

CITY OF OAKLAND

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2017 JAN 26 PM 5: 25

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Darin Ranelletti
Interim Director, PBD

SUBJECT: Programmatic Agreement with SHPO
relating to the Hotel Menlo/Empyrean
Towers

DATE: January 13, 2017

City Administrator Approval

Date:

1/19/17

RECOMMENDATION

City Staff Recommends That The City Council Adopt A Resolution Authorizing The City Administrator, Or Designee, To Negotiate And Execute A Programmatic Agreement, Pursuant To Section 106 Of The National Historic Preservation Act, With The California State Historic Preservation Officer (SHPO) Regarding The Rehabilitation Of The Hotel Menlo/ Empyrean Towers Located At 340-344 13th Street, Oakland, California, Without Returning To The City Council

EXECUTIVE SUMMARY

Adoption of the Resolution would authorize the City Administrator or designee to enter into a Programmatic Agreement with the California State Historic Preservation Officer (SHPO) regarding the rehabilitation of the Hotel Menlo also known as the Empyrean Towers. The purpose of entering into the Agreement is to minimize, reduce or avoid adverse effects on the historic building, complete the National Environmental Policy Act process and facilitate the purchase and rehabilitation of the property as affordable housing.

BACKGROUND / LEGISLATIVE HISTORY

The Hotel Menlo, located at 340-344 13th Street, is a seven-story, single-room occupancy (SRO) building with 96 units. The City has determined that the Hotel Menlo is eligible for listing on the National Register of Historic Places (NHRP) and is a historic resource under the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA). In recent years the property has been the subject of blight, criminal activity and code enforcement actions by the City.

Resources for Community Development (RCD), a non-profit affordable housing developer, proposes to use funding from the U.S. Department of Housing and Urban Development (HUD) to acquire and rehabilitate the building for the purpose of providing 66 units of affordable housing with three ground floor commercial spaces, a ground floor lobby, property management offices, and community room.

Item: _____
City Council
February 7, 2017

Since the Oakland Housing Authority (OHA) has awarded HUD funded Section 8 Project Based Voucher rental assistance for the project, an analysis of the project's potential adverse effects on the environment under NEPA must be completed before RCD can purchase the building. The property is eligible for the NHRP, but the effects of the rehabilitation cannot be fully determined at this time due to the lack of detailed plans. By entering into a Programmatic Agreement with the SHPO, the NEPA process can be completed in order to minimize, reduce or avoid adverse historic effects.

Since the beginning of 2015, there have been significant code compliance complaints regarding this property. Within the past year, the property filed bankruptcy and several developers bid to purchase the property. Only RCD proposed an affordable housing project. The project received indirect financial support from the City in that the City Attorney's office agreed to a reduction of \$600,000 from its approximately \$2.4 million claim in the Empyrean bankruptcy case if RCD were to acquire the property. In addition, RCD and the City of Oakland jointly submitted an application to the Affordable Housing Sustainable Communities (AMSC) Program for additional funds to complete the project (**Attachment A**). Finally, the City Attorney and the Mayor also sent a letter to OHA requesting an allocation of HUD Project-Based Vouchers for the Hotel Menlo (**Attachment B**).

ANALYSIS AND EVALUATION OF EVIDENCE

City staff is recommending that the City enter into a Programmatic Agreement with the SHPO. A Programmatic Agreement is a legally binding document that would ensure that review of the rehabilitation plans and specifications is undertaken in conformance the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Standards). The Programmatic Agreement would include but is not limited to, consultation with SHPO, a resolution process if the project sponsor is unable to ensure the development of a design that is compatible with the Standards, annual reporting, and dispute resolution.

City staff consulted with the SHPO and the Federal Advisory Council on Historic Preservation regarding the possibility of entering into the Programmatic Agreement for the property (**Attachment C**). Attached is the draft Programmatic Agreement which was sent to SHPO (**Attachment D**) for their initial consideration. If a Programmatic Agreement is signed with SHPO, Bureau of Planning staff will be entrusted with compliance with its terms and conditions.

A similar Programmatic Agreement was used for the California Hotel Rehabilitation by EBALDC in 2011, likewise to allow use of Federal funds for acquisition and rehabilitation.

Policy Alternative

While staff recommends that the City Council authorize the City Administrator or designee to enter into the Programmatic Agreement, another alternative is discussed below.

Alternative # 1	Take No Action This alternative would result in no action by the City Council in regards to the Programmatic Agreement
Pros	The City would not assume the legal responsibilities for ensuring that the rehabilitation by RCD complies with the design that is ultimately approved to satisfy the section 106 process pertaining to reducing or avoiding historic resource impacts, as outlined in the Programmatic Agreement.
Cons/Reasons for rejecting	As discussed in the <i>Fiscal Impact</i> section below, taking no action on the proposal would result in the RCD's inability to purchase the property for affordable housing and the property either continuing to deteriorate or being sold to a market-rate developer. City staff recommends rejecting this alternative because increasing affordable housing, especially near transit, is an overall goal of the City and the City's Housing Action Plan.

FISCAL IMPACT

If the City Council chooses not to enter into Programmatic Agreement with SHPO, RCD would be unable to complete the required NEPA analysis, and therefore, be unable to acquire the property. As a result, either the property would fall into further disrepair or, alternatively, could be sold to another developer for market rate housing.

There is no direct cost attached to the Programmatic Agreement process. City staff will review whatever occurs at the property, whether RCD's rehabilitation, another developer's project, or further code enforcement, in the normal course of business and funded through permit application.

PUBLIC OUTREACH / INTEREST

Staff has not conducted public outreach regarding this proposal as no application for the rehabilitation has yet been submitted to the City's Bureau of Planning. Staff is unsure of the overall public interest in the project. NEPA review includes public notice published later in the process with a 15-day comment period.

RCD has held two community meetings with residents of Menlo Hotel/Empyrean Towers. Both meetings were well attended and residents expressed overwhelming support for RCD's proposal to acquire the building, renovate it, and convert it to long-term affordable housing. RCD is also planning a public community meeting for early 2017.

COORDINATION

This agenda report and legislation was reviewed by the Office of the City Attorney, Controller's Bureau, Bureau of Planning, and the Oakland Housing Authority.

SUSTAINABLE OPPORTUNITIES

Economic: The property, with implementation of the Programmatic Agreement, would ensure revitalization of a property within Downtown and the closure of City code enforcement cases that have had a blighting effect on the area.

Environmental: The property, with implementation of the Programmatic Agreement, would ensure the rehabilitation of a local historic resource which is also eligible for the NRHP.

Social Equity: With implementation of the Programmatic Agreement, the property would be acquired and redeveloped into 66 units of affordable housing located Downtown, near bike lanes and close to transit such as the 12th Street Bay Area Rapid Transit (BART), several AC Transit bus lines and the future Bus Rapid Transit (BRT). Affordable housing and prevention of displacement are Citywide goals specifically addressed in the upcoming Downtown Plan.

CEQA / NEPA

The Bureau of Planning is responsible for preparation of the environmental analysis pursuant to CEQA and NEPA. In this case, because the property has not yet been acquired and specific plans for the rehabilitation have not been submitted, a Programmatic Agreement is an appropriate method to ensure that the project will not have an adverse historic impact pursuant to Section 106 of the NHPA. Once the City has entered into the Programmatic Agreement, City staff will issue an Environmental Assessment for the project. City staff will then conduct the appropriate CEQA review after the project sponsor has submitted an application and plans to the Bureau of Planning for the rehabilitation actions.

ACTION REQUESTED OF THE CITY COUNCIL

City Staff Recommends That The City Council Adopt A Resolution Authorizing The City Administrator, Or Designee, To Negotiate And Execute A Programmatic Agreement, Pursuant To Section 106 Of The National Historic Preservation Act, With The California State Historic Preservation Officer Regarding The Rehabilitation Of The Hotel Menlo/ Empyrean Towers Located At 340-344 13th Street, Oakland, California, Without Returning To The City Council

For questions regarding this report, please contact Heather Klein, Planner IV, at (510) 238-3659 or hklein@oaklandnet.com.

Respectfully submitted,



Darin Ranelletti
Interim Director,
Department of Planning and Building

Reviewed by:
Scott Miller
Zoning Manager

Prepared by:
Heather Klein
Bureau of Planning

Attachments (4):

- A. City of Oakland letter, dated June 10, 2016 regarding an application to the Affordable Housing Sustainable Communities Program
- B. City Attorney and Mayor letter, dated August 24, 2016, regarding the allocation of HUD funding for the project
- C. Consultation Letters to SHPO, dated December 14, 2016 and ACHP, dated January 10, 2017
- D. Draft Programmatic Agreement, dated January 12, 2017

Item: _____
City Council
February 7, 2017

CITY OF OAKLAND



CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Abel J. Guillén
Councilmember - District 2

(510) 238-7002
FAX (510) 238-6910
TDD (510) 839-6451

June 10, 2016

Mr. Randall Winston
Executive Director
Strategic Growth Council
1400 Tenth Street
Sacramento, CA 95814

RE: EMPYREAN & HARRISON HOTEL HOUSING AND TRANSPORTATION IMPROVEMENTS

Dear Mr. Winston and Members of the AHSC Application Review Committee:

As elected officials representing the City of Oakland, it is a pleasure to support Resources for Community Development (RCD) and the City of Oakland's joint application to the Affordable Housing Sustainable Communities (AHSC) Program for funds to develop the Empyrean & Harrison Hotel Housing and Transportation Improvement Project. This project will protect and improve much needed affordable housing in a key downtown location, and create infrastructure and active transportation improvements that will measurably reduce car use and greenhouse gas emissions. We urge the committee to recommend the project for funding so that Oakland residents and community members can benefit from its improvements.

This project is aligned with the City of Oakland's recently adopted Energy and Climate Action Plan, which aims for a 36% reduction in greenhouse gas emissions in Oakland by 2020. Transit Oriented Developments like the Empyrean & Harrison project further our efforts to achieve this goal by increasing access to walking routes, bike paths, and public transportation for our city's residents.

Most critically, the project is a key and vital component of our efforts to address housing affordability. The City of Oakland stands at the center of a perfect storm, with the city and the surrounding Bay Area region experiencing extraordinary economic growth. In 2013, Oakland was recognized as the nation's most exciting city, the top "turnaround" town, and a top five city for tech entrepreneurs. Between March 2013 and March 2014, 17,000 new jobs were added in the East Bay, with 143,000 more forecasted by 2020. Unfortunately, with the emergence of Oakland as the fourth most expensive housing market in the country, housing production is not keeping pace with the escalated demand, nor is sufficient housing affordable to many existing residents and the expanding lower-income workforce. As such, the Empyrean & Harrison Hotel Housing and Transportation Improvement Project is aligned with the City of Oakland's Housing Action Plan, which aims to protect 17,000 households from displacement, and create 17,000 units of housing at all income levels, over the next eight years.

The City's Housing Action Plan identified that apartment buildings near transit, like those in this project, are the most vulnerable to rent increases. Both Empyrean Towers and the Harrison Hotel are located in an area that is experiencing rapid rent increases, and locations that are particularly vulnerable to market pressure given their close proximity to the BART Station and the central business district.



Attachment A

CITY OF OAKLAND



CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Abel J. Guillén
Councilmember - District 2

(510) 238-7002
FAX (510) 238-6910
TDD (510) 839-6451

Considering that this neighborhood is already well-served by a variety of transit, retail and service amenities, it is particularly important that we preserve affordable housing for the most vulnerable segment of our community, including those earning 30%-60% AMI, special needs populations, and populations at risk of homelessness. RCD's proposal to acquire and renovate Empyrean Towers and Harrison Hotel will ensure that these apartments, in key transit-oriented locations, remain affordable for decades to come. And addressing affordability and displacement in the city will help curb greenhouse gas emissions in the region by keeping Oakland residents near work, public transportation, and the communities they call home.

Renovation of these properties will also contribute to the on-going revitalization and economic development of downtown Oakland. Empyrean Towers has long suffered from poor management and been a source of instability in the neighborhood. We are confident that professional maintenance and management of Empyrean Towers by RCD will transform the building into a source of community pride. This is a significant investment not only for the tenants of these properties, but the families, individuals and business owners in the neighborhood.

The neighbors to this project will also benefit from the transit and active transportation improvements included in this Project, efforts will also bring more visitors and businesses to downtown Oakland and continue the cycle of economic growth. Investing in bicycle infrastructure along Clay Street and a new AC Transit hybrid bus with a route through burgeoning Emeryville and West Berkeley will greatly improve the accessibility and mobility options for the residents of Empyrean Towers, Harrison Hotel and the rest of downtown Oakland. Offering a diverse range of transportation options will ensure that residents can access employment, retail, educational and recreational opportunities without the financial burden of a car. We especially appreciate that the project does not provide on-site parking, reinforcing the fact that downtown Oakland is the already the most transit-dense neighborhood in the East Bay.

We fully support the efforts of RCD and the City of Oakland to promote and preserve affordability at Empyrean Towers and Harrison Hotel, as well as improve the diversity of transportation options available to downtown Oakland. By leveraging nearly \$30 million, this AHSC award will have a tremendous, lasting impact on downtown Oakland and the Bay Area region. We encourage the Sustainable Growth Council to invest in this meaningful work.

Sincerely,

Handwritten signature of Libby Schaaf in black ink.

Libby Schaaf
Mayor
City of Oakland

Handwritten signature of Abel Guillén in black ink.

Abel Guillén
Councilmember, District 2
Oakland City Council

CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • 3RD & 6TH FLS • OAKLAND, CALIFORNIA 94612

Office of the Mayor
Libby Schaaf, Mayor
and
Office of the City Attorney
Barbara J. Parker, City Attorney

(510) 238-3141
FAX (510) 238-4731
TDD: (510) 238-3254

(510) 238-3601
FAX: (510) 238-6500
TTY/TDD: (510) 238-3254

August 24, 2016

VIA U.S. MAIL and EMAIL to ejohnson@Oakha.org

Eric Johnson, Executive Director
Oakland Housing Authority
1619 Harrison Street
Oakland, CA 94612

Re: Request for Project-Based Vouchers at Emphyrean

Dear Mr. Johnson:

We are writing to ask for the Oakland Housing Authority's ("OHA") assistance with the proposed low-income housing at the Emphyrean Towers, 1300 Webster Street, Oakland ("Emphyrean"). This property has long been a blight to the neighborhood by violating numerous building and safety codes, permitting frequent criminal activity, and providing severely inadequate housing for its residents. We strongly support Resources for Community Development's ("RCD") acquisition and conversion of this property as it will provide an opportunity to convert the Emphyrean to long-term, high quality affordable housing for low-income families. It is a key component of the City's housing strategy and an important contribution to stemming the on-going loss of existing affordable housing.

By way of brief background, the Emphyrean (formerly known as the Menlo Hotel) has remained in a severely rundown condition for many years. The Emphyrean's former owner attempted to hire an arsonist to burn the Emphyrean and was convicted of a federal crime for the attempt. The property was sold to another owner, who continued to allow its rapid deterioration. At one point the property had to be completely evacuated for several days due to contamination in its water system. Because of the Emphyrean's continuing deplorable state and illegal treatment of its tenants, the Oakland City Attorney Barbara Parker on behalf of the City of Oakland filed a lawsuit against the owner in the Alameda County Superior Court. The Court immediately appointed a receiver to take control of the property. The Emphyrean's owner filed bankruptcy and the bankruptcy court appointed a trustee to take charge of the asset.

Attachment B

August 24, 2016

Re: Request for Project-Based Vouchers at Emphyrean

Page Two

The bankruptcy court put the property up for sale. There were multiple offers to purchase the property, mostly from for-profit owners with no intention to make the Emphyrean a quality housing resource for low-income households. The undersigned appeared at the bankruptcy hearing and helped convince the trustee and bankruptcy judge to authorize a sale of the Emphyrean not to the highest cash bidder, but instead to execute an exclusive option agreement with RCD to purchase the Emphyrean for low-income housing on a long-term basis. The City reduced its claim by \$600,000 to facilitate the deal. Normally, properties in bankruptcy are sold to the highest bidder. But here, in a landmark ruling, the bankruptcy judge agreed with the City and permitted RCD an option to purchase the property, citing the City's interest in preserving the Emphyrean as low-income housing. The undersigned personally attended the hearing in support of RCD's proposal.

The City is committed to creating high-quality affordable housing at the Emphyrean, as evidenced by the reduction of our claim by \$600,000. But the project is only feasible with a project-based voucher subsidy. RCD planned to apply for vouchers through OHA's current NOFA, but recently learned that the Emphyrean does not meet the technical requirements of the NOFA – namely, that it needs to undergo renovation before it will meet OHA's housing standards.

We urge the OHA to consider other methods for RCD to apply for project-based vouchers or other assistance OHA may have available. RCD has a limited time to exercise its option and needs to prepare a complete financing package within the next few months. In the past, the OHA permitted projects that qualified through Oakland's Housing NOFA to apply for vouchers. Unfortunately, the next City NOFA is over a year away. However the City has thoroughly vetted the project and applied with RCD for state cap-and-trade ("AHSC") funds. Furthermore, the Metropolitan Transportation Commission ("MTC") reviewed the project and recommended that RCD be awarded funds by the state AHSC program in October. We ask you to consider the City's and MTC's prior vetting of the Emphyrean project as criteria for inviting RCD to apply for vouchers for the Emphyrean. This project has been reviewed and supported at the local, regional, and state level. It is important to the City that the Emphyrean undergoes a thorough renovation and remains a long-term affordable housing property. If RCD cannot exercise its option, the Emphyrean likely will go to a private developer and will be lost as low-income housing. We would like to meet with you to discuss these matters and how we can accomplish our mutual goal of retaining affordable housing in Oakland.

Very truly yours,



LIBBY SCHAAF
Mayor



BARBARA J. PARKER
City Attorney

CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 2114 • OAKLAND, CALIFORNIA 94612-2032

Department of Planning and Building
Zoning Division

(510) 238-3911
FAX (510) 238-4730
TDD (510) 238-3254

January 10, 2017

John M. Fowler, Executive Director
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC, 20001-2637

Notice of Intention to Enter into a Programmatic Agreement for Section 106 Review: Hotel Menlo, 340-344 13th Street, Oakland California

Resources for Community Development proposes to use funding from the U.S. Department of Housing and Urban Development (HUD), as administered by the City of Oakland, to acquire and rehabilitate an existing building for the purpose of providing affordable housing. HUD requires the City to satisfy federal environmental review under the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA), all related Federal statutes and 24 CFR Part 58, HUD's Environmental Review Regulations, prior to use of its program funds.

The subject property, the Hotel Menlo, is listed on City of Oakland *Local Register of Historical Resources* and determined eligible for listing on the National Register of Historic Places based on surveys conducted by the City Planning Department's Oakland Cultural Heritage Survey in 1982 and after, and as documented in a letter to the State Historic Preservation Officer on January 3, 2017 (attached). All work is proposed to be undertaken in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties, in order to protect the historic integrity of the Hotel Menlo.

The proposed undertaking involves the acquisition and rehabilitation of the Hotel Menlo, which is a seven-story building located at 340-344 13th Street in the City of Oakland California (APN 002-0065-011). The Hotel Menlo was designed by local architect Fred D. Voorhees in 1913 in the Renaissance Revival architectural style. Anticipated items that need to be addressed to bring the building up to standard and ensure lasting adaptive re-use include: replacing the elevator; interior wall reconfiguration to convert 99 units to 66 each with private bath and kitchen; window blinds; hardware; new utilities and ventilation; alarms and electrical; heating; new plumbing and lighting. Historic features potentially affected include windows; roofing and

Attachment C

skylights, panel doors and door hardware; claw-foot tubs; handrails and stairs, original ground floor storefront bays; brick and terra cotta; and the lobby.

As Interim Director of Planning and Building, I serve as the Agency Official for Section 106 and as the City's Certifying Officer to HUD for NEPA Review of projects within Oakland that qualify for HUD funding. As Agency Official, I recently entered into consultation with the California State Historic Preservation Officer (SHPO) on the effects this undertaking could have upon historic properties.

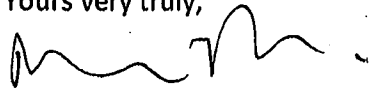
The project developer, Resources for Community Development (RCD), has been conditionally awarded Project-Based Section 8 Vouchers from the Department of Housing and Urban Development. Because the property has not yet been acquired and detailed plans have therefore not yet been prepared, we have proposed entering into a Programmatic Agreement to the State Historic Preservation Officer to minimize, reduce or avoid adverse effects to the extent feasible.

I am enclosing Summary Documentation required under §800.11(e) for your information. These are materials I or Betty Marvin from the City's Oakland Cultural Heritage Survey (OCHS) previously sent for Section 106 Review consultation with Julianne Polanco at SHPO. Documentation of public outreach pursuant to §800.6(a)(4) is also enclosed. There will be continued community involvement in this proposal as it will be considered by the Oakland Landmark Preservation Advisory Board in the coming weeks.

Please note, I am not requesting the Council's participation at this time. Pursuant to §800.6(a)(1)(iii), however, please indicate whether you wish the Advisory Council to participate in the preparation of the Programmatic Agreement for this project within 15 days of receipt of this letter. Your immediate attention to this matter is greatly appreciated since time is of the essence in order for RCD to acquire the building. If I have not received a communication from you within that period, I will assume that the Council does not wish to participate in the Programmatic Agreement.

If you wish to respond, please forward all written communication to me at the above address or contact Heather Klein, Planner IV, Bureau of Planning, (510) 238-3659 hklein@oaklandnet.com.

Yours very truly,



Darin Ranelletti, Interim Director of Planning and Building
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

Enclosures:

Copy of letter dated December 14, 2016 to Julianne Polanco, Request for Section 106 Review of Hotel Menlo Rehabilitation, Oakland, California with the following attachments:

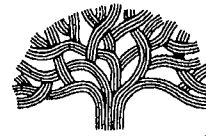
1. **City of Oakland.** Historic Preservation - Historical and Architectural Rating System. *Planning & Building*. [Online] [Cited: March 11, 2016.]

<http://www2.oaklandnet.com/Government/o/PBN/OurServices/Historic/DOWD009155>.

2. **BASIS Architecture & Consulting.** *Capital Needs Assessment for Empryeon Towers, 344 13th Street, Oakland, California 94612.* San Rafael, CA : s.n., February 18, 2016.
3. **Miller, Vern.** *Appendix A: When to Consult with Tribes under Section 106, Empryeon Hotel, 344 13th Street, Oakland, CA 94612.* Santa Rosa, CA : AEM Consulting, October 26, 2016.
4. **U.S. Department of Housing and Urban Development.** Tribal Directory Assessment Tool (TDAT) v2.0. *Community Planning and Development.* [Online] [Cited: November 11, 2016.] <http://egis.hud.gov/tdat/Tribal.aspx>.
5. **Miller, Vern.** *Letter to Debbie Pilas-Treadway, Native American Heritage Commission.* Santa Rosa, CA : AEM Consulting, October 26, 2016.
6. **Leinert, Frank.** *Letter to Cinnamon Crake, AEM Consulting in re: Empryeon Hotel, Alameda County.* West Sacramento, CA : Native American Heritage Commission, October 27, 2016.
7. **Marvin, Betty.** *Letter to Silvia Burley, California Valley Miwok Tribe in re: Hotel Menlo, 344 13th Street, Oakland, Alameda County, California 94612.* s.l. : City of Oakland, November 16, 2016.
8. **Evans, Sally.** *Record Search and Archaeological Sensitivity Analysis for Hotel Menlo, 344 13th Street, Oakland, Alameda County, California.* Sebastopol, CA : Evans & De Shazo, LLC, November 23, 2016. NWIC File No. 16-0636.
9. **Oakland Cultural Heritage Survey.** *State of California, Department of Parks and Recreation, Primary Record, Hotel Menlo, 340-48 13th Street/1300-08 Webster, Oakland, CA 94612.* March 31, 1982.
10. **Shazo, Stacey De.** *Secretary of Interior Standards Review of the 1914 Hotel Menlo, Located at 344 13th Street, Oakland, Alameda County, CA.* Sebastopol, CA : Evans & De Shazo, LLC, November 16, 2016.
11. **AEM Consulting.** *Historic and Cultural Resources Evaluation for Section 106 Review, Hotel Menlo, 340-344 13th Street, Oakland, CA.* Santa Rosa, CA : s.n., December 2016.
12. **City of Oakland.** *Attachment A: Hotel Menlo Recommendations for Archaeological and Paleontological Resources and Human Remains.* December 2016.
13. **Marvin, Betty.** *Letter to Julianne Polanco, Office of Historic Preservation in re: Section 106 Review: Hotel Menlo, 340-344 13th Street, Oakland, CA 94612.* s.l. : City of Oakland, Department of Planning & Building, January 3, 2017. Reply to HUD_2016_1219_001.
14. **Gelfand Partners Architects.** *Empryeon Towers - Plans & Drawings.* March 21, 2015.

Documentation of public outreach efforts (various).

cc: Julianne Polanco, State Historic Preservation Officer c/o Shannon Lauchner
Heather Klein, Planner IV, City of Oakland, Bureau of Planning
Betty Marvin, Historic Preservation Planner, OCHS, City of Oakland
Jessica Sheldon, RCD, Associate Director of Housing Development
Vern Miller, AEM Consulting



CITY OF OAKLAND

250 FRANK H. OGAWA PLAZA, SUITE 3315 • OAKLAND, CALIFORNIA 94612-2032

Department of Planning and Building
Bureau of Planning, Historic Preservation Division

(510) 238-3941
FAX 510) 238-6538
TDD (510) 839-6451

December 14, 2016

Julianne Polanco
Office of Historic Preservation
Department of Parks & Recreation
1725 23rd Street, Suite 100
Sacramento, CA 95816

**Subject: Request For Section 106 Review: Hotel Menlo Rehabilitation (Empyrean Hotel)
340-344 13th Street, Oakland CA**

Dear Ms. Polanco:

Resources for Community Development proposes to use funding from the U.S. Department of Housing and Urban Development (HUD), as administered by the City of Oakland, to rehabilitate an existing building for the purpose of providing affordable housing. HUD requires the City to satisfy federal environmental review under the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA), all related Federal statutes and 24 CFR Part 58, HUD's Environmental Review Regulations, prior to use of its program funds.

As the Interim Planning Director, I serve as the Certifying Officer to HUD for the NEPA Review of projects within Oakland that qualify for these federal funding programs. A Federal Environmental Assessment is being prepared for the project by AEM Consulting pursuant to 24 CFR § 58.36. I also serve as the Agency Official for Section 106 Review under the National Historic Preservation Act (NHPA).

The subject property, the Hotel Menlo, also known as the Empyrean Hotel, located at 340-344 13th Street, has a local Oakland Cultural Heritage Survey rating of B+2+, of "Major Importance" and a "contributor to an Area of Secondary Importance", the Hotel Menlo Group Historic District. The building's historic status was recorded in the State Historic Resources Inventory in 1982 and 1995 as appearing eligible for listing on the National Register of Historic Places. Furthermore, the building was determined eligible in a previous project review in 2001. The Area of Potential Effects (APE) is the building site itself and the historic district. All work would be undertaken in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties in order to protect the historic integrity of the Hotel Menlo. The sponsors understand that in order to qualify for Federal funding, they must subsequently submit detailed plans and specifications.

As Agency Official, I concur with the recommendations in the enclosed evaluation of the historic significance of the Hotel Menlo, prepared by AEM Consulting:

1. For purposes of Section 106 Review of this undertaking, AEM Consulting recommends that the Agency Official for HUD (City of Oakland), concur with the APE.

2. Further that the agency official propose a finding of no adverse effect because the subsequent review of plans for rehabilitation by the City with concurrence from SHPO will ensure consistency with the Secretary's Standards for the Treatment of Historic Properties and applicable guidelines, to avoid adverse effects. (36 CFR Part 800.5 (b))
3. Further, that the agency official agree that the City enter into a Programmatic Agreement drafted in compliance with § 800.6(c) to minimize any potential adverse effects.
4. During excavation required for replacement of the elevator, the three (3) cultural resource recommendations outlined in Attachment A should be followed.

I am requesting your views on the effects this undertaking could have upon historic properties known to exist or subsequently discovered within the APE of the undertaking.

Sincerely yours,



Darin Ranelletti
Interim Director of Planning and Building
NEPA Certifying Environmental Officer

Enclosure:

- Attachment A: Recommendations for Archaeological and Paleontological Resources and Human Remains
- Historic and Cultural Resources Evaluation, Hotel Menlo

DRAFT January 20, 2017

PROGRAMMATIC AGREEMENT

BETWEEN THE CITY OF OAKLAND &
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
REGARDING THE REHABILITATION OF
HOTEL MENLO/EMPYREAN TOWERS LOCATED AT 340-344 13th STREET
OAKLAND, CALIFORNIA

WHEREAS, Resources for Community Development (RCD) a California non-profit corporation (Developer), proposes to acquire, rehabilitate and manage the Hotel Menlo/Empyrean Towers at 340-344 13th Street, Oakland, California, and operate the property as affordable housing for 66 units with three ground floor commercial spaces, ground floor lobby, property management offices, and community room (Project); and

WHEREAS, the City of Oakland (City) has determined that the rehabilitation of the Hotel Menlo/Empyrean Towers, is an Undertaking as defined in Section 800.16(y) of 36 CFR Part 800 National Historic Preservation Act (NHPA) and;

WHEREAS, the City, designated to fulfill the requirements of Section 106 of NHPA with respect to the Undertaking, has determined that the rehabilitation of the Hotel Menlo/Empyrean Towers will have an effect on a historic property determined eligible for listing on the National Register of Historic Places (NRHP) in concurrence with the Office of Historic Preservation through consultation for this Undertaking; and

WHEREAS, the City has consulted with the California State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the NHPA (U.S.C. 470f), as amended; and

WHEREAS, the City, through Housing and Community Development Act of 1974, Title I, as amended, Public Law 93-383; for the release of Project-Based Voucher Program (Section 8 Program) funds, will be the Agency Official for the Undertaking; and

WHEREAS, the Interim Director of the City of Oakland Planning and Building Department has been designated the Certifying Officer under NEPA and the Agency Official under Section 106 of the NHPA;

WHEREAS, the Oakland Housing Authority (OHA), as the Grant Recipient of the federal funds awarded to the Developer, has been invited to concur in this Agreement; and

1 shall ensure that the SHPO will be provided with a copy of the
2 notice of the Part 2 Certification.

3 b. If the Part 2 Certification is approved with conditions from the
4 NPS, the City shall ensure that the project documents are
5 modified to comply with the conditions. If the SHPO agrees that
6 the modified plans satisfy the Part 2 conditions, the
7 rehabilitation project will require no further review under this
8 agreement.

9 c. If the owner is denied Part 2 Certification, is unwilling to modify
10 the plans to comply with any conditions to certification, or fails to
11 complete the IRC process, the City shall initiate consultation
12 with the SHPO pursuant to 36 CFR §§ 800.6(b)(2) and 800.7,
13 as appropriate.

14
15 3. Should Stipulation 2 be no longer applicable because the project does
16 not apply for tax credits, the City shall still initiate consultation with the
17 SHPO pursuant to 36 CFR §§ 800.6(b)(2) and 800.7, as appropriate
18 for this Project.

19
20 4. If the City is unable to ensure the development of a design that is
21 compatible with the *Standards*, prior to the alteration of the Hotel
22 Menlo/Empyrean Towers, the City shall consult with the SHPO to
23 determine the level and type of mitigation necessary. Unless otherwise
24 agreed to by the SHPO, the City shall ensure that all mitigation is
25 completed and accepted by the SHPO prior to alteration, and that if
26 documentation is required for mitigation, copies are made available to
27 the SHPO, the Oakland Public Library Oakland History Room and the
28 Oakland Cultural Heritage Survey.

29
30 5. The City will require that the work described in Stipulation 4, above, will
31 be carried out by or under the direct supervision of a person(s) who
32 meets the appropriate Professional Qualification Standards outlined in
33 the *Archeology and Historic Preservation* (48 Federal Register 44738-
34 39).

35
36 6. Each year following the execution of this Programmatic Agreement
37 until it expires or is terminated, the City shall provide all parties to this
38 Programmatic Agreement a summary report detailing work carried out
39 pursuant to its terms. Such report shall include any scheduling
40 changes proposed, any problems encountered, and any disputes and
41 objections received in the City's efforts to carry out the terms of this
42 Programmatic Agreement.

43
44 7. Should any signatory object at any time to the terms of which this
45 agreement is implemented, the City shall consult with the objecting
46 party to resolve the objection. If the City determines within fifteen days

1 of receipt that such objection(s) cannot be resolved, the City will
2 forward all documentation relevant to the dispute to the ACHP in
3 accordance with 36 CFR § 800.2(b)(2). The City, in reaching a final
4 decision regarding the dispute, shall take any ACHP comment
5 provided into account. The City's responsibility to carry out all other
6 actions under this agreement that are not the subjects of the dispute
7 will remain unchanged.
8

9 8. At any time during implementation of the measures stipulated in this
10 agreement, should an objection to any such measure or its manner of
11 implementation be raised in writing by a member of the public, the City
12 shall take the objection into account and consult, as needed, with the
13 objecting party and the SHPO, as needed, for a period of time not to
14 exceed fifteen days. If the City is unable to resolve the conflict, the City
15 will forward all documentation relevant to the dispute to the ACHP,
16 following the terms outlined in Stipulation 7, above.
17

18 9. The City shall notify the SHPO as soon as practicable if it appears that
19 any action covered by this agreement will affect a previously
20 unidentified property that may be eligible for inclusion in the National
21 Register or affect a known historic property in an unanticipated
22 manner. The City shall stop construction in the vicinity of the discovery
23 and take all reasonable measures to avoid or minimize harm to the
24 property and proceed pursuant to 36 CFR § 800.13(b).
25

26 10. If any signatory believes that the terms of this agreement cannot be
27 carried out, or that an amendment to its terms should be made, that
28 signatory shall immediately consult with the other parties to develop
29 amendments pursuant to 36 CFR §§ 800.6(c)(7) and 800.6 (c)(8). If
30 this agreement is not amended as provided for in this Stipulation, any
31 signatory may terminate it, whereupon the City shall proceed in
32 accordance with 36 CFR § 800.6(c)(8).
33

34 11. If either the terms of this Programmatic Agreement or the Undertaking
35 have not been carried out within five years following the date of
36 execution of the Programmatic Agreement, the signatories shall
37 reconsider the terms. If signatories agree to amend the Programmatic
38 Agreement, they shall proceed in accordance with the amendment
39 process referenced in Stipulation 10, above. If no amendment is
40 executed and five years have passed from the date of execution, this
41 Programmatic Agreement shall expire.
42

43 Execution and implementation of this agreement evidences that the City has
44 afforded the SHPO a reasonable opportunity to comment on the Undertaking and
45 its effects on historic properties, that the City has taken into account the effects of
46 the Undertaking on historic properties, and that the City has satisfied its

1 responsibilities under Section 106 of the NHPA and applicable implementing
2 regulations.

3
4
5
6
7 **Signatories:**

8
9 **CITY**

10
11
12 By: _____ Date: _____
13 **Darin Ranelletti, Interim Director of City of Oakland Planning and**
14 **Building / NEPA Certifying Officer**

15
16
17 **Approved as to Form and Legality**

18
19
20 By: _____ Date: _____
21 **Mark Wald, Deputy City Attorney, Office of the Oakland City Attorney**

22
23
24
25 **CALIFORNIA STATE HISTORIC PRESERVATION OFFICER**

26
27
28 By: _____ Date: _____
29 **Julianne Polanco, State Historic Preservation Officer**

30
31
32
33 **Concurring Parties:**

34
35 Resources for Community Development

36
37
38 By: _____ Date: _____
39 **Dan Sawislak, Executive Director**

40
41
42
43 **OAKLAND HOUSING AUTHORITY**

44
45
46 By: _____ Date: _____

1
2

Eric Johnson, Executive Director

DRAFT

Hee

City Attorney

2017 JAN 26 PM RESOLUTION No. _____ C.M.S.

Introduced by Councilmember _____

A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR, OR DESIGNEE, TO NEGOTIATE AND EXECUTE A PROGRAMMATIC AGREEMENT, PURSUANT TO SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT, WITH THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER REGARDING THE REHABILITATION OF THE HOTEL MENLO/ EMPYREAN TOWERS LOCATED AT 340-344 13TH STREET, OAKLAND, CALIFORNIA, WITHOUT RETURNING TO THE CITY COUNCIL

WHEREAS, the Hotel Menlo/Empyrean Towers located at 340-344 13th Street, Oakland, California has recently been the subject of blight, criminal activity and code compliance investigations and the owners recently filed for bankruptcy; and

WHEREAS, Resources for Community Development (RCD) a California non-profit corporation, has a purchase option for the property and proposes to acquire, rehabilitate, manage and operate the Hotel Menlo/Empyrean Towers as affordable housing for 66 units with three ground floor commercial spaces, ground floor lobby, property management offices, and community room; and

WHEREAS, the provision of affordable housing, especially Downtown and near transit, is an important goal of the City's Housing Action Plan; and

WHEREAS, the Oakland Housing Authority (OHA) has awarded U.S. Department of Housing and Urban Development (HUD) Section 8 Project Based Voucher rental assistance to RCD; and

WHEREAS, the use of HUD and/or other funding to acquire and rehabilitate the Hotel Menlo/Empyrean Towers will require completion of environmental analysis pursuant to the National Environmental Protection Act (NEPA); and

WHEREAS, the City, designated to fulfill the requirements of Section 106 of National Historic Preservation Act (NHPA), has determined that the acquisition and rehabilitation of the Hotel Menlo/Empyrean Towers, will have an effect on a property determined eligible for listing on the National Register of Historic Places pursuant to NEPA; and

WHEREAS, without completion of the NEPA process, RCD cannot acquire the property for rehabilitation as affordable housing; and

WHEREAS, the City has consulted with the California State Historic Preservation Officer (SHPO) regarding entering into a Programmatic Agreement with the City of Oakland

WHEREAS, because specific plans for the rehabilitation have not been submitted, a Programmatic Agreement is an appropriate method to ensure that the project will not have an adverse historic impact pursuant to Section 106 of the NHPA; now, therefore, be it

RESOLVED, that the City Council authorizes the City Administrator, or designee, to negotiate and execute a Programmatic Agreement, pursuant to Section 106 of the NHPA, with the SHPO regarding the rehabilitation of the Hotel Menlo/ Empyrean Towers, and to take any and all other actions necessary to effectuate this Resolution, including possibly adding the Advisory Council on Historic Preservation as a signatory/concurring party, without Returning To The City Council.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLEN, KALB, KAPLAN, AND PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California