

CITY OF OAKLAND

AGENDA REPORT FILED
OFFICE OF THE CITY CLERK
OAKLAND

2010 JUN 24 PM 5:10

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: July 6, 2010

RE: **A Public Hearing To Consider Adopting A Resolution Denying The Appeal (A10-139) Thereby Upholding The Planning Commission Decision To Adopt California Environmental Quality Act Findings And Approve A Planned Unit Development Permit (Including A Preliminary Development Plan For The Project And A Final Development Plan For Phase 1 Of The Project), Design Review For Phase 1 Of The Project, A Conditional Use Permit For Demolition Of Existing Rooming Units, And A Minor Variance For Off-Street Parking For The Alta Bates Summit Medical Center, Summit Campus Seismic Upgrade And Master Plan Project (Planning Case File Numbers ER09-0009, PUD09-104 And DR09-105)**

SUMMARY

Alta Bates Summit Medical Center (ABSMC), an affiliate of Sutter Health ("Applicant"), seeks City approval for its Seismic Upgrade and Master Plan Project, which consists of a Planned Unit Development Permit (including a Preliminary Development Plan for the Project and a Final Development Plan for Phase 1 of the Project), Design Review for Phase 1 of the Project, Conditional Use Permit for demolition of existing rooming units, and a minor variance for off-street parking (Project). Phase 1 improvements enabled by these approvals include construction of a new 11-story Patient Care Pavilion (hospital) with 309 acute care beds, and a new 1,067 space parking garage. Future Phases include a new fitness center to be located at the top of the Phase 1 parking structure, a new medical office building, a new building for use by Samuel Merritt University, and potentially the closure of a one-block section of Summit Street from 30th Street to Hawthorne Avenue.

On May 19, 2010 the Planning Commission, at a duly noticed public hearing, heard and eventually adopted (by a 4-0 vote) a staff recommendation to approve the Project's California Environmental Quality Act (CEQA) findings (including certification of the Project's EIR as having been completed and reviewed in accordance with CEQA, rejection of alternatives and adoption of a Statement of Overriding Consideration) and to approve the Project.

On June 1, 2010 Gloria Smith, representing the California Nurses Association/National Nurses Organizing Committee ("Appellant") timely filed an Appeal to the City Council (A10-139) of the Planning Commission's decision to certify the EIR and approve the Project. The Appellant's claim is limited solely to: (1) the EIR failed to fully mitigate safety and congestion impacts as a result of changes to Webster Street between the freeway ramp and 30th Street; (2) the EIR failed to provide proper access for non-ambulatory or ambulatory-impaired patients and visitors; and (3) the Final EIR contained last minute changes to mitigate significant traffic congestion impacts

Item: _____
City Council
July 6, 2010

at the intersection of West Grand Avenue/Brush Street which were not subject to public review and comment. A copy of the Appeal is contained in *Attachment A*. No other issues are before the City Council.

Staff believes the Appellant failed to exhaust its administrative remedies and, on the merits, the EIR and administrative record fully support the Planning Commission's decision. Therefore, Staff recommends the City Council adopt the Resolution denying the Appeal and thereby upholding the Planning Commission's decision to adopt CEQA findings and approve the Project.

FISCAL IMPACT

The Project is a private development and as such does not require public funds. As a non-profit organization, the ABSMC Patient Care tower would be exempt from property taxes but would pay utility user taxes and potentially certain business license taxes, and would modestly increase the level of municipal services to be provided at the campus.

PROJECT DESCRIPTION

Approval of the Project would enable ABSMC to comply with the state seismic safety requirements of SB 1953, as well as to provide a long-term vision for buildout of the Medical Center campus in order to meet hospital and community needs.

Phase 1 of the Project would include construction of a new 11-story Patient Care Pavilion (hospital) with 309 acute care beds, and a new seven-level, 1067 space parking garage. The new Patient Care Pavilion would replace the acute care patient facilities that currently exist within the Merritt Pavilion, as a significant portion of the existing Merritt Pavilion does not meet state-mandated earthquake-resistant standards for hospitals. Other Phase 1 improvements would include a new temporary surface parking lot, two new emergency generators, on-site circulation improvements (vehicle, pedestrian and bicycle), backfill of the vacated space within the Merritt Pavilion with non-acute care medical-related uses, and relocation of the Emergency Department to a more central location within the Merritt Pavilion in closer proximity to the new Patient Care Pavilion.

Future Phases of the Summit Campus Master Plan include a new fitness center to be located at the top of the Phase 1 parking structure, a new medical office building, a new building for use by Samuel Merritt University, and potentially the closure of a one-block section of Summit Street from 30th Street to Hawthorne Avenue to create a new internal pedestrian plaza space for the campus. Development of Future Phases of the Master Plan will require subsequent applications and Planning Commission approval of Final Development Plans and design review.

PROPERTY DESCRIPTION

The existing Alta Bates Summit Medical Center campus is located in the Central Oakland planning sub-area, south of I-580 in an area known as "Pill Hill". The approximately 20-acre campus is bounded between Telegraph Avenue and Webster Street, and between 30th Street and 34th Street. The campus currently contains approximately 1.4 million square feet of medical-related building space, including the 345-bed acute care hospital within the existing Merritt Pavilion.

GENERAL PLAN ANALYSIS

As indicated in the May 19, 2010 Planning Commission Staff report (*Attachment B*), the City General Plan Land Use and Transportation Element (LUTE) designates the entire ABSMC campus as Institutional. The Institutional designation is intended to create, maintain and preserve areas appropriate for education facilities, cultural and institutional uses, health services and medical uses. The Project's proposed land uses are consistent with this Institutional land use designation.

ZONING ANALYSIS

The zoning on the ABSMC campus is S-1: Medical Center. This zone is intended to create, preserve and enhance areas devoted primarily to medical facilities and auxiliary uses, and is typically appropriate for compact areas around large hospitals. The Project's proposed land uses are all allowed uses within the S-1: Medical Center zone and the Project is consistent with the zoning regulations.

ENVIRONMENTAL DETERMINATION

Pursuant to CEQA and the CEQA Guidelines, a Notice of Preparation (NOP) of a Draft EIR was published on January 26, 2009 then re-issued on March 13, 2009. An Initial Study was not prepared or attached to the NOP. The public comment period on the reissued NOP ended on April 15, 2009. On February 18, 2009 the Planning Commission conducted an EIR scoping session.

A Draft EIR was prepared for the Project and properly circulated for a 45-day public review period beginning on December 21, 2009. Public hearings on the Draft EIR were held on January 20, 2010 (Planning Commission) and on February 8, 2010 (Landmarks Preservation Advisory Board). The City received written and oral comments on the Draft EIR, including written and oral comments from the Appellant. In addition, the Applicant held several informal community

Item:

City Council
July 6, 2010

information meetings on January 29, March 16, and April 16, 2009, and February 17 and May 7, 2010.

The City prepared responses to all comments and published a Final EIR on May 7, 2010, twelve days prior to the May 19, 2010 public hearing. A Notice of Availability/Notice of Release of the Final EIR was distributed to state and local agencies, posted on the project web site and mailed and e-mailed to numerous individuals who had requested to be notified of City actions on the Project and/or who commented on the Draft EIR. The Planning Commission reviewed all comments and responses thereto prior to consideration of certification of the EIR and prior to taking any action on the proposed project. On May 19, 2010 the Planning Commission adopted CEQA Findings and certified that the EIR had been completed and reviewed in compliance with CEQA. The Planning Commission independently reviewed the record and the EIR prior to approving the Project, and adopted the above-referenced CEQA Findings and the conclusions of the EIR as representing their independent judgment on the environmental effects of the Project.

KEY ISSUES AND IMPACTS

If the City Council denies the Appeal and approves the Project, that action will affirm and adopt as the Council's own actions the entire May 19, 2010 approved City Planning Commission Report, including all the discussion, findings, conclusions, and determinations of said report, including the discussion on Environmental Review, all the CEQA Findings, the Findings for Project Approval, Conditions of Approval, the Standard Conditions of Approval and Mitigation Monitoring and Reporting Program and the conclusions of the EIR.

The Appellant's claims are limited solely to: (1) the EIR failed to fully mitigate safety and congestion impacts as a result of changes to Webster Street between the freeway ramp and 30th Street; (2) the EIR failed to provide proper access for non-ambulatory or ambulatory-impaired patients and visitors; and (3) the Final EIR contained last minute changes to mitigate significant traffic congestion impacts at the intersection of West Grand Avenue/Brush Street which were not subject to public review and comment. Each of these issues is responded to in detail below.

Appellant Failed to Exhaust Its Administrative Remedies

For each and every one of these three appellate issues, the Appellant failed to exhaust its administrative remedies prior to filing this Appeal. Issues regarding safety and congestion on Webster Street, and proper access for ambulatory-impaired visitors and patients were raised as comments on the Draft EIR, and were fully responded to in the Final EIR. Neither the Appellant (nor anyone else) presented to the Planning Commission at, or prior to, the May 19, 2010 public hearing any specific objections to the responses included in the Final EIR. Similarly, neither the Appellant nor anyone else raised at any time any specific issues to the Planning Commission about the proposed mitigation measures at West Grand Avenue/Brush Street.

Item: _____
City Council
July 6, 2010

The Notice of the May 19th Planning Commission hearing (which was sent to Appellant) expressly stated and required that “[i]f you challenge a Commission decision in court, you will be limited to issues raised at th[is] public hearing or in correspondence delivered . . . at, or prior to, the public hearing.” Moreover, similar language was included in the Notice of Availability/ Notice of Release of the Final EIR which was also sent to Appellant. Thus this Appeal raises for the first time the specific objections to the EIR when such objections were required to have been raised before the Planning Commission. For this reason alone, Staff recommends the City Council deny the Appeal, separately and independently from the other reasons stated below.

Notwithstanding that Appellants failed to exhaust their administrative remedies, the merits of the appeal are addressed below and also should be rejected.

Issue #1: Safety and Congestion as a Result of Changes to Webster Street

Appellant’s Contentions:

Appellant argues that the City failed to consider and include reasonable and feasible mitigation measures that were raised by members of the public to address the Project’s impact to pedestrian and bicycle safety on Webster Street, between 30th Street and the freeway. The Appeal lists the following recommended mitigation measures:

- 1) Speed limit signage under the freeway
- 2) Stop signs at 36th Street or 37th Street
- 3) Well marked stop signs at the end of the freeway off-ramp for motorists crossing Webster Street and for those turning right onto Webster Street
- 4) Signage to direct traffic to other routes
- 5) Signage directing traffic south on Webster, away from residential areas, and
- 6) Requiring the hospital to direct Staff and patients to approach the campus from Telegraph or Broadway rather than Webster, and/or to take the 27th Street exit from I-980 rather than the narrow and already dangerous Broadway Auto Row/Webster exit from I-580.
- 7) Traffic calming measures
- 8) Lighted pedestrian walkway to the Mosswood Park entry

Appellant also asserts that the City rejected these measures on the grounds that there are no CEQA thresholds for the above measures, whereas the City should seriously consider measures to ensure the safety of pedestrians and bicyclists on Webster Street whether CEQA thresholds exist or not.

Item: _____
City Council
July 6, 2010

Staff Response:

Staff finds these allegations are without merit. The Draft EIR (page 4.3-92, Impact TRANS-26) recognized that the Project will increase auto and bike traffic on Webster Street from the freeway ramp south to 30th Street, and concluded that if the added auto traffic were to share the same space with bicycle traffic this would be a potentially significant impact. The recommended mitigation measure (MM TRANS-26) requires the Project applicant to install "sharrow" lane markings on the pavement and appropriate street signs along this portion of Webster Street (between 30th Street and 34th Street) to distinguish this segment as a bike boulevard. These measures were found to reduce the Project's impact to a level of less than significant, with no further mitigation required.

With regard to the additional mitigation measures suggested in the Appeal, those measures were recommended by various members of the public specifically pertaining to the segment of Webster Street between the freeway off-ramp north to MacArthur Boulevard, not south to 30th Street as alleged by the Appellant. Each of these recommendations was specifically addressed in the Final EIR and/or in the Conditions of Project Approval, as indicated below.

- 1) Speed Limit Signage under the Freeway - The Final EIR (pages 5-14 & 15, 6-68) does not consider the potential for traffic on Webster Street to speed in excess of posted speed limits to be an environmental effect of the Project, but does recognize that installation of a new speed limit sign on northbound Webster Street under the I-580 overpass may be appropriate as it may not be readily apparent to drivers on this segment that they are entering a residential and park area. As a condition of Project approval (**Condition of Approval #18**), ABSMC is required to coordinate with City Transportation Services Department and Public Works to assess the potential needs and/or benefits associated with improved signage (speed limit signs, way-finding signs, bike route signs, potential stop signs as warranted by traffic loads, shuttle stops and transit signage, etc.) along Webster Street from 30th Avenue to MacArthur Boulevard, and to develop a signage program for City review and approval. If determined necessary and/or desirable and approved by the City, ABSMC shall fund or implement, at the discretion of the City, the City-approved signage program.

- 2 and 3): Stop Signs at 36th Street, 37th Street and the freeway off-ramp - The Final EIR (pages 5-14 & 15, 6-72 and 6-74) indicates that the City of Oakland relies on established guidelines from the California Manual on Traffic Control Devices (MUTCD) to determine whether traffic control devices such as stop signs or traffic signals are warranted based on traffic volumes, pedestrian volumes, and accident rates. Since traffic volumes and pedestrian volumes on the Webster Street corridor are substantially below the warrant thresholds and the accident characteristics for the corridor do not meet the minimum thresholds, neither stop signs nor traffic signals on Webster Street between 34th Street and MacArthur Boulevard are warranted.

Item: _____

City Council
July 6, 2010

4, 5 and 6): Directional Signage - The Final EIR (pages 5-14 & 15, 6-74) does not consider way-finding signage or the possible lack thereof to be an environmental effect of the Project, but does recognize that route signage can be an effective tool for directing traffic to the campus. As a condition of Project approval (**Condition of Approval #20**), ABSMC is required to develop for City review and approval a way-finding/signage program for major roadways in the area and within the campus to direct patients/visitors to the appropriate ABSMC parking facilities. ABSMC shall fund or implement, at the discretion of the City, the approved signage program.

7 and 8): Traffic Calming and Lighted Pedestrian Walkway - The Final EIR (pages 5-14 & 15, 6-72 and 6-74) concludes that the number of vehicle and pedestrian trips that the Project would add to the Webster Street corridor would not be expected to cause safety or quality of life impacts that would justify the installation of traffic calming measures or additional lighted pedestrian walkways. Specifically, the Project at buildout would add 9 am and 13 pm peak-hour trips to Webster Street north of 34th Street; 75 am and 47 pm peak-hour vehicle trips south of 34th Street to Hawthorne Avenue; and 11 am and 17 pm peak-hour trips south of Hawthorne Avenue. These added traffic volumes represent less than three percent of the current traffic volumes on Webster Street. Accident records kept by the City do not indicate that this segment of Webster Street is unsafe.

The May 19, 2010 approved City Planning Commission Report and its attachments, the Draft and Final EIR, the Standard Conditions of Approval and Mitigation Monitoring and Reporting Program (SCAMMRP) and the Conditions of Project Approval all extensively address issues related to pedestrian and bicycle safety on Webster Street. The Planning Commission's decision on the Project pertaining to these issues was not made in error, there was no abuse of discretion by the Commission, and the Commission's decision was supported by sufficient, substantial evidence in the record that pedestrian and bicycle safety on Webster Street was seriously considered and addressed. The City Planning Commission reasonably concluded, based upon substantial evidence in the record that these items (other than Impact TRANS-26) were not CEQA impacts that required mitigation measures, although some items were appropriately dealt with in the land use/planning context through Project conditions of approval.

Issue #2: Non-Ambulatory Access

Appellants' Contentions

While the Appellant does not dispute the overall circulation and access plan for the Project, Appellant argues that the Project's design does not provide sufficient access to the physically impaired. Appellant suggests that the existing hospital allows for private vehicles to drop off and pick up patients, but that the new hospital design will eliminate this access in Future Phases, further suggesting that non-ambulatory patients will have to rely on just three locations for private vehicle drop-offs to serve the entire 21-acre campus. Appellant also argues that the site's varied topography will result in buildings, parking garages and surface parking all being at

Item: _____
City Council
July 6, 2010

different levels, posing further hurdles to non-ambulatory patients, and that the EIR did not analyze this impact or resolve these access issues.

Staff Response

Staff finds these allegations are without merit. During the comment period on the Draft EIR, in a letter dated February 3, 2010, the Appellant submitted comments on the Draft EIR that included a comment expressing essentially these same concerns. However, as presented in the Staff Report for the February 24, 2010 Design Review Committee (page 4),

“One of the significant challenges that the ABSMC design team faces . . . is that the topography of the campus has substantial grade changes, as the name “Pill Hill” implies. These grade issues are most challenging in trying to match floor elevations between the existing Merritt Pavilion and the new Patient Care Tower, and in providing paths of pedestrian travel that are compliant with the design guidelines included under the Americans with Disabilities Act (ADA). To address the first challenge of matching floor elevations between the existing Merritt Pavilion and the new Patient Care Tower, the ABSMC design team proposes to re-grade a substantial section of Hawthorne Avenue from Webster Street past Summit Street. . . By re-setting the street elevation, the new driveway which serves as a drop-off and entry into the new hospital building can be set at an appropriate slope between the elevation of the street . . . and the elevation of the ground floor of the new hospital. The new proposed circulation pattern provides an accessible path of pedestrian travel from the Summit Street/Hawthorne Avenue . . . intersection to the Patient Care Tower [and] minimizes the driveway grade . . .”

Both the re-grading of Hawthorne Avenue and the new pedestrian path along Hawthorne Avenue are specifically intended to improve ambulatory impaired and non-ambulatory access to the Project site.

Project site access and circulation, including patient and passenger loading and unloading, is discussed on pages 4.3-110 to 4.3-114 of the Draft EIR. The conclusions reached in the Draft EIR include the following:

- An enhanced mid-block pedestrian crosswalk should be installed to facilitate pedestrian flows along the walking desire line between the new Patient Care Pavilion and the Providence Pavilion. This recommendation is included as **Condition of Project Approval #24**.
- The existing ambulance and private vehicle passenger drop-off access to the Providence Pavilion would remain, and current conflicts between passenger loading activities and parking maneuvers would be eliminated.
- The Providence Pavilion access and circulation system is generally acceptable.
- The existing southern Emergency Department parking lot, currently reserved for ambulances and physicians, would be converted to convenient automobile passenger drop-off and parking for the Emergency Department.

Item: _____

City Council
July 6, 2010

- Passenger loading facilities would be added or improved at the new Patient Care Pavilion, Providence Pavilion, and the relocated Emergency Department.

None of these specific conclusions reached in the Draft EIR were challenged at any time by Appellant or others either in comments on the Draft EIR, nor in this Appeal.

As noted in the Final EIR (page 6-59) in specific response to Appellant's comment on the Draft EIR, the proposed Project would provide three locations for private vehicles to drop off non-ambulatory patients.

- A drop-off loop is proposed on Hawthorne Avenue near Summit Street at the main hospital entrance.
- A second drop-off is proposed in the existing parking garage located on 34th Street.
- A third drop-off is provided at the entrance to the new Emergency Department.

Each of these drop-off areas would provide direct access to the new hospital and to the existing Merritt Pavilion. They also would be wheelchair accessible and sheltered from the weather. Furthermore, a pedestrian path of travel compliant with ADA requirements is provided from Telegraph Avenue to the new hospital's main entrance. This path of travel includes a new pedestrian path along Hawthorne Avenue which cuts into the steep grade of this hill, uses the parking garage elevator to gain elevation, and continues as a crosswalk and pedestrian pathway directly accessing the new hospital's main entrance.

These new points of ADA access would improve accessibility for ambulatory impaired patients and visitors to the new hospital, but are not the only points of access throughout the 21-acre campus. Phase 1 improvements would not change any of the other numerous ADA-accessible access locations throughout the campus which currently serve all other buildings.

Future Phases of the Project could potentially include closure of a one-block section of Summit Street from 30th Street to Hawthorne Avenue to create a new internal pedestrian plaza space for the campus. However, such Future Phases will require subsequent applications and Planning Commission approval of Final Development Plans and design review. Any and all design issues associated with the potential closure of this segment of Summit Street (including ADA access to adjoining buildings) will be addressed in any Final Development Plan for this portion of the campus. A condition of Project approval (**Condition of Approval #14: Summit Street Closure**) requires any future plans for closure of Summit Street as a public thorough-fare to be accompanied by a detailed study demonstrating how continued access would be maintained, and an analysis of internal campus circulation issues. Approval of the Project does not constitute approval of the closure of Summit Street prior to these and other issues being fully considered and approved pursuant to a Final Development Plan.

The February 24, 2010 Design Review Committee Staff Report, the May 19th Planning Commission Staff Report and its attachments, the Draft and Final EIR, the Standard Conditions of Approval and Mitigation Monitoring and Reporting Program (SCAMMRP) and the

Item: _____
City Council
July 6, 2010

Conditions of Project Approval all extensively address issues related to site access for pedestrians, bicyclists and vehicles. The Planning Commission's decision on the Project pertaining to this issue was not made in error, there was no abuse of discretion by the Commission, and the Commission's decision was supported by sufficient, substantial evidence in the record that access for non-ambulatory and ambulatory impaired patients, visitors and Staff was fully addressed. The City Planning Commission reasonably concluded, based upon substantial evidence in the record, that there were no CEQA impacts that required mitigation measures relating to non-ambulatory access, although some items were appropriately dealt with in the land use/planning context through conditions of approval.

Issue #3: Traffic Mitigation at West Grand Avenue/Brush Street

Appellant' Contentions

Lastly, the Appellant contends that the Draft EIR identified detailed mitigation measures that would apply to the West Grand Avenue/Brush Street intersection (Mitigation Measures TRANS-2, TRANS-4, TRANS-6 and TRANS-8) that would result in the intersection operating at acceptable levels of service in the am and pm peak hour. Appellant then contends that the Final EIR reversed course, eliminated these measures on the grounds that the measures would result in unacceptable secondary impacts, and instead imposed a requirement to further study feasible design solutions which improve intersection operations and minimize secondary impacts. Appellant argues that this approach was in violation of CEQA by failing to provide any mitigation for this impact in the Final EIR, and that the public is deprived of meaningful opportunity to review and evaluate the effectiveness of a future design solution that may result from such study. Appellant argues that the EIR defers resolution of this significant impact in violation of CEQA disclosure requirements. Appellant further argues that the City has failed to require any concrete mitigation for traffic impacts at this intersection and that there are no permit conditions, agreements or other measures to ensure that any mitigation measures will ultimately be implemented. The Appellant contends that the EIR fails to explain the public review process to be employed once the applicant has completed the required studies and proposes new alternative designs for mitigation, and that such process should include preparation of a Supplemental EIR recirculated for public and agency review.

Staff Response

Staff finds these allegations are without merit. Staff agrees that the Draft EIR identified detailed mitigation measures that would apply to the West Grand Avenue/Brush Street intersection (Mitigation Measures TRANS-2, TRANS-4, TRANS-6 and TRANS-8) that, if ultimately determined feasible (after further study and submission of final design plans) and implemented, would result in the intersection operating at acceptable levels of service in the am and pm peak hour. However, because further study and final design plans are required to determine feasibility of these measures, the Draft EIR deemed this impact to be significant and unavoidable. If, after submission of final design plans, these improvements are determined to be feasible, then this impact would be reduced to a less-than-significant level (Draft EIR, pages 4.3-51 & 52).

Item: _____
City Council
July 6, 2010

The Final EIR did **not** reverse course on this issue. In fact, further study and consideration of the proposed mitigation measures from the Draft EIR was conducted by Staff prior to preparation and publication of the Final EIR, and the specific and detailed recommended improvements were found infeasible due to secondary impacts to motor vehicles, pedestrians and bicyclists.

Because the intersection is complicated due to its immediate adjacency with the West Grand/San Pablo intersection and other factors (as acknowledged in Final EIR, page 3-8), there may be several acceptable design solutions for the improvements needed at this intersection that do not result in such secondary impacts. Because several design alternatives may be acceptable, the Final EIR requires that a final design plan for this intersection improvement shall be prepared, subject to review and approval of the City. The final design plan is required to ensure that all elements are designed according to established City standards in effect at the time of construction. All other facilities supporting vehicle travel and alternative modes through the intersection are to be brought up to both City standards and ADA standards. The final design plan for this intersection improvement is subject to review and approval of the City, and ABSMC is required to fund, prepare and install the approved plans and improvements.

Contrary to Appellant's contention, the Final EIR **does** include mitigation measures (revised Mitigation Measures TRANS-2, TRANS-4, TRANS-6 and TRANS-8, pages 3-8, 9, 10, 11 and 12 of the Final EIR) to address traffic impacts at West Grand Avenue/Brush Street, specific improvement and performance standards and criteria for how these measures shall be designed are identified, and the SCAMMRP for the Project specifically identifies the Applicant (Project sponsor), ABSMC as the party responsible for implementation of these measures. The deferred formulation of the detailed engineering plans, specifications and estimates for the intersection improvements required by these mitigation measures is appropriate under CEQA in this instance because:

- The City undertook a complete analysis of the significant environmental impact at this intersection, including detailed information regarding how the traffic impact was quantified, and disclosed such in the Draft EIR.
- Potential detailed mitigation measures were identified in the Draft EIR, as were the limitations of such measures and, upon further review as contemplated in the Draft EIR, the specifics of these measures were found to result in significant secondary effects to motor vehicles, pedestrians and bicyclists.
- The City has articulated specific performance standards that must be met under the final, approved mitigation design, and there is a range of feasible design solutions available to achieve these standards.
- The City has established specific funding, preparation and implementation obligations of ABSMC to ensure that the mitigation measures are ultimately implemented.
- Both the Draft EIR and the Final EIR recognized that the mitigation measures that are ultimately implemented may not be sufficient to fully mitigate the impact to a level of less

Item: _____

City Council
July 6, 2010

than significant and thus the impact is identified as significant and unavoidable (in both the Draft and Final EIR).

As further study toward a final design plan for this intersection progresses, it is possible that the preferred design may result in a compromise between those improvements necessary to accommodate traffic volumes and potentially adverse secondary impacts on pedestrians and bicyclists (although this is the very reason why Mitigation Measure TRANS-2, originally proposed in the Draft EIR was modified in the Final EIR in the first place). As acknowledged by Appellant, further CEQA review pursuant to CEQA Guidelines Section 15162 through 15164 may be required in the event that any significant adverse secondary impacts may result from implementation of the eventual preferred mitigation improvements at this intersection.

The approved May 19th Planning Commission Staff Report and its attachments (including CEQA Findings), the Draft and Final EIR, and the Standard Conditions of Approval and Mitigation Monitoring and Reporting Program (SCAMMRP) all address issues related to traffic impacts at West Grand Avenue/Brush Street. The Planning Commission's decision on the Project pertaining to this impact was not made in error, there was no abuse of discretion by the Commission, and the Commission's decision was supported by sufficient, substantial evidence in the record that mitigation for this impact and related mitigation measures will be required, but that the mitigation may not be sufficient to fully mitigate the impact to a level of less than significant. Therefore, the CEQA Findings adopted by the Planning Commission appropriately concluded that this impact may be significant and unavoidable but that the benefits of the Project outweigh this remaining significant, adverse impact.

SUSTAINABLE OPPORTUNITIES

Economic: The Project will maintain and create needed medical, construction, and related jobs in Oakland. The Project will construct all new facilities in a cost-effective manner without using public tax dollars.

Environmental: The Project will meet the contemporary energy and design objectives of the Green Guide for Health Care, a best practices guide for healthy and sustainable building design, construction, and operations for the healthcare industry.

Social Equity: The Project will further ABSMC's 100-year tradition of commitment to Oakland and the Bay Area, and ABSMC's mission of enhancing the health and wellbeing of people in the communities they serve through compassion and excellence, by continuing to provide comprehensive services and facilities designed to meet the health care needs of the diverse communities of the greater East Bay area.

DISABILITY AND SENIOR CITIZEN ACCESS

The Building Division of the Community and Economic Development Agency would require any new construction to conform to the Americans with Disability Act (ADA) in all provisions to ensure equal access to the facility.

RECOMMENDATION AND RATIONALE

Staff recommends that the City Council adopt the attached Resolution denying the Appeal, thereby upholding the Planning Commission's approval of the Project. Staff recommendation is based on the following reasons: 1) the Project and the approval of the Project comply in all significant respects with applicable General Plan policies, Planned Unit Development permit criteria and review procedures, Conditional Use Permit criteria and review procedures; and zoning variance criteria and review procedures; and 2) the Project complies with CEQA.

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 Planning Commission's decision thereby denying the Project. This option would require the City Council to continue the item to a future hearing so that Staff can prepare and the Council has an opportunity to review the proposed Findings and Resolution for denial.
2. Uphold the Planning Commission's decision, but impose additional or revised conditions on the Project and/or modify the Project, solely related to the appellate issues.
3. Continue the item to a future hearing 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 with a recommendation after review by the Planning Commission.

Item: _____
City Council
July 6, 2010

ACTION REQUESTED OF THE CITY COUNCIL

Adopt the Resolution denying the Appeal and thereby upholding the Planning Commission's decision to adopt CEQA findings and approve the Project.

Respectfully submitted,



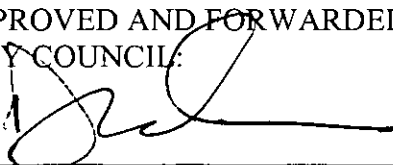
Walter S. Cohen, Director

Community and Economic Development Agency

Reviewed by:
Scott Miller, Zoning Manager

Prepared by:
Scott Gregory, contract planner

APPROVED AND FORWARDED TO THE
CITY COUNCIL:



Office of the City Administrator

ATTACHMENTS:

- A. Appeal of Gloria Smith/California Nurses Association - National Nurses Organizing Committee
- B. Approved May 19, 2010 Planning Commission Staff Report and attachments, with revised and adopted Conditions

Item: _____

City Council
July 6, 2010