

CITY OF OAKLAND

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OAKLAND

2019 MAY 29 PM 3:50

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: William Gilchrist
Director, PBD

SUBJECT: Programmatic Agreements with the
California State Historic Preservation
Officer

DATE: May 20, 2019

City Administrator Approval

Date:

5/29/19

RECOMMENDATION

Staff Recommends That The City Council Conduct A Public Hearing And, Upon Conclusion Adopt The Following Pieces Of Legislation:

- 1. A Resolution Authorizing The City Administrator, Or Designee, To Negotiate And Execute A Programmatic Agreement, Pursuant To Section 106 Of The National Historic Preservation Act, With The California State Historic Preservation Officer Regarding The Avoidance Of Any Adverse Effects On Buried Archaeological Historic Properties As A Result Of The 34th And San Pablo Affordable Housing Project Located At 3419-3431 San Pablo Avenue, Oakland, California, Without Returning To The City Council; And**
- 2. An Ordinance Authorizing The City Administrator Or Designee To Negotiate And Execute Future Required Programmatic Agreements With The California State Historic Preservation Officer For Affordable Housing Projects If An Environmental Assessment Or Environmental Impact Statement Will Be Prepared.**

EXECUTIVE SUMMARY

Adoption of the Resolution would authorize the City Administrator or designee to enter into a Programmatic Agreement with the California State Historic Preservation Officer (SHPO) regarding the 34th and San Pablo Affordable Housing Project (Project). The purpose of entering into the Agreement is to minimize, reduce or avoid possible adverse effects on archeological resources at the site due to construction of the Project. The Programmatic Agreement would allow staff to complete the National Environmental Policy Act (NEPA) process and request authorization to receive and use federal funds. In addition, adoption of the Ordinance would allow the City Administrator or designee to enter into future Programmatic Agreements with SHPO without City Council approval but only for affordable housing projects where an Environmental Assessment or Environmental Impact Statement is being prepared.

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BACKGROUND / LEGISLATIVE HISTORY

East Bay Asian Local Development Corporation (EBALDC), a non-profit affordable housing developer, proposes to use funding from the U.S. Department of Housing and Urban Development (HUD) and other sources to demolish the existing commercial and storage structures at 3419-3431 San Pablo Avenue and construct a mixed-use development with 60 affordable residential units and ground floor commercial space. The Project is located adjacent to the historic California Hotel, and will be seven-stories. The ground floor will include 2,500 square feet of commercial space, 1,885 square feet of common space, and 16 parking stalls. The 60 units will be 100 percent fully affordable for very low-income persons and are a mix of studios and one to three bedrooms. The Project includes a 10 percent density bonus for very low-income households. The Project was approved by the Planning Commission on March 27, 2017.

Affordable housing projects requesting federal funds must be reviewed by SHPO as part of the Section 106 process per the National Historic Preservation Act and provide a determination regarding a project's potential to cause an adverse historic and archeological impact. On December 7, 2018, the City submitted the required analysis along with a Historic Property Survey, Native American Heritage Commission correspondence and an Archeological Sensitivity Assessment and Testing Plan to SHPO. The City requested concurrence that the project would not have an adverse effect on historic or cultural resources. On January 3, 2019, SHPO sent a letter noting no objection to the City's finding of no adverse effect on historic resources. However, SHPO did object to the finding of no adverse effect on an archeological resource. SHPO requested that the City either continue efforts to identify and evaluate possible archeological resources on-site or enter into a Programmatic Agreement (**Attachment A**). Due to the existing structures on-site, the time to conduct additional studies for re-review by SHPO, and the possibility that even after the additional studies were completed that buried archaeological resources could still be found and a Programmatic Agreement still required, the City believes that entering into a Programmatic Agreement now is the best option. A Programmatic Agreement is a legally binding document that would ensure that construction of the Project would not result in adverse effects on archeological resources. With the Programmatic Agreement, the NEPA process and Environmental Assessment can be completed.

ANALYSIS AND POLICY ALTERNATIVES

City staff is recommending that the City enter into a Programmatic Agreement with SHPO for the Project. The Programmatic Agreement would include, but not be limited to, provisions requiring consultation with SHPO, work completed under the supervision of a qualified Archeological Consultant, an archeological resource identification plan, subsurface exploration and evaluation, archeological data recovery if resources are found, a possible archeological monitoring program, possible treatment of human remains, final reports and dispute resolution.

City staff consulted with the Federal Advisory Council on Historic Preservation (ACHP) regarding the possibility of entering into the Programmatic Agreement for the Project (**Attachment B**). The ACHP did not require participation but did note that the Programmatic Agreement should be filed with the ACHP at the conclusion of the consultation process

(Attachment C); however, staff has included in the attached legislation the possibility of adding the ACHP to the Programmatic Agreement without returning to City Council. Attached is the draft Programmatic Agreement that was sent to SHPO **(Attachment D)** for their consideration.

Similar Programmatic Agreements were requested by SHPO for the California Hotel, the Hotel Menlo and the Hotel Harrison to allow the use of federal funds for acquisition and rehabilitation. In each case, the Bureau of Planning requested that the City Council authorize the City Administrator or designee to negotiate and execute the Programmatic Agreements without returning to City Council and the City Council concurred. This process added several months to the overall NEPA processing timeframe. As the Programmatic Agreements are standard throughout the state, and required oversight to ensure compliance with the Secretary of the Interior's Standards for Rehabilitation and Guidelines would be the responsibility of the Bureau of Planning, staff is requesting that the City Council authorize the City Administrator or designee to negotiate and execute all future Programmatic Agreements for NEPA compliance if an Environmental Assessment or Environmental Impact Statement is prepared.

The National Historic Preservation Act requires opportunity for public comment in a manner that reflects the nature and complexity of the project, and allows for the City to utilize the procedures for public involvement required under NEPA. The proposed Ordinance limits the authority granted to the City Administrator to execute Programmatic Agreements only for projects that require an Environmental Assessment or Environmental Impact Statement under NEPA. Projects that require an Environmental Assessment are subject to a 15-day public comment period. Projects that require an Environmental Impact Statement need to provide public notice at the Notice of Intent, publication of the draft Environmental Impact Statement, the Final Environmental Impact statement. In addition, these documents are also subject to an additional 10-day public comment period during the Notice of Intent to Request the Release of Funds. This will ensure appropriate and adequate public involvement in the decisions regarding a project's potential adverse impacts on historic properties.

Policy Alternative

While staff recommends that the City Council authorize the City Administrator or designee to enter into the Programmatic Agreement for the project and future projects, other alternatives are discussed in the following table:

<i>Alternative # 1: Take No Action for the 34th and San Pablo Affordable Housing Project</i>	This alternative would result in no action by the City Council regarding the Programmatic Agreement.
<i>Pros</i>	The City would not assume the legal responsibilities for ensuring compliance with the Section 106 process pertaining to reducing or avoiding archeological resource impacts for the Project, as outlined in the Programmatic Agreement.
<i>Cons/Reasons for rejecting</i>	As discussed in the <i>Fiscal Impact</i> section below, taking no action on the proposal would result in EBALDC’s inability to construct the affordable housing project. City staff recommends rejecting this alternative because increasing affordable housing, especially near transit, is an overall goal of the City and the City’s Housing Action Plan.
<i>Alternative # 2: Require additional archeological analysis for the 34th and San Pablo Affordable Housing Project instead of the Programmatic Agreement</i>	This alternative would result in no action by the City Council regarding the Programmatic Agreement.
<i>Pros</i>	The additional analysis required by SHPO could conclude that the Project would have no adverse effects on an archeological resource. This would result in the City not needing to enter into the Programmatic Agreement. Furthermore, the City would not assume the legal responsibilities for ensuring compliance with the Section 106 process pertaining to reducing or avoiding archeological resource impacts, as outlined in the Programmatic Agreement.
<i>Cons/Reasons for rejecting</i>	While most of the site is a surface parking lot, there are existing structures on-site which would preclude a thorough analysis of the area for possible buried archeological resources. As such, it is possible that even with additional analysis SHPO will still require a Programmatic Agreement. In addition, preparing the additional studies for re-review by SHPO will take time to complete and there is the possibility that even after the additional studies were completed that buried archaeological resources could still be found. Entering into the Programmatic Agreement now will ensure that the affordable housing units will become available sooner. As such, City staff recommends rejecting this alternative.
<i>Alternative #3: Enter into the Programmatic Agreement for the 34th and San Pablo Project but Take No Action for Future Projects</i>	This alternative would result in the City Council entering into a Programmatic Agreement for the 34 th and San Pablo Affordable Housing Project but not permitting the City Administrator to enter into a Programmatic Agreement for future projects without City Council approval.

<i>Pros</i>	The City Council would retain the authority to approve Programmatic Agreements in the future on a case by case basis.
<i>Cons/Reasons for rejecting</i>	When SHPO requires a Programmatic Agreement with the City, the process to obtain City Council approval adds months to the project schedule. Allowing the City Administrator or designee to negotiate these contracts directly with SHPO would result in a quicker NEPA review process and possible faster construction of much needed affordable units. Finally, any delay in the overall process potentially jeopardizes the availability of funding especially since these projects often cobble together funding from multiple sources. As such, City staff recommends rejecting this alternative.

FISCAL IMPACT

If the City Council chooses not to enter into the Programmatic Agreement with SHPO, EBALDC would be unable to complete the required Environmental Assessment document, and therefore, be unable to construct the proposed building for affordable housing.

There is no direct cost attached to the Programmatic Agreement process. The Oakland Housing Authority (OHA) awarded 25 units of Section 8 Project-Based Vouchers, which leverages approximately \$4,304,000 in additional Tranche B Debt to the Project.

There is also no direct cost to allowing the City Administrator or designee to negotiate and execute a Programmatic Agreement for this Project or future projects as staff is already compensated for the NEPA review process as outlined in the Master Fee Schedule. In addition, the Programmatic Agreement notes that the Project sponsor is responsible for engaging the Archeological Consultant and Archeological Monitor. Furthermore, the staff time and cost to review the draft reports required by the Programmatic Agreement are covered through implementation of Project Conditions of Approval #11. This Condition notes that

The project applicant may be required to cover the full costs of independent third party technical review and City monitoring and inspection, including without limitation, special inspector(s)/inspection(s) during times of extensive or specialized plan-check review or construction, and inspections of potential violations of the Conditions of Approval. The project applicant shall establish a deposit with Engineering Services and/or the Bureau of Building, if directed by the Director of Public Works, Building Official, Director of City Planning, Director of Transportation, or designee, prior to the issuance of a construction-related permit and on an ongoing as-needed basis.

However, the NEPA review fee in the Master Fee Schedule and the Conditions of Approval did not anticipate the additional cost and time to draft the staff report and go through the City Council approval process for approval of a Programmatic Agreement.

PUBLIC OUTREACH / INTEREST

Staff has not conducted public outreach regarding the Programmatic Agreement. However, the Project did include a 17-day public notice as part of the Planning entitlements and no comments were received related to possible archeological resources on the site. Furthermore, there is a 15-day public comment period after publication of the Environmental Assessment, which will occur if the City Council chooses to enter into the Programmatic Agreement. Staff responds to all public comments received during the comment period and those comments are provided to HUD with the request to use the grant funds. Future Programmatic Agreements authorized by the Ordinance will be subject to the 15-day public comment period for the required Environmental Assessment, or a 10 -day public comment period if an Environmental Impact Statement is required under NEPA.

COORDINATION

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

SUSTAINABLE OPPORTUNITIES

Economic: The implementation of the Programmatic Agreement for the Project and future Programmatic Agreements for affordable housing projects would ensure revitalization of properties for low-income housing.

Environmental: The implementation of the Programmatic Agreement for the Project and future Programmatic Agreements would ensure that the Project and future projects would not result in an adverse archeological impact.

Social Equity: With implementation of the Programmatic Agreement, the property would be developed with 60 units of affordable housing. City Administrator approval of future Programmatic Agreements could result in faster development of affordable housing projects. Construction of affordable housing is a Citywide goal.

CEQA

The Bureau of Planning is responsible for preparation of the environmental analysis pursuant to California Environmental Quality Act (CEQA) and NEPA. Plans for the demolition and construction of the Project were submitted to the Bureau of Planning in April of 2017 and were approved in April of 2018. The Project was found to be exempt from the CEQA per State Guidelines Section 15300.2: Exceptions, Section 15332: In-fill Development, Section 15183: Projects Consistent with a Community Plan, General Plan or Zoning, and Sections 15162 and 15164: Addenda to the Land Use and Transportation Element (LUTE) and Housing Element of the General Plan and the West Oakland Specific Plan (WOSP) Environmental Impact Reports (EIRs). Specifically, Section 15332 exempts projects intended to promote infill development within urbanized areas. The project met the findings for use of this exception as

the project is within the city limits, has no value as wildlife habitat, would not result in significant traffic, noise, air quality or water quality impacts and is already served by utilities. As such, no Exception to the use of the Infill Exemption applied. Furthermore, as a separate and independent basis, the Project was also found to be consistent with the LUTE, Housing Element and the WOSP EIRs, and therefore, Sections 15183, 15162 and 15164 also applied.

Staff has determined that the Ordinance authorizing the City Administrator to negotiate and execute future Programmatic Agreements for affordable housing projects that are subject to NEPA is not a project subject to CEQA, pursuant to CEQA Guidelines sections 15060 and 15378. However, the future projects which require Programmatic Agreements will be themselves subject to CEQA. In addition to compliance with NEPA, the City Administrator will comply with CEQA at the earliest feasible time prior to approval of each future project and each future Programmatic Agreement.

NEPA

A Programmatic Agreement is an appropriate method to ensure that the Project will not have an adverse archeological impact. Once the City has entered into the Programmatic Agreement, City staff will prepare and publish an Environmental Assessment for the Project pursuant to NEPA. Future projects subject to Programmatic Agreements approved by the City Administrator may instead require either an Environmental Assessment or an Environmental Impact Statement, depending on the environmental impacts of a future project.

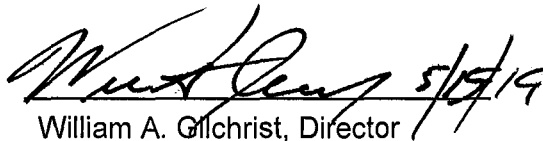
ACTION REQUESTED OF THE CITY COUNCIL

City staff recommends that the City Council conduct a public hearing and, upon conclusion, consider adopting:

1. A Resolution Authorizing The City Administrator, Or Designee, To Negotiate And Execute A Programmatic Agreement, Pursuant To Section 106 Of The National Historic Preservation Act, With The California State Historic Preservation Officer Regarding The Avoidance Of Any Adverse Effects On Buried Archaeological Historic Properties As A Result Of The 34th And San Pablo Affordable Housing Project Located At 3419-3431 San Pablo Avenue, Oakland, California, Without Returning To The City Council; And
2. An Ordinance Authorizing The City Administrator Or Designee To Negotiate And Execute Future Required Programmatic Agreements With The California State Historic Preservation Officer For Affordable Housing Projects If An Environmental Assessment Or Environmental Impact Statement Will Be Prepared.

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

Respectfully submitted,



William A. Gilchrist, Director
Planning and Building Department

Reviewed by:
Edward Manasse, Interim Deputy Director
Bureau of Planning

Prepared by:
Heather Klein, Planner IV
Bureau of Planning

Attachments (4):

- A. *Letter from SHPO noting the need for additional archeological analysis or a Programmatic Agreement, dated January 3, 2019*
- B. *Consultation Letter to ACHP, dated, February 6, 2019*

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Sabrina B. Landreth, City Administrator

Subject: Programmatic Agreements with the California State Historic Preservation Officer

Date: May 20, 2019

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- C. *Letter from ACHP, dated April 19, 2019*
- D. *Draft Programmatic Agreement*

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**DEPARTMENT OF PARKS AND RECREATION
OFFICE OF HISTORIC PRESERVATION**

Lisa Ann L. Mangat, Director

Jullanne Polanco, State Historic Preservation Officer
1725 23rd Street, Suite 100, Sacramento, CA 95816-7100
Telephone: (916) 445-7000 FAX: (916) 445-7053
calshpo.ohp@parks.ca.gov www.ohp.parks.ca.gov

January 3, 2019

Refer to HUD_2018_1207_003

Ms. Betty Marvin
Historic Preservation Planner
Department of Planning & Building
City of Oakland
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612-2032

Re: 34th & San Pablo Family Housing Multifamily Development Project at 3419- 3431
San Pablo Avenue, Oakland, CA

The California State Historic Preservation Officer (SHPO) received the above referenced submittal for our review and comment pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations found at 36 CFR Part 800. The regulations and advisory material are located at www.achp.gov.

Undertaking

You have informed us that the City of Oakland and the East Bay Asian Local Development Corporation (EBALDC) intend to use funding from the U.S. Department of Housing & Urban Development (HUD) develop the 34th & San Pablo Family Housing project. The undertaking involves the demolition a vacant commercial building and shed, and the construction of a new multifamily residential development of 60 affording housing units located at 3419- 3431 San Pablo Avenue in Oakland, CA.

Area of Potential Effects (APE)

The APE for this undertaking has generally been defined, and mapped, as the subject parcel and adjacent parcels. We believe the City has defined a reasonable APE for the undertaking.

Identification of Historic Properties

Both our office and the City are aware that the California Hotel, located at 3501 San Pablo Avenue, is listed in the National Register of Historic Places. Therefore, it is a historic property for the purposes of this Section 106 consultation.

The City hired consultants ESA to conduct both a historic property survey and an archeological survey for the APE. Documentation provided by ESA in the historic property survey evaluated the subject property and two additional buildings within the APE for listing in the National Register. The City determined all three buildings ineligible for listing. We concur with the

Ms. Marvin
January 3, 2019
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City's determination that following properties are not eligible for listing in the National Register of Historic Places:

- 3431 San Pablo Avenue
- 3400 Chestnut Street
- 3420 Chestnut Street

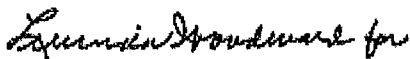
The Archeological Sensitivity Assessment and Testing Plan completed by ESA establishes that the APE is sensitive for both prehistoric and historic era archeological resources. The City plans to require the project applicant to implement additional preconstruction study or prepare an "ALERT" sheet. However, under Section 106 of the NHPA deferring identification efforts in this way is inappropriate absent the existence of a programmatic agreement governing the phased identification efforts. At this time, either the City must continue efforts to identify and evaluate potential subsurface historic properties and continue consultation with our office based on those efforts; or, the City should begin consultation with our office for the development of a programmatic agreement that will memorialize plans for additional phased identification efforts and future assessment of effects. Please inform us of how the City wishes to proceed.

Assessment of Effects

The City has made a finding of no adverse effect for this undertaking. We object to the City's finding at this time based on incomplete archeological identification and evaluation efforts in the APE, but will reconsider that objection once we have the opportunity to review and comment on the results of the additional archeological study, or a programmatic agreement for the undertaking is developed.

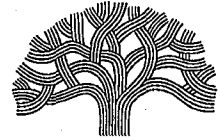
Please be advised that at this time the City of Oakland's Section 106 consultation obligations for this undertaking are not complete. We look forward to continuing consultation for this undertaking. If you have any questions, please do not hesitate to contact Shannon Lauchner, State Historian II, with the Local Government & Environmental Compliance Unit at (916)445-7013 or by email at shannon.lauchner@parks.ca.gov.

Sincerely,



Julianne Polanco
State Historic Preservation Officer

CITY OF OAKLAND



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

Department of Planning and Building
Zoning Division

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

Refer to: HUD_2018_1207_003

February 6, 2019

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

Notice of Intent to Enter into a Programmatic Agreement for Section 106 Review Related to Archeological Resources
34th and San Pablo Family Housing Project, Oakland, California

Project Description

The East Bay Asian Local Development Corporation (EBALDC) proposes to use funding from the U.S. Department of Housing and Urban Development (HUD), as administered by the City of Oakland, to demolish a vacant commercial building and shed and construct a new multifamily affordable residential development. HUD requires the City to satisfy federal environmental review under the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA), all related Federal Statutes and 24 CFR Part 58, HUD's Environmental Review Regulations, prior to use of its program funds.

The Undertaking specifically consists of demolition of the vacant commercial building and shed (Assessor's Parcel Number [APN] 005-0479-003-02) and construction of a new multifamily residential development of 60 affordable housing units. The development would be up to seven stories (78 feet) tall and include a mix of studio, one-, two-, and three-bedroom units. Ground disturbance will include Project-related excavations up to 12 feet below ground surface within the existing parking lot. The building layout wraps an interior courtyard; parking would be located in the interior and vehicular access would be through the adjacent parcel (California Hotel) of shared ownership. To accommodate the pedestrian access of off San Pablo Avenue through the California Hotel property, an existing gate that is attached to the California Hotel will be modified.

Area of Potential Effects

The APE includes the Project Area of direct impact, as well as the adjacent parcels encompassing the entire block bounded by San Pablo Avenue, 34th Street, Chestnut Street, and 35th Street (APN 005-0479-002-01, 005-0479-003-01, 005-0479-003-02, 005-0479-004, 005-0479-005, 005-0479-006, 005-

0479-007, 005-0479-009-01, and 005-0479-010). The APE encompasses approximately 86,660 square feet (2 acres) of total space and currently contains a parking lot with a vacant commercial building and shed (Project Site), the California Hotel, as well as additional buildings on adjacent parcels (3400 and 3420 Chestnut Street). Because there will be changes to the existing gate on the adjacent California Hotel (which is listed in the National Register of Historic Places [National Register]), the APE specifically includes the California Hotel (APN 005-0479-002-01).

For the archaeological analysis, the term Project Area is used and is the area of direct impact where ground disturbing activities would occur as part of the Undertaking. The Project Area includes four parcels (APNs 005-0479-003-01, 005-0479-003-02, 005-0479-004, and 005-0479-005), which include the previously described parking lot and vacant commercial building and shed. The vertical extent of the APE is the maximum depth of Project-related excavation within the Project Area, 12 feet below ground surface.

Historic Architectural Evaluation and Assessment of Effects

On behalf of the City, EBALDC contracted with Environmental Science Associates (ESA) to prepared a Historic Property Survey Report (HPSR) for the Project. ESA also analyzed the Undertaking's consistency with the Secretary of the Interior Standards (SOIS) for Rehabilitation with respect to the California Hotel (NR #88000969). ESA has recommended that the Undertaking, as designed, is consistent with the SOIS for Rehabilitation and that there would be no adverse effect to the California Hotel. The City and the California State Historic Preservation Officer (SHPO) have concurred with this recommendation.

In addition, ESA also evaluated the National Register-eligibility of the other buildings in the APE at 3134 San Pablo Avenue and 3400 and 3420 Chestnut Street. Based on a lack of association with significant events or people, non-distinct architectural characteristics and modifications, as well as a lack of historical data potential, ESA has recommended that the buildings are not eligible for listing in the National Register. The City and SHPO have concurred with this recommendation.

Archaeological Analysis and Assessment of Effects

On behalf of the City, ESA prepared an Archaeological Sensitivity Assessment and Testing Plan (ASATP) which analyzed the potential for buried archaeological resources to be within the Undertaking's area of direct impact. Given the proximity to known prehistoric archaeological resources and the environmental context, there is a moderate sensitivity for the presence of buried prehistoric archaeological resources in the Project Area. In addition, there is a high sensitivity for the presence of buried historic-era archaeological resources (e.g., artifact-filled wells or privies) in the Project Area. The City recommended that with the development of an archaeological research design and pre-construction Archaeological Testing Plan (ATP) to determine the presence or absence of buried archaeological historic properties in the Project Area and incorporation of the ATP into the ASATP there would be no adverse effect to archeological resources. However, SHPO objected to this conclusion and recommended either further archeological analysis or that the City enter into a Programmatic Agreement with SHPO.

Programmatic Agreement to Resolve Potential Adverse Effects to Historic Properties

Due to access and scheduling constraints, the City recommends the preparation of a Programmatic Agreement to memorialize a phased identification and evaluation effort to identify buried archaeological resources, pursuant to 36 CFR 800.4(b)(2). The Programmatic Agreement will outline the

requirements to implement the ATP, as detailed in the ASATP, prior to Project implementation to identify potential buried archaeological historic properties. If identification and evaluation efforts yield positive results, a phased application of the criteria of adverse effects would be followed pursuant to 36 CFR 800.5(a)(3) to determine whether the Project would have an adverse effect on a historic property. The agency official would treat any discovered archaeological deposits as an eligible property until formal evaluations are completed.

As Director of the Department of Planning and Building, I serve as the Agency Official for Section 106 and as the City's Certifying Officer to HUD for NEPA Review of projects within Oakland that qualify for HUD funding. As Agency Official, and under my direction, Planning staff recently entered into consultation with the SHPO on the effects this undertaking could have upon historic properties. Enclosed are copies of the HPSR, Native American correspondence, and ASATP. These Summary Documents required under Section 800.11(e) were provided by Betty Marvin in the City's Oakland Cultural Heritage Survey to the SHPO as part of the Section 106 Review consultation.

Please note, I am not requesting the Council's participation at this time. Pursuant to Section 800.6(a)(1)(iii), however, please indicate whether you wish the Advisory Council to participate in the preparation of the Programmatic Agreement for this project within 15 days of receipt of this letter. If I have not received a communication from you within that period, I will assume that the Council does not wish to participate in the Programmatic Agreement.

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

Yours very truly,



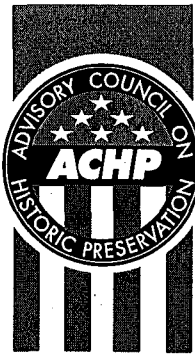
William Gilchrist, Director
Department of Planning and Building and NEPA Certifying Officer
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

Enclosures:

- Enclosure 1: Historic Property Survey Report (HPSR)
- Enclosure 2: Native American Heritage Commission (NAHC) correspondence
- Enclosure 3: Archaeological Sensitivity Assessment and Testing Plan (ASATP)

CC:

Julianne Polanco, State Historic Preservation Officer c/o Shannon Lauchner
Heather Klein, Planner IV, City of Oakland, Bureau of Planning
Betty Marvin, Historic Preservation Planner, City of Oakland, Oakland Cultural Heritage Survey
Andrew Matsas Assistant Project Manager, East Bay Asian Local Development Corporation



Preserving America's Heritage

April 19, 2019

Mr. William Gilchrist
Director
Department of Planning and Building
City of Oakland
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612-2032

Ref: *Proposed 34th and San Pablo Family Housing Project*
Oakland, California
ACHPConnect Log Number: 013638

Dear Mr. Gilchrist:

The Advisory Council on Historic Preservation (ACHP) has received your notification and supporting documentation regarding the potential adverse effects of the referenced undertaking on a property or properties listed or eligible for listing in the National Register of Historic Places. Because the ACHP did not respond within 15 days with a decision regarding participation, the ACHP assumes that the City of Oakland continued the consultation to resolve adverse effects.

Pursuant to 36 CFR §800.6(b)(1)(iv), you will need to file the final Programmatic Agreement (PA) developed in consultation with the California State Historic Preservation Office (SHPO) and any other consulting parties, and related documentation with the ACHP at the conclusion of the consultation process. The filing of the PA and supporting documentation with the ACHP is required in order to complete the requirements of Section 106 of the National Historic Preservation Act.

If you have any questions or require our further assistance, please contact Mr. Anthony Guy Lopez at 202-517-0220 or via e-mail at alopez@achp.gov.

Sincerely,

LaShavio Johnson
Historic Preservation Technician
Office of Federal Agency Programs

PROGRAMMATIC AGREEMENT
BETWEEN THE CITY OF OAKLAND AND
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
REGARDING THE 34TH AND SAN PABLO FAMILY HOUSING PROJECT,
OAKLAND, CALIFORNIA

WHEREAS, East Bay Asian Local Development Corporation (Project Sponsor) proposes to construct a 100% affordable housing project with 60 units and two ground floor commercial spaces at 3419-3437 San Pablo Avenue (Project); and

WHEREAS, the City of Oakland (City) has determined that the construction of the Project is an Undertaking as defined in Section 301 of the National Historic Preservation Act (NHPA) (54 USCA § 300320) and implementing regulations (36 CFR § 800.16(y)) because the Project will be carried out with Federal financial assistance from the Department of Housing and Urban Development (HUD), which is subject to regulation by 24 CFR Part 58; and

WHEREAS, the City is a Certified Local Government pursuant to Section 101(c)(1) of the NHPA (54 USCA § 302502) and is designated to fulfill the requirements of Section 106 of the NHPA (54 USCA § 306108) with respect to the Undertaking; and

WHEREAS, the City Administrator has designated the Director of Planning and Building to be the Agency Official for the Undertaking, including environmental review responsibilities for programs and activities subject to regulation under 24 CFR Part 58; and

WHEREAS, the City has consulted with the California State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) regarding historic properties that are or may be affected by the Undertaking; and

WHEREAS, the City has contacted the Native American Heritage Commission, and a search of their Sacred Lands File was negative; and

WHEREAS, the City has conducted outreach and has actively sought and requested the comments and participation of members of the California Valley Miwok and the Ohlone/Costanoan Indian tribes, and the tribes conveyed no concern about the Undertaking or location, but desired repatriation in the event of discovery during subsurface excavation; and

WHEREAS, the City has established, in consultation with the SHPO, the indirect Area of Potential Effects (APE) for the Undertaking to include the Project area of direct impact, as well as the adjacent parcels encompassing the entire block bounded by San Pablo Avenue, 34th Street, Chestnut Street, and 35th Street (APN 005-0479-002-01, 005-0479-003-01, 005-0479-003-02, 005-0479-004, 005-0479-005, 005-0479-006, 005-0479-007, 005-0479-009-01, and 005-0479-010), encompassing approximately 86,660 square feet (2 acres) (see Figure of Attachment A); and

WHEREAS, the City has established, in consultation with the SHPO, the direct APE for the Undertaking to be the area where ground disturbing activities would occur as part of the Undertaking, including four parcels (APNs 005-0479-003-01, 005-0479-003-02, 005-0479-004, and 005-0479-005), the vertical extent of which is the maximum depth of Project-related excavation or 12 feet below ground surface; and

WHEREAS, the City has determined that there is one building in the direct APE, the California Hotel, that is listed in the National Register of Historic Places (NRHP), and the City and the SHPO have concurred that the Undertaking, as designed, would have no adverse effect to this historic property; and

WHEREAS, the City has determined that there are three buildings in the indirect APE (3134 San Pablo Avenue and 3400 and 3420 Chestnut Street), and the City and the SHPO have concurred that these buildings are not eligible for listing in the NRHP; and

WHEREAS, the City has determined, with the concurrence of SHPO and other consulting parties, based on the archaeological analysis completed for the Undertaking, that there is a moderate sensitivity for the presence of buried prehistoric archaeological properties and a high sensitivity for the presence of buried historic-era archaeological properties in the direct APE, and so an Archaeological Sensitivity Assessment and Testing Plan (ASATP) has been developed to further determine the presence or absence of buried archaeological-historic properties; and

WHEREAS, in accordance with 36 CFR Section 800(6)(a)(1), the City has informed the ACHP of its potential adverse effect determination with specified documentation, and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR Section 800.6(a)(1)(iii); and

WHEREAS, the City and the SHPO have agreed to the procedures and methodology that the City will use to avoid any adverse effects from the Undertaking on buried archaeological historic properties through implementation of the ASATP; and

WHEREAS, the Project Sponsor and the Oakland Housing Authority (OHA) have participated in the Section 106 consultation and have each been invited to be signatories to this agreement, each as a Consulting Party and together as the Consulting Parties; and

WHEREAS, the City remains responsible for reporting the progress of this Undertaking, as it pertains to the Section 106 consultation process, to the SHPO for the duration of this agreement; and

NOW, THEREFORE, the City, the SHPO, and the Consulting Parties agree that the Undertaking shall be implemented according to the following stipulations in this Programmatic Agreement (PA) in order to take into account the effects the Undertaking may have on historic properties.

Execution of this PA by the City, the SHPO, and the Consulting Parties and implementation of its terms, is evidence that the City has taken into account the effects of the Undertaking on known and unknown historic properties and afforded the ACHP an opportunity to comment. Based on the reasonable assumption that the Undertaking may cause alterations in the character or use of archaeological historic properties, and in accordance with the requirements of Stipulation II of the PA (Identification of Historic Properties) and Stipulation III of the PA (Evaluation of Historic Properties), the following measures shall be completed to resolve potential adverse effects from the Undertaking on buried archaeological historic properties:

STIPULATIONS

The City will ensure that the following measures are carried out.

I. Professional Qualifications

A. The City shall ensure that all work carried out pursuant to this PA shall be done by or under the direct supervision of a qualified Archaeological Consultant who meets the Secretary of the Interior's Professional Qualifications Standards as specified at 62 FR 33708.

B. The Project Sponsor shall be responsible for engaging a qualified Archaeological Consultant acceptable to the City, in accordance with City policies, to perform the work required by Stipulation I (Identification of Historic Properties) and Stipulation II (Evaluation of Archaeological Resources), and to the extent necessary, prepare the plans and reports required by Stipulation III (Archaeological Data Recovery Program), Stipulation IV (Archaeological Monitoring Program), and Stipulation VII (Draft and Final Data Recovery Report).

C. All plans and reports prepared by the Archaeological Consultant as specified herein shall be submitted first to the City for review and comment, and shall be considered draft reports subject to revision until final approval by the SHPO.

II. Identification of Historic Properties

A. Archaeological identification shall be conducted in accordance with the Archaeological Sensitivity Assessment and Testing Plan (ASATP), provided as Attachment A to this agreement. The ASATP includes a subsurface exploration program and an archaeological research design that will guide efforts to identify the types of expected archaeological resource(s) that potentially exist within the APE and the locations likely to contain subsurface archaeological historic properties, as well as a plan for data recovery.

B. The purpose of the archaeological subsurface exploration is to determine, to the extent possible, the presence or absence of significant archaeological historic properties.

C. If the results of the archaeological subsurface exploration identify archaeological historic properties within the APE, the City in consultation with the consulting parties shall determine if additional identification measures are warranted and evaluate the archaeological resources according to Stipulation III. Following evaluation, additional measures that may be implemented include archaeological monitoring and/or implementation of an archaeological data recovery program.

III. Evaluation of Archaeological Resources

A. If the subsurface exploration reveals that there are intact archaeological historic properties present within the APE, the Archaeological Consultant shall evaluate any archaeological historic properties identified and make recommendations to the City regarding eligibility on the NRHP under Criteria A, B, C and D, in accordance with the process and requirements outlined in the ASATP.

B. If the City determines, based on the Archaeological Consultant's evaluation, that either (a) any archaeological historic properties identified within the APE do not meet the thresholds for eligibility on the NRHP, or (b) no archaeological historic properties were identified during subsurface exploration within the APE, then the Archaeological Consultant shall prepare a brief memorandum, which the City

will provide to the SHPO and other consulting parties in order to obtain concurrence regarding the absence of significant archaeological historic properties or the need for additional identification efforts. If the SHPO does not object to the City's determination within 30 days, no further action under this PA is required. If the City and SHPO do not agree regarding the eligibility of an identified historic resource, the City shall obtain a determination of eligibility from the Secretary of the Interior.

C. If, based on the Archaeological Consultant's evaluation, the City determines that archaeological historic properties identified within the APE meet the thresholds for eligibility on the NRHP, the Archaeological Consultant will document the findings in an Archaeological Evaluation Report (AER). The AER will provide a determination of the historic property's ability to meet Criteria A, B, C, and/or D of the NRHP and a determination of whether the Undertaking may have an adverse effect on a significant historic property.

D. After reviewing and commenting on the AER, the City will provide the AER to the SHPO and other consulting parties. The SHPO and other consulting parties will have 30 days to review the AER to determine whether the Undertaking may have an adverse effect on the significant historic property. If the City and the SHPO determine that the Undertaking will not have an effect on an identified historic property that meets the criteria for eligibility on the NRHP, or if the SHPO does not object to a finding of no adverse effect within 30 days, then no further action under this PA is required. If the City and SHPO cannot resolve a disagreement regarding the potential for an adverse impact to a significant archaeological historic property, the City shall request review by ACHP and will notify all consulting parties and the public.

IV. Archaeological Data Recovery Program

A. If the City and the SHPO determine both (a) that an archaeological historic property that meets the criteria for eligibility on the NRHP is present within the APE and (b) that the archaeological historic property could be adversely affected by the Undertaking, at the discretion of the Project Sponsor either:

1. The Undertaking shall be re-designed so as to avoid any adverse effect on the significant historic property; or
2. A data recovery program shall be implemented for historic properties and the SHPO will be consulted on the appropriate level of effort.

B. If the City and SHPO determine that an archaeological historic property within the APE is eligible for inclusion in the NRHP under Criterion D, and if the Project cannot be re-designed to avoid the historic property, the Archaeological Consultant will implement archaeological data recovery as outlined in the ASATP. If an archaeological historic property is found significant under Criteria A, and/or B, and/or C, then the City and the SHPO will identify appropriate treatment and that will be implemented by the Project Sponsor and/or the City.

C. Archaeological data recovery will be limited to archaeological historic properties determined to be significant, following application of all NRHP criteria, as defined above, and portions of the archaeological historic property that could be adversely affected by the Undertaking.

D. Should an archaeological data recovery program be warranted, the Archaeological Consultant will prepare an Archaeological Data Recovery Plan (ADRP). Within 30 days of concurrence on the evaluation of a historic property, the City shall submit a draft ADRP to the SHPO. The ADRP shall identify how the proposed data recovery program will preserve the significant information the archaeological

historic resource is expected to contain. The SHPO has 15 days to review the ADRP. Upon approval of the ARDP, the Project Sponsor and/or the City will implement the data recovery program prior to the start of construction.

V. Archaeological Monitoring Program

A. If the City, in consultation with the SHPO, determines that an archaeological monitoring program (AMP) is warranted, an Archaeological Monitoring Plan (AMP) shall be developed. The City will provide the AMP to the SHPO and other consulting parties within 15 days of determination of the need for monitoring. The SHPO, and other consulting parties, will have 10 days to review the AMP. The AMP will include, at a minimum, the following provisions:

1. The Archaeological Consultant shall develop the AMP sufficiently prior to any Project-related soils disturbing activities commencing.
2. The Archaeological Consultant shall recommend, and the City shall determine, what Project activities shall be monitored. In most cases, any soils-disturbing activities, such as demolition, foundation removal, excavation, grading, utilities installation, foundation work, driving of piles (foundation, shoring, etc.), site remediation, etc., shall require archaeological monitoring because of the risk these activities pose to potential archaeological resources and to their depositional context.
3. The Project Sponsor shall advise all Project contractors to be on the alert for evidence of an archaeological historic property, of how to identify the evidence of an archaeological historic property, and of the appropriate protocol in the event of apparent discovery of an archaeological historic property.
4. Qualified archaeological monitor(s) (Monitors) under the supervision of the City and under the direction of the Archaeological Consultant shall monitor the APE until such time at the City has determined that construction activities would not encounter buried archaeological resources or result in an adverse effect to a historic property.
5. The Monitors shall record and be authorized to collect soil samples and artifactual/ecofactual material as warranted for analysis.
6. If an archaeological historic property is encountered, all soils-disturbing activities in the vicinity of the find shall cease. The Monitors shall be empowered to temporarily redirect construction activities and equipment until the find is evaluated. The Monitors shall immediately notify the City, SHPO, and the Consulting Parties of the discovery of an archaeological historic property and will follow the procedures outlined in Stipulation III, or another expedited process as approved by the City and SHPO.

VI. Treatment of Human Remains

A. If human remains are discovered at any time during the implementation of the Undertaking, the City and Project Sponsor shall follow the provisions of the California Health and Human Safety Code Section 7050.5. This shall include immediate notification of the Alameda County Coroner. The Coroner shall have two working days to inspect the remains after receiving notification. During this time, all remains, associated soils, and artifacts shall remain in situ and/or on site, and shall be protected from

public viewing. This may include restricting access to the discovery area and the need to hire 24-hour security.

B. If pursuant to Health and Safety Code Section 7050.5(c) the Coroner determines that the human remains are or may be those of a Native American, then the discovery shall be treated in accordance with the provisions of Public Resources Code Sections 5097.98(a)(d). The Coroner has 24 hours to notify the California State Native American Heritage Commission who shall notify the Most Likely Descendant (MLD). The Archaeological Consultant, the Project sponsor, the City, and the MLD shall make all reasonable efforts to develop an agreement for the treatment of, with appropriate dignity, human remains and associated or unassociated funerary objects. The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects. The City and the Project Sponsor shall take appropriate measures to protect the discovery area from disturbance during any negotiations. Information concerning the discovery shall not be disclosed to the public pursuant to the specific exemption set forth in the California Government Code Section 6254.5(c).

VII. Draft and Final Data Recovery Report

A. Within 6 months after the completion of the implementation of data recovery, if such program is necessary based on the criteria in Stipulation IV, the Archaeological Consultant shall prepare a draft data recovery report documenting the results of the data recovery efforts. The report will include management summary; statement of scope, including Project location and setting; background contexts or summaries; summary of previous research, historical and archaeological; research goals and themes; methodologies; descriptions of recovered materials; findings and interpretations, referencing research goals; conclusions; references cited; and appendices. Tables will be provided that clearly: 1) list all recovery units organized by type (including trenches and column samples) showing sampling techniques, depth, and size and volume of sediment recovered; and 2) list artifacts and ecofacts divided into major categories and organized by component, and within that by recovery unit. Selected diagnostic artifacts, representative or unique tool types, and intact features will be illustrated.

B. The City will have 15 days to review the draft report. The Archaeological Consultant will have 10 days to revise the report and the City will have 15 days to review the final draft report.

C. Once approved by the City, the City will provide a copy of the final draft report to the SHPO and other Consulting Parties for review and comment. The SHPO and other Consulting Parties will have 30 days to review the final draft report.

D. Upon completion of the final report, the City will submit one electronic copy to the Northwest Information Center of the California Historical Resources Information System.

VIII. Documentation Standards

A. Written documentation of activities prescribed by these stipulations shall conform to the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716-44740) as well as to applicable standards and guidelines established by the SHPO.

IX. Curation and Curation Standards

A. The City shall ensure that, to the extent permitted under Section 5097.98 and Section 5097.991 of the California Public Resources Code, the materials and records resulting from the activities prescribed by this PA are curated in accordance with 36 CFR Section 79.

X. Duration of the Agreement

A. This PA is in effect for five (5) years from the date of execution. At any time, the signatories can agree to amend the PA in accordance with the amendment process referenced in Stipulation XI, below.

XI. Amendments, Objections and Resolutions

A. Should any signatory object at any time to the manner in which the terms of this PA are implemented, the City shall consult with the objecting party to resolve the objection and inform the other signatories of the objection. If the City determines within fifteen (15) calendar days of receipt that such objections cannot be resolved, the City will forward all documentation relevant to the dispute to the ACHP in accordance with 36 CFR Section 800.2(b)(2). The City shall prepare a written response that takes into account any advice or comments regarding the dispute from the ACHP and the signatories that were received within thirty (30) days of the City providing adequate documentation, and the City will provide ACHP and the signatories with a copy of this written response. The City will then proceed according to its final decision. The City's responsibility to carry out all other actions under this PA that are not the subjects of the disputed will remain unchanged.

B. If at any time during implementation of the measures required by this PA, an objection to any such measure or its manner of implementation is raised in writing by a member of the public, the City shall take the objection into account and consult, as needed, with the objecting party and the SHPO, as needed, for a period of time not to exceed fifteen (15) calendar days and inform the other signatories of the objection. If the City is unable to resolve the conflict, the City shall forward all documentation relevant to the dispute to the ACHP in accordance with 36 CFR 800.2(b)(2).

C. If any signatory believes that the terms of this PA cannot be carried out, or that an amendment to its terms should be made, that signatory shall immediately consult with the other parties to develop amendments pursuant to 36 CFR Section 800.6(c)(7) and 800.6(c)(8). If this PA is not amended as provided for in this stipulation, any signatory may terminate it, whereupon the City shall either execute a new memorandum of agreement or request the comments of the ACHP under 36 CFR Section 800.7(a).

Execution and implementation of this agreement evidence that the City has taken into account the effects of the Undertaking on known and unknown historic properties within the direct and indirect APE, and the City has satisfied its responsibilities under Section 106 of the National Historic Preservation Act and its implementing regulations.

California State Historic Preservation Officer

By:

Julianne Polanco

Date

City of Oakland

By:

XXX, Director

Date

City of Oakland Housing Authority

By:

XXX, Title

Date

East Bay Asian Local Development Corporation
(Consulting Party)

By:

XXX

Date

FILED
OFFICE OF THE CITY CLERK
OAKLAND


City Attorney's Office

2019 MAY 29 PM 3:50

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR, OR DESIGNEE, TO NEGOTIATE AND EXECUTE A PROGRAMMATIC AGREEMENT, PURSUANT TO SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT, WITH THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER REGARDING THE AVOIDANCE OF ANY ADVERSE EFFECTS ON BURIED ARCHAEOLOGICAL HISTORIC PROPERTIES AS A RESULT OF THE 34TH AND SAN PABLO AFFORDABLE HOUSING PROJECT LOCATED AT 3419-3431 SAN PABLO AVENUE, OAKLAND, CALIFORNIA, WITHOUT RETURNING TO THE CITY COUNCIL

WHEREAS, the East Bay Asian Local Development Corporation (EBALDC), a California non-profit corporation, proposes to demolish existing commercial and storage structures and construct a mixed-use development with 60 affordable residential units and up to approximately 2,500 square feet of commercial space in a seven-story building at 3419-3431 San Pablo Avenue, also known as the 34th and San Pablo Affordable Housing Project; and

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

WHEREAS, the Oakland Housing Authority (OHA) has conditionally awarded U.S. Department of Housing and Urban Development (HUD) Section 8 Vouchers to EBALDC; and

WHEREAS, the use of HUD and/or other federal funding for the project will require completion of environmental analysis pursuant to the National Environmental Protection Act (NEPA); and

WHEREAS, the City, designated to fulfill the requirements of Section 106 of National Historic Preservation Act (NHPA), determined that construction of the 34th and San Pablo Affordable Housing Project, would not adversely affect historic properties or potential archeological resources at the site; and

WHEREAS, SHPO agreed with the City's finding of no adverse effect on historic properties, but disagreed with the City's conclusion regarding potential buried archeological resources; and

WHEREAS, SHPO has determined that a Programmatic Agreement is an appropriate method to ensure that the project will not have an adverse archeological impact pursuant to Section 106 of the NHPA; and

WHEREAS, without completion of the Environmental Assessment and NEPA process, EBALDC cannot construct the building as affordable housing; and

WHEREAS, the City has consulted with the Federal Advisory Council on Historic Preservation regarding entering into a Programmatic Agreement with the City of Oakland; and

WHEREAS, the City Council has adopted three previous Resolutions authorizing the City Administrator, or designee, to negotiate and execute a Programmatic Agreement with SHPO; and therefore be it

RESOLVED, that the City Council authorizes the City Administrator, or designee, to negotiate and execute a Programmatic Agreement, pursuant to Section 106 of the NHPA, with the SHPO regarding the construction of the 34th and San Pablo Affordable Housing Project, and to take any and all other actions necessary to effectuate this Resolution, including possibly adding the Advisory Council on Historic Preservation, EBALDC and/or the City of Oakland Housing Authority as signatories/concurring parties, without returning to the City Council.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California