

# CITY OF OAKLAND

## AGENDA REPORT

TO: Office of the City Administrator  
ATTN: Deborah Edgerly  
FROM: Community & Economic Development Agency  
DATE: July 17, 2007

RE: **A Public Hearing and Consideration of Adoption of a Resolution Denying the Appeals and Upholding the Planning Commission's Approval of the Construction of 44 Dwelling Units at 4801 Shattuck Avenue, Oakland (Case Number CMDV06-425 & TPM-9235)**

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### SUMMARY

On April 4, 2007, the Planning Commission approved a Major Conditional use permit, Design Review and Minor Variances to construct a 44 unit residential development at 4801 Shattuck Avenue (CMDV06-425)(Project).

On April 13, 2007, Bob Brokl, representing Standing Together for Accountable Neighborhood Development (STAND), filed an appeal of the Planning Commission's Approval of the Project to the City Council (Attachment A).

On April 16, 2007, Roy Alper, on behalf of the property owner, filed an appeal challenging the reduction in height imposed on the Project by the Planning Commission to the City Council (Attachment B).

The STAND appellant is arguing that the project does not qualify for an In-Fill Exemption under CEQA, and that the use of Section 15183 of the CEQA Guidelines is also inappropriate because of the requested variances. In addition the appellants argue that the proposed project is not consistent with the General Plan, and that the Planning Commission abused its discretion by granting the requested variances.

The project applicant filed an appeal of the imposed Conditions of Approval that required the rear 65 to 85 feet of the building to be reduced one story in height not to exceed 48 feet above grade. The applicant is arguing that this condition was an abuse of discretion by the Planning Commission because it would adversely impact the design of the building, precluding an effective design solution, other buildings in the area are of similar height, the proposal is consistent with the General Plan vision of "Growth and Change", and has the support of the adjacent neighbor to the north of the project site.

The arguments raised by both appellants are summarized below along with staff's response to each argument. Staff believes that the findings made for approval of the Project, as outlined in

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the April 4, 2007 Planning Commission (approved) staff report (Exhibit A of the proposed resolution) clearly state the reasons why the project complies with the applicable regulations, as well as justifies the imposed conditions of approval. Staff believes that the stated information in the appeal documents do not depict any instance of “error” or “abuse of discretion” by the Planning Commission or where its decision is not supported by substantial evidence in the record. Therefore, Staff recommends that the Council deny both appeals, thereby upholding the Planning Commission’s decision to approve the Project.

## **FISCAL IMPACT**

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

## **BACKGROUND**

### *PROJECT DESCRIPTION*

The proposal is to demolish the existing structures across the three lots and construct a new five story 44 unit condominium development. The project would contain two levels of parking, one at the ground floor and the majority located within a subterranean parking garage, providing a total of 44 spaces. Both parking areas would be accessed off of curb cuts from 48<sup>th</sup> Street.

### *PROJECT LOCATION AND ZONING*

The subject property is a 14,934 square foot site containing frontages on the west side of Shattuck Avenue and the north side of 48<sup>th</sup> Street. The existing project site contains five structures proposed for demolition. The corner site at 4801 Shattuck Avenue contains an existing two story commercial building. The second parcel at 556 48<sup>th</sup> Street contains a residential building containing two dwelling units, and the third site at 560 48<sup>th</sup> Street contains three residential cottages. The property at 556 48<sup>th</sup> Street is not a CEQA historic resource but is listed as a Potentially Designated historic Property, containing a rating of Dc3. The surrounding uses include commercial and low and high density residential uses.

The subject property is located within the R-50, Medium Density Residential Zone, and the R-70, High Density Residential Zone. The zoning boundary splits the site approximately down the middle. 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. The R-70 zone is intended to create, preserve, and enhance areas for apartment living at high densities in desirable settings, and is typically appropriate to areas having good accessibility to transportation routes and major shopping and community centers. Current zoning would allow 17 units on site (6 units for the R-50 portion of the site and 11 units on the R-70 portion of the site).

The current zoning expressly conflicts with the Urban Residential land use designation of the General Plan in that the R-50 zone does not permit a maximum density equal to the General Plan classification. R-50 allows a maximum of one dwelling unit per 1,500 square feet of lot area (for a total of 6 units on the R-50 portion of the site) and the general plan classification allows for a maximum of one dwelling unit per 261 square feet of lot area for a total of 57 units on the entire site (38 units on the R-50 portion of the site and 19 units on the R-70 zoned portion). In these situations, pursuant to Planning Code Chapter 17.01 and the *Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations*, the General Plan governs, and either the higher density is permitted with an Interim Conditional Use Permit and Best Fit Zone (Section 17.01.100.B), or a rezoning (Section 17.01.100.C).

The Guidelines for General Plan Conformity specify a number of Best Fit zones that may be applied in the Urban Residential land use designation. For the Urban Residential category, the R-60 Medium Density Residential, the R-70 High Density Residential, and the R-80 High-Rise Apartment Residential are identified as potential best fit zones. In the case of the subject site, staff has determined (and the Planning Commission agreed) that the R-70 zoning is the most appropriate best fit zone for the entire Project site, given the higher density of the land use designation, the identification of this area as a "Grow and Change" neighborhood, and the location between the highway and a major corridor, as well as the site's adjacency to an existing R-70 Zone.

#### *CEQA DETERMINATION*

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

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

#### *PLANNING COMMISSION REVIEW*

At the April 4, 2007 hearing, the Oakland Planning Commission took public testimony from various interested parties including the appellants, generally objecting to the height of the

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project, as well as others who were in support of the project. Staff recommended, and the Planning Commission agreed, to reduce the height of the rear 65 to 85 feet of the building to four stories (48 feet), and approved the project unanimously.

## KEY ISSUES AND IMPACTS

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

### SECTION I (STAND APPEAL)

- 1. The appellant argues that the project does not qualify for an in-fill CEQA exemption because of the requested variances, and the reasonable possibility of a significant impact due to its unusual height, traffic impacts, and demolition or removal of a potentially designated historic property.**

*The appellant argues that the project does not qualify for an in-fill exemption because of the requested variances, and therefore does not comply with the in-fill criteria that a project must be "consistent with the applicable general plan designation and all applicable policies as well as with applicable zoning designation and regulations". The appellant argues that since the variance was granted, the project does not conform to the Planning Code since by definition a variance is an exception to the Code. This argument is incorrect because by meeting the required minor variance findings, which are expressly authorized by the Planning Code Chapter 17.148, the proposed project is indeed consistent with the Planning Code. The City's position has been upheld by the Alameda County Superior Court in Islamic Cultural Center of Northern California v. City of Oakland (Case No. RG03-133394), dealing with the Madison Street Lofts project (See Attachment C, page 9). The STAND appellant has not cited, nor could they, any legal authority to support their position. Therefore, exemptions are appropriate here.*

*The argument that the project would create a significant impact due to the unusual height of the building is also incorrect. Specifically, the appellant states that the height of the building could impact views, create shadows on adjacent properties, and degrade the existing visual character of the area since there are no other buildings this size. In order to invalidate an exemption under this theory, there must be both an "unusual circumstance" and a reasonable possibility of a significant environmental here. Neither factor is present here.*

*First, there is nothing unusual about the height of the building. The argument that there are no other buildings in the area of a similar height is incorrect. There are two neighboring buildings of similar height, one across the street, and one directly adjacent to the west of the project site, as well as a commercial building two blocks away, at 4601 Shattuck Avenue, that is taller than the proposed development. Moreover, this is an area designated for "Growth and Change" in*

*the general plan and located along major transit corridors, where increased height is appropriate and desirable. Thus, there is nothing unusual about the building's height.*

*Second, there is not a reasonable possibility of a significant impact due to the height of the building. The City of Oakland's Thresholds for Significance (Attachment D) state that a significant impact on views only applies to impacts on scenic vistas, or elements on a scenic highway, neither of which is the case here. In addition, the Thresholds for Significance state that shadow impacts are limited to those that would "substantially impair the beneficial use of any public or quasi-public park, lawn, garden, or open space", or "cast shadow on an historic resource, as defined by CEQA Section 15064.5(a), such that the shadow would materially impair the resource's historic significance by materially altering those physical characteristics of the resource that convey its historical significance". Neither instance is the case for this subject site (the Historic Omni building is located across 48<sup>th</sup> Street, but it would not be impacted by shadows from the proposed development since it is located across the street to the south). Thus, there is no reasonable possibility of a significant impact and exemptions are appropriate here.*

*The argument that the project would create a significant impact to traffic is also incorrect. The appellants erroneously contend that the applicant- submitted traffic study (Attachment E), which was reviewed (and approved) by the Public Works Transportation Services Division, calls for a new traffic signal at the intersection of 52<sup>nd</sup> Street and Shattuck Avenue as mitigation for Project impacts. And, mitigation measures would not be appropriate under a Categorical Exemption. However, this traffic signal was **not** in fact a mitigation measure for the Project. Rather, it was an already approved and funded signal upgrade planned by the City, unrelated to this Project. The Traffic study addressed what, if any, impacts would occur to the newly upgraded intersection as a result of the Project. The study evaluated Levels of Service based upon different signal timing, and concluded that there would be no degradation in Level of Service for the most likely signal timing for the future upgrade to the intersection. The traffic study did not identify any impacts resulting from the Project. Therefore, exemptions are appropriate here.*

*The argument that the demolition or removal of a potentially designated historic property would create a reasonable possibility of causing a significant environmental impact and preclude the use of a Categorical Exemption is likewise incorrect. The City of Oakland's Thresholds for Significance state that a significant impact would be one that would cause a substantial adverse change in the significance of a historical resource. The subject property being referred to is **not** a historic resource under CEQA. Indeed, it would only be a Potentially Designated Historic Property (PDHP) if restored and would then still only receive a rating of C, which still doesn't even qualify it as an historic resource under CEQA (see Planning Commission staff report for more information on Historic Status, Exhibit A of the proposed resolution). The City made the required findings for demolition of a PDHP under Historic Preservation Policy 3.5 and also required the applicant to make good faith efforts to relocate the building (condition of approval # 30) as required under Historic Preservation Policy 3.7. Therefore, exemptions are appropriate here.*

- 2. The appellant argues that the Planning Commission erred in determining that the proposal qualifies for an exemption under CEQA Guidelines Section 15183, because the proposal is not consistent with the Planning Code, and because the EIR certified for the Land Use and Transportation Element (LUTE) of the General Plan did not discuss variances.**

*The appellant asserts that the proposed project is not consistent with the zoning and therefore is not exempt from CEQA. The appellant argues that the use of Section 15183 of the CEQA Guidelines is inapplicable because the General Plan EIR does not specifically list variances in the report, and that the LUTE contemplates the height and bulk in that area to be consistent to what would be permitted for residential development.*

*This assertion is incorrect. Section 15183 of the CEQA Guidelines is a separate and independent basis for CEQA compliance. Section 15183 mandates that projects which are consistent with the development density established by the existing general plan analyzed in a certified EIR do not require further environmental review unless there are "project-specific significant effects which are peculiar to the project or to its site." Here, the proposed project is consistent with the development density established in the General Plan, for which an EIR was certified (LUTE EIR), and there are no peculiar project-specific effects.*

*The appellants appear to contend that the project is not consistent with the density in the Planning Code. However, the General Plan Conformity Guidelines specifically lay out a process for the use of a "Best Fit" Zone when a project conforms to the General Plan, but is not permitted by the existing zoning. In the case of this project, a "Best Fit" Zone of R-70 was used due to the higher density of the land use designation, the identification of this area as a "Grow and Change" neighborhood, and the location between the highway and a major corridor, as well as the site's adjacency to an existing R-70 Zone (including half of the project site).*

*The appellants' argument that the LUTE EIR failed to mention variances is not relevant as Section 15183 does not require that variances, or other methods of achieving the density in the general plan, be specifically addressed. The LUTE EIR analyzed the impacts of the higher density and the project is consistent with that density. There is nothing peculiar about the project or site to warrant further environmental review.*

*The statement about the height and bulk of buildings in the LUTE is specifically related to commercial development which should be consistent with the size of residential buildings which would be permitted, and is not relevant to the project. The R-70 Zone contains a very relaxed height limit that allows for very tall residential buildings and the proposal is not a commercial development. The variance that was granted actually transferred height that is allowed at the front end of the property to the rear of the property, thus bringing the potential height of the proposed building down and not exceeding the height allowed for residential development in the area.*

*The appellant also is arguing that the use of Section 15183 of the CEQA Guidelines is inappropriate because the LUTE EIR requires "continuous or nearly continuous storefronts*

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*located along the front setback” as a mitigation measure for increased height on the corridors. The Planning Commission required that the two ground floor units at the street front contain extra height ceilings and include specific materials along the façade that would enable the space to be easily converted to commercial in the future. The Planning Commission did not believe that the space would be a viable commercial location at this point in time because presently this section of Shattuck Avenue is not developed as a commercial street. The Planning Commission alternative could also be seen as an adequate mitigation since no specific guidelines have yet to be finalized for mixed use commercial areas.*

*Moreover, the fact that a project may appear to not be fully consistent with each and every general plan policy is not a basis to conclude the project is inconsistent with the general plan. Specifically, the Oakland General Plan states the following:*

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

**3. The appellant argues that the Planning Commission abused its discretion by approving a proposal that violates the General Plan’s policy (N7.1 of the LUTE & Policy 7.3 of the Housing Element) of density being consistent with the surrounding community.**

*The appellant’s argument is incorrect. Policy N7.1 of the LUTE of the General Plan states: “New residential development in Detached Unit and Mixed Housing Type areas should be compatible with the density, scale, design, and existing or desired character of surrounding development.” However, the subject property is **not** located within either of these General Plan designations and thus the cited policy is not applicable. The property is actually located within the Neighborhood Center Mixed Use and Urban Residential land use designations, both of which are intended for high intensity development. The area is also designated as “growth and change.”*

*Policy 7.3 of the Housing Element (Action 7.3.1) states “as part of the Planning Code update process, the City will review its property development standards for small in-fill lots and in those areas where there is a mix of residential and commercial land uses to assist with appropriate residential development on challenging sites.” This policy addresses lots that may be difficult to develop and does not state that new development should only match whatever exists on the lot next door, but rather suggests looking at methods to allow development of challenging sites.*

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*When Policy 7.3 talks about developing at densities consistent with the surrounding communities, it is talking about the existing established densities, which were adopted in the 1998 LUTE, as the Housing Element was adopted six years afterwards.*

*Moreover, as discussed above, not each and every policy of the general plan needs to be met in order to conclude that a project is consistent with the general plan. Here, the Planning Commission unanimously concluded the project was consistent with the general plan, for the reasons detailed in the April 4, 2007 Planning Commission Staff Report (Exhibit A of the proposed resolution).*

**4. The appellant alleges that the Commission abused its discretion by granting variances for this project because there are no findings of special circumstance that would allow a variance to be granted.**

*The appellant argues that minor variances are no longer allowed because Policy N11.3 of the LUTE states that “variances should not be granted lightly and without strict compliance with defined conditions, including evidence of hardship.” Thus, the appellant’s contend that only Major Variances are allowed to be granted. This argument is wrong.*

*First, the general plan did not intend to, nor does it, do away with Minor Variance findings. The City has been consistently and properly using the minor variances findings (before and) since adoption of the 1998 LUTE. The subject policy simply reinforces the principle that variances should not be granted lightly and without strict compliance with the applicable variance criteria. The policy went on to list some of the existing variance criteria, but it did not do away with any criteria that were not listed. In other words, there was no express intent to change the detailed and specific variance criteria contained in the Planning Code.*

*In Oakland, pursuant to Planning Code Chapter 17.01, the permit approvals must be consistent with the Planning Code unless there is an “express conflict” with the General Plan (Planning Code sections 17.01.110 and 060). Section 17.01.110 states that where the general plan “is silent or not clear as regards conformity,” the Planning Code shall apply. Only when the Planning Code is in express conflict with the general plan do the policies of the general plan apply and supersede the Planning Code. Here, the general plan is silent on the issue as to whether the minor variance has been superseded. At best, the general plan is not clear on the issue of the continuing validity of the Minor Variance criteria. In any event, the Planning Code prevails and the minor variance criteria are still applicable.*

*In addition, the policy also states “in instances where large numbers of variances are being requested, the City should review its policies and regulations and determine whether revisions are necessary.” This means that while the City is creating new development standards to comply with the General Plan, staff should be looking at past variances that have been granted on a regular basis and possibly modify the regulations so that the proposals are no longer prohibited. Thus, the existing zoning standards may need to be “relaxed” to reflect appropriate development and to reduce the number of variances. It does not mean that variances should not be granted.*

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*Moreover, the General Plan Conformity Guidelines specifically point out which General Plan policies are immediately relevant when there is a Planning and General Plan conflict, and Policy N11.3 is not one of them. Therefore, the minor variance criteria are still valid and allow for the granting of a minor variance without making findings for hardship or special circumstance peculiar to the property.*

*Because the minor variance criteria are still applicable and, as discussed below, Oakland as a Charter City can establish its own variance criteria, there is no "special circumstances peculiar to the subject property" finding that has to be met with a minor variance.*

**5. The appellant alleges that the Commission abused its discretion by approving the large number of variances for this proposal because variances are only to be granted to a small fraction of a zone.**

*Once again the appellant is arguing that the Minor Variance criteria are not valid and the stricter findings for Major Variances should be met. This is not the case, for the same reasons as discussed above. In addition, the appellant is arguing that the large number of variances granted for the project is contrary to case law that states that variances should be granted "only to a small fraction of any one zone." However, Oakland is a Charter City and has the ability to develop its own variance criteria, which are allowed to, and do, differ from both state law and other charter cities. The variance criteria developed for the Oakland Planning Code allows granting a minor variance based upon superior design solutions. Oakland's minor variance criteria do not contain requirements relating to the number of variances that are granted in a zone.*

**6. The appellant claims that the Commission abused its discretion by approving a proposal where the open space is legally inadequate.**

*The appellant is basing this argument on the outdated and incorrect February 28, 2007 staff report, which was superceded and replaced by the April 4, 2007 report. As stated in the April 4, 2007 report, the Best Fit Zone for the entire Project site is R-70 and the project does comply with the R-70 requirements for open space.*

**7. The appellant claims that the Commission abused its discretion by allowing demolition or moving of the historic building, because doing so may have a cumulative impact on the historic character of the area, that it would contradict the Historic Preservation Element of the General Plan, and that demolition of the historic structure would itself possibly be a significant environmental impact.**

*As previously discussed, the subject property is not an historic building, nor is it located within an historic district. The structure contains a survey rating of Dc3, which means that it is of*

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*minor importance (D), containing a contingency rating for potential secondary importance(c), and is not located within an historic district(3). The building has been deemed not to be a historic resource under CEQA, which are typically reserved for buildings with "A" or "B" ratings. Therefore, removing the non-historic structure does not result in a project-specific CEQA impact or a cumulative impact.*

*The appellant's argument that the removal of the building is inconsistent with Policy 3.7 of the Historic Preservation Element is also incorrect. Policy 3.7 of the Historic element states "[a]s a condition of approval for all discretionary projects involving demolition of existing or Potential Designated Historic Properties, the City will normally require that reasonable efforts be made to relocate the properties to an acceptable site." Standard practice has been to require the developer to offer the building for anyone to take by advertising the availability of the building prior to any demolition. Here, condition of approval #30 imposes numerous requirements relating to the good faith relocation efforts and fully and completely satisfies Policy 3.7. As it presently stands, it appears that the building will be relocated to the northern adjacent lot, the owner of which was at the Planning Commission hearing to testify that she is planning on taking the structure.*

## **SECTION II (PROPERTY OWNER'S APPEAL)**

**The property owner is arguing that the Commission abused its discretion by requiring the rear 65 to 85 feet of the building be stepped down one story from 57 feet in height to 48 feet in height.**

- 1. The height reduction has a significant, material adverse impact on the design of the project building, precluding an effective design solution without improving livability, operational efficiency, or appearance.**

*The property owner's argument is only focused on one of the four minor variance criteria that are required to obtain a variance. Primarily, the height of the building was reduced to limit impacts onto the adjacent neighbor to the north. Specifically, there is a finding relating to livability of neighboring properties, and it was the belief of staff as well as the Commission that a five story building right on top of the rear yard of the northern adjacent lot would create significant shadows (from a planning but not CEQA perspective) that would affect the livability of that property, especially since the building would be blocking the southern exposure, which is where a large majority of the direct sunlight comes from. Staff felt that with the step backs in place, four stories would be appropriate, but encroaching further into the height reduction plane was not warranted to the extent requested.*

- 2. The height reduction is not consistent with the character of the neighborhood and other buildings therein, which include at least four buildings ranging in height from 50 to 70 feet in the immediate vicinity of the project.**

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*The argument that the character of the neighborhood is one of 50 to 70 foot tall buildings is simply incorrect. Some buildings of this height do exist within the neighborhood; however, the neighborhood is an eclectic mix of different architectural styles and building sizes. Although there are larger buildings in the area there are also one and two story buildings in the area. The intent of the height reduction is to allow a visual transition of the building from one style to the other, especially in this case where there is a small building directly to the north of the project site as well as one and two story buildings on the south side of 48<sup>th</sup> Street. The height reduction allows a building that is more in scale with the lower buildings as well as the larger buildings, while still allowing a density envisioned by the "growth and change" classification of the General Plan.*

- 3. The height reduction is not consistent with the intent and desired character of the relevant land use classifications of the General Plan and associated policies related to "grow and change" in the neighborhood.**

*The argument that the height reduction is inconsistent with the intent and desired character of the General Plan is incorrect. The overall project still fulfills the intensity called out in the General Plan along transit corridors, and there are no specific policies that state all buildings need to be of at least a certain height. The requirement to reduce the height at the rear of the building was because of issues related to potential non-CEQA impacts on the adjacent neighbor and context of the area.*

- 4. The height reduction is erroneously and inappropriately based in part on the existence of a *de minimus* sliver of R-50 zoned property approximately 25 feet wide adjacent to the northern boundary of the project when it is clear that said sliver is itself in express conflict with the applicable General Plan designations and should be determined to be "best fit" R-70 in any event.**

*While the neighboring property in question does contain a General Plan designation that will likely change the underlying zoning to a much higher intensity zone, it does not change the fact that there are already existing lower intensity residential buildings with their rear yard open spaces adjacent to the subject project, including the rear yard for the Casa Bella building at 4811 Shattuck Avenue, which would potentially be considered an historic resource under CEQA and is unlikely to be removed. The requirement to lower the height of the rear portion of the building was required as a way to limit impacts onto the northern adjacent neighboring lots.*

- 5. The height reduction disregards the unequivocal testimony of the neighbor to the north of the project, the owner most affected by the project, that she supports the project at the 57 foot height.**

*Regardless of what the neighbor adjacent to the project site wants, the Planning staff and Planning Commission still need to review projects and make decisions based upon their merit and what is good development policy. The fact that the neighbor to the north does not mind the height of the building does not change the required findings for rendering a decision on a development project.*

## **SUSTAINABLE OPPORTUNITIES**

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

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

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

## **DISABILITY AND SENIOR CITIZEN ACCESS**

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

## **STAFF RECOMMENDATION AND RATIONALE**

Staff recommends that the City Council adopt the attached Resolution denying both appeals thereby upholding the Planning Commission's approval of the project for the following reasons: 1) The Planning Commission's decision was based on a thorough review of all pertinent aspects of the project and consideration of the objections raised by both the appellants; 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; 3) The appellants have 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; and 4) the project meets the CEQA In-Fill (Guidelines section 15332) exemption requirements and there are no exceptions that would defeat the use of the exemption, and, as a separate and independent basis, the consistency with general plan and zoning exemption (Guidelines section 15183) .

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### **ALTERNATIVE CITY COUNCIL ACTIONS**


The City Council has the option of taking one of the following alternative actions instead of the recommended action above:

1. Uphold the appeal and reverse the Planning Commission's decision thereby denying the project. This option would require the City Council to continue the item to a future hearing so that Staff can prepare and the Council has an opportunity to review the proposed findings and resolution for denial.
2. Uphold the appeal by the applicant and reverse the Planning Commission's Condition of Approval requiring the rear 65-85 feet of the building to be reduced to four stories (48 feet). 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.
3. Uphold the Planning Commission's decision, but impose additional conditions on the project and/or modify the project.
4. Continue the item to a future hearing for further information or clarification.
5. Refer the matter back to the Planning Commission for further consideration on specific issues/concerns of the City Council. Under this option, the item would be forwarded back to the City Council with a recommendation after review by the Planning Commission.

**ACTION REQUESTED OF THE CITY COUNCIL**

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

Respectfully submitted,

  
\_\_\_\_\_  
**CLAUDIA CAPPIO**  
Development Director  
Community & Economic Development Agency

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

APPROVED AND FORWARDED

TO THE CITY COUNCIL:

  
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Office of the City Administrator

**ATTACHMENTS:**

- A. Appellant's appeal application submitted April 13, 2007.
- B. Applicant's appeal application submitted April 16, 2007.
- C. Islamic Cultural Center vs. City of Oakland
- D. Excerpted CEQA Thresholds of Significance (Aesthetics & Historic w/ definition of Historic resource)
- E. Traffic Studies

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# ATTACHMENT A



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

(REVISED 8/14/02)

### PROJECT INFORMATION

Case No. of Appealed Project: CMDV06-425 JTPM-9235

Project Address of Appealed Project: 4801 Shattuck Avenue

### APPELLANT INFORMATION:

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

Mailing Address: 636 - 59TH Street Alternate Contact Number: \_\_\_\_\_

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

An appeal is hereby submitted on:

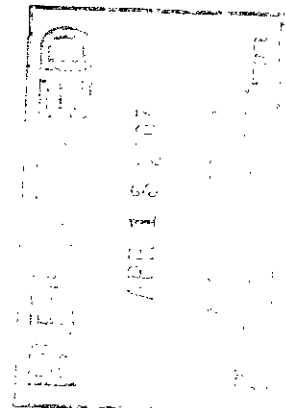
**AN ADMINISTRATIVE DECISION (TO THE CITY PLANNING COMMISSION)**

### YOU MUST INDICATE ALL THAT APPLY:

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

### Pursuant to the Oakland Municipal and Planning Codes listed below:

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



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

Construct a new five story 44 unit residential condominium building

Law Office of Jeff D. Hoffman  
132 Coleridge Street, Suite B  
San Francisco, CA 94110-5113  
Phone: (415) 285-7735  
Fax: (415) 920-1731

April 13, 2007

*By Hand Delivery*  
*April 13, 2007*

Oakland City Council  
Oakland City Hall  
1 Frank Ogawa Plaza  
Oakland, CA 94612

**RE: Appeal of Standing Together for Accountable Neighborhood  
Development Regarding Case File Number CMDV06-425 & TPM-9235 For  
Property at 4801 Shattuck**

Dear Council Members:

This office represents the Standing Together for Accountable Neighborhood Development (“STAND”) regarding Oakland Planning Department case number CMDV06-425 for the property at 4801 Shattuck Avenue, Oakland, CA (“Property”). STAND is a group of residents and neighbors who have a direct interest in, and attempt to influence, developments in North Oakland. STAND works with developers early in the planning stages of developments to allow greater density while maintaining the unique character, human scale, and livability of the neighborhoods of its members through height, bulk, and density controls, and by advocating for the preservation of historic buildings.

The conclusion of STAND after careful review of the Basic Application for Development Review, the Staff Reports, the grant of the application, and other relevant evidence is that the planning commission’s approval of the application should be overturned for several reasons. First, the proposed project is neither eligible for an infill categorical exemption nor is it exempt as a project consistent with a general plan, because the variances requested render it ineligible for those exemptions, and because there is a reasonable possibility that the proposed project would create a significant environmental effect. Second, the variances needed to construct the building as proposed by the applicant would be legally inappropriate to grant, because the property at issue does not meet the requirements for a variance and because there have already been too many variances granted for the zones in which the property at issue is located. Third, the project as proposed would not contain the legally required open space, as recognized by planning commission staff. Fourth, the proposed removal or demolition of a historic building creates a reasonable possibility of a significant environmental effect. Granting

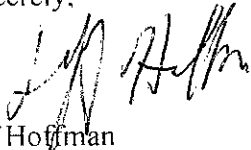


approval of this proposal was thus error and an abuse of discretion by the planning commission, and this proposal, in its current form, should be disapproved.

A California Environmental Quality Act ("CEQA") review would more adequately analyze the potential significant adverse impacts of this proposed project, as well as alternatives and mitigations thereto, and must be prepared. Approval of this project as proposed and without proper CEQA review will undoubtedly result in violations of state and local laws, including CEQA, the Oakland Planning Code, and the Oakland General Plan. A more thorough review, such as an initial study or an environmental impact report ("EIR"), would provide more and better analysis of the potential adverse impacts of the project.

Please include this office and that of Standing Together for Accountable Neighborhood Development, 636 - 59th Street, Oakland, CA 94609 in any further communications to the public by your office on this proposed project. In particular, please provide us with a copy of your determination.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Hoffman". The signature is written in a cursive style with some loops and flourishes.

Jeff Hoffman

**I. THE PLANNING COMMISSION ERRED IN DETERMINING THAT THIS PROPOSAL QUALIFIES FOR AN INFILL CATEGORICAL EXEMPTION.**

**A. This Project Does Not Qualify For An Infill Exemption Because Of The Variances.**

Infill categorical exemptions are limited to projects that are “consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.” (Cal. Code Regs., tit. 14 (“14 CCR”), § 15332(a).)

The Property is zoned R-50 and R-70. (Oakland City Planning Commission Staff Report, File Number CMDV06-425 & TMP-9235, Feb. 28, 2007 (“Staff Report”), p. 3, ¶ 1.)<sup>1</sup> The planning commission (“Commission”) granted variances for height restrictions, and for the required front, side, rear, and street side yard setbacks. (Community and Economic Development Agency, Planning and Zoning Division, approval letter of April 10, 2007 (“Approval”), Minor Variance Findings.) Without a variance, the height limit for buildings in R-50 zones is 30 feet (Oakland Planning Code (“OPC”), § 17.24.130), and for buildings in R-70 zones is 40 feet (*id.*, § 17.24.140).<sup>2</sup> Specifically, the Commission granted a height variance in order to allow building to a height of 57 feet. (Approval, Minor Variance Findings, § A, “Height.”) The Planning Code also requires setbacks for which four additional variances were granted. (*Id.*, see “Setback” sections and “Rear Yard.”)

In this context, a “variance” is “[a] license or official authorization to depart from a zoning law.” (Black’s Law Dict. (Abridged 7<sup>th</sup> ed. 2000) p. 1258, col. 1.) “Consistent” means “free from irregularity, *variation*, or contradiction.” (Webster’s New Collegiate Dict. (6<sup>th</sup> ed. 1979) p. 239, col. 2, emphasis added.) By definition, a variance allowing construction of higher buildings than the Planning Code allows or of buildings without the setbacks that the Code requires would make the project *inconsistent* with that code, because it would grant a variation from the Planning Code’s requirements. Because the project was granted variances rendering it inconsistent with the Oakland Planning Code, it is ineligible for an infill categorical exemption. The Commission thus erred by determining that this proposal is eligible for an infill exemption, and the City Council should reverse this determination.

**B. This Project Does Not Qualify For Any Categorical Exemption, Because There Is A Reasonable Possibility Of A Significant Environmental Effect Due To Its Unusual Height.**

“A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.” (14 CCR, § 15300.2(c).) A significant impact upon views is a significant environmental impact. (Pub. Resources Code, § 21060.5.) This proposal is much higher than the nearby buildings and is well beyond the height limits of the

<sup>1</sup> All citations to staff reports are to the reports on this proposal unless otherwise noted.

<sup>2</sup> Title 17 of the Oakland Municipal Code is also referred to as the Planning Code or the Oakland Planning Code and those terms are used interchangeably in this document.

Planning Code, thus creating unusual circumstances that create a reasonable possibility of causing a significant impact from loss of views and from significant shading. Demolition of the historic building on the Property would also create a reasonable possibility of significant environmental effect. For both of these reasons, a categorical exemption would be legally improper for this project and proper CEQA review must take place. For this reason independently, the Commission erred in determining that this proposal is eligible for an infill exemption.

Variances for a height of 48-57 feet were approved for this proposal. (Approval, Minor Variance Findings, § A, "Height.") However, largest commercial buildings in the immediate area are at most 35 feet in height, and the residential buildings behind the proposed building are at most 30 feet in height, with the single exception of the new building at 4801 Telegraph Avenue, which was given a variance due to its extreme height. The proposed building is so unusual for the area that it would dwarf all of the other buildings around it. This unusual circumstance meets the first element of this exception to categorical exemptions. (14 CCR, § 15300.2(c).)

Any substantial degradation of the existing visual character of an area is sufficient to invoke CEQA review. (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4<sup>th</sup> 903, 938.) "[T]he opinions of area residents, if based on direct observation, may be relevant as to aesthetic impact and may constitute substantial evidence in support of a fair argument; no special expertise is required on this topic." (*Id.* at 937.)

Because the proposed building would be so much higher than any other building in the area except for the building at 4801 Telegraph Avenue, it would block significant views for passersby and pedestrians on Shattuck Avenue of the sky, mature trees, the hills to the east, views of the most distinguished neighboring buildings (Casa Bella and the Omni), and – joined to Gate 48 – would loom over the sidewalk the entire block of 48<sup>th</sup> Street from Shattuck to the freeway. It would cast the Oakland Housing Authority building on 48<sup>th</sup> Street in almost complete shade the entire day when combined with Gate 48 and render that building undesirable. It would also block views from even the third floor of the Victorian commercial Casa Bella building, and loom over its most immediate remaining neighbor, a single story residence on Shattuck. Any resident of the immediate area can attest to these aesthetic harms, and STAND has several members willing and able to do so.

Both the blockage of views and the huge shadow that would be caused by the proposed building would be substantial, to say the least. The significant environmental harm of the loss or degradation of views caused by the unusual height of the proposed building exempts this project from any categorical exemption. Instead, either an initial study should be done in order to determine whether the aesthetic impacts caused by the great height of the proposed building would cause significant environmental harm, or an EIR should be prepared.

**C. Proposed Projects That May Cause Significant Environmental Impacts, Such As This One, Are Not Eligible For Categorical Exemptions.**

“Only those projects having no significant effect on the environment are categorically exempt from CEQA review. (Pub. Resources Code, §§ 21080, subd. (b)(9), 21084, subd. (a).) If a project may have a significant effect on the environment, CEQA review must occur and only then are mitigation measures relevant. [CITATION] Mitigation measures may support a negative declaration but not a categorical exemption.” (*Salmon Protection and Watershed Network v. County of Marin* (2004) 125 Cal.App.4<sup>th</sup> 1098, 1102.)

An analysis commissioned by the City of Oakland to determine potential impacts of this proposal on traffic improperly used mitigations to determine that the proposed project would not have any significant impact on traffic. (4801 Shattuck Avenue Residential Development Project, Traffic Impact Analysis Supplemental Report, March 8, 2007, p. 1, ¶ 4.) Without the mitigations, there would clearly be a significant impact, including a significant cumulative impact, on traffic from this proposal at the intersection of 52<sup>nd</sup> Street and Shattuck Avenue. (*Id.* at ¶ 5 [existing condition of intersection is LOS F].) If the current condition of the intersection is already operating at the lowest possible level of service, adding 44 residential units very nearby can only make that level of service worse. Where an intersection is already operating at an unacceptable level and where a new project would contribute additional traffic, such as here, that new project may cause significant cumulative environmental impacts and should be reviewed under CEQA to determine whether the proposed project may cause those impacts. (14 CCR, § 15130(a); 1 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2006) § 13.37, p. 667.) Adding additional traffic to the intersection that is already operating at an unsatisfactory level of service could be a significant impact and requires environmental review, and removes any eligibility of this proposal for a categorical exemption.

**D. Demolition Or Removal Of The Potential Designated Historic Property On The Property Would Create A Reasonable Possibility Of Causing A Significant Environmental Effect.**

Demolition or removal of a historic building is certainly an unusual circumstance that requires CEQA review and prevents this proposal from being eligible for a categorical exemption. (14 CCR, § 15300.2(c).) Categorical exemptions are not appropriate where an unusual circumstance, such as demolition or removal of a historic building, would take place.

A building exists on the Property that would be a Potentially Designated Historic Property (“PDHP”) were it not for exterior modifications. (Staff Report, February 28, 2007, p. 3, ¶ 4.) There was no analysis of whether this building could be restored to PDHP status by undoing those modifications. The Commission approved demolition of the building if the applicant claims it has made a good faith effort to move it but has been unable to do so. (Approval, Condition 30.) The potential demolition or removal of a historic building is clearly a potential environmental effect that must be considered by

proper CEQA review, and to which a categorical exemption clearly does not apply. (Pub. Resources Code, § 21084.1; 14 CCR, 15064.5(b)(1).) Unless proceeding with this project is conditioned upon, *inter alia*, a prohibition of removal of the potential PDHP, the significant effect of potential demolition or removal of the PDHP must be considered pursuant to CEQA review. Again, because of the proposed removal of the potential PDHP, the Commission erred by determining that the proposal is eligible for an infill exemption.

## **II. THE PLANNING COMMISSION ERRED IN DETERMINING THAT THIS PROPOSAL QUALIFIES FOR AN EXEMPTION UNDER CEQA GUIDELINES SECTION 15183, BECAUSE THE PROPOSAL IS NOT CONSISTENT WITH THE PLANNING CODE, AND BECAUSE THE ENVIRONMENTAL IMPACT REPORT THAT WAS CERTIFIED FOR THE LAND USE AND TRANSPORTATION ELEMENT OF THE GENERAL PLAN DID NOT DISCUSS VARIANCES.**

The Commission claims that this proposal is exempt from CEQA review pursuant to 14 CCR section 15183. (Approved Staff Report, April 4, 2007, p. 1, “Environmental Determination.”) The exemption from CEQA review pursuant to 14 CCR section 15183 does not apply where it “might be necessary to examine whether there are project-specific significant effects which are peculiar to the project” (14 CCR, § 15183(a)) or where a proposed project is not consistent with zoning or the general plan (14 CCR, § 15183(d)(1)). The EIR that was certified for the Land Use and Transportation Element of the Oakland General Plan (“LUTE”) contemplated that the height and bulk of development in Neighborhood Center areas such as this one would be compatible with that which is allowed for residential development. (Oakland General Plan, Land Use and Transportation Element, Draft Environmental Impact Report, p. III.F-11, Policy N1.8.) It also contemplated that the height of developments in Urban Residential areas would step down as in nears lower density residential areas. (*Id.*, Policy N8.2.) Finally, the EIR requires “continuous or nearly continuous storefronts located along the front yard setback ....” (*Id.*, p. III.F-12, Mitigation Measure F.3a.) What the EIR did not contemplate was variances, as none were mentioned in that document.

In stark contrast to the compatibility contemplated by the EIR, this proposal is well beyond the height limits allowed for residential development within the zones in which it exists, is not consistent with the density limits of the Oakland Planning Code, and is not stepped down to be compatible with the lower density residential areas that surround it. (Approval, Minor Variance Findings; Staff Report, February 28, 2007, p. 6, “Density.”) Furthermore, the Commission removed the requirement of commercial storefront space that was recommended by its own staff. (Staff Report, April 4, 2007, p. 8, ¶ 3; Approval, Condition Use Permit Findings, Finding B.) The height and density of the proposed project, its lack of required setbacks, and its lack of storefront space, are all inconsistent with the analysis of the EIR, creating specific impacts that are peculiar to this proposal.

The inconsistency and incompatibility of this proposal make environmental review necessary in order to determine whether they will have significant environmental

impacts, because the extreme height of this proposal, which is well beyond what the Planning Code allows, and the proposed density of the building, which is well beyond the limits of the Planning Code and is not consistent with the surrounding buildings, would both be peculiar to the area. Just as with the categorical infill exemption, this exemption does not apply to proposed projects that require variances because, by definition, those projects are not consistent with the zoning or general plans for which the EIRs have been certified. Moreover, the EIR that was certified for the LUTE element of the general plan did not discuss variances, nor did it discuss height or densities that would exceed the amounts allowed. Therefore, this exemption does not apply to environmental review of either the extreme height or the extreme density of this proposal, and the Commission erred in determining that this project is exempt from environmental review pursuant to 14 CCR section 15183.

### **III. THE COMMISSION ABUSED ITS DISCRETION BY APPROVING A PROPOSAL THAT VIOLATES THE GENERAL PLAN'S POLICY OF DENSITY BEING CONSISTENT WITH THE SURROUNDING COMMUNITY.**

New residential development must be compatible with, *inter alia*, the density and scale of the surrounding developments. (LUTE, p. 109, Policy N7.1.) The density of an infill development must be consistent with that of the surrounding community. (General Plan, Housing Element, p. 23, Policy 7.3.) The density of the surrounding buildings is quite low, except for the buildings at 4801 Telegraph Avenue and 574 – 48<sup>th</sup> Street, which both required several variances. (See Staff Report, May 4, 2005, Case File Number CMDV04-552; TPM8567, p.1, “Planning Permits Required” and Staff Report, August 7, 2002, Case File Number CMDV02-174 p. 4, “Key Issues and Impacts.”) With the exception of those two buildings, all other buildings in the surrounding area are at most two stories. However, the density of this proposal would be very high, with five stories in height at the front and four stories at the rear. (Approval, Minor Variance Findings, “Height.”) A building that is four or five stories in height is clearly not consistent with surrounding buildings that are at most two stories. It was thus an abuse of discretion for the Commission to approve construction of a building that is more than twice as tall as the surrounding buildings, because doing so violates Policy 7.3 of the general plan’s housing element.

### **IV. THE COMMISSION ABUSED ITS DISCRETION BY GRANTING VARIANCES FOR THIS PROJECT, BECAUSE THERE ARE NO FINDINGS OF SPECIAL CIRCUMSTANCES THAT WOULD ALLOW A VARIANCE TO BE GRANTED.**

#### **A. The Commission Abused Its Discretion By Purportedly Granting Minor Variances, Because The Relaxed Standards For Those Variances No Longer Exist.**

Variances “should not be granted lightly” nor without “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 ....” (LUTE, p. 114, Policy N11.3.) “Variances provide the flexibility to resolve difficulties or hardships when the strict application of regulations may be inappropriate due to special or extraordinary physical or topographic circumstances that occur on the property.... [¶] Variances from the development standards can be granted due to *special circumstances peculiar to the subject property*, including size, shape, topography, location, design constraints, or surroundings...” (Oakland General Plan, Housing Element, Appendix E, p. E-21, emphasis added.)

The Planning Code allows for “minor” variances under standards that are less stringent than those required by the General Plan for variances. (OPC, § 17.148.050(1).) However, “where a proposal clearly does not conform with the General Plan but is permitted or conditionally permitted by the Zoning and/or Subdivision Regulations,” an express conflict occurs and the provisions of the General Plan apply. (OPC, § 17.01.050.) Therefore, the general plan has repealed the relaxed minor variance standards of the Planning Code, because those standards would not conform with the general plan, which takes precedence where this type of conflict occurs. The Commission thus abused its discretion by granting minor variances pursuant to the planning code where the standards for those variances would not conform to the standards for variances required by the general plan.

#### **B. The Commission Abused Its Discretion By Granting Variances Without Making The Requisite Findings.**

The Commission approved five variances for the proposed project (Approval. Minor Variance Findings), but there are no findings that there are any *special circumstances peculiar the Property* that would allow a variance, and no such circumstances exist. The size of the Property is almost 15,000 square feet. (Staff Report, April 4, 2007. p. 3, ¶ 3.) Directly across the 48<sup>th</sup> Street from the Property is the former Omni Club, which is a 21,000 square foot building. (Basic Application for Development Review, Assessor’s Parcel Nos. 013-1162-009-01 and -02, § 1, 013-1162-010. ¶ 6.) As can be seen by Oakland’s aerial GIS map, the Property is of average size, shape, and topography compared to the other properties in the immediate area. (City of Oakland Community and Economic Development Agency GIS aerial map, <<http://gismaps.oaklandnet.com/cedap/?Accept=Accept>> [as of Feb. 27, 2007].)

The Commission approved variances allowing reduced or eliminated setbacks to align the Property with the lack of setbacks of adjacent properties that were allowed by variances. The Commission also approved a variance for greatly increased height and to supposedly convince the applicant not to build any higher than it has currently proposed to do, though the Commission offered no evidence that the applicant intended to build any higher than is currently proposed. (Approved Staff Report, pp. 19-22.) However, as discussed directly above, none of those reasons fit the purpose of a variance, nor are they legitimate reasons to grant one. In order grant a variance, the Commission must find, inter alia, that there are “special circumstances peculiar to the subject property.” (General Plan, Housing Element, Appendix E, p. E-21.) No such finding was made here, and the Commission thus abused its discretion by granting variances without making the required findings.

**V. THE COMMISSION ABUSED ITS DISCRETION BY APPROVING THE LARGE NUMBER OF VARIANCES FOR THIS PROPOSAL, BECAUSE VARIANCES ARE ONLY TO BE GRANTED TO A SMALL FRACTION OF A ZONE.**

Variations from the development standards can be granted due to *special circumstances peculiar to the subject property*, including size, shape, topography, location, design constraints, or surroundings..." (Oakland General Plan, Housing Element, Appendix E, p. E-21, emphasis added.) This is substantially similar to the California statute regarding variances. "Variances from the terms of the zoning ordinances shall be granted *only* when, because of *special circumstances applicable to the property*, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification." (Gov. Code, § 65906, emphasis added.) In interpreting the state statute, the California Supreme Court has held that an agency is limited to granting variances to "only a small fraction of any one zone." (*Topanga Assn. for Scenic Community v. Los Angeles* (1974) 11 Cal.3d 506, 520.) Similarly, the Oakland General Plan explicitly provides that variances "should not be granted lightly." (LUTE, p. 114, Policy N11.3.)

The Commission granted five variances for just this one proposed project. The parcel at 574 – 48<sup>th</sup> Street, which is only separated from the Property by two parcels and is in the same R-50 zone, was also granted five variances. (Staff Report, May 4, 2005, Case File Number CMDV04-552; TPM8567, p.1, "Planning Permits Required.") The parcel at 4801 Telegraph Avenue, which is directly across the street from the Property and shares the same R-70 zone, was granted three variances. (Staff Report, August 7, 2002, Case File Number CMDV02-174 p. 4, "Key Issues and Impacts.") These other parcels represent *eight* variances in the immediate area and in the same zones as the Property.

Granting the applicant five, or even any, variances would run afoul of the Supreme Court's admonition in *Topanga* that "only a small fraction of any one zone" is to receive variances. Were more than a few rare variances to be granted in one zone, the orderly distribution of activities would become disorderly, with activities occurring at the whims of developers and individual property owners at the community's expense, instead of according to the desires of the community whose representatives in government had created the zone, and who have a right to expect certain restrictions on activities in their neighborhoods and immediate areas that are provided for by the Planning Code and General Plan. Because two other properties in the immediate area and in the same zones have already received eight variances, granting five more to the applicant would total thirteen variances within less than one short block. Doing so clearly runs afoul of *Topanga*'s restriction on the limited number of variances for each zone.

Even if there were no other variances granted in the zone, the five variances granted for this proposal alone are too numerous for one zone and these variances must be rejected for that reason alone. This is especially true where a property directly across the street and another one just down the street have already received numerous variances. The Commission abused its discretion by granting variances for the proposal, both



because there are already too many variances in the zones in which the Property lies, and because the five variances for this one Property are too numerous.

**VI. THE COMMISSION ABUSED ITS DISCRETION BY APPROVING A PROPOSAL WHERE THE PROPOSED OPEN SPACE IS LEGALLY INADEQUATE.**

As the planning commission staff recognized, the proposed amount of private open space is 564 feet short of that required by the Planning Code and that of public open space is 767 short. (Staff Report, February 28, 2007, pp. 4, 5.) This is a clear violation of the Planning Code and should, independently, have caused this application to be rejected for this reason independently. (See Oakland Municipal Code, §§ 17.24.160, 17.28.160.) However, the Commission apparently ignored this violation and approved this proposal without any condition that the required open space be provided. This was a clear abuse of discretion and should be reversed.

**VII. THE COMMISSION ABUSED ITS DISCRETION BY ALLOWING DEMOLITION OR MOVING OF THE HISTORIC BUILDING, BECAUSE DOING SO MAY HAVE A CUMULATIVE IMPACT ON THE HISTORIC CHARACTER OF THE AREA, WHICH REQUIRES CEQA REVIEW.**

“Cumulative impacts’ refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” (14 CCR, § 15355.) “Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.” (14 CCR, § 15355(b).)

“When assessing whether a cumulative effect requires an EIR, the lead agency shall consider whether the cumulative impact is significant and whether the effects of the project are cumulatively considerable. An EIR must be prepared if the cumulative impact may be significant and the project’s incremental effect, though individually limited, is cumulatively considerable. ‘Cumulatively considerable’ means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” (14 CCR, § 15064(h)(1).) Other projects in the area that produce similar impacts must be analyzed when analyzing cumulative impacts. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1215, 1216.) A lead agency must find that a project may have a significant effect on the environment where the “possible effects of a project are individually limited but cumulatively considerable.” (Pub. Resources Code, § 21083(b)(2).)

The proposed project involves demolition of three more historic resources, including a potential C-rated building. The 4700 Telegraph Avenue project will demolish or remove three C-rated historic buildings, and the “Kingfish” project at 52<sup>nd</sup> Street and Claremont Avenue proposes to demolish or remove more historic structures. In this immediate area, six historic properties have been demolished or are proposed to be

demolished due to development. All of these structures are potentially eligible for listing in the California Register of Historical Resources. Considered together, these demolitions or removals create a significant cumulative effect, harming the historic character of the area. If enough historic buildings were demolished, the entire historic character of the area would be lost. At the very least, an initial study must be prepared to determine whether there is a reasonable chance of significant harm to the historic character of the area, in which case an EIR must be prepared. The Commission abused its discretion by failing to require environmental review for the potential cumulative impacts of demolishing or relocating these many historic resources.

**VIII. THE COMMISSION ABUSED ITS DISCRETION BY ALLOWING THE DEMOLITION OF THE POTENTIALLY DESIGNATED HISTORIC PROPERTY, BECAUSE DOING SO WOULD BE IN DIRECT CONTRADICTION OF EXPLICIT POLICIES OF THE GENERAL PLAN.**

It is the official policy of the City of Oakland that where a PDHP is proposed to be replaced by a new project, the PDHP should be moved, not demolished. (Oakland General Plan, Historic Preservation Element, Policy 3.7)

As discussed above on page 5 of this document, the Property contains a potential PDHP. The proposal was approved on the condition that, inter alia, the applicant make a “good faith” effort to relocate this potential PDHP. (Approval, Condition 30.) However, this condition falls short of the official policy, which requires the applicant to move the building instead of demolishing it. Any permit for the Property must be conditioned upon prohibiting demolition of the potential PDHP. Allowing demolition of a potential PDHP if it is not relocated within 90 days was an abuse of discretion by the Commission and should be overturned by the City Council.

**IX. THE COMMISSION ABUSED ITS DISCRETION BY ALLOWING DEMOLITION OR REMOVAL OF A HISTORIC BUILDING, BECAUSE CEQA REVIEW IS REQUIRED TO DETERMINE WHETHER THOSE ACTIONS WOULD CAUSE A SIGNIFICANT ENVIRONMENTAL EFFECT.**

“A project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment. For purposes of this section, an historical resource is a resource listed in, or determined to be eligible for listing in, the California Register of Historical Resources.” (Pub. Resources Code, § 21084.1.) “Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired.” (14 CCR, § 15064.5(b)(1), (2).)

As discussed directly above, the Property contains a potential PDHP that will either be demolished or removed. The potential PDHP might be eligible for listing in the California Register of Historical Resources, because it might embody “the distinctive

characteristics of a type, period, region, or method of construction.” (Pub. Resources Code, § 5024.1(c)(3).) Because the potential PDHP will either be removed or demolished, causing a potential significant effect on the environment, an initial study must be prepared to determine whether the potential PDHP is eligible for listing and whether an EIR must be prepared. The Commission abused its discretion by allowing a building that could be eligible for listing in the California Register of Historical Resources to be either relocated or demolished without CEQA review.

### CONCLUSION

For the foregoing reasons, this proposed project is not eligible for an exemption from CEQA review, nor is it eligible for a variance. The project as proposed would significantly affect views, for which proposition STAND can easily supply substantial evidence, and which requires an initial study at the very least. There is also a reasonable chance that the proposed project could cause harm to a historical resource. Variances may only be granted on rare occasions and may *not* be granted in a manner similar to freely giving out candy on Halloween, which seems to be the manner in which the City of Oakland has been proceeding.

A proper course of action would be to prepare an initial study to determine the extent of the aesthetic and historical impacts of the proposed project. Because it seems clear that the views of a substantial portion of the sky, the hills and the area near the project would be blocked by the proposed building, an initial study could identify the precise aesthetic effects of both blockage of views and shadowing. Because a potential historical building would either be demolished or removed, an initial study could determine whether that building has historical significance and whether removal or demolition of that building might cause a cumulative impact to the historical nature of the area. An initial study could determine whether the proposed project would have any significant environmental effects and, if so, whether those effects could be mitigated, and what mitigations would be appropriate and effective.

STAND supports smart growth in order to preserve our rapidly disappearing open space. However, STAND advocates that smart growth actually be *smart*; that is, it should not destroy the communities in which it occurs. It is quite possible to develop, through infill, in a manner that both increases the density of an area and preserves the characteristics that those already living there enjoy and have a right to expect.

# ATTACHMENT B



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

(REVISED 8/14/02)

### PROJECT INFORMATION

Case No. of Appealed Project: CMDV06-425

Project Address of Appealed Project: 4801 SHATTUCK AVENUE

### APPELLANT INFORMATION:

Printed Name: 4801 SHATTUCK, LLC

Phone Number: 510.550.4804

Mailing Address: P.O. Box 3297

Alternate Contact Number: 510.550.7175

City/Zip Code OAKLAND, CA 94609

Representing: ROY ALPER

An appeal is hereby submitted on:

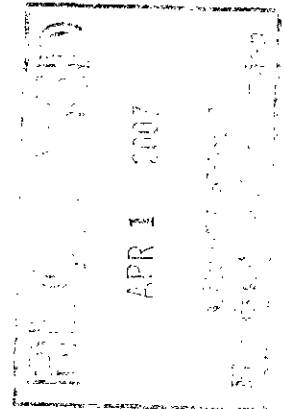
**AN ADMINISTRATIVE DECISION (TO THE CITY PLANNING COMMISSION)**

**YOU MUST INDICATE ALL THAT APPLY:**

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

**Pursuant to the Oakland Municipal and Planning Codes listed below:**

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



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

Granting an application to:

OR

Denying an application to:

The permits listed below, subject to a reduction in height for a portion of the project building. Appellant is appealing the height reduction ONLY.  
(continued on reverse)

(Continued)

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

**YOU MUST INDICATE ALL THAT APPLY:**

**Pursuant to the Oakland Municipal and Planning Codes listed below:**

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

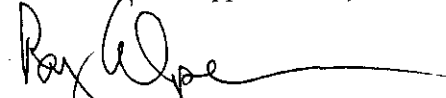
An appeal in accordance with the sections of the Oakland Municipal and Planning Codes listed above shall state specifically wherein it is claimed there was an error or abuse of discretion by the Zoning Administrator, other administrative decisionmaker or Commission (Advisory Agency) or wherein their/its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

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

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

SEE ATTACHED

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



Signature of Appellant or Representative of  
Appealing Organization

4/13/07

Date

Below For Staff Use Only

Date/Time Received Stamp Below:

Cashier's Receipt Stamp Below:

8/14/02

**ATTACHMENT TO REQUEST FOR APPEAL**  
**OF**  
**PLANNING COMMISSION DECISION TO THE CITY COUNSEL**  
**Case File No. CMDV06-425**

The Planning Commission committed error, abused its discretion and made a decision that is not supported by the evidence in the record by requiring that that the rear 65 to 85 feet the proposed Project building be reduced by one floor from 57 feet to a maximum height of 48 feet. Said height reduction decision:

1. Has a significant, material adverse impact on the design of the Project building, precluding an effective design solution without improving livability, operational efficiency, or appearance.
2. Is not consistent with the character of the neighborhood and other buildings therein, which include at least four (4) buildings ranging in height from 50 feet to 70 feet in the immediate vicinity of the Project, one of which (52 feet in height) is immediately adjacent to the Project building on the west and another of which (65 feet 7 inches in height) is directly across Shattuck Avenue from the Project building.
3. Is not consistent with the intent and desired character of the relevant land use classifications of the General Plan and the associated policies related to “Grow and Change” in the neighborhood.
4. Is erroneously and inappropriately based in part on the existence of a *de minimus* sliver of R-50 zoned property approximately 25 feet wide adjacent to the northern boundary of the Project when it is clear that said sliver is itself in express conflict with the applicable General Plan designations and should be determined to be “best fit” R-70 in any event.
5. Disregards the *unequivocal testimony of the neighbor to the north of the Project*, the owner most affected by the Project, that she supports the Project at the 57 foot height.

Supporting evidence for this appeal is to be found in the record of Case File No. CMDV06-425. Appellant reserves the right to submit additional evidence, documents and legal arguments prior to and at the City Council hearing on this appeal.

# ATTACHMENT C

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

ENDORSED  
FILED

ALAMEDA COUNTY

JUN 21 2004

CLERK OF THE SUPERIOR COURT  
By SARA DALLESKE

Deputy

No. RG03-133394

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

Petitioners,

vs.

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

Respondents.

STATEMENT OF DECISION

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

Real Parties in Interest.

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

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

Facts and Procedural History of the Approvals at Issue

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

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

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



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

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

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

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

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

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

and cumulative parking impacts, and zoning regulations.

### Exemptions Under CEQA

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

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

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

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

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

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

Exceptions to the Exemptions

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

Standard of Review

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

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

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attaches an Appendix to its Statement of Decision setting forth in full all relevant statutes and guidelines.  
<sup>4</sup> The Court acknowledges respondent's position that statutory exemptions do not have "exceptions." For purposes of this discussion, however the Court will refer to conditions that limit the applicability of statutory exemptions as "exceptions," albeit different in nature than those applying to categorical exemptions.

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

(*CalBeach Advocates v. City of Solana Beach* (2002) 103 Cal.App.4th 529, 535-536.)

"The interpretation of a statutory exemption and its application to the facts is a question of law." (1 Kostka & Zischke, Practice Under the California Environmental Quality Act, *supra*, § 5.100; citing to *Napa Valley Wine Train, Inc.*, *supra*, 50 Cal.3d at 267.)

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

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

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

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

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

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

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<sup>5</sup> *Guideline 15280. Lower-income Housing Projects*

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

*Guideline 15300.2. Exceptions*

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

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

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

#### Review of the Evidence Regarding the Applicable Exceptions

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

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possibility that the activity will have a significant effect on the environment due to unusual circumstances.

<sup>6</sup> Petitioner did not dispute respondent/real party in interest’s statement (repeated at the hearing) that “[I]f either exemption applies, no further review under CEQA is required.” (Resp. Oppo. Brf. p. 9:16-17.) Thus, if the City’s decision as to the statutory exemption is determined to have been sound under the substantial evidence standard,

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

Violation of the Government Code Re: Granting of Variance

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

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

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*the Downtown Plan, supra*, 102 Cal.App.4<sup>th</sup> at 697.

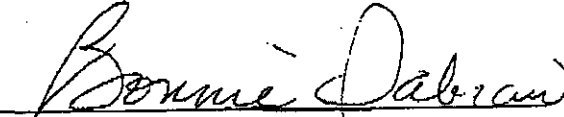
<sup>11</sup> Petitioner commented at hearing that it did not feel that its views were “respected” with regard to this project, and that the length of the record supported an exception to the exemption. The Court views the length of the record as evidence of respondent/real party in interest’s good faith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

CONCLUSION

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

IT IS SO ORDERED.

Date: 6/21/04

  
BONNIE SABRAW  
Judge of the Superior Court

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

# ATTACHMENT D

## EXCERPTS FROM CITY OF OAKLAND'S CEQA THRESHOLDS OF SIGNIFICANCE

### AESTHETICS, SHADOW AND WIND

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

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

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

## **CULTURAL AND HISTORIC RESOURCES**

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

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

### **APPENDIX A**

#### **DEFINITION OF HISTORICAL RESOURCE UNDER CEQA**

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

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

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

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

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

*ATTACHMENT E*

4801 SHATTUCK AVENUE RESIDENTIAL  
DEVELOPMENT PROJECT

**Traffic Impact Analysis  
FINAL REPORT**

*Prepared for:*

**City of Oakland**

*By*

***DKS Associates***

1000 Broadway  
Suite 450  
Oakland, CA 94607-4039

**January 25, 2007**



January 25, 2007

Mr. Peter Vollman  
Planner III  
Community & Economic Development Agency  
City of Oakland  
250 Frank H. Ogawa Plaza, Suite 2114  
Oakland, CA 94612

**Subject: 4801 Shattuck Avenue Development Project  
Traffic Impact Analysis – Final Report**

P 06276-000

Dear Mr. Vollman:

DKS Associates is pleased to submit this Final Traffic Impact Analysis Report for the proposed residential Development Project, located at 4801 Shattuck Avenue in the City of Oakland, CA. The Final Report incorporates revisions to the Revised Draft Report submitted on January 5, 2006 and correspondence received on January 19, 2007.

The report includes an evaluation of potential transportation impacts associated with the proposed project, and makes recommendations to improve pedestrian and vehicular circulation in the study area.

Please do not hesitate to call with any questions regarding this report. DKS has enjoyed being of service on this project.

Sincerely,

**DKS Associates**  
A California Corporation



Mark Spencer, P.E.  
Principal



Patricia Camacho  
Project Manager



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## EXECUTIVE SUMMARY

This report provides an evaluation of traffic and transportation issues related to the proposed 44 unit residential condominium development located at the northwest corner of 48<sup>th</sup> Street and Shattuck Avenue in the City of Oakland, California. The project site is currently developed with general office space (3,000 square feet of which 1,500 square feet is occupied) and five residential dwelling units, of which four are occupied). The project proposes to demolish the existing structures on the site and construct 44 residential condominiums.

The project study area is bounded by 52<sup>nd</sup> Street-Claremont Avenue to the north, Shattuck Avenue to the west, Shafter Avenue to the east and 45<sup>th</sup> Street to the south. The proposed project site is bounded by 48<sup>th</sup> Street to the south and Shattuck Avenue to the east.

Vehicular access to the site would be provided via two driveways along 48<sup>th</sup> Street. This report provides a general description of the transportation facilities in the project vicinity and summarizes existing, project, cumulative and cumulative with project conditions within the study area. Particular attention is given to impacts on vehicular, transit, bicycle and pedestrian facilities.

The proposed project is estimated to generate a net additional 319 daily trips, including 27 A.M. peak hour trips (5 in, 22 out) and 31 P.M. peak hour trips (21 in, 10 out).

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

The proposed project would provide 44 on-site parking spaces with 9 spaces located at ground level (1 ADA) and 35 spaces located in the basement garage (2 ADA).

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

- Upgrading of existing ADA ramps at the intersection of Shattuck Avenue and 48<sup>th</sup> Street to ADA compliance.

- Repaving of cracked sidewalks along the south side of 48<sup>th</sup> Street east of Shattuck Avenue near where the sidewalk meets the ADA ramps.
- In order to provide adequate sight distance from the east driveway, driveway tipping of approximately 9.3 feet would be required in the eastbound direction along 48<sup>th</sup> Street. Sight distance is limited in the westbound direction due to the dead-end. However, vehicles leaving the site would need approximately 50.5 feet of driveway tipping in the westbound direction.
- In order to provide adequate sight distance from the west driveway, driveway tipping of approximately 75.8 feet would be required in the eastbound direction along 48<sup>th</sup> Street. Sight distance is limited in the westbound direction due to the dead-end. However, vehicles leaving the site would need approximately 17.5 feet of driveway tipping in the westbound direction.
- In addition, on-street parking would have to be restricted along 48<sup>th</sup> Street between driveway locations in order to provide adequate site distance.

**TABLE ES-1**

**Level of Service Analysis Summary  
A.M. Peak Hour**

#	Intersection	Traffic Control	Existing			Project			Cumulative			Cumulative w/Project		
			Avg. Delay	V/C	LOS	Avg. Delay	V/C	LOS	Avg. Delay	V/C	LOS	Avg. Delay	V/C	LOS
1.	Shattuck Ave & 52 <sup>nd</sup> St	Signalized	<b>143.5</b>	<b>1.63</b>	<b>F</b>	<b>61.6</b>	<b>0.98</b>	<b>E</b>	<b>114.7</b>	<b>1.18</b>	<b>F</b>	<b>112.2</b>	<b>1.19</b>	<b>F</b>
2.	Telegraph Ave & 52 <sup>nd</sup> St – Claremont Ave	Signalized	<b>61.3</b>	<b>0.96</b>	<b>E</b>	<b>61.3</b>	<b>0.98</b>	<b>E</b>	<b>105.5</b>	<b>1.24</b>	<b>F</b>	<b>107.4</b>	<b>1.26</b>	<b>F</b>
3.	Telegraph Ave & 51 <sup>st</sup> St	Signalized	33.5	0.85	C	33.5	0.85	C	<b>70.9</b>	<b>1.25</b>	<b>E</b>	<b>70.9</b>	<b>1.25</b>	<b>E</b>
4.	Shattuck Ave & 48 <sup>th</sup> St <sup>1</sup>	Unsignalized	11.5	-	B	11.8	-	B	12.5	-	B	12.9	-	B
5.	Telegraph Ave & 48 <sup>th</sup> St	Signalized	6.9	0.20	A	6.9	0.20	A	7.5	0.25	A	7.5	0.25	A
6.	Webster St & 48 <sup>th</sup> St <sup>1</sup>	Unsignalized	9.5	-	A	9.5	-	A	9.9	-	A	9.9	-	A
7.	Telegraph Ave – Shattuck Ave & 45 <sup>th</sup> St	Signalized	13.0	0.32	B	13.0	0.32	B	13.8	0.39	B	13.8	0.39	B
8.	Shafter Ave & 45 <sup>th</sup> St	Signalized	10.0	0.17	B	10.0	0.17	B	10.3	0.22	B	10.3	0.22	B

Average Delay: in seconds per vehicle

V/C: Volume to Capacity Ratio

LOS: Level of Service

<sup>1</sup> Unsignalized Intersection: LOS based on worst approach delay (in seconds)

**TABLE ES-2**

**Level of Service Analysis Summary  
P.M. Peak Hour**

#	Intersection	Traffic Control	Existing			Project			Cumulative			Cumulative w/Project		
			Avg. Delay	V/C	LOS	Avg. Delay	V/C	LOS	Avg. Delay	V/C	LOS	Avg. Delay	V/C	LOS
1.	Shattuck Ave & 52 <sup>nd</sup> St	Signalized	<b>124.2</b>	<b>1.95</b>	<b>F</b>	<b>60.3</b>	<b>0.97</b>	<b>E</b>	<b>107.8</b>	<b>1.19</b>	<b>F</b>	<b>108.4</b>	<b>1.19</b>	<b>F</b>
2.	Telegraph Ave & 52 <sup>nd</sup> St – Claremont Ave	Signalized	<b>222.4</b>	<b>1.55</b>	<b>F</b>	<b>222.1</b>	<b>1.55</b>	<b>F</b>	<b>346.5</b>	<b>1.96</b>	<b>F</b>	<b>332.2</b>	<b>1.91</b>	<b>F</b>
3.	Telegraph Ave & 51 <sup>st</sup> St	Signalized	<b>100.9</b>	<b>1.47</b>	<b>F</b>	<b>101.3</b>	<b>1.47</b>	<b>F</b>	<b>157.2</b>	<b>1.87</b>	<b>F</b>	<b>157.1</b>	<b>1.87</b>	<b>F</b>
4.	Shattuck Ave & 48 <sup>th</sup> St <sup>1</sup>	Unsignalized	13.5	-	B	14.0	-	B	15.8	-	C	16.4	-	C
5.	Telegraph Ave & 48 <sup>th</sup> St	Signalized	7.1	0.28	A	7.1	0.28	A	7.8	0.35	A	7.9	0.35	A
6.	Webster St & 48 <sup>th</sup> St <sup>1</sup>	Unsignalized	9.3	-	A	9.3	-	A	9.6	-	A	9.6	-	A
7.	Telegraph Ave – Shattuck Ave & 45 <sup>th</sup> St	Signalized	17.0	0.46	B	17.1	0.46	B	21.1	0.57	C	21.4	0.57	C
8.	Shaffer Ave & 45 <sup>th</sup> St	Signalized	9.8	0.12	A	9.9	0.12	A	10.0	0.14	A	10.0	0.14	A

Average Delay: in seconds per vehicle

V/C: Volume to Capacity Ratio

LOS: Level of Service

<sup>1</sup> Unsignalized Intersection: LOS based on worst approach delay (in seconds)

## 1.0 INTRODUCTION

This report provides an evaluation of traffic and transportation issues related to the proposed 44 unit residential condominium development site located at the northwest corner of 48<sup>th</sup> Street and Shattuck Avenue in the City of Oakland, California. The project site is currently developed with general office space (3,000 square feet of which 1,500 square feet is occupied) and five residential dwelling units of which four are occupied. The project proposes to demolish the existing structures on the site and construct 44 residential condominiums.

The project study area is bounded by 52<sup>nd</sup> Street-Claremont Avenue to the north, Shattuck Avenue to the west, Shafter Avenue to the east and 45<sup>th</sup> Street to the south. The proposed project site is bounded by 48<sup>th</sup> Street to the south and Shattuck Avenue to the east. The site location and the surrounding roadway network are illustrated in **Figure 1**.

Vehicular access to the site would be provided via two driveways along 48<sup>th</sup> Street. The project site plan is illustrated in **Figure 2**.

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

- Temescal Centrada Mixed Use Development Project, Traffic Impact Analysis Final Report prepared by DKS Associates - July 6, 2006.

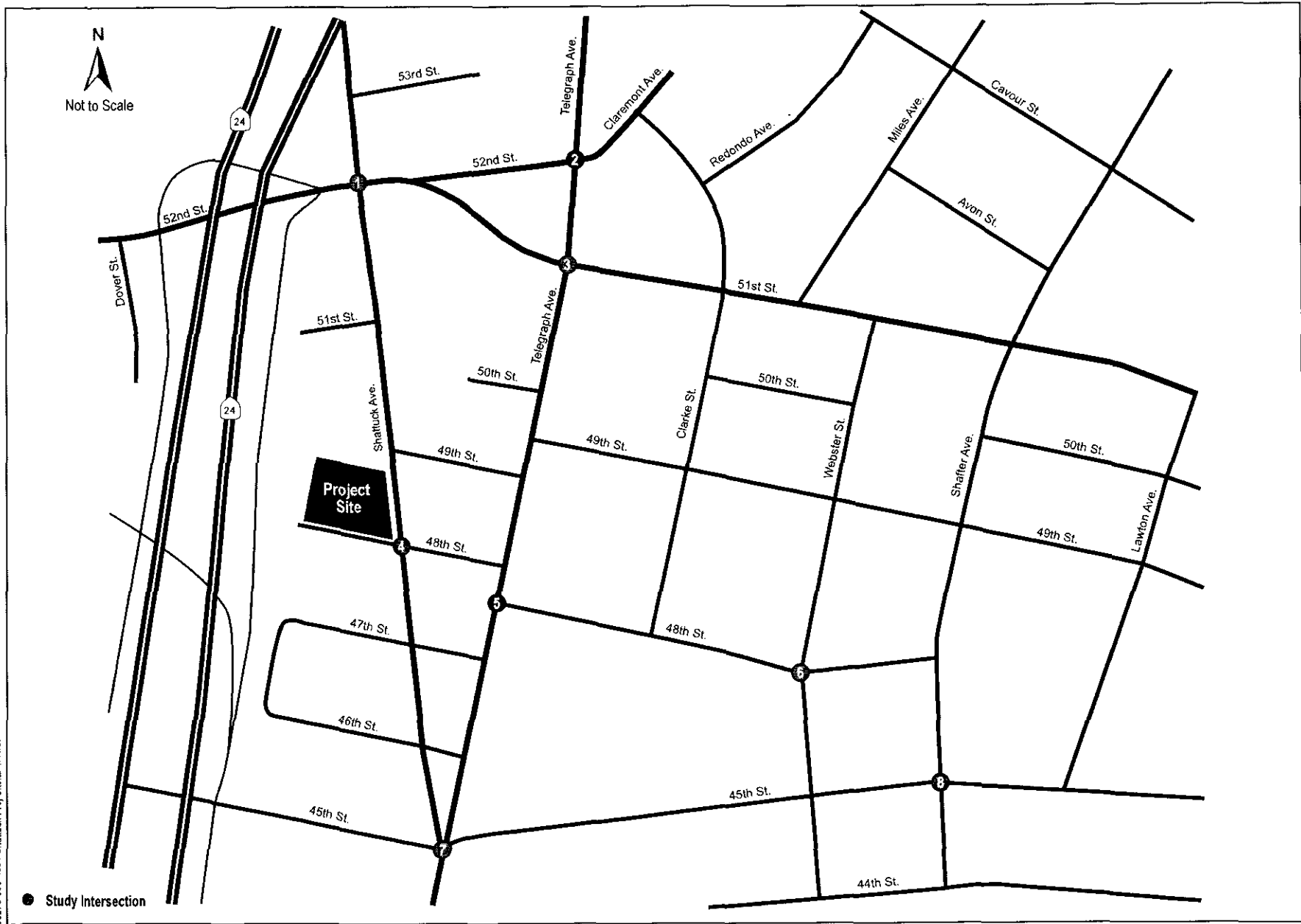
In addition, data provided in this report are based on recent correspondence and conversations with staff of the City of Oakland and site visits conducted in December 2006.

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

Based on consultation with City of Oakland staff, the following eight intersections were analyzed as part of the City of Oakland traffic impact analysis:

1. Shattuck Avenue & 52<sup>nd</sup> Street
2. Telegraph Avenue & 52<sup>nd</sup> Street-Claremont Avenue
3. Telegraph Avenue & 51<sup>st</sup> Street
4. Shattuck Avenue & 48<sup>th</sup> Street
5. Telegraph Avenue & 48<sup>th</sup> Street
6. Webster Street & 48<sup>th</sup> Street
7. Telegraph Avenue-Shattuck Avenue & 45<sup>th</sup> Street
8. Shafter Avenue & 45<sup>th</sup> Street

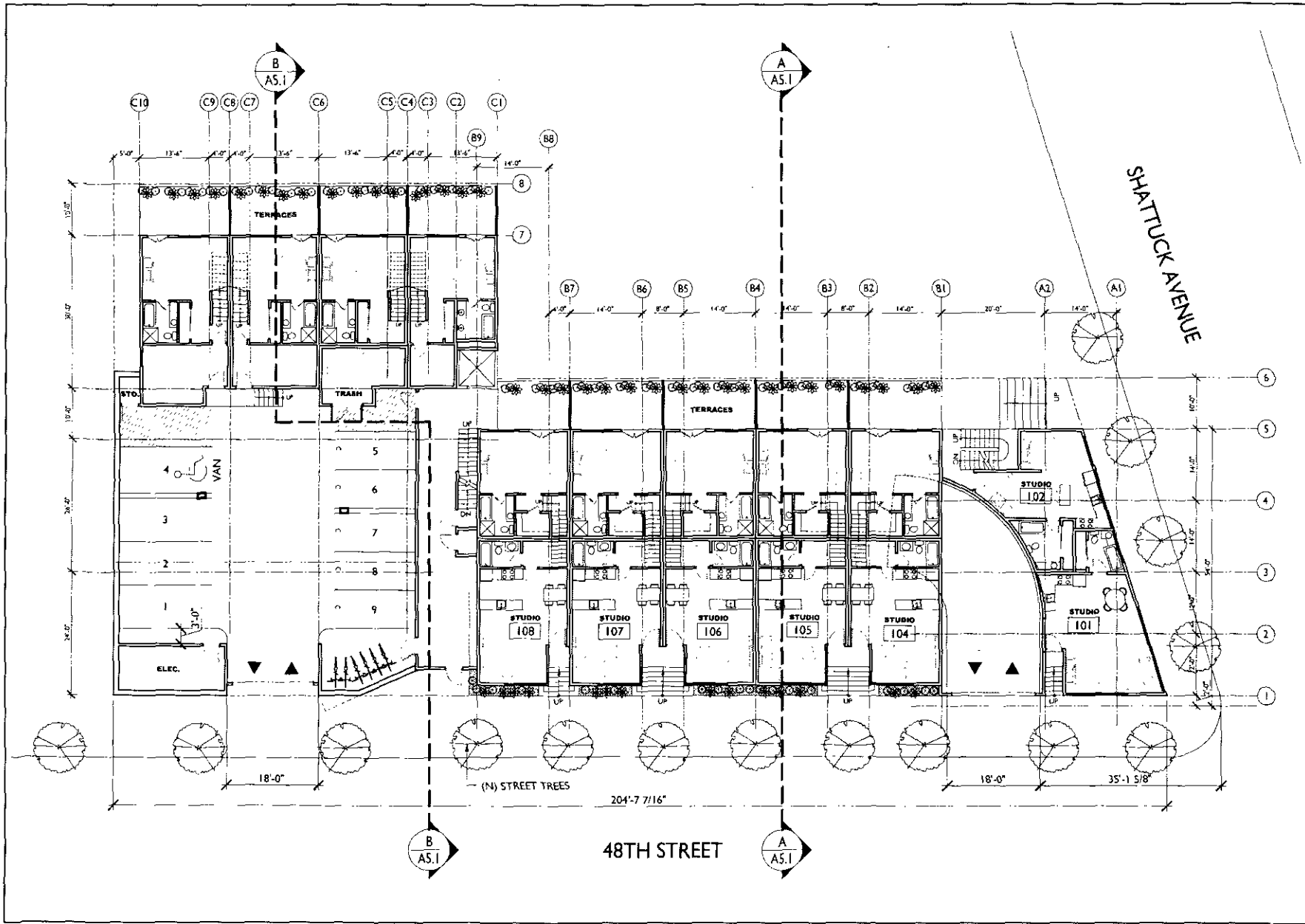




0027E-000-4801 Shattuck Proj Site.ar/1/1/07

**Figure 1**  
**Project Site Location and Roadway Network**

06276-000-4801 Shattuck Site Plan.asx12/7/08



**DKS Associates**  
TRANSPORTATION SOLUTIONS

**Figure 2**  
**Proposed Site Plan**  
**4801 Shattuck Avenue**

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

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

**Scenario 2: Project Condition.** Existing peak-hour volumes plus project-generated traffic estimated for the mixed-use development project.

**Scenario 3: Cumulative Condition.** Existing peak-hour volumes plus a 1.18% traffic growth per year to year 2025 estimated in the vicinity of the proposed project plus traffic generated by the Civiq and Centrada projects.

**Scenario 4: Cumulative with Project Condition.** Cumulative peak-hour volumes plus traffic generated by the proposed project.

In addition to intersection operation analysis, vehicle, pedestrian and bicycle collision data has been analyzed for study intersections along Shattuck Avenue between 47<sup>th</sup> Street and 52<sup>nd</sup> Street. An evaluation of the site plan, on-site circulation, access and egress points, sight distance, proposed parking supply and expected demand is contained in this report.

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

## 2.0 EXISTING TRANSPORTATION SYSTEM

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

### 2.1 Roadway Network

The project area and the surrounding roadway network are illustrated in **Figure 1**. Regional access to the project area is provided by State Route 24, Telegraph Avenue, Shattuck Avenue and 52<sup>nd</sup> Street - Claremont Avenue.

**State Route 24.** This facility extends from Walnut Creek in the east at its junction with Interstate 680 to its terminus at the I-580/I-980 interchange in the west, where it becomes Interstate 980. In the vicinity of the project, SR-24 runs in the east-west direction and includes four-lanes in each direction of travel. SR-24 provides access to the project study area via 51<sup>st</sup> Street – Martin Luther King Jr. ramp in the eastbound direction and at a Telegraph Avenue ramp in the westbound direction. State Route 24 has a posted speed limit of 55 mph.

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

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

**52<sup>nd</sup> Street - Claremont Avenue** is a four-lane arterial with two lanes in each direction. This facility runs in a northeast-southwest direction and it extends from Grizzly Peak Boulevard in the Berkeley hills to its terminus at Telegraph Avenue in Oakland where it becomes 52<sup>nd</sup> Street. 52<sup>nd</sup> Street is a two- to four-lane arterial extending from Telegraph Avenue to its terminus just west of Market Street. Claremont Avenue has a posted speed limit of 25 mph.

**Local Access.** Local access is provided by 51<sup>st</sup> Street, 48<sup>th</sup> Street, 45<sup>th</sup> Street, Webster Street and Shafter Avenue. These roadways are described below:

**51<sup>st</sup> Street** is a four-lane arterial with an east-west direction. It extends from the east at Broadway where it becomes Pleasant Valley Avenue to Telegraph Avenue in the west. In the vicinity of the project, 51<sup>st</sup> street joins Claremont Avenue to become 52<sup>nd</sup> Street. 51<sup>st</sup> continues west of Shattuck to SR 24 on-ramp and west of Martin

Luther King Jr. Way to West Street. 51<sup>st</sup> Street has a posted speed limit of 30 mph east of Telegraph and a 25 mph posted speed limit west of Telegraph Avenue.

**48<sup>th</sup> Street** is a two-lane local residential street with an east-west direction. It extends from the east at Shafer Avenue to just west of Shattuck Avenue. At the intersection of Telegraph Avenue, 48<sup>th</sup> becomes an off-set intersection. 48<sup>th</sup> Street is a dead-end street east of Shattuck Avenue.

**45<sup>th</sup> Street** is a two-lane local residential street with an east-west direction. It extends from the east at Broadway to its terminus at Horton Street in the west. 45<sup>th</sup> has an advisory posted speed limit of 15 mph due to speed bumps along the street.

**Webster Street** is a two-lane local residential street with a north-south direction located east of the project site. It extends from 51<sup>st</sup> Street in the north to its terminus at Central Avenue in the City of Alameda. Webster Street has an advisory posted speed limit of 15 mph due to speed bumps along the street.

**Shafer Avenue** is a two-lane local residential street running in a north-south direction. It extends from MacArthur Boulevard in the south to its terminus at Broadway in the north.

## 2.2 Pedestrian Facilities

Pedestrian facilities within the vicinity of the project site include sidewalks, crosswalks, ADA ramps and audible signals.

### Sidewalks

Based on recent field observations conducted by DKS staff, sidewalks are provided on all sides adjacent to the project site and within the vicinity of the project. Sidewalks adjacent to the project site (48<sup>th</sup> Street and Shattuck Avenue) appear in good condition;

### Crosswalks

Crosswalks are provided at all study intersections within the vicinity of the project. The crosswalk along the east side of the intersection of Shattuck Avenue and 48<sup>th</sup> Street is faded and can be restriped (see **Photo 1**).

Pedestrian signals at the intersections of Shattuck Avenue & 52<sup>nd</sup> Street, Telegraph Avenue & 51<sup>st</sup> Street, Telegraph and 52<sup>nd</sup> Street-Claremont Avenue, Telegraph Avenue & 45<sup>th</sup> Street,

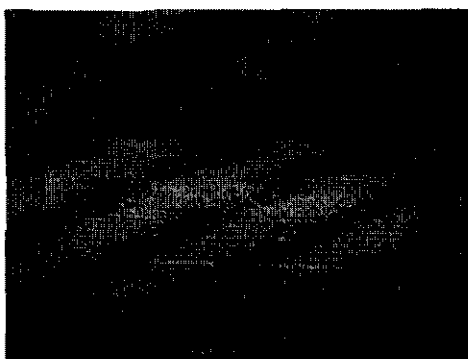


**Photo 1**- Faded crosswalk.

Telegraph Avenue & 48<sup>th</sup> Street and Shafter Avenue & 45<sup>th</sup> Street accommodate pedestrian movements.

## ADA Ramps

DKS recently conducted an evaluation of the existing curb ramps at all study intersections. Per City of Oakland Standard Details for Curb Ramps<sup>1</sup>, most ramps are not compliant with the Americans with Disabilities Act (ADA) guidelines. Photos 2 -3 illustrate a few locations within the study area in which curb ramps are not in compliance. **Table 1** list the curb ramps condition at each of the study intersections.



**Photo 2** – Curb ramp at SW corner of Shattuck Avenue & 48<sup>th</sup> Street where no domes or bands are provided. Ramp is at more than 8.33% slope.



**Photo 3** – Curb ramp and sidewalk at SE corner of Shattuck Avenue & 48<sup>th</sup> Street where no domes or bands are provided. Ramp is at more than 8.33% slope and the sidewalk is cracked.

## Pedestrian Signals and Audible Signals

Pedestrian signals are provided at signalized study intersection. At the intersection of Shattuck Avenue & 52<sup>nd</sup> Street, pedestrian signals are not provided across 52<sup>nd</sup> Street and pedestrian push buttons are not provided for all directions. The intersection of Telegraph Avenue & 48<sup>th</sup> Street, pedestrian push buttons are not provided across 48<sup>th</sup> Street. Pedestrian push buttons are also missing at the intersection of Telegraph Avenue & 45<sup>th</sup> Street along the east side on Telegraph Avenue. The intersection of Shafter Avenue & 45<sup>th</sup> Street provides pedestrian signal heads but no pedestrian push buttons.

Audible units to aid pedestrians are available at the intersections of Shattuck Avenue-Telegraph Avenue & 45<sup>th</sup> Street, Telegraph Avenue & 51<sup>st</sup> Street, Telegraph Avenue & 52<sup>nd</sup> Street- Claremont Avenue.

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<sup>1</sup> City of Oakland Standard Details for Public Works Construction. 2002 Edition.

**TABLE 1**

**Curb Ramps Summary**

	Intersection	Crosswalks	Ramps	ADA Compliant	Notes
1	Shattuck Ave & 52 <sup>nd</sup> St	Yes	Yes	No	Only the NB east ramp is ADA compliant. All other ramps do not provide the 4' landing minimum.
2	Telegraph Ave & 52 <sup>nd</sup> St – Claremont Ave	Yes	Yes	Yes	Ramps are ADA compliant in size; however, no domes are provided. The southeast ramp near the curb does not meet the 4' landing minimum
3	Telegraph Ave & 51 <sup>st</sup> St	Yes	Yes	No	Six of the seven ramps are not ADA compliant. The southeast ramp is ADA compliant in size but does not include domes.
4	Shattuck Ave & 48 <sup>th</sup> St <sup>1</sup>	Yes <sup>1</sup>	Yes	No	Three of the four ramps are not ADA compliant. The northeast ramp is ADA compliant.
5	Telegraph Ave & 48 <sup>th</sup> St (south) <sup>2</sup>	Yes	Yes	No	Curb ramps are not ADA compliant; do not include domes.
6	Webster St & 48 <sup>th</sup> St <sup>3</sup>	Yes	Yes	No	Three of the four ramps are not ADA compliant and do not include domes or the 4' landing minimum. The southwest ramp is ADA compliant but does not include domes.
7	Telegraph Ave – Shattuck Ave & 45 <sup>th</sup> St	Yes	Yes	Yes	Ramps are ADA compliant in size but do not include domes. The northeast ramp includes a pole in the middle of the ramp.
8	Shafter Ave & 45 <sup>th</sup> St	Yes	Yes	No	Only one of the four ramps is ADA compliant but does not include domes. All other ramps do not provide the 4' landing minimum.

<sup>1</sup> The intersection of Shattuck Avenue & 48<sup>th</sup> Street provides curb ramps along the southwest and southeast corners; however, no crosswalks are provided from these locations.

<sup>2</sup> The intersection of Telegraph Avenue & 48<sup>th</sup> Street (north) provides curb ramps but are not ADA compliant with the exception of the ramp located at the northwest corner.

<sup>3</sup> The intersection of Webster Street & 48<sup>th</sup> Street provides curb ramps along the southeast corner; however, no crosswalks are provided from this location.

**2.3 Transit Facilities**

The Alameda-Contra Costa County Transit District (AC Transit) has jurisdiction over public transit in Alameda and Contra Costa County. AC Transit currently operates five (5) lines within the vicinity of the proposed project.

The AC bus routes that would mostly be used as single or connecting routes are Line

12 – Grand, Line 40 – Telegraph, Line 40L – Telegraph Limited, Line 43 – Shattuck and Line 800 – Transbay All-Nighter.

**Line 12.** This route provides service from MacArthur BART to 11<sup>th</sup> Street/Clay in Berkeley. Weekday service provided between 6:03 a.m. and 7:05 p.m. in the eastbound direction, at 20-minute headways during the peak periods (7:00 a.m. – 9:00 a.m. and 4:00 p.m. – 6:00 p.m.) In the westbound direction, service is provided between 6:00 a.m. and 7:40 p.m., at 20-minute headways during the peak periods (7:00 a.m. – 9:00 a.m. and 4:00 p.m. – 6:00 p.m.). Weekend service is provided between 7:05 a.m. – 7:05 p.m. in the eastbound direction and between 6:49 a.m. to 6:49 p.m. in the westbound direction. Line 12 travels along 51<sup>st</sup> Street and Telegraph Avenue in the vicinity of the project.

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

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

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

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

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



In the southbound direction, service is provided between 5:01 a.m. and 11:16 p.m., at 15-to 20-minute headways during the peak periods (7:00 a.m. – 9:00 a.m. and 4:00 p.m. - 6:00 p.m.). Weekend service is provided. Line 43 travels along Shattuck Avenue in the vicinity of the project and includes stops at the intersections of Shattuck & 51<sup>st</sup> Street, Shattuck & 47<sup>th</sup> Street and Shattuck and 46<sup>th</sup> Street.

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

## 2.4 Bicycle Facilities

The 1999 City of Oakland Bicycle Master Plan<sup>2</sup> map is currently being updated and is scheduled for completion in the summer of 2007. The bicycle network system consists of three classifications of bicycle facilities:

- Class I facilities (Bike Path) – provides a completely separated right-of-way for exclusive use of bicycles and pedestrians with cross-flow minimized.
- Class II facilities (Bike Lanes) – provides a striped lane for one-way bike travel on a street or highway.
- Class III facilities (Bike Route) – provides for shared use with pedestrians or motor vehicle traffic and is denoted by a route sign.

The bicycle facilities master plan map identifies Telegraph Avenue (north of Aileen Street to Berkeley), as a Class II 0.90 mile facility. Shafter Avenue is a designated Class III (bike route).

The recommended bikeway network map<sup>1</sup> recommends the extension of the existing Class II facility along Telegraph Avenue from SR-24 to Broadway in Oakland, as well as Class II facilities along Shattuck Avenue and 51<sup>st</sup> Street.

**Appendix A** includes the City of Oakland Existing Bikeway and Recommended Bikeway Network maps.

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<sup>2</sup> City of Oakland Bicycle Master Plan – Adopted July 1999. <http://www.oaklandpw.com/bicycling>

## 2.5 Traffic Collision Analysis

In order to identify locations of high collision rates or specific collision patterns within the study area, DKS reviewed three years of vehicle, pedestrian and bicycle collision data along Shattuck Avenue between 47<sup>th</sup> Street and 52<sup>nd</sup> Street. The periods analyzed range from March 2003 to March 2006. Traffic collision history reports were provided by City of Oakland staff and are included in **Appendix B** of this report.

**Table 2** provides a summary of the collisions at each study intersection and the number of collisions involving motor vehicles, bicyclist, pedestrians and others.

**TABLE 2**

**3-Year Traffic Collision Summary**

Intersection	No. of Collisions	Motor Vehicle Involved with/			
		Other Motor Veh	Bicycle	Ped	Other <sup>3</sup>
Shattuck Ave & 52 <sup>nd</sup> St <sup>1</sup>	36	29	3	3	1
Shattuck Ave & 51 <sup>st</sup> St <sup>2</sup>	7	5		2	
Shattuck Ave & 50 <sup>th</sup> St <sup>2</sup>	1	1			
Shattuck Ave & 49 <sup>th</sup> St <sup>2</sup>	2	1			1
Shattuck Ave & 48 <sup>th</sup> St <sup>2</sup>	4	1		1	2
Shattuck Ave & 47 <sup>th</sup> St <sup>2</sup>	0				
<b>TOTAL</b>	<b>50</b>	<b>37</b>	<b>3</b>	<b>6</b>	<b>4</b>

Source: City of Oakland.

<sup>1</sup> Signalized Intersection

<sup>2</sup> Unsignalized Intersection

<sup>3</sup> Other includes: fixed objects and parked vehicles.

Based on the traffic collision data, most collisions are motor vehicle to motor vehicle and occur due to unsafe speeds, improper turning and or auto right-of-way violations. Of the 50 collisions reported during the three years, only 9 involved pedestrians or bicycles (about 18% of the total collisions). The majority of these accidents (6 total) occurred at the intersection of Shattuck Avenue and 52<sup>nd</sup> Street. The proposed project would add approximately 11 vehicle trips in the A.M. peak hour and 7 during the P.M. peak hour at this location. Several improvements are planned at this location, including a signal upgrade and pedestrian signal heads that include the hand/walking person combination and countdown timer.

The signalized study intersections are equipped with pedestrian crossing signals and crosswalks with the exception of the intersection of Shafter Avenue & 45<sup>th</sup> Street, where no pedestrian signals are provided.

### 3.0 INTERSECTION LEVEL OF SERVICE METHODOLOGY

To evaluate traffic conditions, as well as provide a basis for comparison of conditions before and after project-generated traffic is added to the street system, intersection Level of Service (LOS) analysis was evaluated at all eight (8) study intersections. Signal timing sheets were provided by City staff for all signalized study intersections and used in this analysis.

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

#### 3.1 Level of Service (LOS) Definition

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

#### Unsignalized Intersections

At unsignalized intersections each approach to the intersection is evaluated separately and assigned a LOS. The level of service is based on the delay at the worst approach for two-way stop controlled intersections. Total delay is defined as the total elapsed time from when a vehicle stops at the end of the queue until the vehicle departs from the stop line. This time includes the time required for the vehicle to travel from the last-in-queue position to the first-in-queue position. **Table 3** provides definitions of LOS for unsignalized intersections.

**TABLE 3**

Unsignalized Intersection - LOS Thresholds

Level of Service	Expected Delay	Average Control Delay <sup>1</sup>
A	Little or no delay	≤10
B	Short traffic delay	>10 and ≤ 15
C	Average traffic delays	>15 and ≤ 25
D	Long traffic delays	>25 and ≤ 35
E	Very long traffic delays	>35 and ≤ 50
F	Extreme delays potentially affecting other traffic movements in the intersection	>50

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

**Notes:** <sup>1</sup> Worst Approach Delay (seconds per vehicle).

**Signalized Intersections**

At signalized intersections level of services is evaluated on the basis of average stopped delay for all vehicles at the intersection. **Table 4** defines the levels of service for signalized intersections.

**TABLE 4**

Signalized Intersection - LOS Thresholds

Level of Service	Average Stopped Delay <sup>1</sup> (seconds/vehicle)	Description
A	Delay ≤ 10.0.0	Free flow; minimal to no delay
B	10.0 < Delay ≤ 20.0	Stable flow, but speeds are beginning to be restricted by traffic condition; slight delays.
C	20.0 < Delay ≤ 35.0	Stable flow, but most drivers cannot select their own speeds and feel somewhat restricted; acceptable delays.
D	35.0 < Delay ≤ 55.0	Approaching unstable flow, and drivers have difficulty maneuvering; tolerable delays.
E	55.0 < Delay ≤ 80.0	Unstable flow with stop and go; delays
F	Delay > 80.0	Total breakdown; congested conditions with excessive delays.

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

**Notes:** <sup>1</sup> Control Delay per vehicle (seconds per vehicle).

### 3.2 Standards of Significance

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

### 3.3 Intersection Geometry Modifications

The intersection geometry at Shattuck Avenue & 52<sup>nd</sup> Street was revised in the analysis model for the northbound and southbound movements. Only one lane in both the northbound and southbound directions is actually provided for left, through and right-turn movements. However, based on field observations, the north and south legs are both wide enough to allow for exclusive left-turns at the intersection and also allow for through and right-turn movements to cross the

intersection without having to wait for the left-turn to clear the intersection. Although the intersection is not striped for separate left-turn lanes, this is how the intersection actually functions, and therefore an adjustment was made to the geometry in the analysis model to reflect actual operating conditions. In addition, since vehicles making a left-turn movement experience a greater delay to safely cross the intersection, the saturation flow for the left-turn and thru-movements were adjusted to half of the optimal. This adjustment was applied for the existing condition only.

## 4.0 EXISTING CONDITION

Intersection turning movement volumes for the study intersections were obtained from the recently completed Temescal Centrada Mixed-Use Development Project – Final Traffic Report, and used in this analysis.

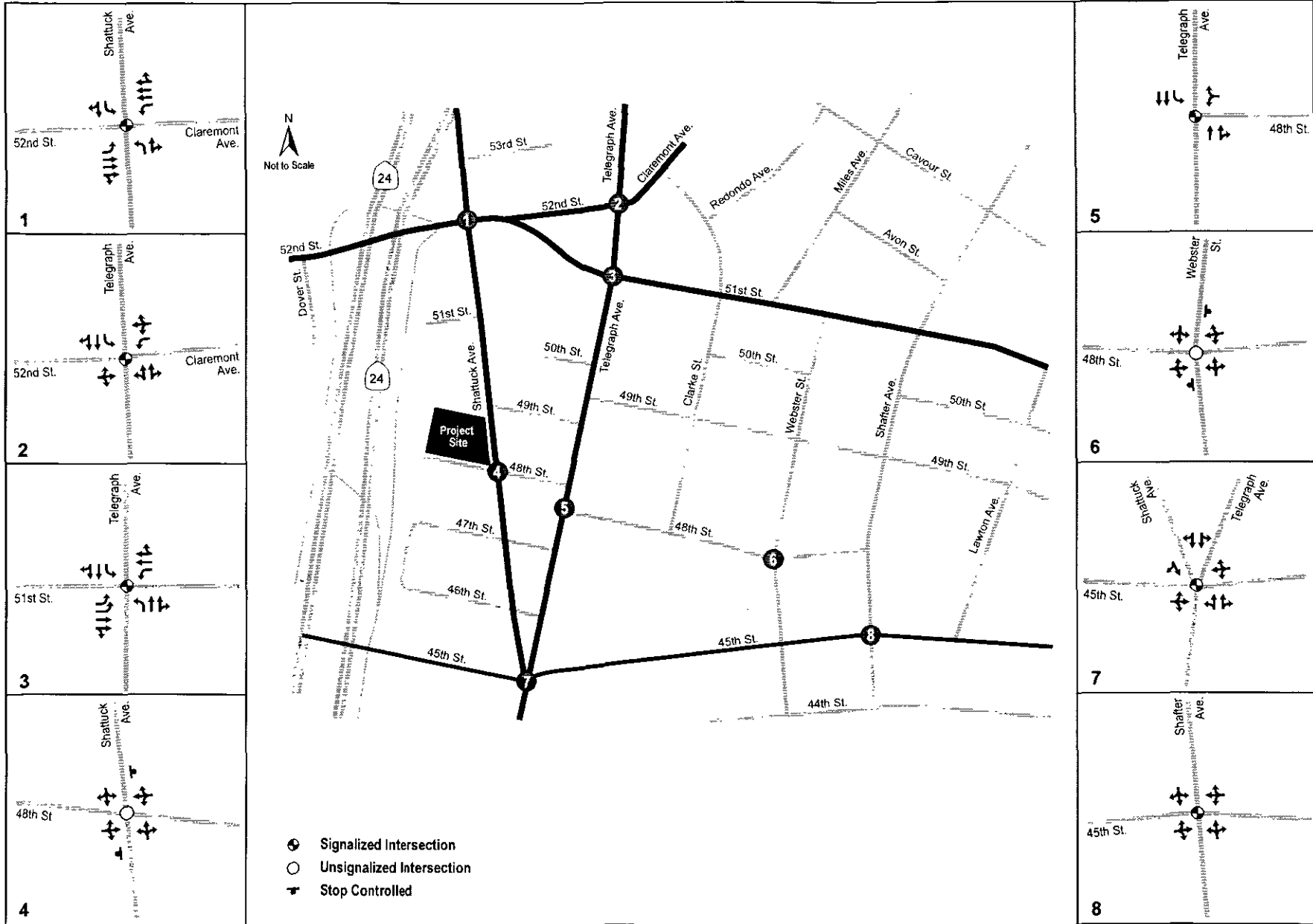
Vehicle turning movement counts for the intersections of Telegraph Avenue/Claremont Avenue and Telegraph Avenue/51<sup>st</sup> Street were provided by City of Oakland and are dated April 28, 2004. DKS performed additional counts at these locations to compare to the data provided, and found that the City provided data were 25% higher on average than current conditions. Therefore, to provide a more conservative analysis, DKS used intersection turning movement volumes as provided by City of Oakland.

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

The intersections and their corresponding existing levels of service are presented in **Table 5**. **Appendix C** includes the detailed calculation level of service analysis sheets, including the weekday A.M. and P.M. peak hours.

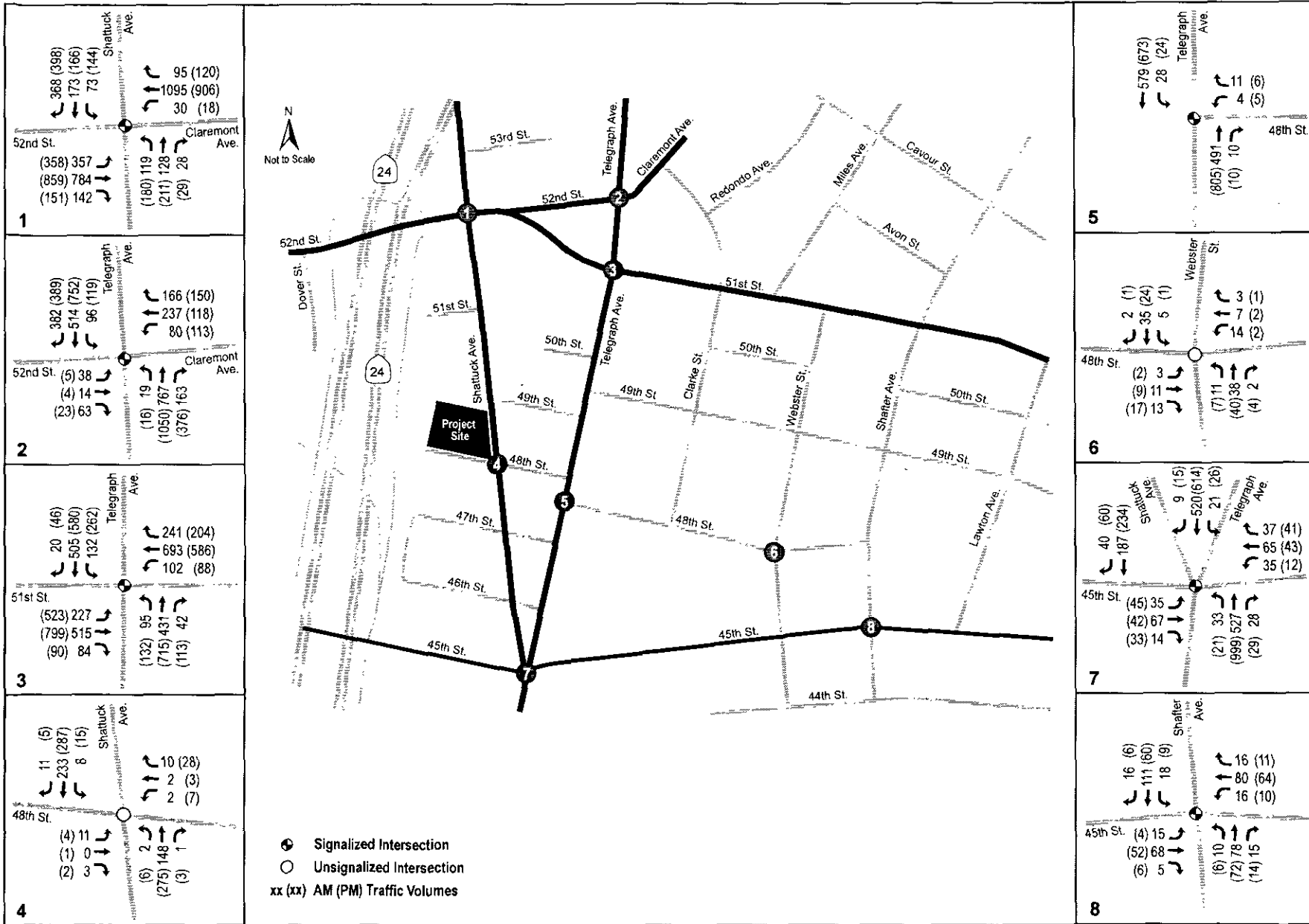


06276-000-4801 Shattuck Exist Geo. ai-12/7/06



**Figure 3**  
**Existing Lane Geometry and Traffic Control**

062716-000-4601 Shattuck Exist Vols air-12/7/06



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

**TABLE 5**

Existing Condition – Level of Service Summary

#	INTERSECTION	A.M. Peak			P.M. Peak		
		Avg. Delay	V/C	LOS	Avg. Delay	V/C	LOS
1	Shattuck Ave & 52 <sup>nd</sup> St	<b>143.5</b>	<b>1.63</b>	<b>F</b>	<b>124.2</b>	<b>1.95</b>	<b>F</b>
2	Telegraph Ave & 52 <sup>nd</sup> St – Claremont Ave	<b>61.3</b>	<b>0.96</b>	<b>E</b>	<b>222.4</b>	<b>1.55</b>	<b>F</b>
3	Telegraph Ave & 51 <sup>st</sup> St	33.5	0.85	C	<b>100.9</b>	<b>1.47</b>	<b>F</b>
4	Shattuck Ave & 48 <sup>th</sup> St <sup>1</sup>	11.5	-	B	13.5	-	B
5	Telegraph Ave & 48 <sup>th</sup> St	6.9	0.20	A	7.1	0.28	A
6	Webster St & 48 <sup>th</sup> St <sup>1</sup>	9.5	-	A	9.3	-	A
7	Telegraph Ave – Shattuck Ave & 45 <sup>th</sup> St	13.0	0.32	B	17.0	0.46	B
8	Shaffer Ave & 45 <sup>th</sup> St	10.0	0.17	B	9.8	0.12	A

Average Delay: in seconds per vehicle

V/C: Volume to Capacity Ratio

LOS: Level of Service

<sup>1</sup> Unsignalized Intersection LOS based on worst approach delay.

#### 4.1 Intersection Operation

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

## 5.0 PROJECT CONDITION

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

### 5.1 Roadway Improvements

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

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

Since the intersection and signal upgrade is still in the planning process, the intersection cycle length and phasing was optimized and the saturation flow was adjusted to the optimal 1,900 vehicles for this analysis. This improvement is part of the City of Oakland Hazard Elimination Program, is fully-funded and scheduled to be completed by the end of September 2007, prior to completion and occupancy of the proposed project.

Intersection operational levels of service along with their associated critical and average delays are summarized in **Table 12. Appendix C** includes the detailed level of service analysis sheets for the cumulative condition, including the A.M. and P.M. peak hours.

## 5.2 Significance Criteria and Project Impacts

The City of Oakland<sup>3</sup> defines a traffic impact as significant if:

- At a study signalized intersection the addition of the project traffic causes an intersection operating at LOS D or better under the existing condition to operate at LOS E or F.
- At a study signalized intersection the addition of the project traffic increases the average delay of any of the critical movements by six (6) seconds or more or degrade to worse than LOS E.
- At a study signalized intersection already operating at LOS E the addition of the project traffic increases the total intersection average vehicle delay by four (4) or more seconds.
- At a study signalized intersection already operating at LOS F the addition of the project traffic (a) increases the total intersection average vehicle delay by two (2) or more seconds or (2) an increase in average delay for any of the critical movements of four (4) seconds or more; or (c) the volume-to-capacity (V/C) ratio exceeds three (3) percent<sup>4</sup>.
- At a study unsignalized intersection the criteria is established on a case – by-case basis; For this analysis an impact at an unsignalized intersection is considered significant if the project would add ten (10) or more peak-hour vehicles, and after project completion would satisfy the Caltrans peak hour volume traffic signal warrant<sup>5</sup>.

## 5.3 Trip Generation

Trip generation of the proposed project was based on the Institute of the Transportation Engineers *Trip Generation Manual*, 7<sup>th</sup> Edition, 2003, as summarized in **Table 6**, for the A.M. and P.M. peak hours, respectively.

The proposed project would generate 319 daily net new trips, including 27 A.M. peak hour trips (5 in, 22 out) and 31 P.M. peak hour trips (21 in, 10 out).

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<sup>3</sup> City of Oakland. CEQA Thresholds/Criteria of Significance Guidelines. August 17, 2004.

<sup>4</sup> But only if the delay values cannot be measured accurately.

<sup>5</sup> This approach is consistent with that used in the Oakland Army Base EIR. A Caltrans peak-hour traffic signal warrant is one of several warrants specified in the Caltrans *Traffic Manual*, Chapter 9 to determine the possible necessity for a new traffic signal installation.

**TABLE 6**

**Project Condition – Trip Generation**

Land Use	Size	Units	Daily		AM PEAK HOUR <sup>2</sup>				PM PEAK HOUR <sup>2</sup>				
			ADT	AVTE	Percent		Vehicle Trips		AVTE	Percent		Vehicle Trips	
					In%	Out%	In	Out		In%	Out%	In	Out
Residential <sup>1</sup>	44	d.u.	319	27	17	83	5	22	31	67	33	21	10
<b>TOTAL NET NEW TRIPS</b>			<b>319</b>				<b>5</b>	<b>22</b>				<b>21</b>	<b>10</b>

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

d.u = dwelling unit

ksf = 1,000 square feet

ADT: Average Daily Traffic

AVTE: Average Vehicle Trip Ends

<sup>1</sup> Residential Condominium/Townhouse – Land Use Code (230). Adjacent Street Traffic - PROPOSED

<sup>2</sup> The peak hour is the highest hour during the typical weekday peak period; or the highest 60-minutes in the two-hour morning or afternoon peak period.

## 5.4 Trip Distribution

The direction of approach and departure for project trips of the proposed project was estimated based on existing travel patterns, a projection of likely travel patterns for project-generated trips and the locations of complementary land uses. DKS reviewed traffic volumes, turning movements at intersections, and locations of various land uses as part of this analysis.

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

The matrix below shows the assumed travel patterns to/from the proposed site by land use.

Land Use	To/From SR 24	Internal Vicinity <sup>1</sup>	Oakland <sup>2</sup>	Berkeley <sup>3</sup>
Proposed Project	26%	5%	31%	38%

Notes: Percent distribution based on total number of trips (AM – 27 trips plus PM – 31 trips = 58 trips)

<sup>1</sup> Assumed to be traveling to/from 45<sup>th</sup> Street.

<sup>2</sup> Assumed to be traveling to/from Oakland via Telegraph Avenue south of 45<sup>th</sup> Street.

<sup>3</sup> Assumed to be traveling to/from Berkeley area via Shattuck Avenue (19%) and Telegraph Avenue (19%) north of Claremont Avenue/52<sup>nd</sup> Street.

**Appendix D** includes the trip distribution at all study intersections.

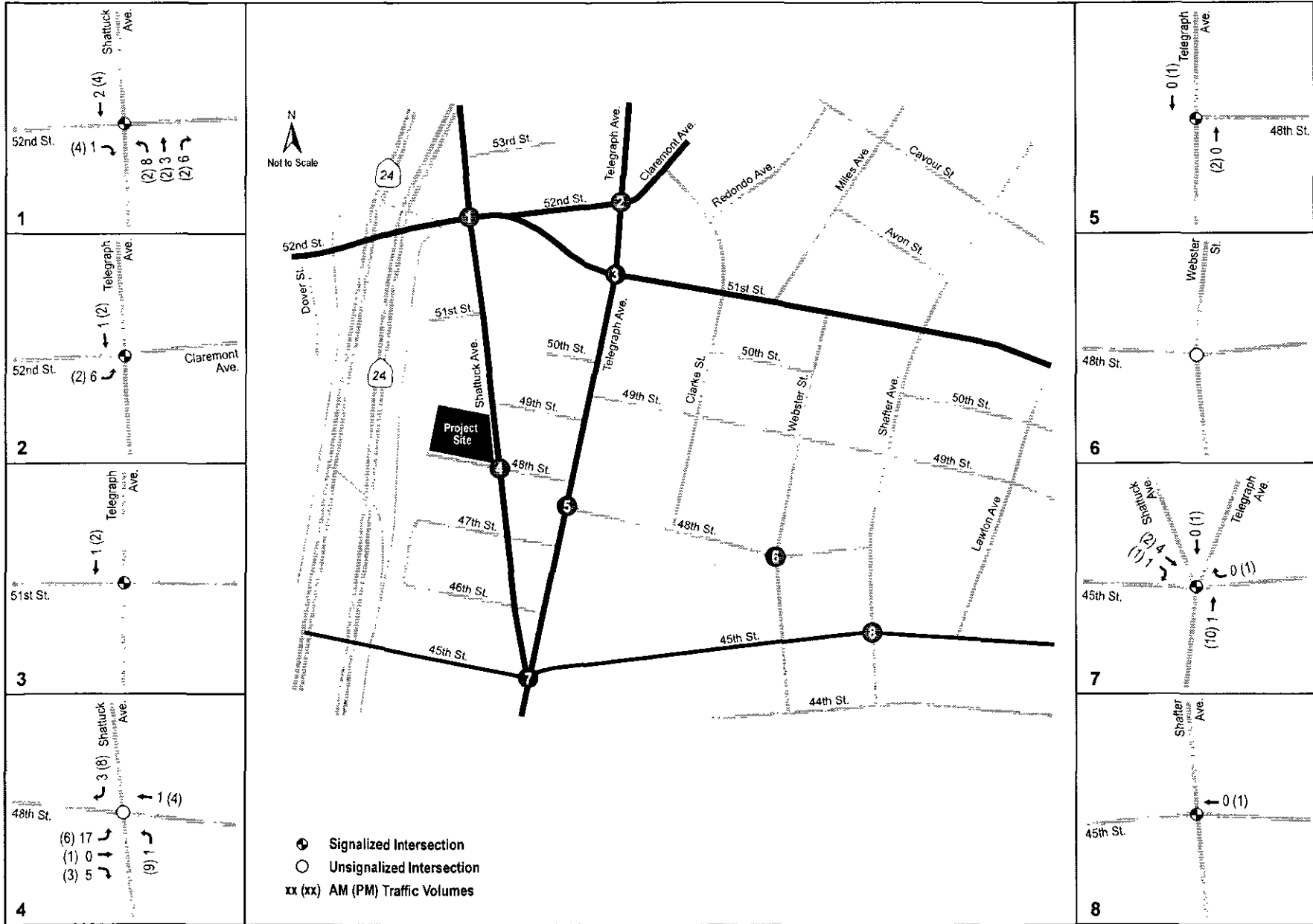
## **5.5 Trip Assignment**

Project-generated trips were assigned to the roadway network based on access points, trip distribution assumptions and likely travel patterns. The proportion of these trips that would travel through the study intersections was used for the intersection LOS analysis under the project condition. **Figure 5** illustrates the trip assignment of the proposed development.

## **5.6 Project Condition – Intersection Level of Service Analysis**

**Figure 6** illustrates the project scenario traffic volumes at each of the study intersections for the A.M. and P.M. peak hours. Intersection operational levels of service along with their associated critical and average delays are summarized in **Table 7**.

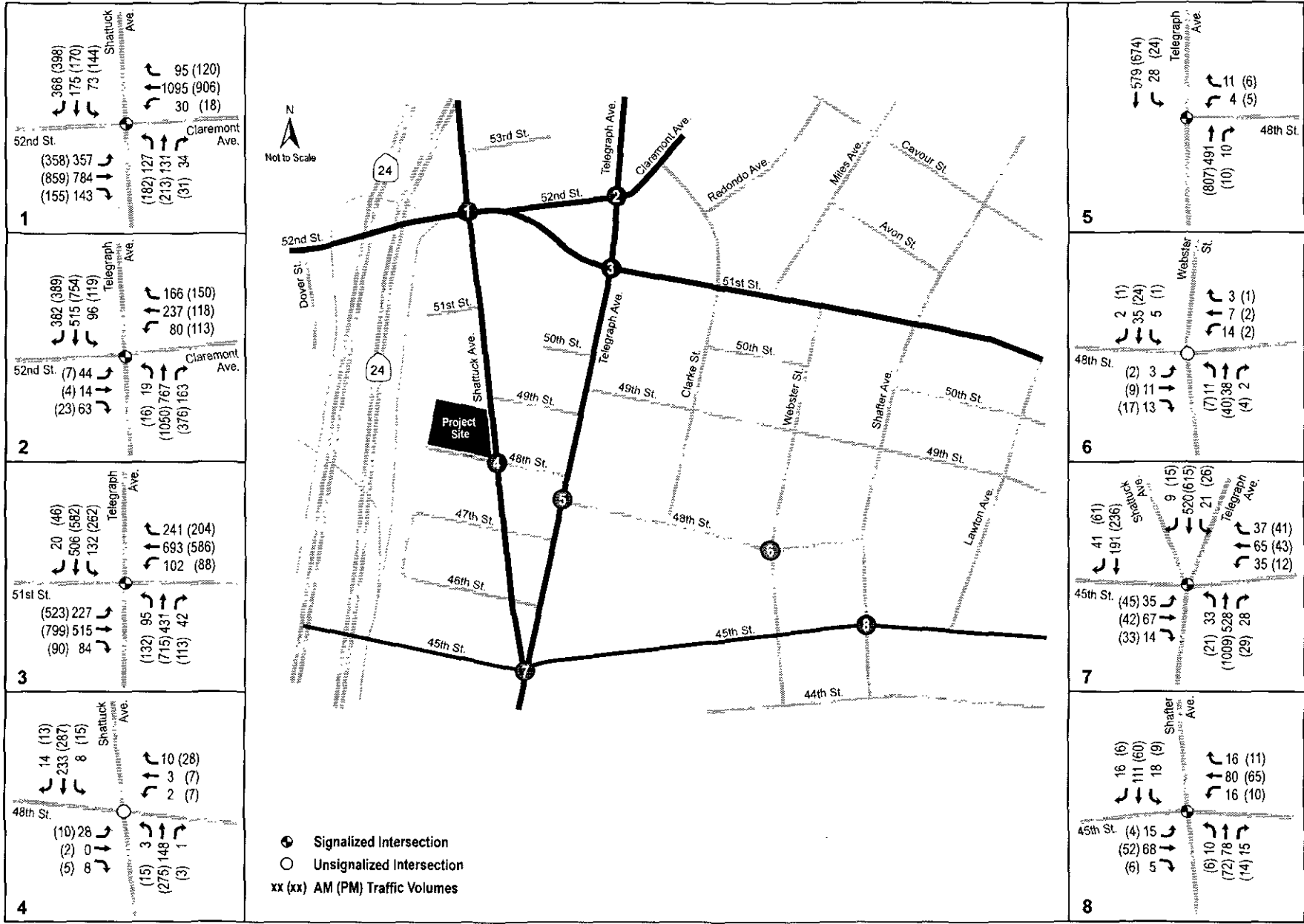
06276-000-4801 Shattuck Proj Trips air-1/12/07



**Figure 5**  
**Project Trips**  
**Weekday AM and PM Peak Hour**



06275-000-4801 Shattuck Proj. Vols. ai-11/207



**Figure 6**  
 Project Condition Intersection Turning Movement Volumes  
 Weekday AM and PM Peak Hour

**TABLE 7**

Project Condition – Level of Service Summary

#	INTERSECTION	A.M. Peak			P.M. Peak		
		Avg. Delay	V/C	LOS	Avg. Delay	V/C	LOS
1	Shattuck Ave & 52 <sup>nd</sup> St	<b>61.6</b>	<b>0.98</b>	<b>E</b>	<b>60.3</b>	<b>0.97</b>	<b>E</b>
2	Telegraph Ave & 52 <sup>nd</sup> St – Claremont Ave	<b>61.3</b>	<b>0.98</b>	<b>E</b>	<b>222.1</b>	<b>1.55</b>	<b>F</b>
3	Telegraph Ave & 51 <sup>st</sup> St	33.5	0.85	C	<b>101.3</b>	<b>1.47</b>	<b>F</b>
4	Shattuck Ave & 48 <sup>th</sup> St <sup>1</sup>	11.8	-	B	14.0	-	B
5	Telegraph Ave & 48 <sup>th</sup> St	6.9	0.20	A	7.1	0.28	A
6	Webster St & 48 <sup>th</sup> St <sup>1</sup>	9.5	-	A	9.3	-	A
7	Telegraph Ave – Shattuck Ave & 45 <sup>th</sup> St	13.0	0.32	B	17.1	0.46	B
8	Shafter Ave & 45 <sup>th</sup> St	10.0	0.17	B	9.9	0.12	A

Average Delay: in seconds per vehicle

V/C: Volume to Capacity Ratio

LOS: Level of Service

<sup>1</sup> Unsignalized Intersection LOS based on worst approach delay.

**5.7 Intersection Operation<sup>6</sup>**

According to the City of Oakland intersection level of service standards, all study intersections would operate at acceptable levels of service under the project conditions, with the exception of the intersections of Shattuck Avenue & 52<sup>nd</sup> Street, Telegraph Avenue & 52<sup>nd</sup> Street-Claremont Avenue and Telegraph Avenue & 51<sup>st</sup> Street. The intersection of Shattuck Avenue & 52<sup>nd</sup> Street would improve from LOS F under the existing condition to LOS E during the A.M. and P.M. peak-hours, respectively. This intersection would operate below the acceptable LOS D during the A.M. and P.M. peak hour; however, the addition of project generated traffic would not result in a significant impact at this intersection.

The intersection of Telegraph Avenue & 52<sup>nd</sup> Street-Claremont Avenue would continue to operate at LOS E and LOS F during the A.M. and P.M. peak hours, respectively. The intersection of Telegraph Avenue & 51<sup>st</sup> Street would continue to operate at LOS F during the P.M. peak hours.

<sup>6</sup> Intersection delay (avg. delay per vehicle) can actually decrease after the addition of project generated traffic, based on whether the additional vehicles are affecting critical movements (i.e. left-turns vs. through movements).

**Table 8** and **Table 9** provide a level of service comparison for the A.M. and P.M. peak hour, respectively, to determine significance criteria and project impacts, if any.

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

**TABLE 8**

**Level of Service Analysis Comparison  
A.M. Peak Hour**

#	Intersection	Traffic Control	Existing			Project			Difference Project-Existing		Impact Determination Significant Impact
			Avg. Delay	V/C	LOS	Avg. Delay	V/C	LOS	Avg. Delay Change	V/C Change	
1.	Shattuck Ave & 52 <sup>nd</sup> St	Signalized	<b>143.5</b>	<b>1.63</b>	<b>F</b>	<b>61.6</b>	<b>0.98</b>	<b>E</b>	-81.9	-0.65	No
2.	Telegraph Ave & 52 <sup>nd</sup> St - Claremont Ave	Signalized	<b>61.3</b>	<b>0.96</b>	<b>E</b>	<b>61.3</b>	<b>0.98</b>	<b>E</b>	0.0	0.02	No
3.	Telegraph Ave & 51 <sup>st</sup> St	Signalized	33.5	0.85	C	33.5	0.85	C			
4.	Shattuck Ave & 48 <sup>th</sup> St <sup>1</sup>	Unsignalized	11.5	-	B	11.8	-	B			
5.	Telegraph Ave & 48 <sup>th</sup> St	Signalized	6.9	0.20	A	6.9	0.20	A			
6.	Webster St & 48 <sup>th</sup> St <sup>1</sup>	Unsignalized	9.5	-	A	9.5	-	A			
7.	Telegraph Ave - Shattuck Ave & 45 <sup>th</sup> St	Signalized	13.0	0.32	B	13.0	0.32	B			
8.	Shaffer Ave & 45 <sup>th</sup> St	Signalized	10.0	0.17	B	10.0	0.17	B			

Average Delay: in seconds per vehicle

V/C: Volume to Capacity Ratio

LOS: Level of Service

<sup>1</sup> Unsignalized intersection: LOS Based on worst approach delay (in seconds)

**TABLE 9**

**Level of Service Analysis Comparison  
P.M. Peak Hour**

#	Intersection	Traffic Control	Existing			Project			Difference Project-Existing		Impact Determination Significant Impact
			Avg. Delay	V/C	LOS	Avg. Delay	V/C	LOS	Avg. Delay Change	V/C Change	
1.	Shattuck Ave & 52 <sup>nd</sup> St	Signalized	<b>124.2</b>	<b>1.95</b>	<b>F</b>	<b>60.3</b>	<b>0.97</b>	<b>E</b>	-63.9	-0.98	No
2.	Telegraph Ave & 52 <sup>nd</sup> St - Claremont Ave	Signalized	<b>222.4</b>	<b>1.55</b>	<b>F</b>	<b>222.1</b>	<b>1.55</b>	<b>F</b>	-0.03	0.00	No
3.	Telegraph Ave & 51 <sup>st</sup> St	Signalized	<b>100.9</b>	<b>1.47</b>	<b>F</b>	<b>101.3</b>	<b>1.47</b>	<b>F</b>	0.4	0.00	No
4.	Shattuck Ave & 48 <sup>th</sup> St <sup>1</sup>	Unsignalized	13.5	-	B	14.0	-	B			
5.	Telegraph Ave & 48 <sup>th</sup> St	Signalized	7.1	0.28	A	7.1	0.28	A			
6.	Webster St & 48 <sup>th</sup> St <sup>1</sup>	Unsignalized	9.3	-	A	9.3	-	A			
7.	Telegraph Ave - Shattuck Ave & 45 <sup>th</sup> St	Signalized	17.0	0.46	B	17.1	0.46	B			
8.	Shafter Ave & 45 <sup>th</sup> St	Signalized	9.8	0.12	A	9.9	0.12	A			

Average Delay: in seconds per vehicle

V/C: Volume to Capacity Ratio

LOS: Level of Service

<sup>1</sup> Unsignalized Intersection: LOS Based on worst approach delay (in seconds)

## **5.8 Signal Warrant Analysis**

### **Shattuck Avenue & 48<sup>th</sup> Street**

Based on the significance criteria and project generated traffic, the proposed project would add more than 10 trips through the intersection (27 a.m. and 30 p.m. peak hour trips) but would not satisfy a Caltrans Peak Hour Volume Warrant. Therefore it is not considered a significant impact. The minimum threshold volume for the minor street approach is 100 vehicles per hour (VPH) and under the project condition the A.M. peak hour volume is estimated at 36 vehicles per hour, and 42 vehicles per hour during the P.M. peak hour.

### **Webster Street & 48<sup>th</sup> Street**

Based on the significance criteria and project generated traffic, the proposed project would not add trips to this intersection and therefore it is not considered a significant impact. The minimum threshold volume for the minor street approach is 100 vehicles per hour (VPH) and under the project condition the A.M. peak hour volume is estimated at 27 vehicles per hour, and 28 vehicles per hour during the P.M. peak hour, similar to the existing condition.

**Appendix E** includes the Peak Hour Volume Traffic Signal Warrant analysis for the intersection of Shattuck Avenue & 48<sup>th</sup> Street and Webster Street & 48<sup>th</sup> Street.

## **5.9 Pedestrian Safety and Circulation**

The expected moderate increase in vehicular traffic volumes at the study intersections would not significantly impact the pedestrian movements. Also the additional pedestrian movements generated by the proposed project would continue to be accommodated by provided sidewalks (existing along the project frontage) and public ways within the project. The proposed project would add about 90 (assumed 2 per dwelling unit) new residents to the area, so a moderate increase in pedestrian activity would be anticipated.

Based on the traffic collision data outlined in Table 2, nine of the 50 accidents during the three years involved bicyclist or pedestrians. The majority of these accidents (6 total) occurred at the intersection of Shattuck Avenue and 52<sup>nd</sup> Street. The proposed project would add approximately 11 vehicle trips in the A.M. peak hour and 7 during the P.M. peak hour at this location. Several improvements are planned at this location, including a signal upgrade and pedestrian signal heads that include the hand/walking person combination and countdown timer.

The signalized study intersections are equipped with pedestrian crossing signals, push buttons and crosswalks with the exception of the intersection of the intersections of Shattuck Avenue & 52<sup>nd</sup> Street, Telegraph Avenue & 48<sup>th</sup> Street, Telegraph Avenue & 45<sup>th</sup> Street and Shafter Avenue & 45<sup>th</sup> Street. At the intersection of Shattuck Avenue & 52<sup>nd</sup> Street, pedestrian signals are not provided across 52<sup>nd</sup> Street and pedestrian push buttons are not provided for all directions. The intersection of Telegraph Avenue & 48<sup>th</sup> Street, pedestrian push buttons are not provided across 48<sup>th</sup> Street. Pedestrian push buttons are also missing at the intersection of Telegraph Avenue & 45<sup>th</sup> Street along the east side on Telegraph Avenue. The intersection of Shafter Avenue & 45<sup>th</sup> Street provides pedestrian signal heads but no pedestrian push buttons.

Audible units to aid pedestrians are available at the intersections of Shattuck Avenue-Telegraph Avenue & 45<sup>th</sup> Street, Telegraph Avenue & 51<sup>st</sup> Street, Telegraph Avenue & 52<sup>nd</sup> Street- Claremont Avenue.

Based on the presence and current condition of sidewalks, pedestrian amenities and crosswalks, the relatively low number of additional pedestrians spread throughout the day and the planned pedestrian facilities improvements in the study area, no adverse pedestrian impacts are anticipated.

## **5.10 Site Access, Internal Circulation & Sight Distance**

Project access and circulation were analyzed for the proposed project. The site plan (**Figure 2**) indicates access from 48<sup>th</sup> Street via two project driveways. Vehicles traveling westbound on 48<sup>th</sup> Street would make a right-turn into one of the project entrances. Vehicles exiting the project traveling eastbound on 48<sup>th</sup> Street would make a left-turn at either of the project driveways. 48<sup>th</sup> Street is a dead-end roadway in the westbound direction and thus no vehicles are expected to/from the west.

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

### **Sight Distance**

DKS performed a driveway sight distance analysis of the proposed project driveways along 48<sup>th</sup> Street, per the Caltrans Highway Design Manual<sup>1</sup>. For the purpose of this analysis, a design speed of 25 mph was assumed.

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

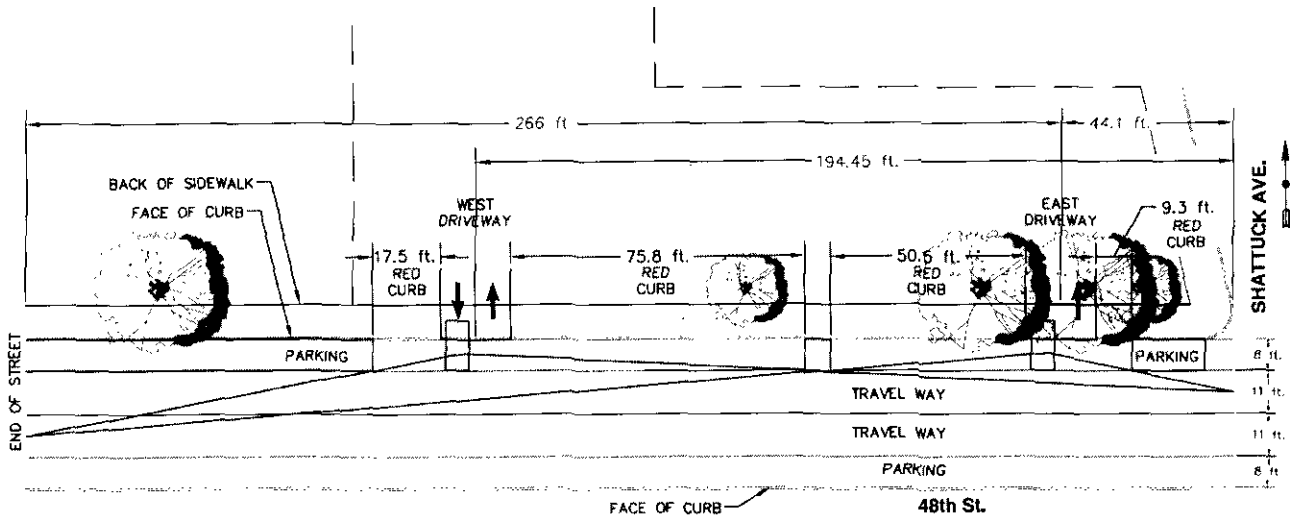
## East Driveway

According to Table 405.1A of the Caltrans Highway Design Manual, the required Corner Sight Distance for a design speed of 25 mph is 300 feet of driveway sight distance (**see Figure 7**). Due to the location of the nearest cross street (Shattuck Avenue), the sight distance is limited to 44.1 feet to the east of the proposed driveway. In order to provide adequate sight distance, driveway tipping of approximately 9.3 feet would be required in the eastbound direction. Sight distance is limited in the westbound direction due to the dead-end. However, vehicles leaving the site would need approximately 50.5 feet of driveway tipping in the westbound direction.

## West Driveway

According to Table 405.1A of the Caltrans Highway Design Manual, the required Corner Sight Distance for a design speed of 25 mph is 300 feet of driveway sight distance (**see Figure 7**). Due to the location of the nearest cross street (Shattuck Avenue), the sight distance is limited to 194.45 feet to the east of the proposed driveway. In order to provide adequate sight distance, driveway tipping of approximately 75.8 feet would be required in the eastbound direction. Sight distance is limited in the westbound direction due to the dead-end. However, vehicles leaving the site would need approximately 17.5 feet of driveway tipping in the westbound direction.





THE REQUIRED SIGHT DISTANCE IS 300 ft. BASED ON CALTRANS DESIGN MANUAL TABLE 405.1A FOR APPROACH SPEEDS OF 25 MPH.

**Figure 7 - Corner Sight Distance**

**Table 10** lists the required sight distance and driveway tipping at the project driveways. The proposed trees near the driveways would not obstruct the views of vehicles leaving the driveway since they are located at the back of sidewalk. There are no roadway configurations, natural hills, or sharp horizontal curves in the roadway that are anticipated to impede with vehicular sight distance. In addition, on-street parking would have to be restricted between driveway locations in order to provide adequate site distance.

No adverse site distance impacts are anticipated.

**TABLE 10**  
Sight Distance Analysis

Driveway Location	Along 48 <sup>th</sup> Street			
	To/From the West		To/From the East	
	Sight Distance	Driveway Tipping	Sight Distance	Driveway Tipping
East	44.1'	9.3'	266'	50.5'
West	194.45	75.8	71.55'	17.5'

Source: Caltrans Highway Design Manual, Table 405-1-A

<sup>1</sup> The California Supplement to the MUTCD does not provide any changes to the Caltrans Traffic Manual peak-hour signal warrant analysis.

### 5.11 Parking Analysis

The parking analysis consists of an evaluation of the proposed parking supply and comparison to the requirements of the City of Oakland. Based on the proposed site plan, the proposed project would provide 44 on-site parking spaces with 9 spaces located at ground level (1 ADA) and 35 spaces located in the basement garage (2 ADA).

**Table 11** summarizes the City's parking standard requirements and the parking spaces provided for the proposed project.

**TABLE 11**  
Parking Analysis Summary

Unit Size	No. Units	Parking Required <sup>1</sup>		Parking Spaces Provided <sup>4</sup>	Surplus/ Shortfall
		Parking Standard (per unit)	No. of Spaces		
Residential	44	1.0	44	44	0
<b>TOTAL</b>			<b>44</b>	<b>44</b>	<b>0</b>

<sup>1</sup> Parking Required based on City of Oakland, Municipal Code, C-28 zoning.

With the provision of 44 parking spaces, the proposed development project would satisfy the City of Oakland Parking Space Standards, which requires a total of 44 spaces. No spillover of parking onto adjacent streets is anticipated.

Visitor parking is available on street along 48<sup>th</sup> Street and Shattuck Avenue.

## 6.0 CUMULATIVE CONDITION

In order to evaluate the overall Cumulative Condition, a growth rate of 1.18 percent per year (to year 2025), was added to the Existing Condition turning movement volumes at the study intersections plus traffic anticipated from the Civiq and Centrada projects. The percent growth rate accounts for traffic growth that may occur due to speculative developments in the neighboring areas, as determined by a comparison of data in the Kaiser Hospital EIR. The Kaiser Hospital EIR does not include any overlapping intersections to the 4801 Shattuck Avenue proposed project. Therefore, the intersection of 51<sup>st</sup> Street & Broadway was used as a basis for determining the projected growth. The growth factor of 1.18% was reviewed and confirmed for use in this traffic analysis by City of Oakland staff.

### 6.1 Intersection Operation

Intersection operational levels of service along with their associated critical and average delays are summarized in **Table 12. Appendix C** includes the detailed level of service analysis sheets for the cumulative condition, including the A.M. and P.M. peak hours.

**TABLE 12**

Cumulative Condition – Level of Service Summary

#	INTERSECTION	A.M. Peak			P.M. Peak		
		Avg. Delay	V/C	LOS	Avg. Delay	V/C	LOS
1	Shattuck Ave & 52 <sup>nd</sup> St	<b>114.7</b>	<b>1.18</b>	<b>F</b>	<b>107.8</b>	<b>1.19</b>	<b>F</b>
2	Telegraph Ave & 52 <sup>nd</sup> St – Claremont Ave	<b>105.5</b>	<b>1.24</b>	<b>F</b>	<b>346.5</b>	<b>1.96</b>	<b>F</b>
3	Telegraph Ave & 51 <sup>st</sup> St	<b>70.9</b>	<b>1.25</b>	<b>E</b>	<b>157.2</b>	<b>1.87</b>	<b>F</b>
4	Shattuck Ave & 48 <sup>th</sup> St <sup>1</sup>	12.5	-	B	15.8	-	C
5	Telegraph Ave & 48 <sup>th</sup> St	7.5	0.25	A	7.8	0.35	A
6	Webster St & 48 <sup>th</sup> St <sup>1</sup>	9.9	-	A	9.6	-	A
7	Telegraph Ave – Shattuck Ave & 45 <sup>th</sup> St	13.8	0.39	B	21.1	0.57	C
8	Shafter Ave & 45 <sup>th</sup> St	10.3	0.22	B	10.0	0.14	A

Average Delay: in seconds per vehicle

V/C: Volume to Capacity Ratio

LOS: Level of Service

<sup>1</sup> Unsignalized Intersection LOS based on worst approach delay.

According to the City of Oakland intersection level of service standards, all study intersections would operate at acceptable levels of service under the cumulative condition, with the exception of the intersections of Shattuck Avenue & 52<sup>nd</sup> Street, Telegraph Avenue & 52<sup>nd</sup> Street-Claremont Avenue and Telegraph Avenue & 51<sup>st</sup> Street.

The addition of cumulative traffic growth would cause the intersection of Shattuck Avenue & 52<sup>nd</sup> Street to degrade from LOS E under the project condition to LOS F under the cumulative condition during the A.M. and P.M. peak hour, respectively.

The intersection of Telegraph Avenue & 52<sup>nd</sup> Street-Claremont Avenue would degrade from LOS E under the existing and project A.M. peak hour conditions to operate at LOS F during the cumulative A.M. peak hour. This intersection would continue to operate at LOS F during the P.M. peak hour.

The intersection of Telegraph Avenue & 51<sup>st</sup> Street would also degrade from LOS C under the existing and project conditions to LOS E during the A.M. peak hour. This intersection would continue to operate at LOS F during the P.M. peak hour.

## 7.0 CUMULATIVE WITH PROJECT CONDITION

As part of this study, DKS also studied whether the project would result in significant cumulative impacts at the study intersections. In Oakland, in order for a project to have significant cumulative impact there must be unacceptable levels of service, the project must contribute five (5) percent or more of the cumulative traffic, and for unsignalized intersections, the unsignalized intersections must satisfy a Caltrans Peak-Hour traffic signal warrant. Cumulative traffic is measured by the difference between existing and future cumulative (with project) conditions. **Table 13 and Table 14** provide a summary of the cumulative (with project) traffic comparison results for the A.M. and P.M. peak hours, respectively.

**TABLE 13**

Existing vs. Cumulative with Project  
Traffic Comparison Summary  
A.M. Peak Hour

#	INTERSECTION	Existing	Cumulative w/Project	Δ	5% Threshold	Project Trips	More than 5%	Signal Warrant?
1	Shattuck Ave & 52 <sup>nd</sup> St	3,392	4,221	829	41	20	No	
2	Telegraph Ave & 52 <sup>nd</sup> St – Claremont Ave	2,539	3,207	668	33	7	No	
3	Telegraph Ave & 51 <sup>st</sup> St	3,087	3,906	819	41	1	No	
4	Shattuck Ave & 48 <sup>th</sup> St <sup>1</sup>	431	555	124	6	27	Yes	No
5	Telegraph Ave & 48 <sup>th</sup> St <sup>2</sup>	1,123	1,409	286	14	0	No	
6	Webster St & 48 <sup>th</sup> St <sup>1</sup>	144	197	53	3	0	No	
7	Telegraph Ave – Shattuck Ave & 45 <sup>th</sup> St	1,618	1,994	376	19	6	No	
8	Shafter Ave & 45 <sup>th</sup> St	448	556	108	5	0	No	

<sup>1</sup> Unsignalized Intersection

Based on the cumulative impact criteria, the project would contribute 5% or more of the cumulative traffic to the intersection of Shattuck Avenue & 48<sup>th</sup> Street. However, this intersection is projected to operate at acceptable levels of service during the A.M. and P.M. peak hour. The project would not cause a significant cumulative transportation impact.

**TABLE 14**

Existing vs. Cumulative with Project  
Traffic Comparison Summary  
P.M. Peak Hour

#	INTERSECTION	Existing	Cumulative w/Project	Δ	5% Threshold	Project Trips	More than 5%	Signal Warrant?
1	Shattuck Ave & 52 <sup>nd</sup> St	3,540	4,395	855	43	14	No	
2	Telegraph Ave & 52 <sup>nd</sup> St – Claremont Ave	3,115	3,927	812	41	4	No	
3	Telegraph Ave & 51 <sup>st</sup> St	4,138	5,248	1,110	56	2	No	
4	Shattuck Ave & 48 <sup>th</sup> St <sup>1</sup>	636	810	174	9	31	Yes	No
5	Telegraph Ave & 48 <sup>th</sup> St	1,523	1,905	382	19	3	No	
6	Webster St & 48 <sup>th</sup> St <sup>1</sup>	110	155	45	2	0	No	
7	Telegraph Ave – Shattuck Ave & 45 <sup>th</sup> St	2,214	2,734	520	26	15	No	
8	Shafter Ave & 45 <sup>th</sup> St	314	390	76	4	1	No	

<sup>1</sup> Unsignalized Intersection

Based on the cumulative impact criteria, the project would contribute 5% or more of the cumulative traffic to the intersection of Shattuck Avenue & 48<sup>th</sup> Street. However, this intersection is projected to operate at acceptable levels of service during the A.M. and P.M. peak hours, and the project would not cause a significant cumulative transportation impact.

**Table 15** provides a summary of the cumulative with project intersection level of service. **Appendix C** includes the detailed level of service analysis sheets for the cumulative with project condition, including the A.M. and P.M. peak hours.

**TABLE 15**

Cumulative w/Project Condition – Level of Service Summary

#	INTERSECTION	A.M. Peak			P.M. Peak		
		Avg. Delay	V/C	LOS	Avg. Delay	V/C	LOS
1	Shattuck Ave & 52 <sup>nd</sup> St	<b>112.2</b>	<b>1.19</b>	<b>F</b>	<b>108.4</b>	<b>1.19</b>	<b>F</b>
2	Telegraph Ave & 52 <sup>nd</sup> St – Claremont Ave	<b>107.4</b>	<b>1.26</b>	<b>F</b>	<b>332.2</b>	<b>1.91</b>	<b>F</b>
3	Telegraph Ave & 51 <sup>st</sup> St	<b>70.9</b>	<b>1.25</b>	<b>E</b>	<b>157.1</b>	<b>1.87</b>	<b>F</b>
4	Shattuck Ave & 48 <sup>th</sup> St <sup>1</sup>	12.9	-	B	16.4	-	C
5	Telegraph Ave & 48 <sup>th</sup> St	7.5	0.25	A	7.9	0.35	A
6	Webster St & 48 <sup>th</sup> St <sup>1</sup>	9.9	-	A	9.6	-	A
7	Telegraph Ave – Shattuck Ave & 45 <sup>th</sup> St	13.8	0.39	B	21.4	0.57	C
8	Shafter Ave & 45 <sup>th</sup> St	10.3	0.22	B	10.0	0.14	A

Average Delay: in seconds per vehicle

V/C: Volume to Capacity Ratio

LOS: Level of Service

<sup>1</sup> Unsignalized Intersection LOS based on worst approach delay.

## 8.0 CONCLUSION

Based on this analysis, the proposed project would generate a net additional 319 daily trips, including 27 A.M. peak hour trips (5 in, 22 out) and 31 P.M. peak hour trips (21 in, 10 out).

The proposed development would provide a total of 44 on-site parking spaces with 9 spaces located at ground level (1 ADA) and 35 spaces located in the basement garage (2 ADA). With the provision of 44 covered spaces, the proposed mixed-use development project would satisfy the City of Oakland Parking Space Standards of 56 spaces.

Under the City of Oakland traffic impact analysis guidelines, the proposed project would not result in any significant transportation impacts at the study intersections.

Although no adverse impacts to pedestrian safety and circulation are anticipated, because of the project's proximity to the intersection of Shattuck Avenue and 48<sup>th</sup> Street, it is recommended that existing ADA ramps at the intersection of Shattuck Avenue and 48<sup>th</sup> Street are upgraded to ADA compliance. Also, the following recommendations are provided to improve off-site traffic operations, on-site access and circulation.

- Repaving of cracked sidewalks along the south side of 48<sup>th</sup> Street east of Shattuck Avenue near where the sidewalk meets the ADA ramps.
- In order to provide adequate sight distance from the east driveway, driveway tipping of approximately 9.3 feet would be required in the eastbound direction along 48<sup>th</sup> Street. Sight distance is limited in the westbound direction due to the dead-end. However, vehicles leaving the site would need approximately 50.5 feet of driveway tipping in the westbound direction.
- In order to provide adequate sight distance from the west driveway, driveway tipping of approximately 75.8 feet would be required in the eastbound direction along 48<sup>th</sup> Street. Sight distance is limited in the westbound direction due to the dead-end. However, vehicles leaving the site would need approximately 17.5 feet of driveway tipping in the westbound direction.
- In addition, on-street parking would have to be restricted along 48<sup>th</sup> Street between driveway locations in order to provide adequate site distance.



4801 SHATTUCK AVENUE RESIDENTIAL  
DEVELOPMENT PROJECT

**Traffic Impact Analysis  
SUPPLEMENTAL REPORT**

*Prepared for:*

**City of Oakland**

*By*

***DKS Associates***

1000 Broadway  
Suite 450  
Oakland, CA 94607-4039

**March 8, 2007**

## **Introduction**

This supplementary analysis provides additional information regarding the analysis of the 52<sup>nd</sup> Street/Shattuck Avenue intersection.

Following the delivery of the January 25, 2007 Final Traffic Impact Study for the 4801 Shattuck Avenue project, the City of Oakland requested a separate evaluation of the intersection at Shattuck Avenue and 52<sup>nd</sup> Street which would include the City's planned intersection improvements as part of the existing condition. The purpose of the separate evaluation was to test the effect of the City's programmed improvement at the intersection under existing conditions, and to see what effect the proposed project may have.

The discussion below provides a comparison between the final traffic study conclusions and the results of the supplementary analysis.

## **Results of Final Traffic Study**

The Final Traffic Impact Study, dated January 25, 2007, concluded that the proposed 4801 Shattuck Avenue project would cause no significant transportation impacts, per the City's guidelines and threshold criteria. Per City staff direction, the January 25 Final Traffic Study included the City's planned and funded improvement at the Shattuck/52<sup>nd</sup> intersection under the Project condition (but not as part of the existing condition), as it will be completed prior to the proposed project. This is consistent with standard practice and how programmed improvements have been incorporated in prior traffic studies. This also made sense in that the City's improvement is not yet under construction.

In the Final Traffic Impact Study, the existing condition shows LOS F (based on the current signal cycle lengths and phasing), and the Project condition (which includes the City's intersection improvement and the project-generated trips) is projected to improve to LOS E for both the AM and PM peak hours.

## **Additional Analysis**

Subsequent to delivery of the Final Traffic Impact Study, the City requested another scenario to be analyzed, whereby the Shattuck Avenue and 52<sup>nd</sup> Street intersection improvement was assumed to be existing today, with an initially optimized signal cycle length and phasing configuration. Under this scenario, the traffic signal cycle lengths were initially 100 seconds during the AM peak hour and 130 seconds during the PM peak hour, respectively. Then a comparison was made to the Project condition, applying the same signal cycle parameters as the improved existing condition. This is academic in the sense that the intersection improvement is not yet built, and traffic signal timing plans change over time based on changes in traffic volumes and other conditions.

Under the parameters in this scenario, the revised model (the Synchro software computer model created to analyze intersection conditions for the proposed project) projected an average delay increase of 6.2 seconds during the AM peak hour and 0.5 seconds during the PM peak hour based on the assumed signal timing. Thus, the modeling exercise suggested there could appear to be a project impact during the AM peak hour using the particular parameters entered into the analysis software. No impact was indicated during the PM peak period.

This result warranted further consideration given the low traffic volume the project would generate and the potential for various signal cycle lengths to actually be implemented upon completion of the intersection improvement. Additional reasonable and realistic cycle length scenarios were therefore analyzed for the intersection. The initial result described above was based on an AM peak hour cycle length of 100 seconds; DKS subsequently compared that cycle length to an AM peak hour cycle length of 110 seconds and also at 120 seconds.

This subsequent analysis shows that the cycle length of 110 seconds in the AM peak hour produces a lower average delay under the existing condition (including the City's programmed improvements). The 110 second cycle length would result in a LOS D, compared to LOS E with a cycle length of 100 seconds. The 120 second cycle time for the AM peak hour also shows a lower average delay than the 100 second cycle for the existing condition with improvements, but not as low as the 110 second cycle. See the attached Table 1 for comparisons.

Based on this, the 110 second cycle time for the AM peak hour was identified as the preferred cycle time for the analysis of the new "existing" and "with project" conditions. Applying the 110 second cycle length in the AM peak hour to the Project condition resulted in the LOS remaining at LOS D, with an additional delay of only 1.9 seconds. The analysis detail for this scenario is provided in the appendix.

Because the traffic signal timing affects operating conditions at other intersections in the study area, the AM peak hour intersection analysis was recalculated for each scenario. Table 2 summarizes the results of this AM Peak Hour supplementary analysis. It was found that no changes to the intersection analysis would be anticipated, compared to the findings and conclusions of the Final Traffic Study.

## **Conclusion**

The improved intersection would operate better at a 110 second cycle length in the AM peak hour than at a 100 second cycle length. In the Project condition at the 110 cycle length, the average delay would increase by less than two seconds, and thus not result in an impact.

The 4801 Shattuck Ave project is not anticipated to generate many new trips through this intersection (20 AM peak hour, and 14 PM peak hour). For the reasons cited above the conclusion of the Final Traffic Study remains. The proposed project would not result in a significant transportation impact at the intersection of Shattuck Avenue and 52<sup>nd</sup> Street.

**TABLE 1**  
**AM Peak Hour Level of Service Summary**

**Comparison of Various Cycle Lengths**  
**with City's proposed intersection improvements at Shattuck Avenue & 52<sup>nd</sup>**  
**Street**

	Scenario	Cycle Length (sec)	Avg. Delay (sec.)	V/C Ratio	LOS
1	Existing AM	100	55.4	0.97	E
2*	Existing AM	110	52.8	0.96	D
3	Existing AM	120	54.2	0.96	D
2*	Existing AM	110	52.8	0.96	D
4	Project AM	110	54.7	0.97	D
			+1.9 sec.	+0.01	

Note: Scenario No. - refers to page number of attached analysis sheets

Average Delay: in seconds per vehicle

V/C: Volume to Capacity Ratio, LOS: Level of Service,

\* 110 second cycle length resulted in lowest average delay, and therefore is the base for comparison to Project conditions.

**TABLE 2**  
**Level of Service Analysis Summary**  
**A.M. Peak Hour**  
**With 110 seconds signal cycle length at Shattuck/52nd**

#	Intersection	Traffic Control	Existing			Project			Cumulative			Cumulative w/Project		
			Avg. Delay	V/C	LOS	Avg. Delay	V/C	LOS	Avg. Delay	V/C	LOS	Avg. Delay	V/C	LOS
1.	Shattuck Ave & 52 <sup>nd</sup> St	Signalized	52.8	0.96	D	54.7	0.97	D	114.7	1.18	F	111.3	1.19	F
2.	Telegraph Ave & 52 <sup>nd</sup> St – Claremont Ave	Signalized	60.8	0.97	E	61.3	0.98	E	105.5	1.24	F	107.4	1.26	F
3.	Telegraph Ave & 51 <sup>st</sup> St	Signalized	33.5	0.85	C	33.5	0.85	C	70.9	1.25	E	70.9	1.25	E
4.	Shattuck Ave & 48 <sup>th</sup> St <sup>1</sup>	Unsignalized	11.5	-	B	11.8	-	B	12.5	-	B	12.9	-	B
5.	Telegraph Ave & 48 <sup>th</sup> St	Signalized	6.9	0.20	A	6.9	0.20	A	7.5	0.25	A	7.5	0.25	A
6.	Webster St & 48 <sup>th</sup> St <sup>1</sup>	Unsignalized	9.5	-	A	9.5	-	A	9.9	-	A	9.9	-	A
7.	Telegraph Ave – Shattuck Ave & 45 <sup>th</sup> St	Signalized	13.0	0.32	B	13.0	0.32	B	13.8	0.39	B	13.8	0.39	B
8.	Shafter Ave & 45 <sup>th</sup> St	Signalized	10.0	0.17	B	10.0	0.17	B	10.3	0.22	B	10.3	0.22	B

Source: DKS Associates, 2007.

Average Delay: in seconds per vehicle

V/C: Volume to Capacity Ratio

LOS: Level of Service

<sup>1</sup> Unsignalized Intersection: LOS based on worst approach delay (in seconds)



Movement	EBT	EBT	EBR	WBL	WBT	WBR	NBL	NBL	NBR	SBL	SBT	SBR
Lane Configurations	↖	↖↖↖		↖	↖↖↖		↖	↖		↖	↖	
Ideal Flow (vphpl)	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900
Total Lost time (s)	4.0	4.0		4.0	4.0		4.0	4.0		4.0	4.0	
Lane Util. Factor	1.00	0.91		1.00	0.91		1.00	1.00		1.00	1.00	
Flt	1.00	0.98		1.00	0.99		1.00	0.97		1.00	0.90	
Flt Protected	0.95	1.00		0.95	1.00		0.95	1.00		0.95	1.00	
Satd. Flow (prot)	1770	4969		1770	5025		1770	1813		1770	1673	
Flt Permitted	0.95	1.00		0.95	1.00		0.44	1.00		0.31	1.00	
Satd. Flow (perm)	1770	4969		1770	5025		828	1813		573	1673	
Volume (vph)	357	784	142	30	1095	95	119	128	28	73	173	368
Peak-hour factor, PHF	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92
Adj. Flow (vph)	388	852	154	33	1190	103	129	139	30	79	188	400
RTOR Reduction (vph)	0	0	0	0	10	0	0	0	0	0	77	0
Lane Group Flow (vph)	388	1006	0	33	1283	0	129	169	0	79	511	0
Turn Type	Prot		Prot		pm+pt		pm+pt					
Protected Phases	7	4	3	8	5	2	1	6				
Permitted Phases					2	6						
Actuated Green, G (s)	21.0	44.0	3.9	26.4	14.0	9.0	41.0	32.0				
Effective Green, g (s)	21.0	44.0	3.4	26.4	14.0	9.0	42.0	33.0				
Actuated g/C Ratio	0.21	0.43	0.03	0.26	0.14	0.09	0.41	0.33				
Clearance Time (s)	4.0	4.0	3.5	4.0	4.0	4.0	5.0	5.0				
Vehicle Extension (s)	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0				
Lane Grp Cap (vph)	367	2156	59	1308	161	161	580	544				
v/s Ratio Prot	c0.22	0.20	0.02	c0.26	c0.04	0.09	0.04	c0.31				
v/s Ratio Perm					0.07	0.02						
v/c Ratio	1.06	0.47	0.56	0.98	0.80	1.05	0.14	0.94				
Uniform Delay, d1	40.2	20.4	48.3	37.3	42.1	46.2	18.7	33.2				
Progression Factor	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00				
Incremental Delay, d2	62.9	0.2	11.0	20.4	24.1	84.7	0.5	26.2				
Delay (s)	103.1	20.5	59.3	57.6	66.2	130.9	19.2	59.4				
Level of Service	F	C	E	E	E	F	B	E				
Approach Delay (s)	43.5		57.7		102.9		54.7					
Approach LOS	D		E		F		D					

**Intersection Summary**

HCM Average Control Delay	55.4	HCM Level of Service	E
HCM Volume to Capacity ratio	0.97		
Actuated Cycle Length (s)	101.4	Sum of lost time (s)	16.0
Intersection Capacity Utilization	94.7%	ICU Level of Service	F
Analysis Period (min)	15		
c Critical Lane Group			



Movement	EBL	EBT	EBR	WBL	WBT	WBR	NBL	NBT	NBR	SBL	SBT	SBR
Lane Configurations	↖	↖↖↖		↖	↖↖↖		↖	↖		↖	↖	
Ideal Flow (vphpl)	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900
Total Lost time (s)	4.0	4.0		4.0	4.0		4.0	4.0		4.0	4.0	
Lane Util. Factor	1.00	0.91		1.00	0.91		1.00	1.00		1.00	1.00	
Fr <sub>t</sub>	1.00	0.98		1.00	0.99		1.00	0.97		1.00	0.90	
Fl <sub>t</sub> Protected	0.95	1.00		0.95	1.00		0.95	1.00		0.95	1.00	
Satd. Flow (prot)	1770	4969		1770	5025		1770	1813		1770	1673	
Fl <sub>t</sub> Permitted	0.95	1.00		0.95	1.00		0.36	1.00		0.27	1.00	
Satd. Flow (perm)	1770	4969		1770	5025		677	1813		497	1673	
Volume (vph)	357	784	142	30	1095	95	119	128	28	73	173	368
Peak-hour factor, PHF	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92
Adj. Flow (vph)	388	852	154	33	1190	103	129	139	30	79	188	400
RTOR Reduction (vph)	0	0	0	0	9	0	0	0	0	0	70	0
Lane Group Flow (vph)	388	1006	0	33	1284	0	129	169	0	79	518	0
Turn Type	Prot		Prot		pm+pt		pm+pt					
Protected Phases	7	4	3	8	5	2	1	6				
Permitted Phases					2	6						
Actuated Green, G (s)	25.0	52.0	3.9	30.4	16.0	11.0	43.0	34.0				
Effective Green, g (s)	25.0	52.0	3.4	30.4	16.0	11.0	44.0	35.0				
Actuated g/C Ratio	0.22	0.47	0.03	0.27	0.14	0.10	0.39	0.31				
Clearance Time (s)	4.0	4.0	3.5	4.0	4.0	4.0	5.0	5.0				
Vehicle Extension (s)	3.0	3.0	3.0	3.0	3.0	3.0	3.0	3.0				
Lane Grp Cap (vph)	397	2319	54	1371	146	179	528	526				
v/s Ratio Prot	c0.22	0.20	0.02	c0.26	c0.04	0.09	0.04	c0.31				
v/s Ratio Perm					0.09	0.02						
v/c Ratio	0.98	0.43	0.61	0.94	0.88	0.94	0.15	0.98				
Uniform Delay, d <sub>1</sub>	42.9	19.9	53.3	39.6	46.9	49.9	21.9	37.9				
Progression Factor	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00				
Incremental Delay, d <sub>2</sub>	38.8	0.1	18.7	12.1	42.0	50.8	0.6	35.7				
Delay (s)	81.7	20.0	72.1	51.7	88.9	100.7	22.5	73.6				
Level of Service	F	B	E	D	F	F	C	E				
Approach Delay (s)	37.2		52.2		95.6		67.6					
Approach LOS	D		D		F		E					

Intersection Summary			
HCM Average Control Delay	52.8	HCM Level of Service	D
HCM Volume to Capacity ratio	0.96		
Actuated Cycle Length (s)	111.4	Sum of lost time (s)	16.0
Intersection Capacity Utilization	94.7%	ICU Level of Service	F
Analysis Period (min)	15		
c Critical Lane Group			





Movement	EBL	EBT	EBR	WBL	WBT	WBR	NBL	NBT	NBR	SBL	SBT	SBR
Lane Configurations	↙	↑↑↑		↙	↑↑↑		↙	↑		↙	↑	
Ideal Flow (vphpl)	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900
Total Lost time (s)	4.0	4.0		4.0	4.0		4.0	4.0		4.0	4.0	
Lane Util. Factor	1.00	0.91		1.00	0.91		1.00	1.00		1.00	1.00	
Flt	1.00	0.98		1.00	0.99		1.00	0.97		1.00	0.90	
Flt Protected	0.95	1.00		0.95	1.00		0.95	1.00		0.95	1.00	
Satd. Flow (prot)	1770	4969		1770	5025		1770	1813		1770	1673	
Flt Permitted	0.95	1.00		0.95	1.00		0.27	1.00		0.27	1.00	
Satd. Flow (perm)	1770	4969		1770	5025		497	1813		508	1673	
Volume (vph)	357	784	142	30	1095	95	119	128	28	73	173	368
Peak-hour factor, PHF	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92
Adj. Flow (vph)	388	852	154	33	1190	103	129	139	30	79	188	400
RTOR Reduction (vph)	0	0	0	0	8	0	0	0	0	0	64	0
Lane Group Flow (vph)	388	1006	0	33	1285	0	129	169	0	79	524	0
Turn Type	Prot			Prot			pm+pt			pm+pt		
Protected Phases	7	4		3	8		5	2		1	6	
Permitted Phases							2			6		
Actuated Green, G (s)	27.0	56.0		3.9	32.4		21.0	15.0		49.0	39.0	
Effective Green, g (s)	27.0	56.0		3.4	32.4		21.0	15.0		50.0	40.0	
Actuated g/C Ratio	0.22	0.46		0.03	0.27		0.17	0.12		0.41	0.33	
Clearance Time (s)	4.0	4.0		3.5	4.0		4.0	4.0		5.0	5.0	
Vehicle Extension (s)	3.0	3.0		3.0	3.0		3.0	3.0		3.0	3.0	
Lane Grp Cap (vph)	394	2292		50	1341		149	224		531	551	
v/s Ratio Prot	c0.22	0.20		0.02	c0.26		c0.04	0.09		0.04	c0.31	
v/s Ratio Perm							0.11			0.02		
v/c Ratio	0.98	0.44		0.66	0.96		0.87	0.75		0.15	0.95	
Uniform Delay, d1	47.0	22.1		58.4	43.8		47.5	51.4		22.5	39.7	
Progression Factor	1.00	1.00		1.00	1.00		1.00	1.00		1.00	1.00	
Incremental Delay, d2	41.0	0.1		28.1	15.5		37.4	13.4		0.6	27.8	
Delay (s)	88.0	22.2		86.5	59.3		84.9	64.8		23.1	67.6	
Level of Service	F	C		F	E		F	E		C	E	
Approach Delay (s)		40.5			60.0			73.5			62.3	
Approach LOS		D			E			E			E	

Intersection Summary			
HCM Average Control Delay	54.2	HCM Level of Service	D
HCM Volume to Capacity ratio	0.96		
Actuated Cycle Length (s)	121.4	Sum of lost time (s)	16.0
Intersection Capacity Utilization	94.7%	ICU Level of Service	F
Analysis Period (min)	15		
c Critical Lane Group			



Movement	EBL	EBT	EBR	WBL	WBT	WBR	NBL	NBT	NBR	SBL	SBT	SBR
Lane Configurations	↖	↖↗		↖	↖↗		↖	↗		↖	↗	
Ideal Flow (vphpl)	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900
Total Lost time (s)	4.0	4.0		4.0	4.0		4.0	4.0		4.0	4.0	
Lane Util. Factor	1.00	0.91		1.00	0.91		1.00	1.00		1.00	1.00	
Flt	1.00	0.98		1.00	0.99		1.00	0.97		1.00	0.90	
Flt Protected	0.95	1.00		0.95	1.00		0.95	1.00		0.95	1.00	
Satd. Flow (prot)	1770	4968		1770	5025		1770	1805		1770	1673	
Flt Permitted	0.95	1.00		0.95	1.00		0.36	1.00		0.27	1.00	
Satd. Flow (perm)	1770	4968		1770	5025		677	1805		497	1673	
Volume (vph)	357	784	143	30	1095	95	127	131	34	73	175	368
Peak-hour factor, PHF	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92	0.92
Adj. Flow (vph)	388	852	155	33	1190	103	138	142	37	79	190	400
RTOR Reduction (vph)	0	0	0	0	9	0	0	0	0	0	69	0
Lane Group Flow (vph)	388	1007	0	33	1284	0	138	179	0	79	521	0
Turn Type	Prot		Prot		pm+pt		pm+pt					
Protected Phases	7	4		3	8		5	2		1	6	
Permitted Phases							2			6		
Actuated Green, G (s)	25.0	52.0		3.9	30.4		16.0	11.0		43.0	34.0	
Effective Green, g (s)	25.0	52.0		3.4	30.4		16.0	11.0		44.0	35.0	
Actuated g/C Ratio	0.22	0.47		0.03	0.27		0.14	0.10		0.39	0.31	
Clearance Time (s)	4.0	4.0		3.5	4.0		4.0	4.0		5.0	5.0	
Vehicle Extension (s)	3.0	3.0		3.0	3.0		3.0	3.0		3.0	3.0	
Lane Grp Cap (vph)	397	2319		54	1371		146	178		528	526	
v/s Ratio Prot	c0.22	0.20		0.02	c0.26		c0.04	0.10		0.04	c0.31	
v/s Ratio Perm							0.09			0.02		
v/c Ratio	0.98	0.43		0.61	0.94		0.95	1.01		0.15	0.99	
Uniform Delay, d1	42.9	19.9		53.3	39.6		47.5	50.2		21.9	38.0	
Progression Factor	1.00	1.00		1.00	1.00		1.00	1.00		1.00	1.00	
Incremental Delay, d2	38.8	0.1		18.7	12.1		57.6	68.9		0.6	36.9	
Delay (s)	81.7	20.0		72.1	51.7		105.1	119.1		22.5	74.9	
Level of Service	F	B		E	D		F	F		C	E	
Approach Delay (s)		37.2			52.2			113.0			68.7	
Approach LOS		D			D			F			E	

**Intersection Summary**

HCM Average Control Delay	54.7	HCM Level of Service	D
HCM Volume to Capacity ratio	0.97		
Actuated Cycle Length (s)	111.4	Sum of lost time (s)	16.0
Intersection Capacity Utilization	95.2%	ICU Level of Service	F
Analysis Period (min)	15		

c Critical Lane Group

2007 JUN -5 PM 6:31 OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C.M.S.

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

*Mark P. Wall*

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**RESOLUTION DENYING THE APPEALS AND UPHOLDING THE  
PLANNING COMMISSION'S APPROVAL FOR CONSTRUCTION OF  
44 DWELLING UNITS AT 4801 SHATTUCK AVENUE, OAKLAND  
(CASE FILE NUMBER CMDV06-425 & TPM-9235)**

**WHEREAS**, the project applicant, Bill Lambert of Shasta Pros, filed an application on August 14, 2006, to construct a 44 unit residential condominium building at 4801 Shattuck Avenue; and

**WHEREAS**, the Design Review Committee of the Planning Commission considered the design aspects of the Project at a duly noticed public meeting on January 24, 2007; and

**WHEREAS**, The project was duly noticed for the Planning Commission hearing of February 28, 2007, and continued to a later date; and

**WHEREAS**, the City Planning Commission took testimony and considered the project at its duly noticed public meeting of April 4, 2007. At the conclusion of the public hearing, the Commission deliberated the matter and voted (5-0-0) to approve the Project; and

**WHEREAS**, on April 13, 2007, the appellant, Bob Brokl representing STAND, filed an appeal of the Planning Commission decision to the City Council; and

**WHEREAS**, on April 16, 2007, Roy Alper on behalf of the property owner filed an appeal of the Conditions of Approval imposed along with the Planning Commission approval; and

**WHEREAS**, after giving due notice to the Appellants, the Applicant, all interested parties and the public, the Appeal came before the City Council for a public hearing on July 17, 2007; and

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

**WHEREAS**, the public hearing on the Appeal was closed by the City Council on July 17, 2007;

**Now, Therefore, Be It**

**RESOLVED:** That, the City Council, having heard, considered and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Application, the Planning Commission's decision, and the Appeal, finds that the Appellants have **not** shown, by reliance on evidence already contained in the record before the City Council that the Planning Commission's Decision of April 4, 2007 was made in error, that there was an abuse of discretion by the Planning Commission or that the Commission's decision was not supported by substantial evidence in the record based on the April 4, 2007 Staff Report to the City Planning Commission (attached as Exhibit "A") and the July 17, 2007 City Council Agenda Report (attached as Exhibit "B"), hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeals are denied, the Planning Commission's approval is upheld, subject to the findings contained in Exhibits "A" and "B", each of which is hereby separately and independently adopted by this Council in full; and be it

**FURTHER RESOLVED:** That, in support of the Planning Commission's decision to approve the Project, the City Council affirms and adopts (i) the April 4, 2007 Staff Report to the City Planning Commission (including without limitation the discussion, findings, conclusions and conditions of approval (each of which is hereby separately and independently adopted by this Council in full)), attached as Exhibit "A"; and (ii) the July 17, 2007 City Council Agenda Report, attached hereto as Exhibit "B" (including without limitation the discussion, findings, and conclusions (each of which is hereby separately and independently adopted by this Council in full)); except where otherwise expressly stated in this Resolution; and be it

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

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

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

5. all oral and written evidence received by the City Planning Commission and City Council during the public hearings on the appeals; and all written evidence received by relevant City Staff before and during the public hearings on the application and appeal;

6. all matters of common knowledge and all official enactments and acts of the City, including, without limitation (a) the General Plan; (b) Oakland Municipal Code (c) Oakland Planning Code; (d) other applicable City policies and regulations; and, (e) all applicable state and federal laws, rules and regulations; and be it

**FURTHER RESOLVED:** That, the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Community & Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, 2<sup>nd</sup> Floor, Oakland CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1<sup>st</sup> floor, Oakland, CA; and be it

**FURTHER RESOLVED:** That, the recitals contained in this Resolution are true and correct and are an integral part of the City Council's decision.

In Council, Oakland, California, \_\_\_\_\_, 2007

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, KERNIGHAN, AND  
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST:

\_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council of  
the City of Oakland, California

## Exhibit A

[April 4, 2007 Planning Commission Staff Report]

# Exhibit A

## Oakland City Planning Commission (APPROVED) STAFF REPORT

Case File Number CMDV06-425 & TPM-9235

April 4, 2007

<b>Location:</b>	4801 Shattuck Avenue (See map on reverse)
<b>Assessors Parcel Numbers:</b>	013-1162-009-00; -009-02; & -010-00
<b>Proposal:</b>	New Construction of a five story 44 unit residential condominium building.
<b>Applicant:</b>	Bill Lambert, (510) 550-4200
<b>Owner:</b>	4801 Shattuck, LLC
<b>Planning Permits Required:</b>	Major Design Review for a new building in excess of 25,000 square feet, Major Conditional Use Permit for more than seven units in the R-70 "Best Fit" Zone, and to allow the density permitted within the Urban Residential and Neighborhood Center Mixed Use General Plan areas, and Minor Variances for rear yard setback (10'0" required; 0'0" proposed), front yard setback (10'0" required; 0'0" proposed), side yard setback for portion of lot adjacent to the R-50 Zone (10'0" required; 0'0" proposed), street side setback (5'0" required; 0'0" proposed), and encroachment into the "height reduction plane" from the minimum required setbacks. Tentative Parcel Map for new condominiums.
<b>General Plan:</b>	Neighborhood Center Mixed Use & Urban Residential
<b>Zoning:</b>	R-70, High Density Residential Zone R-50, Medium Density Residential Zone
<b>Environmental Determination:</b>	Exempt, Section 15332 & Section 15183 of the State CEQA Guidelines; in fill development projects & projects that are consistent with the General Plan.
<b>Historic Status:</b>	556-558 48 <sup>th</sup> Street is listed as a Potentially Designated Historic Property (PDHP); survey rating: Dc3
<b>Service Delivery District:</b>	II - North Oakland
<b>City Council District:</b>	1
<b>Date Filed:</b>	8/14/06
<b>Action to be Taken:</b>	Decision on Application
<b>Staff Recommendation:</b>	Approve with staff recommended modifications and the attached conditions.
<b>Finality of Decision:</b>	Appealable to City Council
<b>For Further Information:</b>	Contact case planner <b>Peterson Z. Vollmann</b> at 510-238-6167 or by e-mail at <a href="mailto:pvollman@oaklandnet.com">pvollman@oaklandnet.com</a> .

### BACKGROUND

This item was noticed to be heard by the Planning Commission on February 28, 2007 and was continued to resolve some outstanding traffic circulation issues. In addition, staff has reevaluated the use of The General Plan Conformity Guidelines and determined that application of the Best Fit Zoning is appropriate here.

## **PROJECT DESCRIPTION**

The proposal is to demolish the existing structures across the three lots and construct a new five story 44 unit condominium development. The project would contain two levels of parking, one at the ground floor and the majority located within a subterranean parking garage, providing a total of 44 spaces. Both parking areas would be accessed off of curb cuts from 48<sup>th</sup> Street. The project site is surrounded by a mix of smaller residential structures containing one and two units as well as larger multi story buildings containing dense residential uses. The proposal is for a five story building which will contain many recesses and plane changes on the elevations in order to break down the mass of the structure as it extends back along 48<sup>th</sup> Street, which contains smaller residential uses across the street.

The subject property is located within the R-70 and R-50 Zones, and the Urban Residential and Neighborhood Center Mixed Use General Plan areas. Pursuant to the R-70 Zoning regulations for the site (including as the best fit zone for the portion zoned R-50) the applicant is requesting variances for a reduced front yard setback, side yard setbacks, rear yard setback, and a variance to allow the building to project into the height reduction plane from the setback line. These variances will be discussed in the Zoning analysis section of this report. Additional discussion of the best fit zone is provided in the General Plan analysis

## **PROPERTY DESCRIPTION**

The subject property is a 14,934 square foot site containing frontages on the west side of Shattuck Avenue and the north side of 48<sup>th</sup> Street. The existing project site contains five structures proposed for demolition. The corner site at 4801 Shattuck Avenue contains an existing two story commercial building. The second parcel at 556 48<sup>th</sup> Street contains a residential building containing two dwelling units, and the third site at 560 48<sup>th</sup> Street contains three residential cottages. The property at 556 48<sup>th</sup> Street is listed as a Potentially Designated historic Property and contains a rating of Dc3. The surrounding uses include commercial and low and high density residential uses.

## **Historic Status**

The Oakland Cultural Heritage Survey (“Survey”) identifies properties that are historic or potentially historic properties. The rating system is based upon three different calculations. First properties are rated A – E, with “A” being a property of the highest importance, “B” is a property of major importance, “C” a property of secondary importance, “D” minor importance and “E” of no particular interest. Properties that contain a rating of C or higher are determined to be properties worthy of consideration for retention, and require special findings if any demolition or major alteration is proposed as part of a development application. The second system of rating is based upon whether or not a property is located within a district, and ratings are given out 1 – 3, with a rating of



1 indicating that a property is located within an Area of Primary Importance (API), a rating of 2 indicating that the property is located within an Area of Secondary Importance (ASI), and a rating of 3 indicating that the property is not located within a district at all. The third method for rating a property is a contingency rating that could be added to a property, which is identified as a lower case letter a-d, in which the lower case letter identifies that the property could be considered at a higher rating if it had not been for alterations that removed or damaged character defining elements of the structure.

The subject property at 556 48<sup>th</sup> Street contains a Survey rating of Dc3, which means that the property is of minor importance due to exterior modifications that damaged the character defining elements of the building (which could have been a C otherwise), and the property is not located within a Historic District.

Planning Staff will require the developer to make a good faith effort to have the building in question, as well as the other houses on the project site, moved prior to demolition. It is possible that the subject house will be relocated onto the adjacent lot on Shattuck Avenue. (See condition #30)

#### **GENERAL PLAN ANALYSIS**

The subject property is located within both the Neighborhood Center Mixed Use and Urban Residential General Plan Land Use Classifications. The Neighborhood Center land use classification is intended to identify, create, maintain, and enhance mixed use neighborhood commercial centers. These centers are typically characterized by a smaller scale pedestrian oriented, continuous street frontage with a mix of retail, housing, office, active open space, eating and drinking places, personal and business services, and smaller scale educational, cultural, or entertainment uses. Future development within this classification should be commercial or mixed uses that are pedestrian oriented and serve nearby neighborhoods, or urban residential with ground floor commercial. The Neighborhood Center Mixed Use General Plan Area allows up to a maximum residential density of one dwelling per 261 square feet of lot area, which would allow for 57 dwelling units on the site, and a maximum FAR of 4.0. The proposal for 44 units is consistent with the General Plan Density.

The Urban Residential General Plan Area is intended to create, maintain, and enhance areas of the City that are appropriate for multi-unit, and mid-rise or high-rise residential structures in locations with good access to transportation and other services. The Urban Residential General Plan area also allows a maximum density of one dwelling unit per 261 square feet of lot area, which would allow for 57 dwelling units on the site. The proposal for 44 units is consistent with the General Plan Density.

The project is located within a "Grow and Change" neighborhood which is a designation used "where growth will be focused to lead Oakland into the next century, enhance the transition of the City and the economy, and allow the City to meet the challenges and

changes ahead.” This is in contrast to “Enhance and Maintain” areas which are “areas where the predominant established uses and densities will continue – changes in use and density will be small.” The project’s height, mass, and density are clearly in conformance with the “Grow and Change” concept as opposed to the predominant development of the surrounding area. It is appropriate that a higher density be supported in this area to promote and further encourage commercial development along Shattuck and Telegraph Avenues.

The following General Plan Land Use Policies and Objectives apply to the proposed project:

Objective N3: Encourage the construction, conservation, and enhancement of housing resources in order to meet the current and future needs of the Oakland community.

Policy N3.1: Facilitating the construction of housing should be considered a high priority for the City of Oakland.

Policy N3.9: Residential development should be encouraged to face the street and to orient their units to desirable sunlight and views, while avoiding unreasonably blocking sunlight and views for neighboring buildings, respecting the privacy needs of residents of the development and surrounding properties, providing for sufficient conveniently located *on-site open space, and avoiding undue noise exposure.*

### **Best Fit Zone**

The current zoning conflicts with the Urban Residential land use designation in that the R-50 zone does not permit a maximum density equal to the General Plan classification (R-50 allows a maximum of one dwelling unit per 1,500 square feet of lot area and the general plan classification allows for a maximum of one dwelling unit per 261 square feet of lot area). In these situations, pursuant to Planning Code Section 17.01 and the *Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations*, the General Plan governs, and either the higher density is permitted with an Interim Conditional Use Permit and Best Fit Zone (Section 17.01.100.B), or a rezoning (Section 17.01.100.C).

The Guidelines for General Plan Conformity specify a number of Best Fit zones that may be applied in the Urban Residential land use designation. For the Urban Residential category, the R-60 Medium Density Residential, the R-70 High Density Residential, and the R-80 High-Rise Apartment Residential are identified as potential best fit zones. In the case of the subject site, staff has determined that the R-70 zoning is the most appropriate best fit zone for the area, given the higher density of the land use designation, the identification of this area as a “Grow and Change” neighborhood, and the location between the highway and a major corridor.

The subject item was previously noticed for the February 28, 2007 Planning Commission Agenda without the use of the R-70 as a "Best Fit Zone". Within the department there has been discussion as to when the use of a "Best Fit" Zone is appropriate, and whether or not the "Best Fit" Zone would be used in place of the existing mapped zone, in this case the replacement of the R-50 Zone with the R-70 Zone – when the activity/facility is permitted but the density not allowed by the Zoning Regulations. The February 28<sup>th</sup> staff report based the best fit interpretation on a very narrow (and incorrect) reading of a portion of the Conformity Guidelines regarding the question of whether the "proposed activity and facility type is permitted under the Zoning Regulations". This question is located within the Overview section of the Guidelines (see page 3) and a determination cannot be made without examining the more detailed and specific portions of the Guidelines which outline the procedures for the application of the document.

After extreme internal discussion on this issue, it is clear that the Guidelines authorize the application of the best fit zone concept in all cases where the zoning density, intensity, and/or other development regulations would not otherwise permit the project, as long as the project is consistent with the General Plan. It has been determined by staff that the overwhelming majority of cases that have had the same conflict between the General Plan and the existing base zone have proceeded by use of a "Best Fit" Zone as a replacement to the base zone, which staff believes is the intended direction and authority of the General Plan Conformity Guidelines.

Specifically, the Procedures portion of the Conformity Guidelines focuses on whether or not there is a conflict between the General Plan and the existing zoning, which would create an express conflict between the two. This "Express Conflict" is created when a project clearly conforms with the General Plan, but is not permitted by the Zoning. The General Plan Conformity Guidelines provide a flow chart for Determining a Project's Conformity with the General Plan (Page 8), in which the several elements are reviewed beyond just the Activity and Facility types, such as density and intensity. After determining that the project is consistent with the General Plan you then have to determine whether or not the project is permitted by Zoning. If the project is permitted by zoning the proposal is permitted outright, if zoning requires a Conditional Use Permit, then the approval of a conditional use permit must be obtained. If the project is not permitted by zoning; this is an express conflict with the General Plan and the project can only be allowed by an Interim Conditional Use Permit or an approved application for a Rezoning (Page 9).

Here, the proposal is not consistent with the regulations of the R-50 zone because to achieve the higher intensity a much larger building needs to be established to fit the proposed density. Given that the project clearly conforms with the General Plan but is not permitted by the underlying zoning district, this is deemed an "express conflict" in the General Plan Conformity Guidelines and the applicant has applied for an Interim Conditional Use Permit that would allow the use of the Best Fit Zone for the project.

While the proposed development is consistent with the vision of the Urban Residential General Plan area by creating a dense residential development within close proximity to local and regional transit options. Staff does not feel that the proposed development is completely consistent with the intent of the Neighborhood Center General plan designation with regard to ground floor activity. While the proposed residential intensity is consistent with that envisioned by the General Plan, the project lacks any ground floor commercial uses. Recent discussions have taken place about what viable commercial opportunities exist for this portion of Shattuck Avenue known as "Short Shattuck" but staff feels that given this property's location at the corner and with good visibility from Telegraph Avenue, ground floor retail should be added for the plan to be truly consistent with the General Plan.

**ZONING ANALYSIS**

The subject property is located within the R-50, Medium Density Residential Zone, and the R-70, High Density Residential Zone. The zoning boundary splits the site approximately down the middle. 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. The R-70 zone is intended to create, preserve, and enhance areas for apartment living at high densities in desirable settings, and is typically appropriate to areas having good accessibility to transportation routes and major shopping and community centers. As discussed above, the best fit zone of the R-70 has been applied such that the entire project has been reviewed under the R-70 regulations. The following table shows the difference between the regulations in the R-50 Zone and the "Best Fit" R-70 Zone.

<b>Attribute</b>	<b>R-50</b>	<b>R-70</b>	<b>Proposal</b>
Density	1:1,500 sq.ft (6 units for R-50 Zoned portion of the lot)	1:450 sq.ft. (36 units w/ 10% bonus at the corner)	44 units 1:339 sq.ft.
Height Limit	30 feet	None*	57'
Parking	1 space per dwelling	1 space per dwelling	44 – 1 per dwelling
Open Space	200 sq.ft. per unit (5600 sq.ft. for units located within the R-50 zoned portion of the lot)	150 sq.ft. per unit (6600 sq.ft.)	8,685 sq.ft.

\*The height of a building is limited to 40' at the rear setback line, and then may increase at a ratio of foot feet vertically per one foot stepped in horizontally from the setback line. When a property is adjacent to a lower intensity zone such as R-50 this height is limited to 30 feet at the setback line which may then increase at a ratio of one foot vertically per one foot horizontally stepped in from the setback line.

## **Parking**

The Planning Code requires one off street parking space per dwelling unit in the R-70 Zone. The proposed project meets the required parking of one off street parking stall per each of the proposed 44 dwelling units, as 44 parking spaces will be provided. The parking will be provided in two separate garages. The largest garage will be located below grade with access off of 48<sup>th</sup> Street. The other garage, which will also be accessed off of 48<sup>th</sup> Street, will be located at the grade level, but will be visually screened by being tucked behind a street level dwelling unit and pedestrian entry lobby.

## **Open Space**

The R-70 Zone requires open space at a ratio of 150 square feet per dwelling unit, which for the proposed 44 dwelling units totals 6,600 square feet. Private open space may be substituted at a 2:1 ratio for group open space, however; when the open space requirement has been completely fulfilled by the a private space substitution, the code still requires a minimum group open space at a ratio of 30 square feet per dwelling unit. The proposed project provides 3,436 square feet of private open space, which meets the full requirement as a 2:1 substitution of the group space. As a result, a minimum group open space requirement of 1,320 square feet is required, which the project complies with by providing 1,813 square feet.

## **Variances**

### **Front Setback Variance**

The R-70 Zone requires a minimum front setback requirement of 10 feet, which in this case would be ten feet from the Shattuck Avenue frontage. The applicant is requesting a setback variance to allow the building to be built out to the zero lot line. Staff feels that the setback variance could be warranted if it were for the purpose of creating a commercial storefront space that would activate the public right of way. Staff has recommended that the applicant include commercial use(s) as a part of the proposal, but to date the plans have not been revised to reflect commercial space. The applicant has proposed as an alternative that the two units at the ground floor would be “commercial ready”, meaning that they could easily be removed and replaced with commercial if they feel the market were there in the future. Staff feels that the commercial should be provided, and that the front yard setback variance should not be granted unless it is added. If the front units are sold as residential, staff feels that it is unlikely that later conversion to commercial use would occur.

### **Street Side Setback Variance**

The street side lot line along 48<sup>th</sup> Street requires a setback that is equal to five feet. The proposal would vary in the setback distance from zero at the corner of Shattuck to about two and a half feet along 48<sup>th</sup> Street. Staff feels that the variance request is warranted given that the other buildings located at the corner of the 48<sup>th</sup> Street and Shattuck Avenue intersection contain lesser setbacks as well.

### **Rear Yard Variance**

The rear yard requirement is for a ten foot rear yard setback. The applicant is requesting to waive the rear yard requirement and proposes to have the building located on the property line and directly abut the adjacent development which also has a wall built out to the property line. Staff feels that this variance is warranted because of the situation of the western adjacent property, which contains a fifty foot plus wall directly on the property line. By allowing the development to build out to the rear property line the development would fill out the block face and would not create any impacts onto adjacent neighbors.

### **Side Setback Variance**

The portion of the lot located adjacent to the R-50 Zone requires a ten foot side yard setback along the side property line. The applicant is requesting a variance from this rule for the interior side lot line which directly adjoins the rear lot line of the adjacent property to the north. The proposal includes a building wall (including an elevator tower) that is on the property line. Staff feels that this setback variance request is not warranted and the building should be set back to meet the minimum ten foot side yard setback requirement.

### **Height Variance**

The portion of the development site that is adjacent to the R-50 Zone allows a maximum height of 30 feet above grade, which may be extended above that height if the building is stepped back at a ratio of one horizontal foot per one vertical foot above the 30 foot limit. The proposed building reaches a height of 57 feet above grade adjacent to the R-50 Zoned lot, and the applicant is requesting a variance to allow the project as proposed. Staff feels that a height variance of a lesser degree is appropriate given that there is a compromise on the overall height of the building, as follows: The front portion of the site is not located adjacent to a lower intensity Zone, and the only height limitations for this portion of the property is the height reduction plane that allows the building envelope to increase in height at a 2:1 ratio from the rear setback line (which in the case of R-70 would be ten feet). By the time this ascending line reaches the front portion of the property a maximum height of nearly 240 feet in height could be permitted under the zoning regulations. Based upon the construction type of the building (concrete) a maximum height of 85 feet could be constructed before moving into a life safety building. As part justification for a variance, staff believes that consideration should be given for the amount of potential height reduction from the front portion of the lot, as well as factoring in the desired intensity under the Neighborhood Center land use category. The proposal would essentially be reducing three stories from the front of the building and add two stories to the rear of the building. Staff believes that the transfer of height from the front of the site to the rear of the site would allow for a more attractive building that would be more compatible with the area rather than a building that contained an 85 foot tower element at the corner. However, staff still has concerns with regards to potential impacts onto the northern adjacent properties and would recommend that the rear 84 feet of the building be reduced by one floor, to a maximum height of 48 feet.

## **KEY ISSUES**

### **Density**

Under the R-70 Zoning standards the maximum number of residential units allowed at the site would be 36. The Neighborhood Center Mixed Use and Urban Residential General Plan areas both allow a maximum residential intensity of one dwelling unit per 261 square feet of lot area, which would allow for a maximum of 57 dwelling units. The proposed project would contain 44 dwelling units. The applicant is applying for an Interim Conditional Use permit to allow the higher density of the General Plan areas. The proposed 44 units equate to 77% of the maximum General Plan density.

### **Design**

The proposed development exhibits a modern architectural design which will vary from much of the older architecture in the surrounding area. The area along Shattuck Avenue contains an array of different architectural styles from different eras, and the applicant's rationale behind the modern design is to continue with the pattern of different architectural styles representing their own era. The other reasoning behind the modern design is that the architect was looking to create a large number of façade recesses and plane changes to address the difference in scale between Shattuck Avenue and 48<sup>th</sup> Street, and the modern architecture allows for greater flexibility in moving masses of the building according to the site, whereas an "antique" design with an Edwardian, Victorian, or Mediterranean style would typically dictate a more massive building that would be articulated with ornamentation and repetitive bay window patterns and would not work as well when setting back a large rear portion of the building, as the proposed project does.

The subject proposal went before the Design Review Committee on January 24, 2007. At the meeting several design changes were recommended by Staff and by the Commissioners present at the meeting. At the meeting staff made the following recommendations:

- Shattuck Avenue Elevation – Staff had requested that the applicant incorporate a ground floor commercial use to activate the street level and the corner of the intersection. The applicant has not accommodated this request, but rather has added more glazing to the street level elevation and is proposing to construct the two street fronting units in a way that may be removed and replaced with commercial in the future. Staff still feels that the project should incorporate the commercial space into the project and is recommending it as a project modification for the Commission to consider.
- North Elevation – Staff had requested that measures be taken to improve the visual quality of the north elevation of the project as it had a large visible access stair and "motel" style corridors running along the façade. The applicant has made design modifications that will include decorative screening to shield the access stairs and the primary entries to the units so that there is no longer a "motel" appearance of the northern façade. Staff is satisfied with the design modifications that have been made.

- Building Height – Staff had concerns over the height of the building at the rear end of the development site, due to its potential impacts to the northern adjacent neighbors. Staff had recommended that the fifth floor of the rear 84 feet of the building be reduced to no more than four stories. The applicant has not accommodated this request, but has stepped the building back an additional five feet from the northern adjacent neighbor's lot. As addressed earlier in this staff report, Planning Staff is still recommending that the rear 84 feet of the building be reduced to four stories. (See condition #55).

The following recommendations were made by the Planning Commissioners present at the Design Review Committee meeting of January 24, 2007.

- Address the blank wall at the western side of the property at the ground level garage. The applicant has redesigned this portion of the building to include a unit that contains another street level stoop, similar to the others on the 48<sup>th</sup> Street side of the property that will create a more pedestrian friendly element to the base of the building. In addition, the applicant has also revised some of the other ground floor stoops to flank the other garage door to reduce the prominence of the garage along 48<sup>th</sup> Street.
- At the Design Review Committee meeting comments were made about the overall scheme of the 48<sup>th</sup> Street façade, and that the window patterns seemed a bit too random, and that the applicant should look into incorporating more vertical window patterns to pick up on the character of the homes on 48<sup>th</sup> Street. The applicant has redesigned the façade of this portion of the building to create a pattern of vertical window segments to reduce the fragmentation in the design.
- A request was made at the Design Review Committee meeting to remove one of the two proposed curb cuts and to locate all of the parking within the below grade garage. The applicant has stated that they have not been able to accommodate all of the required 44 off street parking stalls below grade, thus this request has not been accommodated.

## **ENVIRONMENTAL DETERMINATION**

For purposes of environmental review under the California Environmental Quality Act (CEQA), the project meets the criteria for a Categorical Exemption under Section 15332 of the CEQA Guidelines. In addition, the project also satisfies CEQA Section 15183 for proposals consistent with the General Plan. The criteria for a Categorical Exemption under Section 15332 of the CEQA guidelines are as follows:

- 1) **The project is consistent with the applicable general plan designation and all general plan policies as well as with applicable zoning designation and regulations.**



The proposed project is consistent with the Urban Residential and Neighborhood Center Mixed Use General Plan designations, and by meeting the required findings for the variances would meet the zoning regulations.

- 2) **The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.**

The development site is located within the Oakland City limits, is less than five acres and is completely surrounded by urban uses.

- 3) **The project site has no value as habitat for endangered, rare, or threatened species.**

The project site has been previously developed and does not contain any habitat for endangered, rare, or threatened species.

- 4) **Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.**

The proposed project underwent a full traffic analysis by a qualified traffic consultant, which was reviewed by the Transportation Services Division of Public Works Agency and CEDA Planning staff, and it was determined that the project will not contribute to the deduction of Level of Service (LOS) below an acceptable level for any nearby intersection. With implementation of standard conditions of approval, the project would not result in any significant impacts on traffic, noise, air quality, or water quality.

- 5) **The site can be adequately served by all required utilities and public services.**

All required utilities are readily accessible on the surrounding streets, and the site will be adequately served by public services in the area.

### **Exceptions from a CEQA Exemption**

**Section 15300.2(f) of the CEQA Guidelines**, states that a Categorical Exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource. Buildings that contain an A or B rating are determined to be historic resources. None of the buildings proposed for demolition contain A or B ratings. The Omni structure across 48<sup>th</sup> Street from the project site contains a C3 rating, with a potential B rating. A substantial adverse change includes physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the *significance of the historical resource would be "materially impaired."* The significance of a historical resource is "materially impaired" when a project demolishes or materially alters, in an adverse manner, those physical characteristics of the resource that convey its historical significance. The physical characteristics of the structure itself would not be impaired as a result of the project and the proposed building could not materially impair

its surroundings since the subject property itself is not identified as being located within a historic district.

See also the Historic Resource Findings of 3.5 of the City's Historic Preservation Element of the General Plan, located within the "Findings" section of the document.

## **CONCLUSION**

Staff feels that the proposed project is generally a good use of the site, and ultimately fulfills the vision of the General Plan for adding high density housing off of transit corridors. However, staff feels that there are needed modifications for the project to completely comply with the Variance findings and Conditional Use Permit criteria. Staff feels that the project with its current design is too tall and overbearing on the western side of the development site, and does not create an active pedestrian streetscape along Shattuck Avenue due to the lack of any commercial activity, which staff strongly feels should be provided, given the location at the corner. Staff is recommending that the Planning Commission consider implementing the project modifications as presented in this report and approve the project with those modifications.

- RECOMMENDATIONS:**
1. Affirm staff's environmental determination.
  2. Affirm the use of the R-70 "Best Fit" Zone for the project site.
  3. Approve the Major Design Review, Major Conditional Use Permit, Minor Variances and Tentative Parcel Map subject to the attached findings and conditions, and the recommended project modifications to meet the required interior side yard setback of ten feet, reduce the height of the building to no more than four stories for the rear 84 feet of the building, provide ground floor commercial at the Shattuck Avenue frontage.

Prepared by:

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PETERSON Z. VOLLMANN  
Planner III  
Approved by:

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SCOTT MILLER  
Zoning Manager

Approved for forwarding to the  
City Planning Commission:

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CLAUDIA CAPPIO  
Director of Development

**ATTACHMENTS:**

- A. Plans and Elevations
- B. Findings for Approval
- C. Conditions of Approval
- D. General Plan Conformity Guidelines(minus Appendix)

ATTACHMENT B

Modifications to the Findings and Conditions of Approval as directed by the Planning Commission at the April 4, 2007 meeting are indicated in underlined type for additions and cross-out type for the deletions.

FINDINGS FOR APPROVAL

This proposal meets all the required Use Permit criteria (Sections 17.134.050), Design Review Criteria (Section 17.136.070) and Variance Findings (Section 17.148.050) as set forth below and which are required to approve your application. This proposal does not contain characteristics that require denial pursuant to the Tentative Map Findings (Section 16.08.030 & 16.24.040) of the Oakland Subdivision Regulations. Required findings are shown in bold type; reasons your proposal satisfies them are shown in normal type.

SECTION 17.134.050 –CONDITIONAL USE PERMIT FINDINGS:

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

The proposed project places the bulk of the building out towards Shattuck Avenue, which is the larger street, so that the building is able to contain the density desired by the General Plan while still scaling down the size of the building as it gets closer to the adjacent properties along 48<sup>th</sup> Street, which are lower intensity residential uses. (See design Review Findings for more specifics about the compatibility of design). However, ~~staff feels~~ the Commission finds that in order to limit adverse impacts to neighboring properties that the rear 65 to 85 ~~84~~ feet of the building should be reduced to no more than four stories, as outlined in Condition of Approval #55. The subject property is located in an area that is developed as an urban area and contains existing civic facilities and utilities. The Shattuck Avenue frontage will be designed in a manner that would allow the dwelling units to be removed and easily converted into commercial space in the future if the retail market demands it along this stretch of Shattuck Avenue. A traffic study was prepared that showed that the estimated trip generation from the project would not degrade any nearby intersections to a significant level.

- 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 location design and site planning of the building will provide for an attractive design that allows a large setback and open area to be provided across from the lower intensity uses along 48<sup>th</sup> Street. The project will provide for a functional living environment by providing dense

***FINDINGS***

housing with close proximity to regional mass transit systems. The Shattuck Avenue frontage will be designed in a manner that would allow the dwelling units to be removed and easily converted into commercial space in the future if the retail market demands it along this stretch of Shattuck Avenue.

~~With the recommended project modification for adding ground floor commercial at the corner of 48<sup>th</sup> Street and Shattuck Avenue, the project will function as a successful mixed use development that will help to bridge a visual connection between Shattuck Avenue and Telegraph Avenue.~~

- C. That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region.**

The development will facilitate the growth and change of the area to a dense urban housing location off of a major regional corridor.

- D. That the proposal conforms to all applicable design review criteria set forth in the DESIGN REVIEW PROCEDURE of Chapter 17.136 of the Oakland Planning Code.**

See Design Review findings below.

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

The proposal to construct 44 new residential dwelling units is consistent with the Urban Residential General Plan Area, and by designing the Shattuck Avenue frontage with a design that would allow the dwelling units to be removed and easily converted into commercial space in the future if the retail market demands it along this stretch of Shattuck Avenue by incorporating a ground floor commercial activity the proposal will be consistent with the Neighborhood Center Mixed Use General Plan Designation.

**SECTION 17.01.100B – MINOR CONDITIONAL USE PERMIT FINDINGS FOR PROPOSALS CLEARLY IN CONFORMANCE WITH GENERAL PLAN BUT NOT PERMITTED BY ZONING REGULATIONS**

- A. That the proposal is clearly appropriate in consideration of the characteristics of the proposal and the surrounding area.**

The proposal is clearly appropriate to achieve the purposes of the General Plan as applied to the location and given adjacent and nearby larger buildings. Across Shattuck Ave. to the east is a 65'7" tall residential/mixed use project. Adjacent to the site on the west is a 12 unit 52' project just nearing completion and a 12 unit OHA project adjacent to the Hwy 24 freeway

***FINDINGS***

and BART. Just opposite the freeway from the project is the 65' tall Children's Hospital of Oakland. Approximately 100 yards south of the project at 46<sup>th</sup> Street and Shattuck is the 70+' tall U.C. Storage building. Approximately 150 yards north of the project at 51<sup>st</sup> Street and Shattuck is the 50' tall PG&E substation. Clearly, in both density and height, the project is consistent with the "Growth and Change" taking place in the surrounding area as directed by the General Plan, as well as the larger older buildings in the immediate vicinity.

**B. That the proposal is clearly consistent with the intent and desired character of the relevant land use classification or classifications of the General Plan and any associated policies.**

The intent of the Urban Residential classification is to create, maintain, and enhance areas of the City that are appropriate for multi-unit, mid-rise or high-rise residential structures in locations with good access to transportation and other services. The primary use in this classification is residential. The maximum allowable density for the site is 125 units per gross acre, and 166.67 units per net acre. This is significantly greater than the density allowed under the existing R-50 zoning of the site. The intent of the Neighborhood Center Mixed Use classification is "to identify, create, maintain, and enhance mixed use neighborhood commercial centers." The Desired Character and Uses for future development "should be commercial or mixed uses that are pedestrian-oriented and serve nearby neighborhoods, or urban residential with ground floor commercial." The maximum allowable density for this designation is also 125 units per gross acre, and 166.67 units per net acre.

**C. That the proposal will clearly promote implementation of the General Plan.**

The proposal to construct 44 new residential dwelling units is consistent with the Urban Residential General Plan Area, and by designing the Shattuck Avenue frontage with a design that would allow the dwelling units to be removed and easily converted into commercial space in the future if the retail market demands it along this stretch of Shattuck Avenue by incorporating a ground floor commercial activity the proposal will be consistent with the Neighborhood Center Mixed Use General Plan Designation.

**17.136.070A - RESIDENTIAL DESIGN REVIEW CRITERIA:**

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

The subject property is located within an area that contains a number of different architectural styles and various building sizes, and there is not one clear development style for the area. There is a mix of Victorian, Mediterranean, and Craftsman style structures as well as other later styles of architecture that are largely insignificant. The building heights in the area vary from one story to six stories along Shattuck Avenue. The proposed design of the building is a modern architectural style that will contribute to the context of varying architectural styles down the block. The use of modern architecture also allow the building to contain a large number of setbacks and recesses to appropriately scale the building down to the lesser intense

area along 48<sup>th</sup> Street, as such methods on a traditional building would not necessarily be appropriate. The building will contain a height at the corner consistent with the taller structure directly across Shattuck Avenue, and the height is also appropriate as the building's setting is located at the corner in which a taller height is often the traditional pattern of development in urban areas. The upper levels of the building will step back away from 48<sup>th</sup> Street so that a lower wall height is standing out at the street level to relate to the lower buildings across the street. This large step back, and the vertical window patterns along the building wall will adequately address the issues of scale and bulk as seen from 48<sup>th</sup> Street. Staff has recommended that the fifth floor of the rear 84 feet of the building be cut down to four stories ~~and that the minimum interior side yard setback of four feet be respected~~ so that the impacts upon the northern adjacent properties are reduced. The proposed building will contain a number of different exterior materials that will emphasize the recesses and openings of the building. The main body exterior will be a stucco finish, similar to other buildings in the area, and the recesses will contain wood screening to soften the building appearance. A large amount of glass will be provided in the design, which will give the building a lighter feel and reduce some of the visual mass of the building. Small sections of the building are proposing to use either a zinc or copper panel to allow the building to stand out as visually different from the other buildings in the area, while using a metal material that has a muted finish so that it is subtle and not too bold.

**B. The proposed design will protect, preserve, or enhance desirable neighborhood characteristics.**

The development will enhance the area as a dense residential neighborhood by adding high intensity housing near a major transit corridor. The design will protect neighborhood characteristics by keeping the height within the R-70 zoned portion of the lot to a lower level than allowed by the zone, while stepping the rear portion of the building back away from the street to reduce its visual presence along the street. The Shattuck Avenue frontage will be designed in a manner that would allow the dwelling units to be removed and easily converted into commercial space in the future if the retail market demands it along this stretch of Shattuck Avenue. ~~By incorporating the ground floor commercial space the proposal will enhance the area by creating a visual connection between Shattuck Avenue and Telegraph Avenue.~~

**C. The proposed design will be sensitive to the topography and landscape.**

The subject area is flat.

**D. If situated on a hill, the design and massing of the proposed building relates to the grade of the hill.**

Not situated on a hill.

**E. The proposed design conforms in all significant respects with the Oakland Comprehensive Plan and with any applicable district plan or development control map which has been adopted by the City Council.**

The proposal to construct 44 new residential dwelling units is consistent with the Urban Residential General Plan Area, and by designing the Shattuck Avenue frontage with a design that would allow the dwelling units to be removed and easily converted into commercial space in the future if the retail market demands it along this stretch of Shattuck Avenue by incorporating a ground floor commercial activity the proposal will be consistent with the Neighborhood Center Mixed Use General Plan Designation.

**SECTION 17.148.050(a) – MINOR VARIANCE FINDINGS:**

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

Front Setback

The subject property is located at a corner location that is clearly visible from Telegraph Avenue, which is the main commercial street. ~~Staff is recommending that the ground floor include commercial space so that the visual connection between the two streets is strengthened and create a visual reason for people to come over to Shattuck Avenue and liven up the streets. The waiver of the ten foot front setback would allow for a prominent commercial space at the ground floor that could be located directly along the sidewalk, which is the desired urban setting for commercial activities, thus creating an effective design solution to improve the physical appearance and operational efficiency of the commercial space. If no commercial is to be provided the variance should not be approved. Given that the other three buildings located at the corner at the intersection of 48<sup>th</sup> Street and Shattuck Avenue contain zero lot line setbacks, the granting of the front setback variance would allow the new building to fit in with the context of the other buildings at the intersection, thus creating an effective design solution that will improve the physical appearance of the building.~~

Street Side Setback

Intent of the street side setback is to allow a visual transition from the corner in toward the large front setback of the adjacent key lot. Given that that situation does not exist since the adjacent property contains a smaller setback, it becomes an effective design solution to allow the setback to be reduced to the amount that equals the setback of the adjacent building and then reduce to zero at the corner to emphasize the buildings location at the corner ~~ground floor commercial space~~, which would improve the appearance by creating a design that is consistent with the built pattern of the intersection and rear adjacent property .

Side Setback

The Commission finds that the granting of the variance for the required ten foot side yard setback is an effective design solution that improves appearance of the building by allowing the location of the elevator tower to be tucked behind the building and less visible from the street,



furthermore the majority of the structure at this point is only three stories and abuts the rear yard of the adjacent neighbor rather than the side yard and impacts from this are limited because the structure would not be blocking southern exposure it is only three stores before it is setback (except for the elevator tower) and openings are limited thus reducing privacy impacts.

#### Rear Yard

The rear portion of the property requires a ten foot rear yard setback. The applicant has requested a variance to allow a zero setback at the rear property line. This variance request is reasonable given that the rear adjacent property contains an approximately fifty foot tall blank wall. By allowing the subject structure to abut the adjacent building, it would be an effective design solution that would reduce a negative visual aspect of the adjacent building and fill out the block face of 48<sup>th</sup> Street.

#### Height

The permitted height within the portion of the lot adjacent to the R-50 Zone is limited by a 45 degree height reduction plane from the setback lines. The applicant is requesting a variance to encroach into this plane and create a building that would extend to 57 feet above grade. Staff supports a height variance that would allow the five story height, but with a reduction in the height to no more than four stories at the rear 65 to 85 84 feet of the property to reduce potential impacts onto the northern adjacent properties rear yard open spaces. The front portion of the property that is not located adjacent to the R-50 zone would be permitted a much greater height than that of what is currently proposed, up to as much as 240 feet in height above grade. Given that the construction type of the building is concrete it would be reasonable to say that the applicant could have realized a building of up to 85 feet in height above grade, which is typically the maximum height before moving into the next level of construction for a life safety building. *The granting of the variance to allow 57 feet (with a stepped down fourth floor portion at approximately 48 feet in height) is an effective design solution that would improve the appearance of the building by transferring height from one side of the development site to the other so that the overall project size is more closely in scale with the neighborhood, and it does not create a building that would be extremely larger than any other building in the area.*

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

#### Front Setback

The basic intent of the required front setback in the R-70 zone is to create a landscaped setback to the front of the property before entering the lobby and provide visual relief from the street from a building that could realize an extremely tall tower element, and create a pattern of front yard setbacks through the neighborhood. ~~If the proposal incorporates a ground floor commercial~~

space as recommended by staff as a project modification, the intent of the front yard changes from a lobby entry area to a store front which should be located at the back of the sidewalk. Given that the General Plan designation along Shattuck Avenue is Neighborhood Center Mixed Use, the intent along Shattuck should be for ground floor commercial activities rather than setback landscaped lobby entrances. Given that the other three buildings located at the corner at the intersection of 48<sup>th</sup> Street and Shattuck Avenue contain zero lot line setbacks, the granting of the front setback variance would allow the new building to fit in with the context of the other buildings at the intersection, thus fulfilling the intent of creating a pattern of front yard setbacks in the immediate area.

#### Street Side Setback

The intent of the street side setback is to allow a visual transition from the corner in toward the larger front setback of the adjacent key lot. Given that that situation does not exist since the adjacent property contains a smaller setback, it becomes an effective design solution to allow the setback to be reduced to the amount that equals the setback of the adjacent building and then reduce to zero at the corner to emphasize the corner ~~ground floor commercial space~~.

#### Side Setback

The basic intent of the ten foot required side yard setback is to limit the impacts of a large structure along abutting side yard setbacks. The Commission finds that the granting of the variance for the required ten foot side yard setback is an effective design solution that fulfills the basic intent of the regulation by stepping back the upper levels of the building, which creates the intended separation of the regulation. Furthermore, the majority of the structure at this point is only three stories and abuts the rear yard of the adjacent neighbor rather than the side yard and impacts from this are limited because the structure would not be blocking southern exposure it is only three stores before it is setback (except for the elevator tower) and openings are limited thus reducing privacy impacts.

#### Rear Yard

The basic intent of the rear yard setback of the R-50 Zone is to require rear yards that abut each other to remain open to share a mutual openness amongst the two yards for open space. Given that the adjacent building is actually a fifty foot building with a blank wall; the effective design solution would be to abut another building against the wall to fill out the block face of 48<sup>th</sup> Street and shield the unattractive elevation of the adjacent building and provide for the location of open space in a separate location, in this instance facing out towards the street.

#### Height

The R-70 Zone limits height by creating a height reduction plane from the rear setback line and from the adjacent property lines of lower intensity zones (in this case an R-50 Zone). The intent

of this regulation is to allow for a setback that will reduce the visual impacts of the higher intensity buildings that are located next to lower intensity structures. Given that the western adjacent property is not a lower scale building, and actually contains a tall property line wall, the intent of this setback from the rear yard would not be met in any case. By granting the height variance at the rear portion of the lot, it allows the overall height of the project site to come down, as a much taller height is permitted within the front portion of the lot, and would overall be less of an impact to the northern adjacent neighbor.

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

#### Front Setback

The granting of a front setback variance would not affect the character of the neighborhood as most of the other buildings at corner locations contain a zero lot line front setback.

#### Street Side Setback

The granting of a front setback variance would not affect the character of the neighborhood as most of the other buildings at corner locations contain a zero lot line street side setback.

#### Side Setback

The Commission finds that the granting of the side setback variance would not affect the character of the neighborhood as that portion of the building would not be visible from the street, and the upper levels setbacks reduce the impacts onto the adjacent neighboring property.

#### Rear Yard

The granting of the rear yard variance would not affect the character of the neighborhood or the livability of adjacent properties as the rear adjacent lot contains a fifty foot blank wall at the property line, which is a unique situation that would not typically apply to other R-50 zoned parcels.

#### Height

The granting of the height variance within the rear portion of the lot adjacent to the R-50 zone would not adversely affect the character, livability, or appropriate development of the neighborhood because the granting of the height variance allows the overall building height of the project site to be reduced so that the building as a whole is more in character with the neighborhood, and does not create a building that would be two stories taller than anything else in the area as the allowed building envelope can be transferred from one side of the site to the other. Staff supports a height variance that would allow the five story height, but reduce the height to no more than four stories at the rear 65 to 85 84 feet of the property to reduce potential impacts onto the northern adjacent properties rear yard open spaces.

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

The granting of the variances would not constitute a grant of special privilege, as minor variances are generally granted when proved to create a better design solution to create a more compatible development for the neighborhood. Specifically aligned street side setbacks, ~~street front commercial at the ground floor consistent pattern of front setbacks at the corner~~, a transfer of height from the front of the lot to the rear to keep the overall building height within closer contextual relationship with other buildings nearby, and relocate open space to a more suitable location rather than within the rear yard abutting a large blank wall. The subject property is unique when compared to other properties within the vicinity as there is an existing fifty foot tall development to the rear of the subject property, so the context for this lot is extremely different than that of any other lot in the area that is adjacent to an R-50 Zoned property.

**Policy 3.5 of the Historic Preservation Element of the General Plan**

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

The existing building at 556 48<sup>th</sup> Street contains a Survey rating of Dc3, which means that the property is of minor importance due to exterior modifications that damaged the character defining elements of the building (which could have been a C otherwise), and the property is not located within a Historic District. The subject building contains a mix of architectural styles, with the main portion of the building containing a classic row house style, and a Queen Anne style turret at the corner of the building. The front entry porch also appears to have been modified from its original configuration, which at this point is unclear of what that was. The decorative trim detailing and craftsmanship was the strongest historical elements of the building, which have been seriously compromised from poor maintenance decisions in the past, which have included a "stucco paint" coating that has left the trim work looking as if it were lower quality foam trim. The subject building is a lower quality PDHP and the proposed replacement building will be at least equal to the quality of the existing building. The new proposed building will fill out the corner of 48<sup>th</sup> Street and Shattuck Avenue with a new modern building that will add to the collage of buildings that represent different eras of architectural design as the neighborhood has changed over the years, and no one design style is prevalent. The size of the building at the corner will be compatible with other larger buildings along Shattuck and the rear of the building will step back along 48<sup>th</sup> Street to bring the mass and scale down to reflect the homes across the street and create a successful transition between the larger corridor and the lower scale side street.

***FINDINGS***

**16.08.030 - TENTATIVE MAP FINDINGS** (Pursuant also to California Government Code §66474 (Chapter 4, Subdivision Map Act))

The Advisory Agency shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, if it makes any of the following findings:

**A. That the proposed map is not consistent with applicable general and specific plans as specified in the State Government Code Section 65451.**

The proposal is consistent with the Urban Residential General Plan designation by creating 44 housing units within a development site off of a transit corridor.

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

The proposal is consistent with the Urban Residential General Plan designation by creating 44 housing units within a development site off of a transit corridor.

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

The site is suitable for the proposed 44 units as it is located close to public utilities, transit, and other civic facilities.

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

The proposed density is consistent with the General Plan density envisioned for the area.

**E. That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.**

This site has been previously developed and does not contain any wildlife habitat or waterways.

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

There should be no adverse health effects. This is in a residential development located in an existing neighborhood and it will introduce no new use classifications that are incompatible with the surrounding neighborhood.

**G. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. (This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.)**

There are no easements on this property at present to allow the public access to anything.

**H. That the design of the subdivision does not provide to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision**

The project could to be set up for solar panels on the rooftop.

**SECTION 16.24.040 – LOT DESIGN STANDARDS**

As a merger of three lots into one, the resulting parcel will be larger than those that are existing without any new lots being created, and as a one lot subdivision for condominium purposes, these standards are not applicable.

ATTACHMENT C

CONDITIONS OF APPROVAL

STANDARD CONDITIONS:

1. Approved Use

a. *Ongoing*

- i. The project shall be constructed and operated in accordance with the authorized use as described in the application materials, letter and/or staff report, and the plans dated **February 8, 2007** and submitted on **February 8, 2007**, and as amended by the following conditions. Any additional uses or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval. Any deviation from the approved drawings, Conditions of Approval or use shall required prior written approval from the Director of City Planning or designee.
- ii. This action by the **City Planning Commission** ("this Approval") includes the approvals set forth below. This Approval includes: **Design Review, Minor Variances, Conditional Use, and Tentative Parcel Map**

2. Effective Date, Expiration, Extensions and Extinguishment

a. *Ongoing*

Unless a different termination date is prescribed, this Approval shall expire **April 4, 2009** unless within such period all necessary permits for construction or alteration, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit for this project may invalidate this Approval if the said extension period has also expired.

3. Scope of This Approval; Major and Minor Changes

a. *Ongoing*

The project is approved pursuant to the Planning Code and Subdivision Regulations only and shall comply with all other applicable codes, requirements, regulations, and guide lines, including but not limited to those imposed by the City's Building Services Division, the City's Fire Marshal, and the Public Works Agency. Minor changes to approved plans may be approved administratively by the Director of City Planning or designee.

Major changes to the approved plans shall be reviewed by the Director of City Planning or designee to determine whether such changes require submittal and approval of a revision to the approved project by the approving body or a new, completely independent permit.

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

***a. Ongoing***

- i. The City of Oakland reserves the right at any time during construction to require certification by a licensed professional that the as-built project conforms to all applicable zoning requirements, including but not limited to approved maximum heights and minimum setbacks. Failure to construct the project in accordance with approved plans may result in remedial reconstruction, permit revocation, permit modification or other corrective action.
- ii. Violation of any term, Condition or project description relating to the Approvals is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right, after notice and public hearing, to revoke the Approvals or alter these Conditions or to initiate civil and/or criminal enforcement and/or abatement proceedings if it is found that there is violation of any of the Conditions or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance.

**5. Signed Copy of the Conditions of Approval**

***a. With submittal of a demolition, grading, and building permit***

A copy of the approval letter and Conditions shall be signed by the property owner and submitted with each set of permit plans submitted for this project

**6. Indemnification**

***a. Ongoing***

- i. The project applicant shall defend (with counsel reasonably acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and their respective agents, officers, and employees (hereafter collectively called the City) from any claim, action, or proceeding (including legal costs and attorney's fees) against the City to attack, set aside, void or annul, an approval by the City, relating to a development-related application or subdivision. The City shall promptly notify the project applicant of any claim, action or proceeding and the City shall cooperate fully in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding. The project applicant shall reimburse the City for its reasonable legal costs and attorney's fees.
- ii. Within ten (10) calendar days of the filing of a claim, action or proceeding to attack, set aside, void, or annul, an approval by the City of a development-related application or subdivision, the project applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations and this condition of approval. This condition/ obligations shall survive termination, extinguishment, or invalidation of the approval.

**7. Compliance with Conditions of Approval**

***a. Ongoing***

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



**8. Severability**

***a. Ongoing***

Approval of the project would not have been granted but for the applicability and validity of each and court of competent jurisdiction, these Approvals would not have been granted without requiring other valid conditions consistent with achieving the purpose and intent of such Approval.

**9. Job Site Plans**

***a. Ongoing throughout demolition, grading, and/or construction***

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

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

***a. Prior to issuance of a demolition permit***

The project applicant may be required to pay for on-call special inspector(s)/inspections as needed during the times of extensive or specialized plancheck review, or construction. The project applicant may also be required to cover the full costs of independent technical and other types of peer review, monitoring and inspection, including without limitation, third party plan check fees. The project applicant shall establish a deposit with the Building Services Division, as directed by the Building Official, Director of City Planning or designee.

**11. Fire Services**

***a. Prior to issuance of water supply connection***

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

**12. Underground Utilities**

***a. Prior to issuance of a building permit***

The project applicant shall submit plans for review and approval by the Building Services Division and the Public Works Agency, and other relevant agencies as appropriate, that show all new electric and telephone facilities; fire alarm conduits; street light wiring; and other wiring, conduits, and similar facilities placed underground. The new facilities shall be placed underground along the project applicant's street frontage and from the project applicant's structures to the point of service. The plans shall show all electric, telephone, water service, fire water service, cable, and fire alarm facilities installed in accordance with standard specifications of the serving utilities.

**13. Improvements in the Public Right-of-Way (General)**

***a. Approved prior to the issuance of a P-job or building permit***

- i. The project applicant shall submit Public Improvement Plans for adjacent public rights-of-way (ROW) showing all proposed improvements and compliance with Conditions and City requirements including but not limited to curbs, gutters, sewer laterals, storm drains, street trees, paving details, locations of transformers and other above ground utility structures, the design specifications locations of facilities required by the East Bay Municipal Utility District (EBMUD), street lighting, on-street parking and accessibility improvements

compliant with applicable standards and any other improvements or requirements for the project as provided for in this approval. Encroachment permits shall be obtained as necessary for any applicable improvements, located within public ROW.

- ii. The project applicant shall submit public improvement plans that that comply City specifications. Review and confirmation of the street trees by the City's Parks and Recreation Division is required as part of this condition.
- iii. Planning and Zoning and the Public Works Agency will review and approve designs and specifications for the improvements. Improvements shall be completed prior to the issuance of certificate of occupancy.
- iv. Oakland Fire Department will review and approve fire crew and apparatus access, water supply availability and distribution to current codes and standards.

**14. Payment for Public Improvements**

***a. Prior to issuance of a certificate of occupancy.***

The project applicant shall pay for and install public improvements made necessary by the project.

**15. Compliance Plan**

***a. Prior to issuance of a demolition, grading, or building permit***

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

**16. No Condition – Inadvertently Left Out**

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**AESTHETICS**

**17. Lighting Plan**

***a. Prior to the issuance of an electrical or building permit***

The project applicant will submit a plan for exterior lighting that is visible from the exterior of the building for review and approval by the City Electrical Services Division and Planning and Zoning. The plan shall include the design and location and specifications of all lighting fixtures or standards. The plan shall indicate lighting fixtures that are adequately shielded to a point below the light bulb and reflector and that prevent unnecessary glare onto adjacent properties. All lighting shall be architecturally integrated into the site.

**18. Exterior Materials Details**

***a. Prior to issuance of building permit.***

The applicant shall submit for review and approval of the Planning and Zoning Division, plans that show the details of the exterior of each building including colors. These details

shall include the labeling of all the materials and treatments proposed for the exterior of each building. The applicant shall also provide a material and color board for review and approval of the Planning and Zoning Division. All materials and treatments shall be of high quality that provides the building with significant visual interest. In particular, the exterior porch details shall be submitted for Zoning approval prior to issuance of any building permits. Windows shall be articulated to provide a two inch minimum recess from the exterior building façade in order to create a sufficient shadow line. The final window details shall be submitted for review and approval.

**19. Landscape and Irrigation Plan**

*a. Prior to issuance of building permit.*

The applicant shall submit for review and approval by the Planning and Zoning Division, a detailed landscape and irrigation plan prepared by a licensed landscape architect or other qualified person. Such plan shall show all landscaping on the site maintained by an automatic irrigation system or other comparable system. The landscaping plan shall include a detailed planting schedule showing sizes, quantities, and specific common and botanical names of plant species. Fire and drought-resistant species are encouraged.

**20. Landscaping Maintenance**

*a. Ongoing.*

All landscaping areas and related irrigation shown on the approved plans shall be permanently maintained in neat and safe conditions, and all plants shall be maintained in good growing condition and, whenever necessary, replaced with new plant materials to ensure continued compliance with all applicable landscaping requirements. All paving or other impervious surfaces shall occur only on approved areas.

**AIR QUALITY**

**21. Asbestos Removal in Structures**

*a. Prior to issuance of a demolition permit*

If asbestos is found to be present in building materials to be removed, demolition and disposal is required to be conducted in accordance with procedures specified by Regulation 11, Rule 2 (Asbestos Demolition, Renovation and Manufacturing) of Bay Area Air Quality Management District (BAAQMD) regulations.

**22. Dust Control**

*a. Prior to issuance of a demolition, grading or building permit*

During construction, the project applicant shall require the construction contractor to implement the following measures required as part of Bay Area Air Quality Management District's (BAAQMD) basic and enhanced dust control procedures required for construction sites. These include:

**BASIC (Applies to ALL construction sites)**

- i. Water all active construction areas at least twice daily. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering

frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible.

- ii. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).
- iii. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- iv. Sweep daily (with water sweepers using reclaimed water if possible) all paved access roads, parking areas and staging areas at construction sites.
- v. Sweep streets (with water sweepers using reclaimed water if possible) at the end of each day if visible soil material is carried onto adjacent paved roads.

### **23. Construction Emissions**

#### ***a. Prior to issuance of a demolition, grading or building permit***

To minimize construction equipment emissions during construction, the project applicant shall require the construction contractor to:

- i. Demonstrate compliance with Bay Area Air Quality Management District (BAAQMD) Regulation 2, Rule 1 (General Requirements) for all portable construction equipment subject to that rule. BAAQMD Regulation 2, Rule 1, requires an authority to construct and permit to operate certain types of portable equipment used for construction purposes (e.g., gasoline or diesel-powered engines used in conjunction with power generation, pumps, compressors, and cranes) unless such equipment complies with all applicable requirements of the "CAPCOA" Portable Equipment Registration Rule" or with all applicable requirements of the Statewide Portable Equipment Registration Program. This exemption is provided in BAAQMD Rule 2-1-105.
- ii. Perform low- NOx tune-ups on all diesel-powered construction equipment greater than 50 horsepower (no more than 30 days prior to the start of use of that equipment). Periodic tune-ups (every 90 days) should be performed for such equipment used continuously during the construction period.

## **TREE PERMITS**

### **24. Tree Removal Permit**

#### ***a. Prior to issuance of a demolition, grading, or building permit***

Prior to receiving building permits, the project applicant must secure a tree removal permit, and abide by the conditions of that permit, prior to removal of any trees located on the project site or in the public right-of-way adjacent to the project.

**25. Tree Removal During Breeding Season**

***a. Prior to issuance of a tree removal permit***

To the extent feasible, removal of the trees and other vegetation suitable for nesting of raptors shall not occur during the breeding season of March 15 and August 15. If tree removal must occur during the breeding season, all sites shall be surveyed by a qualified biologist to verify the presence or absence of nesting birds or raptors. If the survey indicates that potential presences of nesting birds or raptors, the results would be coordinated with the California Department of Fish and Game (CDFG) and suitable avoidance measures would be developed and implemented. Construction shall observe the CDFG avoidance guidelines which are a minimum 500-foot buffer zone surrounding active raptor nests and a 250-foot buffer zone surrounding nests of other birds. Buffer zones shall remain until young have fledged.

**26. Tree Protection During Construction**

***a. Prior to issuance of a demolition, grading, or building permit***

Adequate protection shall be provided during the construction period for any trees which are to remain standing. Measures deemed necessary by the Tree Services Division in consideration of the size, species, condition and location of the trees to remain may include any of the following:

- i. Before the start of any clearing, excavation, construction or other work on the site, every protected tree deemed to be potentially endangered by said site work shall be securely fenced off at a distance from the base of the tree to be determined by the City Tree Reviewer. Such fences shall remain in place for duration of all such work. All trees to be removed shall be clearly marked. A scheme shall be established for the removal and disposal of logs, brush, earth and other debris which will avoid injury to any protected tree.
- ii. Where proposed development or other site work is to encroach upon the protected perimeter of any protected tree, special measures shall be incorporated to allow the roots to breathe and obtain water and nutrients. Any excavation, cutting, filing, or compaction of the existing ground surface within the protected perimeter shall be minimized. No change in existing ground level shall occur within a distance to be determined by the City Tree Reviewer from the base of any protected tree at any time. No burning or use of equipment with an open flame shall occur near or within the protected perimeter of any protected tree.
- iii. No storage or dumping of oil, gas, chemicals, or other substances that may be harmful to trees shall occur within the distance to be determined by the Tree Reviewer from the base of any protected trees, or any other location on the site from which such substances might enter the protected perimeter. No heavy construction equipment or construction materials shall be operated or stored within a distance from the base of any protected trees to be determined by the tree reviewer. Wires, ropes, or other devices shall not be attached to any protected tree, except as needed for support of the tree. No sign, other than a tag showing the botanical classification, shall be attached to any protected tree.

- iv. Periodically during construction, the leaves of protected trees shall be thoroughly sprayed with water to prevent buildup of dust and other pollution that would inhibit leaf transpiration.
- v. If any damage to a protected tree should occur during or as a result of work on the site, the project applicant shall immediately notify the Public Works Agency of such damage. If, in the professional opinion of the Tree Reviewer, such tree cannot be preserved in a healthy state, the Tree Reviewer shall require replacement of any tree removed with another tree or trees on the same site deemed adequate by the Tree Reviewer to compensate for the loss of the tree that is removed.
- vi. All debris created as a result of any tree removal work shall be removed by the project applicant from the property within two weeks of debris creation, and such debris shall be properly disposed of by the project applicant in accordance with all applicable laws, ordinances, and regulations.

## **CULTURAL RESOURCES**

### **27. Archaeological Resources**

#### ***a. Ongoing throughout demolition, grading, and/or construction***

Pursuant to CEQA Guidelines 15064.5 (f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore, in the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist or paleontologist to assess the significance of the find. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified archaeologist would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Oakland. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and a report prepared by the qualified archaeologist according to current professional standards.

In considering any suggested measure proposed by the consulting archaeologist in order to mitigate impacts to historical resources or unique archaeological resources, the project applicant shall determine whether avoidance is necessary and feasible in light of factors such as the nature of the find, project design, costs, and other considerations. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while measure for historical resources or unique archaeological resources is carried out.

Should an archaeological artifact or feature be discovered on-site during project construction, all activities within a 50-foot radius of the find would be halted until the findings can be fully

investigated by a qualified archaeologist to evaluate the find and assess the significance of the find according to the CEQA definition of a historical or unique archaeological resource. If the deposit is determined to be significant, the project applicant and the qualified archaeologist shall meet to determine the appropriate avoidance measures or other appropriate measure, subject to approval by the City of Oakland, which shall assure implementation of appropriate measure measures recommended by the archaeologist. Should archaeologically-significant materials be recovered, the qualified archaeologist would recommend appropriate analysis and treatment, and would prepare a report on the findings for submittal to the Northwest Information Center.

**28. Human Remains**

***a. Ongoing throughout demolition, grading, and/or construction***

In the event that human skeletal remains are uncovered at the project site during construction or ground-breaking activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.

**29. Paleontological Resources**

***a. Ongoing throughout demolition, grading, and/or construction***

In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards (SVP 1995,1996)). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find under the criteria set forth in Section 15064.5 of the CEQA Guidelines. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.

**30. Compliance with Historic Preservation Policy 3.7 (Property Relocation Rather than Demolition)**

***a. Prior to issuance of a demolition permit***

The project applicant shall make a good faith effort to relocate the building located at 556 48<sup>th</sup> Street to an acceptable site. Good faith efforts include advertising the availability of

the building by: (a) posting of large visible signs (such as banners, at a minimum of 3'x6' size or larger) at the site; (b) placement of advertisements in Bay Area news media acceptable to the City ;and (c) contacting neighborhood associations and for-profit and not-for-profit housing and preservation organizations. The applicant shall be required to keep a log of all the good faith efforts and submit that along with photos of the subject building showing the large signs (banners) to the Planning Department. The good faith efforts shall also include keeping the signs and advertising in place for a minimum of 90 days. The building shall be made available at no or nominal cost (the amount to be reviewed by the Oakland Cultural Heritage Survey). The project applicant shall make the building available until removal is necessary for construction of a replacement project, but in no case for less than a period of 90 days after such advertisement.

## **GEOLOGY, SOILS AND SEISMICITY**

### **31. Geotechnical Report**

#### ***a. Prior to issuance of a demolition, grading, or building permit***

A site-specific design level geotechnical investigation for each construction site within the project area shall be required as part of this project. Specifically:

- i. Each investigation shall include an analysis of expected ground motions at the site from known active faults. The analyses shall be accordance with applicable City ordinances and polices, and consistent with the most recent version of the California Building Code, which requires structural design that can accommodate ground accelerations expected from known active faults.
- ii. The investigations shall determine final design parameters for the walls, foundations, foundation slabs, and surrounding related improvements (utilities, roadways, parking lots, and sidewalks).
- iii. The investigations shall be reviewed and approved by a registered geotechnical engineer. All recommendations by the project engineer, geotechnical engineer, will be included in the final design, as approved by the City of Oakland.
- iv. Recommendations that are applicable to foundation design, earthwork, and site preparation that were prepared prior to or during the projects design phase, shall be incorporated in the project.
- v. Final seismic considerations for the site shall be submitted to and approved by the City of Oakland Building Services Division prior to commencement of the project.

## **HAZARDS AND HAZARDOUS MATERIALS**

### **32. Phase I and/or Phase II Reports**

#### ***a. Prior to issuance of a demolition, grading, or building permit***

Prior to issuance of demolition, grading, or building permits the project applicant shall submit a Phase I environmental Site assessment report, and a Phase II report if warranted



by the Phase I for the project site. The reports shall make recommendations for remedial action, if appropriate, and should be signed by a Registered Environmental Assessor, Professional Geologist, or Professional Engineer.

**33. Lead-Based Paint/Coatings, Asbestos, or PCB Occurrence Assessment**

***a. Prior to issuance of any demolition, grading or building permit***

The project applicant shall submit a comprehensive assessment report, signed by a qualified environmental professional, documenting the presence or lack thereof of asbestos-containing materials (ACM), lead-based paint, and any other building materials or stored materials classified as hazardous waste by State or federal law.

**34. Environmental Site Assessment Reports Remediation**

***a. Prior to issuance of a demolition, grading, or building permit***

If the environmental site assessment reports recommend remedial action, the project applicant shall:

- i. Consult with the appropriate local, State, and federal environmental regulatory agencies to ensure sufficient minimization of risk to human health and environmental resources, both during and after construction, posed by soil contamination, groundwater contamination, or other surface hazards including, but not limited to, underground storage tanks, fuel distribution lines, waste pits and sumps.
- ii. Obtain and submit written evidence of approval for any remedial action if required by a local, State, or federal environmental regulatory agency.
- iii. Submit a copy of all applicable documentation required by local, State, and federal environmental regulatory agencies, including but not limited to: permit applications, Phase I and II environmental site assessments, human health and ecological risk assessments, remedial action plans, risk management plans, soil management plans, and groundwater management plans.

**35. Lead-based Paint Remediation**

***a. Prior to issuance of any demolition, grading or building permit***

If lead-based paint is present, the project applicant shall submit specifications signed by a certified Lead Supervisor, Project Monitor, or Project Designer for the stabilization and/or removal of the identified lead paint in accordance with all applicable laws and regulations, including but not necessarily limited to: Cal/OSHA's Construction Lead Standard, 8 CCR1532.1 and DHS regulation 17 CCR Sections 35001 through 36100.

**36. Asbestos Remediation**

***a. Prior to issuance of any demolition, grading or building permit***

If asbestos-containing materials (ACM) is present, the project applicant shall submit specifications signed by a certified asbestos consultant for the removal, encapsulation, or enclosure of the identified ACM in accordance with all applicable laws and regulations,

including but not necessarily limited to: California Code of Regulations, Title 8; Business and Professions Code; Division 3; California Health & Safety Code 25915-25919.7; and Bay Area Air Quality Management District, Regulation 11, Rule 2.

**37. Other Materials Classified as Hazardous Waste**

***a. Prior to issuance of any demolition, grading or building permit***

If other building materials or stored materials classified as hazardous waste by State or federal law is present, the project applicant shall submit written confirmation that all State and federal laws and regulations shall be followed when profiling, handling, treating, transporting and/or disposing of such materials.

**38. Health and Safety Plan per Assessment**

***a. Prior to issuance of any demolition, grading or building permit***

If the required lead-based paint/coatings, asbestos, or PCB assessment finds presence of lead-based paint, asbestos, and/or PCBs, the project applicant shall create and implement a health and safety plan to protect workers from risks associated with hazardous materials during demolition, renovation of affected structures, and transport and disposal.

**39. Hazards Best Management Practices**

***a. Prior to commencement of demolition, grading, or construction***

The project applicant and construction contractor shall ensure that construction best management practices are implemented as part of construction to minimize the potential negative effects to groundwater and soils. These shall include the following:

- i. Follow manufacture's recommendations on use, storage, and disposal of chemical products used in construction;
- ii. Avoid overtopping construction equipment fuel gas tanks;
- iii. During routine maintenance of construction equipment, properly contain and remove grease and oils;
- iv. Properly dispose of discarded containers of fuels and other chemicals.
- v. Ensure that construction would not have a significant impact on the environment or pose a substantial health risk to construction workers and the occupants of the proposed development. Soil sampling and chemical analyses of samples shall be performed to determine the extent of potential contamination beneath all UST's, elevator shafts, clarifiers, and subsurface hydraulic lifts when on-site demolition, or construction activities would potentially affect a particular development or building. The applicant is responsible to avoid, eliminate delays with the unexpected discovery of contaminated soils with hazardous materials

**HYDROLOGY**

**EROSION & SEDIMENTATION CONTROL DURING CONSTRUCTION**

**40. Erosion and Sedimentation Control Plan [when grading permit required]**

***a. Prior to any grading activities***

- i. The project applicant shall obtain approval from the Building Services Division of a grading permit if required by the Oakland Grading Regulations pursuant to Section 15.04.780 of the Oakland Municipal Code. The grading permit application shall include an erosion and sedimentation control plan. The erosion and sedimentation control plan shall include all necessary measures to be taken to prevent excessive stormwater runoff or carrying by stormwater runoff of solid materials on to lands of adjacent property owners, public streets, or to creeks as a result of conditions created by grading operations. The plan shall include, but not be limited to, such measures as short-term erosion control planting, waterproof slope covering, check dams, interceptor ditches, benches, storm drains, dissipation structures, diversion dikes, retarding berms and barriers, devices to trap, store and filter out sediment, and stormwater retention basins. Off-site work by the project applicant may be necessary. The project applicant shall provide any obtain off-site permission or easements necessary for off-site work. to present written proof thereof to the Public Works Agency. There shall be a clear notation that the plan is subject to changes as changing conditions occur. Calculations of anticipated stormwater runoff and sediment volumes shall be included, if required by the Director of Development or designee. The plan shall specify that, after construction is complete, the project applicant shall ensure that the storm drain system shall be inspected and that the project applicant shall clear the system of any debris or sediment.

***b. Ongoing throughout grading and construction activities***

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

**POST-CONSTRUCTION STORMWATER MANAGEMENT**

**Requirements in the following table apply to projects that create or replace 10,000 square feet or more of impervious surface.**

**41. Post-Construction Stormwater Pollution Management Plan**

***a. Prior to issuance of building permit (or other construction-related permit)***

The applicant shall comply with the requirements of Provision C.3 of the National Pollutant Discharge Elimination System (NPDES) permit issued to the Alameda Countywide Clean Water Program. The applicant shall submit with the application for a building permit (or other construction-related permit) a completed Stormwater Supplemental Form for the Building Services Division. The project drawings submitted for the building permit (or other construction-related permit) shall contain a stormwater pollution management plan, for review and approval by the City, to limit the discharge of pollutants in stormwater after construction of the project to the maximum extent

practicable. The post-construction stormwater pollution management plan shall include and identify the following:

- All proposed impervious surface on the site;
- Anticipated directional flows of on-site stormwater runoff;
- Site design measures to reduce the amount of impervious surface area and directly connected impervious surfaces;
- Source control measures to limit the potential for stormwater pollution; and
- *Stormwater treatment measures to remove pollutants from stormwater runoff.*

The following additional information shall be submitted with the post-construction stormwater pollution management plan:

- Detailed hydraulic sizing calculations for each stormwater treatment measure proposed; and
- Pollutant removal information demonstrating that any proposed manufactured/mechanical (i.e., non-landscape-based) stormwater treatment measure, when not used in combination with a landscape-based treatment measure, is capable of removing the range of pollutants typically removed by landscape-based treatment measures.

All proposed stormwater treatment measures shall incorporate appropriate planting materials for stormwater treatment (for landscape-based treatment measures) and shall be designed with considerations for vector/mosquito control. Proposed planting materials for all proposed landscape-based stormwater treatment measures shall be included on the landscape and irrigation plan for the project. The applicant is not required to include on-site stormwater treatment measures in the post-construction stormwater pollution management plan if he or she secures approval from the Planning and Zoning Division of a proposal that demonstrates compliance with the requirements of the City's Alternative Compliance Program.

***Prior to final permit inspection***

The applicant shall implement the approved stormwater pollution management plan.

**42. Maintenance Agreement for Stormwater Treatment Measures**

***a. Prior to final zoning inspection***

For projects incorporating stormwater treatment measures, the applicant shall enter into the "Standard City of Oakland Stormwater Treatment Measures Maintenance Agreement," in accordance with Provision C.3.e of the NPDES permit, which provides, in part, for the following:

- The applicant accepting responsibility for the adequate installation/construction, operation, maintenance, inspection, and reporting of any on-site stormwater treatment measures being incorporated into the project until the responsibility is legally transferred to another entity; and
- Legal access to the on-site stormwater treatment measures for representatives of the City, the local vector control district, and staff of the Regional Water Quality Control Board, San Francisco Region, for the purpose of verifying the implementation, operation, and maintenance of the on-site stormwater treatment measures and to take corrective action if necessary. The agreement shall be recorded at the County Recorder's Office at the applicant's expense.

**43. Erosion, and Sedimentation, and Debris Control Measures**

***a. Prior to issuance of demolition, grading, or construction-related permit***

The project applicant shall submit an erosion and sedimentation control plan for review and approval by the City. All work shall incorporate apply all applicable the "Best Management Practices (BMPs) for the construction industry, and as outlined in the Alameda Clean Water Program pamphlets, including BMP's for dust, erosion and sedimentation abatement per Chapter Section 15.04 of the Oakland Municipal Code. The measures shall include, but are not limited to, the following:

**BASIC (Applies to ALL construction sites)**

- i. To ensure that sediment does not flow into the creek and/or storm drains, On sloped properties, the downhill end of the construction area must be protected with silt the project applicant shall install silt fencing (such as sandbags, filter fabric, silt curtains, etc.) and hay bales oriented parallel to the contours of the slope (at a constant elevation) to prevent erosion into the creek.
- ii. In accordance with an approved erosion control plan, the project applicant shall implement mechanical and vegetative measures to reduce erosion and sedimentation, including appropriate seasonal maintenance. One hundred (100) percent degradable erosion control fabric shall be installed on all graded slopes to protect and stabilize the slopes during construction and before permanent vegetation gets established. All graded areas shall be temporarily protected from erosion by seeding with fast growing annual species. All bare slopes must be covered with staked tarps when rain is occurring or is expected.
- iii. Minimize the removal of natural vegetation or ground cover from the site in order to minimize the potential for erosion and sedimentation problems. Maximize the replanting of the area with native vegetation as soon as possible.
- iv. All work in or near creek channels must be performed with hand tools and by a minimum number of people. Immediately upon completion of this work, soil must be repacked and native vegetation planted.
- v. Install filter materials (such as sandbags, filter fabric, etc.) at the storm drain inlets nearest to the creek side of the project site prior to the start of the wet weather season (October 15); site dewatering activities; street washing activities; saw cutting asphalt or concrete; and in order to retain any debris flowing into the City storm drain system. Filter materials shall be maintained and/or replaced as necessary to ensure effectiveness and prevent street flooding.
- vi. Ensure that concrete/granite supply trucks or concrete/plaster finishing operations do not discharge wash water into the creek, street gutters, or storm drains.
- vii. Direct and locate tool and equipment cleaning so that wash water does not discharge into the creek.
- viii. Create a contained and covered area on the site for storage of bags of cement, paints, flammables, oils, fertilizers, pesticides, or any other materials used on the project site

that have the potential for being discharged to the storm drain system by the wind or in the event of a material spill. No hazardous waste material shall be stored on site.

- ix. Gather all construction debris on a regular basis and place them in a dumpster or other container which is emptied or removed on a weekly basis. When appropriate, use tarps on the ground to collect fallen debris or splatters that could contribute to stormwater pollution.
- x. Remove all dirt, gravel, refuse, and green waste from the sidewalk, street pavement, and storm drain system adjoining the project site. During wet weather, avoid driving vehicles off paved areas and other outdoor work.
- xi. Broom sweep the street pavement adjoining the project site on a daily basis. Caked-on mud or dirt shall be scraped from these areas before sweeping. At the end of each workday, the entire site must be cleaned and secured against potential erosion, dumping, or discharge to the creek.
- xii. All erosion and sedimentation control measures implemented during construction activities, as well as construction site and materials management shall be in strict accordance with the control standards listed in the latest edition of the Erosion and Sediment Control Field Manual published by the Regional Water Quality Board (RWQB).

## **NOISE**

### **44. Days/Hours of Construction Operation**

#### ***a. Ongoing throughout demolition, grading, and/or construction***

The project applicant shall require construction contractors to limit standard construction activities as required by the City Building Department.

- i. Construction activities (see below) are limited to between 7:00 a.m. AM and 7:00 p.m. PM Monday through Friday for all other cases, with pPile driving and/or other extreme noise generating activities greater than 90 dBA limited to between 8:00 a.m. and 4:00 p.m. Monday through Friday.
  - ii. Any construction activity proposed to occur outside of the standard hours of 7:00 am to 7:00 pm Monday through Friday for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of resident's preferences for whether the activity is acceptable if the overall duration of construction is shortened and such construction activities shall only be allowed with the prior written authorization of the Building Services Division.
- 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.

#### **45. Noise Control**

##### ***a. Ongoing throughout demolition, grading, and/or construction***

To reduce noise impacts due to construction, the project applicant shall require construction contractors to implement a site-specific noise reduction program, subject to city review and approval, which includes the following measures:

- i. Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible).
- ii. Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used where feasible, and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever feasible.
- iii. Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or other measures to the extent feasible.
- iv. If feasible, the noisiest phases of construction (such as pile driving) shall be limited to less than 10 days at a time.

#### **46. Pile Driving and Other Extreme Noise Generators**

##### ***a. Ongoing throughout demolition, grading, and/or construction***

To further mitigate potential pier drilling, pile driving and/or other extreme noise generating construction impacts greater than 90dBA, a set of site-specific noise attenuation measures shall be completed under the supervision of a qualified acoustical consultant. Prior to commencing construction, a plan for such measures shall be submitted for review and approval by the City to ensure that maximum feasible noise attenuation will be achieved. This plan shall be based on the final design of the project. A

third-party peer review, paid for by the project applicant, shall be required to assist the City in evaluating the feasibility and effectiveness of the noise reduction plan submitted by the project applicant. A special inspection deposit is required to ensure compliance with the noise reduction plan. The amount of the deposit shall be determined by the Building Official, and the deposit shall be submitted by the project applicant concurrent with submittal of the noise reduction plan. The noise reduction plan shall include, but not be limited to, an evaluation of the following measures. These attenuation measures shall include as many of the following control strategies as feasible:

- i. Erect temporary plywood noise barriers around the construction site, particularly along on sites adjacent to residential buildings;
- ii. Implement “quiet” pile driving technology (such as pre-drilling of piles, the use of more than one pile driver to shorten the total pile driving duration), where feasible, in consideration of geotechnical and structural requirements and conditions;
- iii. Utilize noise control blankets on the building structure as the building is erected to reduce noise emission from the site;
- iv. Evaluate the feasibility of noise control at the receivers by temporarily improving the noise reduction capability of adjacent buildings by the use of sound blankets for example; and
- v. Monitor the effectiveness of noise attenuation measures by taking noise measurements.

#### **47. Noise Complaint Procedures**

##### ***a. Ongoing throughout demolition, grading, and/or construction***

Prior to the issuance of each building permit, along with the submission of construction documents, the project applicant shall submit to the City Building Department a list of measures to respond to and track complaints pertaining to construction noise. These measures shall include:

- i. A procedure and phone numbers for notifying the City Building Services Division staff and Oakland Police Department; (during regular construction hours and off-hours);
- ii. A sign posted on-site pertaining with permitted construction days and hours and complaint procedures and who to notify in the event of a problem. The sign shall also include a listing of both the City and construction contractor’s telephone numbers (during regular construction hours and off-hours);
- iii. The designation of an on-site construction complaint and enforcement manager for the project;
- iv. Notification of neighbors and occupants within 300 feet of the project *construction area* at least 30 days in advance of pile-driving activities about the estimated duration of the activity; and



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

#### **48. Interior Noise**

##### ***a. Prior to issuance of a building permit***

If necessary to comply with the interior noise requirements of the City of Oakland's General Plan Noise Element and achieve an acceptable interior noise level, noise reduction in the form of sound-rated assemblies (i.e., windows, exterior doors, and walls) shall be incorporated into project building design. Final recommendations for sound-rated assemblies will depend on the specific building designs and layout of buildings on the site and shall be determined during the design phase.

## **TRAFFIC / TRANSPORTATION**

#### **49. Construction Traffic and Parking**

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

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

- i. A set of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak traffic hours, detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes.
- ii. Notification procedures for adjacent property owners and public safety personnel regarding when major deliveries, detours, and lane closures will occur.
- iii. Location of construction staging areas for materials, equipment, and vehicles (must be located on the project site).
- iv. A process for responding to, and tracking, complaints pertaining to construction activity, including identification of an onsite complaint manager. The manager shall determine the cause of the complaints and shall take prompt action to correct the problem. Planning and Zoning shall be informed who the Manager is prior to the issuance of the first permit issued by Building Services.
- v. Provision for accommodation of pedestrian flow.

- vi. Provision for parking management and spaces for all construction workers to ensure that construction workers do not park in on-street spaces.

## **UTILITIES AND SERVICES SYSTEMS**

### **50. Reduced Water Use**

#### **a. Prior to issuance of a building permit**

As feasible and applicable, the project applicant shall implement the following water-efficient equipment and devices into building design and project plans, consistent with the Landscape Water Conservation section of the City of Oakland Municipal Code (Chapter 7, Article 10): low-, ultra-low, and dual flush flow toilets and showerheads; water efficient irrigation systems that include drip irrigation and efficient sprinkler heads; evapotranspiration (ET) irrigation controllers; drought-resistant and native plants for landscaping; and minimization of turf areas.

### **51. Waste Reduction and Recycling**

The project applicant will submit a Construction & Demolition Waste Reduction and Recycling Plan (WRRP) and an Operational Diversion Plan (ODP) for review and approval by the Public Works Agency.

#### **a. Prior to issuance of demolition, grading, or building permit**

- i. OMC 15.34 outlines requirements for reducing waste and optimizing construction and demolition (C&D) recycling. Affected projects include all new construction, renovations/alterations/modifications with construction values of \$50,000 or more (except R-3), and all demolition (including soft demo). The WRRP must specify the methods by which the development will divert C&D debris waste generated by the proposed project from landfill disposal in accordance with current City requirements. Current standards, FAQs, and forms are available at [www.oaklandpw.com/Page39.aspx](http://www.oaklandpw.com/Page39.aspx) or in the Green Building Resource Center. After approval of the plan, the project applicant will implement the plan.

#### **b. Ongoing**

- ii. The ODP will identify how the project complies with the Recycling Space Allocation Ordinance, OMC 17.118, including capacity calculations, and specify the methods by which the development will meet the current diversion of solid waste generated by operation of the proposed project from landfill disposal in accordance with current City requirements. The proposed program shall be implemented and maintained for the duration of the proposed activity or facility. Changes to the plan may be re-submitted to the Environmental Services Division of Public Works for review and approval.

Any incentive programs shall remain fully operational as long as residents and businesses exist at the project site

**52. Stormwater and Sewer**

***a. Prior to completing the final design for the project's sewer service***

Confirmation of the capacity of the City's surrounding stormwater and sanitary sewer system and state of repair shall be completed by a qualified civil engineer with funding from the project applicant. The project applicant shall be required to pay mitigation additional fees to improve stormwater and sanitary sewer infrastructure if required by the City. Improvements to the existing sanitary sewer collection system shall specifically include, but are not limited to, mechanisms to control or minimize increases in infiltration/inflow associated with the proposed project. Additionally, the project applicant shall be responsible for payment of the required installation or hook-up fees to the affected service providers.

**SPECIFIC PROJECT CONDITIONS**

**53. Meter Shielding**

***a. Prior to issuance of building permits.***

The applicant shall submit for review and approval by the Planning and Zoning Division, plans showing the location of any and all utility meters, transformers, and the like located within a box set within the building, located on a non-street facing elevation, or screened from view from any public right of way.

**54. Tentative Parcel Map**

***a. Prior to issuance of a building permit***

A Parcel Map shall be filed with the City Engineer within two (2) years from the date of approval of the Tentative Parcel Map, or within such additional time as may be granted by the Advisory Agency. Failure to file a Parcel Map within these time limits shall nullify the previous approval or conditional approval of the Tentative Parcel Map.

**55. Project Modifications**

***a. Prior to submittal for a building permit***

The proposed project shall be revised to include the following changes, which shall be re-submitted to staff and presented to the Design Review Committee prior to final approval:

- i. ~~The ground floor elevation along Shattuck Avenue shall include ground floor commercial space.~~ The ground floor portion of the building facing Shattuck Avenue shall contain a high quality durable base for the entire portion of the ground floor so that the design will be suitable for a commercial storefront if in the future these units are converted to commercial space.
- ii. The rear 84 ~~65 to 85~~ feet of the building shall be reduced in height from five stories to four stories (maximum height of 48 feet).
- iii. ~~The interior side yard setback adjacent to the rear yard of the northern adjacent R-50 Zoned portion of the lot shall meet the required ten foot side yard setback requirement.~~ The height of the building at the corner shall be increased (by height only and not by an additional floor) to further emphasize the buildings location at the corner.

**APPROVED BY:** City Planning Commission: April 4, 2007 (date) +5, -0 (vote)

City Council: \_\_\_\_\_ (date) \_\_\_\_\_ (vote)

***CONDITIONS OF APPROVAL***

NEW 44 UNIT CONDOMINIUM PROJECT  
**4801 SHATTUCK AVENUE**  
 4801 SHATTUCK AVENUE  
 OAKLAND, CA 94609

CONDITIONAL USE PERMIT RESUBMITTAL  
 FEBRUARY 8, 2007

RECEIVED  
 FEBRUARY 20 2007  
 CIVIL ENGINEERING DIVISION  
 1500 PUNJABI AVENUE  
 OAKLAND, CA 94612

REVISION	DATE

SEAN DELIN ARCHITECTS  
 1000 WASHINGTON STREET  
 OAKLAND, CA 94612  
 TEL: 415.551.7222  
 FAX: 415.551.7298

(APN 013-116200901)  
 (APN 013-116200902)  
 (APN 013-116200900)

NEW 44 UNIT CONDOMINIUM PROJECT  
**4801 SHATTUCK AVE**  
 4801 SHATTUCK AVE  
 OAKLAND, CA 94609-1464

COVER SHEET  
 SET 11 OF 11 SETS  
 DRAWN BY: VOT  
 CHECKED BY: VOT  
 DATE: 2/17/07  
**A0.0**



**GRAPHIC SYMBOLS**

SECTION NO. REFERENCE  
 SHEET NO.  
 ELEVATION REFERENCE  
 COMBINED INTERIOR ELEVATION NUMBER  
 DETAIL REFERENCE  
 FINISHED ELEVATION REFERENCE  
 FINISHED ELEVATION  
 GENERAL SYMBOL  
 NEIGHBORHOOD

KEY NOTE  
 SEE LEGEND ON DRAWING FOR EXPLANATION OF EACH NOTE  
 DATA REFERENCE ELEVATION SYMBOL OR SYMBOL DOOR MARK OR WINDOW NUMBER  
 WINDOW SYMBOL WINDOW MARK OR EQUIPMENT NUMBER  
 FINISH NOTE REFERENCE  
 FINISHING SYMBOL REFERENCE  
 APPEARANCE SYMBOL REFERENCE  
 DIMENSIONS  
 CHANGE OF FINISH SYMBOL REFERENCE  
 STEP DOWN OR UP INDICATED

**PROJECT TEAM**

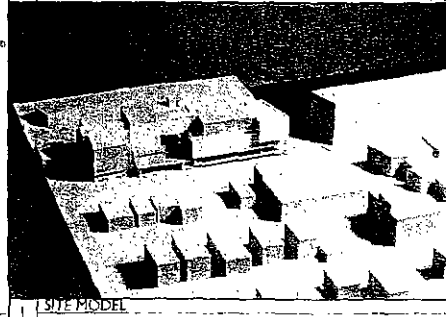
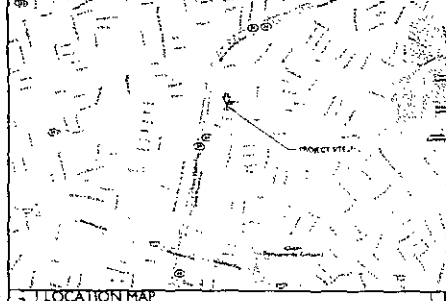
<p><b>OWNERS:</b>          CBP INVESTMENTS LLC          P.O. BOX 3709          CA 94609          TEL: 415 556-7755          FAX: 415 551-7798</p>	<p><b>ARCHITECT:</b>          SEAN DELIN ARCHITECTS          1000 WASHINGTON STREET          BERKELEY, CA 94709          TEL: 415 551-7222          FAX: 415 551-7298          CHARLIE HARRIS          TERRY HOUSLER          LE PARRI</p>
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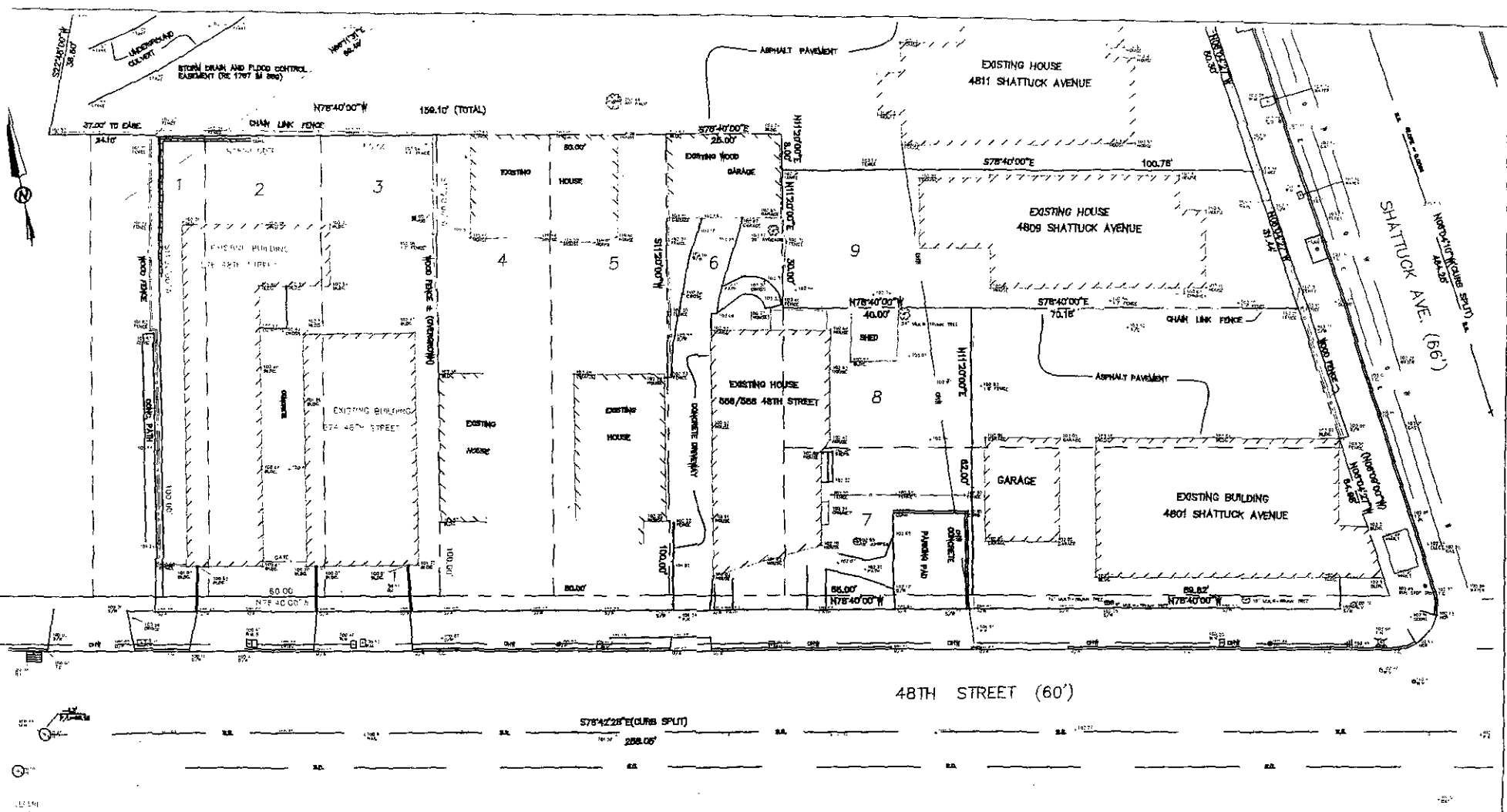
**ARCHITECTURAL DRAWINGS**

A0.0	COVER SHEET - PROJECT INFORMATION
A0.1	TOPOGRAPHIC SURVEY
A0.2	USABLE OPEN SPACE CALCULATION
A0.3	LANDSCAPE PLAN
A1.0	SITE PLAN - MODEL PLANETS
A1.1	CONCEPT NOTES
A1.11	BUILDING PLAN - FIRST FLOOR FLOOR PLAN
A1.12	2ND, 3RD, 4TH AND 5TH FLOOR PLAN
A1.13	4TH FLOOR INTERIOR ELEVATION - FRONT ELEVATION
A1.14	SHATTUCK AVENUE FACADE - INTERIOR ELEVATION
A1.15	SECTION
A1.2	SECTION

**PROJECT INFORMATION**

PROJECT IDENTIFICATION:  
 A.P.N.: 013-116200901  
 013-116200902  
 013-116200900  
 GENERAL PLAN: NEIGHBORHOOD CENTER  
 URBAN RESIDENTIAL  
 CURRENT ZONING DISTRICT: R16 R48  
 BEST USE ZONE DETERMINATION: N/A REQUESTED  
 EXISTING DETERMINATION: N/A  
 BUILDING INFORMATION:  
 TYPE OF CONSTRUCTION: N/A  
 RESIDENTIAL  
 NUMBER OF STORES: 3  
 EXISTING PROPOSED  
 4TH STREET - PROPOSED ONLY  
 5TH STREET - 5 STORY SECTION (SPLIT BACK BY)  
 SHATTUCK AVENUE - 4 & 5 STORES  
 MINIMUM ELEVATION - PROPOSED ONLY:  
 5TH STORE - 3 STORY SECTION (SPLIT BACK BY)  
 EXISTING HEIGHT: 32.00'  
 PROPOSED MAXIMUM HEIGHT:  
 4TH STORY SECTION: 44.00' ROOFLINE  
 5TH STORY SECTION: 49.00' ROOFLINE  
 5TH STORY SECTION: 49.00' ROOFLINE  
 17th STORY SECTION: 49.00' ROOFLINE  
**INSTALLMENTS**  
 1ST STORY SECTION: 13.4 ACRES  
 2ND STORY SECTION: 13.4 ACRES  
 3RD STORY SECTION: 13.4 ACRES  
 4TH STORY SECTION: 13.4 ACRES  
 5TH STORY SECTION: 13.4 ACRES  
**MINIMUM ELEVATION**  
 5TH STORY SECTION: 49.00' ROOFLINE  
 17th STORY SECTION: 49.00' ROOFLINE  
**FLOOR AREA**  
 EXISTING:  
 1ST FLOOR: 4321 SF  
 2ND FLOOR: 1728 SF  
 3RD FLOOR: 1728 SF  
 4TH FLOOR: 1728 SF  
 5TH FLOOR: 1728 SF  
 TOTAL: 13133 SF  
 PROPOSED RESIDENTIAL:  
 1ST FLOOR: 4321 SF  
 2ND FLOOR: 1728 SF  
 3RD FLOOR: 1728 SF  
 4TH FLOOR: 1728 SF  
 5TH FLOOR: 1728 SF  
 TOTAL: 13133 SF  
 44 UNITS @ 462 SF/UNIT





- XX FOUND NAIL AND TOL. FOR 16880
- SET 2" NUB WITH TACK
- /○ BASE OF WALL
- /○ CONCRETE
- /○ DRAIN ASSET
- /○ DRIVEWAY
- /○ EDGE OF PAVEMENT
- /○ ELECTRIC METER
- /○ FIRE HYDRANT
- /○ FLOW LINE
- /○ GAS METER
- /○ GAS VALVE
- /○ HANDED RAMP
- /○ JUMP POLE
- /○ MAN HOLE
- /○ OVERHEAD WIRE
- /○ SANITARY SEWER
- /○ SEWER
- /○ STORM DRAIN
- /○ TOP OF CURB
- /○ TOP OF WALL
- /○ WATER METER
- /○ WATER METER
- /○ WATER VALVE

**GENERAL NOTES**

NO HORIZONTAL OR VERTICAL CURVES EXIST WITHIN 200 FEET OF THE EXISTING DRIVEWAYS.

PROTECTED TREES EXIST ON THESE SITES.

UTILITY LOCATIONS ARE BASED UPON SURFACE STRUCTURES AND PAINTED MARKINGS. VERIFY UNDERGROUND UTILITIES.

**SURVEYOR'S CERTIFICATE:**  
 THIS MAP CORRECTLY REPRESENTS A FIELD SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYORS ACT AT THE REQUEST OF  
MATT OLIVER ON OCTOBER 1, 2014.

I HEREBY STATE THAT ALL EXISTING GRADES AND CONTOURS DELINEATED UPON THIS PLAN ARE BASED UPON CITY OF OAKLAND DATA.

I FURTHER STATE THAT THE PARCELS DELINEATED UPON THIS SURVEY ARE THE SAME AS THAT SHOWN ON THE CURRENT EQUALIZED COUNTY ASSESSMENT ROLL AS CONTIGUOUS UNITS.

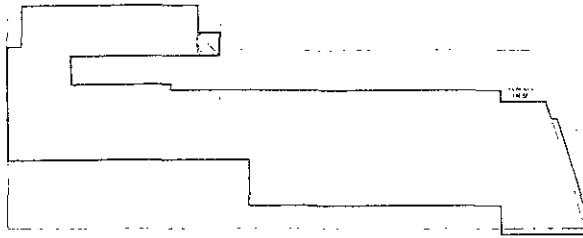
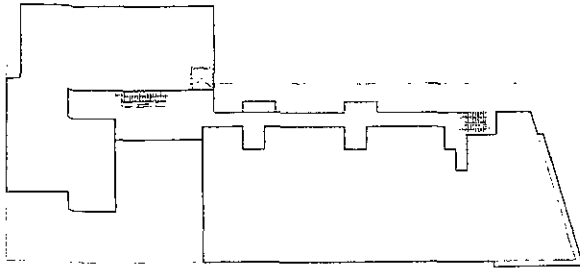
L.L.S. NO. \_\_\_\_\_  
 DATE: \_\_\_\_\_

**TOPOGRAPHIC SURVEY**  
 LOT 2, LOT 3 AND A PORTION OF LOT 1  
 RESUB. OF BLOCK 2121 OF THE ALDEN TRACT (21 M 17)  
 LOCATED AT 574 48TH STREET  
 CITY OF OAKLAND, COUNTY OF ALAMEDA, CALIFORNIA

AUGUST 3, 2006 SCALE: 1" = 10'

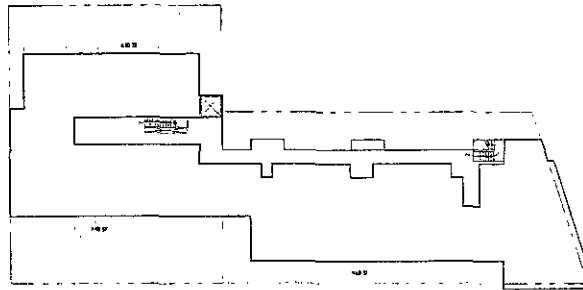
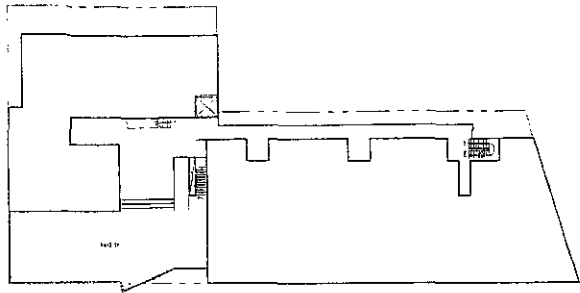
**MORAN ENGINEERING, INC.**  
 CIVIL ENGINEERS & LAND SURVEYORS  
 1830 SHATTUCK AVENUE, SUITE A  
 BERKELEY, CALIFORNIA 94704  
 (510) 848-1830

F.B. No. 978/1004 48TH TOPODWG JOB NO. 03-6856



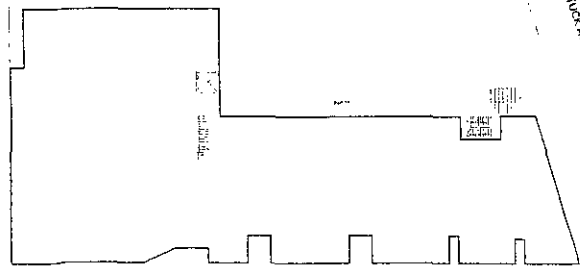
THIRD FLOOR PLAN  
SCALE 1/20" = 1'-0"

3 FIFTH FLOOR PLAN  
SCALE 1/20" = 1'-0"



SECOND FLOOR - COURTYARD LEVEL PLAN  
SCALE 1/20" = 1'-0"

2 FOURTH FLOOR PLAN  
SCALE 1/20" = 1'-0"



4 FIRST FLOOR - GROUND LEVEL PLAN  
SCALE 1/20" = 1'-0"

1 OPEN SPACE CALCULATIONS

MIN. GROUP USABLE OPEN SPACE EQUAL 150 SQ. FT. PER UNIT  
 PRIVATE USABLE OPEN SPACE MAY BE SUBSTITUTED FOR SUCH GROUP SPACE IN THE RATIO PRESENTED IN SECTION 17.126.020 EXCEPT ACTUAL GROUP SPACE SHALL BE PROVIDED IN THE MIN. AMOUNT OF 30 SQ. FT. PER REGULAR DWELLING UNIT

**SECTION 17.126.020. SUBSTITUTION OF PRIVATE SPACE FOR GROUP OPEN SPACE**  
 EACH SQUARE FOOT OF PRIVATE USABLE OPEN SPACE CONFORMING TO THE PROVISIONS OF SECTION 17.126.040 SHALL BE CONSIDERED EQUIVALENT TO TWO SQUARE FEET OF REQUIRED GROUP USABLE OPEN SPACE AND MAY BE SO SUBSTITUTED SUBJECT TO ANY MIN. REQUIREMENTS FOR ACTUAL GROUP SPACE PRESCRIBED IN THE APPLICABLE INDIVIDUAL ZONE REGULATION

USABLE OPEN SPACE ANALYSIS	MINIMUM REQUIRED	PROVIDED
GROUP OPEN SPACE	14 UNITS X 30 = 420	1813
PRIVATE OPEN SPACE		3436 X 2 = 6872
<b>TOTAL</b>	<b>44 UNITS X 150 = 6600</b>	<b>8685</b>

**LEGEND:**  
 GROUP: AN AREA OF CONTIGUOUS SPACE SHALL BE OF SUCH SIZE AND SHAPE THAT A RECTANGLE INSCRIBED WITHIN IT SHALL HAVE NO DIMENSION LESS THAN FIFTY FEET  
 PRIVATE: AN AREA ABOVE GROUND LEVEL SPACE SHALL BE OF SUCH SIZE AND SHAPE THAT A RECTANGLE INSCRIBED WITHIN IT SHALL HAVE NO DIMENSION LESS THAN FIVE FEET

REVISION DATE

NO. DESCRIPTION DATE

1.00 PRELIMINARY 11/15/18

2.00 PERMIT APPLICATION 01/10/19

3.00 PERMIT APPLICATION 01/10/19

4.00 PERMIT APPLICATION 01/10/19

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97.00 PERMIT APPLICATION 01/10/19

98.00 PERMIT APPLICATION 01/10/19

99.00 PERMIT APPLICATION 01/10/19

100.00 PERMIT APPLICATION 01/10/19

NEW 42 UNIT CONDOMINIUM PROJECT  
**4801 SHATTUCK AVE**  
 4801 SHATTUCK AVE  
 OAKLAND, CA 94609-1464

APN: 013-1162009011  
 APN: 013-1162009021  
 APN: 013-1162010001

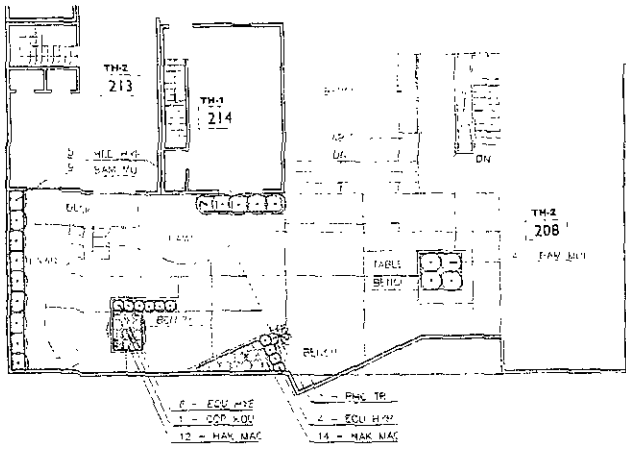
USABLE OPEN SPACE CALCULATION

SCALE: AS SHOWN

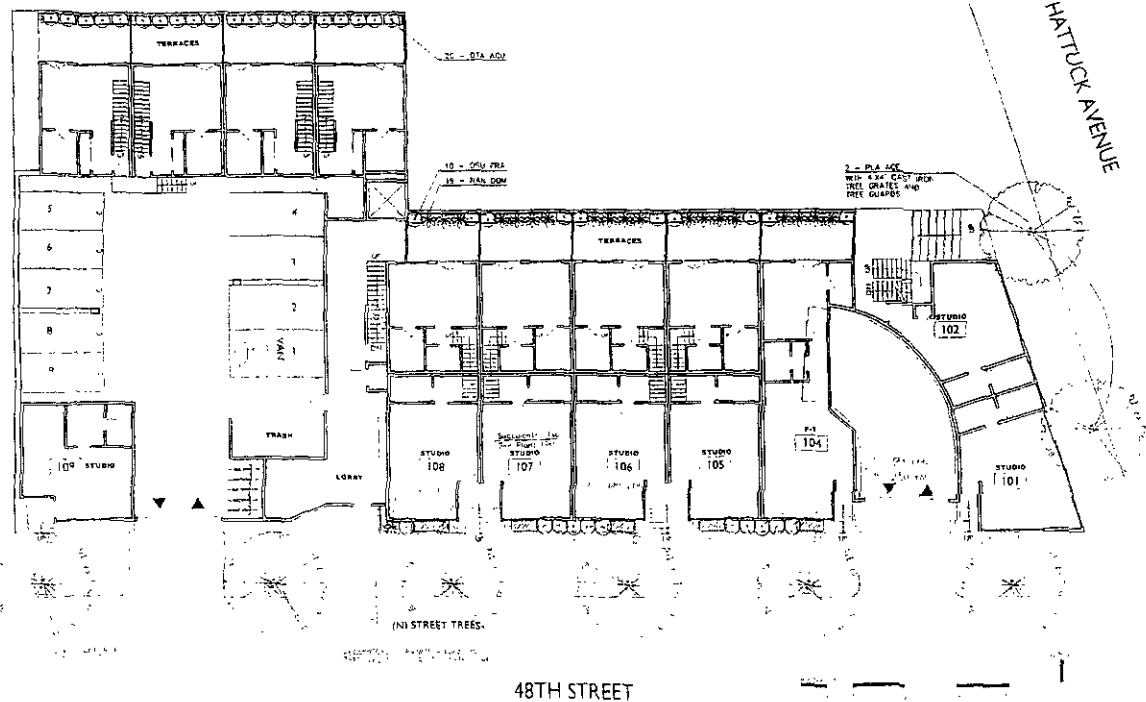
PREPARED BY: [Signature]

DATE: 01/10/19

**A0.2**



LANDSCAPING PLAN - COURTYARD LEVEL  
SCALE 1/8" = 1'-0"



LANDSCAPING PLAN - STREET LEVEL  
SCALE 1/8" = 1'-0"

PLANT PALETTE

PLANT NAME	COMMON NAME	HGT.	WID.	PROPAGATION
1 - ECU. NYE	ECUENYDUS NYMPHEA	20'	15'	SAFETY
1 - COP. XOV	CORYLIA AVERRAN	20'	15'	SAFETY
12 - HAK. MAC	HAKONIA MACULATA	20'	15'	SAFETY
14 - HAK. MAC	HAKONIA MACULATA	20'	15'	SAFETY
2 - DIA. SOC	DIADEMA SORORUM	20'	15'	SAFETY
3 - DIA. SOC	DIADEMA SORORUM	20'	15'	SAFETY
4 - DIA. SOC	DIADEMA SORORUM	20'	15'	SAFETY
5 - DIA. SOC	DIADEMA SORORUM	20'	15'	SAFETY
6 - DIA. SOC	DIADEMA SORORUM	20'	15'	SAFETY
7 - DIA. SOC	DIADEMA SORORUM	20'	15'	SAFETY
8 - DIA. SOC	DIADEMA SORORUM	20'	15'	SAFETY
9 - DIA. SOC	DIADEMA SORORUM	20'	15'	SAFETY
10 - DIA. SOC	DIADEMA SORORUM	20'	15'	SAFETY
11 - DIA. SOC	DIADEMA SORORUM	20'	15'	SAFETY
13 - DIA. SOC	DIADEMA SORORUM	20'	15'	SAFETY
14 - DIA. SOC	DIADEMA SORORUM	20'	15'	SAFETY

LANDSCAPING NOTES:  
 1. ALL PLANTS ARE TO BE SUPPLIED AND PLANTED BY THE CONTRACTOR.  
 2. ALL PLANTS ARE TO BE PLANTED IN THE SPRING MONTHS.  
 3. ALL PLANTS ARE TO BE PLANTED AT THE SPECIFIED LOCATIONS.  
 4. ALL PLANTS ARE TO BE PLANTED AT THE SPECIFIED SIZES.  
 5. ALL PLANTS ARE TO BE PLANTED AT THE SPECIFIED SPACINGS.  
 6. ALL PLANTS ARE TO BE PLANTED AT THE SPECIFIED ORIENTATIONS.  
 7. ALL PLANTS ARE TO BE PLANTED AT THE SPECIFIED TOLERANCES.  
 8. ALL PLANTS ARE TO BE PLANTED AT THE SPECIFIED ADJUSTMENTS.  
 9. ALL PLANTS ARE TO BE PLANTED AT THE SPECIFIED PROTECTIONS.  
 10. ALL PLANTS ARE TO BE PLANTED AT THE SPECIFIED MAINTENANCE.

PLANT PALETTE - CONTACT INFORMATION  
 NTS

REVISIONS

NO.	DATE	DESCRIPTION
1		
2		
3		

LANDSCAPE ARCHITECT  
 4801 SHATTUCK AVE.  
 OAKLAND, CA 94612  
 (APN. 013-116200901)  
 (APN. 013-116200902)  
 (APN. 013-116201000)

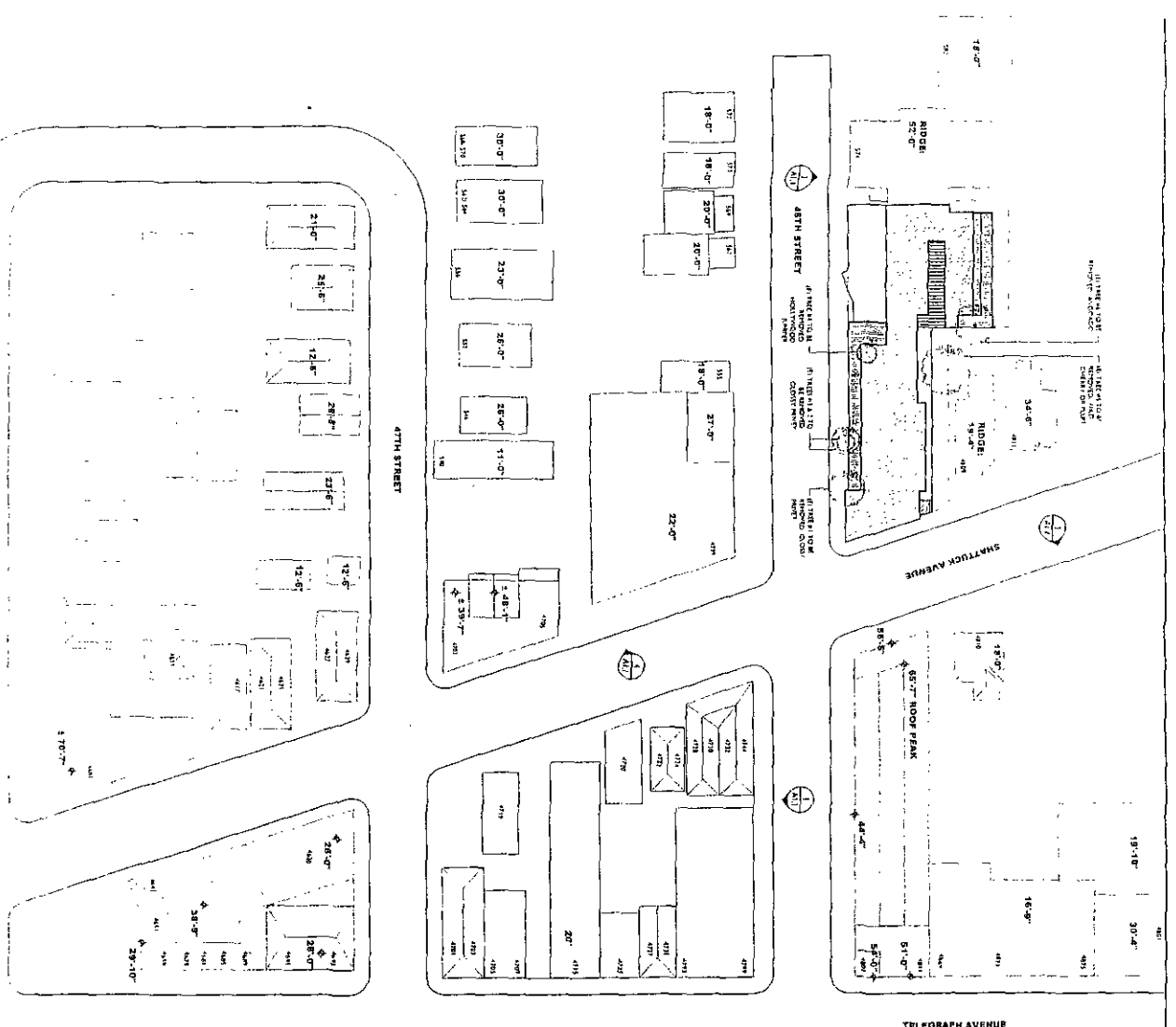
NEW 4 UNIT CONDO/OWNERS PROJECT  
 4801 SHATTUCK AVE  
 4801 SHATTUCK AVE  
 OAKLAND, CA 94612-1464

LANDSCAPING PLAN

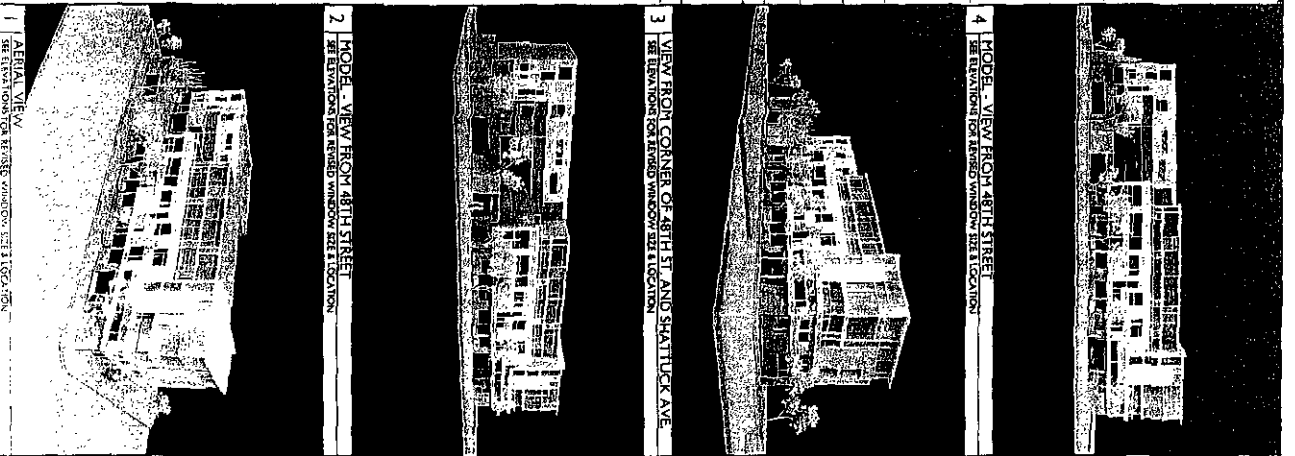
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 CHECKED BY: JET  
 DATE: 10/20/12

A0.3

5 SITE PLAN

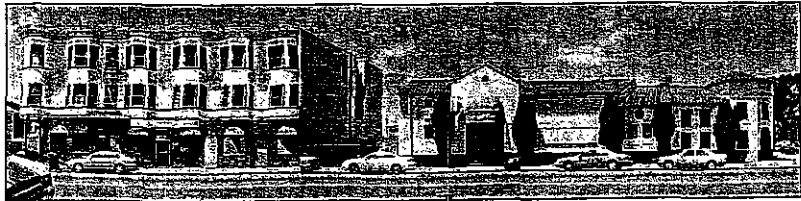


NOTE:  
 1. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.  
 2. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.  
 3. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.



<p><b>REVISIONS</b></p> <table border="1"> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </table>	NO.	DATE	DESCRIPTION													<p>NEW 44 UNIT CONDOMINIUM PROJECT</p> <p><b>4801 SHATTUCK AVE</b></p> <p>4801 SHATTUCK AVE          OAKLAND, CA 94709-1464</p>	<p>(A.P.N. 013-116200901)          (A.P.N. 013-116200902)          (A.P.N. 013-116201000)</p>	<p>kann design associates</p> <p>1208 40th Street, Berkeley, CA 94710          Phone: 510.841.4355 Fax: 510.841.4321          kda@kannassociates.com</p>
	NO.	DATE	DESCRIPTION															
<p><b>PROJECT INFORMATION</b></p> <p>PROJECT NAME: 4801 SHATTUCK AVE          PROJECT NUMBER: 4801          SHEET NUMBER: A1.0          SHEET TOTAL: 11</p>	<p><b>CLIENT INFORMATION</b></p> <p>CLIENT: A.M.B.C.          ARCHITECT: KANN DESIGN ASSOCIATES          DATE: 11/17/10</p>	<p><b>SCALE</b></p> <p>AS SHOWN</p>	<p><b>DATE</b></p> <p>11/17/10</p>															



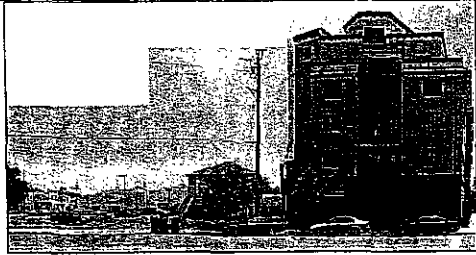


4801 SHATTUCK AVE PROJECT SITE

REVISION	DATE

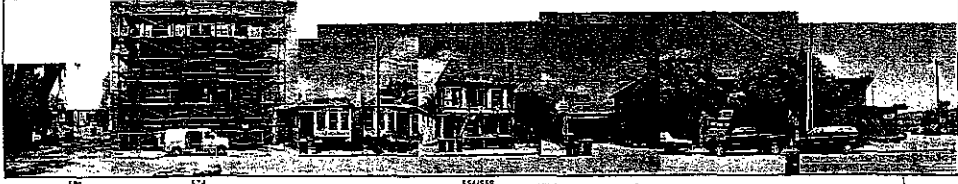
1 SHATTUCK AVENUE - WEST SIDE

DATE TAKEN JULY 11, 2006



3 SHATTUCK AVENUE - EAST SIDE

DATE TAKEN JULY 11, 2006



2 48TH STREET - NORTH SIDE

DATE TAKEN JUNE 11, 2006

LENN GREEN ASSOCIATES  
 1415 RIVER STREET, SUITE 200  
 OAKLAND, CA 94612  
 TEL: (415) 778-8888  
 FAX: (415) 778-8889  
 WWW.LENNGREEN.COM

APN: 013-1162009011  
 APN: 013-1162009021  
 APN: 013-1162010001

NEW 44 UNIT CONDOROUGH PROJECT  
**4801 SHATTUCK AVE**  
 4801 SHATTUCK AVE  
 OAKLAND, CA 94609-1464

1/8" SITE & CONTEXT PHOTOGRAPHS

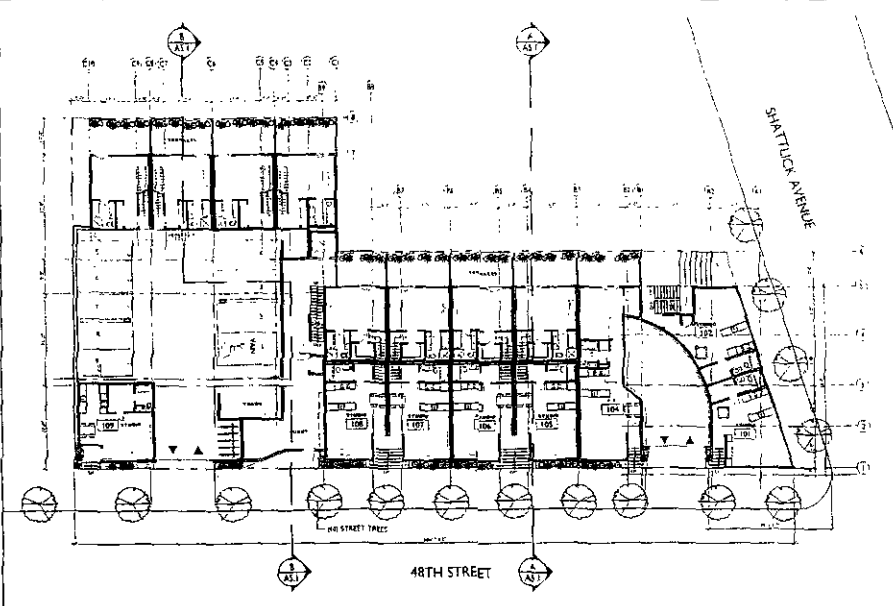
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 JOB NO.: 11620  
 TITLE:

AI.1

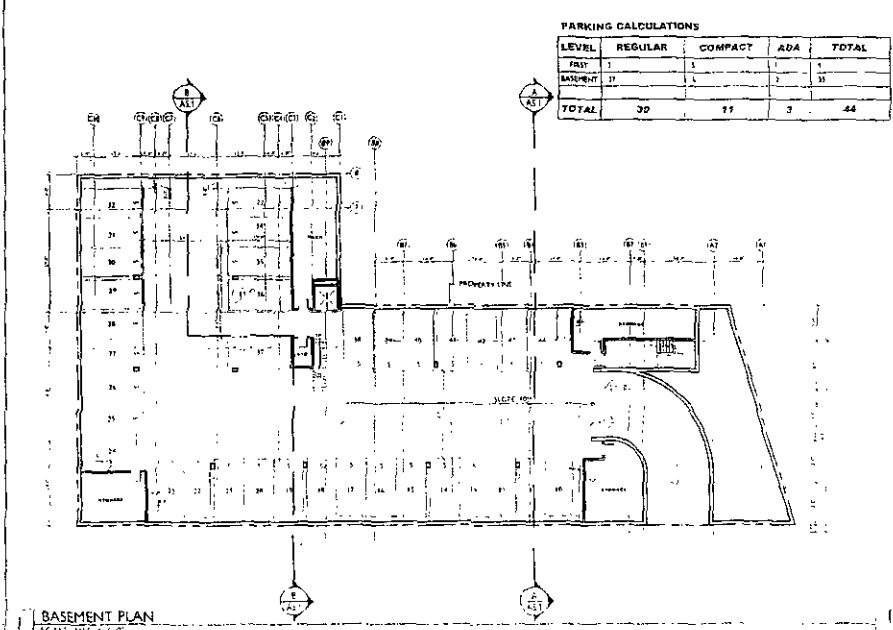


1 48TH STREET - SOUTH SIDE

DATE TAKEN JULY 11, 2006



2 FIRST FLOOR PLAN  
SCALE: 1/8" = 1'-0"



1 BASEMENT PLAN  
SCALE: 1/8" = 1'-0"

PARKING CALCULATIONS

LEVEL	REGULAR	COMPACT	ADA	TOTAL
FIRST	1	1	1	3
BASEMENT	27	1	2	30
TOTAL	28	2	3	33

REVISION	DATE

KERN SYSTEMS ASSOCIATES  
 1000 PIEDMONT AVENUE, SUITE 100  
 OAKLAND, CALIFORNIA 94612  
 PHONE: (415) 764-1100  
 FAX: (415) 764-1101  
 WWW: WWW.KERNSYSTEMS.COM

(A.P.N. 013-116200901)  
 (A.P.N. 013-116200902)  
 (A.P.N. 013-116201000)

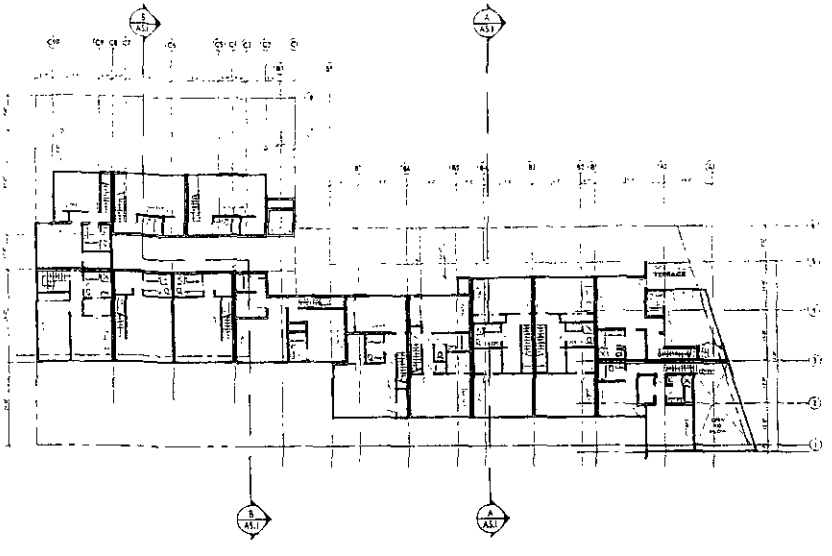
NEW 4 UNIT CONDOMINIUM PROJECT  
**4801 SHATTUCK AVE**  
 4801 SHATTUCK AVE  
 OAKLAND, CA 94612-1464

BASEMENT AND  
 FIRST FLOOR PLAN  
 SCALE: AS SHOWN  
 DRAWING: 17-3  
 JOB NO: A2-01  
 DATE:

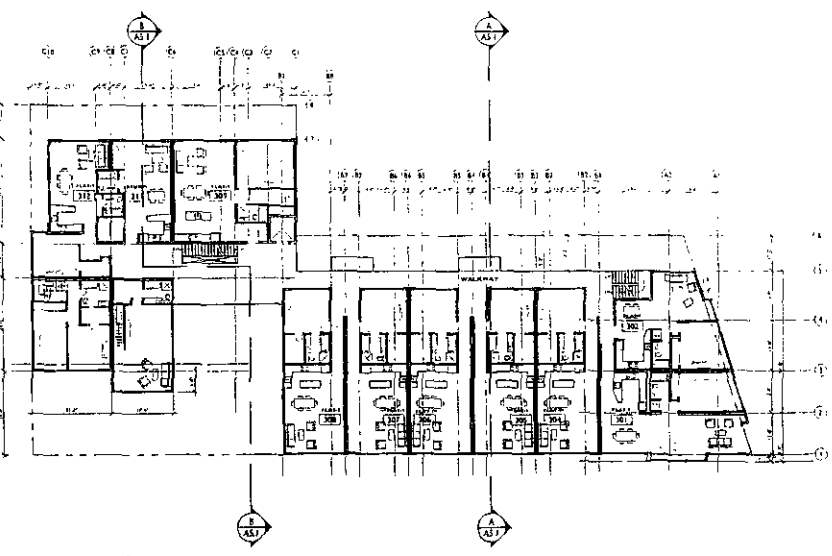
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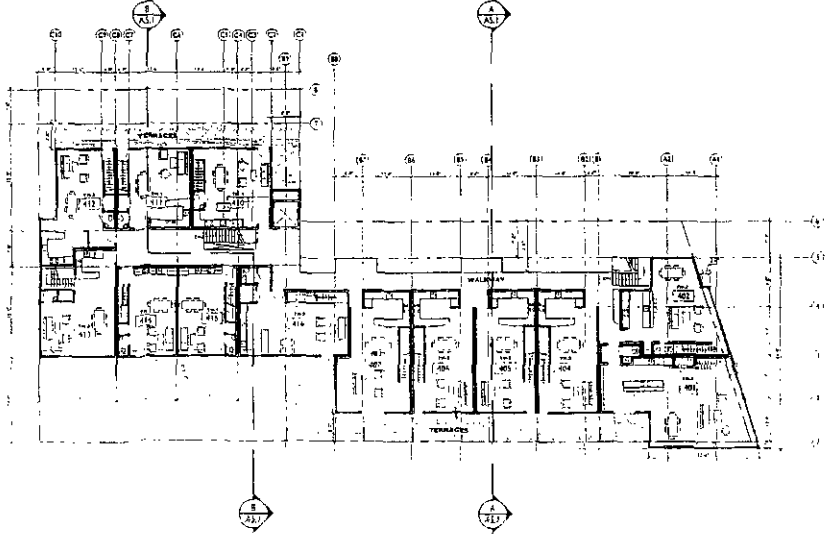
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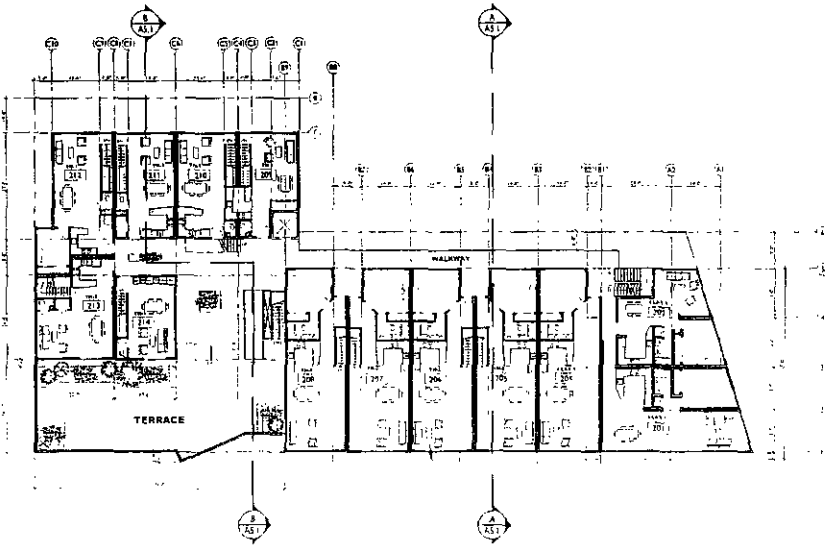
4 FIFTH FLOOR PLAN  
SCALE 1/16" = 1'-0"



2 THIRD FLOOR PLAN  
SCALE 1/16" = 1'-0"



3 FOURTH FLOOR PLAN  
SCALE 1/16" = 1'-0"



1 SECOND FLOOR PLAN  
SCALE 1/16" = 1'-0"

AREA ABOVE	D-SITE
CEILING	100
FLOOR	100
WALL	100
DOOR	100
WINDOW	100
STAIR	100
ELEVATOR	100
MECHANICAL	100
PLUMBING	100
ELECTRICAL	100
TELEPHONE	100
TELEVISION	100
REFRIGERATION	100
AIR CONDITIONING	100
HEATING	100
CANALS	100
CHIMNEYS	100
ROOF	100
FOUNDATION	100
STRUCTURE	100
LANDSCAPE	100
PAVING	100
WATER	100
SEWER	100
STORM	100
IRRIGATION	100
LANDSCAPE	100
PAVING	100
WATER	100
SEWER	100
STORM	100
IRRIGATION	100

KENNETH S. GARDNER ARCHITECTS  
 1500 BAY STREET, SUITE 200  
 OAKLAND, CALIFORNIA 94612  
 TEL: (415) 763-1111  
 FAX: (415) 763-1112  
 WWW: WWW.KSGARCHITECTS.COM

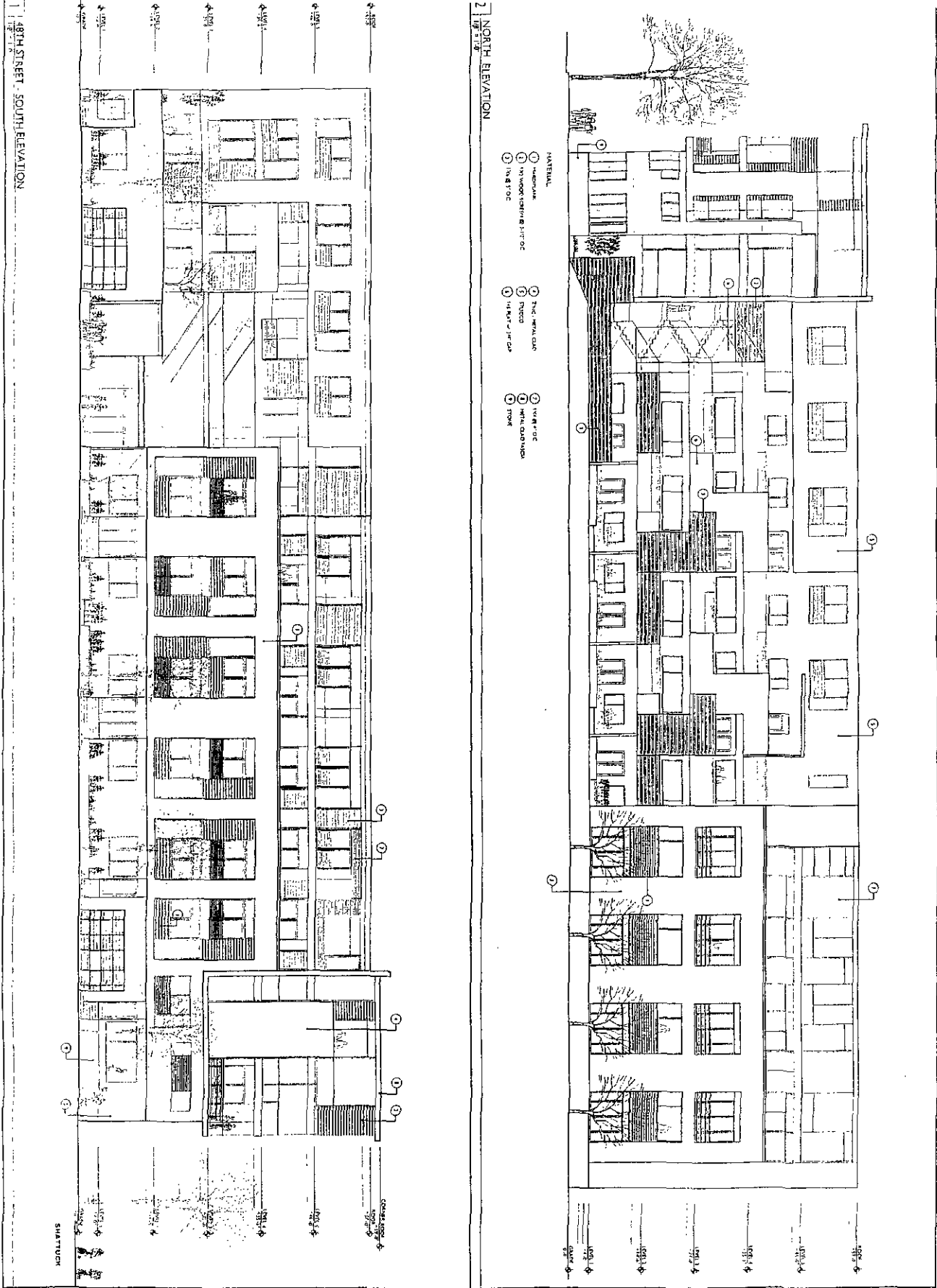
(A.P.N. 013-116200901)  
 (A.P.N. 013-116200902)  
 (A.P.N. 013-116201000)

NEW 11 UNIT CONDOMINIUM PROJECT  
**4801 SHATTUCK AVE**  
 4801 SHATTUCK AVE  
 OAKLAND, CA 94609-1464

SECOND THROUGH FIFTH FLOOR PLANS

SCALE: AS SHOWN  
 DRAWN BY: J.P.D.  
 CHECKED BY: A.K.P.  
 1/03

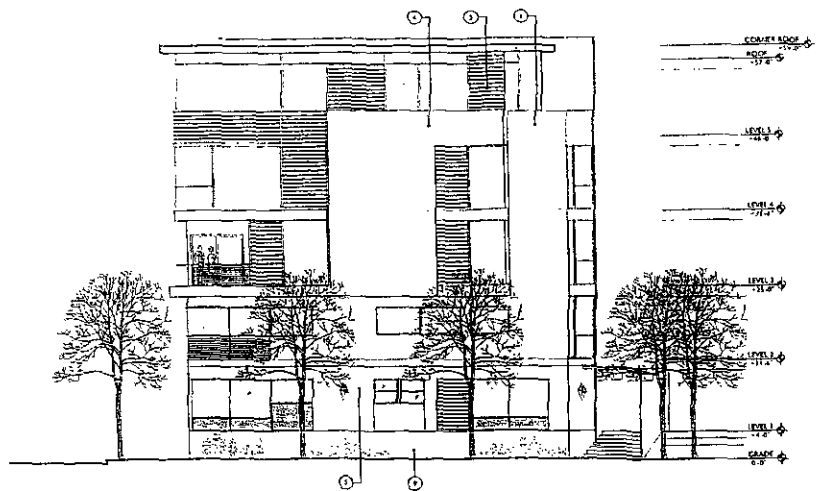
**A2.2**



<p><b>A4.1</b></p>	<p>8874'S TELEGRAPH ELEVATIONS</p>	<p>NEW 44 UNIT CONDOMINIUM PROJECT  <b>4801 SHATTUCK AVE</b>        4801 SHATTUCK AVE        OAKLAND, CA 94709-1464</p>	<p>(A.P.N. 013-116200901)        (A.P.N. 013-116200902)        (A.P.N. 013-116201000)</p>
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**Kahn Design Associates**

1830 SOUTH BAYVIEW, SAN FRANCISCO, CA 94134  
 PHONE: 510.461.2165 FAX: 510.461.2229  
 info@kahn-design.com www.kahn-design.com



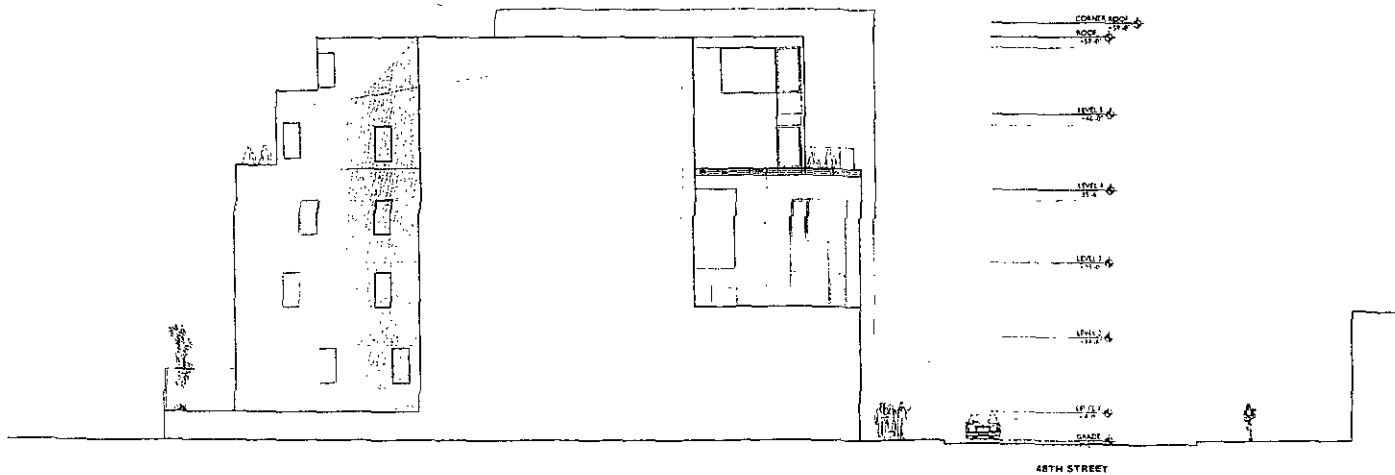
MATERIAL

- ① HANDPAINT
- ② 1/2" XOOD SCREEN @ 3/16" O.C.
- ③ PAINT F.O.C.

- ④ BRICK / METAL CLAD
- ⑤ STUCCO
- ⑥ 1/4" BRICK @ 3/16" GAP

- ⑦ 1/4" BRICK O.C.
- ⑧ METAL CLAD / STUCCO
- ⑨ STONE

2 SHATTUCK AVE (EAST) ELEVATION  
1/8" = 1'-0"



48TH STREET

1 WEST ELEVATION  
1/8" = 1'-0"

REVISION	DATE
REV. APPROVAL	11/15/11
REV. SUBMITTAL	12/07/11

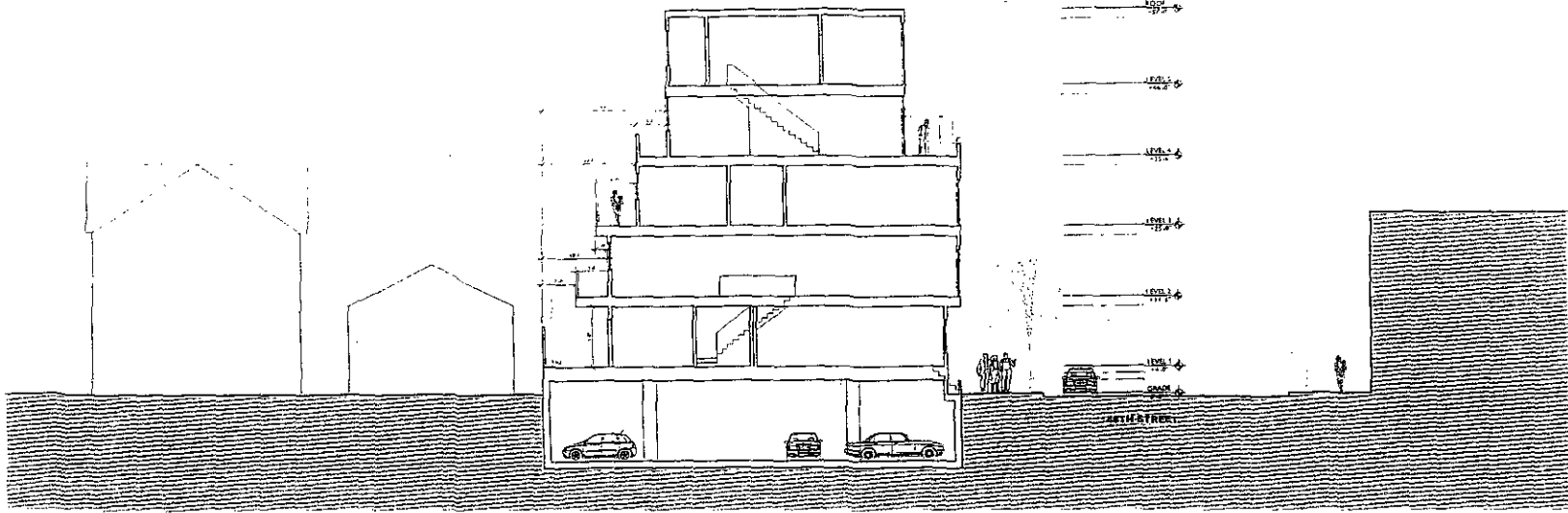
ARCHITECT  
 1234 5678 AVENUE  
 SAN FRANCISCO, CA 94102  
 (415) 555-1234  
 www.architect.com

APN: 013-1162009011  
 APN: 013-1162009023  
 APN: 013-116201000

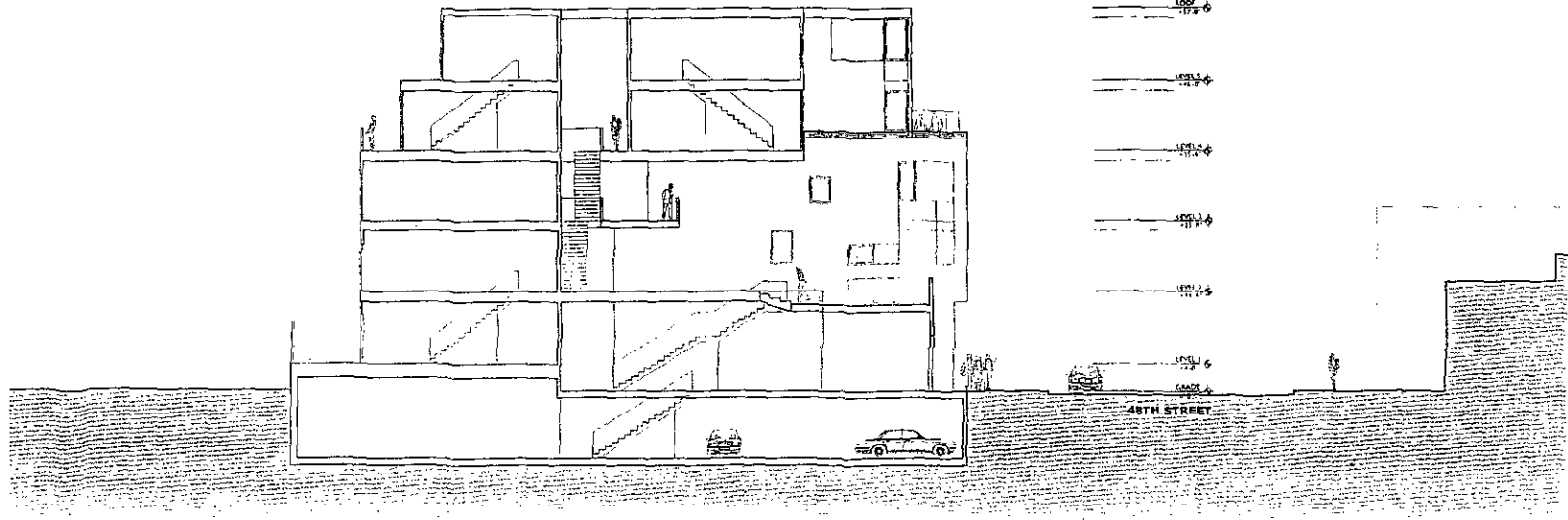
NEW 4 UNIT CONDOMINIUM PROJECT  
**4801 SHATTUCK AVE**  
 4801 SHATTUCK AVE  
 OAKLAND, CA 94709-1464

EAST ELEVATIONS  
 SCALE: 1/8" = 1'-0"  
 DRAWN BY: [initials]  
 CHECKED BY: [initials]  
 DATE: 11/15/11

**A4.2**



2 SECTION A (LOOKING EAST)  
1/8" = 1'-0"



1 SECTION B (LOOKING EAST)  
1/8" = 1'-0"

REVISION	DATE

48TH STREET

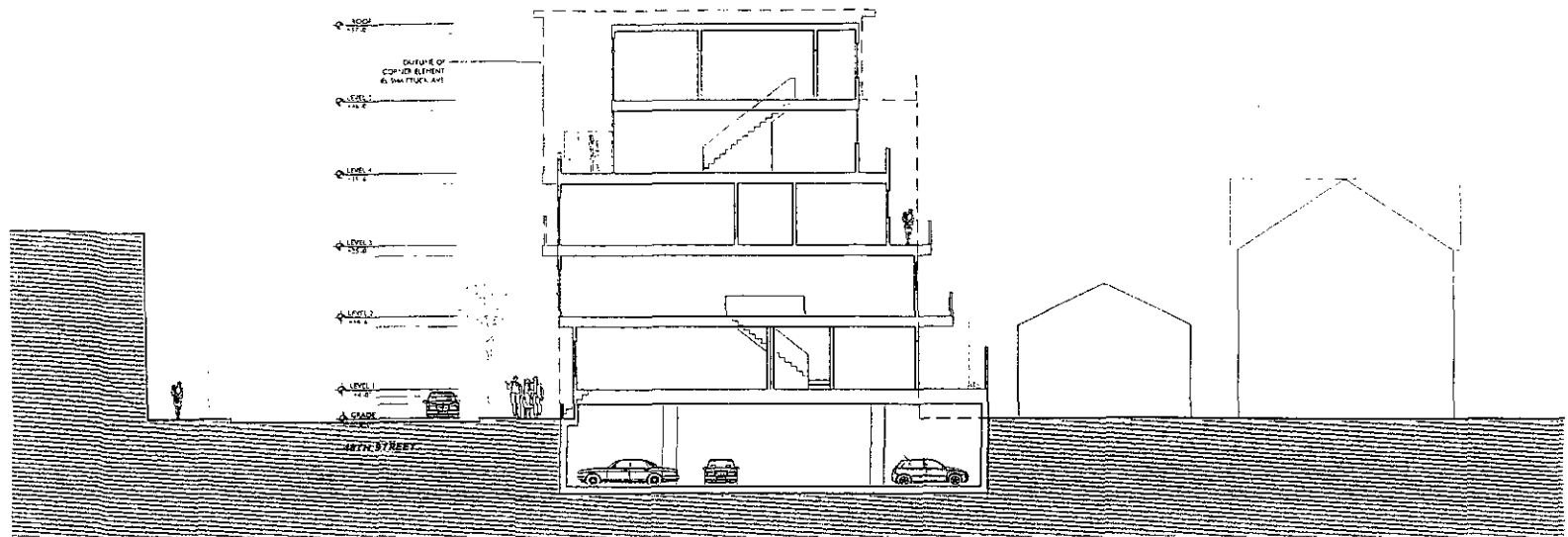
LENN EASTER ARCHITECTS  
1000 AVENUE 880, OAKLAND, CA 94612  
WWW.LENN-EASTER.COM  
LENN EASTER ARCHITECTS

REV #4 UNIT CONDOMINIUM PROJECT  
4801 SHATTUCK AVE  
4801 SHATTUCK AVE  
OAKLAND, CA 94709-1464

SECTION A, B

SCALE 1/8" = 1'-0"  
DRAWN BY JL  
CHECKED AC/CD  
DATE

**A5.1**



2 SECTION A (LOOKING WEST)  
1/8" = 1'-0"

NOT USED

REVISION	DATE

KERN DESIGN SERVICES  
 388 JUDITH STREET, SUITE 100  
 OAKLAND, CALIFORNIA 94612  
 TEL: 510.762.1111

(A.P.N. 013-116200901)  
 (A.P.N. 013-116200902)  
 (A.P.N. 013-116201000)

NEW FLUANT CONDORINIUM PROJECT  
**4801 SHATTUCK AVE**  
 4801 SHATTUCK AVE  
 OAKLAND, CA 94709-1464

SECTION	
SCALE	1/8" = 1'-0"
DRAWN BY	TT
CHECKED BY	ALCP
DATE	
<b>A5.2</b>	

## Exhibit B

[July 17, 2007 City Council Agenda Report]



# CITY OF OAKLAND

## AGENDA REPORT

TO: Office of the City Administrator  
ATTN: Deborah Edgerly  
FROM: Community & Economic Development Agency  
DATE: July 17, 2007

RE: **A Public Hearing and Consideration of Adoption of a Resolution Denying the Appeals and Upholding the Planning Commission's Approval of the Construction of 44 Dwelling Units at 4801 Shattuck Avenue, Oakland (Case Number CMDV06-425 & TPM-9235)**

---

### SUMMARY

On April 4, 2007, the Planning Commission approved a Major Conditional use permit, Design Review and Minor Variances to construct a 44 unit residential development at 4801 Shattuck Avenue (CMDV06-425)(Project).

On April 13, 2007, Bob Brokl, representing Standing Together for Accountable Neighborhood Development (STAND), filed an appeal of the Planning Commission's Approval of the Project to the City Council (Attachment A).

On April 16, 2007, Roy Alper, on behalf of the property owner, filed an appeal challenging the reduction in height imposed on the Project by the Planning Commission to the City Council (Attachment B).

The STAND appellant is arguing that the project does not qualify for an In-Fill Exemption under CEQA, and that the use of Section 15183 of the CEQA Guidelines is also inappropriate because *of the requested variances*. In addition the appellants argue that the proposed project is not consistent with the General Plan, and that the Planning Commission abused its discretion by granting the requested variances.

The project applicant filed an appeal of the imposed Conditions of Approval that required the rear 65 to 85 feet of the building to be reduced one story in height not to exceed 48 feet above grade. The applicant is arguing that this condition was an abuse of discretion by the Planning Commission because it would adversely impact the design of the building, precluding an effective design solution, other buildings in the area are of similar height, the proposal is consistent with the General Plan vision of "Growth and Change", and has the support of the adjacent neighbor to the north of the project site.

The arguments raised by both appellants are summarized below along with staff's response to each argument. Staff believes that the findings made for approval of the Project, as outlined in

## Exhibit B

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July 17, 2007

the April 4, 2007 Planning Commission (approved) staff report (Exhibit A of the proposed resolution) clearly state the reasons why the project complies with the applicable regulations, as well as justifies the imposed conditions of approval. Staff believes that the stated information in the appeal documents do not depict any instance of "error" or "abuse of discretion" by the Planning Commission or where its decision is not supported by substantial evidence in the record. Therefore, Staff recommends that the Council deny both appeals, thereby upholding the Planning Commission's decision to approve the Project.

## **FISCAL IMPACT**

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

## **BACKGROUND**

### *PROJECT DESCRIPTION*

The proposal is to demolish the existing structures across the three lots and construct a new five story 44 unit condominium development. The project would contain two levels of parking, one at the ground floor and the majority located within a subterranean parking garage, providing a total of 44 spaces. Both parking areas would be accessed off of curb cuts from 48<sup>th</sup> Street.

### *PROJECT LOCATION AND ZONING*

The subject property is a 14,934 square foot site containing frontages on the west side of Shattuck Avenue and the north side of 48<sup>th</sup> Street. The existing project site contains five structures proposed for demolition. The corner site at 4801 Shattuck Avenue contains an existing two story commercial building. The second parcel at 556 48<sup>th</sup> Street contains a residential building containing two dwelling units, and the third site at 560 48<sup>th</sup> Street contains three residential cottages. The property at 556 48<sup>th</sup> Street is not a CEQA historic resource but is listed as a Potentially Designated historic Property, containing a rating of Dc3. The surrounding uses include commercial and low and high density residential uses.

The subject property is located within the R-50, Medium Density Residential Zone, and the R-70, High Density Residential Zone. The zoning boundary splits the site approximately down the middle. 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. The R-70 zone is intended to create, preserve, and enhance areas for apartment living at high densities in desirable settings, and is typically appropriate to areas having good accessibility to transportation routes and major shopping and community centers. Current zoning would allow 17 units on site (6 units for the R-50 portion of the site and 11 units on the R-70 portion of the site).

The current zoning expressly conflicts with the Urban Residential land use designation of the General Plan in that the R-50 zone does not permit a maximum density equal to the General Plan classification. R-50 allows a maximum of one dwelling unit per 1,500 square feet of lot area (for a total of 6 units on the R-50 portion of the site) and the general plan classification allows for a maximum of one dwelling unit per 261 square feet of lot area for a total of 57 units on the entire site (38 units on the R-50 portion of the site and 19 units on the R-70 zoned portion). In these situations, pursuant to Planning Code Chapter 17.01 and the *Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations*, the General Plan governs, and either the higher density is permitted with an Interim Conditional Use Permit and Best Fit Zone (Section 17.01.100.B), or a rezoning (Section 17.01.100.C).

The Guidelines for General Plan Conformity specify a number of Best Fit zones that may be applied in the Urban Residential land use designation. For the Urban Residential category, the R-60 Medium Density Residential, the R-70 High Density Residential, and the R-80 High-Rise Apartment Residential are identified as potential best fit zones. In the case of the subject site, staff has determined (and the Planning Commission agreed) that the R-70 zoning is the most appropriate best fit zone for the entire Project site, given the higher density of the land use designation, the identification of this area as a "Grow and Change" neighborhood, and the location between the highway and a major corridor, as well as the site's adjacency to an existing R-70 Zone.

#### *CEQA DETERMINATION*

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

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

#### *PLANNING COMMISSION REVIEW*

At the April 4, 2007 hearing, the Oakland Planning Commission took public testimony from various interested parties including the appellants, generally objecting to the height of the

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July 17, 2007

project, as well as others who were in support of the project. Staff recommended, and the Planning Commission agreed, to reduce the height of the rear 65 to 85 feet of the building to four stories (48 feet), and approved the project unanimously.

## KEY ISSUES AND IMPACTS

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

### SECTION I (STAND APPEAL)

- 1. The appellant argues that the project does not qualify for an in-fill CEQA exemption because of the requested variances, and the reasonable possibility of a significant impact due to its unusual height, traffic impacts, and demolition or removal of a potentially designated historic property.**

*The appellant argues that the project does not qualify for an in-fill exemption because of the requested variances, and therefore does not comply with the in-fill criteria that a project must be "consistent with the applicable general plan designation and all applicable policies as well as with applicable zoning designation and regulations". The appellant argues that since the variance was granted, the project does not conform to the Planning Code since by definition a variance is an exception to the Code. This argument is incorrect because by meeting the required minor variance findings, which are expressly authorized by the Planning Code Chapter 17.148, the proposed project is indeed consistent with the Planning Code. The City's position has been upheld by the Alameda County Superior Court in Islamic Cultural Center of Northern California v. City of Oakland (Case No. RG03-133394), dealing with the Madison Street Lofts project (See Attachment C, page 9). The STAND appellant has not cited, nor could they, any legal authority to support their position. Therefore, exemptions are appropriate here.*

*The argument that the project would create a significant impact due to the unusual height of the building is also incorrect. Specifically, the appellant states that the height of the building could impact views, create shadows on adjacent properties, and degrade the existing visual character of the area since there are no other buildings this size. In order to invalidate an exemption under this theory, there must be both an "unusual circumstance" and a reasonable possibility of a significant environmental here. Neither factor is present here.*

*First, there is nothing unusual about the height of the building. The argument that there are no other buildings in the area of a similar height is incorrect. There are two neighboring buildings of similar height, one across the street, and one directly adjacent to the west of the project site, as well as a commercial building two blocks away, at 4601 Shattuck Avenue, that is taller than the proposed development. Moreover, this is an area designated for "Growth and Change" in*

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City Council  
July 17, 2007

*the general plan and located along major transit corridors, where increased height is appropriate and desirable. Thus, there is nothing unusual about the building's height.*

*Second, there is not a reasonable possibility of a significant impact due to the height of the building. The City of Oakland's Thresholds for Significance (Attachment D) state that a significant impact on views only applies to impacts on scenic vistas, or elements on a scenic highway, neither of which is the case here. In addition, the Thresholds for Significance state that shadow impacts are limited to those that would "substantially impair the beneficial use of any public or quasi-public park, lawn, garden, or open space", or "cast shadow on an historic resource, as defined by CEQA Section 15064.5(a), such that the shadow would materially impair the resource's historic significance by materially altering those physical characteristics of the resource that convey its historical significance". Neither instance is the case for this subject site (the Historic Omni building is located across 48<sup>th</sup> Street, but it would not be impacted by shadows from the proposed development since it is located across the street to the south). Thus, there is no reasonable possibility of a significant impact and exemptions are appropriate here.*

*The argument that the project would create a significant impact to traffic is also incorrect. The appellants erroneously contend that the applicant-submitted traffic study (Attachment E), which was reviewed (and approved) by the Public Works Transportation Services Division, calls for a new traffic signal at the intersection of 52<sup>nd</sup> Street and Shattuck Avenue as mitigation for Project impacts. And, mitigation measures would not be appropriate under a Categorical Exemption. However, this traffic signal was **not** in fact a mitigation measure for the Project. Rather, it was an already approved and funded signal upgrade planned by the City, unrelated to this Project. The Traffic study addressed what, if any, impacts would occur to the newly upgraded intersection as a result of the Project. The study evaluated Levels of Service based upon different signal timing, and concluded that there would be no degradation in Level of Service for the most likely signal timing for the future upgrade to the intersection. The traffic study did not identify any impacts resulting from the Project. Therefore, exemptions are appropriate here.*

*The argument that the demolition or removal of a potentially designated historic property would create a reasonable possibility of causing a significant environmental impact and preclude the use of a Categorical Exemption is likewise incorrect. The City of Oakland's Thresholds for Significance state that a significant impact would be one that would cause a substantial adverse change in the significance of a historical resource. The subject property being referred to is **not** a historic resource under CEQA. Indeed, it would only be a Potentially Designated Historic Property (PDHP) if restored and would then still only receive a rating of C, which still doesn't even qualify it as an historic resource under CEQA (see Planning Commission staff report for more information on Historic Status, Exhibit A of the proposed resolution). The City made the required findings for demolition of a PDHP under Historic Preservation Policy 3.5 and also required the applicant to make good faith efforts to relocate the building (condition of approval # 30) as required under Historic Preservation Policy 3.7. Therefore, exemptions are appropriate here.*

- 2. The appellant argues that the Planning Commission erred in determining that the proposal qualifies for an exemption under CEQA Guidelines Section 15183, because the proposal is not consistent with the Planning Code, and because the EIR certified for the Land Use and Transportation Element (LUTE) of the General Plan did not discuss variances.**

*The appellant asserts that the proposed project is not consistent with the zoning and therefore is not exempt from CEQA. The appellant argues that the use of Section 15183 of the CEQA Guidelines is inapplicable because the General Plan EIR does not specifically list variances in the report, and that the LUTE contemplates the height and bulk in that area to be consistent to what would be permitted for residential development.*

*This assertion is incorrect. Section 15183 of the CEQA Guidelines is a separate and independent basis for CEQA compliance. Section 15183 mandates that projects which are consistent with the development density established by the existing general plan analyzed in a certified EIR do not require further environmental review unless there are "project-specific significant effects which are peculiar to the project or to its site." Here, the proposed project is consistent with the development density established in the General Plan, for which an EIR was certified (LUTE EIR), and there are no peculiar project-specific effects.*

*The appellants appear to contend that the project is not consistent with the density in the Planning Code. However, the General Plan Conformity Guidelines specifically lay out a process for the use of a "Best Fit" Zone when a project conforms to the General Plan, but is not permitted by the existing zoning. In the case of this project, a "Best Fit" Zone of R-70 was used due to the higher density of the land use designation, the identification of this area as a "Grow and Change" neighborhood, and the location between the highway and a major corridor, as well as the site's adjacency to an existing R-70 Zone (including half of the project site).*

*The appellants' argument that the LUTE EIR failed to mention variances is not relevant as Section 15183 does not require that variances, or other methods of achieving the density in the general plan, be specifically addressed. The LUTE EIR analyzed the impacts of the higher density and the project is consistent with that density. There is nothing peculiar about the project or site to warrant further environmental review.*

*The statement about the height and bulk of buildings in the LUTE is specifically related to commercial development which should be consistent with the size of residential buildings which would be permitted, and is not relevant to the project. The R-70 Zone contains a very relaxed height limit that allows for very tall residential buildings and the proposal is not a commercial development. The variance that was granted actually transferred height that is allowed at the front end of the property to the rear of the property, thus bringing the potential height of the proposed building down and not exceeding the height allowed for residential development in the area.*

*The appellant also is arguing that the use of Section 15183 of the CEQA Guidelines is inappropriate because the LUTE EIR requires "continuous or nearly continuous storefronts*

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*located along the front setback” as a mitigation measure for increased height on the corridors. The Planning Commission required that the two ground floor units at the street front contain extra height ceilings and include specific materials along the façade that would enable the space to be easily converted to commercial in the future. The Planning Commission did not believe that the space would be a viable commercial location at this point in time because presently this section of Shattuck Avenue is not developed as a commercial street. The Planning Commission alternative could also be seen as an adequate mitigation since no specific guidelines have yet to be finalized for mixed use commercial areas.*

*Moreover, the fact that a project may appear to not be fully consistent with each and every general plan policy is not a basis to conclude the project is inconsistent with the general plan. Specifically, the Oakland General Plan states the following:*

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

**3. The appellant argues that the Planning Commission abused its discretion by approving a proposal that violates the General Plan’s policy (N7.1 of the LUTE & Policy 7.3 of the Housing Element) of density being consistent with the surrounding community.**

*The appellant’s argument is incorrect. Policy N7.1 of the LUTE of the General Plan states: “New residential development in Detached Unit and Mixed Housing Type areas should be compatible with the density, scale, design, and existing or desired character of surrounding development.” However, the subject property is **not** located within either of these General Plan designations and thus the cited policy is not applicable. The property is actually located within the Neighborhood Center Mixed Use and Urban Residential land use designations, both of which are intended for high intensity development. The area is also designated as “growth and change.”*

*Policy 7.3 of the Housing Element (Action 7.3.1) states “as part of the Planning Code update process, the City will review its property development standards for small in-fill lots and in those areas where there is a mix of residential and commercial land uses to assist with appropriate residential development on challenging sites.” This policy addresses lots that may be difficult to develop and does not state that new development should only match whatever exists on the lot next door, but rather suggests looking at methods to allow development of challenging sites.*

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*When Policy 7.3 talks about developing at densities consistent with the surrounding communities, it is talking about the existing established densities, which were adopted in the 1998 LUTE, as the Housing Element was adopted six years afterwards.*

*Moreover, as discussed above, not each and every policy of the general plan needs to be met in order to conclude that a project is consistent with the general plan. Here, the Planning Commission unanimously concluded the project was consistent with the general plan, for the reasons detailed in the April 4, 2007 Planning Commission Staff Report (Exhibit A of the proposed resolution).*

**4. The appellant alleges that the Commission abused its discretion by granting variances for this project because there are no findings of special circumstance that would allow a variance to be granted.**

*The appellant argues that minor variances are no longer allowed because Policy N11.3 of the LUTE states that "variances should not be granted lightly and without strict compliance with defined conditions, including evidence of hardship." Thus, the appellant's contend that only Major Variances are allowed to be granted. This argument is wrong.*

*First, the general plan did not intend to, nor does it, do away with Minor Variance findings. The City has been consistently and properly using the minor variances findings (before and) since adoption of the 1998 LUTE. The subject policy simply reinforces the principle that variances should not be granted lightly and without strict compliance with the applicable variance criteria. The policy went on to list some of the existing variance criteria, but it did not do away with any criteria that were not listed. In other words, there was no express intent to change the detailed and specific variance criteria contained in the Planning Code.*

*In Oakland, pursuant to Planning Code Chapter 17.01, the permit approvals must be consistent with the Planning Code unless there is an "express conflict" with the General Plan (Planning Code sections 17.01.110 and 060). Section 17.01.110 states that where the general plan "is silent or not clear as regards conformity," the Planning Code shall apply. Only when the Planning Code is in express conflict with the general plan do the policies of the general plan apply and supersede the Planning Code. Here, the general plan is silent on the issue as to whether the minor variance has been superseded. At best, the general plan is not clear on the issue of the continuing validity of the Minor Variance criteria. In any event, the Planning Code prevails and the minor variance criteria are still applicable.*

*In addition, the policy also states "in instances where large numbers of variances are being requested, the City should review its policies and regulations and determine whether revisions are necessary." This means that while the City is creating new development standards to comply with the General Plan, staff should be looking at past variances that have been granted on a regular basis and possibly modify the regulations so that the proposals are no longer prohibited. Thus, the existing zoning standards may need to be "relaxed" to reflect appropriate development and to reduce the number of variances. It does not mean that variances should not be granted.*

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*Moreover, the General Plan Conformity Guidelines specifically point out which General Plan policies are immediately relevant when there is a Planning and General Plan conflict, and Policy N11.3 is not one of them. Therefore, the minor variance criteria are still valid and allow for the granting of a minor variance without making findings for hardship or special circumstance peculiar to the property.*

*Because the minor variance criteria are still applicable and, as discussed below, Oakland as a Charter City can establish its own variance criteria, there is no "special circumstances peculiar to the subject property" finding that has to be met with a minor variance.*

- 5. The appellant alleges that the Commission abused its discretion by approving the large number of variances for this proposal because variances are only to be granted to a small fraction of a zone.**

*Once again the appellant is arguing that the Minor Variance criteria are not valid and the stricter findings for Major Variances should be met. This is not the case, for the same reasons as discussed above. In addition, the appellant is arguing that the large number of variances granted for the project is contrary to case law that states that variances should be granted "only to a small fraction of any one zone." However, Oakland is a Charter City and has the ability to develop its own variance criteria, which are allowed to, and do, differ from both state law and other charter cities. The variance criteria developed for the Oakland Planning Code allows granting a minor variance based upon superior design solutions. Oakland's minor variance criteria do not contain requirements relating to the number of variances that are granted in a zone.*

- 6. The appellant claims that the Commission abused its discretion by approving a proposal where the open space is legally inadequate.**

*The appellant is basing this argument on the outdated and incorrect February 28, 2007 staff report, which was superceded and replaced by the April 4, 2007 report. As stated in the April 4, 2007 report, the Best Fit Zone for the entire Project site is R-70 and the project does comply with the R-70 requirements for open space.*

- 7. The appellant claims that the Commission abused its discretion by allowing demolition or moving of the historic building, because doing so may have a cumulative impact on the historic character of the area, that it would contradict the Historic Preservation Element of the General Plan, and that demolition of the historic structure would itself possibly be a significant environmental impact.**

*As previously discussed, the subject property is not an historic building, nor is it located within an historic district. The structure contains a survey rating of Dc3, which means that it is of*

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*minor importance (D), containing a contingency rating for potential secondary importance(c), and is not located within an historic district(3). The building has been deemed not to be a historic resource under CEQA, which are typically reserved for buildings with "A" or "B" ratings. Therefore, removing the non-historic structure does not result in a project-specific CEQA impact or a cumulative impact.*

*The appellant's argument that the removal of the building is inconsistent with Policy 3.7 of the Historic Preservation Element is also incorrect. Policy 3.7 of the Historic element states "[a]s a condition of approval for all discretionary projects involving demolition of existing or Potential Designated Historic Properties, the City will normally require that reasonable efforts be made to relocate the properties to an acceptable site." Standard practice has been to require the developer to offer the building for anyone to take by advertising the availability of the building prior to any demolition. Here, condition of approval #30 imposes numerous requirements relating to the good faith relocation efforts and fully and completely satisfies Policy 3.7. As it presently stands, it appears that the building will be relocated to the northern adjacent lot, the owner of which was at the Planning Commission hearing to testify that she is planning on taking the structure.*

## **SECTION II (PROPERTY OWNER'S APPEAL)**

**The property owner is arguing that the Commission abused its discretion by requiring the rear 65 to 85 feet of the building be stepped down one story from 57 feet in height to 48 feet in height.**

- 1. The height reduction has a significant, material adverse impact on the design of the project building, precluding an effective design solution without improving livability, operational efficiency, or appearance.**

*The property owner's argument is only focused on one of the four minor variance criteria that are required to obtain a variance. Primarily, the height of the building was reduced to limit impacts onto the adjacent neighbor to the north. Specifically, there is a finding relating to livability of neighboring properties, and it was the belief of staff as well as the Commission that a five story building right on top of the rear yard of the northern adjacent lot would create significant shadows (from a planning but not CEQA perspective) that would affect the livability of that property, especially since the building would be blocking the southern exposure, which is where a large majority of the direct sunlight comes from. Staff felt that with the step backs in place, four stories would be appropriate, but encroaching further into the height reduction plane was not warranted to the extent requested.*

- 2. The height reduction is not consistent with the character of the neighborhood and other buildings therein, which include at least four buildings ranging in height from 50 to 70 feet in the immediate vicinity of the project.**

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*The argument that the character of the neighborhood is one of 50 to 70 foot tall buildings is simply incorrect. Some buildings of this height do exist within the neighborhood; however, the neighborhood is an eclectic mix of different architectural styles and building sizes. Although there are larger buildings in the area there are also one and two story buildings in the area. The intent of the height reduction is to allow a visual transition of the building from one style to the other, especially in this case where there is a small building directly to the north of the project site as well as one and two story buildings on the south side of 48<sup>th</sup> Street. The height reduction allows a building that is more in scale with the lower buildings as well as the larger buildings, while still allowing a density envisioned by the "growth and change" classification of the General Plan.*

- 3. The height reduction is not consistent with the intent and desired character of the relevant land use classifications of the General Plan and associated policies related to "grow and change" in the neighborhood.**

*The argument that the height reduction is inconsistent with the intent and desired character of the General Plan is incorrect. The overall project still fulfills the intensity called out in the General Plan along transit corridors, and there are no specific policies that state all buildings need to be of at least a certain height. The requirement to reduce the height at the rear of the building was because of issues related to potential non-CEQA impacts on the adjacent neighbor and context of the area.*

- 4. The height reduction is erroneously and inappropriately based in part on the existence of a *de minimus* sliver of R-50 zoned property approximately 25 feet wide adjacent to the northern boundary of the project when it is clear that said sliver is itself in express conflict with the applicable General Plan designations and should be determined to be "best fit" R-70 in any event.**

*While the neighboring property in question does contain a General Plan designation that will likely change the underlying zoning to a much higher intensity zone, it does not change the fact that there are already existing lower intensity residential buildings with their rear yard open spaces adjacent to the subject project, including the rear yard for the Casa Bella building at 4811 Shattuck Avenue, which would potentially be considered an historic resource under CEQA and is unlikely to be removed. The requirement to lower the height of the rear portion of the building was required as a way to limit impacts onto the northern adjacent neighboring lots.*

- 5. The height reduction disregards the unequivocal testimony of the neighbor to the north of the project, the owner most affected by the project, that she supports the project at the 57 foot height.**

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*Regardless of what the neighbor adjacent to the project site wants, the Planning staff and Planning Commission still need to review projects and make decisions based upon their merit and what is good development policy. The fact that the neighbor to the north does not mind the height of the building does not change the required findings for rendering a decision on a development project.*

## **SUSTAINABLE OPPORTUNITIES**

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

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

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

## **DISABILITY AND SENIOR CITIZEN ACCESS**

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

## **STAFF RECOMMENDATION AND RATIONALE**

Staff recommends that the City Council adopt the attached Resolution denying both appeals thereby upholding the Planning Commission's approval of the project for the following reasons: 1) The Planning Commission's decision was based on a thorough review of all pertinent aspects of the project and consideration of the objections raised by both the appellants; 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; 3) The appellants have 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; and 4) the project meets the CEQA In-Fill (Guidelines section 15332) exemption requirements and there are no exceptions that would defeat the use of the exemption, and, as a separate and independent basis, the consistency with general plan and zoning exemption (Guidelines section 15183).

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### ALTERNATIVE CITY COUNCIL ACTIONS

The City Council has the option of taking one of the following alternative actions instead of the recommended action above:

1. Uphold the appeal and reverse the Planning Commission's decision thereby denying the project. This option would require the City Council to continue the item to a future hearing so that Staff can prepare and the Council has an opportunity to review the proposed findings and resolution for denial.
2. Uphold the appeal by the applicant and reverse the Planning Commission's Condition of Approval requiring the rear 65-85 feet of the building to be reduced to four stories (48 feet). 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.
3. Uphold the Planning Commission's decision, but impose additional conditions on the project and/or modify the project.
4. Continue the item to a future hearing for further information or clarification.
5. Refer the matter back to the Planning Commission for further consideration on specific issues/concerns of the City Council. Under this option, the item would be forwarded back to the City Council with a recommendation after review by the Planning Commission.

**ACTION REQUESTED OF THE CITY COUNCIL**

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

Respectfully submitted,



**CLAUDIA CAPPIO**

Development Director

Community & Economic Development Agency

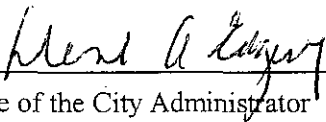
Prepared by:

Peterson Z. Vollmann, Planner III

Planning & Zoning

APPROVED AND FORWARDED

TO THE CITY COUNCIL:



Office of the City Administrator

**ATTACHMENTS:**

- A. Appellant's appeal application submitted April 13, 2007.
- B. Applicant's appeal application submitted April 16, 2007.
- C. Islamic Cultural Center vs. City of Oakland
- D. Excerpted CEQA Thresholds of Significance (Aesthetics & Historic w/ definition of Historic resource)
- E. Traffic Studies

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