

CITY OF OAKLAND
AGENDA REPORT

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OFFICE OF THE CITY CLERK
OAKLAND

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TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community & Economic Development Agency
DATE: October 16, 2007

RE: **A Public Hearing and Adoption of a Resolution Denying the Appeal and Upholding the Planning Commission Approval for construction of 33 dwelling units over ground floor commercial at 5248 Telegraph Avenue (Case File No. CDV06-476 & TPM-9212)**

SUMMARY

On July 18, 2007, the Planning Commission approved a Design Review, Conditional Use permit, Vesting Tentative Parcel Map and Minor Variance to construct a mixed use development containing 33 dwelling units over ground floor commercial (CDV06-476)(Project).

On July 27, 2007, Bob Brokl, representing Standing Together for Accountable Neighborhood Development (STAND), filed an appeal of the Planning Commission's Approval of the Project to the City Council (Attachment A).

On July 30, 2007, Stuart Flashman, representing Rockridge Community Planning Council (RCPC), filed an appeal of the Planning Commission's Approval of the Project to the City Council (Attachment B).

The STAND appellant is arguing that the project does not qualify for a Categorical Exemption under CEQA because of required variances, potential cumulative impacts, and potential impacts to views. The appeal also argues against the use of a "Best Fit" zone for the property (C-45), and that the project is not consistent with the General Plan. In addition, the argument is made that there is no guarantee that the project will be developed or retained as co-housing.

The RCPC appellant is arguing specifically against the use of a "Best Fit" zone for the property (C-45) and that the proposed project is not consistent with the character of the neighborhood.

The arguments raised by the appellant are summarized below in the Key Issues portion of this report along with staff's response to each argument. For the reasons stated in this report, and elsewhere in the record, staff recommends the City Council adopt the attached Resolution denying the appeal, thereby upholding the Planning Commission's approval of the project.

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FISCAL IMPACT

The project involves a private development and does not request or require public funds and has no direct fiscal impact on the City of Oakland. If constructed, the project would provide a positive fiscal impact through increased property taxes, utility user taxes and business license taxes, while at the same time increasing the level of municipal services that must be provided.

BACKGROUND

PROJECT DESCRIPTION

The proposal is to construct a new five-story, 59 foot tall (55 feet to the midpoint of the gable), 33 unit co-housing development. The project would have frontages on both Claremont and Telegraph Avenues, which would contain ground floor commercial spaces. The proposed parking garage will be located behind the ground floor commercial spaces and be accessed from Claremont Avenue. The proposed development will replace four existing structures, which are proposed for demolition (or relocation if possible). Three of the four existing structures are Potentially Designated Historic Structures with a rating of C2+ (the two Victorian structures on Telegraph) and C3 (Kingfish), but not considered to be historic resources under CEQA. The applicant had requested a "Best Fit" Zone of C-45 pursuant to Planning Code Section 17.01.100. Given the current re-zoning process for the Temescal area the Director of Development opted to grant a "Best Fit" zone of C-30 rather than the requested C-45 because of the current direction of that rezoning process. At the public hearing on the project on July 18, 2007, the Planning Commission overruled the C-30 "Best Fit" Zone determination and granted the Best Fit Zone of C-45 as requested by the applicant.

PROJECT LOCATION AND ZONING

The subject site is an 11,777 square foot site containing frontages on the east side of Telegraph Avenue and the west side of Claremont Avenue. Telegraph Avenue is one of the widest streets in Oakland, measuring approximately 100 feet in width. Claremont Avenue is wider than average, with a width of 66 feet. As stated above, the development site contains four existing structures, three of which are Potentially Designated Historic Structures with a rating of C2+ and C3, but these are not considered historic resources under CEQA. The surrounding uses include auto related commercial uses, civic buildings, and high and low density residential uses.

The subject property is located within the C-28, Commercial Shopping District Zone, which is intended to create, preserve, and enhance major boulevards of medium-scale retail establishments featuring some specified higher density nodes in attractive settings oriented to pedestrian comparison shopping, and to encourage mixed-use residential and nonresidential developments, and is typically appropriate along major thoroughfares near residential communities.

Until the Planning Code is updated to reflect the general plan, the City Council has established a procedure in the General Plan Conformity Guidelines and Chapter 17.01 of the Planning Code to provide consistency between zoning and the general plan. During the review of the proposed

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project the applicant, pursuant to Planning Code Section 17.01.100B, had requested a “Best Fit” zone of C-45 to be applied to the project site due to an “express conflict” between the General Plan and the existing Zoning. The “express conflict” determination is made based upon the following process, as laid out in the General Plan Conformity Guidelines (Attachment C).

The General Plan Conformity Guidelines list three items for determining General Plan Conformity as follows:

- **Is the proposed activity and facility type permitted under the General Plan?** – The proposed activities (residential, retail) are permitted in the Community Commercial and Mixed Housing Type General Plan areas, and multi-family residential permitted within both the Community Commercial General Plan and mixed Housing Type classifications. Non-residential facilities are permitted within the Community Commercial General Plan Area, but are silent in the Mixed Housing Type General Plan Area. In such instance you defer to the existing base zoning of C-28, in which it is permitted.

- **Is the proposed intensity or density less than or equal to the maximum permitted under the General Plan?** – The Community Commercial General Plan area allows residential density equal to one dwelling unit per 261 square feet of lot area and commercial development equal to a FAR (Floor Area Ratio) of 5.0. The Mixed Housing Type General Plan area allows up to one dwelling unit per 1,089 square feet of lot area. The project site as broken down between the two separate land use classifications would allow a maximum density of 38 dwelling units. The proposed density of 33 dwelling units is consistent with the General Plan density.

- **Is the project consistent with Relevant General Plan policies?** – In order to answer this question the Guidelines refer you to “Checklist 4” of the document, which states the relevant policies:
 - **Policy 3.9 – Orienting Residential development – Residential developments should be encouraged to face the street and to orient their units to desirable sunlight and views, while avoiding unreasonably blocking sunlight and views for neighboring buildings, respecting the privacy needs of residents of the development and neighboring properties, providing for sufficient conveniently located open on-site open space, avoiding undue noise exposure.**

The proposed development faces Telegraph and Claremont Avenues, it does not unreasonably block sunlight to adjacent properties, and the area is not one that would be considered to have significant views (this is restricted to properties that contain a site slope of greater than 20%). Privacy and noise impacts would be no different than any other residential development that contains windows, and open space will be provided at individual units and common open space courtyards.

- **Policy N7.1 – Ensuring Compatible Development – New residential development in Detached Unit and Mixed Housing Type areas should be**

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compatible with the density, scale, design, and existing or desired character of surrounding development.

The subject property is not located within the Detached Unit area and there are not any lower intensity houses directly adjacent to the site.

- **Policy 7.2 – Defining Compatibility – Infrastructure availability, environmental constraints and natural features, emergency response and evacuation times, street width and function, prevailing lot size, predominant development type and height, scenic values, distance from public transit, and desired neighborhood character are among factors that could be taken into account when developing and mapping zoning designations or determining compatibility. These factors should be balanced with the citywide need for additional housing.**

The subject property is not located in an undeveloped area of the Oakland Hills, but is located within a developed urban area of the City, which contains existing infrastructure, streets, and pre-existing lot patterns. The proposed development is compatible with other mixed use developments on Telegraph Avenue and contains a design style that is contextual with the other period architecture in the surrounding area. The site is located directly on a transit line (AC Transit 1 and 1R lines).

- **Policy 8.2 – Making Compatible Interfaces Between Densities – The height of development in Urban Residential and other higher density residential areas should step down as it nears lower density areas to minimize conflicts at the interface between the different types of development.**

The subject property is not located within one of the Urban Residential areas, which are usually zoned R-70, R-80, and R-90 Zones, and which typically do not contain a set height limit. The subject property is not located adjacent to any lower density zoning districts or uses. The adjacent buildings on Claremont Avenue are commercial buildings and the adjacent site on Telegraph is a civic building.

- **Policy 4.2 – Protection of Residential Yards – Action 4.2.1 – Lot Coverage Limits – Prepare a study of lot coverage or floor area ratio limits for single family residential zoning districts, with assistance from local architects, builders, and residents.**

The subject property is not located within a single family residential district.

If the answers to all of the above questions are yes, or if the General Plan is silent, you must then determine whether or not the proposed project is permitted under the zoning regulations. To determine this, the following questions are applied:

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- **Is the proposed activity and facility permitted under the zoning regulations?** – The proposed activities (residential and retail), and facilities (multi family residential and non-residential) are permitted under the C-28 regulations.
- **Is the project consistent with other regulations of the zone?** –The project is **not consistent** with the regulations of the C-28 Zone. The proposed project contains a density higher than that permitted within the C-28 Zone, but is consistent with the density of the General Plan. The proposed project is also taller in height than permitted by the C-28 Zone and the proposed density is also not permitted by C-28, but the project is consistent with the relevant General Plan policies as stated above.

Given that the project as proposed conformed to the relevant General Plan policies, but is not permitted under the C-28 zoning due to the limitations on building envelope (density and height), the Planning Director opted to grant a “Best Fit” zone of C-30, which is listed as an “other possible Best Fit zone” for the Community Commercial General Plan designation. Other reasons for choosing the C-30 zone were that the proposed zoning update at that time was moving forward with a recommendation of C-30, as well as the fact that other more intense corridors in North Oakland with a Community Commercial General Plan designation also contain C-30 Zoning designations. During the public hearing the Commission reversed the staff recommendation for C-30 and granted the “Best Fit” zone of C-45 as requested by the applicant.

The following table outlines the differences between regulations in the different zones:

Attribute/Zone	C-28	C-30*	C-45	Project
Height	40'	None* (160')	None	59'
Rear Yard	10'	10'	10'	5'
Density**	1:450 (26 units)	1:450 (26 units)	1:300 (39 units)	1:357 (33 units)
Parking	1 per dwelling	1 per dwelling	1 per dwelling	1 per dwelling
Open Space	150sq.ft./d.u.	150sq.ft./d.u.	150sq.ft./d.u.	168sq.ft./d.u.
Best Fit Zone	No	Possible	Yes	N/A
Variance Req'd	Height	Height Plane /Rear Yard	Rear Yard	N/A

* The C-30 Zone requires a residential building to be no more than 40 feet in height at the rear yard setback line, but it may increase in height two feet vertically per each one foot setback horizontally, which for the project site would allow up to a maximum of 160' in height.

**The maximum density for a project site is dictated by the maximum allowed under the General Plan, for this project site the maximum under the General Plan is 38 units by accounting for the split in the General Plan Designation of Community Commercial (78% of the lot), which allows for one dwelling per 261 square feet and Mixed Housing Type (22% of the lot), which allows for one dwelling per 1,089 square feet.

GENERAL PLAN

As discussed elsewhere in this report, and in the City Planning Commission Report, the project is consistent with the relevant policies of the general plan that encourage in-fill development along

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transit corridors, and higher densities in growth and change areas; specifically LUTE Objective N8; Housing Element Policy; Housing Element Actions 1.3.1 and 1.3.2.

CEQA DETERMINATION

The Planning Commission confirmed the determination that the project is exempt from CEQA pursuant to Section 15332 of the CEQA Guidelines (In Fill Development Projects), and, as a separate and independent basis, is also exempt pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning).

Specifically, as a separate and independent basis from the other CEQA findings, pursuant to CEQA section 21083.3 and Guidelines section 15183, the City Council will also find that if it approves the project that: (a) the project is consistent with the Land Use and Transportation Element (LUTE) of the General Plan, for which an EIR was certified in March 1998; (b) feasible mitigation measures identified in the LUTE EIR were adopted and have been, or will be, undertaken; (c) the EIR evaluated impacts peculiar to the project and/or project site, as well as off-site and cumulative impacts; (d) uniformly applied development policies and/or standards (Standard Conditions of Approval) have previously been adopted and found to, when applied to future projects, substantially mitigate impacts. To the extent that no such findings were previously made, the City Council hereby finds and determines (in approving the project) that the Standard Conditions of Approval substantially mitigate environmental impacts; and (e) substantial new information does not exist to show that the Standard Conditions of Approval will not substantially mitigate the project and cumulative impacts.

PLANNING COMMISSION REVIEW

At the July 18, 2007 hearing, the Oakland Planning Commission took public testimony from various interested parties including the appellants, as well as others who were in support of the project. At the conclusion of the public hearing on the item the Commission voted unanimously to approve the project (6-0). During the public hearing the Planning Commission had decided to grant a “Best Fit” zone of C-45 as requested by the applicant, as well as grant a rear yard setback variance that Planning Staff had recommended be denied.

The Planning Commission granted the rear yard variance to reduce the setback from ten (10) feet to five (5) feet based upon meeting the minor variance criteria as set forth in Planning Code Section 17.148.050, as detailed in the approved Planning Commission staff report. This decision was largely based upon the configuration of the site and how it contains two frontages along major streets, the rear yard of the property is actually situated more as a side yard (in which five feet would be required for windows under the Building Code), and that the rear abutting property was in fact not a residential development being a recently established civic structure and activity. To further clarify, the project site has a unique physical circumstance in that it is essentially a through lot that contains two street frontages along Telegraph and Claremont Avenues, and has a relatively small “jog” in the lot that results in a lot line that qualifies as a rear lot line. All of these factors led the Commission to make the decision that as proposed the project served as a superior design solution, that the prescribed regulation would not serve the intent of the Code requirement, and that the unique lot configuration would not lead the variance to being

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considered a grant of special privilege, therefore meeting the required findings for a Minor Variance.

KEY ISSUES AND IMPACTS

The STAND appellant's letter is included as Attachment "A" and described below under **Section I**, and the RCPC appellant's letter is included as Attachment "B" and described below under **Section II**. The basis for the appeals, as contained in the appeal letters, is shown in bold text. A staff response follows each point in italic type.

SECTION I (STAND APPEAL)

- 1. The appellant argues that the project does not qualify for an in-fill CEQA exemption because of the requested a variance. The appellant argues that the project does not qualify for an in-fill exemption because of the required variance, and therefore does not comply with the in-fill criteria that a project must be "consistent with the applicable general plan designation and all applicable policies as well as with applicable zoning designation and regulations". The appellant argues that since the variance was granted, the project does not conform to the Planning Code since by definition a variance is an exception to the Code.**

This argument is incorrect because by meeting the required minor variance findings, which are expressly authorized by the Planning Code Chapter 17.148, the proposed project is indeed consistent with the Planning Code. The City's position has been upheld by the Alameda County Superior Court in Islamic Cultural Center of Northern California v. City of Oakland (Case No. RG03-133394), dealing with the Madison Street Lofts project (See Attachment D, page 9). The STAND appellant has not cited, nor could they, any legal authority to support their position. Therefore, exemptions are appropriate here.

- 2. The appellant argues that use of a "Best Fit" Zone is an illegal attempt to rezone the C-28 zoned property.**

The appellant asserts that the use of the Best Fit zone in this instance is incorrect since both the activity and facility type proposed by the project are both permitted in the C-28 Zone. The appellant cites general language from the overview section of the General Plan Conformity Guidelines, which states that, "There are two situations where Table 5 is used to select a 'Best Fit zone': 1) where the General Plan allows the activity/facility type, but the Zoning Regulations prohibit the activity/facility type". The appellant's assertion that since both Residential Activities and Multi-Family Facilities are permitted in the C-28 Zone, the use of a Best Fit zone is inappropriate.

This assertion is incorrect. The portion of the Conformity Guidelines that is cited in the appellant's letter is merely out of the overview section of the document (Attachment C, Page 3).

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The document later lays out the detailed process for determining conformity with the General Plan and the detailed process in which a "Best Fit" zone is applied. A "Best Fit" zone is applied when there is an express conflict between the General Plan and the Zoning, and is not limited to activity and facility types, but is also applied to other provisions of the Code that would otherwise not allow a project. If a project is deemed consistent with the General Plan, but the project itself is not permitted, than a Best Fit zone may also be applied. Specifically, the Procedures portion of the Conformity Guidelines focuses on whether or not there is a conflict between the General Plan and the existing zoning, which would create an express conflict between the two. This "Express Conflict" is created when a project clearly conforms with the General Plan, but is not permitted by the Zoning. The General Plan Conformity Guidelines provide a flow chart for Determining a Project's Conformity with the General Plan (Attachment C, Page 8), in which the several elements are reviewed beyond just the Activity and Facility types, such as density and intensity, which is the situation here.

After determining that the project is consistent with the General Plan you then have to determine whether or not the project is permitted by Zoning. If the project is permitted by zoning the proposal is permitted outright, if zoning requires a Conditional Use Permit, then the approval of a conditional use permit must be obtained. If the project is not permitted by zoning; this is an express conflict with the General Plan and the project can only be allowed by an Interim Conditional Use Permit or an approved application for a Rezoning (Ibid., Page 9).

Here, an express conflict was determined to exist because the proposed size of the building would not be permitted in the current C-28 Zone, even though the activity or facility type would be permitted. As a separate and independent basis, the density would also not be permitted in the C-28 Zone. Thus, there is an express conflict as the general plan allows both the size of building and density, but the current C-28 zoning does not.

The appellants also argue that the C-28 Zone was created as a Best Fit zone in the 1990's and should not be removed for a higher intensity zone. The Telegraph Avenue corridor through the Temescal area was zoned C-28 in 1992, and the superceding General Plan document was adopted in 1998. The subject area was specifically identified as Community Commercial, which is a higher intensity area than the Neighborhood Center areas (areas that the C-28 zones are appropriate for) most likely because it is located along a major transit corridor and its close proximity to a freeway underpass and existing uses such as a gas station, smog station, and fast food restaurant. Since the General Plan supercedes the previous zoning, C-28 is no longer a compatible zone for Community Commercial areas, and the C-30 Zone is one of the possible Best Fit zones; and the C-45 Zone is a Best Fit zone.

3. The appellant argues that the Planning Commission erred in their findings for a C-45 "Best Fit", after overturning the staff recommendation of C-30.

The determination of a "Best Fit" Zone was made by the Planning Commission, because the General Plan Conformity Guidelines clearly state that the C-45 Zone is one of the "best fit" zones for the Community Commercial General Plan Areas, whereas the staff recommendation

for C-30 was listed only as an “other possible zone”. The C-45 Zone is the only zone that is completely consistent with the proposed project in terms of building height as well as density. In addition, the stated intent of the C-45 Zone, “The C-45 zone is intended to create, preserve, and enhance areas with a wide range of both retail and wholesale establishments serving both long and short term needs in compact locations oriented toward pedestrian comparison shopping, and is typically appropriate to commercial clusters near intersections of major thoroughfares” clearly meets the description of the area in question being located at the intersection of Telegraph and Claremont Avenues.

The appellant’s comments after the initial statement are primarily on the variances granted for the rear yard setback. The Planning Commission granted a Minor Variance to allow the rear yard to be reduced from ten feet to five feet. This decision was largely based upon the configuration of the site and how it contains two frontages along major streets, the rear yard of the property is actually situated more as a side yard (in which five feet would be required for windows under the Building Code), and that the rear abutting property was in fact not a residential development being a recently established civic structure and activity. To further clarify, the project site has a unique physical circumstance in that it is essentially a through lot that contains two street frontages along Telegraph and Claremont Avenues, and has a relatively small “jog” in the lot that results in a lot line that qualifies as a rear lot line. All of these factors led the Commission to make the decision that project as proposed served as a superior design solution, that the prescribed regulation would not serve the intent of the Code requirement, and that the unique lot configuration would not lead the variance to being considered a grant of special privilege, therefore meeting the required findings for a Minor Variance per Planning Code Section 17.148.050.

- 4. The appellant alleges that staff erred in not identifying the need for a side yard variance. The appellant argues that there are insufficient side yard setbacks opposite living room windows, per Planning Code Section 17.108.080, which requires increased setbacks when living room windows face onto side yards.**

This argument is wrong. This requirement is for “legally required living room windows”, which is a requirement for certain exposure into a living space of a dwelling unit. All of the living rooms in the development that have side facing windows also contain a window that faces out to a rear yard or to the street, which both meet the exposure requirements, and thus the increased side yard setbacks are not required for secondary windows.

- 5. The appellant alleges that the Commission abused its discretion allowing a five story building, which out of character for this section of Telegraph.**

Under this argument the appellant refers to requirements to make State Government Code findings for a variance, insinuating that a height variance was granted. This is incorrect, as no height variance was granted as part of this project. Under the C-30 “Best Fit” zone analysis a variance was required for a height reduction plane, for which staff recommended denial. When the Commission granted a “Best Fit” zone of C-45 the height reduction plane was no longer required. The argument that a five story building cannot be permitted because one is not

currently adjacent to the site is invalid. The subject area is designated as a “grow and change” corridor under the Oakland General Plan, and larger buildings are anticipated as the area grows and develops. In addition, the appellant argues that the context of the area is one and two story buildings, which is incorrect because across Claremont Avenue from the project site there is an apartment building that is four stories over a basement and approximately fifty feet in height, as well as other buildings that are three and four stories along Telegraph Avenue. Moreover, the project underwent design review and the required design review findings were made.

6. The appellant argues that the project could have an impact upon views, which would be a significant environmental impact, and therefore a categorical exemption cannot be used.

The argument that the project would create a significant impact due to the unusual height of the building is also incorrect. Specifically, the appellant states that the height of the building could impact views and degrade the existing visual character of the area since there are no other buildings this size, and that the historic Temescal Library across the street will be visually impacted and shaded. In order to invalidate an exemption under this theory, there must be both an “unusual circumstance” and a reasonable possibility of a significant environmental impact. Neither factor is present here.

First, there is nothing unusual about the height of the building. The argument that there are no other buildings in the area of a similar height is incorrect. There are other nearby buildings of similar height, one across the street, and others located within a few blocks to the south along Telegraph and Shattuck Avenues. Moreover, this is an area designated for “Growth and Change” in the general plan and an urban in-fill project, located along major transit corridors (containing one of the widest streets in the City), and close to freeway access, where increased height is appropriate and desirable. In addition, the project underwent design review and the required design review findings were made. Thus, there is nothing unusual about the building’s height.

*Second, there is not a reasonable possibility of a significant impact due to the height of the building. The City of Oakland’s Thresholds for Significance(Attachment E) state that a significant impact on views only applies to impacts on scenic vistas, or elements on a scenic highway, neither of which is the case here. The appellant merely contends that the project would block unspecified views. In addition, the Thresholds for Significance state that shadow impacts are limited to those that would “substantially impair the beneficial use of any public or quasi-public park, lawn, garden, or open space”, or “cast shadow on an historic resource, as defined by CEQA Section 15064.5(a), such that the shadow would materially impair the resource’s historic significance by materially altering those physical characteristics of the resource that convey its historical significance **and** that justify its inclusion on an historical resource list”. While the Temescal Library is a historic resource, the building is about 130 feet southwest of the project site and would only be shadowed by the project at sunrise. Such shadow would not alter any physical characteristics that make the building a historically significant structure. In short, it would not lose its eligibility as an historic resource.*

- 7. The appellant claims that the three Potentially Designated Historic Structures (PDHP) with a City rating of C, may be listed in the California register and would therefore be considered a historic resource under CEQA.**

The appellant's claim that the subject buildings would be considered a historic resource under CEQA is incorrect. Moreover, the Appellant has provided no evidence, nor can they, to support its position. In the City of Oakland, an historical resource under CEQA is a resource that meets any of the following criteria:

- A) A resource listed in, or determined to be eligible for listing in, the California Register of Historical Resources;*
- B) A resource included in Oakland's Local Register of historical resources, unless, the preponderance of evidence demonstrates that it is not historically or culturally significant;*
- C) A resource identified as significant (e.g., rated 1-5) in a historical resource survey recorded on Department of Parks and Recreation Form 523, unless the preponderance of evidence demonstrates that it is not historically or culturally significant;*
- D) Meets the criteria for listing on the California Register of Historical Resources;*
- E) A resource that is determined by the Oakland City Council to be historically or culturally significant even though it does not meet the other four criteria listed here.*

Each of these criteria are discussed below:

- A) A resource listed in, or determined to be eligible for listing in, the California Register of Historical Resources;*

The buildings on the subject site (a) are not listed in the California Register of Historical Resources; and (b) have not been determined eligible by the State Historical Resources Commission for listing in the California Register of Historical Resources.

- B) A resource included in Oakland's Local Register of historical resources, unless, the preponderance of evidence demonstrates that it is not historically or culturally significant;*

Local Register Properties are those that meet the following:

- i) All Designated Historic Properties (Landmarks, Heritage Properties, Study List Properties, Preservation Districts, and S-7 and S-20 Preservation Combining Zone Properties); and*
- ii) Those Potential Designated Historic Properties that have an existing rating of "A" or "B" or are located within an Area of Primary Importance.*

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Here, the buildings are rated C2 & C3, and are not Designated Historic properties. Therefore, the buildings are not considered historical resources under this criterion.

- C) *A resource identified as significant (e.g., rated 1-5) in a historical resource survey recorded on Department of Parks and Recreation Form 523, unless the preponderance of evidence demonstrates that it is not historically or culturally significant;*

The only building on the property with a DPR Form 523 rating is the garage structure, which was evaluated under the Unreinforced Masonry Building program and the rating designation was a 6 which means that the structure is not significant.

- D) *Meets the criteria for listing on the California Register of Historical Resources;*

The structures on the property do not meet the criteria for listing on the National Register of Historic Resources, which also means it does not meet the California Register of Historic Resources criteria. Structures that meet these criteria are generally those with a City of Oakland rating of A or B.

In order for a resource to meet the criteria for listing in the California Register, it must satisfy all of the following three provisions:

1. *It meets one of the following four criteria of significance (PRC 5024.1(c) and CEQA Guidelines 15064.5):*

- i. *the resource “is associated with events that have made a significant contribution to the broad patterns of California’s history and cultural heritage”.*

The three PDHP’s on the subject property are not associated with any events that have made a contribution to the broad patterns of California’s history or cultural heritage.

- ii. *the resource “is associated with the lives of persons important in our past”.*

The three PDHP’s on the subject property are not associated with the lives of persons important to California history.

- iii. *the resource “embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values”*

The Kingfish pub on the site does embody some distinctive characteristics of vernacular commercial buildings of the era; however, there are no specific traits to the building that are architecturally significant. The other two PDHP’s on Telegraph Avenue have characteristics of Victorian era

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architecture, but are by no means comparable to other highly decorated and ornamented Victorian buildings of the same era. None of the buildings on the subject property were designed by important architects of record or possess high artistic values.

- iv. *the resource “has yielded, or may be likely to yield information important in prehistory or history” (this criterion applies primarily to archaeological sites).*

None of the buildings on the property have yielded important information to history or prehistory. City of Oakland Standard Conditions of approval deal with the instance in which important archeological finds may be discovered through grading, however unlikely it may be.

2. *The resource retains historic integrity;*

The buildings are largely intact and retain the original architectural integrity.

3. *It is fifty years old or older (except where it can be demonstrated that sufficient time has passed to understand the historical importance of the resource).*

The buildings are older than fifty years of age.

Given that the buildings on the property do not meet all of the required criteria, they may not be deemed eligible for the California Register.

- E) *A resource that is determined by the Oakland City Council to be historically or culturally significant even though it does not meet the other four criteria listed here.*

None of the buildings on the subject property have been determined to be historically or culturally significant by the Oakland City Council.

8. **The appellant argues that cumulative impacts must be studied and identified before the project can be approved.**

The appellant refers to potential cumulative impacts related to traffic and air quality, removal of historic resources, loss of views, and shading from five and six story buildings.

The subject proposal was subject to a Traffic Impact Study(Attachment F), which was reviewed by the Transportation Services Division of Public Works, and the study concluded that there were no impacts that would trip any of the City of Oakland CEQA thresholds of significance. The Traffic Impact Study also reviewed potential cumulative impacts to intersections in the future, based upon reasonable growth projections, and once again none of the cumulative Thresholds for Significance were tripped.

The appellant argues that the project impacts, along with those created by AC Transit's proposed Bus Rapid Transit (BRT) line, have not been studied. AC Transit has published a Draft Environmental Impact Statement/ Environmental Impact Report for the implementation of the Telegraph Avenue BRT line. The proposed BRT would generally eliminate one through lane of traffic in each direction. However there are no finalized design plans, assurance of full funding, or approvals from AC Transit, the City of Oakland and other public agencies. Transportation improvement projects, like the BRT, are not considered as part of the projected baseline conditions because they are too speculative. Thus, they are not required to be analyzed as part of any CEQA review.

Appellant has not provided, nor could they, any evidence relating to air quality impacts. There are no project specific air quality impacts, nor are there cumulative air quality impacts, as this is an urban infill, transit-oriented development, which is expressly encouraged under the City's General Plan and the Clean Air Plan. The project is consistent with the General Plan, and, in turn, the General Plan consistent with the Clean Air Plan. Moreover, the size of this project does not warrant a detailed, quantitative analysis under the Bay Area Air Quality Management District regulations, as the District does not recommend such a study for projects generating less than 2,000 vehicle trips per day.

As stated above, the buildings on the subject property are not historic resources under CEQA, so there would not be any cumulative impact to consider, and a significant view impact is one that would impact a scenic vista or scenic highway, neither of which is the case for the subject property. Also, there are no project-related shadow impacts or cumulative shadow impacts.

- 9. The appellants claim that the project is not in compliance with the General Plan because (a) the EIR for the Land Use and Transportation Element (LUTE) of the General Plan did not discuss variances, nor did it discuss height or densities that would exceed the amounts allowed; and (b) the density is not compatible with surrounding area.**

Densities are discussed in the Land Use and Transportation Element, and the proposed project is consistent with those densities as discussed earlier in this staff report. Furthermore, the General Plan LUTE identifies the subject property as being located within an area of "growth and change", which envisions development more intense than what exists on the site and surrounding area today. The appellant's statement that variances were not discussed in the LUTE EIR has little bearing on the proposed project since nothing in the General Plan documents state that variances shall no longer be granted, and variance procedures are typical of any municipality's zoning ordinance. The process for reviewing variance requests have been, and continue to be, processed under Section 17.148 of the Oakland Planning Code.

Moreover, as indicated in this report and the Planning Commission report, the project is consistent with and furthers numerous policies in the General Plan. The fact that a project may appear to not be fully consistent with each and every general plan policy is not a basis to

conclude the project is inconsistent with the general plan. Specifically, the Oakland General Plan states the following:

The General Plan contains many policies which may in some cases address different goals, policies and objectives and thus some policies may compete with each other. The Planning Commission and City Council, in deciding whether to approve a proposed project, must decide whether, on balance, the project is consistent (i.e., in general harmony) with the General Plan. The fact that a specific project does not meet all General Plan goals, policies and objectives does not inherently result in a significant effect on the environment within the context of the California Environmental Quality Act (CEQA). (City Council Resolution No. 79312 C.M.S.; adopted June 2005)

10. No Guarantee of the Co-housing component of the project in perpetuity.

The appellant argues that because the proposed co-housing project is not guaranteed to remain as co-housing, that the project should not have received approval for a five story building because it was being used to justify the larger building. This argument is incorrect, because while the discussion of co-housing was ongoing due to the nature of the proposal, it was not used in, or provided a basis for, making any of the required findings for granting of the land use permits, or for that matter any determination of a Best Fit zone. Moreover, as a practical matter, as pointed out at the Planning Commission hearing, the design of the common areas leads the development to be used in a co-housing manner.

SECTION II (RCPC APPEAL)

1. Planning Staff and the Planning Commission made an improper determination of a “direct conflict” between zoning and the General Plan.

The appellant argues that the General Plan outlines maximum densities for areas, and that a project that is less than the maximum density could also be consistent with the General Plan, and that the density permitted in the C-28 and C-30 zones are the same, so there is no justification for determination of an “express conflict” with the zoning and the General Plan, and therefore a “Best Fit” zone cannot be used. This is incorrect.

The LUTE provided a policy framework to guide the future development of the City into the 21st century. The zoning in many parts of the City is over 40 years old. Until a comprehensive zoning update is completed, the policies in the General Plan control where there is an express conflict with the zoning. This does not mean that the maximum density must be achieved for each project; nor does it mean that the maximum densities should not be achieved, if warranted. Here, it was determined that the maximum density was more appropriate for the site than the existing density permitted under C-28 zoning.

As outlined in this staff report, the “express conflict” was determined because of the size/massing of the building and the density. As detailed above, when using the General Plan Conformity Guidelines once a project is determined to meet the relevant General Plan policies, two questions are asked to determine whether or not there is a conflict: 1) Is the proposed activity and facility permitted in the zone; and 2) Is the project consistent with other regulations of the zone? The proposed project was consistent with the allowed activities and facilities, but the proposed project was not consistent with the C-28 Zone because of the building height, therefore there was a conflict between the General Plan and the Zoning, and since the C-28 Zone is not one of the possible “Best Fit” zones for Community Commercial, a C-30 zone, which is a possible Best Fit zone was chosen by staff to guide the allowed development of the site. During the hearing the Planning Commission opted to use the C-45 zone, which is a Best Fit zone for Community Commercial, as it allows both the density and building size.

The appellant also argues that the existing C-28 Zoning was adopted specifically for this area after the most recent 1998 General Plan revision. This is incorrect, as the C-28 Zoning was adopted June 3, 1992 (Ordinance No. 11445 C.M.S.), six years prior to adoption of the General Plan LUTE, and this area was specifically designated as Community Commercial, which was envisioned as an area of higher intensity due to its location adjacent to a transit corridor and the freeway.

2. Improper Determination that C-45 was the “Best Fit” zone for the site.

The appellant argues that the C-45 “Best Fit” zone is inappropriate for this location because of outright permitted uses in the C-45 such as custom manufacturing, administrative, and research services, which directly conflict with the C-28 limitations on ground floor uses that was specifically adopted for the area in 1999 (Ordinance No. 12138 C.M.S.), and because the height and residential development intensity is much greater than what is allowed in the area.

The fact that there may have been a minor, unrelated code amendment after adoption of the General Plan LUTE does not mean that the C-28 zoning was reaffirmed for this area. Moreover, the argument about the limitation on ground floor uses is incorrect, since the C-28 zone only includes this limitation for the area between I-580 and 52nd Street. The project site is north of 52nd Street and the ground floor limitations would not apply to this project site.

Nevertheless, outright permitted uses under C-45, such as custom manufacturing, administrative, and research services, for this site would require a new Interim CUP, which would be evaluated by staff and publicly noticed prior to any decision being rendered, ultimately appealable to the Planning Commission, as indicated in Condition of Approval #1.

3. Need to revise project and supporting findings to promote compatibility with surrounding community.

The appellant argues that the following project modifications should be made to make the project conform to the community character:

- 1) *Overrule the planning Commission's variance approval and restore the height setbacks as proposed in the staff report,*
- 2) *Drop the maximum building height from 59 feet to 55 feet,*
- 3) *Improve the project articulation to make it more in keeping with the general character of buildings in Rockridge and Claremont Avenue.*

The Planning Commission did not grant a variance for the height reduction plane, as stated by the appellant, as there was not a variance required. Once the Planning Commission granted a "Best Fit" Zone of C-45 the required height reduction plane was no longer required. The only variance granted as part of the project approval was the minor variance for a reduced rear yard setback. The justification for the rear yard variance is discussed above in this report. Staff believe that the proposed maximum 59 foot building height is appropriate for this site, along a major transit corridor, because it meets the spirit of the intended 55 foot height limit for the area (proposed under the Temescal rezoning; the mid line of the roof pitch meets the 55 foot limit, and allows for a gable roof, which, in turn provides for a roof style similar to others in the nearby area.

Staff also believes that there is adequate articulation to the building façade because of the breaks in the elevation for the interior courtyards, which break down the visual bulk and mass of the building. This site is not similar to other sites in the Rockridge or Claremont Avenue area because it is located at an intersection of two large streets, one of which, Telegraph Avenue, is a major transit corridor and major regional thoroughfare.

SUSTAINABLE OPPORTUNITIES

Economic: The project will expand the available housing inventory in the City of Oakland.

Environmental: Developing in already developed urban environments reduce pressure to build on agricultural and other undeveloped land. Sites near mass transit enable residents to reduce dependency on automobiles and further reduce adverse environmental impacts.

Social Equity: The project benefits the community and improves social equity by providing additional available housing to the City of Oakland as well as additional temporary jobs during the construction of the project.

DISABILITY AND SENIOR CITIZEN ACCESS

The Building Division of the Community and Economic Development Agency will require that the project conform to the Americans with Disability Act in all provisions to ensure equal access to this facility.

STAFF 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

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based on the following reasons: 1) The Project and the approval of the project comply in all significant respects with applicable general plan policies and review procedures; 2) The C-45 Zone is more appropriate than the C-30 Zone given that it is identified as the “Best Fit” zone and would allow the appropriate size and density envisioned in the general plan, with a Community Commercial General Plan designation in the North Oakland area ; and 3) the Project meets the CEQA In-Fill exemption requirements and there are no exceptions that would defeat the use of the exemption, and, as a separate and independent basis also exempt pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning).

ALTERNATIVE CITY COUNCIL ACTIONS

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, except for the granting of the rear yard setback variance. This would require a redesign and possibly reduce the size of some of the units.
3. Uphold the Planning Commission’s decision, but impose additional conditions on the project and/or modify the project.
4. Continue the item to a future hearing for further information or clarification.
5. Refer the matter back to the Planning Commission for further consideration on specific issues/concerns of the City Council. Under this option, the item would be forwarded back to the City Council with a recommendation after review by the Planning Commission.

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ACTION REQUESTED OF THE CITY COUNCIL

1. Affirm the Planning Commission's environmental determination that the Project is exempt from CEQA review pursuant to CEQA Guidelines sections 15332 (In-Fill exemption) and, as a separate an independent basis, 15183 (projects consistent with community plan, general plan, or zoning).
2. Adopt the attached Resolution denying the appeal, and thereby upholding the Planning Commission's approval of the Project.

Respectfully submitted,



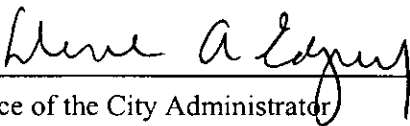
CLAUDIA CAPPIO

Development Director
Community & Economic Development Agency

Prepared by:
Peterson Z. Vollmann, Planner III
Planning & Zoning

APPROVED AND FORWARDED

TO THE CITY COUNCIL:



Office of the City Administrator

ATTACHMENTS:

- A. STAND appeal application submitted July 27, 2007.
- B. RCPC appeal application submitted July 30, 2007.
- C. General Plan Conformity Guidelines
- D. Islamic Cultural Center of Northern California v. City of Oakland (Case No. RG03-133394)
- E. Excerpt of City's Thresholds of Significance
- F. Excerpt from Traffic Impact Study (no appendices)

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CITY OF OAKLAND REQUEST FOR APPEAL OF DECISION TO PLANNING COMMISSION OR CITY COUNCIL

(REVISED 8/14/02)

PROJECT INFORMATION

Case No. of Appealed Project: CPV06-476 + TPM-9212

Project Address of Appealed Project: 5248 Telegraph Ave.

APPELLANT INFORMATION:

Printed Name: Robert Brokl Phone Number: (510) 655-3841

Mailing Address: 636 - 59th St. Alternate Contact Number: _____

City/Zip Code: Oakland, CA. 94609 Representing: STAND (Standing Together for Accountable Neighborhood Development)

An appeal is hereby submitted on:

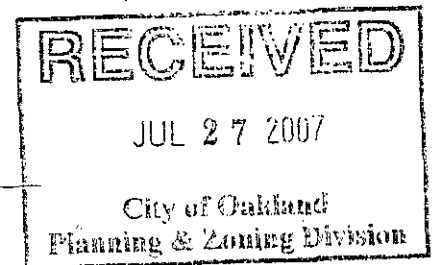
- AN ADMINISTRATIVE DECISION (TO THE CITY PLANNING COMMISSION)

YOU MUST INDICATE ALL THAT APPLY:

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

Pursuant to the Oakland Municipal and Planning Codes listed below:

- Administrative Determination or Interpretation (OPC Sec. 17.132.020)
- Determination of General Plan Conformity (OPC Sec. 17.01.080)
- Design Review (OPC Sec. 17.136.080)
- Small Project Design Review (OPC Sec. 17.136.130)
- Minor Conditional Use Permit (OPC Sec. 17.134.060)
- Minor Variance (OPC Sec. 17.148.060)
- Tentative Parcel Map (OMC Section 16.304.100)
- Certain Environmental Determinations (OPC Sec. 17.158.220)
- Creek Protection Permit (OMC Sec. 13.16.450)
- Creek Determination (OMC Sec. 13.16.460)
- Hearing Officer's revocation/impose or amend conditions (OPC Secs. 15.152.150 & 15.156.160)
- Other (please specify) _____



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

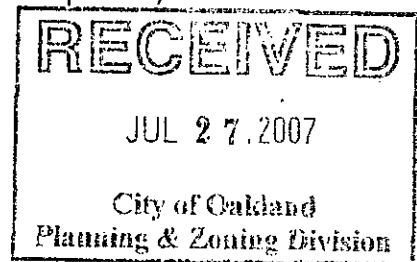
construct a new five story, 33 unit residential condominium building

(continued on reverse)

STAND (Standing Together for Accountable Neighborhood Development)
636 59th St.
Oakland, Ca. 94609

July 25, 2007

Oakland City Council
Oakland City Hall
1 Frank Ogawa Plaza
Oakland, Ca. 94612



RE: Appeal of Standing Together for Accountable Neighborhood Development
Regarding Case File Number CDV06-476 & TPM-9212 for Property at 5248 Telegraph
Ave., Oakland, Ca.

Dear Council Members:

STAND is a group of residents and neighbors who have been active attempting to influence developments in North Oakland. STAND corresponds, meets, and lobbies developers, elected officials, and commissioners to shape projects that allow for true infill, increased appropriate density and new construction, while seeking to preserve the unique character and livability of the Temescal neighborhood and the broader commercial/residential corridor by the use of height, bulk, and density controls, and by the protection of character-defining historic buildings.

We encourage the City Council to overturn the Planning Commission approval of the project. We have reviewed the developer application, staff reports, and the grant of the application. Additionally, members of STAND participated in public meeting and two Planning Commission meetings devoted to the project, and provided written comments at those hearings.

We have concluded the project should be rejected because, with the need for a variance, the project is ineligible for an infill categorical exemption, and because the project as approved is likely to cause environmental harm. The finding of unusual circumstances to justify the variance is unfounded, and the need for additional variances should have been called out at the Commission hearing and were not.

More environmental review--an initial study or an EIR--would further identify the potential significant adverse impacts of the project, and alternatives and mitigations.

We enumerate in more detail our objections below:

1. Staff erred in determining that the project qualifies for an infill categorical exemption.

Infill categorical exemptions are limited to projects that are "consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations."

As the staff report states: "...The project is not consistent with the regulations of the C-28 Zone. The proposed project contains a density higher than that permitted within the C-28 Zone, but is consistent with the density of the General Plan. The proposed project is also taller in height than that permitted by the C-28 Zone, (but) is consistent with the relevant General Plan policies as stated above."

As Lawyer Jeff D. Hoffman has written on a similar variance-requesting project, 4801 Shattuck: "By definition, a variance allowing construction of higher buildings than the planning code allows or buildings without the setbacks that the code requires would make the project inconsistent with that code, because it would grant a variation from the planning code's requirements. Because the project was granted variances rendering it inconsistent with the Oakland planning code, it is ineligible for an infill categorical exemption."

2. "Best Fit" as an Excuse for Rezoning. The City of Oakland last updated its General Plan in 1998. Revisions to the zoning codes for the application of the new general plan guidelines should by law have been implemented in a reasonable period of time. While the old zoning remains in place, the City has reconciled the "conflict" between the General Plan and zoning with their "Best Fit" category--an arbitrary means to "solve" the problem.

As STAND member George Nesbitt notes in his attached comments:

"REZONING, VIOLATION #2: Best fit Rezoning:

The Project is illegally trying to rezone the C-28 zoned lot by applying C-30 as a best fit. This is not a legal use of best fit according to 'Guidelines for Determining Project Conformity.' ...

'There are two situations where Table 5 is used to select a 'best fit zone': (1) where the General plan allows the activity/facility type, but the Zoning Regulations prohibit it (known as 'express conflict'); and (2) where the General plan is silent on the issue, and the Zoning Regulations prohibit the activity/facility type.'

(From page 3 of the Guidelines for Determining Project Conformity March 1998)

The C-28 lot is in the Community Commercial and Mixed Housing Type General Plan designations.

Neighborhood Center Mixed Use and Urban Residential both allow Permanent Residential Activity, and Multifamily Facilities (with a Conditional Use Permit).

Best Fit clearly does not "fit", the activity/facility type is allowed in both the General Plan and Zoning Regulations. Applying "best fit zone" to the C-28 lot is an attempt to illegally rezone or up zone the properties."

As Richard W. Smith noted in his written comments submitted to the Commission:

"The C-28-zone was designed as a 'best fit' zoning for Telegraph Avenue in the Temescal area by the affected community, planning staff, Planning Commission, and the City Council in the '90s. Its express purpose was to replace the C-30 zone in the Temescal area. What evidence is there that this should be reversed? The Best Fit Zone Table in the Guidelines for Determining Project Conformity merely lists C-30 as one of the 'optional' selections. Optional means discretionary and not mandatory. The Guidelines, referring to 17.144.060 obligates the Planning Director to show that C-28 is 'inadequate or otherwise contrary to the public interest.' Therefore, Planning Staff needs to show compelling reasons why the previous change is inappropriate..."

The staff report states: "A small portion (22%) of the project site is within the Mixed Housing Type General plan Area, ***but is slated to be modified under the update for the Temescal Area so that the entire site would be included as community***

commercial." (emphasis added.) The Mixed Housing Type area allow(s) (sic) for one dwelling unit per 1,089 square feet of lot area."

22% is one-fifth of the parcel, and at this point in the rezoning process--prior to approval by the Planning Commission and then the entire City Council--picking a "Best Fit" based upon speculation about future zoning is premature and an abuse of discretion.

3. The Planning Commission erred in their findings for a C-45 "Best Fit", after overturning the staff "Best Fit" recommendation of C-30. Staff had selected C-30 as "Best Fit", replacing the existing C-28 zoning, and recommended granting a variance to allow for the 5-story building and its "encroachment into the 'height reduction plane' from the minimum required rear yard."

After closing the public hearing Commissioner Lighty advocated for the developer's preference of a C-45 "Best Fit" instead, since he believed this would exempt the need for a variance due to the height. The Commissioners agreed to this. Both Lighty and the developer expressed surprise when Planner Scott Miller said that a C-45 "Best Fit" would still require a variance for a rear yard setback. At that point, the Commissioners decided to come up with findings supporting the variance for the building as proposed, without the modifications required by C-45. Commissioner Mudge suggested the "unusual configuration of the lot", and the Commissioners voted for the C-45 designation and their accompanying finding.

In neither the July 18 nor the March 28 staff reports is there any description of the site--two adjoining rectangular lots--as unusual or irregular. Clearly, current and proposed uses would indicate it is indeed capable of being used.

The commissioners abused their discretion, inventing findings without any substantive back-up information, to justify their support of C-45.

4. Staff erred in not identifying the need for side yard variances. As noted by Richard W. Smith, "...There are insufficient side yards at the sides of the building which have units with living room windows. Under both C-28 and C-30 the minimum side yard for the Kingfish project is 15% of lot width (Sections 17.44.170 and 17.46.160C1 which references 17.108.080). this works out to over 11'. The proposed project has 5' side yards. This requires a variance, which in turn, requires public noticing. **There is no evidence that an application for this condition has been filed, nor is there evidence that noticing has occurred.** Since this is an occupant health and life safety issue, it is more significant than issues such as building height and zoning."

5. The proposed 5 story building is out of character for this section of Telegraph Ave. and Claremont Ave. The staff report, as required by Government Code 65906 and local planning code, must make findings that 1) there must be special circumstances applicable to the property, by reason of which the strict application of the zoning ordinance would deprive such property of privileges enjoyed by other property in the vicinity under identical zoning classification, and 3) any variance granted shall be subject to such conditions as will assure that the adjustment is not a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the property is located. (Miller v. Board of Supervisors, 1981).

Staff has failed to identify other existing 5 story buildings in the immediate vicinity. As a matter of fact, under conditional use permit findings (p. 13), staff states: "The existing site and neighboring lots along Telegraph are relatively undeveloped and contain one and two

story commercial and civic buildings." The proposed project is an exception to the surroundings, and, if approved, will become precedent for other structures in the immediate area."

Staff has also failed to identify any special circumstances pertaining to the site that would necessitate granting of the variance and c.u.p.

6. "A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." As Hoffman has noted on the 4801 project, according to the Pub. Resources Code, 21060.5, "A significant impact upon views is a significant environmental impact."

The height of the building would make it unique in the immediate vicinity of Claremont and Telegraph. The adjoining auto service structure is one story; a four story apartment building across the street on Claremont is the single highest structure nearby.

The height of the proposed building, with the impact upon views and shading, and the demolition of three historic properties on the property, all create the reasonable possibility of significant environmental effect. A categorical exemption is therefore invalid for this project, and environmental review must occur.

Further, the National Register Carnegie Temescal Library is directly across the street on Telegraph and will be visually impacted and shaded, and its context compromised, by a 5 story, block-like, modernist (mannerist faux-Craftsman) structure in such close proximity.

7. This project would remove three Potentially Designated Historic Structures (PDHP) with a City rating of C2+. These buildings may be listed in the California Register of Historical Resources.

This is an environmental impact that deserves further environmental review.

According to the staff report of March 28, certain criteria must be met regarding the replacement of historic structures:

"Whenever a project proposes to demolish or remove structures designated as Potentially Designated Historic Properties (PDHP) in order to construct a new building, specific findings are required through Policy 3.5 of the Historic Preservation Element of the General Plan. One of the three following findings must be met:

1. the design quality of the proposed project is at least equal to that of the original structure and is compatible with the character of the neighborhood; or
2. The public benefits of the proposed project outweigh the benefit of retaining the original structure; or
3. The existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood."

....Since the existing design of of these two (Victorian) buildings are distinguished, and the proposed project does not include any specific public benefits, staff feels that the only possible finding for replacement of these buildings is finding #1, which requires the present building to be at least equal design quality."

Staff then suggests various claddings for the proposed 5-story (itself a contradiction of the Craftsman ethos) Craftsman-flavored building that will somehow be the equivalent of century-old structures made of irreplaceable old growth redwood and fir, providing affordable, rent-controlled housing.

Staff ignores the problem that the height of the structure makes it incompatible with the character of the neighborhood.

Removal of a swath of 3 C-rated structures is clearly a potential environmental impact that must be considered by proper CEQA review. The two Victorian cottages provide a far more convivial context for the one and a half story Carnegie Temescal Library directly across the street than a 5 story faux-Craftsman tower.

8. Cumulative impacts must be further studied and identified before this project can be approved.

Although the staff report alludes to "anticipated population growth", it neglects to mention projects already approved nearby ("Civiq" at the corner of 51st and Telegraph), projects in the pipeline ("Creekside" at the nearby Global Video site), and others in waiting, totaling perhaps some 400 condo units within a two block radius of this site.

These projects and the increased traffic they will generate, along with the the Telegraph Avenue Bus Rapid Transit (BRT) proposal, which includes a major lane reduction and turn restrictions along Telegraph Avenue, must be analyzed.

Cumulative impacts of traffic and air quality, removal of historic resources, loss of views and shading with approvals of 5 and 6 story buildings all must be studied, as opposed to approving these projects piecemeal and minimizing impacts of each one, ignoring cumulative effects.

9. General Plan compliance. As Attorney Hoffman has noted, "The EIR that was certified for the Land Use and Transportation Element (LUTE) of the General Plan did not discuss variances, nor did it discuss height or densities that would exceed the amounts allowed."

Also, according to the Housing Element of the General Plan, "New residential development must be compatible with, inter alia, the density and scale of the surrounding development." The 4-story apartment building across the street is unusual in its density, more typical are the Victorian cottages containing 5 units of affordable, rent-controlled housing that this project would remove.

10. No Guarantee of the Co-housing component of the project in perpetuity.

Although there has been much discussion and advocacy for this project because of its co-housing component--indeed, "affordability" of the units has been the justification for the extra floor, there is no guarantee that the building, if approved, will ultimately be or remain co-housing. Only 17 of the 33 units have been lined up with applicants, and the co-housing group will have a limited time period to meet the terms of the developers to take control of the project.

The Planning Commission refused to consider the suggestion by the Rockridge Community Planning Council that (because) "we are concerned that the current proposal is to market and sell the units as condos with no guarantee that the building will retain its co-

housing arrangement, the conditions of approval should require that it start as, and remain, a co-housing project.”

It is not unrealistic to fear that the co-housing group, however sincere, is a Trojan House for the developers and their underlying plans to develop their usual market-rate condos or, as in the case of their 4700 Telegraph “Contrada” project, sell off an approved project to another developer at a huge profit.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert Brokl', with a stylized flourish at the end.

Robert Brokl
for STAND

Attachments:

- A. George Nesbitt 7/18/07
- B. Richard W. Smith 7/18/07
- C. Rockridge Community Planning Council 7/16/07

From; George J. Nesbitt
Regarding;

7/18/07

A

5248 Telegraph Ave.

Case File Number CDV06-476 & TPM-9212

GENERAL PLAN VIOLATION #1

Zoning Consistency with the General Plan

The City has failed to update the Zoning Regulations and Zoning Maps as legally required in accordance with the General Plan. 9 years is not a reasonable time (as Commissioner Mudge and others have publicly stated), and no date for conformity has been proposed. Former Mayor Jerry Brown and the Planning Director. Deliberately and illegally stopped the process and the Zoning Update Committee were told they wouldn't be meeting (as the Zoning Update Committee has publicly stated). A consultant had been hired, and Zoning Regulations were updated. Zoning Maps were revised. The creation of new zoning designations were prepared for some areas zoned industrial that were to become business mix under the General Plan... With the exception of the new HBX (Housing Business Mix) General Plan/Zoning the Planning Commission has been denied there role in brining the Zoning in conformance with the General Plan.

Developers and the Planning Director continue to bring forward projects in the name of implementing the General Plan. The planning Commission has, and continues to approve projects that do not conform to the existing Zoning and the General Plan.

And the City Council has failed to stop these practices by denying most of the appeals that come before them.

The illegal lack of non conformity between the Zoning and the General Plan has ultimately not served anybody's interest, developers threaten to leave Oakland, Industrial land sits vacant due to speculation that it will convert to residential, the City doesn't have money to upgrade infrastructure, the General Fund is starved since so much of the City is Redevelopment Area, Property Taxes keep rising, etc...

Policy N11.1 Required Zoning Consistency.

Consistency between the General Plan and Zoning Regulations should be provided within a reasonable time period of adoption of the final elements (i.e., Housing, Safety, or Noise elements) in the 1990's General Plan update. (See the Implementation Agenda item B.)

(pg 114, Policy Framework, Chapter 2, **General Plan**, March 1998)

b1 Revise zoning regulations

The Planning Code currently consists of five ordinances/regulations; the **Zoning Regulations, the Zoning Maps,** As the primary tools for regulating development within the City of Oakland, these documents are to be **current and consistent with the General Plan.....**

The Zoning Ordinance translates the Element's land use classification and Policy Framework into a regulatory format. As a charter city, Oakland is exempt from the statutory requirement that zoning be consistent with the General Plan. However, **the City is electing to have and maintain zoning consistency.** The Land Use and Transportation Plan Diagram, in concert with the Policy Framework and other Plan Elements, establishes the City's general intent regarding future zoning. Following adoption of the Element, **the City will revise its Zoning Regulations and Zoning Maps to establish consistency.** New zoning designation will be established to reflect changes in land use classifications.

Until the Zoning Regulations are updated, the City will apply land use designations and controls as specified by existing zoning, except where such action would expressly conflict with the updated General Plan. Where a conflict does arise, the City will apply the updated General Plan policies and land use designation.

.....
(pg 170, IMLEMENTAION PROGRAM, Chapter 4, General Plan, March 1998).

REZONING. VIOLATION #2

Best Fit Rezoning

The project is illegally trying to rezone the C-28 zoned lot by applying C-30 as a best fit. This is not a legal use of best fit according to the **"Guidelines for Determining Project Conformity"**. We have seen the City illegally rezone residential lots to commercial without using "best fit" (4700 Telegraph, R-36 lot) and using variances from the existing zoning to justify projects in the name of implementing the General Plan. We have seen the city use "best fit" to illegally rezone projects (4801 Shattuck) and use the current zoning (R-50) as the basis for variances in the name of implementing the General Plan. Now we see the use of "best fit" and using the "best fit" as the basis for variances.

Apparently the Planning Director doesn't know what policy is the "best fit", and applies it differently from project to project

"There are two situations where Table 5 is used to select a "best fit zone": (1) where the General Plan allows the activity/facility type, but the Zoning Regulations prohibit it (known as "express conflict"); and (2) where the General Plan is silent on the issue, and the Zoning Regulations prohibit the activity/facility type.
(From page 3 of the **Guidelines for Determining Project Conformity March 1998**)

v The C-28 lot is in the Community Commercial and Mixed Housing Type General Plan designations.

v Neighborhood Center Mixed Use and Urban Residential both allow Permanent Residential Activity, and Multifamily Facilities (with a Conditional Use Permit).

Best Fit clearly does not "fit", the activity/facility type is allowed in both the General Plan and Zoning Regulations. Applying "best fit zone" to the C-28 lot is an attempt to illegally rezone or up zone the properties.

Since the city has failed to update the Zoning Regulations in accordance with the General Plan, we do not know what the new zoning would be, or how the C-28 would be altered. Therefore we can only apply the existing C-28 zoning to this parcel.

The project should be denied or modified to come into conformity with both the General Plan and the Zoning Regulations.

B

KINGFISH ARGUMENTS

Side Yard

When RCPC reviewed the Kingfish site plans, it appeared that there are insufficient side yards at the side of the building which have units with living room windows. Under both C-28 and C-30 the minimum side yard for the Kingfish project is 15% of lot width (Sections 17.44.170 and 17.46.160 C1 which reference 17.108.080). This works out to over 11'. The Proposed project has 5' side yards. This requires a variance, which in turn, requires public noticing. **There is no evidence that an application for this condition has been filed, nor is there any evidence that noticing has occurred.** Since this is an occupant health and life-safety issue, it is more significant than issues such as building height and zoning.

Criteria for evaluation in Design Review, and Findings required in Use Permit, and Zoning Variances

The staff evaluation does not conform to required procedures. Specifically, conformance for **current zoning** is required, not **proposed zone changes** (DR 17.136.050A5, CUP 17.134.050 refers to DR criteria, Variance 17.148.050 also refers to DR criteria). The proposed zoning only takes effect when, and if, the City Council approves the zone change.

The C-28 and C-30 Zones

The C-28 zone was designed as a "best fit" zoning for Telegraph Avenue in the Temescal area by the affected community, planning staff, Planning Commission, and City Council in the '90s. Its express purpose was to replace the C-30 zone in the Temescal area. What evidence is there that this should be reversed? The Best Fit Zone Table in the Guidelines for Determining Project Conformity merely lists C-30 as one of the "optional" selections. Optional means discretionary and not mandatory. The Guidelines, referring to 17.144.060 obligates the Planning Director to show that C-28 is "inadequate or otherwise contrary to the public interest." Therefore, Planning Staff needs to show compelling reasons why the previous change is inappropriate. If there is overwhelming evidence that Community Commercial in this location is compatible only with C-30, then I would conclude that the Community Commercial designation should be removed by a General Plan amendment, and replaced with a more appropriate designation.

C

RCPC ROCKRIDGE COMMUNITY PLANNING COUNCIL

◇ 5245 COLLEGE AVENUE PMB 311 ◇ OAKLAND, CALIFORNIA 94618 ◇ 510-869-4200 ◇

July 16, 2007

City of Oakland Community and Economic Development Agency
Planning Commission
250 Frank H. Ogawa Plaza
Oakland, California 94612

Subject: The Kingfish Project, 5244 Telegraph Avenue, Case File Number CDV06-476

Dear Commissioners:

The Rockridge Community Planning Council (RCPC) appreciates the opportunity to submit comments on the development proposed for 5227 Claremont Avenue by the North Oakland Cohousing, LLC. We have reviewed the applicant's planning submittal, the project schematic drawings, and the staff reports prepared by Mr. Peterson Vollman.

The RCPC supports the spirit of this project, which would provide a desirable co-housing residential alternative. However, the **RCPC strongly opposes both the high-impact C-30 "best fit" site designation and the requested height variance.** We believe that the proposed "best fit" is not justified, and cannot be based on proposed future general plan amendments or re-zoning. Furthermore, a building higher than four stories would set an unfortunate precedent that would promote overly high-density development, out of scale and character for the lower Claremont Avenue neighborhood and inconsistent of current zoning.

We urge the Planning Commission to require further revisions to the project, and specifically to reject the proposed best fit and proposed height variance because of the following community concerns:

- Express Conflict Determination: **RCPC's primary objection to this project is the Planning Director's designation of C-30 as the "best-fit" zone for the entire site.** Staff concludes when evaluating the "express conflict" provision that the current C-28 zoning is inconsistent with the site's general plan designation of "Community Commercial" because the zoning does not allow the maximum density allowable under the general plan land use designation. But neither does the proposed C-30 "best fit" zone designation, as staff points out in the Zoning Analysis. In fact, an Interim Conditional Use Permit is required in both cases. Building height is the only relevant difference between the two zones considered for this project, and cannot be the only basis for selection.

Nor can the proposed Claremont Avenue zoning or general plan amendments. Currently adopted zoning is the only relevant evaluation criterion for this project.

This area needs to be viewed as a transition from the highly commercial and transit oriented Telegraph Avenue to the residential areas which line Claremont Avenue above Clifton Street. In 1992, the C-30 zoning of the entire Temescal commercial area was changed to C-28 after

Careful consideration by the Planning Commission and the City Council. This was in response to overwhelming community demand for a neighborhood and pedestrian oriented retail boulevard. C-30 is not appropriate for Claremont Avenue as it provides lower incentives for mixed use, allows larger business sizes, and includes fewer commercial use restrictions. RCPC strongly believes that C-28 remains the best fit for the current and envisioned walkable pedestrian-oriented function of the lower Claremont area and sees no express conflict with the General Plan under this “best fit” designation.

- **Building Height: RCPC’s second objection to the development is its proposed height which rises to five stories.** Although the fifth story would be somewhat stepped back from the street facades, it would set a precedent for tall, overly high-density development along Claremont Avenue that would conflict with the area’s current and future envisioned uses and character. A four-story building would relate to the existing scale of the neighborhood and provide a more suitable transition to Claremont Avenue residential areas.
- **Requested “No Precedent” Condition of Approval:** If the Commission does decide to approve the project in its current form, **the RCPC requests that the Planning Commission attach to the conditions of approval to this project, a proviso that no aspect, especially the “best fit” C-30 zone designation, be considered as precedent for other proposed projects along Claremont Avenue.** Staff frequently points to the impending Claremont re-zoning as justification for the “best fit” determination. However, that proposal is still in draft form, the Zoning Update Committee hearing continued, and community members unheard. The RCPC does not want this project cited as a reason for the proposed Claremont Avenue general plan amendments or re-zoning.
- **Compliance with General Plan: The design does not comply with the Design Review Criteria and General Plan guidelines to create buildings well related to the surrounding area in their size, bulk and height.** A five-story building will be clearly out of scale with the character of Claremont Avenue and will adversely impact the livability of existing and future buildings on adjacent sites by limiting sun and air access. A five-story building will not protect, preserve or enhance desirable neighborhood characteristics. **Claremont Avenue is not designated in the general plan as a “Grow and Change” corridor.**

The staff report acknowledges that part of the site is in the Mixed Housing Type general plan designation, but then asserts that, “The subject property is not located within the Detached Unit or Mixed Housing Type areas, hence the citation is inappropriate.” This latter statement is clearly in error. The general plan currently designates this area as Mixed Housing Type Residential and the project should be so considered. Therefore, the project does need to be compatible with the surrounding Mixed Housing Type area; but it clearly is not.

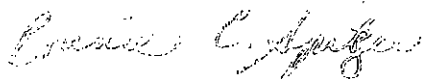
- **CEQA In-Fill Exemption:** We do not agree with the Planning staff that the project satisfies the requirements for the CEQA In-Fill categorical exemption. A project that requires an Interim Conditional Use permit and variance cannot be considered as conforming to City zoning regulations, regardless of whether it fits with the broader and more general directives of the General Plan. The purpose of allowing the in-fill exemption is to allow projects whose potential impacts have already been evaluated through the EIR process for the general plan and

zoning ordinance approvals to bypass further environmental review. With this project's required use permit and variance, such prior environmental review has not been done. A CEQA exemption is therefore inappropriate.

- General Plan Conformance CEQA Exemption: The staff report now identifies a CEQA exemption for projects conforming to the general plan. There is no such exemption. CEQA Guideline §15183, governing CEQA review of "Projects Consistent with a Community Plan or Zoning" provides for a *streamlined* CEQA review of projects "... which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified ..." In this case, the project with its proposed height and density is **not** consistent with either the existing zoning or the existing general plan. Also, it is unclear from the staff report whether all impacts have been completely considered. There are a number of such impacts, including impacts on historic structures, cumulative impacts related to major projects proposed or approved in the immediate area since the adoption of the general plan, and the Telegraph Avenue Bus Rapid Transit proposal, which includes a major lane reduction and turn restrictions along Telegraph Avenue. In particular, the addition of several new projects and the proposed Telegraph BRT require revisiting the project's potential cumulative traffic impacts. Under these circumstances, a CEQA exemption is inappropriate.
- Co-Housing Inclusion: Even though we support the co-housing spirit of this development, we are concerned that current proposal is to market and sell the units as condos with no guarantee that the building will retain its co-housing arrangement. The conditions of approval should require that it start as, and remain, a co-housing project.

The RCPC is very concerned about the impact of so high a building on the Claremont Avenue corridor and the precedent it will set for future development. We acknowledge, of course, that there are specific and unusual circumstances in this project, such as the co-housing living arrangement and viable commercial space. The RCPC will not oppose a four-story building in the C-28 zone, including a higher ground floor for commercial uses. In conclusion, we request that the C-28 zoning designation be retained, the height variance not approved as written, and a condition of approval attached stating that no aspect be considered as precedent for other proposed Claremont Avenue projects.

Thank you for your consideration.



Ronnie C. Spitzer
RCPC Chair

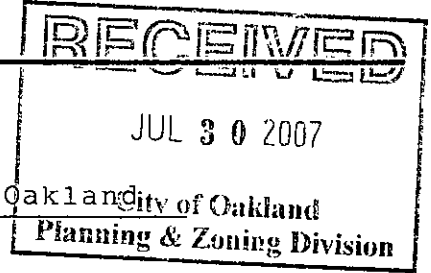


Richard Smith,
RCPC Planning & Project Review Chair



CITY OF OAKLAND
REQUEST FOR APPEAL OF DECISION TO
PLANNING COMMISSION OR CITY COUNCIL

(REVISED 8/14/02)



PROJECT INFORMATION

Case No. of Appealed Project: CDV06-476 & TPM-9212
Project Address of Appealed Project: 5248 Telegraph Avenue, Oakland

APPELLANT INFORMATION:

Printed Name: Stuart Flashman (rep) Phone Number: 652-5373
Mailing Address: 5245 College Ave. PMB311 Alternate Contact Number: 869-4200
City/Zip Code Oakland, CA 94618 Representing: Rockridge Community Planning Council

An appeal is hereby submitted on:

AN ADMINISTRATIVE DECISION (TO THE CITY PLANNING COMMISSION)

YOU MUST INDICATE ALL THAT APPLY:

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

Pursuant to the Oakland Municipal and Planning Codes listed below:

- Administrative Determination or Interpretation (OPC Sec. 17.132.020)
Determination of General Plan Conformity (OPC Sec. 17.01.080)
Design Review (OPC Sec. 17.136.080)
Small Project Design Review (OPC Sec. 17.136.130)
Minor Conditional Use Permit (OPC Sec. 17.134.060)
Minor Variance (OPC Sec. 17.148.060)
Tentative Parcel Map (OMC Section 16.304.100)
Certain Environmental Determinations (OPC Sec. 17.158.220)
Creek Protection Permit (OMC Sec. 13.16.450)
Creek Determination (OMC Sec. 13.16.460)
Hearing Officer's revocation/impose or amend conditions (OPC Secs. 15.152.150 & 15.156.160)
Other (please specify)

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

approve a conditional use permit and variance for 5248 Telegraph Avenue "Kingfish" Mixed Use Project

(continued on reverse)

ATTACHMENT B

(Continued)

A DECISION OF THE CITY PLANNING COMMISSION (TO THE CITY COUNCIL)

YOU MUST INDICATE ALL THAT APPLY:

Pursuant to the Oakland Municipal and Planning Codes listed below:

- Major Conditional Use Permit (OPC Sec. 17.134.070)
- Major Variance (OPC Sec. 17.148.070)
- Design Review (OPC Sec. 17.136.090)
- Tentative Map (OMC Sec. 16.32.090)
- Planned Unit Development (OPC Sec. 17.140.070)
- Environmental Impact Report Certification (OPC Sec. 17.158.220F)
- Rezoning, Landmark Designation, Development Control Map, Law Change (OPC Sec. 17.144.070)
- Revocation/impose or amend conditions (OPC Sec. 17.152.160)
- Revocation of Deemed Approved Status (OPC Sec. 17.156.170)
- Other (please specify) _____

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

You must raise each and every issue you wish to appeal on this Request for Appeal Form (or attached additional sheets). Failure to raise each and every issue you wish to challenge/appeal on this Request for Appeal Form (or attached additional sheets), and provide supporting documentation along with this Request for Appeal Form, may preclude you from raising such issues during your appeal and/or in court.

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

See attached sheets

Supporting Evidence or Documents Attached. *(The appellant must submit all supporting evidence along with this Appeal Form.)*

Steven Mr. Fleckner
Board Member & Authorized Rep. of RCPC
Signature of Appellant or Representative of
Appealing Organization

July 30, 2007
Date

Below For Staff Use Only

Date/Time Received Stamp Below:

Cashier's Receipt Stamp Below:

Rockridge Community Planning Council Appeal to Oakland City Council:
"Kingfish" Project (CDV06-476 & TPM-9212) 5248 Telegraph Avenue

Basis For Appeal

The basis of this appeal is primarily the Planning Commission's determination that the Project be processed under C-45 zoning as "best fit zoning" under Section 17.01.100 of the Oakland Municipal Code, based on its determination that there was a direct conflict between the General Plan Designations for the site – Community Commercial and Mixed Housing Type Residential – and the current zoning – C-28 Commercial Shopping District. Secondly, RCPC appeals the project as approved by the Planning Commission because it is not consistent with the characteristics of the surrounding area. The project needs to be modified to make it more consistent with the current and envisioned development of Claremont Avenue.

I. Improper determination of "Direct Conflict" between zoning and general plan

To begin with, we believe staff's and the Planning Commission's determinations of direct conflict with the General Plan misinterpret the City Council's intent in its General Plan land use designations for the project site as "Community Commercial" and "Mixed Housing Type Residential". The Community Commercial designation allows residential densities of "up to" 125 units per acre (equals approximately 35 units on the 0.21 acres of Community Commercial designated land on this site). Ordinarily, one would assume that any zoning provided for less than the maximum density identified in the General Plan would be consistent with that general plan designation. Yet, under planning staff's current interpretation of the City's general plan consistency ordinance, only zoning categories with the same upper density limit as the general plan designation are deemed consistent.

On the other hand, planning staff, after finding C-28 zoning in direct conflict with the General Plan's density designation for this project, identified C-30 (which has the same density standards as C-28) as the "best fit zoning." If staff found that C-30 was the "best fit zoning" for density, why was C-28 found in direct conflict with the General Plan's designated density? This makes no sense.

Further, C28 zoning for this site was affirmed *specifically for this area* after the most recent 1998 general plan revision. The City Council could not have affirmed the C-28 zoning after revising the General Plan unless it was impliedly accepting C-28 as being consistent with the General Plan designation. Staff's determination of a direct conflict between General Plan density and the site's C-28 zoning should be overruled and the application should be considered for approval under the site's current C-28 zoning.

II. Improper determination that C-45 was the “Best Fit Zoning” for the site.

C-28 zoning has been the long-standing zoning for this area and was specifically designed (*at the insistence of the community*) for the area of Telegraph and Claremont Avenues. (See, Municipal Code §17.44.070 – Restrictions on Ground Level Uses – last amended in 1999 as Ordinance 12138 §6.) It promotes retail uses on the first floor and allows residential and mixed-use developments of moderately high density, with a height limit of forty feet and maximum residential density of one unit per 450 square feet of lot area. In this case, this would allow approximately 26 units. The proposed project is a total of 33 units with a height of fifty-eight feet.

The Planning Commission, working from a general plan “best-fit zoning” table (which, according to the July 18 staff report for the project, is no longer the only basis for determining “best fit zoning”) decided to designate the site for development under C-45 “Community Shopping Commercial” designation, a designation which, as described in the zoning ordinance, is intended for, “compact locations oriented towards pedestrian comparison shopping, and is typically appropriate to commercial clusters near intersections of major thoroughfares.”

- This single first-floor commercial building, which is not part of the denser commercial development in the Temescal shopping district south of Fifty-First Street along Telegraph Avenue, simply does not fit the parameters for C-45 zoning.
- Further, C-45 zoning allows, *without even a use permit*, uses including custom manufacturing, administrative, and research services. These uses may make sense in a commercial cluster near the intersection of major thoroughfares, but they makes no sense for the street-front first floor of a single building that is not and is not planned to be part of a “commercial cluster” oriented towards pedestrian comparison shopping – i.e., a major shopping district. The current C-28 zoning’s requirement for first floor retail use makes far better sense here.
- C-45 zoning includes within it an overlay of R-80 residential zoning. R-80 “highrise apartment” zoning is totally unprecedented in the Temescal and Rockridge areas. It has NO height limit and allows for a development density totally out of character for this community.
- The Planning Commission’s discussion of the C-45 best-fit zoning clearly shows that they gave no consideration to the project’s incongruity with its neighborhood. Their only concern was to approve the project with the minimum number of variances. This is an inappropriate standard, especially where, under §17.01.100, the Commission was required to find, “That the proposal is clearly appropriate in consideration of the characteristics of the proposal and the surrounding area.”

C-45 zoning is clearly inappropriate for this site and the surrounding area. Therefore, the Planning Commission’s “best fit zoning” determination was arbitrary and capricious and should be overturned; the present C-28 zoning should be retained; and the project should be reconsidered for approval based on whether to grant the required conditional use permit and variances to approve the Project under C-28 zoning.

III. Need to revise Project and Supporting Findings to promote compatibility with Surrounding Community.

Even in the event that the Council decides not to overrule the Planning Commission's C-45 best fit determination, the project still needs to be modified to reduce its incongruity with the surrounding area. Especially given the incompatibility of C-45 zoning with the general character of Claremont Avenue, any approval also needs to include a finding that the Planning Commission's C-45 best fit determination should not serve as a precedent for any future decisions about zoning or land use along Claremont Avenue.

Important modifications needed to reduce the incongruity with the Claremont avenue are include the following:

- Overrule the Planning Commission's variance approval and restore the height setbacks as proposed in the staff recommendation;
- Drop the maximum building height from fifty-nine feet to fifty five feet;
- Improve the project articulation to make it more in keeping with the general character of buildings in Rockridge generally and the Claremont Avenue area in particular.

Similarly, should the City Council decide instead to accept planning staff's direct conflict determination and recommended C-30 best fit determination, the same changes and findings are requested.



Community and
Economic
Development Agency

Guidelines for Determining Project Conformity With the General Plan and Zoning Regulations

Adopted by the
City of Oakland
City Planning Commission

May 6, 1998

Amended November 3, 1999 (100-31)

Amended August 8, 2001

Amended December 5, 2001

Amended July 15, 2003

(Minor typographical changes May 28, 2004)

Amended October 31, 2006

Approved July 18, 2006
Approved October 11, 2006

Approved July 18, 2006
Approved October 11, 2006

**Guidelines for Determining Project Conformity
With the General Plan and Zoning Regulations
Oakland City Planning Commission**

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UNDERSTANDING THE GUIDELINES

A. OVERVIEW

This document, Guidelines for Determining Project Conformity, describes the procedure for deciding whether a project is consistent with the General Plan. The document also describes the procedure to follow when the Zoning Regulations and General Plan conflict.

Because the General Plan was adopted more recently than Zoning Regulations, the General Plan and Zoning Regulations may conflict. As a result, some projects may be consistent with Zoning Regulations but inconsistent with the General Plan. When a conflict occurs between Zoning Regulations and the General Plan, the General Plan controls. There are three criteria used to determine whether a project is consistent with the General Plan. They are:

1. Is the proposed activity and facility type permitted under the General Plan? (Refer to Table 2 or 2A)
2. Is the proposed intensity (Floor Area Ratio for non-residential projects) or density (dwelling units per gross acre for residential projects) less than or equal to the maximum permitted by the General Plan? (Refer to Table 3 or 3A)
3. Is the project consistent with relevant General Plan policies? (Refer to Checklist 4)

If the answer to any of the foregoing questions is no, an application for the project will not be processed unless the Director of City Planning makes a determination that the project is consistent with the written goals and policies of the General Plan. The Director would need to make the finding that the land use map shows only the predominant use or average density for the area and that for an individual parcel or small area a different use or density may be appropriate. Additionally, the Director would have to find that the proposal conforms to all of the general use permit criteria, as well as to any and all other applicable use permit criteria pursuant to Section 17.134.050 of the Oakland Planning Code.

If the answer to each of the foregoing questions is yes or the General Plan does not address the issue (i.e., is silent), it must next be determined whether the project is permitted under the Zoning Regulations. Questions are:

1. Is the proposed activity and facility type permitted under the Zoning regulations?
2. Is the project consistent with other regulations of the zone?

If the answer to questions 1 and 2 is yes, the permitting procedure prescribed by the Zoning Regulations is followed (i.e., permitted outright or a conditional use permit required).

If the answer to question 1 is no, a "best fit zone" must be selected by reference to Table 5. There are two situations where Table 5 is used to select a "best fit zone": (1) where the General Plan allows the activity/facility type, but the Zoning Regulations prohibit it (known as "express conflict"); and (2) where the General Plan is silent on the issue, and the Zoning Regulations prohibit the activity/facility type. Where a "best fit zone" is required, the project proponent must apply for either an interim use permit or rezoning.

This is an overview of the procedure for determining consistency with the general Plan. It is not meant to replace the more detailed guidelines that follow. To determine whether a specific proposal is consistent with the General Plan, the Director of City Planning will apply the following Guidelines. The Director's decision is appealable to the City Planning Commission as described in the Planning Code.

PROJECT CONSISTENCY WITH GENERAL PLAN AND ZONING/SUBDIVISION REGULATIONS

(Zoning/Subdivision Regulations prevail unless there is an express conflict)

ZONING/SUBDIVISION REGULATIONS

		ZONING/SUBDIVISION REGULATIONS		
		Permitted	Conditionally Permitted	Not Permitted
GENERAL PLAN	Clearly Conforms	Permitted Outright	Conditional Use Permit (normal process)	Allowed with interim Conditional Use Permit or Rezoning to "Best Fit" Zone ¹
	General Plan is Silent or Not Clear on Conformity	Permitted Outright	Conditional Use Permit (normal process)	Not Allowed Options ² : Modify project to conform to Zoning or Rezone to "Best Fit" Zone ¹ or Variance
	Clearly Does Not Conform	Not Allowed Options: Modify project to conform to General Plan or Apply for General Plan Amendment or Request a General Plan conformity determination from the City Planning Director (an interim CUP is required)	Not Allowed Options: Modify project to conform to General Plan or Apply for General Plan Amendment or Request a General Plan conformity determination from the City Planning Director (In all cases, a CUP is still required under Zoning)	Not Allowed Options ² : Modify project to conform to General Plan and Zoning or Apply for General Plan Amendment and Rezoning to "Best Fit" Zone ¹

= Express conflict between Zoning and General Plan; General Plan prevails.

¹ Where a rezoning occurs, the regulations of the new zone would apply, including any requirements for a Conditional Use Permit.
² Where none of the options are feasible, the project sponsor should be directed to the Business Retention and Attraction section for assistance in locating an appropriate alternate site.

B. BACKGROUND

On March 24, 1998, the City Council passed Resolution No. 74129 C.M.S. approving the new Land Use and Transportation Element of the Oakland General Plan. That resolution stipulates that

"Until the City's zoning regulations are updated, the City shall apply land use designations, zoning controls and subdivision controls as specified by the planning code and subdivision regulations, except where such action would expressly conflict with the updated General Plan. Where an express conflict does arise, the City will apply the updated General Plan policies and land use designation."

On May 12, 1998, the City Council passed Ordinance No. 12054 C.M.S. adopting interim controls for implementing the General Plan prior to the adoption of revisions to the Oakland Planning Code. This ordinance adds Chapter 17.01 to the Planning Code entitled "General Provisions of Planning Code and General Plan Conformity".

Subsequently, other Elements of the Oakland General Plan have been prepared and adopted by the Oakland City Council. Each of these Elements is also to be implemented on the basis of interim controls until final zones, zoning controls, subdivision, and environmental controls are adopted through the Zoning update process. Recently adopted General Plan Elements are: the Estuary Policy Plan (June 8, 1999, City Council Resolution No. 75037 C.M.S.), the Historic Preservation Element (amended July 21, 1998, Resolution No. 74403 C.M.S.), and the Bicycle Master Plan, also an Element of the General Plan, (July 20, 1999, Resolution No. 75148 C.M.S.) The General Plan Guidelines for determining General Plan Conformity have been revised to reflect these recent adoptions.

Section 17.01.060 of the Planning Code directs the City Planning Commission to "adopt guidelines for determining the General Plan conformity of any specific proposal. Such guidelines shall address activity and facility types, density and intensity of development, and relevant General Plan policies. They shall also identify the 'best fit' zones of the Zoning Regulations, and other possible zones, corresponding to the Land Use Classifications of the General Plan."

Section 17.01.070 of the Planning Code stipulates that "the Director of City Planning shall determine whether any specific proposal conforms with the General Plan. The Director shall use the guidelines adopted pursuant to Section 17.01.060 in making this determination. Any interested party may request that this determination be made in writing, upon payment of a fee as prescribed in the City Master Fee Schedule."

Section 17.01.080 of the Planning Code provides that "within ten calendar days of a written determination by the Director of City Planning pursuant to Section 17.01.070, an appeal of said determination may be taken to the City Planning Commission by the applicant or any other interested party. Such appeal shall be accompanied by a fee as prescribed in the City Master Fee Schedule, and shall be processed in accordance with the Administrative Appeal Procedure."

These are the guidelines mandated by Section 17.01.060 of the Planning Code, to be used by staff in determining Project Conformity with the General Plan for all projects.

C. PROCEDURES

The interim controls define an "express conflict" as "any situation where a proposal clearly conforms with the General Plan but is not permitted by the Zoning and/or Subdivision Regulations, or where a proposal clearly does not conform with the General Plan but is permitted or conditionally permitted by the Zoning and/or Subdivision Regulations." They also specify procedures to be followed in each case. These procedures, and, in some cases, project sponsor options, are summarized in Flow Chart 1.

There are three possibilities under the General Plan Elements: the project may be determined to "clearly conform", to "clearly not conform", or the General Plan may be silent or not clear as to conformity. In the Zoning and/or Subdivision Regulations, a project may be permitted outright, conditionally permitted, or not permitted. Therefore, nine possible combinations exist for evaluating for Zoning and/or Subdivision Regulations status and General Plan conformity.

1. Discussion of "Express Conflict" between the General Plan and Zoning

An "express conflict" exists where the project clearly conforms to the General Plan, but is not permitted by the Zoning and/or Subdivision Regulations, or where the project clearly does not conform to the General Plan, but is permitted or conditionally permitted by the Zoning and/or Subdivision Regulations.

In the case where the project clearly conforms to the General Plan, but is not allowed by the Zoning and/or Subdivision Regulations, the project may be allowed upon the granting of a conditional use permit. Section 17.01.100B of the Planning Code stipulates that this shall be processed as either a minor or major conditional use permit, in accordance with the regular conditional use permit procedures of the Zoning Regulations. In addition to the general use permit criteria, the following three special findings must be made:

- That the proposal is clearly appropriate in consideration of the characteristics of the proposal and the surrounding area;
- That the proposal is clearly consistent with the intent and desired character of the relevant Land Use Classification or Classifications of the General Plan and any associated policies;
- That the proposal will clearly promote implementation of the General Plan.

Since the proposal is not permitted under the Zoning Regulations, there would be no set development standards for evaluating it (e.g. height limit, setback, density, parking requirements, etc.). Therefore, Section 17.01.100B stipulates that the proposal shall be subject to the provisions of the "best fit zone" corresponding to the General Plan Land Use Classification in which the site is located (see Section B.5. below). However, the project sponsor may alternatively elect to apply for a rezoning to the "best fit zone" or other possible zone instead of a conditional use permit.

The only exception to this procedure is for proposals within the Mixed Housing Type Residential General Plan Classification, where no project can have a higher density than allowed by its current zoning without a major variance or a rezoning. Under no situation, however, can a project exceed the maximum density permitted under the General Plan, even if the density allowed by the current zoning is greater than the General Plan.

2. Examples of "No Express Conflict" between the General Plan and Zoning

In the case where the project clearly does not conform to the General Plan, *even if the Zoning and/or Subdivision Regulations permit it*, the project is not allowed and no application may be accepted. The project sponsor may modify the project to conform to the General Plan, or apply for a General Plan Amendment. In addition, the determination that the project does not conform to the General Plan may be appealed to the City Planning Commission pursuant to Section 17.01.080.

In some cases, the proposed project may be consistent with the surrounding land uses and appropriate for the area, but not be permitted by the General Plan. It is recognized that the General Plan land uses are broadly applied to areas and that its details are largely illustrative of the Plan's written goals and policies. It is quite possible that slightly different versions would service those goals and policies just as well, or even better. Because the map is generalized, and does not necessarily depict the accuracy of each parcel or very small land area, a determination of project consistency could be requested of the Director of City Planning. The applicant would need to demonstrate that a predominant use, or average density, different from that shown on the map would be appropriate for a relatively small area and that the project is in conformance with the written goals and policies of the General Plan. The project may be allowed upon the granting of an interim conditional use permit or a conditional use permit. Written notice of the Director's determination would be sent to all property owners within 300 feet of the property involved. The Director's determination may be appealed to the City Council pursuant to Section 17.01.080 B.

If the project clearly conforms with the General Plan or the General Plan is silent or not clear, and the project is permitted and/or conditionally permitted by the Zoning and/or Subdivision Regulations, there is no "express conflict" and the normal Zoning and/or Subdivision process applies.

Similarly, if the project clearly does not conform to the General Plan and is not allowed by the Zoning and/or Subdivision Regulations, there is no "express conflict". In this case, the project is not allowed, and no application

may be accepted, since General Plan variances are not an option. To continue, the project sponsor has two choices: elect to modify the project to conform to the General Plan and existing Zoning; or apply for a General Plan Amendment and rezoning to the "best fit zone" or other possible zone. If the Director of Planning and Zoning issues a determination that the proposed project does not conform to the General Plan and the project sponsor disagrees with that determination, the project sponsor may appeal the determination of nonconformity with the General Plan to the City Planning Commission.

There is also no "express conflict" if the General Plan is silent or not clear and the Zoning and/or Subdivision Regulations do not allow the project. In this case, the project sponsor may modify the project to fit the zone, apply for a rezoning to the "best fit zone" or other possible zone, or apply for a variance, (since no variance from the General Plan would be involved).

APPLICATION OF GUIDELINES TO DETERMINE PROJECT CONFORMITY

In making a determination of Project Conformity with the General Plan, the following factors shall be evaluated:

- The General Plan Land Use Classification and Zoning District within which the proposed project is located
- The Zoning Land use classification of the project (activity and facility type)
- The Project intensity (residential density and/or nonresidential floor area ratio)
- Relevant General Plan policies from all adopted Elements.

In order to "clearly conform" to the General Plan, a project must be found to clearly conform by all relevant factors. If the project is found to clearly not conform in any one factor, then the entire project is in nonconformance. Note that if none of the General Plan policies identified in Section B4 apply to the project, this factor should not be considered in the conformity determination; in this case, only land use and project intensity would be considered.

A. General Plan Land Use Classification and Zoning District Determination

To determine the correct General Plan Land Use Classification and Zoning District for the project proposal, determine the proposed project's location on either the General Plan Land Use Diagram or Estuary Policy Plan Land Use Diagram and the City's official Zoning Map. The General Plan Land Use Classifications are broad and indicate the kinds of development expected in any given area of the city. The Zoning District will assist in determining if the intent of the District is similar to that of the General Plan. These two elements will give the reviewer an initial understanding of possible conformity. The flow chart on the next page is intended to assist in this effort, beginning with the General Plan Land Use Classification and Zoning District. However, each project must also be evaluated according to the next three factors below, for a complete understanding of the potential project's conformity status.

FLOW CHART 1: Determining a Project's Conformity with the General Plan and Zoning Regulations

<p style="text-align: center;">FIRST:</p> <p>▪ Is the project located within the Port's jurisdiction?</p>	<p>If YES:</p> <p style="text-align: center;">Send Applicant to Port Planning, 530 Water Street</p>
<p>If NO, follow steps 1 through 4</p>	
<p><i>IDENTIFY PROJECT</i></p> <p>Location:</p>	<p>Zoning:</p> <p>General Plan Designation:</p>
<p><i>ASSESS PROJECT ELEMENTS</i></p> <ol style="list-style-type: none"> 1. Identify the project's activity and facility type. See Section 2, and Table 2 or 2A. 2. Calculate the project's density or intensity. See Section 3, and Table 3 or 3A. 3. Identify relevant General Plan Policies. See Section 4 and Checklist 4. The actual text of many policies are located in the appendix, or you can consult the Elements themselves. 	
<p><i>SUMMARIZE FINDINGS</i></p> <p>Does the project conform to the General Plan Land Use Classification, density or intensity standards, and relevant Plan policies?</p> <p>Does the project conform to Zoning activities or facilities, density/intensity*, and other regulations of the zone? * The General Plan ultimately controls application of density/intensity.</p>	

Then choose A, B, or C below to determine the appropriate action:

A. IF THE PROJECT CONFORMS TO THE GENERAL PLAN:

And the project is permitted by zoning,
Then the project is permitted outright

And the project would normally require a Conditional Use Permit (CUP),
then it is permitted with approval of a CUP.

But the project is not permitted by zoning; this is an express conflict with the General Plan. The project can only be allowed with an Interim CUP or an approved application for a Rezoning.

See Table 5 for "Best Fit Zones" for the rezoning.

B. IF THE GENERAL PLAN IS SILENT:

And the project is permitted by zoning.
Then the project is permitted outright.

And the project would normally require a CUP,
then it is permitted with approval of a CUP

But the project is not permitted by zoning,
the project must be modified to conform to zoning, or apply for a rezoning.

See Table 5 for "Best Fit Zones"

C. IF THE PROJECT DOES NOT CONFORM TO THE GENERAL PLAN:

Even if the project is permitted by zoning, it is not allowed.
This is an express conflict with the General Plan.

Options: Modify the project to conform to the General Plan, apply for a General Plan Amendment, or apply for a General Plan conformity determination from the Director of City Planning (an interim CUP is required).

And even if the project would normally require a CUP, it is not allowed. This is an express conflict with the General Plan.

Options: Modify the project to conform to the General Plan, apply for a General Plan Amendment, or apply for a General Plan conformity determination from the Director of City Planning. In all cases a CUP is still required.

And if the project is not permitted by zoning, it is not allowed.

Options: Modify the project to conform to both the General Plan and Zoning, or apply for a General Plan Amendment and a Rezoning.

See Table 5 for "Best Fit Zones"

B. Land Use Activity and Facility Types

Determine the activity and facility type of the proposal, referring to Chapter 17.10 of the Zoning Regulations if necessary. Then determine the General Plan Land Use Classification of the site, referring to the Land Use Diagram of the Land Use and Transportation Element or the Land Use Diagram of the Estuary Policy Plan, as appropriate. Consult Table 2 or 2A to determine the status of this activity and facility type in this Land Use Classification.

For residential uses, both the activity type (usually Permanent Residential) and the facility type must be found to "clearly conform" for the project to clearly conform with respect to land use, since residential density and housing type are explicitly addressed in many of the Land Use Classifications. For nonresidential uses, the primary concern is the activity type, since the Land Use Classifications do not generally address the form of nonresidential structures. In other words, if the nonresidential activity type clearly conforms, and the General Plan is silent on the nonresidential facility type, the use may still be determined to clearly conform.

In the event that either the activity or facility type is found to clearly not conform to the General Plan according to Table 2 or 2A, the entire use does not conform and must be modified accordingly or rejected.

C. Density or Intensity

Intensity of development is measured by floor area ratio (FAR) for nonresidential projects and dwelling unit density for residential projects, as explained in Zoning Code Bulletin No. C-002, issued April 20, 2000 by the Community and Economic Development Agency, Planning and Zoning. Tables 3 and 3A give the allowable FAR and density for each Land Use Classification.

1. Nonresidential Floor Area Ratio

The calculation of floor area ratio for nonresidential projects is explained in Zoning Code Bulletin No. C-002, issued April 20, 2000 by the Community and Economic Development Agency, Planning and Zoning. If the result exceeds the FAR allowed in the relevant Land Use Classification, the project clearly does not conform. If it is equal or less, the project clearly does conform.

Note, however, that the maximum FAR specified by the General Plan might not be allowed in particular cases. For example, in the Central Business District, an FAR of 20.0 is specified. However, the description of the Central Business District Land Use Classification states that "in some areas ... such as the Broadway spine, the highest FAR may be encouraged, while in other areas such as near Lake Merritt and Old Oakland, lower FARs may be appropriate." Thus, a project that was within the FAR limit of 20.0 in the CBD might still not be able to comply with the special use permit criteria of Section 17.01.100B, depending on its location within the downtown area. The policies for the downtown and its various sub-areas should also be consulted (see Section 4 below).

2. Residential Density

Residential density is somewhat more complicated, because the General Plan specifies density as "principal units per gross acre". Gross acreage includes all land in the neighborhood, including streets and parks. To calculate permitted density on a particular parcel, this gross density figure must be translated to net density. To complicate matters further, there is not a consistent net-to-gross ratio for the entire City. It ranges from more than 80% in some parts of the hills to less than 60% downtown. Overall, an average net-to-gross ratio of 75% is assumed, except downtown where 60% is assumed, and is used in Table 3 or 3A to determine net density limits.

However, if it appears in any given situation that the net-to-gross ratio is significantly different than indicated in Table 3 or 3A, an individual calculation should be made for the site in question. This is done as follows:

- a. Draw a 1,000-foot square centered on the site.
- b. Calculate the total area of all developable land, exclusive of streets or parkland, within that square.
- c. Divide the area determined in step 2 by 1,000,000 square feet (the total area of a 1,000-foot square). The result is the net-to-gross ratio for this area, expressed as a fraction. (Multiply by 100 to get a percent figure.)
- d. Divide the maximum "principal units per gross acre" of the relevant Land Use Classification by the net-to-gross ratio determined in step 3. The result is the maximum principal units per net acre.

- e. Divide 43,560 (the number of square feet in an acre) by the figure determined in step 4 to get the number of square feet of lot area per dwelling unit. This is the way density is calculated in the Zoning Regulations.
- f. Divide the site area by the number determined in step 5, rounding to the nearest whole number. This is the maximum number of principal units permitted on the site by the General Plan.

For example, suppose that the site is 10,000 square feet and is located in the Mixed Housing Type Residential Land Use Classification, which allows up to 30 principal units per gross acre. Here is a possible scenario:

- a. Draw the 1,000-foot square on a parcel map of the area, centered on the site.
- b. Calculate developable area. Suppose the result is 780,000 square feet.
- c. Divide 780,000 by 1,000,000. The result is 0.78, for a net-to-gross ratio of 78%. ($780,000 / 1,000,000 = 0.78$. $0.78 \times 100 = 78$)
- d. Divide 30 principal units per gross acre by 0.78. The result is 38.46. This is the allowable number of principal units per net acre. ($30 / 0.78 = 38.46$)
- e. Divide 43,560 square feet per acre by 38.46 units per acre. The result is 1,132.6 square feet of site area per unit. ($43,560 / 38.46 = 1,132.6$)
- f. Divide the site area of 10,000 square feet by 1,132.6 square feet of site area per unit. The result is 8.83, which rounds to 9. ($10,000 / 1,132.6 = 8.83$ rounded to 9). Thus a maximum of 9 units is allowable on this site under the General Plan.

3. Subdivisions in the Hillside Residential Land Use Classification

In addition to maximum residential density, subdivision lot sizes are specified for the Hillside Residential Land Use Classification. The description of this classification states that "typical lot sizes range from approximately 8,000 square feet to one acre in size." Further, Policy N7.3, entitled "Hill Area Subdivision", reads:

"At least 8,000 square feet of lot area per dwelling unit should be required when land in the hill area is subdivided. Lots smaller than 8,000 square feet may be created only when this ratio is maintained for the parcel being divided."

This policy is interpreted to mean that the average lot size of any subdivision in the Hillside Residential Land Use Classification shall not be less than 8,000 square feet. However, this policy is only intended to apply to large, unsubdivided parcels. As a general rule, the policy would apply to subdivisions of five lots or more requiring a tract map, but not to subdivisions of four lots or fewer requiring a parcel map. In the latter case, the provisions of the Zoning and Subdivision Regulations regarding minimum lot size would prevail.

When a large parcel in the Hillside Residential area is subdivided, it must conform to the minimum lot size specified in the Zoning Regulations, the prevailing lot size specified in the Subdivision Regulations, and the 8,000 square foot minimum average lot size specified in Policy N7.3. If the average lot size of the proposed subdivision is less than 8,000 square feet, the project clearly does not conform to the General Plan and is not allowed. If the average lot size is 8,000 square feet or more, there is no General Plan problem and the Zoning and Subdivision Regulations prevail. The conditional use permit provided by Section 17.01.100B would not be allowed in this situation, since it is not the intent of the General Plan to permit subdivisions with lots smaller than would otherwise be allowed under current regulations.

4. Mixed Use Projects

The density for Mixed Use Projects in the Central Business District and Jack London District is calculated pursuant to Ordinance No. 12349 C.M.S. dated July 24, 2001 amending the Oakland Planning Code Section 17.106.030.

D. General Plan Policy

Checklist 4 lists policies from various General Plan elements that have been identified for use in screening projects for General Plan conformity. The policies listed in Checklist 4 are written in full form in the Appendix, however

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many additional policies that exist in the City's General Plan Elements *are not* listed here. The Checklist and Appendix contain most policies that seem to be immediately relevant to land use decision-making, however it may be necessary to consult the Elements themselves for additional guidance or to resolve complex questions. For any given project, go through the checklist to determine whether any of these policies apply. If so, consult the policy to determine whether the project conforms. If none of these policies applies to the project, the conformity determination will be based solely on land use and intensity, as discussed above. However, if any of these policies do apply, the project must conform to them in order to conform to the General Plan.

For example, a hotel is proposed along upper Broadway in North Oakland in an area designated Community Commercial by the General Plan and zoned C-40. A hotel is a Transient Habitation Commercial Activity, which is conditionally permitted in the C-40 Zone. According to Table 2, the General Plan is silent on Transient Habitation Commercial Activities in the Community Commercial Land Use Classification. Suppose the calculated FAR of the hotel is 2.5; the Community Commercial designation allows an FAR up to 5.0. Thus, the hotel passes the land use and intensity tests, so it appears that the zoning would prevail and the hotel would be conditionally permitted. However, consulting the checklist in Table 4, we find the question "Does the project involve development of a hotel or motel? If yes, see policy N1.7." Policy N1.7 is entitled "Locating Hotel and Motels", and states:

"Hotels and motels should be encouraged to locate downtown, along the waterfront, near the airport, or along the I-880 corridor. *No new hotels or motels should be located elsewhere in the city*, however, the development of 'bed-and-breakfast' type lodgings should be allowed in the neighborhoods, provided that the use and activities of the establishment do not adversely impact nearby areas, and parking areas are screened." [emphasis added].

Thus, it can be clearly seen that the proposed hotel would conflict with this policy, and would therefore not conform to the General Plan. As stipulated in Planning Code Section 17.01.120, the project is not allowed and no application may be accepted. The project sponsor has four options: change the project to conform (e.g. change the project from a hotel to some other use), apply for a General Plan amendment (in this case it would be an amendment to the text of Policy N1.7), find another site where the General Plan allows hotels. If the project sponsor believes that staff's determination regarding General Plan conformity is in error, the sponsor may appeal the determination to the City Planning Commission.

1. "Best Fit Zone" and Other Possible Zones

Under the conditional use permit provided by Section 17.01.100B of the Planning Code the project in question is to be subject to the "best fit zone" from the Zoning Regulations. Such "best fit zones" (and "other possible zones") are identified in Table 5 or 5A for the various General Plan Land Use Classifications. Where more than one "best fit zone" is identified for a particular Land Use Classification, Section 17.100B stipulates that "the Director of City Planning shall determine which zone to apply, with consideration given to the characteristics of the proposal and the surrounding area and any relevant provisions of the General Plan." The Director's determination of "best fit zone" cannot be appealed to the City Planning Commission under Section 17.01.080, because it is made in conjunction with a conditional use permit, which allows appeals under the conditional use permit procedures.

In the case where the project sponsor opts for a rezoning, or for a General Plan amendment to match the current zoning, the "best fit zone" or "other possible zones" are allowed in determining which zone or General Plan Land Use Classification to use. The City Planning Commission and City Council make the ultimate determination of which zone to apply since a rezoning requires passage of an ordinance by the Council with a recommendation from the Commission. Specifically, Section 17.144.060 of the Rezoning and Law Change Procedure provides that the Commission "shall consider whether the existing zone ... [is] inadequate or otherwise contrary to the public interest and may approve, modify, or disapprove the application." "If the project sponsor requests one of these other possible zones, the application should fully explain why this other zone is considered preferable to the "best fit zone."

CHARTS, TABLES AND CHECKLISTS

TABLE 2: LAND USE	GENERAL PLAN LAND USE CLASSIFICATIONS														
ZONING ACTIVITY AND FACILITY TYPES ✓ Conforms w/ General Plan GP Silent or Unclear X Clearly Does not Conform	Hillside Residential	Detached Unit Residential	Mixed Housing Type Residential	Urban Residential	Neighb. Center Mixed Use	Community Commercial	Regional Commercial	Business Mix	Gen. Industrial	Institutional	Central Business District	Mixed-Use Water f (See Table 5A)	Housing Bus. Mix***	Open Space:RCA	Open Space (Other)
Residential Activities:															
Permanent	✓	✓	✓	✓	✓	✓	✓	X	X	✓	✓		NA		
Semi-Transient	X	X	X				X	X	X				NA	X	X
Civic Activities:															
Essential Service													NA		
Limited Child-Care								X	X				NA		
Nursing Home								X	X	✓			NA	X	X
Community Assembly	✓	✓	✓	✓	✓	✓	✓	X	X	✓	✓		NA		
Community Education	✓	✓	✓	✓	✓	✓		X	X	✓	✓		NA		
Non-Assembly Cult.	✓	✓	✓	✓	✓	✓	✓		X	✓	✓		NA		
Administrative					✓	✓	✓			✓	✓		NA		
Residential Care								X	X	✓			NA	X	X
Health Care						✓		X	X	✓			NA	X	X
Utility and Vehicular													NA		
Extensive Impact													NA		
Commercial Activities:															
General Food Sales	✓	✓	✓	✓	✓	✓	✓				✓		NA		
Convenience Market						✓			X				NA	X	X
Fast-Food Restaurant	X	X	X										NA	X	X
Alcohol Bev. Sales													NA		
Convenience Sale/Sv.				✓	✓	✓			X		✓		NA	X	X
Mech. or Elect. Games													NA	X	X
Medical Service						✓		✓	X	✓			NA	X	X
General Retail Sales	✓	✓	✓	✓	✓	✓	✓		X		✓		NA	X	X
General Personal Svc.					✓	✓	✓		X				NA	X	X
Consult. Finan Svc.	X	X				✓	✓		X		✓		NA	X	X
Consmr Laundry/Rep.	X	X				✓	✓	✓					NA	X	X
Group Assembly	X	X				✓	✓				✓		NA	X	X
Administrative	X	X			✓	✓	✓		X		✓		NA	X	X
Business/Communic.	X	X			✓	✓	✓	✓	✓				NA	X	X
Retail Business Sup.	X	X				✓	✓	✓	✓	✓	✓		NA	X	X

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TABLE 2: LAND USE ZONING ACTIVITY AND FACILITY TYPES ✓ Conforms w/ General Plan GP Silent or Unclear X Clearly Does not Conform	GENERAL PLAN LAND USE CLASSIFICATIONS													Mixed-Use Water f (See Table SA)	Housing Bus. Mix***	Open Space:RCA	Open Space (Other)
	Hillside Residential	Detached Unit Residential	Mixed Housing Type Residential	Urban Residential	Neighb. Center Mixed Use	Community Commercial	Regional Commercial	Business Mix	Gen. Industrial	Institutional	Central Business District						
Research Service	X	X						✓	✓						NA	X	X
Gen. Wholesale Sales	X	X	X	X	X			✓	✓						NA	X	X
Trans Habitation/B&B								✓		X		✓			NA	X	X
Construct Sale/Serv.	X	X	X	X	X						X				NA	X	X
Auto Sale/Rent/Deliv.	X	X	X	X		✓	✓	✓							NA	X	X
Automotive Servicing	X	X	X			✓	✓								NA	X	X
Auto Repair/Cleaning	X	X	X	X	X	✓			✓			X			NA	X	X
Auto Fee Parking	X	X	X									✓			NA	X	X
Transport/Warehouse	X	X	X	X	X			✓	✓			X			NA	X	X
Animal Care															NA		
Undertaking Service	X	X	X												NA	X	X
Scrap Operation	X	X	X	X	X	X	X	✓	✓	X	X				NA	X	X
Manufacturing Actv.																	
Custom	X	X	X	X	X			✓	✓	X					NA	X	X
Light	X	X	X	X	X			✓	✓	X					NA	X	X
General	X	X	X	X	X	X	X	✓	✓	X	X				NA	X	X
Heavy	X	X	X	X	X	X	X		✓	X	X				NA	X	X
Agricultural/Extract.																	
Plant Nursery															NA	X	X
Crop/Animal Raising															NA		
Mining and Quarrying															NA	X	X
Residential Facilities:																	
One-Family Dwelling	✓	✓	✓						X	X					NA		
One-Fam. /Secondary	✓	✓	✓						X	X					NA	X	X
One-Fam. w/ Second	✓	✓	✓						X	X					NA	X	X
Two-Family Dwelling	X	X	✓						X	X					NA	X	X
Multi-Family Dwelling	X	X	✓	✓	✓	✓	✓	X	X	✓	✓				NA	X	X
Rooming House									X	X					NA	X	X
Mobile Home									X	X					NA	X	X
Downtown Live Work *	X	X	X	✓	✓	✓	X	X	X	✓	✓				NA	X	X
Nonresidential Facil:																	
Enclosed				✓	✓										NA		
Open															NA		

TABLE 2: LAND USE ZONING ACTIVITY AND FACILITY TYPES ✓ Conforms w/ General Plan GP Silent or Unclear X Clearly Does not Conform	GENERAL PLAN LAND USE CLASSIFICATIONS													Mixed-Use Water f (See Table 5A)	Housing Bus. Mix***	Open Space:RCA	Open Space (Other)	
	Hillside Residential	Detached Unit Residential	Mixed Housing Type Residential	Urban Residential	Neighb. Center Mixed Use	Community Commercial	Regional Commercial	Business Mix	Gen. Industrial	Institutional	Central Business District							
Drive-In	X	X	X													NA	X	X
Sidewalk Cafe				✓	✓	✓	✓				✓					NA	X	X
Shopping Center**	X	X	X	X		✓	✓									NA	X	X
Drive-Through	X	X	X		X	✓	✓									NA	X	X
Signs:																		
Residential																NA	X	X
Special																NA		
Development																NA	X	X
Realty																NA	X	X
Civic																NA		
Business																NA		
Advertising																NA	X	X
Telecommunications																		
Micro																NA		
Mini																NA		
Macro																NA		
Monopole																NA		
Tower																NA	X	X
Accessory Activ./Facil.																		
Live/work			✓								X	✓*				NA	X	X

* Downtown building conversions to Live/Work are governed by a June 1999 ordinance which regulates and designates a specific downtown area for this type of conversion, regardless of General Plan Land Use Classification. See "Residentially-Oriented Live Work" regulations.

** "Shopping Center" is defined as a Non-residential facility type, but is not listed as permitted or conditionally permitted in any zone. This definition is used in conjunction with 1000' foot rule for Fast-Food Restaurants (Section 17.102.210(E)(1)).

***The permitted, conditionally permitted, and prohibited activities for the Housing and Business Mix classification are always determined by the underlying zoning designation. The HBX-1 and HBX-2 zoning designations have been adopted by the City Council to implement the Housing and Business Mix LUTE classification.

The Mixed Use Waterfront Classification is superseded by the Estuary Policy Plan Land Use Classifications. See Table 2A.

TABLE 2A: ESTUARY POLICY PLAN LAND USE CLASSIFICATIONS

TABLE 2A: ESTUARY LAND USE ZONING REGULATIONS ACTIVITY AND FACILITY TYPES*	Jack London District								0-9	San Antonio/Fruitvale										
	Light Indust. 1	Off Price Retail 1	Ret. Dine, Entert 1	Ret. Dine, Entert 2	Produce Market	W. Commrc. Rec. 1	Mixed Use Dist.	W. Mixed U. Dist.	W. Warehouse Dist.	Plan. W. Devel. -1	W. Commrc. Rec. 2	Light Indust 2	Plan. W. Devel. 2	Resid. Mixed U.	Heavy Ind.	Gen. Commerce. 1	Plan. W. Dist. 3	Gen. Commerce. 2	Light Indust. 3	
Residential Activity																				
Permanent		✓	X	✓	✓	X	✓	✓	✓	✓	X		✓	NA	X	X	X	X	X	X
Semi-Transient		✓	X	✓	✓	X	✓	✓	✓	✓	X		✓	NA	X	X	X	X	X	X
All Residential Care categories		✓	X	✓	✓	X	✓	✓	✓	✓	X		✓	NA	X	X	X	X	X	X
Civic Activities:																				
Essential Service														NA						
Limited Child Care											X		X	NA	X		X		X	X
Community Assembly						✓				✓			X	NA	X		X		X	X
Community Education			X	X	X					✓	X		X	NA	X	X	X	X	X	X
Non-Assembly Cultural			✓	✓	✓	✓				✓				NA						
Administrative														NA						
Health Care	X	X	X	X	X	X	X	X	X	X	X	X	X	NA	X	X	X	X	X	X
Utility and Vehicular			X	X	X	X		X	X	X	X		✓	NA	✓		✓		✓	✓
Extensive Impact														NA						
Telecommunications														NA						
Commercial Activities:																				
General Food Sales		✓	✓	✓	✓	✓	✓	✓	✓	✓			✓	NA		✓		✓		
Convenience Market													✓	NA						
Fast-Food Restaurant			*	*										NA						
Alcoholic Beverage Sales														NA						
Convenience Sales and Service														NA						
Mechanical or Electronic Games														NA						
Medical Service													X	NA	X	X	X	X	X	X
Gen. Retail Sales		✓	✓	✓	✓	✓	✓	✓	✓	✓				NA		✓		✓		
Gen. Personal Service		✓	✓	✓	✓	✓	✓	✓	✓	✓				NA		✓		✓		
Consult./Financial Service				✓		✓								NA		✓	✓	✓		
Consumer Laundry/Repair Svc.													✓	NA						✓
Group Assembly			✓	✓		✓				✓				NA		✓		✓		
Administrative			✓	✓	✓	✓		✓		✓				NA		✓	✓	✓		
Business/Communications Svc.													✓	NA		✓	✓	✓	✓	✓
Retail Bus. Supply													✓	NA		✓	✓	✓	✓	✓

TABLE 2A: ESTUARY LAND USE ZONING REGULATIONS ACTIVITY AND FACILITY TYPES*	Jack London District									O-9	San Antonio/Fruitvale									
	Light Indust.1	Off Price Retail 1	Ret. Dine, Entert 1	Ret. Dine, Entert 2	Produce Market	W. Commrc. Rec. 1	Mixed Use Dist.	W. Mixed U. Dist.	W. Warehouse Dist.	Plan. W. Devel. -1	W. Commrc. Rec. 2	Light Indust 2	Plan. W. Devel. 2	Resid. Mixed U.	Heavy Ind.	Gen. Commerce. 1	Plan. W. Dist. 3	Gen. Commerce. 2	Light Indust. 3	
✓ = Clearly conforms = is silent or not clear X = Clearly does not conform																				
Research Service														NA			✓		✓	
Gen. Wholesale Sales		✓	X	X	✓	X	✓	X	✓			✓	✓	NA	✓	✓	✓	✓	✓	✓
Transient Habitation/B&B		✓	✓		✓					✓	✓		X	NA	X	✓				
Construction Sales/Service			X	X		X		X					✓	NA	✓	✓	✓	✓	✓	✓
Auto (Boat) Sales/Rental/Delivery				X		X		X		✓			✓	NA		✓		✓	✓	✓
Auto (Boat) Servicing				X		X		X				✓	✓	NA	✓	✓		✓	✓	✓
Auto (Boat) Repair/Cleaning						X	X	X	X			✓	✓	NA	✓	✓	X	✓	✓	✓
Auto (Boat) Parking – Fee						X		X					✓	NA		✓		✓	✓	✓
Transport/Warehousing	✓		X	X	✓	X		X				✓	✓	NA	✓	✓	✓	✓	✓	✓
Animal Care														NA						
Undertaking Service														NA						
Scrap Operation	X	X	X	X	X	X	X	X	X	X	X	X	X	NA		X	X	X	X	X
Manufacturing Activ.:																				
Custom Manufacturing	✓				✓		✓		✓	✓		✓	✓	NA	✓	✓	✓	✓	✓	✓
Light Manufacturing	✓		X	X	✓	X	✓	X	✓	✓		✓	✓	NA	✓	✓	✓	✓	✓	✓
General Manufacturing		X	X	X	X	X	X	X	X		X		✓	NA	✓					
Heavy Manufacturing	X	X	X	X	X	X	X	X	X	X	X	X	✓	NA	✓	X	X	X	X	X
Agricultural/Extract.:																				
Plant Nursery														NA						
Crop and Animal Raising	X	X	X	X	X	X	X	X	X	X	X	X	X	NA	X	X	X	X	X	X
Mining/Quarrying	X	X	X	X	X	X	X	X	X	X	X	X		NA		X	X	X	X	X
Residential Facilities:																				
One Family Dwelling	✓	✓	X	✓	✓	✓	✓	✓	✓		X	✓	X	NA	X	X	X	X	X	X
One Family Dwelling/Secondary	✓	✓	X	✓	✓	✓	✓	✓	✓		X	✓	X	NA	X	X	X	X	X	X
One Family Dwelling/Second	✓	✓	X	✓	✓	✓	✓	✓	✓		X	✓	X	NA	X	X	X	X	X	X
Two Family Dwelling	✓	✓	X	✓	✓	✓	✓	✓	✓		X	✓	X	NA	X	X	X	X	X	X
Multi-Family Dwelling	✓	✓	X	✓	✓	✓	✓	✓	✓		X	✓	X	NA	X	X	X	X	X	X
Rooming House											X		X	NA	X	X	X	X	X	X
Downtown Live/Work*	✓	✓	X	✓	✓	X	✓	X	✓	X	X	X	X	NA	X	X	X	X	X	X
Mobile Home	X	X	X	X	X	X	X	X	X	X	X	X	X	NA	X	X	X	X	X	X

TABLE 2A: ESTUARY LAND USE ZONING REGULATIONS ACTIVITY AND FACILITY TYPES*	Jack London District								O-9	San Antonio/Fruitvale									
	Light Indust. 1	Off Price Retail 1	Ret. Dine, Entert 1	Ret. Dine, Entert 2	Produce Market	W. Commrc. Rec. 1	Mixed Use Dist.	W. Mixed U. Dist.	W. Warehouse Dist.	Plan. W. Devel. -1	W. Commrc. Rec. 2	Light Indust 2	Plan. W. Devel. 2	Resid. Mixed U.	Heavy Ind.	Gen. Commerce. 1	Plan. W. Dist. 3	Gen. Commerce. 2	Light Indust. 3
NON-RESIDENTIAL FACILITIES																			
Enclosed														NA					
Open			✓	✓		✓			✓					NA					
Drive-in					X	X		X						NA					
Sidewalk Café		✓	✓	✓	✓	✓	✓	✓	✓	✓		X	NA	X					
Shopping Center/Fast Food					X	X								NA					
Drive Through					X	X		X						NA					
SIGNS																			
Residential			X			X				X				NA	X	X	X	X	X
Special														NA					
Development														NA					
Realty														NA					
Civic														NA					
Business														NA					
Advertising														NA					
TELECOMMUNICATIONS FAC														NA					
Micro														NA					
Mini														NA					
Macro														NA					
Monopole														NA					
Tower														NA					
ACCESSORY ACTIV./FACILITY														NA					
Live/Work		✓	X	✓	✓	X	✓		✓	✓	X	✓		NA	X	X	X	X	X

* See Estuary Policy Plan: Policy JL 1.2 for a description of allowable uses.

**The permitted, conditionally permitted, and prohibited activities for the Residential Mixed Use classification are always determined by the underlying zoning designation. The HBX-3 zoning designation has been adopted by the City Council to implement the Residential Mixed Use Estuary Policy Plan classification.

NA = Not Applicable

TABLE 3

GENERAL PLAN LAND USE CLASSIFICATIONS	MAXIMUM INTENSITY ALLOWED				
	Nonresidential	Residential*			
	Maximum Floor Area Ratio	Maximum Density in Principal Units per Gross Acre	Assumed Net- to-Gross Ratio*	Maximum Density in Principal Units per Net Acre	Minimum Square Feet of Site Area per Principal Unit
Hillside Residential	NA	5	75%	6.67	6,530
Detached Unit Residential	NA	11	75%	14.67	2,969
Mixed Housing Type Residential**	NA	30**	75%	40.0**	1,089**
Urban Residential	NA	125	75%	166.67	261
Neighborhood Center Mixed Use	4.0	125	75%	166.67	261
Community Commercial	5.0	125	75%	166.67	261
Regional Commercial	4.0	125	75%	166.67	261
Business Mix	4.0	NA	NA	NA	NA
General Industrial & Transportation	2.0	NA	NA	NA	NA
Institutional	8.0	125	75%	166.67	261
Central Business District	20.0	300	60%	500.0	87
Mixed Use Waterfront District	See Table 3A	See Table 3A	See Table 3A	See Table 3A	See Table 3A
Housing & Business Mix***	NA	NA	NA	NA	NA
Resource Conservation	NA	NA	NA	NA	NA
Urban Park & Open Space	NA	NA	NA	NA	NA

* If it appears in any given situation that the net-to-gross ratio is significantly different than given here, an individual calculation should be made for the site in question, following the procedure explained in the Density/Intensity Section (C2) of this report.

** In the Mixed Housing Type Residential classification, no project can have a higher density than allowed by its current zoning without a major variance or a rezoning. Under no situation can a project exceed the maximum density permitted under the General Plan, even if the density allowed by the current zoning is greater than the General Plan.

***The density and nonresidential floor area ratio for the Housing and Business Mix classification are always determined by the underlying zoning designation. The HBX-1 and HBX-2 zoning designations have been adopted by the City Council to implement the Housing and Business Mix LUTE classification.

NA = Not Applicable

TABLE 3A: DENSITY/INTENSITY	MAXIMUM INTENSITY ALLOWED				
	Nonresidential	Residential*			
ESTUARY POLICY PLAN LAND USE CLASSIFICATIONS	Maximum Floor Area Ratio	Maximum Density in Principal Units per Gross Acre	Assumed Net-to-Gross Ratio*	Maximum Density in Principal Units per Net Acre	Minimum Square Feet of Site Area per Principal Unit
Light Industrial - 1	2.0	30	75%	40.0	1,089
Off Price Retail - 1	2.0	30	75%	40.0	1,089
Retail, Dining Entertainment (Phase 1)	Avg. 3.5 over area	NA	NA	NA	NA
Retail, Dining, Entertainment (Phase 2)	7.0 per parcel	125	75%	166.67	261
Produce Market	1.0 per parcel	30	75%	40.0	1,089
Waterfront Commercial Recreation - 1	Avg. 3.0 over area	NA	NA	NA	NA
Mixed Use District	5.0 per parcel	125	75%	166.67	261
Waterfront Mixed Use	2.0 per parcel	40	75%	53.33	817
Waterfront Warehouse District	5.0 per parcel	100	75%	133.33	327
Planned Waterfront Development - 1	1.0 per private parcel, Avg. 1.0 on remaining	30 per private, Avg. 30 on other	75%	40.0	1,089
W. Commercial Rec. 2	Avg. 1.0	NA	NA	NA	NA
Light Industrial - 2	2.0 per parcel	30	75%	40.0	1,089
Plan. Water Devel. - 2	2.0 per parcel	40	75%	53.33	817
Resid. Mixed Use -1**	NA	NA	NA	NA	NA
Heavy Industrial - 1	0.75 per parcel	NA	NA	NA	NA
Gen. Commercial - 1	1.0 per parcel	NA	NA	NA	NA
Plan Water District 3	0.5 per parcel	NA	NA	NA	NA
General Commercial -2	1.0 per parcel	NA	NA	NA	NA
Light Industrial - 3	0.5 per parcel	NA	NA	NA	NA

* If it appears in any given situation that the net-to-gross ratio is significantly different than given here an individual calculation should be made for the site in question, following the procedure explained in the Density/Intensity Section (C2) of this report.

**The density and nonresidential floor area ratio for the Residential Mixed Use classification are always determined by the underlying zoning designation. The HBX-3 zoning designation has been adopted by the City Council to implement the Residential Mixed Use Estuary Policy Plan classification.

NA = Not Applicable

CHECKLIST 4: IDENTIFYING GENERAL PLAN POLICIES WITH SPECIFIC DEVELOPMENT IMPLICATIONS

Note: Planning staff should become familiar with all General Plan goals, objectives, and policies. This checklist is intended to assist in quickly locating those with the most specific development implications. (LUT = Land Use and Transportation Element) The full text of the policies is included in the Appendix attached.

Yes	No	Policy Directory
		Does the project have a transportation or parking component or affect street development? If yes, see Transportation and Transit-Oriented Development Policies: T2.1, T2.2, T3.3, T3.8, T4.7, T4.9, T6.2, and T6.4.
		Is the project in the downtown area? If yes, see LUT- Downtown policies D1.3, D1.4, D1.5, D1.7, D1.9, D1.10, D1.12, D2.1, D3.2, D6.2, D8.1, D8.2, D8.4, D9.1, D10.2, D10.3, D10.6, D11.2, D12.3, D12.4
		Does the project involve a 'regional-type' commercial business? If yes, see LUT-Industry and Commerce and Neighborhood policies I/C3.1, N1.4
		Does the project involve large-scale office or institutional development? If yes, see LUT-Downtown and Neighborhood policies D8.1, N 1.9, N2.4
		Does the project involve development of a hotel or motel? If yes, see LUT-Neighborhood policy N1.7
		Does the project include residential development? If yes, see LUT-Neighborhood policies N3.9, N7.1, N7.2, N8.2, and Open Space, Conservation, and Recreation Element policy OS4.2
		Is the project in the hill area? If yes, see LUT-Neighborhood policy N7.3, and Open Space, Conservation, and Recreation Element policy OS1.3
		Does the project include a secondary unit? If yes, see LUT-Neighborhood policies N3.3, N7.2; <u>and</u> interim zoning regulations.
		Does the project involve an existing institution (college, university) or is it located on a golf course, cemetery, or EBMUD watershed? If yes, see Open Space, Conservation, and Recreation Element policies OS3.1, OS3.3, OS3.4
		Could the project affect a street or bicycle facility? If yes, see BMP policies: 1, 2, 2.3, 2.5, 3, 3.1, 4, 4.2, 4.3, 4.4, 5, 5.4, 6, 7, 7.8, 8, 8.1, 8.2, and 10.
		Is The Project in the Waterfront Area? If Yes, see Estuary Plan Policies: JL 1, 1.1, 3, 4, 4.3, 5, 6, 8.2, 12.3, 12.4, 12.5, 15.1, 15.2, OAK 1.2, 2.1, 2.2, 2.4, 3.1, 4.1, 4.2, 4.3, 4.4, 4.5, 6, 8, 9, SAF 1, 2, 2.1, 3, 3.2, 3.3, 4, 4.1, 5, 5.1, 6, 6.1, 7, 7.1, 7.3, 8, 8.2.
		Does the project involve a "Designated Historic Property" (DHP) or "Potential Designated Historic Property" (PDHP)?* If yes, see Historic Preservation Element policies 1.2, 1.3, 2.2, 2.4, 2.6, 3.1, 3.2, 3.3, 3.5, 3.8, 3.9

* Consult the Oakland Cultural Heritage Survey or Screen 203 ("Update/Query Parcel Historic Data") for this property in the Permit Tracking System (PTS).

TABLE 5: BEST FIT ZONES FOR THE GENERAL PLAN LAND USE CLASSIFICATIONS

ZONES THAT CORRESPOND TO GENERAL PLAN LAND USE CLASSIFICATIONS ● = "Best Fit" Zones ○ = Other Possible Zones	Hillside Residential	Detached Unit Residential	Mixed Housing Type Residential	Urban Residential	Neighb. Center Mixed Use	Community Commercial	Regional Commercial	Business Mix	General Industrial	Institutional	Central Business District	Mix-use Waterf. See TABLE 5A.	Housing/ Bus. Mix*	Open Space: RCA	Open Space: Other
	OS (RCA) OS (Rsrce Cons)													NA	●
OS (*) Open Space (All other)													NA		●
R-10 Estate	●	○	○	○									NA		
R-20 Low Density	●	○	○	○									NA		
R-30 One-Family		●	○	○	○								NA		
R-35 Special One Family			●	○	○								NA		
R-36 Small Lot			●	○	○								NA		
R-40 Garden Apartment			●	○	○								NA		
R-50 Medium Density			●	○	○								NA		
R-60 Medium High density				●	○	○							NA		
R-70 High Density				●	○	○							NA		
R-80 High-Rise Apartment				●	○	○							NA		
R-90 Downtown Apartment											●		NA		
C-5 Neighborhood			●	○	●								NA		
C-10 Local Retail			●	○	●								NA		
C-20 Shopping Center					○	○							NA		
C-25 Office				●	○	○							NA		
C-27 Village				○	●								NA		
C-28 Commercial Shopping				○	●								NA		
C-30 District Thoroughfare						○							NA		
C-31 Special Retail				○	●								NA		
C-35 District Shopping													NA		
C-36 Boulevard Service						●	●				○		NA		
C-40 Community Thorough						●	●				○		NA		
C-45 Community Shopping						●	●				○		NA		
C-51 Central Business Service											●		NA		
C-52 Old Oakland											●		NA		
C-55 Central Core											●		NA		
C-60 City Service								●	○				NA		
M-10 Special Industry								●					NA		
M-20 Light								●					NA		
M-30 General								○	●				NA		
M-40 Heavy								○	●				NA		
S-1 Medical Center						○				●			NA		
S-2 Civic Center										●	○		NA		
S-3 Research center								●					NA		
S-4 Design Review													NA		
S-13 Mixed Use													NA		
S-15 Transit Oriented Devel.					●	○	○						NA		

*There are no best fit zones for the Housing and Business Mix LUTE classification. The HBX-1 and HBX-2 zoning designations have been adopted by the City Council to implement the Housing and Business Mix LUTE classification.

NA = Not Applicable

TABLE 5A: BEST FIT ZONES FOR THE ESTUARY PLAN LAND USE CLASSIFICATIONS

ZONES THAT CORRESPOND TO ESTUARY PLAN LAND USE CLASSIFICATIONS ● = "Best Fit" Zones ○ = Other Possible Zones	Jack London District									O-9	San Antonio/Fruitvale								
	Light Indust. 1	Off Price Retail 1	Ret. Dine, Entert 1	Ret. Dine, Entert 2	Produce Market	W. Commrc. Rec. 1	Mixed Use Dist.	W. Mixed U. Dist.	W. Warehouse Dist.	Plan. W. Devel. -1	W. Commrc. Rec. 2	Light Indust 2	Plan. W. Devel. 2	Resid. Mixed U. **	Heavy Ind.	Gen. Commerce. 1	Plan. W. Dist. 3	Gen. Commerce. 2	Light Indust. 3
OS (RCA) OS (Rsree Cons Area)														NA					
OS (*) Open Space (All other)	○	○	○	○	○	○	○	○	○	○	○	○	○	NA	○	○	○	○	○
R-10 Estate														NA					
R-20 Low Density														NA					
R-30 One-Family														NA					
R-35 Special One Family														NA					
R-36 Small Lot														NA					
R-40 Garden Apartment														NA					
R-50 Medium Density														NA					
R-60 Medium High density														NA					
R-70 High Density														NA					
R-80 High-Rise Apartment														NA					
R-90 Downtown Apartment														NA					
C-5 Neighborhood														NA					
C-10 Local Retail														NA					
C-20 Shopping Center														NA					
C-25 Office														NA					
C-27 Village					●			●	●					NA					
C-28 Commercial Shopping Dist.		●							●					NA					
C-30 District Thoroughfare														NA					
C-31 Special Retail		●			●			●						NA					
C-35 District Shopping		●				●			○					NA		○			
C-36 Boulevard Service														NA		○			
C-40 Community Thoroughfare		○									●			NA		●		●	
C-45 Community Shopping			●	●	○	●	●	●	●	●				NA		○		○	
C-51 Central Business Service														NA					
C-52 Old Oakland														NA					
C-55 Central Core														NA					
C-60 City Service											●			NA			●		●
M-10 Special Industry	●	●			○	●		●	●		●	○		NA			●		○
M-20 Light	●	●								●	○	●	○	NA	○		●		●
M-30 General	○											●	●	NA	●		●		●
M-40 Heavy												●	●	NA	●		○		●
S-1 Medical Center														NA					
S-2 Civic Center														NA					
S-3 Research center														NA			●		
S-4 Design Review			●	●	●	●		●	●	●				NA					
S-13 Mixed Use	●	●			○	●		●	●		●	●		NA					
S-15 Transit Oriented Devel.														NA					
(S-16 Industrial/Residential Transition)														NA					

* All water's edge properties have an Open Space Designation. See Estuary Policy Plan Figures II-3 and II-4 and policies.

**There are no best fit zones for the Residential Mixed Use Estuary Policy Plan classification. The HBX-3 zoning designation has been adopted by the City Council to implement the Residential Mixed Use Estuary Plan classification.

NA = Not Applicable

APPENDIX

General Plan Policies with Specific Development Implications

This list is not exhaustive, and is not meant to summarize all of the policies in the General Plan Elements. Rather, this list contains policies that highlight clear implications for land use decision-making. Consult the General Plan Elements if necessary.

A. LAND USE AND TRANSPORTATION ELEMENT

INDUSTRY AND COMMERCE (I/C)

Policy I/C2.2: Reusing Abandoned Buildings

The reuse of abandoned buildings by non-traditional activities should be encouraged where the uses are consistent with, and will assist in the attainment of, the goals and objectives of the General Plan.

Policy I/C3.1: Locating Commercial Businesses

Commercial uses, which serve long term retail needs of regional consumers and which primarily offer durable goods, should be located in areas adjacent to the I-880 freeway or at locations visible or amenable to high volumes of vehicular traffic, and accessible by multiple modes of transportation.

Policy I/C3.5 Promoting Culture, Recreation, and Entertainment

Cultural, recreational, and entertainment uses should be promoted within the downtown, particularly in the vicinity of the Fox and Paramount Theaters, and within the Jack London Square area.

Policy I/C4.1 Protecting Existing Activities

Existing industrial, residential, and commercial activities and areas which are consistent with long term land use plans for the City should be protected from the intrusion of potentially incompatible land uses.

Policy I/C4.2 Minimizing Nuisances

The potential for new or existing industrial or commercial uses, including seaport and airport activities, to create nuisance impacts on surrounding residential land uses should be minimized through appropriate siting and efficient implementation and enforcement of environmental and development controls.

TRANSPORTATION AND TRANSIT-ORIENTED DEVELOPMENT (T)

Policy T1.5: Locating Truck Services

Truck services should be concentrated in areas adjacent to freeways and near the seaport and airport, while ensuring the attractiveness of the environment for visitors, local businesses and nearby neighborhoods.

Policy T2.1 Encouraging Transit-Oriented Development

Transit-oriented development should be encouraged at existing or proposed transit nodes, defined by the convergence of two or more modes of public transit such as BART, bus, shuttle service, light rail or electric trolley, ferry, and inter-city or commuter rail. (See the vision for each of Oakland's BART stations and Eastmont Town Center in the LUT Element).

Policy T2.2 Guiding Transit-Oriented Development

Transit-oriented developments should be pedestrian oriented, encourage night and day times use, provide the neighborhood with needed goods and services, contain a mix of land uses, and be designed to be compatible with the character of surrounding neighborhoods.

Policy T3.3 Allowing Congestion Downtown

For intersections within Downtown and for those that provide direct access to downtown locations, the City should accept a lower level of service and a higher level of traffic congestion than is accepted in other parts of Oakland. The desired pedestrian oriented nature of downtown activity and the positive effect of traffic congestion in promoting the use of transit or other methods of travel should be recognized.

Policy T3.8 Screening Downtown Parking

Cars parked in downtown lots should be screened from public view through the use of ground floor storefronts, parks and landscaping, or other pedestrian friendly, safe, and other attractive means.

Policy T4.1 Incorporating Design Features For Alternative Travel

The City will require new development, rebuilding, or retrofit to incorporate design features in their projects that encourage the use of alternative modes of transportation such as transit, bicycling, and walking.

Policy T4.7 Reusing Abandoned Rail Lines

Where rail lines (including siding and spurs) are to be abandoned, first consideration should be given to acquiring the line for transportation and recreational uses, such as bikeways, footpaths, or public transit.

Policy T4.9 "Gateway" Public Access Area

The City, in concert with the East Bay Regional Park District, Port of Oakland, Oakland Base Reuse Authority, and the Bay Conservation and Development Commission, should support development of a "gateway" public park area at the terminus of the San Francisco/Oakland Bay Bridge east span that is reachable by auto, bicycle, or walking. (See also OSCAR).

Policy T6.2 Improving Streetscapes

The City should make major efforts to improve the visual quality of streetscapes. Design of the streetscape, particularly in neighborhoods and commercial centers, should be pedestrian oriented, include lighting, directional signs, trees, benches, and other support facilities.

Policy T6.4 Rebuilding Freeways

In the event of a major disaster, necessitating reconstruction of the I-880 freeway, the freeway should be rebuilt below ground in the downtown/Jack London square area.

DOWNTOWN (D)

Policy D1.3: Planning for Chinatown

The unique character of Chinatown, as a walkable center for Asian-American culture, a regional destination point, and a district with a mixed housing type residential component, should be supported and encouraged.

Policy D1.4: Planning for Old Oakland

Old Oakland should be respected and promoted as a significant historic resource and character-defining element, with Washington Street as its core. Residential development in Old Oakland should be of mixed housing type, with ground floor retail where feasible.

Policy D1.5: Planning for the Gateway District

New development and rehabilitation in the Gateway district should contribute to greater neighborhood cohesion and identity, emphasizing mixed housing type and urban density residential development.

Policy D1.7: Planning for the Gold Coast

The Gold Coast should be recognized and conserved as an established neighborhood providing urban density housing in a unique urban setting.

Policy D1.9: Planning for the Channel Park Residential Area.

The area between the Channel Park Arts, Educational, and Cultural Center and the waterfront should be developed as a walkable urban residential district, incorporating commercial development and open space as appropriate to take advantage of the cultural and recreational amenities provided by the center and the channel to the estuary, and easy transportation by BART.

Policy D1.10: Planning for the Jack London District.

Pedestrian-oriented entertainment, live-work enterprise, moderate-scale retail outlets, and office should be encouraged in the Jack London Waterfront area.

Policy D1.12 Planning for the Produce Market Area (see Estuary Plan Policy JL-4)

The Produce Market should be recognized as California's last example of an early twentieth century produce market. Should the wholesale distribution of produce be relocated to another site, the character and vitality of this unique district should be encouraged in its reuse if economically viable.

Policy D2.1 Enhancing the Downtown

Downtown development should be visually interesting, harmonize with its surroundings, respect and enhance important views in and out of the downtown, respect the character, history, and pedestrian orientation of the downtown, and contribute to an overall attractive skyline.

Policy D3.2 Incorporating Parking Facilities

New parking facilities for cars and bicycles should be incorporated into the design of any project in a manner that encourages and promotes safe pedestrian activity.

Policy D6.2 Reusing Vacant or Underutilized Buildings

Existing vacant or underutilized buildings should be reused. Repair and rehabilitation, particularly of historic or architecturally significant structures should be strongly encouraged. However, where reuse is not economically feasible, demolition and other measures should be considered. (Landmark and Preservation District properties must follow Policy 2.4 of the Historic Preservation Element).

Policy D8.1: Locating Office Development

New large-scale office development should primarily be located along the Broadway corridor south of Grand Avenue, with concentrations at the 12th Street and 19th Street BART stations. The height of office development should respect the Lake Merritt edge. Small-scale offices should be allowed throughout the downtown, including in the downtown neighborhoods, when compatible with the character of surrounding development.

Policy D8.2: Respecting Public Parks

Future office development on Harrison Street opposite Lakeside Park and Snow Park should provide ground level, landscaped, open space to soften the edge between Public Park land and the office core. This space should be clearly accessible to office workers and the public.

Policy D8.4: Developing the Broadway Spine

The Broadway spine, particularly near the 12th Street/City Center BART station, should be the primary location of new public office development.

Policy D9.1: Concentrating Commercial Development

Concentrate region-serving or "destination" commercial development in the corridor around Broadway between 12th and 21st Streets, in Chinatown, and in the Jack London District. Ground floor locations for commercial uses that encourage a pedestrian-friendly environment should be encouraged throughout the downtown.

Policy D10.2: Locating Housing

Housing in the downtown should be encouraged in identifiable districts, within walking distance of the 19th Street, 12th Street/City Center, and Lake Merritt BART stations to encourage transit use, and in other locations where compatible with surrounding uses.

Policy D10.3: Framework for Housing Densities.

Downtown residential areas should generally be within the Urban Density Residential and Central Business District density range, where not otherwise specified. The height and bulk should reflect existing and desired district character, the overall city skyline, and the existence of historic structures or areas.

Policy D10.6 Creating Infill Housing

Infill housing that respects surrounding development and the streetscape should be encouraged in the downtown to create or strengthen distinct districts.

Policy D11.2: Locating Mixed-Use Development

Mixed-use development should be allowed in commercial areas, where the residential component is compatible with the desired commercial function of the area.

Policy D12.3: Locating Entertainment Activities

Large-scale entertainment uses should be encouraged to concentrate in the Jack London Waterfront and within the Broadway corridor area. However, existing large-scale facilities in the Downtown should be utilized to the fullest extent possible.

Policy D12.4: Locating Smaller Scale Entertainment Activities

Small-scale entertainment uses, such as small clubs, should be allowed to locate in the Jack London Waterfront area and to be dispersed throughout downtown districts, provided the City works with area residents and businesses to manage the impacts of such uses.

NEIGHBORHOODS (N)

Policy N1.4: Locating Large Scale Commercial Activities.

Commercial uses, which serve long term retail needs of regional consumers and which primarily offer high volume goods, should be located in areas visible or amenable to high volumes of traffic. Traffic generated by large-scale commercial developments should be directed to arterial streets and freeways and not adversely affect nearby residential streets.

Policy N1.7: Locating Hotels and Motels:

Hotels and motels should be encouraged to locate downtown, along the waterfront, near the airport, or along the I-880 corridor. No new hotels or motels should be located elsewhere in the city, however, the development of "bed-and-breakfast" type lodgings should be allowed in the neighborhoods, provided that the use and activities of the establishment do not adversely impact nearby areas, and parking areas are screened.

Policy N1.8: Making Compatible Development.

The height and bulk of commercial development in the "Neighborhood Mixed Use Center" and "Community Commercial" areas should be compatible with that which is allowed for residential development.

Policy N1.9: Locating Major Office Development

While office development should be allowed in commercial areas in the neighborhoods, the City should encourage major office development to locate in the downtown.

Policy N2.4: Locating Services along Major Streets

New large-scale community, government, and institutional uses should be located outside of areas that are predominantly residential. Preferably, they should be located along major thoroughfares with easy access to freeways and public transit or in the Downtown.

Policy N3.3: Facilitating Development of Second Units (see also N7.1 and N7.2)

One accessory housing unit (also known as second or secondary unit) per property should be permitted outright in all residential zones, provided it meets the setback requirements for the primary structure, is clearly secondary to the primary structure, is compatible with other structures on the site and in the vicinity, and the property owner lives on-site. The permitting procedures and performance criteria applied to these units should facilitate construction of units, and not be prohibitive in their requirements. Accessory units should be allowed when a new primary residence is being constructed or may be added to properties with an existing residence.

Policy N3.9: Orienting Residential Development.

Residential developments should be encouraged to face the street, and orient their units to desirable sunlight and views, while avoiding unreasonably blocking sunlight and views for neighboring buildings, respecting the privacy needs of residents of the development and surrounding properties, providing for sufficient conveniently located on-site open space, and avoiding undue noise exposure.

Policy N7.1: Ensuring Compatible Development

New residential development in Detached Unit and Mixed Housing Type areas should be compatible with the density, scale, design, and existing or desired character of surrounding development.

Policy N7.2: Defining Compatibility

Guidelines for Determining Project Conformity
Adopted May 6, 1998

Policy N7.2: Defining Compatibility
Oakland City Planning Commission

Infrastructure availability, environmental constraints and natural features, emergency response and evacuation times, street width and function, prevailing lot size, predominant development type and height, scenic values, distance to public transit, and desired neighborhood character are among the factors that could be taken into account when developing and mapping zoning designations or determining "compatibility". These factors should be balanced with the citywide need for additional housing.

Policy N7.3: Hill Area Subdivision

At least 8,000 square feet of lot area per dwelling unit should be required when land in the hill area is subdivided. Lots smaller than 8,000 square feet may be created only when this ratio is maintained for the parcel being divided.

Policy N8.2: Making Compatible Interfaces Between Densities

The height of development in Urban Residential and other higher density residential areas should step down as it nears lower density residential areas to minimize conflicts at the interface between the different types of development.

B. BICYCLE MASTER PLAN (BMP)

BMP Policy 1: Create, enhance and maintain the recommended bikeway network.

- **Action 1.12: Diagonal Parking**
Discourage the installation of diagonal or 90-degree parking on streets included in the recommended bikeway network. Replace existing diagonal or 90-degree parking on streets included in the recommended bikeway network with parallel parking or off-street parking where feasible.

BMP Policy 2: Establish design and maintenance standards for all streets that recognize the needs of bicyclists.

- **Action 2.3: Public Utilities**
When locating or relocating public utilities, design the placement of boxes, hydrants, curbs, poles and other objects so that they do not interfere with bicycle travel.
- **Action 2.5: Automobile Parking**
Whenever new on-street automobile parking spaces are created, especially the conversion of parallel parking to diagonal parking, the potential detrimental effects on cyclists should be considered.

BMP Policy 3: Make efforts to obtain, redevelop, or encourage private redevelopment of unused railroad, utility, and other right-of-ways as linked, multi-use Class I bicycle paths or trails.

BMP Policy 4: Include provisions for safe and direct bicycle access to special development areas and key corridors.

- **Action 4.2: Broadway Corridor**
Designate Broadway from Caldecott Field to Jack London Square as a transit/bicycle corridor promenade. Incorporate bicycle facilities in any development or redevelopment projects with ¼ mile of Broadway whenever feasible.

BMP Policy 5: Promote secure and conveniently located bicycle parking at destinations throughout Oakland.

BMP Policy 6: Support improved bicycle access to public transportation.

BMP Policy 8: Insure that the needs of bicyclists are considered in the design of new development and redevelopment projects.

- **Action 8.2: Drive-up windows**
Drive-up windows, drive-in services and take-out services, excluding car washes, should provide full access to bicyclists.

BMP Policy 10: Prior to the implementation of bikeway projects, affected residents, merchants and property owners shall be notified in writing of the potential impacts.

C. ESTUARY POLICY PLAN ELEMENT

Note: The Open Space designation applies to the shoreline of every waterfront property.

JACK LONDON DISTRICT (JL)

Retail, Dining, and Entertainment District Policy JL-1: Reinforce retail, dining, and entertainment uses along the waterfront, and extend these uses along Broadway to create a regional entertainment destination.

Retail, Dining, and Entertainment District Policy JL-1.1: Expand commercial uses along the entire five-block frontage of lower Broadway.

Retail, Dining, and Entertainment District Policy JL-1.2: Intensify Phase I of Jack London Square.

Comment: Several more focused development directives are found with this policy. The following bullet point illustrates one particular directive regarding food carts and kiosks. Existing Zoning Regulations define this type of service as "fast food", for purposes of Zoning administration.

- Additional kiosks and retail extensions in the plaza adjacent to the existing Barnes and Noble bookstore. The kiosks, food carts, etc., should help to intensify activity on a daily basis, and provide patrons with high quality food service and an attractive environment for outdoor eating, with views to the water.

Off Price Retail District Policy JL-3: Encourage the expansion of off-price retail establishments west of Broadway.

Produce District Policy JL- 4: Preserve the historic character of the Produce District, and encourage activities that create a viable urban mixed-use district.

Produce District Policy JL-4.3 Encourage the location of a farmers market along Franklin Street.

Mixed Use District Policy JL-5: Encourage the development of a mix of uses including housing within a context of commercial, and light industrial/manufacturing uses, and ancillary parking generally outside the existing boundaries of the historic district (API) and east to the Lake Merritt channel.

Waterfront Warehouse District Policy JL-6: Encourage the preservation and adaptive reuse of existing buildings and new infill development to provide joint living and working quarters, residential, light industrial, wholesale, office, and compatible uses that preserve and respect the District's unique character.

Shoreline Access and Public Spaces Policy JL-8.2: Create new open spaces that expand the opportunities to view, appreciate, and enjoy the water's edge.

Regional Circulation, Local Street Improvements, and Parking Policy JL-12.3: Reinforce a food and market orientation on Franklin Street.

Regional Circulation, Local Street Improvements, and Parking Policy JL-12.4: Develop significant pedestrian improvements along Webster Street that create a strong link to the waterfront.

Regional Circulation, Local Street Improvements, and Parking Policy JL-12.5: 2nd and 3rd Streets: Reinforce Second Street and Third Street as an east-west connector for pedestrian, vehicular and bicycle movement.

Regional Circulation, Local Street Improvements, and Parking Policy Policy JL-15.1: Provide Class II bike lanes on Second Street and portions of Third Street near Mandela Parkway.

Regional Circulation, Local Street Improvements, and Parking Policy Bicycle Circulation Policy JL-15.2: Establish bike lanes on Washington Street.

OAK TO NINTH AVENUE DISTRICT (OAK)

Shoreline Access and Public Spaces Policy OAK-1.2: Provide for continuous pedestrian and bicycle movement along the water's edge.

Shoreline Access and Public Spaces Policy OAK-2.1: Expand Estuary Park. Encourage Aquatic Sports within the mouth of Lake Merritt Channel.

Shoreline Access and Public Spaces Policy OAK-2.2: Create a major new park on the east side of the mouth of the Lake Merritt Channel, at the Estuary.

Shoreline Access and Public Spaces Policy OAK-2.4: Establish a large park in the existing area of the Ninth Avenue Terminal. Establish a location for large civic events and cultural activities. A new park of significant size should be created in the area.

Shoreline Access and Public Spaces Policy OAK-3.1: Create a system of public open spaces that flanks both sides of Lake Merritt Channel.

Land Use Policy OAK-4.1: Preserve and expand the existing Fifth Avenue Point community as a neighborhood of artists and artisan studios, small businesses, and water-dependent activities.

Land Use Policy OAK-4.2: Promote the development of educational and cultural interpretive facilities (Oak to 9th).

Land Use Policy OAK-4.3: Facilitate the relocation of break-bulk cargo operations from the Ninth Avenue Terminal.

Land Use Policy OAK-4.4: Promote development of commercial-recreational uses in the vicinity of the Crescent Park and Clinton Basin.

Land Use Policy OAK-4.5: North of the Embarcadero, encourage a mixed-use district while maintaining viable industrial uses.

Regional Circulation and Local Street Improvements Policy OAK-6: Explore the future potential for a major new BART Station and major parking facility on BART property at Fifth Avenue and East 8th Street.

Regional Circulation and Local Street Improvements Policy OAK-8: Enhance Fifth Avenue as the principal pedestrian and vehicular linkage to the public open space surrounding the mouth of the Lake Merritt Channel.

Regional Circulation and Local Street Improvements Policy OAK-9: Improve the Embarcadero east of Oak Street as a multi-modal landscaped parkway with bicycle, pedestrian and vehicular facilities.

SAN ANTONIO/FRUITVALE DISTRICT (SAF)

Embarcadero Cove Policy SAF-1: Encourage the development of water-oriented commercial uses within Embarcadero Cove.

Brooklyn Basin Policy SAF-2: Maintain the industrial character and role of Brooklyn Basin as a place for food processing and manufacturing, and retain light industrial uses.

Brooklyn Basin Policy SAF-2.1: Encourage development of compatible office, support commercial and institutional uses.

Con-Agra Policy SAF-3: Encourage heavy industry in the vicinity of the Con-Agra plant to continue, while providing for the transition to a mix of new uses.

Con-Agra Policy SAF-3.2: Redevelop the area with a mixture of waterfront-oriented residential and/or commercial activities, which are compatible with the scale and character of surrounding areas.

Con-Agra Policy SAF-3.3: Provide for strong links to surrounding areas and orient new development to the water.

Kennedy Tract Policy SAF-4: Encourage the preservation and expansion of the affordable residential neighborhood in the Kennedy Tract.

Kennedy Tract Policy SAF-4.1: Provide for a mixture of compatible uses with emphasis on a variety of affordable housing types, while maintaining the area's character of small-scale buildings.

Owens-Brockway Policy SAF-5: Retain the existing industrial use of the Owens-Brockway site.

Owens-Brockway Policy SAF-5.1: Improve the compatibility between industrial and residential uses, and enhance the relationship of the plant with the waterfront.

42nd and High Street Policy SAF-6: Encourage the reuse of existing warehouse properties south of Alameda Avenue and west of High Street for high-quality retail uses that complement adjacent commercial uses.

42nd and High Street Policy SAF-6.1: Provide for new commercial activities adjacent to the 42nd Street interchange.

East of High Street Policy SAF-7: East of High Street, maintain existing viable industrial and service-oriented uses, and encourage the intensification of underutilized and vacant properties.

East of High Street Policy SAF-7.1 South of Tidewater Avenue, provide for continued industrial use, but also encourage new research and development and light industrial activities which are compatible with the adjacent EMBUD Oakport Facility and EBRPD's Martin Luther King Jr. Regional Shoreline Park.

East of High Street Policy SAF-7.3: At the 66th Avenue interchanges, encourage development of commercial uses that can benefit from proximity to freeway interchanges and serve both regional and local markets.

Shoreline Access and Public Space Policy SAF-8: Develop a continuously accessible shoreline, extending from Ninth Avenue to Damon Slough.

Shoreline Access and Public Space Policy SAF-8.2: Develop a major new public park at Union Point.

D. OSCAR ELEMENT

Note: The Open Space designation applies to the shoreline of every waterfront property.

Policy OS1.3: Relate New Development to Slope

Limit intensive urban development to areas where the predominant slope is less than 15 percent. Design development on slopes between 15 and 30 percent to minimize alteration of natural landforms. Strongly discourage development on slopes greater than 30 percent. To the extent permitted by law, when land is subdivided into two or more lots, retain areas with slopes over 30 percent as private, public, or common open space.

Policy OS3.1: University, College, and Institutional Open Space

Retain open space at Oakland's universities, colleges, and other institutions where such open space provides recreational, aesthetic, conservation, or historic benefits. Where such spaces are publicly owned, as at the community colleges, support the permanent retention of athletic fields and other recreational areas as open space. Such areas should not be converted to development unless they are replaced in kind with comparable areas or facilities in the immediate vicinity.

Policy OS3.3: Golf Course and Cemetery Open Space

Retain golf courses and cemeteries as open space areas.

Policy OS3.4: East Bay Municipal Utility District Open Space

Retain EBMUD watershed land and reservoirs as open space and promote their joint use for recreation.

Policy OS4.2: Protection of Residential Yards

Recognize the value of residential yards as a component of the City's open space system and discourage excessive coverage of such areas by buildings or impervious surfaces.

E. HISTORIC PRESERVATION ELEMENT

Policy 1.2: Potential Designated Historic Properties

The City considers any property receiving an existing or contingency rating from the Reconnaissance, or Intensive Surveys of "A" (highest importance), "B" (major importance), or "C" (secondary importance) and all properties determined by the Surveys to contribute or potentially contribute to an Area of Primary or Secondary Importance to warrant consideration for possible preservation. Unless already designated as Landmarks, Preservation Districts, or Heritage properties pursuant to Policy 1.3, such properties will be called "Potential Designated Historic Properties."

Policy 1.3: Designated Historic Properties

The City will designate significant older properties which definitively warrant preservation as Landmarks, Preservation Districts or Heritage Properties. The designations will be based on a combination of Historical and Architectural Inventory Ratings, National Register of Historical Places criteria, and special criteria for Landmarks and Preservation District eligibility. Landmarks, properties, which contribute or potentially contribute to Preservation Districts, and Heritage Properties, will be called "Designated Historic Properties".

Policy 2.2: Landmark and Preservation District Eligibility Criteria

Landmarks and Preservation Districts will be classified according to importance, with three classes of Landmarks and two classes of Preservation Districts. Properties eligible for each of these classifications will be as follows: (*see Historic Preservation Element Pg. 4-3*)

Policy 2.4: Landmark and Preservation District Regulations

- (a) Demolitions and removals involving Landmarks or Preservation Districts will generally not be permitted or be subject to postponement unless certain findings are made. Demolition or removal of more important Landmarks and of most Preservation District properties will normally not be permitted without the required findings, while demolition or removal of less important Landmarks will be subject only to postponement.
- (b) Alterations or New Construction involving Landmarks or Preservation Districts will normally be approved if they are found to meet the Secretary of the Interior's Standards for the Treatment of Historic Properties or if certain other findings are made.
- (c) Findings for approval of demolitions, removals, alterations or New Construction involving Landmarks or Preservation Districts will seek to balance preservation of these properties with other concerns.
- (d) Specific regulatory provisions are set forth in the tables entitled "Demolition and Removal Regulations for Landmarks and Preservation Districts" and "Alteration and New Construction Regulations for Landmarks and Preservation Districts".

(*See Historic Preservation Element Table 4-1, page 4-10 and Table 4-2, page 4-12*)

Policy 2.6: Preservation Incentives

Landmarks and all property contributing or potentially contributing to a Preservation District will be eligible for the following preservation incentives: (iv) Broader range of permitted or conditionally permitted uses;

See Historic Preservation Element Action 2.6.5, page 4-27

Policy 3.1: Avoid or Minimize Adverse Historic Preservation Impacts Related To Discretionary City Actions.

The City will make all reasonable efforts to avoid or minimize adverse effects on the Character-Defining Elements of existing or Potential Designated Historic Properties which could result from private or public projects requiring discretionary City actions.

Policy 3.2: Historic Preservation and City-Owned Properties

To the extent consistent with other Oakland General Plan objectives, the City will ensure that all City-owned or controlled properties warranting preservation will, in fact, be preserved. All City-owned or controlled properties which may be eligible for Landmark or Heritage Property designation or as contributors or potential contributors to a Preservation District will be considered for such designation.

Policy 3.3: Designated Historic Property Status For Certain City-Assisted Properties.

To the extent consistent with other General Plan Goals, Policies and Objectives, as a condition for providing financial assistance to projects involving existing or Potential Designated Historic Properties, the City will require that complete application be made for such properties to receive the highest local designation for which they are eligible prior to issuance of a building permit for the project or transfer of title (for City-owned or controlled properties), whichever comes first. However, Landmark or Preservation District applications will not be required for projects which are small-scale or do not change exterior appearance.

Policy 3.5: Historic Preservation and Discretionary Permit Approvals.

For additions or alteration to Heritage Properties or Potential Designated Historic Properties requiring discretionary City permits, the City will make a finding that: (1) the design matches or is compatible with, but not necessarily identical to, the property's existing or historical design; or (2) the proposed design comprehensively modifies and is at least equal in quality to the existing design and is compatible with the character of the neighborhood; or (3) the existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.

For any project involving complete demolition of Heritage Properties or Potential Designated Historic Properties requiring discretionary City permits, the City will make a finding that: (1) the design quality of the proposed project is at least equal to that of the original structure and is compatible with the character of the neighborhood; or (2) the public benefits of the proposed project outweigh the benefit of retaining the original structure; or (3) the existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.

Policy 3.8: Definition Of "Local Register Of Historical Resources" And Historic Preservation "Significant Effects" For Environmental Review Purposes.

For purposes of environmental review under the California Environmental Quality Act, the following properties will constitute the City of Oakland's Local Register of Historical Resources (Any property listed on the California Register of Historical Resources or officially determined to be eligible for listing on the California Register of Historical Resources is also considered a "Historical Resource" pursuant to Section 21084.1 of the California Environmental Quality Act):

- 1) All Designated Historic Properties, and
- 2) Those Potential Designated Historic Properties that have an existing rating of "A" or "B" or are located within an Area of Primary Importance.

Until complete implementation of Action 2.1.2 (Re-designation), the Local Register of Historical Resources will also include the following designated properties: Oakland Landmarks, S-7 Preservation Combining Zone properties, and Preservation Study List properties.

Complete demolition of a Historical Resource will normally be considered a significant effect that cannot be mitigated to a level less than significant and will, in most cases, require preparation of an Environmental Impact Report.

A proposed addition or alteration to a Historical Resource that has the potential to disqualify a property from Landmark or Preservation District eligibility or may have substantial adverse effects on the property's Character-Defining Elements will normally, unless adequately mitigated, be considered to have a significant effect.

Policy 3.9: Consistency of Zoning with Existing or Eligible Preservation Districts

(a) Unless necessary to achieve some other Oakland General Plan goal or policy which is of greater significance, the base zone of existing or eligible Preservation Districts shall not encourage demolition or removal of a district's contributing or potentially contributing properties nor encourage new construction that is incompatible with these properties.

(b) The City will always consider including a historic preservation component in area wide or specific plans: As part of any amendment to the Zoning Regulations, the impact on historic properties will be evaluated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA **ENDORSED FILED**

ALAMEDA COUNTY

JUN 21 2004

CLERK OF THE SUPERIOR COURT
By SARA DALLESE

Deputy

No. RG03-133394

ISLAMIC CULTURAL CENTER OF
NORTHERN CALIFORNIA, and DOES 1
through 5, inclusive,

Petitioners,

vs.

CITY OF OAKLAND, and DOES 6 through
10, inclusive,

Respondents.

STATEMENT OF DECISION

AFFORDABLE HOUSING ASSOCIATES,
MARK GARRELL, and DOES 11 through
15, inclusive,

Real Parties in Interest.

The petition for writ of mandate brought by the Islamic Cultural Center of Northern California ("petitioner"), came on regularly for hearing on June 10, 2004 in Department 512 of the above-entitled Court, the Honorable Bonnie Sabraw, Judge presiding. Rose M. Zoia represented the petitioner. Respondent City of Oakland ("City") was represented by Farimah Faz, Deputy City Attorney. Real party in interest Affordable Housing Associates ("AHA") was represented by Ellen J. Garber of Shute, Mihaly & Weinberger, LLP.

ATTACHMENT D

The Court, having fully considered the briefs and the arguments of counsel, now issues this Statement of Decision denying all relief sought under the petition for writ of mandate.

Facts and Procedural History of the Approvals at Issue

On December 16, 2003, the Oakland City Council denied an appeal to a prior approval of a project known as the Madison Street Lofts ("Madison Lofts;" "the Project"). (AR 1:0023-34.) Approval of the project included the approval of related variances. The project was found to be exempt from the California Environmental Quality Act ("CEQA") under a statutory exemption for affordable housing, as well as a categorical exemption for infill development. The underlying petition was timely filed in response to the City's Notice of Exemption. (AR 1:002; see also AR 1:001.)

The Madison Lofts contemplates an eight-story building located at 160 14th Street. The development proposes "approximately 2,600 square feet of retail space on the ground floor, 3000 square feet of community and social service space on the podium level, and 76 affordable housing units. Rental rates would be restricted such that approximately 35% of the units would be affordable at 30% of the area median income (AMI), 40% of the units at 50% of the AMI, and 25% of the units at 60% AMI. Unit types would include 23 studios, 29 one bedrooms, 18 two bedrooms, and 6 three bedrooms. Fifty-eight of the units would be typical affordable housing units, while 18 of the units would be service-enriched units." (AR 2:0333.) The project includes 53 ground level parking places. (AR 1:0037; 2:0578.) The entrance to the parking area will have no setback from the sidewalk along Madison Avenue. (AR 1:186.)

Prior to 1986, the site of the proposed project was used as a gas station. Soil testing reveals continuing effects from this use. (AR 3:603.) Presently, the site is used as a parking lot. The location is described as a "heavily trafficked downtown intersection." (AR 1:0037.) On the north side of the property is the Madison Street Temple ("the Temple"), a structure built in 1909 as the original headquarters of Oakland's Scottish Rite, a leading Oakland fraternal organization. (*Ibid.*) The building, currently the

headquarters of the Islamic Cultural Center of Northern California ("ICCNC"), is considered an excellent example of Mission Revival architecture, and has the highest survey rating of "A" from the City's Cultural Heritage Survey office based on its historical and architectural significance. (*Ibid.*) As further context for the site of the project, the City notes:

"The Temple is considered a 'primary contributor' to the Lakeside Apartment District, an area occupying portions of five blocks bounded by 14th Street, Harrison Street, 17th Street, and Lakeside Drive that contains one of Oakland's best concentrations of medium scale early 20th Century apartment and institutional buildings. The site is just outside the District and on the edge of an area of Downtown containing several surface parking lots, government buildings, and a mix of modern and turn of the century commercial and residential buildings.

The City main library, another historically designated property, is located across the intersection from the site. A one story stucco building containing a dry cleaning service an [sic] office building are located to the west of the site. A nursery school is located across 14th Street and a two story, mixed use building is located across Madison Street. The site is within the Mayor's 10K project area."

(AR 1:0038.)¹ It is undisputed that the project site is "within walking distance of three BART stations and all major AC Transit bus lines." (Oppo. Brf. p. 1:12-13; see also AR 1:0046.)

Petitioner agrees that the members of the Oakland community need a source of affordable housing. (Petr. Opn. Brf. p.1, fn. 1.) Petitioner contends, however, that this particular project violates CEQA primarily due to its "scale." Based on the size of Madison Lofts and its associated impacts, it is asserted that the City erred in not finding that the exceptions to the statutory and categorical exemptions are applicable. Specifically, petitioner asserts that the City ignored substantial evidence of significant environmental effects, and abused its discretion by failing to proceed under CEQA with regard to the project's impacts vis-a-vis historical resources, hazardous materials, direct

¹ No party cites to record evidence providing salient details regarding the "Mayor's 10K project area." The City alludes to such area being "targeted for new housing development." (Oppo. Brf., p. 3:26.)

and cumulative parking impacts, and zoning regulations.

Exemptions Under CEQA

Projects that would otherwise be subject to environmental review may be exempted from CEQA, either by statute or regulation. Petitioner does not dispute that Madison Lofts qualified for application of an exemption under either the statutory exemption associated with affordable housing, or, alternatively, the categorical exemption created with regard to infill development.²

A statutory exemption embodies a legislative determination that a given type of project "promotes an interest important enough to justify forgoing the benefits of environmental review." (*Napa Valley Wine Train, Inc. v. PUC* (1990) 50 Cal.3d 370, 382.) "Because the purposes of the statutory exemptions are not necessarily in harmony with CEQA's general purpose, the general rule that CEQA provisions must be interpreted to give the fullest possible protection to the environment does not control the interpretation of a statutory exemption." (1 Kostka & Zischke, Practice Under the California Environmental Quality Act (Cont. Ed. Bar 2003) § 5.3; see also *Napa Valley Wine Train, Inc.*, *supra*, 50 Cal.3d at 381.) The statutory exemption for affordable housing is set forth in Public Resources Code section 21159.23. This section must be read in conjunction with section 21159.21. Section 15280 of Title 14 California Code of Regulations aids in implementation of section 21159.23.³

In addition to statutory exemptions designed to exempt from CEQA projects deemed to have benefits that outweigh probable environmental impacts, the legislature has authorized the Secretary of the Resources Agency to develop a list of classes of projects that may be treated as exempt from CEQA based on *lack of* associated significant environmental effect(s). (See Pub. Res. Code §§ 21083, 21084.) These exemptions are referred to as "categorical exemptions." The categorical exemption adopted for infill development is found at Guideline 15332. In contrast to statutory exemptions, categorical

² Hereinafter, sections of the California Code of Regulations will be referenced as "guidelines."

³ Hereinafter, all statutory references to the Public Resources Code will be abbreviated as "section." The Court

exemptions are narrowly construed to avoid unreasonably exceeding the scope of the exemptions. (See *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 966; *Dehne v. County of Santa Clara* (1981) 115 Cal.App.3d 827, 842; *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 205.)

Exceptions to the Exemptions

Both the statutory and categorical exemptions relied upon by the City for project approval have associated "exceptions" which may preclude application of the exemption.⁴ Petitioner contends that the following exceptions apply to preclude application of the *statutory* exemption: zoning inconsistency (Guideline 15280, subd. (b)(2)); historical resources impact (Guideline 15280, subd. (b)(7)); unusual circumstances/significant effects (Guideline 15280, subd. (e)); and cumulative impacts (Guideline 15280, subd. (e)). With regard to the *categorical* exemption, petitioner argues that these exceptions prevent use of the exemption: zoning inconsistency (Guidelines 15332, subd. (a); 15300.2, subd. (c)); historical resources impact (Guidelines 15300.2, subd. (c), (f)); unusual circumstances/significant effects (Guideline 15300.2, subd. (c)); cumulative impacts (Guideline 15300.2, subd. (c)); hazardous materials (Guidelines 15300.2, subd. (c)); and traffic (Guidelines 15332, subd. (d); 15300.2, subd. (c)).

Standard of Review

The standard of review for statutory exemptions that do *not* incorporate exceptions is the substantial evidence test:

"Under CEQA, we review agency determinations for substantial evidence. (§§ 21168, 21168.5) " "Substantial evidence" is defined by the Guidelines ... [and] "... means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made is to be determined by examining the entire record. Mere uncorroborated opinion or rumor does not constitute substantial evidence." (Guidelines, § 15384, subd. (a).) [Citation.]"

attaches an Appendix to its Statement of Decision setting forth in full all relevant statutes and guidelines.

⁴ The Court acknowledges respondent's position that statutory exemptions do not have "exceptions." For purposes of this discussion, however the Court will refer to conditions that limit the applicability of statutory exemptions as "exceptions," albeit different in nature than those applying to categorical exemptions.

(*Castaic Lake Water Agency v. City of Santa Clarita* (1995) 41 Cal.App.4th 1257, 1264- 1265.) Although "there is no statutory requirement of a preliminary study attending an agency decision to use the exemption[,] ... [¶] ... the administration record must disclose substantial evidence of every element of the contended exemption" (*Western Mun. Water Dist. v. Superior Court* (1986) 187 Cal.App.3d 1104, 1113.)

(*CalBeach Advocates v. City of Solana Beach* (2002) 103 Cal.App.4th 529, 535-536.)
"The interpretation of a statutory exemption and its application to the facts is a question of law." (1 Kostka & Zischke, Practice Under the California Environmental Quality Act, *supra*, § 5.100; citing to *Napa Valley Wine Train, Inc.*, *supra*, 50 Cal.3d at 267.)

There is no published decision establishing whether the substantial evidence standard of review is applicable to review of *exceptions* to statutory exemptions. Petitioner asserts that the Court must apply the less deferential "fair argument" standard of review, such as that applied to challenges to negative declarations, because some courts have found this to be the proper standard for review of "significant effects exception" applicable to categorical exemptions. This standard is summarized as follows:

"[I]f a local agency is required to secure preparation of an EIR 'whenever it can be *fairly argued* on the basis of substantial evidence that the project may have significant environmental impact' [citation], then an agency's adoption of a negative declaration is not to be upheld merely because substantial evidence was presented that the project would not have such impact. The trial court's function is to determine whether substantial evidence supported the agency's conclusion as to whether the prescribed 'fair argument' could be made. If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be 'fairly argued' that the project might have a significant environmental impact. Stated another way, if the trial court perceives substantial evidence that the project might have such an impact, but the agency failed to secure preparation of the required EIR, the agency's action is to be set aside because the agency abused its discretion by failing to proceed 'in a manner required by law.' [Citation.]"

(*Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002, italics in original.) "It is an agency's failure to assess evidence to determine whether it could be

fairly argued that a project would have an adverse impact on the environment that constitutes the abuse of discretion.” (*Dunn-Edwards Corp. v. Bay Area Quality Management Dist.* (1992) 9 Cal.App.4th 644, 655.)

It is true that there is similarity of language between the “significant effects” exception applicable to categorical exemption, and to limiting language that qualifies the affordable housing statutory exemption.⁵ Similarity of language, alone, however, does not persuade that the Court should apply the less deferential standard of review.

This Court takes judicial notice of the split of authority with regard to the proper standard of review to be applied to exceptions to *categorical* exemptions. Some courts have held that the substantial evidence test does not apply and that the presence of any substantial evidence that significant impacts might result should be enough to trigger the significant effects exception, regardless of the presence in the record of substantial evidence to the contrary. (*Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1202; *Dunn-Edwards Corp.*, *supra*, 9 Cal.App.4th at 654-655; *see also Association for Protection of Environmental Values v. City of Ukiah* (1991) 2 Cal.App.4th 720, 728-729 [First District case relying upon negative declaration cases based on agreement of the parties, but expressly querying whether substantial evidence standard of review might be applicable]; *cf. Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal.App.4th 786, 796 [split of authority noted but not addressed because evidence did not rise to level of “fair argument”]; *Fairbank v. City of Mill Valley* (1999) 75 Cal.App.4th 1243, 1259-1260 [split of authority noted but not addressed because evidence did not rise to level of “fair argument”].) Other courts have applied the more deferential substantial evidence test to questions of facts arising from application of exceptions to categorical exemptions. (*Centinela Hosp. Ass’n*

⁵ *Guideline 15280. Lower-income Housing Projects*

(e) This section does not apply if there is a reasonable possibility that the project would have a significant effect on the environment due to unusual circumstances or due to the related or cumulative impacts of reasonably foreseeable other projects in the vicinity.

Guideline 15300.2. Exceptions

(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable

v. City of Inglewood (1990) 225 Cal.App.3d 1586, 1601; *Dehne, supra*, 115 Cal.App.3d 827, 843-844.)

Theoretically, this Court need not weigh in on the debate regarding the proper standard of review to be applied to exceptions to *categorical* exemptions. As noted earlier, the California Supreme Court has established that the general rule that CEQA provisions must be interpreted to give the fullest possible protection to the environment does not control the interpretation of statutory exemptions. (*Napa Valley Wine Train, Inc., supra*, 50 Cal.3d at 381.) For that reason, this Court avoids applying any standard of review that may result in "exceptions that swallow the rule" in the area of statutory exemptions. Such can happen not only if an exemption is interpreted too narrowly (or an exception too broadly), but also by the reviewing court being insufficiently deferential to the decision-maker. Therefore, as to the exception to the affordable housing exemption, this Court will apply the substantial evidence test to review whether the City's determination constituted an abuse of discretion or violation of CEQA.⁶

Review of the Evidence Regarding the Applicable Exceptions

The statutory exemption for affordable housing may be subject to exception if the zoning is inconsistent with the local zoning as it existed on the date of submission of the project application (Guideline 15280, subd. (b)(2)); if the project will "involve the demolition of, or any substantial adverse change in, any district, landmark, object, building, structure, site, area, or place that is listed, or determined to be eligible for listing in the California Register of Historical Resources" (Guideline 15280, subd. (b)(7)); "if there is a reasonable possibility that the project would have a significant effect on the environment due to unusual circumstances" (Guideline 15280, subd. (e)); or "due to related or cumulative impacts of reasonably foreseeable projects in the vicinity (Guideline 15280, subd. (e).)

possibility that the activity will have a significant effect on the environment due to unusual circumstances.
⁶ Petitioner did not dispute respondent/real party in interest's statement (repeated at the hearing) that "[I]f either exemption applies, no further review under CEQA is required." (Resp. Oppo. Brf. p. 9:16-17.) Thus, if the City's decision as to the statutory exemption is determined to have been sound under the substantial evidence standard,

It is undisputed that project approvals included two zoning variances, one for parking and one for setbacks. (AR 1:0041-42; 54-56.) With regard to parking, this type of project would ordinarily require seventy-four spaces. The City granted a parking variance to allow 53 parking spaces, and to allow those spaces to be two inches narrower than usual. (AR 1:0042.) As for setbacks, the City granted a variance allowing the front of the building facing Madison Street to be constructed to the lot line, instead of the usual five-foot setback. The record shows that a rear setback was also required. (AR 1:0041; 54-56.)

As a first point, petitioner argues that the need for *any* variance creates a situation where the project is *per se* impermissibly inconsistent with zoning regulations. The Court disagrees. Petitioner cites no authority on point, and the better view is that a variance – when properly granted – is authorized to be used to assist in the orderly implementation of zoning laws and regulations.⁷ (See *Milagra Ridge Partners, Ltd. v. City of Pacifica* (1998) 62 Cal.App.4th 108, 118-119; *Richter v. Bd. Of Supervisors of Sacramento County* (1968) 259 Cal.App.2d 99, 106.)

Moving on from this point of law, the issue then becomes whether there is substantial evidence in the record to support the City’s position that the variance was properly granted, in accord with rules for administrative findings. (See *Topanga Ass’n for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.) The Court finds that there is evidence in the record supporting the City’s compliance with its obligations as set forth in the Oakland Municipal Code. (See OMC, ch. 17.148.050; see also AR 1:0054-56; 0095-0107; 0185-86; 0210; 0218; 0247; 0250; 0252; 0269; 0271.)⁸

Next, petitioner asserts that the project will create a significant impact on an historical landmark, the Madison Street Temple. Specifically, petitioner contends that the eight-story Madison Lofts will tower over the Temple, blocking sunlight from entering

there will be no reason for this Court to review the evidence under the less deferential fair argument test.
⁷ Alternatively, petitioner argues that the need for a variance creates an “unusual circumstance,” triggering the “significant effects” exception. That issue will be discussed below.
⁸ This issue will be discussed again briefly at the end of this decision.

certain stain glass windows, and obscuring the public's view of the Temple from the building's north and south approaches. Petitioner argues the project's "box shape design" will detract from the setting and enjoyment of the Temple, as well as the nearby Lakeside Apartment District.⁹ Evidence supporting petitioner's position was provided to the City. (AR 1:0109-113; 3:0808-812 [included but not limited to].) Petitioner's additionally argue that the project will adversely impact the nearby Lakeside Apartment District.

The record contains enough relevant information and reasonable inferences from this information to support the City's conclusion that there will be no substantial adverse change in either the Temple or the nearby Lakeside Apartment District arising from the project. The evidence cited by respondents/real party in interest has been reviewed by the Court, and is incorporated herein. (Resp. Oppo. Brf., p. 17:10-22.) Even if the "fair argument" standard was properly used here, the Court is not inclined to find that petitioner raised a fair argument based on the evidence submitted. Petitioner's evidence consists either of speculation or opinion, or raises the specter of impacts that find no support in the law for being "significant," e.g., blocked views from some approaches, short term shadows on distant windows, and an aesthetically-challenged setting for the Temple and nearby historic district. (See AR 3:782; 0808-812; 5:1028-1030.)

Under the "significant effects" exception of Guideline 15280, subdivision (e), petitioner cites to a list of conditions that create "unusual circumstances" that either alone, or taken together, create a "reasonable possibility that the project would have a significant effect on the environment." (Guideline 15280, subd. (e).) These circumstances include: the zoning "inconsistency" requiring variances; the nearness of the Temple and the Lakeside Apartment District; the presence of contaminants in the groundwater; direct and cumulative parking impacts; and issues regarding pedestrian safety.

Again, there is no case law cited that defines "unusual circumstances" with regard

⁹ One city council member described the Madison Lofts as involving mostly "right angles" and lacking the "elegance" of other nearby buildings. (AR 1:223.)

to a statutory exemption. The Court sees no problem with "borrowing" from the context of categorical exemptions, where the test does not undermine the different policies attendant to statutory exemptions. In a case considering the significant effects exception to a categorical exemption, it was held that "unusual circumstances" will be found "where the circumstances of a particular project (i) differ from the general circumstances of the projects covered by a particular categorical exemption, and (ii) those circumstances create an environmental risk that does not exist for the general class of exempt projects." (*Azusa Land Reclamation Co., supra*, 52 Cal.App.4th at 1207, citing to *Myers v. Board of Supervisors* (1976) 58 Cal.app.3d 413, 426.) The issue of whether a particular circumstance is "unusual" is an issue of law for this court to review de novo. (*Azusa Land Reclamation Co., supra*, 52 Cal.App.4th at 1207.)

This Court finds that the Madison Loft Project is unusual based on one factor: it will be next to an historical landmark, and border an historical district. The City provides no evidence to support that affordable housing projects "usually" or "often" are built next to such resources. On the other hand, petitioner provides no evidence to show that it is "unusual" for an affordable housing/in fill development to be built on land that formerly housed a gas station, to require minor variances, and to "threaten" parking impacts and impacts on pedestrian safety due to ingress and egress from associated facilities. Thus, the Court agrees that the development presents an unusual circumstance, but only based on the limited ground of its nearness to historical resources. As the earlier discussion concludes, however, the record contains substantial evidence to show that there will be no significant impact on these historical resources.

Even if the other areas of concern were deemed by the Court to create "unusual circumstances," the Court notes that there is also no evidence presented by petitioner showing a reasonable probability of significant environmental effect arising from those unusual circumstances. With regard to the hazardous materials, petitioner cites only to the evidence showing that certain chemicals exist in the groundwater, but provides no evidence to show that the project interfaces with the groundwater in a manner that creates

an environmental impact. The case cited by petitioner is distinguishable in that the presence of PCBs rendered the project description inadequate, and it was apparent that the project raised a high probability of a potential for removal/disturbance of the PCBs. (See *McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136.)

As for parking impacts, the record contains substantial evidence to support that the City considered the direct and cumulative impacts of the parking project. (AR 1:0095-107.) In any event, primary parking impacts are not considered environmental impacts. (*San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 697.) And, “[t]he social inconvenience of having to hunt for scarce parking spaces is not an environmental impact . . .” (*Ibid.*) Petitioner presents no evidence to show significant effects arising from secondary impacts – such as on traffic and air quality – from this project. Absent such evidence, the Court will not disturb the City’s findings regarding parking.¹⁰ Finally, with regard to issues of pedestrian safety, the Court agrees that petitioner’s evidence amounts to speculation and unsubstantiated opinion. (See AR 1:0110-111.) To the extent that the warning system intended to alert pedestrians to exiting vehicles is challenged as a significant environmental impact, again, there is no evidence cited in the record to support this opinion.

With regard to the pedestrian warning system, petitioner argued that the pedestrian alert system was a “mitigation” that evidenced the impropriety of using an exemption. (See *Azusa Land Reclamation Co., supra*, 52 Cal.App.4th at 1199-1201.) “An agency should decide whether a project is eligible for a categorical exemption as part of its preliminary review of the project . . . , not in the second phase when mitigation measures are evaluated. In determining whether the significant effect exception to a categorical exemption exists, “[i]t is the *possibility* of a significant effect . . . which is at issue, not a determination of actual effect, which would be the subject of a negative declaration or an EIR. Appellants cannot escape the law by taking a minor step in mitigation and then find

¹⁰ Moreover, it is undisputed that the project will be located in an area “well served by public transit,” which was found to be contextually relevant to a parking impacts analysis by the First District in *San Franciscans Upholding*

themselves exempt from the exception to the exemption.’ [Citation; italics in original]” (*Id.* at 1199-1200.) The Court does not interpret *Azusa* to mean that anytime a mitigation measure is included, there is *ipso facto*, an underlying impact of significance. Here, the substantial evidence supports that the lack of setback to the parking entrance is not unusual, and the judicious inclusion of a warning system does not change that determination.”

Violation of the Government Code Re: Granting of Variance

The Court takes judicial notice of the Oakland Municipal Codes establishing that the City of Oakland is a charter city, and thus not subject to sections of the Government Code sections argued in Petitioner’s Opening Brief at pages 23-24. (See City of Oakland’s official website at <http://bpc.iserver.net/codes/oakland/>.)

With regard to findings supporting the grant of variances under the Oakland Municipal Code, the Court has reviewed the findings in the record and finds administrative findings sufficient to “bridge the analytic gap between the raw evidence and the decision or order.” (*Topanga Ass’n for a Scenic Community, supra*, 11 Cal.3d at 515.) (See AR 1:0023; 35; 42; 54-55.)

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the Downtown Plan, supra, 102 Cal.App.4th at 697.

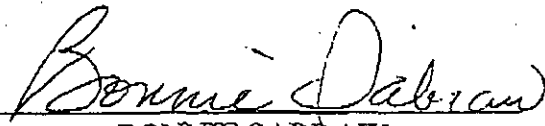
¹¹ Petitioner commented at hearing that it did not feel that its views were “respected” with regard to this project, and that the length of the record supported an exception to the exemption. The Court views the length of the record as evidence of respondent/real party in interest’s good faith in working with the community, and commends such efforts

CONCLUSION

For the above stated reasons, the petitioner's writ of mandate is DENIED, in its entirety. The City is ordered to prepare and submit a proposed judgment for the Court's approval no later than July 1, 2004.

IT IS SO ORDERED.

Date: 6/21/04


BONNIE SABRAW
Judge of the Superior Court

where a statutory exemption may arguably entitle the development to more cursory review.

ATTACHMENT E

EXCERPTS FROM CITY OF OAKLAND'S CEQA THRESHOLDS OF SIGNIFICANCE

AESTHETICS, SHADOW AND WIND

The project would have a significant impact on the environment if it would:

1. Have a substantial adverse effect on a scenic vista;
2. Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state or locally designated scenic highway;
3. Substantially degrade the existing visual character or quality of the site and its surroundings;
4. Create a new source of substantial light or glare which would substantially and adversely affect day or nighttime views in the area;
5. Introduce landscape that would now or in the future cast substantial shadows on existing solar collectors (in conflict with California Public Resource Code Section 25980-25986);
6. Cast shadow that substantially impairs the function of a building using passive solar heat collection, solar collectors for hot water heating, or photovoltaic solar collectors;
7. Cast shadow that substantially impairs the beneficial use of any public or quasi-public park, lawn, garden, or open space;
8. Cast shadow on an historic resource, as defined by CEQA Section 15064.5(a) [**NOTE:** see Appendix A for definition], such that the shadow would materially impair the resource's historic significance by materially altering those physical characteristics of the resource that convey its historical significance and that justify its inclusion on or eligibility for listing in the National Register of Historic Places, California Register of Historical Resources, Local register of historical resources or a historical resource survey form (DPR Form 523) with a rating of 1-5;
9. Require an exception (variance) to the policies and regulations in the General Plan, Planning Code, or Uniform Building Code, and the exception causes a fundamental conflict with policies and regulations in the General Plan, Planning Code, and Uniform Building Code addressing the provision of adequate light related to appropriate uses; or
10. Create winds exceeding 36 mph for more than 1 hour during daylight hours during the year. [**NOTE:** The wind analysis only needs to be done if the project's height is 100 feet or greater (measured to the roof) **and** one of the following conditions exist: (a) the project is located adjacent to a substantial water body (i.e., Oakland Estuary, Lake Merritt or San Francisco Bay); or (b) the project is located in Downtown.¹]

¹ Downtown is defined in the Land Use and Transportation Element of the General Plan (page 67) as the area generally bounded by

CULTURAL AND HISTORIC RESOURCES

The project would have a significant impact on the environment if it would:

1. Cause a substantial adverse change in the significance of a historical resource as defined in CEQA Guidelines §15064.5 [**NOTE:** see Appendix A for definition]. Specifically, a substantial adverse change includes physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of the historical resource would be “materially impaired.” The significance of an historical resource is “materially impaired” when a project demolishes or materially alters, in an adverse manner, those physical characteristics of the resource that convey its historical significance **and** that justify its inclusion on, or eligibility for inclusion on an historical resource list (including the California Register of Historical Resources, the National Register of Historical Resources, Local Register, or historical resources survey form (DPR Form 523) with a rating of 1-5);
2. Cause a substantial adverse change in the significance of an archaeological resource pursuant to CEQA Guidelines §15064.5;
3. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature; or
4. Disturb any human remains, including those interred outside of formal cemeteries.

APPENDIX A

DEFINITION OF HISTORICAL RESOURCE UNDER CEQA

In the City of Oakland, an historical resource under CEQA is a resource that meets **any** of the following criteria:

- 1) A resource listed in, or determined to be eligible for listing in, the California Register of Historical Resources;
- 2) A resource included in Oakland’s Local Register of historical resources (defined below), unless the preponderance of evidence demonstrates that it is not historically or culturally significant;
- 3) A resource identified as significant (e.g., rated 1-5) in a historical resource survey recorded on Department of Parks and Recreation Form 523, unless the preponderance of evidence demonstrates that it is not historically or culturally significant;
- 4) Meets the criteria for listing on the California Register of Historical Resources; **or**

- 5) A resource that is determined by the City Council to be historically or culturally significant even though it does not meet the other four criteria listed here.

The City of Oakland's Local Register (Historic Preservation Element Policy 3.8) includes the following:

- All Designated Historic Properties (Landmarks, Heritage Properties, Study List Properties, Preservation Districts, and S-7 and S-20 Preservation Combining Zone Properties); and
- Those Potential Designated Historic Properties that have an existing rating of "A" or "B" or are located within an Area of Primary Importance.

V 11/1/07

KINGFISH MIXED-USE DEVELOPMENT
PROJECT

**Traffic Impact Analysis
DRAFT REPORT**

Prepared for:

City of Oakland

By

DKS Associates

1000 Broadway
Suite 450
Oakland, CA 94607-4039

June 19, 2007

ATTACHMENT F

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EXECUTIVE SUMMARY

This report provides an evaluation of traffic and transportation issues related to the proposed 33-unit residential condominium and 1,806 square feet commercial/retail development site located at the 5227 Claremont Avenue in the City of Oakland, California. The project site is currently developed with eight (8) self-storage space units (1,982 square feet), seven residential dwelling units of which six are occupied and a pub (1,000 square feet).

The project study area is bounded by Aileen Street to the north, 51st Street to the south, Shattuck Avenue to the west and Claremont Avenue to the east. The proposed project site is bounded by Telegraph Avenue to the west and Claremont Avenue to the east.

Vehicular access to the site would be provided via a driveway along Claremont Avenue. This report provides a general description of the transportation facilities in the project vicinity and summarizes existing, background, project, cumulative and cumulative with project conditions within the study area. Particular attention is given to impacts on vehicular, transit, bicycle and pedestrian facilities.

The proposed project would generate 365 daily new trips, including 47 A.M. peak hour trips (15 in, 32 out) and 50 P.M. peak hour trips (27 in, 23 out).

Under the City of Oakland traffic impact analysis guidelines, the proposed project would not result in any significant transportation impacts at the study intersections. **Table ES-1** summarizes the City of Oakland intersection operations for all studied conditions under the A.M. peak hour. **Table ES-2** summarizes the City of Oakland intersection operations for all studied conditions under the P.M. peak hour.

The proposed project would provide 33 on-site parking spaces with 24 parking-lift spaces, 8 compact parking spaces and 1 van accessible parking space. In addition, bicycle parking would also be provided. All parking (vehicle and bicycle) spaces would be located at ground level.

This study examined various transportation improvement options for streets immediately adjacent to the project site. Recommendations are provided to improve off-site traffic operations, on-site access and circulation. Several recommendations were made that could either be implemented independently or in phases, as described below:

- New sidewalk along project frontages on Claremont Avenue and Telegraph Avenue.

- Restriping of crosswalks at Telegraph Avenue and Claremont Avenue-52nd Street.
- Upgrading of existing ADA ramps at the intersection of Clarke Street and Claremont Avenue, Clarke Street and 51st Street, Telegraph Avenue and 51st Street and Telegraph Avenue and 52nd Street-Claremont Avenue to ADA compliance. The existing ramps are too small and do not include domes (refer to Table 3 of this report for more detail).
- In order to provide adequate sight distance, driveway tipping of approximately 122 feet would be required in the eastbound direction and 24 feet and 4 inches would be required in the westbound direction along Claremont Avenue.
- In addition, 1 to 2 on-street parking spaces along the north side of Claremont Avenue west of the project driveway would be removed in order to provide adequate site distance.
- Upgrading the on-street signage to improve visibility of on-street parking restrictions and to discourage pedestrians crossing at midblock.

Table ES-1 LOS Analysis Summary – A.M. Peak Hour

Level of Service Analysis Summary A.M. Peak Hour																	
#	Intersection	Traffic Control	Existing			Background			Project			Cumulative			Cumulative with/Project		
			Avg. Delay ²	V/C	LOS	Avg. Delay ²	V/C	LOS	Avg. Delay ²	V/C	LOS	Avg. Delay ²	V/C	LOS	Avg. Delay ²	V/C	LOS
1.	Shattuck Ave & 52 nd St	Signal	>80	1.98	F	58.6	0.97	E	59.2	0.97	E	>80	1.18	F	>80	1.18	F
2.	Telegraph Ave & SR 24 WB off-ramp – Aileen St	Signal	23.1	0.67	C	23.1	0.68	C	23.1	0.68	C	38.6	0.87	D	38.8	0.87	D
3.	Telegraph Ave & SR 24 EB on-ramp	Signal	10.0	0.56	B	10.1	0.57	B	10.1	0.57	B	12.5	0.68	B	12.5	0.68	B
4.	Telegraph Ave & 55 th Street	Signal	6.5	0.46	A	6.0	0.47	A	5.9	0.47	A	6.6	0.56	A	6.6	0.57	A
5.	Claremont Ave & SR 24 EB off-ramp – Clifton St	Signal	12.2	0.36	B	12.5	0.37	B	12.6	0.37	B	13.1	0.44	B	13.3	0.44	B
6.	Telegraph Ave & 52 nd St – Claremont Ave	Signal	18.1	0.56	B	19.5	0.58	B	20.2	0.59	C	21.9	0.70	C	22.5	0.72	C
7.	Clarke St & Claremont Ave	Unsignalized	9.8	-	A	10.3	-	B	10.3	-	B	10.3	-	B	10.4	-	B
8.	Telegraph Ave & 51 st St	Signal	33.7	0.70	C	40.0	0.74	D	40.0	0.75	D	68.0	0.89	E	68.0	0.90	E
9.	Clarke St & 51 st St ¹	Unsignalized	35.1	-	E	33.3	-	D	33.3	-	D	>50	-	F	>50	-	F

Source: DKS Associates, 2007.

Notes: Avg. Delay: Average Delay in seconds per vehicle

V/C: Volume-to-capacity ratio.

LOS: Level of Service

1 Unsignalized Intersection: LOS based on worst approach delay (in seconds).

2 For signalized intersections, delays >80 are beyond the upper limits of LOS delay estimation equations under the HCM 2000 methodologies. For unsignalized intersections, delays >50 are beyond the upper limits of LOS delay estimation equations under the HCM 2000 methodologies.

Table ES-2 LOS Analysis Summary – P.M. Peak Hour

Level of Service Analysis Summary P.M. Peak Hour																	
#	Intersection	Traffic Control	Existing			Background			Project			Cumulative			Cumulative with/Project		
			Avg. Delay ²	V/C	LOS	Avg. Delay ²	V/C	LOS	Avg. Delay ²	V/C	LOS	Avg. Delay ²	V/C	LOS	Avg. Delay ²	V/C	LOS
1.	Shattuck Ave & 52 nd St	Signal	>80	1.72	F	77.9	1.02	E	78.4	1.02	E	>80	1.25	F	>80	1.25	F
2.	Telegraph Ave & SR 24 WB off-ramp – Aileen St	Signal	10.1	0.58	B	10.1	0.59	B	10.1	0.59	B	12.5	0.72	B	12.5	0.72	B
3.	Telegraph Ave & SR 24 EB on-ramp	Signal	36.4	0.94	D	37.9	0.95	D	38.4	0.95	D	>80	1.15	F	>80	1.15	F
4.	Telegraph Ave & 55 th Street	Signal	12.0	0.63	B	11.9	0.63	B	11.9	0.64	B	16.4	0.90	B	16.4	0.95	B
5.	Claremont Ave & SR 24 EB off-ramp – Clifton St	Signal	14.6	0.46	B	14.8	0.46	B	14.9	0.46	B	15.8	0.56	B	15.9	0.56	B
6.	Telegraph Ave & 52 nd St – Claremont Ave	Signal	26.5	0.76	C	26.9	0.77	C	27.7	0.78	C	45.5	0.96	D	49.9	0.98	D
7.	Clarke St & Claremont Ave	Unsignalized	10.3	-	B	10.7	-	B	10.8	-	B	11.0	-	B	11.1	-	B
8.	Telegraph Ave & 51 st St	Signal	60.1	0.84	E	63.3	0.85	E	63.3	0.85	E	>80	1.01	F	>80	1.02	F
9.	Clarke St & 51 st St ¹	Unsignalized	>50	-	F	>50	-	F	>50	-	F	>50	-	F	>50	-	F

Source: DKS Associates, 2007.

Notes: Avg. Delay: Average Delay in seconds per vehicle

V/C: Volume-to-capacity ratio.

LOS: Level of Service

1 Unsignalized intersection: LOS based on worst approach delay (in seconds).

2 For signalized intersections, delays >80 are beyond the upper limits of LOS delay estimation equations under the HCM 2000 methodologies. For unsignalized intersections, delays >50 are beyond the upper limits of LOS delay estimation equations under the HCM 2000 methodologies.

10 INTRODUCTION

This report provides an evaluation of traffic and transportation issues related to the proposed 33-unit residential condominium and 1,806 square feet commercial/retail development site located at the 5227 Claremont Avenue in the City of Oakland, California. The project site is currently developed with eight (8) self-storage space units (1,982 square feet), and seven residential dwelling units of which six are occupied.

The project study area is bounded by Aileen Street to the north, 51st Street to the south, Shattuck Avenue to the west and Claremont Avenue to the east. The proposed project site is bounded by Telegraph Avenue to the west and Claremont Avenue to the east. The site location and the surrounding roadway network are illustrated in **Figure 1**.

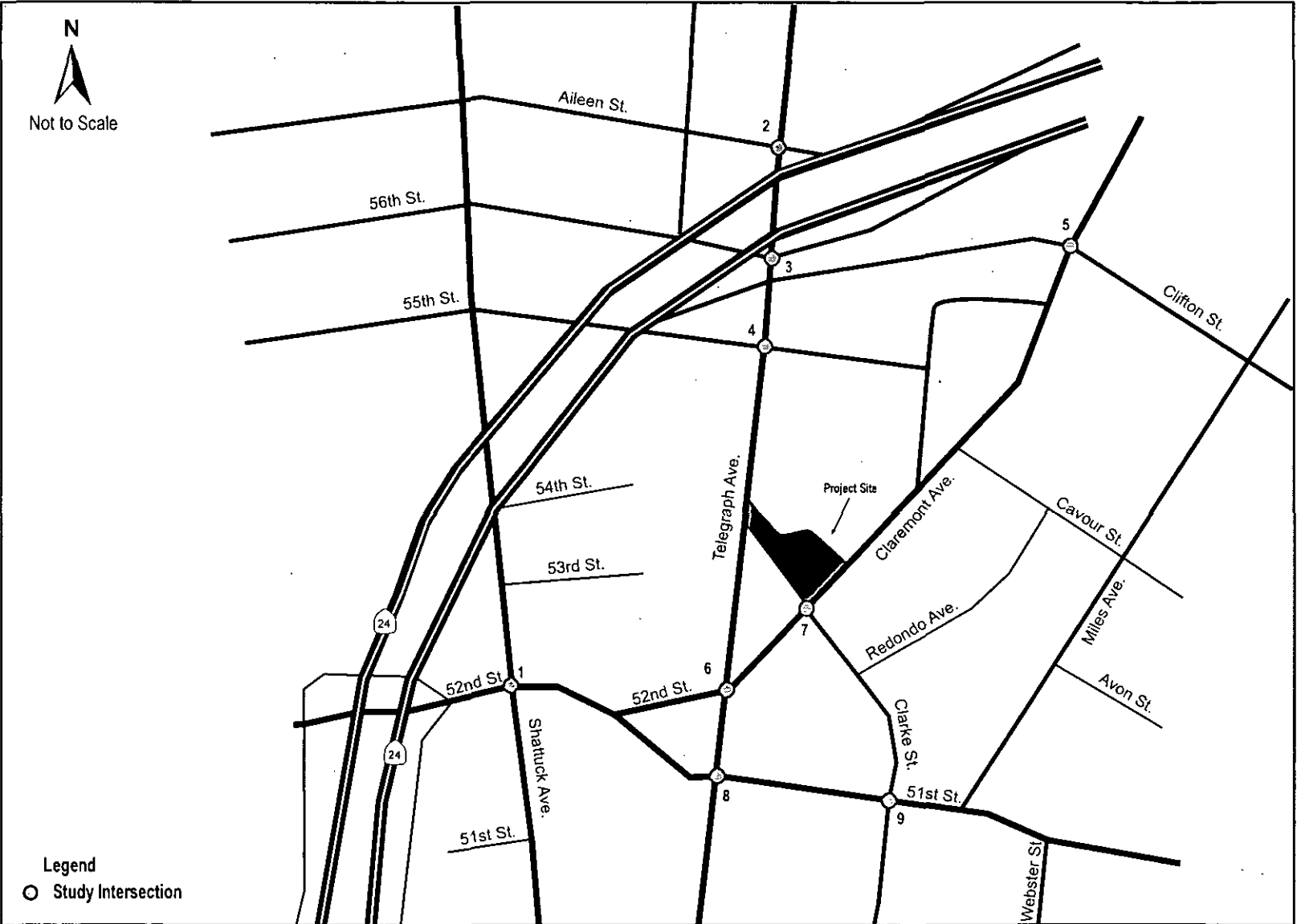
Vehicular access to the site would be provided via a driveway along Claremont Avenue. The project site plan is illustrated in **Figure 2**.

The transportation analysis represented in this study follows review and incorporation, where appropriate, of data from the following transportation studies in the City of Oakland:

- 4801 Shattuck Avenue Residential Development Project, Traffic Impact Analysis - FINAL REPORT. Prepared by DKS Associates, January 25, 2007.
- Temescal Centrada Mixed-Use Development Project, Traffic Impact Analysis - FINAL REPORT. Prepared by DKS Associates, July 6, 2006.
- 5110 Telegraph Avenue Mixed-Use Development Project, Traffic Impact Analysis - FINAL REPORT. Prepared by DKS Associates, December 15, 2005.

In addition, data provided in this report are based on recent correspondence and conversations with staff of the City of Oakland and site visits conducted in February and May 2007.

This report analyzes the traffic conditions during the weekday A.M. and P.M. peak hours. The impacts of the proposed project were estimated using the current level of service methodologies set forth by the City of Oakland.



07022-000-Kingfish Proj Site.ai-4/4/07

Figure 1
Project Study Area

The following nine intersections were analyzed as part of the City of Oakland traffic analysis:

1. Shattuck Avenue & 52nd Street
2. Telegraph Avenue & SR-24 WB off-ramp – Aileen Street
3. Telegraph Avenue & SR 24 EB on-ramp
4. Telegraph Avenue & 55th Street
5. Claremont Avenue & SR 24 EB off-ramp – Clifton Street
6. Telegraph Avenue & 52nd Street – Claremont Avenue
7. Clarke Street & Claremont Avenue
8. Telegraph Avenue & 51st Street
9. Clarke Street & 51st Street

The list of study intersections was based on the size of the project and the number of trips it would potentially generate, the surrounding study area, and with consideration to those intersections that are most likely to be impacted by the proposed project. The operation of these intersections was evaluated for the following scenarios:

Scenario 1: Existing Condition. Level of service based on existing peak-hour volumes.

Scenario 2: Background Condition (No Project). Level of service based on existing peak-hour volumes plus growth from approved, but not yet constructed, developments in the vicinity of the proposed project (Civia, Centrada) that would occur prior to the completed construction of the proposed mixed-use development project. Also, the City's programmed transportation improvement at the intersection of Shattuck and 52nd Street was included as it is scheduled to be completed in September 2007.

Scenario 3: Project Condition. Background peak-hour volumes plus project-generated traffic estimated for the mixed-use development project.

Scenario 4: Cumulative Condition. Existing peak-hour volumes plus a 1.18 percent traffic growth per year to year 2025 estimated in the vicinity of the proposed project plus traffic generated by the 4801 Shattuck Avenue Residential Development Project.

Scenario 5: Cumulative with Project Condition. Cumulative peak-hour volumes plus traffic generated by the proposed project.

In addition to intersection operation analysis, vehicle, pedestrian and bicycle collision data have been analyzed for all study intersections and roadway segments surround the project site. An evaluation of the site plan, on-site circulation, access and egress points, sight distance, proposed parking supply and expected demand is contained in this report.

The following section presents an analysis of the existing conditions of various transportation system components. The components include roadways, intersections, transit service, bicycles, pedestrians, and parking.

20 TRANSPORTATION

This section provides an evaluation of traffic and transportation issues related to the proposed mixed-use development project. A description of the existing transportation system facilities in terms of the roadway network facilities, intersections, transit service, bicycle, pedestrian and parking is provided below.

2.1 Roadway Network¹

The project area and the surround roadway network are illustrated in **Figure 1**. Regional access to the project area is provided by State Route 24, Telegraph Avenue, Shattuck Avenue and Claremont Avenue.

State Route 24. This facility extends from Walnut Creek in the east at its junction with Interstate 680 to its terminus at the I-580/I-980 interchange in the west, where it becomes Interstate 980. In the vicinity of the project area, SR-24 runs in the east-west direction and includes four-lanes in each direction of travel. SR-24 provides access to/from the project study area via on/off ramps on 52nd Street west of Shattuck Avenue, eastbound on-ramp at Telegraph Avenue & 56th Street, westbound off-ramp at Telegraph Avenue & Aileen Street and eastbound off-ramp at Claremont Avenue & Clifton Street. SR 24 has an AADT² of about 144,000 west of the project site and approximately 137,000 east of the project site. State Route 24 has a posted speed limit of 55 mph.

Telegraph Avenue is a four-lane major arterial; it extends from 15th Street-Broadway in Oakland to its terminus at Bancroft Way in Berkeley where it becomes Sather Road. Telegraph Avenue runs in the north-south direction and includes a two-way left-turn lane (TWLTL) between Claremont Avenue-52nd Street and 55th Street. It has a posted speed limit of 30 mph.

Shattuck Avenue is a two-lane arterial in the vicinity of the project; it extends from 45th Street in Oakland to its terminus at Rose Street in Berkeley where it becomes Henry Street. Shattuck Avenue runs in the north-south direction and has a posted speed limit of 25 mph.

52nd Street-Claremont Avenue is a four-lane arterial with two lanes in each direction. This facility runs in a northeast-southwest direction and it extends from Grizzly Peak Boulevard in the Berkeley hills to its terminus at Telegraph Avenue in Oakland where it becomes 52nd Street. 52nd Street is a two- to four-lane arterial

¹ For the purposes of this study, Telegraph Avenue, Shattuck Avenue and Clarke Street are assumed to be north-south oriented. Other roadways, such as SR-24, Aileen Street, 56th Street, 55th Street, Claremont Avenue, 52nd Street and 51st Street, are assumed to be east-west oriented.

² Caltrans Traffic and Data Systems Unit. 2005. <http://traffic-counts.dot.ca.gov/2005all.htm>

extending from Telegraph Avenue to its terminus just west of Market Street. Claremont Avenue has a posted speed limit of 25 mph.

Local access is provided by 51st Street, Clarke Street, Redondo Street, 55th Street, 56th Street and Aileen Street.

51st Street is a four-lane arterial with an east-west direction. It extends from the east at Broadway where it becomes Pleasant Valley Avenue to Telegraph Avenue in the west. In the vicinity of the project, 51st Street joins Claremont Avenue, in the west, to become 52nd Street. 51st Street has a posted speed limit of 30 mph east of Telegraph Avenue and a 25 mph posted speed limit west of Telegraph Avenue.

Clarke Street is a two-lane residential street with a northwest-southeast direction located east of the project site. It extends from 48th Street in the south to Claremont Avenue in the north. Clarke Street provides direct access to the project site.

Redondo Avenue is a minor two-lane residential street running in an east-west direction. It extends from Clarke Street in the west to its terminus at Cavour Street. Cavour Street provides access to Claremont Avenue, in the north.

55th Street is a two- to four-lane arterial; it extends from Vicente Way in the east to its terminus at Doyle Street in the west. West of Shattuck Avenue, 55th Street becomes a four-lane arterial. In the vicinity of the project, 55th Street has a posted speed limit of 30 mph west of Shattuck Avenue.

56th Street is a two-lane local street; it extends from Telegraph Avenue in the east to San Pablo Avenue in the west.

Aileen Street is a two-lane residential street; it extends from Telegraph Avenue in the east to San Pablo Avenue in the west.

2.2 Pedestrian Facilities

DKS recently conducted an evaluation of all existing pedestrian facilities within the vicinity of the project. Pedestrian facilities include sidewalks, crosswalks, ADA ramps, pedestrian signals and audible signals. **Appendix A** includes a detailed inventory of all pedestrian facilities for each of the study intersections.

2.2.1 Sidewalks

Based on recent field observations conducted by DKS staff, sidewalks are provided on all sides adjacent to the project site and within the vicinity of the project. Sidewalks adjacent to the project site are approximately five (5) feet

wide and appear in good condition (see pictures 1 and 2 below). Based on field observations, sidewalks along the east side of Telegraph Avenue between SR 24 EB on-ramp and Aileen Street are slightly uneven. The sidewalk located at the northeast corner along Telegraph Avenue & 51st Street is also cracked.

The proposed project includes sidewalk improvements along the project frontage on Claremont Avenue and Telegraph Avenue.



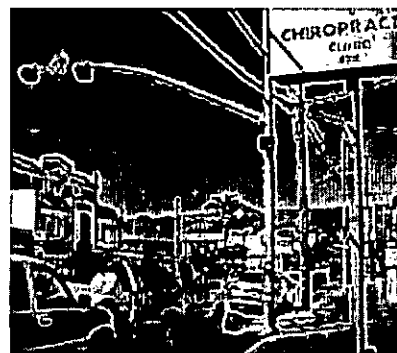
1. Sidewalks along Telegraph Ave



2. Sidewalks along Claremont Avenue (north)

2.2.2 Crosswalks

Crosswalks are provided at all study intersections within the vicinity of the project. A mid-block crosswalk is located east of the project driveway, approximately 140 feet from the property line. Flashing beacons are located along Claremont Avenue near the mid-block crosswalk and just east of Clarke Street. These beacons are mounted on a pole along with a "warning" sign to call attention to pedestrian crossings. During field surveys, the flashing beacons were "flashing" and visible (see picture 3).



3. Flashing Beacon

Crosswalks at the intersection of Telegraph Avenue & Claremont Avenue-52nd Street are visible, but they are starting to fade and need to be restriped (see picture 4 below). **Table 1** provides a summary of the crosswalk conditions at all study intersections.



Claremont Ave & 52nd Street. Crosswalks at Telegraph Ave & Claremont Ave-52nd St east leg and north leg.

Table 1 Crosswalk Inventory & Pavement Conditions

#	Intersection	Crosswalks			
		North Leg	South Leg	East Leg	West Leg
1.	Shattuck Ave & 52 nd St	Uneven and slightly cracked	Uneven and slightly cracked	ok	Uneven and slightly cracked
2.	Telegraph Ave & SR-24 WB off-ramp – Aileen St	dne	Cracked	Slightly cracked	o.k.
3.	Telegraph Ave & SR 24 EB on-ramp	o.k.	dne	o.k.	o.k.
4.	Telegraph Ave & 55 th St	Cracked	Cracked	(a)	(b)
5.	Claremont Ave & SR 24 EB off-ramp – Clifton St	o.k.	cracked	o.k.	o.k.
6.	Telegraph Ave & 52 nd Street – Claremont Ave	Cracked and faded	dne	Faded, skewed and cracked	Cracked
7.	Clarke St & Claremont Ave	dne	(c)	dne	dne
	Midblock on Claremont	o.k.			
8.	Telegraph Ave & 51 st St	Cracked	Cracked	Slightly cracked	Slightly cracked
9.	Clarke St & 51 st St	dne	(d)	dne	dne

Notes:

dne: does not exist

^a flashing hand signals, audio signals, push buttons and ada ramps are provided but crosswalks are not provided.

^b roadway surface is in bad condition. Flashing hand signals, ada ramps, audio signals and push buttons are provided but crosswalks are not provided.

^c ada ramps are provided but no crosswalk is provided.

^d ada ramps are provided but no crosswalk is provided.

2.2.3. Pedestrian Signals, Push Buttons & Audible Signals

Pedestrian signals are provided at all signalized study intersections except for the intersection of Shattuck Avenue & 52nd Street where several are missing. **Table 2** provides a summary of the pedestrian signals inventory and conditions.

Table 2 Pedestrian Signals Inventory & Field Conditions

#	Intersection	Pedestrian Signals	Push Buttons	Audio
1.	Shattuck Ave & 52 nd St	Not provided across 52 nd St	missing in all directions	No
2.	Telegraph Ave & SR-24 WB off-ramp – Aileen St	Flashing hand signals	Missing across Aileen St – SR-24 WB, others vandalized.	No
3.	Telegraph Ave & SR 24 EB on-ramp	Flashing hand and ped (solid) signals	Missing along 56 th Street, various types.	No
4.	Telegraph Ave & 55 th St	Flashing hand signal, one head tilted (see picture 4)	Provided	Yes. Audio is not working along the north leg across Telegraph Ave.
5.	Claremont Ave & SR 24 EB off-ramp – Clifton St	Flashing hand signal; countdown signal along the east leg across Claremont.	Provided	No
6.	Telegraph Ave & 52 nd Street – Claremont Ave	Flashing hand signal.	Provided, a few vandalized (see picture 5a, 5b)	Yes. Audio is not working across 52 nd Street on the west leg; audio is very low across Claremont on the east leg.
7.	Clarke St & Claremont Ave	None	None	None. Unsignalized intersection.
8.	Telegraph Ave & 51 st St	Flashing hand signal	Provided	Yes
9.	Clarke St & 51 st St	None	None	None. Unsignalized intersection.

Source: DKS Associates, 2007.



5.



6a.



6b.

Audible units to aid pedestrians are available at the intersections of Telegraph Avenue & 55th Street, Telegraph Avenue & Claremont Avenue-52nd Street and Telegraph Avenue & 51st Street (see pictures 5, 6a and 6b).

2.2.4 ADA ramps

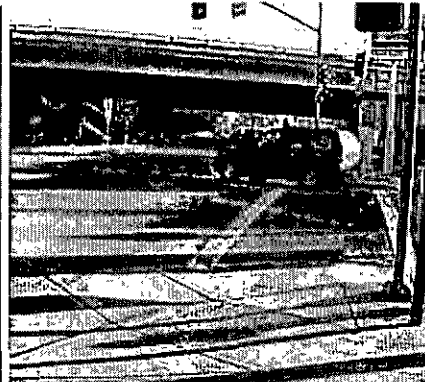
DKS recently conducted an evaluation of the existing curb ramps at all study intersections. Per City of Oakland Standard Details for Curb Ramps³, most ramps are not compliant with the Americans with Disabilities Act (ADA) guidelines. Photos 6 to 8 illustrate a few locations within the study area in which curb ramps are not in compliance versus one that is. **Table 3** list the curb ramps condition at each of the study intersections.



6. Clarke St/Claremont Ave



7. SE corner at Telegraph Ave/
Claremont Ave



8. NW corner at Telegraph Ave/Aileen St

³ City of Oakland Standard Details for Public Works Construction. 2002 Edition.

Table 3 Curb Ramp Summary

#	Intersection	4' landing minimum	Domes	ADA Compliant
1.	Shattuck Ave & 52 nd St	Only at the NB east ramp.	Yes (all)	Only the NE corner
2.	Telegraph Ave & SR-24 WB off-ramp – Aileen St	Only at the NW corner.	Only at the NW corner	Only the NW corner; SW ramp is not well aligned with crosswalk.
3.	Telegraph Ave & SR 24 EB on-ramp	Only at the NW corner	None	No
4.	Telegraph Ave & 55 th St	At all ramps	None	No
5.	Claremont Ave & SR 24 EB off-ramp – Clifton St	Only at N and W corner	None	No
6.	Telegraph Ave & 52 nd Street – Claremont Ave	Except med island at SE corner and across Telegraph Ave at the Library	None	No
7.	Clarke St & Claremont Ave	No	No	No
	Midblock Crosswalk	No	No	No
8.	Telegraph Ave & 51 st St	No	No	No
9.	Clarke St & 51 st St	No	No	No

Source: DKS Associates, 2007.

2.3 Transit Facilities

The Alameda-Contra Costa County Transit District (AC Transit) has jurisdiction over public transit in Alameda and Contra Costa County. AC Transit currently operates five lines within the vicinity of the proposed project, including Transbay bus service.

The AC bus routes that would mostly be used as single or connecting routes are Line 12 – Grand, Line 40 – Telegraph, Line 40L – Telegraph Limited, Line 43 – Shattuck, Line 800 – Transbay All-Nighter and Line E – Claremont Transbay Express.

Line 12. This route provides service from MacArthur BART to 11th Street/Clay in Berkeley. Weekday service is provided between 6:03 a.m. and 7:05 p.m. in the eastbound direction, at 20-minute headways during the peak periods (7:00 a.m.

– 9:00 a.m. and 4:00 p.m. – 6:00 p.m.). In the westbound directions, a service is provided between 6:00 a.m. and 7:40 p.m., at 20-minute headways during the peak periods (7:00 a.m. – 9:00 a.m. and 4:00 p.m. – 6:00 p.m.). Weekend service is provided between 7:05 a.m. – 7:05 p.m. in the eastbound direction and between 6:49 a.m. to 6:49 p.m. in the westbound direction. Line 12 travels along 51st Street and Telegraph Avenue in the vicinity of the project.

Line 40 – Line 40L provides service from the Bayfair BART station to the Berkeley BART station. Line 40 provides service in the northbound direction between 6:46 p.m. – 7:54 p.m. from the Bayfair BART station to the Berkeley BART station, at 20-25 minute headways. Line 40 continues evening service between 8:34 p.m. to 11:40 p.m. from the Eastmont Transit Center to the Berkeley BART station, at 20-minute headways.

In the southbound direction, Line 40 operates between 5:31 a.m. and 6:24 a.m. from the Berkeley BART station to the Bay Fair BART station, at 10-15 minute headways; Line 40 continues evening service between 6:39 p.m. to 11:59 p.m. from the Berkeley BART station to the Bayfair BART station, at 10-15 minute headways. Weekend service is provided.

Line 40L provides limited stop routes that operates between 5:01 a.m. – 6:28 p.m. in the northbound direction, at 10-15 minute headways during the peak periods (7:00 a.m. – 9:00 a.m. and 4:00 p.m. – 6:00 p.m.). in the southbound direction, service is provided between 6:43 a.m. – 6:21 p.m. and 10-15 minute headways during the peak periods (7:00 p.m. – 9:00 a.m. and 4:00 p.m. – 6:00 p.m.). Weekend service is provided.

Both routes travel on Telegraph Avenue in the vicinity of the project site and include stops at the intersections of Telegraph Avenue & 51st Street and Telegraph Avenue & Claremont Avenue – 52nd Street, Telegraph Avenue & 50th Street, Telegraph Avenue & 40th Street and Telegraph Avenue & 45th Street.

Line 43. This route provides service from the Eastmont Transit Center to the El Cerrito Plaza BART Station. Weekday service provided between 5:17 a.m. and 6:57 p.m. in the northbound direction, at 10 – to 15-minute headways during the peak periods (7:00 a.m. – 9:00 a.m. and 4:00 p.m. – 6:00 p.m.). Line 43 continues evening service between 7:50 p.m. to 11:48 p.m. from 14th Street & Broadway to San Pablo Avenue & Marin Avenue at 20 –minute headways. Weekend service is provided.

In the southbound direction, service is provided between 5:01 a.m. and 11:16 p.m., at 15-to 20-minute headways during the peak periods (7:00 a.m. – 9:00 a.m. and 4:00 – 6:00 p.m.). Weekend service is provided. Line 43 travels along Shattuck Avenue in the vicinity of the project and includes stops at the

intersections of Shattuck & 51st Street, Shattuck & 47th Street and Shattuck and 46th Street.

Line 800. This route provides service between Richmond BART station and Market Street & Van Ness Avenue in San Francisco. Weekday service is provided from 14th Street & Broadway in Oakland between 12:35 a.m. and 5:30 a.m. in the eastbound direction, at 1-hour headways. In the westbound direction, weekday service is provided from the Berkeley BART station between 12:08 a.m. to 5:08 a.m. at 1-hour headways. Line 800 travels along Telegraph Avenue in the vicinity of the project.

Line E - Claremont. This route provides service between the Parkwood Apartments in the Berkeley Hills to the Transbay Terminal at First Street and Mission Street in downtown San Francisco. Weekday service is provided in for the A.M. and P.M. peak hour commutes. Service is provided in the eastbound direction at 30 minute headways starting from 5:56 a.m. to 8:09 a.m. and from 4:45 p.m. to 7:50 p.m. Service is also provided in the westbound direction from 6:10 a.m. to 8:45 a.m. only. Line E travels along Claremont Avenue in the vicinity of the project.

In the vicinity of the proposed project, Line 40, 40L, 12 and 800 stop along Telegraph Avenue just north of Claremont Avenue. Line E has a stop at Claremont Avenue and Hudson Street approximately 1,000 feet northeast of the project site.

2.4 Bicycle Facilities

The 1999 City of Oakland Bicycle Master Plan⁴ map is currently being updated and is scheduled for completion in the summer of 2007. According to the City of Oakland Draft Bicycle Master Plan⁵, the bicycle network system consists of three bikeways types as defined by the California Department of Transportation (Caltrans) in Chapter 1000 of the Highway Design Manual. The classification of bicycle facilities is as follow:

- Class I facilities (Bicycle Paths) – provide for bicycle travel on a paved right-of-way that is completely separated from the street. They are typically shared with pedestrians and often called mixed-use paths.
- Class II facilities (Bicycle Lanes) – are striped lanes on streets, designated with specific signage and stencils, for the use of bicyclist.

⁴ City of Oakland Bicycle Master Plan – Adopted July 1999. <http://www.oaklandpw.com/bicycling>.

⁵ City of Oakland Draft Bicycle Master Plan – March 14, 2007.
<http://www.oaklandpw.com/AssetFactory.aspx?did=2164>

- Class III facilities (Bicycle Routes) – designate preferred streets for bicycle travel using lanes shared with motor vehicles

The Bicycle Master Plan map identifies Telegraph Avenue (north of Aileen Street to Berkeley), as a Class II 0.90 mile facility. Shafter Avenue is a designated Class III (bike route). Near the project site, bike racks are located on the west side of Telegraph Avenue and Claremont Avenue near the library entrance. A bike rack is also located on the east side of Telegraph Avenue & 51st Street near the bakery.

The extension of the existing Class II facility along Telegraph Avenue from SR-24 to Broadway in Oakland would require additional study prior to adoption. The recommended bike network map also recommends Class II facilities along Shattuck Avenue and 51st Street.

The proposed project would provide secure ground level bicycle parking (see **Figure 2**). **Appendix B** includes the City of Oakland Existing Bikeway and Recommended Bikeway Network Map.

2.5 Traffic Collision Analysis

In order to identify locations of high collision rates or specific collision patterns within the study area, DKS reviewed three years of vehicle, pedestrian and bicycle collision data at all study intersections and at roadway segments adjacent to the project site. The periods analyzed range from July 2003 to June 2006. Traffic collision history reports were provided by City of Oakland staff and are included in **Appendix C** of this report.

Table 4 provides a summary of the collisions at each study intersection/roadway segment and the number of collisions involving motor vehicles, bicyclist, pedestrians and others. **Table 5** provides a summary of the types of collisions at each of the study intersections/roadway segments.

Table 4 Traffic Collision Summary

Roadway Segment/Intersection	No. of Collisions	Collision Rate ¹	Motor Vehicle Involved with:			
			Other Motor Veh	Bicycle	Ped	Other ²
Telegraph Avenue between 51st Street & Aileen Street	21	16%	17			4
<i>at 51st Street</i>	15	11%	15			
<i>at 52nd Street-Claremont Street</i>	6	5%	5			1
<i>at 55th Street</i>	7	5%	5		2	
<i>at 56th Street</i>	29	22%	26	2		1
52nd Street between Shattuck Avenue & Telegraph Avenue						
<i>at Shattuck</i>	29	22%	24	2	2	1
<i>51st St & Shattuck</i>	7	5%	4		2	1
Claremont between Clifton Street & Telegraph Avenue	5	5%	5			
<i>at Clifton Street</i>	2	2%	1			1
51st Street between Clarke Street & Telegraph Ave	6	5%	4			2
<i>at Clarke</i>	3	2%	3			
Claremont Avenue between Clarke Street to Vicente Way (W)	1	1%	1			
Total	131		110	4	6	11

Notes:

- 1 Collision rate is the percent of total collisions in the vicinity of the project, rounded to the nearest whole number
- 2 Other includes fixed objects, vehicle on other roadway, parked vehicles or not stated.

Table 5 Type of Traffic Collisions Summary

Roadway Segment/ Intersection	No. of Collisions	Type of Collision							
		Broadside	Head- On	Hit Object	Rear- End	Sideswipe	Vehicle- Ped	Not Stated	Other
Telegraph Avenue between 51st Street & Aileen Street	21	1			13	7			
<i>at 51st Street</i>	15	3	1		2	9			
<i>at 52nd Street-Claremont</i>	6	2		1	1	1		1	
<i>at 55th Street</i>	7	3				2	2		
<i>at 56th Street</i>	29	19	2		2	3	1	1	1
52nd Street between Shattuck Avenue & Telegraph Avenue									
<i>at Shattuck</i>	29	13	6		4	3	2	1	
<i>51st/Shattuck</i>	7	3	1	1			2		
Claremont between Clifton Street & Telegraph Avenue	5	2				3			
<i>at Clifton</i>	2					1			1
51st Street between Clarke Street & Telegraph Ave	6	1			2	3			
<i>at Clarke</i>	3	1				1			
Claremont Avenue between Clarke Street to Vicente Way (W)	1				1				
Total	131	48	10	2	25	33	7	3	2

Based on the traffic collision data, most collisions are motor vehicle to motor vehicle and occur due to unsafe speeds, improper turning and/or auto right-of-way violations. Of the 131 collisions reported during the three years, only 10 involved pedestrians or bicycles (about 8% of the total collisions). The majority of these accidents (4 in total) occurred at the intersection of Shattuck Avenue & 52nd Street. This intersection is slated for major improvements in September 2007, as described in Section 6.1 of this report.

The proposed project would add approximately 7 vehicle trips in the A.M. peak hour and 6 during the P.M. peak hour at this location.

30 INTERSECTION EVALUATION

To evaluate traffic conditions, as well as provide a basis for comparison of conditions before and after project-generated traffic is added to the street system, intersection Level of Service (LOS) analysis was evaluated at all nine (9) study intersections. Signal timing sheets⁶ were provided by City staff and used in this analysis.

Per the City of Oakland requirements, traffic conditions for the study intersections were evaluated using the methodologies provided in the 2000 Highway Capacity Manual (HCM). For reference purposes, LOS as defined in the Highway Capacity Manual is a quality measure describing operating conditions within a traffic stream, generally in terms of such service measures as speed and travel time, freedom to maneuver, traffic interruptions, and comfort and convenience.

3.1 Level of Service (LOS) Definition

The LOS evaluation indicates the degree of congestion that occurs during peak travel periods and is the principal measure of roadway and intersection performance. Level of Service can range from "A" representing free-flow conditions, to "F" representing extremely long delays. LOS B and C signify stable conditions with acceptable delays. LOS D is typically considered acceptable for a peak hour in urban areas. LOS E is approaching capacity and LOS F represents conditions at or above capacity.

Unsignalized Intersections

At unsignalized intersections each approach to the intersection is evaluated separately and assigned a LOS. The level of service is based on the delay at the worst approach for two-way stop controlled intersections. Total delay is defined as the total elapsed time from when a vehicle stops at the end of the queue until the vehicle departs from the stop line. This time includes the time required for the vehicle to travel from the last-in-queue position to the first-in queue position. **Table 6** provides definitions of LOS for unsignalized intersections.

⁶ Signal timing sheets were provided in May 2007.

Table 6 Unsignalized Intersections – LOS Thresholds

Level of Service	Expected Delay	Average Control Delay
A	Little or no delay	≤ 10
B	Short traffic delay	> 10 and ≤ 15
C	Average traffic delays	> 15 and ≤ 25
D	Long traffic delays	> 25 and ≤ 35
E	Very long traffic delays	> 35 and ≤ 50
F	Extreme delays potentially affecting other traffic movements in the intersection	> 50

Source: Transportation Research Board, Special Report 209, Highway Capacity Manual, Chapter 17- Unsignalized Intersections, 2000.

Notes: Worst Approach Delay (in seconds per vehicle)

Signalized Intersections

At signalized intersections, level of service is evaluated on the basis of average stopped delay for all vehicles at the intersection. **Table 7** defines the levels of service for signalized intersections.

Table 7 Signalized Intersection LOS Thresholds

Level of Service	Average Stopped Delay (seconds/vehicle)	Description
A	Delay \leq 10.0	Free flow; minimal to no delay
B	10.0 < Delay \leq 20.0	Stable flow, but speeds are beginning to be restricted by traffic condition; slight delays.
C	20.0 < Delay \leq 35.0	Stable flow, but most drivers cannot select their own speeds and feel somewhat restricted; acceptable delays.
D	35.0 < Delay \leq 55.0	Approaching unstable flow, and drivers have difficulty maneuvering; tolerable delays.
E	55.0 < Delay \leq 80.0	Unstable flow with stop and go; delays
F	Delay > 80.0	Total breakdown; congested conditions with excessive delays.

Source: Transportation Research Board, Special Report 209, Highway Capacity Manual, Chapter 16-Signalized Intersections, 2000.

Notes: 1 Control Delay per vehicle (in seconds per vehicle)

3.2 Standards of Significance

Based on the City of Oakland level of service standards, an acceptable operating level of service (LOS) is defined as LOS D or better at all signalized and unsignalized intersections during the peak hours.

3.3 Intersection Geometry Modifications

The intersection geometry at Shattuck Avenue & 52nd Street was revised in the analysis model for the northbound and southbound movements. Only one lane in both the northbound and southbound directions is actually provided for left, through and right-turn movements. However, based on field observations, the north and south legs are both wide enough to allow for exclusive left-turns at the intersection and also allow for through and right-turn movements to cross the intersection without having to wait for the left-turn to clear the intersection. Although the intersection is not striped for separate left-turn lanes, this is how the intersection actually functions, and therefore an adjustment was made to the geometry in the analysis model to reflect actual operating conditions. In addition, since vehicles making a left-turn movements experience a greater delay to safely cross the intersection, the saturation flow for the left-turn and through-movements were adjusted to half of the optimal. This adjustment was applied for the existing condition only.

50 **BINGOODIN**

Vehicle turning movement counts were recently conducted at all nine study intersections in February 2007. Counts were conducted during a typical weekday A.M. period of 7:00-9:00 a.m. and during the P.M. peak period of 4:00-6:00 p.m.

Intersection turning movement count surveys consisted of counting each vehicle at each study intersection location by turning movement, and included documenting intersection geometry diagrams, signal phasing, and pedestrian counts and bicycle counts by leg. **Appendix D** includes the detailed intersection count sheets, pedestrian counts and bicycle counts for the A.M. and P.M. peak periods.

Figure 3 illustrates the current lane geometry and traffic control at each of the study intersections. **Figure 4** illustrates the existing traffic volumes at each study intersection.

The intersections and their corresponding existing levels of service are presented in **Table 8**. **Appendix E** includes the detailed calculation level of service analysis sheets, including the weekday A.M. and P.M. peak hours.

07022-000-Kingfish Erist Geo.ait-4/14/07

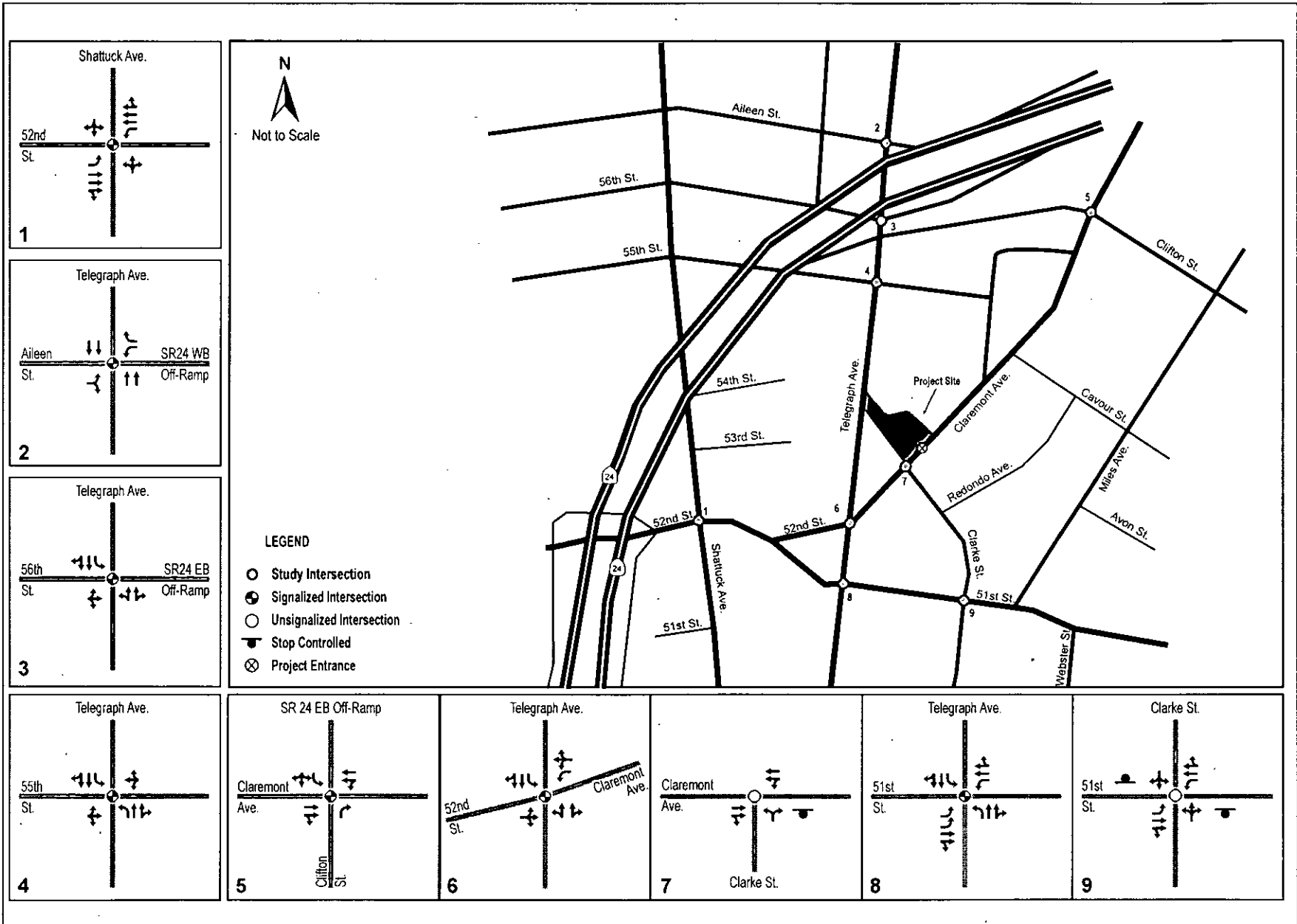
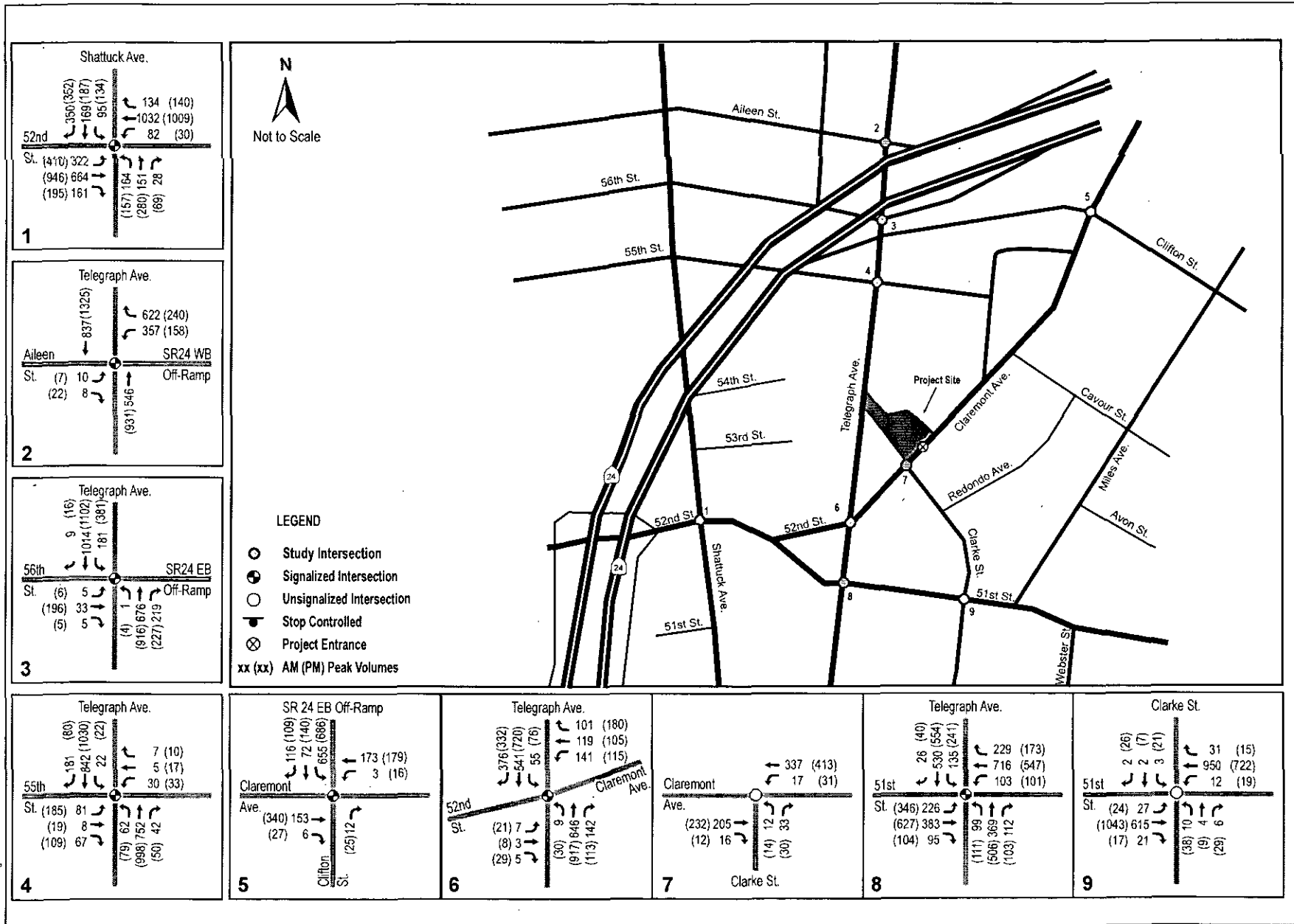


Figure 3
Existing Lane Geometry and Traffic Control



07022-000-Kingfish_Extist_Vols.ai-4/4/07

Figure 4
Existing Condition
Intersection Turning Movement Volumes
Weekday AM and PM Peak Hour

Table 8 Existing Condition LOS Summary

#	Intersection	A.M. Peak			P.M. Peak		
		Avg. Delay ²	V/C	LOS	Avg. Delay ²	V/C	LOS
1.	Shattuck Ave & 52 nd St	>80	1.98	F	>80	1.72	F
2.	Telegraph Ave & SR-24 WB off-ramp – Aileen St	23.1	0.67	C	10.1	0.58	B
3.	Telegraph Ave & SR 24 EB on-ramp	10.0	0.56	B	36.4	0.94	D
4.	Telegraph Ave & 55 th Street	6.5	0.46	A	12.0	0.63	B
5.	Claremont Ave & SR 24 EB off-ramp – Clifton St	12.2	0.36	B	14.6	0.46	B
6.	Telegraph Ave & 52 nd Street – Claremont Ave	18.1	0.56	B	26.5	0.76	C
7.	Clarke St & Claremont Ave ¹	9.8	-	A	10.3	-	B
8.	Telegraph Ave & 51 st St	33.7	0.70	C	60.1	0.84	E
9.	Clarke St & 51 st St ¹	35.1	-	E	>50	-	F

Source: DKS Associates

Notes:

Average Delay: in seconds per vehicle

V/C: Volume to Capacity Ratio

LOS: Level of Service

¹ Unsignalized Intersection LOS is based on worst approach delay.

² For signalized intersections, delays >80 are beyond the upper limits of LOS delay estimation equations under the HCM 2000 methodologies. For unsignalized intersections, delays >50 are beyond the upper limits of LOS delay estimation equations under the HCM 2000 methodologies.

5.1 Intersection Operation

According to the City of Oakland intersection level of service standards, all study intersections operate at acceptable levels of service for the existing conditions, with the exception of the intersections of Shattuck Avenue & 52nd Street, Telegraph Avenue & 51st Street and Clarke Street & 51st Street. The intersection of Shattuck Avenue & 52nd Street currently operates at LOS F during the A.M. and P.M. peak hours, respectively. The intersection of Telegraph Avenue & 51st Street operates at LOS E during the P.M. peak hour and the intersection of Clarke Street & 51st Street operates at LOS E during the A.M. peak hour and LOS F during the P.M. peak hour.

60 BACKGROUND

This section discusses the traffic operating conditions at the study intersection under the background condition. The background condition includes the traffic expected to be generated by the approved projects prior to the completion of the proposed project. For the purpose of this analysis, project generated trips from the Civiq Mixed-Use Project and Temescal Centrada Residential Development Project were added to the local street network and study intersections. **Appendix F** includes the detailed trip assignment for the approved projects.

The proportion of these trips that would travel through the study intersections was used for the intersection LOS analysis under the background condition. **Table 9** includes a summary of the approved projects trip generation.

Table 9 Approved Projects – Trip Generation Summary

Land Use	Size	Units	ADT	A.M. Peak Hour				P.M. Peak Hour						
				AVTE	Percent		Trips		AVTE	Percent		Trips		
					In	Out	In	Out		In	Out			
Civiq ¹	Restaurant	2,290	sq. ft	380	40	52	48	21	19	56	55	45	31	25
	Residential	68	d.u.	398	30	18	82	5	25	35	64	36	22	13
Civiq Total Trips				778					26	44				
Centrada ²	Residential	51	d.u.	362	30	17	83	5	25	35	67	33	23	11
	Residential (Existing)	11	d.u.	-98	-9	17	83	-2	-7	-10	67	33	-7	-3
	Commercial	5,050	sq. ft	254	34	44	56	15	19	34	44	56	15	19
Centrada Total Trips				518					18	36				
GRAND TOTAL				1,296					44	80				

Source: DKS Associates.

¹ 5110 Telegraph Avenue Mixed Use Development Project (CIVIQ). Traffic Impact Analysis Final Report prepared by DKS Associates. December 2005.

² Temescal Centrada Mixed Use Development Project. Traffic Impact Analysis Final Report prepared by DKS Associates. July 2006.

6.1 Roadway Improvements

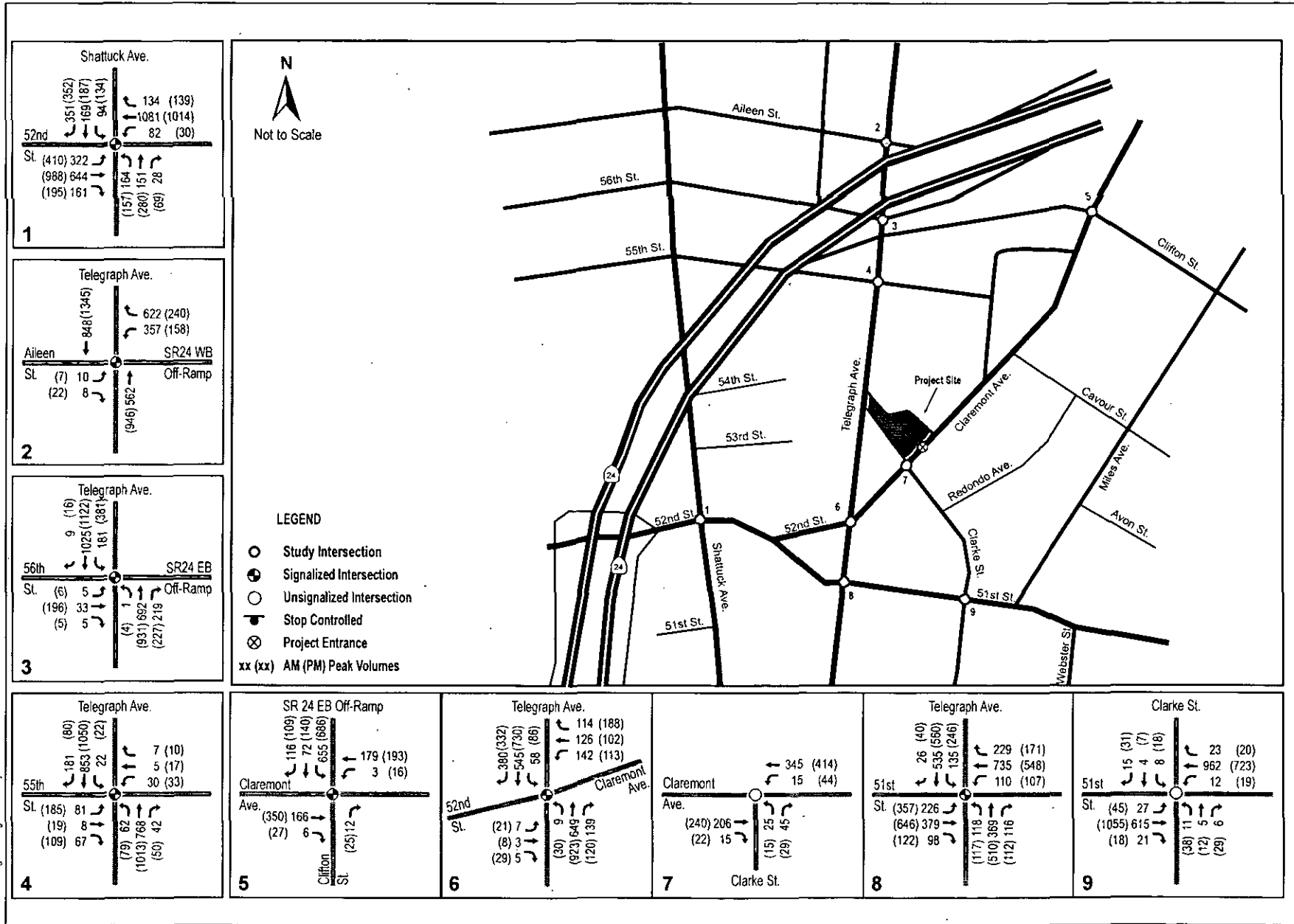
The following roadway improvements were assumed to be implemented prior to the completion date of the proposed project, and thus were included in the background analysis:

- Traffic signal modification and upgrade at Shattuck Avenue & 52nd Street" includes creating an exclusive left-turn lane with 50' of storage in both the northbound and southbound directions, providing protected phasing for westbound left-turns and protected-permissive left-turns phasing in the northbound and southbound directions.

This improvement is part of the City of Oakland Hazard Elimination Program, is fully funded, and scheduled to be completed in September 2007 prior to the completion and occupancy of the proposed project. The intersection cycle length and phasing was optimized (110 sec AM and 130 sec PM) and the saturation flow was adjusted to the optimal 1,900 vehicles for this analysis.

Figure 5 illustrates background traffic volumes at each study intersection. Intersection operational levels of service along with their associated average delays are summarized in **Table 10**.

Appendix E includes the detailed calculation level of service analysis sheets, including the weekday A.M. and P.M. peak hours.



07022-000-Vingfish Background No Proj Vols. 21-4/4/07

Figure 5
Background (No Project) Condition
Intersection Turning Movement Volumes
Weekday AM and PM Peak Hour

Table 10 Background Condition LOS Summary

#	Intersection	A.M. Peak			P.M. Peak		
		Avg. Delay ²	V/C	LOS	Avg. Delay ²	V/C	LOS
1.	Shattuck Ave & 52 nd St	58.6	0.97	E	77.9	1.02	E
2.	Telegraph Ave & SR-24 WB off-ramp – Aileen St	23.1	0.68	C	10.1	0.59	B
3.	Telegraph Ave & SR 24 EB on-ramp	10.1	0.57	B	37.9	0.95	D
4.	Telegraph Ave & 55 th Street	6.0	0.47	A	11.9	0.63	B
5.	Claremont Ave & SR 24 EB off-ramp – Clifton St	12.5	0.37	B	14.8	0.46	B
6.	Telegraph Ave & 52 nd Street – Claremont Ave	19.5	0.58	B	26.9	0.77	C
7.	Clarke St & Claremont Ave ¹	10.3	-	B	10.7	-	B
8.	Telegraph Ave & 51 st St	40.0	0.74	D	63.3	0.85	E
9.	Clarke St & 51 st St ¹	33.3	-	D	>50	-	F

Source: DKS Associates

Notes:

Average Delay: in seconds per vehicle

V/C: Volume to Capacity Ratio

LOS: Level of Service

¹ Unsignalized Intersection LOS is based on worst approach delay.

² For signalized intersections, delays >80 are beyond the upper limits of LOS delay estimation equations under the HCM 2000 methodologies. For unsignalized intersections, delays >50 are beyond the upper limits of LOS delay estimation equations under the HCM 2000 methodologies.

6.2 Intersection Operation

Similar to the existing condition, all study intersections operate at acceptable levels of service for the background condition, with the exception of the intersection of Shattuck Avenue & 52nd Street, Telegraph Avenue & 51st Street and Clarke Street & 51st Street. The intersection of Shattuck Avenue & 52nd Street currently operates at LOS F during the A.M. and P.M. peak hour and after signal modification would improve to LOS E during the A.M. and P.M. peak hours, respectively. The intersection of Telegraph Avenue & 51st Street would continue to operate at LOS E during the P.M. peak hour and the intersection of Clarke Street & 51st Street would improve from LOS E during the A.M. peak hour to LOS D and continue to operate at LOS F during the P.M. peak hour.

70 ~~PBT~~ ~~CONDIO~~

This section evaluates background traffic conditions plus project-generated traffic estimated for the proposed project. The amount of traffic associated with a project is estimated using a three-step process: (1) trip generation, (2) trip distribution, and (3) trip assignment. Trip generation is the process of predicting the number of peak hour trips a proposed development would contribute to the roadways, and whether these trips would be entering or exiting the site. After the number of trips is determined, the distribution process projects the direction these trips use to approach and depart the site, from a regional perspective. Trip assignment involves determining which specific roadways a vehicle would use to travel between its origin and destination.

7.1 Significance Criteria and Project Impacts

The City of Oakland⁷ defines a traffic impact as significant if:

- At a study signalized intersection the addition of the project traffic causes an intersection operating at LOS D or better under the existing conditions to operate at LOS E or F.
- At a study signalized intersection, where the level of service is LOS E, the addition of the project traffic would cause an increase in the average delay of any of the critical movements by six (6) seconds or more or degrade to worse than LOS E.
- At a study signalized intersection already operating at LOS E, the addition of the project traffic would cause the total intersection average vehicle delay by four (4) or more seconds, or degrade to worse than LOS E.
- At a study signalized intersection already operating at LOS F, the addition of the project traffic would cause (a) increases the total intersection average vehicle delay by two (2) or more seconds, or (b) an increase in average delay for any of the critical movements of four (4) seconds or more; or (c) the volume-to-capacity (V/C) ratio exceeds three (3) percent⁸.
- At a unsignalized intersection the criteria is established on a case-by-case basis; For this analysis an impact at an unsignalized intersection is considered significant if the project would add then (10) or more

⁷ City of Oakland. (FINAL DRAFT) CEQA Thresholds/Criteria of Significance Guidelines. August 17, 2004.

⁸ But only if the delay values cannot be measured accurately.

peak-hour vehicles, and after project completion would satisfy the Caltrans peak hour volume traffic signal warrant⁹.

7.2 Trip Generation

Trip generation of the proposed project was based on the Institute of Transportation Engineers Trip Generation Manual, 7th Edition (2003), as summarized in **Table 11**, for the A.M. and P.M. peak hours, respectively. Based on consultation with City of Oakland staff, since no traffic weighted average rate or fitted curve equation is available in Trip Generation for the commercial land use for the A.M. peak hour, the P.M. fitted curve equation of adjacent street traffic was assumed for the A.M. peak hour.

The proposed project would generate 365 daily new trips, including 47 A.M. peak hour trips (15 in, 32 out) and 50 P.M. peak hour trips (27 in, 23 out).

Table 11 Proposed Project – Trip Generation

Land Use	Size	Units	ADT	A.M. Peak Hour				P.M. Peak Hour					
				AVTE	Percent		Trips		AVTE	Percent		Trips	
					In	Out	In	Out		In	Out		
Residential ¹	33	d.u.	250 (7.575)	21 (0.64)	17	83	4	18	24 (0.72)	67	33	16	8
Commercial ²	1,806	1,000 sq. ft	115 (63.67)	26 (14.39)	44	56	11	15	26 (14.39)	44	56	11	15
Total			365	47			15	32	50			27	23

Source: Institute of Transportation Engineers – Trip Generation Manual, 7th Edition, 2003. Fitted Curve Equation:

Notes: minor rounding error.

¹ Residential Condominium/Townhouse – Land Use Code (230) – Adjacent Street Traffic.

Daily: $\ln(T) = 0.85 \ln(X) + T$; average vehicle trip ends X: number of dwelling units or 1,000 square feet.

T: average vehicle trip ends X: number of dwelling units

(#): derived rate.

² Specialty Retail Center – Land Use Code (814) – Adjacent Street Traffic.

Daily: $T = 42.78(X) + 37.66$ A.M.: $T = 2.40(X) + 21.48$ P.M.: $T = 2.40(X) + 21.48$

T: average vehicle trip ends X: 1,000 square feet.

(#): derived rate.

d.u.: dwelling units

sq. ft: square feet

ADT: Average Daily Traffic

AVTE: Average Vehicle Trip Ends

⁹ This approach is consistent with that used in the Oakland Army Base EIR. A Caltrans peak-hour traffic signal warrant is one of several warrants specified in the Caltrans Traffic Manual, Chapter 9 to determine the possible necessity for a new traffic signal installation.

7.3 Trip Distribution

The direction of approach and departure for project trips of the proposed project was estimated based on existing travel patterns, a projection of likely travel patterns for project-generated trips and the locations of complementary land uses. DKS reviewed traffic volumes, turning movements at intersections, and locations of various land uses as part of this analysis. Trip distribution for the commercial land use is based on the location, size and access to/from the site. Based on the proposed site plan, it is assumed that 49% of the commercial trips would travel to/from Telegraph Avenue while 51% would travel to/from Claremont Avenue.

Based on existing travel patterns, it is assumed that the most vehicles traveling within the study area along Shattuck Avenue and Telegraph Avenue travel to/from City of Berkeley and City of Oakland. Vehicles traveling along 51st Street and 52nd Street are assumed to be traveling to/from SR 24. Other vehicular activity is assumed to be internal within the vicinity of the project.

Table 12 shows the assumed travel patterns to/from the proposed site by land use.

Table 12 Project Trips (Origin/Destination) Summary

Location		To/From SR 24	Berkeley	55 th via Telegraph	Oakland	Upper Claremont	SR 24 via Claremont Ave/Clifton St	51 st Street (east)
Proposed Project Trips (percent)	A.M.	7 (15%)	10 (21%)	5 (10%)	11 (23%)	11 (23%)	3 (6%)	1 (2%)
	P.M.	6 (12%)	10 (20%)	5 (10%)	12 (24%)	11 (22%)	5 (10%)	1 (2%)
Total Trips		13	20	10	23	22	8	2

Notes: Percent distribution based on total number of trips (47 AM, 50 PM = 97 trips)

Figure 6 illustrates the trip distribution for the residential land use. **Figure 7** illustrates the trip distribution for the commercial land use.

07022-000-Kingfish Res Trip Dist. at 4/4/07

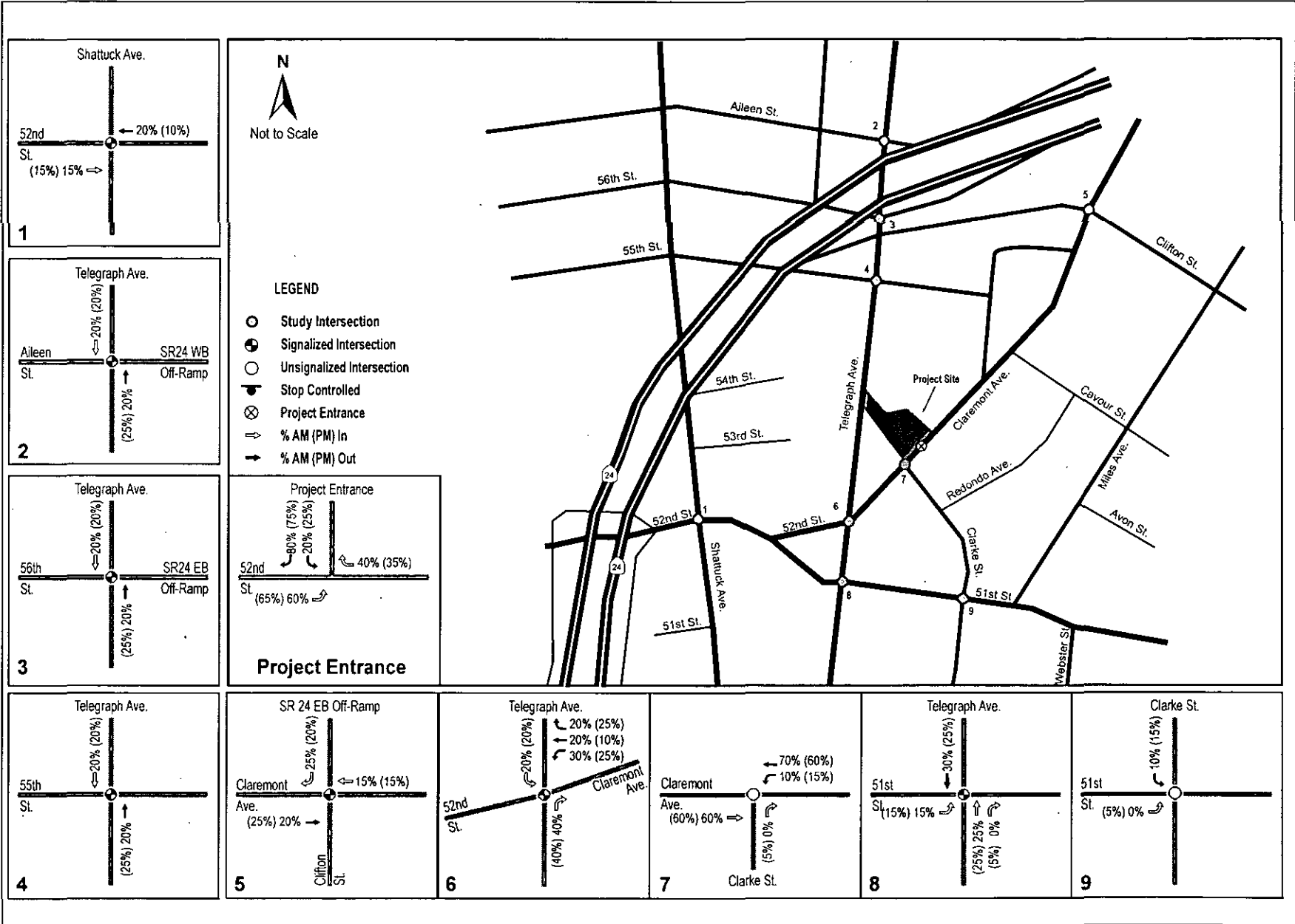


Figure 6
Trip Distribution (Residential)

07022-000-Kingfish Commercial Trip Dist.ca-4/14/07

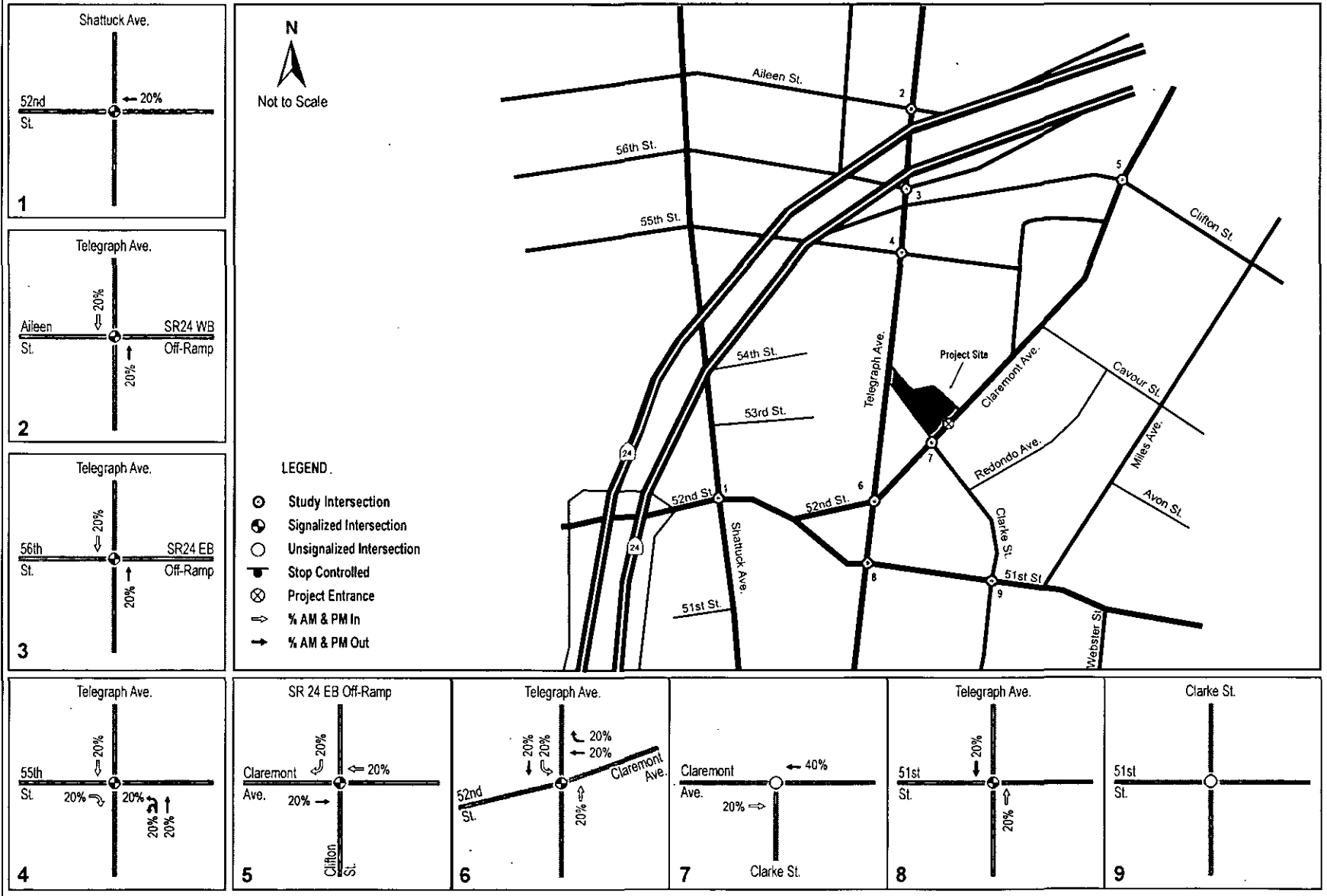


Figure 7
Trip Distribution (Commercial)

7.4 Trip Assignment

Project-generated trips were assigned to the roadway network based on access points, trip distribution assumptions and likely travel patterns. The proportion of these trips that would travel through the study intersections was used for the intersection LOS analysis under the project condition. **Figure 8** illustrates the trip assignment for the residential land use. **Figure 9** illustrates the trip assignment for the commercial land use.

7.5 Project Condition – Intersection Level of Service Analysis

Figure 10 illustrates the project condition traffic volumes at each of the study intersections for the A.M. and P.M. peak hours. All intersections were evaluated under each of the significance criteria as outlined in Section 7.1 of this report. Intersection operational levels of service along with their associated critical and average delays are summarized in **Table 13**. **Appendix E** includes the detailed level of service analysis sheets for the project condition, including the A.M. and P.M. peak hours.

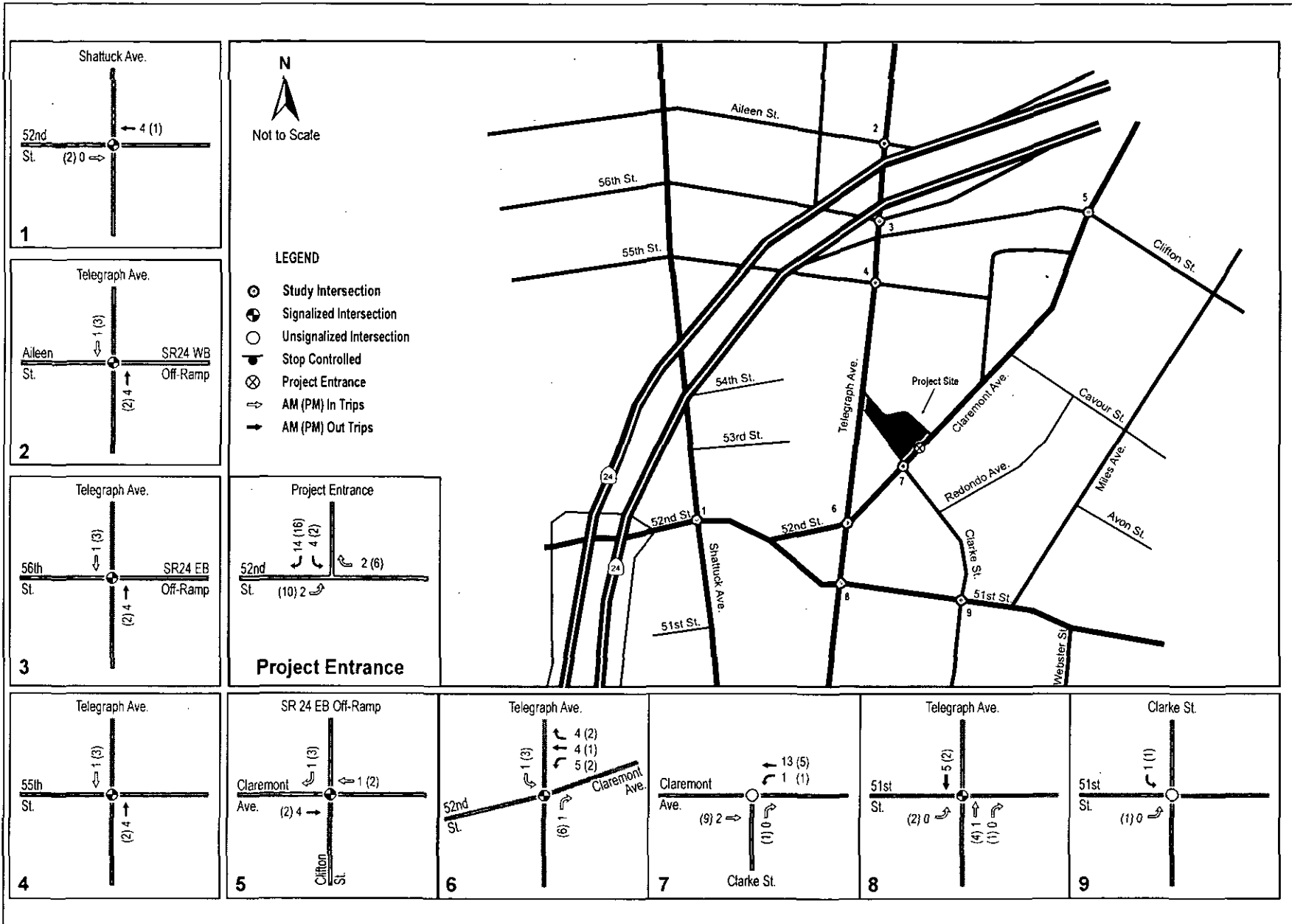
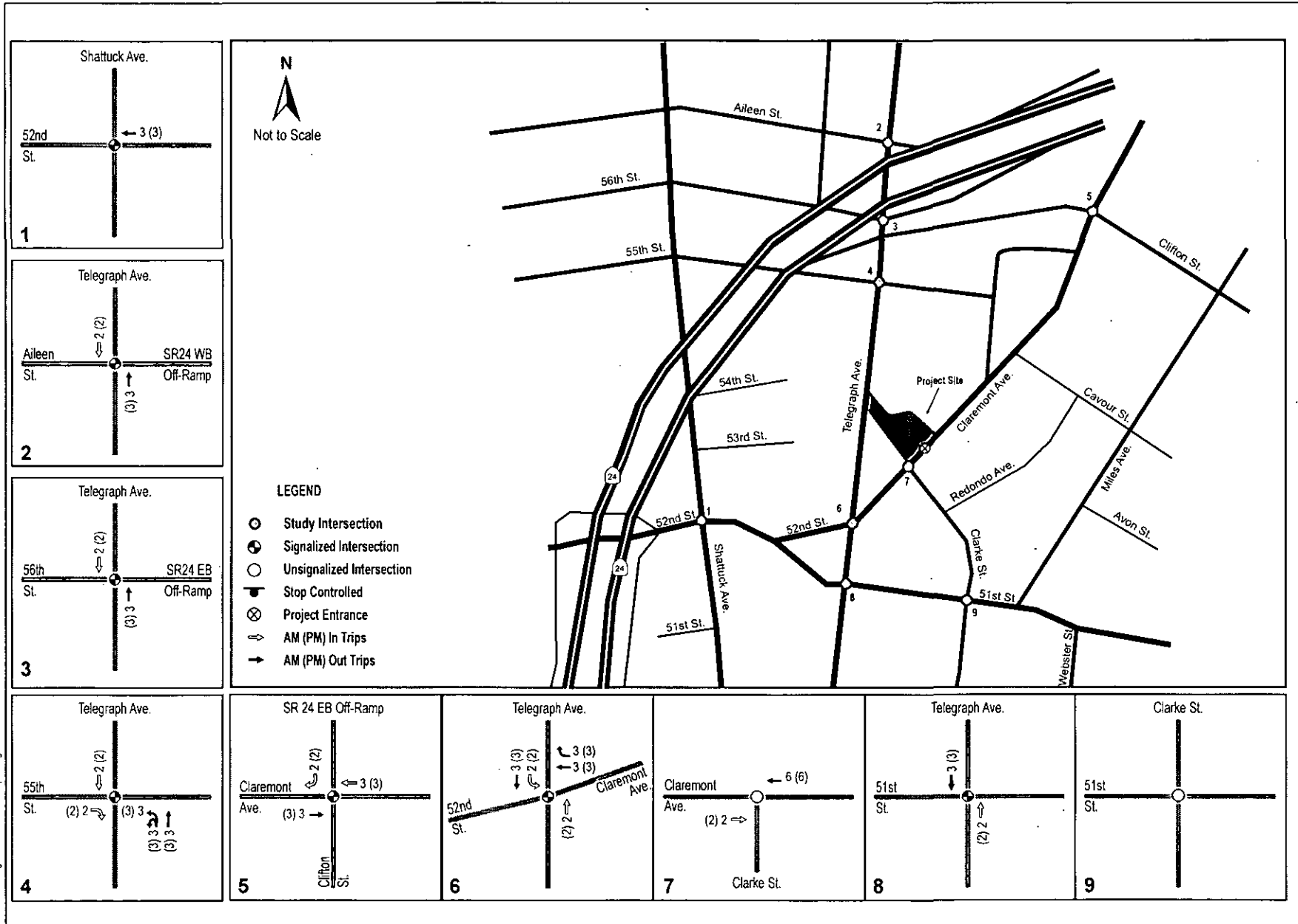


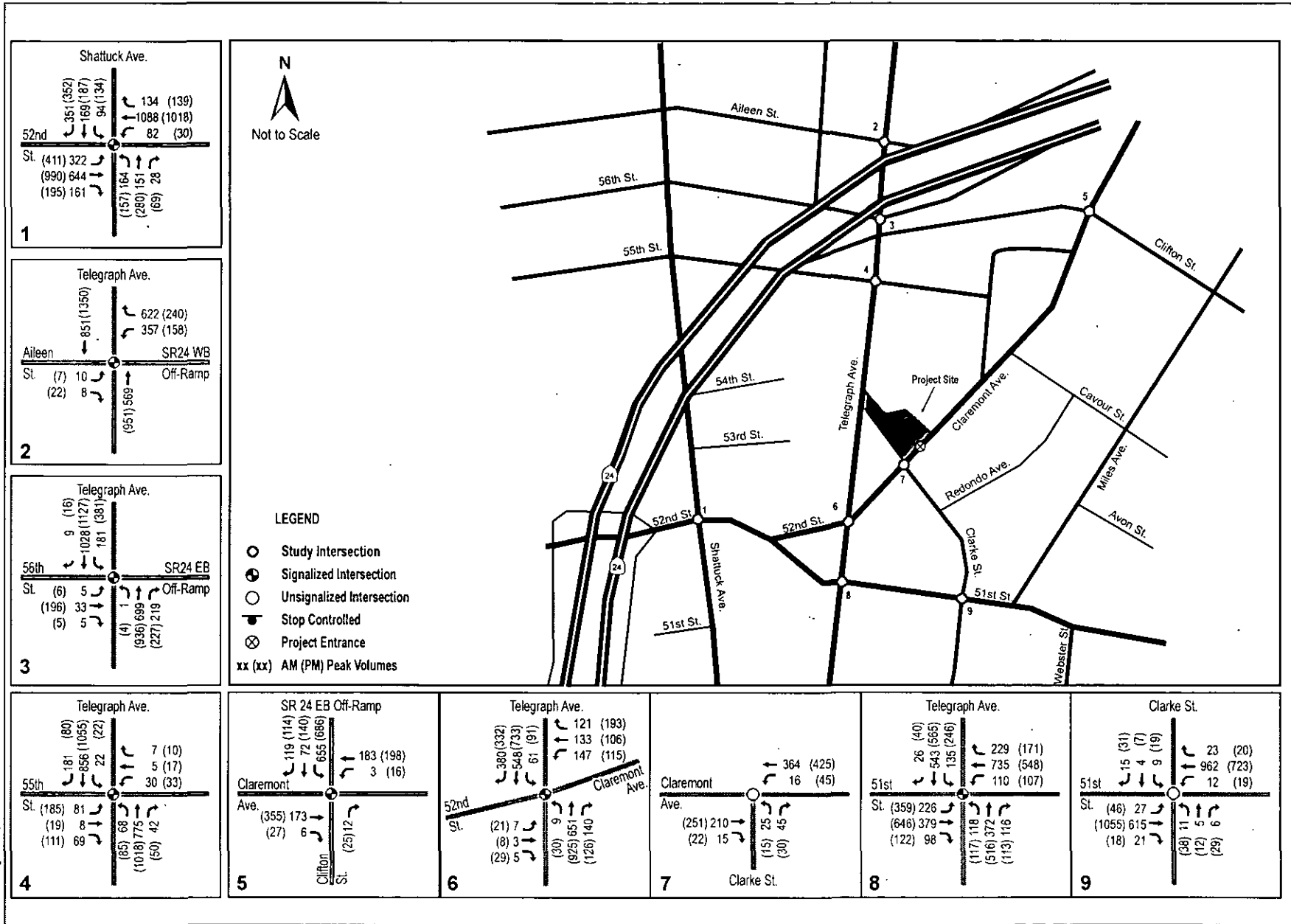
Figure 8
Trip Assignment (Residential)

07022-000-Vingfish Res. Trip Assign. 01/14/07



07022-000-Kingfish Commercial Trip Assign. at-4/4/07

Figure 9
Trip Assignment (Commercial)



07022-000-Kingfish Proj Vols.ai-4/4/07

Figure 10
Project Condition
Intersection Turning Movement Volumes
Weekday AM and PM Peak Hour

Table 13 Project Condition LOS Summary

#	Intersection	A.M. Peak			P.M. Peak		
		Avg. Delay ²	V/C	LOS	Avg. Delay ²	V/C	LOS
1.	Shattuck Ave & 52 nd St	59.2	0.97	E	78.4	1.02	E
2.	Telegraph Ave & SR-24 WB off-ramp – Aileen St	23.1	0.68	C	10.1	0.59	B
3.	Telegraph Ave & SR 24 EB on-ramp	10.1	0.57	B	38.4	0.95	D
4.	Telegraph Ave & 55 th Street	5.9	0.47	A	11.9	0.64	B
5.	Claremont Ave & SR 24 EB off-ramp – Clifton St	12.6	0.37	B	14.9	0.46	B
6.	Telegraph Ave & 52 nd Street – Claremont Ave	20.2	0.59	C	27.7	0.78	C
7.	Clarke St & Claremont Ave ¹	10.3	-	B	10.8	-	B
8.	Telegraph Ave & 51 st St	40.0	0.75	D	63.3	0.85	E
9.	Clarke St & 51 st St ¹	33.3	-	D	>50	-	F

Source: DKS Associates

Notes:

Average Delay: in seconds per vehicle

V/C: Volume to Capacity Ratio

LOS: Level of Service

¹ Unsignalized Intersection LOS is based on worst approach delay.

² For signalized intersections, delays >80 are beyond the upper limits of LOS delay estimation equations under the HCM 2000 methodologies. For unsignalized intersections, delays >50 are beyond the upper limits of LOS delay estimation equations under the HCM 2000 methodologies.

7.6 Intersection Operation

According to the City of Oakland intersection level of service standards, all study intersections would continue to operate at acceptable levels of service for the project condition, with the exception of the intersection of Shattuck Avenue & 52nd Street, Telegraph Avenue & 51st Street and Clarke Street & 51st Street. The intersection of Shattuck Avenue & 52nd Street would continue to operate at LOS E during the A.M. and P.M. peak hour. The intersection of Telegraph Avenue & 51st Street would continue to operate at LOS E during the P.M. peak hour and the intersection of Clarke Street & 51st Street would continue to operate at LOS D during the A.M. peak hour and at LOS F during the P.M. peak hour.

Table 14 and **Table 15** provide a level of service comparison for the A.M. and P.M. peak hour, respectively, to determine significance criteria and project impacts, if any. **Appendix I** includes the detailed significance criteria analysis, under any of these measures including average delay, critical movement delay, level of service comparison, volume-to-capacity ratio analysis, and traffic signal warrant analysis.

The addition of project traffic would not result in a significant impact under any of these measures. Intersection signal warrants for the intersections of Claremont Avenue & Clark Street and 51st Street & Clark Street would not be met, (see Section 7.7).

Appendix E includes the detailed calculation level of service analysis sheets including the weekday A.M. and P.M. peak hours.

Table 14 Project Condition Summary

Level of Service Analysis Summary A.M. Peak Hour														
#	Intersection	Traffic Control	Existing			Background			Project			Difference Project - Background		Impact Determination
			Avg. Delay	V/C	LOS	Avg. Delay	V/C	LOS	Avg. Delay	V/C	LOS	Avg. Delay	V/C	
1.	Shattuck Ave & 52 nd St	Signal	>80	1.98	F	58.6	0.97	E	59.2	0.97	E	0.60	0.00	No Impact
2.	Telegraph Ave & SR 24 WB off-ramp - Aileen St	Signal	23.1	0.67	C	23.1	0.68	C	23.1	0.68	C	0.00	0.00	No Impact
3.	Telegraph Ave & SR 24 EB on-ramp	Signal	10.0	0.56	B	10.1	0.57	B	10.1	0.57	B	0.00	0.00	No Impact
4.	Telegraph Ave & 55 th Street	Signal	6.5	0.46	A	6.0	0.47	A	5.9	0.47	A	-0.10	0.00	No Impact
5.	Claremont Ave & SR 24 EB off-ramp - Clifton St	Signal	12.2	0.36	B	12.5	0.37	B	12.6	0.37	B	0.10	0.00	No Impact
6.	Telegraph Ave & 52 nd St - Claremont Ave	Signal	18.1	0.56	B	19.5	0.58	B	20.2	0.59	C	0.70	0.01	No Impact
7.	Clarke St & Claremont Ave	Unsignalized	9.8	-	A	10.3	-	B	10.3	-	B	0.00	0.00	No Impact
8.	Telegraph Ave & 51 st St	Signal	33.7	0.70	C	40.0	0.74	D	40.0	0.75	D	0.00	0.01	No Impact
9.	Clarke St & 51 st St ¹	Unsignalized	35.1	-	E	33.3	-	D	33.3	-	D	0.00	0.00	No Impact

Source: DKS Associates, 2007.

Notes:

Avg. Delay: Average Delay in seconds per vehicle

V/C: Volume-to-capacity ratio.

LOS: Level of Service

¹ Unsignalized intersection: LOS based on worst approach delay (in seconds).

Table 15 Project Condition LOS Summary – P.M. Peak Hour

Level of Service Analysis Summary P.M. Peak Hour														
#	Intersection	Traffic Control	Existing			Background			Project			Difference Project – Background		Impact Determination
			Avg. Delay	V/C	LOS	Avg. Delay	V/C	LOS	Avg. Delay	V/C	LOS	Avg. Delay	V/C	
1.	Shattuck Ave & 52 nd St	Signal	>80	1.72	F	77.9	1.02	E	78.4	1.02	E	0.50	0.00	No Impact
2.	Telegraph Ave & SR 24 WB off-ramp – Aileen St	Signal	10.1	0.58	B	10.1	0.59	B	10.1	0.59	B	0.00	0.00	No Impact
3.	Telegraph Ave & SR 24 EB on-ramp	Signal	36.4	0.94	D	37.9	0.95	D	38.4	0.95	D	0.50	0.00	No Impact
4.	Telegraph Ave & 55 th Street	Signal	12.0	0.63	B	11.9	0.63	B	11.9	0.64	B	0.00	0.01	No Impact
5.	Claremont Ave & SR 24 EB off-ramp – Clifton St	Signal	14.6	0.46	B	14.8	0.46	B	14.9	0.46	B	0.10	0.00	No Impact
6.	Telegraph Ave & 52 nd St – Claremont Ave	Signal	26.5	0.76	C	26.9	0.77	C	27.7	0.78	C	0.80	0.01	No Impact
7.	Clarke St & Claremont Ave	Unsignalized	10.3	-	B	10.7	-	B	10.8	-	B	0.10	0.00	No Impact
8.	Telegraph Ave & 51 st St ¹	Signal	60.1	0.84	E	63.3	0.85	E	63.3	0.85	E	0.00	0.00	No Impact
9.	Clarke St & 51 st St ¹	Unsignalized	>50	-	F	>50	-	F	>50	-	F	1.30	0.00	No Impact

Source: DKS Associates, 2007.

Notes:

Avg. Delay: Average Delay in seconds per vehicle

V/C: Volume-to-capacity ratio.

LOS: Level of Service

¹ Unsignalized Intersection: LOS based on worst approach delay (in seconds).

7.7 Signal Warrant Analysis

Peak hour traffic signal warrants were tested for the unsignalized study intersections. This was done in accordance with City of Oakland requirements, using the methodology of the MUTCD, California Supplement.

Clarke Street & Claremont Avenue

Based on the significance criteria and project generated traffic, the proposed project would add more than 10 trips through the intersection but would not satisfy a Peak-Hour warrant. Therefore it is not considered a significant impact. The minimum threshold volume for the minor street approach is 100 vehicles per hour (VPH) and under the project condition the A.M. peak hour volume is estimated at 70 vehicles per hour, and the estimation is 45 vehicles per hour during the P.M. peak hour.

Clarke Street & 51st Street

Based on the significance criteria and project generated traffic, the proposed project would not add more than 10 trips through the intersection and would not satisfy a Peak-Hour warrant. Therefore it is not considered a significant impact. The minimum threshold volume for the minor street approach is 100 vehicles per hour (VPH) and under the project condition the A.M. peak hour volume is estimated at 28 vehicles per hour, and the estimation is 79 vehicles per hour during the P.M. peak hour.

Appendix G includes the Peak Hour Volume Traffic Signal Warrant analysis for the intersection of Clarke Street & Claremont Avenue and Clarke Street & 51st Street.

7.8 Pedestrian Safety and Circulation

The expected moderate increase in vehicular traffic volumes at the study intersections would not significantly impact the pedestrian movements. Also, the additional pedestrian movements generated by the proposed project would continue to be accommodated by provided sidewalks (along the project frontage and mid-block on Claremont Avenue). In addition, a new sidewalk would be provided along the project frontages on Claremont Avenue and on Telegraph Avenue. The proposed project would add about 66 (assumed two per dwelling unit) new residents to the area, and therefore a moderate increase in pedestrian activity would be anticipated.

In addition, since no parking is available on-site for the commercial use, any vehicles traveling along Telegraph Avenue that would park along the west side of the street would require pedestrians to walk along Telegraph Avenue towards 52nd Street – Claremont Avenue and cross at the intersection. It is assumed that

a number of pedestrians would cross at midblock at Telegraph Avenue. It is recommended that signage be improved along this segment of the road to discourage pedestrians from crossing at midblock.

Vehicles traveling along Claremont Avenue that would park along the southside would require pedestrians to cross at the midblock crosswalk and/or cross at the intersection of Telegraph Avenue & Claremont Avenue – 52nd Street. It is also recommended that signage be improved along Claremont Avenue to discourage pedestrians from crossing at midblock.

Based on the traffic collision data outlined in **Table 4**, nine of the 117 accidents during the three years involved bicyclist or pedestrians. The majority of these accidents (4 in total) occurred at the intersection of Shattuck Avenue & 52nd Street. The proposed project would add approximately seven (7) vehicle trips in the AM peak hour and six (6) during the PM peak hour at this location. Several improvements are planned at this location, including a traffic signal upgrade and pedestrian signal heads that include the hand/walking person combination and countdown timer.

As described in Section 2.2 of this report, the signalized study intersections are equipped with pedestrian crossing signals, push buttons, and crosswalks to accommodate pedestrian movements in the vicinity of the project. Based on the presence and current condition of sidewalks, pedestrian amenities and crosswalks, the relatively low number of project-generated additional pedestrians spread throughout the day, and the planned pedestrian facilities improvements in the study area, no adverse pedestrian impacts are anticipated.

7.9 Site Access, Internal Circulation and Sight Distance

Project access and circulation were analyzed for the proposed project to assess operational issues. The site plan (**Figure 2**) indicates access to the residential use from Claremont Avenue via one project driveway (24' wide) with full-access in and out of the site. Vehicles traveling westbound on Claremont Avenue would make a right-turn into the project. Vehicles exiting the project would be allowed to make a left or right-turn depending on their destination. Vehicles traveling eastbound on Claremont would make a left at the project entrance.

Since no parking is available on-site for the commercial use, vehicles traveling along Telegraph Avenue would park along the east or west side of the street. Vehicles traveling along Claremont Avenue would park along the north or south side of the street. It is assumed that U-turns would be anticipated along Telegraph Avenue between 55th street and 52nd Street-Claremont, as well as along Claremont Avenue near Clark Street and Vicente Way. The U-turns were factored into the intersection analysis. Based on a review of the potential trip

generation and the historic accident data, no change in the collision rates (see **Table 4**) would be anticipated.

The overall project internal design appears acceptable. No adverse internal circulation impacts related to the proposed project are anticipated.

Sight Distance

DKS performed a driveway sight distance analysis of the proposed project driveway along Claremont Avenue per the Caltrans Highway Design Manual, Table 405.1A. For the purpose of this analysis, a design speed of 30 mph was assumed.

The Design Manual recommends the provision of certain corner sight distance for vehicles intersection approaches. Corner sight distance is the distance at which a substantial clear line of sight should be maintained between the driver of a vehicle waiting at the crossroad and the driver of an approaching vehicle.

The recommended sight distance for a design speed of 30 mph is 361 of driveway sight distance (see sketch below). Due to the location of the nearest cross streets (Clarke Street and Vicente Way) the sight distance is limited to 307 feet to the east of the proposed driveway and 244 feet and two inches to the west of the proposed driveway. In order to provide the recommended sight distance, driveway tipping of approximately 122 feet would be required in the eastbound direction and 24 feet and 4 inches would be required in the westbound direction.

In addition, on-street parking would have to be restricted along the driveway tipping in order to provide the suggested design sight distance. There are approximately eight on-street parking spaces to the east of the midblock crosswalk along the north side of Claremont Avenue and approximately nine spaces to the west of the midblock crosswalk to Telegraph Avenue. On-street parking spaces along Claremont Avenue are regulated to 2-hour limits between 8:00 a.m. and 6:00 p.m.

However, since there is no parking allowed to the east of the proposed project driveway within the recommended 122 feet of red curb, no on-street parking spaces would be removed. To the west of the project driveway, the recommended 24 feet and 4 inches of red curb would require removal of one to two parking spaces.

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OAKLAND

2007 OCT -4 PM 5:49

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER _____

Mark P. Webb

**RESOLUTION DENYING THE APPEALS AND UPHOLDING THE
PLANNING COMMISSION'S APPROVAL FOR CONSTRUCTION OF
33 DWELLING UNITS OVER GROUND FLOOR COMMERCIAL AT
5248 TELEGRAPH AVENUE, OAKLAND (CASE FILE NUMBER
CDV06-476& TPM-9212)**

WHEREAS, the project applicant, Roy Alper, of Project Kingfish LLC, filed an application on September 19, 2006, to construct a 33 unit residential condominium building over ground floor commercial at 5248 Telegraph Avenue (Project); and

WHEREAS, the Design Review Committee of the Planning Commission considered the design aspects of the Project at a duly noticed public meeting on March 28, 2007; and

WHEREAS, the City Planning Commission took testimony and considered the Project at its duly noticed public meeting of July 18, 2007. At the conclusion of the public hearing, the Commission deliberated the matter and voted (6-0-0) to approve the Project, with modifications from the staff recommendation, which included a determination of a "best fit" zone of C-45, and the granting of a minor variance for a rear yard setback; and

WHEREAS, on July 27, 2007, the appellant, Bob Brokl representing STAND, filed an appeal of the Planning Commission decision to the City Council; and

WHEREAS, on July 30, 2007, the appellant, Stuart Flashman representing RCPC, filed an appeal of the Planning Commission decision to the City Council; and

WHEREAS, after giving due notice to the Appellants, the Applicant, all interested parties and the public, the Appeal came before the City Council for a public hearing on October 16, 2007; and

WHEREAS, the Appellants, the Applicant, supporters of the application, those opposed to the application and interested neutral parties were given ample opportunity to participate in the public hearing by submittal of oral and/or written comments; and

WHEREAS, the public hearing on the Appeal was closed by the City Council on October 16, 2007

Now, Therefore, Be It

RESOLVED: That, the City Council, having heard, considered and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Project, application, the Planning Commission's decision, and the Appeal, finds that the Appellants have **not** shown, by reliance on evidence already contained in the record before the City Council that the Planning Commission's Decision of July 18, 2007 was made in error, that there was an abuse of discretion by the Planning Commission or that the Commission's decision was not supported by substantial evidence in the record based on the July 18, 2007 Planning Commission Approved Staff Report (attached as Exhibit "A") and the October 16, 2007 City Council Agenda Report (attached as Exhibit "B"), hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeals are denied, the Planning Commission's approval is upheld, subject to the findings contained in Exhibits "A" and "B", each of which is hereby separately and independently adopted by this Council in full; and be it

FURTHER RESOLVED: That, in support of the Planning Commission's decision to approve the Project, the City Council affirms and adopts (i) the July 18, 2007 Planning Commission Approved Staff Report (including without limitation the discussion, findings, conclusions and conditions of approval (each of which is hereby separately and independently adopted by this Council in full)), attached as Exhibit "A"; and (ii) the October 16, 2007 City Council Agenda Report, attached hereto as Exhibit "B" (including without limitation the discussion, findings, and conclusions (each of which is hereby separately and independently adopted by this Council in full)); except where otherwise expressly stated in this Resolution; and be it

FURTHER RESOLVED: That, the City Council finds and determines that this Resolution complies with CEQA and the Environmental Review Officer is directed to cause to be filed a Notice of Exemption with the appropriate agencies; and be it

FURTHER RESOLVED: That, the record before this Council relating to this application and appeal includes, without limitation, the following:

1. the application, including all accompanying maps and papers;
2. all plans submitted by the Applicant and his representatives;
3. the notice of appeal and all accompanying statements and materials;
4. all final staff reports, final decision letters and other final documentation and information produced by or on behalf of the City, including without limitation and all related/supporting final materials, and all final notices relating to the application and attendant hearings;

5. all oral and written evidence received by the City Planning Commission and City Council during the public hearings on the appeals; and all written evidence received by relevant City Staff before and during the public hearings on the application and appeal;

6. all matters of common knowledge and all official enactments and acts of the City, including, without limitation (a) the General Plan; (b) Oakland Municipal Code (c) Oakland Planning Code; (d) other applicable City policies and regulations; and, (e) all applicable state and federal laws, rules and regulations; and be it

FURTHER RESOLVED: That, the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Community & Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, 2nd Floor, Oakland CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, CA; and be it

FURTHER RESOLVED: That, the recitals contained in this Resolution are true and correct and are an integral part of the City Council's decision.

In Council, Oakland, California, _____, 2007

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, KERNIGHAN, AND
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California

Exhibit A

[July 18, 2007 Planning Commission "Approved" Staff Report]

Location:	5248 Telegraph Ave. (See map on reverse)
Assessors Parcel Number:	014-1225-014-00 & -015-01
Proposal:	New Construction of a five story 33 unit residential condominium building over ground floor commercial.
Applicant:	Bill Lambert (510)550-4200
Owner:	Project Kingfish LLC
Planning Permits Required:	"Major" Design Review for a new building in excess of 25,000 square feet, Interim Conditional Use Permit for a C-30 "Best Fit" Zone, and to allow the density permitted within the Community Commercial General Plan area, Minor Variance for encroachment into the "height reduction plane" from the minimum required rear yard, and Tentative Parcel Map for new condominiums.
General Plan:	Community Commercial
Zoning:	C-28, Commercial Shopping District Zone
Environmental Determination:	Exempt, Section 15332 of the State CEQA Guidelines; in fill development projects. Exempt, Section 15183 of the CEQA Guidelines; projects that conform to the General Plan.
Historic Status:	Potentially Designated Historic Property (PDHP); rating: C2+/C3
Service Delivery District:	2
City Council District:	1
Date Filed:	9/19/06
Staff Recommendation:	Decision on application based on staff report.
Finality of Decision:	Appealable to City Council
For Further Information:	Contact case planner Peterson Z. Vollmann at 510-238-6167 or by e-mail at pvollman@oaklandnet.com .

PROJECT DESCRIPTION

The proposal is to construct a new five story 33 unit co-housing development. The project would have frontages on both Claremont and Telegraph Avenues, which would contain ground floor commercial spaces. The proposed parking garage will be located behind the ground floor commercial spaces and be accessed from Claremont Avenue. The proposed development will replace four existing structures, which are proposed for demolition (or relocation if possible). Three of the four existing structures are Potentially Designated Historic Structures with a rating of C2+ (the two Victorian structures on Telegraph) and C3 (Kingfish). The applicant had requested a "Best Fit" Zone of C-45 pursuant to Planning Code Section 17.01.100. Given the current re-zoning process for the Temescal area the Director of Development opted to grant a "Best Fit" zone of C-30 rather than the requested C-45 because of the current direction of that rezoning process. The C-30 Zone is listed in the General Plan Conformity Guidelines as an "other possible best fit zone" and in staff's view is an appropriate designation for this project site.

This project had previously gone before the Design Review Committee on March 28th, 2007. The applicant's response to comments from that meeting will be outlined in the Design Review portion of this report.

PROPERTY DESCRIPTION

The subject site is an 11,777 square foot site containing frontages on the east side of Telegraph Avenue and the west side of Claremont Avenue. As stated above, the development site contains four existing structures, three of which are Potentially Designated Historic Structures with a rating of C2+ and C3. The surrounding uses include auto related commercial uses, civic buildings, and high and low density residential uses.

Historic Status

The Oakland Cultural Heritage Survey ("Survey") identifies properties that are historic or potentially historic properties. The rating system is based upon three different calculations. First properties are rated A through E, with "A" being a property of the highest importance, "B" is a property of major importance, "C" a property of secondary importance, "D" minor importance and "E" of no particular interest. Properties that contain a rating of C or higher are determined to be properties worthy of consideration for retention, and require special findings if any demolition or major alteration is proposed as part of a discretionary development application. The second system of rating is based upon whether or not a property is located within a district, and ratings are given out 1 through 3, with a rating of 1 indicating that a property is located within an Area of Primary Importance (API), a rating of 2 indicating that the property is located within an Area of Secondary Importance (ASI), and a rating of 3 indicating that the property is not located within a district at all. The third method for rating a property is a contingency rating that could be added to a property, which is identified as a lower case letter a through d, in which the lower case letter identifies that the property could be considered at a higher rating if it had not been for alterations that removed or damaged character defining elements of the structure.

The development site contains three Potentially Designated Historic Properties (PDHP), two of which are located on Telegraph Avenue and one located on Claremont Avenue. The two houses on Telegraph Avenue are rated C2+, which means that they are properties of secondary importance in an ASI, and the "+" identifies the properties as contributors to the district. The two houses in this instance are their own "mini district" because they have special relationship to one another (being of the exact same architectural style). Properties within ASI's are not eligible for the National Register. The property on Claremont, the Kingfish, is rated C3, which means that it is a building of secondary importance and not located within any district.

The current proposal would demolish or remove all of the buildings from the site. Planning Staff will require the developer to make a good faith effort to have the buildings moved prior to demolition. Given that the proposed demolition would remove two contributor buildings, staff recommends as a Condition of Approval that the advertisement of the buildings and number of

publications announcing the availability of the structures be increased from the normal standard condition of approval.

GENERAL PLAN ANALYSIS

The subject property is located within the Community Commercial General Plan Land Use Classification. This land use classification is intended to create, maintain, and enhance areas suitable for a wide variety of commercial and institutional operations along the City's major corridors and in shopping districts and centers. The Community Commercial districts may include Neighborhood Center uses and larger scale retail and commercial uses, such as auto related businesses, business and personal services, health services and medical uses, educational facilities, and entertainment uses. A small portion (22%) of the project site is within the Mixed Housing Type General Plan Area, but is slated to be modified under the update for the Temescal Area so that the entire site would be included as Community Commercial. The Community Commercial General Plan area allows an FAR of 5.0 and a residential density of one dwelling unit per 261 square feet of lot area and the Mixed Housing Type area allow for one dwelling unit per 1,089 square feet of lot area. The project site as broken down between the two separate land use classifications would allow a maximum density of 38 dwelling units (with a site classification solely of Community Commercial the maximum density would be 45 units). The proposed density of 33 dwelling units is consistent with the General Plan density.

Best Fit Zone

The subject property is located predominantly within the Community Commercial General Plan classification, which in the table for "Best Fit" Zones cites the C-30 Zone as a potential zone. The subject property is located within the C-28 Zone and while the proposed project is consistent with the General Plan, it is inconsistent with the C-28 Zone Regulations.

The General Plan Conformity Guidelines list three items for determining General Plan Conformity as follows:

- **Is the proposed activity and facility type permitted under the General Plan?** – The proposed activities (residential, retail) are permitted in the Community Commercial and Mixed Housing Type General Plan areas, and multi family residential permitted within both the Community Commercial General Plan and mixed Housing Type classifications. Non-residential facilities are permitted within the Community Commercial General Plan Area and silent in the Mixed Housing Type, in which case you defer to the zoning of C-28, in which it is permitted.
- **Is the proposed intensity or density less than or equal to the maximum permitted under the General Plan?** – The Community Commercial General Plan area allows residential density equal to one dwelling unit per 261 square feet of lot area and commercial development equal to a FAR (Floor Area Ratio) of 5.0. The Mixed Housing Type General Plan area allows up to one dwelling unit per 1,089 square feet of lot area. The project site as broken down between the two separate land use classifications would

allow a maximum density of 38 dwelling units. The proposed density of 33 dwelling units is consistent with the General Plan density.

- **Is the project consistent with Relevant General Plan policies?** – In order to answer this question the Guidelines refer you to “Checklist 4” of the document, which states the relevant policies, which are:

- **Policy 3.9 – Orienting Residential development – Residential developments should be encouraged to face the street and to orient their units to desirable sunlight and views, while avoiding unreasonably blocking sunlight and views for neighboring buildings, respecting the privacy needs of residents of the development and neighboring properties, providing for sufficient conveniently located open on-site open space, avoiding undue noise exposure.**

The proposed development faces Telegraph and Claremont Avenues, it does not unreasonably block sunlight to adjacent properties, and the area is not one that would be considered to have significant views (this is restricted to properties that contain a site slope of greater than 20%). Privacy and noise impacts would be no different than any other residential development that contains windows, and open space will be provided at individual units and common open space courtyards.

- **Policy N7.1 – Ensuring Compatible Development – New residential development in Detached Unit and Mixed Housing Type areas should be compatible with the density, scale, design, and existing or desired character of surrounding development.**

The subject property is not located within the Detached Unit or Mixed Housing Type areas, hence the citation is inappropriate.

- **Policy 7.2 – Defining Compatibility – Infrastructure availability, environmental constraints and natural features, emergency response and evacuation times, street width and function, prevailing lot size, predominant development type and height, scenic values, distance from public transit, and desired neighborhood character are among factors that could be taken into account when developing and mapping zoning designations or determining compatibility. These factors should be balanced with the citywide need for additional housing.**

The subject property is not located in an undeveloped area of the Oakland Hills, but is located within a developed urban area of the City, which contains existing infrastructure, streets, and pre-existing lot patterns. The proposed development is compatible with other mixed use developments on Telegraph Avenue and contains a design style that is contextual with the other period architecture in area surrounding area, and the site is located directly on a transit line (AC Transit 1 & 1R lines).

- **Policy 8.2 – Making Compatible Interfaces Between Densities – The height of development in Urban Residential and other higher density residential areas should step down as it nears lower density areas to minimize conflicts at the interface between the different types of development.**

The subject property is not located within one of the Urban Residential areas, which are usually zoned R-70, R-80, and R-90 Zones, and which typically do not contain a set height limit. The subject property is not located adjacent to any lower density zoning districts or uses. The adjacent buildings on Claremont Avenue are commercial buildings and the adjacent site on Telegraph is a civic building.

- **Policy 4.2 – Protection of Residential Yards – Action 4.2.1 – Lot Coverage Limits – Prepare a study of lot coverage or floor area ratio limits for single family residential zoning districts, with assistance from local architects, builders, and residents.**

The subject property is not located within a single family residential district.

If the answers to all of the above questions are yes, or if the General Plan is silent, you must then determine whether or not the proposed project is permitted under the zoning regulations. To determine this, the following to questions are applied:

- **Is the proposed activity and facility permitted under the zoning regulations?** – The proposed activities (residential and retail), and facilities (multi family residential and non-residential) are permitted under the C-28 regulations.
- **Is the project consistent with other regulations of the zone?** – This is where the project is not consistent with the regulations of the C-28 Zone. The proposed project contains a density higher than that permitted within the C-28 Zone, but is consistent with the density of the General Plan. The proposed project is also taller in height than permitted by the C-28 Zone, is consistent with the relevant General Plan policies as stated above.

When a proposed project is consistent with the relevant General Plan policies but not permitted under the zoning regulations, this constitutes an “express conflict” with the General Plan, and a “Best Fit Zone” may be applied. The applicant had requested a “best fit” zone of C-45 because it is one of the zones listed in the General Plan Conformity Guidelines, however; given the current status of the re-zoning process in the Temescal district the Zone of C-30 has been chosen for the area that the subject property is located within, and is shown in the Conformity Guidelines as “another possible zone”. Given this the Director has designated a “best fit” zone of C-30 for the project site. At the public hearing on this item the Planning Commission granted the “best fit” zone of C-45 as requested by the applicant. This decision was based upon the General Plan Conformity Guidelines, which indicate the C-45 Zone as a “best fit” zone for the Community Commercial General Plan areas, and because the property is located at the junction of two major arterials which is consistent with the description of the C-45 Zone.

ZONING ANALYSIS

The subject property is located within the C-28, Commercial Shopping District Zone, which is intended to create, preserve, and enhance major boulevards of medium-scale retail establishments featuring some specified higher density nodes in attractive settings oriented to pedestrian comparison shopping, and to encourage mixed-use residential and nonresidential developments, and is typically appropriate along major thoroughfares near residential communities. Given the reasons discussed above the Director designated the property as a “best fit” zone of C-30, District Thoroughfare Commercial Zone, which is intended to create, preserve, and enhance areas with a wide range of retail establishments serving both short and long term needs in convenient locations, and is typically appropriate along major thoroughfares. The main difference between the C-28 zone and the C-30 zone in terms of permitted building envelope is the allowed height within the two zones. The following table illustrates the differences between the height regulations of the C-28 zone and the C-30 “best fit” zone, as well as a reference to the current rezoning process for the Temescal District and the proposed height limits for the subject property.

Attribute	C-28	C-30	Proposed TEM	Project
Height	40 feet	None*	45’/55’ setback	45’/59’ setback**

- * The C-30 Zone requires a residential building to be no more than 40 feet in height at the rear yard setback line, but it may increase in height two feet vertically per each one foot setback horizontally.
- ** The proposed project contains a pitched roof, and the top of the pitch reaches 59’ above grade, however the midpoint is at 55’ above grade, thus trying to remain consistent with the proposed future height regulations.

Density

The “best fit” C-30 Zone allows for a maximum density of one dwelling unit per 450 square feet of lot area. Given the site square footage of 11,777, the maximum number of dwelling units permitted under the Planning Code would be 26. The current C-28 zone contains the same density allowances as the C-30 Zone. The proposed project exceeds the permitted density under the Planning Code, but is consistent with the allowed General Plan density as described earlier in this report. An Interim Conditional use permit is required to achieve the increased density as set forth under the General Plan. The project site is located at the intersection of two North Oakland corridors and is located within an area designated as a “Grow and Change” area, which is where growth will be focused to lead Oakland into the next century. Correlated with transportation and infrastructure improvements, grow and change areas will emphasize significant changes in density, activity, or use, which are consistent with the land use diagram. Given the location of the project site, staff believes that the use permit for the increased density is appropriate for this site.

Open Space

The C-30 zone requires open space for dwelling units at a rate of 150 square feet per dwelling. Group open space may be substituted at a 2:1 ratio with private open space. The total open space requirement for the proposed 33 dwelling units is 4,950 square feet. The proposed project will contain 1,812 square feet of private open space (which counts for 3,624 square feet at 2:1). In

addition to the private open space, group open space is still required even with the full substitution of private open space at a rate of 30 square feet per unit, for a total of 990 square feet. The project proposes group open spaces in the amount of 1,935 square feet, thus meeting the open space requirement for the project.

Parking

The proposed project would include 33 residential units and less than 3,000 square feet of commercial retail space. The zoning requires one off street parking stall per dwelling unit, however, no off street parking is required for the commercial space since it is less than 3,000 square feet. The parking will be provided in the amount required by Code, located at the ground floor of the building with access off of Claremont Avenue. The garage itself will be tucked behind commercial spaces and a lobby entrance so that it will be shielded from public view, with the exception of the garage door.

Height Variance

The C-30 Zone sets a height limit at the rear setback line of 40 feet. The zone then allows the height of a building to increase by two feet in height per foot that it steps back from the rear property line. The proposed project would encroach into this "height reduction plane" setback at points along the rear elevation. The intent of this regulation is to require buildings to step down so that there can be a mutual sharing of openness between the rear yards of adjacent properties for residents to enjoy. Although the adjacent property that shares a rear yard is not a residential property, and currently contains an open parking lot and non residential rear yard, the intent of this regulation would not be served, as the future redevelopment of the adjacent lot over time could be likely, and the granting of this variance could negatively impact future development. Staff recommends, as a Condition of Approval, that the building be redesigned to meet the C-30 provisions for the rear yard setback and height reduction plane. The inclusion of this requirement would not dramatically impact the design of the building and only would cause the loss of minimal square footage.

KEY ISSUES

Design

The proposed project had gone before the Design Review Committee on March 28, 2007. At the meeting several design changes were recommended by staff and the Commissioners present at the meeting. At the meeting the following recommendations were made:

- Telegraph Ave. Façade – The Design Review Committee had recommended a more "urban" façade for the Telegraph Avenue elevation. Previously a large portion of the façade contained shingle and board and batten siding. The project was modified to include the shingles only on the bay projections and remove the board and batten siding. The back exterior wall now includes the use of heavy cement board siding to add a more urban look and durability. In addition, other measures were taken to reduce the bulk of

the Telegraph façade by providing more recesses into the building as recommended by the Design Review Committee.

- Claremont Ave. Façade – The only changes to the Claremont Avenue façade are that the garage door was increased in size to address safety issues with sight-distance issues with vehicles exiting the building, and the height of the building was slightly reduced to meet the intent of the proposed height regulations of the Temescal re-zoning process, which is a 45 foot tall base with a 55 foot maximum after setting the building back from the street.
- Exterior Materials – One of the items raised by staff at the Design Review Committee meeting was the issue of exterior materials. The reason this was an issue of concern is that the proposed project is removing three PDHP's from the property, and special findings are required regarding equal or better quality of design. While some of the materials have been altered at the upper level of the Telegraph Avenue elevation, staff still has concerns with the materials that are at the ground floor portions of the building on both street elevations. Currently the proposal is for stucco finish or cement panel tile. Staff recommends that the ground floor materials be stepped up in quality with a decorative ceramic or stone tile for the two story base of the building that is of very high quality and contains a dark earth tone color to match the Craftsman inspired design of the building. At a minimum, staff would recommend that the stucco base, if retained in the design, contain a smooth finish down to the tile bulk head, and without visible expansion joints.

ENVIRONMENTAL DETERMINATION

For purposes of environmental review under the California Environmental Quality Act (CEQA), the project meets the criteria for a Categorical Exemption under Section 15332 of the CEQA Guidelines. The project also complies with Section 15183, of the CEQA Guidelines for projects that are consistent with the General Plan or Zoning. The criteria for a Categorical Exemption under Section 15332 of the CEQA guidelines are as follows:

- 1) The project is consistent with the applicable general plan designation and all general plan policies as well as with applicable zoning designation and regulations.**

The proposed project is consistent with the Community Commercial General Plan designation by creating a mixed use development that contains ground floor commercial activities with dense residential use above.

- 2) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.**

The development site is located within the Oakland City limits, is less than five acres and is completely surrounded by urban uses.

- 3) The project site has no value as habitat for endangered, rare, or threatened species.**

The project site has been previously developed and does not contain any habitat for endangered, rare, or threatened species.

- 4) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.**

The proposed project underwent a full traffic analysis by a qualified traffic consultant, which was reviewed by the Transportation Services Division of Public Works Agency and CEDA Planning staff, and it was determined that the project will not contribute to the reduction of Level of Service (LOS) below an acceptable level for any nearby intersection. With implementation of standard conditions of approval, the project would not result in any significant impacts on traffic, noise, air quality, or water quality.

- 5) The site can be adequately served by all required utilities and public services.**

All required utilities are readily accessible on the surrounding streets, and the site will be adequately served by public services in the area.

CONCLUSION

Staff feels that the proposed project is a good reuse of the site as it provides the intensity envisioned for corridor development under the Oakland General Plan. The project is located in an area anticipated for growth and change as a manner of providing the density necessary to house a growing population in a area well served by public transportation, especially given the AC Transit Bus Rapid Transit line that runs along this portion of Telegraph Avenue. While the existing site contains potentially designated historic structures, the scale of those structures is no longer appropriate for an area that will be taking on the future anticipated population growth for the East Bay. Subject to the recommended project modifications and Conditions of Approval staff believes that the proposed project is appropriate and should be approved.

- RECOMMENDATIONS:**
1. Affirm staff's environmental determination.
 2. Approve the Major Design Review, and Interim Conditional Use Permit and Tentative Parcel Map subject to the attached findings and conditions, while denying the requested Minor Variance.

Prepared by:

PETERSON Z. VOLLMANN
Planner III

Approved by:

SCOTT MILLER
Zoning Manager

Approved for forwarding to the
City Planning Commission:

CLAUDIA CAPPIO
Director of Development

ATTACHMENTS:

- A. Project Plans
- B. Findings for Approval
- C. Conditions of Approval

ATTACHMENT B

Modifications to the Findings and Conditions of Approval as directed by the Planning Commission at the July 18, 2007 meeting are indicated in underlined type for additions and cross-out type for the deletions.

FINDINGS FOR APPROVAL

This proposal meets all the required Use Permit criteria (Sections 17.134.050 & 17.01.100B), and Design Review Criteria (Section 17.136.070), and Minor Variance Criteria (Section 17.148.050) ~~but in staff's view does not meet the required Variance criteria (17.148.050)~~, as set forth below and which are required to approve the application. This proposal does not contain characteristics that require denial pursuant to the Tentative Map Findings (Section 16.08.030 & 16.24.040) of the Oakland Subdivision Regulations. Required findings are shown in bold type; reasons the proposal satisfies them or not are shown in normal type.

17.136.050A - DESIGN REVIEW CRITERIA:

- A. The proposed design will create a building or set of buildings that are well related to the surrounding area in their setting, scale, bulk, height, materials, and textures.**

The proposed project will contain a mixed use structure containing ground floor commercial with 33 dwelling units above. The project site is located on Telegraph Avenue, which is a major transportation corridor and thoroughfare for the City of Oakland as well as the East Bay, and is designated as an area slated for growth and change under the General Plan. The General Plan vision for Telegraph Avenue is for a mixed use corridor with local and city wide serving commercial uses with high density housing above. The subject building is one of many larger buildings that are anticipated for the Telegraph Avenue corridor. The proposed design will use a cement plaster (stucco) or tile for the two story ground floor base, which is seen in other buildings in the surrounding area, and frame the ground floor commercial and residential lobby entrances. The upper levels will contain a mix of shingles and board and batten siding on the Claremont elevation, and cement board siding and shingle bays on the Telegraph elevation, which are materials consistent with Craftsman era architecture seen in the area. The project will also contain gable roofs with large eaves that will help to break down the visual bulk of the building.

- B. The proposed design will protect, preserve, or enhance desirable neighborhood characteristics.**

The proposed design will enhance the neighborhood character redeveloping an existing underutilized lot with a new mixed use development that incorporates high density housing above ground floor commercial on a transit corridor. The use of high quality exterior materials at the ground floor will provide a strong example for future developments along the corridor.

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C. The proposed design will be sensitive to the topography and landscape.

The subject area is flat.

D. If situated on a hill, the design and massing of the proposed building relates to the grade of the hill.

Not situated on a hill.

E. The proposed design conforms in all significant respects with the Oakland General Plan and with any applicable district plan or development control map which has been adopted by the City Council.

The construction of a mixed use development containing 33 residential dwelling units over a ground floor commercial space is consistent with the vision of the General Plan Community Commercial designation, to add commercial activities and high density residential uses along the Telegraph corridor. The proposed project is also consistent with the C-45 Zone, which has been determined as the best fit zone pursuant to the General Plan Conformity Guidelines. ~~proposed C-30 rezoning of the area under the Temescal zoning update process currently under way.~~

SECTION 17.134.050 –CONDITIONAL USE PERMIT FINDINGS:

A. That the location, size, design, and operating characteristics of the proposed development will be compatible with, and will not adversely affect, the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.

The proposed project will contain a mixed use structure containing ground floor commercial with 33 dwelling units above. The project site is located on Telegraph Avenue, which is a major transportation corridor and thoroughfare for the City of Oakland, and is designated as an area slated for growth and change under the General Plan. The existing site and neighboring lots along Telegraph are relatively underdeveloped and contain one and two story commercial and civic buildings. The General Plan vision for Telegraph Avenue is for a mixed use corridor with local and city wide serving commercial uses with high density housing above. The project is able to accommodate the density envisioned for the corridor while still providing ground floor commercial opportunities and one parking space per dwelling unit that will be tucked away behind the ground floor commercial and residential lobby. The proposed project underwent a full traffic analysis by a qualified traffic consultant, which was reviewed by the Transportation Services Division of Public Works Agency and CEDA Planning staff, and it was determined that the project will not contribute to the deduction of Level of Service (LOS) below an

FINDINGS

acceptable level for any nearby intersection.

- B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant.**

The development will provide for a functional living and shopping environment by providing housing and shopping opportunities that are within very close proximity to local and regional mass transit options with the AC transit Bus Rapid Transit line serving Telegraph Avenue and two BART stations (MacArthur & Rockridge) within very close proximity. The project will contain a four story base and the fifth story will be setback to reduce any visual/spatial impacts onto the corridor. The ground floor will contain a tall base that will contain a large amount of glazing within the commercial space and the residential lobby that will set the frame work for future ground floor commercial development.

- C. That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region.**

The development will facilitate the growth and change of the area to an area of dense urban housing with active ground floor uses on a major regional corridor.

- D. That the proposal conforms to all applicable design review criteria set forth in the DESIGN REVIEW PROCEDURE of Chapter 17.136 of the Oakland Planning Code.**

See Design Review findings above.

- E. That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable plan or development control map which has been adopted by the City Council.**

The construction of a mixed use development containing 33 residential dwelling units over a ground floor commercial space is consistent with the vision of the General Plan Community Commercial designation, to add commercial activities and high density residential uses along the Telegraph corridor. The proposed project is also consistent with the C-45 Zone, which has been determined as the best fit zone pursuant to the General Plan Conformity Guidelines.. ~~proposed C-30 rezoning of the area under the Temescal zoning update process currently under way.~~

SECTION 17.01.100B – MINOR CONDITIONAL USE PERMIT FINDINGS FOR PROPOSALS CLEARLY IN CONFORMANCE WITH GENERAL PLAN BUT NOT PERMITTED BY ZONING REGULATIONS

- A. That the proposal is clearly appropriate in consideration of the characteristics of the proposal and the surrounding area.**

FINDINGS

The proposal is clearly appropriate to achieve the purposes of the General Plan as the property is located at the intersection of two North Oakland corridors and is located within an area designated as a "Grow and Change" area, which is where growth will be focused to lead Oakland into the next century. Correlated with transportation and infrastructure improvements, grow and change areas will emphasize significant changes in density, activity, or use, which are consistent with the land use diagram. Clearly, in both density and height, the project is consistent with the "Growth and Change" taking place in the surrounding area as envisioned by the General Plan.

B. That the proposal is clearly consistent with the intent and desired character of the relevant land use classification or classifications of the General Plan and any associated policies.

The subject property is located within the Community Commercial General Plan Land Use Classification. This land use classification is intended to create, maintain, and enhance areas suitable for a wide variety of commercial and institutional operations along the City's major corridors and in shopping districts and centers. The Community Commercial districts may include Neighborhood Center uses and larger scale retail and commercial uses, such as auto related businesses, business and personal services, health services and medical uses, educational facilities, and entertainment uses. The maximum allowable density for the site is 125 units per gross acre, and 166.67 units per net acre. This is greater than the density allowed under the existing C-28 zoning of the site. The desired character for this portion of Telegraph Avenue is for high density residential uses over ground floor commercial uses, as it is located on a major regional transportation corridor that is well served by mass transit. The increased density in the area is required to accommodate current and future growth of the East Bay in a manner that allows densities to be developed along areas with good access to local and regional transportation options.

C. That the proposal will clearly promote implementation of the General Plan.

The proposal to construct 33 new residential dwelling units over ground floor commercial is consistent with the Community Commercial General Plan Area by developing a high density mixed use development that is located on a major local and regional transportation corridor.

Policy 3.5 of the Historic Preservation Element of the General Plan

For any project involving complete demolition of Heritage Properties or Potentially Designated Historic Properties requiring discretionary City permits, the City will make a finding that: (1) the design quality of the proposed project is at least equal to that of the original structure and is compatible with the character of the neighborhood; or (2) the public benefits of the proposed project outweigh the benefit of retaining the original structure; or (3) the existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.

The proposed project will be of at least equal quality to that of the existing structures. The Kingfish building on Claremont is fairly limited in its exterior material and detail qualities and is rated a C structure more for its iconic stature in the neighborhood. The two Victorian era buildings on Telegraph Avenue are the C rated buildings that contain the exterior details that warrant preservation or new construction that is at least equal to that of the existing. The proposed project will use high quality exterior finishes such as shingles, recessed divided lite windows, and through Conditions of Approval a high quality smooth finish cement plaster base or high quality stone or ceramic tile base, which is appropriate for a building of this size. The proposed building's size will be compatible with the desired vision for this area as a transit oriented development that contains high density over ground floor commercial uses, and the incorporation of Craftsman inspired rooflines and details will relate to other Craftsman era buildings on the street and in the surrounding neighborhood.

16.08.030 - TENTATIVE MAP FINDINGS (Pursuant also to California Government Code §66474 (Chapter 4, Subdivision Map Act))

The Advisory Agency shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, if it makes any of the following findings:

- A. That the proposed map is not consistent with applicable general and specific plans as specified in the State Government Code Section 65451.**

The proposal is consistent with the Community Commercial General Plan designation by creating 33 housing units and ground floor commercial on a transit corridor.

- B. That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.**

The proposal is consistent with the Community Commercial General Plan designation by creating 33 housing units and ground floor commercial on a transit corridor.

- C. That the site is not physically suitable for the type of development.**

The site is suitable for the proposed 33 units as it is located close to public utilities, transit, and contains ample open space and parking.

- D. That the site is not physically suitable for the proposed density of development.**

The proposed density is consistent with the General Plan density envisioned for the area.

- E. That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.**

This site has been previously developed and does not contain any wildlife habitat or waterways.

- F. That the design of the subdivision or type of improvements is likely to cause serious public health problems.**

There should be no adverse health effects. This is in a residential and commercial development located in an existing neighborhood and it will introduce no new use classifications that are

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incompatible with the surrounding neighborhood.

- G. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. (This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.)**

There are no easements on this property at present to allow the public access to anything.

- H. That the design of the subdivision does not provide to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision**

The project is specifically designed to be set up for solar panels on the rooftops.

SECTION 16.24.040 – LOT DESIGN STANDARDS

This is not applicable as the proposal will merge the existing lots for a one lot subdivision for condominiums.

SECTION 17.148.050(a) – MINOR VARIANCE FINDINGS:

- A. That strict compliance with the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations, due to unique physical or topographic circumstances or conditions of design; or as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution improving livability, operational efficiency, or appearance.**

The Planning Commission finds that strict compliance with the rear setback requirement of the C-45 Zone would preclude an effective design solution improving livability because the rear yard of the subject site functions more as a side yard and the required rear yard would reduce the size of the proposed dwelling units.

- B. That strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation.**

The Planning Commission finds that strict compliance with the rear yard setback requirement of the C-45 Zone would preclude an effective design solution fulfilling the basic intent of the regulation, because the rear yard of the project site does not face out onto an adjacent rear yard of another residential development. The intent of the regulation is to allow for mutual openness

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of abutting residential rear yards, and since the building on the adjacent abutting lot is a fairly new civic use the intent of the regulation would not be fulfilled, and the design as proposed allows for a more functional living situation for the project.

- C. That the variance, if granted, will not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy.

The Commission finds that the granting of the rear yard variance would not affect the character or livability or appropriate development of the area since the abutting rear yard is not for a residential property and the reduced setback would not create any adverse impacts onto the adjacent lot.

- D. That the variance will not constitute a grant of special privilege inconsistent with limitations imposed on similarly zoned properties or inconsistent with the purposes of the zoning regulations.

The Commission finds that the granting of the variance would not constitute a grant of special privilege because the proposal creates a superior design solution without impacting the adjacent neighbor. Other C-45 Zoned lots which are not residential do not require rear yard setbacks. In addition, the unique configuration and double frontage nature of the site results in a unique rear yard situation.

FINDINGS FOR DENIAL OF REQUESTED VARIANCE

SECTION 17.148.050(a) MINOR VARIANCE FINDINGS:

~~E. That strict compliance with the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations, due to unique physical or topographic circumstances or conditions of design; or as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution improving livability, operational efficiency, or appearance.~~

~~Strict compliance with the rear setback and height reduction plane regulation would not preclude an effective design solution as the adjacent property to the north may at some time in the future be redeveloped, and this encroachment into this space would negatively impact the livability, by closing in the intended adjacent rear yards openness, of the subject site as well as any future development on the adjacent site.~~

~~F. That strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation.~~

~~The basic intent of the rear yard setback height reduction plane is to allow for a mutual sharing of openness and light into adjacent rear yards. The granting of this variance would not meet the intent of this Code Section because even though the adjacent lot today contains a civic property with a rear parking lot, future development of the site could include a mixed use structure that would share the openness of the adjoining rear yard that this project proposes to reduce.~~

~~G. That the variance, if granted, will not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy.~~

~~The granting of the variance would adversely affect the appropriate development of abutting properties as the intended openness of the two adjacent rear yards would be reduced to an extent that would limit the intended availability to sunlight and openness as intended by the specified code regulation and would set a poor precedent for future development patterns along the block.~~

ATTACHMENT C

CONDITIONS OF APPROVAL

STANDARD CONDITIONS:

1. Approved Use

a. Ongoing

- i. The project shall be constructed and operated in accordance with the authorized use as described in the application materials, letter and/or staff report, and the plans dated **June 26, 2007**, and as amended by the following conditions. Any additional uses or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval. Any deviation from the approved drawings, Conditions of Approval or use shall required prior written approval from the Director of City Planning or designee.
- ii. This action by the **City Planning Commission** ("this Approval") includes the approvals set forth below. This Approval includes: **Design Review, Minor Variances, and Tentative Parcel Map**

2. Effective Date, Expiration, Extensions and Extinguishment

a. Ongoing

Unless a different termination date is prescribed, this Approval shall expire **July 18, 2009** unless within such period all necessary permits for construction or alteration, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit for this project may invalidate this Approval if the said extension period has also expired.

3. Scope of This Approval; Major and Minor Changes

a. Ongoing

The project is approved pursuant to the Planning Code and Subdivision Regulations only and shall comply with all other applicable codes, requirements, regulations, and guide lines, including but not limited to those imposed by the City's Building Services Division, the City's Fire Marshal, and the Public Works Agency. Minor changes to approved plans may be approved administratively by the Director of City Planning or designee.

Major changes to the approved plans shall be reviewed by the Director of City Planning or designee to determine whether such changes require submittal and approval of a revision to the approved project by the approving body or a new, completely independent permit.

4. Conformance to Approved Plans; Modification of Conditions or Revocation

a. Ongoing

- i. The City of Oakland reserves the right at any time during construction to require certification by a licensed professional that the as-built project conforms to all applicable zoning requirements, including but not limited to approved maximum heights and minimum setbacks. Failure to construct the project in accordance with approved plans may result in remedial reconstruction, permit revocation, permit modification or other corrective action.
- ii. Violation of any term, Condition or project description relating to the Approvals is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right, after notice and public hearing, to revoke the Approvals or alter these Conditions or to initiate civil and/or criminal enforcement and/or abatement proceedings if it is found that there is violation of any of the Conditions or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance.

5. Signed Copy of the Conditions of Approval

a. With submittal of a demolition, grading, and building permit

A copy of the approval letter and Conditions shall be signed by the property owner and submitted with each set of permit plans submitted for this project

6. Indemnification

a. Ongoing

- i. The project applicant shall defend (with counsel reasonably acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and their respective agents, officers, and employees (hereafter collectively called the City) from any claim, action, or proceeding (including legal costs and attorney's fees) against the City to attack, set aside, void or annul, an approval by the City, relating to a development-related application or subdivision. The City shall promptly notify the project applicant of any claim, action or proceeding and the City shall cooperate fully in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding. The project applicant shall reimburse the City for its reasonable legal costs and attorney's fees.
- ii. Within ten (10) calendar days of the filing of a claim, action or proceeding to attack, set aside, void, or annul, an approval by the City of a development-related application or subdivision, the project applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations and this condition of approval. This condition/ obligations shall survive termination, extinguishment, or invalidation of the approval.

7. Compliance with Conditions of Approval

a. Ongoing

The project applicant shall be responsible for compliance with the recommendations in any submitted and approved technical report and all the Conditions of Approval set forth below at its sole cost and expense, and subject to review and approval of the City of Oakland.

8. Severability

a. Ongoing

Approval of the project would not have been granted but for the applicability and validity of each and court of competent jurisdiction, these Approvals would not have been granted without requiring other valid conditions consistent with achieving the purpose and intent of such Approval.

9. Job Site Plans

a. Ongoing throughout demolition, grading, and/or construction

At least one (1) copy of the approved plans, along with the Approval Letter and Conditions of Approval, shall be available for review at the job site at all times.

10. Special Inspector/ Inspections, Independent Technical Review, Project Coordination and Management

a. Prior to issuance of a demolition permit

The project applicant may be required to pay for on-call special inspector(s)/inspections as needed during the times of extensive or specialized plancheck review, or construction. The project applicant may also be required to cover the full costs of independent technical and other types of peer review, monitoring and inspection, including without limitation, third party plan check fees. The project applicant shall establish a deposit with the Building Services Division, as directed by the Building Official, Director of City Planning or designee.

11. Fire Services

a. Prior to issuance of water supply connection

The applicant shall submit approved building plans for project-specific needs related to fire protection including, but not limited to automatic extinguishing systems, water supply improvements and hydrants, fire department access, and vegetation management for preventing fires and soil erosion.

12. Underground Utilities

a. Prior to issuance of a building permit

The project applicant shall submit plans for review and approval by the Building Services Division and the Public Works Agency, and other relevant agencies as appropriate, that show all new electric and telephone facilities; fire alarm conduits; street light wiring; and other wiring, conduits, and similar facilities placed underground. The new facilities shall be placed underground along the project applicant's street frontage and from the project applicant's structures to the point of service. The plans shall show all electric, telephone, water service, fire water service, cable, and fire alarm facilities installed in accordance with standard specifications of the serving utilities.

13. Improvements in the Public Right-of-Way (General)

a. Approved prior to the issuance of a P-job or building permit

- i. The project applicant shall submit Public Improvement Plans for adjacent public rights-of-way (ROW) showing all proposed improvements and compliance with Conditions and City requirements including but not limited to curbs, gutters, sewer laterals, storm drains, street trees, paving details, locations of transformers and other above ground utility structures, the design specifications locations of facilities required by the East Bay Municipal Utility District

(EBMUD), street lighting, on-street parking and accessibility improvements compliant with applicable standards and any other improvements or requirements for the project as provided for in this approval. Encroachment permits shall be obtained as necessary for any applicable improvements, located with public ROW.

- ii. The project applicant shall submit public improvement plans that that comply City specifications. Review and confirmation of the street trees by the City's Parks and Recreation Division is required as part of this condition.
- iii. Planning and Zoning and the Public Works Agency will review and approve designs and specifications for the improvements. Improvements shall be completed prior to the issuance of certificate of occupancy.
- iv. Oakland Fire Department will review and approve fire crew and apparatus access, water supply availability and distribution to current codes and standards.

14. Payment for Public Improvements

a. Prior to issuance of a certificate of occupancy.

The project applicant shall pay for and install public improvements made necessary by the project.

15. Compliance Plan

a. Prior to issuance of a demolition, grading, or building permit

The project applicant shall submit to Planning and Zoning and the Building Services Division a **Conditions** compliance plan that describes each condition of approval, the City agency or division responsible for review, and how/when the project applicant has met or intends to meet the Conditions. The compliance plan shall be organized per step in the plancheck/construction process unless another format is acceptable to Planning and Zoning and the Building Services Division. The project applicant shall update the compliance plan and provide it with each item submittal.

AESTHETICS

16. Lighting Plan

a. Prior to the issuance of an electrical or building permit

The project applicant will submit a plan for exterior lighting that is visible from the exterior of the building for review and approval by the City Electrical Services Division and Planning and Zoning. The plan shall include the design and location and specifications of all lighting fixtures or standards. The plan shall indicate lighting fixtures that are adequately shielded to a point below the light bulb and reflector and that prevent unnecessary glare onto adjacent properties. All lighting shall be architecturally integrated into the site.

17. Exterior Materials Details

a. Prior to issuance of building permit.

The applicant shall submit for review and approval of the Planning and Zoning Division, plans that show the details of the exterior of each building including colors. These details shall include the labeling of all the materials and treatments proposed for the exterior of each building. The applicant shall also provide a material and color board for review and approval of the Planning

and Zoning Division. All materials and treatments shall be of high quality that provides the building with significant visual interest. Windows shall be articulated to provide a three inch minimum recess from the exterior building façade in order to create a sufficient shadow line. The final window details shall be submitted for review and approval.

In addition, the ground floor portions of the building (two story base) shall contain either a smooth finish cement plaster that contains no visual expansion joints, or a high quality stone or ceramic tile base that shall be approved by the Zoning Manager.

18. Landscape and Irrigation Plan

a. Prior to issuance of building permit.

The applicant shall submit for review and approval by the Planning and Zoning Division, a detailed landscape and irrigation plan prepared by a licensed landscape architect or other qualified person. Such plan shall show all landscaping on the site maintained by an automatic irrigation system or other comparable system. The landscaping plan shall include a detailed planting schedule showing sizes, quantities, and specific common and botanical names of plant species. Fire and drought-resistant species are encouraged.

The applicant shall provide one street tree (24 inch box) per 25 feet of linear frontage of the project site for review and approval of species, size at time of planting, and placement in the right-of-way, subject to review and approval by the PWA Tree Division and Building Services.

19. Landscaping Maintenance

a. Ongoing.

All landscaping areas and related irrigation shown on the approved plans shall be permanently maintained in neat and safe conditions, and all plants shall be maintained in good growing condition and, whenever necessary, replaced with new plant materials to ensure continued compliance with all applicable landscaping requirements. All paving or other impervious surfaces shall occur only on approved areas.

AIR QUALITY

20. Asbestos Removal in Structures

a. Prior to issuance of a demolition permit

If asbestos is found to be present in building materials to be removed, demolition and disposal is required to be conducted in accordance with procedures specified by Regulation 11, Rule 2 (Asbestos Demolition, Renovation and Manufacturing) of Bay Area Air Quality Management District (BAAQMD) regulations.

21. Dust Control

a. Prior to issuance of a demolition, grading or building permit

During construction, the project applicant shall require the construction contractor to implement the following measures required as part of Bay Area Air Quality Management District's (BAAQMD) basic and enhanced dust control procedures required for construction sites. These include:

BASIC (Applies to ALL construction sites)

- i. Water all active construction areas at least twice daily. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible.
- ii. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).
- iii. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- iv. Sweep daily (with water sweepers using reclaimed water if possible) all paved access roads, parking areas and staging areas at construction sites.
- v. Sweep streets (with water sweepers using reclaimed water if possible) at the end of each day if visible soil material is carried onto adjacent paved roads.

22. Construction Emissions

a. Prior to issuance of a demolition, grading or building permit

To minimize construction equipment emissions during construction, the project applicant shall require the construction contractor to:

- i. Demonstrate compliance with Bay Area Air Quality Management District (BAAQMD) Regulation 2, Rule 1 (General Requirements) for all portable construction equipment subject to that rule. BAAQMD Regulation 2, Rule 1, requires an authority to construct and permit to operate certain types of portable equipment used for construction purposes (e.g., gasoline or diesel-powered engines used in conjunction with power generation, pumps, compressors, and cranes) unless such equipment complies with all applicable requirements of the "CAPCOA" Portable Equipment Registration Rule" or with all applicable requirements of the Statewide Portable Equipment Registration Program. This exemption is provided in BAAQMD Rule 2-1-105.
- ii. Perform low- NOx tune-ups on all diesel-powered construction equipment greater than 50 horsepower (no more than 30 days prior to the start of use of that equipment). Periodic tune-ups (every 90 days) should be performed for such equipment used continuously during the construction period.

TREE PERMITS

23. Tree Removal Permit

a. Prior to issuance of a demolition, grading, or building permit

Prior to receiving building permits, the project applicant must secure a tree removal permit, and abide by the conditions of that permit, prior to removal of any trees located on the project site or in the public right-of-way adjacent to the project.

24. Tree Removal During Breeding Season

a. Prior to issuance of a tree removal permit

To the extent feasible, removal of the trees and other vegetation suitable for nesting of raptors shall not occur during the breeding season of March 15 and August 15. If tree removal must occur during the breeding season, all sites shall be surveyed by a qualified biologist to verify the presence or absence of nesting birds or raptors. If the survey indicates that potential presences of nesting birds or raptors, the results would be coordinated with the California Department of Fish and Game (CDFG) and suitable avoidance measures would be developed and implemented. Construction shall observe the CDFG avoidance guidelines which are a minimum 500-foot buffer zone surrounding active raptor nests and a 250-foot buffer zone surrounding nests of other birds. Buffer zones shall remain until young have fledged.

25. Tree Protection During Construction

a. Prior to issuance of a demolition, grading, or building permit

Adequate protection shall be provided during the construction period for any trees which are to remain standing. Measures deemed necessary by the Tree Services Division in consideration of the size, species, condition and location of the trees to remain may include any of the following:

- i. Before the start of any clearing, excavation, construction or other work on the site, every protected tree deemed to be potentially endangered by said site work shall be securely fenced off at a distance from the base of the tree to be determined by the City Tree Reviewer. Such fences shall remain in place for duration of all such work. All trees to be removed shall be clearly marked. A scheme shall be established for the removal and disposal of logs, brush, earth and other debris which will avoid injury to any protected tree.
- ii. Where proposed development or other site work is to encroach upon the protected perimeter of any protected tree, special measures shall be incorporated to allow the roots to breathe and obtain water and nutrients. Any excavation, cutting, filing, or compaction of the existing ground surface within the protected perimeter shall be minimized. No change in existing ground level shall occur within a distance to be determined by the City Tree Reviewer from the base of any protected tree at any time. No burning or use of equipment with an open flame shall occur near or within the protected perimeter of any protected tree.

- iii. No storage or dumping of oil, gas, chemicals, or other substances that may be harmful to trees shall occur within the distance to be determined by the Tree Reviewer from the base of any protected trees, or any other location on the site from which such substances might enter the protected perimeter. No heavy construction equipment or construction materials shall be operated or stored within a distance from the base of any protected trees to be determined by the tree reviewer. Wires, ropes, or other devices shall not be attached to any protected tree, except as needed for support of the tree. No sign, other than a tag showing the botanical classification, shall be attached to any protected tree.
- iv. Periodically during construction, the leaves of protected trees shall be thoroughly sprayed with water to prevent buildup of dust and other pollution that would inhibit leaf transpiration.
- y. If any damage to a protected tree should occur during or as a result of work on the site, the project applicant shall immediately notify the Public Works Agency of such damage. If, in the professional opinion of the Tree Reviewer, such tree cannot be preserved in a healthy state, the Tree Reviewer shall require replacement of any tree removed with another tree or trees on the same site deemed adequate by the Tree Reviewer to compensate for the loss of the tree that is removed.
- vi. All debris created as a result of any tree removal work shall be removed by the project applicant from the property within two weeks of debris creation, and such debris shall be properly disposed of by the project applicant in accordance with all applicable laws, ordinances, and regulations.

CULTURAL RESOURCES

26. Archaeological Resources

a. Ongoing throughout demolition, grading, and/or construction

Pursuant to CEQA Guidelines 15064.5 (f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore, in the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist or paleontologist to assess the significance of the find. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified archaeologist would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Oakland. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and a report prepared by the qualified archaeologist according to current professional standards.

In considering any suggested measure proposed by the consulting archaeologist in order to mitigate impacts to historical resources or unique archaeological resources, the project applicant shall determine whether avoidance is necessary and feasible in light of factors such as the nature

of the find, project design, costs, and other considerations. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while measure for historical resources or unique archaeological resources is carried out.

Should an archaeological artifact or feature be discovered on-site during project construction, all activities within a 50-foot radius of the find would be halted until the findings can be fully investigated by a qualified archaeologist to evaluate the find and assess the significance of the find according to the CEQA definition of a historical or unique archaeological resource. If the deposit is determined to be significant, the project applicant and the qualified archaeologist shall meet to determine the appropriate avoidance measures or other appropriate measure, subject to approval by the City of Oakland, which shall assure implementation of appropriate measure measures recommended by the archaeologist. Should archaeologically-significant materials be recovered, the qualified archaeologist would recommend appropriate analysis and treatment, and would prepare a report on the findings for submittal to the Northwest Information Center.

27. Human Remains

a. Ongoing throughout demolition, grading, and/or construction

In the event that human skeletal remains are uncovered at the project site during construction or ground-breaking activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.

28. Paleontological Resources

a. Ongoing throughout demolition, grading, and/or construction

In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards (SVP 1995,1996)). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find under the criteria set forth in Section 15064.5 of the CEQA Guidelines. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.

GEOLOGY, SOILS AND SEISMICTITY

29. Geotechnical Report

a. Prior to issuance of a demolition, grading, or building permit

A site-specific design level geotechnical investigation for each construction site within the project area shall be required as part of this project. Specifically:

- i. Each investigation shall include an analysis of expected ground motions at the site from known active faults. The analyses shall be in accordance with applicable City ordinances and policies, and consistent with the most recent version of the California Building Code, which requires structural design that can accommodate ground accelerations expected from known active faults.
- ii. The investigations shall determine final design parameters for the walls, foundations, foundation slabs, and surrounding related improvements (utilities, roadways, parking lots, and sidewalks).
- iii. The investigations shall be reviewed and approved by a registered geotechnical engineer. All recommendations by the project engineer, geotechnical engineer, will be included in the final design, as approved by the City of Oakland.
- iv. Recommendations that are applicable to foundation design, earthwork, and site preparation that were prepared prior to or during the project's design phase, shall be incorporated in the project.
- v. Final seismic considerations for the site shall be submitted to and approved by the City of Oakland Building Services Division prior to commencement of the project.

HAZARDS AND HAZARDOUS MATERIALS

30. Phase I and/or Phase II Reports

a. Prior to issuance of a demolition, grading, or building permit

Prior to issuance of demolition, grading, or building permits the project applicant shall submit a Phase I environmental Site assessment report, and a Phase II report if warranted by the Phase I for the project site. The reports shall make recommendations for remedial action, if appropriate, and should be signed by a Registered Environmental Assessor, Professional Geologist, or Professional Engineer.

31. Lead-Based Paint/Coatings, Asbestos, or PCB Occurrence Assessment

a. Prior to issuance of any demolition, grading or building permit

The project applicant shall submit a comprehensive assessment report, signed by a qualified environmental professional, documenting the presence or lack thereof of asbestos-containing materials (ACM), lead-based paint, and any other building materials or stored materials classified as hazardous waste by State or federal law.

32. Environmental Site Assessment Reports Remediation

a. Prior to issuance of a demolition, grading, or building permit

If the environmental site assessment reports recommend remedial action, the project applicant shall:

- i. Consult with the appropriate local, State, and federal environmental regulatory agencies to ensure sufficient minimization of risk to human health and environmental resources, both during and after construction, posed by soil contamination, groundwater contamination, or other surface hazards including, but not limited to, underground storage tanks, fuel distribution lines, waste pits and sumps.
- ii. Obtain and submit written evidence of approval for any remedial action if required by a local, State, or federal environmental regulatory agency.
- iii. Submit a copy of all applicable documentation required by local, State, and federal environmental regulatory agencies, including but not limited to: permit applications, Phase I and II environmental site assessments, human health and ecological risk assessments, remedial action plans, risk management plans, soil management plans, and groundwater management plans.

33. Lead-based Paint Remediation

a. Prior to issuance of any demolition, grading or building permit

If lead-based paint is present, the project applicant shall submit specifications signed by a certified Lead Supervisor, Project Monitor, or Project Designer for the stabilization and/or removal of the identified lead paint in accordance with all applicable laws and regulations, including but not necessarily limited to: Cal/OSHA's Construction Lead Standard, 8 CCR1532.1 and DHS regulation 17 CCR Sections 35001 through 36100.

34. Asbestos Remediation

a. Prior to issuance of any demolition, grading or building permit

If asbestos-containing materials (ACM) is present, the project applicant shall submit specifications signed by a certified asbestos consultant for the removal, encapsulation, or enclosure of the identified ACM in accordance with all applicable laws and regulations, including but not necessarily limited to: California Code of Regulations, Title 8; Business and Professions Code; Division 3; California Health & Safety Code 25915-25919.7; and Bay Area Air Quality Management District, Regulation 11, Rule 2.

35. Other Materials Classified as Hazardous Waste

a. Prior to issuance of any demolition, grading or building permit

If other building materials or stored materials classified as hazardous waste by State or federal law is present, the project applicant shall submit written confirmation that all State and federal laws and regulations shall be followed when profiling, handling, treating, transporting and/or disposing of such materials.

36. Health and Safety Plan per Assessment**a. Prior to issuance of any demolition, grading or building permit**

If the required lead-based paint/coatings, asbestos, or PCB assessment finds presence of lead-based paint, asbestos, and/or PCBs, the project applicant shall create and implement a health and safety plan to protect workers from risks associated with hazardous materials during demolition, renovation of affected structures, and transport and disposal.

37. Hazards Best Management Practices**a. Prior to commencement of demolition, grading, or construction**

The project applicant and construction contractor shall ensure that construction best management practices are implemented as part of construction to minimize the potential negative effects to groundwater and soils. These shall include the following:

- i. Follow manufacture's recommendations on use, storage, and disposal of chemical products used in construction;
- ii. Avoid overtopping construction equipment fuel gas tanks;
- iii. During routine maintenance of construction equipment, properly contain and remove grease and oils;
- iv. Properly dispose of discarded containers of fuels and other chemicals.
- v. Ensure that construction would not have a significant impact on the environment or pose a substantial health risk to construction workers and the occupants of the proposed development. Soil sampling and chemical analyses of samples shall be performed to determine the extent of potential contamination beneath all UST's, elevator shafts, clarifiers, and subsurface hydraulic lifts when on-site demolition, or construction activities would potentially affect a particular development or building. The applicant is responsible to avoid, eliminate delays with the unexpected discovery of contaminated soils with hazardous materials

HYDROLOGY**EROSION & SEDIMENTATION CONTROL DURING CONSTRUCTION****38. Erosion and Sedimentation Control Plan [when grading permit required]****a. Prior to any grading activities**

The project applicant shall obtain approval from the Building Services Division of a grading permit if required by the Oakland Grading Regulations pursuant to Section 15.04.780 of the Oakland Municipal Code. The grading permit application shall include an erosion and sedimentation control plan. The erosion and sedimentation control plan shall include all necessary measures to be taken to prevent excessive stormwater runoff or carrying by stormwater runoff of solid materials on to lands of adjacent property owners, public streets, or to creeks as a result of conditions created by grading operations. The plan shall include, but not be limited to, such measures as short-term erosion control planting, waterproof slope covering, check dams, interceptor ditches, benches, storm drains, dissipation structures, diversion dikes, retarding berms and barriers, devices to trap, store and filter out sediment, and stormwater retention basins. Off-

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site work by the project applicant may be necessary. The project applicant shall provide any obtain off-site permission or easements necessary for off-site work. to present written proof thereof to the Public Works Agency. There shall be a clear notation that the plan is subject to changes as changing conditions occur. Calculations of anticipated stormwater runoff and sediment volumes shall be included, if required by the Director of Development or designee. The plan shall specify that, after construction is complete, the project applicant shall ensure that the storm drain system shall be inspected and that the project applicant shall clear the system of any debris or sediment.

b. *Ongoing throughout grading and construction activities*

The project applicant shall implement the approved erosion and sedimentation plan. No grading shall occur during the wet weather season (October 15 through April 15) unless specifically authorized in writing by the Building Services Division.

POST-CONSTRUCTION STORMWATER MANAGEMENT

Requirements in the following table apply to projects that create or replace 10,000 square feet or more of impervious surface.

39. Post-Construction Stormwater Pollution Management Plan

a. *Prior to issuance of building permit (or other construction-related permit)*

The applicant shall comply with the requirements of Provision C.3 of the National Pollutant Discharge Elimination System (NPDES) permit issued to the Alameda Countywide Clean Water Program. The applicant shall submit with the application for a building permit (or other construction-related permit) a completed Stormwater Supplemental Form for the Building Services Division. The project drawings submitted for the building permit (or other construction-related permit) shall contain a stormwater pollution management plan, for review and approval by the City, to limit the discharge of pollutants in stormwater after construction of the project to the maximum extent practicable. The post-construction stormwater pollution management plan shall include and identify the following:

- All proposed impervious surface on the site;
- Anticipated directional flows of on-site stormwater runoff;
- Site design measures to reduce the amount of impervious surface area and directly connected impervious surfaces;
- Source control measures to limit the potential for stormwater pollution; and
- Stormwater treatment measures to remove pollutants from stormwater runoff.

The following additional information shall be submitted with the post-construction stormwater pollution management plan:

- Detailed hydraulic sizing calculations for each stormwater treatment measure proposed; and
- Pollutant removal information demonstrating that any proposed manufactured/mechanical (i.e., non-landscape-based) stormwater treatment measure, when not used in combination with a landscape-based treatment measure, is capable of removing the range of pollutants typically removed by landscape-based treatment measures.

All proposed stormwater treatment measures shall incorporate appropriate planting materials for stormwater treatment (for landscape-based treatment measures) and shall be designed with considerations for vector/mosquito control. Proposed planting materials for all proposed landscape-based stormwater treatment measures shall be included on the landscape and irrigation plan for the project. The applicant is not required to include on-site stormwater treatment measures in the post-construction stormwater pollution management plan if he or she secures approval from the Planning and Zoning Division of a proposal that demonstrates compliance with the requirements of the City's Alternative Compliance Program.

Prior to final permit inspection

The applicant shall implement the approved stormwater pollution management plan.

40. Maintenance Agreement for Stormwater Treatment Measures

a. Prior to final zoning inspection

For projects incorporating stormwater treatment measures, the applicant shall enter into the "Standard City of Oakland Stormwater Treatment Measures Maintenance Agreement," in accordance with Provision C.3.e of the NPDES permit, which provides, in part, for the following:

- The applicant accepting responsibility for the adequate installation/construction, operation, maintenance, inspection, and reporting of any on-site stormwater treatment measures being incorporated into the project until the responsibility is legally transferred to another entity; and
- Legal access to the on-site stormwater treatment measures for representatives of the City, the local vector control district, and staff of the Regional Water Quality Control Board, San Francisco Region, for the purpose of verifying the implementation, operation, and maintenance of the on-site stormwater treatment measures and to take corrective action if necessary. The agreement shall be recorded at the County Recorder's Office at the applicant's expense.

41. Erosion, and Sedimentation, and Debris Control Measures

a. Prior to issuance of demolition, grading, or construction-related permit

The project applicant shall submit an erosion and sedimentation control plan for review and approval by the City. All work shall incorporate apply all applicable the "Best Management Practices (BMPsS) for the construction industry, and as outlined in the Alameda Clean Water Program pamphlets, including BMP's for dust, erosion and sedimentation abatement per Chapter Section 15.04 of the Oakland Municipal Code. The measures shall include, but are not limited to, the following:

BASIC (Applies to ALL construction sites)

- i. To ensure that sediment does not flow into the creek and/or storm drains, On sloped properties, the downhill end of the construction area must be protected with silt the project applicant shall install silt fencing (such as sandbags, filter fabric, silt curtains, etc.) and hay bales oriented parallel to the contours of the slope (at a constant elevation) to prevent erosion into the creek.
- ii. In accordance with an approved erosion control plan, the project applicant shall implement mechanical and vegetative measures to reduce erosion and sedimentation,

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- including appropriate seasonal maintenance. One hundred (100) percent degradable erosion control fabric shall be installed on all graded slopes to protect and stabilize the slopes during construction and before permanent vegetation gets established. All graded areas shall be temporarily protected from erosion by seeding with fast growing annual species. All bare slopes must be covered with staked tarps when rain is occurring or is expected.
- iii. Minimize the removal of natural vegetation or ground cover from the site in order to minimize the potential for erosion and sedimentation problems. Maximize the replanting of the area with native vegetation as soon as possible.
 - iv. All work in or near creek channels must be performed with hand tools and by a minimum number of people. Immediately upon completion of this work, soil must be repacked and native vegetation planted.
 - v. Install filter materials (such as sandbags, filter fabric, etc.) at the storm drain inlets nearest to the creek side of the project site prior to the start of the wet weather season (October 15); site dewatering activities; street washing activities; saw cutting asphalt or concrete; and in order to retain any debris flowing into the City storm drain system. Filter materials shall be maintained and/or replaced as necessary to ensure effectiveness and prevent street flooding.
 - vi. Ensure that concrete/granite supply trucks or concrete/plaster finishing operations do not discharge wash water into the creek, street gutters, or storm drains.
 - vii. Direct and locate tool and equipment cleaning so that wash water does not discharge into the creek.
 - viii. Create a contained and covered area on the site for storage of bags of cement, paints, flammables, oils, fertilizers, pesticides, or any other materials used on the project site that have the potential for being discharged to the storm drain system by the wind or in the event of a material spill. No hazardous waste material shall be stored on site.
 - ix. Gather all construction debris on a regular basis and place them in a dumpster or other container which is emptied or removed on a weekly basis. When appropriate, use tarps on the ground to collect fallen debris or splatters that could contribute to stormwater pollution.
 - x. Remove all dirt, gravel, refuse, and green waste from the sidewalk, street pavement, and storm drain system adjoining the project site. During wet weather, avoid driving vehicles off paved areas and other outdoor work.
 - xi. Broom sweep the street pavement adjoining the project site on a daily basis. Caked-on mud or dirt shall be scraped from these areas before sweeping. At the end of each workday, the entire site must be cleaned and secured against potential erosion, dumping, or discharge to the creek.
 - xii. All erosion and sedimentation control measures implemented during construction activities, as well as construction site and materials management shall be in strict accordance with the control standards listed in the latest edition of the Erosion and Sediment Control Field Manual published by the Regional Water Quality Board (RWQB).

NOISE

42. Days/Hours of Construction Operation

a. Ongoing throughout demolition, grading, and/or construction

The project applicant shall require construction contractors to limit standard construction activities as required by the City Building Department.

- i. Construction activities (see below) are limited to between 7:00 a.m. AM and 7:00 p.m. PM Monday through Friday for all other cases, with pPile driving and/or other extreme noise generating activities greater than 90 dBA limited to between 8:00 a.m. and 4:00 p.m. Monday through Friday.
- ii. Any construction activity proposed to occur outside of the standard hours of 7:00 am to 7:00 pm Monday through Friday for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of resident's preferences for whether the activity is acceptable if the overall duration of construction is shortened and such construction activities shall only be allowed with the prior written authorization of the Building Services Division.
- iii. Construction activity shall not occur on Saturdays, with the following possible exceptions:
 - I. Prior to the building being enclosed, requests for Saturday construction for special activities (such as concrete pouring which may require more continuous amounts of time), shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of resident's preferences for whether the activity is acceptable if the overall duration of construction is shortened. Such construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division.
 - II. After the building is enclosed, requests for Saturday construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division, and only then within the interior of the building with the doors and windows closed.
- iv. No extreme noise generating activities (greater than 90 dBA) shall be allowed on Saturdays, with no exceptions.
- v. No construction activity shall take place on Sundays or Federal holidays.
- vi. Construction activities include but are not limited to: truck idling, moving equipment (including trucks, elevators, etc) or materials, deliveries, and construction meetings held on-site in a non-enclosed area.

43. Noise Control

a. Ongoing throughout demolition, grading, and/or construction

To reduce noise impacts due to construction, the project applicant shall require construction contractors to implement a site-specific noise reduction program, subject to city review and approval, which includes the following measures:

- i. Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible).

- ii. Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used where feasible, and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever feasible.
- iii. Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or other measures to the extent feasible.
- iv. If feasible, the noisiest phases of construction (such as pile driving) shall be limited to less than 10 days at a time.

44. Pile Driving and Other Extreme Noise Generators

a. Ongoing throughout demolition, grading, and/or construction

To further mitigate potential pier drilling, pile driving and/or other extreme noise generating construction impacts greater than 90dBA, a set of site-specific noise attenuation measures shall be completed under the supervision of a qualified acoustical consultant. Prior to commencing construction, a plan for such measures shall be submitted for review and approval by the City to ensure that maximum feasible noise attenuation will be achieved. This plan shall be based on the final design of the project. A third-party peer review, paid for by the project applicant, shall be required to assist the City in evaluating the feasibility and effectiveness of the noise reduction plan submitted by the project applicant. A special inspection deposit is required to ensure compliance with the noise reduction plan. The amount of the deposit shall be determined by the Building Official, and the deposit shall be submitted by the project applicant concurrent with submittal of the noise reduction plan. The noise reduction plan shall include, but not be limited to, an evaluation of the following measures. These attenuation measures shall include as many of the following control strategies as feasible:

- i. Erect temporary plywood noise barriers around the construction site, particularly along on sites adjacent to residential buildings;
- ii. Implement “quiet” pile driving technology (such as pre-drilling of piles, the use of more than one pile driver to shorten the total pile driving duration), where feasible, in consideration of geotechnical and structural requirements and conditions;
- iii. Utilize noise control blankets on the building structure as the building is erected to reduce noise emission from the site;
- iv. Evaluate the feasibility of noise control at the receivers by temporarily improving the noise reduction capability of adjacent buildings by the use of sound blankets for example; and

- v. Monitor the effectiveness of noise attenuation measures by taking noise measurements.

45. Noise Complaint Procedures

a. Ongoing throughout demolition, grading, and/or construction

Prior to the issuance of each building permit, along with the submission of construction documents, the project applicant shall submit to the City Building Department a list of measures to respond to and track complaints pertaining to construction noise. These measures shall include:

- i. A procedure and phone numbers for notifying the City Building Services Division staff and Oakland Police Department; (during regular construction hours and off-hours);
- ii. A sign posted on-site pertaining with permitted construction days and hours and complaint procedures and who to notify in the event of a problem. The sign shall also include a listing of both the City and construction contractor's telephone numbers (during regular construction hours and off-hours);
- iii. The designation of an on-site construction complaint and enforcement manager for the project;
- iv. Notification of neighbors and occupants within 300 feet of the project construction area at least 30 days in advance of pile-driving activities about the estimated duration of the activity; and
- v. A preconstruction meeting shall be held with the job inspectors and the general contractor/on-site project manager to confirm that noise measures and practices (including construction hours, neighborhood notification, posted signs, etc.) are completed.

46. Interior Noise

a. Prior to issuance of a building permit

If necessary to comply with the interior noise requirements of the City of Oakland's General Plan Noise Element and achieve an acceptable interior noise level, noise reduction in the form of sound-rated assemblies (i.e., windows, exterior doors, and walls) shall be incorporated into project building design. Final recommendations for sound-rated assemblies will depend on the specific building designs and layout of buildings on the site and shall be determined during the design phase.

TRAFFIC / TRANSPORTATION

47. Construction Traffic and Parking

a. Prior to the issuance of a demolition, grading or building permit

The project applicant and construction contractor shall meet with the Transportation Services Division of the Public Works and other appropriate City of Oakland agencies to determine traffic

management strategies to reduce, to the maximum extent feasible, traffic congestion and the effects of parking demand by construction workers during construction of this project and other nearby projects that could be simultaneously under construction. The project applicant shall develop a construction management plan for review and approval by the City Transportation Services Division. The plan shall include at least the following items and requirements:

- i. A set of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak traffic hours, detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes.
- ii. Notification procedures for adjacent property owners and public safety personnel regarding when major deliveries, detours, and lane closures will occur.
- iii. Location of construction staging areas for materials, equipment, and vehicles (must be located on the project site).
- iv. A process for responding to, and tracking, complaints pertaining to construction activity, including identification of an onsite complaint manager. The manager shall determine the cause of the complaints and shall take prompt action to correct the problem. Planning and Zoning shall be informed who the Manager is prior to the issuance of the first permit issued by Building Services.
- v. Provision for accommodation of pedestrian flow.
- vi. Provision for parking management and spaces for all construction workers to ensure that construction workers do not park in on-street spaces.

UTILITIES AND SERVICES SYSTEMS

48. Reduced Water Use

a. Prior to issuance of a building permit

As feasible and applicable, the project applicant shall implement the following water-efficient equipment and devices into building design and project plans, consistent with the Landscape Water Conservation section of the City of Oakland Municipal Code (Chapter 7, Article 10): low-, ultra-low, and dual flush flow toilets and showerheads; water efficient irrigation systems that include drip irrigation and efficient sprinkler heads; evapotranspiration (ET) irrigation controllers; drought-resistant and native plants for landscaping; and minimization of turf areas.

49. Waste Reduction and Recycling

The project applicant will submit a Construction & Demolition Waste Reduction and Recycling Plan (WRRP) and an Operational Diversion Plan (ODP) for review and approval by the Public Works Agency.

a. Prior to issuance of demolition, grading, or building permit

OMC 15.34 outlines requirements for reducing waste and optimizing construction and demolition (C&D) recycling. Affected projects include all new construction, renovations/alterations/modifications with construction values of \$50,000 or more (except R-3), and all demolition (including soft demo). The WRRP must specify the methods by which the development will divert C&D debris waste generated by the proposed project from landfill disposal in accordance with current City requirements. Current standards, FAQs, and forms are available at www.oaklandpw.com/Page39.aspx or in the Green Building Resource Center. After approval of the plan, the project applicant will implement the plan.

b. Ongoing

The ODP will identify how the project complies with the Recycling Space Allocation Ordinance, OMC 17.118, including capacity calculations, and specify the methods by which the development will meet the current diversion of solid waste generated by operation of the proposed project from landfill disposal in accordance with current City requirements. The proposed program shall be implemented and maintained for the duration of the proposed activity or facility. Changes to the plan may be re-submitted to the Environmental Services Division of Public Works for review and approval. Any incentive programs shall remain fully operational as long as residents and businesses exist at the project site.

50. Stormwater and Sewer

a. Prior to completing the final design for the project's sewer service

Confirmation of the capacity of the City's surrounding stormwater and sanitary sewer system and state of repair shall be completed by a qualified civil engineer with funding from the project applicant. The project applicant shall be required to pay mitigation additional fees to improve stormwater and sanitary sewer infrastructure if required by the City. Improvements to the existing sanitary sewer collection system shall specifically include, but are not limited to, mechanisms to control or minimize increases in infiltration/inflow associated with the proposed project. Additionally, the project applicant shall be responsible for payment of the required installation or hook-up fees to the affected service providers.

SPECIFIC PROJECT CONDITIONS

51. Meter Shielding

a. Prior to issuance of building permits.

The applicant shall submit for review and approval by the Planning and Zoning Division, plans showing the location of any and all utility meters, transformers, and the like located within a box set within the building, located on a non-street facing elevation, or screened from view from any public right of way.

52. Tentative Parcel Map

a. Prior to issuance of a building permit

A Parcel Map shall be filed with the City Engineer within two (2) years from the date of approval of the Tentative Parcel Map, or within such additional time as may be granted by the Advisory Agency. Failure to file a Parcel Map within these time limits shall nullify the previous approval or conditional approval of the Tentative Parcel Map.

53. Compliance with Policy 3.7 of the Historic Preservation Element (Property Relocation Rather than Demolition)

a. Prior to issuance of a demolition permit

The project applicant shall make a good faith effort to relocate the building located at **5248 Telegraph Avenue, and 5244 Telegraph Avenue** to a site acceptable to the City. Good faith efforts include, at a minimum, the following:

- i. Advertising the availability of the building by: (1) posting of large visible signs (such as banners, at a minimum of 3'x6' size or larger) at the site; (2) placement of advertisements in Bay Area news media acceptable to the City; and (3) contacting neighborhood associations and for-profit and not-for-profit housing and preservation organizations;
- ii. Maintaining a log of all the good faith efforts and submitting that along with photos of the subject building showing the large signs (banners) to the Planning and Zoning Division;
- iii. Maintaining the signs and advertising in place for a minimum of 180 days; and
- iv. Making the building available at no or nominal cost (the amount to be reviewed by the Oakland Cultural Heritage Survey) until removal is necessary for construction of a replacement project, but in no case for less than a period of 180 days after such advertisement.

54. Building Modifications

a. ~~Prior to issuance of a building permit~~

~~The proposed building shall be revised so that the project meets all the C-30 requirements for rear yard setback and the "height reduction plane" from the rear yard setback line.~~

APPROVED BY: City Planning Commission: _____ (date) _____ (vote)
City Council: _____ (date) _____ (vote)

Exhibit B

[October 16, 2007 City Council Agenda Report]

CITY OF OAKLAND

AGENDA REPORT

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community & Economic Development Agency
DATE: October 16, 2007

RE: **A Public Hearing and Adoption of a Resolution Denying the Appeal and Upholding the Planning Commission Approval for construction of 33 dwelling units over ground floor commercial at 5248 Telegraph Avenue (Case File No. CDV06-476 & TPM-9212)**

SUMMARY

On July 18, 2007, the Planning Commission approved a Design Review, Conditional Use permit, Vesting Tentative Parcel Map and Minor Variance to construct a mixed use development containing 33 dwelling units over ground floor commercial (CDV06-476)(Project).

On July 27, 2007, Bob Brokl, representing Standing Together for Accountable Neighborhood Development (STAND), filed an appeal of the Planning Commission's Approval of the Project to the City Council (Attachment A).

On July 30, 2007, Stuart Flashman, representing Rockridge Community Planning Council (RCPC), filed an appeal of the Planning Commission's Approval of the Project to the City Council (Attachment B).

The STAND appellant is arguing that the project does not qualify for a Categorical Exemption under CEQA because of required variances, potential cumulative impacts, and potential impacts to views. The appeal also argues against the use of a "Best Fit" zone for the property (C-45), and that the project is not consistent with the General Plan. In addition, the argument is made that there is no guarantee that the project will be developed or retained as co-housing.

The RCPC appellant is arguing specifically against the use of a "Best Fit" zone for the property (C-45) and that the proposed project is not consistent with the character of the neighborhood.

The arguments raised by the appellant are summarized below in the Key Issues portion of this report along with staff's response to each argument. For the reasons stated in this report, and elsewhere in the record, staff recommends the City Council adopt the attached Resolution denying the appeal, thereby upholding the Planning Commission's approval of the project.

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FISCAL IMPACT

The project involves a private development and does not request or require public funds and has no direct fiscal impact on the City of Oakland. If constructed, the project would provide a positive fiscal impact through increased property taxes, utility user taxes and business license taxes, while at the same time increasing the level of municipal services that must be provided.

BACKGROUND

PROJECT DESCRIPTION

The proposal is to construct a new five-story, 59 foot tall (55 feet to the midpoint of the gable), 33 unit co-housing development. The project would have frontages on both Claremont and Telegraph Avenues, which would contain ground floor commercial spaces. The proposed parking garage will be located behind the ground floor commercial spaces and be accessed from Claremont Avenue. The proposed development will replace four existing structures, which are proposed for demolition (or relocation if possible). Three of the four existing structures are Potentially Designated Historic Structures with a rating of C2+ (the two Victorian structures on Telegraph) and C3 (Kingfish), but not considered to be historic resources under CEQA. The applicant had requested a “Best Fit” Zone of C-45 pursuant to Planning Code Section 17.01.100. Given the current re-zoning process for the Temescal area the Director of Development opted to grant a “Best Fit” zone of C-30 rather than the requested C-45 because of the current direction of that rezoning process. At the public hearing on the project on July 18, 2007, the Planning Commission overruled the C-30 “Best Fit” Zone determination and granted the Best Fit Zone of C-45 as requested by the applicant.

PROJECT LOCATION AND ZONING

The subject site is an 11,777 square foot site containing frontages on the east side of Telegraph Avenue and the west side of Claremont Avenue. Telegraph Avenue is one of the widest streets in Oakland, measuring approximately 100 feet in width. Claremont Avenue is wider than average, with a width of 66 feet. As stated above, the development site contains four existing structures, three of which are Potentially Designated Historic Structures with a rating of C2+ and C3, but these are not considered historic resources under CEQA. The surrounding uses include auto related commercial uses, civic buildings, and high and low density residential uses.

The subject property is located within the C-28, Commercial Shopping District Zone, which is intended to create, preserve, and enhance major boulevards of medium-scale retail establishments featuring some specified higher density nodes in attractive settings oriented to pedestrian comparison shopping, and to encourage mixed-use residential and nonresidential developments, and is typically appropriate along major thoroughfares near residential communities.

Until the Planning Code is updated to reflect the general plan, the City Council has established a procedure in the General Plan Conformity Guidelines and Chapter 17.01 of the Planning Code to provide consistency between zoning and the general plan. During the review of the proposed

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project the applicant, pursuant to Planning Code Section 17.01.100B, had requested a “Best Fit” zone of C-45 to be applied to the project site due to an “express conflict” between the General Plan and the existing Zoning. The “express conflict” determination is made based upon the following process, as laid out in the General Plan Conformity Guidelines (Attachment C).

The General Plan Conformity Guidelines list three items for determining General Plan Conformity as follows:

- **Is the proposed activity and facility type permitted under the General Plan?** – The proposed activities (residential, retail) are permitted in the Community Commercial and Mixed Housing Type General Plan areas, and multi-family residential permitted within both the Community Commercial General Plan and mixed Housing Type classifications. Non-residential facilities are permitted within the Community Commercial General Plan Area, but are silent in the Mixed Housing Type General Plan Area. In such instance you defer to the existing base zoning of C-28, in which it is permitted.
- **Is the proposed intensity or density less than or equal to the maximum permitted under the General Plan?** – The Community Commercial General Plan area allows residential density equal to one dwelling unit per 261 square feet of lot area and commercial development equal to a FAR (Floor Area Ratio) of 5.0. The Mixed Housing Type General Plan area allows up to one dwelling unit per 1,089 square feet of lot area. The project site as broken down between the two separate land use classifications would allow a maximum density of 38 dwelling units. The proposed density of 33 dwelling units is consistent with the General Plan density.
- **Is the project consistent with Relevant General Plan policies?** – In order to answer this question the Guidelines refer you to “Checklist 4” of the document, which states the relevant policies:
 - **Policy 3.9 – Orienting Residential development – Residential developments should be encouraged to face the street and to orient their units to desirable sunlight and views, while avoiding unreasonably blocking sunlight and views for neighboring buildings, respecting the privacy needs of residents of the development and neighboring properties, providing for sufficient conveniently located open on-site open space, avoiding undue noise exposure.**

The proposed development faces Telegraph and Claremont Avenues, it does not unreasonably block sunlight to adjacent properties, and the area is not one that would be considered to have significant views (this is restricted to properties that contain a site slope of greater than 20%). Privacy and noise impacts would be no different than any other residential development that contains windows, and open space will be provided at individual units and common open space courtyards.

- **Policy N7.1 – Ensuring Compatible Development – New residential development in Detached Unit and Mixed Housing Type areas should be**

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compatible with the density, scale, design, and existing or desired character of surrounding development.

The subject property is not located within the Detached Unit area and there are not any lower intensity houses directly adjacent to the site.

- **Policy 7.2 – Defining Compatibility – Infrastructure availability, environmental constraints and natural features, emergency response and evacuation times, street width and function, prevailing lot size, predominant development type and height, scenic values, distance from public transit, and desired neighborhood character are among factors that could be taken into account when developing and mapping zoning designations or determining compatibility. These factors should be balanced with the citywide need for additional housing.**

The subject property is not located in an undeveloped area of the Oakland Hills, but is located within a developed urban area of the City, which contains existing infrastructure, streets, and pre-existing lot patterns. The proposed development is compatible with other mixed use developments on Telegraph Avenue and contains a design style that is contextual with the other period architecture in the surrounding area. The site is located directly on a transit line (AC Transit 1 and 1R lines).

- **Policy 8.2 – Making Compatible Interfaces Between Densities – The height of development in Urban Residential and other higher density residential areas should step down as it nears lower density areas to minimize conflicts at the interface between the different types of development.**

The subject property is not located within one of the Urban Residential areas, which are usually zoned R-70, R-80, and R-90 Zones, and which typically do not contain a set height limit. The subject property is not located adjacent to any lower density zoning districts or uses. The adjacent buildings on Claremont Avenue are commercial buildings and the adjacent site on Telegraph is a civic building.

- **Policy 4.2 – Protection of Residential Yards – Action 4.2.1 – Lot Coverage Limits – Prepare a study of lot coverage or floor area ratio limits for single family residential zoning districts, with assistance from local architects, builders, and residents.**

The subject property is not located within a single family residential district.

If the answers to all of the above questions are yes, or if the General Plan is silent, you must then determine whether or not the proposed project is permitted under the zoning regulations. To determine this, the following questions are applied:

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- **Is the proposed activity and facility permitted under the zoning regulations?** – The proposed activities (residential and retail), and facilities (multi family residential and non-residential) are permitted under the C-28 regulations.
- **Is the project consistent with other regulations of the zone?** –The project is **not consistent** with the regulations of the C-28 Zone. The proposed project contains a density higher than that permitted within the C-28 Zone, but is consistent with the density of the General Plan. The proposed project is also taller in height than permitted by the C-28 Zone and the proposed density is also not permitted by C-28, but the project is consistent with the relevant General Plan policies as stated above.

Given that the project as proposed conformed to the relevant General Plan policies, but is not permitted under the C-28 zoning due to the limitations on building envelope (density and height), the Planning Director opted to grant a “Best Fit” zone of C-30, which is listed as an “other possible Best Fit zone” for the Community Commercial General Plan designation. Other reasons for choosing the C-30 zone were that the proposed zoning update at that time was moving forward with a recommendation of C-30, as well as the fact that other more intense corridors in North Oakland with a Community Commercial General Plan designation also contain C-30 Zoning designations. During the public hearing the Commission reversed the staff recommendation for C-30 and granted the “Best Fit” zone of C-45 as requested by the applicant.

The following table outlines the differences between regulations in the different zones:

Attribute/Zone	C-28	C-30*	C-45	Project
Height	40'	None* (160')	None	59'
Rear Yard	10'	10'	10'	5'
Density**	1:450 (26 units)	1:450 (26 units)	1:300 (39 units)	1:357 (33 units)
Parking	1 per dwelling	1 per dwelling	1 per dwelling	1 per dwelling
Open Space	150sq.ft./d.u.	150sq.ft./d.u.	150sq.ft./d.u.	168sq.ft./d.u.
Best Fit Zone	No	Possible	Yes	N/A
Variance Req'd	Height	Height Plane /Rear Yard	Rear Yard	N/A

* The C-30 Zone requires a residential building to be no more than 40 feet in height at the rear yard setback line, but it may increase in height two feet vertically per each one foot setback horizontally, which for the project site would allow up to a maximum of 160' in height.

**The maximum density for a project site is dictated by the maximum allowed under the General Plan, for this project site the maximum under the General Plan is 38 units by accounting for the split in the General Plan Designation of Community Commercial (78% of the lot), which allows for one dwelling per 261 square feet and Mixed Housing Type (22% of the lot), which allows for one dwelling per 1,089 square feet.

GENERAL PLAN

As discussed elsewhere in this report, and in the City Planning Commission Report, the project is consistent with the relevant policies of the general plan that encourage in-fill development along

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transit corridors, and higher densities in growth and change areas; specifically LUTE Objective N8; Housing Element Policy; Housing Element Actions 1.3.1 and 1.3.2.

CEQA DETERMINATION

The Planning Commission confirmed the determination that the project is exempt from CEQA pursuant to Section 15332 of the CEQA Guidelines (In Fill Development Projects), and, as a separate and independent basis, is also exempt pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning).

Specifically, as a separate and independent basis from the other CEQA findings, pursuant to CEQA section 21083.3 and Guidelines section 15183, the City Council will also find that if it approves the project that: (a) the project is consistent with the Land Use and Transportation Element (LUTE) of the General Plan, for which an EIR was certified in March 1998; (b) feasible mitigation measures identified in the LUTE EIR were adopted and have been, or will be, undertaken; (c) the EIR evaluated impacts peculiar to the project and/or project site, as well as off-site and cumulative impacts; (d) uniformly applied development policies and/or standards (Standard Conditions of Approval) have previously been adopted and found to, when applied to future projects, substantially mitigate impacts. To the extent that no such findings were previously made, the City Council hereby finds and determines (in approving the project) that the Standard Conditions of Approval substantially mitigate environmental impacts; and (e) substantial new information does not exist to show that the Standard Conditions of Approval will not substantially mitigate the project and cumulative impacts.

PLANNING COMMISSION REVIEW

At the July 18, 2007 hearing, the Oakland Planning Commission took public testimony from various interested parties including the appellants, as well as others who were in support of the project. At the conclusion of the public hearing on the item the Commission voted unanimously to approve the project (6-0). During the public hearing the Planning Commission had decided to grant a "Best Fit" zone of C-45 as requested by the applicant, as well as grant a rear yard setback variance that Planning Staff had recommended be denied.

The Planning Commission granted the rear yard variance to reduce the setback from ten (10) feet to five (5) feet based upon meeting the minor variance criteria as set forth in Planning Code Section 17.148.050, as detailed in the approved Planning Commission staff report. This decision was largely based upon the configuration of the site and how it contains two frontages along major streets, the rear yard of the property is actually situated more as a side yard (in which five feet would be required for windows under the Building Code), and that the rear abutting property was in fact not a residential development being a recently established civic structure and activity. To further clarify, the project site has a unique physical circumstance in that it is essentially a through lot that contains two street frontages along Telegraph and Claremont Avenues, and has a relatively small "jog" in the lot that results in a lot line that qualifies as a rear lot line. All of these factors led the Commission to make the decision that as proposed the project served as a superior design solution, that the prescribed regulation would not serve the intent of the Code requirement, and that the unique lot configuration would not lead the variance to being

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considered a grant of special privilege, therefore meeting the required findings for a Minor Variance.

KEY ISSUES AND IMPACTS

The STAND appellant's letter is included as Attachment "A" and described below under Section I, and the RCPC appellant's letter is included as Attachment "B" and described below under Section II. The basis for the appeals, as contained in the appeal letters, is shown in bold text. A staff response follows each point in italic type.

SECTION I (STAND APPEAL)

- 1. The appellant argues that the project does not qualify for an in-fill CEQA exemption because of the requested a variance. The appellant argues that the project does not qualify for an in-fill exemption because of the required variance, and therefore does not comply with the in-fill criteria that a project must be "consistent with the applicable general plan designation and all applicable policies as well as with applicable zoning designation and regulations". The appellant argues that since the variance was granted, the project does not conform to the Planning Code since by definition a variance is an exception to the Code.**

This argument is incorrect because by meeting the required minor variance findings, which are expressly authorized by the Planning Code Chapter 17.148, the proposed project is indeed consistent with the Planning Code. The City's position has been upheld by the Alameda County Superior Court in Islamic Cultural Center of Northern California v. City of Oakland (Case No. RG03-133394), dealing with the Madison Street Lofts project (See Attachment D, page 9). The STAND appellant has not cited, nor could they, any legal authority to support their position. Therefore, exemptions are appropriate here.

- 2. The appellant argues that use of a "Best Fit" Zone is an illegal attempt to rezone the C-28 zoned property.**

The appellant asserts that the use of the Best Fit zone in this instance is incorrect since both the activity and facility type proposed by the project are both permitted in the C-28 Zone. The appellant cites general language from the overview section of the General Plan Conformity Guidelines, which states that, "There are two situations where Table 5 is used to select a 'Best Fit zone': 1) where the General Plan allows the activity/facility type, but the Zoning Regulations prohibit the activity/facility type". The appellant's assertion that since both Residential Activities and Multi-Family Facilities are permitted in the C-28 Zone, the use of a Best Fit zone is inappropriate.

This assertion is incorrect. The portion of the Conformity Guidelines that is cited in the appellant's letter is merely out of the overview section of the document (Attachment C, Page 3).

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The document later lays out the detailed process for determining conformity with the General Plan and the detailed process in which a "Best Fit" zone is applied. A "Best Fit" zone is applied when there is an express conflict between the General Plan and the Zoning, and is not limited to activity and facility types, but is also applied to other provisions of the Code that would otherwise not allow a project. If a project is deemed consistent with the General Plan, but the project itself is not permitted, then a Best Fit zone may also be applied. Specifically, the Procedures portion of the Conformity Guidelines focuses on whether or not there is a conflict between the General Plan and the existing zoning, which would create an express conflict between the two. This "Express Conflict" is created when a project clearly conforms with the General Plan, but is not permitted by the Zoning. The General Plan Conformity Guidelines provide a flow chart for Determining a Project's Conformity with the General Plan (Attachment C, Page 8), in which the several elements are reviewed beyond just the Activity and Facility types, such as density and intensity, which is the situation here.

After determining that the project is consistent with the General Plan you then have to determine whether or not the project is permitted by Zoning. If the project is permitted by zoning the proposal is permitted outright, if zoning requires a Conditional Use Permit, then the approval of a conditional use permit must be obtained. If the project is not permitted by zoning; this is an express conflict with the General Plan and the project can only be allowed by an Interim Conditional Use Permit or an approved application for a Rezoning (Ibid., Page 9).

Here, an express conflict was determined to exist because the proposed size of the building would not be permitted in the current C-28 Zone, even though the activity or facility type would be permitted. As a separate and independent basis, the density would also not be permitted in the C-28 Zone. Thus, there is an express conflict as the general plan allows both the size of building and density, but the current C-28 zoning does not.

The appellants also argue that the C-28 Zone was created as a Best Fit zone in the 1990's and should not be removed for a higher intensity zone. The Telegraph Avenue corridor through the Temescal area was zoned C-28 in 1992, and the superceding General Plan document was adopted in 1998. The subject area was specifically identified as Community Commercial, which is a higher intensity area than the Neighborhood Center areas (areas that the C-28 zones are appropriate for) most likely because it is located along a major transit corridor and its close proximity to a freeway underpass and existing uses such as a gas station, smog station, and fast food restaurant. Since the General Plan supercedes the previous zoning, C-28 is no longer a compatible zone for Community Commercial areas, and the C-30 Zone is one of the possible Best Fit zones; and the C-45 Zone is a Best Fit zone.

3. The appellant argues that the Planning Commission erred in their findings for a C-45 "Best Fit", after overturning the staff recommendation of C-30.

The determination of a "Best Fit" Zone was made by the Planning Commission, because the General Plan Conformity Guidelines clearly state that the C-45 Zone is one of the "best fit" zones for the Community Commercial General Plan Areas, whereas the staff recommendation

for C-30 was listed only as an "other possible zone". The C-45 Zone is the only zone that is completely consistent with the proposed project in terms of building height as well as density. In addition, the stated intent of the C-45 Zone, "The C-45 zone is intended to create, preserve, and enhance areas with a wide range of both retail and wholesale establishments serving both long and short term needs in compact locations oriented toward pedestrian comparison shopping, and is typically appropriate to commercial clusters near intersections of major thoroughfares" clearly meets the description of the area in question being located at the intersection of Telegraph and Claremont Avenues.

The appellant's comments after the initial statement are primarily on the variances granted for the rear yard setback. The Planning Commission granted a Minor Variance to allow the rear yard to be reduced from ten feet to five feet. This decision was largely based upon the configuration of the site and how it contains two frontages along major streets, the rear yard of the property is actually situated more as a side yard (in which five feet would be required for windows under the Building Code), and that the rear abutting property was in fact not a residential development being a recently established civic structure and activity. To further clarify, the project site has a unique physical circumstance in that it is essentially a through lot that contains two street frontages along Telegraph and Claremont Avenues, and has a relatively small "jog" in the lot that results in a lot line that qualifies as a rear lot line. All of these factors led the Commission to make the decision that project as proposed served as a superior design solution, that the prescribed regulation would not serve the intent of the Code requirement, and that the unique lot configuration would not lead the variance to being considered a grant of special privilege, therefore meeting the required findings for a Minor Variance per Planning Code Section 17.148.050.

4. **The appellant alleges that staff erred in not identifying the need for a side yard variance. The appellant argues that there are insufficient side yard setbacks opposite living room windows, per Planning Code Section 17.108.080, which requires increased setbacks when living room windows face onto side yards.**

This argument is wrong. This requirement is for "legally required living room windows", which is a requirement for certain exposure into a living space of a dwelling unit. All of the living rooms in the development that have side facing windows also contain a window that faces out to a rear yard or to the street, which both meet the exposure requirements, and thus the increased side yard setbacks are not required for secondary windows.

5. **The appellant alleges that the Commission abused its discretion allowing a five story building, which out of character for this section of Telegraph.**

Under this argument the appellant refers to requirements to make State Government Code findings for a variance, insinuating that a height variance was granted. This is incorrect, as no height variance was granted as part of this project. Under the C-30 "Best Fit" zone analysis a variance was required for a height reduction plane, for which staff recommended denial. When the Commission granted a "Best Fit" zone of C-45 the height reduction plane was no longer required. The argument that a five story building cannot be permitted because one is not

currently adjacent to the site is invalid. The subject area is designated as a "grow and change" corridor under the Oakland General Plan, and larger buildings are anticipated as the area grows and develops. In addition, the appellant argues that the context of the area is one and two story buildings, which is incorrect because across Claremont Avenue from the project site there is an apartment building that is four stories over a basement and approximately fifty feet in height, as well as other buildings that are three and four stories along Telegraph Avenue. Moreover, the project underwent design review and the required design review findings were made.

6. The appellant argues that the project could have an impact upon views, which would be a significant environmental impact, and therefore a categorical exemption cannot be used.

The argument that the project would create a significant impact due to the unusual height of the building is also incorrect. Specifically, the appellant states that the height of the building could impact views and degrade the existing visual character of the area since there are no other buildings this size, and that the historic Temescal Library across the street will be visually impacted and shaded. In order to invalidate an exemption under this theory, there must be both an "unusual circumstance" and a reasonable possibility of a significant environmental impact. Neither factor is present here.

First, there is nothing unusual about the height of the building. The argument that there are no other buildings in the area of a similar height is incorrect. There are other nearby buildings of similar height, one across the street, and others located within a few blocks to the south along Telegraph and Shattuck Avenues. Moreover, this is an area designated for "Growth and Change" in the general plan and an urban in-fill project, located along major transit corridors (containing one of the widest streets in the City), and close to freeway access, where increased height is appropriate and desirable. In addition, the project underwent design review and the required design review findings were made. Thus, there is nothing unusual about the building's height.

Second, there is not a reasonable possibility of a significant impact due to the height of the building. The City of Oakland's Thresholds for Significance(Attachment E) state that a significant impact on views only applies to impacts on scenic vistas, or elements on a scenic highway, neither of which is the case here. The appellant merely contends that the project would block unspecified views. In addition, the Thresholds for Significance state that shadow impacts are limited to those that would "substantially impair the beneficial use of any public or quasi-public park, lawn, garden, or open space", or "cast shadow on an historic resource, as defined by CEQA Section 15064.5(a), such that the shadow would materially impair the resource's historic significance by materially altering those physical characteristics of the resource that convey its historical significance and that justify its inclusion on an historical resource list". While the Temescal Library is a historic resource, the building is about 130 feet southwest of the project site and would only be shadowed by the project at sunrise. Such shadow would not alter any physical characteristics that make the building a historically significant structure. In short, it would not lose its eligibility as an historic resource.

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7. **The appellant claims that the three Potentially Designated Historic Structures (PDHP) with a City rating of C, may be listed in the California register and would therefore be considered a historic resource under CEQA.**

The appellant's claim that the subject buildings would be considered a historic resource under CEQA is incorrect. Moreover, the Appellant has provided no evidence, nor can they, to support its position. In the City of Oakland, an historical resource under CEQA is a resource that meets any of the following criteria:

- A) A resource listed in, or determined to be eligible for listing in, the California Register of Historical Resources;*
- B) A resource included in Oakland's Local Register of historical resources, unless, the preponderance of evidence demonstrates that it is not historically or culturally significant;*
- C) A resource identified as significant (e.g., rated 1-5) in a historical resource survey recorded on Department of Parks and Recreation Form 523, unless the preponderance of evidence demonstrates that it is not historically or culturally significant;*
- D) Meets the criteria for listing on the California Register of Historical Resources;*
- E) A resource that is determined by the Oakland City Council to be historically or culturally significant even though it does not meet the other four criteria listed here.*

Each of these criteria are discussed below:

- A) A resource listed in, or determined to be eligible for listing in, the California Register of Historical Resources;*

The buildings on the subject site (a) are not listed in the California Register of Historical Resources; and (b) have not been determined eligible by the State Historical Resources Commission for listing in the California Register of Historical Resources.

- B) A resource included in Oakland's Local Register of historical resources, unless, the preponderance of evidence demonstrates that it is not historically or culturally significant;*

Local Register Properties are those that meet the following:

- i) All Designated Historic Properties (Landmarks, Heritage Properties, Study List Properties, Preservation Districts, and S-7 and S-20 Preservation Combining Zone Properties); and*
- ii) Those Potential Designated Historic Properties that have an existing rating of "A" or "B" or are located within an Area of Primary Importance.*

Here, the buildings are rated C2 & C3, and are not Designated Historic properties. Therefore, the buildings are not considered historical resources under this criterion.

C) A resource identified as significant (e.g., rated 1-5) in a historical resource survey recorded on Department of Parks and Recreation Form 523, unless the preponderance of evidence demonstrates that it is not historically or culturally significant;

The only building on the property with a DPR Form 523 rating is the garage structure, which was evaluated under the Unreinforced Masonry Building program and the rating designation was a 6 which means that the structure is not significant.

D) Meets the criteria for listing on the California Register of Historical Resources;

The structures on the property do not meet the criteria for listing on the National Register of Historic Resources, which also means it does not meet the California Register of Historic Resources criteria. Structures that meet these criteria are generally those with a City of Oakland rating of A or B.

In order for a resource to meet the criteria for listing in the California Register, it must satisfy all of the following three provisions:

1. It meets one of the following four criteria of significance (PRC 5024.1(c) and CEQA Guidelines 15064.5):

i. the resource "is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage".

The three PDHP's on the subject property are not associated with any events that have made a contribution to the broad patterns of California's history or cultural heritage.

ii. the resource "is associated with the lives of persons important in our past".

The three PDHP's on the subject property are not associated with the lives of persons important to California history.

iii. the resource "embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values"

The Kingfish pub on the site does embody some distinctive characteristics of vernacular commercial buildings of the era; however, there are no specific traits to the building that are architecturally significant. The other two PDHP's on Telegraph Avenue have characteristics of Victorian era

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architecture, but are by no means comparable to other highly decorated and ornamented Victorian buildings of the same era. None of the buildings on the subject property were designed by important architects of record or possess high artistic values.

- iv. *the resource "has yielded, or may be likely to yield information important in prehistory or history" (this criterion applies primarily to archaeological sites).*

None of the buildings on the property have yielded important information to history or prehistory. City of Oakland Standard Conditions of approval deal with the instance in which important archeological finds may be discovered through grading, however unlikely it may be.

2. *The resource retains historic integrity;*

The buildings are largely intact and retain the original architectural integrity.

3. *It is fifty years old or older (except where it can be demonstrated that sufficient time has passed to understand the historical importance of the resource).*

The buildings are older than fifty years of age.

Given that the buildings on the property do not meet all of the required criteria, they may not be deemed eligible for the California Register.

- E) *A resource that is determined by the Oakland City Council to be historically or culturally significant even though it does not meet the other four criteria listed here.*

None of the buildings on the subject property have been determined to be historically or culturally significant by the Oakland City Council.

8. **The appellant argues that cumulative impacts must be studied and identified before the project can be approved.**

The appellant refers to potential cumulative impacts related to traffic and air quality, removal of historic resources, loss of views, and shading from five and six story buildings.

The subject proposal was subject to a Traffic Impact Study(Attachment F), which was reviewed by the Transportation Services Division of Public Works, and the study concluded that there were no impacts that would trip any of the City of Oakland CEQA thresholds of significance. The Traffic Impact Study also reviewed potential cumulative impacts to intersections in the future, based upon reasonable growth projections, and once again none of the cumulative Thresholds for Significance were tripped.

The appellant argues that the project impacts, along with those created by AC Transit's proposed Bus Rapid Transit (BRT) line, have not been studied. AC Transit has published a Draft Environmental Impact Statement/ Environmental Impact Report for the implementation of the Telegraph Avenue BRT line. The proposed BRT would generally eliminate one through lane of traffic in each direction. However there are no finalized design plans, assurance of full funding, or approvals from AC Transit, the City of Oakland and other public agencies. Transportation improvement projects, like the BRT, are not considered as part of the projected baseline conditions because they are too speculative. Thus, they are not required to be analyzed as part of any CEQA review.

Appellant has not provided, nor could they, any evidence relating to air quality impacts. There are no project specific air quality impacts, nor are there cumulative air quality impacts, as this is an urban infill, transit-oriented development, which is expressly encouraged under the City's General Plan and the Clean Air Plan. The project is consistent with the General Plan, and, in turn, the General Plan consistent with the Clean Air Plan. Moreover, the size of this project does not warrant a detailed, quantitative analysis under the Bay Area Air Quality Management District regulations, as the District does not recommend such a study for projects generating less than 2,000 vehicle trips per day.

As stated above, the buildings on the subject property are not historic resources under CEQA, so there would not be any cumulative impact to consider, and a significant view impact is one that would impact a scenic vista or scenic highway, neither of which is the case for the subject property. Also, there are no project-related shadow impacts or cumulative shadow impacts.

- 9. The appellants claim that the project is not in compliance with the General Plan because (a) the EIR for the Land Use and Transportation Element (LUTE) of the General Plan did not discuss variances, nor did it discuss height or densities that would exceed the amounts allowed; and (b) the density is not compatible with surrounding area.**

Densities are discussed in the Land Use and Transportation Element, and the proposed project is consistent with those densities as discussed earlier in this staff report. Furthermore, the General Plan LUTE identifies the subject property as being located within an area of "growth and change", which envisions development more intense than what exists on the site and surrounding area today. The appellant's statement that variances were not discussed in the LUTE EIR has little bearing on the proposed project since nothing in the General Plan documents state that variances shall no longer be granted, and variance procedures are typical of any municipality's zoning ordinance. The process for reviewing variance requests have been, and continue to be, processed under Section 17.148 of the Oakland Planning Code.

Moreover, as indicated in this report and the Planning Commission report, the project is consistent with and furthers numerous policies in the General Plan. The fact that a project may appear to not be fully consistent with each and every general plan policy is not a basis to

conclude the project is inconsistent with the general plan. Specifically, the Oakland General Plan states the following:

The General Plan contains many policies which may in some cases address different goals, policies and objectives and thus some policies may compete with each other. The Planning Commission and City Council, in deciding whether to approve a proposed project, must decide whether, on balance, the project is consistent (i.e., in general harmony) with the General Plan. The fact that a specific project does not meet all General Plan goals, policies and objectives does not inherently result in a significant effect on the environment within the context of the California Environmental Quality Act (CEQA). (City Council Resolution No. 79312 C.M.S.; adopted June 2005)

10. No Guarantee of the Co-housing component of the project in perpetuity.

The appellant argues that because the proposed co-housing project is not guaranteed to remain as co-housing, that the project should not have received approval for a five story building because it was being used to justify the larger building. This argument is incorrect, because while the discussion of co-housing was ongoing due to the nature of the proposal, it was not used in, or provided a basis for, making any of the required findings for granting of the land use permits, or for that matter any determination of a Best Fit zone. Moreover, as a practical matter, as pointed out at the Planning Commission hearing, the design of the common areas leads the development to be used in a co-housing manner.

SECTION II (RCPC APPEAL)

1. Planning Staff and the Planning Commission made an improper determination of a “direct conflict” between zoning and the General Plan.

The appellant argues that the General Plan outlines maximum densities for areas, and that a project that is less than the maximum density could also be consistent with the General Plan, and that the density permitted in the C-28 and C-30 zones are the same, so there is no justification for determination of an “express conflict” with the zoning and the General Plan, and therefore a “Best Fit” zone cannot be used. This is incorrect.

The LUTE provided a policy framework to guide the future development of the City into the 21st century. The zoning in many parts of the City is over 40 years old. Until a comprehensive zoning update is completed, the policies in the General Plan control where there is an express conflict with the zoning. This does not mean that the maximum density must be achieved for each project; nor does it mean that the maximum densities should not be achieved, if warranted. Here, it was determined that the maximum density was more appropriate for the site than the existing density permitted under C-28 zoning.

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As outlined in this staff report, the “express conflict” was determined because of the size/massing of the building and the density. As detailed above, when using the General Plan Conformity Guidelines once a project is determined to meet the relevant General Plan policies, two questions are asked to determine whether or not there is a conflict: 1) Is the proposed activity and facility permitted in the zone; and 2) Is the project consistent with other regulations of the zone? The proposed project was consistent with the allowed activities and facilities, but the proposed project was not consistent with the C-28 Zone because of the building height, therefore there was a conflict between the General Plan and the Zoning, and since the C-28 Zone is not one of the possible “Best Fit” zones for Community Commercial, a C-30 zone, which is a possible Best Fit zone was chosen by staff to guide the allowed development of the site. During the hearing the Planning Commission opted to use the C-45 zone, which is a Best Fit zone for Community Commercial, as it allows both the density and building size.

The appellant also argues that the existing C-28 Zoning was adopted specifically for this area after the most recent 1998 General Plan revision. This is incorrect, as the C-28 Zoning was adopted June 3, 1992 (Ordinance No. 11445 C.M.S.), six years prior to adoption of the General Plan LUTE, and this area was specifically designated as Community Commercial, which was envisioned as an area of higher intensity due to its location adjacent to a transit corridor and the freeway.

2. Improper Determination that C-45 was the “Best Fit” zone for the site.

The appellant argues that the C-45 “Best Fit” zone is inappropriate for this location because of outright permitted uses in the C-45 such as custom manufacturing, administrative, and research services, which directly conflict with the C-28 limitations on ground floor uses that was specifically adopted for the area in 1999 (Ordinance No. 12138 C.M.S.), and because the height and residential development intensity is much greater than what is allowed in the area.

The fact that there may have been a minor, unrelated code amendment after adoption of the General Plan LUTE does not mean that the C-28 zoning was reaffirmed for this area. Moreover, the argument about the limitation on ground floor uses is incorrect, since the C-28 zone only includes this limitation for the area between I-580 and 52nd Street. The project site is north of 52nd Street and the ground floor limitations would not apply to this project site.

Nevertheless, outright permitted uses under C-45, such as custom manufacturing, administrative, and research services, for this site would require a new Interim CUP, which would be evaluated by staff and publicly noticed prior to any decision being rendered, ultimately appealable to the Planning Commission, as indicated in Condition of Approval #1.

3. Need to revise project and supporting findings to promote compatibility with surrounding community.

The appellant argues that the following project modifications should be made to make the project conform to the community character:

- 1) *Overrule the planning Commission's variance approval and restore the height setbacks as proposed in the staff report,*
- 2) *Drop the maximum building height from 59 feet to 55 feet,*
- 3) *Improve the project articulation to make it more in keeping with the general character of buildings in Rockridge and Claremont Avenue.*

The Planning Commission did not grant a variance for the height reduction plane, as stated by the appellant, as there was not a variance required. Once the Planning Commission granted a "Best Fit" Zone of C-45 the required height reduction plane was no longer required. The only variance granted as part of the project approval was the minor variance for a reduced rear yard setback. The justification for the rear yard variance is discussed above in this report. Staff believe that the proposed maximum 59 foot building height is appropriate for this site, along a major transit corridor, because it meets the spirit of the intended 55 foot height limit for the area (proposed under the Temescal rezoning; the mid line of the roof pitch meets the 55 foot limit, and allows for a gable roof, which, in turn provides for a roof style similar to others in the nearby area.

Staff also believes that there is adequate articulation to the building façade because of the breaks in the elevation for the interior courtyards, which break down the visual bulk and mass of the building. This site is not similar to other sites in the Rockridge or Claremont Avenue area because it is located at an intersection of two large streets, one of which, Telegraph Avenue, is a major transit corridor and major regional thoroughfare.

SUSTAINABLE OPPORTUNITIES

Economic: The project will expand the available housing inventory in the City of Oakland.

Environmental: Developing in already developed urban environments reduce pressure to build on agricultural and other undeveloped land. Sites near mass transit enable residents to reduce dependency on automobiles and further reduce adverse environmental impacts.

Social Equity: The project benefits the community and improves social equity by providing additional available housing to the City of Oakland as well as additional temporary jobs during the construction of the project.

DISABILITY AND SENIOR CITIZEN ACCESS

The Building Division of the Community and Economic Development Agency will require that the project conform to the Americans with Disability Act in all provisions to ensure equal access to this facility.

STAFF 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

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based on the following reasons: 1) The Project and the approval of the project comply in all significant respects with applicable general plan policies and review procedures; 2) The C-45 Zone is more appropriate than the C-30 Zone given that it is identified as the “Best Fit” zone and would allow the appropriate size and density envisioned in the general plan, with a Community Commercial General Plan designation in the North Oakland area ; and 3) the Project meets the CEQA In-Fill exemption requirements and there are no exceptions that would defeat the use of the exemption, and, as a separate and independent basis also exempt pursuant to CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning).

ALTERNATIVE CITY COUNCIL ACTIONS

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, except for the granting of the rear yard setback variance. This would require a redesign and possibly reduce the size of some of the units.
3. Uphold the Planning Commission’s decision, but impose additional conditions on the project and/or modify the project.
4. Continue the item to a future hearing for further information or clarification.
5. Refer the matter back to the Planning Commission for further consideration on specific issues/concerns of the City Council. Under this option, the item would be forwarded back to the City Council with a recommendation after review by the Planning Commission.

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ACTION REQUESTED OF THE CITY COUNCIL

1. Affirm the Planning Commission's environmental determination that the Project is exempt from CEQA review pursuant to CEQA Guidelines sections 15332 (In-Fill exemption) and, as a separate an independent basis, 15183 (projects consistent with community plan, general plan, or zoning).
2. Adopt the attached Resolution denying the appeal, and thereby upholding the Planning Commission's approval of the Project.

Respectfully submitted,

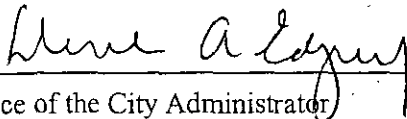


CLAUDIA CAPPIO

Development Director
Community & Economic Development Agency

Prepared by:
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Planning & Zoning

APPROVED AND FORWARDED
TO THE CITY COUNCIL:



Office of the City Administrator

ATTACHMENTS:

- A. STAND appeal application submitted July 27, 2007.
- B. RCPC appeal application submitted July 30, 2007.
- C. General Plan Conformity Guidelines
- D. Islamic Cultural Center of Northern California v. City of Oakland (Case No. RG03-133394)
- E. Excerpt of City's Thresholds of Significance
- F. Excerpt from Traffic Impact Study (no appendices)

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