore cutting corners, ignoring Oakland's General Plan policies and environmental impacts is completely acceptable. What the City fails to appreciate is that there are houses parallel to and all along College Ave. for miles that back into the commercial structures. There is nothing new about the controversy between commercial owners who want to expand every inch of their property at the expense of the homeowners behind them. That is why the community participated so fully in the General Plan Congress to make sure that commercial development would not over-whelm the housing.

If the City continues violating the Equal Protection Clause of the state constitution by willy-nilly following whatever rule on a whim hits the planner for each proposed project, the value of both the commercial properties and the housing is going to plummet. Given the City's sudden huge appetite for density, there is simply no way for any home purchaser to know what they are buying in Oakland. If I buy a house on College Ave. today for \$800,000 depending on the General Plan policies to protect my investment, will I find myself with a \$400,000 property after the City grants an application for this type of

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project here? How am I on notice that I may be faced with a gargantuan building dwarfing my property and taking away my light and view?

More importantly, there is no reason why the applicant could not have developed his property with six residential units, within the zoning AND within the General Plan. The project should be modified to meet the General Plan policies without the neighbors having to seek court assistance.

Thank you for considering our comments.

Very truly yours,



Leila H. Moncharsh
Veneruso & Moncharsh, J.D., M.U.P.

LHM:lm

cc: Clients



Guidelines for Determining Project Conformity With the General Plan and Zoning Regulations

Adopted by the
City of Oakland
City Planning Commission

May 6, 1998

Amended November 3, 1999 (100-31)
Amended August 8, 2001
Amended December 5, 2001
Amended July 15, 2003
(Minor typographical changes May 28, 2004)

UNDERSTANDING THE GUIDELINES

A. OVERVIEW

This document, Guidelines for Determining Project Conformity, describes the procedure for deciding whether a project is consistent with the General Plan. The document also describes the procedure to follow when the Zoning Regulations and General Plan conflict.

Because the General Plan was adopted more recently than Zoning Regulations, the General Plan and Zoning Regulations may conflict. As a result, some projects may be consistent with Zoning Regulations but inconsistent with the General Plan. When a conflict occurs between Zoning Regulations and the General Plan, the General Plan controls. There are three criteria used to determine whether a project is consistent with the General Plan. They are:

1. Is the proposed activity and facility type permitted under the General Plan? (Refer to Table 2 or 2A)
2. Is the proposed intensity (Floor Area Ratio for non-residential projects) or density (dwelling units per gross acre for residential projects) less than or equal to the maximum permitted by the General Plan? (Refer to Table 3 or 3A)
3. Is the project consistent with relevant General Plan policies? (Refer to Checklist 4)

If the answer to any of the foregoing questions is no, an application for the project will not be processed unless the Director of City Planning makes a determination that the project is consistent with the written goals and policies of the General Plan. The Director would need to make the finding that the land use map shows only the predominant use or average density for the area and that for an individual parcel or small area a different use or density may be appropriate. Additionally, the Director would have to find that the proposal conforms to all of the general use permit criteria, as well as to any and all other applicable use permit criteria pursuant to Section 17.134.050 of the Oakland Planning Code.

If the answer to each of the foregoing questions is yes or the General Plan does not address the issue (i.e., is silent), it must next be determined whether the project is permitted under the Zoning Regulations. Questions are:

1. Is the proposed activity and facility type permitted under the Zoning regulations?
2. Is the project consistent with other regulations of the zone?

If the answer to questions 1 and 2 is yes, the permitting procedure prescribed by the Zoning Regulations is followed (i.e., permitted outright or a conditional use permit required).

If the answer to question 1 is no, a "best fit zone" must be selected by reference to Table 5. There are two situations where Table 5 is used to select a "best fit zone": (1) where the General Plan allows the activity/facility type, but the Zoning Regulations prohibit it (known as "express conflict"); and (2) where the General Plan is silent on the issue, and the Zoning Regulations prohibit the activity/facility type. Where a "best fit zone" is required, the project proponent must apply for either an interim use permit or rezoning.


This is an overview of the procedure for determining consistency with the general Plan. It is not meant to replace the more detailed guidelines that follow. To determine whether a specific proposal is consistent with the General Plan, the Director of City Planning will apply the following Guidelines. The Director's decision is appealable to the City Planning Commission as described in the Planning Code.

PROJECT CONSISTENCY WITH GENERAL PLAN AND ZONING/SUBDIVISION REGULATIONS

(Zoning/Subdivision Regulations prevail unless there is an express conflict)

ZONING/SUBDIVISION REGULATIONS

		Permitted	Conditionally Permitted	Not Permitted
GENERAL PLAN	Clearly Conforms	Permitted Outright	Conditional Use Permit (normal process)	Allowed with Interim Conditional Use Permit or Rezoning to "Best Fit" Zone ¹
	General Plan is Silent or Not Clear on Conformity	Permitted Outright	Conditional Use Permit (normal process)	Not Allowed Options ² : Modify project to conform to Zoning or Rezone to "Best Fit" Zone ¹ or Variance
	Clearly Does Not Conform	Not Allowed Options: Modify project to conform to General Plan or Apply for General Plan Amendment or Request a General Plan conformity determination from the City Planning Director (an interim CUP is required)	Not Allowed Options: Modify project to conform to General Plan or Apply for General Plan Amendment or Request a General Plan conformity determination from the City Planning Director (In all cases, a CUP is still required under zoning)	Not Allowed Options ² : Modify project to conform to General Plan and Zoning or Apply for General Plan Amendment and Rezoning to "Best Fit" Zone ¹

 = Express conflict between Zoning and General Plan; General Plan prevails.

¹ Where a rezoning occurs, the regulations of the new zone would apply, including any requirements for a Conditional Use Permit.

² Where none of the options are feasible, the project sponsor should be directed to the Business Retention and Attraction section for assistance in locating an appropriate alternate site.

Then choose A, B, or C below to determine the appropriate action:

A. IF THE PROJECT CONFORMS TO THE GENERAL PLAN:
And the project is permitted by zoning, Then the project is permitted outright
And the project would normally require a Conditional Use Permit (CUP), then it is permitted with approval of a CUP.
But the project is not permitted by zoning; this is an express conflict with the General Plan. The project can only be allowed with an Interim CUP or an approved application for a Rezoning. <i>See Table 5 for "Best Fit Zones" for the rezoning.</i>

B. IF THE GENERAL PLAN IS SILENT:
And the project is permitted by zoning. Then the project is permitted outright.
And the project would normally require a CUP, then it is permitted with approval of a CUP
But the project is not permitted by zoning, the project must be modified to conform to zoning, or apply for a rezoning. <i>See Table 5 for "Best Fit Zones"</i>

C. IF THE PROJECT DOES NOT CONFORM TO THE GENERAL PLAN:
Even if the project is permitted by zoning, it is not allowed. This is an express conflict with the General Plan. Options: Modify the project to conform to the General Plan, apply for a General Plan Amendment, or apply for a General Plan conformity determination from the Director of City Planning (an interim CUP is required).
And even if the project would normally require a CUP, it is not allowed. This is an express conflict with the General Plan. Options: Modify the project to conform to the General Plan, apply for a General Plan Amendment, or apply for a General Plan conformity determination from the Director of City Planning. In all cases a CUP is still required.
And if the project is not permitted by zoning, it is not allowed. Options: Modify the project to conform to both the General Plan and Zoning, or apply for a General Plan Amendment and a Rezoning. <i>See Table 5 for "Best Fit Zones"</i>

B. Land Use Activity and Facility Types

Determine the activity and facility type of the proposal, referring to Chapter 17.10 of the Zoning Regulations if necessary. Then determine the General Plan Land Use Classification of the site, referring to the Land Use Diagram of the Land Use and Transportation Element or the Land Use Diagram of the Estuary Policy Plan, as appropriate. Consult Table 2 or 2A to determine the status of this activity and facility type in this Land Use Classification.

Policy D12.3: Locating Entertainment Activities

Large-scale entertainment uses should be encouraged to concentrate in the Jack London Waterfront and within the Broadway corridor area. However, existing large-scale facilities in the Downtown should be utilized to the fullest extent possible.

Policy D12.4: Locating Smaller Scale Entertainment Activities

Small-scale entertainment uses, such as small clubs, should be allowed to locate in the Jack London Waterfront area and to be dispersed throughout downtown districts, provided the City works with area residents and businesses to manage the impacts of such uses.

NEIGHBORHOODS (N)

Policy N1.4: Locating Large Scale Commercial Activities.

Commercial uses, which serve long term retail needs of regional consumers and which primarily offer high volume goods, should be located in areas visible or amenable to high volumes of traffic. Traffic generated by large-scale commercial developments should be directed to arterial streets and freeways and not adversely affect nearby residential streets.

Policy N1.7: Locating Hotels and Motels.

Hotels and motels should be encouraged to locate downtown, along the waterfront, near the airport, or along the I-880 corridor. No new hotels or motels should be located elsewhere in the city, however, the development of “bed-and-breakfast” type lodgings should be allowed in the neighborhoods, provided that the use and activities of the establishment do not adversely impact nearby areas, and parking areas are screened.

➔ **Policy N1.8: Making Compatible Development.**

The height and bulk of commercial development in the “Neighborhood Mixed Use Center” and “Community Commercial” areas should be compatible with that which is allowed for residential development.

Policy N1.9: Locating Major Office Development

While office development should be allowed in commercial areas in the neighborhoods, the City should encourage major office development to locate in the downtown.

Policy N2.4: Locating Services along Major Streets

New large-scale community, government, and institutional uses should be located outside of areas that are predominantly residential. Preferably, they should be located along major thoroughfares with easy access to freeways and public transit or in the Downtown.

Policy N3.3: Facilitating Development of Second Units (see also N7.1 and N7.2)

One accessory housing unit (also known as second or secondary unit) per property should be permitted outright in all residential zones, provided it meets the setback requirements for the primary structure, is clearly secondary to the primary structure, is compatible with other structures on the site and in the vicinity, and the property owner lives on-site. The permitting procedures and performance criteria applied to these units should facilitate construction of units, and not be prohibitive in their requirements. Accessory units should be allowed when a new primary residence is being constructed or may be added to properties with an existing residence.

Policy N3.9: Orienting Residential Development.

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

➔ **Policy N7.1: Ensuring Compatible Development**

New residential development in Detached Unit and Mixed Housing Type areas should be compatible with the density, scale, design, and existing or desired character of surrounding development.

Policy N7.2: Defining Compatibility

*Guidelines for Determining Project Conformity
Adopted May 6, 1998*

Oakland City Planning Commission

Revised November 3, 1999, August 8, 2001, December 5, 2001, July 15, 2003 (typographical changes May 28, 2004)

Infrastructure availability, environmental constraints and natural features, emergency response and evacuation times, street width and function, prevailing lot size, predominant development type and height, scenic values, distance to public transit, and desired neighborhood character are among the factors that could be taken into account when developing and mapping zoning designations or determining “compatibility”. These factors should be balanced with the citywide need for additional housing.

Policy N7.3: Hill Area Subdivision

At least 8,000 square feet of lot area per dwelling unit should be required when land in the hill area is subdivided. Lots smaller than 8,000 square feet may be created only when this ratio is maintained for the parcel being divided.

Policy N8.2: Making Compatible Interfaces Between Densities

The height of development in Urban Residential and other higher density residential areas should step down as it nears lower density residential areas to minimize conflicts at the interface between the different types of development.

B. BICYCLE MASTER PLAN (BMP)

BMP Policy 1: Create, enhance and maintain the recommended bikeway network.

▪ **Action 1.12: Diagonal Parking**

Discourage the installation of diagonal or 90-degree parking on streets included in the recommended bikeway network. Replace existing diagonal or 90-degree parking on streets included in the recommended bikeway network with parallel parking or off-street parking where feasible.

BMP Policy 2: Establish design and maintenance standards for all streets that recognize the needs of bicyclists.

▪ **Action 2.3: Public Utilities**

When locating or relocating public utilities, design the placement of boxes, hydrants, curbs, poles and other objects so that they do not interfere with bicycle travel.

▪ **Action 2.5: Automobile Parking**

Whenever new on-street automobile parking spaces are created, especially the conversion of parallel parking to diagonal parking, the potential detrimental effects on cyclists should be considered.

BMP Policy 3: Make efforts to obtain, redevelop, or encourage private redevelopment of unused railroad, utility, and other right-of-ways as linked, multi-use Class I bicycle paths or trails.

BMP Policy 4: Include provisions for safe and direct bicycle access to special development areas and key corridors.

▪ **Action 4.2: Broadway Corridor**

Designate Broadway from Caldecott Field to Jack London Square as a transit/bicycle corridor promenade. Incorporate bicycle facilities in any development or redevelopment projects with ¼ mile of Broadway whenever feasible.

BMP Policy 5: Promote secure and conveniently located bicycle parking at destinations throughout Oakland.

BMP Policy 6: Support improved bicycle access to public transportation.

BMP Policy 8: Insure that the needs of bicyclists are considered in the design of new development and redevelopment projects.

▪ **Action 8.2: Drive-up windows**

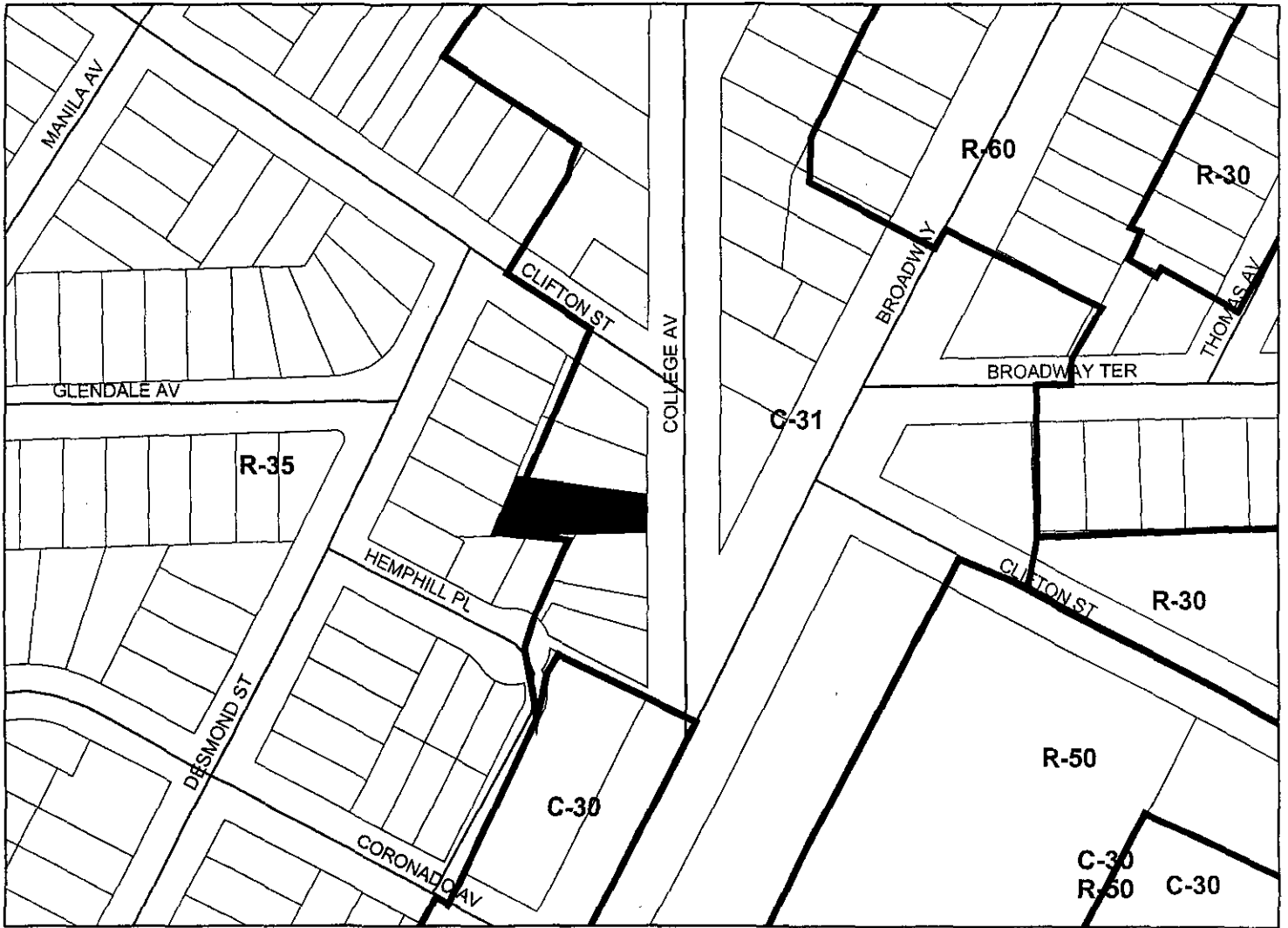
Drive-up windows, drive-in services and take-out services, excluding car washes, should provide full access to bicyclists.

Location:	5253 College Avenue (See map on reverse)
Assessor's Parcel Number:	014-1240-004-00
Proposal:	Appeal of an Administrative decision to approve a mixed use development containing six dwelling units over ground floor commercial.
Applicant:	Kirk Peterson
Owners:	Kirk Peterson
Appellant:	Bert Verrips
Planning Permits Required:	Design Review for new construction, Minor Variance to allow more than 20% of the required group open space on the rooftop, and Conditional Use permits for ground floor parking and re-establishment of the existing non-retail ground floor use (Financial and Consultative – Architecture firm).
General Plan:	Neighborhood Center Mixed Use
Zoning:	C-31 Special Retail Commercial Zone
Environmental Determination:	Exempt, Section 15303 of the State CEQA Guidelines, New construction of small structures Exempt, Section 15183 of the State CEQA Guidelines, Projects consistent with a community plan, general plan, or zoning
Historic Status:	Not a Potential Designated Historic Property; Survey rating: X
Service Delivery District:	2
City Council District:	1
Status:	The application was approved by the Zoning Manager on February 28, 2007. The approval was subsequently appealed by the appellant on March 9, 2007.
Action to be Taken:	Decision on appeal based on staff report and public testimony
Staff Recommendation:	Deny the appeal thereby upholding the approval of the application
Finality of Decision:	Final Decision
For Further Information:	Contact case planner Peterson Z. Vollmann at (510) 238-6167 or by email at pvollman@oaklandnet.com .

SUMMARY

The applicant proposes to demolish the existing commercial building and construct a new mixed use building containing six dwelling units over two new ground floor commercial spaces. The proposal required a Design Review approval for the proposed new construction, and a minor variance to allow more than 20% of the required group open space to be located on the roof top. In addition the project required a Minor Conditional Use Permit, pursuant to the C-31 zone regulations, for ground floor parking and for the re-establishment of the existing Architecture firm, which is a non-retail use. On February 28, 2007 the Zoning Manager approved the application, finding that the proposal complied with all the necessary criteria for approval. On March 9, 2007 the approval was appealed to the Planning Commission. Staff recommends that the Planning Commission deny the appeal, thereby upholding the Zoning Manager's approval of the project.

CITY OF OAKLAND PLANNING COMMISSION



0 135 270 540 810 1,080 Feet

Case File: A07-090 (CDV06-604)
Applicant: Kirk Peterson
Address: 5253 College Ave
Zone: C-31



PROPERTY DESCRIPTION

The subject lot is approximately 6,255 square feet in size, located on College Avenue just to the north of the Broadway/College intersection. The site is currently developed with a one-story commercial building that is approximately 1,700 square feet, with auto access off of a driveway easement that enters from Hemphill Place.

The site is located on College Avenue in the College Avenue commercial district. The site is bordered by commercial uses with some upper level housing on College Avenue and lower intensity residential uses along the back streets.

PROJECT DESCRIPTION

The applicant proposes to construct a three (3) story mixed use building with commercial space and parking located on the ground floor, and six residential dwelling units above. The parking would be accessed off of a driveway easement that runs along the back side of other properties, and enters at approximately the middle of the site. All parking will be located within enclosed garages served off of the central parking court. This driveway configuration allows the proposal to have a continuous commercial ground floor with no sign of parking facilities from College Avenue. The front commercial space would be used for any use that would be out right permitted under the C-31 Zone, and the rear commercial space, which does not contain any street frontage or display windows, would be used as an architecture firm, which requires a Conditional Use Permit since it is located at the ground floor and is classified as a "non-retail" use in the C-31 Zone. The upper levels will contain six dwelling units, three per floor, and contain open space provided in individual decks as well as a large rooftop open space. The applicant requested and was granted a minor variance to allow 100% of the required group open space to be located on the rooftop. Staff approved this variance request because the subject property backs up against lower scale residential properties and staff believes that it was an adequate design solution that would move the open space for the future tenants further away from the abutting rear yards of the adjacent homes (Condition of Approval #14 – Attachment B).

GENERAL PLAN ANALYSIS

The site is designated Neighborhood Center Mixed Use (NCMU) by the General Plan. The NCMU designation is intended to identify, create, maintain, and enhance mixed use neighborhood commercial centers. These centers are typically characterized by smaller scale pedestrian-oriented, continuous street frontage with a mix of retail, housing, office, active open space, eating and drinking places, personal and business services, and smaller scale educational, cultural, or entertainment uses. According the General Plan, future development within this classification should be commercial or mixed uses that are pedestrian-oriented and serve nearby neighborhoods, or urban residential with ground floor commercial.

The subject C-31 Zoning is consistent with the Neighborhood Center Mixed Use General Plan Designation. Since the project site is not located within a Growth and Change corridor, the existing allowed Intensity and Density are consistent with the General Plan.

ZONING ANALYSIS

The site is located in the C-31 Special Retail Commercial Zone. According to the Zoning Regulations, the C-31 Zone is intended to create, preserve, and enhance areas with a wide range of retail establishments serving both short and long term needs in attractive settings oriented to pedestrian comparison shopping, and is typically appropriate along important shopping streets having a special or particularly pleasant character.

The project is consistent with the intent of the C-31 Zoning District, because it creates a mixed use project that does not sacrifice the retail potential of the commercial level. The project will add six new dwelling units to the neighborhood, and create a new retail space that fronts on College, while relocating the existing "non-retail" use to a new rear location at the ground floor that does not contain any street frontage.

ENVIRONMENTAL DETERMINATION

The project was found to be categorically exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15303 of the State CEQA Guidelines ("New Small Structures") because the proposal involves the construction of only six new dwelling units, and less than 10,000 square feet of commercial space.

ZONING ADMINISTRATOR'S DECISION

On February 28, 2007 the Zoning Manager approved the application finding that the proposal complies with all the necessary criteria for approval. Attached is the Zoning Manager's decision letter containing the required findings and the reasons the findings were met (see Attachment B). The primary reasons for approving the application were the following:

1. **High Quality Design:** The proposed building contains a high quality design with the attention to detail and ornamentation that would allow the building to fit in contextually with the existing character of the College Avenue commercial district.
2. **Ground Floor Uses:** The proposed building met the required Use Permit findings for ground floor activities, non-retail and parking, by concealing the activities behind a prominent store front that fits in with the commercial district and has no impact onto the pedestrian atmosphere of the street.
3. **Open Space Variance:** The proposed project complied with the findings for a minor variance because of the superior design solution that allows the open space for the six dwelling units to be located further away from the adjacent rear yards of the neighboring lower intensity homes. Much of the opposition to this variance was based upon the roof top open space and neighbors didn't want the Department to grant a variance that would allow neighbors to be located on rooftops looking down into their yards, but the rooftop open space is outright permitted. The variance was to allow all of the open space on the roof and eliminate the requirement for open space in the rear yard, which staff believed would be more of an impact because of the close proximity to their yards. The project as proposed would move all of the outdoor space onto the roof top and leave the rear yard as a landscaped garden that is directly off of the architecture firm's office windows, which staff believed to be much less of an impact (Condition of Approval #14 requires the roof top open space to be setback 25 feet from the rear property line and an additional five feet from the south building wall).

BASIS OF THE APPEAL

On March 9, 2007 the appellant, Bert Verrips, submitted an appeal of the Zoning Manager's decision to approve the project. The applicant's appeal letter received March 9, 2007 contains arguments challenging the Zoning Manager's approval of the Application (see Attachment C). The appellant's arguments are summarized below. Staff's response to each argument follows each item.

- A. **The City's findings do not support granting the conditional use permit for allowing non-retail ground floor use in the C-31 commercial retail zone.**

Appellant's Argument: The City's first finding regarding the project's compatibility and harmony with the surrounding neighborhood completely ignores the General Plan requirement that the College Avenue commercial area remain low density since it is in the "Maintain and Enhance" area.

The appellant challenges that the proposed project is not compatible with the rear abutting properties that are located within the lower intensity residential zone, and that the density of the project should not be permitted because it is located within an area designated as "Maintain and Enhance".

Staff Response: The "Maintain and Enhance" designation of the General Plan does not preclude any development of individual property that would intensify above the existing condition, as suggested by the appellant. The intent of the "Maintain and Enhance" areas is to analyze the existing zoning for an area and determine whether or not there should be a down zoning applied to an area or whether the existing zoning should be respected and complied with. This is different from the "Growth and Change" areas of the City where the higher intensity/ density set forth in the General Plan is encouraged and would essentially replace the existing zoning which may allow less intensity/density. The College Avenue corridor contains a Zoning of C-31, which was specifically created for small neighborhood commercial districts such as this as well as locations such as Piedmont Avenue. These areas have been designated as "Maintain and Enhance" because the higher intensity called out in the General Plan would not typically be appropriate on these streets because of their small nature, and therefore the existing zoning is respected and followed. The proposed project complies with the C-31 height limits and setbacks, and the proposed six units is only one-half the density that is permitted for this site, which would allow for a maximum of twelve (12) dwelling units *by right*. If the applicant were requesting an Interim Use permit to exceed the base C-31 Zone density the appellant's argument would have merit, but that is simply not the case, as the applicant is only proposing to build one-half of what is permitted.

The argument that the proposed building should not be permitted based upon compatibility with the adjacent lower intensity homes behind the project site is not valid, because the subject property is located on College Avenue, which is a mixed use commercial district, and not within the rear low intensity single family zone. When reviewing development proposals on commercial streets staff looks to have a building that is contextual with the commercial district, which this project has done by the proposed architecture of the building and the prominent storefront at the sidewalk. When staff looks at the rear abutting lower intensity areas we look to see what impacts if any would occur, and whether or not they are significant. Staff does not believe that the impacts from this proposed building would be significant. Yes the building is larger than the rear single family homes, but that is because the project is not located within the same single family zone. Any property located directly adjacent to a lot in a commercial zone should be aware that higher intensity development is permitted. Furthermore, the rear wall of the subject building is only two stories at 29 feet tall (parapet/railing included), which is less than the 30 foot maximum height permitted within the adjacent R-35 Zone that the appellant's property is located within. The third floor

is then stepped back as required by Zoning, which reaches the maximum 35 foot height limit.

Furthermore, the reason for the Conditional Use permits was not for the issue of density or intensity. The Use permit was for two issues, ground floor parking and a “non-retail” business located at the ground floor. Staff believes that the granting of the use permit for these two issues is valid. The intent of a use permit for ground floor parking is primarily to ensure that parking does not adversely impact the pedestrian and commercial nature of the commercial street. This has been accomplished in this project because the parking is accessed off of a driveway easement, and no aspect of the parking is visible or noticeable from College Avenue. In addition, the project is of a relatively small size such that the impact to the residential street should not be adverse. Second the use permit to allow a “non-retail” activity at the ground floor is also warranted because the existing use of the building is an Architecture firm, which is classified as a “non-retail” use in the C-31 Zone. The proposed project will re-establish this “non-retail” use, but it will be located at the back of the building in a commercial space that will not have any street fronting elements. The front of the building will create a new commercial space that will have full street frontage and will be available for “retail” activities or other uses that are principally permitted at the ground floor within the C-31 Zone. In the end the proposal will actually create a new retail opportunity that presently does not exist, and the re-established “non-retail” use will not have any negative impact upon the shopping environment on College Avenue.

- B. The developer and the City have failed to produce the necessary evidence to support findings necessary for the grant of a variance for 80% of the open space requirement to be fulfilled on the roof.**

Appellant’s Argument: The appellant is arguing that the use of the rooftop for recreational opportunities would result in the loss of privacy and would result in increased noise. Concerns are also based on the potential of parties that would result from the development being occupied by renters, and/or students.

The appellant also argues that the Department used the wrong test for determining whether to grant the variance. The appellant cites Policy N11.3 of the General Plan, **Requiring Strict Compliance with Variance Criteria**, and that since the General Plan supercedes the Zoning that a **Minor Variance should no longer be an acceptable procedure**, and that the **tougher Major Variance Criteria should be applied that require proof of a “hardship caused by unique physical or topographical constraints”**.

Staff Response: The granting of the open space variance is not to allow open space to be located on the rooftop. The granted variance was to allow all of the required open space on the rooftop of the building. If the proposed project had called out the rear yard as the open space to meet the open space requirement, the rooftop open space would still be permitted outright. There is no restriction to the use of a rooftop for open space; the only restriction is that no more than 20% of the *required* group open space may be located on the rooftop. The applicant could very well provide access to the rear yard for tenants and still keep all of the proposed open space on the rooftop and be completely complying with the Planning Code. Staff viewed the variance as a better design solution that would limit the impacts onto neighbors by locating the group open space on the roof so that it would be further away from the neighboring properties and there would not be walls for noise to reflect off of. The conditions of approval required the rooftop decks to be set back 25 feet from rear property

line, and an additional five feet from the south building wall (which faces the side property line), and that the roof top be screened by a solid parapet along the perimeter to further conceal the open space on the rooftop. In addition, other “use” limitations of this rooftop open space have been placed to further reduce or eliminate any potential adverse impacts. By creating all of the residential open space on the roof deck, the rear yard would essentially become a landscaped garden that would sit adjacent to the office space and would not have any recreational use at all, which staff had viewed as a superior design solution that would benefit the adjacent neighbors as well as the future tenants of the proposed building.

With regard to the Criteria used for the granting of the Variance, staff used the Minor Variance criteria as required by the Planning Code. Objective N11 of the General Plan is the section that guides policy for updating the Zoning Code for compliance with the General Plan. While Policy N11.3 does state that the stricter criteria should be used, it also states that, “in instances where large numbers of variances are being requested, the City should review its policies and regulations and determine whether revisions are necessary”. This is not meant to trump the existing Zoning regulations, but rather act as a guide for updating the Zoning regulations in certain situations.

C. The City has not made any findings or otherwise demonstrated why the claimed CEQA exemptions apply or that the exceptions cited by the community did not apply.

1. Guideline Section 15183 exemption is inapplicable because the General Plan EIR doesn't even remotely say a thing about College Avenue.

Appellant's Statement: The appellant is challenging the use of Section 15183 of the CEQA guidelines for an environmental exemption. This is based upon the argument that the appellant makes that the EIR for the Oakland General Plan does not specifically cite an increase of density on College Avenue, and that the project is not consistent with the General Plan.

Staff Response: Section 15183 does not require a general plan EIR to cite the specific density of a project's location. Section 15183 states that “projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require further environmental review, except as might be necessary to examine whether there are project-specific environmental effects which are peculiar to the project or its site. This project falls within the criteria of zoning and the general plan.

This project is consistent with the applicable densities, and an EIR was prepared for the zoning and general plan policies. The Land Use and Transportation Element (LUTE) of the General Plan was an element of the EIR. In the LUTE the subject property is identified in an area designated as Neighborhood Center Mixed Use. The area is also identified as a “Maintain and Enhance” area, which as stated earlier in this report does not preclude any re-development of the site, but would lead any future development towards remaining consistent with the existing C-31 base zoning. The proposed project is consistent with the C-31 regulations and only is constructing half the number of dwelling units that would be outright permitted on the property. Furthermore, the proposed project is consistent with the Neighborhood Center Mixed Use designation because the proposal is creating a mixed use

building that provides housing options above a new commercial space that will create future shopping opportunities for the College Avenue commercial district. The appellant also argues that the project is not consistent with the General Plan because it is not “sensitive to the character and design of existing buildings”. The proposed project is consistent with other mixed use buildings along College Avenue in height as well as architectural style. The argument that a building on a commercial street should be designed to be consistent with single family houses is invalid since the subject property is not located within the same single family zone. In reviewing proposals on commercial streets staff looks at the rear of buildings not as a contextual matter, but as a matter of good design and limited impacts from height. In this case the rear of the building has ornamental features and quality finishes to create an attractive building and the height of the building steps away from the rear of the lot as mandated by the Planning Code, and at the rear portion of the building is only 29 feet in height above grade, which is less than the maximum height permitted in the adjacent zone.

In addition, as discussed in more detail below regarding Appellant’s assertion no. 2, there are no project-specific significant effects that are peculiar to the project or its site that would require additional environmental review as the subject parcel is a typical urban lot.

- 2. CEQA Guideline exemption 15303 does not apply because the community has shown that there is a reasonable possibility the project will have a significant impact on the environment. (Guideline Section 15300.2(a))**

Appellant’s Statement: The appellant argues that the Small Structures CEQA exemption may not be used because of unusual circumstances that would qualify as an Exception to the use of a CEQA Categorical Exemption. The appellant states the following reasons for a possible environmental impact:

- **Due to the topography of the lot the people who would occupy the proposed building could look into the windows of the adjacent neighbors.**
- **The noise from the rooftop would reverberate throughout the neighborhood.**
- **The proposed project would create significant traffic and parking impacts.**
- **Cumulative impacts – such as, 1) Allowing rooftop open space, which would lead to future noise impacts; 2) Traffic and Parking impacts from the subject project and other nearby proposed projects; 3) Allowing increased density in a “Maintain and Enhance” area.**

Staff Response: Section 15303 of the CEQA Guidelines states that a project is Categorical Exempt from Environmental Review if a project includes new construction of a building of no more than six dwelling units in an urbanized zone, and a commercial space of not more than 10,000 square feet. The proposed project contains six units and the proposed commercial space is far less than 10,000 square feet.

Section 15300.2 of the CEQA Guidelines provides Exceptions to the use of any Categorical Exemption if they meet any of the following criteria:

- a) Location. A class “3” exemption applies in all instances, except where the project

designated, precisely mapped, and officially adopted pursuant to law by federal, state or local agencies.

The project location is not located in an area that has been specifically identified as an environmentally sensitive area.

- b) Cumulative Impacts. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

The existing base C-31 Zoning recognizes and permits this type of mixed use development, and recently there have not been a large number of proposed mixed use developments along this stretch of College Avenue. A much larger nearby project is proposed at 5175 Broadway, which is currently undergoing an Initial Study pursuant to CEQA. The potential cumulative impacts argued by the appellant about rooftop open space are unwarranted as an exception/variance is not required to allow rooftop open space, it is only required when it is proposed as a complete substitution for the location of required group open space as discussed earlier in this staff report. The claim that outdoor open space would lead to noise impacts would preclude any outdoor activities in residential neighborhoods as well. The noise from an outdoor space from an apartment building would be the same noise that would emanate from a multi-unit building as well and would be subject to the same noise ordinances. The appellant argues that there would be cumulative impacts to parking and traffic in the area. Parking has been determined not to be considered an environmental impact by the courts. The proposed six unit building would not create a significant number of trips to even be considered in the discussion of cumulative impacts as six units and the small proposed commercial space would not generate the peak hour trips that would potentially degrade the existing Level of Service of any nearby intersections. Traffic impacts are typically studied further by larger development proposals that could potentially be a Class 32 In-Fill exemption, which specifically identify traffic impacts as an area of needed review. The appellant also argues that there would be cumulative impacts caused by increasing the density of the College Avenue area, which is designated as "Maintain and Enhance" in the General Plan. As stated earlier in this staff report the project is not proposing an increase of density over what is permitted in the C-31 Zone, and the proposal would only contain one-half of the permitted density under the existing base C-31 Zone.

- c) Significant Effect. A Categorical Exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

The appellant argues that due to the location of the project site there are unusual circumstances that would create significant impacts, specifically identifying occupants of the proposed building looking into windows of adjacent neighbors, parking, traffic, and noise. The claims against parking, traffic and noise are discussed in the previous section under cumulative impacts, and privacy is not an environmental impact, and it is unreasonable to expect no contact with adjacent neighbors when living in an urban environment. The same alleged impact would then be true of any of the existing homes in the area which are only required to be

set back five feet from one another. No setback variances or height variances have been granted for the project.

- d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources within a highway officially designated as a state scenic highway.

The subject property is not located on a scenic highway nor would it cause any visual degradation from any scenic highway.

- e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

The subject property is not on any of these lists.

- f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significant of a historic resource.

The subject property is not a historic resource.

CONCLUSION

Staff believes the proposal complies with all the necessary criteria for approval of the Design Review, Minor Conditional Use Permits, and Minor Variance. The proposal will develop an attractive mixed use project that provides housing opportunities in the area, as well as creating expanding ground floor commercial opportunities for the College Avenue commercial district.

Staff believes the appellant has not sufficiently demonstrated that there was an error or abuse of discretion in the Zoning Administrator's decision to approve the project. Staff recommends that the Planning Commission deny the appeal, thereby upholding the Zoning Administrator's decision to approve the project.

RECOMMENDATIONS:

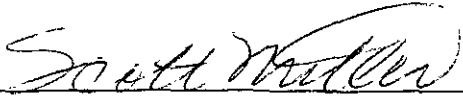
1. Affirm staff's environmental determination;
2. Uphold the Zoning Administrator's decision to approve the application for a Design Review, Minor Conditional Use Permits, and Minor Variance.

Prepared by:



PETERSON Z. VOLLMANN
Planner III

Approved by:



SCOTT MILLER
Zoning Manager

Approved for forwarding to the
City Planning Commission:

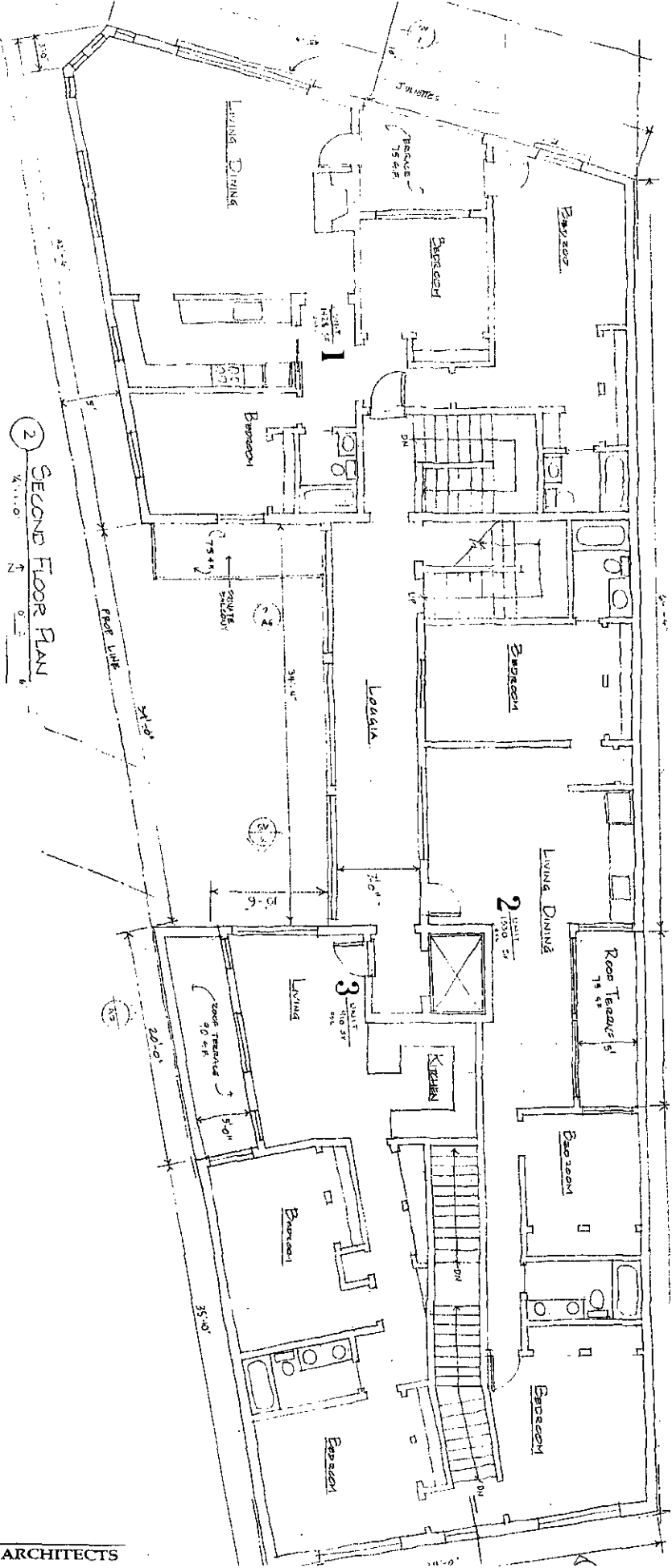


CLAUDIA CAPPIO
Development Director

LEGAL NOTICE: The decision of the City Planning Commission is final and not administratively appealable. Any party seeking to challenge such decision in court must do so within ninety (90) days of the date the decision is announced (Code of Civil Procedure Section 1094.6).

ATTACHMENTS:

- A. Project Drawings
- B. Zoning Administrator's Decision Letter
- C. Appellant's Letter



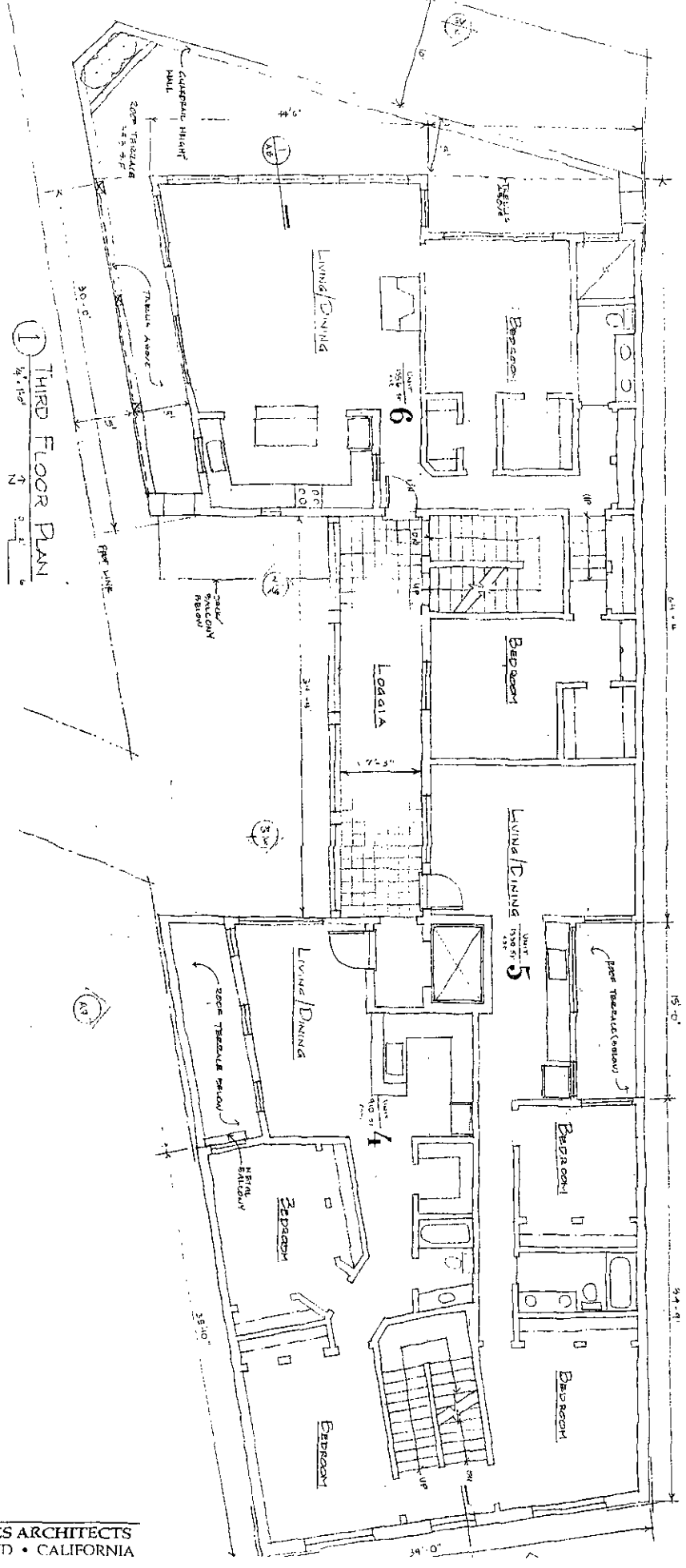
2 SECOND FLOOR PLAN
 1/4" = 1'-0"

new building at 5253 COLLEGE AVENUE

A 2

DATE: 01/14/76
 DRAWN: K.P.
 CHECKED: K.P.

① THIRD FLOOR PLAN

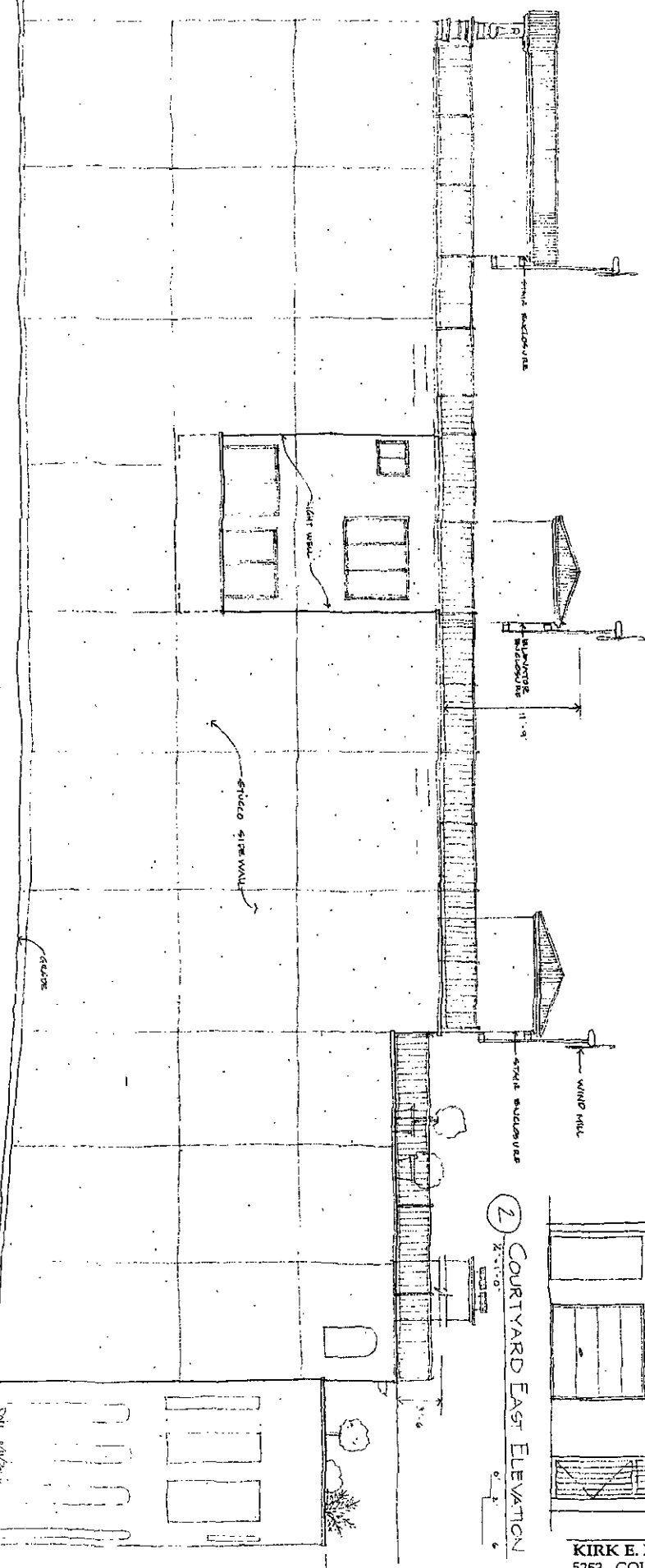


new building at 5253 COLLEGE AVENUE A3

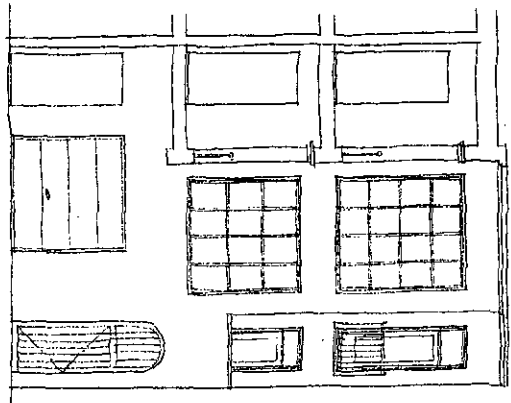
DATE: 09/11/2006
 SCALE: 1/4" = 1'-0"
 REV: 1 02/21/2006

1 NORTH ELEVATION

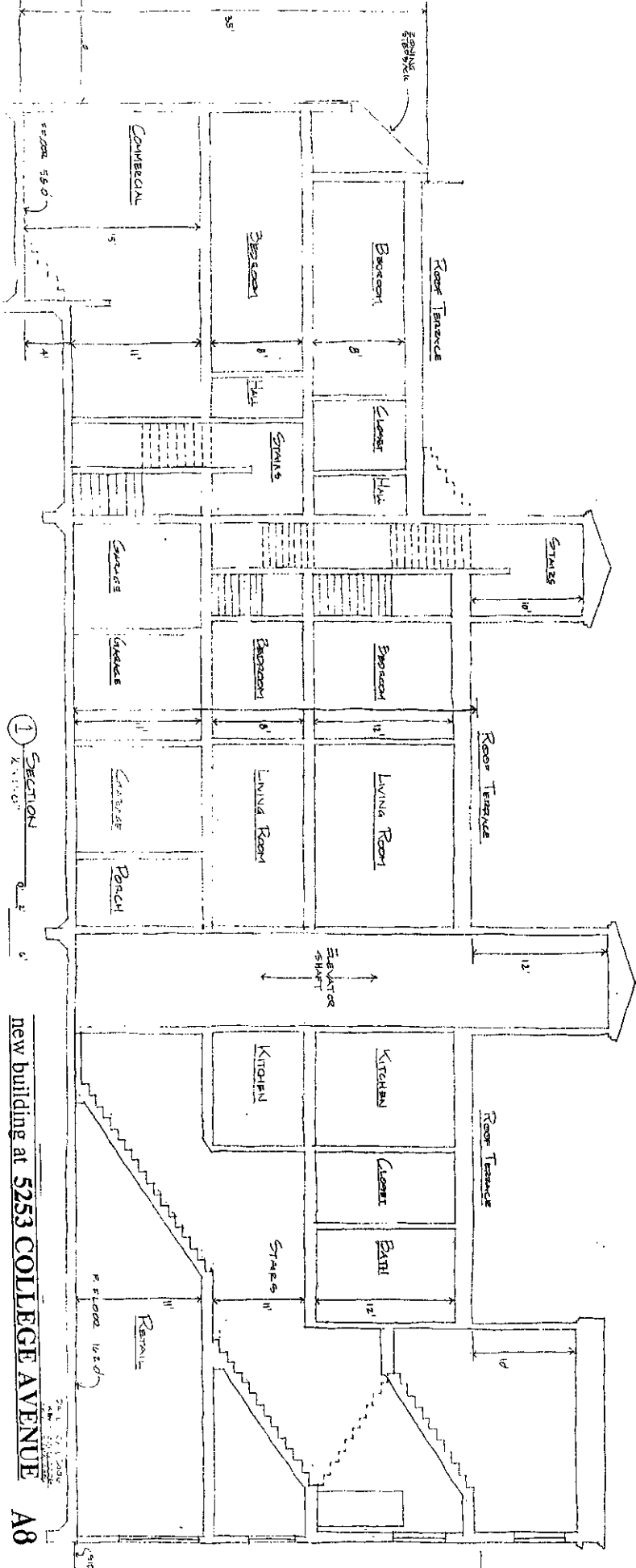
new building at 5253 COLLEGE AVENUE A6



2 COURTYARD EAST ELEVATION



KIRK E. PETERSON & ASSOCIATES ARCHITECTS
5253 COLLEGE AVENUE • OAKLAND • CALIFORNIA



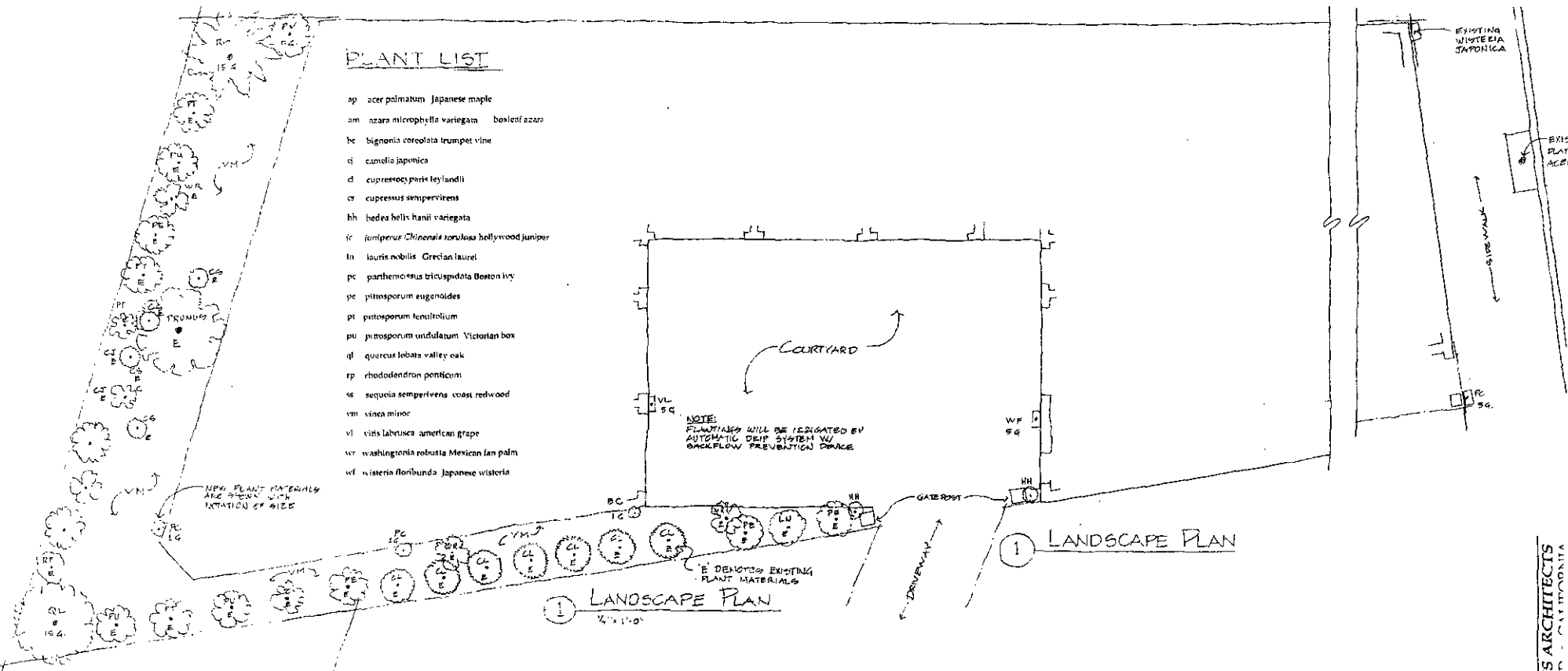
SECTION 1
K.I.P. 12.11.67

new building at 5253 COLLEGE AVENUE
A8

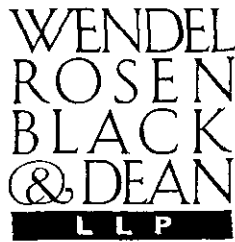
KIRK E. PETERSON & ASSOCIATES ARCHITECTS
5253 COLLEGE AVENUE • OAKLAND • CALIFORNIA

PLANT LIST

- ap acer palmatum Japanese maple
- am azara microphylla variegata boxleaf azara
- bc bignonia corolata trumpet vine
- cl camelia japonica
- cp cupressocypis leylandii
- cs cupressus sempervirens
- hh hedeia helix hanii variegata
- ic juniperus Chinensis torulosa hollyhock juniper
- ln lauris nobilis Grecian laurel
- pc parthenocissus tricuspidata Boston ivy
- pe pittosporum eugenioides
- pt pittosporum tenuifolium
- pu pittosporum undulatum Victorian box
- ql quercus lobata valley oak
- rp rhododendron ponticum
- ss sequoia sempervirens coast redwood
- vm vincia minor
- vl vitis labrusca american grape
- wr washingtonia robusta Mexican fan palm
- wf wisteria floribunda Japanese wisteria



KIRK E. PETERSON & ASSOCIATES ARCHITECTS
LOS ANGELES, CALIFORNIA



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Fax: (510) 834-1928
nparish@wendel.com

May 2, 2007

VIA HAND DELIVERY

Planning Commission
City of Oakland
One Frank H. Ogawa Plaza
Oakland, CA 94612

ATTACHMENT F

**Re: Agenda Item 4, Planning Commission meeting of May 2, 2007
5253 College Avenue; Appeal of Administrative Decision to Approve Mixed Use
Development Containing Six Dwelling Units over Ground Floor Commercial
Case File Number A07-090 (CDV06-604)**

Dear Members of the Planning Commission:

This firm represents Kirk Peterson, the applicant for the mixed-use project ("Project") which is the subject of this appeal. The Staff Report does an excellent job of responding to the numerous issues raised in the appeal. However, we felt that it was necessary to provide a separate response to certain issues raised in the appeal, and to supplement the Staff Report for this matter.

From reviewing the various documents submitted for the appeal, it is apparent that the appellant has a fundamental misunderstanding regarding the purpose of the specific approvals required for the Project. The March 9, 2007, letter submitted by Leila Moncharsh that forms the basis of the appeal argues that the conditional use permits requested for the Project should be denied due to the size and bulk of the Project. However, the requested conditional use permits have absolutely no impact on the size of the Project. The conditional use permits merely allow Mr. Peterson to use a portion of the ground floor to reestablish his architecture office at the site after completion of the Project, and to use a portion of the ground floor for six parking spaces. The conditional use permit does not affect the size of the Project in any way – a mixed-use development of equivalent size that dedicated the entirety of the ground floor area to retail would be permissible under current zoning without any conditional use permit.

Ms. Moncharsh's March 9, 2007, letter further argues that the variance should be denied since it permits the establishment of open space areas on the roof of the Project. This argument is based on a misreading of both the Zoning Code and the administrative approval granted for the Project. As noted in the Staff Report, there is no prohibition on the usage of the rooftop for open space, and the Project could include any amount of rooftop open space without the need for any variance or other approval other than regular design review. The variance merely permits the group open space requirement to be met entirely by open space on the rooftop, rather than requiring at least

80% of the group open space to be provided at ground level. Mr. Peterson requested this variance to address the concerns raised by adjacent property owners regarding ground level open space adjacent to their backyards. Note also that Mr. Peterson has discussed with staff the possibility of providing additional ground level open space to eliminate the need for this variance.

The appellant incorrectly attempts to incorporate the variance standards from Government Code §65906 into Oakland's Planning Code. This is not the first time Ms. Moncharsh has raised this issue, and it will be probably not be the last. As this office and the City Attorney's office have previously informed Ms. Moncharsh, Government Code §65906 is not applicable to Oakland, since it is a charter city. *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 511; Government Code §65803. Charter cities like Oakland are permitted to adopt their own standards for variances and other zoning matters.¹ Accordingly, Oakland must look only to its own adopted Planning Code to determine the standards applicable to variances.

Ms. Moncharsh attempts to argue that General Plan Policy N11.3 requires findings beyond those required under the Planning Code for minor variances. She is essentially arguing that the adoption of the General Plan completely eliminated Oakland's ability to issue minor variances, and mandated that every variance be considered under the major variance standards. This is ludicrous, especially in light of the fact that Oakland Municipal Code §17.148.050, which describes the findings required for minor variances, has been amended multiple times since the General Plan was adopted in 1998. General Plan Policy N11.3 states that variances must be governed by strict compliance with "defined conditions." The mere fact that this Policy states that such conditions include certain requirements applicable to major variances does not, and cannot, mean that the City Council intended to eliminate the ability to issue minor variances.

As mentioned above, a major focus of the appeal is an allegation that the Project is inconsistent with the General Plan. Gerald Green, a planning consultant representing Mr. Peterson, will be making a separate presentation to the Commission demonstrating the consistency between the Project and the General Plan and applicable zoning. Ms. Moncharsh's letter of March 9, 2007, which forms the bulk of the appeal, alleges that the Project violates certain enumerated policies in the General Plan, all related to the compatibility of the Project with nearby residential areas. This issue is well addressed in the Staff Report's discussion under item A, which responds to appellant's argument regarding the conditional use permit to allow non-retail uses on the ground floor. As noted in the Staff Report, in the context of a development in the narrow band of C-31 zoning applicable to College Avenue, the Project is compatible with the adjacent residential properties. As also noted in the Staff Report, the Project complies with applicable General Plan and zoning requirements regarding height limits and setbacks, and is less than half of the residential density permitted for the site by right. It is also worth reiterating a point made in the Staff Report regarding the height of the Project – the rear of the proposed building is actually less than the maximum height permitted in the adjacent residential zone.

¹ In a earlier letter regarding the Project, dated January 26, 2007, Ms. Moncharsh discusses at length a "variance test" described in *Miller v. Board of Supervisors* (1981) 122 Cal.App.3d 539. This case, and the variance test described therein, is inapplicable to the Project, since the earlier case involved a variance granted by a County subject to Government Code §65906, and was based on the provisions of this statute.

Another major focus of the appeal is an allegation that the Project approval fails to comply with the California Environmental Quality Act (“CEQA”). We believe that the administrative approval and the Staff Report properly demonstrate that the Project is categorically exempt from CEQA pursuant to CEQA Guidelines §15303, and is also exempt from CEQA pursuant to CEQA Guidelines §15183. The appellant argues that these exemptions are not applicable, for a variety of reasons, which are easily addressed and dismissed. The first argument is that there are certain “unusual circumstances” applicable to the Project that would lead to significant effects on the environment. If the appellant’s argument were valid, this would mean that CEQA Guidelines §15300.2 would prohibit the use of the §15303 categorical exemption.² As discussed below, and as separately addressed in the Staff Report, the appellant is incorrect in arguing that the Project could produce any significant effects.

As a threshold matter, however, even if it could somehow be argued that the Project could lead to any significant effects on the environment, it cannot be said that there are any unusual circumstances affecting or exacerbating the potential impacts of the Project. For example, the appellant argues that the fact that this Project is “close to a major retail commercial corridor as well as the California College of the Arts” constitutes an unusual circumstance. The fallacy of this argument is obvious – if the appellant’s position were valid, any development on College Avenue would involve unusual circumstances. Also, the potential environmental impacts alleged by the appellant would be produced by any development project of a similar size in an urban environment. More specifically, such alleged impacts would also result from any development near the appellant’s house. In a similar situation regarding a categorical exemption under CEQA Guidelines §15303, a California appellate court found that no unusual circumstances existed. *Association for Protection etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720, 736 (“The potential environmental impacts Association posits seem to us to be normal and common considerations in the construction of a single-family residence and are in no way due to “unusual circumstances.”). Since there are no unusual circumstances present, the Planning Commission should determine that the Project is exempt from CEQA under CEQA Guidelines §15303.

The appellant also argues that CEQA Guidelines §15183 is not applicable to the Project. Under this provision, projects consistent with development density established by general plan policies do not require further environment analysis, unless there are “project-specific significant effects which are peculiar to the project or its site.” The appellant argues that the Project is not consistent with the density without the requested variance, so that this exemption does not apply. As discussed above, the appellant’s argument is partially based on a misunderstanding regarding the nature of the requested approvals for the Project. The requested variance has no effect on the density of the Project – the Project is consistent with General Plan policies regarding density whether or not the variance is granted. The appellant also argues that the exemption provided by CEQA Guidelines §15183 is not applicable because “the General Plan EIR doesn’t even remotely say a thing about College Ave.” This issue is addressed well by the Staff Report, which notes that CEQA Guidelines §15183 only requires that an EIR be prepared for the general plan. There is no requirement under CEQA Guidelines §15183 that that EIR specifically address the area wherein the new project is

² Although Ms. Moncharsh’s March 9, 2007, letter cites CEQA Guidelines §15300.2(a) for these exceptions to the CEQA’s categorical exemption provisions, the correct reference to the “unusual circumstances” provision is CEQA Guidelines §15300.2(c).

proposed – and it should also be noted that this would defeat the intent of being able to rely on an EIR for a citywide or countywide General Plan.

For the reasons set forth above and in the Staff Report for this matter, the Planning Commission should deny the appeal and uphold the determination of the Zoning Manager, including but not limited to the exemption of the Project from CEQA pursuant to CEQA Guidelines §§15303 and 15183. Thank you for your consideration of these comments. Please ensure that this letter is made part of the administrative record for this matter.

Sincerely,

WENDEL, ROSEN, BLACK & DEAN LLP

A handwritten signature in black ink, appearing to read 'Neal A. Parish', is written over the typed name.

Neal A. Parish

NAP:np

Attachment

cc: Peterson Z. Vollman
Claudia Cappio, Director of Development
Kirk Peterson

ULTRA : Urbanists for a Livable Temescal Rockridge Area

May 16, 2007

RE: 5253 College Ave. 014-1240-004-00

Dear Planning Commissioners:

ULTRA supports planning staff's recommendation to deny the appeal before you today and uphold the zoning administrator's original determination to approve the project as proposed along with the CUP and variance as originally submitted.

The proposal for 5253 College Ave. not only meets the zoning requirements; it demonstrates a design and scale that is completely appropriate to this low-medium density commercial district. The quality of the architecture for this vernacular is highly commendable and will contribute to the urban fabric of the neighborhood.

ULTRA believes that the allowable density of 12 units (instead of the 6 proposed) would better serve our regional needs to provide urban infill housing. However, we are encouraged to know that the 6 units may potentially be structured as 3 rental and 3 ownership. This will contribute to diversifying the housing stock in a neighborhood that continues to see increasing median house costs and a steep increase in condo conversions, despite the current market.

If we continue to build housing along commercial corridors, we will increase the use of public transit that is particularly accessible at this location. Given the number of proposed developments in the North Oakland area (another multi-unit project is currently proposed along Broadway one block away) developing a comprehensive Transportation Demand Management (TDM) Program, including a dedicated city staff person to implement and oversee it might address the growing concern over parking and traffic impacts.

As you know, "TDM" is the term used for a whole systems approach to traffic reduction and parking that takes into consideration everything from supply and demand of parking (pricing, where it is, whether it is shared), all the different ways people get places, why

ULTRA : Urbanists for a Livable Temescal Rockridge Area

they go there, how long they stay, how that changes throughout the day, valuing and enhancing all modes of transportation.

ULTRA also feels that the applicant should be allowed to implement the well-designed open space configuration on the rooftop as shown in the revised drawings that help mitigate direct impact to residences along Desmond Street. The use of the ground floor space at the rear of the building as a commercial space is also appropriate in that there will be less intense use of the backyard area.

It is true that in this particular case the low-density single family zoning designation abuts this property at a slightly lower topographical elevation, however, the proposed project is not in a medium-high or high density zone. In those cases, the City may want to designate a medium density or buffer zone between two more disparate zones. Also in this case, as a property owner, the appellant may have or may not have been aware of the zoning differences between the two areas at the time of purchase.

It is our understanding that the applicant/architect has made several attempts to meet with concerned residents and has addressed the specific concerns around open space, landscaping, lighting, fencing, etc. and meets all the required setbacks and zoning regulations.

ULTRA believes that by implementing the goals of Oakland's General Plan, the City will begin to take responsibility, as a City, to contribute towards a sustainable and equitable region.

Although this is a difficult situation when there is, undeniably, immediate impact on near-by residents, we trust that this commission as well as the planning staff recognizes, in addition to the legal rights, the greater good that this project will help realize.

Thank you for your every consideration,

ULTRA Core Members:

Hiroko M. Kurihara, John Gatewood, Joan Lichterman, Joyce Roy,
Suzanne L'Heureux, Christopher Waters, Thomas Dolan

May 2, 2007

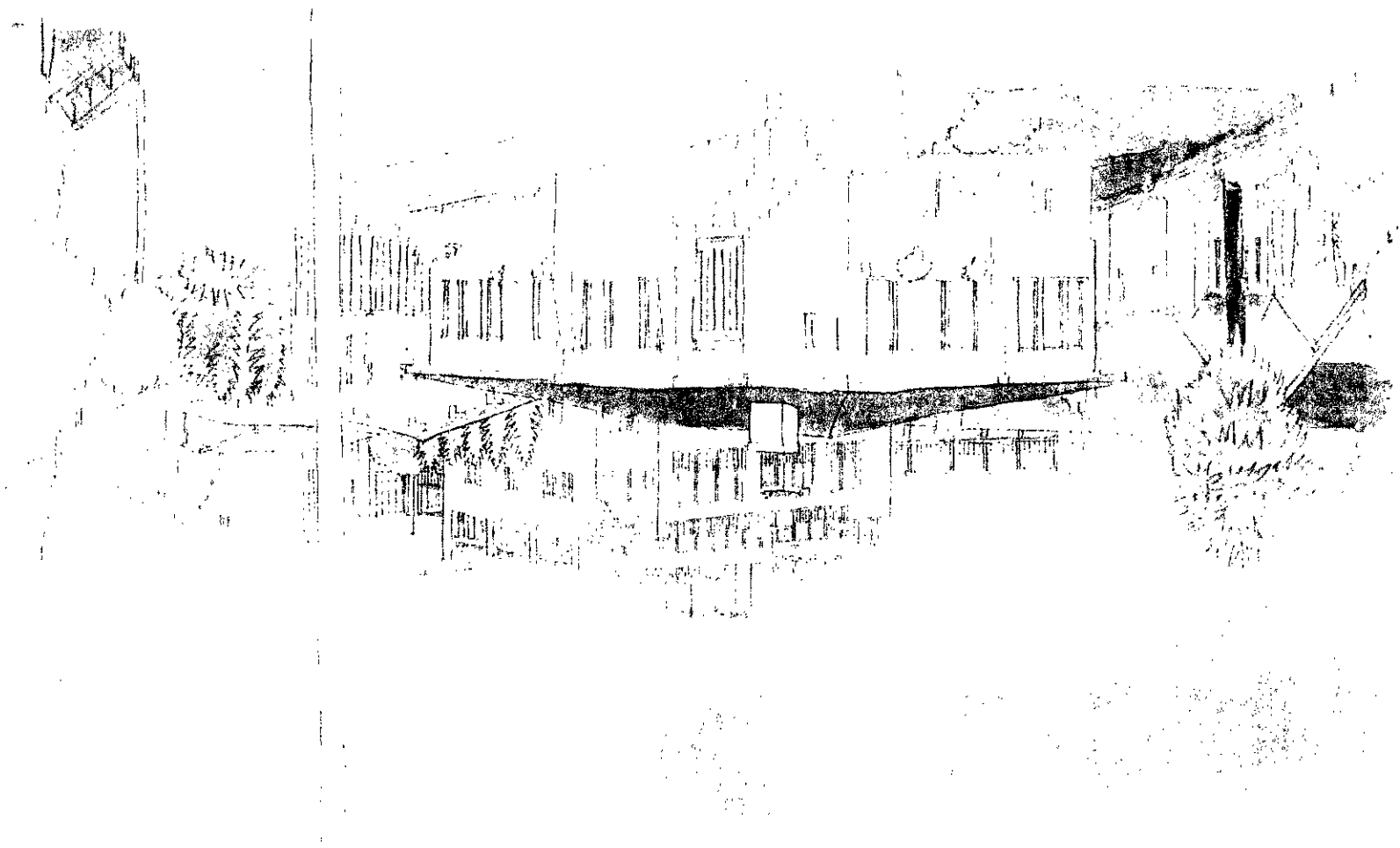
Dear Planning Commissioners,

As President of the Rockridge District Association (RDA), the retail and business association for College Avenue, I wish to support Kirk Peterson's project at 5253 College Avenue. I attended the meeting at the Rockridge Library where City staff and Mr. Peterson presented the project. I found the project to be an exciting addition to College Avenue.

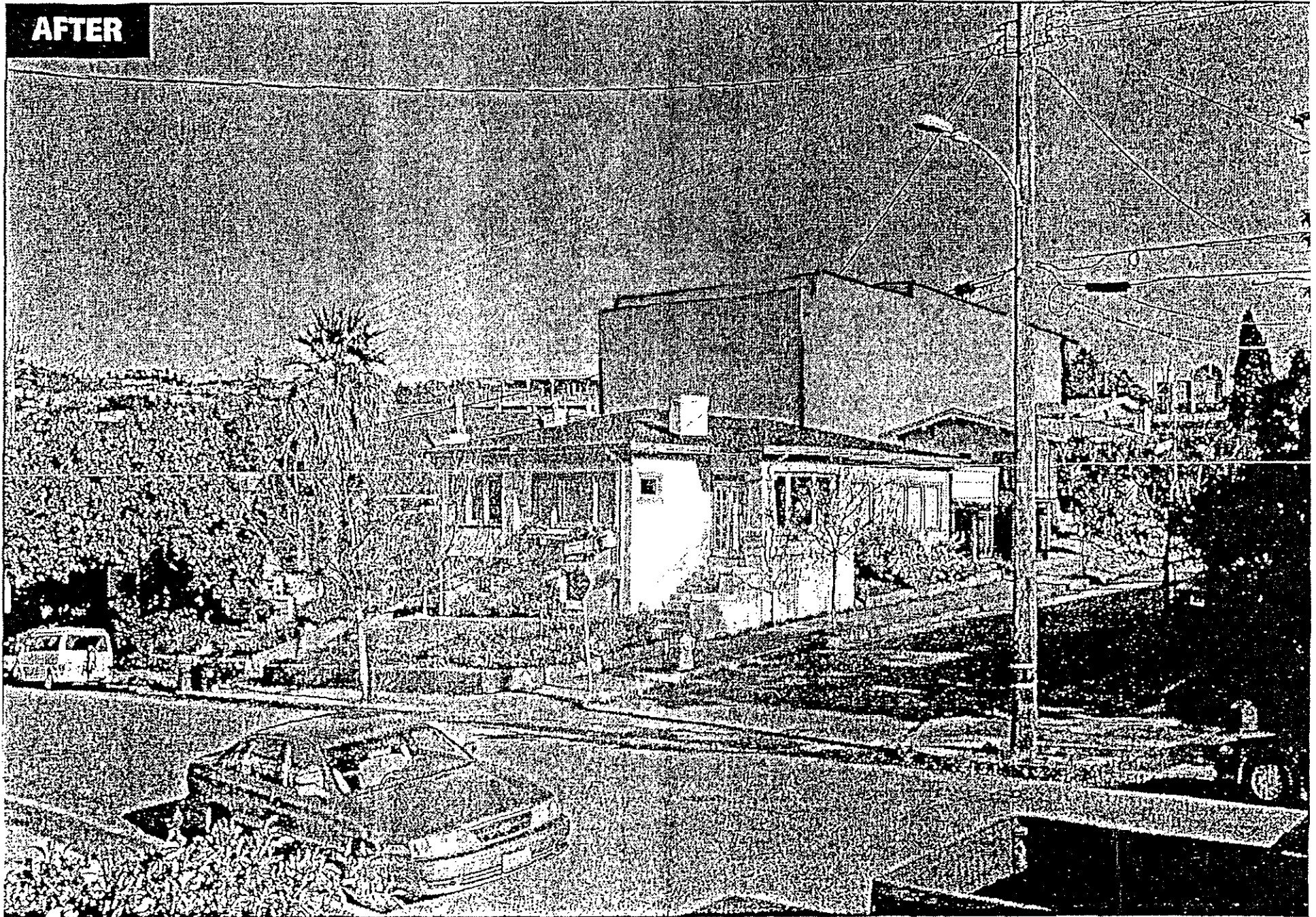
The project is within C-31 zoning, does not require a variance and demonstrates architectural integrity. The project includes not only retail space on the ground floor, but also 6 residential units (possibly 3 ownership, 3 rentals). These units will support diverse housing stock in Rockridge and will encourage more pedestrian activity long College Ave.

The RDA looks forward to renewed interest and investment in the buildings and businesses at the south end of College Avenue.

Sara E. Wilson
Rockridge Market Hall
5655 College Ave.
Oakland, CA 94618
swilson@markethallfoods.com
Tel: 510-655-0739
Cell: 510-773-4327

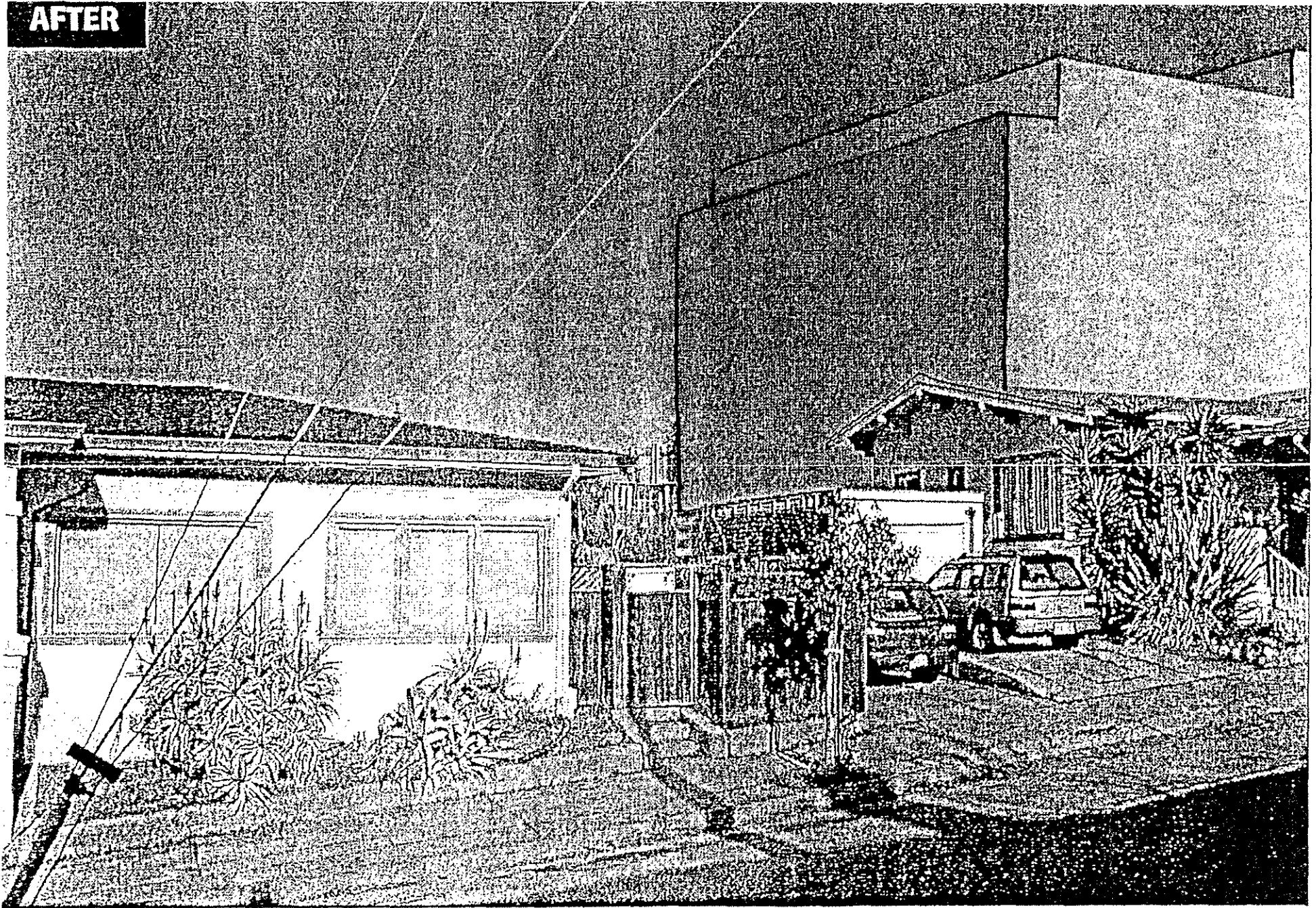


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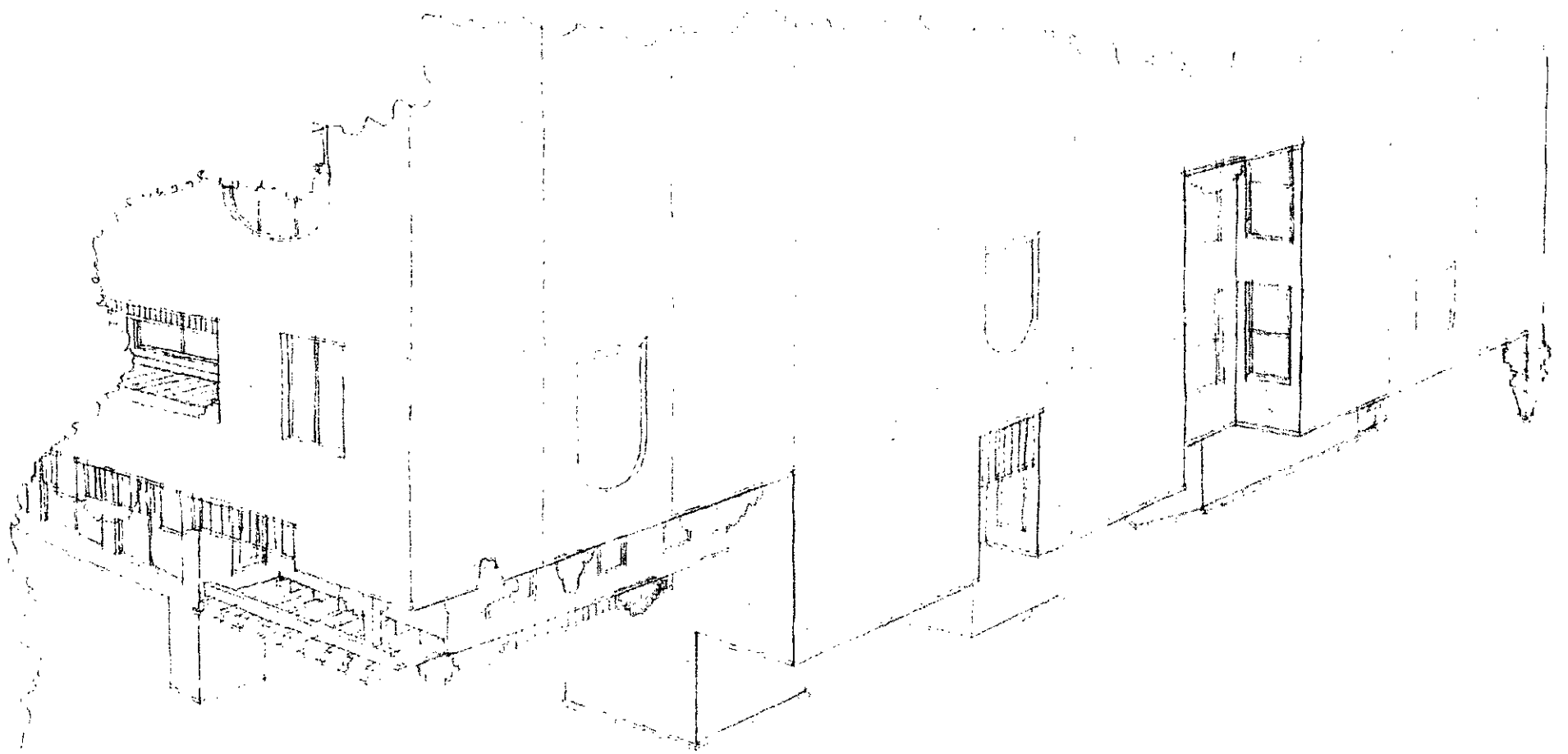


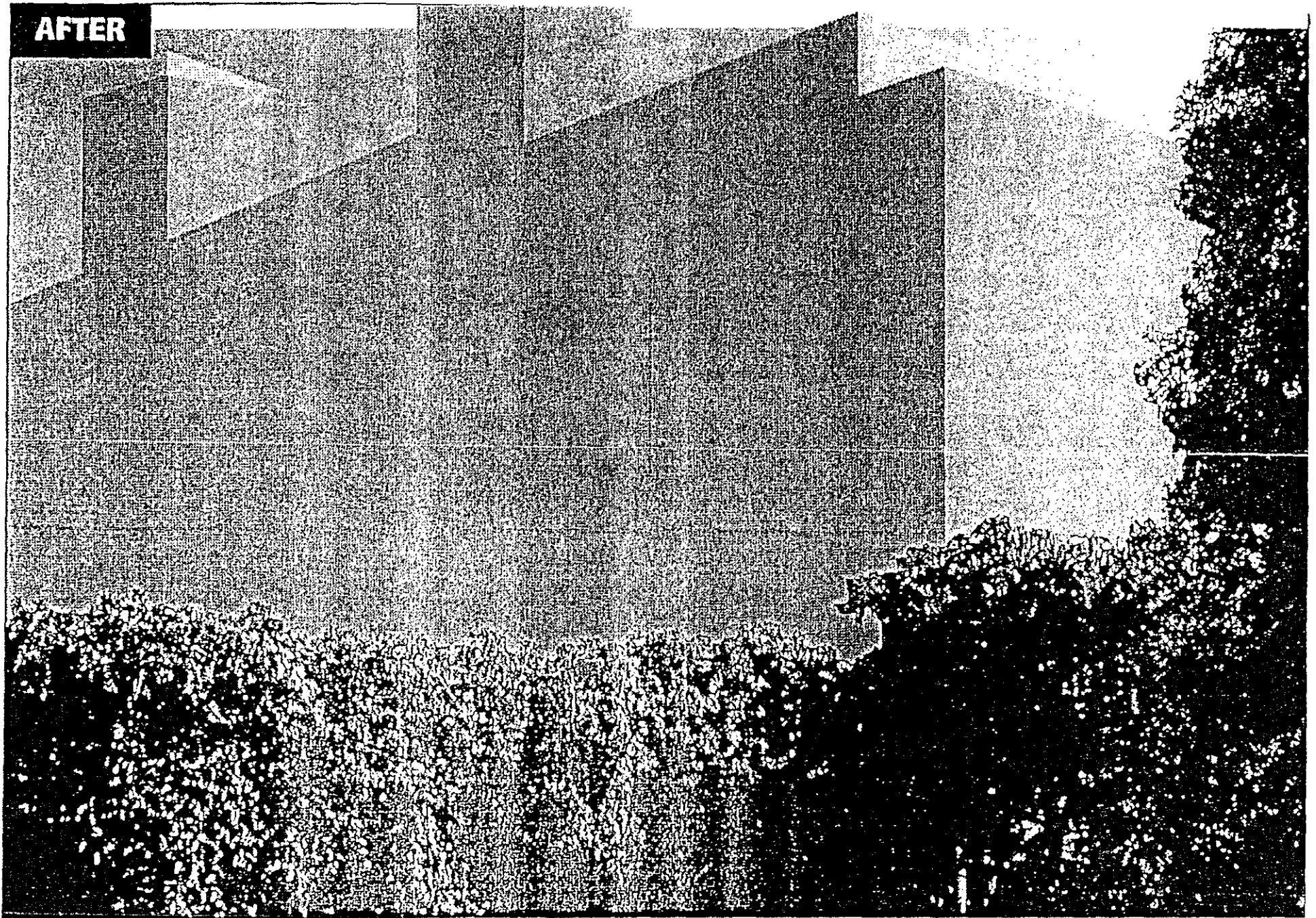
Northeastward View of Project from 2019 Desmond, at Foot of Hemphill

AFTER



Northeastward View Across Hemphill from 5220 Desmond

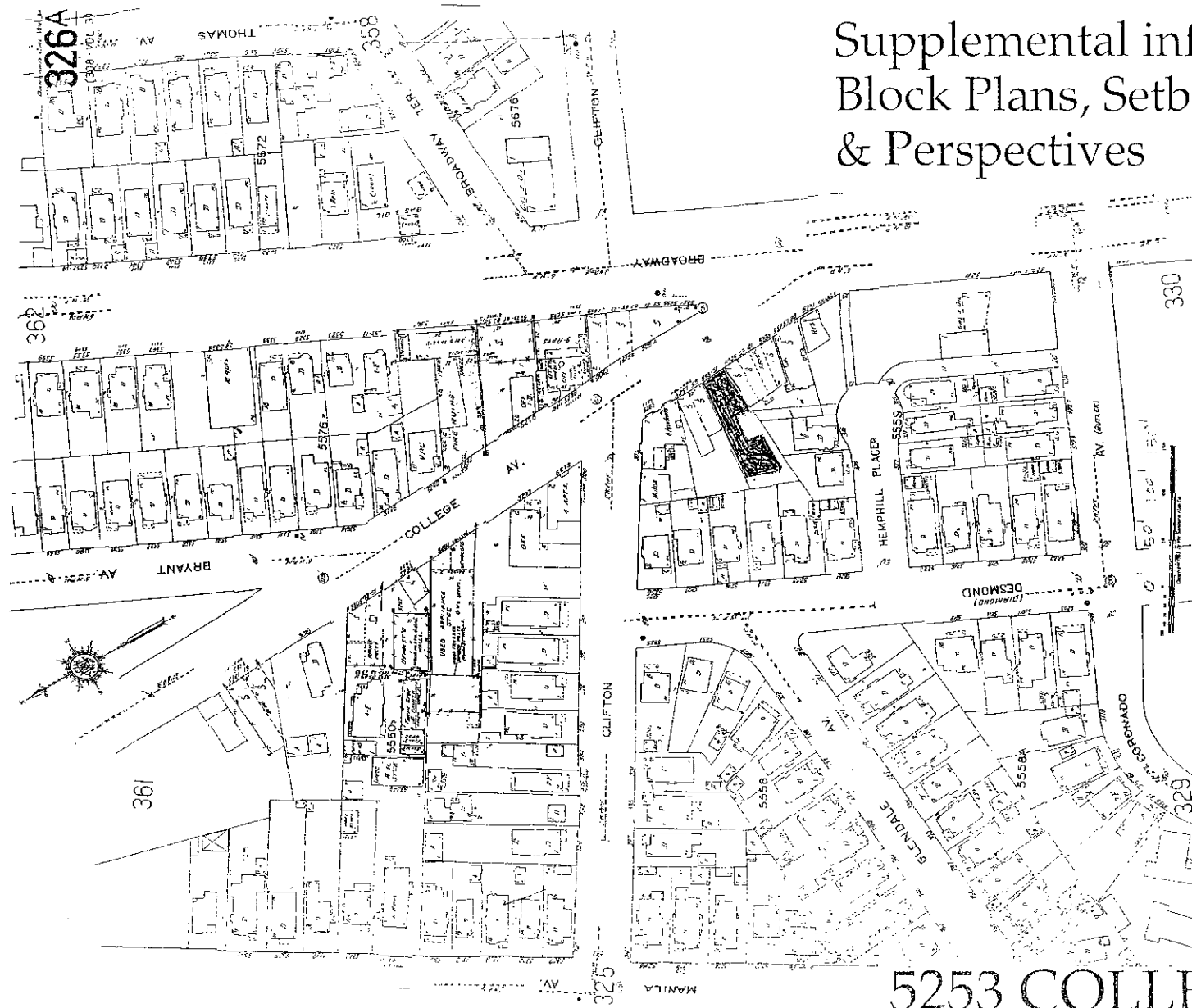




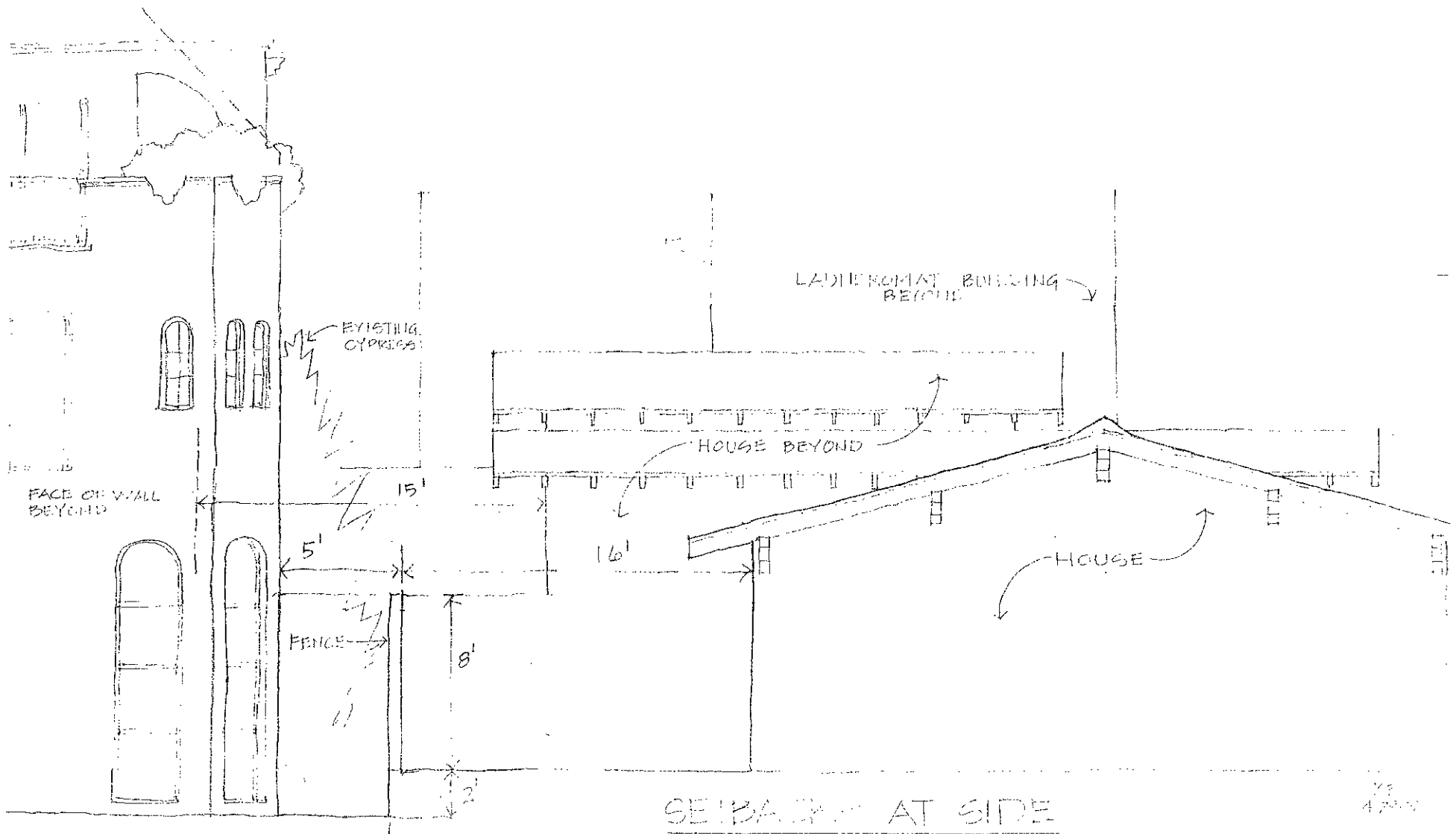
AFTER

Southeastward View of Project from Rear of 5248 Desmond

Supplemental information: Block Plans, Setback Illustrations & Perspectives



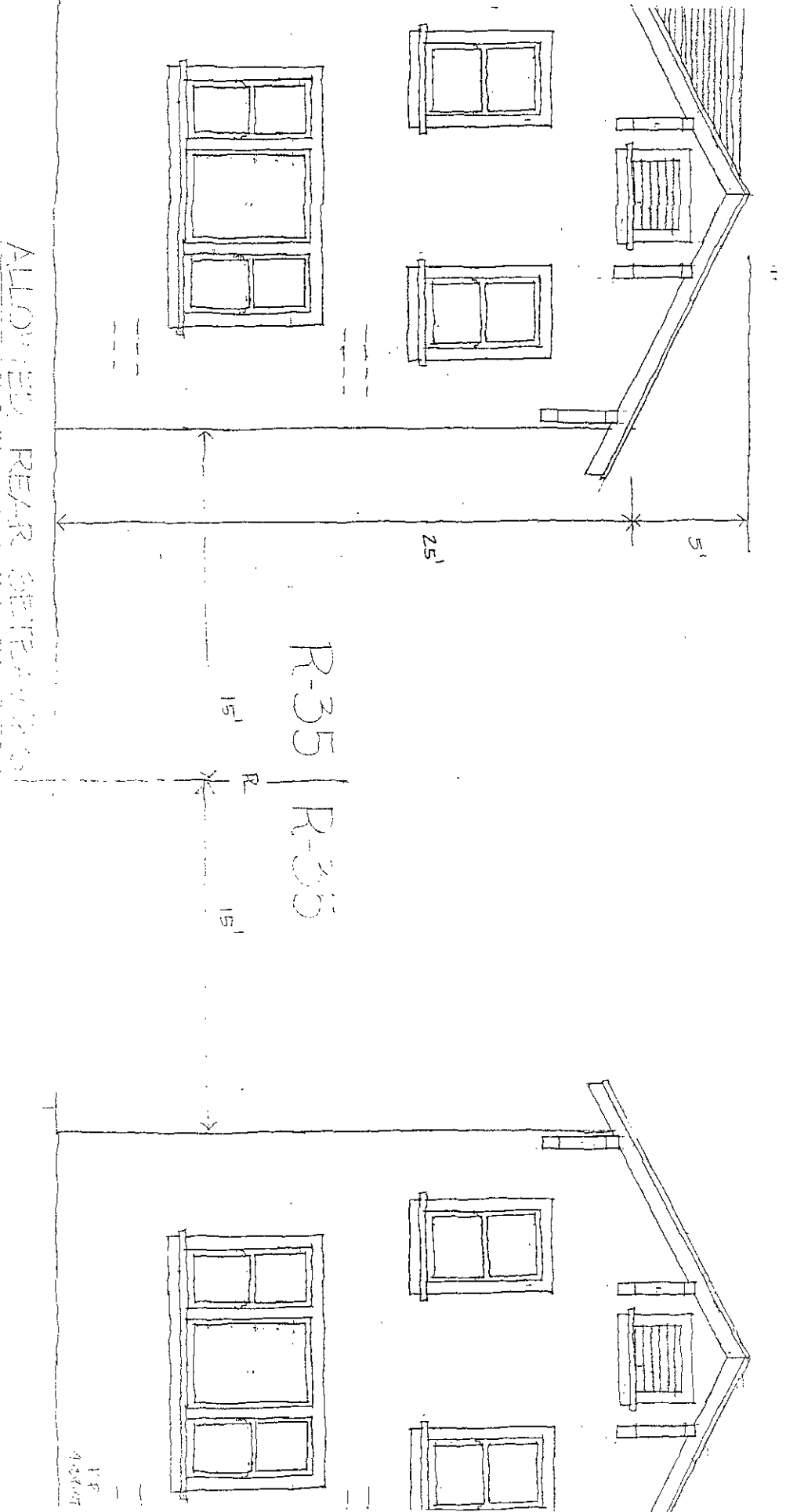
5253 COLLEGE AVENUE



C-31 R-35

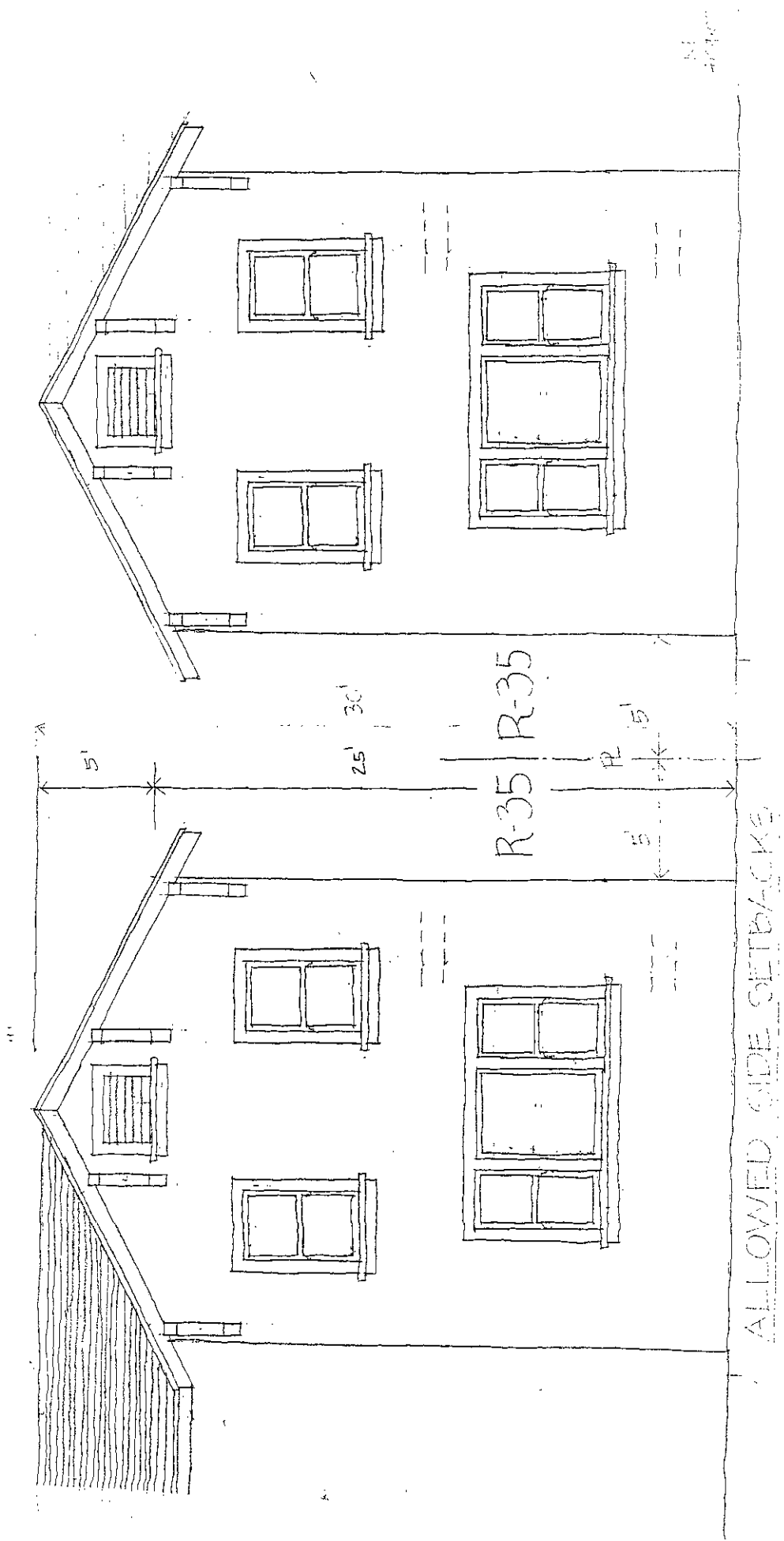
5253 COLLEGE AVENUE

4

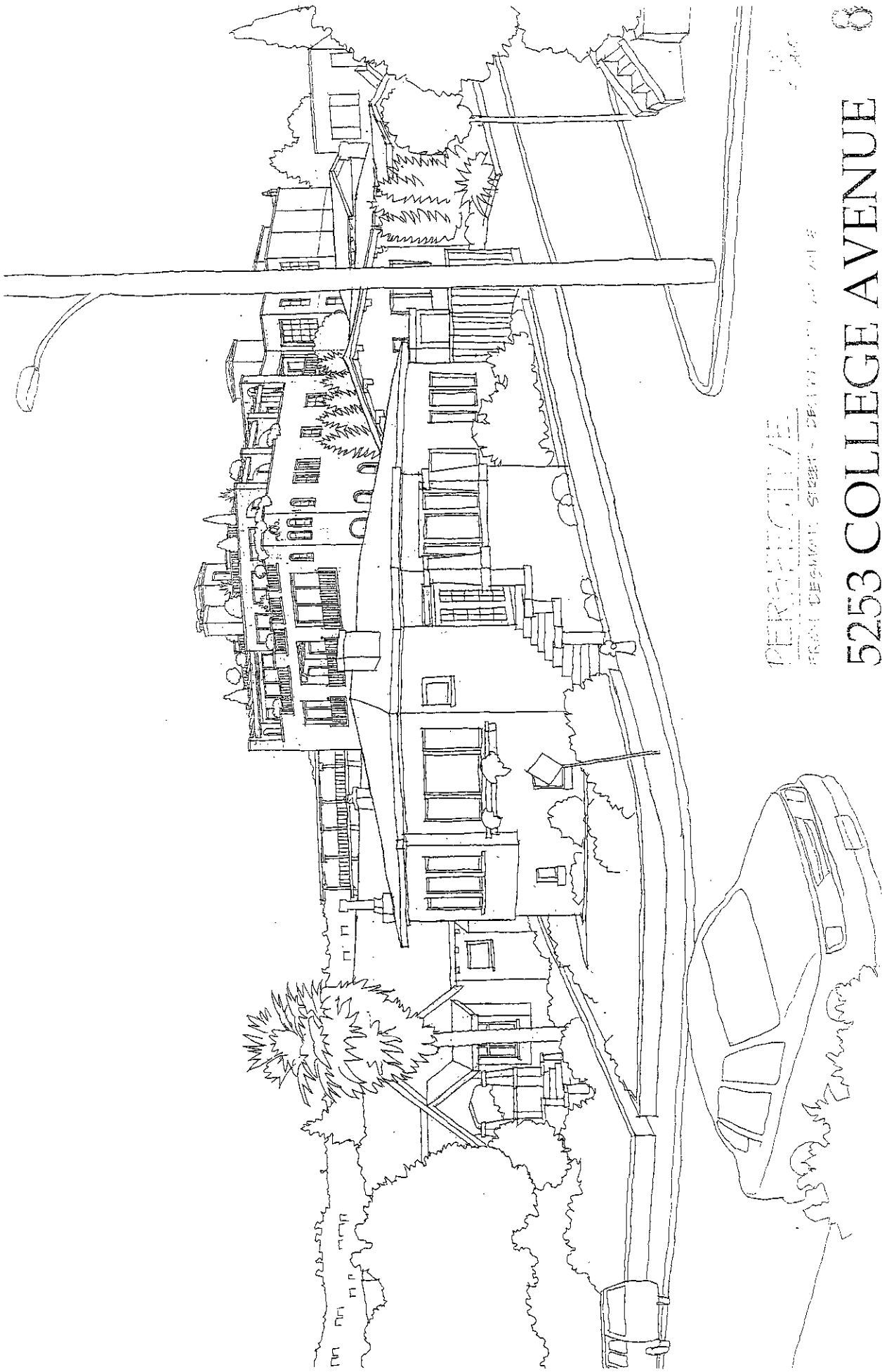


5253 COLLEGE AVENUE

1 P
4/24/07

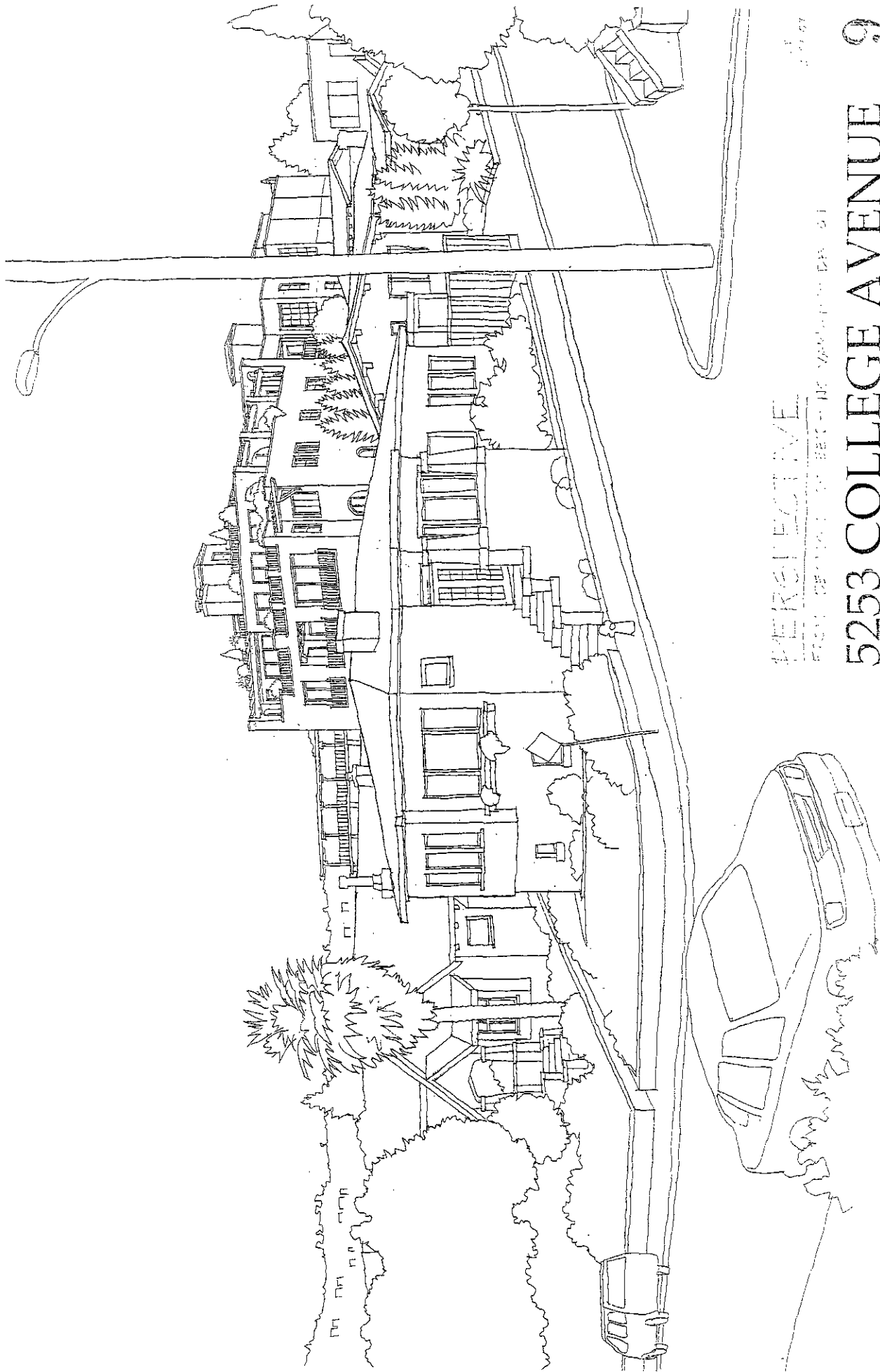


5253 COLLEGE AVENUE 7



PERSPECTIVE
FROM DEANWELL STREET - DEPARTMENT OF ZONING

5253 COLLEGE AVENUE 8

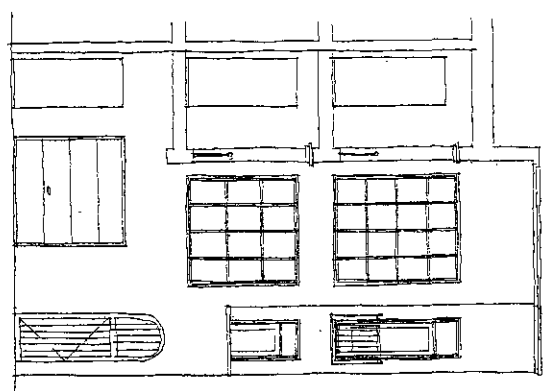
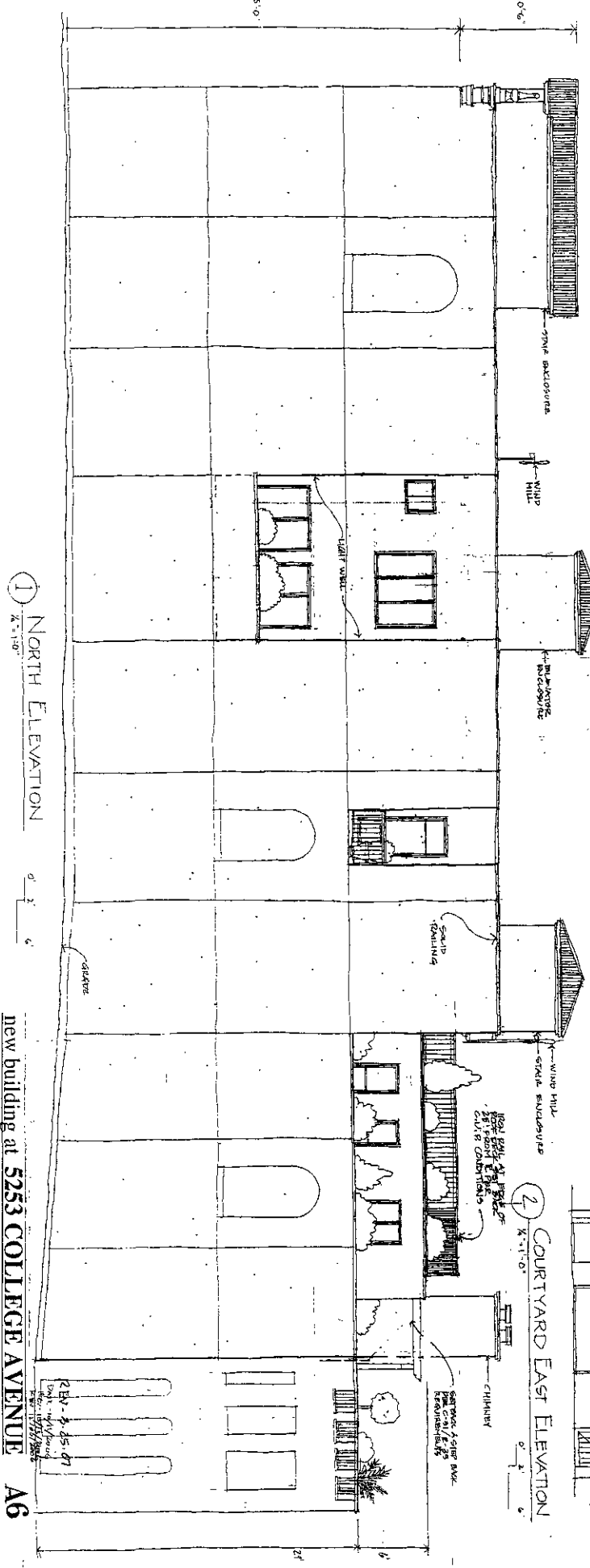


PERSECTIVE

1111 COLLEGE AVENUE, BOSTON, MASSACHUSETTS 02116

5253 COLLEGE AVENUE 9

SIDEWALL DESIGN REVISIONS



1 NORTH ELEVATION
 new building at 5253 COLLEGE AVENUE A6

OFFICE OF THE CITY CLERK

2007 JUN -7 PM 3:14

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER _____

**RESOLUTION DENYING THE APPEAL AND UPHOLDING THE
CEQA DETERMINATION OF A CATEGORICAL EXEMPTION FOR
CASE FILE NUMBER CD06-604 (CONSTRUCTION OF 6 DWELLING
UNITS OVER GROUND FLOOR COMMERCIAL AT 5253 COLLEGE
AVENUE, OAKLAND**

WHEREAS, the project applicant/owner, Kirk Peterson, filed an application on December 7, 2006, to construct a mixed use project containing 6 residential units and less than 3,000 square feet of commercial space at 5253 College Avenue; and

WHEREAS, The Zoning Administrator considered the matter and approved the project on February 28, 2007; and

WHEREAS, on March 9, 2007 the appellant, Bert Verrips, filed an appeal of the Administrative decision to the Planning Commission; and

WHEREAS, The City Planning Commission took testimony and considered the appeal at its meeting held May 2, 2007. At the conclusion of the public hearing held for the matter, the commission deliberated the matter, revised the project to include the removal of the open space variance and amend the Conditions of Approval, and voted. The appeal was denied, 6-0-0; and

WHEREAS on May 10, 2007, an appeal of the Planning Department's CEQA Determination and a statement setting forth the basis of the appeal was received; 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 June 19, 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 June 19, 2007;

Now, Therefore, Be It

RESOLVED: The requirements of the California Environmental Quality Act (CEQA) of 1970, as prescribed by the Secretary of Resources, and the City of Oakland's environmental review requirements, have been satisfied, and, in accordance the adoption of this resolution is exempt from CEQA under Section 15303 of the State CEQA Guidelines, Section 15183 of the CEQA Guidelines, and Section 15332 of the CEQA Guidelines; and be it

FURTHER 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 Department's decision, and the Appeal, finds that the Appellant has **not** shown, by reliance on evidence already contained in the record before the City Planning Commission that the Zoning Administrator's Decision of February 28, 2007 and City Planning Commission's decision on May 2, 2007 was made in error, that there was an abuse of discretion by the Planning Department or Planning Commission or that the Commission's decision on May 2, 2007 was not supported by substantial evidence in the record based on the May 2, 2007 Staff Report to the City Planning Commission (attached as Exhibit "A") and the June 19, 2007, City Council Agenda Report (attached as Exhibit "B") hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeal is denied, the Planning Department's CEQA Determination is upheld, subject to the findings contained in Exhibit "B" in the Staff Report for this item prepared for the City Council meeting of June 19, 2007, 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 on May 2, 2007 to deny the appeal and uphold the approval of the Project, the City Council affirms and adopts the May 2, 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) all attached as Exhibit "A", as well as the June 19, 2007, City Council Agenda Report, attached hereto as Exhibit "B," (including without limitation the discussion, findings, and conclusions) 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, 3rd 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

[May 2, 2007 Planning Commission Staff Report]

Case File Number: A07-090(CDV06-604)

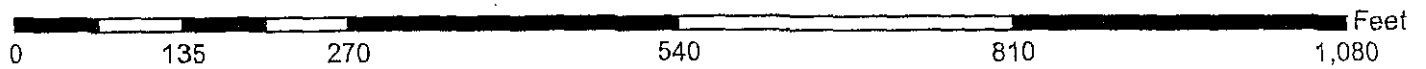
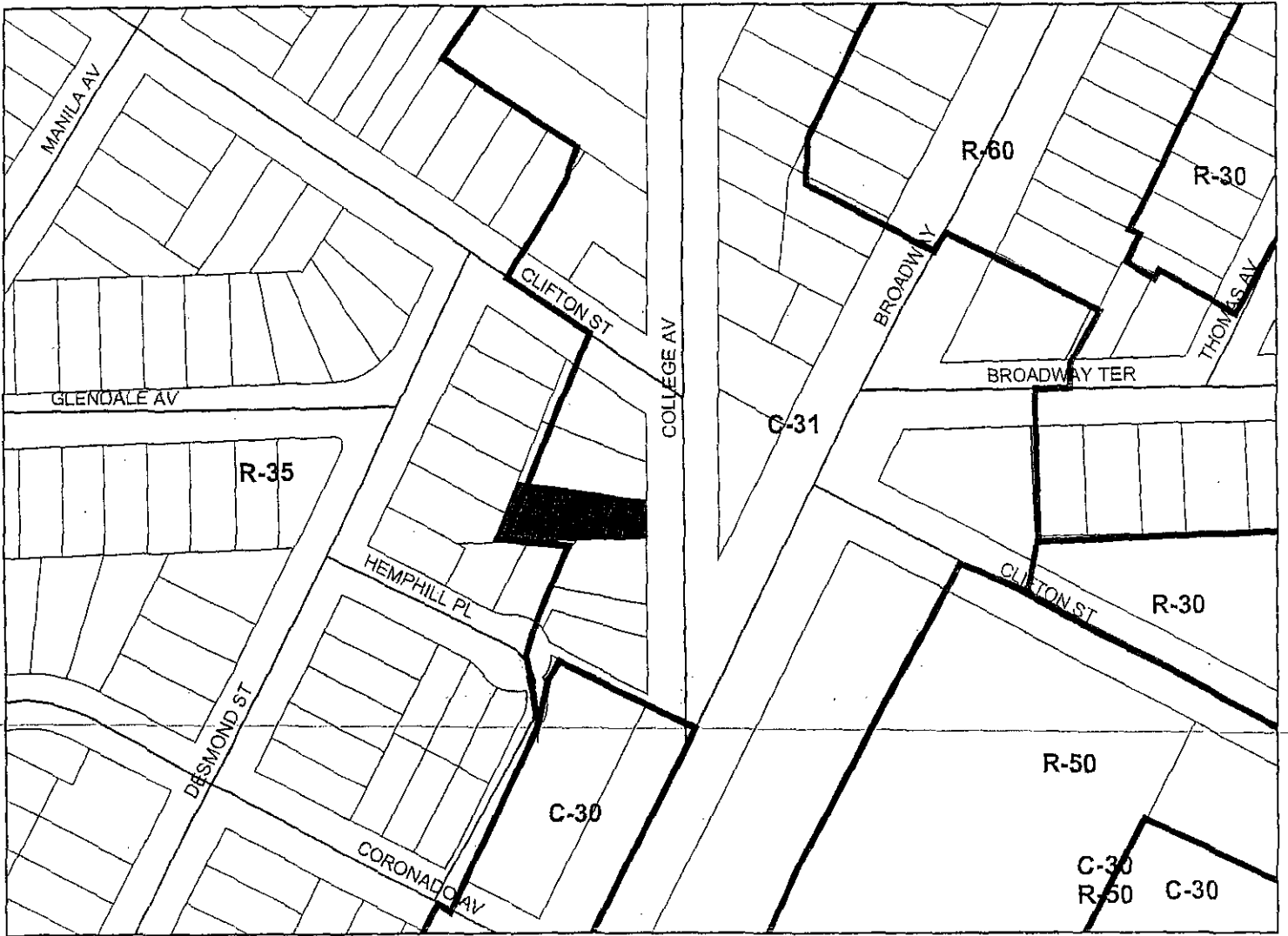
May 2, 2007

Location:	5253 College Avenue (See map on reverse)
Assessor's Parcel Number:	014-1240-004-00
Proposal:	Appeal of an Administrative decision to approve a mixed use development containing six dwelling units over ground floor commercial.
Applicant:	Kirk Peterson
Owners:	Kirk Peterson
Appellant:	Bert Verrips
Planning Permits Required:	Design Review for new construction, Minor Variance to allow more than 20% of the required group open space on the rooftop, and Conditional Use permits for ground floor parking and re-establishment of the existing non-retail ground floor use (Financial and Consultative - Architecture firm).
General Plan:	Neighborhood Center Mixed Use
Zoning:	C-31 Special Retail Commercial Zone
Environmental Determination:	Exempt, Section 15303 of the State CEQA Guidelines, New construction of small structures Exempt, Section 15183 of the State CEQA Guidelines, Projects consistent with a community plan, general plan, or zoning
Historic Status:	Not a Potential Designated Historic Property, Survey rating: X
Service Delivery District:	2
City Council District:	1
Status:	The application was approved by the Zoning Manager on February 28, 2007. The approval was subsequently appealed by the appellant on March 9, 2007.
Action to be Taken:	Decision on appeal based on staff report and public testimony
Staff Recommendation:	Deny the appeal thereby upholding the approval of the application
Finality of Decision:	Final Decision
For Further Information:	Contact case planner Peterson Z. Vollmann at (510) 238-6167 or by email at pvollman@oaklandnet.com .

SUMMARY

The applicant proposes to demolish the existing commercial building and construct a new mixed use building containing six dwelling units over two new ground floor commercial spaces. The proposal required a Design Review approval for the proposed new construction, and a minor variance to allow more than 20% of the required group open space to be located on the roof top. In addition the project required a Minor Conditional Use Permit, pursuant to the C-31 zone regulations, for ground floor parking and for the re-establishment of the existing Architecture firm, which is a non-retail use. On February 28, 2007 the Zoning Manager approved the application, finding that the proposal complied with all the necessary criteria for approval. On March 9, 2007 the approval was appealed to the Planning Commission. Staff recommends that the Planning Commission deny the appeal, thereby upholding the Zoning Manager's approval of the project.

CITY OF OAKLAND PLANNING COMMISSION



Case File: A07-090 (CDV06-604)
Applicant: Kirk Peterson
Address: 5253 College Ave
Zone: C-31



PROPERTY DESCRIPTION

The subject lot is approximately 6,255 square feet in size, located on College Avenue just to the north of the Broadway/College intersection. The site is currently developed with a one-story commercial building that is approximately 1,700 square feet, with auto access off of a driveway easement that enters from Hemphill Place.

The site is located on College Avenue in the College Avenue commercial district. The site is bordered by commercial uses with some upper level housing on College Avenue and lower intensity residential uses along the back streets.

PROJECT DESCRIPTION

The applicant proposes to construct a three (3) story mixed use building with commercial space and parking located on the ground floor, and six residential dwelling units above. The parking would be accessed off of a driveway easement that runs along the back side of other properties, and enters at approximately the middle of the site. All parking will be located within enclosed garages served off of the central parking court. This driveway configuration allows the proposal to have a continuous commercial ground floor with no sign of parking facilities from College Avenue. The front commercial space would be used for any use that would be out right permitted under the C-31 Zone, and the rear commercial space, which does not contain any street frontage or display windows, would be used as an architecture firm, which requires a Conditional Use Permit since it is located at the ground floor and is classified as a "non-retail" use in the C-31 Zone. The upper levels will contain six dwelling units, three per floor, and contain open space provided in individual decks as well as a large rooftop open space. The applicant requested and was granted a minor variance to allow 100% of the required group open space to be located on the rooftop. Staff approved this variance request because the subject property backs up against lower scale residential properties and staff believes that it was an adequate design solution that would move the open space for the future tenants further away from the abutting rear yards of the adjacent homes (Condition of Approval #14 – Attachment B).

GENERAL PLAN ANALYSIS

The site is designated Neighborhood Center Mixed Use (NCMU) by the General Plan. The NCMU designation is intended to identify, create, maintain, and enhance mixed use neighborhood commercial centers. These centers are typically characterized by smaller scale pedestrian-oriented, continuous street frontage with a mix of retail, housing, office, active open space, eating and drinking places, personal and business services, and smaller scale educational, cultural, or entertainment uses. According the General Plan, future development within this classification should be commercial or mixed uses that are pedestrian-oriented and serve nearby neighborhoods, or urban residential with ground floor commercial.

The subject C-31 Zoning is consistent with the Neighborhood Center Mixed Use General Plan Designation. Since the project site is not located within a Growth and Change corridor, the existing allowed Intensity and Density are consistent with the General Plan.

ZONING ANALYSIS

The site is located in the C-31 Special Retail Commercial Zone. According to the Zoning Regulations, the C-31 Zone is intended to create, preserve, and enhance areas with a wide range of retail establishments serving both short and long term needs in attractive settings oriented to pedestrian comparison shopping, and is typically appropriate along important shopping streets having a special or particularly pleasant character.

The project is consistent with the intent of the C-31 Zoning District, because it creates a mixed use project that does not sacrifice the retail potential of the commercial level. The project will add six new dwelling units to the neighborhood, and create a new retail space that fronts on College, while relocating the existing "non-retail" use to a new rear location at the ground floor that does not contain any street frontage.

ENVIRONMENTAL DETERMINATION

The project was found to be categorically exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15303 of the State CEQA Guidelines ("New Small Structures") because the proposal involves the construction of only six new dwelling units, and less than 10,000 square feet of commercial space.

ZONING ADMINISTRATOR'S DECISION

On February 28, 2007 the Zoning Manager approved the application finding that the proposal complies with all the necessary criteria for approval. Attached is the Zoning Manager's decision letter containing the required findings and the reasons the findings were met (see Attachment B). The primary reasons for approving the application were the following:

1. **High Quality Design:** The proposed building contains a high quality design with the attention to detail and ornamentation that would allow the building to fit in contextually with the existing character of the College Avenue commercial district.
2. **Ground Floor Uses:** The proposed building met the required Use Permit findings for ground floor activities, non-retail and parking, by concealing the activities behind a prominent store front that fits in with the commercial district and has no impact onto the pedestrian atmosphere of the street.
3. **Open Space Variance:** The proposed project complied with the findings for a minor variance because of the superior design solution that allows the open space for the six dwelling units to be located further away from the adjacent rear yards of the neighboring lower intensity homes. Much of the opposition to this variance was based upon the roof top open space and neighbors didn't want the Department to grant a variance that would allow neighbors to be located on rooftops looking down into their yards, but the rooftop open space is outright permitted. The variance was to allow all of the open space on the roof and eliminate the requirement for open space in the rear yard, which staff believed would be more of an impact because of the close proximity to their yards. The project as proposed would move all of the outdoor space onto the roof top and leave the rear yard as a landscaped garden that is directly off of the architecture firm's office windows, which staff believed to be much less of an impact (Condition of Approval #14 requires the roof top open space to be setback 25 feet from the rear property line and an additional five feet from the south building wall).

BASIS OF THE APPEAL

On March 9, 2007 the appellant, Bert Verrips, submitted an appeal of the Zoning Manager's decision to approve the project. The applicant's appeal letter received March 9, 2007 contains arguments challenging the Zoning Manager's approval of the Application (see Attachment C). The appellant's arguments are

- A. The City's findings do not support granting the conditional use permit for allowing non-retail ground floor use in the C-31 commercial retail zone.

Appellant's Argument: The City's first finding regarding the project's compatibility and harmony with the surrounding neighborhood completely ignores the General Plan requirement that the College Avenue commercial area remain low density since it is in the "Maintain and Enhance" area.

The appellant challenges that the proposed project is not compatible with the rear abutting properties that are located within the lower intensity residential zone, and that the density of the project should not be permitted because it is located within an area designated as "Maintain and Enhance".

Staff Response: The "Maintain and Enhance" designation of the General Plan does not preclude any development of individual property that would intensify above the existing condition, as suggested by the appellant. The intent of the "Maintain and Enhance" areas is to analyze the existing zoning for an area and determine whether or not there should be a down zoning applied to an area or whether the existing zoning should be respected and complied with. This is different from the "Growth and Change" areas of the City where the higher intensity/ density set forth in the General Plan is encouraged and would essentially replace the existing zoning which may allow less intensity/density. The College Avenue corridor contains a Zoning of C-31, which was specifically created for small neighborhood commercial districts such as this as well as locations such as Piedmont Avenue. These areas have been designated as "Maintain and Enhance" because the higher intensity called out in the General Plan would not typically be appropriate on these streets because of their small nature, and therefore the existing zoning is respected and followed. The proposed project complies with the C-31 height limits and setbacks, and the proposed six units is only one-half the density that is permitted for this site, which would allow for a maximum of twelve (12) dwelling units *by right*. If the applicant were requesting an Interim Use permit to exceed the base C-31 Zone density the appellant's argument would have merit, but that is simply not the case, as the applicant is only proposing to build one-half of what is permitted.

The argument that the proposed building should not be permitted based upon compatibility with the adjacent lower intensity homes behind the project site is not valid, because the subject property is located on College Avenue, which is a mixed use commercial district, and not within the rear low intensity single family zone. When reviewing development proposals on commercial streets staff looks to have a building that is contextual with the commercial district, which this project has done by the proposed architecture of the building and the prominent storefront at the sidewalk. When staff looks at the rear abutting lower intensity areas we look to see what impacts if any would occur, and whether or not they are significant. Staff does not believe that the impacts from this proposed building would be significant. Yes the building is larger than the rear single family homes, but that is because the project is not located within the same single family zone. Any property located directly adjacent to a lot in a commercial zone should be aware that higher intensity development is permitted. Furthermore, the rear wall of the subject building is only two stories at 29 feet tall (parapet/railing included), which is less than the 30 foot maximum height permitted within the adjacent R-35 Zone that the appellant's property is located within. The third floor

is then stepped back as required by Zoning, which reaches the maximum 35 foot height limit.

Furthermore, the reason for the Conditional Use permits was not for the issue of density or intensity. The Use permit was for two issues, ground floor parking and a "non-retail" business located at the ground floor. Staff believes that the granting of the use permit for these two issues is valid. The intent of a use permit for ground floor parking is primarily to ensure that parking does not adversely impact the pedestrian and commercial nature of the commercial street. This has been accomplished in this project because the parking is accessed off of a driveway easement, and no aspect of the parking is visible or noticeable from College Avenue. In addition, the project is of a relatively small size such that the impact to the residential street should not be adverse. Second the use permit to allow a "non-retail" activity at the ground floor is also warranted because the existing use of the building is an Architecture firm, which is classified as a "non-retail" use in the C-31 Zone. The proposed project will re-establish this "non-retail" use, but it will be located at the back of the building in a commercial space that will not have any street fronting elements. The front of the building will create a new commercial space that will have full street frontage and will be available for "retail" activities or other uses that are principally permitted at the ground floor within the C-31 Zone. In the end the proposal will actually create a new retail opportunity that presently does not exist, and the re-established "non-retail" use will not have any negative impact upon the shopping environment on College Avenue.

- B. The developer and the City have failed to produce the necessary evidence to support findings necessary for the grant of a variance for 80% of the open space requirement to be fulfilled on the roof.**

~~Appellant's Argument: The appellant is arguing that the use of the rooftop for recreational opportunities would result in the loss of privacy and would result in increased noise. Concerns are also based on the potential of parties that would result from the development being occupied by renters, and/or students.~~

The appellant also argues that the Department used the wrong test for determining whether to grant the variance. The appellant cites Policy N11.3 of the General Plan, Requiring Strict Compliance with Variance Criteria, and that since the General Plan supercedes the Zoning that a Minor Variance should no longer be an acceptable procedure, and that the tougher Major Variance Criteria should be applied that require proof of a "hardship caused by unique physical or topographical constraints".

Staff Response: The granting of the open space variance is not to allow open space to be located on the rooftop. The granted variance was to allow all of the required open space on the rooftop of the building. If the proposed project had called out the rear yard as the open space to meet the open space requirement, the rooftop open space would still be permitted outright. There is no restriction to the use of a rooftop for open space; the only restriction is that no more than 20% of the required group open space may be located on the rooftop. The applicant could very well provide access to the rear yard for tenants and still keep all of the proposed open space on the rooftop and be completely complying with the Planning Code. Staff viewed the variance as a better design solution that would limit the impacts onto neighbors by locating the group open space on the roof so that it would be further away

line, and an additional five feet from the south building wall (which faces the side property line), and that the roof top be screened by a solid parapet along the perimeter to further conceal the open space on the rooftop. In addition, other "use" limitations of this rooftop open space have been placed to further reduce or eliminate any potential adverse impacts. By creating all of the residential open space on the roof deck, the rear yard would essentially become a landscaped garden that would sit adjacent to the office space and would not have any recreational use at all, which staff had viewed as a superior design solution that would benefit the adjacent neighbors as well as the future tenants of the proposed building.

With regard to the Criteria used for the granting of the Variance, staff used the Minor Variance criteria as required by the Planning Code. Objective N11 of the General Plan is the section that guides policy for updating the Zoning Code for compliance with the General Plan. While Policy N11.3 does state that the stricter criteria should be used, it also states that, "in instances where large numbers of variances are being requested, the City should review its policies and regulations and determine whether revisions are necessary". This is not meant to trump the existing Zoning regulations, but rather act as a guide for updating the Zoning regulations in certain situations.

C. The City has not made any findings or otherwise demonstrated why the claimed CEQA exemptions apply or that the exceptions cited by the community did not apply.

1. Guideline Section 15183 exemption is inapplicable because the General Plan EIR doesn't even remotely say a thing about College Avenue.

Appellant's Statement: The appellant is challenging the use of Section 15183 of the CEQA guidelines for an environmental exemption. This is based upon the argument that the appellant makes that the EIR for the Oakland General Plan does not specifically cite an increase of density on College Avenue, and that the project is not consistent with the General Plan.

Staff Response: Section 15183 does not require a general plan EIR to cite the specific density of a project's location. Section 15183 states that "projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require further environmental review, except as might be necessary to examine whether there are project-specific environmental effects which are peculiar to the project or its site. This project falls within the criteria of zoning and the general plan.

This project is consistent with the applicable densities, and an EIR was prepared for the zoning and general plan policies. The Land Use and Transportation Element (LUTE) of the General Plan was an element of the EIR. In the LUTE the subject property is identified in an area designated as Neighborhood Center Mixed Use. The area is also identified as a "Maintain and Enhance" area, which as stated earlier in this report does not preclude any re-development of the site, but would lead any future development towards remaining consistent with the existing C-31 base zoning. The proposed project is consistent with the C-31 regulations and only is constructing half the number of dwelling units that would be outright permitted on the property. Furthermore, the proposed project is consistent with the Neighborhood Center Mixed Use designation because the proposal is creating a mixed use

building that provides housing options above a new commercial space that will create future shopping opportunities for the College Avenue commercial district. The appellant also argues that the project is not consistent with the *General Plan* because it is not "sensitive to the character and design of existing buildings". The proposed project is consistent with other mixed use buildings along College Avenue in height as well as architectural style. The argument that a building on a commercial street should be designed to be consistent with single family houses is invalid since the subject property is not located within the same single family zone. In reviewing proposals on commercial streets staff looks at the rear of buildings not as a contextual matter, but as a matter of good design and limited impacts from height. In this case the rear of the building has ornamental features and quality finishes to create an attractive building and the height of the building steps away from the rear of the lot as mandated by the Planning Code, and at the rear portion of the building is only 29 feet in height above grade, which is less than the maximum height permitted in the adjacent zone.

In addition, as discussed in more detail below regarding Appellant's assertion no. 2, there are no project-specific significant effects that are peculiar to the project or its site that would require additional environmental review as the subject parcel is a typical urban lot.

2. CEQA Guideline exemption 15303 does not apply because the community has shown that there is a reasonable possibility the project will have a significant impact on the environment. (Guideline Section 15300.2(a))

Appellant's Statement: The appellant argues that the Small Structures CEQA exemption may not be used because of unusual circumstances that would qualify as an Exception to the use of a CEQA Categorical Exemption. The appellant states the following reasons for a possible environmental impact:

- Due to the topography of the lot the people who would occupy the proposed building could look into the windows of the adjacent neighbors.
- The noise from the rooftop would reverberate throughout the neighborhood.
- The proposed project would create significant traffic and parking impacts.
- Cumulative impacts – such as, 1) Allowing rooftop open space, which would lead to future noise impacts; 2) Traffic and Parking impacts from the subject project and other nearby proposed projects; 3) Allowing increased density in a "Maintain and Enhance" area.

Staff Response: Section 15303 of the CEQA Guidelines states that a project is Categorical Exempt from Environmental Review if a project includes new construction of a building of no more than six dwelling units in an urbanized zone, and a commercial space of not more than 10,000 square feet. The proposed project contains six units and the proposed commercial space is far less than 10,000 square feet.

Section 15300.2 of the CEQA Guidelines provides Exceptions to the use of any Categorical Exemption if they meet any of the following criteria:

designated, precisely mapped, and officially adopted pursuant to law by federal, state or local agencies.

The project location is not located in an area that has been specifically identified as an environmentally sensitive area.

- b) Cumulative Impacts. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

The existing base C-31 Zoning recognizes and permits this type of mixed use development, and recently there have not been a large number of proposed mixed use developments along this stretch of College Avenue. A much larger nearby project is proposed at 5175 Broadway, which is currently undergoing an Initial Study pursuant to CEQA. The potential cumulative impacts argued by the appellant about rooftop open space are unwarranted as an exception/variance is not required to allow rooftop open space, it is only required when it is proposed as a complete substitution for the location of required group open space as discussed earlier in this staff report. The claim that outdoor open space would lead to noise impacts would preclude any outdoor activities in residential neighborhoods as well. The noise from an outdoor space from an apartment building would be the same noise that would emanate from a multi-unit building as well and would be subject to the same noise ordinances. The appellant argues that there would be cumulative impacts to parking and traffic in the area. Parking has been determined not to be considered an environmental impact by the courts. The proposed six unit building would not create a significant number of trips to even be considered in the discussion of cumulative impacts as six units and the small proposed commercial space would not generate the peak hour trips that would potentially degrade the existing Level of Service of any nearby intersections. Traffic impacts are typically studied further by larger development proposals that could potentially be a Class 32 In-Fill exemption, which specifically identify traffic impacts as an area of needed review. The appellant also argues that there would be cumulative impacts caused by increasing the density of the College Avenue area, which is designated as "Maintain and Enhance" in the General Plan. As stated earlier in this staff report the project is not proposing an increase of density over what is permitted in the C-31 Zone, and the proposal would only contain one-half of the permitted density under the existing base C-31 Zone.

- c) Significant Effect. A Categorical Exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

The appellant argues that due to the location of the project site there are unusual circumstances that would create significant impacts, specifically identifying occupants of the proposed building looking into windows of adjacent neighbors, parking, traffic, and noise. The claims against parking, traffic and noise are discussed in the previous section under cumulative impacts, and privacy is not an environmental impact, and it is unreasonable to expect no contact with adjacent neighbors when living in an urban environment. The same alleged impact would then be true of any of the existing homes in the area which are only required to be

set back five feet from one another. No setback variances or height variances have been granted for the project.

- d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources within a highway officially designated as a state scenic highway.

The subject property is not located on a scenic highway nor would it cause any visual degradation from any scenic highway.

- e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

The subject property is not on any of these lists.

- f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significant of a historic resource.

The subject property is not a historic resource.

CONCLUSION

Staff believes the proposal complies with all the necessary criteria for approval of the Design Review, Minor Conditional Use Permits, and Minor Variance. The proposal will develop an attractive mixed use project that provides housing opportunities in the area, as well as creating expanding ground floor commercial opportunities for the College Avenue commercial district.

Staff believes the appellant has not sufficiently demonstrated that there was an error or abuse of discretion in the Zoning Administrator's decision to approve the project. Staff recommends that the Planning Commission deny the appeal, thereby upholding the Zoning Administrator's decision to approve the project.

RECOMMENDATIONS:

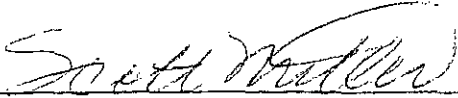
1. Affirm staff's environmental determination;
2. Uphold the Zoning Administrator's decision to approve the application for a Design Review, Minor Conditional Use Permits, and Minor Variance.

Prepared by:



PETERSON Z. VOLLMANN
Planner III

Approved by:



SCOTT MILLER
Zoning Manager

Approved for forwarding to the
City Planning Commission:



CLAUDIA CAPPIO
Development Director

LEGAL NOTICE: The decision of the City Planning Commission is final and not administratively appealable. Any party seeking to challenge such decision in court must do so within ninety (90) days of the date the decision is announced (Code of Civil Procedure Section 1094.6).

ATTACHMENTS:

- A. Project Drawings
 - B. Zoning Administrator's Decision Letter
 - C. Appellant's Letter
-

Exhibit B

[June 19, 2007 City Council Agenda Report]