

## **EXHIBIT A**

### **Certification of the EIR, CEQA Findings, and Statement of Overriding Considerations for the Approval of the MacArthur Transit Village Project**

#### **Planning Commission Hearing**

**June 4, 2008**

#### **I. INTRODUCTION**

1. These findings are made pursuant to the California Environmental Quality Act (Pub. Res. Code section 21000 et seq; "CEQA") and the CEQA Guidelines (Cal. Code Regs. title 14, section 15000 et seq.) by the City of Oakland Planning Commission in connection with the EIR prepared for the MacArthur Transit Village Project ("the Project"), EIR SCH # 2006022075.

2. These CEQA findings are Exhibit A and attached and incorporated by reference into each and every staff report, resolution and ordinance associated with approval the Project. Exhibit C contains conditions of approval, which includes as Exhibit C- 1, the Mitigation Monitoring and Reporting Program ("MMRP"). All Exhibits are incorporated by reference into each other and into the ordinance or resolution to which the Exhibit is attached.

3. These findings are based on substantial evidence in the entire administrative record and references to specific reports and specific pages of documents are not intended to identify those sources as the exclusive basis for the findings.

#### **II. PROJECT DESCRIPTION**

4. The Project, which is the subject of the EIR, is located on approximately 8.2 acres within the block bound by 40<sup>th</sup> Street, Telegraph Avenue, West MacArthur Boulevard and State Route 24. The Project studied in the EIR is a mixed use development that, among other elements, includes: a new BART parking garage; improvements to the BART Plaza; up to 675 residential units (both market-rate and affordable); up to 44,000 square feet of commercial space (including live/work units); 5,000 square feet of community center or childcare space; approximately 1,000 structured parking spaces, including the 300 space BART parking garage; approximately 30-45 on-street parking spaces, pedestrian and bicycle friendly internal streets and walkways; improvements to the Frontage Road; a new internal street, Village Drive, located between Frontage Road and Telegraph Avenue; two new traffic signals at the intersections of Village Drive/Telegraph Avenue and West MacArthur Boulevard/Frontage Road; a rezoning of the Project site to S-15, and a text amendment to the S-15 zone.

#### **III. ENVIRONMENTAL REVIEW OF THE PROJECT**

5. Pursuant to CEQA and the CEQA Guidelines, the City determined that an EIR would be required for the Project. On February 15, 2006 and June 13, 2007, the City issued Notices of Preparation for the EIR, which were circulated to responsible agencies and interested groups and

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individuals for review and comment. A copy of these Notices and the comments thereon are included in Appendix A-1 and A-2 of the Draft EIR.

6. A Draft EIR was prepared for the Project to analyze its environmental impacts. The Draft EIR was properly circulated for a 46-day public review period from January 31, 2008 to March 17, 2008, which exceeds the legally required 45-day comment period. The Planning Commission held a hearing on the Draft EIR on March 5, 2008.

7. The City received written and oral comments on the Draft EIR. The City prepared responses to comments on environmental issues and made changes to the Draft EIR. The responses to comments, changes to the Draft EIR, and additional information were published in a Final EIR on May 23, 2008. The Draft EIR, the Final EIR and all appendices thereto constitute the "EIR" referenced in these findings.

#### **IV. THE ADMINISTRATIVE RECORD**

8. The record, upon which all findings and determinations related to the approval of the Project are based, includes the following:

- a. The EIR and all documents referenced in or relied upon by the EIR.
- b. All information (including written evidence and testimony) provided by City staff to the Planning Commission relating to the EIR, the approvals, and the Project.
- c. All information (including written evidence and testimony) presented to the Planning Commission by the environmental consultant and subconsultants who prepared the EIR or incorporated into reports presented to the Planning Commission.
- d. All information (including written evidence and testimony) presented to the City from other public agencies relating to the MacArthur Transit Village Project or the EIR.
- e. All final applications, letters, testimony and presentations presented by the project sponsor and its consultants to the City in connection with the Project.
- f. All final information (including written evidence and testimony) presented at any City public hearing or City workshop related to the Project and the EIR.
- g. For documentary and information purposes, all City-adopted land use plans and ordinances, including without limitation general plans, specific plans and ordinances, together with environmental review documents, findings, mitigation monitoring programs and other documentation relevant to planned growth in the area.
- h. The Mitigation Monitoring and Reporting Program for the Project.
- i. All other documents composing the record pursuant to Public Resources Code section 21167.6(e).

9. The custodian of the documents and other materials that constitute the record of the proceedings upon which the City's decisions are based is the Development Director, Community and

Economic Development Agency, or his/her designee. Such documents and other materials are located at Frank H. Ogawa Plaza, Suite 3315, Oakland, California, 94612.

## **V. CERTIFICATION OF THE EIR**

10. In accordance with CEQA, the Planning Commission certifies that the EIR has been completed in compliance with CEQA. The Planning Commission has independently reviewed the record and the EIR prior to certifying the EIR and approving the Project. By these findings, the Planning Commission confirms, ratifies, and adopts the findings and conclusions of the EIR as supplemented and modified by these findings. The EIR and these findings represent the independent judgment and analysis of the City and the Planning Commission.

11. The Planning Commission recognizes that the EIR may contain clerical errors. The Planning Commission reviewed the entirety of the EIR and bases its determination on the substance of the information it contains.

12. The Planning Commission certifies that the EIR is adequate to support all actions in connection with the approval of the Project, the rezoning of the Project site from C-28/S-18 and R-70/S-18 to S-15 Transit Oriented Development, and the text amendment to the S-15 zone and taking all other actions and recommendations as described in the staff report to which these CEQA findings are attached. The Planning Commission certifies that the EIR is adequate to support approval of the Project described in the EIR, each component and phase of the Project described in the EIR, any variant of the Project described in the EIR, any minor modifications to the Project or variants described in the EIR and the components of the Project.

## **VI. ABSENCE OF SIGNIFICANT NEW INFORMATION**

13. The Planning Commission recognizes that the Final EIR incorporates information obtained and produced after the Draft EIR was completed, and that the EIR contains additions, clarifications, and modifications. The Planning Commission has reviewed and considered the Final EIR and all of this information. The Final EIR does not add significant new information to the Draft EIR that would require recirculation of the EIR under CEQA. The new information added to the EIR does not involve a new significant environmental impact, a substantial increase in the severity of an environmental impact, or a feasible mitigation measure or alternative considerably different from others previously analyzed that the project sponsor declines to adopt and that would clearly lessen the significant environmental impacts of the Project. No information indicates that the Draft EIR was inadequate or conclusory or that the public was deprived of a meaningful opportunity to review and comment on the Draft EIR. Thus, recirculation of the EIR is not required.

14. The Planning Commission finds that the changes and modifications made to the EIR after the Draft EIR was circulated for public review and comment do not individually or collectively constitute significant new information within the meaning of Public Resources Code section 21092.1 or the CEQA Guidelines section 15088.5.

## **VII. MITIGATION MEASURES, CONDITIONS OF APPROVAL, AND MITIGATION MONITORING AND REPORTING PROGRAM**

15. Public Resources Code section 21081.6 and CEQA Guidelines section 15097 require the City to adopt a monitoring or reporting program to ensure that the mitigation measures and

revisions to the Project identified in the EIR are implemented. The Mitigation Monitoring and Reporting Program ("MMRP") is attached and incorporated by reference into the June 4, 2008 staff report prepared for the approval of the Project, is included in the conditions of approval for the Project, and is adopted by the Planning Commission. The MMRP satisfies the requirements of CEQA.

16. The mitigation measures set forth in the MMRP are specific and enforceable and are capable of being fully implemented by the efforts of the City of Oakland, the applicant, and/or other identified public agencies of responsibility. As appropriate, some mitigation measures define performance standards to ensure no significant environmental impacts will result. The MMRP adequately describes implementation procedures, monitoring responsibility, reporting actions, compliance schedule, non-compliance sanctions, and verification of compliance in order to ensure that the Project complies with the adopted mitigation measures.

17. The Planning Commission will adopt and impose the feasible mitigation measures as set forth in the MMRP as enforceable conditions of approval. The City has adopted measures to substantially lessen or eliminate all significant effects where feasible.

18. The mitigation measures incorporated into and imposed upon the Project approval will not have new significant environmental impacts that were not analyzed in the EIR. In the event a mitigation measure recommended in the EIR has been inadvertently omitted from the conditions of approval or the MMRP, that mitigation measure is adopted and incorporated from the EIR into the MMRP by reference and adopted as a condition of approval.

### **VIII. FINDINGS REGARDING IMPACTS**

19. In accordance with Public Resources Code section 21081 and CEQA Guidelines sections 15091 and 15092, the Planning Commission adopts the findings and conclusions regarding impacts and mitigation measures that are set forth in the EIR and summarized in the MMRP. These findings do not repeat the full discussions of environmental impacts, mitigation measures, standard conditions of approval, and related explanations contained in the EIR. The Planning Commission ratifies, adopts, and incorporates, as though fully set forth, the analysis, explanation, findings, responses to comments and conclusions of the EIR. The Planning Commission adopts the reasoning of the EIR, staff reports, and presentations provided by the staff and the project sponsor as may be modified by these findings.

20. The Planning Commission recognizes that the environmental analysis of the Project raises controversial environmental issues, and that a range of technical and scientific opinion exists with respect to those issues. The Planning Commission acknowledges that there are differing and potentially conflicting expert and other opinions regarding the Project. The Planning Commission has, through review of the evidence and analysis presented in the record, acquired a better understanding of the breadth of this technical and scientific opinion and of the full scope of the environmental issues presented. In turn, this understanding has enabled the Planning Commission to make fully informed, thoroughly considered decisions after taking account of the various viewpoints on these important issues and reviewing the record. These findings are based on a full appraisal of all viewpoints expressed in the EIR and in the record, as well as other relevant information in the record of the proceedings for the Project.

21. As a separate and independent basis from the other CEQA findings, pursuant to CEQA section 21083.3 and Guidelines section 15183, the Planning Commission finds: (a) the project is

consistent with 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) this 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 (hereafter called "Standard Conditions of Approval") have previously been adopted and found to, that when applied to future projects, substantially mitigate impacts, and to the extent that no such findings were previously made, the City Planning Commission hereby finds and determines that the Standard Conditions of Approval substantially mitigate environmental impacts (as detailed below); and (e) no substantial new information exists to show that the Standard Conditions of Approval will not substantially mitigate the project and cumulative impacts.

### **SIGNIFICANT BUT MITIGATABLE IMPACTS**

22. Under Public Resources Code section 21081(a)(1) and CEQA Guidelines sections 15091(a)(1) and 15092(b), and to the extent reflected in the EIR, the MMRP, and the City's Standard Conditions of Approval, the Planning Commission finds that changes or alterations have been required in, or incorporated into, the components of the Project that mitigate or avoid potentially significant effects on the environment. The following potentially significant impacts will be reduced to a less than significant level through the implementation of Project mitigation measures, or where indicated through the implementation of Standard Conditions of Approval (which are treated as mitigation measures and are an integral part of the MMRP):

a. TRANS-1: Impact TRANS-1 finds that traffic generated by the Project under the Cumulative Year 2015 Baseline Plus Project conditions would have a significant impact at the Telegraph Avenue/51<sup>st</sup> Street intersection by contributing to LOS E operations during the PM peak hour and increasing critical movement average delay by more than 6 seconds.. This impact will be mitigated through the implementation of Mitigation Measure TRANS-1, which requires optimization of the signal timing at this intersection and coordination of signal phasing and timing with the adjacent Telegraph Avenue/52<sup>nd</sup> Street and Claremont Avenue intersection and other intersections in the same coordination group. To implement this measure, the project sponsor must fund the cost of preparing and implementing a signal optimization plan consisting of signal timing parameters for the signals in the coordination group, which must be reviewed and approved by the City of Oakland Transportation Services Division. As shown in EIR Table IV.C-15, this mitigation measure will reduce the average delay for critical movements to less than the 6-second threshold of significance.

b. TRANS-2: Impact TRANS-2 finds that the addition of project traffic would have a significant impact at the Market Street/MacArthur Boulevard intersection under Cumulative Year 2015 Baseline Plus Project conditions by degrading intersection operations from LOS D to LOS E during the PM peak hour. This impact will be mitigated through implementation of Mitigation Measure TRANS-2, which requires changing the signal cycle length to 90 seconds and optimizing signal timing at the Market Street/MacArthur Boulevard intersection. To implement this measure, the project sponsor must fund the cost of preparing and implementing a signal optimization plan consisting of signal timing parameters for this intersection, which must be reviewed and approved by City's Transportation Services Division. As shown in EIR Table IV.C-15, after implementation of this mitigation measure the intersection will operate at level of service C during the PM peak hours.

c. TRANS-3: Impact TRANS-3 finds that the addition of Project traffic would cause a significant impact at the Telegraph Avenue/52<sup>nd</sup> Street and Claremont Avenue intersection under Cumulative 2030 Baseline Plus Project conditions. The Project would contribute to LOS F

operations and increase intersection average delay by more than 2 seconds during the AM peak hour and would contribute to LOS E operations and increase critical movement average delay by more than 6 seconds during the PM peak hour. This impact will be mitigated through implementation of Mitigation Measure TRANS-3, which requires the project sponsor to fund the cost of preparing and implementing a signing plan to prohibit left-turns from northbound Telegraph Avenue into westbound 52<sup>nd</sup> street during peak commute times and a signal timing plan to change the signal cycle length to 120 seconds, optimize signal timing at the Telegraph Avenue/52<sup>nd</sup> Street and Claremont Avenue intersection, and coordinate signal timing and phasing with the adjacent Telegraph Avenue/51<sup>st</sup> Street intersection and other intersections in the same coordination group, which must be reviewed and approved by the City's Transportation Division. As shown in EIR Table IV.C-17, after implementation of this mitigation measure the increase in intersection delay during the AM peak hour would be reduced to less than the 2-second threshold of significance and the intersection would operate at LOS C during the PM peak hours.

d. TRANS-5: Impact TRANS-5 finds that the addition of Project traffic would cause a significant impact at the West Street/40<sup>th</sup> Street intersection under Cumulative Year 2030 Baseline Plus Project conditions. The Project would degrade intersection operations from LOS D to LOS E in the PM peak hour. This impact will be mitigated through implementation of Mitigation Measure TRANS-5, which requires the project sponsor to fund the cost of preparing and implementing a plan to optimize signal timing at the West Street/40<sup>th</sup> Street intersection, which must be reviewed and approved by the City's Transportation Division. As shown in EIR Table IV.C-17, after implementation of this mitigation measure the intersection would operate at LOS A during the PM peak hour.

e. TRANS-6: Impact TRANS-6 finds that the addition of Project traffic would cause a significant impact at the Telegraph Avenue/40<sup>th</sup> Street intersection under Cumulative Year 2030 Baseline Plus Project conditions. The Project would degrade the intersection operations from LOS E to LOS F in the AM peak hour and would increase critical movement average delay by more than 4 seconds during the PM peak hours. This impact will be mitigated through implementation of Mitigation Measure TRANS-6, which requires the project sponsor to fund the cost of preparing and implementing plans to provide protected/permitted left turn phasing on eastbound and westbound 40<sup>th</sup> Street approaches and to change signal cycle length to 120 seconds during the AM peak hours and 105 seconds during the PM peak hours and optimize signal timing at the Telegraph Avenue/40<sup>th</sup> Street intersection and to coordinate with other intersections in the same coordination group. These plans must be reviewed and approved by the City's Transportation Division. As shown in EIR Table IV.C-17, after implementation of this mitigation measure, the intersection would operate at LOS D during both AM and PM peak hours.

f. TRANS-7: Impact TRANS-7 finds that the addition of Project traffic would cause a significant impact at the Market Street/MacArthur Boulevard intersection under Cumulative Year 2030 Baseline Plus Project conditions. The Project would contribute to LOS F operations and would increase intersection average delay by more than 2 seconds during both AM and PM peak hours. This impact will be mitigated through implementation of Mitigation Measure TRANS-7, which requires the project sponsor to fund the cost of preparing and implementing plans to stripe a left-turn lane on northbound Market Street at MacArthur Boulevard, change cycle lengths to 110 seconds during the AM peak hour and 90 seconds during the PM peak hour, and optimize signal timing at the Market Street/MacArthur Boulevard intersection. These plans must be reviewed and approved by the City's Transportation Division. As shown in EIR Table IV.C-17, after implementation of this mitigation measure, the intersection would operate at LOS C during both AM and PM peak hours.

g. TRANS-8: Impact TRANS-8 finds that the addition of Project traffic would cause a significant impact at the Telegraph Avenue/MacArthur Boulevard intersection under

Cumulative Year 2030 Baseline Plus Project conditions. The Project would degrade intersection operations from LOS D to LOS E in the AM peak hour. This impact will be mitigated through implementation of Mitigation Measure TRANS-8, which requires the project sponsor to fund the cost of preparing and implementing a plan to provide protected/permitted left-turn phasing on northbound and southbound Telegraph Avenue approaches, to change signal cycle length to 120 seconds and optimize signal timing at the Telegraph Avenue/MacArthur Boulevard intersection and to coordinate signal phasing and timing with other intersections in the same coordination group. This plan must be reviewed and approved by the City's Transportation Division. As shown in EIR Table IV-C-17, after implementation of this mitigation measure, the intersection would operate at LOS D during the AM peak hour and LOS E during the PM peak hour.

h. Other Potentially Significant Impacts: The following impacts will be less than significant because of the requirements contained in the City's Standard Conditions of Approval (which are treated as mitigation measures and included with the EIR mitigation measures in the MMRP). Some Standard Conditions of Approval are not CEQA-related but are nevertheless included here for convenience and additional information provided to the decision-makers:

(1) Public Policy/Tree Removal: The Project will remove the existing trees on the project site. Any potential impact to nesting raptors or other birds will be reduced to a less than significant level through implementation of Standard Condition COA POLICY-1, which limits tree removal during breeding season and, for tree removal during breeding season, requires a survey by a qualified biologist and appropriate buffers in which no work will be allowed until the young have successfully fledged.

(2) Transportation, Circulation, and Parking/Construction Activities: The Project construction activities would temporarily and intermittently affect traffic flow and circulation and parking availability. This impact will be reduced to a less than significant level through the implementation of Standard Condition COA-TRANS-1, which imposes specific requirements for the preparation, City, BART and AC Transit review, and City approval of a construction management plan prior to the issuance of each building permit. The plan must include the following elements: comprehensive traffic control measures, notification procedures for adjacent property owners and public safety personnel, location of staging areas on the project site, identification of haul routes to minimize impacts and provisions for monitoring and correcting any damage or debris from haul trucks, temporary construction fences to contain debris and materials and secure the site, trash removal provisions, complaint procedures, and a construction worker TDM plan to reduce trips from construction workers.

(3) Air Quality/Construction Activities: Activities associated with Project construction would generate short-term emissions of ozone and particulate matter emissions. This impact will be reduced to a less than significant level through the implementation of Standard Conditions COA AIR-1 and COA AIR-2. Standard Condition COA-1, Dust Control imposes BAAQMD's basic dust control procedures for all construction sites and enhanced dust control procedures for sites larger than four acres. Standard Condition COA-2, Construction Emissions imposes requirements to minimize construction equipment emissions during construction, including demonstration of compliance with BAAQMD Regulation 1, Rule 2 regarding emissions from portable equipment and reduced NOx emissions from diesel-powered equipment.

(4) Noise/Construction Activities: The Project construction activities would intermittently and temporarily generate noise levels above existing ambient levels in the project vicinity. This impact will be reduced to a less than significant level through the implementation of

Standard Conditions COA Noise-1, Noise-2, Noise-3, and Noise-5, which impose requirements for construction hours and days, equipment and truck requirements, a site-specific noise reduction program requiring City review and approval, procedures for responding to and tracking construction noise complaints, and a site specific noise attenuation measures plan for pile driving and other extreme noise generators, which must be completed under the supervision of a qualified acoustical consultant, must be reviewed and approved by the City, must achieve maximum feasible noise attenuation, and must include, among other measures, certain identified measures as applicable to the site and the construction activity

(5) Noise/Interior Noise: Given the exterior noise levels in the vicinity of the project site, the interior noise levels for rooms in the Project buildings that would be directly exposed to and located within 240 feet of the centerline of SR-24 could exceed DNL 45 dBA. This impact will be reduced to a less than significant level through the implementation of Standard Condition COA Noise-4, which requires noise reduction in the form of sound-rated assemblies (i.e., windows, exterior doors, and walls) to be incorporated into Project building design based on the recommendations of a qualified acoustical engineer. An alternative form of ventilation shall be provided for all units located within 659 feet of the centerline of SR-24 or within 153 feet of the centerline of 40<sup>th</sup> Street or within 166 feet of the centerline of MacArthur Boulevard to ensure that windows can remain closed to meet the interior noise standards and Uniform Building Code requirements. All residential building facades directly exposed to and within 240 feet of the centerline of SR-24 must be constructed to meet the interior DNL 45 dB requirements, which can be achieved through several methods and quality control measures to ensure all air gaps and penetrations of the building shell are controlled and sealed.

(6) Noise/Historic Structures: Project demolition and construction activities could affect adjacent structures. This impact will be reduced to a less than significant level through the implementation of Standard Condition COA NOISE-6, which requires the project sponsor to retain a structural engineer or other qualified professional to determine threshold levels of vibration and cracking that could damage adjacent buildings and design construction means and methods that will not exceed these thresholds. Additionally, the project applicant shall submit a demolition plan for review and approval so as not to unduly impact neighboring property improvements, particularly 505 40<sup>th</sup> Street. Methods of protection for any improvements within 5 feet of the project site boundary shall be specifically addressed in the demolition plan. This plan shall be reviewed and approved by the City CEDA Building Services.

(7) Hydrology and Water Quality/Construction Erosion and Geology/Erosion and Sedimentation: Project demolition, clearing and grading and construction would involve activities (excavation, soil stockpiling, pier drilling, grading, and dredging, etc.) that would result in erosion that could be carried to stormwater drains or off site to streets and sidewalks or adjacent properties. This impact will be reduced to a less than significant level through the implementation of Standard Condition COA HYDRO-1 and COA GEO-1, which requires compliance with the grading permit requirements of Oakland Municipal Code Section 15.04.780, including, among other requirements, implementation of an erosion and sedimentation control plan that must include measures to prevent excessive stormwater runoff or carrying by stormwater runoff of solid materials to adjacent lands, public street or creeks.

(8) Hydrology and Water Quality/Construction Water Quality: Project construction activities, if not managed properly could result in erosion and increased sedimentation and pollutants in stormwater runoff. This impact will be reduced to a less than significant level through implementation of Standard Condition COA HYDRO-2, which requires compliance with the General Construction Activity Stormwater Permit administered by the State Water Resources Board

and preparation and compliance with a stormwater pollution prevention plan (SWPPP) that must incorporate construction period Best Management Practices and Post-Construction Stormwater Management methods including site planning controls, non-stormwater management, and maintenance, inspection, and repair of structural controls in perpetuity.

(9) Hydrology and Water Quality/Project Operation: Project operation activities would increase urban pollutants in runoff from the Project site. The potential water quality impact will be reduced to a less than significant level through implementation of Standard Conditions COA HYDRO-3 and COA HYDRO-4. COA HYDRO-3 Post-Construction Stormwater Pollution Management Plan requires compliance with Provision C.3 of the NPDES permit issued to the Alameda Countywide Clean Water Program, and preparation and compliance with a stormwater pollution management plan to limit the discharge of pollutants in stormwater after Project construction to the maximum extent practicable. COA HYDRO-4 Maintenance Agreement for Stormwater Treatment Measures requires a maintenance agreement related to the stormwater treatment measures to ensure on-going responsibility for on-site treatment measures and access to the on-site treatment measures

(10) Geology, Soils, and Seismicity/Seismic Ground Shaking, Ground Failure and Liquefaction: In the event of a major earthquake in the region, seismic ground shaking could potentially injure people and cause collapse or structural damage to the Project structures. This impact will be reduced to a less than significant level through implementation of Standard Condition COA GEO-2 and COA GEO-3, which impose specific requirements for the preparation, review, approval and implementation of a site-specific soils report that must include, among other information, corrective actions for any land stability problems and site-specific, design level geotechnical investigation that must include, among other information, final design parameters for walls, foundations, foundation slabs, surrounding related improvements and infrastructure for each construction site within the project area.

(11) Public Health and Hazards/Hazardous Materials in Building Materials Demolition or renovation of existing structures that contain hazardous building materials, such as lead-based paint, asbestos, and PCBs could expose workers, the public, or the environment to these hazardous materials and would generate hazardous waste. This impact will be reduced to a less than significant through compliance with local, state, and federal regulatory requirements and implementation of Standard Conditions HAZ-2, HAZ-4, HAZ-6, HAZ-7, HAZ-8, and HAZ-9, which impose requirements for a pre-demolition assessment for the presence of lead-based paint, asbestos, or PCB-containing equipment, or any other building materials or stored materials classified as hazardous waste, abatement in accordance with all regulatory requirements of any identified lead-based paint, asbestos, PCB or other hazardous materials, and development and implementation of a worker health and safety plan.

(12) Public Health and Hazards/Soil and Groundwater: Implementation of the Project would disturb soil and groundwater impacted by historic hazardous material use, which could expose construction workers, the public, or future workers and residents to hazardous materials in soil, groundwater, and soil gases. This impact will be reduced to a less than significant level through implementation of Standard Conditions COA HAZ-1, COA HAZ 3, COA HAZ-5 as modified to include site specific requirements from completed studies. COA HAZ-1 imposes requirements for implementation of construction best management practices, assessment and remediation related to soil and groundwater, preparation of a Soil Management Plan, proper handling and disposal of any impacted soil, onsite containment of groundwater pumped from the subsurface prior to treatment and disposal to ensure resolution of environmental and health issues pursuant to oversight agencies, and utilization of engineering controls. COA HAZ-3 requires the project applicant to prepare and submit to

the City a Phase I report and, if warranted, a Phase II report for the project site. These reports should recommend any necessary remedial action. COA HAZ-5 imposes requirements should the environmental site assessment reports require remedial action, including consulting with the appropriate regulatory agencies, approval of any remedial action by the regulatory agencies, preparation of a Construction-Phase Risk Management Plan that must include any necessary health and safety measures to protect the health of construction workers and the nearby public during construction, and approval of a remedial action plan including measures to reduce any potential health risks to future site users based on a site specific HHRA and the requirements of regulatory agencies.

(13) Public Health and Hazards/Fire Safety: The potential for the Project to increase the potential for fire safety impacts will be reduced to a less than significant level through implementation of Standard Conditions COA-10 and COA-11. COA-10 requires the project applicant to submit a fire safety phasing plan to the City for review and approval which must include all fire safety features incorporated into the Project and the schedule for implementation. COA-11 requires that all construction vehicles and equipment be fitted with spark arrestors to minimize accidental ignition of dry construction debris or dry vegetation.

(14) Public Health and Hazards/Hazardous Materials Business Plan: The potential for the Project to cause a public health or hazard impact will be reduced to a less than significant level through implementation of Standard Condition COA HAZ -12, which requires the project sponsor to submit a Hazardous Materials Business Plan for review and approval by the Fire Prevention Bureau, Hazardous Materials Unit. The Plan shall identify any hazardous materials or chemical stored or used on site, the location of such hazardous materials, an emergency response plan, and a plan that describes how these materials are handled, transported and disposed.

(15) Public Services/Conformance with other Requirements: The potential for the Project to cause a public service impact will be reduced to a less than significant level through implementation of Standard Conditions COA SERV-1, SERV-2, and SERV-3. COA SERV-1 requires that the Project comply with all applicable federal, state, regional, and local codes, requirements, regulations, and guidelines and approval by the Fire Services Division of building plans for project-specific needs related to fire protection. COA SERV-2 requires the project applicant to submit for approval a fire safety phasing plan including all of the fire safety features incorporated into the project and the schedule for implementation of these features. COA SERV-3 requires the project applicant to submit plans for site review and approval to the Fire Prevention Bureau Hazardous Materials Unit.

(16) Utilities and Infrastructure/Wastewater Treatment and Collection: The Project will generate wastewater. This impact will be reduced to a less than significant level through implementation of Standard Condition COA-UTIL-2, which ensures that the project sponsor must pay for any necessary stormwater or wastewater infrastructure improvements and must pay necessary additional fees to control or minimize increase in infiltration/inflow increases associated with the project.

(17) Utilities and Infrastructure/Storm Drainage: The Project may require new or reconfigured storm drainage facilities to direct stormwater to the City-maintained storm drain located beneath Telegraph Avenue. This impact of constructing these facilities will be reduced to a less than significant level through the implementation of Standard Condition COA UTIL-2, which requires confirmation of the capacity and state of repair of the surrounding stormwater and sanitary sewer system, project applicant responsibility for all improvements necessary to serve the proposed project, including any improvements to control or minimize infiltration/inflow increases from the proposed

project, implementation of Best Management Practices to reduce peak stormwater runoff from the project site, and responsibility for installation or hook up fees.

(18) Utilities and Infrastructure/Solid Waste: Demolition activities on the Project site would generate solid waste. This impact will be reduced to a less than significant level through the implementation of Standard Condition COA UTIL-1, which requires a Construction & Demolition Waste Reduction and Recycling Plan (WRRP) and an Operational Diversion Plan (ODP) and compliance with Chapter 15.34 of the Oakland Municipal Code, which contains requirements for reducing waste and optimizing construction and demolition recycling. The WRRP must specify methods by which the development will divert construction and demolition debris waste. Additionally, the ODP must identify how the Project will comply with the Recycling Space Allocation Ordinance for the life of the Project.

(19) Utilities and Infrastructure/Stormwater Pollution Management: Project construction will generate stormwater runoff that could adversely affect water quality. This impact will be reduced to a less than significant level through implementation of Standard Conditions COA UTIL-3 and COA UTIL-4. COA UTIL-3 requires the final site plan to incorporate appropriate site design measures to manage stormwater runoff and minimize impacts to water quality after the construction of the project, including, among others, minimizing impervious surfaces, using permeable paving, clustering buildings, open space, and vegetated buffer areas. The approved site design measures must be permanently maintained. COA UTIL-4 requires the implementation and maintenance of all structural source control measures imposed by the Chief of Building Services to limit the generation, discharge, and runoff of stormwater.

(20) Utilities and Infrastructure/ Stormwater and Sewer: The Project may require new or reconfigured stormwater and sewer facilities. This impact will be reduced to a less than significant level through implementation of Standard Condition COA UTIL-5, which requires confirmation of the capacity of the stormwater and sewer system and the state of repair prior to completing the final design for the project's sewer service.

(21) Cultural Resources/Prehistoric Resources: Project ground-disturbing activities could cause adverse changes to the significance of currently unknown prehistoric archaeological resources on the site. This impact will be reduced to a less than significant level through the implementation of Standard Condition COA CULT-1, which imposes requirements for specified procedures to be followed, including certain halting of construction activities and consultation with a cultural resources professional and implementation of appropriate mitigation, should an archaeological artifact be discovered on-site during construction.

(22) Cultural Resources/Archeological: Project ground-disturbing activities could cause adverse changes to the significance of archaeological resources associated with previous uses on the site. This impact will be reduced to a less than significant level through the implementation of Standard Condition COA CULT-1, which imposes requirements for specified procedures to be followed, including certain halting of construction activities and consultation with a cultural resources professional and implementation of appropriate mitigation, should an archaeological artifact be discovered on-site during construction.

(23) Cultural Resources/Paleontological: Excavation activities associated with Project construction could adversely affect unidentified paleontological resources at the site. This impact will be reduced to a less than significant level through the implementation of Standard

Condition COA CULT-3, which calls for examination by a qualified paleontologist of unanticipated discoveries, evaluation and assessment of any finds, and halting or diverting of certain construction activities for certain discoveries followed by implementation of certain procedures and, if necessary, an excavation plan.

(24) Cultural Resources/Human Remains: Excavation activities associated with Project construction could adversely affect human remains. This impact will be reduced to a less than significant level through implementation of Standard Condition CULT-2, which calls for halting construction activities, notification of the coroner, and implementation of certain procedures and protocols should any remains be uncovered during construction.

(25) Aesthetic Resources/Glare: The Project could result in glare adversely affecting pedestrians and motorists. This impact will be reduced to a less than significant level through the implementation of Standard Condition AES-1, which calls for lighting fixtures to adequately shield lights to prevent unnecessary glare.

### **SIGNIFICANT AND UNAVOIDABLE IMPACTS**

23. Under Public Resources Code sections 21081(a)(3) and 21081(b), and CEQA Guidelines sections 15091, 15092, and 15093, and to the extent reflected in the EIR and the MMRP, the Planning Commission finds that the following impacts of the Project remain significant and unavoidable, notwithstanding the imposition of all feasible mitigation measures, as set forth below. The Planning Commission also finds that any alternative discussed in the EIR that may reduce the significance of these impacts is rejected as infeasible for the reasons given below.

24. Impact TRANS-4 finds that the addition of Project traffic would cause a significant impact at the Telegraph Avenue/51<sup>st</sup> Street intersection under Cumulative Year 2030 Baseline Plus Project conditions. The Project-generated traffic increases critical movement average delay by more than 4 seconds during the AM peak hour and would increase intersection average delay by more than 2 seconds during the PM peak hour. Mitigation Measure TRANS-4 requires the project sponsor to fund the cost of preparing and implementing a plan to change signal cycle length to 120 seconds, optimize signal timing at the Telegraph Avenue/51<sup>st</sup> Street intersection, and coordinate signal phasing and timing with the adjacent Telegraph Avenue/52<sup>nd</sup> Street and Claremont Avenue intersection and other intersection in the same coordination group. This measure would reduce the impact, but is not sufficient to reduce the impact to a less than significant level. Additionally, a Transportation Demand Management (“TDM”) program, which must be reviewed and approved by the City, must be implemented to encourage Project residents and employees to shift from driving alone to other modes. The TDM program is included in the MMRP and the conditions of approval. The TDM program would reduce the impact, but not to a less than significant level. Other measures to reduce the impact could include providing a second left-turn lane or a third through lane on southbound Telegraph Avenue. These improvements are not feasible because they would require elimination of a great number of heavily used metered on-street parking spaces that serve the local commercial uses or require additional right of way that is not available because of existing development along Telegraph Avenue. An alternative that would reduce the impact was considered in the EIR and is rejected as set forth in findings below. This potential unavoidable significant impact is overridden as set forth below in the Statement of Overriding Considerations.

25. Impact TRANS-9 finds that the addition of Project traffic would cause a significant impact at the Broadway/MacArthur Boulevard intersection under Cumulative Year 2030 Baseline Plus Project conditions. The Project would contribute to LOS F operations and would increase

intersection average delay by more than 2 seconds during the AM peak hour. Mitigation measure TRANS-9 requires that a Transportation Demand Management (“TDM”) program, which must be reviewed and approved by the City, must be implemented to encourage Project residents and employees to shift from driving alone to other modes. The TDM program would reduce the impact, but not to a less than significant level. Other measures considered to reduce the impact could include providing a second southbound left-turn lane on Broadway in the median area. This measure would not be effective in reducing this impact because the lane could be only 75 feet long, would accommodate few vehicles, and would often be blocked by traffic in the first left-turn lane. The second left turn lane also would prohibit U-turns on the southbound Broadway approach. Consequently, this measure would not be effective in reducing congestion and improving intersection level of service. Additionally, a measure to convert the exclusive southbound right-turn lane into a shared through/right turn lane, requiring a third receiving lane on southbound Broadway south of MacArthur Boulevard, was considered. This measure would not be effective in reducing this impact because the necessary additional lane would result in the loss of bicycle lanes, turn lanes, or parking and because the three southbound lanes would have to merge to two lanes, thereby reducing the effectiveness of the additional through lanes. An alternative that would reduce the impact was considered in the EIR (Reduced Build/Site Alternative) and is rejected as set forth in findings below. This potential unavoidable significant impact is overridden as set forth below in the Statement of Overriding Considerations.

## **IX. FINDINGS REGARDING ALTERNATIVES**

26. The Planning Commission finds that specific economic, social, environmental, technological, legal or other considerations make infeasible the alternatives to the Project as described in the EIR despite remaining impacts, as more fully set forth in the Statement of Overriding Considerations below. The only remaining significant unavoidable impacts of the Project that cannot be fully mitigated through the mitigation measures and standard conditions described in the EIR are certain 2030 cumulative impacts to transportation, circulation and parking.

27. The EIR evaluated a reasonable range of alternatives to the original project that was described in the Draft EIR. The DEIR identified six alternatives and one sub-alternative (which could be combined with any of the alternatives) to the proposed project. The Planning Commission adopts the EIR's analysis and conclusions eliminating an alternative site from further consideration.

28. The three potentially feasible alternatives analyzed in the EIR represent a reasonable range of potentially feasible alternatives that reduce one or more significant impacts of the Project. These alternatives include: (1) No Project/No Build Alternative; (2) Existing Zoning Alternative; and (3) Reduced Building/Site Alternative. Additionally, the EIR analyzed three planning alternatives that address planning and design concerns, but may not meet the CEQA requirement for reducing one or more significant impacts of the Project. These alternatives include: (4) Proposed Project with Full BART Replacement Parking; (5) Tower Alternative; and (6) Increased Commercial Alternative. As presented in the EIR, the alternatives were described and compared with each other and with the proposed project. The No Project Alternative was identified as the environmentally superior alternative. Under CEQA Guidelines section 15126.6(e)(2), if the No Project Alternative is identified as the environmentally superior alternative, the EIR must also identify an environmentally superior alternative among the other alternatives. The Mitigated Reduced Building/Site Alternative is the second environmentally superior alternative.

29. The Planning Commission certifies that it has independently reviewed and considered the information on alternatives provided in the EIR and in the record. The EIR reflects the Planning Commission's independent judgment as to alternatives. The Planning Commission finds that the Project provides the best balance between the project sponsor's objectives, the City's goals and objectives, the Project's benefits as described below in the Statement of Overriding Considerations, and mitigation of environmental impacts to the extent feasible. The three CEQA alternatives proposed and evaluated in the EIR are rejected for the following reasons. Each individual reason presented below constitutes a separate and independent basis to reject the project alternative as being infeasible, and, when the reasons are viewed collectively, provide an overall basis for rejecting the alternative as being infeasible.

30. The City has reviewed the memorandum prepared by CBRE Consulting Group, Inc. Sedway Group dated May 27, 2008 and entitled "MacArthur Transit Village Project: Assessment of Financial Feasibility of CEQA Alternatives and Full BART Replacement Parking Garage Alternative" (hereafter CBRE Report). After reviewing this memorandum and supporting documentation, the City has determined that the memorandum constitutes credible, expert data, analysis and evidence regarding the economic feasibility of the Project alternatives. The City has relied on the information analysis and conclusions in this memorandum in its findings regarding the Project alternatives as more specifically set forth below.

31. No Project/No Build Alternative: Under the No Project/No Build Alternative, the Project would not be undertaken and the site would remain in its current condition with the existing BART parking lot, two motels, and the commercial and residential buildings. This alternative would avoid all of the Project's potentially significant and mitigatable impacts and the significant and unavoidable Cumulative Year 2030 Baseline Plus Project transportation impacts identified in Impact TRANS-4 and Impact TRANS-9. This alternative is rejected as infeasible because (a) it would not achieve any of the Project sponsor's objectives for the Project; (b) it would not achieve the goals of the City's Neighborhood Center Mixed-Use and Transit-Oriented Development designations of the site as set forth in the Land Use and Transportation Element of the General Plan; (c) it would not provide in-fill development on an underutilized, blighted site consistent with the Broadway/MacArthur/San Pablo Redevelopment Plan and Redevelopment Agency goals for the site; (d) it would not improve the BART plaza or provide the improvements that will enhance vehicle, pedestrian and bike access to the BART station; (e) it would result in the loss of up to 675 new housing opportunities, including affordable housing, suitable for high density housing and identified in the Housing Element of the General Plan as an "Additional Housing Opportunity Site"; (f) it would not provide new commercial opportunities that would positively contribute to the surrounding neighborhood by offering additional goods and services and enhancing the existing nearby commercial area and by providing business and employment opportunities; (g) it would not provide new construction jobs; (h) it would not meet BART's objectives of improving the quality of access to the MacArthur BART station and increasing BART ridership; (i) it would not improve neighborhood safety by introducing a new mixed use development on the site with ground floor uses and a 24-hour population; (j) it would not implement the objectives of the City's Sustainable Community Development Initiative that promote for in-fill housing, green buildings, mixed-use development, and transit villages.

32. Existing Zoning Alternative: Under the Existing Zoning Alternative, the Project site would be developed in accordance with the development standards and uses allowed under the current R-70/S-18 (High Density Residential, Mediated Design Review) zone and the C-28/S-18 (Commercial Shopping District, Mediated Design Review) zone. This alternative would provide approximately 530 units, (145 fewer residential units than the Project), would segregate the commercial

and residential uses on the site, and would reduce building heights. This alternative would reduce Project vehicle trips by approximately 8% in the AM peak hour and 10% in the PM peak hour. Although this alternative would reduce the magnitude of the Project traffic impacts, it would not reduce the significant unavoidable impacts identified in Impact TRANS-4 and Impact TRANS-9. Two variants of this alternative were examined in the EIR. The Full BART Replacement Parking variant would not change any of the traffic or other impacts identified for the Project or the Existing Zoning Alternative, because the traffic analysis in the EIR did not reduce Project trip generation to account for reduced BART parking. The Residential Parking Permit Program variant would result in fewer vehicles driving to and from the MacArthur BART station and would reduce the magnitude of the Project intersection impacts. This alternative, including the two variants, is rejected as infeasible because: (a) it would not avoid or reduce to a less than significant level any of the Project's potentially significant or significant and unavoidable impacts; (b) it would significantly reduce the number of residential units in the Project, including affordable units, and thus would be substantially less effective than the Project in fulfilling the City's and project sponsor's goals for high-density, transit-oriented development on this site; (c) it would result in a less desirable mixed-use development on the site than would the Project because it would segregate the residential and commercial uses in accordance with the existing zoning designations; (d) it would be financially infeasible as documented in the CBRE Report, which found the alternative "generates a negative profit of approximately \$7.5 million or 10%. In other words, the entitlement and infrastructure costs exceed revenue from all sources, indicating that the developer would lose \$7.5 million on this project."

33. Mitigated Reduced Building/Site Alternative: Under the Mitigated Reduced Building/Site Alternative, the Project site would be reduced to include only the BART surface parking lot parcels and would include four mixed use buildings with approximately 200 residential units (475 fewer residential units than the Project), 20,000 square feet of commercial area and 650 parking spaces and a parking structure for 300 exclusive BART parking spaces. This alternative would avoid the significant and unavoidable traffic impacts, TRANS-4 and TRANS-9, of the Project. Two variants of this alternative were examined in the EIR. The Full BART Replacement Parking variant would not change any of the traffic or other impacts identified for the Project or the Mitigated Reduced Building/Site Alternative, because the traffic analysis in the EIR did not reduce Project trip generation to account for reduced BART parking. The Residential Parking Permit Program variant would result in fewer vehicles driving to and from the MacArthur BART station and would reduce the magnitude of the Project intersection impacts. This alternative, including the two variants, is rejected as infeasible because: (a) it would significantly reduce the number of residential units in the Project, including the affordable units, and would be substantially less effective than the Project in meeting the City's and project sponsor's goals for high-density, transit-oriented development on the site; (b) it would reduce the opportunities for new commercial development and thus would provide fewer opportunities for employment and would reduce the opportunity to provide new goods and services to the neighborhood; and (c) it would be financially infeasible as documented in the CBRE Report, which found the alternative results in the development costs exceeding the residual land value. Consequently, no developers or lenders would be willing to invest in the project.

34. Planning Project Alternatives: These three alternatives are included in the EIR to examine certain planning and community related factors. These alternatives have not been designed to avoid or lessen any of the Project impacts. Thus, these are not CEQA-mandated alternatives and need not be approved or rejected as infeasible as otherwise required by CEQA (Pub. Res. Code section 21081). Nonetheless, the City has considered these planning alternatives and makes the following findings:

(a) The Full BART Replacement Parking Alternative, which would include a 600 space garage instead of a 300 space garage is infeasible because: (1) the CBRE Report documented that the 600 space garage would render the Project financially infeasible; (2) it is inconsistent with the City's goals of reducing vehicle use and promoting alternative forms of transportation (transit, bicycle, pedestrian) that will reduce vehicle emissions, including greenhouse gas emissions, and (3) it would not reduce or avoid any of the Project's potentially significant impacts that can be mitigated through the mitigation measures, impacts that are reduced to a less than significant level through the implementation of the City's Standard Conditions of Approval, or significant and unavoidable impacts. The Project TDM plan incorporates into the Project a commitment to increase the BART replacement parking by an additional 210 spaces above the 300 spaces originally proposed, through a variety of mechanisms detailed in the TDM plan. Additionally, as discussed in the TDM plan one study has indicated that future demand for parking spaces for BART patrons may be significantly reduced based on the number of existing patrons who would shift travel modes if the number of parking spaces is reduced. This increase in replacement parking represents an appropriate balance between ensuring adequate parking for BART patrons and fulfilling City policies that promote alternative transportation options.

(b) The Tower Alternative would include a 23-story tower on the Building D lot with 868 residential units, 1,100 parking spaces, 34,000 square feet of commercial space, and 7,500 square feet of community space. This alternative would increase the magnitude of the Project impacts, but would not result in any new significant impacts. This alternative also included analysis of two variants, one with full BART replacement parking and one with a Residential Parking Permit Program. The alternative and the two variants would not reduce or avoid any of the potentially significant or significant and unavoidable impacts of the Project. At this time, this alternative is neither rejected nor approved. In the future, the project sponsor may apply to the City to incorporate the alternative into the Project and the City would consider and process this revised application in accordance with standard procedures, with appropriate public notice before the City Planning Commission.

(c) The Increased Commercial Alternative would include 172,000 square feet of commercial office space, 475 residential units, 27,000 square feet of commercial space, and 5,000 square feet of community space. This alternative would result in a new potentially significant traffic impact and require implementation of an additional mitigation measure. This alternative also included analysis of two variants, one with full BART replacement parking and one with a Residential Parking Permit Program. The alternative and the two variants would not reduce or avoid any of the potentially significant or significant and unavoidable impacts of the Project. At this time, this alternative is neither rejected nor approved. In the future, the project sponsor may apply to the City to incorporate the alternative into the Project and the City would consider and process this revised application in accordance with standard procedures, with appropriate public notice before the City Planning Commission.

## **X. STATEMENT OF OVERRIDING CONSIDERATIONS**

35. The Planning Commission finds that each of the specific economic, legal, social, technological, environmental, and other considerations and the benefits of the Project separately and independently outweigh these remaining significant, adverse impacts and is an overriding consideration independently warranting approval. The remaining significant adverse impacts identified above are acceptable in light of each of these overriding considerations.

36. The Project will substantially enhance the MacArthur BART station by enhancing access to the BART station through renovation of the BART plaza including lighting,

improved safety, and improved access and circulation , reconfiguration and improvement of Frontage Road including a sidewalk and two-way bicycle access, construction of Village Drive including large, attractive sidewalks and a kiss and ride loading and unloading area, and installation of two new traffic signals at the intersections of Village Drive/Telegraph Avenue, West MacArthur Boulevard/Frontage Road and Frontage Road/40<sup>th</sup> Street.

37. The Project will replace a large, blighted site currently containing surface parking and several aging commercial buildings with a well-designed, transit-oriented, mixed-use development that will enhance the surrounding neighborhood.

38. The Project will provide up to 675 new residential units, including affordable units.

39. The Project will increase safety in the neighborhood and around the BART station and enhance the vitality of this area by adding a 24-hour population to the site and creating "eyes on the street" with residential stoops and ground floor commercial uses.

40. The Project will strengthen the surrounding neighborhood by adding a significant number of new residential units in a sensitively-scaled pedestrian-friendly development that will enhance and connect with the surrounding residential neighborhoods.

41. The Project will strengthen the nearby Telegraph Avenue commercial corridor by providing a new population to support nearby existing businesses and by creating opportunities for new neighborhood-serving retail and local employment.

42. The Project will provide 5,000 square feet of community space.

43. The Project will fulfill the City's General Plan, Land Use Element goals for development of the site with a high-density, mixed-use, transit-oriented project.

44. The Project will remediate any existing hazardous conditions on the site.

45. The Project will meet the U.S. Green Building Council Gold Level LEED Neighborhood Development standards.

46. The Project will provide construction jobs over the course of the build out of the Project phases.

47. The Project promotes smart growth by providing infill development at a transit-rich site and by utilizing and enhancing existing infrastructure.

48. The Project will increase ridership for BART and other public transit agencies.

49. The Project will further the City's Sustainable Community Development Initiative by providing infill housing, meeting green building guidelines, promoting mixed-sue development, and establishing a transit village.