CITY OF OAKLAND

AGENDA REPORT

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: April 1, 2008

RE: **Adopt a Resolution Approving in Part and Denying in Part the Appeal So as to Allow the Major Rehabilitation of a Former Motel as 18 Condominium Units, at 10031 MacArthur Boulevard (Case no. A07-461)**

SUMMARY

On March 4, 2008 the City Council heard an appeal of a Planning Commission decision regarding a property at 10031 MacArthur Boulevard. In the March 4 report and resolution, staff recommended that Council uphold the Planning Commission's decision to allow this former motel property to be converted to 17 condominium units, rather than the 19 units the property owner had requested.

By a unanimous 7-0 straw vote, Council directed staff to prepare findings to approve 18 units. This report and resolution provide the findings necessary for Council to enact that direction. The new findings, and all findings approved by the Planning Commission on October 17, 2007, are attached to the Resolution for this report. The new findings are a variance for open space for the 18th unit and an Interim Major Conditional Use Permit to allow the density of the 18th unit where Zoning allows 17 units.

ACTION REQUESTED OF THE CITY COUNCIL

1. Affirm staff's environmental determination.

2. Affirm the required legal findings for 18 condominium dwelling units.

Respectfully submitted,

DAN LINDHEIM
Director
Community and Economic Development Agency

Reviewed by:
Scott Miller
Zoning Manager
Planning & Zoning Division

Prepared by:
Aubrey Rose
Planner II
Planning & Zoning Division

APPROVED AND FORWARDED TO THE CITY COUNCIL:

Office of the City Administrator

ATTACHMENTS:

A. March 4, 2008 City Council Agenda Report

Item: _____
City Council
April 1, 2008

OFFICE OF THE CITY CLERK
OAKLAND

2008 MAR 20 PM 2:34

APPROVED AS TO FORM AND LEGALITY

DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION NO. _____C.M.S.

A RESOLUTION APPROVING IN PART AND DENYING IN PART THE APPEAL SO AS TO ALLOW THE MAJOR REHABILITATION OF A FORMER MOTEL AS 18 CONDOMINIUM UNITS, AT 10031 MACARTHUR BOULEVARD

WHEREAS, on August 16, 2007, the applicant Terry J. Murphy, representing the property owner Kamal Pal, applied for a Major Variance (density), 5 Minor Variances (front, left side, right side, and rear setbacks & open space), Regular Design Review ("new" dwelling units), and a Tentative Parcel Map (condominium conversion) to allow the pending major rehabilitation of a former motel (approved in 2002 to convert from motel to 17 apartment units) to be completed as 19 condominium dwelling units with no required replacement units at 10031 MacArthur Boulevard (Project); and

WHEREAS, on October 17, 2007 a duly noticed public hearing was held before the City Planning Commission for the Project; and

WHEREAS, on October 17, 2007, the Planning Commission independently reviewed, considered and determined that the Project is categorically exempt from the environmental review requirements of the California Environmental Quality Act ("CEQA") pursuant to sections 15301(d), 15301(k), and 15183 of the State CEQA Guidelines; and

WHEREAS, on October 17, 2007 the item was approved by the City Planning Commission to allow 17 condominium units with no required replacement units rather than 19 units; and

WHEREAS, an appeal of the Planning Commission's October 17, 2007 actions were filed by the Applicant ("Appellant") on October 25, 2007; and

WHEREAS, after giving due notice to the Appellants, the Applicant, all interested parties, and the public, the Appeal came before the City Council in a duly noticed public hearing on March 4, 2008; and

WHEREAS, the Appellants and all other interested parties were given the opportunity to participate in the public hearing by submittal of oral and written comments; and

WHEREAS, the public hearing on the Appeal was closed by the City Council on March 4, 2008;

WHEREAS, the City Council decided, by unanimous 7-0 vote, that the project should consist of 18 condominium units in lieu of either 17 units or 19 units and directed Planning Staff to prepare findings for such and return to Council with such findings; now, therefore, be it

RESOLVED: The City Council independently finds and determines that this Resolution complies with CEQA, as the Project is categorically exempt from CEQA pursuant to CEQA Guideline Section 15301(d) "Rehabilitation of deteriorated facilities" and, and as a separate and independent basis, the Project is also exempt from CEQA pursuant Section 15301(k) "Creation of condominiums within an existing structure" of the State CEQA Guidelines; and Section 153183, "Projects Consistent with a Community Plan, General Plan or Zoning " of the State CEQA Guidelines. 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 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 Application, the Planning Commission's decision, and the Appeal, finds that 18 units are appropriate at this location and that the minor open space variance and interim conditional use permit for density should be granted. Accordingly, the Appeal is granted in part and denied in part; and be it

FURTHER RESOLVED: That, in support of the City Council's decision to approve 18 units, the City Council affirms and adopts as its findings and determinations (i) the minor open space variance and interim conditional use permit findings, attached hereto as Exhibit "A", and (ii) the October 17, 2007, Approved City Planning Commission 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 "B,", **except** where otherwise expressly stated in this Resolution; and be it

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

1. the Project application, including all accompanying maps and papers;

2. all plans submitted by the Applicant and his representatives;

3. all final staff reports, decision letters and other documentation and information produced by or on behalf of the City.

4. all oral and written evidence received by the City staff, Planning Commission and City Council before and during the public hearings on the application and appeal;

5. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan and the General Plan Conformity Guidelines; (b) Oakland Municipal Code, including, without limitation, the Oakland real estate regulations, Oakland Fire 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, Suite 3315, 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, _____, 2008

PASSED BY THE FOLLOWING VOTE:

AYES-

NOES-

ABSENT-

ABSTENTION-

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

LEGAL NOTICE:

ANY PARTY SEEKING TO CHALLENGE THIS FINAL DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE DATE OF THE ANNOUNCEMENT OF THIS DECISION, UNLESS A DIFFERENT PERIOD APPLIES.

Exhibit A: FINDINGS FOR 18 UNITS

SECTION 17.148.050(A) – VARIANCE FINDINGS *for 18 units (open space)*:

1. That strict compliance with the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations, due to unique physical or topographic circumstances or conditions of design; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution improving livability, operational efficiency, or appearance.

The project involves the major rehabilitation of a two-building motel, permitted for conversion into apartments, to be completed as 18 condominium units; the site contains Code-conforming usable open space to accommodate 17 units. Strict adherence to the Planning Code requirement for providing usable open space would result in unnecessary hardship inconsistent with the purposes of the zoning regulations due to conditions of design. The purpose of the ordinance is to ensure that new units are adequately accommodated with open space in certain districts. The Minor Variance will relieve the requirement to provide usable open space for one unit where required open space for seventeen others is accommodated so that the interior of an existing facility can be utilized for new dwelling units and home ownership opportunities.

2. *That strict compliance with the regulations would deprive the applicant of privileges enjoyed by* owners of similarly zoned property; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation;

To require standard usable open space for 1 additional dwelling unit would preclude the effective design solution of utilizing an existing facility with proper features to provide new housing and homeownership opportunities. The percentage of the site's open space deficiency is minimal, and the site also contains non-code-conforming open space in the form of an indoor community space and several private balconies. Taken in its entirety, the project's open space has been found to be satisfactory for a total of 18 units.

3. That the variance, if granted, will not adversely affect the character, livability, or appropriate *development of abutting properties or the surrounding area, and will not be detrimental to the* public welfare or contrary to adopted plans or development policy;

The Variance will not adversely affect the surrounding community or contravene any plans: the project only involves the rehabilitation of the interior of an existing facility and does effect the outdoors portions of the site visible from the public right-of-way and adjacent private property.

4. That the variance will not constitute a grant of special privilege inconsistent with limitations imposed on similarly zoned properties or inconsistent with the purposes of the zoning regulations;

The Variance will not constitute special privileges that are not extended to surrounding properties in similar circumstances or which are inconsistent with the purposes of the zoning regulations; the Minor Variance will allow the complete utilization of an existing structure and does not involve construction of new building area.

5. That the elements of the proposal requiring the variance (e.g., elements such as buildings, walls, fences, driveways, garages and carports, etc.) conform with the regular design review criteria set forth in the design review procedure at Section 17.136.050.

The elements of the proposal requiring the variances, a 2-building facility containing 18 units with Code-conforming usable open space for 17 units, conform to Regular Design Review Criteria as approved by the Planning Commission on October 17, 2007.

SECTION 17.134.050 – *INTERIM* CONDITIONAL USE PERMIT PROCEDURE/GENERAL USE PERMIT CRITERIA *for 18 Units (where 17 are allowed by the Planning Code and 18 are allowed by the General Plan)*

A. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of *abutting properties and the surrounding neighborhood, with consideration to be given to harmony* in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.

The project involves the major rehabilitation of a two-building motel, permitted for conversion into apartments, to be completed as 18 condominium units; the Planning Code allows 17 units for a property of this size in the R-50 Zone and the Urban Residential land use classification of the General Plan allows 18 units. The project therefore requires an Interim Conditional Use Permit (Major) for a project with density in conformity with the General Plan.

The project and its intended activities will be compatible with its surroundings and will not pose a nuisance; the project will consist of 18 residential units on a commercial thoroughfare that is flanked by motels and commercial uses and which has residential neighborhoods set back from the corridor on either side. The project utilizes an existing facility, so no new bulk is proposed. The design is consistent with area structures and has been improved in consideration of the future residential use. The site contains adequate parking. The facility and its residents and their activities on- and off-site will be compatible with surroundings and will not pose a nuisance.

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 site and its surroundings will be compatible with the project and its intended activities. The site has near-adequate open space, adequate parking, and will have improved landscaping and building design. The surrounding district contains many commercial uses such as markets, laundromats, and restaurants to serve the site's new residents.

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 project constitutes an improvement to the neighborhood; the site formerly consisted of a motel under a compliance plan. Its 2002 conversion to an apartment could have alleviated the original issues and made the site more compatible with area residential uses. The current approval of a subdivision for condominium purposes will allow the spirit of home ownership to foster additional care for the site, which will in turn positively impact its surroundings.

D. That the proposal conforms to all applicable design review criteria set forth in the design review procedure at Section 17.136.070.

The elements of the proposal requiring the variances, a 2-building facility containing 18 units with Code-conforming usable open space for 17 units, conform to Regular Design Review Criteria as approved by the Planning Commission on October 17, 2007.

E. That the proposal conforms in all significant respects with the Oakland Comprehensive Plan and with any other applicable plan or development control map which has been adopted by the City Council.

The proposed design for an 18-unit condominium facility conforms to the Land Use & Transportation Element (LUTE) of the Oakland General Plan. The proposed design conforms to the following General Plan Policies and Objectives as described:

HOUSING VARIETY
Objective N6
Encourage a mix of housing costs, unit sizes, types, and ownership structures.

Policy N6.2 Increased Home Ownership.
Housing developments that increase home ownership opportunities for households of all incomes are desirable.

SENSE OF COMMUNITY
Objective N9
Promote a strong sense of community within the city of Oakland, and support and enhance the district character of different areas of the city, while promoting linkages between them.

Policy N9.3 Maintaining a Positive Image.
The City should strive to maintain a positive and safe public image.

The project will elevate the improvement of a distressed motel site since converted to residential use by introducing the possibility for home ownership of units of varying sizes (one- to –four bedroom units) in a district containing several motels that have long been obsolete due to the construction of the 580 (MacArthur) Freeway circa 1962 as a result of the Federal Highway Act of 1956.

CITY OF OAKLAND

AGENDA REPORT

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: March 4, 2008

RE: **Conduct a Public Hearing and Upon Conclusion Adopt a Resolution Denying the Appeal (Case no. A07-461) and Upholding the Decision of the Planning Commission to Approve the Major Rehabilitation of a Former Motel as 17 Condominium Dwelling Units Rather Than 19 Condominium Units As Requested, at 10031 MacArthur Boulevard.**

SUMMARY

On October 17, 2007 the City Planning Commission approved by a unanimous 7-0 vote a Major Variance (density), 5 Minor Variances (front, left side, right side, and rear setbacks & open space), Regular Design Review ("new" dwelling units), and a Tentative Parcel Map (condominium subdivision) to allow major rehabilitation of a former motel (approved in 2002 for conversion to 17 apartment units) to be completed as 17 condominium dwelling units at 10031 MacArthur Boulevard (Project), rather than the 19 units requested by the applicant. For the purposes of CEQA, the Planning Commission utilized Categorical Exemption Sections 15301(d) (Rehabilitation of deteriorated facilities), 15301(k) (Creation of condominiums within an existing structure), and 15183 (Projects consistent with a community plan, general plan or zoning).

The request submitted August 16, 2007 was to allow the rehabilitation to be completed as 19 condominium dwelling units with no replacement units to be required. Planning Commission policy direction to staff in 2007 allowed the waiver of required replacement units in specific projects where significant improvements to vacant buildings were proposed. Staff had analyzed the request prior to submittal under a Pre-Application review (Case no. ZP 07-0075) and concluded that (for much the same reasons justifying the approval of 17 units in 2002), 19 units was not consistent with the General Plan or Planning Code. At that time staff had informed the applicant that the request would require a Planning Commission hearing and that staff could not support it, but that a request for 17 units could be supported. When the applicant submitted for 19 units, staff recommended approval of 17 units rather than recommending denial and the Planning Commission agreed.

On October 25, 2007 applicant Terry J. Murphy filed an appeal of the Planning Commission's decision on behalf of property owner Kamal Pal. The basis of the Appeal letter is (1) that the Planning Commission did not provide (adequate) justification for its denial of 19 units (4 units

more than allowed by Zoning) or its approval of 17 units (incorrectly referenced as 2 units more than allowed by Zoning), and (2) that the Planning Commission did not provide adequate direction as to how to utilize the two "extra spaces;" in short, the Appeal is of the approval that allows 17 units with no required replacement units where 19 units were requested.

In response, staff suggests that the Planning Commission did in fact state the justification for both its decision to not permit the density exceeding Zoning featured in the applicant's requested proposal (but to still provide relief). With respect to the "extra spaces," the Planning Commission did in fact provide direction for one of the two spaces (community/recreation area); while the Planning Commission may not have guided the applicant as to future uses for the other space, per se, such direction would not be within the purview of the Planning Commission in this case, and the outcome is greater flexibility for the property owner.

This staff report features further elaboration on the Planning Commission's findings from the General Plan and Planning Code that led to the decision to allow 17 units with no required replacement units rather than 19 units, and to a lesser extent, future uses of the "extra spaces." The points that will be covered are: prior approvals; and the inextricable link at this site between density, open space, parking, landscaping, and design.

Since the appeal was limited solely to the issue of the two additional units (17 granted and 19 sought), the sole issue before the City Council is whether to grant the additional two units or not. The underlying approvals of the condominium conversion itself are not before the City Council.

FISCAL IMPACT

The project is a private development on private property. No public funds are required for the project and therefore there would be no direct fiscal impact to the City. All staff time that is required to process the applications for planning and building permits is fully cost-covered through fees. The project does have the potential to result in indirect fiscal impacts to the City: the new development would increase the property tax valuation of the property, thereby providing a positive fiscal impact to the City through increased property tax revenue.

BACKGROUND

Project Description

The proposal submitted in 2007 was to allow the pending major rehabilitation of a former motel (approved in 2002 for conversion to 17 apartment units) to be completed as 19 condominium dwelling units, with no required replacement units. (The required replacement units could be waived with the creation of condominium units from former rooming units lacking Certificates of Occupancy pursuant to Planning Commission direction of May 16, 2007.)

Property Description

The property at 10031 MacArthur Boulevard measures on average 133.5-feet in width by 191-feet in depth, totaling 26,250 square-feet in area. The site (formerly the Bel Air Motel) contains two 2-story buildings along the sides facing inward toward a long central parking lot. The

northerly building (10031 MacArthur Boulevard or "Building A") contains five unfinished 2-bedroom/2-bathroom units on each of two floors, 3 exterior stairways leading down from an exterior second-floor walkway both facing east toward a central parking lot, a front (right) storage and inset mechanical room, and an attached dumpster enclosure at the rear (left). The southerly building ("10059" or "Building B") contains, on the ground floor, an office unit, one unfinished 1-bedroom/1-bathroom unit with an office, and two 4-bedroom/2-bathroom units; the upper floor contains four 2-bedroom/1-bathroom units, one 3-bedroom/1-bathroom units, and 3 exterior stairways and an upper walkway facing west. (In 2007 the applicant proposed to convert the first floor office unit into a 2-bedroom/1-bathroom by adding a kitchen.) The property contains a concentric walkway that approaches the southerly building from the sidewalk. The parking lot located between the two buildings contains 21 parking spaces, with 10 spaces facing 10031 and 11 spaces facing 10059. To the rear/east of 10059 is a driveway spanning the entire depth of the subject site's left side; the driveway is to access the adjacent property located at 10065 MacArthur Boulevard, which appears to contain a commercial space in front and a four-unit apartment building at the rear. To the right of the site at 10023 MacArthur Boulevard is a fire damaged structure. Adjacent facilities flanking this stretch of MacArthur Boulevard feature commercial activities including motels; to the rear of the site is a residential neighborhood primarily consisting of single-family homes.

Design

Between the 2002 approval and the 2007 application, the buildings were to receive treatments to improve the motel-look of the site to be more residential, as possible, by re-stuccoing the building, adding pitched roofs, changing windows and stairways, and improving landscaping and fencing. Some of these changes have been completed; the 2007 application requested approval as-built, but the Planning Commission required that the Design Review approved in 2002 be honored.

General Plan Conformity

The site is located within an Urban Residential land use area in a medium density residential zone. (The Urban Residential area straddles MacArthur Boulevard for approximately 100 to 125-feet in depth.) The rear of the parcel is located within the Mixed Housing Type Residential area, as is the entire neighborhood beyond the rear of the site. The section of arterial corridor close by to the east lies within the Community Commercial and is a commercial shopping district zone. The Urban Residential classification's 'Desired Character and Use' is:

> *"...primary future use in this classification is residential...If possible, where detached density housing adjoins urban residential the zoning should be structured to create a transition area between the two."*

When analyzed in conjunction with the setback and open space deficiencies on the property, staff maintains that the 2002 and 2007 approvals more closely meet the 'Desired Character and Use' of the Urban Residential classification.

Zoning Conformity

The R-50 zone is intended:

> *"...to create, preserve, and enhance areas for apartment living at medium densities in desirable settings, and is typically appropriate to areas of existing medium density residential development."*

Staff did not find the proposal to be consistent with this description, and clearly exceeds Zoning: the R-50 Zone conditionally permits 1 dwelling unit per 1,500 square-feet of lot area; this equates to 17 units on this lot, as stated in the Planning Commission staff report of October 17, 2007. (The 2007 request was for a Major Variance to boost density, rather than an Interim Major Conditional Use Permit.) The property is larger and more densely-developed than surrounding lots. The proposal to increase density would further exacerbate the open space deficit. It is staff's opinion, based on several site visits, that adjacent neighborhood properties contain fewer units, greater setbacks, and more open space than what was proposed by the application; in short, the greater neighborhood exemplifies medium density which the project should maintain. Therefore, staff did not support the proposal to further exceed the maximum density allowed by the project site's Zoning.

Variances

Structures built with permits that do not adhere to development standards are considered legally nonconforming. When apartments are converted to condominium ownership, subject to location and number of units, replacement units within the City are required as a condition of project approval. According to May 2007 City Planning Commission policy direction to staff, formerly-residential units lacking Certificates of Occupancy may be rehabilitated into condominium-ownership units without required replacement units, providing considerable savings for the project, with the caveat that the units being created be considered new units. As such, they are subject to certain development standards; namely: density, setbacks, height, lot coverage, parking and open space. The proposal therefore justifies variances for setbacks, due to the fact that the project utilizes existing building envelopes to provide housing, a desirable outcome.

KEY ISSUES AND IMPACTS—ISSUES RAISED ON APPEAL

Appellant's Arguments

On October 25, 2007, Terry J. Murphy appealed the Planning Commission's decision. The appellant's letter is attached to this report (Attachment A). Listed below in **bold** text is a summary of the arguments raised by the appellant. Staff's response to each argument follows each item in *italicized* text.

Issues

1. The City's Planning Commission did not adequately provide justification for denial of 19 units (4 more than allowed by Zoning) but approval of 17 units (2 more than allowed by Zoning).

Staff Response:
At the October 17, 2007 hearing the Planning Commission approved a 17-unit condominium subdivision (consistent with Zoning for density) where the applicant had requested approval for 19-units (which exceeds Zoning by 2 units). Due to 2007 Planning Commission policy direction to staff allowing for a wavier of required replacement units in specific situations, the approval of 17-units as condominiums featured considerable cost savings to the property owner. At the hearing, the Planning Commission expressed preference for maintaining a medium neighborhood density with regards to open space, landscaping, parking, and design. The approval of 2007 relied on findings based on a thorough analysis of the 2007 request; this was reflected in the adopted findings.

The request for a Variance to increase density requires increased Code-conforming open space where a deficiency already exists. The deficiency of required open space would be worsened by additional density. The increased density would also require increased parking; increased open space cannot be provided; increased parking would require a decrease in landscaping (and potentially, to open space--both undesirable detractions to the design improvements). The site provides options to accommodate some amount of open space (Code-conforming usable group open space for 4 units only, due to Planning Code proximity requirement), which were conditioned as part of a previous Planning Commission approval, and staff finds no other justification through the Planning Code for further relief.

Following is the analysis of three Variance findings that could not be made for the proposal involving 19 units, as included in an attachment (to the staff report of October 17, 2007) presenting that option, as well as the findings for an alternate option that was approved for the 17-units project:

1. That strict compliance with the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations, due to unique physical or topographic circumstances or conditions of design; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution improving livability, operational efficiency, or appearance.

   Denial Finding for 19 Units (Finding 1, relating to open space):
   Finding 1 cannot be made for both the Major Variance (density) and a Minor Variance (open space): in the case of the requested Major Variance for exceptional density, no known property-related hardship would occur in not accommodating nineteen units; in the case of the requested Minor Variance to not provide new residences with open space, the site configuration that is currently deficient for this necessary amenity possesses the means to accommodate it; therefore, as a viable option to the Minor Variance exists, no justification for such a Minor Variance likewise can be derived.

   Approval Finding for 17-units (Finding 1, for open space)
   Strict adherence to Code-conforming setbacks and usable open space would preclude the effective design solution of rehabilitating two existing uninhabitable structures for new use; this will improve the livability of the site while maximizing density allowed by Zoning and

previous Permits; the project will simultaneously provide appearance that is architecturally rhythmic to the prevailing design and bulk of surrounding structures and properties. The alternative would consist of the extreme and undesirable action of a partial or full demolition of an existing structure that has been mostly converted and rehabilitated.

2. That strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation;

   Denial Finding for 19-units (Findings 2 & 4, relating to open space):
   Findings 2 and 4 cannot be made for much the same reasons: The Major Variance cannot be supported because other area property owners are not allowed excessive density; other district properties contain fewer units. Additionally, sites containing motels with office units are quite simply not unusual in this district. The Minor Variance to allow no open space for new residences also cannot be supported for the reason that other area properties apparently contain open space, particularly to the rear of the subject property's rear yard, an area that has already been conceptually shown to effectively accommodate some amount of open space.

   Approval Finding for 17-units (Finding 2, relating to open space)
   To require standard setbacks and open space would preclude the effective design solution of rehabilitating an existing structure; the rehabilitation will provide new dwelling units and still meet the intents of these development standards, as setbacks and open space are provided at this developed infill site commensurate with surrounding properties and provided adequate light and air to the site and adjacent properties; the site will also feature recreational opportunities equal or superior to many nearby properties.

4. That the variance will not constitute a grant of special privilege inconsistent with limitations imposed on similarly zoned properties or inconsistent with the purposes of the zoning regulations;

   Denial Finding for 19-units (Findings 2 & 4, relating to open space):
   (See Finding no. 2, above)

   Approval Option for 17-units (Finding 4, relating to open space)
   The variances will not constitute special privileges not extended to surrounding properties or contravening zoning regulations intents and purposes: the variances allow the instatement of an approved use in an existing structure.

In regard to parking: the current site conditions (requested for legalization as-built) exceeds the 2002 approval for 17 spaces by a quantity of 4. This would reduce the landscaping that was to be situated between parking spaces. Therefore, to add dwelling units would require 19 parking spaces, so that the landscaping required in 2002 as a condition of approval of the project could not be achieved.

In conclusion, the Planning Commission did adequately explain its justification for approval of density consistent with the Zoning Regulations from the Planning Code rather than allowing excessive density as requested.

2. The City's Planning Commission did not provide adequate direction as to how to utilize the subsequent two "extra spaces."

Staff Response:
In 2007 staff suggested that the application could be approved (to fully comply with the 2002 approval) by providing 17 units, converting the office unit to "one common unit," and to adhere to approvals for design, landscaping, and creation of usable group open space. Staff suggested the 2007 proposal to create condominium units rather than apartments was an acceptable concept that could be amended to the 2002 approval accordingly.

The 2002 Approval provided that the lower front unit of the south building was to be a manager's office/dwelling unit serving the complex (for-rent apartment buildings with sixteen or more units are mandated by the State of California to have an on-site manager with unit); the adjacent unit was to be a recreation/community room. The 2007 approval of a condominium subdivision eliminated from the project the State requirement to provide an on-site manager's office/dwelling unit; that Approval upheld the 2002 requirement for indoor recreational space and was silent on future use of the "manager's unit." Due to minimal open space at the site, staff suggests the property owner utilize this opportunity to convert said "manager's unit" to additional community/recreational space, should they wish to do so.

In conclusion, staff maintains that the Planning Commission did provide direction to the applicant as to how to use one of two "extra spaces," and that the effective leniency extended toward the second space should in fact be considered desirable, in that it could be considered to be less cumbersome and to provide more flexibility to the property owner.

SUSTAINABLE OPPORTUNITIES

The project would provide the following economic, environmental, and social equity benefits:

Economic: The project would contribute to the economic vitality of a neighborhood by redeveloping an existing structure resulting in an appropriate increase in new home ownership opportunities. The project would also increase the property tax valuation of the property thereby providing a positive fiscal impact to the City through increased property tax revenue. Since the project would involve residential condominiums, sales and resales of the residential units in the project would also generate transfer taxes for the City.

Environmental: The project involves the rehabilitation of an existing developed site, primarily interior work with some landscaping, and has little or no potential to negatively affect the natural environment.

Social Equity: The project involves a 17 unit condominium development in an underutilized district and the project realizes some of the district's potential by increasing housing opportunities appropriately within an Oakland neighborhood.

DISABILITY AND SENIOR CITIZEN ACCESS

The existing structure undergoing a major rehabilitation to become housing will be required to comply with applicable local, state, and federal ADA access requirements.

STAFF RECOMMENDATION AND RATIONALE

Staff recommends that the City Council adopt the attached resolution denying the appeal, and uphold the Planning Commission's approval of the project with 17 units for the following reasons: 1) The Planning Commission's decision was based on a thorough review of all pertinent aspects of the project; 2) The project and the approval of the project comply in all significant respects with applicable General Plan policies and Zoning regulations and review procedures; and 3) The appellant has failed to demonstrate that there was an error or abuse of discretion in the Planning Commission's decision or that the Planning Commission's decision is not supported by substantial evidence in the administrative record.

ALTERNATIVE CITY COUNCIL ACTIONS

Since the appeal was limited solely to the issue as to the two additional units (17 granted and 19 sought), the sole issue before the City Council is whether or not to grant the additional two units. The underlying approvals of the condominium conversion itself are not before the City Council. The City Council has the option of taking one of the following alternative actions instead of the recommended action above:

1. Uphold the Planning Commission's decision, but impose additional conditions relating to the number of units on the project.

2. Continue the item to a future hearing for further information or clarification.

3. 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.

4. Uphold the appeal and overturn the Planning Commission's decision, thereby approving the 19-unit 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 approval.

ACTION REQUESTED OF THE CITY COUNCIL

1. Affirm staff's environmental determination.

2. Affirm the Planning Commission's approval of 17 condominium dwelling units, rather than 19 condominium units as requested.

Respectfully submitted,

DAN LINDHEIM
Director
Community and Economic Development Agency

Reviewed by:
Scott Miller, Zoning Manager
Planning & Zoning Division

Prepared by:
Aubrey Rose, Planner II
Planning & Zoning Division

APPROVED AND FORWARDED TO THE
CITY COUNCIL:

Office of the City Administrator

ATTACHMENTS:

A. Appeal letter dated October 24, 2007

Exhibit B

Item: _____
City Council
March 4, 2008

Terry J. Murphy
Murphy Consulting
925-285-1510

To: Mr. Aubrey Rose
City Of Oakland
Planning and Zoning Department

10/24/07

Mr. Rose,

With this letter and a check from my clients in the amount of $918.00 I am requesting an appeal of the Planning Commission decision made on Wednesday, October 18 regarding Case no. CMDV07-370 at 10031 MacArthur Blvd. in Oakland to deign 19 units in favor of 17 units only. We are filing this appeal because in the deliberation after the presentation the Planning Commission gave **no** reasons why it was possible to allow two units over the fifteen allowed by zoning but not the four that was our request. What we are dealing with are two, existing, buildings and the question has been how much density could be allowed on the site and why. In addition, there was no indication from the Commission what my clients were to do with the spaces that had been created [with permits] by the previous owner with the full knowledge of the Building Inspection Department.

Please understand that we have **no** objection to the other requirements placed on the project by the Commission. The landscape plan and the retaining wall will need to be done for this project to be complete. Our appeal is only regarding the number of units to be allowed on the site.

Respectfully Submitted,

Terry J. Murphy

OFFICE OF THE CITY CLERK
OAKLAND

2008 FEB 21 PM 6:01

APPROVED AS TO FORM AND LEGALITY

DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION NO. _____C.M.S.

A RESOLUTION DENYING THE APPEAL (CASE NO. 07-461) AND *UPHOLDING THE DECISION OF THE PLANNING COMMISSION* TO APPROVE THE MAJOR REHABILITATION OF A FORMER MOTEL AS 17 CONDOMINIUM DWELLING UNITS, RATHER THAN 19 CONDOMINIUM UNITS AS REQUESTED, AT 10031 MACARTHUR BOULEVARD.

WHEREAS, on August 16, 2007, the applicant Terry J. Murphy, representing the property owner Kamal Pal, applied for a Major Variance (density), 5 Minor Variances (front, left side, right side, and rear setbacks & open space), Regular Design Review ("new" dwelling units), and a Tentative Parcel Map (condominium conversion) to allow the pending major rehabilitation of a former motel (approved in 2002 to convert from motel to 17 apartment units) to be completed as 19 condominium dwelling units with no required replacement units at 10031 MacArthur Boulevard. (Project); and

WHEREAS, on October 17, 2007 a duly noticed public hearing was held before the City Planning Commission for the Project; and

WHEREAS, on October 17, 2007, the Planning Commission independently reviewed, considered and determined that the Project is categorically exempt from the environmental review requirements of the California Environmental Quality Act ("CEQA") pursuant to sections 15301(d), 15301(k), and 15183 of the State CEQA Guidelines; and

WHEREAS, on October 17, 2007 the item was approved by the City Planning Commission to allow 17 condominium units with no required replacement units rather than 19 units; and

WHEREAS, an appeal of the Planning Commission's October 17, 2007 actions were filed by the Applicant ("Appellant") on October 25, 2007; and

WHEREAS, after giving due notice to the Appellants, the Applicant, all interested parties, and the public, the Appeal came before the City Council in a duly noticed public hearing on March 4, 2008; and

Exhibit B

WHEREAS, the Appellants and all other interested parties were given the opportunity to participate in the public hearing by submittal of oral and written comments; and

WHEREAS, the public hearing on the Appeal was closed by the City Council on March 4, 2008; now, therefore, be it

RESOLVED: The City Council independently finds and determines that this Resolution complies with CEQA, as the Project is categorically exempt from CEQA pursuant to CEQA Guideline Section 15301(d) "Rehabilitation of deteriorated facilities" and, and as a separate and independent basis, the Project is also exempt from CEQA pursuant Section 15301(k) "Creation of condominiums within an existing structure" of the State CEQA Guidelines; and Section 153183, "Projects Consistent with a Community Plan, General Plan or Zoning " of the State CEQA Guidelines. 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 City Council, having independently heard, considered, and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Application, the Planning Commission's decision, and the Appeal, finds that the Appellant has **not** shown, by reliance on evidence in the record, that the Planning Commission's decision was made in error, that there was an abuse of discretion by the Commission, or that the Commission's decision was not supported by substantial evidence in the record. This decision is based, in part, on the March 4, 2008, City Council Agenda Report and the October 17, 2007, Approved Planning Commission Report, which are hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeal is denied, the Planning Commission's decision approving the Project as 17 condominium dwelling units with no required replacement units, rather than 19 as requested, is upheld, subject to the findings and conditions of approval adopted by the Planning Commission, each of which is hereby separately and independently adopted by this Council in full, as may be amended here; and be it

FURTHER RESOLVED: That, in support of the City Council's decision to approve the Project, the City Council affirms and adopts as its findings and determinations (i) the March 4, 2008, City Council Agenda Report, attached hereto as Exhibit "A" [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)], and (ii) the October 17, 2007, Approved City Planning Commission 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 "B," except where otherwise expressly stated in this Resolution; and be it

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

1. the Project application, including all accompanying maps and papers;

2. all plans submitted by the Applicant and his representatives;

3. all final staff reports, decision letters and other documentation and information produced by or on behalf of the City.

4. all oral and written evidence received by the City staff, Planning Commission and City Council before and during the public hearings on the application and appeal;

5. all matters of common knowledge and all official enactments and acts of the City, such as *(a) the General Plan and the General Plan Conformity Guidelines; (b) Oakland Municipal Code*, including, without limitation, the Oakland real estate regulations, Oakland Fire 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, Suite 3315, 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, _____, 2008

PASSED BY THE FOLLOWING VOTE:

AYES-

NOES-

ABSENT-

ABSTENTION-

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

LEGAL NOTICE:

ANY PARTY SEEKING TO CHALLENGE THIS FINAL DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE DATE OF THE ANNOUNCEMENT OF THIS DECISION, PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 1094.6, UNLESS A SHORTER PERIOD APPLIES.

Exhibit B

Exhibit B

[October 17, 2007 Approved Planning Commission Staff Report]

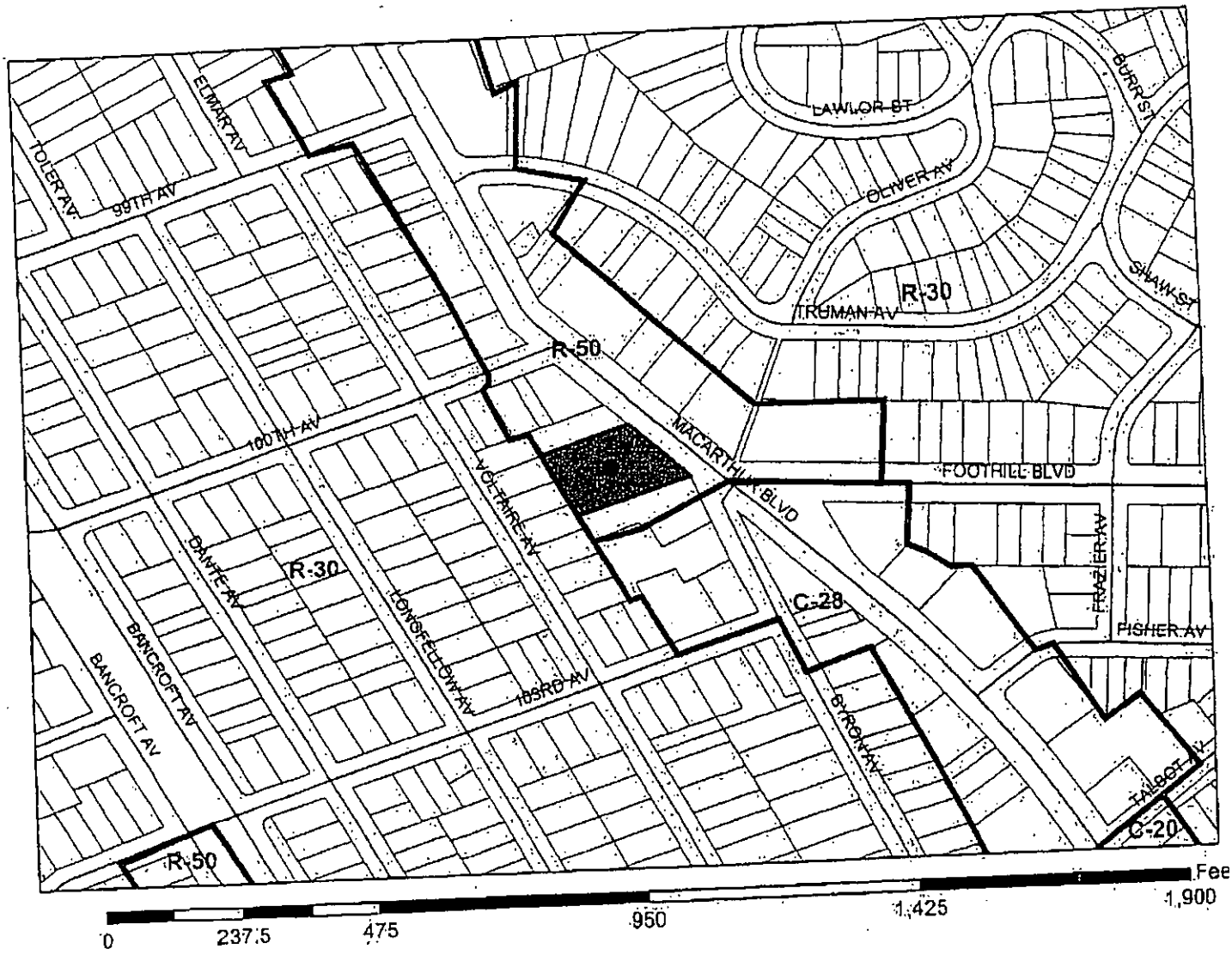
Oakland City Planning Commission APPROVED STAFF REPORT

Case File Number TPM 9391 / CMDV07-370 **October 17, 2007**

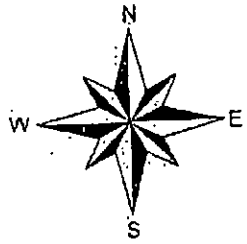
Location:	10031 (& "10059") MacArthur Blvd. (See map on reverse)
Assessors Parcel Numbers:	047-5574-011-06
Proposal:	To allow the major rehabilitation of a former motel into nineteen (19) condominium dwelling units. *The 2-building motel (Bel Air Motel) was a deemed approved motel that was declared a public nuisance and closed (#200318604); the facility obtained approval (vested but not exercised) for residential conversion to 17 dwelling unit (CMD01-544 April 2, 2002); the property currently contains 18 uninhabitable units and some repairs have occurred.*
Applicant-Contact/ Telephone number:	Terry J. Murphy (925)285-1510
Owner:	Kamal Pal
Planning Permits Required:	Major Variance to allow 19 dwelling units where 17 units are vested *and where 15 units are otherwise allowed by Zoning* (OMC Sec. 17.24.110, 17.48.020(A)(1)); Minor Variances (5) for relief from requirements for front, left, right, and rear setbacks & open space (OMC Sec. 17.24.140, 17.24.160); *Regular Design Review to create new dwelling units (OMC Sec.* 17.24.040, 17.136.040(A)(4)); Tentative Parcel Map to subdivide a parcel for condominium purposes (OMC Sec. 16.08)
General Plan:	Urban Residential (fronting MacArthur Blvd.)/ Mixed Housing Type Residential (rear)
Zoning:	R-50 Medium Density Residential Zone
Environmental Determination:	Exempt, Section 15301(d) of the State CEQA Guidelines: Rehabilitation of deteriorated facilities; Exempt, Section 15301(k) of the State CEQA Guidelines: Creation of condominiums within an existing structure; Exempt, Section 15183 of the State CEQA Guidelines: Projects consistent with a community plan, general plan or zoning
Historic Status:	Not a Potential Designated Historic Property Survey Ratings: *3.
Service Delivery District:	6 – Elmhurst/South Hills
City Council District:	7 – Reid
Date Filed:	August 16, 2007
Status:	Pending
Action to be Taken:	Deny request and discuss conditional approval of an alternate option discussed in the report
Finality of Decision:	*Appealable to City Council*
For Further Information:	Contact case planner **Aubrey Rose** at **510-238-2071** or **arose@oaklandnet.com**

#4

CITY OF OAKLAND PLANNING COMMISSION



Case File: TPM9391 & CMDV07-370
Applicant: Terry J. Murphy
Address: 10031 MacArthur
Zone: R-50



SUMMARY

Applicant Terry J. Murphy on behalf of property owner Kamal Pal requests Planning Commission approval of a Major Variance (density), five (5) Minor Variances (all setbacks & open space), a Regular Design Review (new dwelling units), and a Tentative Parcel Map to substantially rehabilitate the interior of a former motel (vested with conditions for residential conversion and containing eighteen spaces under repair) as nineteen (19) condominium units.

BACKGROUND

The facility is a two-building motel located on MacArthur Blvd. in east Oakland. Built circa 1956--prior to the construction of the 580 ("MacArthur") Freeway approximately one quarter mile away (northeast)--the site is located in a distressed area without much typical demand for motels due to the 580. By the late 1990s if not sooner, the motel's rooming units were both divided and rented out on a monthly basis without City Permits; the entire site was subsequently shut down by administrative action as a Public Nuisance in 2000. The owner at the time attempted to legalize thirty-two (32) units as residential and was denied by the Planning Commission, and by the City Council on Appeal, in 1999. In 2001 a new owner applied for Planning Permits featuring an Interim Conditional Use Permit for density exceeding that allowed by Zoning (that is, 15 units) to convert the facility to twenty (20) units, and including a Design Review for exterior renovations; the request was conditionally granted by the Planning Commission in 2002 for seventeen (17) units, consistent with staff's recommendation at that time. (This CUP included the requisite approval allowing more than 7 units in the R-50 Zone.) Relevant conditions of the 2002 approval included:

- To retain one space originally used as a motel office as a 'common room' rather than converting it to a dwelling unit (Approved plans)
- To create usable group open space at the rear yard through engineered fill on a wide, shallow down slope & usable private open space with balconies (Approved plans)
- That the CUP would *"expire April 3, 2003 unless actual construction or alteration...has begun by necessary permits by this date."* (Condition #2a)

Subsequent Permit history to date is as follows:

- Building Permit for approved conversion to 17 units (applied & issued 2002, expired 2005) & 2nd associated Building Permit for prep work
- Building Permit to complete work approved on expired Permit of 2002 (applied & approved 2005, expired 2006, reinstated 2007)
- Building Permit for approved conversion, "10059" (south) building (applied & issued 2003, expired 2005)
- Building Permit to complete work approved in 2003 for 10059 building (applied 2005, approved 2005, expired 2006)

(The current owner purchased the property in 2007)

- Pre-Application for major rehabilitation as 18 condominium units (submitted 2007)
- Subject Application, requesting Permits featuring an Interim CUP for density exceeding that allowed by Zoning (submitted 2007)

Following is a current disposition of the 2002 Conditions relevant to this request:

- The CUP was vested, as long as all Conditions of Approval are met
- Required open space was not created (See Attachment E for approved plan of 2002)
- Some landscaping has been completed (See Attachments B & E)
- Some exterior improvements have been completed (See Attachments B & E)
- Construction by major rehabilitation of 18 dwelling units is nearly complete, where 17 units were approved; (1) final inspection and (2) obtainment of Certificate of Occupancy remain outstanding
- (Some of the other completed repairs are described in the following PROPERTY DESCRIPTION section of this report)

The applicant was advised in July 2007 at the Pre-Application stages of two options for application submittal paths:

A) Apply for a Planning Commission review for the following Major and Minor Permits:

- An Interim Major CUP (to allow 19 units)
- Regular Design Review (to complete 19 dwelling units)
- Minor Variances, 5 (relief from setbacks & 19-unit open space requirements)
- Tentative Parcel Map (to subdivide the parcel as 19 condominium units)

Staff advised the applicant that the Major CUP and the Variance for open space were not supportable.

B) Apply for an Administrative review for the following Minor Permits:

- Regular Design Review (to complete 17 dwelling units)
- Minor Variances, 4 (reduced setback)
- Tentative Parcel Map (to subdivide the parcel as 17 condominium units)

In other words, to amend the 2002 approval to allow the creation of condominium units; staff advised the applicant that this option was supportable.

The applicant chose option A), consistent with the wishes of the property owner, and applied for Permits in August 2007.

In September 2007, staff was made aware that the effort to extend the Guidelines For Determining Project Conformity (Adopted May 6, 1998 and expired as of June 30, 2007) was not moving forward, and hence the Guidelines were not to be used. The consequence of this is, applications not deemed complete by that expiration date are ineligible to apply for an Interim CUP to increase density beyond that allowed by Zoning. The applicant for the subject case was advised of this, and that to pursue the desired outcome, the project would instead require a Major Variance to exceed the maximum density allowed by Zoning. The case was moved forward accordingly. Although the 2002 Approval did allow increased density at the site via an Interim CUP, that approval for density with conditions is vested as described earlier in this report. However, with the discontinuation of use of the 'Conformity Guidelines,' a CUP amendment is not an option at this time to increase from 17 to 19 units.

PROJECT DESCRIPTION

The project would consist of completion of the major rehabilitation of former motel rooms as dwelling units, an increase in number of unfinished units by one; subdivision of the parcel for condominium purposes, and a Building Permit final inspection and steps to obtain a Certificate of Occupancy. A Tentative Parcel Map is required instead of a Tentative Tract Map, despite the fact that the subdivision would result in more than four parcels, as the former is practice in subdivisions for condominium purposes. Additionally, prevalent lot size information is not required for consideration in projects involving creation of new condominium units.

The proposed exterior improvements are as follows:

- A new gate extending from the sidewalk to the concrete walk extension
- *Repositioning of existing fence*
- New concrete patio paving over engineered fill
- New concrete black wall with stucco finish to measure approximately 5-feet in height at each side of the existing electric-powered 'automobile' gate
- Four (4) new trees in the front yard
- New concrete walk
- A new landscaped area featuring a newly-planted tree (at each building)
- At each side of the center stairs, another landscaped area with tree (at each building)
- At the rear, and additional landscaped area with tree (at each building)
- New concrete retaining wall/fill to raise grade to elevation of existing patio

The current proposal contains the following relevant differences from the 2002 Conditions:

- Creates 19 condominium units where 17 apartment units were approved
  (To create condominium units would in this instance take advantage of Planning Commission policy direction to staff of May 16, 2007: for projects involving the major rehabilitation of facilities lacking a Certificate of Occupancy into condominium units, the requirement to generate replacement units is waived)
- Provides no open space
- Completion of approved exterior modifications not proposed
  (No changes to the buildings' facades are proposed at this time and therefore existing elevations plans have not been submitted (See Attachments B & E)

PROPERTY DESCRIPTION

The property at 10031 MacArthur Boulevard measures 142-feet in width at the front, 215-feet in depth along the left side, 167-feet in depth along the right side, and 125-feet in width at the rear to total 26,250 square-feet in area. The sidewalk and front yard at the site contains (from left to right): a tree (on-site), a water main (on-site), a minor PG&E utilities facility (at the curb), a second tree (on-site), a street light (curb), the site's curb cut, a City tree (curb), a water main (sidewalk), a second street light (curb), a PG&E utilities cabinet (at the curb), and two additional minor PG&E utilities facilities.

The northerly building, "Building A" or "10031" contains on each of two floors: five unfinished 2-bedroom/2-bathroom units, as well as three (3) exterior stairways, a front storage and inset mechanical room, and an attached dumpster enclosure at the rear.

The southerly building, "Building B" or "10059" contains on the first floor an office unit, one unfinished 1-bedroom/1-bathroom unit with an office, and two 4-bedroom/2-bathroom units. The upper floor contains four 2-bedroom/1-bathroom units, and one 3-bedroom/1-bathroom unit; the building contains three exterior stairways. *The applicant proposes to convert the first floor office unit into a 2-bedroom/1-bathroom by adding kitchen as well as making interior changes to the adjacent unit.*

The property contains a concentric walkway that approaches the southerly building from the sidewalk. The parking lot located between the two buildings contains 21 parking spaces, with 10 spaces facing Building A/10031 and 11 spaces facing Building B/10059.

To the rear of 10051 is a driveway spanning the entire depth of the subject site's left side; the driveway is to access the adjacent property located at 10065 MacArthur Blvd. which apparently contains a beauty salon in the front commercial space and may contain a four-unit apartment building at the end of the driveway. To the right of the site at 10023 is a fire damaged structure. Adjacent facilities flanking this stretch of MacArthur Blvd. feature commercial activities such as auto repair, convenience markets including liquor stores, motels, a laundromat, a beauty salon, and also what appear to be other motels that are being used as residential facilities.

GENERAL PLAN ANALYSIS

The site is located in a Corridor Mixed Use Classification land use area, Urban Residential, and is a medium density residential zone. The Urban Residential area straddles MacArthur Blvd. for approximately 100-125-feet in depth on average at this section of MacArthur Blvd. The City's Development Control (Zoning) Map for the area shows the rear of the subject parcel to be located within the Mixed Housing Type Residential area, as is the entire neighborhood beyond the rear of the site. The project was wrongly noticed as being located only within the Urban Residential area, in the belief that the aforementioned was a mapping error, which apparently it is not. The section of arterial corridor close by to the east lies within the Community Commercial and is a commercial shopping district zone.

Staff feels the proposed density and associated lack of open space is not consistent with the area's desired character and use. The Urban Residential classification's *'Desired Character and Use' are "...primary future use in this classification is residential...If possible, where detached density housing adjoins urban residential the zoning should be structured to create a transition area between the two."* Staff feels the 2002 approval meets the desired character and use of the Urban Residential classification. Furthermore, staff feels the option recommended to the applicant during the Pre-Application phase for 17 units is consistent with the following General Plan Objectives and Policies; specifically, in terms of support of a Tentative Parcel Map for condominiums at lower density and with open space:

HOUSING VARIETY
Objective N6
Encourage a mix of housing costs, unit sizes, types, and ownership structures.

Policy N6.2 Increased Home Ownership.
Housing developments that increase home ownership opportunities for households of all incomes are desirable.

SENSE OF COMMUNITY
Objective N9
Promote a strong sense of community within the city of Oakland, and support and enhance the district character of different areas of the city, while promoting linkages between them.

Policy N9.3 Maintaining a Positive Image.
The City should strive to maintain a positive and safe public image.

Policy N11.3 Requiring Strict Compliance with Variance Criteria.
As variances are exceptions to the adopted regulations and undermine those regulations when approved in large numbers, they should not be granted lightly and without strict compliance with defined conditions, including evidence that hardship will be caused by unique physical or topographic constraints and the owner will be deprived privileges enjoyed by similar properties, as well as the fact that the variance will not adversely affect the surrounding area nor will it grant special privilege to the property. In those instances where large number of variances are being requested, the City should review its policies and regulations and determine whether revisions are necessary.

Staff feels the original approval, arrived at after considerable collective deliberation by the Planning Commission, property owners, and City staff best honors the Urban Residential classification; the original approval, along with the newly-introduced element of the current proposal to create condominium units, conforms to several objectives and policies of the Oakland General Plan.

ZONING ANALYSIS

The property is larger and denser than surrounding lots to begin with, and furthermore, the proposal to increase density from 17 to 19 units would further exacerbate the existing site's open space deficit. Therefore, staff cannot support the proposal to exceed the maximum density allowed by the project site's Zoning beyond 17 units. Recent policy direction underscores the importance of adhering to Zoning standards for maximum density calculations when the Interim Conditional Use Permit process is not available. It is staff's belief based on several site visits that adjacent neighborhood properties contain fewer units, greater setbacks, and more open space than what is proposed by this application; in short: medium density. The R-50 zone is intended *"to create, preserve, and enhance areas for apartment living at medium densities in desirable settings, and is typically appropriate to areas of existing medium density residential*

development" Staff does not find the proposal consistent with this description. However, staff does feel that the 2002 approval fits this description, and staff is comfortable supporting Minor Variances for setbacks to honor the Planning Commission previous decision and to marry it with the new concept to increase homeownership opportunities in the area. This infill project preserves an existing building shell to improve a site by introducing a more viable activity, but to do so the project must be granted Minor Variances; the alternative would be demolition. The district contains many sites with similar bulk due to the conglomeration of old motels along the corridor; the original function of these sites has ceased to be viable but opportunities exist for district revitalization. Staff suggests that such a project warrants flexibility in the application of the Planning Code.

The following Project Summary Tables depict statistics for the requested Minor Variances for Setbacks and Open Space requirements:

PROJECT SUMMARY TABLE 1: Setbacks

	Front	Left	Right	Rear
Required *(1)*	15'	4'	4'	15'
Existing/Proposed *(2)*	2.5' *(3)*	2.5' *(3)*	1.5' *(3)*	12.5' *(3)*

(1) Minimum yards in R-50 Zone (OMC Sec. 17.24.140)
(2) Facility legally nonconforming for deficient setbacks (OMC Sec. 17.114.110(A))
(3) Approximate

Staff is comfortable supporting Minor Variances for setbacks; the site provides no alternatives and the Variance should not cause adverse impacts to the surrounding area consisting of the corridor along MacArthur Blvd. and the neighborhoods to the southwest.

PROJECT SUMMARY TABLE 2: Open Space, Existing & Proposed

EXISTING *(1)*	Required *(3)*		PROPOSED *(4)*	Required	
	Group or	*Private*		*Group or*	*Private*
0 sq. ft. *(2)*	3,400 sq. ft.	1,275 sq. ft.	0 sq. ft.	4,000 sq. ft.	1,500 sq. ft.

(1) Based on 17 units, as approved by the Planning Commission (April 3, 2002)
(2) Usable group and private open space definitions (OMC 17.126.030, 17.126.040)
(3) Usable group and private open space requirements for R-50 Zone (OMC 17.24.160)
(4) Based on 20 units, as proposed by applicant in 2001

Staff is not comfortable supporting a Minor Variance for no open space; the site provides options to accommodate Code-conforming open space, which was demonstrated by a prior applicant and conditioned as part of the previous Planning Commission approval. The following table shows that the 2002 approval included combined group and private usable open space for in excess of the 17 units approved; this scenario incidentally requires site alterations precluding a design featuring 20 units:

PROJECT SUMMARY TABLE 3: Open Space, Prior Approval

APPROVED *(1)*		
	Group and	*Private*
	2,000 sq. ft.	1,000 sq. ft.

(1) CMD01-544 April 3, 2002

Staff finds no other justification for this Minor Variance

Design Review
Staff feels that for Design Review findings to be made, an approval must be conditioned to include all original conditions. Therefore, all approved exterior modifications from the 2002 approval must be part of such an approval, including balconies to meet private open space requirements; the same holds for approved landscaping. This is above and beyond that which is proposed. Staff recommends a conditioned approval must require the applicant to submit design plans depicting the original approval and to adhere to them. Findings of denial for the subject Regular Design Review are not included with the Resolution of this report due to the fact that the design as proposed is not unacceptable because findings cannot be made, but because it does not adhere to the original design approval.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines statutorily exempt projects which are disapproved (Section 15270). Should the project be denied, this exemption would apply.

CEQA Guidelines categorically exempts specific types of projects from environmental review.

- Section 15301(d) exempts project involving 'Rehabilitation of deteriorated facilities'
- Section 15301(k) exempts 'Creation of condominiums within an existing structure'
- Section 15183 exempts 'Projects consistent with a community plan, general plan or zoning'

Should the Planning Commission conditionally approve the project as described later in this report, the proposed project would meet these descriptions: it involves the major rehabilitation of a closed nuisance facility ultimately resulting in the creation of condominium purposes, and the entire project is consistent with the Oakland General Plan and the Oakland Planning Code.

KEY ISSUES AND IMPACTS

The issues staff considered in reviewing this application were those of residential density (and the property-based need for it) and resultant livability (site and surroundings) based on associated relieved development standards; these issues are discussed in the GENERAL PLAN ANALYSIS and ZONING ANALYSIS sections of this report. Another consideration is Planning Commission precedent. Condition of Approval no. 4a, 'Modification of Conditions or Revocation', fully in effect at this time, states: *"The City Planning Commission reserves the right, after notice and public hearing, to alter Conditions of Approval or revoke this conditional use permit if it is found that the approved use or facility is violating any of the conditions of Approval, any applicable codes, requirements, regulation, guideline or causing a public nuisance."* Likewise, Planning Code Section 17.134.080, 'Adherence to approved plans', states: *"A conditional use permit shall be subject to the plans and other conditions upon the basis of which it was granted"* Therefore, the Planning Commission is of course entirely within it's rights to deny any components of this proposal which stray from the original approval. Staff suggests that while the application as submitted should not be approved, the application could be conditionally approved in accordance

with Option B) as described to the applicant during the Pre-Application phase of this process, mentioned on page 4 of this report. That is, to fully comply with the 2002 approval by providing 17 units, converting the office unit to a "one common unit", and to adhere to approvals for design, landscaping, and creation of usable group and private open space; staff suggests the proposal now before the City to create condominium units rather than apartments is an acceptable concept that could be amended to the 2002 approval accordingly.

Tentative Parcel Map

The City's Building Services Division did not recommend approving the Tentative Parcel Map submitted in conjunction with this application. However, staff feels that the reasons for this recommendation can be addressed with minor revision to Tentative Parcel Map so that it can be approved (See Memo, Attachment F).

RECOMMENDATIONS:

1. Affirm staff's environmental determination.
2. Deny the Major Variance (density) and the Minor Variance (open space) subject to the attached findings for Denial.
3. Discuss the alternate option based on an amended version of a previous Planning Commission approval; in the event the Planning Commission moves to approve the alternate option at this time, a corresponding resolution is included as an attachment to this report (Attachment C).

Prepared by:

Aubrey Rose

AUBREY ROSE
Planner II

Approved by:

Scott Miller

SCOTT MILLER
Zoning Manager

Findings for Approval

FINDINGS FOR APPROVAL:
This 17-unit proposal meets all the required findings under the City of Oakland Tentative Maps/Action On (OMC Sec. 16.08.030) and Parcel Maps/Lot Design Standards (OMC Sec. 16.24.040) of the Subdivisions Regulations (OMC Title 16) of the Oakland Municipal Code and with the Design Review Procedure/Regular design review criteria (Section 17.136.050(A)) and the Variance Procedure/Findings required (OMC Sec. 17.148.050) of the Oakland Zoning Regulations of the Oakland Planning Code as set forth below and which are required to approve your application. Required findings are shown in **bold** type; reasons your proposal satisfies them are shown in normal type.

SECTION 16.08.030 – TENTATIVE MAPS/ACTION ON
(Pursuant to California Government Code Section 66474, Chapter 4 of the 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 the applicable general and specific plans as specified in the State Government Code Section 65451.**

This finding cannot be made: the proposed map is consistent with the Subdivision Ordinance of the Oakland Municipal Code, the Land Use & Transportation Element of the Oakland General Plan, and no specific plans apply.

B. **That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.**

This finding cannot be made: the design of the proposed subdivision is consistent with the Subdivision Ordinance of the Oakland Municipal Code, the Land Use & Transportation Element of the Oakland General Plan, and no specific plans apply.

C. **That the site is not physically suitable for the type of development.**

This finding cannot be made: the site has proven to be appropriate for living units, as it contains a structure having former rooming units built circa 1956; the site is adjacent several existing residential structures and similar non-residential structures containing rooming units.

D. **That the site is not physically suitable for the proposed density of development.**

This finding cannot be made: the site can clearly accommodate the proposed density as the

project creating condominium units within an existing building envelope will feature seventeen units where the building currently contains eighteen unfinished living units.

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 finding cannot be made: the design of the subdivision will not require substantial grading or exterior construction and therefore is highly likely to cause any environmental damage.

F. **That the design of the subdivision or type of improvements is likely to cause serious public health problems.**

This finding cannot be made: the design of the subdivision will only involve the creation of condominium units within an existing structure and is highly unlikely to cause any public health problems.

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).**

This finding cannot be made: the design of the subdivision will not conflict with any easement, as none exist across the property, or between the property and the adjacent public right-of-ways.

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.**

This finding cannot be made: the design of the subdivision will only involve the creation of condominium units within a former non-residential structure and includes no new designs which do not utilize solar resources.

SECTION 16.24.040- PARCEL MAPS/LOT DESIGN STANDARDS

A. **No lot shall be created without frontage on a public street, as defined by Section 16.04.030, except:**
   1. **Lots created in conjunction with approved private easements.**

2. **A single lot with frontage on a public street by means of a vehicular access corridor provided that in all cases the corridor shall have a minimum width of twenty (20) feet and shall not exceed three hundred (300) feet in length. Provided further, the corridor shall be a portion of the lot it serves, except that its area (square footage) shall not be included in computing the minimum lot area requirements of the zoning district.**

The project meets this finding: the project involving the creation of condominium units within an existing building envelope will not include the creation of new real lots.

B. **The side lines of lots shall run at right angles or radially to the street upon which the lot fronts, except where impractical by reason of unusual topography.**

This finding is not applicable to this project: no new real lots will be created.

3. **All applicable requirements of the zoning regulations shall be met.**

The project meets this finding: it meets all requirements of the R-50 Medium Density Residential Zone and Variance and Design Review procedures of the Oakland Planning Code.

C. **Lots shall be equal or larger in measure than the prevalent size of existing lots in the surrounding area except:**
1. **Where the area is still considered acreage.**
2. ***Where a deliberate change in the character of the area has been initiated by the adoption of a specific plan, a change in zone, a development control map, or a planned unit development.***

The lot is larger than the average for adjacent area lots and will not be reduced in area for this subdivision creating condominium units.

D. **Lots shall be designed in a manner to preserve and enhance natural out-croppings of rock, specimen trees or group of trees, creeks or other amenities.**

This finding is not applicable: the site is already developed and contains no biological, geologic, or hydrologic amenities.

SECTION 17.136.050(A) - REGULAR DESIGN REVIEW CRITERIA for a 17-unit project:

The Design Review findings approved with Case no. CMD01-544 (approved April 3, 2002) remain in full effect and are listed first (in italics) following each criteria, followed comments on the current project:

1. **That the proposed design will create a building or set of buildings that are well related to the surrounding area in their setting, scale, bulk, height, materials, and textures:**

The proposed enhancements to the site will improve the existing conditions. The buildings will be re-stuccoed, and re-roofed from flat to pitched roofs. All windows in stucco walls will be inset a minimum of three inches from their surrounding trims. Instead of long continuous motel-like access balconies, each of the two buildings will have punctuated access ways that lead onto the courtyard. The result is a grouping of buildings related to each other as wells as the residential character of the surrounding neighborhood buildings.

This finding is met by the proposal: the design will serve as a transition between the arterial the site and buildings fronts, and the neighborhood buffered from this arterial by the site. The proposed design utilizes an existing building shell built circa 1956 that is vacant and uninhabitable; the structure is comparable in size to other such facilities flanking the same frontage and is the same vintage and style architecturally as a predominance of the structures in the adjacent neighborhoods.

2. **That the proposed design will protect, preserve, or enhance desirable neighborhood characteristics;**

The new elevations facing the heavily traveled thoroughfare will be improved. The site will reflect "desirable neighborhood characteristics" such as nicely landscaped open areas, decorative fences, clean and tidy compounds, and off-street parking.

This finding is met by the proposal: the design will basically be residential in nature, with the added desirable feature to enhance home ownership opportunities, and will honor the prevailing area architecture for era-specific design, bulk, and height; the design will adhere to the intent of the district by enhancing the area combination of building unit types, with the added desirable feature to offer a variety of transportation options.

3. **That the proposed design will be sensitive to the topography and landscape.**

The topography and landscape of the site are primarily established by the existing structures and driveway conditions. Additional landscaping and new open space area will be created to enhance the existing conditions.

The conversion of the wide, shallow down slope rear yard to group open space by fill is not considered to be a desecration of the site's topography, and will be landscaped, as the site will be throughout.

4. **That, if situated on a hill, the design and massing of the proposed building relates to the grade of the hill;**

N/A

This finding is not applicable: the site is level and therefore not situated on a hill.

5. **That the proposed design conforms in all significant respects with the Oakland**

General Plan and with any applicable design review guidelines or criteria, district plan or development control map which have been adopted by the Planning Commission or City Council.

The project is in the R-50 Zone and the Urban Residential General Plan designation. The project conforms to all applicable standards of the General Plan..

The proposed design for a multi-family residential facility conforms to the Land Use & Transportation Element (LUTE) of the Oakland General Plan. The proposed design conforms to the following General Plan Policies and Objectives as described:

HOUSING VARIETY
Objective N6
Encourage a mix of housing costs, unit sizes, types, and ownership structures.

Policy N6.2 Increased Home Ownership.
Housing developments that increase home ownership opportunities for households of all incomes are desirable.

SENSE OF COMMUNITY
Objective N9
Promote a strong sense of community within the city of Oakland, and support and enhance the district character of different areas of the city, while promoting linkages between them.

Policy N9.3 Maintaining a Positive Image..
The City should strive to maintain a positive and safe public image.

Policy N11.3 Requiring Strict Compliance with Variance Criteria.
As variances are exceptions to the adopted regulations and undermine those regulations when approved in large numbers, they should not be granted lightly and without strict compliance with defined conditions, including evidence that hardship will be caused by unique physical or topographic constraints and the owner will be deprived privileges enjoyed by similar properties, as well as the fact that the variance will not adversely affect the surrounding area nor will it grant special privilege to the property. In those instances where large number of variances are being requested, the City should review its policies and regulations and determine whether revisions are necessary.

The City does not have formal design guidelines per se for multi-family residential facilities requiring Regular Design Review. The City does however contain both the 'Interim Design Review Manual for One- and Two-Unit Residences' and the 'Small Project Design Review/Checklist Criteria For Facilities With 3 Or More Dwelling Units', both of which staff finds to contain relevance for this project. The project in turn conforms to both of these peripheral design guidelines documents. The building will not obstruct views, solar access or negatively impact privacy of adjacent sites both because the building envelope exists and no exterior construction is proposed, and because the existing structure generates none of these

impacts. As described in the findings the building is compatible with adjacent buildings in terms of architectural style and bulk. The front façade does not contain balconies; all windows have been replaced. The proposal does not include the expansion of the existing building. The project will beautify an existing infill site by utilizing a former commercial structure and maintaining the variety of residential building unit types that prevail in the district.

SECTION 17.148.050(A) – VARIANCE FINDINGS for a 17-unit project:

1. **That strict compliance with the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations, due to unique physical or topographic circumstances or conditions of design; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution improving livability, operational efficiency, or appearance.**

   Strict adherence to Code-conforming setbacks would preclude the effective design solution of rehabilitating two existing uninhabitable structures for new use; this will improve the livability of the site while maximizing density allowed by Zoning and previous Permits; the project will simultaneously provide appearance that is architecturally rhythmic to the prevailing design and bulk of surrounding structures and properties. The alternative would consist of the extreme and undesirable action of a partial or full demolition of an existing structure that has been mostly converted and rehabilitated.

2. **That strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation;**

   To require standard setbacks would preclude the effective design solution of rehabilitating an existing structure; the rehabilitation will provide new dwelling units and still meet the intents of these development standards, as setbacks are provided at this developed infill site commensurate with surrounding properties and provided adequate light and air to the site and adjacent properties; the site will also feature recreational opportunities equal or superior to many nearby properties.

3. **That the variance, if granted, will not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy;**

   The variances will not adversely affect the surrounding community or contravene any plans: the project only involves the rehabilitation of an existing structure and does not add bulk to the site.

4. **That the variance will not constitute a grant of special privilege inconsistent with**

limitations imposed on similarly zoned properties or inconsistent with the purposes of the zoning regulations;
The variances will not constitute special privileges not extended to surrounding properties or contravening zoning regulations intents and purposes: the variances allow the instatement of an approved use in an existing structure.

5. **That the elements of the proposal requiring the variance (e.g., elements such as buildings, walls, fences, driveways, garages and carports, etc.) conform with the regular design review criteria set forth in the design review procedure at Section 17.136.050.**

The elements of the proposal requiring the variances, building setback, conform to regular design review criteria as indicated by the Design Review findings of Case no. CMD01-544 (approved April 3, 2002).

FINDINGS FOR APPROVAL

Conditions of Approval

1. Approved Use

Ongoing

a) The project shall be constructed and operated in accordance with the authorized use as described in the application materials, staff report, and the plans dated February 8, 2007 and submitted on August 16, 2007 and as amended by the following conditions, especially **Condition no. 45**. Any additional uses or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval. Any deviation from the approved drawings, Conditions of Approval or use shall required prior written approval from the Director of City Planning or designee.

b) This action by the City Planning Commission ("this Approval") includes the approvals set forth below. This Approval includes: Case File Number TPM 9391 / CMDV07-370 under Oakland Municipal Code Sections 16.08.030, 16.24.040, 17.136.050(A), and 17.148.050.

2. Effective Date, Expiration, Extensions and Extinguishment

Ongoing

Unless a different termination date is prescribed, this Approval shall expire two calendar years from the approval date, unless within such period all necessary permits for construction or alteration have been issued, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit for this project may invalidate this Approval if the said extension period has also expired.

3. Scope of This Approval; Major and Minor Changes

Ongoing

The project is approved pursuant to the **Planning Code and Subdivision Regulations** only. Minor changes to approved plans may be approved administratively by the Director of City Planning or designee. Major changes to the approved plans shall be reviewed by the Director of City Planning or designee to determine whether such changes require submittal and approval of a revision to the approved project by the approving body or a new, completely independent permit.

4. Conformance with other Requirements

Prior to issuance of a demolition, grading, P-job, or other construction related permit

a) The project applicant shall comply with all other applicable federal, state, regional and/or local codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Building Services Division, the City's Fire Marshal, and the City's Public Works Agency.

b) The applicant shall submit approved building plans for project-specific needs related to fire protection to the Fire Services Division for review and approval, including, but not limited to automatic extinguishing systems, water supply improvements and hydrants, fire department access, and vegetation management for preventing fires and soil erosion.

5. **Conformance to Approved Plans; Modification of Conditions or Revocation**

Ongoing

a) Site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60-90 days of approval, unless an earlier date is specified elsewhere.

b) The City of Oakland reserves the right at any time during construction to require certification by a licensed professional that the as-built project conforms to all applicable zoning requirements, including but not limited to approved maximum heights and minimum setbacks. Failure to construct the project in accordance with approved plans may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension or other corrective action.

c) Violation of any term, Conditions or project description relating to the Approvals is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approvals or alter these Conditions 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. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement actions.

6. **Signed Copy of the Conditions**

With submittal of a demolition, grading, and building permit

A copy of the approval letter and Conditions shall be signed by the property owner, notarized, and submitted with each set of permit plans to the appropriate City agency for this project.

7. **Indemnification**

a) *Ongoing* 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 this Approval, or any related approval by the City. 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.

b) Within ten (10) calendar days of the filing of a claim, action or proceeding to attack, set aside, void, or annul this Approval, or any related approval by the City, 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/obligation shall survive termination, extinguishment, or invalidation of this, or any related approval. Failure to timely execute the Letter Agreement does not relieve the project applicant of any of the obligations contained in 7(a) above, or other conditions of approval.

8. **Compliance with Conditions of Approval**

Ongoing

The project applicant shall be responsible for compliance with the recommendations in any submitted and approved technical report and all the Conditions of Approval set forth below at its sole cost and expense, and subject to review and approval of the City of Oakland.

9. **Severability**

Ongoing

Approval of the project would not have been granted but for the applicability and validity of each and every one of the specified conditions, and if any one or more of such conditions is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid conditions consistent with achieving the same purpose and intent of such Approval.

10. **Job Site Plans**

Ongoing throughout demolition, grading, and/or construction

At least one (1) copy of the stamped approved plans, along with the Approval Letter and Conditions of Approval, shall be available for review at the job site at all times.

11. **Special Inspector/Inspections, Independent Technical Review, Project Coordination and Management**

Prior to issuance of a demolition, grading, and/or construction permit

The project applicant may be required to pay for on-call 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, including inspections of violations of Conditions of Approval. The project applicant shall establish a deposit with the Building Services Division, as directed by the Building Official, Director of City Planning or designee.

12. **Required Landscape Plan for New Construction and Certain Additions to Residential Facilities**

Prior to issuance of a building permit

Submittal and approval of a landscape plan for the entire site is required for the establishment of a new residential unit (excluding secondary units of five hundred (500) square feet or less), and for additions to Residential Facilities of over five hundred (500) square feet. The landscape plan and the plant materials installed pursuant to the approved plan shall conform with all provisions of Chapter 17.124 of the Oakland Planning Code, including the following:

a) Landscape plans for projects involving grading, rear walls on downslope lots requiring conformity with the screening requirements in Section 17.124.040, or vegetation

management prescriptions in the S-11 zone, shall show proposed landscape treatments for all graded areas, rear wall treatments, and vegetation management prescriptions.

b) Within the portions of Oakland northeast of the line formed by State Highway 13 and continued southerly by Interstate 580, south of its intersection with State Highway 13, all plant materials on submitted landscape plans shall be fire resistant and, to the satisfaction of the Director of City Planning, a substantial portion of the planted area shown on submitted landscape plans shall be drought tolerant plant materials. The City Planning Department shall maintain lists of plant materials considered fire resistant and drought tolerant.

c) All landscape plans shall show proposed methods of irrigation. The methods shall ensure adequate irrigation of all plant materials for at least one growing season.

13. **Landscape Requirements for Street Frontages.**

Prior to issuance of a final inspection of the building permit

a) All areas between a primary Residential Facility and abutting street lines shall be fully landscaped, plus any unpaved areas of abutting rights-of-way of improved streets or alleys, provided, however, on streets without sidewalks, an unplanted strip of land five (5) feet in width shall be provided within the right-of-way along the edge of the pavement or face of curb, whichever is applicable. Existing plant materials may be incorporated into the proposed landscaping if approved by the Director of City Planning.

b) In addition to the general landscaping requirements set forth in Chapter 17.124, a minimum of one (1) fifteen-gallon tree, or substantially equivalent landscaping consistent with city policy and as approved by the Director of City Planning, shall be provided for every twenty-five (25) feet of street frontage. On streets with sidewalks where the distance from the face of the curb to the outer edge of the sidewalk is at least six and one-half (6 ½) feet, the trees to be provided shall include street trees to the satisfaction of the Director of Parks and Recreation.

14. **Assurance of Landscaping Completion.**

Prior to Issuance of a Certificate of Occupancy

The trees, shrubs and landscape materials required by the conditions of approval attached to this project shall be planted before the certificate of occupancy will be issued; or a bond shall be provided for the planting of the required landscaping. The amount of such bond shall equal the greater of two thousand five hundred dollars ($2,500.00) or the estimated cost of the required landscaping, based on a licensed contractor's bid.

15. **Landscape Maintenance.**

Ongoing

All required planting shall be permanently maintained in good growing condition and, whenever necessary, replaced with new plant materials to ensure continued compliance with applicable landscaping requirements. All required fences, walls and irrigation systems shall be permanently maintained in good condition and, whenever necessary, repaired or replaced.

16. **Underground Utilities**

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.

17. **Improvements in the Public Right-of-Way (General)**
Approved prior to the issuance of a P-job or building permit
a) The project applicant shall submit Public Improvement Plans to Building Services Division for adjacent public rights-of-way (ROW) showing all proposed improvements and compliance with the conditions and City requirements including but not limited to curbs, gutters, sewer laterals, storm drains, street trees, paving details, locations of transformers and other above ground utility structures, the design specifications and locations of facilities required by the East Bay Municipal Utility District (EBMUD), street lighting, on-street parking and accessibility improvements compliant with applicable standards and any other improvements or requirements for the project as provided for in this Approval. Encroachment permits shall be obtained as necessary for any applicable improvements- located within the public ROW.

b) Review and confirmation of the street trees by the City's Tree Services Division is required as part of this condition.

c) The Planning and Zoning Division and the Public Works Agency will review and approve designs and specifications for the improvements. Improvements shall be completed prior to the issuance of the final building permit.

d) The Fire Services Division will review and approve fire crew and apparatus access, water supply availability and distribution to current codes and standards.

18. **Improvements in the Public Right-of-Way (Specific)**
Approved prior to the issuance of a grading or building permit
Final building and public improvement plans submitted to the Building Services Division shall include the following components:

a) Remove and replace any existing driveway that will not be used for access to the property with new concrete sidewalk, curb and gutter.

19. **Payment for Public Improvements**
Prior to issuance of a final inspection of the building permit.
The project applicant shall pay for and install public improvements made necessary by the project including damage caused by construction activity.

20. **Compliance Plan**
Prior to issuance of a demolition, grading, or building permit
The project applicant shall submit to the Planning and Zoning Division and the Building Services Division a Conditions compliance plan that lists each condition of approval, the

City agency or division responsible for review, and how/when the project applicant has met or intends to meet the conditions. The applicant will sign the Conditions of Approval attached to the approval letter and submit that with the compliance plan for review and approval. The compliance plan shall be organized per step in the plancheck/construction process unless another format is acceptable to the Planning and Zoning Division and the Building Services Division. The project applicant shall update the compliance plan and provide it with each item submittal.

21. **Dust Control**

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:

a) 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.

b) 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).

c) 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.

d) Sweep daily (with water sweepers using reclaimed water if possible) all paved access roads, parking areas and staging areas at construction sites.

e) 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.

f) Limit the amount of the disturbed area at any one time, where feasible.

g) Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 mph.

h) Pave all roadways, driveways, sidewalks, etc. as soon as feasible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.

i) Replant vegetation in disturbed areas as quickly as feasible.

j) Enclose, cover, water twice daily or apply (non-toxic) soil stabilizers to exposed stockpiles (dirt, sand, etc.).

k) Limit traffic speeds on unpaved roads to 15 miles per hour.

l) Clean off the tires or tracks of all trucks and equipment leaving any unpaved construction areas.

22. **Construction Emissions**

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:

a) 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 provides the issuance of authorities to construct and permits 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.

b) 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.

23. **Days/Hours of Construction Operation**
Ongoing throughout demolition, grading, and/or construction
The project applicant shall require construction contractors to limit standard construction activities as follows:

a) Construction activities are limited to between 7:00 AM and 7:00 PM Monday through Friday, except that pile driving and/or other extreme noise generating activities greater than 90 dBA shall be limited to between 8:00 a.m. and 4:00 p.m. Monday through Friday.

b) Any construction activity proposed to occur outside of the standard hours of 7:00 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.

c) Construction activity shall not occur on Saturdays, with the following possible exceptions:

i. Prior to the building being enclosed, requests for Saturday construction for special activities (such as concrete pouring which may require more continuous amounts of time), shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of resident's preferences for whether the activity is acceptable if the overall duration of construction is shortened. Such construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division.

ii. After the building is enclosed, requests for Saturday construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division, and only then within the interior of the building with the doors and windows closed.

d) No extreme noise generating activities (greater than 90 dBA) shall be allowed on Saturdays, with no exceptions.

e) No construction activity shall take place on Sundays or Federal holidays.

f) Construction activities include but are not limited to: truck idling, moving equipment (including trucks, elevators, etc) or materials, deliveries, and construction meetings held on-site in a non-enclosed area.

g) Applicant shall use temporary power poles instead of generators where feasible.

24. Noise Control

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 the Planning and Zoning Division and the Building Services Division review and approval, which includes the following measures:

a) Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible).

b) 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.

c) Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or other measures to the extent feasible.

d) If feasible, the noisiest phases of construction shall be limited to less than 10 days at a time.

25. Noise Complaint Procedures

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 Building Services Division a list of measures to respond to and track complaints pertaining to construction noise. These measures shall include:

a) A procedure and phone numbers for notifying the Building Services Division staff and Oakland Police Department; (during regular construction hours and off-hours);

b) A sign posted on-site pertaining with permitted construction days and hours and complaint procedures and who to notify in the event of a problem. The sign shall also include a listing of both the City and construction contractor's telephone numbers (during regular construction hours and off-hours);

c) The designation of an on-site construction complaint and enforcement manager for the project;

d) Notification of neighbors and occupants within 300 feet of the project construction area at least 30 days in advance of extreme noise generating activities about the estimated duration of the activity; and

e) A preconstruction meeting shall be held with the job inspectors and the general contractor/on-site project manager to confirm that noise measures and practices (including construction hours, neighborhood notification, posted signs, etc.) are completed.

26. **Interior Noise**

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, based upon recommendations of a qualified acoustical engineer and submitted to the Building Services Division for review and approval. 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.

27. **Construction Traffic and Parking**

Prior to the issuance of a demolition, grading or building permit

The project applicant and construction contractor shall meet with appropriate City of Oakland agencies to determine traffic management strategies to reduce, to the maximum extent feasible, traffic congestion and the effects of parking demand by construction workers during construction of this project and other nearby projects that could be simultaneously under construction. The project applicant shall develop a construction management plan for review and approval by the Planning and Zoning Division, the Building Services Division, and the Transportation Services Division. The plan shall include at least the following items and requirements:

a) A set of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak traffic hours, detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes.

b) Notification procedures for adjacent property owners and public safety personnel regarding when major deliveries, detours, and lane closures will occur.

c) Location of construction staging areas for materials, equipment, and vehicles at an approved location.).

d) A process for responding to, and tracking, complaints pertaining to construction activity, including identification of an onsite complaint manager. The manager shall determine the cause of the complaints and shall take prompt action to correct the problem. Planning and Zoning shall be informed who the Manager is prior to the issuance of the first permit issued by Building Services.

e) Provision for accommodation of pedestrian flow.

28. **Erosion and Sedimentation Control**

Ongoing throughout demolition grading, and/or construction activities

The project applicant shall implement Best Management Practices (BMPs) to reduce erosion, sedimentation, and water quality impacts during construction to the maximum extent practicable. Plans demonstrating the Best Management Practices shall be submitted for review and approval by the Planning and Zoning Division and the Building Services Division. At a minimum, the project applicant shall provide filter materials deemed acceptable to the City at nearby catch basins to prevent any debris and dirt from flowing into the City's storm drain system and creeks.

29. **Hazards Best Management Practices**

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:

a) Follow manufacturer's recommendations on use, storage, and disposal of chemical products used in construction;
b) Avoid overtopping construction equipment fuel gas tanks;
c) During routine maintenance of construction equipment, properly contain and remove grease and oils;
d) Properly dispose of discarded containers of fuels and other chemicals.
e) Ensure that construction would not have a significant impact on the environment or pose a substantial health risk to construction workers and the occupants of the proposed development. Soil sampling and chemical analyses of samples shall be performed to determine the extent of potential contamination beneath all UST's, elevator shafts, clarifiers, and subsurface hydraulic lifts when on-site demolition, or construction activities would potentially affect a particular development or building.
f) If soil, groundwater or other environmental medium with suspected contamination is encountered unexpectedly during construction activities (e.g., identified by odor or visual staining, or if any underground storage tanks, abandoned drums or other hazardous materials or wastes are encountered), the applicant shall cease work in the vicinity of the suspect material, the area shall be secured as necessary, and the applicant shall take all appropriate measures to protect human health and the environment. Appropriate measures shall include notification of regulatory agency(ies) and implementation of the actions described in Standard Conditions of Approval 50 and 52, as necessary, to identify the nature and extent of contamination. Work shall not resume in the area(s) affected until the measures have been implemented under the oversight of the City or regulatory agency, as appropriate.

30. **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.

Prior to issuance of demolition, grading, or building permit

Chapter 15.34 of the Oakland Municipal Code 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 shall implement the plan.

Ongoing

The ODP will identify how the project complies with the Recycling Space Allocation Ordinance, (Chapter 17.118 of the Oakland Municipal Code), 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 in 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 the Public Works Agency for review and approval. Any incentive programs shall remain fully operational as long as residents and businesses exist at the project site.

31. **Lighting Plan**

Prior to the issuance of an electrical or building permit

The proposed lighting fixtures shall be adequately shielded to a point below the light bulb and reflector and that prevent unnecessary glare onto adjacent properties. Plans shall be submitted to the Planning and Zoning Division and the Electrical Services Division of the Public Works Agency for review and approval. All lighting shall be architecturally integrated into the site.

32. **Archaeological Resources**

Ongoing throughout demolition, grading, and/or construction

a) Pursuant to CEQA Guidelines section 15064.5 (f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore, in the event that any prehistoric or 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.

b) In considering any suggested measure proposed by the consulting archaeologist in order to mitigate impacts to historical resources or unique archaeological resources, the project

applicant shall determine whether avoidance is necessary and feasible in light of factors such as the nature of the find, project design, costs, and 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.

c) Should an archaeological artifact or feature be discovered on-site during project construction, all activities within a 50-foot radius of the find would be halted until the findings can be fully investigated by a qualified archaeologist to evaluate the find and assess the significance of the find according to the CEQA definition of a historical or unique archaeological resource. If the deposit is determined to be significant, the project applicant and the qualified archaeologist shall meet to determine the appropriate avoidance measures or other appropriate measure, subject to approval by the City of Oakland, which shall assure implementation of appropriate 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.

33. **Human Remains**

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.

34. **Paleontological Resources**

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.

35. **Erosion and Sedimentation Control Plan**
Prior to any grading activities

a) The project applicant shall obtain 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 for review and approval by the Building Services Division. The erosion and sedimentation control plan shall include all necessary measures to be taken to prevent excessive stormwater runoff or carrying by stormwater runoff of solid materials on to lands of adjacent property owners, public streets, or to creeks as a result of conditions created by grading operations. The plan shall include, but not be limited to, such measures as short-term erosion control planting, waterproof slope covering, check dams, interceptor ditches, benches, storm drains, dissipation structures, diversion dikes, retarding berms and barriers, devices to trap, store and filter out sediment, and stormwater retention basins. Off-site work by the project applicant may be necessary. The project applicant shall obtain permission or easements necessary for off-site work. There shall be a clear notation that the plan is subject to changes as changing conditions occur. Calculations of anticipated stormwater runoff and sediment volumes shall be included, if required by the Director of 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.

Ongoing throughout grading and construction activities

b) The project applicant shall implement the approved erosion and sedimentation plan. No grading shall occur during the wet weather season (October 15 through April 15) unless specifically authorized in writing by the Building Services Division.

36. **Site Review by the Fire Services Division**
Prior to the issuance of demolition, grading or building permit
The project applicant shall submit plans for site review and approval to the Fire Prevention Bureau Hazardous Materials Unit. Property owner may be required to obtain or perform a Phase II hazard assessment.

37. **Phase I and/or Phase II Reports**
Prior to issuance of a demolition, grading, or building permit
Prior to issuance of demolition, grading, or building permits the project applicant shall submit to the Fire Prevention Bureau, Hazardous Materials Unit, a Phase I environmental site assessment report, and a Phase II report if warranted by the Phase I report for the project site. The reports shall make recommendations for remedial action, if appropriate, and should be signed by a Registered Environmental Assessor, Professional Geologist, or Professional Engineer.

38. **Lead-Based Paint/Coatings, Asbestos, or PCB Occurrence Assessment**
Prior to issuance of any demolition, grading or building permit

The project applicant shall submit a comprehensive assessment report to the Fire Prevention Bureau, Hazardous Materials Unit, 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.

39. **Environmental Site Assessment Reports Remediation**
Prior to issuance of a demolition, grading, or building permit
If the environmental site assessment reports recommend remedial action, the project applicant shall:

a) Consult with the appropriate local, State, and federal environmental regulatory agencies to ensure sufficient minimization of risk to human health and environmental resources, both during and after construction, posed by soil contamination, groundwater contamination, or other surface hazards including, but not limited to, underground storage tanks, fuel distribution lines, waste pits and sumps.

b) Obtain and submit written evidence of approval for any remedial action if required by a local, State, or federal environmental regulatory agency.

c) Submit a copy of all applicable documentation required by local, State, and federal environmental regulatory agencies, including but not limited to: permit applications, Phase I and II environmental site assessments, human health and ecological risk assessments, remedial action plans, risk management plans, soil management plans, and groundwater management plans.

40. **Lead-based Paint Remediation**
Prior to issuance of any demolition, grading or building permit
If lead-based paint is present, the project applicant shall submit specifications to the Fire Prevention Bureau, Hazardous Materials Unit 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, as may be amended.

41. **Other Materials Classified as Hazardous Waste**
Prior to issuance of any demolition, grading or building permit
If other materials classified as hazardous waste by State or federal law are present, the project applicant shall submit written confirmation to Fire Prevention Bureau, Hazardous Materials Unit that all State and federal laws and regulations shall be followed when profiling, handling, treating, transporting and/or disposing of such materials.

42. **Health and Safety Plan per Assessment**
Prior to issuance of any demolition, grading or building permit
If the required lead-based paint/coatings, asbestos, or PCB assessment finds presence of such materials, the project applicant shall create and implement a health and safety plan to protect

43. **Submittal of Final Map and Final Map Requirements**

Within two years of the effective date of approval.

The applicant shall submit within 2 years of the approval of this permit, a Final Map to the Oakland Building Services Division. The Final Map submittal shall include: all easements for rights-of-way provided for public services or utilities; all property which is offered for dedication for public use; and all property that may be reserved by deed covenant for the common use of the property owners in the subdivision, in a form acceptable to the City Engineer and acceptance language by the City Engineer, along with all other supplementary maps or plans required as conditions of Tentative Map approval. The applicant shall record the Final Map and a written legal description of the reconfigured parcels as part of the deed with the Alameda County Recorder's Office. The applicant shall provide a proof of such recordation to the Building Services Division prior to issuance of any Building Permits. Failure to file a Final Parcel Map within these time limits shall nullify the previous approval or conditional approval of the Tentative Parcel Map.

44. **Certification of Parcel Map**

Ongoing.

A Parcel Map may be certified by the Oakland City Engineer at the expiration of the 10-day appeal period from the date of this approval.

45. **Prior Conditions Remain in Effect**

Prior to issuance of building permit

The applicant must submit all plans replicating approved plans from case no. CMD01-544 approved April 3, 2002; in particular, plans must be submitted to reflect previously-approved density, floor plans, elevations, landscape plans, and open space ("recreation area") plans from said case.

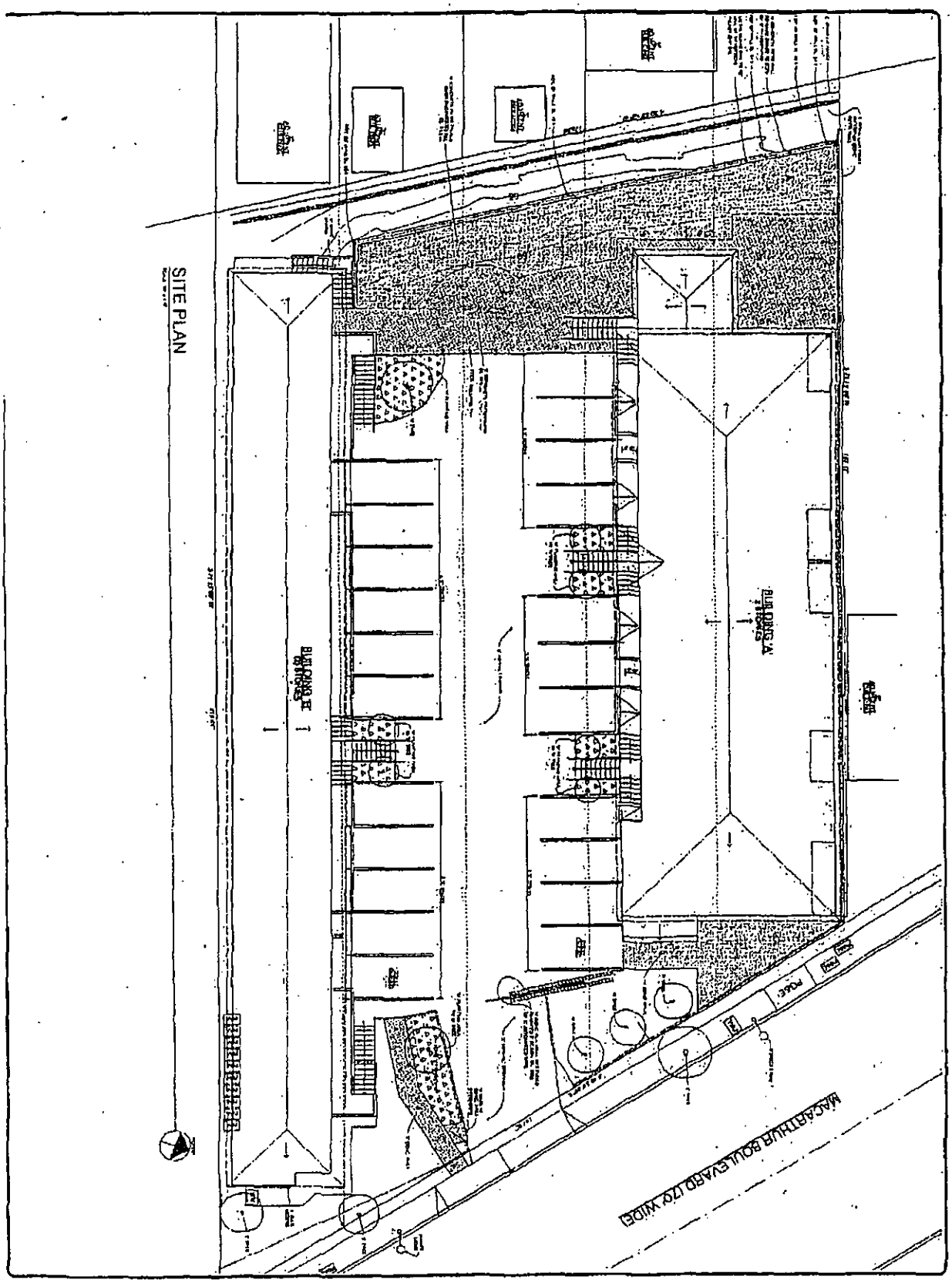
APPROVED BY:

City Planning Commission: October 17, 2007 (date) 7-0 (vote)
City Council: _____ (date) _____ (vote)

Applicant and/or Contractor Statement

I have read and accept responsibility for the Conditions of Approval, as approved by Planning Commission action on October 17, 2007. I agree to abide by and conform to these conditions, as well as to all provisions of the Oakland Zoning Code and Municipal Code pertaining to the project.

Signature of Owner/Applicant: _____ (date)
Signature of Contractor _____ (date)

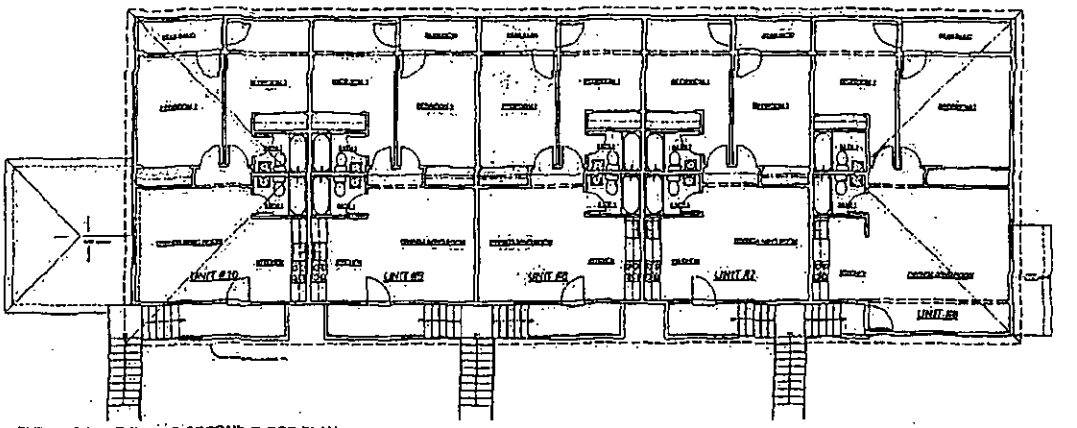


A-1.0

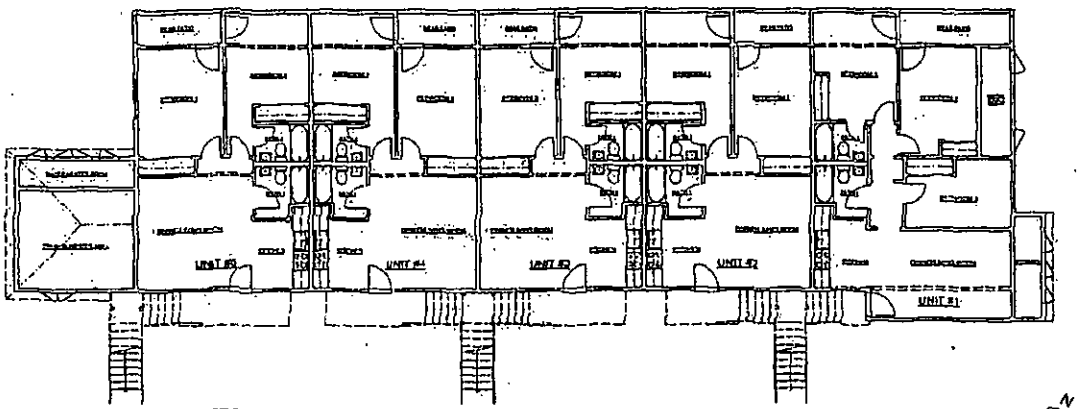
10031-10059 MacArthur Blvd.
Oakland, CA

BUILDING 'B':
- PROPOSED SITE PLAN

BAYFRONT



BUILDING 'A'---EXISTING SECOND FLOOR PLAN



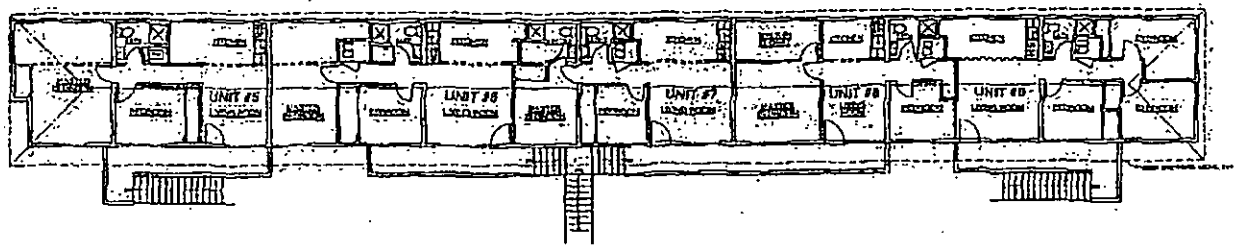
BUILDING 'A'---EXISTING FIRST FLOOR PLAN

BEVERIDGE

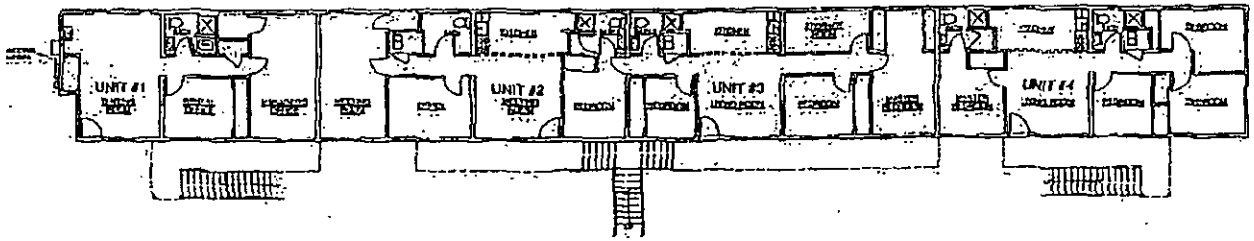
BUILDING 'A':
AS-BUILT FLOOR PLANS

10031-10059 MacArthur Blvd.
Oakland, CA

A-2.1

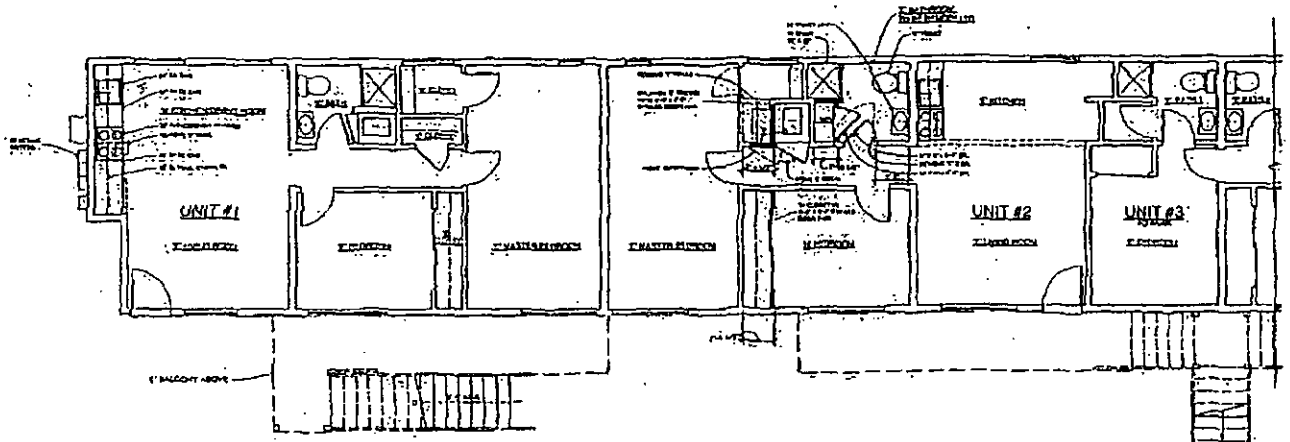


BUILDING 'B'---EXISTING SECOND FLOOR PLAN



BUILDING 'B'---EXISTING FIRST FLOOR PLAN

N



BUILDING 'B'---PROPOSED FIRST FLOOR PLAN @ UNITS #1 & #2

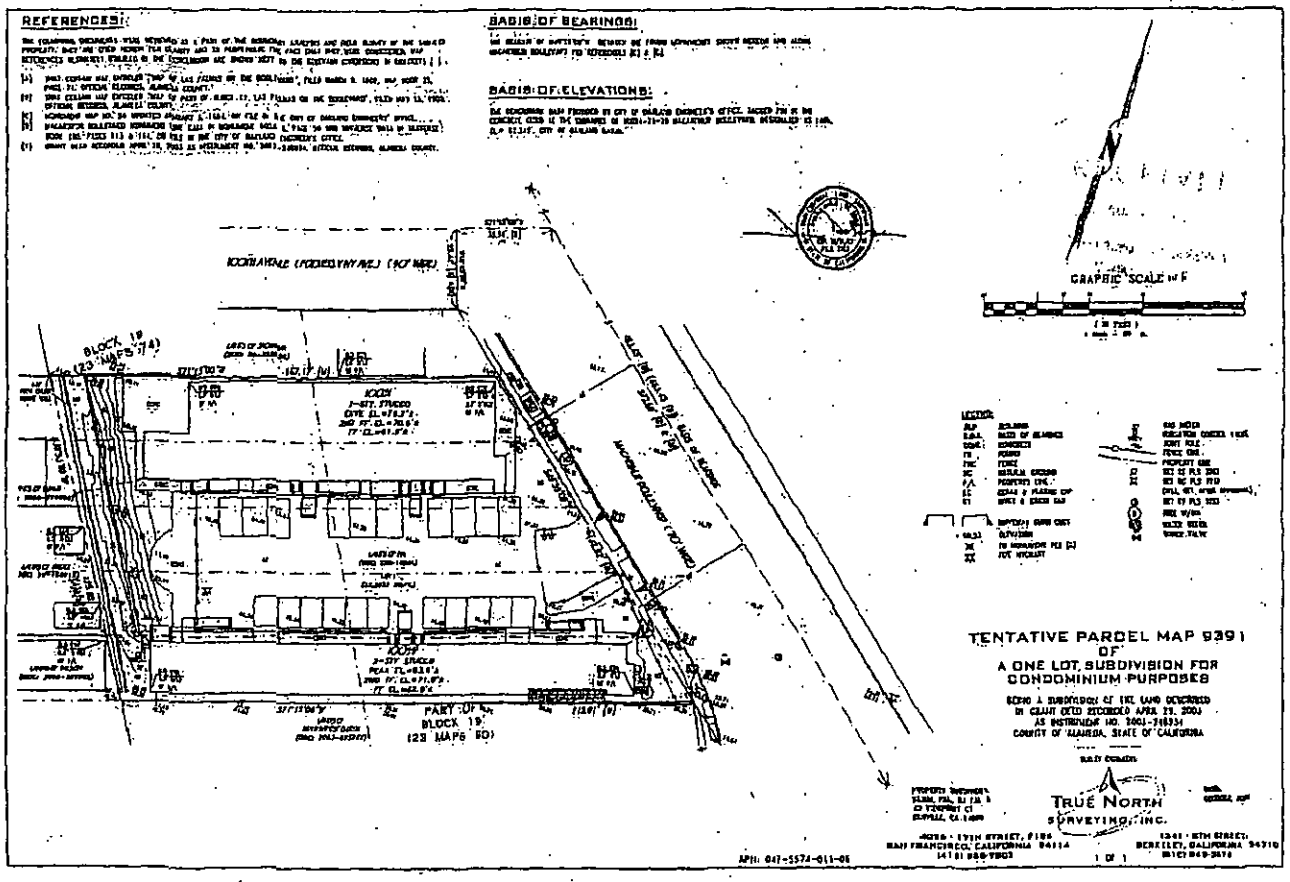
N

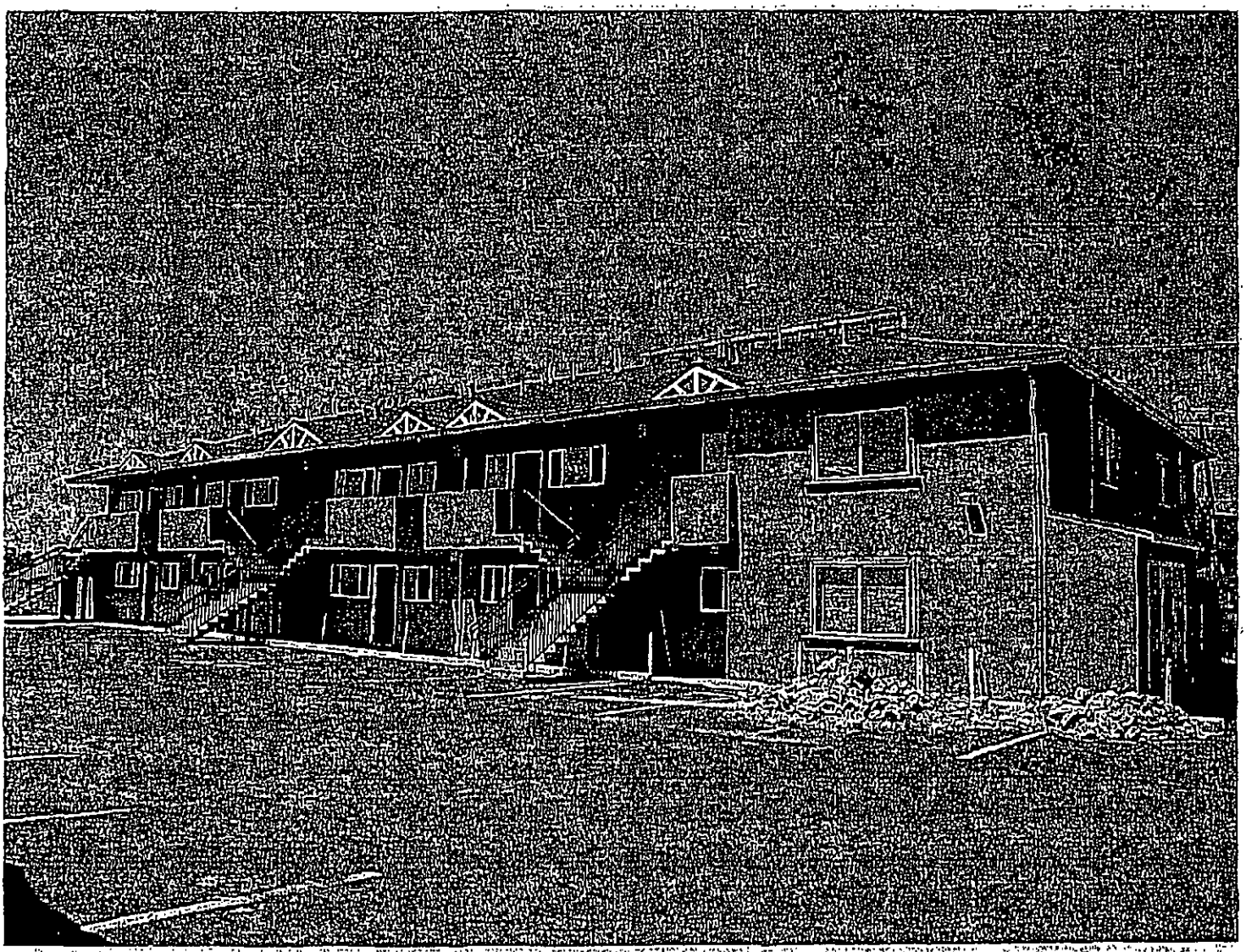
BAYFRONT

BUILDING 'B':
- AS-BUILT FLOOR PLANS
- PROPOSED UNITS 1 & 2 PLAN

10031-10059 MacArthur Blvd.
Oakland, CA

A-2.2


REFERENCES:
BASIS OF BEARINGS:
BASIS OF ELEVATIONS:
GRAPHIC SCALE IN F
TENTATIVE PARCEL MAP 9391
OF
A ONE LOT SUBDIVISION FOR
CONDOMINIUM PURPOSES
BEING A SUBDIVISION OF THE LAND DESCRIBED
IN GRANT DEED RECORDED APRIL 23, 2001
AS INSTRUMENT NO. 2001-148934
COUNTY OF ALAMEDA, STATE OF CALIFORNIA
TRUE NORTH
SURVEYING, INC.
APN: 047-5574-011-05
1 OF 1



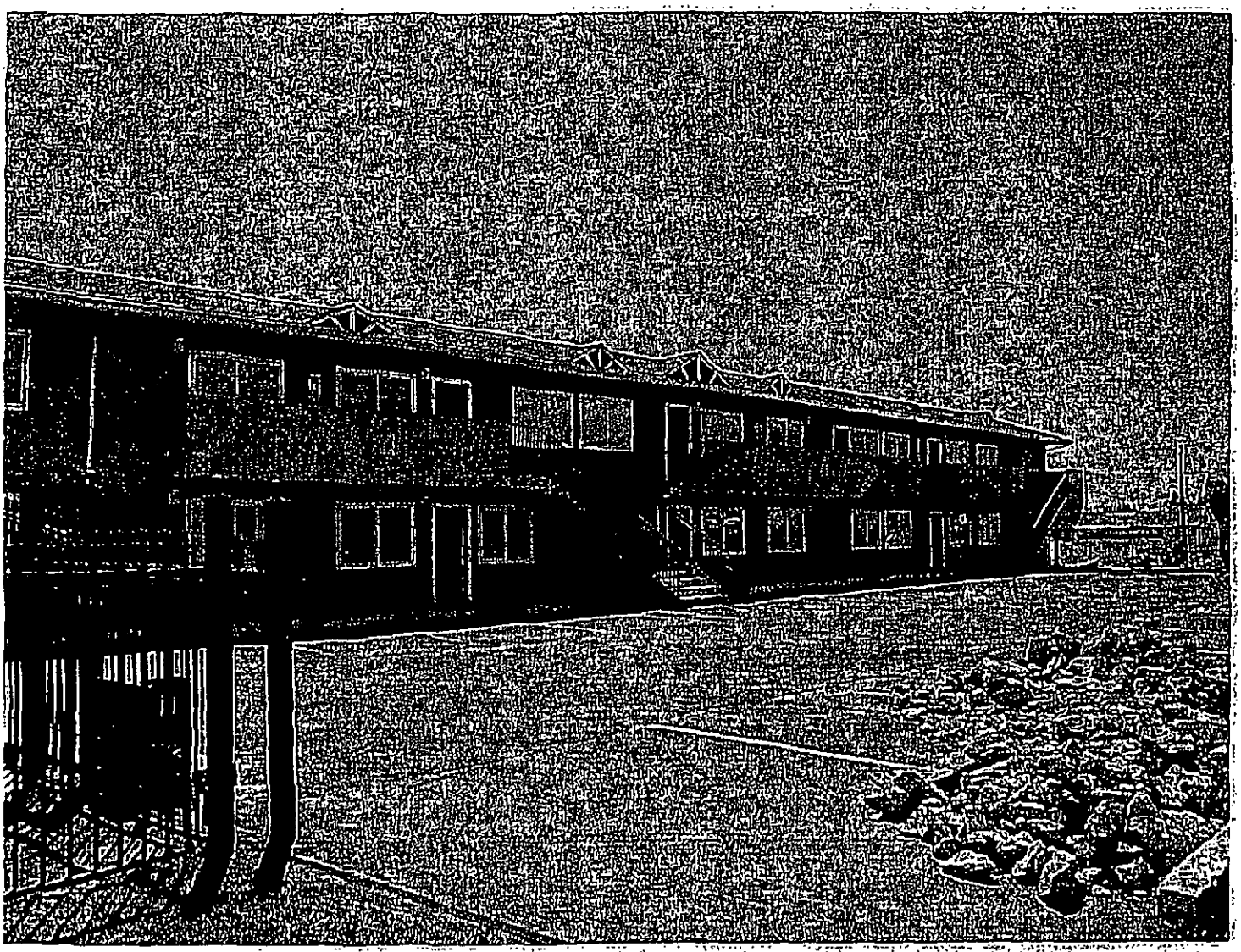


Exhibit B