

CITY OF OAKLAND
REDEVELOPMENT AGENCY
SUPPLEMENTAL AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2004 JUL -1 PM 2:09

TO: Office of the City Manager / Agency Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: July 6, 2004

RE: A SUPPLEMENTAL REPORT ON:

A TOTAL OF FIVE CITY AND AGENCY RESOLUTIONS REGARDING REDEVELOPMENT ACTIVITIES IN THE UPTOWN ACTIVITY AREA OF THE CENTRAL DISTRICT REDEVELOPMENT PROJECT AREA:

AGENCY RESOLUTIONS: (1) AUTHORIZING EXECUTION OF A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT, GROUND LEASES, AND RELATED DOCUMENTS BETWEEN THE REDEVELOPMENT AGENCY, THE CITY OF OAKLAND, AND UPTOWN PARTNERS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, FOR THE DEVELOPMENT OF A MIXED-USE RESIDENTIAL RENTAL AND RETAIL DEVELOPMENT PROJECT IN THE UPTOWN ACTIVITY AREA OF THE CENTRAL DISTRICT REDEVELOPMENT PROJECT AREA; (2) ADOPTING A REPLACEMENT HOUSING PLAN FOR HOUSING UNITS THAT MAY BE DEMOLISHED AT THE WESTERNER HOTEL, 1918 - 1954 SAN PABLO AVENUE, FOR THE UPTOWN PROJECT; AND (3) AUTHORIZING THE AGENCY ADMINISTRATOR TO EXECUTE A COOPERATION AGREEMENT WITH THE CITY AND THE COALITION FOR WORKFORCE HOUSING RELATING TO THE DEVELOPMENT OF A ONE HUNDRED PERCENT (100%) AFFORDABLE HOUSING PROJECT ON A PARCEL LOCATED IMMEDIATELY BEHIND THE FOX THEATER BETWEEN 18TH AND 19TH STREET IN THE UPTOWN ACTIVITY AREA OF THE CENTRAL DISTRICT REDEVELOPMENT PROJECT AREA

CITY RESOLUTIONS: (1) AUTHORIZING APPROVAL AND EXECUTION OF A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT, GROUND LEASES, AND RELATED DOCUMENTS BETWEEN THE REDEVELOPMENT AGENCY, THE CITY OF OAKLAND AND UPTOWN PARTNERS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, FOR THE DEVELOPMENT OF A MIXED USE RESIDENTIAL RENTAL AND RETAIL DEVELOPMENT PROJECT IN THE UPTOWN ACTIVITY AREA OF THE CENTRAL DISTRICT REDEVELOPMENT PROJECT AREA; AND (2) AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A COOPERATION AGREEMENT WITH THE REDEVELOPMENT AGENCY AND THE COALITION FOR WORKFORCE HOUSING RELATING TO

Item: 14.4

City Council/Redevelopment Agency
July 6, 2004

**THE DEVELOPMENT OF A ONE HUNDRED PERCENT (100%)
AFFORDABLE HOUSING PROJECT ON A PARCEL LOCATED
IMMEDIATELY BEHIND THE FOX THEATER BETWEEN 18TH AND
19TH STREET IN THE UPTOWN ACTIVITY AREA OF THE CENTRAL
DISTRICT REDEVELOPMENT PROJECT AREA**

On June 22, 2004, the Community and Economic Development Committee (CEDC) considered a recommendation for a proposed Lease Disposition and Development Agreement (LDDA) between the Agency and Uptown Partners LLC (UP) to develop the Uptown Project. The Committee asked staff to respond to the following questions.

1. What is UP's financial contribution to the project?

UP is contributing approximately \$31.7 million in developer equity to the project, which comprises approximately 16 percent of the total project development costs, including the Agency's financial assistance.

2. Which parcels does UP currently own in the Project Area?

UP owns the following three properties in that block of the Project Area that is bound by Thomas L. Berkley Way (formerly 20th Street) on the north, Telegraph Avenue on the east, William Street on the south and San Pablo Avenue on the west: 588, 592 and 596 William Street. Collectively, these properties measure approximately 11,000 square feet and are located on what will be developed as Parcel 2. Forest City purchased these properties for \$234,000

3. Are there mitigations for cumulative air pollution and traffic impacts? Can a mitigation fund be set up for the cumulative traffic mitigation measure to West Grand Avenue/Frontage Road? Can contributions to mass transit be required as a mitigation?

The Project EIR identifies cumulative significant and unavoidable air quality impacts as the result of increased traffic from the Uptown Project, as well as from other growth expected during the next 15 years. As a significant and unavoidable impact, it is not required to be mitigated. However, to the extent feasible, the City often attempts to incorporate other mitigation measures and requirements for projects that will aid in decreasing the impact, even if it cannot be mitigated to a less than significant impact. For this project, staff would note that the incorporation of housing within a central core downtown area close to BART and AC Transit will substantially aid in the long-term decrease in automobile trips. It is a great example of the smart growth policies being encouraged on a region-wide basis by Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC). Staff does not recommend that the Council incorporate a mass transit fee at this time because discussions with BART and

AC Transit have not occurred to the extent necessary to ascertain what set of improvements such a fee would be based upon.

With regard to West Grand and Frontage, this intersection will require millions of dollars of improvements, perhaps including the acquisition of land for new columns for widening the elevated roadway. Sufficient design work has not been completed to determine whether this measure is feasible. In addition, the City does not have the authority to implement this mitigation, if it proved to be feasible. This intersection and the surrounding area are within the jurisdiction of California Department of Transportation (Caltrans). Thus, this impact must be determined to be significant and unavoidable because the City does not have the sole ability to implement the improvement. However, if the Council deems it desirable, a condition of approval could be added to require Forest City to contribute their fair share of this improvement in the future, if it is determined to be feasible. This fair share contribution would be based on the number of new vehicle trips that are projected to be generated from the proposed development up to a maximum amount that has to be determined.

4. Explain UP's "Option-to-Purchase" the Agency-owned properties.

UP will have an option to acquire the Agency-owned properties during the term of the proposed ground lease. If the developer exercises the option during the initial 66-year term of the lease, the purchase price will equal the lesser of: (1) the fair market value (FMV) of the Agency's interest in the land, or (2) the Agency's cost of acquiring the land, including Agency's relocation costs, legal fees, legal settlement costs and demolition costs. The Agency's site assembly costs will be adjusted each year by applying the annual Consumer Price Index (CPI) increase to the date of purchase with a minimum and maximum annual increase of 2% and 5%, respectively. If UP exercises the purchase option after it extends the initial lease term by another 33 years, the purchase price will be the FMV of the Agency's interest in the land.

At this time, the Agency's total estimated site assembly costs are approximately \$20.7 million. Over the last 15 years, the Agency has acquired 30 parcels at a total cost of approximately \$6.5 million and the Agency has set aside an additional \$14.2 million to (1) acquire 8 privately-owned properties in the Project Area, which include the 3-acre property owned by Sears, Roebuck and Company ("Sears"), and (2) relocate any residential tenants, businesses and billboards occupying these parcels.

It is probable that the FMV of these properties will increase at a higher rate than the applicable annual CPI adjustments. Hence, if the developer exercises their option-to-purchase during the first 66 years, the Agency-owned properties would likely be sold at CPI Adjusted cost. In order to determine the FMV of the properties at the time that UP wishes to exercise its option-to-purchase, the Agency will commission an appraisal.

5. What happens if Phase II is not built?

UP wants to develop the project (Parcels 1, 2, 3 & 4) in one phase, subject to available financing. If UP can only secure an allocation of multi-family tax-exempt family housing bonds sufficient to cover the development of Parcels 1, 2 and 4 (Phase 1), they will have the opportunity to apply to CDLAC for another bond funding allocation for a second phase, which would consist of Parcel 3 only. The LDDA allows them to apply for this second phase over the ensuing 12 months period.

The Agency would convey Parcel 3 to UP at the earlier of (1) UP having achieved 50 percent occupancy for the first project phase and closing the financing for Parcel 3, or (2) within 3 years of the close of escrow for Phase 1, upon UP having submitted evidence of sufficient financing for phase 2. If UP cannot comply with this schedule, the Agency would not transfer Parcel 3 to UP, nor would the Agency be obligated to make any of the pro-rated gap financing assistance or tax increment reimbursement (approximately \$3.9 million) available for that project phase. At that point, the Agency would have the option to issue another Request for Proposals for the development of Parcel 3.

6. What are the performance penalties?

The LDDA includes a very detailed "Schedule of Performance" which requires the developer to complete a sequence of steps according to strict deadlines, subject to extension for "force majeure" (circumstances outside the parties' control which causes delay- e.g., natural disasters, fires, floods, etc.).

The Schedule of Performance, for instance, dictates when the parties open escrow, the deadlines for UP to apply for bond financing, timetables for when the developer must submit all construction documents to the Agency for its approval, and the latest dates by which the developer must both start construction and complete the project.

If the developer fails to meet any of the deadlines, or if it does not complete construction of the Project: "...expeditiously, diligently, within the timeframes set forth in the Schedule of Performance and in accordance with good construction and engineering practices and applicable law," (LDDA Section 6.1(b)), then it has committed a default under the LDDA (see question 14 below for a description of the Agency's rights if the Developer defaults).

7. What happens in foreclosure to the Agency's affordable housing requirements?

When a lender requires a developer to "subordinate" a recorded restriction (e.g., affordable housing requirements), the restrictions are wiped out if the developer defaults on its loan, and the lender forecloses.

California Redevelopment Law (Health & Safety Code Section 33334.14) permits a redevelopment agency to "subordinate" rental affordable housing requirements if:

(1) required by a Federal or State program that is providing financial assistance to the project; or

(2) for other lenders, the Agency finds that **both** of the following exist:

- It is not economically feasible for the developer to find a loan on comparable terms that does not require subordination of the affordable housing requirements; and
- The Agency can reasonably protect its interest in the project, for instance, by requiring the lender to allow the Agency to "cure" the developer's default (e.g., pay off the delinquent loan payments).

Historically in Oakland, lenders on projects including affordable housing requirements will only make a loan to the developer if the parties subordinate the affordable housing requirements. This means that if the lender on the Uptown Project requires subordination (which is very likely), the Agency's affordable housing requirements in the Uptown Project can be wiped out if the Developer defaults and the lender forecloses on the project.

8. Provide the LDDA/Ground lease wording regarding environmental cleanup insurance minimum requirements, and what happens if we have a cost overrun.

Section 2.6 (b) of the LDDA, currently in draft form, which covers the minimum requirements for the environmental clean-up insurance is attached to this report as Attachment 1.

9. What guarantee is there that the Council will not be asked for more money for environmental clean-up after approving the LDDA.

At this time, there is no guarantee that staff would not seek future Council approval for additional funding for site clean-up after approval of the LDDA. Until the Agency and UP have obtained a final Guaranteed, Fixed Price Remediation Contract, it is not known if available funds (\$3,585,600) for hazardous materials abatement are sufficient. In mid-July, the Agency will receive the results of its comprehensive hazardous materials testing program for the site. These results will provide an assessment of the extent of soil and groundwater contamination and a preliminary remediation cost estimate. This information will be the basis for the preparation of the Remedial Action Plan for the site and the subsequent solicitation of bids for a Guaranteed, Fixed Price Remediation Contract. If the final bid price is in excess of available funds, the parties will meet and confer to determine how any additional costs will be covered. This process could lead to an additional request for funding from the City Council. Once funding has been identified, UP and the Agency will obtain a cost cap liability insurance policy in an amount equal to 100% of the Guaranteed Fixed Price Remediation Contract.

If unknown contaminants are discovered during construction, a pollution legal liability insurance policy will cover any remediation costs up to \$20,000,000 in the aggregate. At this time, there is no reason to believe that there are any unidentified contaminants on the site that would require a clean-up of this order of magnitude.

10. What environmental liability does Sears have? How will this factor into site assembly?

Currently, Sears is liable for any hazardous contamination that is present on their site. Sears may be able to seek cost recovery from responsible third parties. Sears has verbally acknowledged that they bear some responsibility for the clean-up of their site. Staff has informed Sears about the Agency's ability to order a clean-up of Sears' property that would have to be paid in full by Sears. The contribution toward site clean-up by Sears will be negotiated as part of the purchase and sales agreement for the transaction.

11. What triggers receipt of participation rent payments by the Agency? Can these participation rent payments be triggered earlier?

Pursuant to the Ground Lease, UP, in consideration of the financial assistance provided by the Agency and City, will make participation rent payments to the Agency. The Agency will receive a 25 percent participation in the excess net cash flow generated by the property. Excess net cash flow is defined as any net cash flow generated by the Uptown Project that is greater than that cash flow required to provide a 12 percent cumulative annual return on developer's equity including any outstanding balance of cumulative preferred return. The Agency's ground rent payments will continue until the Agency has been repaid the Agency's and City's financial assistance to the project.

Participation rent payments are triggered at the time that UP receives its 12 percent cumulative annual return, which based on current projections may not occur until 2017. As a result, the participation payments cannot be triggered earlier. If the project performs well, however, UP will receive its preferred return earlier than currently projected, which means that the Agency will receive its 25 percent participation rent earlier as well. In addition, if UP refinances the first mortgage for the project and is able to reduce or eliminate its equity contribution, the Agency will receive its participation payments earlier as it will no longer be in a subordinate position to UP's equity in terms of the receiving the Agency's 25 percent participation in the excess cash flow from the project.

12. What is the significance of the "2020" date.

On June 22, 2004, staff recommended approval of an ordinance that would extend by one year the ability of the redevelopment agency to collect tax increment for the Central District Urban Renewal Area to the Community and Economic Development Committee. Currently, the Agency's ability to collect tax increment expires on June 11, 2019.

UP financial projections indicate that they will require a reimbursements of the net available tax increment generated by and collected from the Uptown Project until 2020 in order to service additional debt in the amount of approximately \$12.1 million. Hence, 2020 is the last year during which the Agency will reimburse the net available tax increment to UP.

13. Will the 17th street garage money be needed? What if this money is not available?

The Unrestricted Land Sale Proceeds Fund includes approximately \$3.8 million that will be reallocated from the 17th & San Pablo Parking Garage project to provide financial assistance to the Uptown Project. If the 17th & San Pablo Parking Garage project with Rotunda Partners is approved by the Council, then the \$3.8 million will be available for the Uptown Project. If the Council does not approve the 17th & San Pablo Parking Garage project, then the City would have to issue parking bonds that are repayable by parking garage revenues, as previously presented to the Council. The proposed use of \$3.8 million from Unrestricted Land Sale Proceeds will (1) eliminate any potential adverse impact on staffing levels in the Public Works Agency that would result from the reallocation of parking revenue to cover bond payments instead of personnel costs, and (2) reduce the amount of City money going into the Uptown Project.

14. What is the liability of UP in a default situation?

If the Developer defaults under the LDDA and does not cure its default, the LDDA gives the Agency the right to all remedies permitted by law or equity including any or all of the following:

- The Agency can terminate the LDDA and the Developer loses all rights to develop the site; since the Agency is not selling the site, but only leasing the site to the Developer, on LDDA termination, the full property title reverts back to the Agency;
- The Agency can institute an action for specific performance (e.g., force the Developer to perform its duties); and
- The Agency can sue for its actual damages.
- The Agency can acquire UP's properties in the Project Area at the original acquisition costs.

Only the Developer entity would be liable for a default; no individual member, shareholder, owner, or officer of Uptown Partners would be liable.

Because the Developer likely will have little assets, the LDDA requires a financially strong parent company to guarantee that it will complete the Project if the Developer defaults. The parties are negotiating the terms of the Guaranty.

15. Provide a chart showing Agency Costs, the subsidy to UP, and potential payback and revenues to the City.

The following provides an overview of the Agency's and City's funding contribution to the Uptown Project.

Activity	Agency's + City's Costs	UP Subsidy	Discounted UP Payback to City	UP Subsidy after Payback
Site Assembly Costs (Past and Estimated Future)	\$20,700,000	\$20,700,000	\$4,177,362	\$16,522,638
Agency + City Gap Financing	\$13,635,749	\$13,635,749	\$5,441,272	\$8,194,477
Net Available Increment + Net Business Tax Reimbursement 2007- 2020	\$12,114,708	\$12,114,708	\$3,777,226	\$8,337,482
Hazardous Materials Abatement (Reimbursement to Uptown Partners)	\$2,585,600	\$0	\$0	\$0
Off-site Improvements	\$5,700,000	\$0	\$0	\$0
Public Park (City funds)	\$1,000,000	\$0	\$0	\$0
TOTAL	\$55,736,057	\$46,450,457	\$13,395,860	\$33,054,597

Agencies often provide for the construction of the necessary off-site public improvements, such as streets, utilities, parks, playgrounds, etc. to carry out the goals of the redevelopment plan. In the case of the Uptown Project, the Agency is prepared to pay for the installation of all off-site improvements and the construction of a publicly-owned park. Agencies will also frequently provide a "clean" site to developers, either by causing any hazardous materials remediation to be completed by responsible third parties, or by completing any remediation itself. Hence, the Agency's payments for off-site public improvements and hazardous materials remediation are not specific to the Forest City Project, but are needed to prepare the site for development regardless of the developer or the proposed use for the site. This point is reflected in the column titled "UP Subsidy".

According to the terms of the LDDA, the Agency (which has assigned all of its participation rent payments to the City), is entitled to cash flow participation during operation and at the sale of the project. As shown above, the assigned participation rent payments to the City which are estimated to begin in 2018 and end in 2027, the year in which UP's interests in the project are assumed to be sold for analytical purposes, amount to approximately \$9.2 million, if discounted at an annual rate of 6 percent. In addition, if UP exercises its option-to-purchase, which, for analytical purposes, is assumed to occur exactly at the expiration of the initial 66-year ground lease term, the present value of the purchase price, if discounted at an annual rate of 6 percent, would be in an amount of \$4,177,362. Collectively, the participation payment requirement and the developer's exercise of its option-to-purchase would yield approximately \$13.4 million to the Agency in this scenario. These payments would reduce the actual project subsidy to \$33.0

million. The actual subsidy after payback to the Agency will depend on when and if UP exercises its purchase option, and when participation payments to the Agency begin.

16. What is the projected tax benefit for the City?

Beginning in 2021, property taxes will accrue to the City and are now projected to yield approximately \$914,000 in the first year and increasing by 2 percent thereafter. Business license tax will begin to accrue to the City in 2009, starting at approximately \$170,000 per year. Before the City's receipt of property taxes in 2021, the City will receive a 34.8 percent tax sharing payment (beginning with approximately \$101,000 during the first year of project completion) from property taxes generated by the Uptown Project, which are not part of the reimbursement agreement with UP.

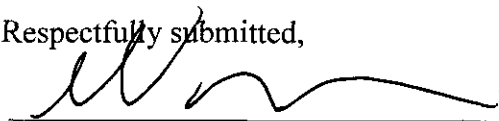
17. What triggers the reimbursement of business license tax to Uptown Partners?

If the net available tax increment generated by the Uptown Project is sufficient to cover the required schedule of payments for additional private financing in the amount of \$12.1 million, then the Agency will not be required to reimburse an amount of up to the projected business taxes payable to the City by UP for their rental housing project. However, based on current projections, the estimated net available tax increment generated by the project is not enough to cover the required payment schedule. Hence, the Agency will need to rebate all or a portion of the business taxes. Nevertheless, depending on future changes to the Educational Revenue Augmentation Fund, the Agency may need to reimburse less business taxes to achieve the annual rebate schedule.

Mitigation Monitoring and Reporting Program

The Environmental Impact Report for the Uptown Project identified potentially significant impacts with regard to subsurface historical and cultural resources that may be encountered during the course of construction. Staff received comments and concerns from the Chinese Historical Society regarding the archeological mitigation measures, and Anna Naruta, who has been working on this issue, has proposed revised language. Staff has reviewed the language and incorporated some of the proposed changes. The revisions are reflected in Attachment 2.


Respectfully submitted,



Daniel Vanderprieem,
Director of Redevelopment, Economic
Development, and Housing and
Community Development

Prepared by:
Jens Hillmer, Urban Economic Analyst IV
Downtown Redevelopment Unit

APPROVED AND FORWARDED TO
THE CITY COUNCIL/REDEVELOPMENT
AGENCY



Deborah Edgerly
City/Agency Administrator

Item: 14.4
City Council/Redevelopment Agency
July 6, 2004

Attachment 1

2004 JUL -1 PM 2:09

Draft Section 2.6 of the Lease Disposition and Development Agreement

(b) Environmental Cost Cap Financial Insurance

Requirements. The Developer agrees to enter into a guaranteed, fixed price remediation contract with an environmental engineering remediation firm that has substantial experience with fixed price remediation contracts and that has annual gross revenues in excess of thirty million dollars (\$30,000,000) (Qualified Remediation Contractors). The Qualified Remediation Contractor shall be selected following a competitive bidding process. The competition will occur in two stages:

(i) Upon completion of further Site characterization and a proposed Remediation Plan approved by the Parties, the Developer will send a Request for Proposal ("Remediation RFP") to three Qualified Remediation Contractors, seeking a proposal for a "Guaranteed, Fixed Price Remediation Contract", consisting of (A) a fixed priced contract to complete all site investigation and remediation work identified in the proposed Remediation Plan, (B) a guarantee, in the form of a remediation cost cap insurance policy, with an insurance company with a financial rating acceptable to the Parties, that includes as the named Insureds the Remediation Contractor and Developer, and includes the other Parties (*Agency and City*) as additional named Insureds, and includes a coverage limit that is the **higher** of three million dollars (\$3,000,000) or the estimated remediation cost in the fixed price ("Remediation Cost Cap Insurance Policy"), and (C) a pollution legal liability insurance policy that includes as the named insureds the Remediation Contractor and Developer and includes the other Parties as additional named Insureds, that includes a coverage limit of no less than ten million dollars (\$10,000,000) per occurrence and twenty million dollars (\$20,000,000) in aggregate, and that has a minimum term of ten years ("Pollution Liability Policy"). The Guaranteed, Fixed Price Remediation Contract shall include without limitation (X) all proposed contractual terms and conditions, (Y) the binders and policies for the Remediation Cost Cap Insurance and Pollution Liability Policies, and (Z) the total "fixed price" including without limitation a budget separately identifying Site investigation and remediation costs required to complete the proposed Remediation Plan (draft "Remediation Budget") and the Remediation Cost Cap Insurance and Pollution Liability Policy premium payments (draft "Insurance Premium"). The Remediation RFP shall seek such Guaranteed, Fixed Price Remediation Contract proposals based on existing Site data (as compiled in the Phase I Report prepared by Matrix in 2003, Site Assessment Reports in the possession of any Party, other site data that becomes available as of issuance of the Remediation RFP in 2004, and the proposed Remediation Plan. The Agency shall have a reasonable opportunity to review, comment on, and approve the Guaranteed, Fixed Price Remediation Contract proposals, provided that the Agency's review will not be unreasonably delayed

Supplemental Report
July 6, 2004
Attachment 1

and the Agency's approval will not be unreasonably withheld or delayed. Following review of the proposals by the Parties, the lowest responsive contractor shall be selected by the Developer as the presumptive Remediation Contractor for the Site.

(ii) The Parties shall thereafter conclude discussions with the Regional Water Quality Control Board and shall secure Regional Board approvals of the final Remediation Plan and Prospective Purchaser Agreement. The Parties may periodically consult with the presumptive Remediation Contractor during this period. Upon Regional Board approval of the Remediation Plan and PPA, the presumptive Remediation Contractor shall prepare a final proposed Guaranteed, Fixed Price Remediation Contract for the Site for review by the Parties, including all modifications and final terms for the proposed Guaranteed, Fixed Price Remediation Contract, Remediation Cost Cap Insurance Policy, and Pollution Liability Policy.

If the final Guaranteed, Fixed Price Remediation Contract exceeds the current allocation of hazardous material remediation funds of \$3,585,600 (\$2,585,600 from the Agency and \$1.0 from UP), then the parties can meet and confer as to whether to abandon the project, or to identify additional funding to cover any gap.

ATTACHMENT 2

Revision to Mitigation Measures HIST-2a and HIST-2b

New HIST-2a and HIST-2b

[For inclusion in Mitigation Monitoring and Reporting Plan (MMRP)]

Mitigation Measure

HIST-2a: A pre-construction archaeological testing program shall be implemented to help identify whether historic or unique archaeological resources exist within the Project site. Examples of potential historic or unique archaeological resources that could be identified within the Project site include: back-filled wells; basements of buildings that pre-date Euro-American buildings that were constructed on the Project site; and backfilled privies. For these resources to be considered significant pursuant to CEQA, they would have to have physical integrity and meet at least one of the criteria listed in CEQA Guidelines section 15064.5(a)(3) (for historic resources) and/or CEQA section 21083.2(g) (for unique archaeological resources). These criteria include: association with events that have made a significant contribution to the broad patterns of California history and cultural heritage; association with the lives or persons important in our past; embodiment of the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; yield, or may likely yield, information important in prehistory or history; contains information needed to answer important scientific research questions and be subject to a demonstrable public interest in that information; have a special and particular quality such as being the oldest of its type or the best available example of its type; or be directly associated with a scientifically recognized important prehistoric or historic event or person.

The testing program shall be guided by a sensitivity study (including a history of previous land uses) and, in conjunction with a sensitivity study, shall use a combination of subsurface investigation methods (including backhoe trenching, augering, and archaeological excavation units, as appropriate). The purpose of the sensitivity study and testing program is to: (1) identify the presence and location of potentially-significant archaeological deposits; (2) determine if such deposits meet the definition of a historical resource or unique archaeological resource under section 21083.2(g) of the CEQA statutes; (3) guide additional archaeological work, if warranted, to recover the information potential of such deposits; and (4) refine the archaeological monitoring plan.

Representatives of established local Chinese-American organizations (including the Chinese Historical Society of America and the Oakland Asian Cultural Center) shall be invited to participate in a focused community review of the sensitivity study and plan for the subsequent testing program prior to initiation of subsurface investigation. The City shall consider the community comments in finalizing the sensitivity study and testing program.

If historic or unique archaeological resources associated with the Chinese community are identified within the project site and are further determined to be unique, the City shall consult with representatives of an established local Chinese-American organization(s)

regarding the potential use of the archaeological findings for interpretive purposes.

Implementation Procedure

1) Project Sponsor shall retain an archaeologist to implement a pre-construction archaeological testing program, as described in the mitigation measure.

2) Archaeologist shall provide the sensitivity study and plan for the archaeological testing program for focused community review by representatives of established local Chinese-American organizations (including the Chinese Historical Society of America and the Oakland Asian Cultural Center). Community reviewers shall be provided 14 days to review sensitivity study and archaeological testing program and provide written comments. The City shall consider the community comments in finalizing the sensitivity study and archaeological testing program.

3) ~~2~~) Archaeologist shall prepare a plan for additional data recovery of archaeological material, if deemed necessary.

4) If additional data recovery of archaeological material is deemed necessary, Archaeologist shall submit the plan to focused community review by representatives of established local Chinese-American organizations (including the Chinese Historical Society of America and the Oakland Asian Cultural Center). Such community reviewers shall be provided 14 days to review the plan and provide written comments.

5) ~~3~~) Project Sponsor shall consult with representatives of the Chinese-American community regarding the potential use of archaeological findings.

Monitoring Responsibility

1) City of Oakland Community and Economic Development Agency, Planning Division.

2) City of Oakland Community and Economic Development Agency, Planning Division.

3) City of Oakland Community and Economic Development Agency, Planning Division.

4) City of Oakland Community and Economic Development Agency, Planning Division.

5) City of Oakland Community and Economic Development Agency, Planning Division.

Monitoring and Reporting Action

1) Receive notice that an archaeologist has been retained.

2) Verify that appropriate groups have been contacted to review sensitivity study and archaeological testing program. Verify community comments have been collected and reviewed and considered.

3) 2) Verify that a research design is prepared.

4) Verify that appropriate groups have been contacted to review research design and plan for additional data recovery. Verify community comments have been collected and reviewed and considered.

5) 3) Verify that the appropriate groups have been contacted regarding archaeological findings within the Project site.

Monitoring Schedule

1) Prior to approval of any permit that authorizes removal of foundations or work below finished grade.

2) Prior to approval of any permit that authorizes removal of foundations or work below finished grade.

3) Prior to approval of ~~any~~ any permit that authorizes removal of foundations or work below finished grade.

4) Prior to approval of ~~any~~ any permit that authorizes removal of foundations or work below finished grade.

5) 3) During Project construction.

Non-Compliance Sanction

1) No approval of ~~the~~ any permit that authorizes removal of foundations or work below finished grade.

2) No approval of ~~the~~ any permit that authorizes removal of foundations or work below finished grade.

3) No approval of ~~the~~ any permit that authorizes removal of foundations or work below finished grade.

4) No approval of ~~the~~ any permit that authorizes removal of foundations or work below finished grade.

5) City issues corrective action or stop work order. ~~3) No approval of the grading permit.~~

Mitigation Measure

HIST-2b: Archaeological monitoring of ground-disturbing construction in the Project area shall be conducted, as appropriate and if necessary, based on the results of the pre-construction testing program and the potential for encountering unidentified archaeological deposits. Upon completion of the pre-construction testing program specified in Mitigation Measure HIST-2a, the extent of archaeological monitoring during Project construction will be assessed, and the scope and frequency of the monitoring required by this mitigation measure shall be based on the findings of this assessment. Monitoring shall be conducted by a cultural resource professional approved by the City who meets the Secretary of the Interior's Professional Qualifications Standards for Prehistoric and Historical Archaeology.

Upon completion of such archaeological monitoring, evaluation, or data recovery mitigation, the archaeologist shall prepare a report documenting the methods, results, and recommendations of the investigation, and submit this report to the NWIC. Public displays of the findings of archaeological recovery excavation(s) of historical or unique resources shall be prepared. As appropriate, brochures, pamphlets, or other media, shall be prepared for distribution to schools, museums, libraries, and – in the case of Chinese or Chinese-American archaeological deposits– Chinese- American organizations.

Implementation Procedure

- 1) Project Sponsor shall retain an archaeologist to monitor ground-disturbing activity within the Project site, as described in the mitigation measure.
- 2) Archaeologist shall halt work in the vicinity of the archaeological resource until findings can be made regarding whether the resource meets the CEQA definition of an archaeological or historic resource.
- 3) If identified archaeological resources meet CEQA criteria for archaeological or historic resources, they shall be avoided by demolition or construction activities. If avoidance is not feasible, then effects to the deposit shall be mitigated through a data recovery strategy developed by the evaluating archaeologist, as described in the mitigation measure. This report shall be submitted to the NWIC.

Monitoring Responsibility

- 1) City of Oakland Community and Economic Development Agency, Planning Division.
- 2) City of Oakland Community and Economic Development Agency, Planning Division.
- 3) City of Oakland Community and Economic Development Agency, Planning Division.

Monitoring and Reporting Action

- 1) Receive notice that an archaeologist has been retained.
- 2) Verify that work is suspended if archaeological resources are found.
- 3) Review and approve the archaeological resources mitigation plan, if one is prepared.

Monitoring Schedule

- 1) Prior to approval of any permit that authorizes removal of foundations or work below finished grade.
- 3) During demolition or Project construction.
- 3) During Project construction.

Non-Compliance Sanction

- 1) No approval of any permit that authorizes removal of foundations or work below finished grade.
- 2) City issues corrective action or stop work order.
- 3) City issues corrective action.

14.4
ORA/COUNCIL
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