

# AGENDA REPORT

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TO: DEANNA J. SANTANA  
CITY ADMINISTRATOR

FROM: Rachel Flynn

SUBJECT: High and MacArthur  
Mixed-Use Project Appeal

DATE: October 28, 2013

City Administrator  
Approval

Date

10/28/13

COUNCIL DISTRICT: 4

## RECOMMENDATION

Conduct a Public Hearing on the appeal of CRADL and Citizens4Oakland, pursuant, in part, to Oakland Planning Code Section 17.130.050 and California Environmental Quality Act Guidelines Section 15185, and upon conclusion consider adopting a resolution denying the appeal and upholding the City Planning Commission's certification of an Environmental Impact Report and approval of a mixed-use project, consisting of 115 senior housing units and 3,446 square feet of retail space, at 4311-4317 MacArthur Boulevard.

## EXECUTIVE SUMMARY

AMG & Associates (Applicant) proposes to redevelop the vacant, contaminated site at 4311-4317 MacArthur Boulevard with a 5-story mixed-use project, including 115 units of senior housing, 3,446 square feet of ground-floor commercial space, and 65 parking spaces (Project). The 0.93-acre Project site is triangular-shaped and is bounded by High Street to the north, the Interstate 580 Freeway to the west, and MacArthur Boulevard to the southeast. The Project site is identified as a "Housing Opportunity Site" in the City Council approved 2010 Housing Element of the General Plan.

On July 17, 2013 the Planning Commission approved (by a vote of 3 to 1) the requested planning permits for the Project, which include Design Review, Major Conditional Use Permits to allow increased density for senior housing, a reduction in parking for senior housing, and ground-level parking and loading areas; and Minor Variances for increased height. The Planning Commission also certified an Environmental Impact Report (EIR) for the Project (see Attachment B, Planning Commission Staff Report).

Commercial and Retail Attraction and Development for the Laurel (CRADL) and Citizens4Oakland (Appellants) appealed the Planning Commission's decision to certify the EIR and to approve the Project on July 29, 2013 (see *Attachment A*). The Appellants essentially

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maintain that the Planning Commission erred and/or abused its discretion in granting the Project approvals because the Project does not meet the certain required Planning Code criteria, and also certified the EIR in violation of the California Environmental Quality Act (CEQA).

The issues/arguments raised by the Appellant are summarized below in the Analysis portion of this report along with staff's response to each argument. In sum, staff believes Appellants have not demonstrated that the Planning Commission erred or abused its discretion, or that its decision is not supported by substantial evidence. Therefore, for the reasons stated in this report, and elsewhere in the record, including the attached July 17, 2013 Planning Commission staff report (Attachment B) and in the EIR, staff recommends that the City Council adopt the attached Resolution denying the appeal and upholding the Planning Commission's certification of the EIR and approval of the Project.

### **OUTCOME**

Approval of this appeal would uphold the Planning Commission's certification of the EIR and approval of the Project and the Applicant would be free to proceed with other steps necessary to begin implementation of the Project.

### **BACKGROUND**

Another project for this site was previously approved on February 20, 2008 by the Planning Commission (by a vote of 4-0) and was also appealed to the City Council. Subsequently, the Applicant withdrew his application, which invalidated all land use approvals, rendering the appeal moot.

In March 2010, the applicant submitted a new application for planning-related approvals. The new application includes a slightly revised Project description with an increase in the amount of ground-floor commercial space from 3,124 to 3,446 square feet, and an increase in the number of parking spaces provided from 64 to 65. This new application also includes minor revisions to the ground floor plan related to parking and bicycle parking, a change in the site plan to remove the optional shuttle turn-out on High Street, and more architectural detail provided on the building elevations. The Project elevations are essentially the same as the project that was previously approved.

### **CEQA**

A focused Draft EIR (or DEIR) for the Project was published on October 26, 2012. The DEIR conducted a site-specific, detailed analysis for the Project including: aesthetic resources, air quality and greenhouse gases, hazards and hazardous materials, transportation and circulation, and noise and vibration. The DEIR was made available for a 45-day public review period that ended on December 10, 2012. A public hearing on the DEIR was held before the Planning

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Commission on December 5, 2012. All the comments received during the comment period were addressed in the FEIR which was published on June 28, 2013.

Aside from conducting a site-specific, detailed analysis for the Project as summarized above, the High and MacArthur Project DEIR also separately and independently relied upon and tiered off the analysis included in the 2010 certified Housing Element EIR and the 1998 certified Land Use and Transportation Element EIR, as provided for in CEQA. And, as such, the Project also qualifies for CEQA streamlining pursuant to Public Resources Code section 21083.3 and CEQA Guidelines section 15183 (Projects consistent with Community Plans, General Plans and Zoning) and/or Public Resources Code sections 21094.5 and 21094.5.5 and CEQA Guidelines section 15183.3 (Streamlining For Infill Development), for the reasons detailed in the EIR and CEQA findings adopted by the Planning Commission (see Attachment B, Planning Commission Staff Report, CEQA Findings Attachment C).

The CEQA analysis concluded there were no significant and unavoidable impacts; indeed, all impacts could be reduced to less than significant levels through the City's Standard Conditions of Approval.

On July 17, 2013, the Planning Commission conducted a public hearing on the Project, closed the hearing, certified the EIR and approved the Project. A Notice of Determination was filed on July 18, 2013.

## ANALYSIS

Below are the primary issues presented by the Appellants in their appeal and staff's response to each issue, in the order (and numbering) presented in the Appeal.

### Items A-I (Background)

***Appellants Issues:*** Appellants provide background and make various allegations/assertions -- including those relating to the site, previous project, ownership issues, funding and disputes amongst numerous parties -- as to why the property has not been developed for commercial uses.

**Staff Response:** These issues are not directly relevant to the appeal. The above issues merely recount the Appellant's perception of the history and economics of the Project, much of it based upon speculation. Staff notes that the property has been vacant for years, even before any litigation, and that many other sites with similar challenges have been developed around the City within that time period. Even if these allegations are true, however, these issues do not directly address the planning and CEQA-related issues before the City Council - that is, has the Planning Commission erred or abused its discretion, or is its decision not supported by substantial evidence. The issue is not whether commercial development may be the "highest and best" use of the site, as Appellants maintain, but rather whether the Project meets the required Planning

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and CEQA findings. Here, the Planning Commission determined the required findings were met and approved the Project and substantial evidence supported the decision.

**Item J (The Project is Undesirable and a Poor Substitute for Retail Use)**

1. ***Appellants Issues:*** The Project does not meet the Conditional Use Permit criteria because it presents poor living conditions for seniors.

**Staff response:** The Planning Commission found the Project meets the Conditional Use Permit (CUP) criteria from Sections 17.134.050, 17.48.100, 17.106.060, and 17.116.110A of the Planning Code for compatibility with the surrounding neighborhood given the context of the site and the nature of the proposed uses (see pages 13-14, and 17-20 of the July 17, 2013 Planning Commission Report, Attachment B). The Commission found the Project as designed and with implementation of the Standard Conditions of Approval (SCA) will be attractive, safe, and pleasant for senior residents. The traffic study prepared as part of the EIR determined that the signal crossings are adequately timed for seniors to cross. A Site-specific health risk assessment was conducted for the Project, which concluded there would be less than significant air quality impacts on the residents even without incorporation of air filters in the building (which are also required per SCA AIR-2). In addition, there is extensive bus service to the site, and the conditions of approval include provision of shuttle service as a potential strategy to include in the Transportation Demand Program required by SCA TRANS-1. The site will be remediated under the regulatory authority and according to the clean-up standards of the Regional Water Quality Control Board. In short, Appellants merely seek to substitute their own personal views as to what may be a “desirable” location for senior housing for that of the Planning Commission, but substantial evidence supports the Planning Commission’s decision.

2. ***Appellants Issues:*** The area is zoned commercial and the General Plan supports commercial as the primary use but the project is primarily residential.

**Staff response:** The Appellants contends that the Project is not consistent with the General Plan Neighborhood Center Mixed Use classification. However, the density of the Project is well within that allowed by the General Plan classification without any density bonus. Furthermore, according to 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.” In addition, “vertical integration of uses, including residential units above street-level commercial space, is encouraged.” As a mixed-use and urban residential project, the residential and ground-floor commercial uses included in the Project are clearly consistent with these goals. Furthermore, as stated in the July 17<sup>th</sup> Planning Commission staff report and the DEIR, the Project is consistent with several General Plan policies

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including: *Objective N.3* Encourage the construction, conservation, and enhancement of housing resources in order to meet the current and future needs of the Oakland community; *Policy N3.1* Facilitating Housing Construction; *Policy N3.2* Encouraging Infill Development; and *Policy N3.9* Orienting Residential Development. The applicable C-30 District Thoroughfare Commercial Zone and C-31 Special Retail Commercial Zone zoning classifications for the site also permit both residential and commercial uses outright. However, the C-30 and C-31 zoning classifications do not allow the density and height of the Project without conditional use permits and minor variances. Although the Neighborhood Center Mixed Use classification states that “these centers are typically characterized by small 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” it does not mandate that these are requirements.

Moreover, the Project site is identified as an Opportunity Site in the City Council adopted 2010 Housing Element of the General Plan and the Project’s density is consistent with that contained in the Housing Element and the Housing Element EIR. Additionally, the Project is located on the MacArthur Boulevard corridor, which is identified as a “grow and change” area in the General Plan. Such areas are where the General Plan seeks to encourage further growth and development, often at higher densities than currently exist as the plan attempts to focus the bulk of residential development to our major transit corridors.

Also, this argument is not supported by the text of the C-31 regulations or by the zoning regulations definition of “Mixed Use” because there is no regulation that requires the commercial space to be a certain size. Here, the Project provides 3,446 square feet of commercial space.

Planning Code Section 17.09.040 defines “Mixed use development” as “...an integrated development containing residential, commercial, and/or industrial activities and adhering to a comprehensive plan and located on a single tract of land, or on two or more tracts of land which may be separated only by a street or other right-of-way, or which may be contained in a single building.” Given that this definition would allow comprehensively planned yet distinct elements to be located across lot lines or Rights of Way from one another, this project clearly meets the Mixed Use definition found in the zoning regulations. As for the C-31 zone, this is a relatively restrictive zone as far as commercial zones are in the City of Oakland, but does not contain minimum numeric requirements for the size of commercial spaces. It contains restrictions on what sort of commercial uses can occupy the ground floor, requires a CUP for all food sales and requires Design Review for new construction and alternations. Like most commercial zones it also permits residential uses outright and at fairly high densities. This Project fully conforms to the C-31 zone with the placement of commercial uses on the ground

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floor and residential uses above. While some opponents are disappointed with the size of the commercial spaces on the ground floor, there is no regulation that requires the commercial space to be a certain size and thus there is no violation of the zoning regulations.

Moreover, this site is on the edge of the C-31 district and begins a transition out of the Laurel district to the Mills College area. It is not in itself a prime pedestrian retail location as the roadbed of MacArthur Boulevard becomes difficult to navigate and there is no reasonable street parking fronting that section of the property (this is where the site approaches the underpass for I-580). Therefore, staff views this as a relatively poor place for commercial development and the site has been vacant for years, due in part to its lack of connectivity to the Laurel shopping district. Thus, the amount of commercial space proposed here is reasonable.

Accordingly, substantial evidence supports the Planning Commission's determination that the Project is consistent with the general plan and zoning.

3. ***Appellants Issues:*** The Project does not comply with the General Plan test for granting variances, the general plan controls over the Planning Code and it requires strict compliance with the Major variance criteria, similar to the state standards.

- i. ***Appellants Issue:*** General Plan contains the correct variance test

**Staff response:** Essentially, Appellants contend that Oakland's General Plan has eliminated minor variances and only major variances are permitted to be granted. Staff disagrees. First, this novel interpretation is contrary to the manner in which the Planning Staff, Planning Commission and City Council have interpreted the LUTE and Oakland Planning Code for the last fifteen (15) years. Adoption of Appellants theory would mean that minor variances can no longer be granted; indeed, all minor variances granted since the adoption of the LUTE in 1998 (which number in the hundreds, if not thousands) are improper, including those granted by the City Council on appeal.

Second, the Planning Code has undergone extensive updates, the most recent substantive update being in 2011. Third, there is no express conflict between the Planning Code and General Plan because the General Plan does not expressly do away with minor variances. Rather, the General plan merely states that variances should be carefully considered and gives examples of the major variance criteria that need to be adhered to in certain situations. Appellants argue that this implicitly does away with minor variances. However, in order to eliminate a long-standing provision of the Planning Code (in existence since at least 1965), there must be explicit statements that eliminate the minor variance provisions of

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the Planning Code. Appellants have not submitted any evidence that the City expressly intended to (and did) eliminate minor variances.

Moreover, as a separate and independent basis from the above Appellants did not raise this issue before the Planning Commission, but rather raised this issue for the first time in their appeal. As a result, as detailed in the next section of the report, this issue is therefore not properly before the City Council.

- ii. ***Appellants Issues:*** The Applicant has not and cannot meet the variance test of the California appellate courts, including (1) there must be special circumstances applicable to the property; and (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 other 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.

**Staff response:** As acknowledged by the Appellants, charter cities like Oakland are permitted to adopt their own variance criteria. Here, the City Council has adopted specific variance findings, including those for minor variances, which are contained in the Oakland Planning Code. Therefore, general state law variance requirements are not applicable in Oakland. The Planning Commission determined that the Project meets the applicable variance criteria contained in the Oakland Planning Code (see summary below and detailed discussion in section J.3.iii below for how the variance criteria are met). Moreover, as a separate and independent basis from the above Appellants did not raise this issue before the Planning Commission, but rather raised this issue for the first time in their appeal. As a result, as detailed in the next section of the report, this issue is therefore not properly before the City Council.

Variances are granted on a case-by-case basis, and granting variances for this Project does not change the existing zoning in the surrounding area that any subsequent developers are subject to for their properties. Nor does granting the variances here mandate that the City grant a variance to another property in the Laurel District. Any future land use application for a variance would be subject to the planning process outlined in the Planning Code, including notice, opportunity to comment on the proposal, possible public hearings before the Planning Commission, appropriate CEQA review and adoption of findings, supported by substantial evidence.

As explained in the Planning Commission Staff Report, and summarized below, the granting of a variance height variance is warranted here – and will not set a

precedent -- because (1) the Project is consistent with the allowable density, floor area ratio, uses, and policies of the General Plan; (2) of the site's unique location -- being at the edge of the Laurel District, immediately adjacent to a freeway (necessitating a certain design to minimize receiving freeway noise and air pollution) and at the intersection of two major transit corridors; (3) its awkward triangular shape; (4) the site is separated from any residential uses by the 580 Freeway and the height of the Project will not negatively impact residences in the adjacent lower density residential zones; (5) the Project entails senior housing and is therefore eligible for an increase in density and an increase in density for this site can only be accomplished with the approval of height variances to achieve the desired number of units in order for the Project to be economically feasible; and (6) occupies an entire block, thus further isolating it from other contiguous lots (as it is bound on all sides by roadways).

- iii. ***Appellants Issues:*** The staff report does not provide evidence supporting the granting of the variances.

***Appellants Issues:*** Criteria 1 -- The zoning for the C-30 and C-31 districts precludes the approved height.

**Staff response:** As discussed elsewhere in this report (especially in section J.3.ii above) and in the Planning Commission Report (see pages 15-16 of Attachment B) additional height is appropriate in these circumstances because strict compliance with the height regulations would (a) result in practical difficulty and unnecessary hardship due to the unique physical and topographical circumstances of the site; and/or (b) preclude an effective design solution that would improve livability and operational efficiency. The zoning regulations allow the proposed uses and allow density bonuses for senior housing with a conditional use permit. In order to achieve the additional density, especially given the limitations of the property in regard to shape and proximity to the freeway, the building can only feasibly be constructed on certain portions of the property, and in a certain layout to provide buildable area and open space that is shielded (from noise and air pollution) from the freeway. The applicant has demonstrated that the senior housing project is not financially feasible with a lower height, which results in a reduced density. Thus, both the findings for a major and minor height variance can be met here, although only a minor variance is required.

***Appellants Issues:*** Criteria 2 -- Compliance with the height limit would not deprive the Applicant of privileges enjoyed by other owners in the C-30 and C-31 zoning districts.

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**Staff response:** As discussed elsewhere in this report (especially in sections J.3.ii and J.3.iii above) and in the Planning Commission Report (see page 16 of Attachment B), additional height is appropriate in these circumstances because strict compliance with the height regulations would (a) deprive the applicant of privileges enjoyed by owners of similarly zoned property; and/or (b) preclude an effective design solution fulfilling the basic intent of the applicable regulation. As discussed under Criteria 4 below, height variances have been granted to similarly zoned properties and thus denying the requested variance would deprive the owner of privileges enjoyed by others. Moreover, the site is awkwardly shaped and is bounded by the freeway and two major arterial streets. Again, density bonuses are allowed for senior housing, and in order to accommodate the additional density given the limitations of the property, it is appropriate to allow additional height to accommodate senior housing in this location. The provision of housing, especially senior housing, is an important goal of the City's general plan and one of the basic purposes/ intent of the Planning Code. The applicant has demonstrated that the senior housing project is not financially feasible with a lower height, which results in a reduced density. Thus, both the findings for a major and minor height variance can be met here, although only a minor variance is required.

***Appellants Issues:*** Criteria 3 – The height of the Project will adversely affect the character and the surrounding area.

**Staff response:** As discussed elsewhere in this report (especially in section J.1 above relating to the CUP criteria) and in the Planning Commission Report (see pages 16-17 of Attachment B), the height of the Project will not adversely affect the character of abutting property or the surrounding area. There are no abutting properties to the Project site, and the increased building height is unlikely to negatively affect the character of the surrounding area because it includes a variety of building heights and the area is considered as a “grow and change” area in the General Plan. Such areas often entail development at higher than existing densities in order to focus development in areas that can best accommodate it, such as this site which is bounded by a freeway and two major arterial streets, and is served extensively by mass transit. Figures IV.A-4a-IVA-7b from the DEIR show the existing and simulated views of the Project. Views of the Project from the freeway for motorists will be partial and fleeting, and there will be no substantial impacts to any scenic vistas. Views of the Project from MacArthur Boulevard will replace a vacant site with a building that is taller than the buildings in the immediate vicinity, but the

building has been designed to enhance the visual character of the area and the site is appropriate for additional height. Thus, the granting of the variance will not adversely affect the area.

***Appellants Issues:*** Criteria 4 – The height variance constitutes a special privilege inconsistent with the limitations on the rest of the area.

**Staff response:** As discussed elsewhere in this report (especially in sections J.3.ii and J.3.iii above) and in the Planning Commission Report (see page 17 of Attachment B) the additional height does not constitute a grant of special privilege inconsistent with limitations imposed on similarly zoned property or inconsistent with the purposes of the zoning regulations.

Height variances have been granted for recent mixed-use projects in the Temescal neighborhood to allow them the increased density that the General Plan allows over the applicable zoning. The applicable zoning for these projects was the C-28 Commercial Shopping District Zone, which is very similar to the C-30 and C-31 zones because it is also a commercial zone that allows a similar variety of residential, civic, and commercial activities, the same residential density, and the same height as the C-31 zone. A 22 ft. height variance was granted for the project at 4801 Telegraph (CMDV02174) that included 25 residential units and 848 square feet of ground-floor commercial space. A 17 ft. height variance was granted for the project at 5110 Telegraph Avenue (CMDV05469) that included 68 units and 2,990 sq. ft. of ground-floor commercial space. At 5132 Telegraph Avenue, (CMDV07064) a 20 ft. height variance was granted for the project that included 102 units and 7,700 sq. ft. of ground-floor commercial space. In addition, the Lincoln Court project at 2400 MacArthur Boulevard (CDV04156) was granted a 3 ft. height variance for 82 units of senior housing in the C-31 zone.

The density of the Project is allowed by the General Plan and allowed by the zoning regulations with a conditional use permit for senior housing projects. This site has unique factors that must be taken into consideration, as indicated above and elsewhere in this Report and the July 19, 2013 Planning Commission Staff Report, and the City has taken similar factors into consideration for other properties that have received height variances in order to allow them to take advantage of increased density when it is allowed.

As stated previously in sections J.3ii and J.3.iii., density bonuses are allowed for senior housing, and in order to accommodate the additional density given the constraints of the site, it is appropriate to allow additional height. The provision of housing, especially senior housing, is an important goal of the City's general plan and one of the basic purposes/intent of the Planning Code, which is directly advanced by the granting of the height variance. The applicant has demonstrated that the senior housing project is not financially feasible with a lower height, which results in a reduced density.

***Appellants Issues:*** Criteria 5 – The Project is inconsistent with the Design Review Guidelines.

**Staff response:** Although this criteria was inadvertently left out of the variance findings in the Planning Commission staff report, it was thoroughly addressed in the Design Review Section and Residential Facilities Design Review findings (see Planning Commission Staff Report, Attachment B at pages 7 and 14-15) and such analysis also applies to the variance findings. The Project is consistent with the criteria as it would greatly enhance the existing blighted vacant lot and bring beneficial change to the surrounding neighborhood. Furthermore, although it will be larger than most buildings in the surrounding area, the General Plan calls for this to be a “grow and change” area, and this site is separated by any other properties by a freeway and two major arterial streets.

***Appellants Issues:*** Criteria 6 – The Project does not conform with all of the applicable guidelines and the General Plan.

**Staff response:** Although this criteria was also left out of the variance findings in the Planning Commission staff report, it was thoroughly addressed in the discussion of the General Plan Designation and the conditional use permit findings (see Planning Commission Staff Report, Attachment B at pages 4 and 14) and such analysis also applies to the variance findings. In addition, as discussed in Section J.2. of this Report, the Project is consistent with the density and uses allowed in the Neighborhood Center Mixed Use designation of the General Plan, and is also consistent with several policies in the Land Use and Transportation Element of the General Plan, as well as the Housing Element of the General Plan which identifies the Project site as a housing opportunity site.

In sum, substantial evidence supports the Planning Commission's determination that the Project meets the variance criteria.

**Item K (The Project violates CEQA and the EIR should not have been certified)**

1. ***Appellants Issues:*** The FEIR doesn't meet the "independent judgment and analysis test" due to the Quiet Title lawsuit filed by AMG against the City.

**Staff response:** In making the CEQA findings, the Planning Commission specifically found and determined that they were, exercising their independent judgment in reviewing and certifying the EIR. Appellants have not cited, nor could they, any legal authority for the proposition that a lawsuit filed against a city by a party precludes the city from considering whether an EIR for a project, sponsored by the plaintiff in that lawsuit, meets the applicable CEQA requirements. Nor can Appellants provide any authority as to what other governmental entity should consider certification of the EIR, or the underlying land use permits for the project, in such a situation. Moreover, Appellants did not raise this issue before the Planning Commission, but only in its appeal to the City Council, after the Planning Commission decided the matter. Thus, as discussed in the next section of this report, this issue is therefore not properly before the City Council. In addition, neither planning staff nor the members of the Planning Commission were even aware of the lawsuits regarding the property until the Appellant raised the issue in their appeal. The Planning Commissioners are not a party in the lawsuits and made their own independent judgment on the Project, irrespective of the litigation over the property. In any event, the lawsuit against the City has been dismissed. In sum, substantial evidence supports the Planning Commission's exercise of its independent judgment in reviewing and certifying the EIR.

2. ***Appellants Issues:*** The Project is inconsistent with the General Plan and zoning requirements.

**Staff response:** As discussed previously in this report and as detailed in the Planning Commission Report, the Project is consistent with the General Plan and zoning requirements subject to the requested Conditional Use Permits and Variances for: increased density for senior housing, a reduction in parking for senior housing, allowance of ground-level parking and loading areas, and increased height. The EIR identified the need for the variances and adequately analyzed the land use impacts of the Project, including an evaluation of the aesthetic impacts. Appellants merely disagree with the conclusions of the EIR, but substantial evidence supports the Planning Commission decision to certify the EIR. Even if Appellants are correct in that there may be some inconsistencies with the general plan, as stated in the FEIR (page 10), such policy conflicts do not necessarily result in CEQA impacts and the fact that a particular project

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does not meet all general plan policies, does not inherently result in a CEQA significant impact.

3. ***Appellants Issues:*** There is no evidence that anyone will comply with the mitigations.

Staff response: Appellants assertions are wholly speculative. Every project is required to comply with conditions of approval and/or mitigation measures from the Standard Conditions of Approval and Mitigation Monitoring and Reporting Program (SCAMMRP), per Section 17.130.070 of the Planning Code, which includes performance standards that are required to be met. Failure to comply with the SCAMMRP may result in revocation of the land use permits or other enforcement actions being taken, per Project Condition of Approval No. 5. Moreover, the Regional Water Quality Control Board, the lead agency for the site's remediation, can issue abatement and clean-up orders, independent of any City Project approvals (or lack thereof). In sum, the City cannot deny certification of the EIR and/or deny project approvals because project opponents speculate that there may be future noncompliance with conditions of approval.

4. ***Appellants Issues:*** The FEIR failed to respond to comments.

Staff response: The FEIR responded, as appropriate, to all comments on the DEIR, including those made on the previously approved 2008 project (that is not currently before the City). However, comments submitted on the previous 2008 project were either already addressed in the DEIR, had been superseded by a more recent technical evaluation, were only applicable to the previously approved project, were not related to the adequacy of the EIR, or had no relevance to the Project or its environmental review, and such was noted in the FEIR. No further responses were required. In short, all comments on the previous 2008 project could not have addressed the environmental analysis that was conducted four years later in the 2012 DEIR. Substantial evidence supports the Planning Commission's determination that the FEIR adequately responded to comments.

1. ***Appellants Issues:*** The total reliance on standard conditions of approval from a 2010 Housing Element EIR was legally impermissible.

- A. ***Appellants Issues:*** While courts encourage cities to avoid duplicative EIRS, they do not encourage using earlier EIRs to avoid adequately evaluating the project-specific environmental impacts and mitigating them.

Staff response: As discussed in detail in the DEIR, FEIR and the Planning Commission Staff Report (both the main body and the separate CEQA Findings section), although the Project DEIR fied off the 2010

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Housing Element EIR and the 1998 LUTE EIR, it also included its own detailed, site specific analysis of the Project for all relevant and applicable environmental topics, including without limitation traffic, noise, air quality, aesthetics, and hazardous materials. That is, the Planning Commission found that while it could rely on the previous Housing Element and LUTE EIRs, it could separately and independently rely on the detailed, site-specific analysis undertaken for the Project. Not only were Standard Conditions of Approval imposed on the Project, but project-specific recommended measures as well as project specific conditions of approval were also imposed; all of which are legally enforceable obligations. Thus, substantial evidence supports the EIR adequately analyzed and mitigated (through standard conditions of approval) impacts.

B. *Appellants Issues:* The statutory partial exemption does not apply because:

- (1) There are impacts peculiar to the Project or to the site
- (2) The policies cited by the EIR are very general and do not address the specific Project impacts.
- (3) The impacts identified by CRADL's expert include potentially significant off-site and on-site impacts that were not addressed in the 2010 Housing Element Update EIR.
- (4) Significant impacts identified in the Project EIR have a more severe adverse impact than discussed in the 2010 Housing Element EIR.

Staff response: The statutory exemptions do apply to the Project because the Project would not result in any project-specific significant impacts that are peculiar to the Project or its site, nor more severe impacts, than those impacts identified in the Housing Element and LUTE EIRs. Appellants comments on the adequacy of these issues were completely addressed in the FEIR (see Approach to Environmental Analysis on pages 2-9 of the FEIR and response to comment B1-4 on pages 81- 82 of the FEIR) and Appellants have not submitted any further new comments on the responses contained in the FEIR. Moreover, as discussed throughout this report and in the EIR itself, a thorough and comprehensive site-specific environmental assessment was conducted for the Project.

C. *Appellants Issues:* The City overlooked its legal obligation to provide a MMRP for the Project.

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Staff response: The Initial Study prepared for the Project merely identified “potentially” significant impacts that may require further study in an EIR, which was done, and no significant impacts requiring mitigation measures were identified. The 46-page Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCAMMRP) adopted by the Planning Commission, and imposed as Project Conditions of Approval (via condition of approval No. 18), satisfy the legal requirement for a Mitigation and Monitoring Reporting Program. The Project’s SCAMMRP includes all the specific development standards that will mitigate the Project’s environmental impacts to less than significant levels. The City Council approved the use of the SCAs in November 2008 and found they will reduce impacts to less than significant levels and the Planning Commission found likewise in this specific instance. As the standard conditions of approval (SCA) reduce all the potential environmental impacts of the Project to a less-than-significant level, additional mitigation measures were not required. Moreover, the adopted SCAs are the functional equivalent of mitigation measures and are legally enforceable. A detailed response to Appellants’ DEIR comments was prepared in the FEIR, which adequately addressed all issues raised in the appeal (see the response to comment B1-3 on pages 80-81 and pages 5-6 of FEIR) and Appellants have not submitted any further comments on the responses. In sum, the City satisfied its legal obligations with respect to adoption of the MMRP.

II. ***Appellants Issues:*** The EIR’s use of tiering did not relieve the City of the requirement to mitigate the significant impacts of the Project.

A. ***Appellants Issues:*** The City could not tier off the 2010 EIR without also analyzing, and mitigating, Project specific impacts.

Staff response: As previously discussed, in addition to tiering off the Housing Element and LUTE EIRs, the Project DEIR also includes project-specific analysis of Hazardous Materials, Aesthetics, Air Quality, and Traffic. Implementation of the SCAMMRP will mitigate all potential environmental impacts in these areas to a less-than-significant level. The SCA, adopted by the City Council in 2008, are the functional equivalent of mitigation measures and are legally enforceable as such. In sum, substantial evidence supports the Planning Commission’s determination that the EIR is adequate and the SCAs will reduce impacts to less than significant levels. Specific environmental topic areas are discussed below.

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- B. ***Appellants Issues:*** Aesthetics was not adequately addressed in the Project EIR.

Staff response: The DEIR undertook a complete and thorough review and analysis of the aesthetic impacts of the Project, including an evaluation of the potential loss of Scenic Highway Designation (see DEIR at pages 75-107). This review by the CEQA consultants included touring the Project site and surrounding area, taking before/after visual simulations of the Project site and surrounding area, communicating with appropriate Caltrans officials relating to the Scenic Highway Designation and reviewing the previous project's planning case tile. Based upon this substantial evidence, the DEIR concluded that although the project would alter the views from the freeway, the qualities that contribute to the scenic character would remain with implementation of the Project. The existing trees immediately adjacent to the freeway would be maintained, distant views of the hills for motorists would remain visible, and the existing billboard on the site would be removed. According to communications with the Caltrans Scenic Highway Coordinator for District 4, in which this project is located, the Project would not damage the Scenic Highway designation of the freeway. A detailed response to Appellants' DEIR comments was prepared in the FEIR, which adequately addressed all issues raised in the appeal (see response to comment B1-7 on pages 83-84 of the FEIR) and Appellants have not submitted any further comments on the responses contained in the FEIR. In sum, substantial evidence supports the Planning Commission's determination that the aesthetic impacts were adequately addressed and impacts reduced to less than significant levels with the City's standard conditions of approval. Thus, there would be no loss of Scenic Highway Designation.

- C. ***Appellants Issues:*** Hazardous materials were not adequately addressed in the Project EIR.

Staff response: The DEIR undertook a complete and thorough review and analysis of the hazardous materials impacts of the Project, including having the CEQA consultant review previous Phase I and Phase II studies prepared for the Project site (including characterization of the on-site and off-site hazardous materials), reviewing project tiles and communicating with various regulatory agencies, all of which were fully disclosed and discussed in the DEIR (see DEIR at pages 147-170). Contrary to Appellants' contentions, there is no legal mandate to provide a new Phase II site assessment as part of an EIR (such has already been previously performed and is also required to be updated prior to remediation), nor to



have the site remediated prior to project approval. Appellants comments on the adequacy of the evaluation were completely addressed in the FEIR (see response to comment BI-8 on pages 85-87 of the FEIR) and Appellants have not submitted any further comments on the responses contained in the FEIR. Moreover, Appellants admitted that issues relating to the site and its location, such as air quality impacts from the nearby freeway and hazardous materials, are not CEQA issues since the Project is not causing the impacts, but rather these are impacts of the environment on the Project.

As stated on pages 168-169 of the DEIR, implementation of SCAs HAZ-1 to HAZ-6 would meet requirements to characterize and/or clean up the Project site to protect human health and the environment, as required by the regulatory agencies. The City's SCA, approved by the City Council in 2008, are best management practices that are designed to and will reduce impacts to less than significant levels. Both the contamination and potential remediation activities are common and not peculiar.

The Regional Water Quality Control Board (RWQCB) is the lead agency charged with overseeing site clean-up and has performance based standards that must be adhered to, depending, in part, on the future land use of the site. The RWQCB indicated to the City that the City's SCAs are adequate and that the RWQCB will be overseeing all site investigations and clean-up activities, including approval of a remediation plan prior to issuance of any City building-related permits (see FEIR at page 86).

Contrary to Appellants' assertions, there was no improper deferral of mitigation because in the EIR there was analysis and disclosure of the contamination; clean-up options were discussed; there is an overall strategy for mitigating the impacts, through the City's SCA and the regulatory authority of the RWQCB, which includes performance standards and enforcement; the City is committed to mitigating the impacts and it does not make sense for the City to impose its own site-specific clean-up requirements when there is another agency in charge of the clean-up.

In sum, substantial evidence supports the Planning Commission's determination that hazardous materials were adequately addressed, that there will be less than significant impacts with the City's standard conditions of approval, and there is not improper deferral of the mitigation measure.

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- D. ***Appellants Issues:*** Air quality impacts on the senior residents of the Project were not adequately addressed in the Project EIR.

Staff response: Appellants admit that the air quality impacts from the freeway (and other sources) on the senior residents are not legally required to be studied under CEQA (because they are potential effects of the existing environment on the project and not project generated impacts). Here, however, such freeway and other source generated air quality impacts were nevertheless comprehensively analyzed in a detailed, site specific health risk assessment (HRA) included in the DEIR and further clarified in the FEIR. The site-specific HRA concluded there would be less than significant air quality impacts on the residents even without incorporation of air filters in the building (which are also required per SCA AIR-2). Appellants comments on the adequacy of the HRA were completely addressed in the FEIR and Appellants have not submitted any further comments on the responses contained in the FEIR. Thus, the appeal merely restates the comments on the DEIR without addressing the responses contained in the FEIR. In sum, substantial evidence supports the Planning Commission's determination that air quality issues were adequately addressed and that there will be less than significant air quality impacts, including those generated by the freeway and other sources on the residents, with imposition of the City's standard conditions of approval.

- E. ***Appellants Issues:*** Traffic was not adequately addressed in the Project EIR.

Staff response: The DEIR undertook a thorough and detailed Project-specific traffic analysis, including evaluating safety impacts and evaluation of crossing times for seniors, conducted by a qualified traffic engineering firm (see DEIR pages 171-212). The FEIR adequately responded to the traffic-related comments submitted on the DEIR, none of which were submitted by a traffic engineer, and Appellants have not submitted any further comments on the responses contained in the FEIR. The DEIR also considered the previous comments submitted in 2008 on a different traffic analysis. The Planning Commission adopted SCAMMRP includes three recommended traffic improvements (to further reduce the already less than significant impacts) related to provision of shuttle service, operation of the loading zone, and access to the garage (see response to comment B-10 on pages 89-90 of the FEIR). Thus, substantial evidence supports the conclusions that there will be less than significant

traffic impacts with imposition of the City's standard conditions of approval.

III. ***Appellants Issues:*** The Project description is inadequate and misleading.

A. ***Appellants Issues:*** The EIR Project description does not match either the original project application or the Initial Study.

Staff response: According to CEQA Guidelines Section 15124, the project description does not need to provide any detail beyond that needed for evaluation and review of the environmental impacts. The total number of housing units (115 units) evaluated is consistent between the Initial Study, the DEIR and what was eventually approved by the Planning Commission. As noted in the FEIR (Response to Comment B-11 on page 90): "The number of affordable and market-rate housing units is not required for the evaluation of environmental impacts under CEQA, and a variation would not change the evaluation and conclusions in the Draft EIR." In other words, the same environmental impacts occur with affordable as market-rate housing. Moreover, the applicant has not requested, and the City has not provided, any density bonus for affordable housing; the only bonuses provided are for senior housing and those are provided for either market rate or affordable units. Thus, the project description is legally adequate.

B. ***Appellants Issues:*** If the Project is primarily market-rate, the Initial Study overlooked conflicts with zoning.

Staff response: The same planning entitlements are required by the Project whether it is comprised entirely of market-rate units, entirely of affordable units (as long as no special density bonus for affordability is requested, as is the case here), or a combination of both. The City does not regulate the affordability of a project and the Project was not approved based on affordability. As previously stated, the Applicant did not ask for, and was not granted, any concessions for the Project based on affordability. As indicated above, substantial evidence supports the Planning Commission's approval of the Project's land use permits and thus there are no conflicts with zoning as granting of variances are fully consistent with zoning.

IV. ***Appellants Issues:*** The lead agency must recirculate the DEIR.

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**Staff response:** The Planning Commission found and determined that none of the new information, corrections or clarifications to the DEIR identified in the FEIR constitute "significant" new information pursuant to Section 15088.5 of the CEQA Guidelines (see Attachment B, Planning Commission Report, CEQA Findings Attachment C at pages 3-4 and FEIR at pages 10-11). Thus, recirculation of the DEIR is not legally required.

- V. ***Appellants Issues:*** The EIR violates CEQA due to incomplete analysis of environmental impacts and insufficient mitigations to address potential environmental impacts.

**Staff response:** The Planning Commission certified the EIR, adopted CEQA findings and the SCAMMRP, finding the EIR complied with CEQA, the FEIR adequately addresses all the comments received on the DEIR and that implementation of the SCAMMRP will mitigate the potential environmental impacts of the project to less than significant levels. Substantial evidence supports the Planning Commission actions.

#### **CERTAIN ISSUES ARE NOT PROPERLY BEFORE THE CITY COUNCIL**

As a separate and independent basis from the Analysis discussion above, certain arguments, issues and/or evidence (hereafter Issues) raised in the Appeal are not properly before the City Council since they were not specifically raised (a) during the seventeen (17) day public comment period on the Project, up to and including the July 17, 2013 City Planning Commission hearing/decision on the Project; and/or (b) during the Draft EIR's 45-day public comment period and related to the current Project.

Appellants had actual and constructive notice of the requirements to raise any and all Issues during the aforementioned periods, if they wanted to raise such Issues on appeal and/or in court (and thus limiting any appeal to such previously presented Issues), because such is clearly stated in the various notices/agendas for the Project, the City's Appeal Form (which has not been revised since May 2011), as well the City's July 22, 2013 decision letter on the Project.

Moreover, the requirement to present any and all Issues during the aforementioned periods, and thus limiting any appeal to such previously presented Issues, are stated in various provisions of the Oakland Planning Code, including without limitation sections 17.130.050 (Presentation of written and documentary evidence); 17.134.040A1 (Procedure for Consideration of Major CUP at the Planning Commission hearing); and 17.134.070 (Appeal to City Council for Major CUP).

As a further separate and independent basis from the Analysis discussion, certain Issues raised during the Draft EIR's 45-day public comment period are also not properly before the City Council because they were written and submitted for an earlier (2008) project, not the current Project.

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Thus, Issues that were not raised on the adequacy of the current Project's Draft EIR but rather on the earlier project are by definition unrelated to the current Project's Draft EIR since they were prepared years prior to the release of the current Project's Draft EIR.

In addition, this is not a hearing on the Project under Public Resources Code section 21177(a), but rather a hearing on the appeal under CEQA Guidelines section 15185. Also; the public hearing on the appeal is not a de novo hearing -- in accordance with the Oakland Planning Code and the decision in *Mashoon v. City of Oakland* (Appeal No. A077608; filed December 9, 1997; First Appellate District, Division Five); rather, it is limited only to the Issues properly presented to the City Council, as stated above.

Although the City Council is not legally obligated to consider the Issues not properly before it as outlined above, it has nevertheless considered them -- without waiving any of its rights to object to the late/improper submittal of the Issues -- as detailed in Analysis section above.

### PUBLIC OUTREACH/INTEREST

The Project has been contentious in the neighborhood since its original inception. The previously approved Project was subject to two Design Review Committee (DRC) meetings, two community meetings, and three Planning Commission meetings, as well as multiple meetings with individual DRC members regarding design issues.

The current Project has entailed a community meeting that was very sparsely attended and three Planning Commission hearings. All of the public hearings were noticed per City requirements.

### COORDINATION

City Council member Libby Schaaf attempted to mediate the appeal between the two parties but such efforts were rejected. The Office of the City Attorney has reviewed the agenda related materials and approved the accompanying resolution for Form & Legality. This report has been reviewed by the Budget Office.

### COST SUMMARY/IMPLICATIONS

1. **COST OF PROJECT:** This Project is funded by a private developer and does not request or require public funds and has no direct fiscal impact on the City of Oakland. The Applicant has not submitted a request for City subsidies.
2. **FISCAL IMPACT:** If constructed, the Project would provide a positive fiscal impact via increased property taxes, utility user taxes, sales taxes, and business license taxes, while at the same time increasing the level of municipal services that must be provided to the residents and tenants.

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## **SUSTAINABLE OPPORTUNITIES**

***Economic:*** The Project is anticipated to cost approximately \$17,000,000 and would contribute both direct and indirect economic benefits to the City. It would generate approximately 200,000 man hours of temporary construction work, and would create approximately 10 new full-time permanent jobs.

***Environmental:*** The Project would provide infill development in close proximity to mass transit and would remediate a vacant site that is contaminated with hazardous materials. The CEQA analysis for the Project found that it would not result in a significant impact on the environment with implementation of the City's standard conditions of approval.

***Social Equity:*** The Project would provide additional much needed housing opportunities for seniors, consistent with the City Council adopted 2010 Housing Element.

### **Action Requested of the City Council**

Adopt a resolution denying the appeal and upholding the decision of the Planning Commission to certify the EIR and approve the Project

### **Alternative Recommendations**

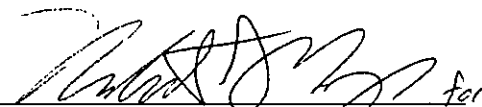
The City Council has the option of taking one of the following alternative actions instead of the recommended action above:

1. Uphold the appeal and reverse the decision of the Planning Commission thereby denying the Project. This option would require the City Council to continue the item to a future hearing so that staff could prepare and the City Council has an opportunity to review the proposed findings and resolution for denial.
2. Uphold the decision of the Planning Commission, but impose additional and/or revised conditions on the Project and/or modify the Project, solely related to the appellate issues. Depending on the revisions, this option may also require the City Council to continue the item to a future hearing so that staff could prepare and the City Council has an opportunity to review the proposed revisions.
3. Continue the item to a future meeting for further information or clarification, solely related to the appellate issues.
4. Refer the matter back to the Planning Commission for further consideration on specific issues/concerns of the City Council, solely related to the appellate issues. Under this option, the item would be forwarded back to the City Council for decision.

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For questions regarding this report, please contact Lynn Warner, Planner III, at (510) 238-6983.

Respectfully submitted,



RACHEL FLYNN  
Director, Department of Planning and Building

Reviewed by:  
Scott Miller, Zoning Manager

Prepared by:  
Lynn Warner, Planner III  
Planning Department

***Attachments:***

- A. *July 29, 2013 Appeal*
- B. *July 17, 2013 Planning Commission Staff Report with Attachments*

**NOTE:**

The EIR (consisting of the Draft and Final (Response to Comments Document)) has been separately provided to the City Council and is also available at the Planning Department located at 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, CA 94612 and on the City's website at <http://www2.oaklandnet.com/Government/o/PBN/OurServices/Application/DOWD009158>.



CITY OF OAKLAND
APPEAL FORM
FOR DECISION TO PLANNING COMMISSION, CITY
COUNCIL OR HEARING OFFICER

PROJECT INFORMATION

Case No. of Appealed Project: CMD/10-312; ER10-0001
Project Address of Appealed Project: 4311-4317 MacArthur Blvd
Assigned Case Planner/City Staff: Lynn Warner
APR 030-1982-121-00 through 030-1982-123-00

APPELLANT INFORMATION: See attached

Printed Name: CRAADL - Citizens 4 Oakland Phone Number: (510) 482-0390
Mailing Address: 5707 Redwood Rd. #10 Alternate Contact Number:
City/Zip Code: Oakland, CA 94619 Representing: Commercial & Retail Attachment &
Development for the home (CRAADL)
Email: 101550@msn.com and Citizens 4 Oakland
Please contact our attorney, Leila H. Moncharsh at the contact information above

An appeal is hereby submitted on:

- AN ADMINISTRATIVE DECISION (APPEALABLE TO THE CITY PLANNING COMMISSION OR HEARING OFFICER)

YOU MUST INDICATE ALL THAT APPLY:

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

Please identify the specific Administrative Decision/Determination Upon Which Your Appeal is Based Pursuant to the Oakland Municipal and Planning Codes listed below:

- Administrative Determination or Interpretation (OPC Sec. 17.132.020)
Determination of General Plan Conformity (OPC Sec. 17.01.080)
Design Review (OPC Sec. 17.136.080)
Small Project Design Review (OPC Sec. 17.136.130)
Minor Conditional Use Permit (OPC Sec. 17.134.060)
Minor Variance (OPC Sec. 17.148.060)
Tentative Parcel Map (OMC Section 16.304.100)
Certain Environmental Determinations (OPC Sec. 17.158.220)
Creek Protection Permit (OMC Sec. 13.16.450)
Creek Determination (OMC Sec. 13.16.460)
City Planner's determination regarding a revocation hearing (OPC Sec. 17.152.080)
Hearing Officer's revocation/impose or amend conditions (OPC Sees. 17.152.150 &/or 17.156.160)
Other (please specify)

(continued on reverse)



(Continued)

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

**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) Parcel Map Waiver, Design Review, Minor Variances

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

You must raise each and every issue you wish to appeal on this Appeal Form (or attached additional sheets). Failure to raise each and every issue you wish to challenge/appeal on this Appeal Form (or attached additional sheets), and provide supporting documentation along with this Appeal Form, may preclude you from raising such issues during your appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.

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

The Planning Commission abused its discretion in granting the approvals and certifying the Environmental Impact Report as described in the attached letter.

Supporting Evidence or Documents Attached. *(The appellant must submit all supporting evidence along with this Appeal Form, however, the appeal will be limited evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.)*

(Continued on reverse)

(Continued)

*Lita H. Small*

July 29, 2013

Signature of Appellant or Representative of  
Appealing Organization

Date

Attorney for CRADE & Citizens 4 Oakland

Date/Time Received Stamp Below:

Below For Staff Use Only

Cashier's Receipt Stamp Below:

DONNA M. VENERUSO (d.'09)  
LEILA H. MONCHARSH

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

July 29, 2013

City Council  
City of Oakland  
City Hall  
1 Frank Ogawa Plaza  
Oakland, CA 94612

RE: Appeal from Approval of Project No. CMDV10-312; ER10-0001AMG & Associates; 4311-4317 MacArthur Blvd.

Dear Council Members:

This appeal is filed on behalf of my clients, Commercial & Retail Attraction & Development for the Laurel (CRADL) and Citizens4Oakland. CRADL is an organization of merchants in the Laurel District who oppose the above project. Citizens4Oakland is an organization of concerned residents of Oakland who oppose the project.

The proposed project has always been based on two assumptions: 1. That the three parcels forming a large empty lot as the project site, located on the corner of High Street and MacArthur Boulevard, has been empty for years because nobody wants to buy it and install retail uses, and 2. a large senior housing project with 115 units will bring further retail uses to the Laurel commercial district because the seniors will shop there, causing other businesses to flock there in droves, and the city will make money. There are no studies that show senior housing vitalizes retail uses. The three parcels have been empty because the property has been tied up in litigation for years, as shown below.

**A. Background Facts – Uses Prior to Alex Hahn Purchasing the Three Parcels**

Historically, the property was used for retail purposes and for a PG&E station. The retail past uses included a grocery store, a gas station, and a tire store. After a fire, the three parcels were purchased by Alex Hahn, a well know and politically connected property owner/developer in Oakland. The property was cleared and the toxic substances from the PG&E station were removed. Mr. Hahn did not cooperate with the county agency that required removal of old gas tanks and to this day, the tanks are still located on the site and appear to be leaking.

**B. Alex Hahn and Alexis M. Gevorgian (AMG) Enter into Sales Contract**

In July 2005, Mr. Hahn formed Hahn & Kang Equity (Hahn), which sold the property to Alexis M. Gevorgian, under the name AMG & Associates. Mr. Gevorgian is a Southern California developer. The first purchase price was \$3.5 million (later reduced to \$2,537,500 in

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an addendum, dated October 11, 2009).<sup>1</sup> In 2006, they contacted then Council member Jean Quan with their plan to develop the property with senior affordable housing. Council member Quan became a strong supporter for the project as it would add to other senior housing projects she had advanced, from public funding, at Lincoln Court and Altheim. However, the Laurel District merchants and residents opposed such a large project in the Laurel commercial district. The project has almost no retail, violates height restrictions, is inconsistent with the surrounding commercial area, and does nothing to advance the commercial interests of the merchants, who have invested their life savings in the district.

### C. City Attempts to Approve the Project with No EIR

An attempt was made by the city to have the project approved without any Environmental Impact Report (EIR), despite that the property was on the Cortese list as a contaminated site and under state law, an EIR was required. After the project was approved by an earlier planning commission around 2008, CRADL, Citizens4Oakland, and various individuals clients appealed the project approvals to the city council. The application was withdrawn and the city later required the applicant to obtain an EIR. During the ensuing years, a number of events occurred.

### D. AMG and Hahn Failed to Pay Property Taxes or Clean Up the Contaminated Property and Borrowed Money for the EIR

An issue developed between AMG and Hahn because someone had to pay for the clean-up of the property and the now required EIR. AMG borrowed \$100,000 from Pacific Properties to pay for the EIR, but that still left other costs such as property taxes that were accruing and unpaid by either Hahn or by AMG. The negotiations between AMG and Hahn continued until December 2009 when the last addendum to the purchase agreement was signed by them.<sup>2</sup> Part of their agreement was that AMG would pay the now very overdue property taxes as a "loan" with a deed of trust and the borrower was Hahn. AMG paid the property taxes and subsequently foreclosed on the property for unpaid property taxes of approximately \$260,000.

Needless to say, the investors that constituted Hahn and Kang Equity were displeased at having contributed to the purchase price of \$2,537,500, only to lose both the property and receive no funds from AMG for its true value, which certainly would have been more than the \$260,000 AMG paid for the taxes! Further, Hahn and Kang Equity were family members of Alex Hahn and they had entrusted him with the role of managing partner.

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<sup>1</sup> Attached to Cross-Complaint, filed on June 25, 2013, Exhibit B.

<sup>2</sup> See Attachment 4, an exhibit to the Cross-Complaint, attached here as Exhibit B.

#### **E. Litigation Over Embezzled Money and Illegal Foreclosure Began**

With title to the property in hand, due to the foreclosure, and loan proceeds from Pacific, AMG obtained an EIR. At the same time that the EIR was in progress, the less-than-thrilled family members who invested in the property sued AMG, Alex Hahn and his son, Charles Hahn on August 21, 2012 in Alameda Superior Court. The complaint basically alleges that Alex and his son, who were managing the Hahn partnership embezzled money from it, effectively embezzling from their own family members they were using as co-investors. The family member investors also accused AMG of basically stealing the property by paying property taxes, but no other money for the property. They requested that the court void the foreclosure and return the property back to the Hahn partnership.<sup>3</sup>

#### **F. Hahn Hired Clinton Killian, Who Filed A Cross-Complaint Against the Hahn Family Investors and AMG**

In June 2013, Alex Hahn personally and on behalf of Hahn & Kang Equity hired attorney Clinton Killian, a former Oakland Planning Commissioner, and he filed a cross-complaint against AMG and the family investors who had sued Alex Hahn and his son. That lawsuit contains a cause of action against AMG for breach of contract because AMG never paid the purchase price for the property, under the purchase agreement, and the investors want their money.<sup>4</sup>

#### **G. AMG Sues the City of Oakland, a Real Estate Company and Hahn**

Then, on March 28, 2013, AMG, now with the name "AMG Investment and Development" sued the City of Oakland and Hahn. There, AMG seeks an order from the court declaring AMG the owner of the property. Mr. Gevorgian signed the verification attached to the lawsuit.<sup>5</sup> In an email from AMG's attorney to the Oakland city attorney, it became apparent that Mr. Gevorgian wanted something done about liens, held by Oakland, on the property. The city attorney responded the same day, "Are these properties set to be sold?"<sup>6</sup>

Subsequently, the Alameda Superior Court, realizing that all three of these matters, described above, are related, ordered them all into one courtroom. On July 9, 2013, AMG's attorney filed an objection to the court's order, in an attempt to separate the issues. The cases have remained all in the same courtroom.<sup>7</sup>

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<sup>3</sup> Complaint RG12644534, filed August 21, 2012, attached as Exhibit A.

<sup>4</sup> Cross Complaint, attached as Exhibit B.

<sup>5</sup> Complaint RG13673502, filed March 28, 2013, attached as Exhibit C.

<sup>6</sup> Email, dated April 23, 2013, attached as Exhibit D.

<sup>7</sup> Objection, RG13673502, filed July 9, 2013, attached as Exhibit E.

**H. During the Recent Planning Commission Hearing, Mr. Gevorgian Denied Any Knowledge of A Lawsuit and Suggested the Community's Attorney Invented it**

In my letter for the planning commission hearing on July 17, 2013, I included that there was a problem with the title to the property and ongoing litigation about it. Commissioner Weinstein, who voted to approve the project, first asked Mr. Gevorgian about my claim that there was pending litigation about the property. Here was Mr. Gevorgian's answer:

With respect to the Hahn issue, I have no idea what she is talking about. I have not been served with any complaint. I have legal title to the property. I have provided the legal title evidence to the city. Um, and I could certainly provide it. I can also tell you that I have not been served with any lawsuit. Um, I mean, if there is any. I don't even want to get into that, cause it's just (shrugging and waving his hands around) – it's just factually incorrect.<sup>8</sup>

**I. The Project Requires Substantial Public Funding**

The project is now before your Council for approval, which also entails at least a tacit agreement that the city, through redevelopment funds, a "loan" that never gets paid back, or from other public sources, will provide money towards its completion. During the Planning Commission hearing, Mr. Gevorgian would not commit whether the project would be for some, a lot, or no affordable housing because he needed to find out how much in federal tax credits he could obtain. While he did not mention anything about redevelopment or city funding, there is always a contribution that needs to be filled by the local agency.

AMG provided a pro forma that demonstrates that Mr. Gevorgian needs over \$2.0 million for the developer fee, coincidentally about the same amount of money owed to the Hahn investors. AMG has already started applying for funding.

Not a dime of public money should go towards this project, let alone to Mr. Gevorgian and the Hahns for their legal problems, stemming from stealing from one another and from their co-investors.

**J. The Project Continues to Be Undesirable and A Poor Substitute for Retail Use**

As shown above, the delay in getting the three parcels back into retail use was related to litigation, not due to the absence of any retail buyer. While it is unlikely that another buyer would pay over \$2.5 million for the property in today's commercial real estate market, that fact

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<sup>8</sup> Transcription of July 17, 2013 planning commission hearing, attached as Exhibit F.

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is related to the overall economy and not to either the three parcels or the Laurel District. The current project before your Council violates the zoning code and CEQA.

### **1. The Project Does Not Meet CUP Criteria**

This project has never met the conditional use permit criteria because it presents poor living conditions for seniors. There is no place for them to walk for maintaining good health because the project is located on an “island” surrounded by Highway 580, High St., and MacArthur Blvd., all busy roadways. The EIR admits that the seniors are “sensitive receptors” and should not be located next to these three major throughfares. The solution was to seal them into their living quarters with air conditioning units, but that is not a great alternative.

When the project was before the city in 2007 or 2008, it had a shuttle service component that AMG would pay for. The seniors cannot walk across several lanes of traffic to access basic services. This time, there is no commitment to fund a shuttle service for the seniors, nor is there any identified funding for one. Nor is there any schedule in the conditions for when the shuttle will be available to the seniors

Also in 2008, when the project was last before your Council, there was a viable grocery store in the Laurel District within walking distance of the project, albeit one that was struggling. It was sold and the current grocery store replacement is a Maxx store with very little goods and choices. The next nearest grocery store is very small and expensive (Farmer Joe's) and is at the end of the Laurel District, which is too far for seniors to access other than by car or shuttle service. The next closest grocery store to the project site is about five miles away.

### **2. The Area is Zoned Commercial, the General Plan Supports Commercial as the Primary Use, But the Project is Primarily Residential**

The staff report cut off the definition in the General Plan of Neighborhood Center Mixed Use – it continues and states that “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.”<sup>9</sup>

There is nothing in the General Plan language quoted in the staff report or the language above supporting huge residential complexes over a tiny bit of token retail in the Neighborhood Center Mixed Use areas of Oakland; the plan requires that “Future development

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<sup>9</sup> Page 149 of the LUTE

within this classification should be commercial or mixed uses that are pedestrian-oriented and serve nearby neighborhoods, or urban residential with ground floor commercial.” [Emphasis added.] Ground floor parking with 65 parking spaces, only five of which are designated for retail and the rest for residential is completely inconsistent with the requirement for ground floor commercial.<sup>10</sup>

This project further makes a mockery of the General Plan requirement for ground floor commercial by designating only 3,446 square feet of ground floor commercial compared with the entire project’s 40,879 square feet of which 37,755 square feet are for residential use.<sup>11</sup> Without a use permit and keeping the three lots separate as originally they were, the three lots would have accommodated up to a total of 21,000 square feet of retail on the ground floor. With a use permit and assuming three lots joined into one lot, the developer could have exceeded 7,000 square feet.<sup>12</sup> It is obvious that the proposed retail is no more than an attempt to avoid the Zoning ordinance and the General Plan dictates so as to stuff five levels of 114 units of residential and 65 parking spaces where they are not allowed. The developer’s original plans had NO retail accentuating their real intent of just putting a huge residential complex where it doesn’t belong. The later added “token” retail was their inept attempt to circumvent the General Plan and the zoning regulations.

Without citing to any controlling policies in the staff report and simply quoting general language about encouraging housing, the City overlooked the applicable policies referenced on Page 149 of the General Plan LUTE, specifically regarding Neighborhood Center Mixed Use. Included Under Housing Production, Conservation and Enhancement is policy No. 3.2 requiring that the infill development be “consistent with the General Plan;” This project is not as shown above and because it also violates the General Plan’s variance restrictions as shown below.

Policy N3.11 requires that the City “aggressively enforce the requirements of the City’s Housing Code and other applicable regulations on housing of all types.” Presumably, this would include the Planning Code with its height restrictions. Policy N 11.1 requires consistency between the General Plan and zoning regulations which, under this policy, should be completed “within a reasonable period of adoption of the final elements...” A period of eight years with no consistency violates the General Plan. Most significantly Policy N11.3 requires application of a stringent test before the City can grant variances.

- 3. The project does not comply with the General Plan test for granting variances and the General Plan supercedes Zoning under Oakland’s ordinances.**

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<sup>10</sup> Page 149 under “Desired Character and Uses.”

<sup>11</sup> Page 2, last paragraph and page 8 under Parking section - - staff report.

<sup>12</sup> Planning Code §17.48.080



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It is unclear exactly what test the Planning Commission used when making its findings as to the requested variances. It appears that the City has joined together two very different tests in each of the paragraphs relating to the variance test creating ambiguity as to what test the Planning Commission was expected to use. However, the test that the Planning Commission should use is contained in the General Plan which overrides any other test.

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

Prior to this project coming before the Planning Commission, we have noticed a number of projects in which the City has been using a minor variance test contained in Oakland Planning Code §§ 17.148.010 et seq. When challenged on other projects, the City Attorney claimed 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 ordinances. Under Government Code § 65803, a charter city can adopt by charter or by ordinance provisions of a state regulation that otherwise would not apply to a charter city. Here, Oakland's ordinance directs that the General Plan prevails over its Planning 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

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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. As a result, these two ordinances cited above are still in effect and dictate that the General Plan provisions prevail over the Planning Code. The General Plan, in turn, uses the same variance test as 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:

**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....

Since Oakland has, by ordinance, determined that the General Plan prevails whenever there is a conflict between the General Plan and the Planning Code and since the General Plan variance criteria is different from the Planning Code minor variance language, two conclusions are appropriate: 1. The General Plan prevails over the Planning Code and therefore, the variance test in the General Plan is the one the City should be using as to ALL variances and 2. Oakland has adopted the state standard for granting variances which in all particulars is the same as Oakland's General Plan.

Furthermore, the minor variance language in the Zoning Ordinance 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." [Emphasis added.] (Oakland Planning Code § 17.148.050 A.

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Not only has the developer failed to produce any evidence of why he cannot build his project without height variances, he also has failed to demonstrate that he is not receiving “special privilege” if the City grants the variances.

ii. 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.

In this instance there is absolutely no evidence supporting findings covering the first two elements. There are no buildings over three floors or 30 to 40 feet in height 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 height variances, 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 in the Laurel commercial district without receiving height variances. The City’s argument that the lots “push the building up” due to a slope defies the laws of gravity. The height is measured on all structures from the dirt up; the dirt doesn’t “push up” the height. The issue here is what special circumstances exist such that this developer cannot construct a project within the zoning height limit and therefore is unable to enjoy the same privileges as other nearby properties in the same zone? Given that there are no properties in the same zone or vicinity exceeding the zoning height limit, the developer cannot meet this element of the test.

The City Council should appreciate that granting this height variance has two long term effects on the greater Laurel district: 1. It sets precedence for the next application down the road where a developer wants to violate zoning limitations. 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 these variances destroys the existing small-scale nature of the Laurel commercial area, especially since the project site is located right at the gateway which divides the retail from the freeway and Mills College.

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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. 4<sup>th</sup> 916, 923.

It is highly deleterious to the Laurel district commercial and residential neighborhood to allow one developer to have such a huge impact on the nearby area.

### **iii. The Staff Report Does Not Provide Evidence Supporting the Grant of the Variances**

As the planner notes on pages 5 and 6 of her staff report, the proposed project is located in the C-30 and C31 zones allowing projects of no more than 45 feet in height by today's zoning. The older zoning that the city is applying to the project would further restrict the height to no more than 40 feet in the C-30 and 35 feet in the C-31 zones. The proposed project is between 47 and 60 feet tall. According to Plan A.10, the project is 65 feet tall at its highest point. Although the planner states that the project is an "average" of 54 feet, this is still considerably over the zoning height limit. Because of the height of the proposed project, it requires two variances, besides the conditional use permit.

At the time the city considered the variance criteria for the former project, it was listed as an affordable housing project. One of the reasons for granting the variances was that the city was relaxing its zoning standards to accommodate the affordable housing. However, the application for the current project is for market rate housing and does not enjoy the same relaxation of zoning rules for affordable housing as a market rate project. As of this writing, the applicant suddenly applied for government subsidized funding last week and it is now unclear what the status is of the project. The staff report and the EIR do not indicate how many of the 86 units are for affordable housing, if any. The current staff report is not relying upon any affordable housing relaxation of zoning rules to support the variance findings.

## **1. Oakland's Variances Require Specific Findings that The City Cannot Make**

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While the staff report lists the variances as minor, they still must comply with the legal standards for granting them. Under our local planning code, to grant the variances, the city must make findings for each element. The city cannot legally make findings supporting criteria 1, 2, 3, 4, 5, and 6.

Criteria 1 – The zoning for the C-30 and C-31 does not preclude the project design;  
It precludes the height

The city interpreted this criteria to mean that it could look at the topography of the land and determine that if it was not an ordinary rectangular lot, then a variance could be granted. However, the variance that the staff is recommending has nothing to do with the layout of the land in relation to the design of the project. The variance is granting a height exception, not a setback or other type of exception.

Contrary to the staff assertion on page 15 that the property is “unfeasible to build on,” it has been built on in the past as a tire store, a PG&E substation, and as gas station. The size of the lot, alone, allows it to be built on. There is no evidence that it cannot be utilized for a building and therefore, this argument provides no evidence substantiating the grant of the height variance. Similarly, the statement on page 16 that the footprint of the building “tends to force the building upwards” is nonsensical and without any evidentiary support.

The staff report interprets the criteria as meaning that if there is a zoning regulation, such as an open space requirement, the city can grant a height variance to accommodate it. This is also a far reach beyond the written words in the variance criteria. The court will, in that instance, apply its own interpretation under a *de novo* standard. (*Stolman v. City of Los Angeles* (2003) 114 Cal.App.4th 916, 928 and *Hall-Villareal v. City of Fresno* (2011) 196 Cal.App.4th 24, 29.) The words are that “strict compliance would preclude an effective design solution,” not that the applicant may have difficulty figuring out how to reduce the size of its project to comply with another zoning regulation.

For the same reason, as above, the test is not whether the variance would “result in an effective design solution improving the livability, appearance and operational efficiency.” (Staff report, p. 16.) it is whether strict compliance would “preclude an effective design solution.” There is no evidence supporting that it would.

The reference on page 16 to the handling of the setbacks next to the R-50 zone by basically “reversing them” from the front of the property to the back of it, facing the freeway, also does nothing to meet this criteria. Nor is there any showing that the switching of the setbacks has anything to do with the need for a height increase.

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**Criteria 2 – Compliance with the Zoning Height Limit Would Not Deprive the Applicant of Privileges Enjoyed by Other Owners in the C-30 and C-31 Area of the Project**

Courts have interpreted this type of criteria as meaning that the city cannot grant a variance if other property owners in the vicinity do not also share that right. The interpretation of variances has been summarized as follows:

(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.

In this instance there is absolutely no evidence supporting findings covering the first this element. There are no buildings in the C-30 or C-31 commercial district and within the vicinity of the proposed project that exceed the zoning height restriction, let alone by over twenty feet. 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. Nor is there any mention in the staff report of any other building in the entire area of the C-30 and C-31 district surrounding the project site that is as tall or even remotely in the same height range as the proposed project. Instead, there is only a conclusory statement, unsupported by evidence, that the City of Oakland has granted “similar variances” for other similar situations.

As described above, the court may interpret this criteria language, under the *de novo* standard. *Stollman, supra*. The obvious purpose of the height restriction is to prevent property owners from creating many different building heights in a given zone. The rationale offered in the staff report that there are no residences nearby that would be affected by the height is untrue. The photos previously submitted from the former project application and re-submitted by the community show that the height of buildings around the proposed project is considerably lower than the height of the proposed project. The proposed project, at 20 feet over the height limit for the zone is going to be much taller and more visible than either the surrounding houses or the Laurel commercial district.

**Criteria 3 – The Height of the Proposed Project Will Adversely Affect the Character and the Surrounding Area**

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Figures IV. A-4a – IV. A-7b in the DEIR demonstrate that the height of the proposed project will tower over its surroundings. The staff report focuses on the benefits of the project to seniors and states that it will provide “some affordable housing” without quantifying it. However, that is not the purpose of the criteria. It is requiring an analysis of how the height of this building will impact its surroundings and affect the character of the area, which consists of low level houses and shops.

#### **Criteria 4 – The Height Variance Constitutes A Special Privilege Inconsistent With the Limitations on the Rest of the Area**

If the City grants the height variance, 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.

The Planning Commission failed to appreciate that granting this height variance has two long term effects on the community: 1. It sets precedence for the next application down the road where a developer wants to exceed the zoning height restriction. 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 surrounding area that consists of small, low height commercial properties near residences. By allowing a project between 15 and 20 feet over the zoning height limit in this neighborhood, the Planning Commission is completely changing the the nature of the area from a small commercial street to an area consistent with much higher density. That is why the court vigorously reviews the grant of variances, as explained above. (*Stolman v. City of Los Angeles* (2003) 114 Cal. App. 4<sup>th</sup> 916, 923.)

The staff interpretation of this criteria section is that it relates to the topography of the proposed project site area. It reasons that since it has granted height variances in other situations with unusually shaped lots, it can meet this finding here. However, that interpretation is not supported by the wording of the criteria or by the appellate court’s interpretation of it. Nor is it relevant to the Laurel District where the proposed project is located. That somewhere in Oakland, the city granted variances with this absurd explanation (and no doubt, no court review) does not mean it should be used in the Laurel District, where the heights of the existing structures are uniformly much lower than the proposed project.

#### **Criteria 5 – The Project Is Inconsistent with Design Review Guidelines**

The staff report admits that the proposed project was in Design Review hearings on several occasions. What the report does not acknowledge is the reason for it. The proposed project violates several of the design criteria under Planning code section 17.136.050. Criteria 1 specifically discusses the relationship of height with the surrounding area and endeavors to have buildings relate well with one another. As shown above, the proposed project does not relate in height, bulk or mass with anything around it.

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The staff report may be relying on section 17.136.070A for its design analysis and applying it to the variance test. However, the analysis above would still be the same as this code section is very similar to the one analyzed above.

Criteria 2 requires that the proposed project will be of a quality and character that “harmonizes with” and serves to protect the value of, private and public investments in the area. The area is commercial, not residential, and the property is capable of accommodating retail uses. By turning this substantial lot into a residential, huge building, and taking away its use for retail purposes, the project is diminishing the retail investment of its neighbors in the Laurel district.

Criteria 3 requires that the project be consistent with the General Plan and with design guideline criteria. It is not. Specifically it is not consistent with the setback requirements of design review to maximize light and air. It also is inconsistent with the Scenic Highways Element of the Oakland General Plan.

The staff report does not address this criteria.

**Criteria 6 – The Proposed Project Does not Conform With All of the Applicable Guidelines, General Plan, etc.**

C-31 has a height limit of 35 feet under the prior zoning, which the city is applying to this project, according to the staff report. The proposed project is nearly twice the allowable height limit. Additionally, when there are increases in allowable height, the additional floors need to be set back 10 feet each rise. The highest point for the project is the corner which is totally in the C-31 zone. Yet, there are no setbacks at the sidewalk, and above three stories the walls are still at the sidewalk level, not stepped back 10 feet.

The proposed project does not conform with the General Plan Scenic Highways Element, and with its prohibition against liberal use of variances. There is no discussion in the staff report regarding this criteria. Furthermore, this is one of the ways in which the project violates CEQA.

**K. The Proposed Project Violates CEQA and It Was An Abuse of Discretion for the Planning Commission to Certify the EIR**

**1. The FEIR Does not Meet The “Independent Judgment and Analysis Test” Due to the Lawsuit**

Guideline § 15090, subd. (a) requires that the FEIR reflect the lead agency’s “independent judgment and analysis.” With a lawsuit by the developer pending against it since March 2013, the city had a conflict of interest and should have: 1. Revealed that it was being



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sued by AMG and the nature of the lawsuit; and 2. Requested that another agency become the lead agency. The FEIR could not have been the result of totally independent judgment on the city's part as required by the CEQA.

## 2. The Project Is Inconsistent With the General Plan and Zoning Requirements

The Planning Commission should not have granted the height variances, as described above. Instead, they could have granted the entitlements without the variances, leaving AMG with a project that conformed with the zoning height restrictions. Instead, and without any support in the EIR, the Planning Commission granted the variances. They abused their discretion by not requiring an EIR that analyzed the inconsistency between the variances they were granting and the General Plan and zoning code. Furthermore, the EIR does not analyze the aesthetic impact of approving the project with the current height as it may impact the rest of the Laurel District, given that the rest of it is so much lower in height. Nor does it analyze the precedent setting impact on the Laurel of having a project that is so large. It does demonstrate in photos, however, just how deleterious it would be to have a precedent set that the proposed project height is allowable for the Laurel District. The City should order a supplemental EIR on the inconsistency:

The Pocket Protectors contend that substantial evidence exists to support a fair argument for potential significant effects on the environment as to City land use policies and regulations (including City development standards) and aesthetic impacts. We agree with The Pocket Protectors. For reasons that follow, we conclude the trial court erred in ruling that the issues tendered by The Pocket Protectors were immune from environmental review in an EIR.

The CEQA Initial Study Checklist, used to determine whether a project may have significant environmental impacts, includes the question whether a project may “[c]onflict with any applicable land use plan, policy, or regulation . . . adopted for the purpose of avoiding or mitigating an environmental effect.” (Guidelines, Appen. G, § IX, subd. (b).)

*(Pocket Protectors v. City of Sacramento (2005) 124 Cal.App.4th 903, 929.*

## 3. There Is No Evidence That Anyone Will Be Complying With the Mitigations

Apparently for political reasons, the city chose to label the mitigations in the MMRP as “standard conditions of approval.” Whatever the city chooses to call them, they are mitigations and under CEQA the city must enforce them. For example, the clean-up requirements cannot just be ignored by the city. Thus far, neither AMG nor Hahn have chosen to comply with many requests by the county agency for the tanks to be removed and testing. They have not complied

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with any of them. Given that the ownership of the property is in limbo, there is no evidence that anyone will be responsible for the expense of the mitigations or even that someone will be cooperating with the responsible agency for the pollution clean-up.

The city is relying on PRC § 21083.3, which specifically states that to rely upon this section, the city must “undertake or require the undertaking of any feasible mitigation measures specified in the prior environmental impact report or, if not, then the provisions of this section have no application to that effect. The lead agency shall make a finding, at a public hearing, as to whether those mitigation measures will be undertaken.” (PRC §§ 21083.3 (c) and 21081.6, subd. (a)(1), and Guideline § 15283 (e) (1 and 2).)

Furthermore, in considering whether the mitigations are sufficient, the city should have considered the former history of the developer and the Hahns in refusing all attempts at cleaning up the site:

Because an EIR cannot be meaningfully considered in a vacuum devoid of reality, a project proponent's prior environmental record is properly a subject of close consideration in determining the sufficiency of the proponent's promises in an EIR. Consideration, however, must also be given to measures the proponent proposes to take in the future, not just to the measures it took or failed to take in the past. In balancing a proponent's prior shortcomings and its promises for future action, a court should consider relevant factors including: the length, number, and severity of prior environmental errors and the harm caused; whether the errors were intentional, negligent, or unavoidable; whether the proponent's environmental record has improved or declined; whether he has attempted in good faith to correct prior problems; and whether the proposed activity will be regulated and monitored by a public entity.

*(Laurel Heights Improvement Association of San Francisco v. Regents of the University of California (1988) 47 Cal.3d 376, 420.*

Here, Hahn and AMG have a long history, that is well documented in their own lawsuit materials, of just ignoring the county's attempts to get the testing and clean-up completed. Instead, they are in a fight with one another, and the city, over who even owns the property. W

Moreover, the MMRP does not require a Phase 2 study, despite the reports of Petra Pless. It leaves that decision up to another agency down the road, after the entitlements have already been granted.

#### 4. The **FEIR Failed to Respond** to Comments

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The City appears to misunderstand the significance of the documents that relate to the same project, with minor changes, and the present document. ALL of the documents for this project are part of the administrative record, not just the ones that accompany the current iteration of the same project. PRC § 21167, subd. (e) mandates that the administrative record include all documents associated with the project approved by the city, including documents associated with “not only the final version of the project approved by the public agency, but also prior versions of the project constituting substantially the same overall activity.” (*Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 334.)

As part of its appeal, Appellants intend to rely on ALL documents, audio and videotapes of hearings, the EIR, the documents supporting and opposing the EIR, and any other document that was submitted or generated by the city for this project. The documents that Appellants rely on include ALL of the documents that are dated from the first application for this project through to the last day the city has jurisdiction. It is unreasonable to expect, and Appellants will not, attach all of these documents to this appeal letter and appeal form.

Because so many of the comments submitted during the earlier iteration of the project were relevant to the DEIR, they were submitted again as comments to the EIR. The preparer was not at liberty to refuse to respond to the comments that were germane to the environmental issues. (Guideline § 15088.)

Additionally, Appellants raise the following objections to the EIR:

**I. THE TOTAL RELIANCE ON STANDARD CONDITIONS OF APPROVAL FROM A 2010 HOUSING ELEMENT UPDATE EIR WAS LEGALLY IMPERMISSIBLE UNDER THE CIRCUMSTANCES OF THIS PROJECT**

**A. While Courts Encourage Cities to Avoid Duplicative EIRs, They Do Not Encourage Using Earlier EIRs to Avoid Adequately Evaluating Project-Specific Environmental Impacts and Mitigating Them**

The draft EIR for the AMG project relied on tiering, described in Public Resources Code §§ 21903, 21094 and on a statutory partial exemption under PRC § 21083.3. None of these sections allow the city to jump from a very general EIR for a housing element General Plan update to using standard conditions of approval (SCAs) as mitigations for the proposed project. Courts encourage tiering from General Plan EIRs, only to the extent that the project specific EIR does not repeat the same information and analysis contained in the General Plan EIR.

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“CEQA directs agencies to ‘tier’ EIR’s whenever feasible, in part to streamline regulatory procedures and eliminate repetitive discussions of the same issues in successive EIR’s. (PRC § 21093; *Las Virgenes Homeowners Federation, Inc. v. County of Los Angeles* (1986) 177 Cal.App.3d 300, 307.) PRC § 21068.5 defines ‘tiering’ as the ‘coverage of general matters and environmental effects in an [EIR] prepared for a policy, *plan, program* or ordinance followed by narrower or site-specific [EIR’s] which incorporate by reference the discussion in any prior [EIR] and which concentrate on the environmental effects which (a) are capable of being mitigated, or (b) were not analyzed as significant effects on the environment in the prior [EIR].’ (See CEQA Guidelines § 15153, italics added.)

For example, an EIR for a General Plan normally will discuss topics, such as the impact on traffic congestion from increasing construction throughout a city during the next 10 years. The analysis might cover which intersections can be expected to become more congested and provide mitigations designed to address that congestion. If later on a project applicant seeks to construct, say, a hotel that might add to the congestion of nearby intersections, already discussed in the General Plan EIR, the city can rely on, (i.e., “tier” off) that General Plan EIR for mitigations or SCAs to address the increased congestion. The city does not have to require a new EIR that would repeat the same analysis and mitigations for the project impact of adding congestion to a nearby intersection.

If the hotel project, however, potentially created traffic hazards due to the configuration of the exits from the proposed hotel, that impact would be “project-specific” and not covered by the General Plan discussion of general congestion at an intersection near the hotel. In that event, the city should require an EIR to analyze the impacts to traffic caused by the exits and mitigations to prevent traffic hazards. If the hotel project potentially contributed to congestion at nearby intersections *and* potentially created traffic hazards due to the configuration of its exits, the city would do both in a project-specific EIR - tier off the General Plan EIR in addressing the increased congestion and analyze the project-specific impact due to the configuration of the exits. The EIR for the hotel would not have to include a repetition of the analysis, contained in the General Plan EIR, regarding traffic congestion at nearby intersections.

A statutory partial exemption from CEQA review can also avoid repetitive EIRs. However, the proposed project here does not qualify for the partial exemption claimed by the city.

#### **B. The Statutory Partial Exemption Does Not Apply**

Guideline § 15183 applies to “various special circumstances [where] CEQA offers partial or conditional exemptions which operate much like ‘piggy-backing.’ [This] partial exemption applies to a residential development project that is consistent with a general plan for which an EIR has been certified.” (*Gentry v. City of Murrieta* (1995) 38 Cal.App.4th 1359, 1374.)

This Guideline requires the city to limit its environmental examination to impacts that:

- (1) Are peculiar to the project or the parcel on which the project would be located,
- (2) Were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent,
- (3) Are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the general plan, community plan or zoning action, or
- (4) Are previously identified significant effects which, as a result of substantial new information which was not known at the time the [General Pla] EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.

Under all four tests, the statutory exemption does not apply.

**(1) There are Impacts Peculiar to the Proposed Project or the Parcel Upon Which it Would Exist**

The General Plan housing element EIR that was certified by the city in 2010 will not apply to the proposed project if CRADL presents a fair argument that there is a “reasonably foreseeable *project-specific* significant change in the environment that is *peculiar* to the [project] or its site.” (*Wal-Mart Stores, Inc. v. City of Turlock* (2006) 138 Cal.App.4th 273, 288.) “Peculiar” is defined as “a physical change in the environment [that] belongs exclusively or especially” to the project or its site. (*Id.* at pg. 294.) The effects of the environmental change peculiar to the project can occur directly or indirectly, but they must be reasonably foreseeable and not speculative. (*Id.* at p. 288.)

Here, CRADL’s expert environmentalist, Dr. Pless, has opined that there are reasonably foreseeable impacts from the hazardous materials that have not been cleaned from the site. She also opined that the SCAs offered by the city are nothing more than “canned” generalizations, having nothing to do with mitigating those impacts. During the first round of hearings regarding the identical project, CRADL’s other experts also wrote about impacts, specific to the project that were not discussed in the EIR for the housing element update. We have resubmitted those expert reports.

**(2) The Policies Cited by the EIR are Very General and Do Not Address the Specific Project impacts.**

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Staff apparently is relying on Guideline § 15183 (f), which states in part:

An effect of a project on the environment shall not be considered peculiar to the project or the parcel for the purposes of this section if uniformly applied development policies or standards have been previously adopted by the city or county with a finding that the development policies or standards will substantially mitigate that environmental effect when applied to future projects, unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect. The finding shall be based on substantial evidence which need not include an EIR . . .

There are three reasons why this subsection (f) does not apply: First, there is substantial new information from CRADL's expert environmentalist and its other experts that these policies and SCAs do not mitigate the impacts that they found related to the project and its site.

Second, almost all of the policies and SCAs are so general as to be basically irrelevant to the proposed project or its impacts. Third, and very significantly, the city has failed to identify any specific mitigations based on its references and incorporate them into an MMRP. We will discuss *post* this important failing.

**(3) The Impacts Identified by CRADL's Experts Include Potentially Significant Off-site Impacts and On-site Impacts that Were Not Addressed in the 2010 Housing Element Update EIR**

It is not sufficient for the 2010 EIR to just list pending or possible projects and then announce that anything the 2010 EIR concludes can then be applied to the instant project. There are no indications that the expert reports that were extant for the instant project, from either the developer or from the community were even reviewed and discussed in the 2010 housing element update EIR.

**(4) Significant Impacts Identified Here Have a More Severe Adverse Impact than Discussed in the 2010 EIR**

At the time of the 2010 EIR, nobody realized, and the 2010 EIR does not mention, that the property owners and developers were completely non-compliant with the governmental agencies charged with supervising the cleanup of the site. Nor is there any mention in the 2010 EIR as to what, exactly needs to be done to identify the source of the pollution at the project site. The 2010 EIR simply states that the city's policy is to remove leaking gas tanks! That is insufficient to meet CEQA's informational requirements for the public and decision makers.

### **C. The City Overlooked Its Legal Obligation to Provide a MMRP for the Proposed Project**

The city acknowledged in its Initial Study that there were substantial environmental impacts. Instead of identifying specific, feasible mitigations, the city essentially threw into the project EIR a bunch of policies and SCAs. The EIR overlooks the informational function of CEQA, which requires the city to specifically identify the potential mitigations and impose them through a Mitigations Monitoring Reporting Program.

PRC § 21083.3, relied upon by the city to avoid obtaining a complete EIR, specifically states that to rely upon this section, the city must “undertake or require the undertaking of any feasible mitigation measures specified in the prior environmental impact report or, if not, then the provisions of this section have no application to that effect. The lead agency shall make a finding, at a public hearing, as to whether those mitigation measures will be undertaken.” (PRC §§ 21083.3 (c) and 21081.6, subd. (a)(1), and Guideline § 15283 (e) (1 and 2).)

As the planner assigned to the AMG project pointed out, gleefully, “There are no mitigations in this EIR!”

## **II. THE EIR’S USE OF “TIERING” DID NOT RELIEVE THE CITY OF THE REQUIREMENT TO MITIGATE THE SIGNIFICANT IMPACTS OF THE PROJECT.**

### **A. The City Could Not Tier Off the 2010 EIR Without Also Analyzing And Mitigating Project Specific Impacts**

As the California Supreme Court explained:

Tiering is properly used to defer analysis of environmental impacts and mitigation measures to later phases when the impacts or mitigation measures are not determined by the first-tier approval decision but are specific to the later phases. For example, to evaluate or formulate mitigation for “site specific effects such as aesthetics or parking” (*id.*, § 15152) it may be impractical when an entire large project is first approved; under some circumstances analysis of such impacts might be deferred to a later tier EIR.

(*Vineyard Area Citizens for Responsible Growth* (2007) 40 Cal.4th 412, 431.)

The city chose to tier from its EIR prepared for its 2010 Housing Element Update. Admittedly, that EIR did not discuss Hazardous Materials or Aesthetics (including the scenic highway designation) and as to those two issues, the EIR for the AMG project should not tier and

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rely on the 2010 EIR. (See, EIR, p. 60, first paragraph.) There was no opportunity for public comment for the 2010 EIR regarding Hazardous Material or Aesthetics, one of CEQA's requirements. A city cannot legally just produce an EIR for a General Plan, decide not to include two topics based on its initial study, and then later use that EIR as a basis for avoiding analyzing and mitigating impacts as to those two topics.

The city seeks to tier off its 2010 EIR as to air quality and traffic. The EIR misleads the reader, however, by the statement that ". . . the Housing Element EIR provided CEQA clearance for new residential projects that are consistent with the Housing Element and EIR, such as the proposed project." (EIR, p. 60.) The Housing Element EIR did no such thing. It only allowed, at most, the city to limit its EIR analysis to Aesthetics and Hazardous Materials since those impacts were NOT covered in the 2010 EIR. As to these two issues, the city was required to mitigate any significant impacts to the environment. As to Air Quality and Traffic, the city was still required to either incorporate the mitigations from the 2010 EIR or analyze and mitigate the mitigations in the current EIR. PRC §21094 states, in part:

(a) (1) If a prior environmental impact report has been prepared and certified for a . . . [general] plan, the lead agency for a later project that meets the requirements of this section shall examine significant effects of the later project upon the environment by using a tiered environmental impact report, except that the report on the later project is not required to examine those effects that the lead agency determines were either of the following:

(A) Mitigated or avoided pursuant to paragraph (1) of subdivision (a) of Section 21081 as a result of the prior environmental impact report.

(B) Examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site-specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project.

PRC § 21081(a) (1) states:

Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

(a) The public agency makes one or more of the following findings with respect to each significant effect:



- (1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.
- (2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.
- (3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

Instead, the city merely copied boilerplate SCAs from the 2010 EIR for the Housing Element update into the current EIR. To the extent that SCAs are being used as mitigations, they need to be identified and enforced as such.

Furthermore, the city overlooked the significance of the Initial Studies for the 2010 EIR and the current draft EIR. "Section 21094 states the procedure to be followed for tiered EIR's. Subdivision (a) provides in pertinent part: Where a prior [EIR] has been prepared and certified for a program [or] plan, ... the lead agency for a later project that meets the requirements of this section shall examine significant effects of the later project upon the environment by using a tiered [EIR], except that the report on the later project need not examine those effects which the lead agency determines were... examined at a sufficient level of detail in the prior [EIR].... Subdivision (c) provides: 'For purposes of compliance with this section, an initial study shall be prepared to assist the lead agency in making the determinations required by this section. The initial study shall analyze whether the later project *may cause significant effects on the environment* that were not examined in the prior [EIR].'" (*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1318-1319.)

In other words, the city first had to analyze in its Initial Study for the AMG project whether it poses significant impacts on the environment that were not evaluated in the 2010 EIR (i.e, Hazardous Materials and Traffic). Then, it had to apply the mitigations listed in the 2010 EIR to the AMG project through mitigation measures, changes to the project, or conditions of approval as to the topics that allegedly did cover project impacts (i.e., Air Quality and Traffic). As to Aesthetics and Hazardous Materials, which were NOT covered in the 2010 Housing Element EIR, and which the Initial Study for the project listed as potentially significant, the EIR had to analyze those impacts, independent of the 2010 EIR for the Housing Element.

Instead, the AMG EIR mentions a bunch of SCAs for all four topics. These SCAs do nothing to mitigate the substantial impacts described in the AMG project's Initial Study and in many cases, are not even relevant to reducing those impacts.

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## B. Aesthetics

The 2010 EIR did not discuss scenic highways and instead referred the reader to the Initial Study for that EIR, which stated there would need to be an independent CEQA review for each project near the freeway. The Initial Study for the Housing Element Update also referenced the many extant general plan policies designed to preserve the highway 580 scenic corridor. (See, 2010 EIR, pg. 3.1-5, and 2010 Initial Study pp. 26-29.)

The current Initial Study acknowledges that the AMG project will likely have a substantial adverse effect on a scenic vista, substantially damage scenic resources including a state designated scenic highway, and substantially degrade the existing visual character or quality of the site and its surroundings. It concludes that:

The project site is located immediately adjacent to I-580, which is a State designated Scenic Highway from the I-980/CA-24 interchange in Oakland to the Oakland/San Leandro border; it is also designated as a Scenic Highway in the Scenic Highways Element of the General Plan. I-580 has won several awards for landscaping in this section of Oakland and is known for its spectacular views of the San Francisco Bay, San Francisco, and Oakland. The site is visible from I-580, and construction of the proposed five-story structure may impact these publicly-accessible views. The proposed project may result in a potentially significant impact to scenic vistas. This topic will be fully analyzed in the EIR.

Development on the project site would result in changes to the visual character and quality of the site and its surroundings. The proposed building height is taller than most buildings in the area and the community has raised concerns regarding the building height. The proposed project's potential impacts to visual character will be analyzed in the EIR. (Initial Study for AMG Project, pp.11-13.)

The proposed project EIR contains photos showing what the scenic vista looks like now and what it will look like after the project is constructed. Sure enough, the building's height and mass is right in the scenic viewshed from the freeway to the hills. There is no other building even remotely close to the height of this one in that viewshed or anywhere near it. We next expect to read how this EIR plans to mitigate the impact to the scenic highway designation and the vista that it is blocking. Instead, the EIR goes off into a ditch by improperly relying on the 2010 Housing Element EIR and stating:

However, the Housing Element Initial Study determined that compliance with existing General Plan policies, Municipal Code standards, and Standard Conditions of Approval would ensure that potential impacts to aesthetic resources would be less than significant. The Initial Study also concluded that impacts to the

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aesthetic resources would be less than significant because each specific development project would be reviewed individually. No significant aesthetic impacts were identified and no mitigation measures were required.

In fact, the Initial Study explained that development under the Housing Element would not damage the scenic highway designation **IF** the city required "Compliance with the *LUTE* policies, *OSCAR Element* policies, and Scenic Highway Element policies, and Chapter 15.52 of the Municipal Code [which] would reduce scenic view and vista impacts to less than significant." The Initial Study set forth the exact requirements for avoiding damage to the vistas, one of which was to not build in the viewshed to begin with. (The 2010 EIR did not analyze aesthetics, based on the Initial Study findings (2010 EIR, p. S-6).)

The 2010 Initial Study goes on to specifically discuss the scenic highway designation and adds that there needs to be CEQA review of each development. It mentions two specific general plan policies in the general plan that are directed at the 580 freeway. They provide that visual intrusions within the scenic corridor should be removed, converted, buffered, or screened from the motorist's view. Also, "New construction within the scenic corridor should demonstrate architectural merit and a harmonious relationship with the surrounding landscape." (See, 2010 Initial Study, pp. 26-29.)

Instead of informing the decision makers and public about the very important policies that are listed in the Housing Element Initial Study, on pages 86-89, the EIR drowns the reader under a ton of irrelevant policies including items such as reducing the costs of development, the development of parking, street tree selection, design of street signs, and public art requirements. Then, instead of proposing mitigations for a project that is obviously in the viewshed where it does not belong, the EIR recommends standard conditions of approval for landscaping without any requirement that the landscaping even buffer the motorists' view of the building.

There is no discussion in the EIR regarding the project's inconsistency with the controlling policies listed in the Housing Element Initial Study. Instead, the EIR ridiculously concludes that it does not matter whether the project blocks views to the hillsides because people all drive so fast on the freeway, nobody will notice the intrusion into the viewshed anyway. (EIR, p. 96-97.)

Further on page 97, there is a claim by the planner, based on a hearsay discussion with a CalTrans employee, that the freeway would not receive the scenic highway designation today, if the city applied for it. The implication appears to be speculative that the designation has somehow gone away, so why bother following the General Plan policies to preserve it?! This statement in the EIR does not conform with CEQA's requirement for accuracy. "Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial

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evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion support[ed] by facts." (Guidelines, § 15064, subd. (f) (5).)

When the project was considered previously in 2008, the community submitted to the city a great deal of information about the scenic highway designation, including a letter from the CalTrans Scenic Highway Coordinator, Mr. Walker. In 2007, he commented on the status of the Highway 580 scenic designation and warned that while this project, alone, would not cost the city this important designation, it was a nail in the coffin, given its height and mass. He explained that the designation was "fragile" given the circumstances of Oakland's lack of protection for it.

Also submitted were documents demonstrating Oakland's historical commitment to preserving the scenic highway designation and the city's reasons. Today, the reasons for preserving the viewshed and the scenic highway designation include the state prohibitions against heavy trucks on 580, prohibitions against overhead utilities without a CPUC exception, and prohibitions against all outdoor advertising visible from the freeway. There is also a CalTrans website that describes why cities value the designation. The documents included a history of the 580 designation, including how it benefited the city. The designation is still intact today and there is no documentation or reason to believe or even suspect that CalTrans is about to remove it. Nor is there any reason stated in the EIR to think that the city would not tight designating the freeway.

The EIR preparer should have reviewed the prior document submission. (These documents are being re-submitted to the city by the community.) Further, if the planner believed that the designation had been removed or was about to be removed, then the EIR should have discussed the environmental impacts to aesthetics from its removal, including the potential for heavy trucks returning to 580, overhead utilities, and proliferation of billboards.

### **C. Hazardous Materials**

This topic also was not covered in the 2010 EIR because the Initial Study found that the SCAs would reduce the above list of impacts to below a level of significance. (2010 EIR, p. S-6.) On page 113-114 of the Initial Study for the 2010 Housing Element Update, the author said that the presence of a site on the Cortese List does not preclude development, but does require adequate CEQA review to make sure that the hazardous materials do not present a danger to the public. Also, there is a discussion about the importance of obtaining Phase II evaluations when there is evidence after Phase I that hazardous waste may exist at the site.

The Initial Study for the AMG project concluded that the proposed project presented a significant hazard to the public or the environment due to disposal of hazardous materials, emitting hazardous emissions or acutely hazardous materials, and was located on the Cortese List

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of hazardous waste sites. As to the leaking underground gas tanks, the Initial Study concluded: “The project site was previously used by PG&E as a service yard and for an auto repair shop; as a result, it is included on the California Environmental Protection Agency’s list of leaking underground storage tank sites. An analysis of potential hazard and hazardous materials impacts and relevant mitigation measures will be included in the EIR.” (Initial Study for AMG project, pp. 34-36.)

The EIR incorporates SCAs from the 2010 Housing Element Initial Study, but overlooked the Initial Study’s comment about the need for analysis on a “project-by-project basis.” Just listing a bit of history about the site is not sufficient for that analysis. It also overlooked the discussion in the 2010 Initial Study about obtaining Phase II results when analyzing the proper way to remedy the hazardous waste site.

In her letter, Dr. Pless, an environmental expert, emphasized the need for the city to obtain Phase II results and for the EIR to discuss those results. The EIR should also provide a mitigation plan before the final EIR is certified. Instead, the EIR defers the analysis of where the gas is leaking from, what contaminants still remain on the site, and the clean-up mitigations to a future, unknown date.

It is improper for the EIR to defer to another agency or someone in the future to figure out where the leaking tanks are located and what should be done about the hazardous plume that they are creating below the project site. Many of the SCAs are nothing more than promises that a city employee or another agency will look at something before the project is built out. None of these efforts to get around the informational requirements can legally succeed. In *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, the First District Court of Appeal rejected putting off CEQA review to another day:

By deferring environmental assessment to a future date, the conditions run counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process. . . [T]he Supreme Court approved the principle that the environmental impact should be assessed as early as possible in government planning. Environmental problems should be considered at a point in the planning process where genuine flexibility remains. A study conducted after approval of a project will inevitably have a diminished influence on decision making. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA. [Cites.]

(*Id.* at p. 307.)

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Similarly, CEQA does not allow deferral of analysis and mitigation, even when the city is relying on a prior General Plan EIR. “[T]iering is not a device for deferring the identification of significant environmental impacts. . . . While it might be argued that not building a portion of the project is the ultimate mitigation, it must be borne in mind that the EIR must address the project and assumes the project will be built. (*Vineyard* 40 Cal.4th 412, 429.) “Tiering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental impacts of the project and does not justify deferring such analysis to a later tier EIR or negative declaration.” (Cal. Code Regs., tit. 14, § 15152, subd. (b).)

Dr. Pless provided examples of EIRs where cities obtained sufficient information, following Phase II, so that the decision makers could decide whether to grant permits after the EIRs informed them as to the exact nature of the hazardous waste and a plan for remedying it. The EIR for the proposed project does not even indicate whether the site can be adequately cleaned or whether it can be cleaned to residential standards. These are important considerations for the decision makers before they grant permits for the project.

The EIR also does not discuss the feasibility of using conditions of approval for this project given: 1. The developer’s and former owners’ long history of non-compliance with governmental agencies legally charged with testing and cleaning the site of hazardous material; and 2. The problem with the ownership status of the property. The community has previously submitted volumes of records from agencies attempting to get cooperation from the prior owners and their developer without success. They are now resubmitting those documents with a copy of the recent lawsuit in which there is a request of the court to set aside the current deeds, which now have AMG as the owner of the property. If that occurs, there is no reason to believe that the former owners will agree, or follow, any of these proposed SCAs. There is no reason to think AMG will follow them either, given the number of years that there has been no compliance.

#### **D. Air Quality**

The 2010 EIR for the Housing Element did analyze Air Quality and concluded:

While not legally required by CEQA, the DEIR, in each relevant chapter, also addresses significant unavoidable impacts at the project-level; that is, impacts which might result from *specific* housing development projects, such as:

- *Transportation*: identified roadway segments impacts, previously identified impacted intersections, at-grade railroad crossings impacts, and identified State Highway impacts; and
- *Air Quality*: gaseous Toxic Air Contaminants (TACs) and odor impacts.

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Although certain future housing projects would be required to perform additional studies and must follow the feasible recommendations resulting from such studies, no further CEQA review would be required for above identified project-level impacts, as such impacts have already been identified as significant [and] unavoidable.

Despite the finding in the 2010 of significant and unavoidable air quality impacts for housing development between 2007 and 2014, the city chose to obtain a project level EIR analysis of air quality impacts. The construction impacts on air quality fall within CEQA. However, the placement of seniors, who are sensitive receptors, next to the freeway and two major arterials (i.e., next to the air pollution from gasoline emissions) does not legally fall within CEQA, according to current case law. Regardless, the EIR's analysis of air quality is chock full of errors, according to the analysis of its data by Dr. Pless. In her letter, she painstakingly goes through the data and the modeling that was performed, demonstrating those errors.

A major public controversy regarding the proposed project has consistently been the callousness of placing seniors next to three major sources of air pollution from the 580 freeway on one side of the triangular shaped project site, and next to High St. and MacArthur Blvd. on the other two sides. All three of these roadways carry very high levels of traffic. The project proponent has responded with an equally callous suggestion that he will install filtration devices and air conditioning units. Thus, the solution has been to hermetically seal the seniors inside the building, since the minute they open any windows, they will be exposed to admittedly high levels of air pollutants.

Dr. Ankunding, an anesthesiologist, and citizens with experience caring for elderly people wrote comment letters, during the last review of this project, explaining that seniors are much more sensitive and at risk for pneumonia and other ailments if placed in an environment with excessive air pollution. Many citizens excoriated the city for even considering placing seniors within 65 feet of the freeway. The community is again submitting these same documents in response to the project EIR.

The EIR attempted to downplay the significance of the air quality impacts on the senior tenants. The EIR cannot manipulate the data for the purpose of "selling" the decision makers on the project. Having done so, it has put the entire EIR in question as to its validity. Under very similar circumstances, the First District Court of Appeal soundly rejected such tactics in another air quality case:

Much information of vital interest to the decision makers and to the public pertaining to toxic air contamination was simply omitted. In other instances, the information provided was either incomplete or misleading

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... These violations of CEQA constitute an abuse of discretion. The Port must meaningfully attempt to quantify the amount of mobile-source emissions that would be emitted from normal operations conducted as part of the ADP, and whether these emissions will result in any significant health impacts. If so, the EIR must discuss what mitigation measures are necessary to ensure the project's conformance with all applicable laws, ordinances, standards, and regulations related to public health protection.

(*Berkeley KeepJets Over The Bay Comm. v. Board of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1371.)

#### E. Traffic

The 2010 EIR for the Housing Element Update considered traffic impacts from generally increasing housing in Oakland from 2007 to 2014. However, it did not address project-specific traffic impacts. The EIR for the proposed project has failed to discuss the environmental impacts that were raised by Traffic Engineer Brohard and residents during prior consideration of the proposed project in 2008. The community is resubmitting those documents.

For example, the EIR failed to consider the Initial Study item: Will the project substantially increase traffic hazards due to motor vehicles, bicycles, or pedestrians due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)? The LOS of F for the intersection of High and MacArthur is indicative that it carries a great deal of traffic. Traffic Engineer Brohard explained that since the seniors would generally not have cars, they would need to cross this major intersection to access groceries and other necessities. The signal lights needed to be timed to allow seniors with walking assists to get across the very wide crosswalks safely and without causing traffic accidents from changing lights preceding their safely making their way through the crosswalks.

The mitigation proposed by the developer was that there would be a shuttle service, paid for by the developer, to shuttle the seniors safely across the street and to shopping. The issue then became how many times a day the shuttle would run – the community sought four times a day and the planner would only recommend two times per day. In the current EIR, there is no discussion of the shuttle or the safety issue. Instead, it contains Oakland's standard boilerplate provision for a traffic design management plan that considers topics, completely unrelated to seniors such as a bicycle management plan to reduce daily traffic congestion, valet parking services to avoid over-crowding the parking lot, etc.

Another problem discussed in 2008 was that the traffic study contained misinformation regarding the usefulness of a turn-in-one-direction, only sign. These signs had been tried in the Laurel District and failed. Further, there was misinformation in the traffic study, which assumed



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people would turn out of the proposed project and head towards Mills College, when in fact, they head the other direction towards the freeway or the Laurel District. Similarly, there was mistaken information about the route used by drivers to divert around crowded 580 when the traffic backs up.<sup>13</sup> All of these errors were brought to the city's attention in correspondence by the community and the documents will be resubmitted. The EIR failed to address any of these traffic issues.

### **III. THE PROJECT DESCRIPTION IS INADEQUATE AND MISLEADING.**

#### **A. The EIR Project Description Does not Match Either the Original Project Application or the Initial Study**

From the very first page, the EIR contradicts the Initial Study project description with a brand new description. We are told that the project "would include construction of a five-story building containing 115 market-rate and affordable, one-bedroom, senior apartments . . ." Conspicuously absent is any breakdown as to how many of the units will be reserved for affordable housing and how many for market-rate housing. This vague description continues throughout the EIR. For example, on page 7, we are told that the project seeks to provide four "key elements," one of which is providing market-rate and affordable senior housing, again with no breakdown of the number of units. On pages 61-62, and 244, we are again informed that the project objectives include providing market-rate and affordable senior housing.

The original, identical project specifically offered 115 units of affordable senior housing while the current project application specifies that the project is for 110 units of housing with a rental amount in the "range from 525 – 750." (It appears that this is the rental cost rather than the square footage, since page 7 lists the square foot as "approximately 540 square feet. See, page 2 of the document entitled "Request for Environmental Review" attached to the current project application.)

The zoning analysis would be very different for senior market-rate housing than for senior affordable housing. As best explained by Planner Merkamp in 2008, the state requires cities to provide affordable housing and therefore, cities tend to relax the zoning code requirements to accommodate it:

Finally, the project will develop 115 units of affordable senior housing. The State of California has enacted tough measures to essentially force jurisdictions to grant waivers to zoning standards for projects that provide affordable housing. . . The General Plan identifies the provision of such housing as a critical goal to fulfill on

---

<sup>13</sup> The traffic discussion about the traffic congestion on 580 belies the EIR claim that people drive too fast to notice the proposed project, blocking the view to the hills and jeopardizing the scenic highway designation.

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a local and regional basis and staff believes such benefits help justify a relaxation of the above zoning standards. (Staff report, February 20, 2008.)

**B. If the Project is Primarily Market-Rate, the Initial Study Overlooked Conflicts with Zoning**

The Initial Study stated that there was a less than significant impact from conflicts between the proposed project and the zoning or land use policies. (Appendices, pp. 44-47.) One of the bases for that conclusion was that “The Land Use Element encourages the construction of affordable senior housing to meet a critical need in both the City of Oakland and the region for providing affordable residences for senior citizens.” The Initial Study cited to several policies encouraging increased housing development generally. However, there is no discussion in the Initial Study or the EIR of the conflict between the zoning limitations for the project site and the need for variances to get around height and density restrictions. If the project is market-rate, then the variances not only conflict with existing land use policy and zoning, but also present the potential for setting a precedence such that other property developers of market rate housing can also obtain similar variances.

The problem started with an inadequate project description in the EIR, the Initial Study, or both. The project description must be accurate, stable and consistent throughout the EIR process. “An accurate, stable and finite project description is the *sine quo non* of an informative and legally sufficient EIR.” (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193; *Christward Ministry v. County of San Diego* (1993) 13 Cal.App.4th 31, 45; CEQA Guidelines § 15124 (d).)

**IV. THE LEAD AGENCY MUST RECIRCULATE THE DEIR**

Dr. Pless correctly stated in her comment letter that after the errors are corrected and the EIR provides mitigation measures, the lead agency must recirculate and re-notice the DEIR. Public Resources Code §21092.1 provides:

When significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 and consultation has occurred pursuant to Sections 21104 and 21153, but prior to certification, the public agency shall give notice again pursuant to Section 21092, and consult again pursuant to Sections 21104 and 21153 before certifying the environmental impact report.

This code section applies when there is significant new information that is developed during the period of time after the DEIR is released and before certification of a final EIR. (*Laurel Heights Improvement Association of San Francisco v. Regents of the University of*

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*California* (1993) 6 Cal.3d 1112, 1130.) Recirculation is required because the public needs an opportunity to vet the new information and to comment on it. The decision makers need an opportunity to consider those comments.

For example, if the lead agency simply includes in the final EIR the hazardous testing results and corrections for the interpretation errors, discovered by Dr. Pless, there would be no opportunity for the public to vet and comment on the testing results and offered corrections before the planning commission certified the EIR. The public would also be precluded from vetting and commenting on any mitigations resulting from the Phase II testing. That process would violate the very informational purpose of CEQA. (*Ibid.* at p. 1129-1130.)

## V. THE EIR VIOLATES CEQA

The "heart" of CEQA is the provision requiring preparation of an environmental impact report (EIR). (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 84.) The objective of the EIR is to compel government at all levels to make decisions with environmental consequences in mind. (*Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283.) The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." (*County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.) It is an abuse of discretion for a city to grant a permit for a proposed project when the environmental impacts have not been analyzed in an EIR.

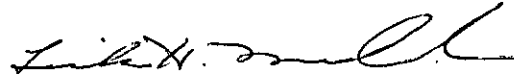
A prejudicial abuse of discretion occurs "if the failure to include relevant information [in the EIR] precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process." (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722.)

The resort to irrelevant and inapplicable SCAs, the misleading analysis of air quality data, the failure to apply the mitigations necessary to protect the scenic highway viewshed, and the erroneous project description individually, and together, preclude informed decisionmaking. The EIR should be redrafted and recirculated with an adequate comment period.

Thank you for considering our comments.

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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

cc: Clients

**EXHIBIT A**



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 4 FAX: (408)748-3309

**FILED**  
 ALAMEDA COUNTY

AUG 21 2012

5 File No. 1101

CLERK OF THE SUPERIOR COURT  
 By R. P. Hughes Deputy

6 Attorney for Young S. Hahn, Edward Kang, Won S. Hahn,  
 James Kang, and Sang Duk Hahn

7  
 8  
 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 10 ALAMEDA COUNTY, UNLIMITED JURISDICTION

11  
 12 YOUNG S. HAHN, EDWARD KANG, WON )  
 13 S. HAHN, JAMES KANG, and SANG DUK )  
 HAHN, )

14 Plaintiffs )

15 vs. )

16 ALEX K. HAHN, an individual; CHARLES )  
 17 HAHN, an individual; JUNG HYUN CHO, an )  
 individual; HAHN DEVELOPMENT LLC, a )  
 18 California limited liability company; AMG & )  
 ASSOCIATES LLC, a California limited )  
 liability company, and DOES 1- 20 and all )  
 19 persons unknown claiming any interest in the )  
 property, inclusive, )

20 Defendants )

CASE No.: RG12644534

COMPLAINT FOR DAMAGES FOR  
 BREACH OF FIDUCIARY DUTY;  
 EMBEZZLEMENT; BREACH OF WRITTEN  
 CONTRACT; CANCELLATION OF  
 INSTRUMENT; DISSOLUTION OF  
 PARTNERSHIP; ACCOUNTING;  
 PARTITION OF REAL PROPERTY (CCP  
 §§872.210, 872.230); AND COMMON  
 COUNT

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1 Plaintiffs allege:

2 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

3 1. The real properties that are the subject of this action and on which partition is  
4 sought (hereinafter collectively, the "Real Property") are located at 4311 -4317 MacArthur Blvd.,  
5 and High Street, Oakland CA 94619 and more particularly described in Exhibit 1 to this  
6 Complaint. Assignment of this action to unlimited jurisdiction is proper because Plaintiffs seek  
7 reliefs including damages in excess of \$25,000 on its claims. The subject Real Property is  
8 located in Alameda County, with the APNs of 030-1982-121 ("Plot 121"), 030-1982-122 ("Plot  
9 122"), and 030-1982-123 ("Plot 123"), and majority of all parties reside in Alameda County.  
10 Therefore, venue in Alameda County, California is proper.

11 2. Plaintiffs Young S. Hahn ("YS Hahn"), Won S. Hahn ("WS Hahn"), Sang Duk  
12 Hahn ("SD Hahn"), James Kang ("JA Kang") and Edward Kang ("ED Kang") are, and at all  
13 time herein mentioned were, competent adults residing either in Alameda or Santa Clara County.

14 3. Defendant Hahn Development LLC ("HDL") is, and at all times mentioned herein  
15 was, a California limited liability company, whose registered address is 80 Grand Avenue, Suite  
16 M, Oakland, CA 94612.

17 4. Defendants Alex K Hahn ("AK Hahn"), Jung Hyun Cho ("JH Cho"), and Charles  
18 Hahn ("CH Hahn") are, and at all time herein mentioned were, competent adults residing in  
19 Alameda County.

20 5. On February 27, 2004, HDL, AK Hahn, YS Hahn, WS Hahn, ED Kang, and CH  
21 Hahn formed Hahn & Kang Equity I, L.P. ("HKLP") by filing the Certificate of Limited  
22 Partnership, LP-1, with the Secretary of State and by entering into the Hahn & Kang Equity I,  
23 L.P. Limited Partnership Agreement. Shortly thereafter, in June, 2004, the Limited Partnership  
24 Agreement was amended to add SD Hahn, JA Kang, and JH Cho as additional limited partners.  
25 The true and correct copy of the amended partnership agreement (the "Partnership Agreement")  
26 is attached hereto as Exhibit 1 and made part of and incorporated by reference as if set forth fully  
27 herein.

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1 6. Pursuant to the Partnership Agreement, HDL was named as the general partner of  
2 HKLP, having the management power of the affairs of HKLP subject to certain conditions and  
3 exceptions. In fact, HDL served as the general partner of HKLP from the time of the initial  
4 formation and at all times herein mentioned, unless otherwise explicitly stated.

5 7. All the other parties, both Plaintiffs and Defendants, were limited partners of  
6 HKLP. They contributed their holdings in the subject Real Property and cash, even after the  
7 formation was completed. Thus, as of September 1 2007, the limited partners held proportional  
8 partnership interests in HKLP as follows: Defendant AK Hahn, 9.62%; Plaintiff YS Hahn,  
9 8.91%; Plaintiff WS Hahn, 9.23%; Plaintiff SD Hahn, 11.86%; Plaintiff JA Kang, 9.04%;  
10 Defendant JH Cho, 8.70%; Plaintiff ED Kang, 24.84%; and Defendant CH Hahn, 2.81%.  
11 General partner, HDL held 15%.

12 8. HKLP was formed to develop the subject Real Property. The principal place of  
13 business of HKLP was Oakland, Alameda County. HKLP formulated a number of plans to  
14 develop the vacant lot, that is, the subject Real Property actively through 2007; however,  
15 following the passing of Mr. Allan Hahn, the late son of AK Hahn, HKLP has been inactive,  
16 saddled with failed development plans and missed opportunities, mismanagement, hazardous  
17 substances on and under the subject Real Property.

18 9. HDL truthfully disclosed and updated the financial affairs of HKLP. Since early  
19 2007, HDL stopped altogether to update and report to Plaintiffs in regard to the changes in any  
20 proportional ownership, despite the fact that Plaintiffs contributed additional funds. Furthermore,  
21 Plaintiffs are informed and believe and thereon allege that even before it stopped any reports,  
22 Defendants had been embezzling funds belonging to HKLP in at least two ways, causing HKLP  
23 to fail to properly adjust the capital accounts of each limited partner. As such, Plaintiffs are  
24 ignorant of the true partnership interests that each own as of the time of this complaint and  
25 Plaintiffs will amend the actual pro rata ownership percentage following a full accounting of the  
26 funds of HKLP that Defendant HDL and AK Hahn misused.

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1           10. Plaintiffs are informed and believe and thereon allege that Defendants HDL and  
2 AK Hahn had embezzled HKLP's income for personal use. Plaintiffs base this allegation on the  
3 following fact: HKLP rented a small portion of the subject Real Property to a third party, who  
4 used the plot to erect a roadside sign at all times since the formation of HKLP. When Plaintiffs  
5 did not receive any financial statements and information from Defendants HDL and AK Hahn  
6 since 2007, Plaintiffs repeatedly requested bank account statements and financial data and finally  
7 received a limited amount of bank statements and other financial data only in August, 2009.

8           11. Plaintiff ED Kang then reviewed the data and found that HKLP did not even have  
9 a separate bank account since 2007 and the accounting of HDL's income showed several items  
10 of substantial amounts of funds were missing. Plaintiff ED Kang made this discovery in or about  
11 August, 2009.

12           12. Shortly thereafter, Defendant CH Hahn also admitted that Defendant AK Hahn  
13 "owes" monies to HKLP, though CH Hahn disputed that the amount was more than \$50,000.  
14 Plaintiff is informed and believes and thereon alleges that the actual amount that Defendant AK  
15 Hahn owes to HKLP is in excess of \$188,300. Plaintiffs base this allegation on the following  
16 discovery after having reviewed the copies of bank statements and some financial information  
17 given from HDL: funds of \$61,600 transferred to AK Hahn as "loans"; missing rental receipts  
18 from the third party advertiser in the amount of \$31,200 (\$650 per month for 48 months);  
19 missing funds of \$60,500 borrowed from a third party without any records of expenditures; and a  
20 check cashed in the amount of \$35,000 from HKLP's bank account to AK Hahn. The foregoing  
21 discoveries were made in or about September, 2009.

22           13. HDL failed to cause HKLP to pay the property tax time and again, thus  
23 repeatedly, costing late penalties for unpaid taxes and risking tax sales. Plaintiffs are informed  
24 and believes and thereon allege that the property tax bills for the Plot 121 were either paid late or  
25 unpaid for 2005, 2006, 2007, 2008, 2009, and 2010, that the property tax bills for the Plot 122  
26 were either paid late or unpaid for 2005, 2006, 2007, 2008, 2009, 2010, and 2011, and that the  
27 property tax bills for the Plot 123 were either paid late or unpaid for 2006, 2007, 2008, 2009,  
28

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1 2010, and 2011. The late payments and non payment resulted in recording of tax lien,  
2 culminating to the State of California's filing of Notice of State Tax Lien, in the amount of  
3 \$2,058.22 recorded on November 5, 2008 (instrument number 2008323663) and the State's  
4 filings of two Notices of Power to Sell Tax-Defaulted Property both filed on August 21, 2009 in  
5 the amounts of \$33,838.82 and \$56,233.70.

6 14. Furthennore, HDL knowingly repeatedly failed to address the issue of the  
7 presence of toxic and harardous substances found on the subject Real Property, failing to cause  
8 HKLP to develop and execute a plan to abate the problem or at least work with the government  
9 agencies to address the problem, even when HDL repeatedly received notices from government  
10 agencies. Thus, the City of Oakland repatedly filed abatement actions against HDL and/or  
11 HKLP, resulting in multiple recordings of priority liens and special assessments against and on  
12 the subject Real Property.

13 15. As a result, on December 21, 2005, a Priority Lien and Special Assessment in the  
14 amount of \$6,005 plus interest was recorded (the instrument number of 2005542294); on July 9,  
15 2007, a another special lien and special assessment in the amount of \$30,458.40 plus interest  
16 (instrument number of 2007252003); on July 12, 2007, in the amount of \$19,755.20 plus interest  
17 (2007257595); on September 2, 2008, in the amount of \$2,902 plus interest (2008266376); and  
18 on January 20, 2009, in the amount of \$2,597.00 plus interest (2009019377).

19 16. Furthermore, Plaintiffs are informed and believe and thereon allege that HDL  
20 caused HKLP to execute two trust deeds apparently securing two loans from AMG & Associates  
21 LLC, a third party, in the amounts of \$65,000 and \$200,000 on or about June 2, 2006 and on or  
22 about March 1, 2010, respectively (the "AMG Trust Deeds"). Plaintiffs base the foregoing  
23 allegation on the recorded instruments of 2006247707 and 2010107461, respectively.

24 17. However, Plaintiffs have been unable to determine where HKLP used and spent  
25 the loans from AMG, reviewing the financial documents and bank statements that Plaintiffs  
26 obtained in 2009. Defendants AK Hahn and HDL have not yet come forth with any explanations  
27 as to where the funds were used for.  
28

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1 18. Fed up with years' mismanagement, no explanations as to the suspicious  
2 transactions and disappeared monies, and also facing multitude of problems coupled with no  
3 apparent action plans by HDL and AK Hahn, on March 23, 2012, Plaintiff consented to remove  
4 HDL and AK Hahn from the office of general partner of HKLP satisfying the required votes  
5 among the limited partners. On March 28, 2012, Plaintiff further consented to appoint TriBay  
6 Mortgage Group, a California corporation to the then-vacated office of general partner of HKLP.

7 19. Plaintiffs then promptly notified HDL and HKLP of the said removal and  
8 appointment, and further requested HDL and HKLP to execute and deliver the necessary  
9 instruments (California Secretary of State Forms LP-2 and LP-101) so that Plaintiffs would  
10 respond to the multitude of problems on behalf of HKLP.

11 20. However, HDL and HKLP refused to acknowledge the removal and insisted on  
12 staying in the office of general partner, refusing to execute and deliver LP-2 and LP-101. Faced  
13 with the stiff refusal and the practical difficulties, Plaintiffs then retracted the resolution to  
14 appoint Tri-Bay Mortgage Group to the office of general partner; instead, Plaintiffs resolved to  
15 treat the consent to remove HDL and HKLP from the office of general partner as one to dissolve  
16 HKLP.

17 **FIRST CAUSE OF ACTION**

18 **Breach of Fiduciary Duty**

19 **(Against HDL and AK Hahn)**

20 21. Plaintiffs re-allege and re-incorporate the allegations in Paragraph 1 through 20  
21 by reference as if set forth herein below.

22 22. HDL is, and was at all times herein mentioned, the general partner of HKLP. AK  
23 Hahn is the sole managing member of HDL, which was an alter ego of AK Hahn, erasing any  
24 distinction between HDL and AK Hahn by his own conducts. Thus, HDL and AK Hahn jointly  
25 and severally owed the fiduciary duties to Plaintiffs and HKLP.

26 23. Plaintiffs are, and were at all times herein mentioned, limited partners of HKLP.  
27  
28

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1 24. HDL owed fiduciary duty to Plaintiffs and HKLP to manage the affairs of HKLP  
2 and its properties, including the subject Real Property in the best interests of Plaintiffs and HKLP.

3 25. HDL breached the fiduciary duty by the reason of the aforementioned wrongful  
4 conducts.

5 26. As a proximate result of HDL's breach, Plaintiffs suffered general damages not  
6 less than \$1,000,000 to be proven at trial

7 **SECOND CAUSE OF ACTION**

8 **Embezzlement**

9 (Against HDL and AK Hahn)

10 27. Plaintiffs re-allege and re-incorporate the allegations in Paragraph 1 through 20  
11 by reference as if set forth herein below.

12 28. HDL and AK Hahn misappropriated and embezzled funds belonging to HKLP in  
13 the amount not less than \$188,640 to be proven at trial.

14 **THIRD CAUSE OF ACTION**

15 **Breach of Written Contract**

16 (Against HDL and AK Hahn)

17 29. Plaintiffs re-allege and re-incorporate the allegations in Paragraph 1 through 20  
18 by reference as if set forth herein below.

19 30. Plaintiffs performed all of their duties and obligations provided in the Partnership  
20 Agreement except those that are excused or prevented from performance by Defendants.

21 31. As a proximate result of Defendants breaches, Plaintiffs suffered damages not less  
22 than \$1,000,000, an amount to be proven at trial.

23 **FOURTH CAUSE OF ACTION**

24 **Cancellation of Instrument**

25 (Against AMG & Associates, LLC and HDL)

26 32. Plaintiffs re-allege and re-incorporate the allegations in Paragraph 1 though 19 by  
27 reference as if set forth herein below.

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1 33. The Partnership Agreement prohibited HDL and AK Hahn from hypothecating  
2 the assets of HKLP to secure loans, unless first approved by the limited partners holding the  
3 majority interests among the limited partners. Plaintiffs holding more than sixty percent of the  
4 interests of the limited partners never received any request from either HDL or AK Hahn for the  
5 execution and issuance of As such, HDL and AK Hahn did not have the authorities to execute  
6 and deliver the AMG Trust Deeds.

7 34. Under the terms of the AMG Trust Deeds, AMG may force foreclosure of the  
8 subject Real Property upon the occurrence of certain events beyond the control of Plaintiffs; thus,  
9 if left standing, the AMG Trust Deeds will cause serious injury to Plaintiffs.

10 35. The AMG Trust Deeds are valid on its face.

11 36. The AMG Trust Deeds are void as they were executed and delivered by one who  
12 had no such authorities. Furthermore, Plaintiffs are informed and believe and thereon allege that  
13 AMG has not actually loaned the monies to HKLP. Plaintiffs base the foregoing beliefs on the  
14 fact that Plaintiffs have not seen any traces or evidences of the loan deposited into HKLP's bank  
15 accounts or reflected onto the financial statements of HKLP.

16 37. By this Complaint, Plaintiffs notify AMG of Plaintiffs intent to cancel the AMG  
17 Trust Deeds and offer to restore everything of value Plaintiff received, if anything.

18 **FIFTH CAUSE OF ACTION**

19 **Dissolution of Partnership**

20 **(Against HDL and AK Hahn)**

21 38. Plaintiffs re-allege and re-incorporate the allegations in Paragraph 1 through 20  
22 by reference as if set forth herein below.

23 39. Plaintiffs have performed all conditions, covenants, and promises required to be  
24 performed by them in accordance with the terms and conditions of the Amended Partnership  
25 Agreement, except to the extent that the performance was excused.

26 40. Because of Defendants HDL's and AK Hahn's wrongful conduct, as alleged  
27 above, Plaintiffs seek the immediate and total dissolution of HKLP between Plaintiffs and  
28

1 Defendants effective as of March 23, 2012. Furthermore, Plaintiffs are entitled to dissolution of  
2 HKLP by court decree pursuant to Subdivisions (A) and (C) of Corporation Code Section  
3 16801(5).

4 41. Plaintiffs are also entitled to dissolution of HKLP pursuant to the provisions of  
5 the Amended Partnership Agreement, i.e., Plaintiffs' written consent to remove HDL from the  
6 office of general partner, because it effectively dissolved HKLP when HDL refused to consent  
7 and when Partnership rescinded the appointment of Tri-Bay Mortgage to the office of general  
8 partner.

9 **SIXTH CAUSE OF ACTION**

10 **Accounting**

11 (Against HDL and AK Hahn)

12 42. Plaintiffs re-allege and re-incorporate the allegations in Paragraph 1 through 20  
13 and 39 through 41

14 43. Defendants HDL and AK Hahn are in possession of the partnership books, assets,  
15 and accounts. The amount of partnership assets and liabilities is unknown to Plaintiffs and  
16 cannot be ascertained without an accounting of profits and losses that occurred during the  
17 operation of the partnership business.

18 44. Plaintiff has demanded an accounting, but HDL and AK Hahn have failed and  
19 refused, and continue to refuse to settle accounts and divide partnership assets Plaintiffs.

20 **SEVENTH CAUSE OF ACTION**

21 **Partition**

22 (Against HDL, AK Hahn, CH Hahn, and JH Cho)

23 45. Plaintiffs re-allege and re-incorporate the allegations in Paragraph 1 though 44 by  
24 reference as if set forth herein below.

25 46. Following Plaintiffs' vote on the March 23, 2012, HKLP was effectively  
26 dissolved and Plaintiffs and Defendants are co-owners of the subject Real Property. As such,  
27  
28

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1 Plaintiffs and Defendants HDL, AK Hahn, CH Hahn, and JH Cho own an undivided 63.88 and  
2 36.12 percent interest, respectively, as joint tenants in the fee title to the subject Real Property.

3 47. Plaintiff does not know the true names of persons who have or claim interests in  
4 the subject Real Property on which partition is sought, and whose interests are described as  
5 follows. Such persons are named in following paragraph as defendants "all persons unknown  
6 claiming any interest in the property," or on discovery will be named in this complaint by  
7 amending and served under previous paragraph as a fictitious "Doe" defendant.

8 48. Plaintiffs are informed and believe and thereon allege that there are persons  
9 unknown who have or claim interests in the Property on which partition is sought. Plaintiffs join  
10 such persons as defendants "all persons unknown claiming any interest in the property," who  
11 shall be served by publication. Such defendants include persons who have or claim an interest in  
12 the property by reason of transfer of a particular interest or contingency or otherwise in a manner  
13 that makes ownership of such interest uncertain, as alleged in this complaint:

14 49. Plaintiffs are informed and believes and thereon allege that the interests of record  
15 or actually known to Plaintiffs that other persons have, or claim, in the subject Real Property that  
16 Plaintiff reasonably believe will be materially affected by this partition action are the interests of  
17 Defendants HDL, AK Hahn, CH Hahn, and JH Cho.

18 50. The estate on which partition is sought is the estate constituting the fee title to the  
19 subject Real Property described in Paragraph 1.

20 **EIGHTH CAUSE OF ACTION**

21 **Common Count**

22 **(Against HDL and AK Hahn)**

23 51. Plaintiffs re-allege and re-incorporate the allegations in Paragraph 1 though 50 by  
24 reference as if set forth herein below.

25 52. By means of the various wrongful transactions herein above referred to,  
26 Defendants became indebted to Plaintiffs in an amount ascertainable from the books and  
27 accounts of HKLP, which sums remain unpaid in an amount according to proof, but at least the  
28

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1 sum of \$188,640, with interest, for money and other consideration had and received by  
2 Defendants, but that was intended for the use and benefit of Plaintiffs.

3 53. The sums alleged herein above remain due and owing to Plaintiffs, although  
4 demand for payment of the sums has been made, and there remains now due and owing and  
5 unpaid from Defendants, a substantial amount, which exceeds the sum of \$188,640, the total  
6 amount to be proved at trial.

7 WHEREFORE, Plaintiffs pray for the following reliefs:

8 **PRAYER FOR RELIEF**

9 1. A judgment partitioning by division the fee in the subject Real Property described  
10 in Paragraphs 1, Exhibit 1;

11 2. A judgment against Defendants and their respective successors in interest for their  
12 respective shares of sums reasonably spent by Plaintiffs in maintaining and preserving the  
13 subject Real Property in an amount according to proof, with interest at the legal rate from the  
14 date of each expenditure which judgment shall be secured by an equitable lien on the respective  
15 interests of Defendants HDL, AK Hahn, CH Hahn and JH Cho and their respective successors in  
16 interest in the subject Real Property or sale proceeds;

17 3. An award of attorney fees spent for the common benefit of all owners;

18 4. A judgment against Defendants and their respective successors in interest for their  
19 respective shares of the expense of the title report in an amount according to proof, with interest  
20 at the legal rate from the date of each expenditure which judgment shall be secured by an  
21 equitable lien on the respective interests of Defendants HDL, AK Hahn, CH Hahn and JH Cho  
22 and their respective successors in interest in the subject Real Property or sale proceeds;

23 5. A judgment declaring that both AMG Trust Deeds be void;

24 6. A judgment and decree ordering Defendants to re-convey the interest in the  
25 subject Real Property described in both AMG Trust Deeds to Plaintiffs to the extent of the said  
26 instruments affecting the rights and interests of Plaintiffs in the subject Real Property;

LAW OFFICE OF BRIAN H. SONO  
2700 AUGUSTINE DRIVE, SUITE 198  
SANTA CLARA, CA 95054  
TEL: (408)748-3308 FAX: (408)748-3309



1 7. A judgment and decree ordering Defendants to cancel the AMG Trust Deeds and  
2 deliver them to Plaintiffs or deliver the instruments to the clerk of this court for cancellation;

3 8. A judgment that if Defendants fail to obey the orders of the court under Prayers 6  
4 and 7, above, that the court award Plaintiffs damages in the sum of \$1,000 per day, plus interest  
5 at the legal rate from the date judgment is entered;

6 9. A judgment granting an exemplary damage;

7 10. A general damage in the amount of \$188,640 or more according to proof;

8 11. Prejudgment interest;

9 12. For cost of suit; and

10 13. For such other and further relief as the court deems proper.

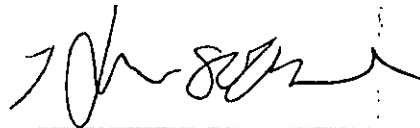
11 //

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13 //

14 //

15 Dated: August 11, 2012



17 Brian H. Song, Esq. (SBN 188662)  
18 Attorney for Edward Kang, Young S. Hahn, James  
19 Kang, Won S. Hahn, and Sang Duk Hahn

LAW OFFICE OF BRIAN H. SONG  
2700 AUGUSTINE DRIVE, SUITE 198  
SANTA CLARA, CA 95054  
TEL: (408)748-3308, FAX: (408)748-3309

# Exhibit A

## PARCEL 1:

LOT 5 AND A PORTION OF LOTS 6, 7, 8, 9 AND 10, BLOCK "B", MAP OF MELROSE ACRES, FILED NOVEMBER 4, 1920, IN MAP BOOK 6, PAGE 46, ALAMEDA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHWESTERN LINE OF MAC ARTHUR BOULEVARD, FORMERLY HOPKINS STREET, WITH THE SOUTHEASTERN LINE OF HIGH STREET, AS SAID STREETS ARE SHOWN ON SAID MAP; RUNNING THENCE ALONG SAID LINE OF HIGH STREET, SOUTH  $58^{\circ} 04' 37''$  WEST, 55.63 FEET TO THE SOUTHWESTERN LINE OF SAID LOT 5; THENCE ALONG THE LAST NAMED LINE, SOUTH  $36^{\circ} 13' 53''$  EAST, 199.95 FEET TO THE SOUTHEASTERN LINE OF LOT 4; THENCE ALONG THE SOUTHEASTERN LINE OF LOT 4, SOUTH  $58^{\circ} 04' 37''$  WEST, 23.76 FEET TO A POINT ON THE EXTERIOR BOUNDARY LINE OF PARCEL 1 AS DESCRIBED IN DEED TO THE STATE OF CALIFORNIA, DATED JULY 15, 1961 AND RECORDED SEPTEMBER 19, 1961, ON REEL 411 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, IMAGE 925 (SERIES AS/115253); THENCE ALONG THE EXTERIOR BOUNDARY OF SAID STATE OF CALIFORNIA PARCEL OF LAND (AS/115253), THE FOUR FOLLOWING COURSES AND DISTANCES: SOUTH  $58^{\circ} 29' 50''$  EAST, 204.81 FEET; NORTH  $25^{\circ} 13' 00''$  WEST, 175.21 FEET, ON THE ARC OF A TANGENT CURVE TO THE LEFT WITH A RADIUS OF 364.00 FEET, A DISTANCE OF 80.00 FEET; AND NORTH  $49^{\circ} 14' 07''$  EAST, 2.70 FEET TO SAID LINE OF MAC ARTHUR BOULEVARD; THENCE ALONG THE LAST MENTIONED LINE, NORTH  $40^{\circ} 45' 53''$  WEST,

129.84 FEET TO THE POINT OF BEGINNING.

APN: 030-1982-121 and 030-1962-122

## PARCEL 2:

A PORTION OF LOTS 3 AND 4 IN BLOCK B, AS SHOWN ON THAT MAP ENTITLED, "MELROSE ACRES OAKLAND, ALAMEDA COUNTY, CALIFORNIA", FILED NOVEMBER 4, 1920, IN LIBER 6 OF MAPS, PAGE 46, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

COMMENCING AT A POINT ON THE SOUTHEASTERLY LINE OF SAID LOT 4, DISTANT THEREON NORTH  $57^{\circ} 02' 22''$  EAST (SAID BEARING BEING NORTH  $58^{\circ} 04' 37''$  EAST ACCORDING TO THE CALIFORNIA COORDINATE SYSTEM, ZONE III), 16.88 FEET FROM THE MOST SOUTHERLY CORNER OF SAID LOT 4; THENCE NORTH  $55^{\circ} 32' 05''$  WEST (SAID BEARING BEING NORTH  $58^{\circ} 29' 50''$  WEST ACCORDING TO THE CALIFORNIA COORDINATE SYSTEM, ZONE III), 100.72 FEET; THENCE NORTH  $51^{\circ} 27' 39''$  WEST (SAID BEARING BEING NORTH  $50^{\circ} 25' 24''$  WEST ACCORDING TO THE CALIFORNIA COORDINATE SYSTEM, ZONE IU), 104.13 FEET TO THE SOUTHWESTERLY LINE OF SAID LOT 3; THENCE ALONG LAST SAID LINE, NORTH  $37^{\circ} 16' 08''$  WEST (SAID BEARING BEING NORTH  $36^{\circ} 13' 53''$  WEST ACCORDING TO THE CALIFORNIA COORDINATE SYSTEM, ZONE UI), 10.59 FEET TO THE SOUTHEASTERLY LINE OF HIGH STREET (90.00 FEET WIDE); THENCE ALONG LAST SAID LINE, NORTH  $57^{\circ} 02' 22''$  EAST (SAID BEARING BEING NORTH  $58^{\circ} 04' 37''$  EAST ACCORDING TO THE CALIFORNIA COORDINATE SYSTEM, ZONE III), 67.63 FEET TO THE NORTHEASTERLY LINE OF SAID LOT 4; THENCE ALONG LAST SAID LINE, SOUTH  $37^{\circ} 16' 05''$  EAST (SAID BEARING BEING SOUTH  $36^{\circ} 13' 53''$  EAST ACCORDING TO THE CALIFORNIA COORDINATE SYSTEM, ZONE III), 199.95 FEET TO THE MOST EASTERLY CORNER OF SAID LOT 4; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID LOT 4, SOUTH  $57^{\circ} 02' 22''$  WEST (SAID BEARING BEING SOUTH  $58^{\circ} 04' 37''$  WEST ACCORDING TO CALIFORNIA COORDINATE SYSTEM, ZONE III), 23.78 FEET TO THE POINT OF COMMENCEMENT.

APN: 030-1982-123





\*11360926\*

1 Michael J. McLaughlin, Esq., (SBN 277814)  
Clinton O. Killian, Esq., (SBN 116501)  
2 Fried & Williams LLP  
480 9th Street  
3 Oakland, CA 94607  
4 (510) 625-0100

**FILED**  
ALAMEDA COUNTY

JUN 25 2013

CLERK OF THE SUPERIOR COURT

By *[Signature]*  
Deputy

5 Attorneys for Defendants Alex Hahn, ~~Charles Hahn~~  
Hahn Development LLC and Cross-Complainants

7  
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF ALAMEDA  
10 UNLIMITED CIVIL JURISDICTION

11 Young S. Hahn, Edward Kang, Won S. Hahn, ) CASE NO: RG12644534  
12 James Kang, and Sang Duk Hahn, )  
13 Plaintiffs, ) CROSS COMPLAINT FOR BREACH OF  
14 v. ) FIDUCIARY DUTY AND BREACH OF  
15 ) CONTRACT

16 ALEX K. HAHN, an individual; )  
17 CHARLES HAHN, an individual; )  
18 HAHN DEVELOPMENT LLC, a California )  
19 limited liability company; )  
20 AMG & ASSOCIATES LLC, a California )  
21 limited liability company; and )  
22 DOES 1-20 and all persons unknown claiming )  
23 any interest in the property, inclusive, )

24 Defendants. )

25 Alex K. Hahn; )  
26 Hahn & Kang Equity I Limited Partnership )

27 Cross-Plaintiffs )

28 v. )

Young S. Hahn, Won S. Hahn, Edward Kang, )  
Sang Duk Hahn, and AMG & Associates LLC )

Cross-Defendants )

1 For their complaint against Cross-Defendants Young S. Hahn, Won S. Hahn, Edward  
2 Kang, Sang Duk Hahn, and AMG & Associates LLC, Cross-Plaintiffs Alex K. Hahn and Hahn  
3 & Kang Equity I Limited Partnership allege as follows:  
4

5  
6 PARTIES

7 1. Cross-Plaintiff Alex K. Hahn ("Alex Hahn") is, and at all relevant times has been, a  
8 competent adult residing in Alameda County, California.

9  
10 2. Cross-Plaintiff Hahn & Kang Equity I Limited Partnership is a California Limited  
11 Partnership doing business in Alameda County. Alex Hahn is the managing partner of Hahn &  
12 Kang Equity I and represents their interest in this action.

13 3. Cross-Defendant Young S. Hahn (a/k/a and hereinafter, "Phillip Hahn") is, and at all  
14 relevant times has been, a competent adult residing in Alameda County, California.

15  
16 4. Cross-Defendant Won S. Hahn (a/k/a and hereinafter, "Jeff Hahn") is, and at all relevant  
17 times has been, a competent adult residing in Alameda County, California.

18 5. Cross-Defendant Edward Kang is, and at all relevant times has been, a competent adult  
19 residing in Santa Clara County, California.

20  
21 6. Upon information and belief, Cross-Defendant James Kang is, and at all relevant times has  
22 been, a competent adult residing in Alameda County, California.

23 7. Cross-Defendant Sang Duk Hahn is, and at all times has been, a competent adult residing in  
24 Contra Costa County, California.

25  
26 8. Cross-Defendant AMG & Associates LLC ("AMG Associates") is, and at all relevant times  
27 has been, a California limited liability company whose registered address is 16633 Ventura  
28 Boulevard, Suite 1014, Encino, California 91436.

1 9. On information and belief, DOES 1-20, inclusive, and each of them, are in some manner  
2 liable to Cross-Plaintiff Alex Hahn. Alex Hahn is unaware of the true names, capacities, or  
3 bases for liability of DOES 1-20, inclusive, and therefore sues said parties by their fictitious  
4 names. Cross-Plaintiff Alex Hahn will amend this Cross Complaint to allege said parties' true  
5 names, capacities, and bases for liability when the same has been ascertained. During all  
6 relevant times set forth herein, Cross Plaintiff Alex Hahn is informed and believes, and based  
7 upon such information and belief alleges, that Phillip Hahn, Jeff Hahn, Edward Kang, Sang Duk  
8 Hahn were and are agents, servants, employees, partners, and/or joint venturers of one another,  
9 and in doing the things alleged herein, were and are acting within the course and scope of such  
10 agencies and with the permission and consent of each other.

#### 13 JURISDICTION & VENUE

14 10. Venue is proper in Alameda County pursuant to Code of Civil Procedure § 395, as the  
15 obligations giving rise to Cross-Plaintiff Alex Hahn's causes of action against Cross-Defendants  
16 were entered into, and were to be performed, in Alameda County.

#### 18 ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

19 11. Cross-Plaintiff Alex Hahn and Cross-Defendants Phillip Hahn, Jeff Hahn, and Edward  
20 Kang are partners in the Hahn & Kang Limited Partnership, a California limited partnership.

21 12. Pursuant to the terms of the Hahn & Kang Limited Partnership Agreement, Hahn  
22 Development LLC, a California limited liability company, was designated as the general partner  
23 of the Hahn & Kang Limited Partnership. Also pursuant to the terms of the Hahn & Kang  
24 Limited Partnership Agreement the business purpose of the Hahn & Kang Limited Partnership  
25 was "concerned primarily, if not exclusively, with the acquisition, ownership, development,  
26  
27  
28

1 operation and disposition of a vacant lot located at 4311-4333 MacArthur Blvd., Oakland,  
2 Alameda County" (the "Property").

3 13. On or about August 15, 2005, AMG & Associates entered into a Purchase Agreement by  
4 which it agreed to purchase the Property from Hahn & Kang Limited Partnership for \$3.5 million  
5 dollars. Attached hereto as Exhibit A is a true and correct copy of the Purchase Agreement.  
6

7 14. Between August 15, 2005, and October 11, 2009, the parties to the Purchase Agreement  
8 agreed to several addendums. Attached hereto as Exhibit B are true and correct copies of  
9 Addendum Nos. 1-4 to the Purchase Agreement. The terms of the purchase and sale of the  
10 Property were modified by the various Addendum, including the purchase price, which was  
11 changed to approximately \$2.5 million.  
12

13 15. In addition, the County of Alameda liened the property for unpaid property taxes. Alex  
14 Hahn sent requests on behalf of the Hahn & Kang Limited Partnership to Cross-Defendants  
15 Young S. Hahn, Won S. Hahn, Edward Kang, Sang Duk Hahn for contributions from the  
16 partners to pay the property taxes.  
17

18 16. The Cross-Defendants, and each of them, ignored Alex Hahn's requests for contributions to  
19 pay the property taxes.  
20

21 17. In connection with the sale of the Property, Hahn & Kang Limited Partnership borrowed in  
22 excess of \$260,000 from AMG & Associates for the purpose of paying unpaid property taxes  
23 owed to the County of Alameda. Cross-Defendants Defendants Young S. Hahn, Won S. Hahn,  
24 Edward Kang, Sang Duk Hahn approved of the borrowing of these funds from AMG &  
25 Associates.  
26

27 18. On or about April 2, 2012, Title Trust Deed Service Company, as agent for AMG &  
28 Associates, recorded a Notice of Default and Election to Sell Under Deed of Trst in the County

1 of Alameda Recorder's Office. On or about August 17, 2012, the Property was sold by the  
2 Tmstee at a public auction in Alameda County, and a Tmstee's Deed Upon Sale transferring title  
3 to the Property to AMG & Associates was recorded in the County of Alameda Recorder's Office  
4 on August 27, 2012.  
5

6 **FIRST CAUSE OF ACTION**

7 **(Breach of Fiduciary Duty Against Young S. Hahn,**

8 **Won S. Hahn, Edward Kang, and San Duk Hahn)**  
9

10  
11 19. Cross-Plaintiff Alex Hahn incorporates by reference the allegations set forth in paragraphs  
12 1 to 18 as though fully set forth herein.

13 20. As partners in the Hahn & Kang Limited Partnership, Cross-Defendants owed fiduciary  
14 duties to Cross-Plaintiff Alex Hahn.  
15

16 21. Cross-Defendants Young S. Hahn, Won S. Hahn, Edward Kang, Sang Duk Hahn breached  
17 their fiduciary duties to Cross-Plaintiff Alex Hahn by ignoring Alex Hahn's requests for  
18 contributions that they contribute to the payment of the property taxes owed to the County of  
19 Alameda.  
20

21 22. As a proximate result of Cross-Defendant Young S. Hahn, Won S. Hahn, Edward Kang,  
22 Sang Duk Hahn's breaches of fiduciary duty, Cross-Plaintiff Alex Hahn has been damaged in an  
23 amount to be proved at trial.  
24

25 **SECOND CAUSE OF ACTION**

26 **(Breach of Contract Against AMG Associates LLC)**

27 23. Cross-Plaintiff Alex Hahn incorporates by reference the allegations set forth in paragraphs  
28 1 to 18 as though fully set forth herein.



1 23. The Purchase Agreement and related Addenda required Cross-Defendant AMG Associates  
2 LLC to pay Cross-Plaintiff Hahn & Kang Equity I Limited Partnership the purchase price for the  
3 Property.

4  
5 24. Cross-Defendant AMG Associates LLC breached the Purchase Agreement by failing to pay  
6 the purchase price and instead foreclosing on the Property in order to obtain title.


7 25. As a proximate result of Cross-Defendant AMG Associate LLC's breach of contract,  
8 Cross-Plaintiffs have been damaged in an amount to be proved at trial.

9  
10 PRAYER

11 WHEREFORE, Cross-complainant prays for judgment against Cross-defendants as  
12 follows:

- 13 1. For compensatory in an amount to be proved at trial in excess of the jurisdictional  
14 limit of this court;
- 15 2. For attorney fees
- 16 3. For costs incurred in this suit;
- 17 4. For an award of pre-judgment interest; and
- 18 5. For such other and further relief that this Court deems just and proper.
- 19  
20  
21  
22  
23

24 Dated this 25th of June, 2013

25   
26 Clinton Killian

# Marcus & Millichap

## COUNTER OFFER (Seller)

THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT. READ IT CAREFULLY.

The undersigned Seller, Hahn Dev LLC / Hahn & Kang Equity 1, makes the following Counter Offer to the offer contained in the Purchase Agreement executed by AMG & Associates as buyer on July 11, 20 05, relating to that certain real property (the "Property") located at 4311 s 4317 MacArthur Street, Oakland, CA 94619.

### TERMS AND CONDITIONS

Seller agrees to sell the Property to Buyer on the terms and conditions set forth in the aforementioned Purchase Agreement (including addenda, if any) with the following exceptions, additions and modifications:

- 1) Price to be \$3,500,000
- 2) Due Diligence Period to be 60 Days
- 3) Close of Escrow to be ~~3~~<sup>10</sup> months after Due Diligence Period

The foregoing terms and conditions supersede and replace any inconsistent provisions in the referenced Purchase Agreement. All other terms and conditions of said Purchase Agreement (including all terms and conditions related to Agent's commission) shall remain in full force and effect. The Purchase Agreement (including any previous Counter Offers or Amendments) and this Counter Offer, taken together, shall constitute the entire agreement of the parties.

If this Counter Offer is not accepted in writing by Buyer and an executed copy personally delivered to Seller, or Vincent Schwab, Seller's authorized agent, on or before July 27, 20 05, this Counter Offer shall be null and void. Buyer's net deposit shall be returned, and neither Seller nor Buyer shall have any further rights or obligations hereunder. Seller reserves the right to accept any other offer prior to the actual receipt of Buyer's written acceptance of this Counter Offer, which shall void this Counter Offer. The date on which Buyer accepts this Counter Offer in writing shall be the "effective date" of the Purchase Agreement between Seller and Buyer. Seller hereby acknowledges receipt of an executed copy of this Counter Offer.

SELLER: \_\_\_\_\_ ADDRESS: c/o Agent Vincent Schwab  
Alex Hahn  
Hahn Dev LLC /  
Hahn & Kang Equity 1

DATE: \_\_\_\_\_

Buyer accepts and agrees to the terms and conditions set forth in this Counter Offer and agrees to purchase the Property on the terms and conditions in the aforementioned Purchase Agreement as modified by the provisions of this Counter Offer. Buyer hereby acknowledges receipt of an executed copy of this Counter Offer.

BUYER: \_\_\_\_\_ ADDRESS: c/o Agent Vincent Schwab  
AMG & Associates

DATE: 7/25/05

AGENT: MARCUS & MILLICHAP REAL ESTATE INVESTMENT BROKERAGE COMPANY

BY: \_\_\_\_\_ ADDRESS: 750 Battery Street, 5th Floor  
Vincent F. Schwab Sao Francisco, CA 94111

DATE: 7-25-05

NO REPRESENTATION IS MADE BY AGENT AS TO THE LEGAL EFFECT OR VALIDITY OF ANY PROVISION OF THIS COUNTER OFFER. A REAL ESTATE BROKER IS QUALIFIED TO GIVE ADVICE ON REAL ESTATE MATTERS. IF YOU DESIRE LEGAL, FINANCIAL OR TAX ADVICE, CONSULT YOUR ATTORNEY, ACCOUNTANT OR TAX ADVISOR.

# Marcus & Millichap

## PURCHASE AGREEMENT

THIS DOCUMENT IS MORE THAN A RECEIPT FOR MONEY. IT IS INTENDED TO BE A LEGALLY BINDING AGREEMENT. READ IT CAREFULLY.

AMG S Associates LLC or Assignee shall be hereafter referred to as "Buyer".

Hahn Dev LLC / Hahn & Kana Equity 1 shall be hereafter referred to as "Seller".

Buyer shall deliver to Escrow Holder as defined in Paragraph 3 or to Marcus & Millichap Real Estate Investment Brokerage Company ("Agent"), as agent for  Seller  Buyer the sum of Fifty Thousand dollars (\$ 50,000) in the form of check. This sum is a deposit ("Deposit") to be applied to the purchase price of that certain real property (referred to as the "Property") located in the City of Oakland, County of Alameda, State of California, and more particularly described as follows:

All land, billboard signs, and entitlements of that approximate 41,000 square feet land development site located at 4311 S 4317 MacArthur Street in Oakland, CA. APN #'s 030-1982-121, 030-1982-122 & 030-1982-123

### TERMS AND CONDITIONS

Seller agrees to sell the Property, and Buyer agrees to purchase the Property, on the following terms and conditions:

1) **PURCHASE PRICE:** The purchase price for the Property is Three Million Five Hundred Thousand dollars (\$ 3,500,000). Buyer's Deposit, pending Seller's execution of this Purchase Agreement (the "Agreement"), shall be:

(A)  delivered to Agent and Agent shall within \_\_\_\_\_ (\_\_\_\_) calendar days deposit Buyer's deposit check into a Marcus & Millichap Trust Account;

(B)  delivered directly to the Escrow Company indicated in Paragraph 3 of this Agreement by check or wire, upon satisfaction of the conditions set forth in Paragraph 3 of this Agreement

If option (A) is selected, Agent shall deliver and deposit same in escrow as provided in Paragraph 3 below. The balance of the purchase price shall be payable at close of escrow pursuant to the terms stated below.

2) **DOWN PAYMENT:** Not Applicable

3) **ESCROW:** Within three ( 3 ) calendar days after the Effective Date (as defined in a separate paragraph below) Buyer shall open escrow with First American Title (the "Escrow Holder") by the simultaneous deposit of a copy of this Agreement and Buyer's Deposit with the Escrow Holder.

Within sixty ( 60 ) calendar days from Effective Date (as defined in paragraph 36 below) Seller and Buyer agree to prepare and execute such escrow instructions as may be necessary and appropriate to close the transaction. Should said instructions fail to be executed as required, Escrow Holder shall and is hereby directed to close escrow pursuant to the terms and conditions of this Agreement. Close of escrow (or the "Closing Date", which shall mean the date on which the deed transferring title is recorded) shall occur on or before November 1, 2006. Escrow fee shall be paid by Buyer. County transfer taxes shall be paid by Seller. City transfer taxes, if any, shall be paid by county custom. All other closing costs shall be paid as follows county custom.

4) **PRORATIONS:** Real property taxes, premiums on insurance acceptable to Buyer, interest on any debt being assumed or taken subject to by Buyer, and any other expenses of the Property shall be prorated as of the Closing Date. Security deposits, advance rentals, and the amount of any future lease credits shall be credited to Buyer. The amount of any bond or assessment which is a lien and not customarily paid with real property taxes shall be (select one "X") X paid by seller or      assumed by buyer. Delinquent or unpaid rents and C.A.M. reconciliations shall be handled outside of escrow and neither Agent or escrow shall be responsible for same. Buyer agrees to assume any existing laundry lease, if applicable to the Property.

**LEASED PROPERTY PRORATIONS:** Rents actually collected (prior to closing) will be prorated as of the Closing Date and rent collected thereafter applied first to rental payments then owed the Buyer and their remainder paid to the Seller. All free rent due any tenant at the close of escrow for rental periods after the closing shall be a credit against the Purchase Price. Other income and expenses shall be prorated as follows:                     .

5) **TITLE:** Within ten ( 10 ) calendar days after the Effective Date of this Agreement, Seller shall procure and cause to be delivered to Buyer a preliminary title report with copies of all exceptions issued by First American Title (the "Title Company") on the Property. Within sixty ( 60 ) calendar days following the Effective Date, Buyer shall either approve in writing the exceptions contained in said title report or specify in writing any exceptions to which Buyer reasonably objects. If Buyer objects to any exceptions, Seller shall, within sixty ( 60 ) calendar days following the Effective Date, deliver to Buyer written notice that either (i) Seller will, at Seller's expense, remove the exception(s) to which Buyer has objected before the Closing Date or (ii) Seller is unwilling or unable to eliminate said exception(s). If Seller fails to so notify Buyer or is unwilling or unable to remove any such exception by the Closing Date, Buyer shall elect in writing, within sixty ( 60 ) calendar days from the Effective Date to either terminate this Agreement and receive back the entire Deposit (in which event Buyer and Seller shall have no further obligations under this Agreement); or to purchase the Property subject to such exception(s).

Seller shall convey by grant deed to Buyer (or to such other person or entity as Buyer may specify) marketable fee title subject only to the exceptions approved by Buyer in accordance with this Agreement. Title shall be insured by a standard California Land Title Association owner's policy of title insurance issued by the Title Company in the amount of the purchase price with premium paid by Buyer.

6) **FINANCING CONTINGENCIES:** Not Applicable

7) **PEST CONTROL CONTINGENCIES:** Not Applicable

8) **INSPECTION CONTINGENCIES:**

B.1) **BOOKS AND RECORDS:** Seller agrees to provide Buyer with items a-g listed below within ten ( 10 ) calendar days following the Effective Date:

- a. All rental agreements, leases, service contracts, insurance policies, latest tax bill(s) and other written agreements, written code violations or other notices which affect the Property.
- b. The operating statements of the Property for the twelve ( 12 ) calendar months immediately preceding the Effective Date hereof.
- c. For commercial properties, copies of whatever documents the Seller may have regarding the financial condition, business prospects or prospective continued occupancy of any tenant (including but not limited to financial statements, credit reports, etc.).
- d. All notes and security instruments affecting the Property.
- e. A complete and current rent roll, including a schedule of all tenant deposits and fees.
- f. A report paid for by Seller by HRD, a professional provider, concerning the Natural Hazard Disclosures (as defined below) concerning the Property. "Natural Hazard Disclosures" shall mean whether the Property is located within: (1) Special Flood Hazard Area; (2) Dam Failure Inundation Area; (3) Earthquake Fault Zone; (4) Seismic Hazard Zone; (5) High Fire Severity Area; and/or (6) Wildland Fire Area. Seller represents and warrants that, unless otherwise noted by Seller to Buyer in writing, Seller is unaware of any inaccuracies in the Natural Hazard Disclosures.
- g. Any and all documents, of any type or nature, that in any way reference the existence of litigation affecting the property.

Buyer shall acknowledge receipt of these items in writing. Buyer shall have fifty ( 50 ) calendar days following receipt thereof to review and approve in writing each of these items. If Buyer fails to approve these items within the specified time, this Agreement shall be rendered null and void, Buyer's entire deposit shall be returned, and Buyer and Seller shall have no further obligations hereunder.

- 8.2) **PHYSICAL INSPECTION:** Buyer shall have sixty ( 60 ) calendar days following the Effective Date to inspect the physical condition of the Property, including, but not limited to the soil conditions and the presence or absence of lead-based paint, mold and other hazardous materials on or about the Property, and to notify the Seller in writing that Buyer approves same. If Buyer fails to approve the physical condition of the Property within the specified time, this Agreement shall be null and void and Escrow Holder is hereby authorized to return Buyer's entire deposit. Buyer and Seller shall have no further obligations hereunder.
- 8.3) **STATE AND LOCAL LAWS:** Buyer shall have sixty ( 60 ) calendar days following the Effective Date to investigate State and local laws to determine whether the Property must be brought into compliance with minimum energy conservation or safety standards or similar retrofit requirements as a condition of sale or transfer and the cost thereof, and to notify Seller that Buyer approves same. If approved by Buyer, Buyer shall comply with and pay for these requirements. If Buyer fails to approve these requirements, if any, within the specified time, this Agreement shall be rendered null and void, Buyer's entire Deposit shall be returned, and Buyer and Seller shall have no further obligations hereunder.
- 9) **DEPOSIT INCREASE:** Upon removal of the Inspection contingencies set forth in paragraph(s) 5, 8.1, 8.2 & 8.3 hereof, Buyer shall pass through to Seller the deposit of Fifty Thousand Dollars (\$50,000) to be made non-refundable, which shall be credited to the purchase price at the close of escrow unless otherwise provided herein. See additional deposit increase terms in paragraph 39.
- 10) **DEPOSIT TRANSFER:** Buyer's Deposit shall remain in escrow (or in trust if held by Agent), until removal of the Inspection contingencies set forth in paragraph(s) 5, 8.1, 8.2 & 8.3 hereof. Upon removal of said contingencies, Buyer's Deposit shall be delivered to escrow by Agent (if same has been held in trust by Agent); a grant deed duly executed by Seller, sufficient to convey title to Buyer, shall be delivered to escrow by Seller; and Buyer and Seller shall execute escrow instructions directing the Escrow Holder to release immediately from escrow and deliver to Seller Buyer's entire Deposit (including increases, if any). Buyer acknowledges and agrees that, in the event Buyer defaults on this Agreement after removal of contingencies, Buyer's Deposit is non-refundable and is forfeited to Seller. Seller shall hold Buyer's Deposit subject to the remaining terms and conditions of this Agreement. If the Property is made unmarketable by Seller, or acts of God, or Seller should default on this Agreement, the Deposit shall be returned to Buyer and deed shall be returned to Seller. If Seller defaults on this Agreement after Seller has received the Deposit, Seller understands and agrees that Buyer's Deposit must be returned to Buyer immediately.
- 11) **ESTOPPEL CERTIFICATE CONTINGENCY (Leased Properties):**
- 11.1) Seller shall obtain and deliver to Buyer, within ten ( 10 ) days after the last contingency set forth in paragraph(e) 5, 8.1, 8.2 & 8.3 is removed, estoppel letters or certificates from 1) each lessee or tenant at the Property stating: a) the date of commencement and the scheduled date of termination of the lease; b) the amount of advanced rentals or rent deposits paid to Seller; c) the amount of monthly (or other periodic) rent paid to Seller; d) that the lease is in full force and effect and that there have been no modifications or amendments thereto, or, if there have been modifications or amendments, an explanation of same; e) square footage (if set forth in the lease); and f) that there is no default under the terms of the lease by lessor or lessee. Buyer shall have three ( 3 ) calendar days following tenants' receipt of estoppel certificates to review and approve the estoppel certificates and if any tenant does not return to Seller a completed and executed estoppel certificate, then Seller shall execute, warrant and represent to Buyer any unreturned estoppel certificates. Buyer may only disapprove said certificates, and cancel the Agreement, if the certificates reflect a discrepancy materially affecting the economics of the transaction, or a previously undisclosed material breach of one of the leases. Upon such disapproval, Buyer's entire deposit shall be returned, and the parties shall have no further obligations hereunder.

- 8.2) **PHYSICAL INSPECTION:** Buyer shall have sixty ( 60 ) calendar days following the Effective Date to inspect the physical condition of the Property, including, but not limited to the soil conditions and the presence or absence of lead-based paint, mold and other hazardous materials on or about the Property, and to notify the Seller in writing that Buyer approves same. If Buyer fails to approve the physical condition of the Property within the specified time, this Agreement shall be null and void and Escrow Holder is hereby authorized to return Buyer's entire deposit. Buyer and Seller shall have no further obligations hereunder.
- 8.3) **STATE AND LOCAL LAWS:** Buyer shall have sixty ( 60 ) calendar days following the Effective Date to investigate State and local laws to determine whether the Property must be brought into compliance with minimum energy conservation or safety standards or similar retrofit requirements as a condition of sale or transfer and the cost thereof, and to notify Seller that Buyer approves same. If approved by Buyer, Buyer shall comply with and pay for these requirements. If Buyer fails to approve these requirements, if any, within the specified time, this Agreement shall be rendered null and void, Buyer's entire Deposit shall be returned, and Buyer and Seller shall have no further obligations hereunder.
- 9) **DEPOSIT INCREASE:** Upon removal of the inspection contingencies set forth in paragraph(s) 5, 8.1, 8.2 & 8.3 hereof, Buyer shall pass through to Seller the deposit of Fifty Thousand Dollars (\$50,000) to be made non-refundable, which shall be credited to the purchase price at the close of escrow unless otherwise provided herein. See additional deposit increase terms in paragraph 39.
- 10) **DEPOSIT TRANSFER:** Buyer's Deposit shall remain in escrow (or in trust if held by Agent), until removal of the inspection contingencies set forth in paragraph(s) 5, 8.1, 8.2 & 8.3 hereof. Upon removal of said contingencies, Buyer's Deposit shall be delivered to escrow by Agent (if said title has been held in trust by Agent); a grant deed duly executed by Seller, sufficient to convey title to Buyer, shall be delivered to escrow by Seller; and Buyer and Seller shall execute escrow instructions directing the Escrow Holder to release immediately from escrow and deliver to Seller Buyer's entire Deposit (including increases, if any). Buyer acknowledges and agrees that, in the event Buyer defaults on this Agreement after removal of contingencies, Buyer's Deposit is non-refundable and is forfeited to Seller. Seller shall hold Buyer's Deposit subject to the remaining terms and conditions of this Agreement. If the Property is made unmarketable by Seller, or acts of God, or Seller should default on this Agreement, the Deposit shall be returned to Buyer and deed shall be returned to Seller. If Seller defaults on this Agreement after Seller has received the Deposit, Seller understands and agrees that Buyer's Deposit must be returned to Buyer immediately.
- 11) **ESTOPPEL CERTIFICATE CONTINGENCY (Leased Properties):**
- 11.1) Seller shall obtain and deliver to Buyer, within ten ( 10 ) days after the last contingency set forth in paragraph(s) 5, 6.1, 8.2 & 8.3 is removed, estoppel letters or certificates from 1) each lessee or tenant at the Property stating: a) the date of commencement and the scheduled date of termination of the lease; b) the amount of advanced rentals or rent deposits paid to Seller; c) the amount of monthly (or other periodic) rent paid to Seller; d) that the lease is in full force and effect and that there have been no modifications or amendments thereto, or, if there have been modifications or amendments, an explanation of same; e) square footage (if set forth in the lease); and f) that there is no default under the terms of the lease by lessor or lessee. Buyer shall have three ( 3 ) calendar days following tenants' receipt of estoppel certificates to review and approve the estoppel certificates and if any tenant does not return to Seller a completed and executed estoppel certificate, then Seller shall execute, warrant and represent to Buyer any unreturned estoppel certificates. Buyer may only disapprove said certificates, and cancel the Agreement, if the certificates reflect a discrepancy materially affecting the economics of the transaction, or a previously undisclosed material breach of one of the leases. Upon such disapproval, Buyer's entire deposit shall be returned, and the parties shall have no further obligations hereunder.

- 12) **SERVICE AND TENANT CONTRACTS/OTHER MATERIAL CHANGES:** Seller shall not enter into any new service or tenant contracts that cannot be canceled with 30 days notice and without penalty. Seller shall not make any material changes to the Property, do any act, or enter into any agreements of any kind that materially changes the value of the Property or the rights of the buyer as they relate to the Property.
- 13) **PERSONAL PROPERTY:** Title to any personal property to be conveyed to Buyer in connection with the sale of the Property shall be conveyed to Buyer by Bill of Sale on the Closing Date free and clear of all encumbrances (except those approved by Buyer as provided above). The price of these items shall be included in the Purchase Price for the Property, and Buyer agrees to accept all such personal property in "as is" condition.
- 14) **CONDITION OF PROPERTY:** It is understood and agreed that the Property is being sold "as is"; that Buyer has, or will have prior to the Closing Date, inspected the Property; and that neither Seller nor Agent makes any representation or warranty as to the physical condition or value of the Property or its suitability for Buyer's intended use. "Property Condition" means each and every matter of concern or relevance to Buyer relating to the Property, including without limitation the financial, legal, title, physical geological and environmental condition and sufficiency of the Property and all improvements and equipment thereon; applicable governmental laws, regulations, and zoning; building codes, and the extent to which the Property complies therewith; the fitness of the Property for Buyer's contemplated use; the presence of hazardous materials; title matters; and contracts to be assumed by Buyer

Upon Buyer's satisfaction or waiver of the contingencies in Paragraph 5, 8.1, 8.2 & 8.3, Buyer agrees, and represents and warrants that upon Closing Buyer will purchase the Property "as is" and solely on reliance on its own investigation of the Property. Seller had no obligation to repair, correct or compensate Buyer for any Property Condition, and upon closing, Buyer shall be deemed to have waived any and all objections to the Property Condition, whether or not known to Buyer. Upon Closing, Buyer hereby waives, releases, acquits, and forever discharges Seller, and Seller's agents, directors, officers, and employees to the maximum extent permitted by law from any and all claims, actions, causes of action, demands, rights, liabilities, damages, losses, costs expenses, or compensation whatsoever, direct or indirect known or unknown, foreseen or unforeseen, that it now has or which may arise in the future on account of or in any way growing out of or connected with Property Condition. BUYER EXPRESSLY WAIVES ANY OF ITS RIGHTS GRANTED UNDER CALIFORNIA CIVIL CODE SECTION 1542, WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Buyer's Initials SL Seller's Initials AM

- 15) **RISK OF LOSS:** Risk of loss to the Property shall be borne by Seller until title has been conveyed to Buyer. In the event that the improvements on the Property are destroyed or materially damaged between the Effective Date of this Agreement and the date title is conveyed to Buyer, Buyer shall have the option of demanding and receiving back the entire Deposit and being released from all obligations hereunder, or alternatively, taking such improvements as Seller can deliver. Upon Buyer's physical inspection and approval of the Property, Seller shall maintain the Property through close of escrow in the same condition and repair as approved, reasonable wear and tear excepted.
- 16) **POSSESSION:** Possession of the Property shall be delivered to Buyer on Closing Date.
- 17) **LIQUIDATED DAMAGES:** By placing their initials immediately below, Buyer and Seller agree that it would be impracticable or extremely difficult to fix actual damages in the event of a default by Buyer, that the amount of Buyer's Deposit hereunder (as same may be increased by the terms hereof) is the parties' reasonable estimate of Seller's damages in the event of Buyer's default, and that upon Buyer's default in its purchase obligations under this Agreement, not caused by any breach by Seller, Seller shall be released from its obligations to sell the Property and shall retain Buyer's Deposit (as same may be increased by the terms hereof) as liquidated damages, which shall be Seller's sole and exclusive remedy in law or at equity for Buyer's default.

Buyer's Initials SL Seller's Initials AM

- 18) **SELLER EXCHANGE:** Buyer agrees to cooperate should Seller elect to sell the Property as part of a like-kind exchange under IRC Section 1031. Seller's contemplated exchange shall not impose upon Buyer any additional liability or financial obligation, and Seller agrees to hold Buyer harmless from any liability that might arise from such exchange. This Agreement is not subject to or contingent upon Seller's ability to acquire a suitable exchange property or effectuate an exchange. In the event any exchange contemplated by Seller should fail to occur, for whatever reason, the sale of the Property shall nonetheless be consummated as provided herein.

- 19) **BUYER EXCHANGE:** Seller agrees to cooperate should Buyer elect to purchase the Property as part of a like-kind exchange under IRC Section 1031. Buyer's contemplated exchange shall not impose upon Seller any additional liability or financial obligation, and Buyer agrees to hold Seller harmless from any liability that might arise from such exchange. This Agreement is not subject to or contingent upon Buyer's ability to dispose of its exchange property or effectuate an exchange. In the event any exchange contemplated by Buyer should fail to occur, for whatever reason, the sale of the Property shall nonetheless be consummated as provided herein.
- 20) **DISCLOSURE OF REAL ESTATE LICENSURE:** Not Applicable
- 21) **AUTHORIZATION:** Buyer and Seller authorize Agent to disseminate sales information regarding this transaction, including the purchase price of the Property.
- 22) **AGENCY DISCLOSURE:**
- 22.1) **DUAL AGENCY:** Seller and Buyer understand that Agent represents both Seller and Buyer in the sale of the subject Property, and acknowledge that they have authorized and consented to such dual representation. Seller and Buyer also understand and consent that if a loan is arranged through Marcus & Millichap Capital Corporation, Agent may receive a referral fee separate and apart from any commission referenced in this Agreement.
- 23) **OTHER BROKERS:** Buyer and Seller agree that, in the event any broker other than Agent or a broker affiliated with Agent is involved in the disposition of the Property, Agent shall have no liability to Buyer or Seller for the acts or omissions of such other broker, who shall not be deemed to be a subagent of Agent
- 24) **LIMITATION OF LIABILITY:** Except for Agent's gross negligence or willful misconduct, Agent's liability for any breach or negligence in its performance of this Agreement shall be limited to the greater of \$50,000 or the amount of compensation actually received by Agent in any transaction hereunder.
- 25) **SCOPE OF AGENT'S AUTHORITY AND RESPONSIBILITY:** Agent shall have no authority to bind either Buyer or Seller to any modification or amendment of this Agreement. Agent shall not be responsible for performing any due diligence or other investigation of the Property on behalf of either Buyer or Seller, or for providing either party with professional advice with respect to any legal, tax, engineering, construction or hazardous materials issues. Except for maintaining the confidentiality of any information regarding Buyer or Seller's financial condition and any future negotiations regarding the terms of this Purchase Agreement or as otherwise required by law, Buyer and Seller agree that their relationship with Agent is at arm's length and is neither confidential nor fiduciary in nature.
- 26) **BROKER DISCLAIMER:** Buyer and Seller acknowledge that, except as otherwise expressly stated herein, Agent has not made any investigation, determination, warranty or representation with respect to any of the following: (a) the financial condition or business prospects of any tenant, or such tenant's intent to continue or renew its tenancy in the Property; (b) the legality of the present or any possible future use of the Property under any federal, state or local law; (c) pending or possible future action by any governmental entity or agency which may affect the Property; (d) the physical condition of the Property, including but not limited to, soil conditions, the structural integrity of the improvements, and the presence or absence of fungi, mold or wood-destroying organisms; (e) the accuracy or completeness of income and expense information and projections, of square footage figures, end of the terms of leases, options, and other agreements affecting the Property; (f) the possibility that lease, options or other documents exist which affect or encumber the Property and which have not been provided or disclosed by Seller; or (g) the presence or location of any hazardous materials on or about the Property, including, but not limited to, asbestos, PCB's, or toxic, hazardous or contaminated substances, lead-based paint and underground storage tanks.

Buyer agrees that investigation and analysis of the foregoing matters is Buyer's sole responsibility and that Buyer shall not hold Agent responsible therefor. Buyer further agrees to reaffirm its acknowledgment of this disclaimer at close of escrow and to confirm that it has relied upon no representations of Agent in connection with its acquisition of the Property.

Buyer's Initials SL Seller's Initials AM

- 27) **LEAD-BASED PAINT HAZARDS:** Not Applicable



28) **MOLD/ALLERGEN ADVISORY AND DISCLOSURE:** Not Applicable

29) **ARBITRATION OF DISPUTES:** If a controversy arises with respect to the subject matter of this Purchase Agreement or the transaction contemplated herein (including but not limited to the parties' rights to the Deposit or the payment of commissions as provided herein), Buyer, Seller and Agent agree that such controversy shall be settled by final, binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Notice: By Initialing in the space below you are agreeing to have any dispute arising out of the matters included in the "Arbitration of Disputes" provision decided by neutral arbitration as provided by California law and you are giving up any rights you might possess to have the dispute litigated in court or jury trial. By Initialing in the space below you are giving up your judicial rights to discovery and appeal, unless such rights are specifically included in the "Arbitration of Disputes" provision. If you refuse to submit to arbitration after agreeing to this provision, you may be compelled to arbitrate under the authority of the California Code of Civil Procedure. Your agreement to this arbitration provision is voluntary.

We have read and understand the foregoing and agree to submit disputes arising out of the matters included in the "Arbitration of Disputes" provision to neutral arbitration.

Buyer's Initials SL Seller's Initials AA

Buyer's Agent's Initials \_\_\_\_\_ Seller's Agent's Initials \_\_\_\_\_

30) **SUCCESSORS & ASSIGNS:** This Agreement and any addenda hereto shall be binding upon and inure to the benefit of the heirs, successors, agents, representatives and assigns of the parties hereto.

31) **ATTORNEYS' FEES:** In any litigation, arbitration or other legal proceeding which may arise between any of the parties hereto, including Agent the prevailing party shall be entitled to recover its costs, including costs of arbitration, and reasonable attorneys' fees in addition to any other relief to which such party may be entitled.

32) **TIME:** Time is of the essence of this Agreement

33) **NOTICES:** All notices required or permitted hereunder shall be given to the parties in writing (with a copy to Agent) at their respective addresses as set forth below. Should the date upon which any act required to be performed by this Agreement fall on a Saturday, Sunday or holiday, the time for performance shall be extended to the next business day.

34) **FOREIGN INVESTOR DISCLOSURE:** Seller and Buyer agree to execute and deliver any instrument affidavit or statement and to perform any act reasonably necessary to carry out the provisions of this Foreign Investment in Real Property Tax Act and regulations promulgated thereunder. Seller represents that Seller is not a foreign person as defined in Section 1445 of the Internal Revenue Code and withholding of any portion of the purchase price is not required under Sections 18662 or 18668 of the California Revenue and Taxation Code.

35) **ADDENDA:** Any addendum attached hereto and either signed or initialed by the parties shall be deemed a part hereof. This Agreement including addenda, if any, expresses the entire agreement of the parties and supersedes any and all previous agreements between the parties with regard to the Property. There are no other understandings, oral or written, which in any way alter or enlarge its terms, and there are no warranties or representations of any nature whatsoever, either express or implied, except as set forth herein. Any future modification of this Agreement will be effective only if it is in writing and signed by the party to be charged.

36) **ACCEPTANCE AND EFFECTIVE DATE:** Buyer's signature hereon constitutes an offer to Seller to purchase the Property on the terms and conditions set forth herein. Unless acceptance hereof is made by Seller's execution of this Agreement and delivery of a fully executed copy to Buyer, either in person or at the address shown below, or by facsimile or e-mail with a legitimate confirmation of receipt on or before August 17, 2005, this offer shall be null and void, the Deposit shall be returned to Buyer, and neither Seller nor Buyer shall have any further rights or obligations hereunder. Delivery shall be effective upon personal delivery to Buyer or Buyer's agent or, if by mail, on the next business day following the date of postmark. The "Effective Date" of this Agreement shall be the later of (a) the date on which Seller executes this Agreement or (b) the date of or written acceptance (by either Buyer or Seller) of the final counter-offer submitted by the other party. Buyer and Seller both acknowledge and agree that a facsimile copy of this Agreement with a party's signature is as legally valid and binding as the original Agreement with an original signature. If Buyer is not an individual but a legal entity, Buyer's representative represents that he/she is authorized on behalf of the legal entity to sign this Agreement


- 37) OTHER BUYERS: Buyer understands that Agent represents other buyers who may have an interest in similar, or the same property that Buyer is considering purchasing. Buyer understands, consents and agrees that Agent, at all times before, during and after his representation of Buyer, may also represent other prospective buyers in the purchase of any property offered for sale. Buyer understands, consents and agrees that, regardless of the particular agency relationship between Buyer and Agent, Agent's representation of other buyers does not constitute a breach of any duty to Buyer.
- 38) GOVERNING LAW: This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- 39) OTHER TERMS AND CONDITIONS:
  - 1) After One Hundred Twenty days 120 from the effective date, Buyer will increase deposit by Twenty-Five Thousand Dollars (\$25,000) to be passed through to Seller and made non-refundable.
  - 2) Buyer will make every effort to obtain entitlements and permits to develop site. If Buyer fails to close escrow, all site plans, reports, entitlements, and any studies conducted by Buyer pertaining to the site will be delivered to Seller within 10 days of canceling this contract and escrow.
  - 3) If Buyer fails to obtain building entitlements and site plan approval within ten (10) months from the effective date, Buyer will cancel this contract. All the above mentioned terms including paragraph 39.1 and 39.2 will still remain in effect.

THE PARTIES ARE ADVISED TO CONSULT THEIR RESPECTIVE ATTORNEYS WITH REGARD TO THE LEGAL EFFECT AND VALIDITY OF THIS PURCHASE AGREEMENT. THE PARTIES AGREE THAT THIS AGREEMENT CAN BE SIGNED IN COUNTERPART WITH THE SAME LEGAL FORCE AND EFFECT AS IF NOT SIGNED IN COUNTERPART.

The undersigned Buyer hereby offers and agrees to purchase the above-described Property for the price and upon the terms and conditions herein stated.

This offer is made by Buyer to Seller on this 15<sup>th</sup> day of August, 2005. The undersigned Buyer hereby acknowledges receipt of an executed copy of this Agreement, including the Agency Disclosure contained in Paragraph 22, above.

All individuals signing below on behalf of a legal entity hereby represent that they are authorized by, and on behalf of, said entity to enter into this Agreement.

BUYER:  ADDRESS: c/o Vincent F. Schwab /  
Stephen Li for: Kevin T. Chuck  
AMG & Associates LLC  
or Assignee

DATE: 8/15/05 TELEPHONE: \_\_\_\_\_

**SELLER'S ACCEPTANCE AND AGREEMENT TO PAY COMMISSION**

The undersigned Seller accepts the foregoing offer and agrees to sell the Property to Buyer for the price and on the terms and conditions stated herein. Seller acknowledges receipt of an executed copy of this Agreement and authorizes Agent to deliver an executed copy to Buyer.

Where Seller has agreed to pay a commission, Seller acknowledges and agrees that payment of said commission is not contingent upon the closing of the transaction contemplated by this Agreement, and that, in the event completion of the sale is prevented by default of Seller, then Seller shall immediately be obligated to pay to Agent the entire commission. Seller agrees that in the event completion of the sale is prevented by default of Buyer, then Seller shall be obligated to pay to Agent an amount equal to one half of any damages or other monetary compensation (including liquidated damages) collected from Buyer by suit or otherwise as a consequence of Buyer's default, if and when such damages or other monetary compensation are collected; provided, however, that the total amount paid to Agent by Seller shall not in any case exceed the brokerage commission hereinabove set forth. Seller acknowledges and agrees that the existence of any direct claim which Agent may have against Buyer in the event of Buyer's default shall not alter or in any way limit the obligations of Seller to Agent as set forth herein. The provisions of this paragraph may not be amended or modified without the written consent of Agent.

SELLER:

Hahn Dev LLC / Hahn & Kang Equity 1

ADDRESS:

c/o Vincent F. Schwab /  
Kevin T. Chuck

DATE:

TELEPHONE:

Agent accepts and agrees to the foregoing. Agent represents and warrants that Agent is unaware of any incorrect or incomplete information contained in any Natural Hazard Disclosures.

AGENT: MARCUS & MILLICAP REAL ESTATE INVESTMENT BROKERAGE COMPANY

BY:

Vincent F. Schwab /  
Kevin T. Chuck

ADDRESS:

750 Battery Street, 5<sup>th</sup> Floor  
San Francisco, CA 94111

DATE:

TELEPHONE:

415-391-9220

NO REPRESENTATION IS MADE BY AGENT AS TO THE LEGAL OR TAX EFFECT OR VALIDITY OF ANY PROVISION OF THIS PURCHASE AGREEMENT. A REAL ESTATE BROKER IS QUALIFIED TO GIVE ADVICE ON REAL ESTATE MATTERS. IF YOU DESIRE LEGAL, FINANCIAL OR TAX ADVICE, CONSULT YOUR ATTORNEY, ACCOUNTANT OR TAX ADVISOR.

# Marcus & Millichap

## COUNTER OFFER (Seller)

THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT. READ IT CAREFULLY.

The undersigned Seller, Hahn Dev LLC / Hahn & Kang Equity 1, makes the following Counter Offer to the offer contained in the Purchase Agreement executed by AMG & Associates as buyer on July 11, 20 05, relating to that certain real property (the "Property") located at 4311 & 4317 MacArthur Street, Oakland, CA 94619.

### TERMS AND CONDITIONS

Seller agrees to sell the Property to Buyer on the terms and conditions set forth in the aforementioned Purchase Agreement (including addenda, if any) with the following exceptions, additions and modifications:

- 1) Price to be \$3,500,000
- 2) Due Diligence Period to be 60 Days
- 3) Close of Escrow to be 6 months after Due Diligence Period

The foregoing terms and conditions supersede and replace any inconsistent provisions in the referenced Purchase Agreement. All other terms and conditions of said Purchase Agreement (including all terms and conditions related to Agent's commission) shall remain in full force and effect. The Purchase Agreement (including any previous Counter Offers or Amendments) and this Counter Offer, taken together, shall constitute the entire agreement of the parties.

If this Counter Offer is not accepted in writing by Buyer and an executed copy personally delivered to Seller, or Vincent Schwab, Seller's authorized agent, on or before July 16, 20 05, this Counter Offer shall be null and void, Buyer's entire deposit shall be returned, and neither Seller nor Buyer shall have any further rights or obligations hereunder. Seller reserves the right to accept any other offer prior to the actual receipt of Buyer's written acceptance of this Counter Offer, which shall void this Counter Offer. The date on which Buyer accepts this Counter Offer in writing shall be the "effective date" of the Purchase Agreement between Seller and Buyer. Seller hereby acknowledges receipt of an executed copy of this Counter Offer.

SELLER: \_\_\_\_\_ ADDRESS: c/o Agent Vincent Schwab  
Alex Hahn  
Hahn Dev LLC /  
Hahn & Kang Equity 1

DATE: \_\_\_\_\_

Buyer accepts and agrees to the terms and conditions set forth in this Counter Offer and agrees to purchase the Property on the terms and conditions in the aforementioned Purchase Agreement as modified by the provisions of this Counter Offer. Buyer hereby acknowledges receipt of an executed copy of this Counter Offer.

BUYER: \_\_\_\_\_ ADDRESS: c/o Agent Vincent Schwab  
AMG & Associates

DATE: \_\_\_\_\_

AGENT: MARCUS & MILLICHAP REAL ESTATE INVESTMENT BROKERAGE COMPANY

BY: \_\_\_\_\_ ADDRESS: 750 Battery Street, 5<sup>th</sup> Floor  
Vincent F. Schwab San Francisco, CA 94111

DATE: \_\_\_\_\_

NO REPRESENTATION IS MADE BY AGENT AS TO THE LEGAL EFFECT OR VALIDITY OF ANY PROVISION OF THIS COUNTER OFFER. A REAL ESTATE BROKER IS QUALIFIED TO GIVE ADVICE ON REAL ESTATE MATTERS. IF YOU DESIRE LEGAL, FINANCIAL OR TAX ADVICE, CONSULT YOUR ATTORNEY, ACCOUNTANT OR TAX ADVISOR.

ADDENDUM NO. 1

This is Addendum No. 1 to the Purchase Agreement, dated August 17, 2005, on property known as assessor parcel numbers 030-1982-121, 030-1982-122, 030-1982-123 in the County of Alameda, State of California (the "Property") between AMG & Associates LLC or assignee (the "Buyer") and Hahn Development LLC/ Hahn & Kang Equity I, L.P., a California limited partnership (the "Seller").

The Purchase Agreement is amended as follows:

Add Paragraph 40: "The parties acknowledge that Buyer disapproves of the physical condition of the Property. Buyer and Seller agree to proceed with the purchase and sale of Property under the following terms, irrespective of any provision to the contrary in paragraph 8.2 and elsewhere in the Purchase Agreement:

- 40.1 The close of escrow is contingent upon Seller delivering environmental clearances to Buyer, to Buyer's sole satisfaction, from all agencies with applicable jurisdiction, indicating that there is no environmental contamination on the or about the Property. Environmental clearances shall be sufficient to allow Buyer to use and develop the Property for Buyer's intended use. Environmental Contamination is defined as any use, storage, existence, release, migration, generation, treatment, removal, or transportation of any hazardous materials substances or wastes (including without limitation petroleum products, herbicides and insecticides) from, under, into or on the Property. Hazardous materials is defined as any hazardous or toxic material or waste which is or becomes regulated by any local governmental authority, the State of California, the United States government under any environmental requirements or any other governing body with jurisdiction.
- 40.2 If required by any applicable jurisdiction, prior to close of escrow, Seller agrees to remediate cure and correct all Environmental Contamination on the Property, at Seller's expense, except that Buyer shall contribute up to 10% of the costs with a maximum contribution not to exceed \$50,000."
- 40.3 Seller agrees to remove the billboard from the Property and terminate any billboard lease prior to the close of escrow.

Add as last sentence of Paragraph 14: "Notwithstanding the foregoing, Buyer and Seller agree that the property is NOT being sold "as is" with respect to its environmental condition and this paragraph shall not apply to any environmental condition or contamination on the Property. Seller warrants and represents that it will deliver the Property, at close of escrow, free and clean of any Environmental Contamination."

Seller shall cooperate with Buyer for the application to the City of Oakland for an apartment project application.

Any contribution made by Buyer relating to Paragraph 40.2 shall be credited to the purchase price at the close of escrow.

Buyer shall instruct escrow to release \$50,000 to Seller on or before October 24, 05 as per the agreement.

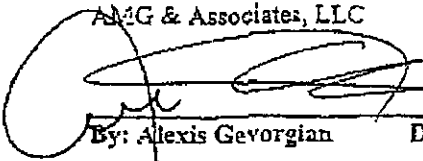
Buyer's Initials: AG

Seller's Initials: HC

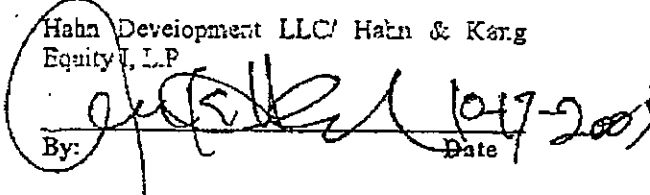
Add as last sentence of Paragraph 9: "Notwithstanding the foregoing, Buyer instructs Escrow to release \$50,000 to Seller upon the parties mutual execution of this addendum and any escrow instructions necessary to evidence this addendum. The \$50,000 shall be non-refundable to Buyer, however credited to the purchase price at the close of escrow."

Executed on this 21<sup>st</sup> day of October, 2005, in Los Angeles, California.

AMG & Associates, LLC

  
By: Alexis Gevorgian Date

Hahn Development LLC/ Hahn & Karg  
Equity I, L.P

  
By: Date 10-17-2005

ADDENDUM NO. 2

This is Addendum No. 2 to the Purchase Agreement, dated August 17, 2005, on property known as assessor parcel numbers 030-1982-121, 030-1982-122, 030-1982-123 in the County of Alameda, State of California (the "Property") between AMG & Associates LLC or assignee (the "Buyer") and Hahn Development LLC/ Hahn & Kang Equity I, L.P., a California limited partnership (the "Seller").

Paragraph 39, Item #3 of the Purchase Agreement is amended as follows:

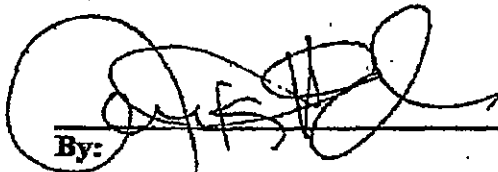
"If Buyer fails to obtain building entitlements and site plan approval within thirteen (13) months from the effective date, Buyer may elect (but is under no obligation to do so), to cancel this contract. All the above mentioned terms including paragraph 39.1 and 39.2 will still remain in effect."

Executed on this 26<sup>th</sup> MAY day of April, 2006.

AMG & Associates, LLC

Hahn Development LLC/ Hahn & Kang  
Equity I, L.P

  
\_\_\_\_\_  
By: Alexis Gevorgian      Date 5/26/06

  
\_\_\_\_\_  
By: \_\_\_\_\_      Date \_\_\_\_\_

ADDENDUM NO. 3

This is Addendum No. 3 to the Purchase Agreement, dated August 17, 2005, and Addendum No. 1, dated, October 21, 2005 and Addendum No 2, dated May 26, 2006, on property known as assessor parcel numbers 030-1982-121, 030-1982-122, 030-1982-123 in the County of Alameda, State of California (the "Property") between AMG & Associates LLC or assignee (the "Buyer") and Hahn Development LLC/ Hahn & Kang Equity I, L.P., a California limited partnership (the "Seller").

The Purchase Agreement and Addendums are hereby amended as follows:

Paragraph 40.1 of Addendum No. 1 is hereby deleted and restated as follows:

Buyer's obligation to close of escrow is contingent upon Seller delivering to Buyer, environmental clearances or closure letters ("Clearances") from all regulatory agencies with applicable jurisdiction indicating that the Property is free of all Environmental Contamination and is suitable for Buyer's intended use and development purposes. Environmental Contamination is defined as any use, storage, existence, release, migration, generation, treatment, removal, or transportation of any hazardous materials substances or wastes (including without limitation petroleum products, herbicides and insecticides) from, over, under, into or on the Property. Hazardous materials is defined as any hazardous or toxic material or waste which is or becomes regulated by any local governmental authority, the State of California, the United States government under any environmental requirements or any other governing body with jurisdiction.

Prior to close of escrow, Seller shall deliver all Clearances from all regulatory agencies to Buyer and obtain Buyer's written satisfaction and approval of said Clearances ("Buyer's Approval of Clearances"), which approval shall be in Buyer's sole discretion. In the event that Buyer does not provide Buyer's Approval of Clearances by July 1, 2007, then Buyer shall have the right, but not the obligation, to authorize and enter into any agreements and contracts necessary to remediate, cure and correct Environmental Contamination from, over, under, into or on the Property, to Buyer's satisfaction. Seller hereby consents and authorizes Buyer to perform any necessary remediation work on the Property on Seller's behalf. If Buyer exercises its right to remediate, cure and correct Environmental Contamination, then Buyer shall obtain and approve reasonable proposals and pay costs as necessary in its sole discretion. If Buyer pays for remediation costs for the Property, the parties agree to reduce the Purchase Price by the actual remediation costs plus ~~five percent (5%)~~ <sup>two percent (2%)</sup>. *AK*

Paragraph 40.2 of Addendum No 1 is hereby deleted and restated as follows:

Prior to close of escrow and at Seller's expense, Seller agrees to remediate, cure and correct all Environmental Contamination on the Property and obtain closure or clearance letter(s) from applicable agency in form and content satisfactory to Buyer, in its sole discretion.

Paragraph 3 of the Purchase Agreement is amended as follows:

Close of escrow shall occur on or before nine (9) months from the date of Buyer's Approval of Environmental Clearances.




The terms contained in this Addendum No. 3 are contingent on: (a) execution of the Note and Deed of Trust attached hereto as Exhibit 1 and made a part hereof and (b) AMG & Associates LLC funding \$50,000, which represents full consideration for the Note with a face value of \$60,500. The parties acknowledge that the \$60,500 Note face value consists of \$50,000 consideration paid by AMG & Associates LLC plus two years of interest only payments calculated at 10 percent (10%) per annum. The parties further agree that the Deed of Trust, which secures the Note, shall be recorded against the Property in the County of Alameda, State of California. First American Title and Escrow (Los Angeles office) shall provide title and escrow services for the aforementioned Note and Deed of Trust and the parties shall evenly split the escrow charges. AMG & Associates shall obtain lender's title insurance, if it so elects, at its expense.

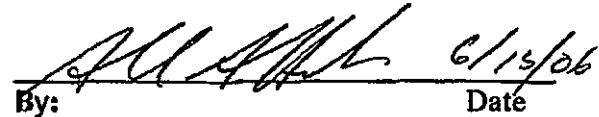
Executed on this 14 th day of June, 2006, in Los Angeles, California.

AMG & Associates, LLC

Hahn Development LLC/ Hahn & Kang  
Equity I, L.P



\_\_\_\_\_  
By: Alexis Gevorgian      Date



\_\_\_\_\_  
By:      Date 6/13/06

#### ADDENDUM NO. 4

This is Addendum No. 4 to the Purchase Agreement, dated October 11, 2009, on property known as assessor parcel numbers 030-1982-i21, 030-1982-122, 030-1982-123 in the County of Alameda, State of California (the "Property") between AMG & Associates LLC or assignee (the "Buyer") and Hahn & Kang Equity I, L.P., a California limited partnership (the "Seller").

The Purchase Agreement is amended as follows:

1. Purchase Price shall be \$2,537,500, which shall be paid or satisfied in the manner provided in Paragraph 3 hereof.
2. Buyer and Seller shall cooperate with each other to obtain all regulatory and governmental permits and approvals in regard to any contamination at the subject site provided that such permits and approvals are necessary for Buyer's intended use. Seller shall remain and is responsible for the all environmental cleanup as required by the City of Oakland and all environmental regulatory agencies. Buyer shall have no obligation to clean site and shall have the right to clean site in its sole discretion.
3. Seller shall have the first right to clean the site. If Seller has not commenced and contracted for the clean up within two (2) months after all discretionary approvals have been obtained by Buyer for its intended use, Buyer has the right to clean the site per the terms herein. Buyer shall have the right but not the obligation to clean the site pursuant to the requirements as set forth by the City of Oakland and all applicable environmental regulatory agencies.
4. If Buyer elects to clean up site, after first having offered Seller the opportunity to clean the property and Seller has refused, the cost of cleanup shall be paid through a third loan (third to the current first deed of trust for \$60,500 and the second deed of trust mentioned in Paragraph 8 of this agreement) secured by the property at a rate of 12% per annum. If Buyer commences cleaning up of the site, Buyer shall first provide a tentative budget or prognostics of the planned cleanup activities to Seller before engaging in such activities, hiring any third party contractors, or otherwise commence such activities and shall not commence until it secures Seller's approval, which shall not be unreasonably withheld.
5. The cost of cleanup, if incurred by Buyer, shall be repaid in cash at the close of escrow provided that Seller pre-approved such cost prior it being incurred. Notwithstanding the foregoing, Buyer or its affiliates shall not be compensated for any works they perform in relation to the cleanup works. Upon commencing the cleanup activities, Buyer shall exercise reasonable diligence to minimize and control the cost and to expedite the process and shall report to and consult with Seller from time to time or upon Seller's request and shall be subject to Seller's right, which is created hereby, to take over the cleaning up process at any time upon its written notice to Buyer at its own expenses, provided that Seller may take over the clean up process only upon Buyer's breach of its duties to exercise reasonable diligence and competency, which are created and imposed on Buyer

hereby. Seller shall also be responsible for its own review of the clean up progress every 2 weeks and shall inform Buyer of any grievances and concerns it discovers in connection with the process immediately. For the purpose of Seller's responsibility of reviewing the progress, Buyer shall make available for review all related information, including bills and contracts with all contractors and consultants engaged to work on the process.

6. Of the Purchase Price, Seller shall be paid \$1,175,000 in cash at the Close of Escrow. The cash payment shall be subject to offset for any loans to be repaid by Seller to Buyer and due on or before the closing and any other charges and expenses that Seller is obligated to pay Buyer in connection herewith. The balance of the Purchase Price shall be satisfied by Buyer's delivery and grant of deed to a retail space of 2,969 sq. ft to Seller upon the receipt of the certificate of occupancy and the recordation of the subdivision map per the City of Oakland. Buyer shall use all due and reasonable diligence and shall spend reasonable efforts in constructing the said retail space. Furthermore, Buyer shall build the said retail space in the industry standard workmanship manner and use materials, labors, and construction expertise that are up to the industry standard. Buyer's grant of deed to the said retail space shall be free of all restrictions, liens, or other encumbrances except those that are customary and necessary to the enjoyment and employment of the said retail space in the ordinary course of business. The said retail space shall be of commercially acceptable quality and grade for the purpose of immediately commencing and continuing with retail businesses on the premises by a third party or Sellers.
7. The existing loan in the amount of \$60,500 plus accrued interest owed by Buyer to Seller shall be refinanced (or extended) by Buyer at the same rate for a period of 24 months with 2 points provided that Buyer may elect to repay the said loan by repaying out of the cash payment due to it upon the close of escrow. If Buyer chooses to refinance the said loan, Seller shall not be required to pay out of pocket for points and fees.
8. This amendment shall not become effective until and unless the Pacific Companies, an Idaho Corporation agrees to make available to Seller a credit line of up to \$100,000 which shall be used for the sole purpose of completing any environmental documents and related legal fees that are required in order to meet the environmental approvals set forth by the City of Oakland and all other applicable public agencies. The credit rate and fees shall be the same as the aforementioned existing loan due to Buyer.
9. Upon obtaining the said credit approval from the Pacific Companies, Buyer shall select City approved and required land use environmental consultant and project processor, contract, retain, supervise, and control project consultants to diligently pursue receiving the environmental approvals from all relevant agencies for the Buyer's intended use for the subject property and shall authorize the Pacific Companies to pay, as such payments are directly drawn from the said credit line, such consultants after Seller approves the bills and invoices from such consultants. The said credit line shall be secured by the

second deed of trust, under the terms of which Seller shall pay all property taxes as they become due. Seller shall approve environmental reports within 2 weeks of presentation, which shall not be unreasonably withheld.

10. Except as otherwise amended in this agreement, all other terms and conditions in the original agreement, 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> amendment shall remain in full force and effect.


Executed on this \_\_\_\_\_ day of December, 2009, in Santa Clara, California.

AMG & Associates, LLC



By: Alexis Gevorgian

Hahn & Kang Equity I, L.P



By: Alex Hahn, Managing Member of  
Hahn Development LLC  
Its General Partner

**EXHIBIT C**

1 Julie A. Herzog SBN 117102  
 2 Law Office of Julie A. Herzog  
 3 18980 Ventura Boulevard, #230  
 4 Tarzana, California 91356  
 5 (818) 888-6659 Fax (818) 888-9140  
 6 lawwings@earthlink.net

7 Attorney for Plaintiff AMG  
 8 Investment & Development Services, Inc.

**FILED BY FAX**

ALAMEDA COUNTY

March 28, 2013

CLERK OF  
THE SUPERIOR COURT  
By Judith Sallee, Deputy

CASE NUMBER:  
**RG13673502**

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 10 FOR THE COUNTY OF ALAMEDA

11 AMG INVESTMENT & DEVELOPMENT  
 12 SERVICES, INC., a California corporation,

Plaintiff,

v.

13 GRUBB & ELLIS COMPANY, a Delaware  
 14 corporation; CITY OF OAKLAND, a chartered  
 15 city; HAHN & KANG EQUITY I, L.P., a  
 16 California limited partnership; HAHN  
 17 DEVELOPMENT, LLC, a California limited  
 18 liability company; DOES 1 through 25, inclusive,  
 19 and All Persons Claiming Any Right, Title,  
 20 Estate, Lien or Interest in the Real Property  
 21 Described Herein or Any Part Thereof,

Defendants.

) Case No.

) VERIFIED COMPLAINT:

) 1. TO QUIET TITLE

) 2. FOR DECLARATORY RELIEF

) UNLIMITED JURISDICTION - CIVIL

1 Plaintiff alleges as follows:

2 FACTS COMMON TO ALL CAUSES OF ACTION

3 1. At all times relevant hereto, plaintiff AMG Investment & Development Services, Inc. was  
4 and is a California corporation duly organized under the law of the State of California and doing  
5 business in Alameda County, California.

6 2. Plaintiff is informed and believes and based thereon alleges that at all times relevant  
7 hereto, defendant Grubb & Ellis Company is a Delaware corporation doing business in Alameda  
8 County, California and the successor in interest to Grubb & Ellis Commercial.

9 3. Plaintiff is informed and believes and based thereon alleges that defendant the City of  
10 Oakland is a chartered city located in Alameda County, California.

11 4. Plaintiff is informed and believes and based thereon alleges that at all times relevant  
12 hereto defendant Hahn & Kang Equity t, L.P. was a California limited partnership doing business in  
13 Alameda County, California and is the former owner of the real property that is the subject of this  
14 action.

15 5. Plaintiff is informed and believes and based thereon alleges that at all times relevant  
16 hereto defendant Hahn Development, LLC was and is a California limited liability company doing  
17 business in Alameda County, California.

18 6. The true names and capacities of the defendants named herein as Does J through 25,  
19 inclusive, are unknown to plaintiff, who therefore sues said defendants by such fictitious names.  
20 Plaintiff will amend this complaint to state the true names and capacities of these unknown  
21 defendants when the same has been ascertained. Plaintiff is informed and believes and based  
22 thereon alleges that Does 1 through 25, inclusive, claim a right, title or interest in the real property  
23 that is the subject of this action.

24 7. Plaintiff is the assignee of that certain Straight Note dated June 2, 2006 in the principal  
25 amount of \$60,500.00 and deed of trust of even date therewith executed by defendant Hahn & Kang  
26 Equity I, L.P. in favor of AMG & Associates, LLC and recorded on June 28, 2006 in the Official  
27 Records of Alameda County as Instrnment No. 2006247707 (the "AMG Deed of Trust") which is  
28 secured by the real property situated in the County of Alameda, City of Oakland, commonly known

VERIFIED COMPLAINT

1 as 4311 MacArthur Blvd., Oakland, California 94619 as to Parcel 1 and no street address for Parcel  
2 2, a vacant property at the corner of High and MacArthur Blvds., Alameda County Assessor's Map  
3 Nos. 030-1982-121, 122 and 123 which is legally described on Exhibit A hereto (the "Property").

4 8. Plaintiff is informed and believes and based thereon alleges that on or about August 21,  
5 2009, the County of Alameda recorded a Notice of Power to Sell Tax Defaulted Property for Non-  
6 Payment of Delinquent Taxes for the 2003-2004 fiscal year against the Property as Instrument Nos.  
7 2009276545 and 2009276546; that on or about September 14, 2011, the County of Alameda  
8 recorded a Notice of Power to Sell Tax Defaulted Property for Non-Payment of Delinquent Taxes  
9 for the 2005-2006 fiscal year against the Property as Instrument No. 2011260871; and, that at all  
10 times relevant hereto up to the time of Plaintiff's payments to the County of Alameda alleged herein,  
11 the County of Alameda held a valid first priority lien on the Property for delinquent property taxes  
12 that was superior to any claim, right, estate, interest or lien of defendants.

13 9. On or about March 9, 2012, Plaintiff paid the County of Alameda \$203,296.12 in  
14 payment for the delinquent property taxes on the Property. In November 2012, Plaintiff paid the  
15 County of Alameda an additional \$26,201.43 in further payment for the delinquent property taxes on  
16 the Property. The AMG Deed of Trust specifically provided for the payment of said taxes if the  
17 Trustor, defendant Halm & Kang Equity I, L.P. failed to make said payments at least 10 days before  
18 delinquency. As a result of Plaintiff's payments to the County of Alameda, Plaintiff was subrogated  
19 to the first priority lien position of the County of Alameda in the amount of its payments.

20 10. On April 2, 2012, Plaintiff duly noticed and caused to be recorded with the County of  
21 Alameda as Instrument No. 2012-109833, a Notice of Default and Election to Sell Under Deed of  
22 Trust as a result of Hahn & Kang Equity I, L.P. failure to pay any of the principal or tax advances  
23 due under the AMG Note. On July 10, 2012, the Trustee of the AMG Deed of Trust caused to be  
24 served and recorded a duly noticed Notice of Sale of the Property pursuant to the AMG Deed of  
25 Trust recorded as Instrument No. 2012-219334. The delinquency in said Notice included the back  
26 property taxes paid by Plaintiff.

27 11. On or about August 27, 2012, Plaintiff became the owner in fee simple of the Property  
28 pursuant to a Trustee's Deed Upon Sale recorded in the official records of Alameda County as



1 Instrument No. 2012-280253 ("Trustee's Deed") following the duly noticed Trustee's sale pursuant  
2 to the power of sale in the AMG Deed of Trust.

3 FIRST CAUSE OF ACTION

4 (To Quiet Title Against All Defendants)

5 12. Plaintiff realleges and incorporates herein by this reference paragraphs 1 through 11,  
6 inclusive of this complaint as though set forth in full.

7 13. The real property that is the subject of this Action is the real property situated in the  
8 County of Alameda, City of Oakland, commonly known as 4311 MacArthur Blvd., Oakland,  
9 California 94619 as to Parcel 1 and no street address for Parcel 2, a vacant property at the corner of  
10 High and MacArthur Blvds., Alameda County Assessor's Map Nos. 030-1982-121, 122 and 123  
11 which is legally described on Exhibit A hereto (the "Property").

12 14. Plaintiff is informed and believes and based upon such information and belief alleges  
13 that defendants claim a right, title, estate or interest in or claim or cloud on the land superior to  
14 Plaintiff's fee title ownership interest.

15 15. The title of the Plaintiff to which a determination is sought is owner in fee of the  
16 Property free of any right, title, lien, estate, claim, or interest of defendants. The basis of Plaintiff's  
17 title is based upon the Trustee's Deed. Further, Plaintiff's claims of superiority of title vis-à-vis  
18 defendants' claims or interests is based on Plaintiff's payment of the sum of \$229,427.55 to redeem  
19 the Property from the County of Alameda's priority lien of defaulted taxes for the 2003-2004, 2005-  
20 2006 fiscal years and subsequent delinquencies.

21 16. Plaintiff is informed and believe and based thereon alleges that the adverse claim of  
22 defendants to the title of the Plaintiffs against which a determination is sought are as lien holders.

23 17. The determination is sought as of March 28, 2013.

24 SECOND CAUSE OF ACTION

25 (For Declaratory Relief Against All Defendants)

26 18. Plaintiff realleges and incorporates herein by this reference paragraphs 1 through 17,  
27 inclusive of this complaint as though set forth in full.

28 VERIFIED COMPLAINT

1           19. An actual controversy has arisen and now exists between Plaintiff and defendants  
 2 concerning their respective rights and interests in the Property. Plaintiff contends, and is informed  
 3 and believes and based thereon alleges that defendants deny, that Plaintiff is owner in fee of the  
 4 Property free and clear of any right, claim, estate, interest or lien of defendants; that by virtue of  
 5 Plaintiff's payment of the County of Alameda first priority tax liens, under Civil Code Section 2904,  
 6 as well as the doctrine of equitable subrogation, Plaintiff was subrogated to the rights and priorities  
 7 of the County of Alameda property tax liens, and that by virtue of that priority, defendants' liens, if  
 8 any, were extinguished by the August 27, 2012 foreclosure sale at which Plaintiff was the successful  
 9 bidder.  
 10

11           20. Plaintiff desires a judicial determination of its rights and interests in the Property and a  
 12 judicial declaration that Plaintiff is the owner in fee of the Property free and clear of any right, claim,  
 13 estate, interest or lien of defendants.  
 14

15           21. A judicial declaration is necessary and appropriate at this time under the circumstances  
 16 in order that Plaintiffs may ascertain its rights and interests in the Property, and to avoid a  
 17 multiplicity of actions.  
 18

19           WHEREFORE, Plaintiff prays for judgment as follows:

20           1.       On the First Cause of Action to Quiet Title, for a judicial determination that Plaintiff  
 21 is the owner in fee of the Property free and clear of the adverse claims alleged herein.

22           2.       On the Second Cause of Action for Declaratory Relief, for a judicial determination  
 23 that Plaintiff has been subrogated to the rights and priority of the first priority tax liens of the County  
 24 of Alameda that were paid by Plaintiff, and that Plaintiff is the owner in fee of the Property free and

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clear of the adverse claims alleged herein

3. For such other and further relief as the Court deems just and proper.

Dated: March 27, 2013

By: Julie A. Herzog  
Julie A. Herzog  
Attorney for Plaintiff AMG Investment &  
Development Services, Inc.

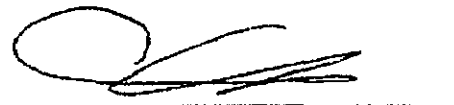
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VERIFICATION

STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

I have read the foregoing document entitled Verified Complaint and know its contents. I am the President of the Plaintiff in this action, and am duly authorized to make this verification on its behalf. The matters stated in the foregoing document are true and correct of my own personal knowledge, except those matters which are alleged on information and belief, which I am informed and believe and based thereon state are true and correct.

Executed on this 27th day of March 2013, at Encino, California. I declare under penalty of perjury that the foregoing is true and correct.



Alexis M. Gevorgian

**EXHIBIT "A"****VERIFIED COMPLAINT**

THE LAND REFERRED TO IN THIS ~~GUARANTEE~~ IS SITUATED IN THE STATE OF CALIFORNIA, CITY OF OAKLAND, COUNTY OF ALAMEDA AND IS DESCRIBED AS FOLLOWS:

**PARCEL 1:**

LOT 5 AND A PORTION OF LOTS 6, 7, 8, 9 AND 10, BLOCK "B", MAP OF MELROSE ACRES, FILED NOVEMBER 4, 1920, IN MAP BOOK 6, PAGE 46, ALAMEDA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHWESTERN LINE OF MAC ARTHUR BOULEVARD, FORMERLY HOPKINS STREET, WITH THE SOUTHEASTERN LINE OF HIGH STREET, AS SAID STREETS ARE SHOWN ON SAID MAP; RUNNING THENCE ALONG SAID LINE OF HIGH STREET, SOUTH 58° 04' 37" WEST, 86.63 FEET TO THE SOUTHWESTERN LINE OF SAID LOT 5; THENCE ALONG THE LAST NAMED LINE, SOUTH 36° 13' 53" EAST, 199.95 FEET TO THE SOUTHEASTERN LINE OF LOT 4; THENCE ALONG THE SOUTHEASTERN LINE OF LOT 4, SOUTH 58° 04' 37" WEST, 23.76 FEET TO A POINT ON THE EXTERIOR BOUNDARY LINE OF PARCEL 1 AS DESCRIBED IN DEED TO THE STATE OF CALIFORNIA, DATED JULY 15, 1961 AND RECORDED SEPTEMBER 19, 1961, ON REEL 411 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, IMAGE 925 (SERIES AS/115253); THENCE ALONG THE EXTERIOR BOUNDARY OF SAID STATE OF CALIFORNIA PARCEL OF LAND (AS/115253), THE FOUR FOLLOWING COURSES AND DISTANCES: SOUTH 58° 29' 50" EAST, 204.81 FEET; NORTH 25° 13' 00" WEST, 175.21 FEET, ON THE ARC OF A TANGENT CURVE TO THE LEFT WITH A RADIUS OF 364.00 FEET, A DISTANCE OF 30.00 FEET; AND NORTH 49° 14' 07" EAST, 2.70 FEET TO SAID LINE OF MAC ARTHUR BOULEVARD; THENCE ALONG THE LAST MENTIONED LINE, NORTH 40° 45' 53" WEST,

129.84 FEET TO THE POINT OF BEGINNING

**PARCEL 2:**

A PORTION OF LOTS 3 AND 4 IN BLOCK B, AS SHOWN ON THAT MAP ENTITLED, "MELROSE ACRES OAKLAND, ALAMEDA COUNTY, CALIFORNIA", FILED NOVEMBER 4, 1920, IN LIBER 6 OF MAPS, PAGE 46, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

COMMENCING AT A POINT ON THE SOUTHEASTERLY LINE OF SAID LOT 4, DISTANT THEREON NORTH 57° 02' 22" EAST (SAID BEARING BEING NORTH 58° 04' 37" EAST ACCORDING TO THE CALIFORNIA COORDINATE SYSTEM, ZONE III), 18.88 FEET FROM THE MOST SOUTHERLY CORNER OF SAID LOT 4; THENCE NORTH 59° 32' 05" WEST (SAID BEARING BEING NORTH 58° 29' 50" WEST ACCORDING TO THE CALIFORNIA COORDINATE SYSTEM, ZONE III), 100.72 FEET; THENCE NORTH 51° 27' 39" WEST (SAID BEARING BEING NORTH 50° 25' 24" WEST ACCORDING TO THE CALIFORNIA COORDINATE SYSTEM, ZONE III), 104.13 FEET TO THE SOUTHWESTERLY LINE OF SAID LOT 3; THENCE ALONG LAST SAID LINE, NORTH 37° 16' 08" WEST (SAID BEARING BEING NORTH 36° 13' 53" WEST ACCORDING TO THE CALIFORNIA COORDINATE SYSTEM, ZONE III), 10.59 FEET TO THE SOUTHEASTERLY LINE OF HIGH STREET (90.00 FEET WIDE); THENCE ALONG LAST SAID LINE, NORTH 57° 02' 22" EAST (SAID BEARING BEING NORTH 58° 04' 37" EAST ACCORDING TO THE CALIFORNIA COORDINATE SYSTEM, ZONE III), 87.63 FEET TO THE NORTHEASTERLY LINE OF SAID LOT 4; THENCE ALONG LAST SAID LINE, SOUTH 37° 16' 08" EAST (SAID BEARING BEING SOUTH 36° 13' 53" EAST ACCORDING TO THE CALIFORNIA COORDINATE SYSTEM, ZONE III), 199.95 FEET TO THE MOST EASTERLY CORNER OF SAID LOT 4; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID LOT 4, SOUTH 57° 02' 22" WEST (SAID BEARING BEING SOUTH 58° 04' 37" WEST ACCORDING TO CALIFORNIA COORDINATE SYSTEM, ZONE III), 23.76 FEET TO THE POINT OF COMMENCEMENT.

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number and address): <b>Julie A. Herzog, SBN 117102</b> <b>18980 Ventura Blvd. #230</b> <b>Tarzana, CA 91356</b>  TELEPHONE NO: (818) 888-6659      FAX NO (Optional): (818) 888-9140 E-MAIL ADDRESS (Optional): lawwings@earthlink.net ATTORNEY FOR (Name): Plaintiff AMG Investment & Development Services, Inc.	<b>FILED BY FAX<sup>ILY</sup></b> <b>ALAMEDA COUNTY</b> <b>May 29, 2013</b> <b>CLERK OF</b> <b>THE SUPERIOR COURT</b> <b>By Alicia Espinoza, Deputy</b>  <b>CASE NUMBER</b> <b>RG13673502</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA</b> STREET ADDRESS: <b>1225 Fallon Street</b>  MAILING ADDRESS: CITY AND ZIP CODE: <b>Oakland, CA 94612</b> BRANCH NAME: <b>Rene C. Davidson Courthouse</b>	<b>CASE NUMBER:</b> <b>RG13673502</b>
<b>PLAINTIFF/PETITIONER: AMG Investment &amp; Development Services, Inc.</b>  <b>DEFENDANT/RESPONDENT: Grubb &amp; Ellis Company, etc. et. al.</b>	<b>CASE NUMBER:</b> <b>RG13673502</b>  <b>Ref. No or File No.:</b>
<b>PROOF OF SERVICE OF SUMMONS</b>	

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
  - a.  summons
  - b.  complaint
  - c.  Alternative Dispute Resolution (ADR) package
  - d.  Civil Case Cover Sheet (served in complex cases only)
  - e.  cross-complaint
  - f.  other (specify documents): Notice of Assignment of Judge; Notice of Case Management Conference
3. a. Party served (specify name of party as shown on documents served):  
City of Oakland
- b.  Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):  
City of Oakland, City Attorney
4. Address where the party was served:  
Oakland City Hall, 6th Floor, 1 Frank Ogawa Plaza, Oakland CA 94612
5. I served the party (check proper box)
  - a.  by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): \_\_\_\_\_ (2) at (time): \_\_\_\_\_
  - b.  by substituted service. On (date): \_\_\_\_\_ at (time): \_\_\_\_\_ I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3): \_\_\_\_\_
    - (1)  (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
    - (2)  (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
    - (3)  (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
    - (4)  I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): \_\_\_\_\_ from (city): \_\_\_\_\_ or  a declaration of mailing is attached.
    - (5)  I attach a declaration of diligence stating actions taken first to attempt personal service.

PLAINTIFF/PETITIONER: AMG Investment & Development Services, Inc.	CASE NUMBER: RG13673502
DEFENDANT/RESPONDENT: Grubb & Ellis Company, etc. et. al.	

5. c.  by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4. by first-class mail, postage prepaid,
- (1) on (date): 4-5-2013 (2) from (city): Woodland Hills, CA
- (3)  with two copies of the Notice and Acknowledgment of Receipt and a postage-paid return envelope addressed to me. (Attach completed Notice and Acknowledgement of Receipt.) (Code Civ. Proc., § 415.30.)
- (4)  to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d.  by other means (specify means of service and authorizing code section):  
Service acknowledged by Deputy City Attorney Kiran Jain on 4/23/2013 (Sec attached email)
- Additional page describing service is attached

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a.  as an individual defendant
- b.  as the person sued under the fictitious name of (specify):
- c.  as occupant
- d.  On behalf of (specify): City of Oakland  
under the following Code of Civil Procedure section:
- |   |   |
|---|---|
| <input type="checkbox"/> 416.10 (corporation)                     | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation)             | <input type="checkbox"/> 416.60 (minor)                               |
| <input type="checkbox"/> 415.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee)                 |
| <input type="checkbox"/> 415.40 (association or partnership)      | <input type="checkbox"/> 416.90 (authorized person)                   |
| <input checked="" type="checkbox"/> 413.50 (public entity)        | <input type="checkbox"/> 415.46 (occupant)                            |
|   | <input type="checkbox"/> other:                                       |

7. Person who served papers

- a. Name: Julie A. Herzog
- b. Address: 18980 Ventura Blvd., #230
- c. Telephone number: (818) 888-6659
- d. The fee for service was: \$ 0
- e. I am:

- (1)  not a registered California process server.
- (2)  exempt from registration under Business and Professions Code section 22350(b).
- (3)  a registered California process server:
- (i)  owner  employee  independent contractor.
- (ii) Registration No.:
- (iii) County:

8.  I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9.  I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: 5-29-2013

Julie A. Herzog  
(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

  
(SIGNATURE)

**EXHIBIT D**



**Julie Herzog**

---

**From:** Jain, Kiran C <KJain@oaklandcityattomey.org>  
**Sent:** Tuesday, April 23, 2013 5:09 PM  
**To:** Julie Herzog  
**Subject:** RE: AMG Investment, etc. v. Grubb & Ellis Co., et al., A.C.S.C. Case No. RG13673502

Thanks Julie. Are these properties set to be sold?

Kiran

**From:** Julie Herzog [<mailto:lawwings@earthlink.net>]  
**Sent:** Tuesday, April 23, 2013 5:02 PM  
**To:** Jain, Kiran C  
**Subject:** AMG Investment, etc. v. Grubb & Ellis Co., et al., A.C.S.C. Case No. RG13673502

Dear Ms. Jain: Per our telephone call of this afternoon, please find attached the preliminary title report showing the liens of the City of Oakland we discussed. They are exception nos. 17 to 18 and 21 to 27, inclusive. Please give me a call back after you've investigated and let me know if these are liens the City is still pursuing, and if they are, so we can discuss the priority issues involved in the case. Thank you. Julie Herzog

Julie A. Herzog Esq.  
Attorney at Law  
18980 Ventura Blvd., #230  
Tarzana, CA 91356  
(818) 888-6659 fax (818) 888-9140  
[lawwings@earthlink.net](mailto:lawwings@earthlink.net)

This e-mail and any files transmitted with it are intended only for the individual named. If you have received this e-mail by mistake, please notify the sender immediately by e-mail. If you are not the named addressee, you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail (including any attachments) if you have received it by mistake. Please do not forward to anyone else. Thank you.

Please do not disseminate, distribute or copy this e-mail.  
If you are not the named addressee, you should not disseminate, distribute or copy this e-mail.

No virus found in this message.  
Checked by AVG - [www.avg.com](http://www.avg.com)  
Version: 2012.0.2221 / Virus Database: 3162/5768 - Release Date: 04/23/13

**EXHIBIT E**

1 Julie A. Herzog SBN 117102  
 2 Law Office of Julie A. Herzog  
 3 18980 Ventura Boulevard, #230  
 Tarzana, California 91356  
 (818) 888-6659 Fax (818) 888-9140  
 4 Attorney for Plaintiff AMG  
 Investment & Development Services, Inc

**FILED BY FAX**  
 ALAMEDA COUNTY

July 09, 2013

CLERK OF  
 THE SUPERIOR COURT  
 By Catherine Green, Deputy

CASE NUMBER:  
**RG13673502**

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 9 **FOR THE COUNTY OF ALAMEDA**

11 AMG INVESTMENT & DEVELOPMENT  
 12 SERVICES, INC., a California corporation,

13 Plaintiff,

14 v.

15 GRUBB & ELLIS COMPANY, a Delaware  
 16 corporation; CITY OF OAKLAND, a chartered  
 city; HAHN & KANG EQUITY L.L.P., a  
 17 California limited partnership; HAHN  
 DEVELOPMENT, LLC, a California limited  
 18 liability company; DOES 1 through 25, inclusive,  
 19 and All Persons Claiming Any Right, Title,  
 Estate, Lien or Interest in the Real Property  
 20 Described Herein or Any Part Thereof,

21 Defendants.

) Case No. RG13673502  
 ) Assigned to the Hon. Frank Roesch, Dept. 24

) NOTICE OF OBJECTION TO AND  
 ) OBJECTION TO NOTICE OF RELATED  
 ) CASE FILED IN CASE NO. RG12629895

) UNLIMITED JURISDICTION - CIVIL

) Complaint Filed: March 28, 2013

) Trial Date: None

23 TO THE COURT AND THE PARTIES HEREIN AND TO ALL PARTIES IN THE *HAHN*  
 24 v. *HAHN* related cases, Alameda Superior Court Case Nos. RG12629895 and RG12644534:

26 PLEASE TAKE NOTICE that Plaintiff AMG INVESTMENT & DEVELOPMENT  
 27 SERVICES, INC. objects to the Notice of Related Case filed by Defendant Alex Hahn in *Hahn v.*

28 NOTICE OF OBJECTION TO AND OBJECTION TO NOTICE OF RELATED CASES

1 *Hahn*, Alameda Superior Case No. RG12629895 on the grounds that the cases should not be deemed  
2 related for the following reasons:

3           1. The already related Alameda Superior Court cases, Nos. RG12629895 and RG12644534  
4 both designated *Hahn v. Hahn*, are family partnership dissolution and breach of fiduciary cases in  
5 which Plaintiff AMG Investment & Development Services, Inc. has no interest. Contrary to the box  
6 checked on Alex Hahn's Notice of Related Case, the parties to the action are not the same. As can  
7 be seen from the above caption, the parties to this case are Plaintiff AMG Investment &  
8 Development Services, Inc. and defendants Grubb & Ellis Company, the City of Oakland, Hahn &  
9 Kang Equity I, L.P., Hahn Development, LLC, DOES 1 through 25, inclusive, and All Persons  
10 Claiming Any Right, Title, Estate, Lien or Interest in the Real Property located in the City of  
11 Oakland, commonly known as 4311 MacArthur Blvd., Oakland, California 94619 as to Parcel 1 and  
12 no street address for Parcel 2, a vacant property at the corner of High and MacArthur Blvds.,  
13 Alameda County Assessor's Map Nos. 030-1982-121, 122 and 123. The parties to the *Hahn v. Hahn*  
14 Case No. RG126298895 are plaintiffs Young S. Halm, Miae Hahn, Won S. Halm, Grace Hahn, Sang  
15 Duk Hahn, and Mingie Hahn and defendants Alex K. Hahn, Jae Hee Hahn and Jung Hyun Cho (filed  
16 5/11/12 and designated as Hahn I on the attached Order Relating Cases). The parties to the *Hahn v.*  
17 *Hahn* Case No. RG12644534 are plaintiffs Young S. Hahn, Edward Kang, Won S. Hahn, James  
18 Kang, and Sang Duk Hahn, and defendants Alex K. Hahn, Charles Hahn, Jung Hyun Cho, Hahn  
19 Development, LLC and AMG & Associates, LLC (filed 8/21/12 and designated as Hahn II on the  
20 attached Order Relating Cases).

21           2. The cases do not arise from the same or substantially identical transactions, incidents, or  
22 events requiring the determination of the same or substantially the same or identical questions of law  
23 or fact. The AMG Investment & Development Services, Inc. action is for quiet title and declaratory  
24 relief that a foreclosure sale held on August 27, 2012 extinguished the defendants interests, if any, in  
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NOTICE OF OBJECTION TO AND OBJECTION TO NOTICE OF RELATED CASES

1 the subject property. The Hahn I complaint filed May 11<sup>th</sup>, 2012 is a family partnership dispute for  
2 Partition of Real Property, Cancellation of Instrument and Accounting, and Damages.” The real  
3 property in that case is identified as 495 22<sup>nd</sup> St., Oakland, California and is not the real property at  
4 issue in the AMG Investment & Development, Inc. case. The Hahn II complaint filed August 21,  
5 2012 states that it is “For Damages for Breach of Fiduciary Duty; Embezzlement; Breach of Written  
6 Contract; Cancellation of Instrument; Dissolution of Partnership; Accounting; Partition of Real  
7 Property; and Common Court.” Although the same real property that is in issue in the AMG  
8 Investment & Development Services, Inc. case is tangentially involved in the partnership dispute,  
9 AMG Investment & Development Services, Inc., Grubb & Ellis Company, and the City of Oakland  
10 have no interest in the outcome of the family partnership disputes.  
11

12  
13 3. As mentioned in paragraph 2, the Hahn I Action (No. 895) does not involve claims  
14 against, title to, possession of, or damages to the same property involved in the AMG Investment &  
15 Development Services, Inc. case. The Hahn II complaint initially had one cause of action against a  
16 wholly separate AMG company, AMG & Associates, LLC but AMG & Associates, LLC was  
17 dismissed from the Plaintiffs’ Complaint at a February 4, 2013 Case Management Conference. On  
18 June 27, 2013, Counsel for Defendant Alex Hahn in the Hahn II case sent counsel for Plaintiff AMG  
19 Investment & Development Services, Inc. a copy of Cross-Complaint he filed on June 25, 2013  
20 which includes a cause of action against AMG & Associates, LLC for Breach of Contract. The  
21 contract alleged to have been breached by AMG & Associates, LLC in a purchase agreement dated  
22 August 15, 2005 for the same property that is the subject of the AMG Investment & Development  
23 Services, Inc. case. The Hahn II cross-complaint does not however, involve a claim against, seek  
24 any interest in, title to or possession of, or damages to the real property that is the subject of the  
25 AMG Investment & Development Services, Inc. action.  
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28 4. For the above stated reasons, Plaintiff AMG Investment & Development Services, Inc.

NOTICE OF OBJECTION TO AND OBJECTION TO NOTICE OF RELATED CASES

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does not believe that designating the AMG Investment & Development Services, Inc. case as a related case to the *Hahn v. Hahn* related cases is likely for other reasons to require substantial duplication of judicial resources if heard by different judges. The issues to be tried are separate and distinct and the parties and causes of action are too different. Plaintiff AMG Investment & Development Services, Inc. respectfully requests the court to allow it to proceed with its case without the related designation.

Dated: July 9, 2013

By: Julie A. Herzog  
Julie A. Herzog  
Attorney for AMG Investment & Development Services, Inc.

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FILED  
ALAMEDA COUNTY

FEB 20 2013

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA  
CLERK OF THE SUPERIOR COURT  
By Nancy A. Pose Deputy

YOUNG S. HAHN, et al.,  
Plaintiff(s),  
vs.  
ALEX K. HAHN, et al.,  
Defendant(s).

ORDER RELATING CASES  
("CRC") 3.300(h)(1))

No. RG12 629895  
("Hahn I Action")

YOUNG S. HAHN, et al.,  
Plaintiff(s),  
vs.  
ALEX K. HAHN, et al.,  
Defendant(s).

No. RG12-644534  
("Hahn II Action")

The Court finds that the above two actions (referred to respectively as the *Hahn I Action*, and the *Hahn II Action*) are related. IT IS HEREBY ORDERED:

1. That the *Hahn II Action* shall be transferred from Dept 16 and assigned to Department 516, and set for a case management conference in Dept 516 on May 20, 2011 at 2:30 p.m.
2. All future dates in Dept 16 in the *Hahn II* case are hereby vacated.
3. After filing, the Department 516 clerk shall serve a copy of this Order on all parties in all related cases, and deliver a copy to Judge Wynne Carvill and to Judge Lawrence John Appel. (See CRC 3.300(i))

Dated: FEB 20 2013

HON. BRENDA F. HARBIN-FORTE  
JUDGE OF THE SUPERIOR COURT

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the county of Los Angeles, State of California. I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within actions; my business address is 18980 Ventura Boulevard, Suite 230, Tarzana, CA 91356.

On July 9, 2013, I served the document(s) entitled, NOTICE OF OBJECTION TO AND OBJECTION TO NOTICE OF RELATED CASE FILED IN CASE NO. RG12629895 on the interested parties in this action by placing true copies thereof in a sealed envelope(s) addressed as stated below:

**SEE ATTACHED SERVICE/MAILING LIST**

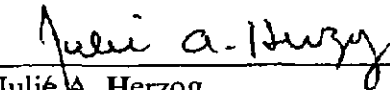
**BY MAIL** I deposited such envelope in the mail at West Hills, California. The envelope was mailed with postage thereon fully prepaid.

**(BY FACSIMILE TRANSMISSION)**: I caused a true copy thereof to be sent via facsimile to the attached listed names and facsimile numbers and received confirmed transmission reports indicating that this document was successfully transmitted to the parties.

**(VIA OVERNIGHT MAIL)**: I deposit such envelope to be placed for collection and handling via UPS following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for UPS. On the same day that material is placed for collection, it is picked by UPS at \_\_\_\_\_, California.

**(BY HAND DELIVERY)**: I caused said envelope to be delivered by hand to the addressee(s) mentioned in the attached service/ mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and was executed on July 9, 2013 at Woodland Hills, California.

  
\_\_\_\_\_  
Julie A. Herzog



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SERVICE LIST

Brian H. Song, Esq.  
Law Office of Brian H. Song  
2700 Augustine Drive., Suite 198  
Santa Clara, CA 95054  
Attorney for Plaintiffs in the  
*Hahn v. Hahn* cases and  
Registered Agent for Service of Process  
for Hahn & Kang Equity I, L.P.  
in Case No. RG13673502

Barbara Parker, Esq.  
Kiran C. Jain, Esq.  
Oakland City Attorney's Office  
City Hall, 6th Floor  
1 Frank Ogawa Plaza  
Oakland, California 94612  
Attorneys for Defendant  
City of Oakland in Case No.  
RG13673502

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Fried & Williams, LLP  
480 9<sup>th</sup> Street  
Oakland CA 94607  
ckillian@friedwilliams.com  
Attorneys for Defendants in the  
*Hahn v. Hahn* related cases

**EXHIBIT F**

AMG – PLANNING COMMISSION MEETING – JULY 17, 2013

Item 6 – AMG

(Transcribed from video recording of the meeting by Alecto Caldwell, July 27, 2013).

Planner = Lynn Warner (PLW)

Commissioners = Moore (CM); Weinstein (CW); Bonilla (CB); (CP) Pattillo (Chair); Whales

AG = Alexis Gervorkian (sp?) – Applicant/developer.

LG = Leslie Golden (landscape architect and presenter for the project applicant.

Miller – reads title of project and presents Lynn Warner – “presenting first for the City”

CP (Chair Pattillo): One moment.

Commissioner Whales: I have to recuse myself since I own property within 300 feet of this...

CP: You are excused.

PLW: I apologize, we had a lot of last minute comments to print out and distribute to all of you, so I know all of you haven't had a chance to read all those. Uh, and I also gave you some language there for a proposed Condition of Approval, #19 is what it would be. That CP would like to add to the conditions.

Let me start out by saying, Good evening, Commissioners. Uh, let me get to my report here. OK.

The project site is approximately 1 acre in size, a little under that. And it is currently vacant except for a billboard. The triangular shaped lot includes three parcels and it is bounded by High Street, Interstate 580 and MacArthur Blvd. Buildings in the immediate vicinity range from one to three stories in height. The project involves the redevelopment of the site with a five story mixed-use project, including 115 units of senior housing, 3640 square feet of ground floor commercial space, and 65 parking spaces.

Four stories of 1 bedroom senior units will be located on a podium over the ground floor which will include parking and commercial space. The height of the building varies from 47 to 60 feet. Please note that on Sheet A 10 it shows a maximum height of 65 feet, but that is an error, it should read 60 feet, according to the applicant.

Just for your background, because I know a lot of Commissioners are somewhat recent to the Commission, this project, basically, a similar project was previously approved on Feb. 20, 2008, by the Planning Commission, but was appealed to the City Council. Subsequently, the Applicant withdrew his application which invalidated all Land Use Approvals, rendering the Appeal moot. In March 2010, the Applicant submitted a new Application for Planning related approvals. The new Application includes a slightly revised project description and the project elevations are essentially the same as the project that was previously approved.

The project requires Major Conditional Use Permits to exceed the maximum allowable density, to reduce the parking requirement, and to provide ground level parking and loading. The proposed increase in allowable density is warranted due to the provision of senior housing. In addition, some portion of the units will be provided as affordable housing. The proposed reduction in the parking requirement is warranted due to the provision of senior housing, which generates a much lower parking demand than typical multi-family residential projects. The provision of ground level parking and loading is justified because the parking will be enclosed within the building and screened. And the loading area will be located at the edge of the building. Minor Variances are required in order to exceed the general height limit and the height limit adjacent to R50 Medium Density Residential Zone. The 47 to 60 foot height of the proposed project would exceed the 3 to 40 foot allowable height limit. The height limit varies because this is split by two different zoning districts. Because the project provides senior housing and a Conditional Use Permit is required in order to exceed the allowable density, it is logical to assume that granting such a density bonus entails waiving zoning regulation related to height in order to... accommodate the additional units. In addition, the configuration of the lot, the need to provide open space, and the proximity to Interstate 580 make it difficult to design the project to be consistent with the height limits. The design of the project was extensively reviewed and revised as part of the approval process for the previous project proposed for the site. The previous project design was considered at two Design Review Committee Meetings, two community meetings, and three Planning Commission Meetings, and was also discussed with several DRC members on several occasions. Staff believes the proposed project is attractively designed, with high quality materials and that it would be a substantial improvement to the surrounding Laurel District Neighborhood. It would replace an existing vacant, blighted site that contains a billboard and weeds with a mixed use building containing active residential and commercial uses. The design of the project is appropriate for its prominent location at the corner of High Street and MacArthur Blvd. and adjacent to Interstate 580.

The project would result in several potentially significant impacts. However, all of the impacts identified in the DEIR would be reduced to less than significant levels with the implementation of the proposed Standard Conditions of Approval which are included as Attachment B in the Staff Report.

Uh, before I wrap up, I just want to mention that the bulk of the comments that you received this evening, uh, well... they kind of go over a wide variety of concerns. But they can be broken down into several categories. One is environmental issues. I will summarize this since you don't... haven't had the chance to really review this. Uh... in terms of environmental issues, the primary issues are that the site is contaminated, it has got hazardous materials contamination. But, the project has got Standard Conditions of Approval that require remediation of the site. This is standard. Just about every infill site you see in Oakland has hazardous materials contamination. There is a reason it is vacant. So this is no different from any of the other ones, um. This site would have to be remediated fully to residential standards. That is going to be regulated by all the relevant governing agencies. It is not just the City, it is Alameda County Environmental Health Department, Regional Water Quality Control Board. There are a lot of different agencies that oversee that. So that .... All of these have been addressed in the EIR. But there is also air quality. A lot of people raised a concern about placing any residents, but particularly seniors right next to a busy freeway. And there is a Standard Condition of Approval in the Standard

Conditions of Approval and Monitoring and Reporting Program that includes (clears throat), excuse me. It is a standard measure whenever you are next to a freeway or some sort of sensitive location for air quality you have to do extra air filtration. I believe it is called the MERV (sp?) air filtration system. So that is going to be implemented into the project. That is a Standard Requirement. And, of course, all of the other standard air measures that are part of our Standard Conditions of Approval. But that is the main one of dissent (?), because it is right next to the freeway.

The, um, let's see what else. Traffic. Particularly because it is a busy intersection, and having seniors who are a little bit more, um, less agile in terms of crossing the street. That has all been addressed in the EIR and there are no significant impacts from traffic. Traffic isn't that good to begin with but that is because this is a senior project, it is only going to contribute a very small number of trips, especially during the AM and PM peak hours, because, you know, the seniors aren't out at the same hours, you know, that all the regulars are out. So their contribution during those busy hours is very small. And, so that is also less than significant and there are all the standard measures included in Conditions of approval to address those issues.

Um, Oh,... Scenic Designation. Scenic Highway Designation. Highway 580 is a Scenic Highway Corridor and there was some concern that placing a new building along that corridor could impact the integrity of that designation by Cal Trans, and that was examined. The consultant checked with Cal Trans on that and they said that the Scenic Highway corridor basically.... I am paraphrasing, but basically, it discusses this in the aesthetics section of the EIR, or the initial study, but it is already so deteriorated that this is going to have a minor impact on it. Yes, it is going to be visible from the freeway, it is bigger than anything around it, but, the fact that you are whizzing by, you see it for a split second, and it will rise up above the trees, but you're not going to see it for long periods of time and right now there is a billboard there. So the billboard is already visible from there. It is going to come down as part of the project and then in its place would be this project. But, it would not, according to Cal Trans, impact the Scenic Highway Designation.

So, I think.... Mark, can you think of any others? I think those are the primary....

CP: The other issue...

PLW ... environmental issues

CP: ... not environmental issues, but the use – senior housing vs commercial.

PLW: Yes, I'll get into that

CP: You will address that – OK

PLW: Yes I will.

PLW: So, I think that is all the environmental issues, primarily, that were hit on again and again in various comments, both throughout the process, you know, in the draft EIR, the final EIR and in some of these letters we have recently received.

Then, there are other more land use concerns. And those... a lot of people said, well you know this is a commercial, a commercially zoned property. It is part of a commercially zoned area so why could you have, how could you allow a residential project. Well, that's because Commercial Zoning allows a combination of uses. It allows commercial uses, civic uses, and residential uses. So residential uses are clearly allowed in this commercial zone and virtually every commercial zone within the City. So it is not that is required to be a commercial use, it's that you can't have a commercial use in most residential zones, but commercial use are more comprehensive and they allow a variety of uses including residential. So it is not precluded in any way from residential uses. Um, now, a lot of people may have a preference for commercial, but, you know, we have not received any applications for this site for commercial. And there is no requirement to make it commercial. It might be a nice addition to the neighborhood, but, you know, which primarily a commercial corridor along this area is. But, unfortunately, we don't have any applications for that. I happen to know that Kir Williams in the Economic Development Division just told me many times that she has brought people out there on bus tours. Developers. Showing all these potential development sites to developers throughout the City and nobody, you know, has submitted anything for this. So, it is a nice idea, but there is nothing on the boards, and this is what is on the boards and it is allowed. And again, just to reiterate, I realize that none of you Planning Commissioners were on the Planning Commission, I didn't work on the project then either, but this was approved by the Planning Commission in 2008.

Um, let's see. Other land use issues..... Oh. Well, related to some of the use permits and variances that are being asked for - the variances are related to height, so that is completely up to you, whether you think that the height is appropriate, but again, this right next to a freeway, it's at the corner of two huge arterial streets - High and MacArthur, a very busy thoroughfare. Uh. If any site.... It is designated as a Grow and Change Area in the General Plan, so it wasn't meant to stay static and low intensity. There are several, many corridors throughout the City, you know, Telegraph, San Pablo, all kinds of our roads (?) throughout the City that have had infill sites like this that have been redeveloped with buildings that are taller than the generally surrounding buildings in the area. And, if any place can accommodate it, it is generally, areas such as this that are on, you know, high traffic corridors, especially next to a freeway.

Um, uh, let's see what else. Um, the use permits that are being asked for are for parking and loading, um, and that's because they are on the ground floor here and there is really nowhere else to put them, but the parking... The loading has been tucked to the side on High Street, the furthest distance, and you know, the less prominent side, um, beside the building. It is not going to be that big a deal because it is loading for residential building. Uh.

CP: When you are on that, can you speak to why the drop off zone on High was deleted from the project?

PLW: Yes. Because that was looked at during the traffic analysis, as part of the EIR process, and it was determined that that was going to be a circulation problem, because of how traffic goes to the intersection and there is already a bus stop there and it was just going to be a conflict. So they decided that they really had to take it out for traffic circulation reasons. So that couldn't put an extra pick up spot there. But they do have a spot set aside inside the garage if they end up using shuttle service either

on their own or utilizing existing shuttle services in the area. So they can pull into the garage. Pick up and drop off and then drive out.

Um. And the parking, although it is on the ground floor, is going to be screened. It is going to be enclosed in the building. It is not going to be open parking. And it is going to be visually screened.

Um. The other issue related to use permits the need additional density in order to get the additional units of senior housing. And that is provisioned in the Code to accommodate senior housing is to allow it via the Use Permit process. And, as well, we have a provision to reduce parking for senior housing. Obviously the two go together. And part of the study in the draft EIR showed that senior housing produces less trips. And they have less demand for parking as well. So that is why it makes sense to reduce the parking there.

So, um, also some people have brought up the issue... so those are the land use entitlement issues then there are some of the policy and planning issues related to it. And those are primarily related to... Some people keep bringing up the issue about affordable housing. This project as currently proposed... Well, basically the applicant, he can speak to this. After this he is going to come up and give a brief presentation, he and his architect. And they can walk you through the design in more detail. But, uh, he would like to have as much affordable housing here as possible.

The problem is, from what I understand, and I'm not a housing person so I don't know how all the uh... economics work per se. But he said that, you know there are tax credits that they have to get and they don't know until after the project gets approved, and they are out in the market, looking to get tax credits, how much money they are going to receive. And so it is really not sure at this point how many, you know, he would like to have 100% affordable housing, if possible, but it may not work out that way. A lot of the projects he does are, a lot of the projects he does are a mix of affordable and market rate housing. So, it doesn't matter at all, from a Planning point of view, because we don't regulate affordable housing any differently. We are not allowed to under State Law. So, uh, it is some unknown amount at this point, but again, the developer can speak to this, but I know his intent is to get as much affordable housing as possible, but it is not an issue from a Planning point of view, we regulate it the same way. And it would be different if he had asked for bonuses because of it being an affordable housing project, he could do that under State law, get additional density for affordable housing, you can get bonuses for that. But he has not asked for that.

And then, I think, the final main issue related to planning and policy is just design. And that's just, you know, (chuckle) and that's always the hardest one because it's very subjective. And, again, you are all new on it. I'm new. A lot of us are coming in on the process, but again, we do have to realize that there is a history on this project. And it has been through, honestly (she holds her right hand up as if swearing to tell the truth and nothing but the truth), I have worked on a lot of big projects in the City. The Shoreline City Center Project, the Cathedral, the Essex Building on Lake Merritt, a lot of them. And not a single one has been through even a fraction of the review process that this one has. So, um, it has been through a lot of meetings, and it evolved, um, from what I understand, in terms of design from where it was originally to where it is now. And hopefully, with maybe some minor tweaks and further

Conditions of Approval, and such, uh, it is ready to be decided upon one way or the other. Um, but I just wanted to reiterate that it has been through the full process before. And was approved completely by the Planning Commission previously.

So, uh, with that, I will turn it over to the applicant. Uh, Leslie is going to start, Ok, so we will have....

CP: Before you step away. Uh, first I want to thank you for such a thorough report. It is always impossible to review and so the fact that you have summarized it is very helpful.

PLW: You are welcome.

CP: And I wanted to ask my fellow Commissioners if they have questions and Commissioner Bon... does for Staff.

CB: Um, yes, my question is... I heard about mitigation filtering system, air quality, and so forth. I have not heard, and I went through the volumes of stuff I got from the City and I am not aware, in order to, um, mitigate noise for the seniors, if there is a sound wall, acoustic.... Plan on that side of the freeway to contain the noise.

PLW: No, there are no sound walls that are required as part of the project. Um, I think, there is just extra insulation, through, you know, they are going to have to do extra insulated windows, which is a standard requirement, you know, whenever you have extra noisy conditions that you are subject to. And during construction period, they are going to have to do, you know, the standard mitigation measure... well, standard conditions of approval to mitigate noise during construction. But in terms of operational noise, there is no requirement for a sound wall.

?:(Don't know who said it). OK.

Attorney: Madame Chair, if I can just follow up on that. So there are, as Lynn alluded to, there are standard Conditions of Approval that require, they are performance based standards, so the interior of the unit will be no more than, I think it is 45dba or thereabouts, and whether that is achieved through triple paned windows, or insulation or thick walls, the residents will be insulated from that sound above a certain level regardless of whether there is a sound wall.

CB: Thank you. That was my question and now it has been answered.

CP: OK. Are there other questions for Staff? Commissioner Moore.

CM: In the final comments for the EIR, I think one of the comments was, I think coming from the public, was about emergency vehicle access into the parking area. And, um, I forgot to look at that on the final draft. The final EIR. Was that addressed?

Pause.

PLW: Yeah, all the comments we received were addressed in response to comments, but I, honestly, don't know exactly where that one is. But, um, in the Response to Comments document, there is a...



unfortunately it is not by comment , I mean, it lists everybody's comments and what comment number it is... yeah, they will look through it while other people are working on it and they'll get back to you.

CM: Thank you

PLW: Any other comments from the Commission, or questions right now?

CP: Can we have the Applicant?

PLW: OK.

LG: Good evening, my name is Leslie Golden. I am representing the builder of this particular project , and if we can have our presentation, please. (PowerPoint presentation begins). I have been involved in this project since 2006, and as you know it has gone through many revisions. As I think it was well put just a moment ago.

I just want to orient everyone. This is MacArthur Blvd. and this is High Street, and in the distance I think you can see the 580 Freeway. And I would like to just go over a little bit some of the goals of this project. It is for active seniors, um, typically someone of my age or older. Um we don't... I just wanted to bring it back to the people who are going to be using this facility. Excuse me, the builder has also included a recreational facility for the community to get together, and has provided outdoor space for other activities. It's gone through an extensive community design process beginning in 2006. It has four community meetings, three design review board meetings, numerous revisions based upon the planning review comments, and the community comments. And it was approved on Feb. 20, 2008.

This is a photograph of the existing site with the billboard, uh, shown here, and on the left is 580 and that is, as you can see, it is screened by the existing vegetation. (Slide changes). (Pause). Again, you can see here the existing vegetation, some of it on Cal Trans right of way, and that plant material would stay. Um, (slide changes). This is looking, facing south on High Street. So you can see, it is just a vacant lot with a billboard.

(Slide changes) This was the first rendering that was proposed in 2006. It 's a six story, excuse me, that's a mis... that's a typo, it's a six story multi family, excuse me, it's a mixed use development . And the comments on this project were that, from the community, were that it had too high a density and that the scale was too big for the community.

(Slide changes). Shows the elevation from High Street, again using the six story, mixed use, and um, the materials are called out here. I think. One of the comments was that the materials should be a little more earthy and a little more toned down and that we should reduce the height. I also want to point out that the freeway is located on, uh, over here, and there will be a landscape buffer between the building and the freeway. And that there is a corridor on this side facing 580 so there are no residential windows facing the freeway. All residential windows are facing the interior courtyard or the street. Uh, the building was revised to use a little bit more natural, uh, a little bit toned down color scheme which was requested by the community. And then the community asked for more natural materials and for the incorporation of this laurel leaf design. I think, if you know the area, there is a gateway

feature, and it has an archway of a laurel leaf wrapped around it, so we were proposing to provide an art feature that spoke to the gateway and also provide an art element that would be provided by the community.

Uh. And this was the elevation facing (pause) MacArthur. And I think that the comments here were that the massing was too uniform and that they wanted us to widen this breezeway and create two completely separate buildings, so that we would reduce the mass of this building by designing two buildings that looked independent. And this (another slide) is the way it had been and was revised and redesigned. Two separate buildings with a breezeway between. The cars drive through the center and then there is a podium level where the recreation occurs for the residents.

(Another slide). These are some material boards showing the types of materials and the colors that would be included. In this detailing there is a lot of articulation and a lot of detail that has been included that will make it a rich and inviting building for the community.

(Another slide). And this is the other side, facing High Street. And then a close up that describes either wood or Core 10 steel to give it a little more natural character.

Another slide. This is another revision, requested by the community. Uh, a community member had... I will advance... (slide changes to rendition of the Laurel Archway) – this was designed by a community member, uh, this is the Laurel Gateway which our office designed and worked on the streetscape work. But this laurel leaf logo was designed by the community, and we were requested to utilize that design. To incorporate it at the entry. And to incorporate it at the grillwork underneath to screen the garage.

So, um, this is a revision that we prepared in 2010. And these are site furnishings designed in 2008. And it was to pick up on the streetscape improvements which were, uh, completed in 2007.

This is the landscape plan showing a bus stop here, some street trees and an entry feature that swings into the building and then an art feature that would be commissioned from the community. And then a continuation of the street trees, picking up on what was done at the Laurel District, and then an interior courtyard for community users. And where we can, we are going to be adding our own screening at both ends of the building. And, uh, the plant material hasn't really been finalized. This was designed many years ago and we can, of course, add more natives and more diversity.

This is a photo-simulation of an interior courtyard view, showing different social spaces and gathering areas.

And this is another view.

And I just want to reiterate the transition and transformation that this building has gone through. It started out as a six story mixed use building. I think it is very nicely articulated, but the community and the design review requested changes. And, I think, it has created a wonderful new building. Uh. Uh, and again. Visually, this looks like one building and that looks like another, so it does reduce the massing. And the retail below gives it an activity at the street level. So we are very excited about this new addition to the Laurel District.

(Slide of Gas Station, McDonalds, Mechanic's Shop, Strip Shopping Center). And we just wanted to highlight that this, that these are land uses that are permitted. And we would contend that is certainly a great improvement than either of these alternatives.

Slide changes again. I just wanted to reiterate. I know that you are all familiar that as people age they have extreme mobility issues and getting up and down stairs creates a situation where our seniors are housebound. And throughout, uh, in the City of Oakland's Housing Element, they have indicated that there is an increasing demand for senior housing. And, uh, it is proven by the fact that there is over a ten month wait for similar projects. And the Housing Element also suggested that by providing alternatives for seniors would facilitate home ownership for younger families in a different demographic. I also want to say that the senior consumers would add economic vitality to the Laurel District and be a beneficial. And, uh, we want to say that seniors are great neighbors. They use local City services, they will support the existing commercial and reduce the blight, and the alternative land uses are really not the most desirable. That our project is probably the best use for this project, uh, this land. And we would like to ask the Commission's support of the City Staff's recommendation and approve this senior housing project for the City of Oakland.

Thank you. I will take questions, if you have any. Oh, uh, Alexis would like to say a word.

AG: Thank you Chairman and members of the Commission. My name is Alexis Gervorkian (sp?). My address is 16663 Entero (?) Blvd., in Encino, California. Uh, basically, I think, every, you know, Lynn's presentation and our presentation before, uh, seems to be pretty comprehensive. I don't see anything that I can really add to the presentation, except to say that, uh, this has probably been the most challenging process that I have ever had in my career. And, uh, the uh, Staff Report that Lynn has put together is just amazing. Her and the environmental consultants reports just, uh, they have left no stone unturned. And, um, it is remarkable what you have to do to get a project approved. Uh. With respect to the sound issue that Mr. Ponilla (mispronounced I think) mentioned, that issue came up on the very first project that we proposed in which the units were oriented, some of the units were oriented toward the freeway. So what we did was we actually inverted the project, wherein the units were flipped over into the interior of the courtyard and then we basically created two walls between where the freeway is and where the units lie. Additionally we have additional insulation and we added the filtration system with some certain MERV (sp?) ratings that we had to comply with.

Um, in terms of alternative uses, you saw the other uses that are potentially are, uh, potential projects and uh, we don't think any one of those are an addition to the community. Uh, additionally, I think that if you look at this project in context, from an urban planning standpoint, the Laurel, uh, has something like a 25 to 30% vacancy. You have a lot of dark, a lot of dark buildings that are, uh, you know, turn into blight inevitably. Uh, I think the original concept of the Laurel was to have vitality, you know, mixed use, people shopping, eating, things like that. And none of that has happened. And in the last five, going back at least eight years. And this is actually the first project that is coming into the community with what was originally envisioned by the planners. And we are coming in with the residential component to potentially stimulate the commercial. And...

CP: Can I ask you to... cut it... if we have questions, we will bring you back up. There has been quite a lengthy presentation.

AG: Just one additional thought was that we originally had 100% residential. We came back with a commercial component because that's what was requested by the community. So. Thanks for your time, and if you have questions, I am here to answer them.

CP: Are there any questions you are burning to ask the applicant, or can we take speakers? All right. Will you call the first group of speakers?

Clerk: Sure. I have Spanky Carranza, Amy Dawson, Brian Prince. I hope I have that right. Maria Pafalox? Palafox, yeah. And Dallas Maxfield. You may all line up in any order.

CP: So just come up to the microphone, and when you get there, just state your name. Yes, step right up. Be the first.

Speaker: Hi, my name is Brian Prince. I, uh, live in the Laurel area. And I really believe that the senior housing really needs to be built. If you look at that particular area, there is already a strip mall across the street, there is already a gas station across the street, excuse me, catty corner. And then there is a vacant lot. So, you have two vacant lots there, uh, and I really believe that senior housing needs to be built there. I think it will add to the community. Um, if you look at the Diamond District, there has been housing built there, its uh, its very much improved that area, its, uh, just a lot safer there. And I really believe that this senior housing will make that area uh a lot safer.

CP: Thank you. Next speaker.

Speaker: Name is Sparky Carranza. Not Spanky, but I've been called many things before. That's OK. Uh, when..., you know, I've never heard a proposal that Staff hasn't liked. And, uh, I think that this proposal is wrong for this site. Since 1988, living in the area, and working closely with businesses in that area, being a neighbor in that area, shopping in that area. We've really had the vision of seeing that being like Fourth Street. And I can remember going down to Forth Street in the early 80's and there was nothing there. It was desolate. All that was down there was Betty's Diner. And it wasn't until there was an anchor business that showed up, and then all at once it started revive and become something. We have tried to get commercial in there over the years, and Staff has just ignored any serious requests from anybody. Their view of the area is to replace the Albertson's Grocery Store with a Food Maxx. And I don't know if you've been in there, but it's pretty depressing. To give the neighbors, or, uh, to take away a major grocery store. I think the neighbors need anchor, magnet businesses to attract more businesses, and the other item would be... I believe one of the major mitigating factors was for why the proposal was dropped the last time was because we actually brought up that are petroleum tanks underneath that property, and actually on MacArthur in that area. And I don't believe that, the historical response to, the DTSB, the Department of Toxic Substances has really been address adequately, it is just kind of glossed over... Oh, we are going to take care of it, oh, we are going to take care of it. But I just don't see that at all. And, then, I am over 55, I think I would maybe be able to be a

resident there, and I have two cars and I make multiple trips all day long. And I certainly wouldn't be living there if I could afford to live elsewhere. Thank you very much.

CP: Thank you. Next speaker.

Speaker: My name is Maria Polafox and I'm in favor for the senior housing, cause I have two elderly grandparents that are becoming old and we have to take care of ourselves, and to get a lot of help, we would like senior housing so I can put them somewhere that is safe. I was born and raised in Oakland, I want a safer environment. Something for my aunts (?), so we would be able to put them in a safer place around the surroundings of where I live. And I've been living in that area for more than ten years now.

CP: Thank you for that input. Next speaker.

Speaker: Hi there. My name is Dallas Maxfield. And, uh, I am in favor of the home. I work in the Laurel District. And I walk around all the time. And it just an empty lot there. And it has been empty since I worked there. And, uh, it would be really good if it would be something that could get business booming, and more people around in that area, because a lot of places seem like they are closing lately, and there's a lot of nail shops and not a lot of food places. And if that was there, there would be more reason, and it would rejuvenate the whole block, the Laurel District. And if its empty, and there's a lot of crimes there too. And bringing them there, it would be less. A lot of people don't want to hang out at retirement homes (chuckle), so... (laughter).

CP: Thank you. Next speaker.

Speaker: Good evening Commissioners. My name is Amy Dawson. I am a ten years resident of the area and I am really, really opposed to this. And, I mean, I have all these prepared... thanks... I hope that each of you goes to the site, drives around. I drove on Sunday. I drove from Grand Lake, on MacArthur, all the way to 98<sup>th</sup>. There are two five story buildings. One right on the corner of Lakeshore and a few blocks up. And then none. No five story buildings at all. There are seven four story, a couple with sort of the garage isn't really a full garage. It is completely out of character to the area. Why there? Um, it would just look completely different. I didn't even know it was going to be a wall right on the freeway. Now it is just a big blank wall. Right now I'm opposed, I don't like looking at the post office, it is a big blank wall. This is right, smack dab on top of the freeway. The picture that we are shown are (chuckling) really good angles! You don't get... it is going to dwarf the sign that's there right now. It is going to dwarf the few little redwood trees that are by the freeway. It is huge. It is massive. Even if has been put into two chunks. It is huge, it is massive. If you..I wouldn't want to live in a place where I can't even open the windows and breathe fresh air. I went to a place in San Francisco that had a little courtyard. It was much bigger than this. I looked at the picture that was shown. That doesn't show four stories above. That shows like two, and this little courtyard. I ask about the sun coming in. And they said, well in changes between seasons. Well of course it does. I want to know what it is like and how much sun goes in on the 21<sup>st</sup> of June and on the 21<sup>st</sup> of December. When does it have full sun? It is going to be a damp, cold spot most of the year. Uh, you can tell I am upset about it. Uh, so it is exposing seniors to.. it's unhealthy for them, it's confining, it's isolating. People are not going to want to

come and visit because they can't find a place to park. It is going to be hard for them to leave unless they have a car or someone is willing to give them a ride. Or this so-called shuttle might be sometimes running. It's bad, bad, bad. Please. I urge you to please go look at the place carefully and think about whether you'd like to be there or not. And whether it should even be that size. Thank you.

CP: Thank you. You want to call the next group?

Clerk: All right. Tony Torrence, Geneva Zianray, Kevin Rath, Lily Liang, Ginaro Maciavello, and Craig Cooper, and I do have Leila Moncharsh who has five cedes.

CP: Next. Yes.

Speaker: Hello. Good evening everyone. My name is Tony Torrence. We need to get this project approved for the seniors. I live five blocks away from where this senior housing project will be built. I live in a condo complex that was built recently. And it's no fancy place. But it is great little place. And it's secure. I wish the seniors in my neighborhood could live in a place like that. But they can't because there isn't any nice senior housing around. So I don't know why we haven't been talking about the.. I don't why we have been talking about this project for years instead of building this project. I see all the bad stuff happening in these vacant lots, all the time. Why can't we get something nice to happen on High Street and MacArthur so that our seniors do what I do and live in a nice place, live in a nice place made for them and that's right next to buses, shops, and all kinda things for the community. Give the seniors a break and let them have some place to go. Thank you.

CP: Thank you. Next speaker.

Speaker: Hi, my name is Genie Liziara. I am the program director of Manos Home Care, which is located in the Laurel District. It is a nonprofit company that services children and seniors with disabilities. We're about a block away from that site and I just want to let you know I've been following this project for years. And I've been dismayed, and appalled (giggle) about how long it has taken to get built. I talk to seniors every day about care and trying to keep them in their homes, but there does come a time when they need to leave their home and have a community to go to with other people their own age. Um, and spend time and be out with people, and they don't have to rely on their own family members and friends to come and get them. Um, it's something they talk about every day. And we lose clients that way, you know, where they just say, i don't want to stay in my home anymore, I want to go someplace that is for me and for my community. And that is completely understandable. Um, and as far as I understand it, Oakland has a General Plan that is supposed to emphasize high density housing in senior , high density senior housing does go with that plan, right? So, I don't know what the hold up is, really. It's been five, six years that I've known about it, and have been following it trying to figure out what is going on. I really, really, really urge you guys to consider it and please approve the plan as soon as possible. OK? Thank you. (Giggle).

CP: We'll do our best. Next speaker.

Speaker: Hello, my name is Lily Lang. And she is my mother, Ada. I am here today to represent my parents who are living a couple of blocks from High Street and Laurel. So, um, I would like to, I would like to support this senior housing project. Because, as many Asian Americans, we would like to have a nice place for seniors in district so that my parents and other seniors will have a chance to take bus, go to the Chinatown directly and then come back home with peace. So, please approve the project. Thank you.

Speaker: Hi. My name is Kevin Rath, and I am the Executive Director of Manos Home Care. We take care of over 1000 children and seniors with disabilities in their home throughout Alameda and Contra Costa County. I am also the Manager, and have a controlling interest in the Laurel Office Center, which is a block away. Which is where Manos Home Care is located. And I've living in... I live two blocks away from the vacant lot, (grins) and I see it every day, when I go to work. And I've been seeing it every day since the tire store and liquor shop burned down. Fifteen years ago. So I have been there since 1990. And, I urge the Commission to approve this project. The legal issues were important. And they have been addressed. And now, all we have is a very small group of people, good friends and neighbors that still oppose this because they think somehow something else is going to go there. Well, I think, there's two choices we have now. If this Council, if the Commission doesn't approve the senior housing, which Oakland desperately needs, it's part of the General Plan, it's high density housing on a transit corridor. If we don't get this for seniors, the only place for seniors are going to live in the Laurel. It's the last place we can build for seniors. And if we don't do that, the next time, when a fast food place comes in, cause they tried it before, when the fast, not if, but when the fast food place comes in, there won't be any hearing, it'll just go up and then we'll have another fast food place, and that will be a tragedy. Um thank you very much.

CP: Thank you, next speaker.

Speaker: Yes, my name is Craig Cooper. I live in the Laurel as well. Um, for the last 14 years. I have been following this project since 2006. I would like to express my full and complete support for this project. This project provides the highest and best use, in my opinion. I work as an environmental engineer. The environmental, um, contamination issues are not significant there, they can be easily addressed. And I think that this type of project is what's called smart growth. You put high density, you know, residential near your transportation, near your commercial districts, and so we can increase foot traffic in the Laurel, and there's a lot of positive things that can come from that. And, on top of that, we have a moral imperative to provide senior housing. I really believe that. And I am really glad that other people in the Laurel are finally starting to speak out. I think you are really starting to hear the true voice of the people in the Laurel. I, uh, every morning I walk down to High and MacArthur, I do casual carpool, of the X3(?) bus there, I point across the street and I say, hey do you see the empty lot over there? They are thinking about, you know, putting in senior housing. Without fail, every single person in the Laurel that I spoke to said that sounds like a great idea. Without fail. Right now we have an empty lot that's causing us problems, and you probably know the problems that we've had with this empty lot. I won't get into it. This is definitely the highest and best use. It has sat vacant for way too long. Let's get this project going. I am 100% m favor of it. Thank you.

CP: Thank you. Are there additional speakers then?

Clerk: Yes. Yes.

Speaker: Good evening. I'm Leila Moncharsh, and I represent a number of the merchants. And, in fact, I think the only merchant that is in favor of the project on the Laurel, that I am aware of, is the Manos Company because it stands to do quite well if there is senior housing there. Because that is their client base. But the merchants do not want to see the City change the use of that lot from retail to residential. They had no problem with the bottom level being used for retail, and an upper floor or two being used for residential. The problem with this project was, well. First of all there were several problems with it. First of all, it is way too tall. As I said in my letter, which I hope you got. I don't know how many of the comments made it to you and how many did not. But, this is like twice the zoning in height. And it's massive. And it wasn't the community... I heard the building representative say over and over because the community wanted this and the community wanted that. The community had nothing to do with it. What happened was, Commissioner Z-M was an architect, and she looked at this thing and she realized that it was just sort... it was hideous. It was a rectangle with a little rectangle inside. Right? And the seniors were going to live sort of around this rectangle, and you have this great big dark area inside. And we actually found some other development projects that Mr. Gravorkian (sp?) and the AMG Associates had built in southern California. We got an overhead photograph of what this looked like, and it was hideous. And so Z-M, bless her heart, spent time after time after time trying to at least make it look like somehow it might be compatible. And she never did. I mean, I think she was a no vote. By the time the whole thing got done, she said I just can't do this. And you know, basically, it is very, very large. The quality of life for the seniors is extremely poor because the one thing that those photographs that the building representative showed you don't illustrate is that High St. and MacArthur are wide, multi-laned, extremely busy streets. So you've got a situation with seniors where they are going to have to get through all that traffic to get on one side of the street to the other. The studies that have come out recently and have been coming out more and more is that older people do best when they can walk in their neighborhood. There is just no way that you can make it if you are older, you have a cane. The problem with the traffic wasn't that the project was going to add more traffic. The problem was that it didn't have any way that it could assist older people getting out of the project, across the street and into the Laurel. So one of the things that we had asked for very early on is, we said - look, this was a project that Jean Quan, who was then the Councilmember, it was like her favorite project. We had done Lincoln Court, and that went fine. Everybody really appreciated it. Jean said we've got to have this. We've just gotta have it. We kept, you know, pointing out to her the downsides of it (chuckle). And, so one of the things we came up with is we said that look, if you have to have it Jean, then fine, but can't you at least put a shuttle service in here? And at that time the issue wasn't that the developer would or would not pay for it, it was going to get paid for by the developer. The issue was how many times a day. And you know we couldn't even get that out of this development project. We could get no commitment that a shuttle service would come in there and pick up these older people and get them somewhere where the poor folks could even get groceries. You know. I mean, it was that bad. And now we don't even have a commitment to even pay for the shuttle service. It is completely up in the air. If you look at the Conditions and you look at how this is set up. The shuttle



service, there was an issue about where it would go, that's why it got moved. Because, basically, there was even a problem with that. With the massiveness of this building and the way it was set up. So, you've got a situation where you are putting seniors into a building that has no amenities as far as a court area. It has no light; it has nothing to be attractive to anybody. I mean, I wouldn't want to live there. And as somebody who took care of a parent for eight years with dementia, you know, I'm sorry, but my heart goes out to the people who are in my situation. Who are trying to find good housing for their parents. That is just not it. Uh, and so, basically, you've got the quality of life issue because they can't walk into the Laurel safely and get across all that traffic. You know, as my mother got older, she had more and more trouble appreciating the fact that you have to be more and more careful as you go across the street. How much more time do I have, Scott? (Inaudible response). So, basically what I've written about, I've written about the variance issue because that's still a legal problem. You know, the stock market is always going to go up when the stock market is doing well. And the stock market is always going to go down when it is doing badly. And that's kind of the approach that has been taken to this particular lot. It got tied up in litigation with Mr. Govorkian and Hahn family for years. It's tied up, as far as I know, now. It got into a fight amongst them as to who was going to pay for the EIR. It wasn't like the community was responsible for the amount of time these people took. It just is huge, it is not a good quality of life for anybody to live in it, let alone try to get out and walk around. There's no grocery store that is nearby there that is adequate for the needs of older people, let alone anybody else. That Maxx store is completely unsatisfactory. And how are they going to get anywhere without the shuttle? OK. So those were the reasons. And sealing them in? You know, air filtration works great until you open a window. And if you can't open a window, then you are back in the quality of life issue again. So these were the topics that came up and these were the issues that occurred. And, you know, I have got to tell you, the merchants do not want this. And they are going to fight this, every chance they get, every way they can. Because it takes away from their investment as well. Thank you.

CP: Thank you. Are there any additional speakers?

Clerk: No additional speakers.

CP: All right. Who wants to start this?

C Weinstein: I have a couple of additional questions, I guess, for the project applicant. Can you speak.... I don't know what legal issues she was referring to in terms of the Hahn property, and the second thing, I guess, is could you speak a little bit to the traffic and pedestrian plan and your thoughts on the shuttle. That would be great.

AG: Sure. With respect to the Hahn issue, I have no idea what she is talking about. I have not been served with any complaint. I have legal title to the property. I have provided the legal title evidence to the City. Um, and I could certainly provide it. I can also tell you that I have not been served with any lawsuit. Um, I mean, if there is any... I don't even want to get into that, cause it's just (shrugging and waving his hands around) – it's just factually incorrect.

Commissioner Weinstein: I believe you.

AG: Um, with respect to the shuttle. We provide shuttle on an as needed basis. We have thousands of units that we own throughout California, and to the extent that there is demand, we provide it. We also enter into partnership agreements with local nonprofits that provide that service. And that's pretty much it on that issue. And there are a couple of other issues... if you give me the opportunity, I can clarify, but that is up to you. Some comments that she mentions which were just factually incorrect.

CP: And you also asked about the traffic. And I was wondering about ... to shorten the length of the crosswalk. Could you address that?

AG: (Interrupted by Planner LW – you might want to have the environmental consultant to address that.) I can try, but

PLW: That was something that we did look at so if you want to address that Lynette. Signal timing was looked at for seniors crossing, since it was brought up over and over again. So we looked at that and she can reference the page in the Response to Comments that refers to that. While Lynette is coming up here, though, I wanted to mention that, um, on page 45 of Attachment B, in the Standard Conditions of Approval and Mitigation Monitoring and Reporting Program. There are three recommended conditions of Approval. They weren't required to alleviate any significant impacts. But it was recommended that to improve some of the traffic circulation in the area, some of the traffic, safety concerns that people had, Recommendation Trans I was included and it says .. In consultation with City of Oakland Staff consider the provision of shuttle service as a strategy to be included in the Transportation Demand Management Plan required by Standard Condition of Approval Trans I. So, it is always a Standard Condition of Approval to every project has to provide a Transportation Demand Management Program. If considered feasible, implement the City approved shuttle service. So we would look at the time that they are supposed to submit the TDM Plan, if it seems like including shuttle service is appropriate, we already know that it is physically possible to accommodate it in the garage and the matter is really more whether or not Alexis is able to find an existing shuttle service in the area that wants to just stop at the site, serve the site, or if he needs to contract one out himself. He has said though, that it is usually easier to piggyback on existing service than to create your own. So, it is more the details are going to be left to that Plan and that is later on, and it is not a requirement, it's a recommendation.

AG: To clarify. She referred to seniors with canes crossing the street. Well, while some seniors may have canes, not all seniors have canes. And this is an active senior community. It is intended to target a certain segment, and before you get to assisted living, or any of the type of congregate care. It is not, you know, its, they don't have all canes. Some may have canes, but most will not.

Environmental Consultant: (did not give name). The draft EIR as well as the Response to Comments, oops sorry. Lynn Aptious (sp?) with Urban Planning Partners, and we prepared the EIR for this project. And in response to the comments raised about the crossing times as the signals, our consultant, traffic consultant, did look at that, uh, page 204 of the draft EIR details that. It is also discussed on page 89 of the Response to Comments document. And they did find that the signal timing as they are currently set are adequate for senior crossing. Happy to answer any other questions.

CP: Do we have any other questions for anybody? All right then. Do I close the public hearing and bring it... yes, all right, so... I am closing the public hearing and bringing it back to the Commission to comment. Mr. Moore would you like to start?

CM: First of all, I actually had a meeting in the neighborhood earlier this week, I think it was, or maybe late last week. And there definitely are concerned neighbors. I know that there are a number of concerned neighbors. I have gotten a lot of letters, and some calls. I think the focus of the concern, the biggest concern that I heard was from merchants along MacArthur and that this is not a good anchor project for retail on MacArthur. And I think that that's true. They were concerned about the bulk of the project along MacArthur as it goes further away from High. And the setbacks. And it's is, you know, a bulky project and across the street from that is the Post Office, and that is also a kind of a big edifice. There are things I would have liked to have seen this project do differently, particularly the height and density, but it is a project that's here and its gone through quite an extensive process and I am kind of uncomfortable even to figure out how to unravel this thing. So it's a project that is before us and I am a little unsettled about it.

CP: Commissioner Weinstein.

CW: I too have gone to the site. I have gone at different times of the day to get a sense of the character. And I think, you know, it is an area that has significant vacancy, and it is a vacant lot that has sat vacant for years. And I think this is an opportunity to follow the intention of the General Plan which is to bring infill and increase housing to support commercial corridors. And I think that this is an opportunity to build on a site that is not attracting the type of commercial that maybe other, uh, other neighbors, and other merchants may want. But this is the type of project that can help spur additional development and bring in additional commercial. I think it is important that you bring residential first in order to activate an area. And I think having senior housing near services, and particularly near transit all the transit access that is there is really important and a good opportunity. It doesn't exist in all, in different areas of Oakland. Coming into this project late into the process, I think it is hard to make comments on the design. Uh, I think it has been through an extensive design process, and so I wouldn't want to undermine that. I think the developer has been patient (chuckle) through all of those iterations, which I know can be difficult and I imagine that the developer at this point, and community members also, want some certainty about the project moving forward. I wouldn't want to have it go through another round of design. So, I am in many ways excited about this project. To see new housing brought to the Laurel District to support commercial vitality of the area.

CP: Thank you. Commissioner Bonilla.

CB: Yes. I am very familiar with this area. I lived in the Fruitvale for about fifteen years. So I drove by it quite often, ---- the Laurel District a lot, on my way to Mills College. So I am very familiar with it. It's an eyesore right now. Life is about compromises. Um, while some segments of the Laurel District might not be happy about it, would like an anchor commercial entity to take hold there to help them out with their businesses. I really feel that demographics don't lie. We need senior housing. The population is aging. These are things that we must take into consideration, while we weigh the pros and cons. We

had several speakers that spoke to that – the aging population and how they would like to have access for their own family members in the not too distant future. Uh, and I think that this is good use. I have my doubts in regards to noise because of the seniors and proximity of the freeway. But I believe that has been mitigated with the insulation. I have some background in construction. And there is no openings facing the freeway. There is no windows. And so that took care of that. And I am pleased, with that. Having said that, I am in support of the project because I think it will be more beneficial in the long run than the people who might not be agreeable with it. Thank you.'

CP: OK. Well, my history goes, with this project, goes back a little further than my fellow Commissioners. While I was not here at the early stage in the initial approval. I was here when it came up for scoping for the EIR. And, at that time, I thought the project looked pretty good, and was disappointed that it wasn't going to move ahead at that time. Uh, what does often happen with these projects that get drug out and drug out and drug out, you do sometimes lose continuity. And so, as the Staff person mentioned, I am going to propose an additional Condition of Approval for my fellow Commissioners consideration tonight. And what I see as I review this set of plans, it does seem to be a sort of out of sync between the architecture and the landscape architecture. Some of them real basically, like where you have shown bike racks and the bus stop not quite aligning. Specific things that I noticed – screening between the building and the landscape buffer along the highway. You know, what are we screening. It's a landscaped area, so I'm not sure you really need the screening there. Uh, I think my major concern and made the focus of the condition is primarily the interior courtyard. It seems to be overly paved. There is basically a little bit of planting in the middle and twelve foot wide pedestrian circulation all around it. And unless programmatically there is a requirement for a lot of paving on that interior space, I would urge you to add some more greenery. Something, specifically, that will provide some shading. Contrary to some of the speakers, my office actually does a great deal of this kind of design and those interior courtyards can get too much light and so you do need to provide some shading and the ability for the residents to move in or out of the sun. Uh, there are also, in the set, I know we have been through Design Review and I am not going to ask you to go back to Design Review. But there was very little information about the materials, the landscape materials for the courtyard. We don't know what the paving is, we don't know what the water feature is, we don't know what the site furnishings, so I am going to ask that to be looked at by Staff. Programmatically, no information about how that large multi-use space is going to be used. If you really have a program for it, we just need to know that and if not, maybe that is where some of the additional softscaping can go. Uh, I did include in this, I would like you to consider possibly an alternate species to evergreen pear. Just because I know from doing a citywide survey, that it is terribly overused in Oakland and more and more I am seeing a decline of the pears from the fire blight. I did hear you saying during your presentation you are trying to match what is already there. And if that is the case, I would certainly understand. I wish they would come up with a fire blight resistant version of the pear. I like the nice detailing of the laurel. And I am glad to hear that that came from the neighborhood. A little bit of reservations. Don't overdo it. Particularly liked it in the railing. I am not so sure about it being on the façade of the building. Overall, I really like this project. I will disagree with many of the speakers that thought it was way too big and way too dense. We are building things like this all over the place. This is a standard model, on podium, and four stories above. It is what is going on (shrugging her shoulders).

And the fact that it is immediately adjacent to the freeway... to me, if you can't do it, density here, where do you want to do it. I want to acknowledge if it was the civil (?) or architect, but your parking layout is absolutely masterful. It is one of the best used, efficient parking layouts ever. I particularly like the treatment of the signage on the facade facing High Street. I really like the way you brought the vehicular access into the underground parking at midblock of MacArthur. I think that that will really, downplays the vehicular access and it helps to create that breezeway, the separation and create that two different building effect. I also really like the use of the wood trellis detailing. Particularly at the corner of High and MacArthur. And the other places where you have it sort of at the pedestrian scale. I am not so certain about how it is used on the rooftops. And I know that is something that you have been asked to add. And I think you are almost there. But if you could share with your architect – my first reaction to that was that it felt dated to me. I think we already have that detail somewhere else on a building in Oakland. So if you could ask your architect to refine those wood decorative elements, I think it would improve the project. And I also just want to add that I agree that I think this will very likely stimulate development around this area. So for those in the audience who really want more commercial, I think this is the best way to make it happen. So, unless anyone has any other brilliant thing to say, I will entertain a motion.

CB: Motion to accept the City Staff Recommendation.

I think CW seconded, but hard to tell, no microphone or anything audible or obvious.

CB: Motion to approve recommendations, Staff recommends that the Planning Commission take public testimony about the CEQUA findings for the project, which includes certification of the EIR and rejection of alternative as infeasible as attachment C... Standard Conditions of Approval, Mitigation, Monitoring and approval program in attachments B, and approve the Conditional Use permits and Minor Variances and the.... Project. And subject to the conditions of Approval. .... Based on the attached findings. (Very hard to understand him.)

CP: Second?

Someone seconded, but unclear who.

Attorney: Madame Chair. That would include your proposed Condition No. 19?

CP: I'm sorry. Yes.

Attorney: You don't need to read that, we have it all, we have it all here. But you did add something else, something about a roof element – is that No. 20 then? Or is that all

CP: Oh, that was just an informal asking, it wasn't an official...

Attorney: OK, just clarifying.

CP: Yes, thank you.

CW: I send the motion.

Clerk: Commissioner Moore:

CM: No.

Clerk: Commissioner Weinstein?

CW: Yes.

Clerk: Commissioner Bonilla?

CB: Yes.

Clerk: Chair Pattillo?

CP: Yes.

Attorney: So this item is approved by a vote of three ayes and one no. This item is appealable to City council within 10 days.

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P R I O R I T Y   L I E N   A N D   S P E C I A L   A S S E S S M E N T

Assessor's Parcel Number 030 -1982-121-00

Complaint 0604423  
CEDA Lien L02S734  
Lien Inv: 10056015  
Orig Inv: 10054839

Property Address 4311 MACARTHUR BL  
Oakland, California

Property Owner HANG AND KANG EQUITY I LP

PRIORITY LIEN & SPECIAL ASSESSMENT \$19,755.20 + Interest

WHEREAS, the owners, as known to the City of Oakland, of the referenced real property were lawfully noticed by the City of a nuisance or substandard or hazardous or injurious condition on the property maintained in violation of code or ordinance; AND

WHEREAS, the City lawfully initiated abatement action when the condition on the property was not corrected expeditiously by the owners; AND

WHEREAS, the owners, upon demand, failed to reimburse the City fully for accumulating fees and costs and accruing interest lawfully assessed for abatement action; THEREFORE

NOTICE IS NOW GIVEN, to the owners and to mortgagees and holders of liens and other encumbrance of record and to beneficiaries under deeds of trust of record or other heirs or successors or assigns and to purchasers, whether for value or by delinquency sale or transference or conveyance, among others having a legal interest in the property that the City encumbers the property with a priority lien for the referenced dollar amount and accruing interest from the general levy of property taxes with a special assessment (GOV 38773, GOV 53935, R&T 3712); AND

NOTICE IS ALSO GIVEN, for the priority lien and special assessment, that all laws applicable to the levy and collection and enforcement of municipal and county property taxes are equally applicable and similarly that under foreclosure and delinquent sale all penalties and interest and procedures are also equally applicable.

by Antoinette Kenwick Dated 05/29/07  
Antoinette Kenwick  
Inspections Manager - CEDA

BUILDING OFFICIAL  
CITY OF OAKLAND

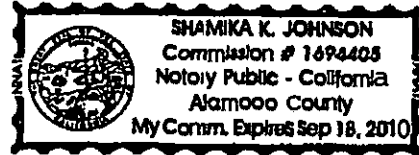
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA     }  
COUNTY OF ALAMEDA    }     ss.

On June 18, 2007 before me, Shamika K Johnson, Notary Public, personally appeared Antoinette Renwick, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

  
Shamika K Johnson



Shamika K Johnson  
Commission # 1694405  
Notary Public - California  
Alameda County  
My Comm. Expires Sept. 18, 2010



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07/09/2007 03:04 PM

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Assessor's Parcel Number 030 -1982-122-00

Complaint 0700055  
CEDA Lien L025673  
Lien Inv: I005560S  
Orig Inv: 10054758

Property Address 4317 MACARTHUR BL  
Oakland, California

Property Owner HAHN & KANG EQUITY I LP

PRIORITY LIEN & SPECIAL ASSESSMENT \$30,458.40 + Interest

WHEREAS, the owners, as known to the City of Oakland, of the referenced real property were lawfully noticed by the City of a nuisance or substandard or hazardous or injurious condition on the property maintained in violation of code or ordinance; AND

WHEREAS, the City lawfully initiated abatement action when the condition on the property was not corrected expeditiously by the owners; AND

WHEREAS, the owners, upon demand, failed to reimburse the City fully for accumulating fees and costs and accruing interest lawfully assessed for abatement action; THEREFORE

NOTICE IS NOW GIVEN, to the owners and to mortgagees and holders of liens and other encumbrance of record and to beneficiaries under deeds of trust of record or other heirs or successors or assigns and to purchasers, whether for value or by delinquency sale or transference or conveyance, among others having a legal interest in the property that the City encumbers the property with a priority lien for the referenced dollar amount and accruing interest from the general levy of property taxes with a special assessment (GOV 38773, GOV 53935, R&T 3712); AND

NOTICE IS ALSO GIVEN, for the priority lien and special assessment, that all laws applicable to the levy and collection and enforcement of municipal and county property taxes are equally applicable and similarly that under foreclosure and delinquent sale all penalties and interest and procedures are also equally applicable.

by Antoinette Renwick Dated 04/26/07  
Antoinette Renwick  
Inspections Manager - CEDA

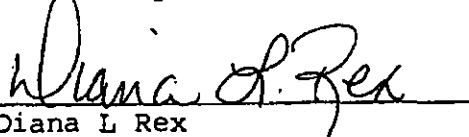
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CITY OF OAKLAND

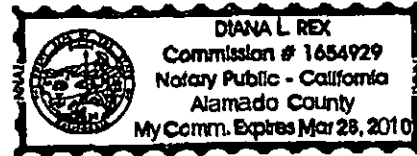
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA }  
COUNTY OF ALAMEDA } SS.

On May 30, 2007 before me, Diana L Rex, Notary Public, personally appeared Antoinette Renwick, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

  
Diana L Rex



Diana L Rex  
Commission # 1654929  
Notary Public - California  
Alameda County  
My Comm. Expires Mar 28, 2010

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P R I O R I T Y L I E N A N D S P E C I A L A S S E S S M E N T

Assessor's Parcel Number 030 -1982-122-00

Complaint 0703486

Property Address 4317 MACARTHUR BL,  
Oakland, California

CEDA Lien L028771

Lien Inv: 10062875

Orig Inv: 10057022

Property Owner HAHN & KANG EQUITY 1 LP

PRIORITY LIEN & SPECIAL ASSESSMENT \$2,695.00 + Interest

WHEREAS, the owners, as known to the City of Oakland, of the referenced real property were lawfully noticed by the City of a nuisance or substandard or hazardous or injurious condition on the property maintained in violation of code or ordinance; AND

WHEREAS, the City lawfully initiated abatement action when the condition on the property was not corrected expeditiously by the owners; AND

WHEREAS, the owners, upon demand, failed to reimburse the City fully for accumulating fees and costs and accruing interest lawfully assessed for abatement action; THEREFORE

NOTICE IS NOW GIVEN, to the owners and to mortgagees and holders of liens and other encumbrance of record and to beneficiaries under deeds of trust of record or other heirs or successors or assigns and to purchasers, whether for value or by delinquency sale or transference or conveyance, among others having a legal interest in the property that the City encumbers the property with a priority lien for the referenced dollar amount and accruing interest from the general levy of property taxes with a special assessment (GOV 38773, GOV 53935, R&T 3712); AND

NOTICE IS ALSO GIVEN, for the priority lien and special assessment, that all laws applicable to the levy and collection and enforcement of municipal and county property taxes are equally applicable and similarly that under foreclosure and delinquent sale all penalties and interest and procedures are also equally applicable.

BUILDING OFFICIAL  
CITY OF OAKLAND

by Antoinette Renwick Dated 07/29/08  
Antoinette Renwick  
Inspections Manager - CEDA

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

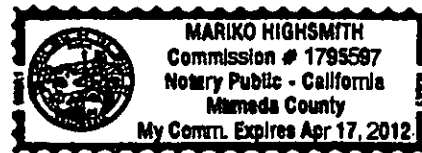
STATE OF CALIFORNIA }  
COUNTY OF ALAMEDA } SS.

On August 12, 2008 before me, Mariko Highsmith, Notary Public, personally appeared Antoinette Renwick, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
Mariko Highsmith



Mariko Highsmith  
Commission # 1795597  
Notary Public - California  
Alameda County  
My Comm. Expires Apr 17, 2012



2009019377

01/20/2009 08:30 AM

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Assessor's Parcel Number 030 -1982-121-00

Complaint 0805191  
CEDA Lien L030290  
Lien Inv: 10065960  
Orig Inv: 10064842

Property Address 4311 MACARTHUR BL  
Oakland, California

Property Owner HAHN AND KANG EQUITY I LP

PRIORITY LIEN & SPECIAL ASSESSMENT \$2,597.00 + Interest

WHEREAS, the owners, as known to the City of Oakland, of the referenced real property were lawfully noticed by the City of a nuisance or substandard or hazardous or injurious condition on the property maintained in violation of code or ordinance; AND

WHEREAS, the City lawfully initiated abatement action when the condition on the property was not corrected expeditiously by the owners; AND

WHEREAS, the owners, upon demand, failed to reimburse the City fully for accumulating fees and costs and accruing interest lawfully assessed for abatement action; THEREFORE

NOTICE IS NOW GIVEN, to the owners and to mortgagees and holders of liens and other encumbrance of record and to beneficiaries under deeds of trust of record or other heirs or successors or assigns and to purchasers, whether for value or by delinquency sale or transference or conveyance, among others having a legal interest in the property that the City encumbers the property with a priority lien for the referenced dollar amount and accruing interest from the general levy of property taxes with a special assessment (GOV 38773, GOV 53935, R&T 3712); AND

NOTICE IS ALSO GIVEN, for the priority lien and special assessment, that all laws applicable to the levy and collection and enforcement of municipal and county property taxes are equally applicable and similarly that under foreclosure and delinquent sale all penalties and interest and procedures are also equally applicable.

BUILDING OFFICIAL  
CITY OF OAKLAND

by *Antdihette Renwick*  
Antdihette Renwick  
Inspections Manager - CEDA

Dated 12/22/08

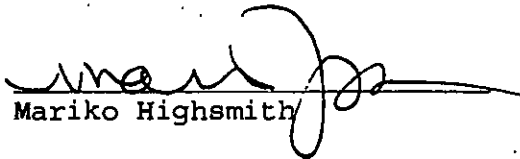
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

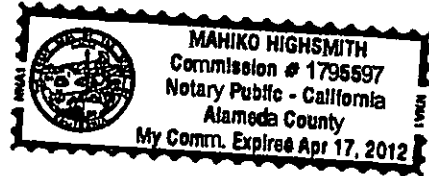
STATE OF CALIFORNIA     }  
COUNTY OF ALAMEDA     }     ss.

On January 5, 2009 before me, Mariko Highsmith, Notary Public, personally appeared Antoinette Renwick, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
Mariko Highsmith



Mariko Highsmith  
Commission # 1795597  
Notary Public - California  
Alameda County  
My Comm. Expires Apr 17, 2012

<b>Project Title:</b>	<b>High and MacArthur Mixed-Use Project</b>
<b>Location:</b>	4311-4317 MacArthur Boulevard (APN 030-1982-121-00 through 030-1982-123-00)
<b>Proposal:</b>	Redevelopment of a currently vacant lot with a mixed-use project including approximately 115 units of senior housing, 3,446 square feet of ground-floor commercial space, and 65 parking spaces.
<b>Applicant/Owner:</b>	AMG and Associates, LLC
<b>Contact Person/Phone Number:</b>	Alexis Gevorgian/(818) 380-2600 ext. 14
<b>Case File Numbers:</b>	CMDV10-312, ER10-0001
<b>Planning Permits/Approvals Required:</b>	Major Conditional Use Permits, Design Review, Variances, Parcel Map Waiver; certification of EIR
<b>General Plan:</b>	Neighborhood Center Mixed Use
<b>Applicable Zoning:</b>	C-30 District Thoroughfare Commercial Zone; C-31 Special Retail Commercial Zone; S-4 Design Review Combining Zone (Current Zoning is CN-3 Neighborhood Commercial Zone 3 and CN-2 Neighborhood Commercial Zone 2)
<b>Environmental Determination:</b>	An Initial Study and Draft Focused Environmental Impact Report was prepared and circulated; a Response to Comments Document/Final EIR was published on July 5, 2013
<b>Historic Status:</b>	N/A (There are no buildings located on the project site)
<b>Service Delivery District:</b>	4
<b>City Council District:</b>	4
<b>Date Filed:</b>	March 5, 2010
<b>Staff Recommendation:</b>	Certify EIR and approve project
<b>Finality of Decision:</b>	Appealable to City Council within 10 days
<b>For Further Information:</b>	Contact the case planner, Lynn Warner, at (510) 238-6983 or by e-mail at <a href="mailto:lwarneroaklandnet.com">lwarneroaklandnet.com</a> .

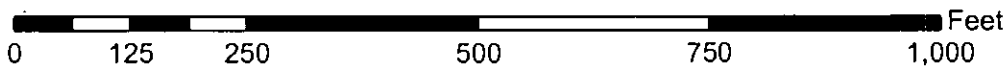
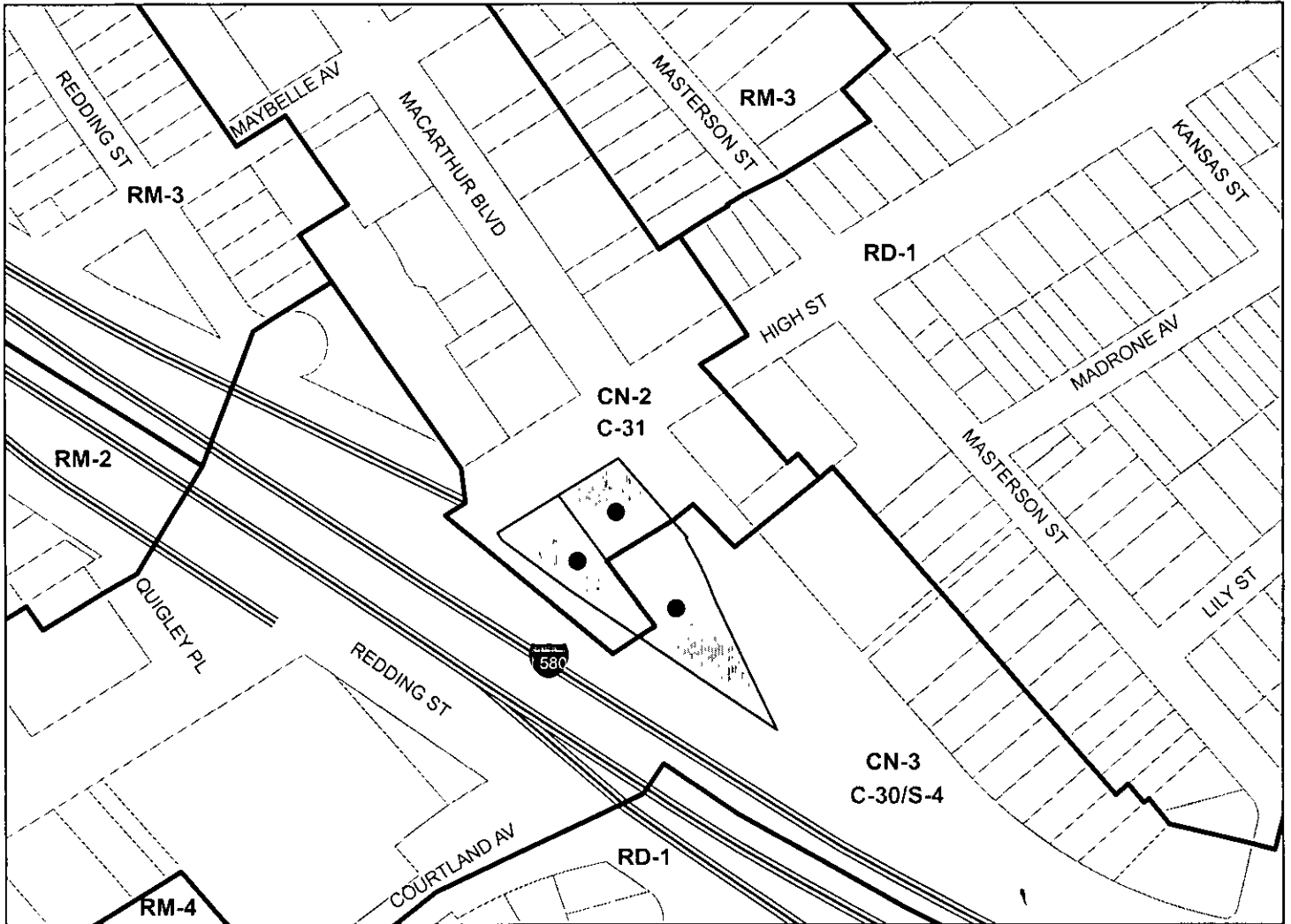
**SUMMARY**

The applicant proposes to redevelop the currently vacant property bounded by High Street, MacArthur Boulevard, and Interstate 580 with a five-story mixed-use project including 115 units of senior housing, 3,446 square feet of ground-floor commercial space, and 65 parking spaces (Project).

The Project is subject to the environmental review requirements of the California Environmental Quality Act (CEQA). A Focused Draft Environmental Impact Report (DEIR) was prepared that analyzed the potential environmental impacts of the Project, which were not screened out for further review by the Initial Study. The DEIR was reviewed by the Planning Commission at a public hearing on December 5, 2012. A Response to Comments/Final EIR (FEIR) was published on/before July 5, 2013 that addresses comments received on the DEIR. Although no mitigation measures are required for the Project, Standard Conditions of Approval are imposed.

The purpose of today's hearing is to hear comments from the public and the Planning Commission concerning the EIR and the proposed Project. Staff recommends the Planning Commission certify the EIR and approve the Project, subject to the attached findings and conditions of approval.

# CITY OF OAKLAND PLANNING COMMISSION



Case File: CMDV10-312, ER10-001  
Applicant: AMG & Associates  
Address: 4311-4317 MacArthur Boulevard  
Zone: C-31, C-30/S-4 (currently CN-2, CN-3)



**SITE DESCRIPTION**

The Project site is approximately 0.93 acres in size and is currently vacant except for a billboard. The triangular shaped site includes three parcels and is bounded by High Street to the north, Interstate 580 to the west, and MacArthur Boulevard to the southeast.

The site is surrounded by a combination of commercial and residential uses. Buildings in the immediate vicinity range from one to three stories in height.

**PROJECT DESCRIPTION**

The Project involves the redevelopment of the site with a five-story mixed-use Project including 115 units senior housing, 3,446 square feet of ground-floor commercial space, and 65 parking spaces. The commercial space would be located in two separate areas, a 2,959 square foot space located on MacArthur Boulevard at the corner of High Street, and a 487 square foot kiosk fronting on High Street. Four stories of one-bedroom senior units will be located on a podium over the ground-floor which will include parking and commercial space. The height of the building varies from 47-60 feet.

The entrance to the parking garage would be located mid-block on MacArthur Boulevard, and the loading area would be located off of High Street. The parking garage would be divided by a security gate into two areas, one accessible only to residents and the other accessible to visitors, patrons of the commercial space, and residents.

The Project has been designed to appear as two separate structures surrounding an interior courtyard for the residents. The courtyard is 7,928 sq. ft. in size and includes landscaping, a water feature, seating areas, and a large, open, multi-use space. In addition, open space is provided through the public area on the High Street frontage of the Project that includes a seating area, and via 10,664 sq. ft. of private patio and balcony space. The exterior building materials include a combination of smooth finish stucco and fiber cement lap siding, with a slate base at the entries, metal balconies and railings, wood or steel canopies, aluminum windows, and decorative metal grills to screen the parking garage. The perimeter of the building and the courtyard will be landscaped. Each building will be painted in a variety of earth tones, with a different color scheme for each of the buildings. An as yet undesigned art feature will be provided in front of the High Street elevation of the building, subject to review and approval by the Zoning Manager or designee. Design review of this art feature is included as a requirement in Condition of Approval 16. The Project plans are attached to this report (see Attachment A).

**BACKGROUND**

A similar project was previously approved on February 20, 2008 by the Planning Commission, but was appealed to the City Council. Subsequently, the applicant withdrew his application, which invalidated all land use approvals rendering the appeal moot.

In March 2010, the applicant submitted a new application for planning-related approvals. The new application includes a slightly revised Project description with an increase in the amount of ground-floor commercial space from 3,124 to 3,446 square feet, and an increase in the number of parking spaces provided from 64 to 65. This new application also includes minor revisions to the ground floor plan related to parking and bicycle parking, a change in the site plan to remove the optional shuttle turn-out on High Street, and more detail provided on the building elevations. The Project elevations are essentially the same as the project that was previously approved.

At the June 15, 2011 scoping meeting for the DEIR, a few design concerns were raised by the Planning Commission. Because the previously approved project had already been subjected to rigorous design review, staff consulted with members of the DRC to see whether there were any outstanding concerns related to the design of the Project. There were no concerns that warranted the need for the Project design to come before the DRC again. Therefore, staff determined that the Project should be brought to the full Planning Commission for consideration of the Project approvals after the Final EIR had been prepared.

A community meeting was held for the proposed Project on October 24, 2011. The primary concerns raised were the status of the Project and whether remediation of the site contamination had begun.

### GENERAL PLAN DESIGNATION

The site is designated Neighborhood Center Mixed Use in the Oakland General Plan Land Use and Transportation Element (LUTE). The General Plan states that "The Neighborhood Center Mixed Use classification is intended to identify, create, maintain, and enhance mixed use neighborhood commercial centers..." The General Plan also states that "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." (LUTE, p. 149). The proposed Project is a mixed-use project that includes both residential and ground-floor commercial uses. Therefore, the proposed Project uses are consistent with the General Plan classification for the site. The maximum allowable residential General Plan density without any density bonus is 125 units per gross acre or 166.67 units per net acre. The maximum residential density for the 0.93 acre site is 155 units. Thus, the proposed 115-unit Project is well within the allowable General Plan density. The maximum nonresidential floor area ratio (FAR) for the site is 4.0. Thus the proposed 3,446 square feet of ground-floor commercial space is well within the allowable FAR.

In addition, the Project is consistent with several LUTE policies including: *Objective N.3* Encourage the construction, conservation, and enhancement of housing resources in order to meet the current and future needs of the Oakland community; *Policy N3.1* Facilitating Housing Construction; *Policy N3.2* Encouraging Infill Development; and *Policy N3.9* Orienting Residential Development.

The Project site is identified as an Opportunity Site in the Housing Element of the General Plan and in the Housing Element EIR. Development of the Project site, at a level consistent with the proposed Project, was considered in the Housing Element EIR. The High and MacArthur Project DEIR relied upon and tiered off of the analysis included in the Housing Element EIR and the Land Use and Transportation (LUTE) EIR. Both the Housing Element EIR, LUTE EIR and the High and MacArthur Project DEIR are available for review or distribution to interested parties at no charge at the Department of Planning, Building, and Neighborhood Preservation, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, CA 94612, Monday through Friday, 8:30 a.m. to 5:00 p.m., and the Housing Element and Project EIR are also on the City's website at the "Completed Environmental Review" page (paste this link into your browser): <http://www2.oaklandnet.com/Government/o/PBN/OurServices/Application/DOWD009158>.

### ZONING CLASSIFICATION

The City updated its Zoning Regulations on April 14, 2011. The updated Zoning Regulations do not apply to project applications that were deemed complete prior to that date, which includes the proposed Project. Therefore, the previous zoning regulations are applicable to the Project instead of

the current zoning regulations. The current zoning regulations are shown in the table below for informational, comparison purposes only.

The site is split into two different zoning districts and includes a combining zone. The northwestern portion of the site is located in the C-31 Special Retail Commercial Zone (the C-31 zoning changed to CN-2 Neighborhood Commercial Zone 2). The southeastern portion of the site is located in the C-30 District Thoroughfare Commercial Zone with an S-4 Design Review Combining Zone (the C-30 zoning changed to CN-3 Neighborhood Commercial Zone 3).

The proposed residential and commercial uses are allowed under the C-30 and C-31 zoning classifications for the site. The maximum residential density for these zoning classifications is set forth in the R-70 High Density Residential Zone regulations, which allow 1 unit per 450 sq. ft. of lot area. That equates to a maximum allowable density for the site of 90 units. However, Section 17.106.060 of the Planning Code allows the density for senior housing to exceed the zoning density by up to 75% with a Conditional Use Permit (CUP). Therefore, the proposed 115-unit Project would exceed the maximum allowable zoning density by 28%, which is well within the possible range allowed with a CUP.

In addition, a CUP would be required to reduce the parking requirement. Under Section 17.116.110 of the Planning Code, a reduction in the number of prescribed parking spaces of up to 75 % may be granted for senior citizen housing with a CUP. This provision would allow for a reduction in the required number of parking spaces from 121 (115 residential spaces and 6 commercial spaces) to 65 spaces (59 residential spaces and 6 commercial spaces). Therefore, the proposed number of residential spaces would be a reduction of approximately 57%, which is well within the possible range allowed with a CUP. Furthermore, a CUP would also be required to allowed ground-level parking and loading areas in the C-31 zone.

The Project will also require a Minor Variance to exceed the height limit in the C-30 zone, which is 40 feet, and in the C-31 zone, which is 35 feet. Section 17.108.010 also restricts building height adjacent to the R-50 zone to 30 feet with an allowed increase of 1 foot height for every additional 1 foot of setback. The height of the proposed Project varies between 47 and 60 feet and thus requires another Minor Variance.

Zoning Regulation Comparison Table

Criteria	Applicable Requirement C-30 & C-31	Current Requirement CN-2 & CN-3 (For Information)	Proposed Project	Comment
Density	1 unit per 450 sq. ft. of lot area = 90 units	CN-2: 1 unit per 450 sq. ft. of lot area = 90 units CN-3: 1 unit per 375 sq. ft. of lot area = 108 units	115 units	Exceeds the applicable requirements. Major CUP required to exceed maximum density for senior housing under section 17.106.060.
Yard – Front (High St.)	0'	Minimum 0' Maximum 10' OR Maximum front yard requirement is 75% of street frontage	0' – 16' 4"	Meets the applicable requirements.
Yard – Street Side Lot Line (MacArthur Blvd.)	0'	0' OR Maximum front yard requirement is 50% of street frontage	0' - 8'	
Yard – Interior Lot Line	10'	0'	10'	
Yard – Rear	15'	10' – 15'	40'	
Yard – Courts	15'	18' – 50'	43'	
Height – General	40' (C-30) 35' (C-31)	45' (CN-3) 45' (CN-2)	Varies between 47' & 60'. 54' average.	
Height – Adjacent to R-50 Zone	30' with allowed increase of 1' height for every additional 1' of setback	N/A	Varies between 47' & 60'. 54' average.	Does not meet the applicable requirements. Minor Variance is required.
Open Space	150 sq.ft./unit = 17,250 sq.ft.	150 sq. ft. /unit = 17,250 sq. ft.	17,461 sq.ft.	Exceeds the applicable requirements.
Auto Parking	1 space / unit = 115 spaces 1 space / 600 sq.ft. retail/commercial = 6 spaces	Not specified, however parking access must not be from a primary street	65 automobile spaces	Seeks Major Conditional Use Permit under Section 17.116.110 to reduce parking requirement and to provide ground-level parking.
Bicycle Parking (long term)	1 space/10 units = 12 spaces Minimum retail/commercial = 2 spaces		14 long-term bicycle spaces	Meets the applicable requirements.
Bicycle Parking (short term)	1 space/20 units = 6 spaces Minimum retail/commercial = 2 spaces		8 short-term bicycle spaces	
Loading	50,000 – 149,999 sq.ft. residential building = 1 berth	Not specified, however access must be on ground floor with the entrance from a non-primary street	1 berth	Seeks Major Conditional Use Permit to provide ground-level loading.

In addition, the S-4 Design Review Combining Zone requires Design Review approval, and a Parcel Map Waiver is required in order to merge the existing parcels on the Project site. The Project sponsor will apply for a parcel map waiver to merge the parcels prior to issuance of a building permit for the Project. This is required in Condition of Approval 15.

### **Major Conditional Use Permits**

Major Conditional Use Permits are required to exceed the maximum allowable density, to reduce the parking requirement, and to provide ground-level parking and loading. The proposed increase in allowable density is warranted due to the provision of senior housing which is a benefit for the surrounding community, the City of Oakland and the region. In addition, some portion of the units will be provided as affordable housing. The planning and environmental analysis and conclusions are the same regardless of the breakdown between affordable and market rate housing units. In other words, it does not matter if the Project were to be 100% market rate or 100% affordable, as the planning and CEQA findings are the same – and can be made -- for both.

The proposed reduction in the parking requirement is warranted due to the provision of senior housing, which generates a much lower parking demand than typical multi-family residential projects. Furthermore, the site is well served by eight AC Transit routes that stop at the corner of High Street and MacArthur Boulevard so alternative means of transportation are available to the residents.

The provision of ground-level parking and loading is justified because the parking will be enclosed within the building and screened, and the loading area will be located at the edge of the building.

### **Minor Variances**

Minor variances are required in order to exceed the general height limit and the height limit adjacent to the R-50 Medium Density Residential Zone. The 47 – 60 foot height of the proposed Project would exceed the 35 – 40 foot allowable height limit. Because the Project provides senior housing and a Conditional Use Permit is required in order to exceed the allowable density, it is logical to assume that granting such a density bonus entails waiving the zoning regulation related to height in order to accommodate the additional units. In addition, the configuration of the lot, the need to provide open space, and the proximity to Interstate 580 make it difficult to design the Project to be consistent with the height limits. The intent of the 30 foot height limit adjacent to the R-50 zone is to buffer adjacent lower-density residential uses; however the site is separated from the R-50 zone by Interstate 580 so there are no directly adjacent residential uses.

### **Design Review**

As previously mentioned, the design of the Project was extensively reviewed and revised as part of the approval process for the previous Project proposed for the site. The previous project design was considered at two DRC meetings, two community meetings, and three Planning Commission meetings, and was also discussed with individual DRC members on several occasions.

Staff believes that the proposed Project is attractively designed with high quality materials and that it would be a substantial improvement to the surrounding Laurel District neighborhood. It would replace an existing vacant blighted lot that contains a billboard and weeds with a mixed-use building containing active residential and commercial uses. The design of the Project is appropriate for its prominent location at the corner of High Street and MacArthur Boulevard, and adjacent to Interstate 580.

With regard to views of the site, visual building form, and visual quality, although larger in scale than the majority of existing development in the area, the design of the proposed building will be compatible with the surrounding neighborhood pursuant to the design review findings.

## ENVIRONMENTAL REVIEW

### Scope

The Project is subject to the environmental review requirements of CEQA. See separate CEQA findings for a detailed discussion of what follows.

A Notice of Preparation (NOP) for the DEIR was published on May 18, 2011. The 30-day public comment period on the NOP ended on June 16, 2011. A Scoping Meeting for the DEIR was held before the Planning Commission on June 15, 2011.

An Initial Study was prepared, and circulated with the NOP, that screened out certain potential environmental impacts from further study, including: agricultural resources, biological resources, cultural resources, geology and soils, hydrology and water quality, land use and planning, mineral resources, population and housing, public services, recreation, and utilities and service systems. The Initial Study is included as Appendix A to the DEIR.

The following topics were analyzed in detail in the DEIR to address the remaining potential environmental impacts of the Project:

- A. Aesthetic Resources
- B. Air Quality and Greenhouse Gases
- C. Hazards and Hazardous Materials
- D. Transportation and Circulation
- E. Noise and Vibration

As previously discussed and as provided for in CEQA, the High and MacArthur Project DEIR also relied upon and tiered off the analysis included in the 2010 certified Housing Element EIR and the LUTE EIR. As a separate and independent basis from the other CEQA findings, the Project qualifies for CEQA streamlining pursuant to Public Resources Code section 21083.3 and Guidelines section 15183 (Projects consistent with Community Plans, General Plans and Zoning) and/or Public Resources Code sections 21094.5 and 21094.5.5 and Guidelines section 15183.3 (Streamlining For Infill Development), for the reasons detailed in the EIR and the attached CEQA findings.

The Initial Study and DEIR address all environmental topics identified in the City of Oakland's CEQA Thresholds of Significance and at a level of detail warranted by each topic.

Publication and Distribution of the DEIR

The DEIR was made available for a 45-day public review period from October 26, 2012 to December 10, 2012. The Notice of Availability for the DEIR was mailed to property owners within 300 feet of the Project site, distributed to state and local agencies, posted on the Project site, and mailed to interested parties. Copies of the DEIR were also distributed to City officials, including the Planning Commission, and were made available at the office of the Department of Planning and Building and on the City's website at the "Current Environmental Review" page. A public hearing on the DEIR was held by the Planning Commission on December 5, 2012.

Impacts Identified in the DEIR

The Project would result in several potentially significant impacts. However, all of the impacts identified in the DEIR would be reduced to less-than-significant levels with implementation of the proposed Standard Conditions of Approval (SCA) (see the summary table in Attachment B). The SCA are the functional equivalent of mitigation measures and are legally enforceable in the same manner as mitigation measures. There are no mitigation measures required for the Project, nor are there any significant and unavoidable impacts of the Project.

Key Environmental Issues

Below is a summary of the key environmental issues related to the Project. Note that the list below only contains the key items related to the environmental effects of the Project; for a complete discussion of each environmental topic see the attached CEQA Findings and the EIR.

Throughout the environmental review process, several comments have been received from the public regarding the potential impacts of the Project on transportation and circulation. In particular, concerns were raised about possible traffic problems at the High Street and MacArthur Boulevard intersection. The EIR found that the Project would not result in any significant traffic impact at this intersection. Other concerns were raised regarding potential circulation problems related to parking and site access. The EIR found that the Project meets the parking requirements, and that with implementation of Project-specific Conditions of Approval it would not result in any significant impacts related to site access.

The EIR included the following recommended measures to include as Project-specific Conditions of Approval to improve traffic operations of the Project related to shuttle service, the loading zone, and the garage entry. These are not required to mitigate any Project impacts:

**Recommendation TRANS-1:** In consultation with City of Oakland staff, consider the provision of shuttle service as a strategy to be included in the Transportation Demand Management (TDM) plan required by SCA TRANS-1. If considered feasible, implement the City approved shuttle service.

Sheet A.2 of the Project plans show a loading area in the parking garage that can accommodate shuttle service if it is provided.

**Recommendation TRANS-2:** Limit entry into the loading zone to a right turn in only and limit exit from the loading zone to a right turn out only (excluding any maneuvering required to back in/out of the loading zone) and prohibit deliveries during peak commute periods (7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m.) and employ the use of flaggers as necessary to ensure safe maneuvering into the loading zone.

Recommendation TRANS-3: Limit entry into the garage to a right turn in only and limit exits from the garage to a right turn out only.

In addition, some concerns have been raised about impacts of the Project on hazards and hazardous materials. As discussed in the EIR, the site has been included on the Cortese List because of hazardous materials contamination of the soil and groundwater due to previous uses on the site. However, preparation and implementation of a hazardous materials business plan (IS SCA HAZ-1); hazards best management practices (EIR SCA HAZ-1); site review by the Fire Services Division (EIR SCA HAZ-2); Phase I and/or Phase II reports and implementation of any recommendations from such (EIR SCA HAZ-3); environmental site assessment reports remediation (EIR SCA HAZ-4); best management practices for soil and groundwater hazards (EIR SCA HAZ-5); and radon or vapor intrusion from soil or groundwater sources (EIR SCA HAZ-6) would result in less than significant impacts. Moreover, compliance with other regulatory requirements would ensure there would not be significant adverse hazards and hazardous materials impacts. Additionally, as a separate and independent basis, any existing pollutants on/near the Project site are not considered to be CEQA impacts caused by the Project; indeed, the Project will remediate the existing on-site contamination.

Concerns were also expressed regarding potential impacts of the Project on air quality and greenhouse gases. With implementation of these SCAs, the Project would not violate any air quality standard, contribute substantially to an existing or projected air quality violation, expose sensitive receptors to substantial pollutant concentrations, or substantially increase diesel emissions. Moreover, as a separate and independent basis, any air contaminants generated from the nearby Freeway are not considered to be CEQA impacts caused by the Project.

The Project would not result in a significant impact (either on a project or cumulative basis) on the scenic highway designation of the MacArthur Freeway, in part, because the character of existing views would remain relatively unchanged. Specifically, the landscaping, distant views of the hills, and views of the commercial and residential palette would remain essentially unchanged. In addition, the removal of the existing billboard and blighted conditions on the site would be an aesthetic benefit provided by the Project.

### Project Alternatives

Chapter 5 of the DEIR included three alternatives to the proposed Project that provide a reasonable range of potentially feasible alternatives that are capable of reducing or eliminating environmental impacts. The three CEQA Project alternatives to the proposed Project include:

*The No Project/No Build Alternative* – CEQA requires a “No Project” alternative to be considered in the EIR. This alternative assumes that no development would occur on the site and that existing conditions would remain. None of the impacts associated with the Project would occur under this alternative; the existing billboard would remain and hazardous materials may not be cleaned-up.

*The Reduced Development/Mitigated Alternative* – This alternative assumes that the Project site would be developed with 29 less residential units and one less building floor, for a total of 86 senior housing units and 3,446 square feet of ground-floor commercial space within a four-story building. This alternative would result in impacts similar to the Project for all the topics areas identified, but the effects would be incrementally less.

*The Commercial Alternative* – This alternative assumes the Project site is developed with a single-story



6,000 square foot commercial building. It is assumed that the building is occupied by multiple tenants and that the required parking would be provided in a surface parking lot. Implementation of this alternative would result in impacts similar to the Project, although the effects would be incrementally less, except for Transportation and Traffic impacts.

The Environmentally Superior Alternative is the No Project/No Build Alternative because it would result in the least environmental impacts. Under CEQA, if the No Project is identified as the environmentally superior alternative, the EIR also must identify an environmentally superior alternative among the other Project development alternatives. Therefore, the environmentally superior alternative would be the Reduced Development/Mitigated Alternative because it is the development alternative that would result in the fewest environmental impacts.

Because there are no significant unavoidable impacts, alternatives need not be rejected as infeasible. Nevertheless, in the interest of being conservative and providing information to the public and decision-makers, the Project alternatives are rejected as infeasible because, in part, they either (a) would not achieve the objectives sought by the Project; (b) would not be economically feasible, and/or (c) would not promote or achieve many of the goals, objectives, and actions of the LUTE and Housing Element.

#### **Publication and Distribution of the FEIR**

The Final EIR/Response to Comment document (FEIR) includes responses to the comments received on the DEIR, changes to the DEIR, and additional information. The FEIR was published on/before July 5, 2013. The Notice of Availability (NOA) for the FEIR was distributed on Friday, June 28, 2013, by being mailed to property owners within 300 feet of the Project site, distributed to state and local agencies, posted on the Project site, and mailed to interested parties. Copies of the FEIR were also distributed to City officials, including the Planning Commission, and were made available at the office of the Department of Planning and Building and on the City's website at the "Current Environmental Review" page:

<http://www2oaklandnet.com/Government/o/PBN/OurServices/Application/DOWD009157>.

#### **CONCLUSION**

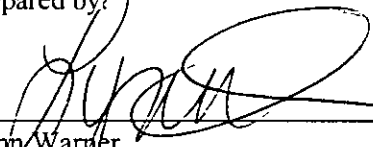
In summary, the proposed Project, which is consistent with both the applicable zoning and General Plan, would redevelop a vacant blighted site with a mixed-use Project providing a combination of senior housing and commercial space in the Laurel District. The Project meets the General Plan goals of providing new housing units and infill development on underused or vacant parcels and the site is identified as a Housing Opportunity site in the City's Housing Element. The Project would enhance the area and be an addition to the surrounding neighborhood. The Conditional Use Permits and Variances are warranted and are not expected to create adverse impacts. The site is well served by transit and its development will result in the removal of an existing billboard and clean-up of existing hazardous material contamination. A site specific Health Risk Assessment concludes that there will be less than significant impacts associated with the potential exposure of Project residents (who are considered sensitive receptors) to any air contaminants generated from the nearby Freeway.

**STAFF RECOMMENDATION**

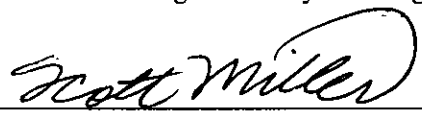
Staff recommends that the Planning Commission take public testimony, close the public hearing, and:

1. Adopt the CEQA findings for Project, which include certification of the EIR and rejection of alternatives as infeasible in Attachment C;
2. Adopt the Standard Conditions of Approval and Mitigation Monitoring Reporting Program (SCAMMRP) in Attachment B; and
3. Approve the Major Conditional Use Permits, Minor Variances, and Design Review for the Project subject to the Conditions of Approval and SCA/MMRP, based on the attached findings.

Prepared by:

  
\_\_\_\_\_  
Lynn Warner  
Planner II

Approved for forwarding to the City Planning Commission by:

  
\_\_\_\_\_  
SCOTT MILLER  
ZONING MANAGER  
\_\_\_\_\_  
RACHEL FLYNN, DIRECTOR  
DEPARTMENT OF PLANNING AND BUILDING

**ATTACHMENTS:**

- A. Project Plans
- B. Standard Conditions of Approval and Mitigation Monitoring and Reporting Program (SCAMMRP)
- C. CEQA Findings
- D. AMG Financial Feasibility of 86-unit Alternative

**FINDINGS FOR APPROVAL**

The proposed Project meets the required findings under Planning Code Section 17.134.050 (Conditional Use Permit criteria), Section 17.136.070A (Residential Design Review criteria), Section 17.148.050 (Minor Variance Criteria), Section 17.48.100 (Conditional Use Permit criteria in the C-31 zone), Section 17.116.110 (Exemptions to the Parking Requirements), and Section 17.106.060 (Conditional Use Permit criteria for increased density for senior housing). Required findings are shown in bold type; explanations as to why these findings can be made are in normal type. In addition, findings have been developed pursuant to California Environmental Quality Act (Pub. Res. Code section 21000 et seq; "CEQA") and the CEQA Guidelines (Cal. Code Regs. Title 14, section 15000 et seq.). The basis to approve the Project and related permits are not limited to the findings contained herein, but also includes the information contained in the July 17, 2013 Staff Report to the Planning Commission, the conditions of approval and the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCA/MMRP), the EIR prepared for the Project, and the entire administrative record, hereby incorporated by reference.

**Section 17.134.050 Conditional Use Permit criteria**

- A. 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.

The Project applicant is requesting a Major Conditional Use Permit (CUP) for an increase in density for affordable senior housing on a vacant property. There are no abutting properties that will be adversely affected by the proposed Project, nor will the proposed Project negatively affect the neighborhood character. On the contrary, this area of MacArthur Boulevard has no distinct character, architectural style, or scale. The structures in the immediate vicinity include 1-2 story utilitarian commercial buildings, 2-3 story office buildings, and small scale retail/storage. The Project's prominent design will emphasize the important corner of MacArthur Boulevard and High Street. Furthermore, the landscape improvements and public art at the corner will enhance the streetscape and promote the character of the neighborhood. The EIR concluded that the Project will not have any significant impacts upon the surrounding area. Specifically, the EIR concluded the Project would not result in a significant impact (either on a Project or cumulative basis) on the scenic highway designation of the MacArthur Freeway, in part, because the character of existing views would remain relatively unchanged -- the landscaping, distant views of the hills, and views of the commercial and residential palette would remain essentially unchanged. In addition, the removal of the existing billboard and blighted conditions on the site would be an aesthetic benefit provided by the Project.

- B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant.

The Project will provide a combination of residential and commercial uses in the Laurel District. The Project was designed to promote residential activities in the neighborhood and to emphasize the

important corner of MacArthur Boulevard and High Street. The site is well situated for senior housing with respect to transit ridership, as it is extensively served by AC Transit. The building design is attractive and compatible with the surrounding neighborhood.

- C. That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region.

The General Plan LUTE encourages several policies that promote the construction of housing on infill sites and underutilized properties in all areas of the city. The Project entails the construction of new senior housing in areas within walking distance of services and shops and that are well served by mass transportation. The Project will essentially buffer the existing smaller single-family neighborhood to the east from the freeway. In addition, the Project will support basic community functions by providing new residents who will enliven this transitional area. Provision of senior housing is also an essential service to the community, the City, and the region.

- D. That the proposal conforms to all applicable design review criteria set forth in the design review procedure at Section 17.136.070.

The proposed Project conforms to all applicable design review criteria outlined in Section 17.136.070A, as detailed below.

- E. That the proposal conforms in all significant respects with the Oakland Comprehensive Plan and with any other applicable plan or development control map which has been adopted by the City Council.

The proposed Project conforms in all significant respects with the “Neighborhood Center Mixed Use” General Plan land use designation. The Project will support the objectives and policies of the LUTE including: encouraging the construction, conservation, and enhancement of housing resources (Objective N3); facilitating housing construction (Policy N3.1); encouraging infill housing (Policy N3.2); and orienting residential development (Policy N3.9). The Project is located on the MacArthur Boulevard corridor in the Laurel District. This corridor is identified as a “grow and change” area in the General Plan. Such areas are where the General Plan seeks to encourage further growth and development, often at higher densities than currently exist as the plan attempts to focus the bulk of residential development to our corridors, downtown, and other special areas such as Jack London Square.

**Section 17.136.070A Residential Facilities Design Review criteria**

- 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;

As stated previously, the proposed Project is located in a transitional neighborhood with many low rise commercial activities, small utilitarian buildings, and vacant lots. There is no specific architectural character or massing except in the lower scale neighborhood to the northwest. The building would be taller and larger than surrounding structures although it has been articulated with varying roof heights, and designed to appear as separate buildings in order to reduce the apparent bulk and mass of the building. While it will be larger than most buildings in the surrounding area staff notes that the General Plan calls for this area to “grow and change.” It identifies the entire stretch of MacArthur Boulevard from 35<sup>th</sup> Avenue to the freeway underpass as an underdeveloped

area that could accommodate an increase in density as the plan seeks to focus development along the city's existing corridors. While respecting the existing context in terms of scale is important in much of Oakland, the General Plan identifies certain areas where the existing context is actually viewed as something to exceed and expand past and this is one of those areas.

2. That the proposed design will protect, preserve, or enhance desirable neighborhood characteristics;

Currently, the neighborhood is a mix of commercial uses and vacant lots. The proposed Project would enhance the neighborhood by replacing a blighted vacant lot with active residential and commercial uses. This would encourage further beneficial change in the neighborhood, and would promote more pedestrian activities. It would bring new residents to the Laurel District who would help contribute to the economic health of the businesses in the area as customers, and would potentially stimulate further revitalization on other nearby vacant lots which are a blight to the area.

3. That the proposed design will be sensitive to the topography and landscape;

The proposed Project site is flat and is vacant except for a billboard. The site contains no notable landscaping. Therefore, the Project will have no affect on the existing topography or landscape.

4. That, if situated on a hill, the design and massing of the proposed building relates to the grade of the hill;

See response #3.

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

The proposed Project is consistent with the General Plan land use designation for the site, with Conditional Use Permit, and Variance findings, and with the Design Review criteria as discussed in more detail throughout the report and these findings.

**Section 17.148.050A Minor Variances Findings**

1. That strict compliance with the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations, due to unique physical or topographic circumstances or conditions of design; or as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution improving livability, operational efficiency, or appearance.

*Overall height limits:* The maximum height is 35 feet in the C-31 zone and 40 feet in the C-30 zone. The height of the proposed Project varies between 47 and 60 feet (including parapets and other architectural details meant to add attractiveness to the building or screen rooftop features) above grade. Most of the building height will average 55 feet and it lowers at the corner of High and MacArthur to approximately 47 feet.

One factor concerning this request for a Minor Variance is the shape of the lot, which tapers narrowly towards the rear and thus renders that piece of the lot as unfeasible to build on. This

impacts the potential footprint of the Project and tends to force the building upwards. Another factor is the need for open space. This is limited to the courtyard and the proposed location in the center of the site surrounded by the buildings is the only reasonable place to put it in order to shield it from the noise of the adjacent freeway. Moreover, the increased density for senior housing authorized by the CUP also results in the need for additional height.

Thus, granting of the minor height variance would result in an effective design solution improving livability, appearance and operational efficiency.

*30 foot height limit adjacent to the R-50 Zone:* Section 17.108.090 states that structures in a commercial zone whose side lot line abuts the R-50 zone be set back 10 feet and limited in height to 30 feet. This height can then be increased 1 foot for every additional foot of setback provided (up to the maximum limit of the height). The Project is set back 10 feet from the side lot line but exceeds the 30 foot height limit. The intent of the height limit was to buffer lower density zoning districts such as the R-50 and below when they abutted higher density zones as well as commercial areas. This would help to preserve solar access for those residential units as well as height context. However, in this case there are no immediately adjacent residential units but Interstate 580 itself is actually zoned R-50. Therefore, staff believes that allowing a relaxation of this height limit is justifiable due to this unique physical circumstance. In addition, granting this variance would result in an effective design solution improving livability, appearance and operational efficiency.

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

*Overall height limits:* As stated above, granting the Minor Variance for the overall height is reasonable given the site constraints and the need to provide open space that is both attractive and useful to the residents. This need requires the building to wrap around the open space, shielding it from the vehicular noise coming off the freeway. This combined with the roughly triangular shape of the property forces the building upwards as much of the lower (southern) portion of the lot is not practical for development. Few if any lots in the district are impacted in these ways; they are either not abutting the freeway, which adds constraints as to where needed components of the development can be placed, or they are generally more regularly shaped, rectangular lots. Similar variances have been granted for other similarly zoned properties/projects. Moreover, the granting of the variance results in an effective design solution, consistent with the basic intent of the zoning regulations.

*30 foot height limit adjacent to the R-50 Zone:* This is a unique physical situation as the R-50 zone bordering the western edge of the freeway covers the freeway only. It is unusual to have a freeway zoned something different than the zoning on either side of it (often if the freeway splits the zoning the boundary line will run down the middle of the roadbed) and due to this the decreased height and increased setback do not make sense. The purpose of these restrictions is to transition the height of buildings in high density districts adjacent to low density districts to avoid them towering over the lower density houses. In this case, there are no adjacent houses due to the freeway. Moreover, the granting of the variance results in an effective design solution, consistent with the basic intent of the zoning regulations

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

*Overall height limits:* There are no abutting properties and the increased building height is unlikely to affect the livability of surrounding properties. The Project would provide 115 units of senior housing which should have far fewer impacts on traffic or noise than 115 regular apartments would. The Project would be consistent with adopted plans and development policy in that it would redevelop a vacant blighted parcel through in-fill development; encourage development along an important transit corridor; and create some affordable senior housing which is a critical need for both the City of Oakland and the region at large. Thus granting the height variance will not impact the livability of adjacent properties or be detrimental to the public welfare.

*30 foot height limit adjacent to the R-50 Zone:* This is a unique situation as the R-50 zone bordering the western edge of the freeway covers the freeway only. It is unusual to have a freeway zoned something different than the zoning on either side of it (often if the freeway splits the zoning the boundary line will run down the middle of the roadbed) and due to this the reduced height and increased setback do not make sense. The purpose of these restrictions is to transition the height of buildings in high density districts adjacent to low density districts to avoid them towering over the lower density houses. In this case, there are no adjacent houses due to the freeway. Thus granting the height variance will not impact the livability of adjacent properties or be detrimental to the public welfare.

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.

The Project would meet the intent of the zoning regulations by creating appropriate development that will enhance and benefit the surrounding neighborhood, while meeting the goals of the General Plan. The Minor Variances can be supported and meet the general intent of the zoning regulations. The Project site has the constraints of being a roughly triangular lot that narrows as it parallels MacArthur Boulevard on one side and it has the Interstate 580 freeway adjacent to its opposite side. These factors reduce the portion of the lot that is buildable, and require a building design that can shelter areas such as open space from the noise and other unpleasant aspects of the freeway. These conditions are generally unique to this parcel and are not a common element in this neighborhood. It is particularly uncommon for properties to have both factors of unusual shape and a noisy freeway next to them. The City of Oakland concludes that granting the two Minor Variances would not be a grant of special privilege inconsistent with limitations on similarly zoned properties as this Project site has unique characteristics and circumstances. The City of Oakland has been willing to contemplate relaxation of the zoning standards before for other such projects that have unusually shaped lots or other factors to consider.

**Section 17.48.100 Conditional Use Permit criteria for the C-31 Special Retail Commercial Zone:**

- A. That the proposal will not detract from the character desired for the area:

The intent of the C-31 zone regulations is to create a vigorous and active commercial district focused on pedestrian movement. Commercial and mixed use projects are encouraged in this district. The Project would replace a vacant blighted lot at the edge of this zoning district (indeed about half the site is outside the C-31 zoning district) and add ground floor retail and new residents to the neighborhood. These residents will be able to walk to or utilize transit to access businesses in the surrounding area. The ground floor commercial space is well articulated and will provide for a successful and active street frontage. The parking is well screened within the building and will not negatively impact the pedestrian corridor, and the loading area is located at the edge of the building on the less prominent street frontage.

**B. That the proposal will not impair a generally continuous wall of building facades:**

The proposed Project will replace a lot that is vacant except for a billboard and would generally create a continuous wall of building facades. The Project would cover the bulk of three properties (to be merged separately) and will require one driveway to provide parking. The Project will add commercial areas on the ground floor at the corner of High Street and MacArthur Boulevard as well as along High Street, and would contribute to the creation of a continuous wall of building facades which is not yet common in this zoning district.

**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:**

The site is currently vacant except for a billboard and does not contribute to a shopping frontage. The Project would add approximately 3,446 sq. ft. of commercial space to this vacant lot.

**D. That the proposal will not interfere with the movement of people along an important pedestrian street:**

This section of MacArthur Boulevard is not an important pedestrian section. The property is vacant and has nothing to attract pedestrians to it. The Project will provide new residents and ground-floor commercial space that will generate new pedestrian activity in the surrounding area.

**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:**

The vehicular access off of MacArthur Boulevard is workable as the portion of the street where the driveway is located has no significant commercial uses on it. This is different than if the driveway were located along a section of MacArthur Boulevard in the heart of the district where it would interrupt concentrated commercial uses. The only other option for vehicular access would be to have the driveway on High Street, but this is not the ideal location as the frontage is narrower.

**2. Every reasonable effort has been made to share means of vehicular access with abutting properties:**

There are no abutting properties to share vehicular access with.

**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:**

The amount of parking is actually less than the 1:1 code requirement, being reduced by approximately 57%. This is in keeping with section 17.116.110 of the Oakland Planning Code which conditionally permits a parking reduction up to 75% for senior housing when the required findings can be met (see below).

**G. That the proposal will conform in all significant respects with any applicable district plan which has been adopted by the City Council:**

The Project would provide senior housing in close proximity to transit and services in the surrounding area. The provision of more senior housing is identified as an important city and regional goal, and the General Plan considers the corridors the ideal places for further, higher density developments due to their existing infrastructure and levels of existing commercial and residential development and their potential for further growth.



**Section 17.106.060 Conditional Use Permit criteria for increased number of living units in senior housing**

- A. That such occupancy is guaranteed, for a period of not less than fifty (50) years, by appropriate conditions incorporated into the permit;

Conditions guaranteeing such occupancy have been included in this permit.

- B. That the impact of the proposed facilities will be substantially equivalent to that produced by the kind of development otherwise allowed within the applicable zone, with consideration being given to the types and rentals of the living units, the probable number of residents therein, and the demand for public facilities and services generated.

This facility is likely to have the same (or less) impacts as 90 units of housing for the general population that would be otherwise allowable within the applicable zone. Senior housing often will have lesser traffic impacts due to the lower rates of car ownership and driving. 90 market rate units would usually be of varying sizes in a typical apartment complex, likely leading to more people living in the units and therefore a higher population density. The number of daily vehicle trips generated by the 115 units of senior housing included in the Project would be approximately 67% less than 90 units of market rate housing. In addition, the site is served extensively by AC Transit. City services are unlikely to be affected in a significant way.

**Section 17.116.110A Conditional Use Permit criteria for reduction in parking for senior housing**

- 1. In the case of senior citizen housing where living units are regularly occupied by not more than two individuals at least one of whom is sixty (60) years of age or older or is physically handicapped regardless of age, that such occupancy is guaranteed, for a period of not less than fifty (50) years, by appropriate conditions incorporated into the permit;

Conditions guaranteeing such occupancy have been included in this permit.

- 2. In the case of a dormitory, fraternity, or similar facility, that the occupants are prevented from operating a motor vehicle because they are not of driving age or by other special restriction, which limitation of occupancy by nonqualifying drivers is assured by appropriate conditions incorporated into the permit;

This is not a dormitory or fraternity so this finding does not apply.

- 3. That due to the special conditions referred to above, and considering the availability, if any, of public transportation within convenient walking distance, the reduced amount of parking will be adequate for the activities served, and that the reduction will not contribute to traffic congestion or impair the efficiency of on-street parking.

This site is located on two major streets and is served by eight AC Transit bus lines. These lines provide 24-hour service. Service destinations include downtown Oakland, downtown San Francisco, downtown Emeryville, the Oakland International Airport, several BART stations, and the Amtrak station near the Oakland Coliseum. Bus stops are located in front of the building on both High and MacArthur as well as directly across the street on MacArthur. Such high levels of transit service ensure that the residents at this facility will have ample opportunities and options for mass transit

usage going to many convenient locations at all times of day. The reduced amount of parking is appropriate for the proposed Project and will not negatively impact the surrounding area.

Modifications to the Conditions of Approval as directed by the City Planning Commission at the July 17, 2013 meeting or clarification made by staff are indicted in underlined type for additions and ~~cross-out-type~~ for deletions.

**CONDITIONS OF APPROVAL**

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1. Approved Use

*Ongoing*

a) The Project shall be constructed and operated in accordance with the authorized use as described in the application materials, staff report dated July 17, 2013, and the plans dated 12/22/10, and 6/12/13 [the original plans were updated as necessary to reflect the revised Project], and as amended by the following conditions. Any additional uses or facilities other than those approved with this permit, as described in the Project description and the approved plans, will require a separate application and approval. Any deviation from the approved drawings, Conditions of Approval or use shall required prior written approval from the Director of City Planning or designee.

b) This action by the City Planning Commission ("this Approval") includes the approvals set forth below. This Approval includes: Approval of Major Conditional Use Permits, Minor Variances, and Design Review for the High & MacArthur Mixed-Use Project, under Oakland Municipal Code Section 17.134.050 (Conditional Use Permit criteria), Section 17.136.070A (Residential Design Review criteria), Section 17.148.050 (Minor Variance Criteria), Section 17.48.100 (Conditional Use Permit criteria in the C-31 zone), Section 17.116.110 (Exemptions to the Parking Requirements), and Section 17.106.060 (Conditional Use Permit criteria for increased density for senior housing).

2. Effective Date, Expiration, Extensions and Extinguishment

*Ongoing*

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

3. Scope of This Approval; Major and Minor Changes

*Ongoing*

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

4. Conformance with other Requirements

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

a) The Project applicant shall comply with all other applicable federal, state, regional and/or local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Building Services Division, the City's Fire Marshal, and the City's Public Works Agency. Compliance with other applicable requirements may require changes to the approved

use and/or plans. These changes shall be processed in accordance with the procedures contained in Condition of Approval 3.

- b) The applicant shall submit approved building plans for Project-specific needs related to fire protection to the Fire Services Division for review and approval, including, but not limited to automatic extinguishing systems, water supply improvements and hydrants, fire department access, and vegetation management for preventing fires and soil erosion.

**5. Conformance to Approved Plans; Modification of Conditions or Revocation  
Ongoing**

- a) Site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60-90 days of approval, unless an earlier date is specified elsewhere.
- b) The City of Oakland reserves the right at any time during construction to require certification by a licensed professional that the as-built Project conforms to all applicable zoning requirements, including but not limited to approved maximum heights and minimum setbacks. Failure to construct the Project in accordance with approved plans may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension or other corrective action.
- c) Violation of any term, Conditions of Approval or Project description relating to the Approvals is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approvals or alter these Conditions of Approval if it is found that there is violation of any of the Conditions of Approval or the provisions of the Planning Code or Municipal Code, or the Project operates as or causes a public nuisance. This provision is not intended to, nor does it limit in any manner whatsoever the ability of the City to take appropriate enforcement actions. The Project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Conditions of Approval.

**6. Signed Copy of the Conditions of Approval  
With submittal of a demolition, grading, and building permit**

A copy of the approval letter and Conditions of Approval shall be signed by the property owner, notarized, and submitted with each set of permit plans to the appropriate City agency for this Project.

**7. Indemnification  
Ongoing**

- a) To the maximum extent permitted by law, the applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and its respective agents, officers, and employees (hereafter collectively called City) from any liability, damages, claim, judgment, loss (direct or indirect) action, causes of action, or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul, (1) an approval by the City relating to a development-related application or subdivision or (2) implementation of an approved development-related project. The City may elect, in its sole discretion, to participate in the defense of said Action and the applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.

b) Within ten (10) calendar days of the filing of any Action as specified in subsection A above, the applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Letter of Agreement shall survive termination, extinguishment or invalidation of the approval. Failure to timely execute the Letter Agreement does not relieve the applicant of any of the obligations contained in this condition or other requirements or conditions of approval that may be imposed by the City.

**8. Compliance with Conditions of Approval**

***Ongoing***

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

**9. Severability**

***Ongoing***

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

**10. Job Site Plans**

***Ongoing throughout demolition, grading, and/or construction***

At least one (1) copy of the stamped approved plans, along with the Approval Letter and Conditions of Approval, shall be available for review at the job site at all times.

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

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

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

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

***Approved prior to the issuance of a grading or building permit***

Final building and public improvement plans submitted to the Building Services Division shall include the following components:

- a) Install additional standard City of Oakland streetlights as needed
- b) Remove and replace any existing driveway that will not be used for access to the property with new concrete sidewalk, curb and gutter.
- c) Reconstruct drainage facility to current City standard.
- d) Provide separation between sanitary sewer and water lines to comply with current City of Oakland and Alameda Health Department standards.
- e) Construct wheelchair ramps that comply with Americans with Disability Act requirements and current City Standards at all entrances.

- f) Remove and replace deficient concrete sidewalk, curb and gutter within property frontage as needed.
- g) Provide adequate fire department access and water supply, including, but not limited to currently adopted fire codes and standards.

**13. Payment for Public Improvements**

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

The project applicant shall pay for and install public improvements made necessary by the Project including damage caused by construction activity.

**14. Compliance Matrix**

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

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

**15. Parcel Map Waiver**

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

The existing parcels on the Project site shall be merged into one parcel prior to the commencement of construction activities for the Project.

**16. Art Feature**

***Prior to issuance of building permits***

The applicant shall submit plans for the design of the art feature at the corner of High Street and MacArthur Boulevard to the Planning and Zoning Division for review and approval.

**17. Restrictions of Occupancy**

***Prior to the issuance of the occupancy permit for the first unit***

The applicant shall submit for review and approval by the Planning and Zoning Division proof of filing of a deed restriction with the Alameda County Recorder. Said restriction shall include the following: That the targeted units shall be occupied by not more than two individuals, at least one of whom is sixty (60) years of age or older or is physically handicapped regardless of age; and that such occupancy is guaranteed for a period of not less than fifty (50) years.

**18. Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCAMMRP)**

***Ongoing***

All Standard Conditions of Approval and Recommended Measures identified in the EIR are included in the Standard Condition of Approval and Mitigation Monitoring Program (SCAMMRP) which is included in these conditions of approval, incorporated herein by reference, as conditions of approval of the Project, and are therefore not repeated in these conditions of approval. To the extent that there is any inconsistency between the SCAMMRP and these conditions, the more restrictive conditions shall govern; to the extent any Standard Conditions of Approval and/or Recommended Measure identified in the EIR are inadvertently omitted from the SCAMMRP, they are hereby adopted and incorporated herein by reference, as if fully set forth in the SCAMMRP. The Project sponsor (also referred to as the Developer or Applicant) shall be responsible for compliance with the

recommendation in any submitted and approved technical reports, all applicable conditions of approval and Recommended Measures set forth herein at its sole cost and expense, unless otherwise expressly provided in a condition of approval, and subject to the review and approval of the City of Oakland. The SCAMMRP identifies the time frame and responsible party for implementation and monitoring for each standard condition and Recommended Measure. Overall monitoring and compliance with the standard conditions and Recommended Measures will be the responsibility of the Planning and Zoning Division. Adoption of the SCAMMRP will constitute fulfillment of the CEQA monitoring and/or reporting requirement set forth in Section 21081.6 of CEQA. Prior to the issuance of a demolition, grading, and/or construction permit, the Project sponsor shall pay the applicable mitigation and monitoring fee to the City in accordance with the City's Master Fee Schedule.

**19. Final Landscape Plan**

**Prior to issuance of building permits**

The applicant shall submit a more developed landscape plan to the Planning and Zoning Division for review and approval. The plan should identify proposed landscape materials including the accent paving on High at MacArthur, courtyard paving, courtyard site furnishings and water feature, and the type of planting. Provide additional details on proposed courtyard amenities, and consider increasing the percentage of softscape from approximately 15% of the courtyard to 30%, or provide other non-paving amenities. Consider an alternate tree species to Aristocrat Pear.

**APPROVED BY:**

| City Planning Commission: July 17, 2013 (date) 3 ayes – 1 no (vote)  
City Council: \_\_\_\_\_ (date) \_\_\_\_\_ (vote)

**Applicant and/or Contractor Statement**

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

Signature of Owner/Applicant: \_\_\_\_\_ (date)  
Signature of Contractor: \_\_\_\_\_ (date)





## High and MacArthur Senior Community

### Oakland, California

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A.3	2ND FLOOR PLAN	A.9	EXTERIOR ELEVATIONS	A.15	3-D RENDERING
A.4	3RD FLOOR PLAN	A.10	ROUTE 580 ELEVATION	A.16	INTERIOR ELEVATION
A.5	4TH FLOOR PLAN	A.11	MATERIALS AND DETAILS	LA.1	LANDSCAPE PLAN
A.6	ROOF PLAN	A.12	MATERIALS AND DETAILS	LA.2	SITE MATERIALS

**AMG & Associates, LLC**  
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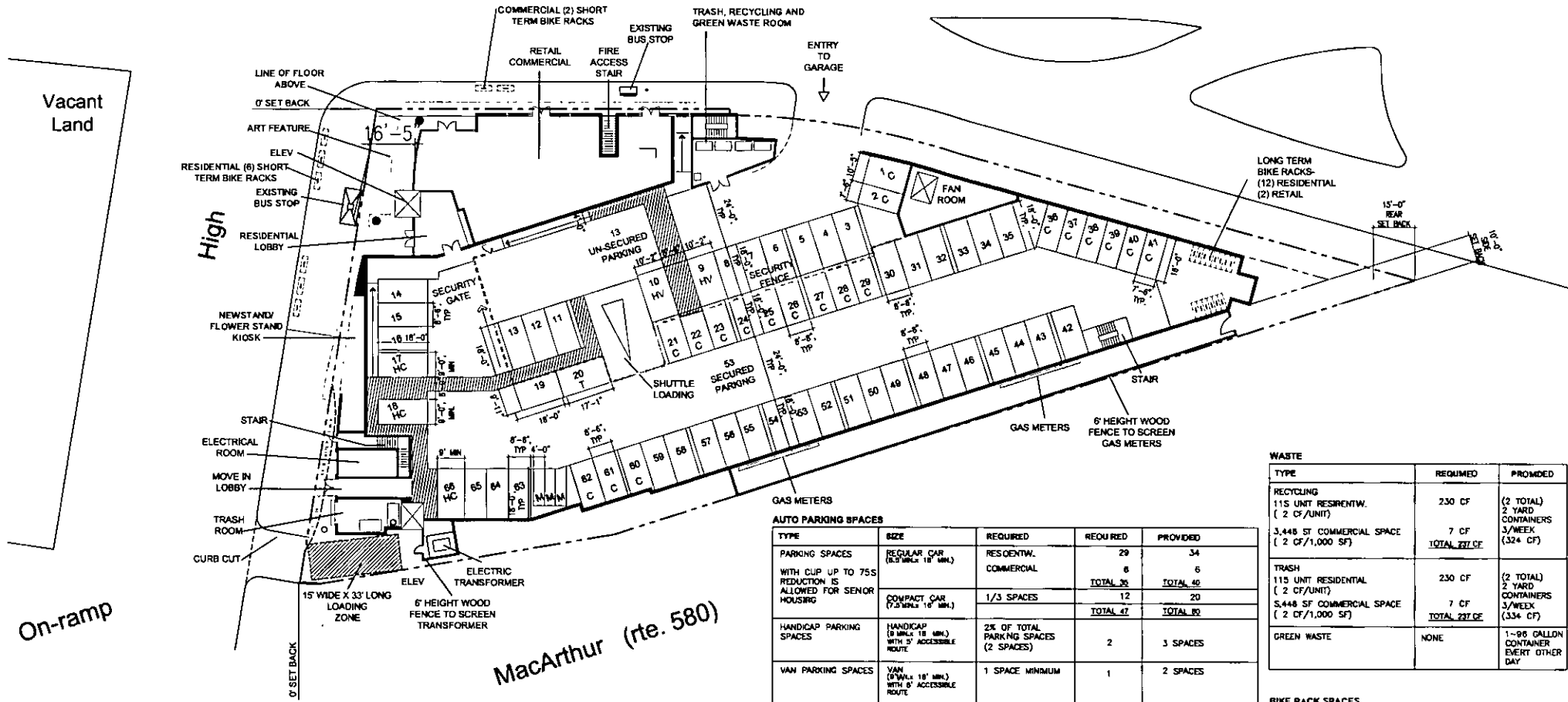
Project # 2000085403 02/04/08

**A.0**

**ATTACHMENT A**



# MacArthur



**AUTO PARKING SPACES**

TYPE	SIZE	REQUIRED	REQUIRED	PROVIDED
PARKING SPACES WITH CURB UP TO 75% REDUCTION IS ALLOWED FOR SENIOR HOUSING	REGULAR CAR (8.0' MIN. X 18' MIN.)	RESIDENTIAL	29	34
	COMPACT CAR (7.5' MIN. X 16' MIN.)	COMMERCIAL	6	6
			<b>TOTAL 35</b>	<b>TOTAL 40</b>
HANDICAP PARKING SPACES	HANDICAP (8' MIN. X 18' MIN.) WITH 5' ACCESSIBLE ROUTE	2% OF TOTAL PARKING SPACES (2 SPACES)	2	3 SPACES
VAN PARKING SPACES	VAN (8' MIN. X 18' MIN.) WITH 5' ACCESSIBLE ROUTE	1 SPACE MINIMUM	1	2 SPACES
			<b>TOTAL 37</b>	<b>TOTAL 42</b>

**ADDITIONAL SPACES NOT REQUIRED**

TANDUM PARKING	(7.5' MIN. X 16' MIN.)	NONE REQUIRED	1 SPACE
MOTOR CYCLE PARKING SPACES	(4' MIN. X 15' MIN.)	NONE REQUIRED	3 SPACES

**WASTE**

TYPE	REQUIRED	PROVIDED
RECYCLING 115 UNIT RESIDENTIAL ( 2 CF /UNIT)	230 CF	(2 TOTAL) 2 YARD CONTAINERS 3/WEEK (324 CF)
3,448 SF COMMERCIAL SPACE ( 2 CF/1,000 SF)	7 CF	<b>TOTAL 237 CF</b>
TRASH 115 UNIT RESIDENTIAL ( 2 CF/UNIT)	230 CF	(2 TOTAL) 2 YARD CONTAINERS 3/WEEK (334 CF)
5,448 SF COMMERCIAL SPACE ( 2 CF/1,000 SF)	7 CF	<b>TOTAL 237 CF</b>
GREEN WASTE	NONE	1-96 GALLON CONTAINER EVERY OTHER DAY

**BIKE RACK SPACES**

	REQUIRED	PROVIDED
SHORT TERM PARKING	RESIDENTIAL	8
	COMMERCIAL	2
	<b>TOTAL 8</b>	<b>TOTAL 8</b>
LONG TERM PARKING	RESIDENTIAL	12
	COMMERCIAL	2
	<b>TOTAL 14</b>	<b>TOTAL 14</b>

**GARAGE PLAN**  
Scale: 1/16"=1'-0"

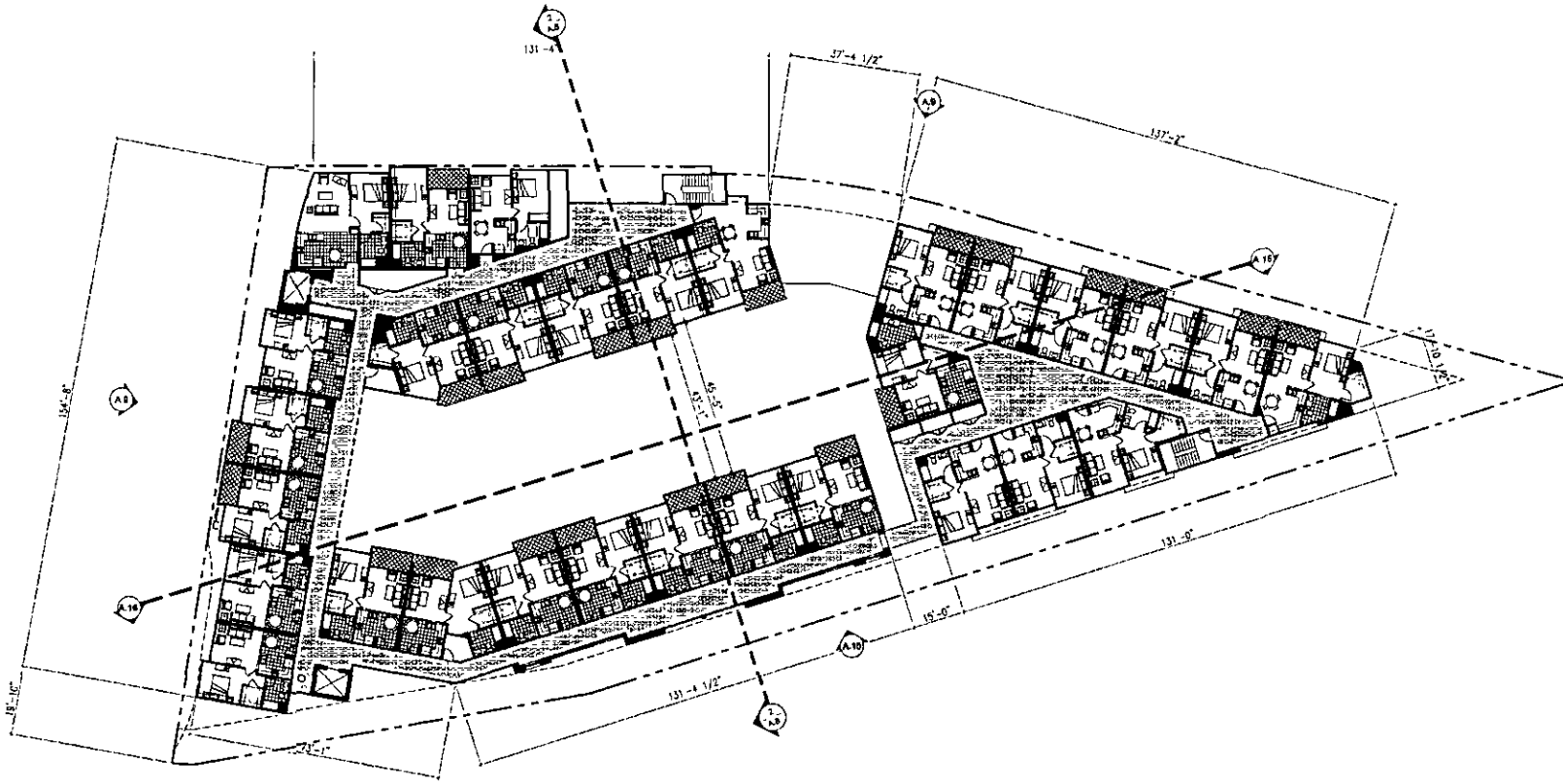


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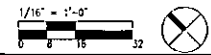
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SANTA MONICA, CA 90401  
TEL: (310) 384-2823 FAX: (310) 458-3888  
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**SECOND FLOOR PLAN**



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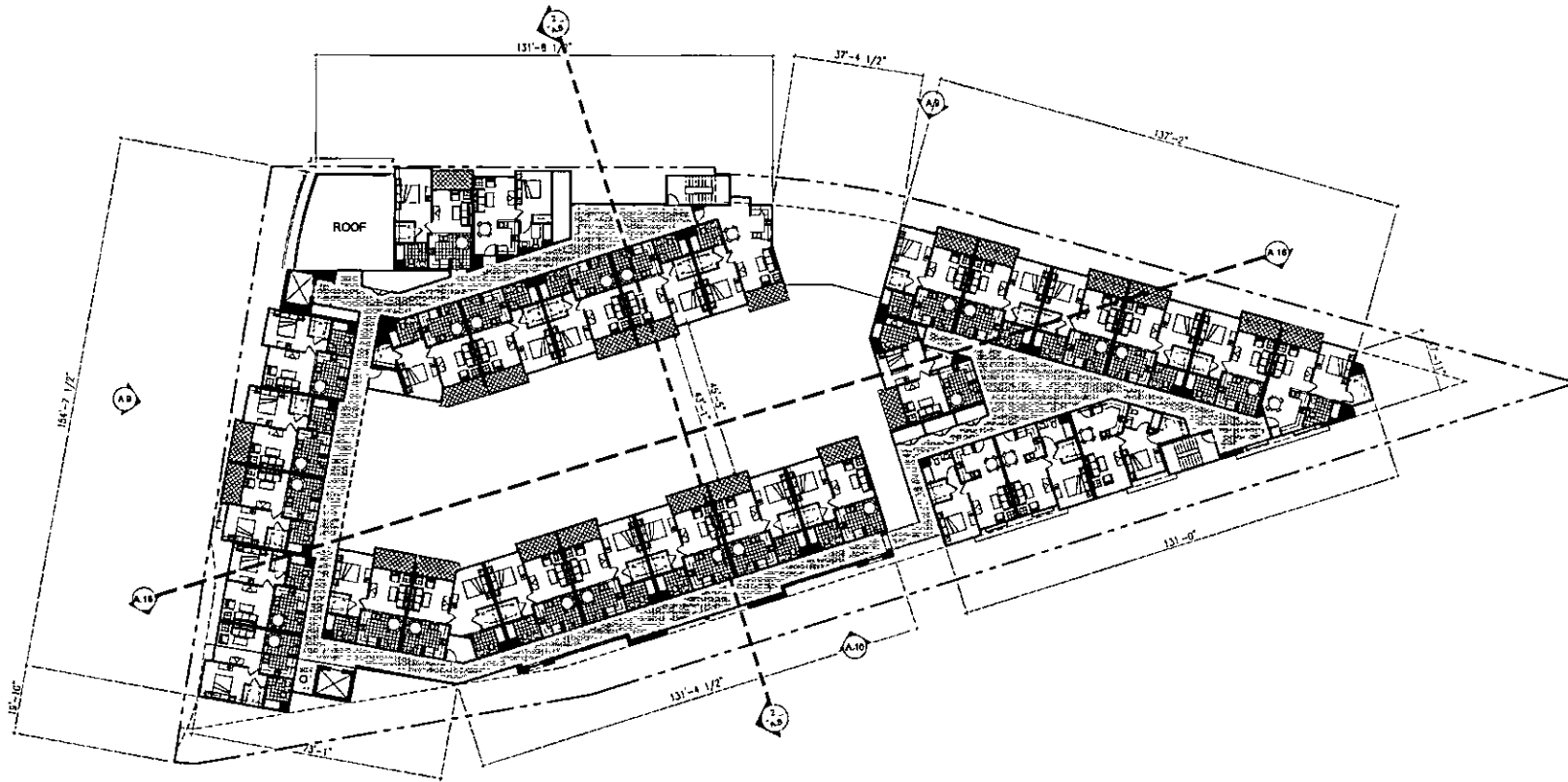
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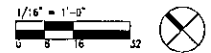
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**FOURTH FLOOR PLAN**



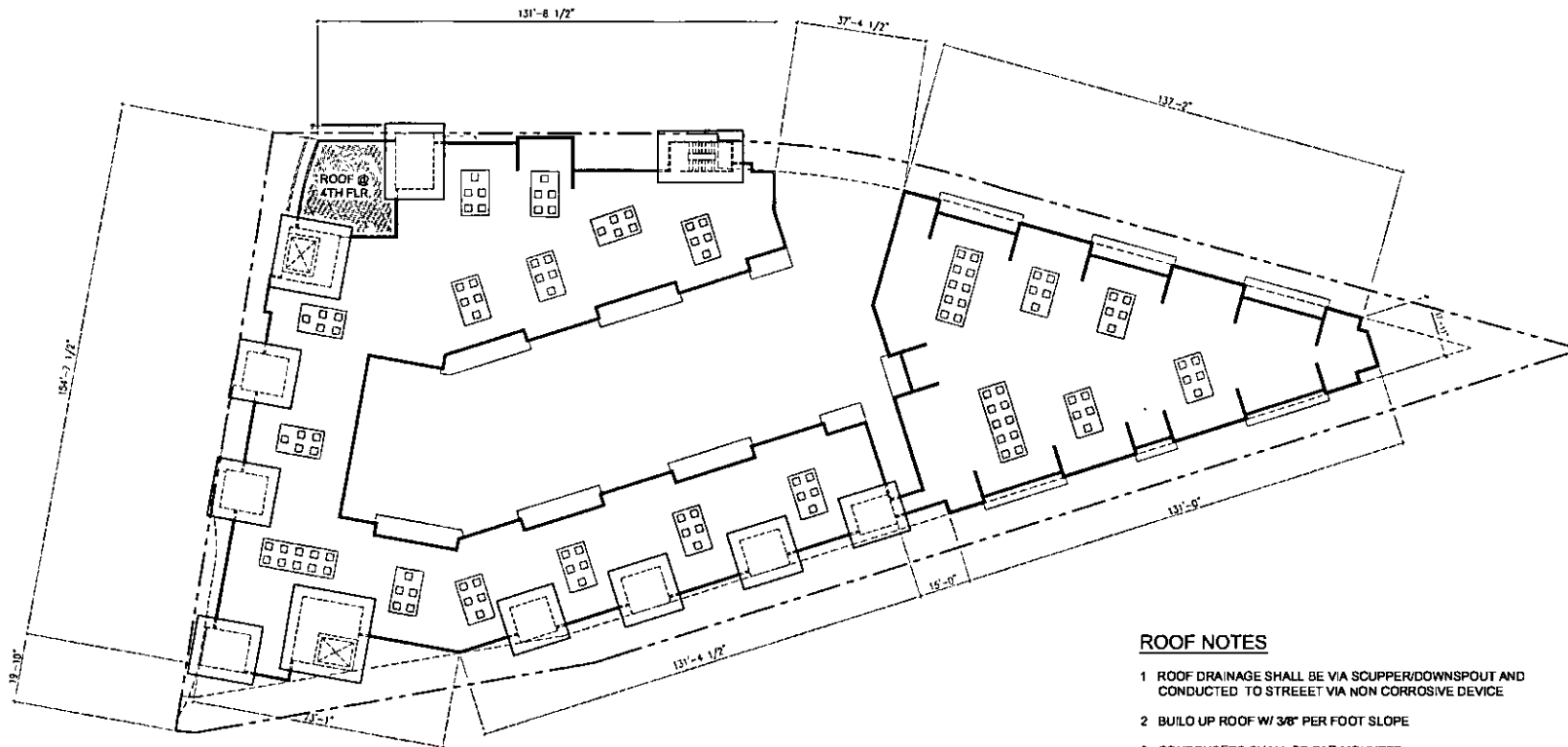
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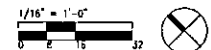
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**ROOF NOTES**

- 1 ROOF DRAINAGE SHALL BE VIA SCUPPER/DOWNSPOUT AND CONDUCTED TO STREET VIA NON CORROSIVE DEVICE
- 2 BUILO UP ROOF W/ 3/8" PER FOOT SLOPE
- 3 CONDENSERS SHALL BE PAD MOUNTED

**ROOF PLAN**



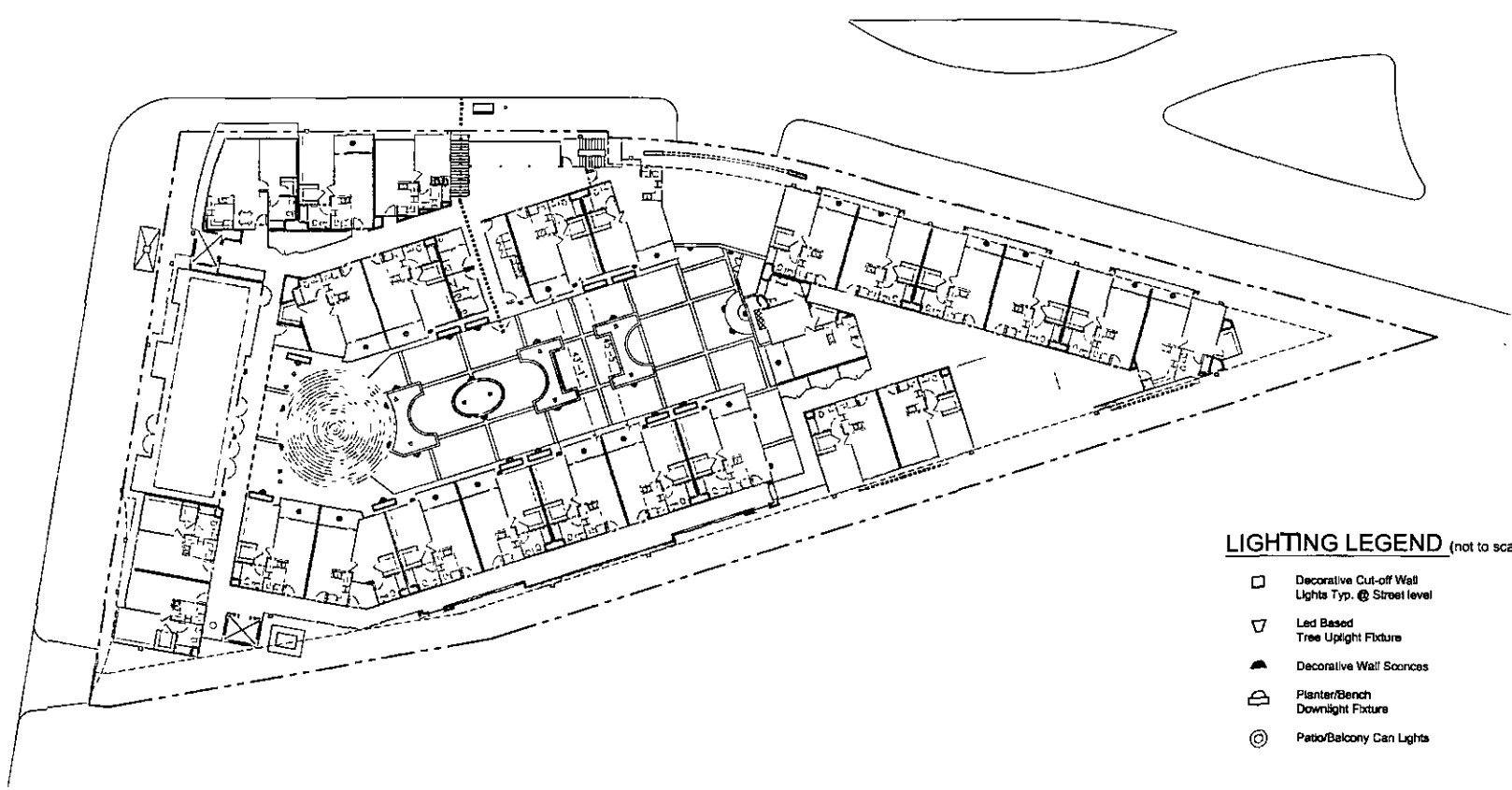
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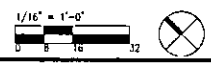
Project # 20050854.00 02/04/08



**LIGHTING LEGEND** (not to scale)

- Decorative Cut-off Wall  
Lights Typ. @ Street level
- ▽ Led Based  
Tree Uplight Fixture
- ▲ Decorative Wall Sconces
- ▭ Planter/Bench  
Downlight Fixture
- ⊙ Patio/Balcony Can Lights

**LIGHTING PLAN**



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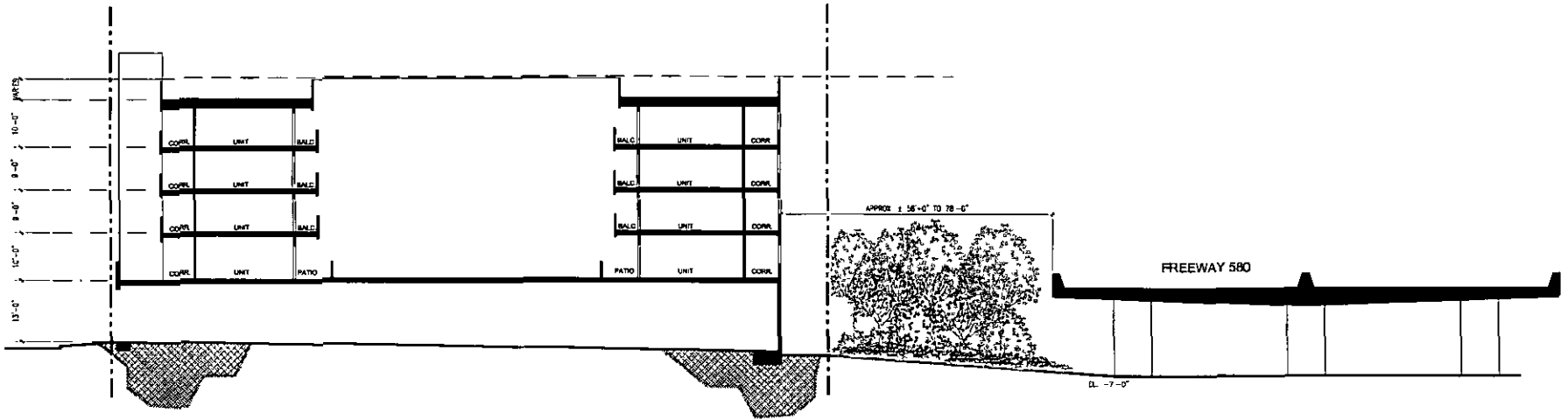
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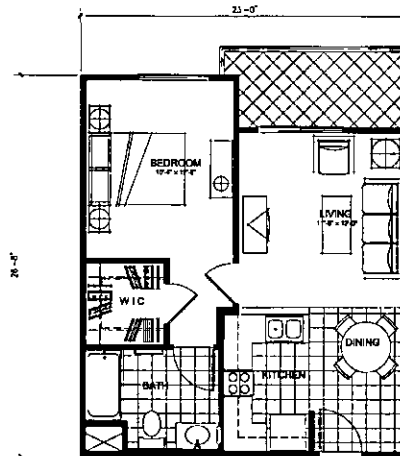
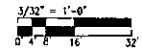
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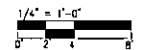




2. TYPICAL BUILDING SECTION



1. TYPICAL UNIT PLAN (approx. 540 s.f.)



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## High and MacArthur Senior Community

Oakland, California

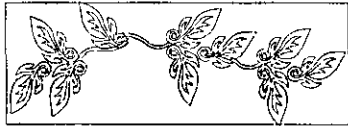


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DECORATIVE LAUREL LEAF METAL SCULPTURE



DECORATIVE "LAUREL DISTRICT" THEME SECURITY GRILL



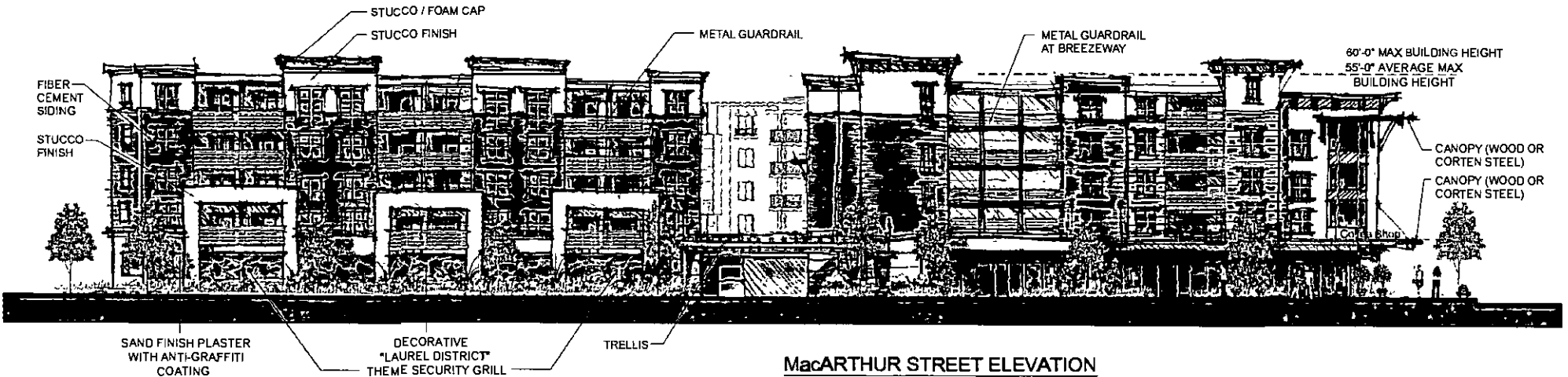
HIGH STREET ELEVATION

60'-0" MAX BUILDING HEIGHT  
55'-0" AVERAGE MAX BUILDING HEIGHT

ALL WINDOWS SHALL HAVE A MINIMUM OF 2" RECESS FROM BUILDING FACE

ROLL UP DOOR

STREET LEVEL DECORATIVE CUT-OFF WALL LIGHTS TYP.



MacARTHUR STREET ELEVATION

60'-0" MAX BUILDING HEIGHT  
55'-0" AVERAGE MAX BUILDING HEIGHT

CANOPY (WOOD OR CORTEN STEEL)  
CANOPY (WOOD OR CORTEN STEEL)

THE CONCEPT HERE IS TO SCREEN THE PARKING LOT WITH AN ORNAMENTAL TREATMENT OF INTERWOVEN LAUREL LEAVES. IT DOES NOT HAVE TO BE DENSE ENOUGH TO SECURE THE AREA - JUST ATTRACTIVELY SCREEN. I WOULD LIKE TO FIND A WAY TO USE THE NEGATIVE IMAGES LEFT OVER FROM THE METAL CUT OUTS - PERHAPS IT COULD ALTERNATE (POSITIVE AND NEGATIVE) OR BE PLACED SOMEPLACE ELSE ON THE PROJECT OR USED SOMEPLACE ELSE ON THE LAUREL DISTRICT! YOUR THOUGHTS ARE APPRECIATED

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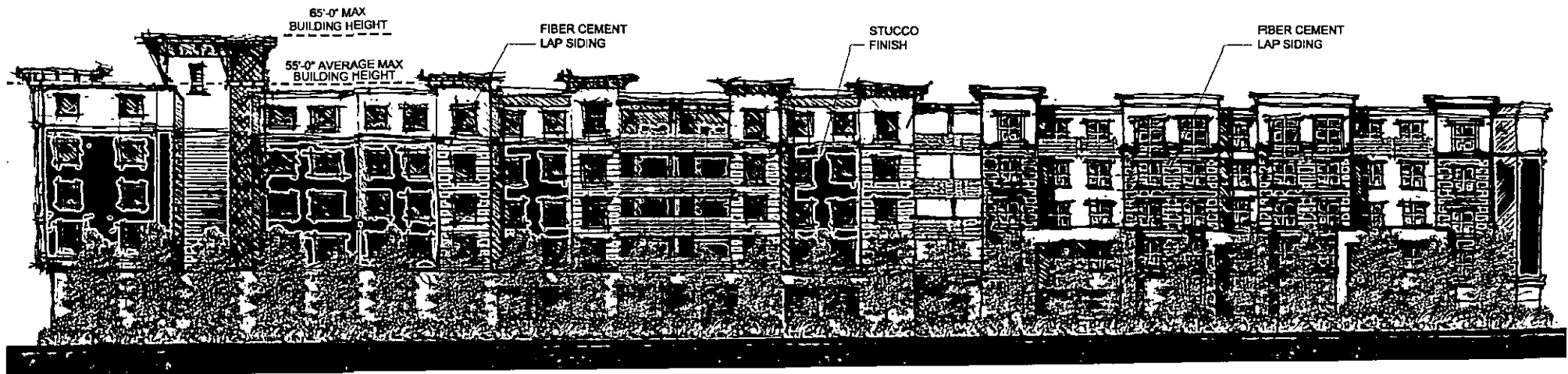
**LEAF ADDITIONS 12-26-10 Golden**



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**A.9**



MacARTHUR (RTE. 580) ELEVATION

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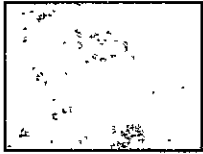
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1. SAND FINISH PLASTER



2. PAINT SELECTIONS



A. ICI Paints  
Moonraker  
MP# 201Y 53423

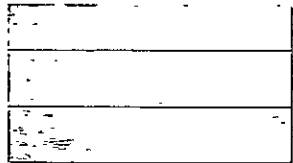
B. Frazee  
Admiralack  
DL 1636A

C. ICI Paints  
Laurie's Lace  
MP# 301Y 71238



D. ICI Paints  
Dorland  
MP# 001Y 46139

3. FIBER CEMENT LAP SIDING

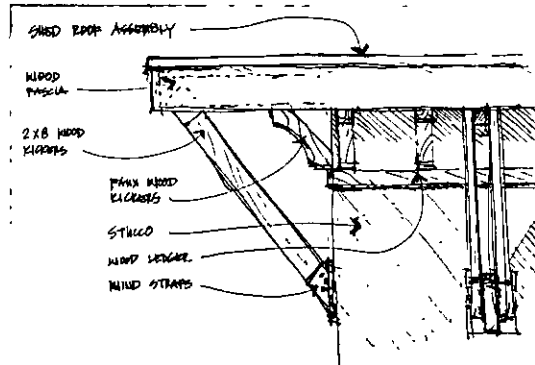


Colonial Roughness

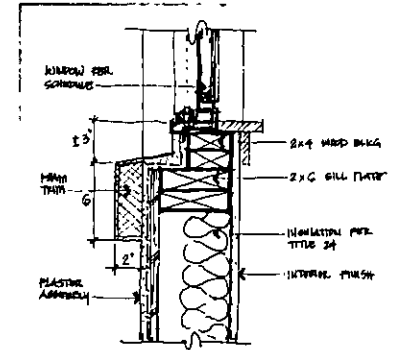
4. RAILING SYSTEM



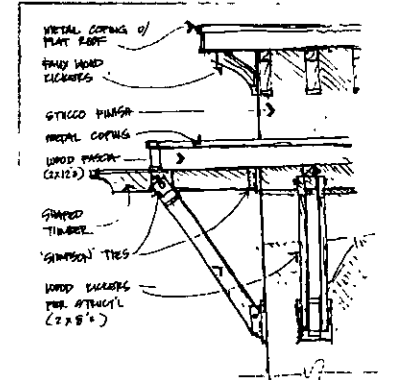
5. TOWER



7. RECESSED ALUMINUM WINDOW



6. DECORATIVE CANOPY



SEE SHEET A.12  
FOR ADDITIONAL  
INFORMATION

MATERIALS AND DETAILS

SCALE 1/8" = 1'-0"

High and MacArthur Senior Community  
OAKLAND CALIFORNIA

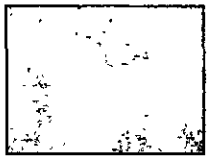


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REVISION  
06/12/13

**A.11**

1. SAND FINISH PLASTER



2. PAINT SELECTIONS



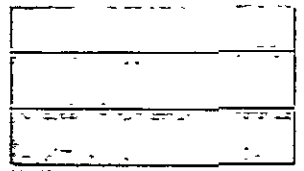
A. OI Paints  
Classic Liberty Red  
MP # 30YR 07254



B. OI Paints  
Stratopony  
MP # 40YR 73028

C. OI Paints  
Dorford  
MP # 20YR 45139

3. FIBER CEMENT LAP SIDING

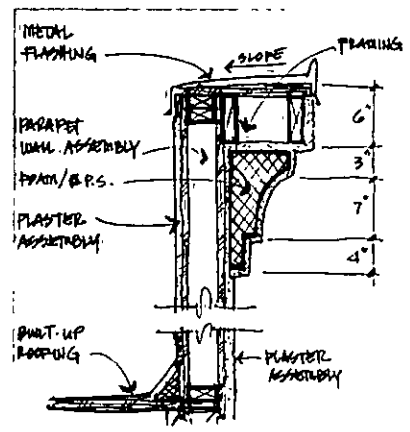


Colonial Roughsawn

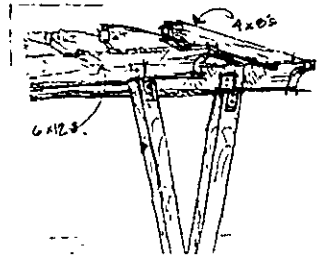
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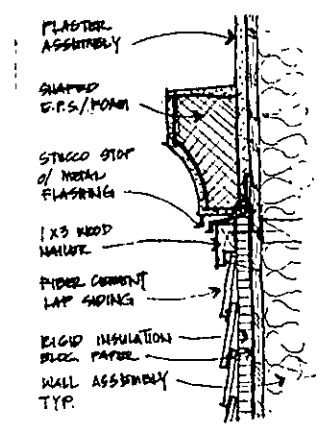
5. PARAPET



7. TRELLIS GATEWAY



6. WALL TRANSITION



MATERIALS AND DETAILS  
SCALE 1/8" = 1'-0"

High and MacArthur Senior Community  
OAKLAND CALIFORNIA

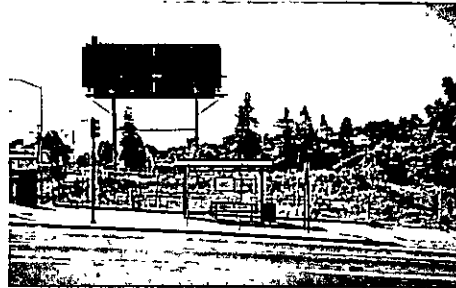


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PROPERTY SIDE VIEW FACING NORTHEAST



PROPERTY SIDE VIEW FROM HIGH STREET FACING SOUTH



PROPERTY SIDE VIEW FROM MACARTHUR BOULEVARD FACING NORTH

**EXISTING LOT**



ACROSS STREET EAST CORNER



ACROSS STREET WEST CORNER



ACROSS STREET NORTH CORNER



4251 MACARTHUR BOULEVARD

**ADJACENT / ACROSS STREET PROPERTIES**

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3251 HIGH STREET



3616 HIGH STREET



3627 HIGH STREET



3633 HIGH STREET



4233 MACARTHUR BOULEVARD



4248 MACARTHUR BOULEVARD



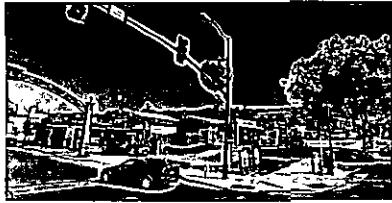
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4255 MACARTHUR BOULEVARD



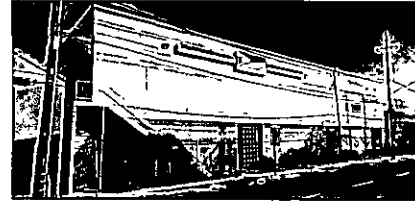
4258 MACARTHUR BOULEVARD



4267 MACARTHUR BOULEVARD



4300 MACARTHUR BOULEVARD



4400 MACARTHUR BOULEVARD



4412 MACARTHUR BOULEVARD



4422 MACARTHUR BOULEVARD



4430 MACARTHUR BOULEVARD



4436 MACARTHUR BOULEVARD



4442 MACARTHUR BOULEVARD



4446 MACARTHUR BOULEVARD



4454 MACARTHUR BOULEVARD



4460 MACARTHUR BOULEVARD

## 20 NEAREST NEIGHBORS

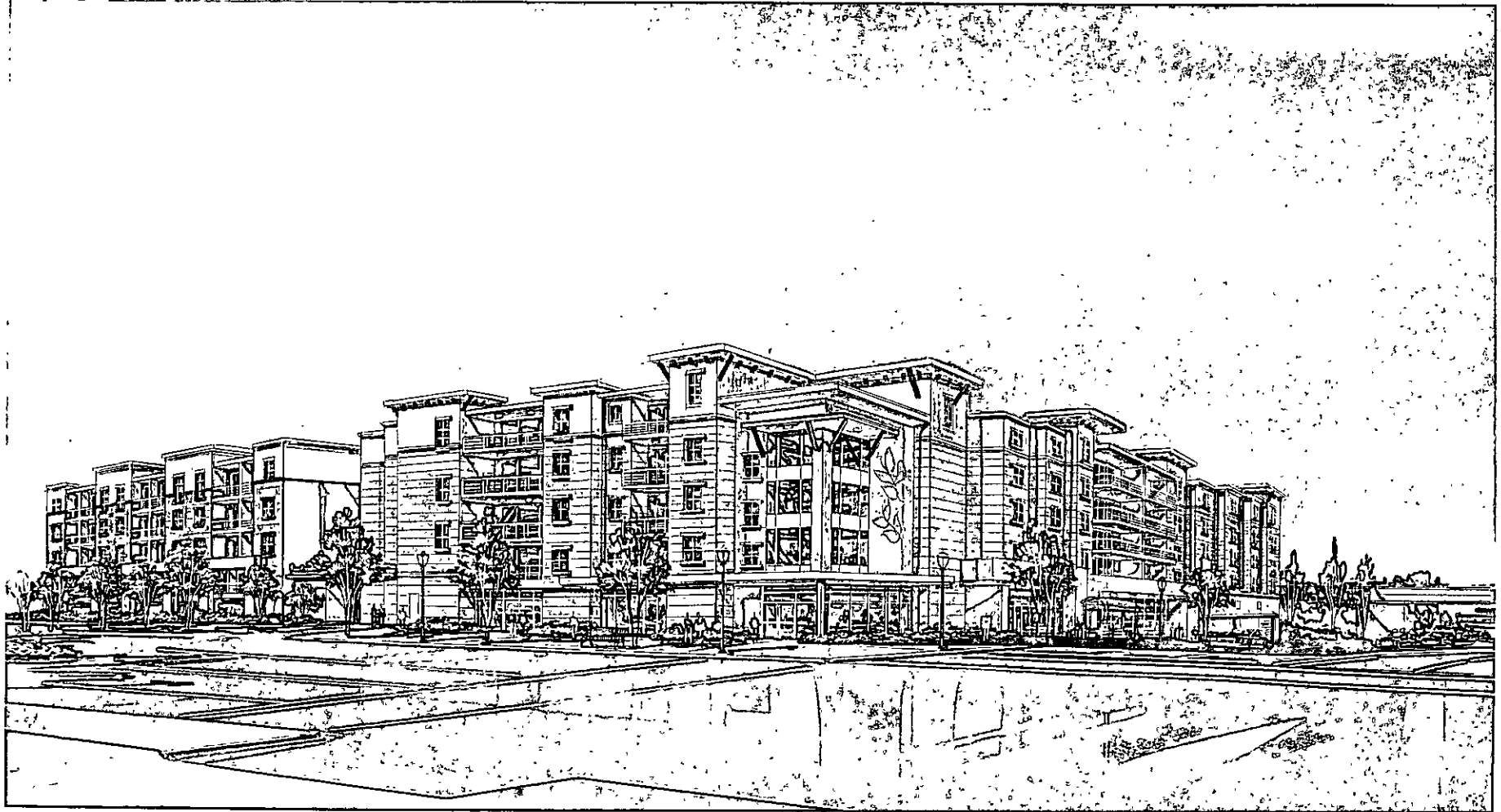
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### 3-D RENDERING

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## High and MacArthur Senior Community

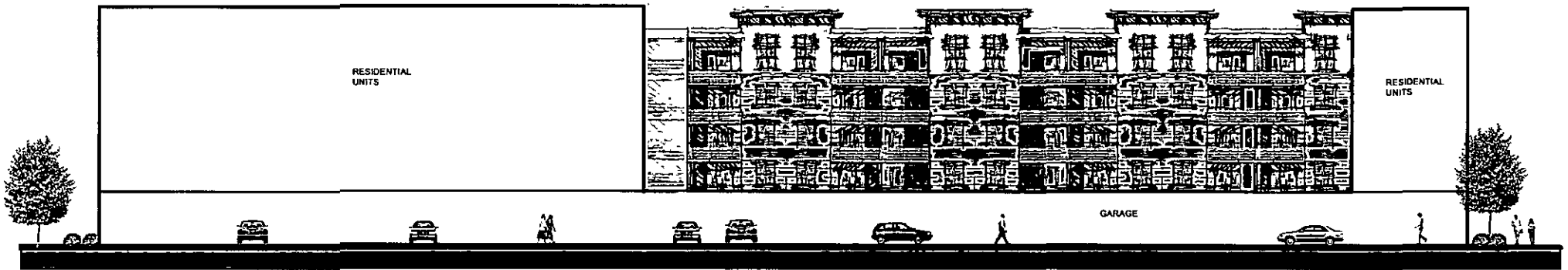
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INTERIOR ELEVATION AT COURTYARD

**A.16**

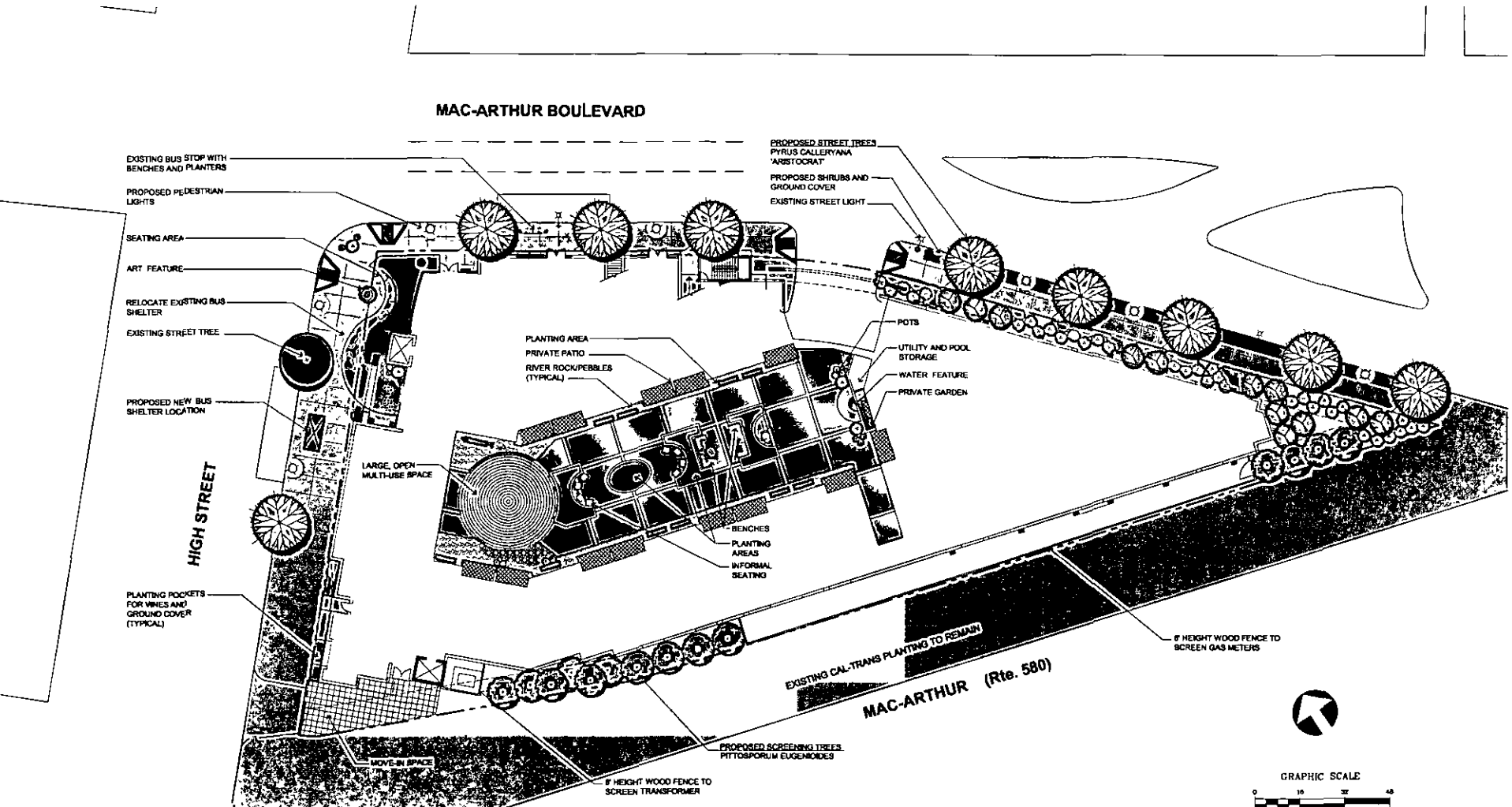
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 Encino, California 91436  
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**Oakland, California**

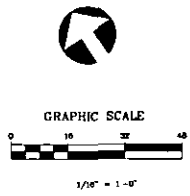
**GOLDEN**  
 associates   
 4400 MARKET STREET OAKLAND CA, 94608  
 t 510 485 4030 f 510 485 5125 CA lic #2431  
 LANDSCAPE ARCHITECTURE URBAN DESIGN & PLANNING

Project # 803

12/22/2010



# LANDSCAPE PLAN



LA.1

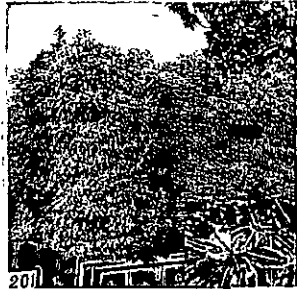
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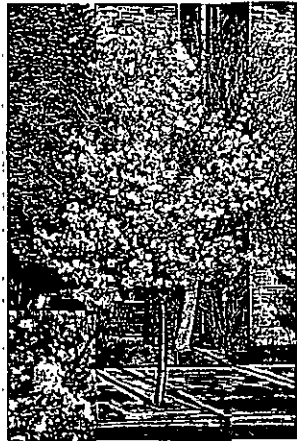
**GOLDEN**  
 associates

440 MARKET STREET OAKLAND CA, 94608  
 T 510 463 4000 F 510 463 8325 CA Lic. #24311

LANDSCAPE ARCHITECTURE URBAN DESIGN & PLANNING  
 REVISED  
 Project # 803 06/12/13



2011  
PITTOSPORUM EUGENIOIDES  
SCREENING ALONG HIGHWAY 580



PRYUS CALLYERANA 'ARISTOCRAT  
FLOWERING PEAR - STREET TREE



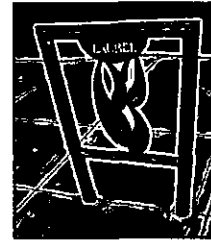
LAGERSTROEMIA INDICA  
CREPE MYRTLE - ACCENT TREE



BANNERS AT LIGHTS



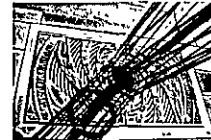
PEDESTRIAN LIGHTING



CUSTOM BIKE RACK



BENCHES AND TRASH RECEPTACLES



CUSTOM TREE GRATES



FLOWERING POTS



BUS SHELTER

## SITE MATERIALS

LA.2

AMG & Associates, LLC  
16633 Venture Boulevard, Suite 1014  
Encino, California 91436  
Tel: 818 380 2600 ext 19  
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High and Mearthur Senior Community  
Oakland, California

GOLDEN  
associates   
#600 MARKET STREET OAKLAND CA, #408  
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LANDSCAPE ARCHITECTURE URBAN DESIGN & PLANNING

Project # 603

2/1/08

ATTACHMENT B

STANDARD CONDITIONS OF APPROVAL AND MITIGATION MONITORING AND  
REPORTING PROGRAM

This Standard Conditions of Approval and Mitigation Monitoring and Reporting Program (SCAMMRP) was formulated based on the findings of the Environmental Impact Report (EIR) prepared for the High & MacArthur Mixed-Use project in the City of Oakland. This SCAMMRP is in compliance with Section 15097 of the CEQA *Guidelines*, which requires that the Lead Agency "adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects." The SCAMMRP lists Standard Conditions of Approval (SCAs) and improvements recommended in the EIR and identifies mitigation monitoring requirements.

Table 1 presents the SCAs identified in the High & MacArthur EIR necessary to mitigate potentially significant impacts as well as recommended improvements. Each SCA or Recommended Improvement has been organized to correspond with the environmental issues discussed in Chapter IV of the EIR and the Initial Study. The Initial Study and EIR found that all potentially significant impacts would be reduced to a less-than-significant level with implementation of SCAs. The Initial Study and EIR did not identify any significant impacts; therefore, no mitigation measures are warranted. The Recommended Improvements listed at the end of Table 1 are not required to mitigate potentially significant impacts, but are included based on the Response to Comments document.

The first column of Table 1 identifies the SCA or Recommended Improvement. The second column identifies the monitoring schedule or timing, while the third column names the party responsible for monitoring the required action. The fourth column, "Monitoring Procedure," outlines the steps for monitoring the action identified in the SCA or Recommended Improvement. The fifth and sixth columns deal with reporting and provide spaces for comments, dates and initials. These last columns will be used by the City to ensure that individual SCAs and Recommended Improvements have been monitored.

TABLE 1: STANDARD CONDITIONS OF APPROVAL AND MITIGATION MONITORING AND REPORTING PROGRAM

SCA/Recommended Improvement	Mitigation Monitoring			Reporting	
	Monitoring Schedule	Monitoring Responsibility	Monitoring Procedure	Comments	Date/Initials
<b>A. AESTHETIC RESOURCES</b>					
<p>IS SCA AES-1: Lighting Plan. <i>Prior to issuance of an electrical or building permit.</i></p> <p>The proposed lighting fixtures shall be adequately shielded to a point below the light bulb and reflector and that prevent unnecessary glare onto adjacent properties. Plans shall be submitted to the Planning and Zoning Division and the Electrical Services Division of the Public Works Agency for review and approval. All lighting shall be architecturally integrated into the site.</p>	<p>Prior to the issuance of an electrical or building permit</p>	<p>City of Oakland, Planning and Zoning Division and the Electrical Services and Traffic Maintenance Division of the Public Works Agency</p>	<ul style="list-style-type: none"> <li>Verify that lighting fixtures are shielded to prevent unnecessary glare.</li> <li>Ensure that all lighting is architecturally integrated into the site.</li> </ul>		
<p>EIR SCA AES-1: Required Landscape Plan for New Construction and Certain Additions to Residential Facilities. <i>Prior to issuance of a building permit.</i></p> <p>Submittal and approval of a landscape plan for the entire site is required for the establishment of a new residential unit (excluding secondary units of five hundred (500) square feet or less), and for additions to Residential Facilities of over five hundred (500) square feet. The landscape plan and the plant materials installed pursuant to the approved plan shall conform with all provisions of Chapter 17.124 of the Oakland Planning Code, including the following:</p> <p>a) Landscape plan shall include a detailed planting schedule showing the proposed location, sizes, quantities, and specific common botanical names of plant species</p> <p>b) Landscape plans for projects involving grading, rear walls on down slope lots requiring conformity with the screening requirements in Section 17.124.040, or vegetation management prescriptions in the S-11 zone, shall show proposed landscape treatments for all</p>	<p>Prior to the issuance of a building permit</p>	<p>City of Oakland, Planning and Zoning Division</p>	<p>Ensure that the landscape plan and the plant materials installed pursuant to the approved plan conform to all provisions of Chapter 17.124 of the Oakland Planning Code.</p>		

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<p>graded areas, rear wall treatments, and vegetation management prescriptions.</p> <p>c) Landscape plan shall incorporate pest-resistant and drought-tolerant landscaping practices. Within the portions of Oakland northeast of the line formed by State Highway 13 and continued southerly by Interstate 580, south of its intersection with State Highway 13, all plant materials on submitted landscape plans shall be fire-resistant. The City Planning and Zoning Division shall maintain lists of plant materials and landscaping practices considered pest-resistant, fire-resistant, and drought-tolerant.</p> <p>d) All landscape plans shall show proposed methods of irrigation. The methods shall ensure adequate irrigation of all plant materials for at least one growing season.</p>					
<p>EIR SCA AES-2: Landscape Requirements for Street Frontages. <i>Prior to issuance of a final inspection of the building permit.</i></p> <p>a) All areas between a primary Residential Facility and abutting street lines shall be fully landscaped, plus any unpaved areas of abutting rights-of-way of improved streets or alleys, provided, however, on streets without sidewalks, an unplanted strip of land five (5) feet in width shall be provided within the right-of-way along the edge of the pavement or face of curb, whichever is applicable. Existing plant materials may be incorporated into the proposed landscaping if approved by the Director of City Planning.</p> <p>b) In addition to the general landscaping requirements set forth in Chapter 17.124, a minimum of one (1) fifteen-gallon tree, or substantially equivalent landscaping consistent with City policy and as approved by the Director of City Planning, shall be provided for every twenty-five (25) feet of street frontage. On streets with sidewalks where the distance from the face of the curb to the outer edge of the sidewalk is at least six and one-half (6 ½) feet, the trees to be provided shall include street trees to the</p>	<p>Prior to issuance of a final inspection of a building permit</p>	<p>City of Oakland, Planning and Zoning Division, Director of City Planning</p>	<ul style="list-style-type: none"> <li>• Ensure that street frontages comply with all provisions of Chapter 17.124 of the Oakland Planning Code and are reviewed by the Director of City Planning if existing plant materials are proposed to be incorporated.</li> <li>• Ensure that a minimum of one (1) fifteen-gallon</li> </ul>		

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SCA/Recommended Improvement	Mitigation Monitoring			Reporting	
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satisfaction of the Director of Parks and Recreation.			tree, or substantially equivalent landscaping consistent with City policy and as approved by the Director of City Planning, is provided for every twenty-five (25) feet of street frontage.		
<b>EIR SCA AES-3: Assurance of Landscaping Completion.</b> <i>Prior to issuance of a final inspection of the building permit.</i> The trees, shrubs and landscape materials required by the conditions of approval attached to this project shall be planted before the Certificate of Occupancy will be issued; or a bond, cash, deposit, or letter of credit, acceptable to the City, shall be provided for the planting of the required landscaping. The amount of such or a bond, cash, deposit, or letter of credit shall equal the greater of two thousand five hundred dollars (\$2,500.00) or the estimated cost of the required landscaping, based on a licensed contractor's bid.	Prior to the issuance of a final inspection of the building permit	City of Oakland, Planning and Zoning Division, Director of City Planning	Ensure that landscape materials are planted or City-accepted financing method is posted.		

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<p><b>EIR SCA AES-4: Landscape Requirements for Street Frontages.</b> <i>Prior to issuance of a final inspection of the building permit.</i></p> <p>On streets with sidewalks where the distance from the face of the curb to the outer edge of the sidewalk is at least six and one-half (6½) feet and does not interfere with access requirements, a minimum of one (1) twenty-four (24) inch box tree shall be provided for every twenty-five (25) feet of street frontage, unless a smaller size is recommended by the City arborist. The trees to be provided shall include species acceptable to the Tree Services Division.</p>	Prior to the issuance of a final inspection of the building permit	City of Oakland, Tree Services Division of the Public Works Agency	Ensure that planted trees comply with the SCA and/or City arborist recommendation		
<p><b>EIR SCA AES-5: Landscape Maintenance.</b> <i>Ongoing.</i></p> <p>All required planting shall be permanently maintained in good growing condition and, whenever necessary, replaced with new plant materials to ensure continued compliance with applicable landscaping requirements. All required irrigation systems shall be permanently maintained in good condition and, whenever necessary, repaired or replaced.</p>	Ongoing	City of Oakland, Tree Services Division of the Public Works Agency	Ensure that required planting and irrigation systems are permanently maintained in good condition.		



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<p>EIR SCA AES-6: Improvements in the Public Right-of-Way (General).  <i>Approved prior to the issuance of a P-job or building permit.</i></p> <p>a) The project applicant shall submit Public Improvement Plans to Building Services Division for adjacent public rights-of-way (ROW) showing all proposed improvements and compliance with the conditions and City requirements including but not limited to curbs, gutters, sewer laterals, storm drains, street trees, paving details, locations of transformers and other above ground utility structures, the design specifications and locations of facilities required by the East Bay Municipal Utility District (EBMUD), street lighting, on-street parking and accessibility improvements compliant with applicable standards and any other improvements or requirements for the project as provided for in connection with project approval. Encroachment permits shall be obtained as necessary for any applicable improvements located within the public ROW.</p> <p>b) Review and confirmation of the street trees by the City's Tree Services Division is required as part of this condition.</p> <p>c) The Planning and Zoning Division and the Public Works Agency will review and approve designs and specifications for the improvements. Improvements shall be completed prior to the issuance of the final building permit.</p> <p>d) The Fire Services Division will review and approve fire crew and apparatus access, water supply availability and distribution to current codes and standards.</p>	<p>Prior to the issuance of a P-job or building permit</p>	<p>City of Oakland, Building Services Division, Planning and Zoning Division, the Public Works Agency including Tree Services Division, and the Fire Prevention Bureau</p>	<p>Ensure that all improvements in the public right-of-way are approved by responsible agencies prior to any permit issuance.</p>		

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SCA/Recommended Improvement	Mitigation Monitoring			Reporting	
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<p><b>EIR SCA AES-7: Underground Utilities.</b> <i>Prior to issuance of a building permit.</i>                      The project applicant shall submit plans for review and approval by the Building Services Division and the Public Works Agency, and other relevant agencies as appropriate, that show all new electric and telephone facilities; fire alarm conduits; street light wiring; and other wiring, conduits, and similar facilities placed underground. The new facilities shall be placed underground along the project applicant's street frontage and from the project applicant's structures to the point of service. The plans shall show all electric, telephone, water service, fire water service, cable, and fire alarm facilities installed in accordance with standard specifications of the serving utilities.</p>	Prior to the issuance of a building permit	City of Oakland, Building Services Division and the Public Works Agency	Ensure that plans are submitted to responsible agency and that plans include all requirements listed in the SCA.		
<p><b>EIR SCA AES-8: Tree Protection During Construction.</b> <i>Prior to issuance of a demolition, grading, or building permit.</i>                      Adequate protection shall be provided during the construction period for any trees which are to remain standing, including the following, plus any recommendations of an arborist:</p> <p>a) Before the start of any clearing, excavation, construction or other work on the site, every protected tree deemed to be potentially endangered by said site work shall be securely fenced off at a distance from the base of the tree to be determined by the City Tree Reviewer. Such fences shall remain in place for duration of all such work. All trees to be removed shall be clearly marked. A scheme shall be established for the removal and disposal of logs, brush, earth and other debris which will avoid injury to any protected tree.</p> <p>b) Where proposed development or other site work is to encroach upon the protected perimeter of any protected tree, special measures shall be incorporated to allow the roots to breathe and obtain water and nutrients. Any excavation, cutting, filing, or compaction of the existing ground surface within the protected</p>	Prior to the issuance of a demolition, grading, or building permit	City of Oakland, Public Works Agency, including Tree Services Division	Ensure that trees which are to remain standing will be protected by the listed requirements and any additional recommended by an arborist.		

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

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disposed of by the project applicant in accordance with all applicable laws, ordinances, and regulations.					
<b>B. AIR QUALITY AND GREENHOUSE GAS EMISSIONS</b>					
<p><b>EIR SCA AIR-1: Construction-Related Air Pollution Controls, (Dust, and Equipment Emissions).</b> <i>Ongoing throughout demolition, grading, and/or construction.</i></p> <p>During construction, the project applicant shall require the construction contractor to implement all of the following applicable measures recommended by the Bay Area Air Quality Management District (BAAQMD):</p> <p><b>BASIC: (Applies to all construction sites)</b></p> <p>a) Water all exposed surfaces of active construction areas at least twice daily (using reclaimed water if possible). Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible.</p> <p>b) Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).</p> <p>c) All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.</p> <p>d) Pave all roadways, driveways, sidewalks, etc. as soon as feasible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.</p> <p>e) Enclose, cover, water twice daily or apply (non-toxic) soil stabilizers to exposed stockpiles (dirt, sand, etc.).</p>	Ongoing throughout demolition, grading, and/or construction	City of Oakland, Building Services Division	<ul style="list-style-type: none"> <li>• Make regular visits to the project site to ensure that all dust-control measures are being implemented</li> <li>• Verify that a designated dust control coordinator is on-call during construction periods.</li> </ul>		

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<p>f) Limit vehicle speeds on unpaved roads to 15 miles per hour.</p> <p>g) Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five minutes (as required by the California airborne toxics control measure Title 13, Section 2485, of the California Code of Regulations). Clear signage to this effect shall be provided for construction workers at all access points.</p> <p>h) All construction equipment shall be maintained and properly tuned in accordance with the manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.</p> <p>i) Post a publicly visible sign that includes the contractor's name and telephone number to contact regarding dust complaints. When contacted, the contractor shall respond and take corrective action within 48 hours. The telephone numbers of contacts at the City and BAAQMD shall also be visible. This information may be posted on other required on-site signage.</p> <p>ENHANCED: All "Basic" controls listed above plus the following controls if the project involves:</p> <ul style="list-style-type: none"> <li>i) 114 or more single-family dwelling units;</li> <li>ii) 240 or more multi-family units;</li> <li>iii) Nonresidential uses that exceed the applicable screening size listed in BAAQMD's CEQA Guidelines;</li> <li>iv) Demolition permit;</li> <li>v) Simultaneous occurrence of more than two construction phases (e.g., grading and building construction occurring simultaneously);</li> <li>vi) Extensive site preparation (i.e., the construction site is four acres or more in size), or</li> </ul>					

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<p>vii) Extensive soil transport (i.e., 10,000 or more cubic yards of soil import/export).</p> <p>j) All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe.</p> <p>k) All excavation, grading, and demolition activities shall be suspended when average wind speeds exceed 20 mph.</p> <p>l) Install sandbags or other erosion control measures to prevent silt runoff to public roadways.</p> <p>m) Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for one month or more).</p> <p>n) Designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust off-site. Their duties shall include holidays and weekend periods when work may not be in progress.</p> <p>o) Install appropriate wind breaks (e.g., trees, fences) on the windward side(s) of actively disturbed areas of the construction site to minimize wind-blown dust. Wind breaks must have a maximum 50 percent air porosity.</p> <p>p) Vegetative ground cover (e.g., fast-germinating native grass seed) shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.</p> <p>q) The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. Activities shall be phased to reduce the amount of disturbed surfaces at any one time.</p> <p>r) All trucks and equipment, including tires, shall be washed off prior to leaving the site.</p>					

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<p>s) Site accesses to a distance of 100 feet from the paved road shall be treated with a 6- to 12-inch compacted layer of wood chips, mulch, or gravel.</p> <p>t) Minimize the idling time of diesel-powered construction equipment to two minutes.</p> <p>u) The project applicant shall develop a plan demonstrating that the off-road equipment (more than 50 horsepower) to be used in the construction project (i.e., owned, leased, and subcontractor vehicles) would achieve a project wide fleet-average 20 percent NO<sub>x</sub> reduction and 45 percent particulate matter (PM) reduction compared to the most recent California Air Resources Board (CARB) fleet average. Acceptable options for reducing emissions include the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as they become available.</p> <p>v) Use low VOC (i.e., ROC) coatings beyond the local requirements (i.e., BAAQMD Regulation 8, Rule 3: Architectural Coatings).</p> <p>w) All construction equipment, diesel trucks, and generators shall be equipped with Best Available Control Technology for emission reductions of NO<sub>x</sub> and PM.</p> <p>x) Off-road heavy diesel engines shall meet CARB's most recent certification standard.</p>					
<p><b>EIR SCA AIR-2: Exposure of Air Pollution (Toxic Air Contaminants: Particulate Matter).</b> <i>Prior to issuance of a demolition, grading, or building permit.</i></p> <p>A. Indoor Air Quality: In accordance with the recommendations of CARB and BAAQMD, appropriate measures shall be incorporated into the project design in order to reduce the potential health risk due to exposure to diesel particulate matter to achieve an</p>	<p>Prior to issuance of a demolition, grading, or building permit</p>	<p>City of Oakland, Planning and Zoning Division and the Building Services Division</p>	<ul style="list-style-type: none"> <li>Verify that an appropriate method to achieve an acceptable interior air quality level is</li> </ul>		

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SCA/Recommended Improvement	Mitigation Monitoring			Reporting	
	Monitoring Schedule	Monitoring Responsibility	Monitoring Procedure	Comments	Date/Initials
<p>acceptable interior air quality level for sensitive receptors. The appropriate measures shall include one of the following methods:</p> <ol style="list-style-type: none"> <li>1) The project applicant shall retain a qualified air quality consultant to prepare a health risk assessment (HRA) in accordance with CARB and the Office of Environmental Health and Hazard Assessment requirements to determine the exposure of project residents/occupants/users to air pollutants prior to issuance of a demolition, grading, or building permit. The HRA shall be submitted to the Planning and Zoning Division for review and approval. The applicant shall implement the approved HRA recommendations, if any. If the HRA concludes that the air quality risks from nearby sources are at or below acceptable levels, then additional measures are not required.</li> <li>2) The applicant shall implement all of the following features that have been found to reduce the air quality risk to sensitive receptors and shall be included in the project construction plans. These features shall be submitted to the Planning and Zoning Division and the Building Services Division for review and approval prior to the issuance of a demolition, grading, or building permit and shall be maintained on an ongoing basis during operation of the project.                         <ol style="list-style-type: none"> <li>a) Redesign the site layout to locate sensitive receptors as far as possible from any freeways, major roadways, or other sources of air pollution (e.g., loading docks, parking lots).</li> <li>b) Do not locate sensitive receptors near distribution center's entry and exit points.</li> <li>c) Incorporate tiered plantings of trees (redwood, deodar cedar, live oak, and/or oleander) to the maximum extent feasible between the sources of pollution and the</li> </ol> </li> </ol>			<p>implemented.</p> <ul style="list-style-type: none"> <li>• Verify that the outdoor areas are shielded or buffered from air pollution sources to the maximum extent feasible,</li> </ul>		



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<p>sensitive receptors.</p> <p>d) Install, operate and maintain in good working order a central heating and ventilation (HV) system or other air take system in the building, or in each individual residential unit, that meets or exceeds an efficiency standard of MERV 13. The HV system shall include the following features: Installation of a high efficiency filter and/or carbon filter to filter particulates and other chemical matter from entering the building. Either HEPA filters or ASHRAE 55% supply filters shall be used.</p> <p>e) Retain a qualified HV consultant or HERS rater during the design phase of the project to locate the HV system based on exposure modeling from the pollutant sources.</p> <p>f) Install indoor air quality monitoring units in buildings.</p> <p>g) Project applicant shall maintain, repair and/or replace HV system on an ongoing and as needed basis or shall prepare an operation and maintenance manual for the HV system and the filter. The manual shall include the operating instructions and the maintenance and replacement schedule. This manual shall be included in the CC&amp;Rs for residential projects and distributed to the building maintenance staff. In addition, the applicant shall prepare a separate homeowners manual. The manual shall contain the operating instructions and the maintenance and replacement schedule for the HV system and the filters.</p> <p>B Outdoor Air Quality: To the maximum extent practicable, individual and common exterior open space, including playgrounds, patios, and decks, shall either be shielded from the source of air pollution by buildings or otherwise buffered to further reduce air pollution for project occupants</p>					

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<p><b>EIR SCA AIR-3: Exposure to Air Pollution (Toxic Air Contaminants: Gaseous Emissions).</b> Prior to issuance of a demolition, grading, or building permit.</p> <p>A. <b>Indoor Air Quality:</b> In accordance with the recommendations of CARB and BAAQMD, appropriate measures shall be incorporated into the project design in order to reduce the potential risk due to exposure to toxic air contaminants to achieve an acceptable interior air quality level for sensitive receptors. The project applicant shall retain a qualified air quality consultant to prepare a HRA in accordance with CARB and the Office of Environmental Health and Hazard Assessment requirements to determine the exposure of project residents/occupants/users to air pollutants prior to issuance of a demolition, grading, or building permit. The HRA shall be submitted to the Planning and Zoning Division for review and approval. The applicant shall implement the approved HRA recommendations, if any. If the HRA concludes that the air quality risks from nearby sources are at or below acceptable levels, then additional measures are not required.</p> <p>B. <b>Exterior Air Quality:</b> To the maximum extent practicable, individual and common exterior open space, including playgrounds, patios, and decks, shall either be shielded from the source of air pollution by buildings or otherwise buffered to further reduce air pollution for project occupants.</p>	<p>Prior to issuance of a demolition, grading, or building permit</p>	<p>City of Oakland, Planning and Zoning Division</p>	<ul style="list-style-type: none"> <li>Verify that indoor air quality measures are incorporated into the project design and that a qualified air quality consultant is retained to prepare a HRA that is submitted to the Planning and Zoning Division for review and approval.</li> <li>Verify that individual and common exterior open space is shielded or buffered from the course of air pollution to the maximum extent practicable.</li> </ul>		

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<b>C. AGRICULTURE AND FOREST RESOURCES</b>					
<i>No SCAs or Recommended Improvements were determined to be necessary for Agriculture and Forest Resources</i>					
<b>D. BIOLOGICAL RESOURCES</b>					
<i>No SCAs or Recommended Improvements were determined to be necessary for Biological Resources.</i>					
<b>E. CULTURAL RESOURCES</b>					
<p>IS SCA CULT-1: Archeological Resources, Ongoing throughout demolition, grading and/or construction.</p> <p>a) Pursuant to CEQA Guidelines section 15064.5 (f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore, in the event that any prehistoric or historical subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist to assess the significance of the find. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified archaeologist would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Oakland. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and a report prepared by the qualified archaeologist according to current professional standards.</p> <p>b) In considering any suggested measure proposed by the consulting archaeologist in order to mitigate impacts to historical resources or unique archaeological resources, the project applicant shall determine whether avoidance is necessary and feasible in light of factors such as the nature of the find, project design, costs, and</p>	Ongoing throughout demolition, grading, and/or construction	City of Oakland, Building Services Division and Planning and Zoning Division - Historic Preservation Staff	In the event that any prehistoric or historical subsurface cultural resources are discovered, ensure all work within 50 feet of the resources is halted and ensure the project applicant and/or Lead Agency consult with a qualified archaeologist to assess the significance of the find.		

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SCA/Recommended Improvement	Mitigation Monitoring			Reporting	
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<p>other considerations. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while measure for historical resources or unique archaeological resources is carried out.</p> <p>c) Should an archaeological artifact or feature be discovered on-site during project construction, all activities within a 50-foot radius of the find would be halted until the findings can be fully investigated by a qualified archaeologist to evaluate the find and assess the significance of the find according to the CEQA definition of a historical or unique archaeological resource. If the deposit is determined to be significant, the project applicant and the qualified archaeologist shall meet to determine the appropriate avoidance measures or other appropriate measure, subject to approval by the City of Oakland, which shall assure implementation of appropriate measures recommended by the archaeologist. Should archaeologically-significant materials be recovered, the qualified archaeologist shall recommend appropriate analysis and treatment, and shall prepare a report on the findings for submittal to the Northwest Information Center.</p>					
<p><b>IS SCA CULT-2: Paleontological Resources.</b> <i>Ongoing throughout demolition, grading and/or construction.</i></p> <p>In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards (SVP 1995,1996)). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the</p>	Ongoing throughout demolition, grading, and/or construction	City of Oakland, Building Services Division and Planning and Zoning Division	In the event of an unanticipated discovery of a paleontological resource, ensure that excavations within 50 feet of the find be temporarily halted or diverted until the discovery is examined by a		

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paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.			qualified paleontologist (per Society of Vertebrate Paleontology standards (SVP 1995,1996)).		
IS SCA CULT-3: Human Remains. <i>Ongoing throughout demolition, grading and/or construction.</i> In the event that human skeletal remains are uncovered at the project site during construction or ground-breaking activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.	Ongoing throughout demolition, grading, and/or construction	City of Oakland, Building Services Division and Planning and Zoning Division	In the event that human skeletal remains are uncovered, ensure that all work is immediately halted and the Alameda County Coroner is contacted to evaluate the remains following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines.		
<b>F. GEOLOGY AND SOILS</b>					
IS SCA GEO-1: Soils Report. <i>Required as part of the submittal of a tentative tract or tentative parcel map.</i> A preliminary soils report for the project site shall be required as part of this project and submitted for review and approval by the Building Services Division. The soils reports shall be based, at least in part, on information obtained from on-site testing. Specifically the minimum contents of the report should include:	Required as part of the submittal of a tentative tract or tentative parcel map	City of Oakland, Building Services Division	Verify that a preliminary soils report has been submitted for the project site.		

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<p>A. Logs of borings and/or profiles of test pits and trenches:</p> <ol style="list-style-type: none"> <li>1) The minimum number of borings acceptable, when not used in combination with test pits or trenches, shall be two (2), when in the opinion of the Soils Engineer such borings shall be sufficient to establish a soils profile suitable for the design of all the footings, foundations, and retaining structures.</li> <li>2) The depth of each boring shall be sufficient to provide adequate design criteria for all proposed structures.</li> <li>3) All boring logs shall be included in the soils report.</li> </ol> <p>B. Test pits and trenches:</p> <ol style="list-style-type: none"> <li>1) Test pits and trenches shall be of sufficient length and depth to establish a suitable soils profile for the design of all proposed structures.</li> <li>2) Soils profiles of all test pits and trenches shall be included in the soils report.</li> </ol> <p>C. A plat shall be included which shows the relationship of all the borings, test pits, and trenches to the exterior boundary of the site. The plat shall also show the location of all proposed site improvements. All proposed improvements shall be labeled.</p> <p>D. Copies of all data generated by the field and/or laboratory testing to determine allowable soil bearing pressures, sheer strength, active and passive pressures, maximum allowable slopes where applicable and any other information which may be required for the proper design of foundations, retaining walls, and other structures to be erected subsequent to or concurrent with work done under the grading permit.</p> <p>E. Soils Report. A written report shall be submitted which shall include, but is not limited to, the following:</p> <ol style="list-style-type: none"> <li>1) Site description;</li> </ol>					

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2) Local and site geology; 3) Review of previous field and laboratory investigations for the site; 4) Review of information on or in the vicinity of the site on file at the Information Counter, City of Oakland, Planning and Zoning Division; 5) Site stability shall be addressed with particular attention to existing conditions and proposed corrective attention to existing conditions and proposed corrective actions at locations where land stability problems exist; 6) Conclusions and recommendations for foundations and retaining structures, resistance to lateral loading, slopes, and specifications, for fills, and pavement design as required; 7) Conclusions and recommendations for temporary and permanent erosion control and drainage. If not provided in a separate report they shall be appended to the required soils report; 8) All other items which a Soils Engineer deems necessary; and 9) The signature and registration number of the Civil Engineer preparing the report. F. The Director of Planning and Building Department may reject a report that she/he believes is not sufficient. The Director of Planning and Building may refuse to accept a soils report if the certification date of the responsible soils engineer on said document is more than three years old. In this instance, the Director may be require that the old soils report be recertified, that an addendum to the soils report be submitted, or that a new soils report be provided.					
IS SCA GEO-2: Erosion and Sedimentation Control Plan. <i>Prior to any</i>	Prior to any	City of Oakland,	Verify that a site-		

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<p><i>grading activities.</i></p> <p>a) The project applicant shall obtain a grading permit if required by the Oakland Grading Regulations pursuant to Section 15.04.660 of the Oakland Municipal Code. The grading permit application shall include an erosion and sedimentation control plan. The erosion and sedimentation control plan shall include all necessary measures to be taken to prevent excessive stormwater runoff or carrying by stormwater runoff of solid materials on to lands of adjacent property owners, public streets, or to creeks as a result of conditions created by grading operations. The plan shall include, but not be limited to, such measures as short-term erosion control planting, waterproof slope covering, check dams, interceptor ditches, benches, storm drains, dissipation structures, diversion dikes, retarding berms and barriers, devices to trap, store and filter out sediment, and stormwater retention basins. Off-site work by the project applicant may be necessary. The project applicant shall obtain permission or easements necessary for off-site work. There shall be a clear notation that the plan is subject to changes as changing conditions occur. Calculations of anticipated stormwater runoff and sediment volumes shall be included, if required by the Director of the Planning and Building Department or designee. The plan shall specify that, after construction is complete, the project applicant shall ensure that the storm drain system shall be inspected any that the project applicant shall clear the system of any debris or sediment.</p> <p><i>Ongoing.</i></p> <p>b) The project applicant shall implement the approved erosion and sedimentation plan. No grading shall occur during the wet weather season (October 15 through April 15) unless specifically authorized in writing by the Building Services Division.</p>	grading activities	Building Services Division	specific erosion and sedimentation control plan is submitted and approved.		
IS SCA CEO-3: Geotechnical Report. <i>Required as part of the submittal of a tentative tract or tentative parcel map.</i>	Required as part of the	City of Oakland, Building Services	Verify that the project sponsor has		



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<p>a) A site-specific, design level, landslide or liquefaction geotechnical investigation for each construction site within the project area shall be required as part of this project and submitted for review and approval by the Building Services Division. Specifically:</p> <ul style="list-style-type: none"> <li>i. Each investigation shall include an analysis of expected ground motions at the site from identified faults. The analyses shall be accordance with applicable City ordinances and policies, and consistent with the most recent version of the California Building Code, which requires structural design that can accommodate ground accelerations expected from identified faults.</li> <li>ii. The investigations shall determine final design parameters for the walls, foundations, foundation slabs, surrounding related improvements, and infrastructure (utilities, roadways, parking lots, and sidewalks).</li> <li>iii. The investigations shall be reviewed and approved by a registered geotechnical engineer. All recommendations by the project engineer, geotechnical engineer, shall be included in the final design, as approved by the City of Oakland.</li> <li>iv. The geotechnical report shall include a map prepared by a land surveyor or civil engineer that shows all field work and location of the "No Build" zone. The map shall include a statement that the locations and limitations of the geologic features are accurate representations of said features as they exist on the ground, were placed on this map by the surveyor, the civil engineer or under their supervision, and are accurate to the best of their knowledge.</li> <li>v. Recommendations that are applicable to foundation design, earthwork, and site preparation that were prepared prior to or during the project's design phase, shall be incorporated in the</li> </ul>	<p>submittal of a tentative tract or tentative parcel map.</p>	<p>Division</p>	<p>submitted a site-specific, design level, landslide or liquefaction geotechnical investigation that meets the requirements of the SCA for each construction site within the project area.</p>		

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<p>project.</p> <p>vi. Final seismic considerations for the site shall be submitted to and approved by the City of Oakland Building Services Division prior to commencement of the project.</p> <p>vii. A peer review is required for the Geotechnical Report. Personnel reviewing the geologic report shall approve the report, reject it, or withhold approval pending the submission by the applicant or subdivider of further geologic and engineering studies to more adequately define active fault traces.</p> <p>b) Tentative Tract or Parcel Map approvals shall require, but not be limited to, approval of the Geotechnical Report.</p>					
<b>G. HAZARDS AND HAZARDOUS MATERIALS</b>					
<p><b>IS SCA HAZ-1: Hazardous Materials Business Plan. Prior to issuance of a business license</b></p> <p>The project applicant shall submit a Hazardous Materials Business Plan for review and approval by Fire Prevention Bureau, Environmental Protection and Compliance. Once approved this plan shall be kept on file with the City and will be updated as applicable. The purpose of the Hazardous Materials Business Plan is to ensure that employees are adequately trained to handle the materials and provides information to the Fire Services Division should emergency response be required. The Hazardous Materials Business Plan shall include the following:</p> <p>a) The types of hazardous materials or chemicals stored and/or used on site, such as petroleum fuel products, lubricants, solvents, and cleaning fluids.</p> <p>b) The location of such hazardous materials</p> <p>c) An emergency response plan including employee training information.</p>	<p>Prior to the issuance of a business license</p>	<p>City of Oakland, Fire Prevention Bureau, Environmental Protection and Compliance</p>	<p>Verify that a Hazardous Materials Business Plan is submitted and includes the information required by the SCA.</p>		

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d) A plan that describes the manner in which these materials are handled, transported and disposed.					
<p><b>EIR SCA HAZ-1: Hazards Best Management Practices. Prior to commencement of demolition, grading, or construction.</b>                      The project applicant and construction contractor shall ensure that construction of Best Management Practices (BMPs) are implemented as part of construction to minimize the potential negative effects to groundwater and soils. These shall include the following:</p> <p>a) Follow manufacture's recommendations on use, storage, and disposal of chemical products used in construction;</p> <p>b) Avoid overtopping construction equipment fuel gas tanks,</p> <p>c) During routine maintenance of construction equipment, properly contain and remove grease and oils;</p> <p>d) Properly dispose of discarded containers of fuels and other chemicals;</p> <p>e) Ensure that construction would not have a significant impact on the environment or pose a substantial health risk to construction workers and the occupants of the proposed development. Soil sampling and chemical analyses of samples shall be performed to determine the extent of potential contamination beneath all UST's, elevator shafts, clarifiers, and subsurface hydraulic lifts when on-site demolition, or construction activities would potentially affect a particular development or building; and</p> <p>f) if soil, groundwater or other environmental medium with suspected contamination is encountered unexpectedly during construction activities (e.g., identified by odor or visual staining, or if any underground storage tanks, abandoned drums or other hazardous materials or wastes are encountered), the applicant shall cease work in the vicinity of the suspect material, the area shall be secured as necessary, and the applicant shall take all</p>	Prior to commencement of demolition, grading, or construction	City of Oakland, Building Services Division, and Planning and Zoning Division	Verify that construction BMPs are implemented.		

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appropriate measures to protect human health and the environment. Appropriate measures shall include notification of regulatory agency(ies) and implementation of the actions described in the City's Standard Conditions of Approval, as necessary, to identify the nature and extent of contamination. Work shall not resume in the area(s) affected until the measures have been implemented under the oversight of the City or regulatory agency, as appropriate.					
EIR SCA HAZ-2: Site Review by the Fire Services Division. Prior to the issuance of demolition, grading or building permit. The project applicant shall submit plans for site review and approval to the Fire Prevention Bureau, Environmental Protection and Compliance. Property owner may be required to obtain or perform a Phase II hazard assessment.	Prior to the issuance of demolition, grading or building permit	City of Oakland, Fire Prevention Bureau, Environmental Protection and Compliance	Verify that project applicant submit plans for site review and approval by the Fire Prevention Bureau, Environmental Protection and Compliance.		

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<p><b>EIR SCA HAZ-3: Phase I and/or Phase II Reports.</b> <i>Prior to issuance of a demolition, grading, or building permit.</i></p> <p>Prior to issuance of demolition, grading, or building permits the project applicant shall submit to the Fire Prevention Bureau, Environmental Protection and Compliance, a Phase I environmental site assessment report, and a Phase II report if warranted by the Phase I report for the project site. The reports shall make recommendations for remedial action, if appropriate, and should be signed by a Registered Environmental Assessor, Professional Geologist, or Professional Engineer.</p>	<p>Prior to issuance of a demolition, grading, or building permit</p>	<p>City of Oakland, Building Services Division, and Planning and Zoning Division</p>	<p>Verify that a Phase I, and, if appropriate, Phase II, environmental site assessment report has been submitted to the Fire Prevention Bureau Environmental Protection and Compliance. Ensure any approved recommended remediation actions are implemented.</p>		
<p><b>EIR SCA HAZ-4: Environmental Site Assessment Reports Remediation.</b> <i>Prior to issuance of a demolition, grading, or building permit.</i></p> <p>If the environmental site assessment reports recommend remedial action, the project applicant shall:</p> <p>a) Consult with the appropriate local, State, and federal environmental regulatory agencies to ensure sufficient minimization of risk to human health and environmental resources, both during and after construction, posed by soil contamination, groundwater contamination, or other surface hazards including, but not limited to, underground storage tanks, fuel distribution lines, waste pits and sumps</p> <p>b) Obtain and submit written evidence of approval for any remedial action if required by a local, State, or federal environmental regulatory agency.</p>	<p>Prior to issuance of a demolition, grading, or building permit</p>	<p>City of Oakland, Building Services Division, and Planning and Zoning Division</p>	<ul style="list-style-type: none"> <li>• Verify that written evidence of approval for any remedial actions required has been obtained and that remediation action plan has been adequately prepared.</li> <li>• Verify that a construction-phase risk management plan has been</li> </ul>		

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c) Submit a copy of all applicable documentation required by local, State, and federal environmental regulatory agencies, including but not limited to: permit applications, Phase I and II environmental site assessments, human health and ecological risk assessments, remedial action plans, risk management plans, soil management plans, and groundwater management plans.			adequately prepared.		
<p>EIR SCA HAZ-S: Best Management Practices for Soil and Groundwater Hazards. <i>Ongoing throughout demolition, grading, and construction activities.</i></p> <p>The project applicant shall implement all of the following BMPs regarding potential soil and groundwater hazards.</p> <p>a) Soil generated by construction activities shall be stockpiled onsite in a secure and safe manner. All contaminated soils determined to be hazardous or non-hazardous waste must be adequately profiled (sampled) prior to acceptable reuse or disposal at an appropriate off-site facility. Specific sampling and handling and transport procedures for reuse or disposal shall be in accordance with applicable local, State and federal agencies laws, in particular, the Regional Water Quality Control Board (RWQCB) and/or the Alameda County Department of Environmental Health (ACDEH) and policies of the City of Oakland.</p> <p>b) Groundwater pumped from the subsurface shall be contained onsite in a secure and safe manner, prior to treatment and disposal, to ensure environmental and health issues are resolved pursuant to applicable laws and policies of the City of Oakland, the RWQCB and/or the ACDEH. Engineering controls shall be utilized, which include impermeable barriers to prohibit groundwater and vapor intrusion into the building (pursuant to the Standard Condition of Approval regarding Radon or Vapor Intrusion from Soil and Groundwater Sources).</p> <p>c) Prior to issuance of any demolition, grading, or building permit,</p>	Ongoing throughout demolition, grading, and construction activities	City of Oakland, Building Services Division, Planning and Zoning Division, Fire Department, and Emergency Management Services Division	<ul style="list-style-type: none"> <li>Ensure that all BMPs listed are implemented by reviewing the written verification of required clearances by oversight authorities.</li> <li>Frequently visit site to confirm that soil is securely stockpiled and groundwater is safely contained.</li> </ul>		

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<p>the applicant shall submit for review and approval by the City of Oakland, written verification that the appropriate federal, State or county oversight authorities, including but not limited to the RWQCB and/or the ACDEH, have granted all required clearances and confirmed that the all applicable standards, regulations and conditions for all previous contamination at the site. The applicant also shall provide evidence from the City's Fire Department, Office of Emergency Services, indicating compliance with the Standard Condition of Approval requiring a Site Review by the Fire Services Division pursuant to City Ordinance No. 12323, and compliance with the Standard Condition of Approval requiring a Phase I and/or Phase II Reports.</p>					
<p><b>EIR SCA HAZ-6: Radon or Vapor Intrusion from Soil or Groundwater Sources. <i>Ongoing.</i></b>                      The project applicant shall submit documentation to determine whether radon or vapor intrusion from the groundwater and soil is located on-site as part of the Phase I documents. The Phase I analysis shall be submitted to the Fire Prevention Bureau, Environmental Protection and Compliance, for review and approval, along with a Phase II report if warranted by the Phase I report for the project site. The reports shall make recommendations for remedial action, if appropriate, and should be signed by a Registered Environmental Assessor, Professional Geologist, or Professional Engineer. Applicant shall implement the approved recommendations.</p>	Ongoing	City of Oakland, Building Services Division, Planning and Zoning Division, and Fire Prevention Bureau, Environmental Protection and Compliance	Verify documentation regarding radon and vapor intrusion and confirm if Phase II report or professional signature are required.		
<b>H. HYDROLOGY AND WATER QUALTY</b>					
<p><b>IS SCA HWQ-1: Erosion, Sedimentation, and Debris Control Measures. <i>Prior to issuance of a demolition, grading, or construction-related permit.</i></b>                      The project applicant shall submit an erosion and sedimentation control plan for review and approval by the Building Services Division. All work shall incorporate all applicable BMPs for the construction industry, and</p>	Prior to issuance of a demolition, grading, or construction-related permit	City of Oakland, Building Services Division, and Planning and Zoning Division	<ul style="list-style-type: none"> <li>Verify that an erosion and sedimentation control plan has been adequately prepared and</li> </ul>		

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<p><b>SCA/Recommended Improvement</b></p> <p>as outlined in the Alameda Countywide Clean Water Program pamphlets, including BMP's for dust, erosion and sedimentation abatement per Chapter Section 15.04 of the Oakland Municipal Code. The measures shall include, but are not limited to, the following:</p> <p>a) On sloped properties, the downhill end of the construction area must be protected with silt fencing (such as sandbags, filter fabric, silt curtains, etc.) and hay bales oriented parallel to the contours of the slope (at a constant elevation) to prevent erosion into the street, gutters, storm drains.</p> <p>b) In accordance with an approved erosion control plan, the project applicant shall implement mechanical and vegetative measures to reduce erosion and sedimentation, including appropriate seasonal maintenance. One hundred (100) percent degradable erosion control fabric shall be installed on all graded slopes to protect and stabilize the slopes during construction and before permanent vegetation gets established. All graded areas shall be temporarily protected from erosion by seeding with fast growing annual species. All bare slopes must be covered with staked tarps when rain is occurring or is expected.</p> <p>c) Minimize the removal of natural vegetation or ground cover from the site in order to minimize the potential for erosion and sedimentation problems. Maximize the replanting of the area with native vegetation as soon as possible.</p> <p>d) Install filter materials acceptable to the Engineering Division at the storm drain inlets nearest to the project site prior to the start of the wet weather season (October 15); site dewatering activities; street washing activities; saw cutting asphalt or concrete; and in order to retain any debris flowing into the City storm drain system. Filter materials shall be maintained and/or replaced as necessary to ensure effectiveness and prevent street flooding.</p> <p>e) Ensure that concrete/granite supply trucks or concrete/plaster</p>			<p>implemented.</p> <ul style="list-style-type: none"> <li>Verify that the applicant has obtained permissions and easements necessary for any off-site work required by the plan.</li> <li>Verify that applicant is able to retain qualified consultant if necessary.</li> </ul>		



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finishing operations do not discharge wash water into the creek, street gutters, or storm drains. f) Direct and locate tool and equipment cleaning so that wash water does not discharge into the street, gutters, or storm drains. g) Create a contained and covered area on the site for storage of bags of cement, paints, flammables, oils, fertilizers, pesticides, or any other materials used on the project site that have the potential for being discharged to the storm drain system by the wind or in the event of a material spill. No hazardous waste material shall be stored on-site. h) Gather all construction debris on a regular basis and place them in a dumpster or other container which is emptied or removed on a weekly basis. When appropriate, use tarps on the ground to collect fallen debris or splatters that could contribute to stormwater pollution. i) Remove all dirt, gravel, refuse, and green waste from the sidewalk, street pavement, and storm drain system adjoining the project site. During wet weather, avoid driving vehicles off paved areas and other outdoor work. j) Broom sweep the street pavement adjoining the project site on a daily basis. Caked-on mud or dirt shall be scraped from these areas before sweeping. At the end of each workday, the entire site must be cleaned and secured against potential erosion, dumping, or discharge to the street, gutter, storm drains. k) All erosion and sedimentation control measures implemented during construction activities, as well as construction site and materials management shall be in strict accordance with the control standards listed in the latest edition of the Erosion and Sediment Control Field Manual published by the RWQCB. l) All erosion and sedimentation control measures shall be monitored					

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regularly by the project applicant. The City may require erosion and sedimentation control measures to be inspected by a qualified environmental consultant (paid for by the project applicant) during or after rain events. If measures are insufficient to control sedimentation and erosion then the project applicant shall develop and implement additional and more effective measures immediately.					
<p>IS SCA HWQ-2: Post-Construction Stormwater Management Plan. <i>Prior to the issuance of building permit (or other construction related permit)</i> The applicant shall comply with the requirements of Provision C.3 of the National Pollutant Discharge Elimination System (NPDES) permit issued to the Alameda Countywide Clean Water Program. The applicant shall submit with the application for a building permit (or other construction-related permit) a completed Stormwater Supplemental Form for the Building Services Division.</p> <p>The project drawings submitted for the building permit (or other construction-related permit) shall contain a stormwater pollution management plan, for review and approval by the City, to limit the discharge of pollutants in stormwater after construction of the project to the maximum extent practicable.</p> <p>a) The post-construction stormwater pollution management plan shall include and identify the following.</p> <ol style="list-style-type: none"> <li>i. All proposed impervious surface on the site;</li> <li>ii. Anticipated directional flows of on-site stormwater runoff;</li> <li>iii. Site design measures to reduce the amount of impervious surface area and directly connected impervious surfaces;</li> <li>iv. Source control measures to limit the potential for stormwater pollution;</li> <li>v. Stormwater treatment measures to remove pollutants from stormwater runoff; and</li> </ol>	<p>Submit Stormwater Supplemental Form and stormwater pollution management plan prior to applying for first building permit, Comply with measures in plan: ongoing throughout demolition, grading, and/or construction activities; and Implement plan prior to final permit inspection</p>	<p>City of Oakland, Building Services Division, and Planning and Zoning Division</p>	<ul style="list-style-type: none"> <li>• Verify that the applicant complies with the requirements of Provision C.3 of the NPDES permit issued to the Alameda Countywide Clean Water Program.</li> <li>• Verify that a completed Stormwater Supplemental Form and a stormwater pollution management plan have been adequately prepared.</li> <li>• Prior to final permit inspection,</li> </ul>		

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SCA/Recommended Improvement	Mitigation Monitoring			Reporting	
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<p>vi. 'Hydromodification management measures so that post-construction stormwater runoff does not exceed the flow and duration of pre-project runoff, if required under the NPDES permit.</p> <p>b) The following additional information shall be submitted with the post-construction stormwater pollution management plan:</p> <p>i. Detailed hydraulic sizing calculations for each stormwater treatment measure proposed; and</p> <p>ii. Pollutant removal information demonstrating that any proposed manufactured/mechanical (i.e., non-landscape-based) stormwater treatment measure, when not used in combination with a landscape based treatment measure, is capable or removing the range of pollutants typically removed by landscape-based treatment measures and/or the range of pollutants typically removed by landscape-based treatment measures and/or the range of pollutants expected to be generated by the project.</p> <p>All proposed stormwater treatment measures shall incorporate appropriate planting materials for stormwater treatment (for landscape-based treatment measures) and shall be designed with considerations for vector/mosquito control. Proposed planting materials for all proposed landscape-based stormwater treatment measures shall be included on the landscape and irrigation plan for the project. The applicant is not required to include onsite stormwater treatment measures in the post-construction stormwater pollution management plan if he or she secures approval from Planning and Zoning of a proposal that demonstrates compliance with the requirements of the City's Alternative Compliance Program.</p> <p><i>Prior to final permit inspection.</i></p>			<p>verify that the stormwater pollution management plan is implemented.</p>		

TABLE 1: STANDARD CONDITIONS OF APPROVAL AND MITIGATION MONITORING AND REPORTING PROGRAM

SCA/Recommended Improvement	Mitigation Monitoring			Reporting	
	Monitoring Schedule	Monitoring Responsibility	Monitoring Procedure	Comments	Date/Initials
The applicant shall implement the approved stormwater pollution management plan.					
<p><b>IS SCA HWQ-3: Maintenance Agreement for Stormwater Treatment Measures.</b> <i>Prior to final zoning inspection.</i></p> <p>For projects incorporating stormwater treatment measures, the applicant shall enter into the "Standard City of Oakland Stormwater Treatment Measures Maintenance Agreement," in accordance with Provision C.3.e of the NPDES permit, which provides, in part, for the following.</p> <p>a) The applicant accepting responsibility for the adequate installation/construction, operation, maintenance, inspection, and reporting of any on-site stormwater treatment measures being incorporated into the project until the responsibility is legally transferred to another entity; and</p> <p>b) Legal access to the on-site stormwater treatment measures for representatives of the City, the local vector control district, and staff of the RWQCB, San Francisco Region, for the purpose of verifying the implementation, operation, and maintenance of the on-site stormwater treatment measures and to take corrective action if necessary. The agreement shall be recorded at the County Recorder's Office at the applicant's expense.</p>	Prior to final zoning inspection	City of Oakland, Building Services Division, and Planning and Zoning Division	Verify that the applicant has entered into the "Standard City of Oakland Stormwater Treatment Measures Maintenance Agreement," in accordance with Provision C.3.e of the NPDES permit.		
<b>I. LAND USE AND PLANNING</b>					
<i>No SCAs or Recommended Improvements were determined to be necessary for Land Use and Planning.</i>					
<b>J. MINERAL RESOURCES</b>					
<i>No SCAs or Recommended Improvements were determined to be necessary for Mineral Resources.</i>					
<b>K. NOISE</b>					
<p><b>EIR SCA NOISE-1: Days/Hours of Construction Operation.</b> <i>Ongoing throughout demolition, grading, and/or construction.</i></p> <p>The project applicant shall require construction contractors to limit</p>	Ongoing throughout demolition,	City of Oakland, Building Services Division	Make regular visits to the construction site to ensure that noise		

**Table 1: STANDARD CONDITIONS OF APPROVAL AND MITIGATION MONITORING AND REPORTING PROGRAM**

SCA/Recommended Improvement	Mitigation Monitoring			Reporting	
	Monitoring Schedule	Monitoring Responsibility	Monitoring Procedure	Comments	Date/Initials
standard construction activities as follows: a) Construction activities are limited to between 7:00 a.m. and 7:00 p.m. Monday through Friday, except that pile driving and/or other extreme noise generating activities greater than 90 dBA limited to between 8:00 a.m. and 4:00 p.m. Monday through Friday. b) Any construction activity proposed to occur outside of the standard hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case-by-case basis, with criteria including the proximity of residential uses and a consideration of resident's preferences for whether the activity is acceptable if the overall duration of construction is shortened and such construction activities shall only be allowed with the prior written authorization of the Building Services Division. c) Construction activity shall not occur on Saturdays, with the following possible exceptions: i. Prior to the building being enclosed, requests for Saturday construction for special activities (such as concrete pouring which may require more continuous amounts of time), shall be evaluated on a case-by-case basis, with criteria including the proximity of residential uses and a consideration of resident's preferences for whether the activity is acceptable if the overall duration of construction is shortened. Such construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division. ii. After the building is enclosed, requests for Saturday construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division, and only then within the interior of the building with the doors and windows closed.	grading, and/or construction		from construction activities is appropriately controlled.		

TABLE 1: STANDARD CONDITIONS OF APPROVAL AND MITIGATION MONITORING AND REPORTING PROGRAM

SCA/Recommended Improvement	Mitigation Monitoring			Reporting	
	Monitoring Schedule	Monitoring Responsibility	Monitoring Procedure	Comments	Date/Initials
d) No extreme noise generating activities (greater than 90 dBA) shall be allowed on Saturdays, with no exceptions.					
e) No construction activity shall take place on Sundays or Federal holidays.					
f) Construction activities include but are not limited to: truck idling, moving equipment (including trucks, elevators, etc.) or materials, deliveries, and construction meetings held on-site in a non-enclosed area.					
g) Applicant shall use temporary power poles instead of generators where feasible.					

TABLE 1: STANDARD CONDITIONS OF APPROVAL AND MITIGATION MONITORING AND REPORTING PROGRAM

SCA/Recommended Improvement	Mitigation Monitoring			Reporting	
	Monitoring Schedule	Monitoring Responsibility	Monitoring Procedure	Comments	Date/Initials
<p><b>EIR SCA NOISE-2: Noise Control.</b> <i>Ongoing throughout demolition, grading, and/or construction.</i></p> <p>To reduce noise impacts due to construction, the project applicant shall require construction contractors to implement a site-specific noise reduction program, subject to city review and approval, which includes the following measures:</p> <p>a) Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible).</p> <p>b) Except as provided herein, impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used if such jackets are commercially available, and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever such procedures are available and consistent with construction procedures.</p> <p>c) Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or use other measures as determined by the City to provide equivalent noise reduction.</p> <p>d) The noisiest phases of construction shall be limited to less than 10 days at a time. Exceptions may be allowed if the City determines an</p>	Ongoing throughout demolition, grading, and/or construction	City of Oakland, Building Services Division	<ul style="list-style-type: none"> <li>Verify that a site-specific noise reduction program has been prepared and implemented</li> <li>Make regular visits to the construction site to ensure that noise from construction activities is appropriately controlled.</li> </ul>		

TABLE 1: STANDARD CONDITIONS OF APPROVAL AND MITIGATION MONITORING AND REPORTING PROGRAM

SCA/Recommended Improvement	Mitigation Monitoring			Reporting	
	Monitoring Schedule	Monitoring Responsibility	Monitoring Procedure	Comments	Date/Initials
extension is necessary and all available noise reduction controls are implemented.					
<p><b>EIR SCA NOISE-3: Noise Complaint Procedures.</b> <i>Ongoing throughout demolition, grading, and/or construction.</i>                      Prior to the issuance of each building permit, along with the submission of construction documents, the project applicant shall submit to the City Building Services Division a list of measures to respond to and track complaints pertaining to construction noise. These measures shall include:</p> <ul style="list-style-type: none"> <li>a) A procedure and phone numbers for notifying the City Building Services Division staff and Oakland Police Department; (during regular construction hours and off-hours);</li> <li>b) A sign posted on-site pertaining with permitted construction days and hours and complaint procedures and who to notify in the event of a problem. The sign shall also include a listing of both the City and construction contractor's telephone numbers (during regular construction hours and off-hours);</li> <li>c) The designation of an on-site construction complaint and enforcement manager for the project;</li> <li>d) Notification of neighbors and occupants within 300 feet of the project construction area at least 30 days in advance of extreme noise generating activities about the estimated duration of the activity; and</li> <li>e) A preconstruction meeting shall be held with the job inspectors and the general contractor/on-site project manager to confirm that noise measures and practices (including construction hours, neighborhood notification, posted signs, etc.) are completed.</li> </ul>	Ongoing throughout demolition, grading, and/or construction; and Prior to the issuance of each building permit	City of Oakland, Building Services Division	Verify the implementation of the list of measures to respond to and track complaints pertaining to construction noise		
<p><b>EIR SCA NOISE-4: Interior Noise.</b> <i>Prior to issuance of a building permit and Certificate of Occupancy</i>                      If necessary to comply with the interior noise requirements of the City of</p>	Prior to issuance of a building permit	City of Oakland, Building Services Division	Verify that appropriate sound-rated assemblies to		



**Table 1: STANDARD CONDITIONS OF APPROVAL AND MITIGATION MONITORING AND REPORTING PROGRAM**

SCA/Recommended Improvement	Mitigation Monitoring			Reporting	
	Monitoring Schedule	Monitoring Responsibility	Monitoring Procedure	Comments	Date/Initials
<p>Oakland's General Plan Noise Element and achieve an acceptable interior noise level, noise reduction in the form of sound-rated assemblies (i.e., windows, exterior doors, and walls), and/or other appropriate features/measures, shall be incorporated into project building design, based upon recommendations of a qualified acoustical engineer and submitted to the Building Services Division for review and approval prior to issuance of building permit. Final recommendations for sound-rated assemblies, and/or other appropriate features/measures, will depend on the specific building designs and layout of buildings on the site and shall be determined during the design phases. Written confirmation by the acoustical consultant, HVAC or HERS specialist, shall be submitted for City review and approval, prior to Certificate of Occupancy (or equivalent) that:</p> <ul style="list-style-type: none"> <li>a) Quality control was exercised during construction to ensure all air-gaps and penetrations of the building shell are controlled and sealed;</li> <li>b) Demonstrates compliance with interior noise standards based upon performance testing of a sample unit; and</li> <li>c) Inclusion of a Statement of Disclosure Notice in the CC&amp;R's on the lease or title to all new tenants or owners of the units acknowledging the noise generating activity and the single event noise occurrences. Potential features/measures to reduce interior noise could include, but are not limited to, the following:                         <ul style="list-style-type: none"> <li>i. Installation of an alternative form of ventilation in all units identified in the acoustical analysis as not being able to meet the interior noise requirements due to adjacency to a noise generating activity, filtration of ambient make-up air in each unit and analysis of ventilation noise if ventilation is included in the recommendations by the acoustical analysis.</li> <li>ii. Prohibition of Z-duct construction.</li> </ul> </li> </ul>	and Certificate of Occupancy		reduce noise levels have been incorporated into the project building design.		

TABLE 1: STANDARD CONDITIONS OF APPROVAL AND MITIGATION MONITORING AND REPORTING PROGRAM

SCA/Recommended Improvement	Mitigation Monitoring			Reporting	
	Monitoring Schedule	Monitoring Responsibility	Monitoring Procedure	Comments	Date/Initials
<p><b>EIR SCA NOISE-5: Pile Driving and Other Extreme Noise Generators.</b>  <i>Ongoing throughout demolition, grading, and/or construction.</i>                      To further reduce potential pier drilling, pile driving and/or other extreme noise generating construction impacts greater than 90 dBA, a set of site-specific noise attenuation measures shall be completed under the supervision of a qualified acoustical consultant. Prior to commencing construction, a plan for such measures shall be submitted for review and approval by the City to ensure that maximum feasible noise attenuation will be achieved. This plan shall be based on the final design of the project. A third-party peer review, paid for by the project applicant, may be required to assist the City in evaluating the feasibility and effectiveness of the noise reduction plan submitted by the project applicant. The criterion for approving the plan shall be a determination that maximum feasible noise attenuation will be achieved. A special inspection deposit is required to ensure compliance with the noise reduction plan. The amount of the deposit shall be determined by the Building Official, and the deposit shall be submitted by the project applicant concurrent with submittal of the noise reduction plan. The noise reduction plan shall include, but not be limited to, an evaluation of implementing the following measures. These attenuation measures shall include as many of the following control strategies as applicable to the site and construction activity:</p> <p>a) Erect temporary plywood noise barriers around the construction site, particularly along on sites adjacent to residential buildings;</p> <p>b) Implement “quiet” pile driving technology (such as pre-drilling of piles, the use of more than one pile driver to shorten the total pile driving duration), where feasible, in consideration of geotechnical and structural requirements and conditions;</p> <p>c) Utilize noise control blankets on the building structure as the building is erected to reduce noise emission from the site;</p> <p>d) Evaluate the feasibility of noise control at the receivers by</p>	<p>Submit plan prior to commencing construction activities involving pile driving or other extreme noise generators; and                      Implement measures according to timeframes outlined in the plan</p>	<p>City of Oakland, Building Services Division</p>	<ul style="list-style-type: none"> <li>• Verify that a plan for reducing extreme noise generating construction impacts has been prepared.</li> <li>• Verify that the plan will achieve the maximum feasible noise attenuation.</li> <li>• Verify that a special inspection deposit has been submitted.</li> </ul>		

TABLE 1: STANDARD CONDITIONS OF APPROVAL AND MITIGATION MONITORING AND REPORTING PROGRAM

SCA/Recommended Improvement	Mitigation Monitoring			Reporting	
	Monitoring Schedule	Monitoring Responsibility	Monitoring Procedure	Comments	Date/Initials
temporarily improving the noise reduction capability of adjacent buildings by the use of sound blankets for example, and implement such measures if such measures are feasible and would noticeably reduce noise impacts; and e) Monitor the effectiveness of noise attenuation measures by taking noise measurements.					
<b>EIR SCA NOISE-6: Operational Noise-General. Ongoing.</b> Noise levels from the activity, property, or any mechanical equipment on site shall comply with the performance standards of Section 17.120 of the Oakland Planning Code and Section 8.18 of the Oakland Municipal Code. If noise levels exceed these standards, the activity causing the noise shall be abated until appropriate noise reduction measures have been installed and compliance verified by the Planning and Zoning Division and Building Services Division.	Ongoing	City of Oakland, Planning and Zoning Division, and Building Services Division	Verify that operation noise complies with the standards in Section 17.120 of the Oakland Planning Code and Section 8.18 of the Oakland Municipal Code via site visits or other mechanisms.		
<b>L. POPULATION AND HOUSING</b>					
<i>No SCAs or Recommended Improvements were determined to be necessary for Population and Housing.</i>					
<b>M. PUBLIC SERVICES</b>					
<i>No SCAs or Recommended Improvements were determined to be necessary for Public Services.</i>					
<b>N. RECREATION</b>					
<i>No SCAs or Recommended Improvements were determined to be necessary for Recreation.</i>					
<b>O. TRANSPORTATION AND CIRCULATION</b>					
<b>EIR SCA TRANS-1: Parking and Transportation Demand Management.</b> <i>Prior to issuance of a final inspection of the building permit.</i> The applicant shall submit for review and approval by the Planning and Zoning Division a Transportation Demand Management (TDM) plan containing strategies to reduce on-site parking demand and single	Prior to issuance of a final inspection of the building permit	City of Oakland, Planning and Zoning Division, Transportation Services Division	Verify that the TDM Plan has been prepared and approved by the Planning and Zoning		

TABLE 1: STANDARD CONDITIONS OF APPROVAL AND MITIGATION MONITORING AND REPORTING PROGRAM

SCA/Recommended Improvement	Mitigation Monitoring			Reporting	
	Monitoring Schedule	Monitoring Responsibility	Monitoring Procedure	Comments	Date/Initials
<p>occupancy vehicle travel. The applicant shall implement the approved TDM plan. The TDM shall include strategies to increase bicycle, pedestrian, transit, and carpools/vanpool use. All four modes of travel shall be considered. Strategies to consider include the following:</p> <p>a) Inclusion of additional bicycle parking, shower, and locker facilities that exceed the requirement.</p> <p>b) Construction of bike lanes per the Bicycle Master Plan; Priority Bikeway Projects.</p> <p>c) Signage and striping onsite to encourage bike safety.</p> <p>d) Installation of safety elements per the Pedestrian Master Plan (such as cross walk striping, curb ramps, count down signals, bulb outs, etc.) to encourage convenient crossing at arterials.</p> <p>e) Installation of amenities such as lighting, street trees, trash receptacles per the Pedestrian Master Plan and any applicable streetscape plan</p> <p>f) Direct transit sales or subsidized transit passes.</p> <p>g) Guaranteed ride home program.</p> <p>h) Pre-tax commuter benefits (checks).</p> <p>i) On-site car-sharing program (such as City Car Share, Zip Car, etc.):</p> <p>j) On-site carpooling program.</p> <p>k) Distribution of information concerning alternative transportation options.</p> <p>l) Parking spaces sold/leased separately.</p> <p>m) Parking management strategies; including attendant/valet parking and shared parking spaces.</p>			Division.		
<p><b>EIR SCA TRANS-2: Construction Traffic and Parking. Prior to the issuance of a demolition, grading or building permit.</b>                      The project applicant and construction contractor shall meet with</p>	Prior to the issuance of a	City of Oakland, Transportation	<ul style="list-style-type: none"> <li>Confirm project applicant meets</li> </ul>		

Table 1: STANDARD CONDITIONS OF APPROVAL AND Mitigation Monitoring AND Reporting PROGRAM

SCA/Recommended Improvement	Mitigation Monitoring			Reporting	
	Monitoring Schedule	Monitoring Responsibility	Monitoring Procedure	Comments	Date/Initials
<p>appropriate City of Oakland agencies to determine traffic management strategies to reduce, to the maximum extent feasible, traffic congestion and the effects of parking demand by construction workers during construction of this project and other nearby projects that could be simultaneously under construction. The project applicant shall develop a construction management plan for review and approval by the Planning and Zoning Division, the Building Services Division, and the Transportation Services Division. The plan shall include at least the following items and requirements:</p> <p>a) A set of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak traffic hours, detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes.</p> <p>b) Notification procedures for adjacent property owners and public safety personnel regarding when major deliveries, detours, and lane closures will occur.</p> <p>c) Location of construction staging areas for materials, equipment, and vehicles at an approved location.</p> <p>d) A process for responding to, and tracking, complaints pertaining to construction activity, including identification of an onsite complaint manager. The manager shall determine the cause of the complaints and shall take prompt action to correct the problem. Planning and Zoning shall be informed who the Manager is prior to the issuance of the first permit issued by Building Services Division.</p> <p>e) Provision for accommodation of pedestrian flow.</p> <p>f) Provision for parking management and spaces for all construction workers to ensure that construction workers do not park in on-street spaces.</p> <p>g) Any damage to the street caused by heavy equipment, or as a result of this construction, shall be repaired, at the applicant's expense,</p>	demolition, grading or building permit	Services Division	<p>with appropriate City of Oakland agencies to determine construction traffic management strategies.</p> <ul style="list-style-type: none"> <li>• Ensure that project sponsor develops and submits construction management plan to AC Transit to review /comment prior to approval.</li> <li>• Verify that construction management plan meets the standards listed in the SCA.</li> </ul>		

TABLE 1: STANDARD CONDITIONS OF APPROVAL AND MITIGATION MONITORING AND REPORTING PROGRAM

SCA/Recommended Improvement	Mitigation Monitoring			Reporting	
	Monitoring Schedule	Monitoring Responsibility	Monitoring Procedure	Comments	Date/Initials
<p>within one week of the occurrence of the damage (or excessive wear), unless further damage/excessive wear may continue; in such case, repair shall occur prior to issuance of a final inspection of the building permit. All damage that is a threat to public health or safety shall be repaired immediately. The street shall be restored to its condition prior to the new construction as established by the City Building Inspector and/or photo documentation, at the applicant's expense, before the issuance of a Certificate of Occupancy.</p> <p>h) Any heavy equipment brought to the construction site shall be transported by truck, where feasible.</p> <p>i) No materials or equipment shall be stored on the traveled roadway at any time.</p> <p>j) Prior to construction, a portable toilet facility and a debris box shall be installed on the site, and properly maintained through project completion.</p> <p>k) All equipment shall be equipped with mufflers.</p> <p>l) Prior to the end of each work day during construction, the contractor or contractors shall pick up and properly dispose of all litter resulting from or related to the project, whether located on the property, within the public rights-of-way, or properties of adjacent or nearby neighbors.</p>					
<b>P. UTILITIES AND SERVICE SYSTEMS</b>					
<p><b>IS SCA UTIL-1: Stormwater and Sewer.</b> <i>Prior to completing the final design for the project's sewer service.</i></p> <p>Confirmation of the capacity of the City's surrounding stormwater and sanitary sewer system and state of repair shall be completed by a qualified civil engineer with funding from the project applicant. The project applicant shall be responsible for the necessary stormwater and sanitary sewer infrastructure improvements to accommodate the</p>	<p>Prior to completing the final design for the project's sewer service</p>	<p>City of Oakland, Sanitary Sewer Maintenance Department, Building Services Division</p>	<p>Verify that a qualified civil engineer has confirmed the capacity of the City's stormwater and sanitary sewer system and that</p>		

TABLE 1: STANDARD CONDITIONS OF APPROVAL AND MITIGATION MONITORING AND REPORTING PROGRAM

SCA/Recommended Improvement	Mitigation Monitoring			Reporting	
	Monitoring Schedule	Monitoring Responsibility	Monitoring Procedure	Comments	Date/Initials
<p>proposed project. In addition, the applicant shall be required to pay additional fees to improve sanitary sewer infrastructure if required by the Sewer and Stormwater Division. Improvements to the existing sanitary sewer collection system shall specifically include, but are not limited to, mechanisms to control or minimize increases in infiltration/inflow to offset sanitary sewer increases associated with the proposed project. To the maximum extent practicable, the applicant will be required to implement BMPs to reduce the peak stormwater runoff from the project site. Additionally, the project applicant shall be responsible for payment of the required installation or hook-up fees to the affected service providers.</p>			<p>applicant is responsible for necessary improvements.</p>		
<p><b>IS SCA UTIL-2: Waste Reduction and Recycling.</b> The project applicant will submit a Construction &amp; Demolition Waste Reduction and Recycling Plan (WRRP) and an Operational Diversion Plan (ODP) for review and approval by the Public Works Agency.</p> <p><i>Prior to issuance of demolition, grading, or building permit</i></p> <p>Chapter 15.34 of the Oakland Municipal Code outlines requirements for reducing waste and optimizing construction and demolition (C&amp;D) recycling. Affected projects include all new construction, renovations/alterations/ modifications with construction values of 550,000 or more (except R-3), and all demolition (including soft demo). The WRRP must specify the methods by which the development will divert C&amp;D debris waste generated by the proposed project from landfill disposal in accordance with current City requirements. Current standards, FAQs, and forms are available at <a href="http://www.oaklandpw.com/Page39.aspx">www.oaklandpw.com/Page39.aspx</a> or in the Green Building Resource Center. After approval of the plan, the project applicant shall implement the plan.</p> <p><i>Ongoing.</i></p> <p>The ODP will identify how the project complies with the Recycling Space Allocation Ordinance, (Chapter 17.118 of the Oakland Planning Code),</p>	<p>Prior to issuance of demolition, grading, or building permit and ongoing</p>	<p>City of Oakland, Environmental Services Division, Building Services Division</p>	<p>Verify that applicant has submitted a WRRP and ODP that comply with the requirements in Chapter 15.34 and 17.118 of the Oakland Planning Code.</p>		

TABLE 1: STANDARD CONDITIONS OF APPROVAL AND MITIGATION MONITORING AND REPORTING PROGRAM

	Mitigation Monitoring			Reporting	
	Monitoring Schedule	Monitoring Responsibility	Monitoring Procedure	Comments	Date/Initials
<p><b>SCA/Recommended Improvement</b></p> <p>including capacity calculations, and specify the methods by which the development will meet the current diversion of solid waste generated by operation of the proposed project from landfill disposal in accordance with current City requirements. The proposed program shall be implemented and maintained for the duration of the proposed activity or facility. Changes to the plan may be resubmitted to the Environmental Services Division of the Public Works Agency for review and approval. Any incentive programs shall remain fully operational as long as residents and businesses exist at the project site.</p>					
<b>RECOMMENDED IMPROVEMENTS</b>					
<p><b>Recommendation TRANS-1:</b> In consultation with City of Oakland staff, consider the provision of shuttle service as a strategy to be included in the Transportation Demand Management (TDM) plan required by SCA TRANS-1. If considered feasible, implement the City approved shuttle service.</p>	<p>Prior to issuance of a final inspection of the building permit as part of EIR SCA TRANS-1</p>	<p>City of Oakland, Planning and Zoning Division, with Transportation Services Division as necessary</p>	<p>Ensure that shuttle service is considered for inclusion in the TDM plan and if considered feasible, implement approved shuttle service.</p>		



TABLE 1: STANDARD CONDITIONS OF APPROVAL AND MITIGATION MONITORING AND REPORTING PROGRAM

SCA/Recommended Improvement	Mitigation Monitoring			Reporting	
	Monitoring Schedule	Monitoring Responsibility	Monitoring Procedure	Comments	Date/Initials
<p><b>Recommendation TRANS-2:</b> Limit entry into the loading zone to a right turn in only and limit exit from the loading zone to a right turn out only (excluding any maneuvering required to back in/out of the loading zone) and prohibit deliveries during peak commute periods (7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m.) and employ the use of flaggers as necessary to ensure safe maneuvering into the loading zone.</p>	<p>Prior to issuance of a final inspection of the building permit</p>	<p>City of Oakland, Transportation Services Division</p>	<ul style="list-style-type: none"> <li>• Verify that mechanisms (such as signage, etc.) ensuring the use of the loading zone in accordance with Recommendation TRANS-2 are implemented.</li> <li>• Visit site to confirm that deliveries are not occurring during prohibited times and flaggers are used.</li> </ul>		
<p><b>Recommendation TRANS-3:</b> Limit entry into the garage to a right turn in only and limit exits from the garage to a right turn out only.</p>	<p>Prior to issuance of a final inspection of building permit</p>	<p>City of Oakland, Transportation Services Division</p>	<p>Verify that mechanisms (such as signage, etc.) to limit entry into and exit from the garage are implemented.</p>		

**HIGH & MACARTHUR MIXED-USE PROJECT**  
**CEQA FINDINGS**  
Certification of the EIR and Rejection of Alternatives

**I. INTRODUCTION**

1. These findings are made pursuant to the California Environmental Quality Act (Pub. Res. Code section 21000 et seq; "CEQA") and the CEQA Guidelines (Cal. Code Regs. title 14, section 15000 et seq.) by the City of Oakland Planning Commission in connection with the Environmental Impact Report (EIR) prepared for the High and MacArthur Mixed-Use Project (the Project), SCH #2011052049.
2. These CEQA findings are attached and incorporated by reference into each and every staff report, resolution and ordinance associated with approval the Project.
3. These findings are based on substantial evidence in the entire administrative record and references to specific reports and specific pages of documents are not intended to identify those sources as the exclusive basis for the findings.

**II. PROJECT DESCRIPTION**

4. The High & MacArthur Mixed-Use Project seeks to redevelop and revitalize an underutilized site in Oakland to provide a mixed-use senior housing development (residential and commercial). The Project would include construction of a five-story building containing 115 market-rate and affordable, one-bedroom, senior apartments; 3,446 square feet of ground-floor commercial space; and 65 parking spaces. The 0.93-acre Project site is located in Central Oakland on the edge of the Laurel District at the southwest corner of the High and MacArthur Boulevard intersection. The triangular shaped site is bound by MacArthur Boulevard to the north and east, MacArthur Freeway to the south, and High Street to the west. The Project site includes three privately owned parcels. The parcels are vacant except for a billboard (to be removed as part of the Project) and were at one time occupied by a PG&E service yard, an auto repair shop, and a market. The residential component of the building would be designed around an interior central courtyard. All the units are proposed to be one-bedroom and would average approximately 540 square feet in size. The maximum building height is 60 feet, with the tallest portion along the High Street elevation as the terrain slopes down from the corner to the freeway.

**III. ENVIRONMENTAL REVIEW OF THE PROJECT**

5. Pursuant to CEQA and the CEQA Guidelines, a Notice of Preparation (NOP) of an EIR and an Initial Study were published on May 18, 2011. The Initial Study screened out environmental factors that would not be further studied in the Draft EIR. These factors included: Agricultural Resources, Biological Resources, Cultural Resources, Geology and Soils, Hydrology and Water Quality, Land Use and Planning, Mineral Resources, Population and Housing, Public Services, Recreation, and Utilities and Service Systems. The NOP/IS was distributed to state and local agencies, posted at the Project site, and mailed to property owners within 300' of the Project site. On, June 15, 2011 the Planning Commission conducted a duly noticed EIR scoping session concerning the scope of the EIR. At the time of the scoping session, the Draft EIR was expected to address the potential environmental effects for Aesthetics, Air Quality, Hazards and Hazardous Materials, Noise, and Transportation and Circulation. The public comment period on the NOP ended on June 16, 2011.

6. A Draft EIR (DEIR) was prepared for the Project to analyze its environmental impacts. Pursuant to CEQA and the CEQA Guidelines, a Notice of Availability/Notice of Release and the DEIR was published on October 26, 2012. The Notice of Availability/Notice of Release of the DEIR was distributed to appropriate state and local agencies, posted at the Project site, mailed to property owners within 300' of the Project site, and mailed to individuals who have requested to specifically be notified of official City actions on the Project. Copies of the DEIR were also distributed to appropriate state and local agencies, City officials including the Planning Commission, and made available for public review at the office of the Department of Planning and Building (250 Frank H. Ogawa Plaza, Suite 3315) and on the City's website. A duly noticed Public Hearing on the DEIR was held at the December 5, 2012 meeting of the Planning Commission. The DEIR was properly circulated for a 45-day public review period ending on December 10, 2012.
7. The City received written and oral comments on the DEIR. The City prepared responses to comments on environmental issues and made changes to the DEIR. The responses to comments, changes to the DEIR, and additional information were published in a Response To Comment Document/Final EIR (FEIR) on/before July 5, 2013. The DEIR, the FEIR and all appendices thereto constitute the "EIR" referenced in these findings. The FEIR was made available for public review on/before July 5, 2013, more than 10 days prior to the duly noticed July 17, 2013 Planning Commission public hearing. On June 28, 2013, the Notice of Availability/Notice of Release of the FEIR was distributed to those state and local agencies who commented on the DEIR, posted on the Project site, mailed to property owners within 300' of the Project site, and mailed to individuals who have requested to specifically be notified of official City actions on the Project. Copies of the DEIR and FEIR were also distributed to those state and local agencies who commented on the NOP and DEIR, City officials including the Planning Commission, and made available for public review at the office of the Department of Planning and Building (250 Frank H. Ogawa Plaza, Suite 3315), and on the City's website. Pursuant to CEQA Guidelines, responses to public agency comments on the DEIR have been published and made available to all commenting agencies at least 10 days prior to the public hearing. The Planning Commission has had an opportunity to review all comments and responses thereto prior to consideration of certification of the EIR and prior to taking any action on the proposed Project.

#### IV. THE ADMINISTRATIVE RECORD

8. The record, upon which all findings and determinations related to the approval of the Project are based, includes the following:
  - a. The EIR and all documents referenced in or relied upon by the EIR.
  - b. All information (including written evidence and testimony) provided by City staff to the Planning Commission relating to the EIR, the approvals, and the Project.
  - c. All information (including written evidence and testimony) presented to the Planning Commission by the environmental consultant and sub-consultants who prepared the EIR or incorporated into reports presented to the Planning Commission.
  - d. All information (including written evidence and testimony) presented to the City from other public agencies relating to the Project or the EIR.
  - e. All final applications, letters, testimony and presentations presented by the Project sponsor and its consultants to the City in connection with the Project.

- f. All final information (including written evidence and testimony) presented at any City public hearing or City workshop related to the Project and the EIR.
  - g. For documentary and information purposes, all City-adopted land use plans and ordinances, including without limitation general plans, specific plans and ordinances, together with environmental review documents, findings, mitigation monitoring programs and other documentation relevant to planned growth in the area.
  - h. The Standard Conditions of Approval for the Project and Mitigation Monitoring and Reporting Program for the Project.
  - i. All other documents composing the record pursuant to Public Resources Code section 21167.6(e).
9. The custodian of the documents and other materials that constitute the record of the proceedings upon which the City's decisions are based is the Director of City Planning, Department of Planning and Building or his/her designee. Such documents and other materials are located at 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California, 94612.

#### V. CERTIFICATION OF THE EIR

10. In accordance with CEQA, the Planning Commission certifies that the EIR has been completed in compliance with CEQA. The Planning Commission has independently reviewed the record and the EIR prior to certifying the EIR and approving the Project. By these findings, the Planning Commission confirms, ratifies, and adopts the findings and conclusions of the EIR as supplemented and modified by these findings. The EIR and these findings represent the independent judgment and analysis of the City and the Planning Commission.
11. The Planning Commission recognizes that the EIR may contain clerical errors. The Planning Commission reviewed the entirety of the EIR and bases its determination on the substance of the information it contains.
12. The Planning Commission certifies that the EIR is adequate to support all actions in connection with the approval of the Project and all other actions and recommendations as described in the July 17, 2013 Planning Commission staff report. The Planning Commission certifies that the EIR is adequate to support approval of the Project described in the EIR, each component and phase of the Project described in the EIR, any variant of the Project described in the EIR, any minor modifications to the Project or variants described in the EIR and the components of the Project.

#### VI. ABSENCE OF SIGNIFICANT NEW INFORMATION

13. The Planning Commission recognizes that the FEIR incorporates information obtained and produced after the DEIR was completed, and that the FEIR contains additions, clarifications, and modifications. The Planning Commission has reviewed and considered the FEIR and all of this information. The FEIR does not add significant new information to the DEIR that would require recirculation of the EIR under CEQA. The new information added to the EIR does not involve a new significant environmental impact, a substantial increase in the severity of a previously identified significant environmental impact, or a feasible mitigation measure or alternative considerably different from others previously analyzed that the Project sponsor declines to adopt and that would clearly lessen the significant environmental impacts of the Project. No information indicates that the DEIR was inadequate or conclusory or that the public was

deprived of a meaningful opportunity to review and comment on the DEIR. Thus, recirculation of the EIR is not required.

14. The Planning Commission finds that the changes and modifications made to the EIR after the DEIR was circulated for public review and comment do not individually or collectively constitute significant new information within the meaning of Public Resources Code section 21092.1 or the CEQA Guidelines section 15088.5.

#### VII. STANDARD CONDITIONS OF APPROVAL AND MITIGATION MONITORING AND REPORTING PROGRAM

15. Public Resources Code section 21081.6 and CEQA Guidelines section 15097 require the City to adopt a monitoring or reporting program to ensure that the mitigation measures and revisions to the Project identified in the EIR are implemented. The Standard Conditions of Approval and Mitigation Monitoring and Reporting Program ("SCAMMRP") is attached and incorporated by reference into the July 17, 2013 Planning Commission staff report prepared for the approval of the Project, is included in the conditions of approval for the Project, and is adopted by the Planning Commission. The SCAMMRP satisfies the requirements of CEQA. No mitigation measures are required for the Project.
16. The standard conditions of approval (SCA) set forth in the SCAMMRP are specific and enforceable and are capable of being fully implemented by the efforts of the City of Oakland, the applicant, and/or other identified public agencies of responsibility. As appropriate, some standard conditions of approval define performance standards to ensure no significant environmental impacts will result. The SCAMMRP adequately describes implementation procedures and monitoring responsibility in order to ensure that the Project complies with the adopted standard conditions of approval.
17. The Planning Commission will adopt and impose the feasible standard conditions of approval as set forth in the SCAMMRP as enforceable conditions of approval. The City has adopted measures to substantially lessen or eliminate all significant effects where feasible.
18. The standard conditions of approval incorporated into and imposed upon the Project approval will not themselves have new significant environmental impacts or cause a substantial increase in the severity of a previously identified significant environmental impact that were not analyzed in the EIR. In the event a standard condition of approval recommended in the EIR has been inadvertently omitted from the conditions of approval or the SCAMMRP, that standard condition of approval is adopted and incorporated from the EIR into the SCAMMRP by reference and adopted as a condition of approval.

#### VIII. FINDINGS REGARDING IMPACTS

19. In accordance with Public Resources Code section 21081 and CEQA Guidelines sections 15091 and 15092, the Planning Commission adopts the findings and conclusions regarding impacts and standard conditions of approval that are set forth in the EIR and summarized in the SCAMMRP. These findings do not repeat the full discussions of environmental impacts, standard conditions of approval, and related explanations contained in the EIR. The Planning Commission ratifies, adopts, and incorporates, as though fully set forth, the analysis, explanation, findings, responses to comments and conclusions of the EIR. The Planning Commission adopts the reasoning of the EIR, staff reports, and presentations provided by the staff and the Project sponsor as may be modified by these findings.

20. The Planning Commission recognizes that the environmental analysis of the Project raises controversial environmental issues, and that a range of technical and scientific opinion exists with respect to those issues. The Planning Commission acknowledges that there are differing and potentially conflicting expert and other opinions regarding the Project. The Planning Commission has, through review of the evidence and analysis presented in the record, acquired a better understanding of the breadth of this technical and scientific opinion and of the full scope of the environmental issues presented. In turn, this understanding has enabled the Planning Commission to make fully informed, thoroughly considered decisions after taking account of the various viewpoints on these important issues and reviewing the record. These findings are based on a full appraisal of all viewpoints expressed in the EIR and in the record, as well as other relevant information in the record of the proceedings for the Project.
21. As a separate and independent basis from the other CEQA findings, the Planning Commission finds and determines that the Project qualifies for CEQA streamlining pursuant to Public Resources Code section 21083.3 and Guidelines section 15183 (Projects consistent with Community Plans, General Plans and Zoning) and/or Public Resources Code sections 21094.5 and 21094.5.5 and Guidelines section 15183.3 (Streamlining For Infill Development), for the reasons detailed in the EIR and hereby incorporated by reference as if fully set forth herein, and as summarized below: (a) the Project is consistent with Land Use and Transportation Element (LUTE) of the General Plan, for which an EIR was certified in March 1998 and the Housing Element, for which an EIR was certified in December 2010; (b) feasible mitigation measures identified in the LUTE and Housing Element EIRs were adopted and have been, or will be, undertaken; (c) this EIR evaluated impacts peculiar to the Project and/or Project site, as well as off-site and cumulative impacts; (d) uniformly applied development policies and/or standards (hereafter called "Standard Conditions of Approval") have previously been adopted and found to, that when applied to future projects, substantially mitigate impacts, and to the extent that no such findings were previously made, the City Planning Commission hereby finds and determines that the Standard Conditions of Approval (or "SCA") substantially mitigate environmental impacts for this Project (as detailed below and in the EIR); (e) no substantial new information exists to show that the Standard Conditions of Approval will not substantially mitigate Project and cumulative impacts; (f) the Project qualifies as an "Infill Project"; (g) the Project does not cause any new specific effects or more significant effects from that studied in the LUTE and Housing element EIRs; and (h) in instances where new specific effects occur, SCAs would substantially mitigate the potential impacts.

#### IX. NO IMPACT

22. Under Public Resources Code section 21081(a)(1) and CEQA Guidelines sections 15091(a)(1) and 15092(b), and to the extent reflected in the EIR, the Planning Commission finds that there are no significant impacts on the following environmental factors; agricultural resources, biological resources, land use, mineral resources, population and housing, public services, and recreation. These environmental factors were determined to have no impacts and therefore, were scoped out through the Notice of Preparation, Initial Study and scoping session for the DEIR. These reasons are summarized below and detailed in the Initial Study, hereby incorporated by reference as if fully set forth herein.
  - a. The proposed Project would be located in an urban area and there are no agricultural or farmland uses within or adjacent to the Project site. Therefore the proposed Project would have no impact on agricultural resources.
  - b. The proposed Project site is a vacant infill site that has been previously developed and is located in an urban area. The site is flat and consists of mosfy dirt and weeds. There are no biological resources on the site including: sensitive species, riparian habitat or other sensitive natural

community, or protected wetlands. The site is not included in any habitat conservation plan or natural community conservation plan. The proposed Project would not substantially interfere with the movement of native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites. There are no protected trees or creeks on the site and the proposed Project would not conflict with either the City of Oakland Tree Preservation Ordinance or the City of Oakland Creek Protection Ordinance.

- c. The proposed Project would not divide the existing community or result in a conflict with surrounding land uses as the site is an infill site that has been previously developed. The proposed Project would not conflict with applicable land use policies or regulations. Per the staff report, and the Conditional Use Permit and Variance findings, the uses are consistent with many land use policies and objectives. The proposed Project site is not located within a habitat conservation plan or natural community conservation plan and would therefore have no impact.
- d. The proposed Project site has no known mineral resources. The proposed Project would not require quarrying, mining, dredging, or extraction of locally important mineral resources on site, nor will it deplete any nonrenewable natural resources. Therefore, the proposed Project would not impact mineral resources.
- e. The proposed Project would incrementally impact the population by adding an additional 115 senior residential units. However, the units proposed are consistent with the General Plan and zoning designations of this area and consistent with the policies of the City of Oakland General Plan Land Use and Transportation and Housing Elements. Therefore, the impact would be less than significant. The proposed Project site is vacant and therefore no displacement of existing housing or people would occur as a result of the Project.
- f. The proposed Project site is located within a developed area of Oakland already served by public services. The increased population attributable to this proposed development would result in an incremental increase in the demand for emergency medical, fire, and police response. The proposed Project would not require new or physically altered facilities to ensure the provision of these services. As a senior housing development, the proposed Project would not result in any impacts to schools.
- g. Although open space is provided on site, the proposed Project may result in the use by residents of parks and senior centers in the surrounding area. However, this increase in use is not expected to result in physical deterioration of these facilities, or to require the construction or expansion of recreational facilities.

#### **X. POTENTIALLY SIGNIFICANT BUT MITIGABLE IMPACTS**

- 23. Under Public Resources Code section 21081(a)(1) and CEQA Guidelines sections 15091(a)(1) and 15092(b), and to the extent reflected in the EIR, the SCAMMRP, and the City's Standard Conditions of Approval, the Planning Commission finds that changes or alterations have been required in, or incorporated into, the components of the Project that mitigate or avoid potentially all significant effects on the environment.
- 24. The following potentially significant impacts will be reduced to a less than significant level through the implementation of Standard Conditions of Approval, referenced in the Initial Study and the EIR (which are an integral part of the SCAMMRP):

25. Aesthetics: The Project will result in aesthetic changes with regard to views of the Project site, new lighting, new landscaping, installation of public improvements, and tree protection during construction. However, the Project, as designed, and with conformance with the Standard Conditions of Approval will result in a less than significant level of impact to aesthetics.

With regard to views of the site, visual building form, and visual quality, although larger in scale than the majority of existing development in the area, the design of the proposed building will be compatible with the surrounding neighborhood pursuant to the design review findings.

The Project would not result in a significant impact (either on a project or cumulative basis) on the scenic highway designation of the MacArthur Freeway as the character of existing views would remain relatively unchanged. Specifically, the landscaping, distant views of the hills, and views of the commercial and residential palette would remain essentially unchanged. In addition, the removal of the existing billboard and blighted conditions on the site would be an aesthetic benefit provided by the Project.

Any potential impact of new lighting due to the Project will be reduced to a less than significant level through implementation of IS SCA AES-1 which requires approval of plans to adequately shield lighting to prevent glare onto adjacent properties.

New landscaping installed as part of the Project will conform to all the applicable requirements of EIR SCA AES-1, EIR SCA AES-2, EIR SCA AES-3, EIR SCA AES-4, and EIR SCA AES-5.

Public improvements and utilities for the Project shall be installed per the requirements of EIR SCA AES-6 and EIR SCA AES-7.

Trees adjacent to the Project site will be protected during construction per the requirements of EIR SCA AES-8.

26. Air Quality and Greenhouse Gas Emissions: As detailed in the EIR, the Project would generate short-term emissions of criteria pollutants, including suspended and inhalable particulate matter and equipment exhaust emissions, during construction. Project-related construction activities would include site preparation, earthmoving, and general construction activities. However, control of dust and equipment emissions (EIR SCA AIR-1) will result in a less than significant impact. In addition, the Project shall incorporate measures to reduce the exposure to toxic air contaminants including particulate matter and gaseous emissions (EIR SCA AIR-2 and EIR SCA AIR-3). With implementation of these SCAs, the Project would not violate any air quality standard, contribute substantially to an existing or projected air quality violation, expose sensitive receptors to substantial pollutant concentrations, or substantially increase diesel emissions. Moreover, as a separate and independent basis, any air contaminants generated from the nearby freeway are not considered to be CEQA impacts caused by the Project.
27. Cultural Resources: The Project site has been previously developed and it is unlikely that it contains significant cultural resources. However, significant impacts to archaeological, paleontological, and human remains could result if the proposed Project were to be constructed in a manner that was not sensitive to the potential encounter of these resources during construction, as noted in the Initial Study (Section V). Any such impact would be reduced to less than significant levels, through application of measures included in IS SCA CULT-1, IS SCA CULT-2, and IS SCA CULT-3. The Project site is vacant and does not contain any historic resources and, therefore, the Project would not result in a significant impact to historic resources.



28. Geology and Soils: Development of the proposed Project could expose people or structures to seismic hazards such as groundshaking or liquefaction, could subject people to geologic hazards including expansive soils, subsidence, seismically induced settlement and differential settlement, or could result in erosion, as noted in the Initial Study (Section VI). These impacts will be reduced to less than significant levels through the implementation of IS SCA GEO-1 and IS SCA GEO-3, which require that a soils report and geotechnical investigation be prepared and recommendations implemented. In addition, the Project applicant shall obtain a grading permit if required that includes an erosion and sedimentation control plan (IS SCA GEO-2). Moreover, compliance with other regulatory requirements, including compliance with all applicable building codes, would ensure there would not be significant adverse geology and soils impacts.
29. Hazards and Hazardous Materials: As discussed in the EIR, the site has been included on the Cortese List because of hazardous materials contamination of the soil and groundwater due to previous uses on the site. However, preparation and implementation of a hazardous materials business plan (IS SCA HAZ-1); hazards best management practices (EIR SCA HAZ-1); site review by the Fire Services Division (EIR SCA HAZ-2); Phase I and/or Phase II reports and implementation of any recommendations from such (EIR SCA HAZ-3); environmental site assessment reports remediation (EIR SCA HAZ-4); best management practices for soil and groundwater hazards (EIR SCA HAZ-5); and radon or vapor intrusion from soil or groundwater sources (EIR SCA HAZ-6) would result in less than significant impacts. Moreover, compliance with other regulatory requirements would ensure there would not be significant adverse hazards and hazardous materials impacts. Additionally, as a separate and independent basis, any existing pollutants on/near the Project site are not considered to be CEQA impacts caused by the Project; indeed, the Project will remediate the existing on-site contamination.

In addition, the Project site is not located within the vicinity of an airport or in a wildlands area. The proposed Project would not significantly interfere with emergency response plans or evacuation plans.

30. Hydrology and Water Quality: The proposed Project could result in erosion, siltation, stormwater runoff, and other water quality impacts during project construction and operation as noted in the Initial Study (Section VIIi). Implementation of IS SCA HWQ-1, IS SCA HWQ-2, and IS SWA HWQ-3 would result in less than significant impacts on hydrology and water quality. These Standard Conditions require the preparation of an erosion and sedimentation control plan; preparation of a post-construction stormwater pollution management plan, and implementation of a stormwater treatment measures maintenance agreement. Moreover, compliance with other regulatory requirements would ensure there would not be significant adverse hydrology and water quality impacts.
31. Noise: Project construction and operation would potentially increase noise levels as noted in the EIR. These impacts will be reduced to less than significant levels through the implementation of Standard Conditions of Approval, which require practices and procedures to reduce noise generation during construction and project operational noise on the surrounding area. Specifically, compliance with EIR SCA NOISE-1, EIR SCA NOISE-2, EIR SCA NOISE-3, and EIR SCA NOISE-5 would limit hours and days of construction, require a site-specific noise reduction program, require noise complaint procedures, and attenuate pile-driving and other extreme noise generators. These Standard Conditions of Approval would reduce the impacts of construction noise to less than significant levels. In addition, interior noise levels and noise generated from project operation will be abated through compliance with EIR SCA NOISE-4 and EIR SCA NOISE-6 to less-than-significant levels. Moreover, compliance with various policies and goals contained in the City's general plan and other regulatory requirements would ensure there would not be significant adverse noise and vibration impacts.

32. Traffic and Transportation: As detailed in the EIR, the project would generate 30 AM peak hour trips and 31 PM peak hour trips. Traffic generated by the proposed Project would not be considered a significant impact under City standards. EIR SCA TRANS-1 requires implementation of a Transportation Demand Management (TDM) Plan to reduce on-site parking demand and single occupancy vehicle travel, and EIR SCA TRANS-2 requires preparation of a construction traffic and parking management plan.

In addition, there are recommended improvements to address trip reductions and safety. Recommendation TRANS-1 would consider the provision of shuttle service as a strategy to be included in the TDM Plan, but lack of shuttle service will not increase any already identified less than significant impacts. Recommendation TRANS-2 would limit entry into the loading zone to a right turn in only and limit exit from the loading zone to a right turn out only (excluding any maneuvering required to back in/out of the loading zone) and restrict deliveries during peak commute periods (7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m.) and employ the use of flaggers as necessary to ensure safe maneuvering into the loading zone. Recommendation TRANS-3 would limit entry into the garage to a right turn only and limit exit from the garage to a right turn out only. Implementation of these SCAs and recommendations would reduce the traffic and transportation impacts of the Project to less than significant levels.

33. Utilities and Service Systems: It is unlikely that the proposed Project would result in substantial new or expanded stormwater infrastructure on-site, water demand, or demand for solid waste collection based on the scope of the Project and as noted in the Initial Study (Section XVI). However, the Project applicant shall implement IS SCA UTIL-1 regarding capacity of the stormwater and sanitary sewer infrastructure, and IS SCA UTIL-2 regarding preparation of a waste reduction and recycling plan. These SCAs would reduce potential impacts to less than significant levels. Moreover, compliance with other regulatory requirements would ensure there would not be significant adverse utilities/service systems impacts.

The Project would increase energy consumption at the site, but not warrant the construction or expansion of new facilities. The Project will be required to meet current state and local codes and standards concerning energy consumption, particularly Title 24 of the California Code of Regulations enforced by the City of Oakland through its building permit review process. Therefore, the Project would have a less than significant impact on energy consumption.

## XI. SIGNIFICANT AND UNAVOIDABLE IMPACTS

34. Under Public Resources Code sections 21081(a)(3) and 21081(b), and CEQA Guidelines sections 15091, 15092, and 15093, and to the extent reflected in the EIR and the SCAMMRP, the Planning Commission finds that there are **NO** significant and unavoidable impacts.

## XII. FINDINGS REGARDING ALTERNATIVES

35. The Planning Commission finds that because there are no significant unavoidable impacts, alternatives need not be rejected as infeasible. Nevertheless, in the interest of being conservative and providing information to the public and decision-makers, the Planning Commission finds that there are specific economic, social, environmental, technological, legal or other considerations that make infeasible the alternatives to the Project described in the EIR for the reasons stated below.
36. The EIR evaluated a reasonable range of alternatives to the Project that was described in the DEIR. The three potentially feasible alternatives analyzed in detail in the EIR represent a reasonable range of

potentially feasible alternatives that reduce one or more significant impacts of the Project. These alternatives include: Alternative 1: the No Project/No Build Alternative, Alternative 2: Reduced Development/Mitigated Alternative, and Alternative 3: Commercial Alternative. As presented in the EIR, the alternatives were described and compared with each other and with the proposed Project. After the No Project Alternative (1), Alternative 2: Reduced Development/Mitigated Alternative was identified as the environmentally superior development alternative.

37. The Planning Commission certifies that it has independently reviewed and considered the information on the alternatives provided in the EIR and in the record. The EIR reflects the Planning Commission's independent judgment as to alternatives. The Planning Commission finds that the Project provides the best balance between the Project sponsor's objectives and the City's goals and objectives. The three alternatives proposed and evaluated in the EIR are rejected for the following reasons. Each individual reason presented below constitutes a separate and independent basis to reject the Project alternative as being infeasible, and, when the reasons are viewed collectively, provide an overall basis for rejecting the alternative as being infeasible.
38. Alternative 1: No Project / No Build Alternative: The No Project/No Build Alternative assumes that the Project site would remain in its current condition and would not be subject to development. The site would be fenced off, the billboard would remain, hazardous materials clean-up may not occur and the remainder of the site would be vacant and undeveloped. No new structures would be developed, so no new vehicle trips would be generated at the adjacent intersection and no noise from building construction would occur.

The No Project/No Build Alternative would not result in any of the less than significant impacts identified for the Project in the Initial Study or the EIR. No new construction would occur under the No Project/No Build Alternative; therefore, there would not be any incremental increase in traffic at the intersection of High Street and MacArthur Boulevard. Additionally the less-than-significant impacts identified relative to aesthetics, air quality and green-house gas (GHG) emissions, hazards and hazardous materials, and noise would not occur.

The No Project/No Build Alternative is rejected as infeasible because (a) it would not achieve any of the objectives sought by the Project; (b) it would not facilitate the construction of housing units (General Plan policy objective N3.1); (c) it would make it more difficult for the City to meet its Regional Housing Needs Allocation (RHNA); (d) it would not encourage infill development (General Plan policy objective N3.2); (e) it would not provide construction and permanent jobs; (f) it would not provide increased tax revenue; and/or (g) it would not promote or achieve many of the goals, objectives, and actions of the City's Land Use and Transportation General Plan Element.

39. Alternative 2: Reduced Development/Mitigated Alternative: The Reduced Development/Mitigated Alternative assumes that the Project site would be developed with 29 less residential units and one less building floor, for a total of 86 senior housing units within a 3-story building and 3,446 square feet of commercial space.

Implementation of this alternative would result in impacts similar to the proposed Project for all of the environmental topics found to be less than significant and focused out of the EIR in the Initial Study, although the effects would be incrementally less.

Like the proposed Project, the Reduced Development/Mitigated Alternative would be subject to Standard Conditions of Approval and would result in less-than-significant aesthetic impacts; however, the overall

building scale and massing of the building would be less than the proposed Project because the building would be one floor less in overall height. Like the proposed Project, this alternative would be visible from the MacArthur Freeway, a scenic highway. Under this alternative the building would be one less story in height, so less of it would be visible to freeway motorists. The existing bill-board would be removed and the existing vacant lot would be developed with a new mixed-use structure. Changes to the scenic character of the site would be modified from their current condition, as is the case with the proposed Project. This alternative would result in essentially the same less-than significant aesthetic impacts as the Project, although the reduced building height would slightly reduce the level of the less-than-significant impact.

The Reduced Development/Mitigated Alternative would result in the same less-than-significant impacts, although slightly reduced, identified for the proposed Project related to air quality and GHG emissions, hazard and hazardous materials and noise.

Traffic trips expected to be generated by this alternative would be less than the proposed Project because it involves less development. Even though the trips would be reduced, like the proposed Project, this alternative would result in the same LOS calculations as the proposed Project and no significant impacts would result.

This alternative is rejected as infeasible because (a) it would not facilitate the construction of as many housing units (General Plan policy objective N3.1); (b) it would make it more difficult for the City to meet its Regional Housing Needs Allocation (RHNA); (c) it would not be as encouraging for infill development (General Plan policy objective N3.2); (d) it would not provide as many construction and permanent jobs; (e) it would not provide as much tax revenue; (f) it would not reduce any significant impacts and/or (g) it would not be an economically feasible project to construct and operate because the fixed costs associated with development will be spread over 29 (25%) less housing units.

40. Alternative 3: Commercial Alternative: The Commercial Alternative assumes the Project site is developed with a single-story commercial building. Based on the current zoning provisions for building height, setbacks, and parking, this alternative assumed the Project site is developed with a 6,000 square-foot building, which is the maximum size that could be accommodated without triggering more significant traffic impacts. For purposes of this analysis it is assumed that the building would be occupied by multiple commercial tenants and the required parking would be provided in a surface parking lot.

Implementation of this alternative would result in impacts similar to the proposed Project for all of the environmental topics found to be less than significant and focused out of the EIR in the Initial Study, although the effects would be incrementally less.

Like the proposed Project, the Commercial Alternative would be subject to Standard Conditions of Approval and Design Review and would result in less-than-significant aesthetic impacts similar to the proposed Project as it assumes the design would be of high quality and would not substantially degrade the character of the area or significantly impact public views. However, given the proposed height would be reduced from five stories to one story the overall building scale and massing of the building would be much smaller than the proposed Project. The majority of the building would not likely be visible from the MacArthur Freeway. As a result it would further reduce the Project's already less-than-significant impacts on scenic vistas and the scenic highway, MacArthur Freeway.

This alternative would involve a lower profile structure on the Project site, which is consistent with the current fabric of the neighborhood. However, like the proposed Project, the structure would be new and would change the character of the existing vacant and undeveloped site. Like the proposed Project, this alternative would result in less-than-significant adverse aesthetic impacts.

The Commercial Alternative would also result in similar less-than-significant impacts to hazards and hazardous materials and noise; the implementation of the City's Standard Conditions of Approval would reduce potential significant impacts.

The Commercial Alternative would potentially have fewer air quality and GHG impacts than the proposed Project because this alternative involves less building material, less construction time and equipment, and less overall building area. As a result, this alternative would likely result in fewer GHG emissions during construction and during operations.

The Commercial Alternative would result in the same trip generation as the proposed Project. Under this alternative, the 6,000 square foot multi-tenant commercial building would result in 23 AM Peak hour trips and 35 PM Peak hour trips. As a result the Commercial Alternative would not result in more significant transportation and traffic impacts than the proposed Project.

The Commercial Alternative would result in the same less-than-significant impacts identified for the proposed Project related to hazards and hazardous materials and noise; incrementally less air quality and GHG emissions and less-than-significant aesthetic impacts; and would result in the same transportation and circulation impacts (intersection operation at High and MacArthur).

This alternative is rejected as infeasible because (a) it would not achieve the basic Project objectives; (b) it would not facilitate the construction of any housing units (General Plan policy objective N3.1); (c) it would make it more difficult for the City to meet its Regional Housing Needs Allocation (RHNA); (d) it would not be as encouraging for infill development because it would be an underutilization of the site (General Plan policy objective N3.2); (e) it would not provide as many construction jobs; (f) it would not reduce any significant impacts; (g) it would not achieve many of the beneficial urban design and character effects that would be achieved by the proposed Project, such as providing a high quality design at a prominent street corner, as well as a mix of uses; and/or (h) it would entail a surface parking lot rather than parking incorporated inside the building, which would screen the parking from public view and would allow the building to provide an active street edge.

### **XIII. STATEMENT OF OVERRIDING CONSIDERATIONS**

41. The Planning Commission finds that no Statement of Overriding Considerations is necessary since there are no significant unavoidable impacts.



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## High Street Proforma Narrative, 86 Senior Housing Units , Oakland, CA

July 2, 2013

Attached please find a proforma for an 86 unit senior housing project on the subject site located on High Street in Oakland, CA (the "Project").

Under the most current financial market conditions, the most likely and feasible method to develop the Project will be through the use of Federal tax credit equity. Without the use of tax credit equity, there would be no other form of equity available as the yield expectations for non tax credit equity exceed the yield produced on the Project. As such, we have analyzed the most likely form of project financing, which is through the use of tax credits.

The attached proforma demonstrates that that even if we were to value the land at a zero dollars and received an allocation of tax credits, the net operating income from the project does not justify an equity investment from the common equity investment marketplace. In this case the "common equity" is also called the "gap" as the applicant must close the gap (raise the funds) in order to develop the project. The attached proforma demonstrates that there is a "gap" in funds in the amount of approximately \$1,848,567, this is the amount needed to have the cash sources to build the project.

Part of the reason for a "gap" is due to the fact that the project does not have enough units (and income) to spread the fixed costs to a lower level; the higher the number of units, the lower the fixed costs are per unit. Fixed costs per unit are calculated by dividing the fixed costs (as defined below) by the number of units. "Fixed Costs" are incurred both during construction and post construction during operations. These costs include, but are not limited to architecture, engineering, finance costs, legal fees, city fees, construction management and profit, and many other fees. Once the project is placed in service, the costs include but are not limited to onsite maintenance, services, special assessments, management fees, landscaping, and many other costs.

If the applicant were to develop more units, the rental income from the project will increase without having an increase in the fixed costs, and therefore the project would have more "net operating income" ("NOI") and "cash flow" to incentivize "cash equity investors" to invest money to "close the gap". Equity investors expect to be compensated for their investment and developers of every product type (retail, office buildings, industrial buildings, and other real estate product types) are competing for these equity funds. Additionally, if the project had more NOI from more units, the developer could borrow more funds to build the project, thus reducing the gap and equity required.

As you will see on the cash flow page of the proforma, there is zero cash flow for a minimum of the first 10 years after the project is placed in service. Note that the attached proforma assumes that the land is valued at zero, which reduces the gap (The more you reduce project costs the more you reduce the gap). The reason that we have structured the proforma in this manner is to make the best attempt to make the project feasible by asking the land owner to "donate the land" to make the project feasible; but as you can see, even with the land being donated, there is a gap which receives a yield of zero for the first 10 years, making the project impossible to finance. Not having the land valued at zero would make the project even less feasible.

**ATTACHMENT D**

# Oakland Senior

A 86-Unit Senior Housing Alternative  
Oakland, CA

Financial Pro Forma

July 2, 2013

**DEVELOPMENT BUDGET**  
**Oakland Senior**  
**Oakland, CA**

	Project Costs	Cost Per Unit	Cost Per Res. Sq. Ft.	Tax Credit Eligible Basis
Total Land Costs (Donation)	\$ -	\$ -	\$ -	XXXXXXXXXX
Total Acquisition Costs	\$ 150,000	\$ 1,744	\$ 2.57	\$ 150,000
<b>New Construction and/or Rehabilitation</b>				
Off-Site Work	\$ -	\$ -	\$ -	\$ -
Parking Deck	\$ 1,500,000	\$ 17,442	\$ 25.74	\$ 1,500,000
Structures	\$ 8,741,100	\$ 101,641	\$ 150.00	\$ 8,741,100
General Requirements	\$ 1,223,754	\$ 14,230	\$ 21.00	\$ 1,223,754
Contractor Overhead	\$ -	\$ -	\$ -	\$ -
Contractor Profit	\$ -	\$ -	\$ -	\$ -
Construction Contingency	\$ -	\$ -	\$ -	\$ -
Total Construction Costs	\$ 11,464,854	\$ 133,312	\$ 196.74	\$ 11,464,854
<b>Financing Costs</b>				
Construction Loan Interest	\$ 530,000	\$ 6,163	\$ 9.09	\$ 486,000
Construction Loan Fee	\$ 100,000	\$ 1,163	\$ 1.72	\$ 100,000
Construction Lender Costs (Legal, Etc.)	\$ 20,000	\$ 233	\$ 0.34	\$ 20,000
Bond Issuer & Trustee Fees	\$ 50,000	\$ 581	\$ 0.86	\$ 50,000
Permanent Loan Fees	\$ 22,000	\$ 256	\$ 0.38	XXXXXXXXXX
Permanent Loan Costs	\$ 25,000	\$ 291	\$ 0.43	XXXXXXXXXX
Tax Credit Fees	\$ 42,373	\$ 493	\$ 0.73	XXXXXXXXXX
Bond Counsel	\$ 50,000	\$ 581	\$ 0.86	XXXXXXXXXX
Financial Advisor	\$ 25,000	\$ 291	\$ 0.43	XXXXXXXXXX
Total Financing Costs	\$ 864,373	\$ 10,051	\$ 14.83	\$ 656,000
<b>Soft Costs</b>				
Architectural	\$ 325,000	\$ 3,779	\$ 5.58	\$ 325,000
Engineering/Surveying/Environmental	\$ 160,000	\$ 1,860	\$ 2.75	\$ 160,000
Taxes During Construction	\$ 10,000	\$ 116	\$ 0.17	\$ 10,000
Insurance	\$ 286,600	\$ 3,333	\$ 4.92	\$ 286,600
Title & Recording	\$ 40,000	\$ 465	\$ 0.69	\$ 40,000
Borrower Attorney	\$ 40,000	\$ 465	\$ 0.69	\$ 40,000
Appraisal	\$ 10,000	\$ 116	\$ 0.17	\$ 10,000
Local Tap, Building Permit, & Impact Fees	\$ 602,000	\$ 7,000	\$ 10.33	\$ 602,000
Marketing	\$ 86,658	\$ 1,008	\$ 1.49	XXXXXXXXXX
Relocation Costs	\$ -	\$ -	\$ -	XXXXXXXXXX
Furnishings	\$ 50,000	\$ 581	\$ 0.86	\$ 50,000
Cost Certification	\$ 10,000	\$ 116	\$ 0.17	\$ 10,000
Market Study	\$ 10,000	\$ 116	\$ 0.17	\$ 10,000
Soft Cost Contingency	\$ 100,000	\$ 1,163	\$ 1.72	\$ 100,000
Developer Overhead & Profit	\$ 2,064,668	\$ 24,008	\$ 35.43	\$ 2,064,668
Consultant Fee	\$ -	\$ -	\$ -	\$ -
Total Soft Costs	\$ 3,794,926	\$ 44,127	\$ 65.12	\$ 3,708,268
<b>Reserves</b>				
Rent Reserve	\$ -	\$ -	\$ -	XXXXXXXXXX
Operating Reserve	\$ 222,318	\$ 2,585	\$ 3.82	XXXXXXXXXX
Total Reserve Costs	\$ 222,318	\$ 2,585	\$ 3.82	XXXXXXXXXX
<b>Totals</b>	<b>\$ 16,496,471</b>	<b>\$ 191,819</b>	<b>\$ 283.08</b>	<b>\$ 15,979,122</b>



**SOURCES & USES****Oakland Senior  
Oakland, CA****CONSTRUCTION PHASE****Sources of Funds**

Tax Credit Financing	\$	1,012,336
Other	\$	-
Other	\$	-
Other	\$	-
Gap in Funds / Equity	\$	554,570
Other	\$	-
Deferred Costs	\$	222,318
Deferred Contractor Profit	\$	-
Deferred Developer Fee	\$	2,064,668
Construction Loan	\$	12,642,579
<b>Total Sources of Funds</b>	<b>\$</b>	<b>16,496,471</b>

**Uses of Funds**

Total Land Costs (Donation)	\$	-
Total Acquisition Costs	\$	150,000
New Construction and/or Rehabilitation	\$	11,464,854
Construction Contingency	\$	-
Financing Costs	\$	864,373
Architecture & Engineering	\$	485,000
Other Soft Costs	\$	1,145,258
Developer Fees	\$	2,064,668
Soft Cost Contingency	\$	100,000
Reserves	\$	222,318
<b>Total Uses of Funds</b>	<b>\$</b>	<b>16,496,471</b>

**PERMANENT PHASE****Sources of Funds**

Total Tax Credit Financing	\$	5,061,681
Permanent Loan	\$	7,516,963
Other	\$	-
Other	\$	-
Other	\$	-
Gap in Funds / Equity	\$	1,848,567
Other	\$	-
Other	\$	-
Other	\$	-
Deferred Developer Fee	\$	2,064,668
<b>Total Sources of Funds</b>	<b>\$</b>	<b>16,491,879</b>

**Uses of Funds**

Total Land Costs (Donation)	\$	-
Total Acquisition Costs	\$	150,000
New Construction and/or Rehabilitation	\$	11,464,854
Construction Contingency	\$	-
Financing Costs	\$	864,373
Architecture & Engineering	\$	485,000
Other Soft Costs	\$	1,145,258
Developer Fees	\$	2,064,668
Soft Cost Contingency	\$	100,000
Reserves	\$	222,318
<b>Total Uses of Funds</b>	<b>\$</b>	<b>16,496,471</b>

## OPERATING & LOAN DETAILS

<b>Project:</b> Oakland Senior	<b>Location:</b> Oakland, CA	6/25/2013
--------------------------------	------------------------------	-----------

Type	AMI Rent Level	Number of Units	Avg. Unit Sq. Ft.	Market Rent	Utility Allowance	Net Market Rent	Monthly Totals	Annual Totals
1BR/iBA	50%	7	613	836	35	801	5,607	67,284
1BR/1BA	55%	0	0	0	0	0	0	0
1BR/iBA	60%	63	613	1,003	35	968	60,984	731,808
1BR/1BA	0%	0	0	0	0	0	0	0
2BR/1BA	50%	2	804	1,003	45	958	1,916	22,992
2BR/1BA	55%	0	0	0	0	0	0	0
2BR/1BA	60%	14	804	1,203	45	1,158	16,212	194,544
2BR/1BA	0%	0	0	0	0	0	0	0
3BR/2BA	50%	0	0	0	0	0	0	0
3BR/2BA	55%	0	0	0	0	0	0	0
3BR/2BA	60%	0	0	0	0	0	0	0
3BR/2BA	0%	0	0	0	0	0	0	0
4BR/2BA	50%	0	0	0	0	0	0	0
4BR/2BA	55%	0	0	0	0	0	0	0
4BR/2BA	60%	0	0	0	0	0	0	0
4BR/2BA	0%	0	0	0	0	0	0	0
COMMERCIAL		0	3,446	0	0	0	5,500	66,000

Total Units & Sq. Ft.	86	55,774	% of Sq. Ft.	% of Units		\$ 90,219	\$ 1,082,628
Community Facilities		2,500	Affordable	Affordable			
<b>Total Project Sq. Ft.</b>		<b>58,274</b>	100.00%	100.00%			

Operating Deficit Guarantee	
10% of Perm.	\$ 751,696
Year 1 Op. Exp.	\$ 387,000
<b>Guarantee</b>	<b>\$ 751,696</b>

Replacement Reserves	
Standard/Unit	\$ 300
UMR Min/Unit	\$ 600
<b>Reserve / Unit</b>	<b>\$ 300</b>

Project Unit Mix		
Unit Type	Number	% of Total
1 Bdrm./1 Bath.	70	81.40%
2 Bdrm./1 Bath.	16	18.60%
3 Bdrm./2 Bath.	0	0.00%
4 Bdrm./2 Bath.	0	0.00%
<b>Totals</b>	<b>86</b>	<b>100.00%</b>

Total Annual Rental Income	\$ 1,082,628
Other Income	
Laundry /Unit/Year	\$ 50
Tenant Charges & Interest /Unit/Year	\$ 50
<b>Total Annual Other Income</b>	<b>\$ 8,600</b>
<b>Total Annual Potential Gross Income</b>	<b>\$ 1,091,228</b>
Vacancy & Collection Loss	\$ (76,386)
<b>Annual Effective Gross Income</b>	<b>\$ 1,014,842</b>

**OPERATING & LOAN DETAILS (continued)**

**ANNUAL EXPENSES**

Real Estate Taxes & Special Assessments  
 State Taxes  
 Insurance  
 Licenses  
 Fuel & Gas  
 Electricity  
 Water & Sewer  
 Trash Removal  
 Pest Control  
 Building & Maintenance Repairs  
 Building & Maintenance Supplies  
 Supportive Services  
 Annual Issuer & Trustee Fees  
 Gardening & Landscaping  
 Management Fee  
 On-Site Manager(s)  
 Other Payroll  
 Manager's Unit Expense  
 Cleaning Supplies  
 Benefits  
 Payroll Taxes & Work Comp  
 Advertising  
 Telephone  
 Legal & Accounting  
 Operating Reserves  
 Office Supplies & Expense  
 Miscellaneous Administrative  
 Replacement Reserves

	% of Annual EGI	% of Total Operating Exp.	Per Unit	Total
	0.34%	0.90%	\$ 41.00	\$ 3,500
	0.08%	0.21%	\$ 9.00	\$ 800
	1.69%	4.44%	\$ 200.00	\$ 17,200
	0.03%	0.09%	\$ 4.00	\$ 350
	0.09%	0.25%	\$ 11.00	\$ 900
	0.76%	2.00%	\$ 90.00	\$ 7,700
	4.57%	12.00%	\$ 540.00	\$ 46,400
	1.34%	3.50%	\$ 158.00	\$ 13,600
	0.14%	0.36%	\$ 16.00	\$ 1,400
	4.57%	12.00%	\$ 540.00	\$ 46,400
	2.29%	6.00%	\$ 270.00	\$ 23,200
	1.18%	3.10%	\$ 140.00	\$ 12,000
	0.00%	0.00%	\$ -	\$ -
	3.05%	8.00%	\$ 360.00	\$ 31,000
	6.00%	15.61%	\$ 702.00	\$ 60,400
	4.07%	10.67%	\$ 480.00	\$ 41,280
	0.76%	2.00%	\$ 90.00	\$ 7,700
	6.05%	15.86%	\$ 714.00	\$ 61,380
	0.38%	1.00%	\$ 45.00	\$ 3,900
	0.20%	0.52%	\$ 23.00	\$ 2,000
	2.50%	6.56%	\$ 295.00	\$ 25,400
	0.38%	1.00%	\$ 45.00	\$ 3,900
	0.15%	0.39%	\$ 18.00	\$ 1,500
	0.59%	1.55%	\$ 70.00	\$ 6,000
	0.00%	0.00%	\$ -	\$ -
	0.15%	0.39%	\$ 18.00	\$ 1,500
	-5.74%	-15.07%	\$ (679.00)	\$ (58,210)
	2.54%	6.67%	\$ 300.00	\$ 25,800

Annual Expenses - Per Unit & Total      \$ **4,500**    \$ **387,000**

Annual Net Operating Income - Per Unit & Total      \$ **7,300**    \$ **627,842**

**Oakland Senior  
Multi-Year Stabilized Operating Pro-Forma**

**Oakland, CA**

RENTAL INCOME	% AMI	Net Rent / Unit - Year 1	No. of Units	Annual Increase	Year 1	Year 2	Year 3
1BR/1BA	50%	801	7	2.5%	67,284	68,966	70,690
1BR/1BA	55%	0	0	2.5%	-	-	-
1BR/1BA	60%	968	63	2.5%	731,808	750,103	768,856
1BR/1BA	0%	0	0	2.5%	-	-	-
2BR/1BA	50%	958	2	2.5%	22,992	23,567	24,156
2BR/1BA	55%	0	0	2.5%	-	-	-
2BR/1BA	60%	1,158	14	2.5%	194,544	199,408	204,393
2BR/1BA	0%	0	0	2.5%	-	-	-
3BR/2BA	50%	0	0	2.5%	-	-	-
3BR/2BA	55%	0	0	2.5%	-	-	-
3BR/2BA	60%	0	0	2.5%	-	-	-
3BR/2BA	0%	0	0	2.5%	-	-	-
4BR/2BA	50%	0	0	2.5%	-	-	-
4BR/2BA	55%	0	0	2.5%	-	-	-
4BR/2BA	60%	0	0	2.5%	-	-	-
4BR/2BA	0%	0	0	2.5%	-	-	-
COMMERCIAL	0%	0	0	2.5%	-	-	-
<b>TOTAL RENTAL INCOME</b>			86		1,016,628	1,042,044	1,068,095
OTHER INCOME			Units	Incr./Yr.	Year-1	Year-2	Year-3
Laundry			86	2.5%	4,300	4,408	4,518
Tenant Charges & Interest			86	2.5%	4,300	4,408	4,518
<b>TOTAL OTHER INCOME</b>					8,600	8,815	9,035
<b>TOTAL INCOME</b>					1,025,228	1,050,859	1,077,130
Less Vacancy Allowance				7%	(71,766)	(73,560)	(75,399)
<b>GROSS INCOME</b>					953,462	977,299	1,001,731
OPERATING EXPENSES		Per Unit - Yr 1	%EGH	Incr./Yr.	Year-1	Year-2	Year-3
Advertising	\$	45	0.4%	3.5%	3,900	4,037	4,178
Legal	\$	23	0.2%	3.5%	2,000	2,070	2,142
Accounting/Audit	\$	47	0.4%	3.5%	4,000	4,140	4,285
Security	\$	-	0.0%	3.5%	-	-	-
Other: Telephone, Office Expense, Misc	\$	(642)	-5.8%	3.5%	(55,210)	(57,142)	(59,142)
Management Fee	\$	702	6.3%	3.5%	60,400	62,514	64,702
Fuel	\$	2	0.0%	3.5%	200	207	214
Gas	\$	8	0.1%	3.5%	700	725	750
Electricity	\$	90	0.8%	3.5%	7,700	7,970	8,248
Water/Sewer	\$	540	4.9%	3.5%	46,400	48,024	49,705
On-Site Manager	\$	480	4.3%	3.5%	41,280	42,725	44,220
Maintenance Personnel	\$	90	0.8%	3.5%	7,700	7,970	8,248
Other: Payroll Taxes, Work Comp, Benefits	\$	319	2.9%	3.5%	27,400	28,359	29,352
Insurance	\$	200	1.8%	3.5%	17,200	17,802	18,425
Painting	\$	50	0.5%	3.5%	4,300	4,451	4,606
Repairs	\$	490	4.4%	3.5%	42,100	43,574	45,099
Trash Removal	\$	158	1.4%	3.5%	13,600	14,076	14,569
Externalizing	\$	16	0.1%	3.5%	1,400	1,449	1,500
Grounds	\$	360	3.3%	3.5%	31,000	32,085	33,208
Elevator	\$	-	0.0%	3.5%	-	-	-
Other: Cleaning & Building Supplies	\$	315	2.8%	3.5%	27,100	28,049	29,030
Other: Licenses	\$	4	0.0%	3.5%	350	362	375
Other: State Tax	\$	9	0.1%	3.5%	800	828	857
Other:	\$	-	0.0%	3.5%	-	-	-
Other:	\$	-	0.0%	3.5%	-	-	-
Other:	\$	-	0.0%	3.5%	-	-	-
<b>TOTAL OPERATING EXPENSES</b>	\$	3,306			284,320	294,271	304,571
Internet Expense	\$	-	0.0%	3.5%	-	-	-
Service Amenities	\$	140	1.3%	3.5%	12,000	12,420	12,855
Reserve for Replacement	\$	300	2.7%	0.0%	25,800	25,800	25,800
Real Estate Taxes	\$	41	0.4%	2.0%	3,500	3,570	3,641
<b>TOTAL EXPENSES, TAXES &amp; RESERVES</b>	\$	3,786			325,620	336,061	346,867
<b>CASH FLOW AVAILABLE FOR DEBT SERVICE</b>					627,842	641,238	654,864
DEBT SERVICE & OTHER DISTRIBUTIONS		Loan Amount			Year-1	Year-2	Year-3
Permanent Loan	Hard	\$ 7,516,963	0.052		502,274	502,274	502,274
Other	NA	\$ -			-	-	-
Asset Management Fees	Soft	\$ 13,600			13,600	13,600	13,600
Deferred Developer Fee	Soft	\$ 2,064,668			111,968	125,364	138,991
Other	Soft	\$ -			-	-	-
Other	Soft	\$ -			-	-	-
Other	Soft	\$ -			-	-	-
Equity	Soft	\$ 1,848,567			-	-	-
<b>ANNUAL NET CASH FLOW / VEILD</b>					-	-	-
Deferred Dev. Fee Balance	Interest Rate:	0.00%			1,952,700	1,827,336	1,688,345
Debt Service Coverage Ratio on Hard Debt					1.25	1.28	1.30

**Oakland Senior  
Multi-Year Stabilized Operating Pro-Forma**

**Oakland, CA**

6/25/2013

RENTAL INCOME	% AMI	Net Rent / Unit - Year 1	No of Units	Annual Increase	Year 4	Year 5	Year 6	Year 7	Year 8
1BR/1BA	50%	801	7	2.5%	72,458	74,269	76,126	78,029	79,980
1BR/1BA	55%	0	0	2.5%	-	-	-	-	-
1BR/1BA	60%	968	63	2.5%	788,077	807,779	827,974	848,673	869,890
1BR/1BA	0%	0	0	2.5%	-	-	-	-	-
2BR/1BA	50%	958	2	2.5%	24,760	25,379	26,013	26,664	27,330
2BR/1BA	55%	0	0	2.5%	-	-	-	-	-
2BR/1BA	60%	1,158	14	2.5%	209,503	214,740	220,109	225,611	231,252
2BR/1BA	0%	0	0	2.5%	-	-	-	-	-
3BR/2BA	50%	0	0	2.5%	-	-	-	-	-
3BR/2BA	55%	0	0	2.5%	-	-	-	-	-
3BR/2BA	60%	0	0	2.5%	-	-	-	-	-
3BR/2BA	0%	0	0	2.5%	-	-	-	-	-
4BR/2BA	50%	0	0	2.5%	-	-	-	-	-
4BR/2BA	55%	0	0	2.5%	-	-	-	-	-
4BR/2BA	60%	0	0	2.5%	-	-	-	-	-
4BR/2BA	0%	0	0	2.5%	-	-	-	-	-
COMMERCIAL	0%	0	0	2.5%	-	-	-	-	-
<b>TOTAL RENTAL INCOME</b>			86		1,094,797	1,122,167	1,150,221	1,178,977	1,208,451
<b>OTHER INCOME</b>			Units	Incr /Yr.	Year-4	Year-5	Year-6	Year-7	Year-8
Laundry			86	2.5%	4,631	4,746	4,865	4,987	5,111
Tenant Charges & Interest			86	2.5%	4,631	4,746	4,865	4,987	5,111
<b>TOTAL OTHER INCOME</b>					9,261	9,493	9,730	9,973	10,223
<b>TOTAL INCOME</b>					1,104,058	1,131,660	1,159,951	1,188,950	1,218,674
Less Vacancy Allowance				7%	(77,284)	(79,216)	(81,197)	(83,227)	(85,307)
<b>GROSS INCOME</b>					1,026,774	1,052,444	1,078,754	1,105,723	1,133,367
<b>OPERATING EXPENSES</b>	Per Unit - Yr. 1	%EGl	Incr./Yr.	Year-4	Year-5	Year-6	Year-7	Year-8	
Advertising	\$ 45	0.4%	3.5%	4,324	4,475	4,632	4,794	4,962	
Legal	\$ 23	0.2%	3.5%	2,217	2,295	2,375	2,459	2,545	
Accounting/Audit	\$ 47	0.4%	3.5%	4,435	4,590	4,751	4,917	5,089	
Security	\$ -	0.0%	3.5%	-	-	-	-	-	
Other: Telephone, Office Expense, Misc	\$ (642)	-5.8%	3.5%	(61,212)	(63,355)	(65,572)	(67,867)	(70,243)	
Management Fee	\$ 702	6.3%	3.5%	66,967	69,310	71,736	74,247	76,846	
Fuel	\$ 2	0.0%	3.5%	222	230	238	246	254	
Gas	\$ 8	0.1%	3.5%	776	803	831	860	891	
Electricity	\$ 90	0.8%	3.5%	8,537	8,836	9,145	9,465	9,797	
Water/Sewer	\$ 540	4.9%	3.5%	51,445	53,245	55,109	57,037	59,034	
On-Site Manager	\$ 480	4.3%	3.5%	45,768	47,370	49,028	50,744	52,520	
Maintenance Personnel	\$ 90	0.8%	3.5%	8,537	8,836	9,145	9,465	9,797	
Other: Payroll Taxes, Work Comp, Benefits	\$ 319	2.9%	3.5%	30,379	31,442	32,543	33,682	34,860	
Insurance	\$ 200	1.8%	3.5%	19,070	19,737	20,428	21,143	21,883	
Painting	\$ 50	0.5%	3.5%	4,767	4,934	5,107	5,286	5,471	
Repairs	\$ 490	4.4%	3.5%	46,677	48,311	50,002	51,752	53,563	
Trash Removal	\$ 158	1.4%	3.5%	15,079	15,606	16,153	16,718	17,303	
Exterminating	\$ 16	0.1%	3.5%	1,552	1,607	1,663	1,721	1,781	
Grounds	\$ 360	3.3%	3.5%	34,370	35,573	36,818	38,107	39,441	
Elevator	\$ -	0.0%	3.5%	-	-	-	-	-	
Other: Cleaning & Blding Supplies	\$ 315	2.8%	3.5%	30,046	31,098	32,186	33,313	34,479	
Other: Licenses	\$ 4	0.0%	3.5%	388	402	416	430	445	
Other: State Tax	\$ 9	0.1%	3.5%	887	918	950	983	1,018	
Other:	\$ -	0.0%	3.5%	-	-	-	-	-	
Other:	\$ -	0.0%	3.5%	-	-	-	-	-	
Other:	\$ -	0.0%	3.5%	-	-	-	-	-	
<b>TOTAL OPERATING EXPENSES</b>	\$ 3,306			315,231	326,264	337,683	349,502	361,734	
Internet Expense	\$ -	0.0%	3.5%	-	-	-	-	-	
Service Amenities	\$ 140	1.3%	3.5%	13,305	13,770	14,252	14,751	15,267	
Reserve for Replacement	\$ 300	2.7%	0.0%	25,800	25,800	25,800	25,800	25,800	
Real Estate Taxes	\$ 41	0.4%	2.0%	3,714	3,789	3,864	3,942	4,020	
<b>TOTAL EXPENSES, TAXES &amp; RESERVES</b>	\$ 3,786			358,050	369,623	381,599	393,995	406,822	
<b>CASH FLOW AVAILABLE FOR DEBT SERVICE</b>				668,725	682,821	697,155	711,729	726,545	
<b>DEBT SERVICE &amp; OTHER DISTRIBUTIONS</b>		Loan Amount		Year-4	Year-5	Year-6	Year-7	Year-8	
Permanent Loan	Hard	\$ 7,516,963	0.052	502,274	502,274	502,274	502,274	502,274	
Other	NA	\$ -		-	-	-	-	-	
Asset Management Fees	Soft	\$ 13,600		13,600	13,600	13,600	13,600	13,600	
Deferred Developer Fee	Soft	\$ 2,064,668		152,851	166,948	181,281	195,855	210,671	
Other	Soft	\$ -		-	-	-	-	-	
Other	Soft	\$ -		-	-	-	-	-	
Other	Soft	\$ -		-	-	-	-	-	
Equity	Soft	\$ 1,848,567		-	-	-	-	-	
<b>ANNUAL NET CASH FLOW / VEILD</b>				-	-	-	-	-	
Deferred Dev. Fee Balance	Interest Rate:	0.00%		1,535,494	1,368,546	1,187,265	991,410	780,739	
Debt Service Coverage Ratio on Hard Debt				1.33	1.36	1.39	1.42	1.45	

**Oakland Senior  
Multi-Year Stabilized Operating Pro-Forma**

**Oakland, CA**

RENTAL INCOME	% AMI	Net Rent / Unit - Year 1	No. of Units	Annual Increase	Year 9	Year 10	Year 11	Year 12	Year 13
1BR/1BA	50%	801	7	2.5%	81,979	84,028	86,129	88,282	90,489
1BR/1BA	55%	0	0	2.5%	-	-	-	-	-
1BR/1BA	60%	968	63	2.5%	891,637	913,928	936,776	960,196	984,200
1BR/1BA	0%	0	0	2.5%	-	-	-	-	-
2BR/1BA	50%	958	2	2.5%	28,014	28,714	29,432	30,167	30,922
2BR/1BA	55%	0	0	2.5%	-	-	-	-	-
2BR/1BA	60%	1,158	14	2.5%	237,033	242,959	249,033	255,259	261,640
2BR/1BA	0%	0	0	2.5%	-	-	-	-	-
3BR/2BA	50%	0	0	2.5%	-	-	-	-	-
3BR/2BA	55%	0	0	2.5%	-	-	-	-	-
3BR/2BA	60%	0	0	2.5%	-	-	-	-	-
3BR/2BA	0%	0	0	2.5%	-	-	-	-	-
4BR/2BA	50%	0	0	2.5%	-	-	-	-	-
4BR/2BA	55%	0	0	2.5%	-	-	-	-	-
4BR/2BA	60%	0	0	2.5%	-	-	-	-	-
4BR/2BA	0%	0	0	2.5%	-	-	-	-	-
COMMERCIAL	0%	0	0	2.5%	-	-	-	-	-
<b>TOTAL RENTAL INCOME</b>			86		1,238,663	1,269,629	1,301,370	1,333,904	1,367,252
OTHER INCOME			Units	Incr./Yr.	Year-9	Year-10	Year-11	Year-12	Year-13
Laundry			86	2.5%	5,239	5,370	5,504	5,642	5,783
Tenant Charges & Interest			86	2.5%	5,239	5,370	5,504	5,642	5,783
<b>TOTAL OTHER INCOME</b>					10,478	10,740	11,009	11,284	11,566
<b>TOTAL INCOME</b>					1,249,141	1,280,369	1,312,379	1,345,188	1,378,818
Less Vacancy Allowance				7%	(87,440)	(89,626)	(91,866)	(94,163)	(96,517)
<b>CROSS INCOME</b>					1,161,701	1,190,743	1,220,513	1,251,025	1,282,301
OPERATING EXPENSES	Per Unit - Yr. 1	%EGI	Incr./Yr.	Year-9	Year-10	Year-11	Year-12	Year-13	
Advertising	\$ 45	0.4%	3.5%	5,136	5,315	5,501	5,694	5,893	
Legal	\$ 23	0.2%	3.5%	2,634	2,726	2,821	2,920	3,022	
Accounting/Audit	\$ 47	0.4%	3.5%	5,267	5,452	5,642	5,840	6,044	
Security	\$ -	0.0%	3.5%	-	-	-	-	-	
Other: Telephone, Office Expense, Misc.	\$ (642)	-5.8%	3.5%	(72,701)	(75,246)	(77,879)	(80,605)	(83,426)	
Management Fee	\$ 702	6.3%	3.5%	79,535	82,319	85,200	88,182	91,269	
Fuel	\$ 2	0.0%	3.5%	263	273	282	292	302	
Gas	\$ 8	0.1%	3.5%	922	954	987	1,022	1,058	
Electricity	\$ 90	0.8%	3.5%	10,139	10,494	10,862	11,242	11,635	
Water/Sewer	\$ 540	4.9%	3.5%	61,100	63,238	65,452	67,743	70,114	
On-Site Manager	\$ 480	4.3%	3.5%	54,358	56,260	58,230	60,268	62,377	
Maintenance Personnel	\$ 90	0.8%	3.5%	10,139	10,494	10,862	11,242	11,635	
Other: Payroll Taxes, Work Comp, Benefits	\$ 319	2.9%	3.5%	36,081	37,343	38,650	40,003	41,403	
Insurance	\$ 200	1.8%	3.5%	22,649	23,442	24,262	25,111	25,990	
Painting	\$ 50	0.5%	3.5%	5,662	5,860	6,066	6,278	6,498	
Repairs	\$ 490	4.4%	3.5%	55,438	57,378	59,386	61,465	63,616	
Trash Removal	\$ 158	1.4%	3.5%	17,909	18,535	19,184	19,856	20,551	
Exterminating	\$ 16	0.1%	3.5%	1,844	1,908	1,975	2,044	2,115	
Grounds	\$ 360	3.3%	3.5%	40,821	42,250	43,729	45,259	46,843	
Elevator	\$ -	0.0%	3.5%	-	-	-	-	-	
Other: Cleaning & Building Supplies	\$ 315	2.8%	3.5%	35,686	36,935	38,227	39,565	40,950	
Other: Licenses	\$ 4	0.0%	3.5%	461	477	494	511	529	
Other: State Tax	\$ 9	0.1%	3.5%	1,053	1,090	1,128	1,168	1,209	
Other:	\$ -	0.0%	3.5%	-	-	-	-	-	
Other:	\$ -	0.0%	3.5%	-	-	-	-	-	
Other:	\$ -	0.0%	3.5%	-	-	-	-	-	
<b>TOTAL OPERATING EXPENSES</b>	\$ 3,306			374,395	387,499	401,061	415,099	429,627	
Internet Expense	\$ -	0.0%	3.5%	-	-	-	-	-	
Service Amenities	\$ 140	1.3%	3.5%	15,802	16,355	16,927	17,520	18,133	
Reserve for Replacement	\$ 300	2.7%	0.0%	25,800	25,800	25,800	25,800	25,800	
Real Estate Taxes	\$ 41	0.4%	2.0%	4,101	4,183	4,266	4,352	4,439	
<b>TOTAL EXPENSES, TAXES &amp; RESERVES</b>	\$ 3,786			420,098	433,837	448,055	462,770	477,999	
<b>CASH FLOW AVAILABLE FOR DEBT SERVICE</b>				741,603	756,907	772,457	788,255	804,302	
DEBT SERVICE & OTHER DISTRIBUTIONS		Loan Amount		Year-9	Year-10	Year-11	Year-12	Year-13	
Permanent Loan	Hard	\$ 7,516,963	0.052	502,274	502,274	502,274	502,274	502,274	
Other	NA	\$ -	-	-	-	-	-	-	
Asset Management Fees	Soft	\$ 13,600	-	13,600	13,600	13,600	13,600	13,600	
Deferred Developer Fee	Soft	\$ 2,064,668	-	225,730	241,033	256,584	57,392	-	
Other	Soft	\$ -	-	-	-	-	-	-	
Other	Soft	\$ -	-	-	-	-	-	-	
Other	Soft	\$ -	-	-	-	-	-	-	
Equity	Soft	\$ 1,848,567	-	-	-	-	107,495	144,214	
<b>ANNUAL NET CASH FLOW / YEILD</b>				-	-	-	107,495	144,214	
Deferred Dev. Fee Balance	Interest Rate:	0.00%		555,009	313,976	57,392	-	-	
Debt Service Coverage Ratio on Hard Debt				1.48	1.51	1.54	1.57	1.60	

**Oakland Senior  
Multi-Year Stabilized Operating Pro-Forma**

**Oakland, CA**

RENTAL INCOME	% AMI	Net Rent / Unit - Year 1	No. of Units	Annual Increase	Year 14	Year 15
1BR/1BA	50%	801	7	2.5%	92,752	95,071
1BR/1BA	55%	0	0	2.5%	-	-
1BR/1BA	60%	968	63	2.5%	1,008,805	1,034,026
1BR/1BA	0%	0	0	2.5%	-	-
2BR/1BA	50%	958	2	2.5%	31,695	32,487
2BR/1BA	55%	0	0	2.5%	-	-
2BR/1BA	60%	1,158	14	2.5%	268,181	274,886
2BR/1BA	0%	0	0	2.5%	-	-
3BR/2BA	50%	0	0	2.5%	-	-
3BR/2BA	55%	0	0	2.5%	-	-
3BR/2BA	60%	0	0	2.5%	-	-
3BR/2BA	0%	0	0	2.5%	-	-
4BR/2BA	50%	0	0	2.5%	-	-
4BR/2BA	55%	0	0	2.5%	-	-
4BR/2BA	60%	0	0	2.5%	-	-
4BR/2BA	0%	0	0	2.5%	-	-
COMMERCIAL	0%	0	0	2.5%	-	-
<b>TOTAL RENTAL INCOME</b>			<b>86</b>		<b>1,401,433</b>	<b>1,436,469</b>
OTHER INCOME			Units	Incr./Yr.	Year-14	Year-15
Laundry			86	2.5%	5,928	6,076
Tenant Charges & Interest			86	2.5%	5,928	6,076
<b>TOTAL OTHER INCOME</b>					<b>11,855</b>	<b>12,152</b>
<b>TOTAL INCOME</b>					<b>1,413,288</b>	<b>1,448,620</b>
Less Vacancy Allowance				7%	(98,930)	(101,403)
<b>GROSS INCOME</b>					<b>1,314,358</b>	<b>1,347,217</b>
OPERATING EXPENSES		Per Unit - Yr. 1	%EGI	Incr./Yr.	Year-14	Year-15
Advertising	\$	45	0.4%	3.5%	6,099	6,313
Legal	\$	23	0.2%	3.5%	3,128	3,237
Accounting/Audit	\$	47	0.4%	3.5%	6,256	6,475
Security	\$	-	0.0%	3.5%	-	-
Other: Telephone, Office Expense, Misc.	\$	(642)	-5.8%	3.5%	(86,346)	(89,368)
Management Fee	\$	702	6.3%	3.5%	94,463	97,769
Fuel	\$	2	0.0%	3.5%	313	324
Gas	\$	8	0.1%	3.5%	1,095	1,133
Electricity	\$	90	0.8%	3.5%	12,042	12,464
Water/Sewer	\$	540	4.9%	3.5%	72,568	75,107
On-Site Manager	\$	480	4.3%	3.5%	64,560	66,820
Maintenance Personnel	\$	90	0.8%	3.5%	12,042	12,464
Other: Payroll Taxes, Work Comp, Benefits	\$	319	2.9%	3.5%	42,852	44,352
Insurance	\$	200	1.8%	3.5%	26,900	27,842
Painting	\$	50	0.5%	3.5%	6,725	6,960
Repairs	\$	490	4.4%	3.5%	65,843	68,147
Trash Removal	\$	158	1.4%	3.5%	21,270	22,014
Exterminating	\$	16	0.1%	3.5%	2,190	2,266
Grounds	\$	360	3.3%	3.5%	48,483	50,180
Elevator	\$	-	0.0%	3.5%	-	-
Other: Cleaning & Building Supplies	\$	315	2.8%	3.5%	42,383	43,867
Other Licenses	\$	4	0.0%	3.5%	547	567
Other: State Tax	\$	9	0.1%	3.5%	1,251	1,295
Other:	\$	-	0.0%	3.5%	-	-
Other:	\$	-	0.0%	3.5%	-	-
Other:	\$	-	0.0%	3.5%	-	-
<b>TOTAL OPERATING EXPENSES</b>	\$	<b>3,306</b>			<b>444,664</b>	<b>460,227</b>
Internet Expense	\$	-	0.0%	3.5%	-	-
Service Amenities	\$	140	1.3%	3.5%	18,767	19,424
Reserve for Replacement	\$	300	2.7%	0.0%	25,800	25,800
Real Estate Taxes	\$	41	0.4%	2.0%	4,528	4,618
<b>TOTAL EXPENSES, TAXES &amp; RESERVES</b>	\$	<b>3,786</b>			<b>493,759</b>	<b>510,070</b>
<b>CASH FLOW AVAILABLE FOR DEBT SERVICE</b>					<b>820,599</b>	<b>837,148</b>
DEBT SERVICE & OTHER DISTRIBUTIONS		Loan Amount			Year-14	Year-15
Permanent Loan	Hard	\$ 7,516,963	0.052		502,274	502,274
Other	NA	\$ -	-		-	-
Asset Management Fees	Soft	\$ 13,600	-		13,600	13,600
Deferred Developer Fee	Soft	\$ 2,064,668	-		-	-
Other	Soft	\$ -	-		-	-
Other	Soft	\$ -	-		-	-
Other	Soft	\$ -	-		-	-
Equity	Soft	\$ 1,848,567	-		152,363	160,637
<b>ANNUAL NET CASH FLOW / YEILD</b>					<b>152,363</b>	<b>160,637</b>
Deferred Dev. Fee Balance	Interest Rate:	0.00%			-	-
<b>Debt Service Coverage Ratio on Hard Debt</b>					<b>1.63</b>	<b>1.67</b>

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

# OAKLAND CITY COUNCIL

*Mark P. Wald*  
City Attorney

2013 NOV -7 PM 1:33 RESOLUTION No. \_\_\_\_\_ C.M.S.

Introduced by Councilmember \_\_\_\_\_

**A RESOLUTION DENYING THE APPEAL OF CRADL AND CITIZENS4OAKLAND AND UPHOLDING THE CITY PLANNING COMMISSION'S CERTIFICATION OF AN ENVIRONMENTAL IMPACT REPORT AND APPROVAL OF A MIXED-USE PROJECT, CONSISTING OF 115 SENIOR HOUSING UNITS AND 3,446 SQUARE FEET OF RETAIL SPACE, AT 4311-4317 MACARTHUR BOULEVARD**

**WHEREAS**, AMG & Associates ("Applicant") filed applications for Major Conditional Use Permits, Variances, Design Review, and California Environmental Quality Act ("CEQA") Review for the High and MacArthur Mixed-Use Project ("Project") on March 5, 2010; and

**WHEREAS**, the City, commencing in 2011, began preparing a CEQA document (a focused Draft Environmental Impact Report, hereafter referred to as a "DEIR"), published a Notice of Preparation for the DEIR on May 18, 2011, and held a Scoping Meeting before the Planning Commission for the DEIR on June 15, 2011, all in accordance with CEQA; and

**WHEREAS**, the Planning Commission conducted a duly noticed public hearing on the DEIR on December 5, 2012, and the 45-day public comment period on the DEIR closed on December 10, 2012; and

**WHEREAS**, the City received comments on the DEIR and prepared a Response to Comment Document/ Final EIR ("FEIR") to address the comments received during the 45-day comment period; and

**WHEREAS**, the FEIR was published on June 28, 2013, along with a Notice of Availability/Release of the FEIR, both of which were sent to the Appellants via their attorney; and

**WHEREAS**, on July 17, 2013, the Planning Commission conducted a duly noticed public hearing on the Project, closed the public hearing, certified and made appropriate CEQA findings for the EIR, and approved the Project, subject to findings and conditions of approval; and

**WHEREAS**, the Planning Commission found, in part, that (i) the issues raised in comments on the DEIR were adequately addressed in the FEIR; and (ii) the Project would: be consistent with both the applicable zoning designation and General Plan classification; redevelop a vacant (except for a billboard), blighted site with a mixed-use project providing a combination of senior housing and commercial space in the Laurel District; meet the General Plan goals of providing new housing units and infill development on underused or vacant parcels on a site identified as a Housing Opportunity site in the City's Housing Element; enhance the area and be an addition to the surrounding neighborhood; result in the removal of an existing billboard and clean-up of existing



hazardous material contamination; not create substantial adverse impacts; and meet the criteria for design review, conditional use permits to allow increased density for senior housing, a reduction in parking for senior housing, and ground-level parking and loading areas, and variances for increased height to enable the higher density senior housing; and

**WHEREAS**, as previously stated, both the 45-day public comment period on the Draft EIR and public hearing on the Project under Public Resources Code section 21177(a) were closed by the City Planning Commission and a decision on the Project was made by the City Planning Commission on July 17, 2013, and also a Notice of Determination for the Project was filed on July 18, 2013; and

**WHEREAS**, on July 29, 2013, the Commercial and Retail Attraction and Development for the Laurel (CRADL) and Citizens4Oakland ("Appellants") filed an appeal to the City Council challenging the Planning Commission's decision ("Appeal"); and

**WHEREAS**, on November 19, 2013, the City Council conducted a duly noticed public hearing on the Appeal, in part, under Oakland Planning Code sections 17.130.050, 17.134.040A1 and 17.134.070 and CEQA Guidelines section 15185 (and not a public hearing on the Project under Public Resources Code section 21177(a), nor a de novo hearing; rather, the hearing on the appeal was limited only to the Issues properly presented to the City Council, as stated below); and

**WHEREAS**, all interested parties were given the opportunity to participate in the public hearing on the Appeal in accordance with all applicable City procedures; and

**WHEREAS**, the public hearing on the Appeal was closed by the City Council on November 19, 2013; now, therefore be it

**RESOLVED**, The City Council finds and determines, after having independently reviewed and considered the record and the EIR, that the responses to the DEIR public comments contained in the FEIR, as well as the staff report for the July 17, 2013 Planning Commission meeting and the City Council Agenda Report for the November 19, 2013 City Council meeting constitute substantial evidence that adequately address the issues raised by the Appellants; and be it

**FURTHER RESOLVED**, The City Council, having independently reviewed, heard, considered and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Applications, EIR, the decision of the Planning Commission, and the Appeal, hereby finds and determines that the Appellants have not shown, by reliance on appropriate/proper evidence in the record, that the Planning Commission's decision was made in error, that there was an abuse of discretion by the Planning Commission, and/or that the Planning Commission's decision was not supported by sufficient, substantial evidence in the record. This decision is based, in part, on the November 19, 2013 City Council Agenda Report, the July 17, 2013 Planning Commission staff report, and the EIR, all of which are hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeal is denied, the Planning Commission's decision to adopt the above-referenced CEQA findings (including that the EIR was completed in compliance with CEQA and the certification of the EIR) and other required findings and approve the Project are upheld; and be it

**FURTHER RESOLVED**, That, in further support of the City Council's decision to deny the Appeal and approve the Project, the City Council affirms and adopts as its own independent

findings and determinations (i) the November 19, 2013 City Council Agenda Report, including without limitation the discussion, findings, conclusions, conditions of approval (including the Standard Conditions of Approval/Mitigation and Monitoring Program (“SCAMMRP”)) (each of which is hereby separately and independently adopted by this Council in full); and (ii) the July 17, 2013 Planning Commission staff report, including without limitation the discussion, findings, conclusions, conditions of approval and SCAMMRP (each of which is hereby separately and independently adopted by this Council in full); and be it

**FURTHER RESOLVED**, As a separate and independent basis, certain arguments, issues and/or evidence (hereafter Issues) raised in the Appeal are not properly before the City Council since they were not specifically raised (a) during the seventeen (17) day public comment period on the Project, up to and including the July 17, 2013 City Planning Commission hearing/decision on the Project; and/or (b) during the Draft EIR’s 45-day public comment period and related to the current Project. The requirement to present any and all Issues during the aforementioned periods (and therefore limiting any appeal to such previously presented Issues) is provided for in (i) various notices/agendas for the Project, for which the Appellant had actual and construction notice; (ii) the City’s Appeal Form (which has not been revised since May 2011); (iii) the City’s July 22, 2013 decision letter on the Project; and (iv) various provisions of the Oakland Planning Code, including without limitation sections 17.130.050 (Presentation of written and documentary evidence); 17.134.040A1 (Procedure for Consideration of Major CUP at the Planning Commission hearing); and 17.134.070 (Appeal to City Council for Major CUP). Although the City Council is not legally obligated to consider Issues not properly before it, it has nevertheless considered them – without waiving any of its rights to object to the late/improper submittal of the Issues-- as detailed in the November 19, 2013 City Council Agenda Report; and be it

**FURTHER RESOLVED**, As a further separate and independent basis, certain Issues raised during the Draft EIR’s 45-day public comment period are also not properly before the City Council because they were written and submitted for an earlier (2008) project, not the current Project. Thus, Issues that were not raised on the adequacy of the current Project’s DEIR but rather on the earlier project are by definition unrelated to the current Project’s Draft EIR since they were prepared years prior to the release of the current Project’s Draft EIR. Although the City Council is not legally obligated to consider Issues not properly before it, it has nevertheless considered them – without waiving any of its rights to object to the late/improper submittal of the Issues-- as detailed in the November 19, 2013 City Council Agenda Report; and be it

**FURTHER RESOLVED**, The public hearing on the Appeal is not a de novo hearing -- in accordance with the Oakland Planning Code and the decision in *Mashoon v. City of Oakland* (Appeal No. A077608; filed December 9, 1997; First Appellate District, Division Five); rather, it is limited only to the Issues properly presented to the City Council, as stated above; and be it

**FURTHER RESOLVED**, 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 Determination with the appropriate agencies; and be it

**FURTHER RESOLVED**, The record before this Council relating to this Resolution includes, without limitation, the following, as it relates to the current Project (and not the earlier, 2008 project):

1. the Applications, including all accompanying maps and papers;
2. all plans submitted by the Applicant and its representatives;
3. all staff reports, decision letters, and other documentation and information produced by or on behalf of the City, including without limitation the Draft and FEIR (collectively called "EIR") and supporting technical studies, all related and/or supporting materials, and all notices relating to the Applications and attendant hearings;
4. all oral and written evidence properly received by City staff, the Planning Commission, and the City Council before and during the public hearings on the Applications, as stated above;
5. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan; (b) the Oakland Municipal Code; (c) the 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**, 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 (a) the Planning and Building Department, Planning and Zoning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California, and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, First Floor, Oakland, California; and be it

**FURTHER RESOLVED**, per standard City practice, if litigation is filed challenging this decision, or any subsequent implementing actions, then the time period for obtaining necessary permits for construction or alteration and/or commencement of authorized construction-related activities stated in Condition of Approval #2 is automatically extended for the duration of the litigation; and be it

**FURTHER RESOLVED**, 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, \_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF and  
PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

LaTonda Simmons

City Clerk and Clerk of the Council  
For the of City of Oakland, California