

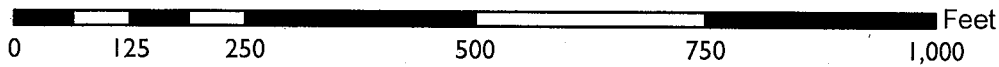
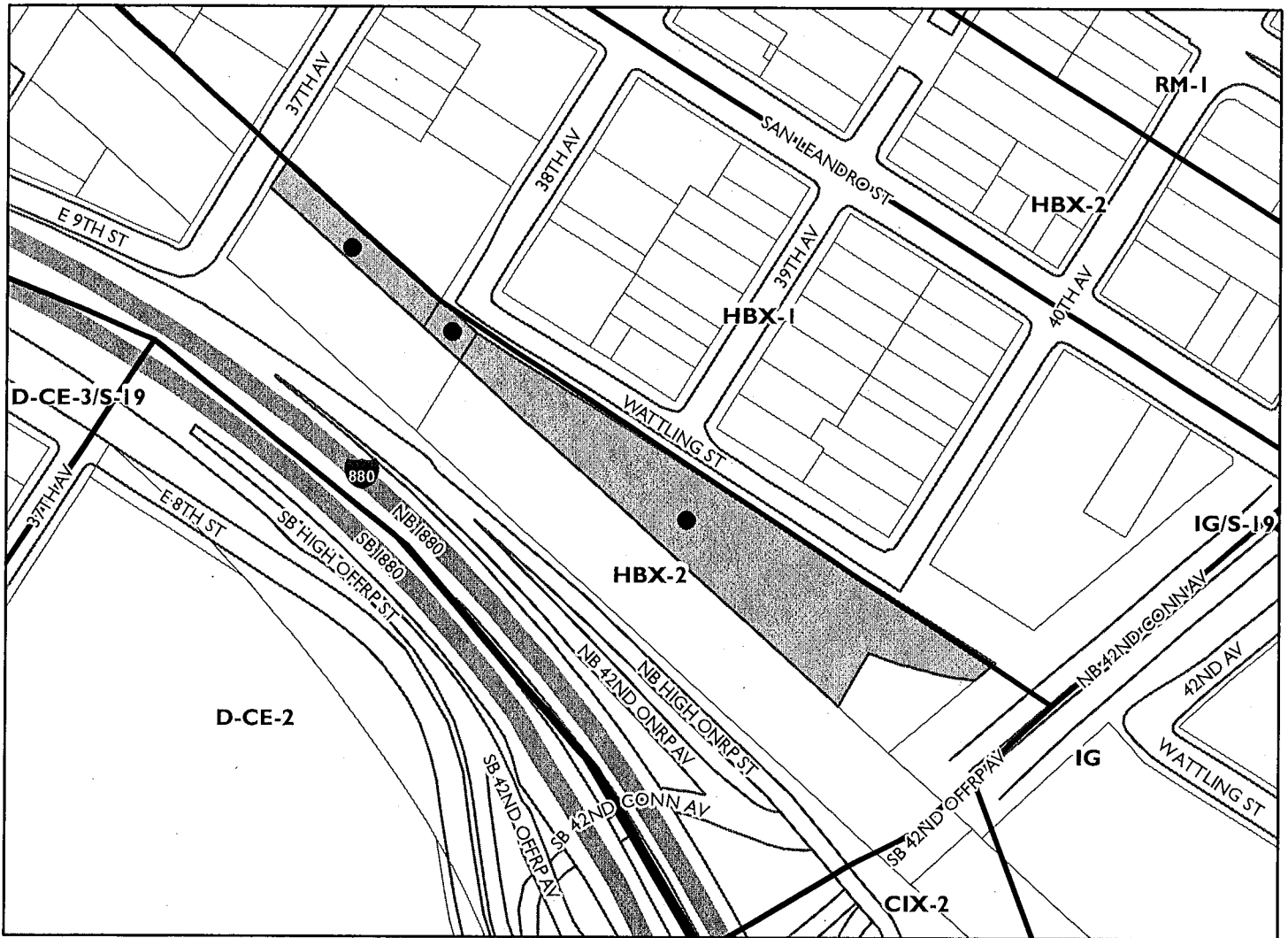
Location:	3927 Wattling Street (APN: 033-2169-016-01; 033-2169-016-02; and 033-2170-003-00)
Proposal:	Extension of the planning entitlements to construct a new, phased multi-family residential development consisting of 18 condominium units and 60 attached single-family homes.
Applicant:	Philip Lesser
Phone Number:	(650) 346-2903
Owner:	Oak Partners, LLC
Case File Number:	REV10-0021
Planning Permits Required:	Extension of the Planned Unit Development Permit for a phased project; Final Planned Unit Development Permit for all phases; Major Design Review for construction of a new principal facility over 25,000 sq. ft.; Minor Variances for courtyard dimensions and residential loading; Vesting Tentative Parcel Map for condominium purposes.
General Plan:	Housing and Business Mix
Zoning:	Existing and Current: HBX-2, Housing and Business Mix 2 Zone
Environmental Determination:	Projects consistent with a community plan, general plan or zoning (CEQA Guidelines Section 15183); Infill Exemption (CEQA Guidelines Section 15332)
Historic Status:	The project site is used for container storage.
Service Delivery District:	3
City Council district:	5
Status:	Planning Commission approval on June 18, 2008. (Case File PUD06-606; PUDF08-166). Revision for minor design changes approved administratively on January 18, 2011. Entitlements extended through December 31, 2016.
Staff Recommendation:	Decision based on staff report
Finality of Decision:	Appealable to City Council within 10 days
For further information:	Contact case planner Heather Klein at 510 238-3659 or by e-mail at hklein@oaklandnet.com .

SUMMARY

The applicant for the residential project at 3927 Wattling Street has requested an extension (*Attachment A*) of the entitlements originally approved by the Planning Commission in 2008 with minor design changes approved administratively in 2011 (*Attachment B*). The Project applicant has taken advantage of all ministerial options for extensions; however, Condition of Approval #2 allows the Project applicant to request further entitlement extensions from the Planning Commission if an application is submitted prior to the expiration date. The Project applicant filed for an extension on November 20, 2015 and the Planning Commission approved a one-year extension on January 20, 2016 (*Attachment C*). The entitlements will now expire on December 31, 2016. The applicant is requesting that the Planning Commission, again grant a 1 extension to the project entitlements.

According to the Project applicant, construction documents and special studies required by the Conditions of Approval have been prepared. A developer has been identified who has strong interest in the project but needs additional time to complete it. The extension would provide the

CITY OF OAKLAND PLANNING COMMISSION



Case File: REV100021
Applicant: Philip Lesser
Address: 3927 Wattling Street
Zone: HBX-2

applicant with additional time in order to facilitate development of the project and staff is supportive of the time extension.

The Project will provide new housing units and infill development on underused, parcels currently used for container storage. The project conforms with the City's zoning and General Plan goals and policies. Therefore, staff recommends that the Project entitlements be extended for a one-year period.

BACKGROUND

Several actions have been approved for this project including the following:

- Planning Commission approval of a Preliminary Planned Unit Development Permit, a Final Development Permit, and a Vesting Tentative Tract Map for the construction of 18 condominium units and 61 attached single-family homes on June 18, 2008.
- Administrative approval of minor design changes to the project including a reduction of one residential unit (61 to 60) on January 18, 2011.
- Planning Commission approval on November 16, 2016 extending the planning entitlements per Condition of Approval #2 until December 31, 2016.

PROJECT DESCRIPTION

Extension Request

Condition of Approval #2 does not limit the number of times an applicant may request an extension from the Planning Commission. In conformance with adopted Condition of Approval #2, the applicant submitted an application on November 20, 2016, again, requesting a one-year extension of the entitlements from the Planning Commission. As noted above, the approved permit for this application is still active. Unless the Planning Commission approves another time extension request, the approved permit will expire, and the Project applicant will need to apply for a new development permit in accordance with the new Planning Code.

Approved Project Use and Design

The proposed project consists of 18 condominium units and 60 attached single-family townhomes. The overall project intent is to create a development consistent with the surrounding residential neighborhood pattern while lessening the impacts of the adjacent railroad tracks and Interstate 880. At the time of the original decision, the Planning Commission supported the proposed uses and character of the development.

ZONING AND GENERAL PLAN ANALYSIS

The project was approved under the HBX-2 (Housing and Business Mix -2) Zone and the zoning for the site has not changed. Residential uses are still permitted in this area at the density and Floor Area Ratio proposed.

DISCUSSION

On May 3, 2016, the City adopted impact fees for affordable housing, transportation, and capital improvements (Ordinances 13365 and 1366). Development impact fees are a commonly used method of collecting a proportional share of funds from new development for infrastructure improvements and other public facilities to offset the impact of new development. The Planning Commission's previous extension approval required the imposition of impact fees to the project unless the project has obtained vested rights.

CONCLUSION AND RECOMMENDATIONS

As noted above, the Project is still in conformance with the General Plan's goals and policies and Planning Code. Staff believes that a one-year extension would allow the applicant to successfully complete the approved, desirable project. At the same time, an additional year would ensure that the site does not remain underutilized for an excessive amount of time. Condition of Approval #2 permits the applicant to request additional extensions from the Planning Commission if needed to complete the Project.

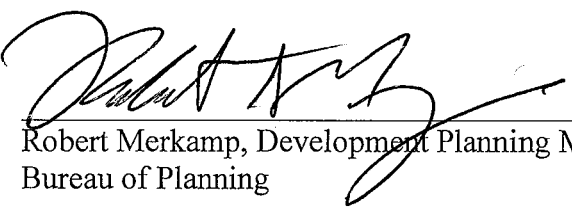
Therefore, staff recommends that the Planning Commission:

1. Approve a one-year extension of Project approvals until December 31, 2017, subject to the previously approved Findings and Conditions of Approval and the additional Condition of Approval regarding the imposition of impact fees.

Prepared by:


Heather Klem, Planner IV

Reviewed by:


Robert Merkamp, Development Planning Manager
Bureau of Planning

Approved for forwarding to the Planning Commission:


Darin Ranelletti, Interim Director

Planning and Building Department

ATTACHMENTS:

- A. Applicant's extension letter of request, dated November 20, 2016
- B. Staff Report (Excerpt), dated June 18, 2008 and REV100-0021 Approval Letter (Excerpt)
- C. Staff Report (Excerpt), dated January 20, 2016

FINDINGS FOR APPROVAL

See Attachment B: PUD06-606 Staff Report and REV10-0021 Revision Approval Letter

ADDITIONAL CONDITION OF APPROVAL

The following condition of approval shall be added to the adopted conditions of approval for case file REV10-0021 upon extension of applicable entitlements beyond December 31, 2016:

The Project approved under Case File REV10-0021 is subject to, and Applicant shall agree to pay, the development impact fees that were adopted by the City Council per Ordinances 13365 and 1366 unless a vested right has been obtained.

November 20, 2016

Robert Merkamp
City of Oakland
Planning & Zoning Division
250 Frank H. Ogawa Plaza
Suite 2114
Oakland CA 94612-4730

Re: Request for Two Year Planning Council Extension of Entitlements
Case File No. REV10-0021
Project Address: Wattling Street
Assessor's Parcel Nos: 033-2169-016-01; 033-2169-016-2; 033-2170-003-00

Dear Mr. Merkamp:

A Planning Council extension to obtain building permits for the aforementioned project will expire on December 31, 2016.

Oak Partners, LLC, the project sponsor, will not have building permits issued by that date.

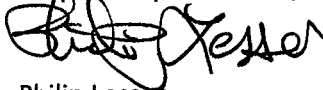
Since the approval of this project on January 18, 2011, project sponsor has expended hundreds of thousands of dollars to generate construction documents and special studies per the direction of pertinent City of Oakland Departments.

We now have a developer showing strong interest in building this project. However they need more time than what is remaining on the current entitlements.

Therefore, on behalf of my client, Oak Partners, LLC, we respectfully request to have another entitlements extension placed as soon as possible on the agenda of the Oakland Planning Commission.

Please advise if you and your staff require anything else from our project team prior to the hearing.

Respectfully submitted,



Philip Lesser
For Oak Partners, LLC
555 Laurel Avenue, # 501
San Mateo CA 94401

Cc. Heather Klein, Planner III, City of Oakland/Bureau of Planning
Enclosures: Application Fee Check payable to City of Oakland (\$1,678.31)

ATTACHMENT A

Location:	Wattling Street (see map on the reverse)
Assessors Parcel Number:	(APN: 033-2169-016-01; 033-2169-016-02; and 033-2170-003-00)
Proposal:	Construction of a new phased multifamily residential development consisting of 18 condominium units and 61 attached single-family homes. The proposed project also includes construction of a triple-sided static billboard. The billboard will be between 75'-85' tall with 2,016 sq. ft. of signage above a 2,404 sq. ft. garden.
Applicant Contact Person / Phone Number:	Toby Levy c/o Levy Design Partners, Inc / (415) 777-0561
Owners:	Oak Partners LLC c/o Philip Lesser
Planning Permits Required:	Preliminary Planned Unit Development for a phased project; Final Planned Unit Development Permit for all five phases; Major Design Review for the construction of a new principal facility over 25,000 sq. ft. of new floor area; Minor Variances for courtyard dimensions and residential loading; Vesting Tentative Parcel Map for condominium purposes.
	<i>A Franchise Agreement or Relocation Agreement for the Advertising Sign will be required with approval by City Council.</i>
General Plan:	Housing and Business Mix
Zoning:	HBX-2 Housing and Business Mix 2 Zone
Environmental Determination:	Projects consistent with a community plan, general plan or zoning (CEQA Guidelines Section 15183); Infill Exemption (CEQA Guidelines Section 15332)
Historic Status:	The project site is vacant.
Service Delivery District:	4
City Council district:	5
Date Filed:	December 13, 2006
Staff Recommendation:	Decision based on staff report
Finality of Decision:	Appealable to City Council within 10 days
For further information:	Contact case planner Heather Klein at 510 238-3659 or by e-mail at hklein@oaklandnet.com.

SUMMARY

OakPartners, LLC has submitted an application to construct a new phased multifamily residential development consisting of 18 condominium units and 61 attached single-family homes. The applicant is also proposing construction of a triple-sided static billboard above a 2,404 sq. ft. garden.

The project site is located on three vacant parcels southwest on Wattling Street and between 37th Avenue and 40th Avenue. The site is currently used for container storage.

The architect's overall intent is to create a scheme that is consistent with the surrounding neighborhood development pattern, while lessening the impact imposed on the area by the nearby railroad tracks and Interstate 880. Since the site is very long and thin, the overall design goal is to create sub-neighborhoods within the project. This is accomplished through imposing a smaller street pattern on the site. The multi-family condo building seeks to act as a buffer and a transition piece between the industrial area and the more residential oriented area starting on 38th Ave. The single family townhouses between 38th and 40th Ave. are designed to be consistent with the scale of the residential neighborhood across Wattling Street.

(Contains map showing the project site and general vicinity)

Staff has identified the following key issues. Further discussion is provided later in the staff report.

- The ownership of a portion of Wattling Street is in dispute and a quiet title action is currently proceeding in Superior Court of California, County of Alameda. Seven units in Parcel I, Phase 4 front onto this portion of Wattling Street. An unfavorable decision from the Court will likely have a minor impact on the overall project. Phase 1, 2, 3 and 5 would not be affected at all. Changes to Phase 4 would likely include minor changes to site plan, public improvements that jog onto the project site, and/or a reduction in the number of units.
- The applicant is requesting a Preliminary Planned Unit Development (PUD) for a phased project; a Final Planned Unit Development Permit (FPUD) for all phases, and a PUD bonus for the lot area of Parcel 3 which is shown as open space.
- The applicant is requesting several Minor Variances for courtyard dimensions and residential loading.
- The project applicant is proposing a three-sided, static billboard with 2,016 sq. ft. of signage. Construction of the billboard is not subject to a decision by the Planning Commission but will be considered as part of a Franchise or Relocation Agreement with City Council that currently includes removal of 15 billboards in Council District 5. The City Council can require a design review permit for the billboard.

Overall, staff believes that the project will be a positive contribution to this neighborhood and recommends approval of the project subject to the findings and conditions. The required permits and variances are justified given the constraints of this site and the nature of the project.

PROJECT SITE AND SURROUNDING AREA

Existing Conditions

The proposed development is located on three irregularly-shaped parcels southwest on Wattling Street. Specifically, the three parcels total 1.77 acres and are bounded by Wattling Street, 37th Ave., 40th Ave., and the Southern Pacific Railroad. The project site is vacant but is being used for container storage. The property does not have a historic rating per the Oakland Cultural Heritage Survey.

Surrounding Area

The area surrounding the project site is a mix of industrial and residential uses. To the northeast of Wattling Street are several warehouse buildings and several small 1-2 story single-family homes. To the east are live / work and warehouse buildings. To the southwest are the Southern Pacific Railroad (50' from the rear property line to the centerline of the tracks) and Interstate 880 (120' from the rear property line) to the west are more warehouse and industrial buildings

PROJECT DESCRIPTION

Building Program and Floor Plans

The proposed project consists of 18 condominium units and 61 attached single-family townhomes on four parcels. Parcel 1 contains seven attached single-family townhomes and a surface parking lot at the rear of the units. Parcel 2 contains 54 attached single-family townhomes. These units are oriented inwards onto pedestrian walkways with a driveway to the garage located on the rear of home. The end units can also be accessed directly from Wattling Street. Seventeen units are located along the property line facing the Southern Pacific Railroad tracks. Approximately half of these units have a private garage, while the other units have uncovered parking located off of the driveways. Parcel 3 contains the garden

with a possible billboard above. Parcel 4 would include 18 units in a four-story building. This parcel would be accessed via a one-way driveway entering off of Wattling Street and existing onto 37th Avenue.

The architect's overall intent is to create a scheme that is consistent with the surrounding neighborhood development pattern, while lessening the impact imposed of the nearby railroad tracks and Interstate 880. Since the site is long and thin, the overall design goal is to create sub-neighborhoods within the project. Specifically, the northwest end of the site is in a heavy industrial area being bound by 37th Ave, railroad tracks, and the State Shingle building. The multi-family condo building on Parcel 4 seeks to act as a buffer and a transition piece between the industrial area and the more residential oriented area starting on 38th Ave. This structure houses flexible units with internal courts. A noise buffering façade layer shields these courts. The single-family townhouses between 38th and 42nd Ave. are organized in a smaller street pattern perpendicular to Wattling. The units are designed to be in scale with of the rest of the neighborhood. The facades have been designed to work together and also to break up the massing and repetitiveness along Wattling Street. Parallel to the railroad tracks and Interstate 880, the townhouses follow the rear property line, perpendicular to our new streets and thereby create a buffer from railroad and highway noise and views. The materials for the project include concrete block in a split face, stucco, trex-board, and fiber cement board and panels, with wire mesh fences and gates.

The one bedroom condominiums are approximately 725 sq. ft. with either a podium courtyard space or a deck. The 3-story single-family homes are a combination of two to three bedroom units that range in size from 1,032 to 1,502 sq. ft.

The project proposes extensive hardscape and softscape elements throughout the development, including new sidewalk, curb, and gutter. Additional hardscape elements include a wood gazebo, decorative paving, decomposed granite, stepping stones, barbeques, benches, fencing, and ornamental gates. Planting areas and open space are located throughout the development. A 4' wide landscape buffer and street trees are proposed in front of the residential units fronting Wattling Street. The units fronting onto the driveways have small lawn areas. A 2,404 sq. ft. garden or park is also located on the site. The landscaping plans show ornamental fruit trees, shrubs, vines, and groundcovers.

The applicant is also considering construction of a triple-sided static billboard mounted on a single steel pole. The new billboard must be approved by the City Council, as part of a Franchise Agreement or Relocation Agreement, that currently includes removal of 15 billboards in Council District 5.

Green Building

The proposed project would incorporate a number of green building principles and features. The project conserves resources by increasing density, is designed with diverse unit sizes, promotes infill development, and is near transit. The proposed building features that the applicant is considering include passive solar heating, Low-E double-pane windows, compact fluorescent lighting, low energy-using major appliances, low water landscaping and storm water management, and avoiding products with added formaldehyde, decking to be of recycled-content, and rapidly renewable flooring

GENERAL PLAN ANALYSIS

Land Use and Transportation Element of the General Plan

The General Plan designation for the project site is Housing and Business Mix (HBX). The HBX zoning designations have been adopted by the City Council to implement the Housing and Business Mix LUTE classification. Therefore, the proposed density conforms to the General Plan density.

The General Plan states that the *intent* of the HBX designation is to “recognize the equal importance of both housing and business. This classification is intended to guide a transition from heavy industry to low impact light industrial and other businesses that can co-exist compatibly with residential development.” The General Plan states that the *desired character* of future development within this classification should be compatible with housing, and development should recognize the mixed business nature of the area. This classification allows mixed housing type density housing, “live-work”, low light industrial, commercial, and service businesses, and compatible community facilities.

The following General Plan Land Use and Transportation 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 Housing Construction

Policy N3.2 Encouraging Infill Development

The project site has been used as container storage for years and has been the subject of several complaints including blight, trash and debris, unauthorized access to the property, abandoned vehicles and dumping. The proposal to construct housing on this site would be positive for the neighborhood. The Land Use Element considers the construction of new housing to be one of the highest priorities in Oakland to meet the demand of a growing population. In addition, the project site has no existing buildings, is located across the street from a small residential neighborhood and is appropriate for infill development. The project meets the objectives listed above by providing 79 new residential units on several underutilized parcels.

Policy T2.1 Encouraging Transit-Oriented Development Although the project is not technically considered a Transit-Oriented Development, it is located just 6 blocks away (less than a quarter mile) from the Fruitvale BART station. This project would meet the goal of this policy by providing housing near transit consistent with the City’s transit first policy.

Policy N6.1 Mixing Housing Types The project is proposing a mix of condominium units and larger attached townhomes style units that range from one to three bedroom units. This mix of unit types and sizes will provide housing for a range of incomes and family units.

The proposed project meets the referenced objectives, the general intent of the HBX land use designation, and is a good fit for this area.

Coliseum Area Redevelopment Project Area Plan

In addition, the project is located in the Coliseum Area Redevelopment Project Area and is subject to the policies and goals in the Coliseum Area Redevelopment Plan. The following Redevelopment Plan goals apply to the proposed project:

Goal 1: The elimination of blighting influences and the correction of environmental deficiencies in the Project Area, including among others, small and irregular lots, faulty exterior spacing, obsolete and aged building types, mixed character or shifting uses or vacancies, incompatible and uneconomic land uses, substandard alleys and inadequate or deteriorated public improvements, facilities, and utilities.

Goal 2: The assembly of land into parcels suitable for modern, integrated development with improved pedestrian and vehicular circulation in the Project Area.

Goal 3: The replanning, redesign, and development of undeveloped areas which are stagnant or improperly utilized.

The project develops an underutilized, vacant property that has had several complaints for trash, blight, dumping, and inoperable vehicles into an integrated residential community. The project will combine several small thin and irregular parcels sufficiently large to allow for comprehensive planning. The project is proposing new curb, gutter, and sidewalk, as well as street trees to improve pedestrian circulation. Staff would include, as typical for all new development projects, a condition requiring half street improvements for vehicular circulation.

The proposed project meets the referenced objectives, policies, goals, and the general intent of the Coliseum Redevelopment Plan. Staff finds that the project is a good fit for this area.

ZONING ANALYSIS

The zoning of the site is designated HBX-2 or Housing and Business Mix 2 Zone. The HBX-2 zone is intended to "provide development standards for areas that have a mix of industrial, certain commercial and medium to high density residential development. This zone recognizes the equal importance of housing and business." The maximum residential density for this zone is 1 unit per 930 sq. ft. of lot area. Staff has calculated a maximum density of 83 units. The 79-unit proposed project is under the maximum density permitted by the zoning designation.

The following table depicts the project's comparison to HBX-2 zoning requirements.

Zoning Regulation Comparison Table

Criteria	Requirement HBX-2	Proposed	Comment
Lot Area	4,000 sq. ft.	Parcel 1 = 14,968 sq. ft. Parcel 2 = 49,652 sq. ft. Parcel 3 = 2,434 sq. ft. Parcel 4 = 10,149 sq. ft.	All parcels meet the HBX-2 requirements, except parcel 3. Can be waived with the PUD bonuses.
Lot Width	35'	All parcels are over 35' in lot width	Meets the HBX-2 requirements.
Lot Frontage	35'	All parcels are over 35' in lot frontage	Meets the HBX-2 requirements.
Yard – Front Setback	Per HBX Design Guidelines Manual	0-47'	Consistent with the HBX Design Guidelines Manual
Yard – Interior Side Setback	Per HBX Design Guidelines Manual	0-21'	Consistent with the HBX Design Guidelines
Yard – Corner Side Setback	N/A	0'	Consistent with the HBX Design Guidelines
Yard – Rear Setback	Per HBX Design Guidelines Manual	0-10'	Consistent with the HBX Design Guidelines
Height	45'	33'-45'	Meets the HBX-2 requirements.
Open Space	150 sq. ft. / unit = 12,000 sq. ft.	3,500 sq. ft. of group open space and 12,680 sq. ft. of private open space = 16,180 sq. ft.*	Meets the HBX-2 requirements.
Parking	1 space / unit = 80 spaces	1spaces / unit = 80 spaces	Consistent with the HBX Design Guidelines with landscaping.
Parking Design	Per HBX Design Guidelines Manual	Located in a lot off of the street in front of the units	Consistent with the HBX Design Guidelines
Loading	50,000-149,999 sq. ft. resid. = 1 berth	0 berths	Does not meet the HBX-2 requirements. Minor Variance is required.
Residential density	1 unit / 930 sq. ft. = 83 units	80 units	Meets the HBX-2 requirements.
FAR	2.6	99,657 sq. ft. of building floor area = 1.29	Meets the HBX-2 requirements.
Advertising Sign	Prohibited except pursuant to Section 17.104.060	One static triple sided billboard with 2,016 sq. ft. of signage as part of a relocation agreement	See KEY ISSUES section for a discussion on the billboard.

The criteria for review and approval of this facility at this location includes the following: The Planned Unit Development Criteria (Preliminary and Final) in Section 17.140.080 and 17.140.060, the Design Review Criteria in Section 17.136.050A for the residential development; the Minor Variance Criteria in 17.48.050; and the Tentative Parcel Map Section 16.24.040 and 16.08.030. All applicable criteria are analyzed and appropriate findings are made in the *Findings* Section of this report.

ENVIRONMENTAL DETERMINATION

Based on the size and location of the project site, as well as the findings of the traffic report and historic analysis, staff has concluded that the project is able to satisfy the in-fill exemption under the California Environmental Quality Act (CEQA), Section 15332. The categorical exemption criterion follows with a brief summary of staff's analysis in bold print:

- a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations; **As demonstrated in the General Plan Analysis section of this report, the application is consistent with all applicable General Plan policies and the Housing and Business Mix (HBX) designation. The Zoning Analysis and Required Findings sections demonstrate that, with approval of the PUD's and Variances, the project is consistent with the Zoning Ordinance. In addition, the project is also consistent with many of the goals in the Coliseum Redevelopment Plan.**
- b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; **The project site encompasses approximately 1.77 acres (77,213 sq. ft.). The site is located within the Coliseum Redevelopment Plan Area and is substantially surrounded by commercial, manufacturing, civic, and residential urban uses.**
- c) The project site has no value as habitat for endangered, rare or threatened species; **The project site is currently occupied by container structures. According to the Phase I report, the site was previously used as truck wrecking yard and truck sales, a lumberyard, contained a railroad spur was also evident. This history covers a period between 1912 and the present. Based on these uses and the surrounding context, staff has concluded that the site contains no known endangered, rare, or threatened species.**
- d) Approval of the project would not result in any significant effects relating to traffic, air quality, noise, or water quality; **A traffic report was completed specifically for this project and submitted in June 2008 (available at the Planning and Zoning office). Traffic impacts from the project were reviewed at several intersections within proximity to the project site. The project is anticipated to generate approximately 417 new net daily trips, 38 AM peak hour trips and 44 PM peak hour trips with a 10% discount for transit use. Staff did not take into account the existing trips to site which is used as container storage so the overall trips could be less. Level of Service (LOS) was calculated for 8 intersections. In the existing condition, all intersections operate at acceptable levels (LOS D or better).**

The trips associated with the project would generate far fewer than the 2,000 vehicle trips per day that the Bay Area Air Quality Management District (BAAQMD) considers the normal minimum traffic volume that should require a detailed air quality analysis. However, given the project's location near I-880 and the Southern Pacific railroad tracks, staff required an air quality analysis to be completed (available at the Planning and Zoning office). The study concluded that the BAAQMD's control measures as stated in the City's standard condition of approval regarding dust abatement and equipment emissions were adequate to address construction related impacts.

The project's adjacency to the railroad and I-880 is within the 500' advisory buffer for health risks per the California Air Resources Board's guidance manual. The architects have included several features in the project drawings that would address this proximity. The air quality

study concluded that, with these features, the existing air quality context would not impact the proposed development and cause a health risk. These features are reiterated for importance as conditions of approval. In addition, the study also analyzed Green House Gas Emissions. The project would reduce green house gases by promoting infill development in a major urban area, locating near Fruitvale BART and several ACTransit lines, adding vegetation on a vacant and blighted site, and implementation of several green features already discussed above.

Due to adjacency to I-880 and the railroad, staff required a noise study to be completed (available at the Planning and Zoning office). The study analyzed construction noise, operation noise, traffic noise, interior noise and levels from transportation sources. The study concluded that the project features that would be implemented to reduce air quality impacts also reduce noise levels from existing noise generators on the project. The project's mechanical equipment would be required to meet the performance standards in the Planning Code. Construction noise would be temporary and would comply with the City's standard condition of approval.

The applicant is required to comply with all applicable City regulation and operation procedures as part of the issuance of building or grading permits. As noted above, standard and uniformly applied conditions of approval have been imposed for this project regarding air quality and noise, as well as water quality, and cultural resources.

e) The site can be adequately served by all required utilities and public services. The project site is located in a highly urbanized area within Oakland and can be adequately served by utility and public services.

f) Cumulative Impacts:

Staff has also concluded that the project would not cause a cumulative impact. The traffic report's findings indicate that in the 2015 cumulative scenario the studied intersections are starting to fail with most intersections at or approaching LOS E and F. By 2030 all the studied intersections are at LOS F. The report concluded that these LOS levels would occur with or without the project and are caused by background traffic growth and the project would not cause any of the City's traffic thresholds to be exceeded for years 2015 or 2030. Therefore, the project does not result in a cumulative traffic or other impact.

As a separate and independent basis, the project also satisfies CEQA Guidelines Section 15183 as the project is consistent with the general plan and zoning. Specifically, 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) 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 (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; and (e) no substantial new information exists to show that the Standard Conditions of Approval will not substantially mitigate the project and cumulative impacts.

COMMUNITY MEETING

The applicant held a community meeting on September 11, 2007. Approximately 25 neighbors and property owners attended the meeting. The community's main concern was parking and traffic in the area. The community also had concerns about the overall density, the size of the open spaces, the design of the multi-unit building, and the billboard. Staff has not received any public comment letters in support or opposition to the project. However, staff did receive one letter from an adjacent neighbor regarding the ownership of the street. This is briefly discussed below.

DESIGN REVIEW AND CONFORMITY WITH DESIGN GUIDELINES

Staff presented the project before the Design Review Committee (DRC) on October 24, 2007. Overall, the DRC appreciated the applicant's willingness to invest in this area. Staff had several issues regarding the design and planning of the project. The committee provided comments, indicated support for the variances and recommended forwarding to the full Planning Commission. A discussion of the changes and how the proposed project meets the HBX Design Guideline Objectives follows.

Design Objective #1 – Create a Development pattern that encloses the street space by defining a street wall and street section while providing transitions from existing patterns and respecting the light and air of residential properties, if present.

There is a discernable setback context on 37th, 38th, 39th, and 40th Avenues. There is not that same context on Wattling Street where there is mixture of properties built directly to the property line, large setbacks completely paved, and landscaped setbacks. Therefore, the architect create a new street section with 11' sidewalks, trees 18' O. C., and a 3' landscape strip. Given the context, staff feels that the project should comply with the 5' landscape area per guideline 1.1 and have a smaller sidewalk dimension if this acceptable to the Design and Construction Services Division. The project street wall includes the building facades and the pedestrian/vehicular gates.

Parcels 2 and 3 border the railroad tracks and further on I-880. The project has been designed with the rear units acting as a sound wall to buffer the noise. Parcel 1 has been redesigned to provide the open space and parking in the rear (See Objective #3).

The design guidelines state that new construction should take into account the light and air of single family homes, duplexes, or similar small scale residential development, but that the intense urban development envisioned by the HBX zones will have some impact onto light and air of existing properties. Given the proposed height and orientation of the townhomes, it is unlikely that there will be impacts on sunlight to the adjacent properties to the northeast. Even the height of the multi-unit building will be unlikely to have impacts on residential properties, unless in the winter months, since those buildings are well across the street.

Design Objective #2 – Site Parking to maintain an attractive streetscape and preserve on-street parking.

Although vehicles parallel park along this side of Wattling Street, there are no marked or metered spaces and no curb, gutter and sidewalk. The project provides the required parking on-site and along private driveways located within the interior of the site behind the townhouse units and within a garage for the multi-unit building. Most of the project units are oriented toward the interior, except for those on the end

which face onto Wattling Street. This orientation allows access via only six driveways to access the units and therefore preserve as much on-street parking as possible.

The project is proposing new sidewalk, curb, and gutter which will enhance the pedestrian experience along this edge. In addition, new street trees and three foot planter strips with shrubs and groundcovers will provide an attractive streetscape. Again, the end units are oriented toward Wattling which provides an attractive and articulated street façade.

Design Objective #3 – Integrate functional open space into the design of the site.

The design objective is met by creating a variety of open spaces that “green” the project site. Some of these spaces are small such as the new tree wells, the 3’ landscape strip along Wattling Street and at the corner plantings at the garages. Other areas are larger and more functional including the courtyards and decks within the multi-unit building, the private open spaces in front of the townhomes, the garden, and the open spaces before the units facing the rear property line. These last areas include barbecues, benches, fencing, and ornamental planting. Overall, the project is providing 3,500 sq. ft. of group open space and 12,680 sq. ft. of private open space for a total of 16,180 sq. ft.

The original submittal included seven attached single-family homes to the rear of the lot and a surface parking lot in front on Parcel I. Staff and the DRC was concerned that the proposal did not meet *HBX Guideline #3.1 which states that the project should preserve the collective rear yard open area for residential development.* To address this issue the architect revised the project to move the driveway and parking lot to the rear of the homes. The units now face the street and staff supports this revision.

Design Objective #4 – Use design techniques to scale buildings appropriate to their location.

The project meets the guidelines of the objective by purposefully creating a scheme that is consistent with the surrounding neighborhood development pattern. Parcel 1 is located across Wattling Street from a single story live/work building. Parcel 2 is located across the Wattling Street from small 1-2 story single-family homes. The proposed townhouse development will retain the lower scale character along Wattling Street. These units are 34’ high with canted rooflines to further reduce the scale of the proposed buildings. Parcel 3 containing the multi-unit building is behind the State Shingle Co., a two-story industrial building. The multi-unit building is taller than the industrial building by almost 27’ but it is not located directly on 38th Avenue or Wattling Street but setback approximately 9’. The height of the industrial building is likely to mask the proposed structure. The height of this building also provides variety within the development.

The original submittal included a multi-unit building that was three-stories over parking. Staff was concerned that the proposal did not meet *HBX Design Objective #4 which states that the project should use “techniques to scale the buildings appropriate to their location.* The DRC thought the height was appropriate but did not like the design which was different in materials and style than the townhomes. The applicant revised the multi-story building so that the roofline slants to reflect the townhome design. This creates articulation along the roofline. In addition, the exterior walkway is now broken up and masked through the use of a wall panel system. Staff supports this revision.

The proposed project will emphasize a human scale and active streetscape by providing new sidewalk, curb, gutter, street trees, and landscape strips. The enlarged end units also clearly define the pedestrian entrance from the vehicular entrance and create a more intimate experience.

Design Objective #5 – Consider a variety of architectural styles.

Within the project itself, the architectural style is fairly contemporary. However, the context is a mix of architectural styles including Victorian, industrial, utilitarian, and bungalow. The height and massing of the project help integrate the project into the neighborhood, while the contemporary style sets it apart. The original submittal showed a combination of concrete masonry block, fiber cement board/panels, and trex board for the buildings. Staff was concerned that these materials did not meet *HBX Design Objective #5 which states that the project should consider a variety of architectural styles. The design review process should encourage the design of visually attractive buildings that add richness and variety.* The DRC reviewed the materials and did not believe that they needed to be changed.

Design Objective #6 – Provide visual interest to street facing elevations.

Staff was concerned that proposal was not articulated enough for a residential project and additional windows should be required. Staff was concerned that the proposal would not meet *HBX Design Objective #6 which states that the project should provide visual interest to street facing areas.* The DRC thought the rooflines of the townhomes was too various. In addition, they thought the rhythm of building, driveway, and pedestrian access was too repetitive and similar in width along the street front. The architect switched the rooflines for the townhomes to read more as a set of pairs. The architect also “popped” out the sides of the units along the pedestrian access to diminish the width and create variety along the street front. Staff supports this revision.

Design Objective #7 – Provide visual emphasis to buildings at street corners.

The corners at 37th Ave. and 38th Ave. do not play an important urban design role in this particular context given that a portion of the project is behind another parcel and Wattling Street does not continue to 37th Ave. Nevertheless, a large expanse of windows on the multi-unit building helps emphasize the entrance and provide visual interest. The change in materials provide interest on the 37th Street side.

Design Objective #8 – Provide well designed landscaping and buffering for street fronting yards, parking areas, nonresidential activities, and parking podiums.

Again, the project is proposing new sidewalk, curb, and gutter, new street trees and three foot planter strips with shrubs and groundcovers to provide an attractive streetscape. None of the parking areas are located in the front of the development. The parking area for the multi-unit building is hidden behind the State Shingle Building and a gate.

KEY ISSUES

The project is a contemporary, multi-unit residential development in a predominantly mixed-use and transitional neighborhood. Staff has identified a number of planning and design issues for consideration in the next section of this report.

Ownership of a Portion of Wattling Street in Dispute

The proposed plans show public improvements including sidewalk, curb, and gutter along a portion of Wattling Street past 40th Avenue, as shown in Figure A. Seven units would front onto the proposed sidewalk. This portion of the street is currently fenced off and used as a parking lot for the tenants of 4001 San Leandro Street.

The owner of 4001 San Leandro Street is currently engaged in a quiet title process in Superior Court of California, County of Alameda regarding this portion of Wattling Street. The owner supposedly has documents that were not shared with the City that indicated private parties were in ownership of the street. City of Oakland staff does not believe that the City's right to the street was ever abandoned. Staff issued a Notice to Abate to the owner of 4001 San Leandro Street to abate the illegal fencing and parking in the public right of way. That notice is currently suspended due to the pending court prove-up hearing in on June 28, 2008.

The applicant has been informed that since the matter is in the courts, the ownership of the street remains uncertain. The prove-up hearing does not constitute a decision on ownership of the street, it is only the means by which the City will interject its claim to that portion of the street. Staff does not recommend a decision on the project await a court decision because of the potential length of time to resolve the matter of ownership. Since this parcel is part of Phase 4, there is ample time to resolve this particular issue while continuing with Phases 1-3.

A court decision in favor of the City would result in the removal of the fence, the public improvements being installed, and the project proceeding as shown in the plans. In staff's opinion, an unfavorable decision regarding the ownership of this portion of Wattling Street will have a minor impact on the overall project. Phase 1, 2, 3 and 5 would not be affected at all. Changes to Phase 4 would likely include minor changes to site plan, public improvements that jog onto the project site, and/or a reduction in the number of units. These changes are not anticipated to result in a CEQA impact. Traffic to/from this phase onto the project site would use the nearest driveway shown beyond the portion of Wattling Street in question. Traffic heading away from the site is still anticipated to use 40th Avenue. Staff has included Condition of Approval # 52 to address this issue.

PUD Bonuses

Planning Code section 17.122.100 allows the Waiver or Reduction of Yard and Other Dimensional Requirements, including lot area. Per the Vesting Tentative Map, Parcel 3 is not meeting the minimum lot size of 4,000 sq. ft. Since this area will be used as a park and development will be restricted, staff believes that application of the bonus would be warranted.

Minor Variances

- *Courtyard Dimensions:* Section 17.108.120 states that there be a minimum courtyard requirement between opposite exterior walls, or portions thereof, of the same or separate buildings on such lot. There are several instances in both the multi-unit building and within the single-family portion of the project that are not meeting this regulation. The intent of the regulation was to increase light and air to the proposed units as well as to provide adequate open space. This is also an objective (Guideline 3.1) of the HBX Design Guidelines Manual. Staff believes that on this irregular site it would be difficult to meet this regulation without decreasing units. The DRC and staff believe that the Variance is supportable.
- *Loading Berths:* Pursuant to Section 17.116.120, one loading berth is required for residential use with floor area between 50,000 and 149,999 sq. ft. The whole project is proposing 99,657 sq. ft. of floor area and the project is not proposing any dedicated on-site loading. A minor variance is requested to delete the loading berth from the project program. Staff believes that a variance for the loading berths can be supported since the project will entail the construction of condominiums and single-family homes not rental units. Loading is anticipated to take place in the mews or along Wattling Street. The removal of the loading berth is not anticipated to result in a significant impact on circulation because

it would be used infrequently to only accommodate moving vans, which could utilize the resident's driveways or the on-street parking spaces.

Franchise Agreement or Relocation Agreement for the Advertising Sign

The project applicant is considering construction of a three-sided, static billboard with 2,016 sq. ft. of signage. Staff inadvertently noticed the billboard as requiring a design review permit. Planning Code Section 17.104.060 states that new advertising signs or billboards are prohibited in the City of Oakland unless a franchise agreement or relocation agreement is authorized by the Oakland City Council, and then only under the terms and conditions of such agreements. Only City Council could require a design review permit for the billboard as a condition of the agreement. The proposed billboard will be considered as part of a Franchise or Relocation Agreement with City Council that currently includes removal of 15 billboards in Council District 5.

CONCLUSIONS

In summary, the proposal seeks to develop a residential project in East Oakland. The project meets the primary goal of providing new housing units and infill development on underused or vacant parcels. Furthermore, the project is clearly in conformance with the General Plan and the Coliseum Area Redevelopment Project Area Plan goals and policies. The PUD permits and variances are warranted and are not anticipated to create adverse impacts, pursuant to the attached Findings and Conditions of Approval.

RECOMMENDATIONS:

1. Affirm staff's environmental determination; and
2. Approve the Preliminary Planned Unit Development Permit, the Final Planned Unit Development Permits for all phases, Minor Variances, Design Review, and Vesting Tentative Parcel Maps subject to the Conditions of Approval based on the attached findings.

Prepared by:

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Approved for forwarding to the
City Planning Commission:

Dan Lindheim
Director
Community and Economic Development Agency

Gary Patton
Major Projects Manager
Deputy Director of Development

ATTACHMENTS:

- A. Plans and Elevations
- B. Memos from Engineering and Fire Services.

FINDINGS FOR APPROVAL:

The proposed project meets the required findings under Planning Code Sections 17.140.080 (Planned Unit Development Criteria), 17.140.060 (Planning Commission Action for a Final Planned Unit Development for all Phases), Section 17.136.050A (Residential Design Review findings), Section 17.148.050 (Variances findings); and Section 16.24.040 and 16.08.030 (Tentative Parcel Map findings). Required findings are shown in bold type; explanations as to why these findings can be made are in normal type. Required findings are shown in bold type below and are also contained within other sections of this report and the administrative record; explanations as to why these findings can be made are in normal type.

Section 17.140.080 Preliminary Planned Unit Development Permit**A. That the location, design, size, and uses are consistent with the Oakland Comprehensive Plan and with any other applicable plan, development control map, or ordinance adopted by the City Council.**

The proposed residential project is located within the Housing and Business Mix General Plan land use designation. The General Plan states that the *intent* of the HBX designation is to "recognize the equal importance of both housing and business. The General Plan states that the *desired character* of future development within this classification should be compatible with housing, and development should recognize the mixed business nature of the area. The project is consistent with this classification that allows mixed housing type density. The HBX zoning designations have been adopted by the City Council to implement the Housing and Business Mix LUTE classification.

The project is meeting several policies and goals of the General Plan including: 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 Housing Construction; and *Policy N3.2 Encouraging Infill Development*. As stated before in the General Plan Analysis Section, the project site has been used as container storage for years and has been the subject of several complaints. The proposal to construct of housing on this would be positive for the neighborhood and the Land Use Element considers the construction of new housing to be one of the highest priorities in Oakland to meet the demand of a growing population. There is a residential neighborhood and live/work facility across the street and therefore the site is appropriate for residential development.

The project is also meeting Policy T2.1 Encouraging Transit-Oriented Development. The project is located just 6 blocks away (less than a quarter mile) from the Fruitvale BART station. This project would meet the goal of providing housing near transit. The project is providing a mix of condominium units and larger attached townhomes style units that range from one to three bedroom units. This mix is consistent with Policy N6.1 which encourages a Mixing Housing Types.

The project is located in the Coliseum Area Redevelopment Project Area, an applicable plan under this finding. The proposed project is consistent with the following goals:

Goal 1: The elimination of blighting influences and the correction of environmental deficiencies in the Project Area, including among others, small and irregular lots, faulty exterior spacing, obsolete and aged building types, mixed character or shifting uses or vacancies, incompatible and uneconomic

Findings

land uses, substandard alleys and inadequate or deteriorated public improvements, facilities, and utilities.

Goal 2: The assembly of land into parcels suitable for modern, integrated development with improved pedestrian and vehicular circulation in the Project Area.

Goal 3: The re-planning, redesign, and development of undeveloped areas which are stagnant or improperly utilized.

The project as outlined is also consistent with the HBX Design Guidelines and with approval of the Variances for courtyard width and residential loading, the project will conform to the Planning Code.

- B. That the location, design, and size are such that the development can be well integrated with its surroundings, and, in the case of a departure in character from surrounding uses, that the location and design will adequately reduce the impact of the development.**

The project is located in the Housing and Business Mix General Plan designation and the project is surrounded by these uses. The HBX zoning designations have been adopted by the City Council to implement the Housing and Business Mix LUTE classification. During the adoption process each area was specifically reviewed for conformity with the lot area requirements in the Housing and Business General Plan classification. The architect intent was to create sub-neighborhoods within the project that relate to surrounding neighborhood development pattern. The multi-family condo building seeks to act as a buffer and a transition piece between the industrial area and the more residential oriented area starting on 38th Ave. This building relates more to the warehouse and industrial uses such as the Shingle Building right in front of it. The single family townhouses between 38th and 40th Ave. are designed to be consistent with the scale of the residential neighborhood across Wattling Street.

The revised plans show a project that not only is well integrated with the context but within the development itself. The revised rooflines help relate the multi-unit building to the townhomes. The garden also provides a transition between these uses. The materials are repetitive with the development and unify the design. The project meets intent of the HBX Design Guideline Manual which is to guide and transition to a more intense development pattern, promote designs that exist compatibly with the traditional development patterns, create freedom of styles and varied designs, develop attractive streetscapes, etc. The project is proposing new sidewalk, curb, and gutter where none existed, thereby improving the pedestrian context. Staff believes that the project is appropriate in location, size, and design.

- C. That the location, design, size, and uses are such that traffic generated by the development can be accommodated safely and without congestion on major streets and will avoid traversing other local streets.**

The project will be required as a condition of approval to make half street repairs to Wattling Street. In addition, the project is proposing new sidewalk, curb, gutter which are new improvements in that area. Since the site is long, project traffic could use 37th Ave., 38th Ave., 39th Ave., and 40th Ave. to exit the project. This would disperse traffic along the local streets. A traffic study was completed for the project as is available at the Planning and Zoning office. The study concluded that the project will not have a traffic impact based on the City of Oakland criteria in the existing condition and cumulative condition.

Findings

- D. That the location, design, size, and uses are such that the residents or establishments to be accommodated will be adequately served by existing or proposed facilities and services.**

The proposed project site is located in a developed area surrounded by residential and industrial uses that are currently and adequately served by existing utilities and service systems including water supply, wastewater treatment, storm water drainage, and solid waste disposal. The proposed project will also provide additional services for the area and improvements to the existing infrastructure such as new sidewalk, curb, and gutter.

- E. That the location, design, size, and uses will result in an attractive, healthful, efficient, and stable environment for living, shopping, or working, the beneficial effects of which environment could not otherwise be achieved under the zoning regulations.**

The proposed project is an attractive, high quality residential development that will benefit the surrounding area by developing an underutilized parcel. As stated earlier in the report, the site has been used as container storage and has also had multiple complaints lodged for blight, trash and debris, unauthorized access to the property, abandoned vehicles and dumping.

The proposed project would eliminate these types of possible future complaints by creating an attractive development project that is consistent with the Housing and Business Mix General Plan and Zoning regulations. The project's structures are varied yet integrated into a single comprehensive development that is related to the surrounding context. The project is located near several transit options. The only PUD bonus, the applicant is requesting is for the lot size of the open space parcel. Other than that, the project conforms to the zoning regulations with the granting of the minor Variances for courtyard width and loading. Staff suggested the PUD permit as a way to accommodate the five phases of the project. The project's interior private driveways and planting plan creates an intimate neighborhood setting. Compliance with the conditions of approval will result in an attractive, healthful, efficient, and stable environment for living environment.

- F. That the development will be well integrated into its setting, will not require excessive earth moving or destroy desirable natural features, will not be visually obtrusive and will harmonize with surrounding areas and facilities, will not substantially harm major views for surrounding residents, and will provide sufficient buffering in the form of spatial separation, vegetation, topographic features, or other devices.**

As stated above the architect's intent was to create a development that responds to the existing context. The site is flat so no sizable amount of grading will occur. There are no natural features to speak of on the site which is used as container storage. The project will not be visually intrusive as it responds to the context of the neighborhood and the backside borders the Southern Pacific Railroad and I-880. Again the current view is of a barren parcel used as container storage and a history of complaints. This is no view to speak of. The project is proposing an extensive planting plan including street trees and planting at the back of the new sidewalk. There is no need to buffer the project from the existing setting because the intent is to integrate into the setting.

Section 17.140.060 (Planning Commission Action for Final Planned Unit Development for Phase 1 only):

Findings

The proposal conforms to all applicable criteria and standards and conforms in all substantial respects to the preliminary development plan, or, in the case of the design and arrangement of those portions of the plan shown in generalized, schematic fashion, it conforms to applicable design review criteria.

The applicant has submitted detailed drawings consistent with the Final Development Plan requirements for all the Phases. Essentially, the PUD and the FPUD are the same drawings and therefore conform to all applicable criteria and standards for both the PUD and the FPUD regulations. The project meets the General Plan and Coliseum Redevelopment Plan goals and policies and is appropriate for the location.

Section 17.136.070A (Residential Facilities Design Review Findings)

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

As stated above in the report, the proposed project is located in a neighborhood with a mix of residential, industrial, and manufacturing activities. There is no specific architectural character or massing except in the lower scale neighborhood to the north. The design of each building and façade articulation responds to the adjacent uses and scale, while lessens the impact imposed on the area by the nearby railroad tracks and Interstate 880. Since the site is very long and thin, the overall design goal is to create sub-neighborhoods within the project. This is accomplished through imposing a smaller street pattern on the site. The multi-family condo building seeks to act as a buffer and a transition. The buildings are related to each other through the repetition of materials and architectural features which are expressed differently on each building.

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

The proposed design will preserve as well as enhance the neighborhood character by filling in an existing underutilized lot with a new mixed use development. The proposed design is consistent with the relevant Objectives of the HBX Design Guidelines.

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

The proposed project site is flat and is currently occupied by container storage. The site contains no notable landscaping. Therefore, the project will have no affect on the existing topography or landscape.

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

See response #3

- 5. That 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 City Council.**

Findings

The proposed project is consistent with the General Plan land use designation for the site, with Planned Unit Development Permits, and Variance findings, and with the Design Review Criteria as discussed in more detail throughout the report.

Coliseum Area Redevelopment Project Area Plan

In addition, the project is located in the Coliseum Area Redevelopment Project Area and is subject to the policies and goals in the Coliseum Area Redevelopment Plan. The following Redevelopment Plan goals apply to the proposed project:

Goal 1: The elimination of blighting influences and the correction of environmental deficiencies in the Project Area, including among others, small and irregular lots, faulty exterior spacing, obsolete and aged building types, mixed character or shifting uses or vacancies, incompatible and uneconomic land uses, substandard alleys and inadequate or deteriorated public improvements, facilities, and utilities.

Goal 2: The assembly of land into parcels suitable for modern, integrated development with improved pedestrian and vehicular circulation in the Project Area.

Goal 3: The replanning, redesign, and development of undeveloped areas which are stagnant or improperly utilized.

Section 17.148.050 Minor Variances Findings

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

a) *Courtyard Dimensions:* Section 17.108.120 requires that when there are living room windows on the same lot facing each other on opposite walls, the zoning regulations require the minimum width of internal courts to equal one foot of width for each foot of height. The proposed project includes three courtyards between the units on the 2nd floor with decks above on the 3rd and 4th floors. The width of the courtyards is 20'. This is approximately 3' narrower than the zoning requirement. Strict compliance with this regulation would require a loss of 2 units, that the units surrounding the courtyard become significantly smaller, or the addition of another residential level. These options would preclude an effective design solution and operational efficiency for the building. Staff believes the court is wide enough to protect unit privacy, and buffer noise that a variance can be supported. In addition the parcel with the narrow courtyards is only 31' in width. Given the irregularity of the site and the General Plan goal providing housing, staff believes that this small reduction in courtyard width is supportable.

b) *Loading Berths:* For residential floor area between 50,000-149,999 sf, one loading berth is required. The project is not providing any loading berths on site and the applicant is anticipating loading to take place along Wattling Street adjacent to the project or with the driveways. Strict compliance would preclude operational efficiency on the site and require either less housing, less parking, or less open space. The lack of a designated loading space on-site is not expected to cause significant traffic or circulation problems in the vicinity.

Findings

Loading would be infrequent and only needed to facilitate residents moving in and out of the building. Moving vans could utilize on-street spaces in front of the townhomes, in the multi-unit building or in the driveways.

2. **That strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation.**
 - a) *Courtyard Dimensions:* As stated above, strict compliance with this regulation would require a loss of 2 units or that the units surrounding the courtyard become significantly smaller. The addition of another residential level to replace the lost units or square footage would preclude an effective design solution for so small a variance. Staff believes the court is wide enough to protect unit privacy, buffer noise and provide adequate access for fire personnel in an emergency. This along with adequate open space is the intent of the regulation. The additional width is not needed to meet the open space requirement since private balconies, a garden, planted walkway, and streetscape improvements are also proposed.
 - b) *Loading Berths:* The intent of the loading berth regulation was to provide designated off-street spaces for loading. If the project were to comply with the loading berth requirement, units or parking spaces would need to be removed. Replacement of the removed units would likely increase the building height and would result in an awkward site plan. Loading would only be necessary for residents moving in and out of the units. This would take place infrequently since the units are for-sale and not rental. On-street spaces could be utilized in front of the townhomes or within the multi-unit building or in the driveways. Staff believes that the site plan maximizes the functionality of the project site and granting the loading berth variance would provide an effective design solution for the project.
3. **That the variance, if granted, will not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy.**
 - a) *Courtyard Dimension:* The variance for the minimum court dimension will not affect the livability, character, or appropriate development of adjacent parcels, since this is an internal issue to the project. The lack of approximately 3' in width will not compromise unit privacy, noise buffering and will provide adequate access for fire personnel in an emergency.
 - b) *Loading Berths:* According to the traffic study, the lack of designated loading spaces on-site is not expected to cause significant traffic or circulation problems in the vicinity and is not expected to adversely affect the character or livability of the neighborhood. As stated above, loading would be used to accommodate residents moving in and out of the units. Since these units will not be rental, loading is expected to occur infrequently and by moving vans. These vans could use on-street parking, or on-site spaces in the multi-unit building or driveways.
4. **That the variance will not constitute a grant of special privilege inconsistent with limitations imposed on similarly zoned properties or inconsistent with the purposes of the zoning regulations.**

Findings

a and b) The project meets the intent of the zoning regulations by supporting an appropriate layout that is well-suited to the surrounding properties in mass, scale, height, materials, and development pattern. This compatibility will enhance and benefit the surrounding neighborhood. The variances can be supported and meet the general intent of the zoning regulations. The width of courtyard as shown in the plans will still provide unit privacy and be adequate for emergency personnel to reach these units. Loading will be only used for residents moving in and out of the building. This will be infrequent since the units will be for-sale.

16.24.040 Lot Design Standards

Lot design shall be consistent with the provisions of Section 16.04.010, Purpose, and the following provisions:

A. No lot shall be created without frontage on a public street, as defined by Section 16.04.030, except:

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

All of the Parcels have frontage on a public street. Parcels 1, 2, and 4 have frontage on Watling Street. Parcel 3 has frontage on 37th Avenue.

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

The side lot lines of the proposed parcel run at right angles to the street on which they front except Parcel 3. That parcel effectively acts as a key lot due to 1) the fact that Watling Street does not extend to 37th Avenue; 2) the parcel intersects with 37th Avenue; and 3) the parcel is adjacent to the Parcel 4's side lot line.

C. All applicable requirements of the zoning regulations shall be met.

The proposed parcel conforms to the zoning regulations of the HBX-2 (Housing and Business Mix Commercial Zone) subject to the PUD, the FPUD and Variances that are requested as part of the overall project approval.

D. Lots shall be equal or larger in measure than the prevalent size of existing lots in the surrounding area except:

1. Where the area is still considered acreage;
2. Where a deliberate change in the character of the area has been initiated by the adoption of a specific plan, a change in zone, a development control map, or a planned unit development.

The project is proposing to merge three lots and subdivide the site into 4 parcels. The three residential parcels will be used for condominium purposes. However, this project is proposing a PUD which is an exception to this requirement. The applicant is asking for a PUD bonus for the lot size of

Findings

Parcel 4 the garden parcel. Since this area will be used as a park and development will be restricted, staff believes that application of the bonus would be warranted.

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

The project site is currently used as container storage. The site is devoid of vegetation and other natural features.

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 HBX zoning designations have been adopted by the City Council to implement the Housing and Business Mix LUTE classification. Each area was specifically reviewed in terms of density. If the project meets the density in the HBX zoning regulations, which the project is, then the project meets the HBX land use classification. The project meets the zoning and is consistent with the general plan with approval of the PUD (including the PUD bonus), FPUD, and the Variances.

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

The HBX zoning designations have been adopted by the City Council to implement the Housing and Business Mix LUTE classification. Each area was specifically reviewed in terms of density. If the project meets the density in the HBX zoning regulations, which the project is, then the project meets the HBX land use classification. The project meets the zoning and is consistent with the general plan. There is no specific plan for this area.

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

The site is flat, in an urban area, devoid of natural features and future development can be easily accommodated.

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

The HBX zoning designations have been adopted by the City Council to implement the Housing and Business Mix LUTE classification. Each area was specifically reviewed in terms of density. If the project meets the density in the HBX zoning regulations, which the project is, then the project meets the HBX land use classification. The site for the proposed development is flat and devoid of natural features and is suitable for development.

- 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.**

The subject property is located in an urban area surrounded by developed residential, commercial, and industrial properties. The site is used for container storage devoid of natural features that would provide habitat to fish or wildlife. No environmental damage would occur with the proposed project.

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

Findings

problems.

The merger of the parcels and the subsequent subdivision are not expected to cause serious public health problems. The proposed development would be served by public water and sewer service, and would therefore not require the use of on-site sewage disposal or domestic water well. The project site is not located on the state's Cortese List for hazardous waste. There are no buildings on the site. Therefore asbestos, lead in paint, lead in water, and contaminated equipment are expected. Radon or According the Phase I report, available at the Planning and Zoning office, the radon or other vapor intrusions are not expected to pose a health hazard. The site is located near the railroad and I-880. These facilities could pose air quality and noise on the project. The architects have included several features in the project drawings that would address this proximity. The study concluded that, with these features, the existing air quality context would not impact the proposed development and cause a health risk. These features are reiterated for importance as conditions of approval.

- 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.)**

Adjacent to the site to the rear are several easements including a high pressure petroleum line, the Southern Pacific Railroad. Storm drain lines are also located to the front of the site along Wattling Street. In addition, the City also holds a 6' sewer easement. The multi-story building will not built with the easement so there is no conflict between the proposed building and access to the sewer. Southern Pacific also holds an easement over Parcel 4 to access the rail line. Gates to the garden and the wall adjacent to the rail line would provide access. Neither of these easement will result in conflicts or restrict use.

- 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 subdivision of the lot for condominium purposes does not exclude the possibility of for future passive or natural heating or cooling opportunities.

Findings

CONDITIONS OF APPROVAL

1. Approved Use

Ongoing

- a) The project shall be constructed and operated in accordance with the authorized use as described in the application materials, staff report, and the plans dated March 12, 2008 and submitted on May 27, 2008, 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.
- b) This action by the City Planning Commission ("this Approval") includes the approvals set forth below. This Approval includes:
 - I. Approval of a Planned Unit Development (PUD), including bonus for lot size for Parcel 4, for the Wattling Residential PUD under OMC Section 17.140
 - II. Approval of a Final Planned Unit Development (FPUD) under OMC Section 17.140
 - III. Approval of Minor for the courtyard dimensions in the multi-unit building and residential loading under OMC Section 17.148
 - IV. Major Design Review for the construction of a new principal facility over 25,000 sq. ft. of new floor area under OMC Section 17.136A
 - V. Vesting Tentative Parcel Map for condominium purposes under OMC Section 16.108 and 16.124.

2. Effective Date, Expiration, Extensions and Extinguishment

Ongoing

- a) Unless a different termination date is prescribed, this PUD, PUDF, Variance, and Design Review Approval shall expire two years from the approval date, unless within such period all necessary permits for construction or alteration have been issued, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit for this project may invalidate this Approval if the said extension period has also expired.
- b) Based on the submitted five phase plan, failure of the applicant to obtain a building permit for Phase 2 within one (1) year of a certificate of occupancy for Phase 1 shall invalidate this approval. Failure of the applicant to obtain a building permit for Phase 3 within one (1) year of a certificate of occupancy for Phase 2 shall invalidate this approval. Failure of the applicant to obtain a building permit for Phase 4 within one (1) year of a certificate of occupancy for Phase 3 shall invalidate this approval. Failure of the applicant to obtain a building permit for Phase 5 within one (1) year of a certificate of occupancy for Phase 4 shall invalidate this approval. Provided further, that upon written request, the Planning and Zoning Division may grant a one year extension of these deadlines, with additional extensions subject to approval by the City Planning Commission.
- c) This approval of the Vesting Tentative Map shall expire two (2) calendar years from the approval date, the effective date of its granting, unless the applicant files a Parcel Map with the City Engineer within two (2) years from the date of this letter. Failure to file a Parcel Map

Conditions of Approval

within these time limits shall nullify the previous approval or conditional approval of the Tentative Parcel Map. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, the Zoning Administrator may grant an extension of this permit, and up to two subsequent extensions upon receipt of a subsequent written request and payment of appropriate fees received no later than the expiration date of the previous extension.

3. Recordation of the Final Map for Approved Project

For condominium purposes the final map shall be recorded prior to the certificate of occupancy for the 79 units pursuant to Case File PUD06-606; PUDF08-166. The applicant shall discuss the recordation with Engineering Services, as this department may have a different timeframe for final map submittal.

4. Scope of This Approval; Major and Minor Changes

Ongoing

- a) The project is approved pursuant to the Planning Code and Subdivision Regulations only. Minor changes to approved use and/or plans may be approved administratively by the Director of City Planning or designee. Major changes to the approved use and/or 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.
- b) The project shall comply with all other applicable codes, requirements, regulations and guidelines, including but not limited to those imposed by the City's Building Services Division and the City's Fire Marshal. The proposal shall specifically comply with the conditions required by Philip Basada of the Fire Prevention Bureau and Tim Low of Engineering Services per the attached memorandums (Attachment B).

5. Conformance with other Requirements

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

- a) The project applicant shall comply with all other applicable federal, state, regional and/or local codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Building Services Division, the City's Fire Marshal, and the City's Public Works Agency. Compliance with the other applicable requirements may require changes to the approved use/or plans. These changes shall be processed in accordance with the procedures contained in Condition of Approval 3.
- b) The applicant shall submit approved building plans for project-specific needs related to fire protection to the Fire Services Division for review and approval, including, but not limited to automatic extinguishing systems, water supply improvements and hydrants, fire department access, and vegetation management for preventing fires and soil erosion.

6. Conformance to Approved Plans; Modification of Conditions or Revocation

Ongoing

- a) Site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60-90 days of approval, unless an earlier date is specified elsewhere.
- b) The City of Oakland reserves the right at any time during construction to require certification by a licensed professional that the as-built project conforms to all applicable zoning requirements, including but not limited to approved maximum heights and minimum setbacks. Failure to

Conditions of Approval

construct the project in accordance with approved plans may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension or other corrective action.

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

7. **Signed Copy of the Conditions**

With submittal of a demolition, grading, and building permit

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

8. **Indemnification**

- a) *Ongoing* The project applicant shall defend (with counsel reasonably acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and their respective agents, officers, and employees (hereafter collectively called the City) from any claim, action, or proceeding (including legal costs and attorney's fees) against the City to attack, set aside, void or annul this Approval, or any related approval by the City. The City shall promptly notify the project applicant of any claim, action or proceeding and the City shall cooperate fully in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding. The project applicant shall reimburse the City for its reasonable legal costs and attorney's fees.
- b) Within ten (10) calendar days of the filing of a claim, action or proceeding to attack, set aside, void, or annul this Approval, or any related approval by the City, the project applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations and this condition of approval. This condition/obligation shall survive termination, extinguishment, or invalidation of this, or any related approval. Failure to timely execute the Letter Agreement does not relieve the project applicant of any of the obligations contained in 7(a) above, or other conditions of approval.

9. **Compliance with Conditions of Approval**

Ongoing

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

10. **Severability**

Ongoing

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

Conditions of Approval

11. Job Site Plans

Ongoing throughout demolition, grading, and/or construction

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

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

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

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

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

Prior to issuance of a building permit

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

- a) Landscape plans shall include a detailed planting schedule showing the proposed location, sizes, quantities, and specific common botanical names of plant species.
- b) Landscape plans for projects involving grading, rear walls on downslope lots requiring conformity with the screening requirements in Section 17.124.040, or vegetation management prescriptions in the S-11 zone, shall show proposed landscape treatments for all graded areas, rear wall treatments, and vegetation management prescriptions.
- c) Landscape plans shall incorporate pest-resistant and drought tolerant landscaping practices. Within the portions of Oakland northeast of the line formed by State Highway 13 and continued southerly by Interstate 580, south of its intersection with State Highway 13, all plant materials on submitted landscape plans shall be fire resistant. The City Planning and Zoning Division shall maintain lists of plant materials and landscaping practices considered pest-resistant, fire resistant and drought tolerant.
- d) All landscape plans shall show proposed methods of irrigation. The methods shall ensure adequate irrigation of all plant materials for at least one growing season.

14. Landscape Requirements for Street Frontages.

Prior to issuance of a final inspection of the building permit

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

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

15. Assurance of Landscaping Completion.

Prior to Issuance of a Certificate of Occupancy

The trees, shrubs and landscape materials required by the conditions of approval attached to this project shall be planted before the certificate of occupancy will be issued; or a bond, acceptable to the City, shall be provided for the planting of the required landscaping. The amount of such bond shall equal the greater to the estimated cost of the required landscaping an irrigation, based on a licensed contractor's bid.

16. Landscape Maintenance.

Ongoing

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

17. Bicycle Parking

Prior to the issuance of first certificate of occupancy.

The applicant shall submit for review and approval of the Planning and Zoning Division, plans that show bicycle storage and parking facilities to accommodate at least one short-term bicycle parking space onsite or on public sidewalk, and five long-term bicycle parking spaces. The plans shall show the design and location of bicycle racks within the secure bicycle storage areas. The applicant shall pay for the cost and installation of any bicycle racks in the public right of way.

18. Underground Utilities

Prior to issuance of a building permit

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

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

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

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

Conditions of Approval

as provided for in this Approval. Encroachment permits shall be obtained as necessary for any applicable improvements- located within the public ROW.

- b) Review and confirmation of the street trees by the City's Tree Services Division is required as part of this condition.
- c) The Planning and Zoning Division and the Public Works Agency will review and approve designs and specifications for the improvements. Improvements shall be completed prior to the issuance of the final building permit.
- d) The Fire Services Division will review and approve fire crew and apparatus access, water supply availability and distribution to current codes and standards.

20. Phased Public Improvement Plan

Prior to issuance of building permit for work in the public right-of-way

The applicant shall submit Public Improvement Plans for improvements to be installed with each phase of the development.

21. Payment for Public Improvements

Prior to issuance of a final inspection of the building permit.

The project applicant shall pay for and install public improvements made necessary by the project including damage caused by construction activity.

22. Construction Phasing and Management Plan

Approved prior to the issuance of a grading or building permit

The project sponsor shall submit a Construction Phasing and Management Plan, incorporating all applicable conditions of approval. The plan shall also include the following additional measures and standards:

- a) A site security and safety plan to assure that grading and construction activities are adequately secured during off-work hours.
- b) A construction period litter/debris control plan to ensure the site and surrounding area is kept free of litter and debris.
- c) A plan to provide safe temporary access to occupied units during active construction activities, including path of travel, securing active construction areas and parking.

23. Compliance Matrix

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

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

24. Dust Control

Prior to issuance of a demolition, grading or building permit

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

- a) Water all active construction areas at least twice daily. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible.
- b) Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).
- c) Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- d) Sweep daily (with water sweepers using reclaimed water if possible) all paved access roads, parking areas and staging areas at construction sites.
- e) Sweep streets (with water sweepers using reclaimed water if possible) at the end of each day if visible soil material is carried onto adjacent paved roads.
- f) Limit the amount of the disturbed area at any one time, where feasible.
- g) Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 mph.
- h) Pave all roadways, driveways, sidewalks, etc. as soon as feasible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.
- i) Replant vegetation in disturbed areas as quickly as feasible.
- j) Enclose, cover, water twice daily or apply (non-toxic) soil stabilizers to exposed stockpiles (dirt, sand, etc.).
- k) Limit traffic speeds on unpaved roads to 15 miles per hour.
- l) Clean off the tires or tracks of all trucks and equipment leaving any unpaved construction areas.
- m) All "Basic" controls listed above, plus:
- n) Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- o) Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for one month or more).
- p) Designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust offsite. Their duties shall include holidays and weekend periods when work may not be in progress. The name and telephone number of such persons shall be provided to the BAAQMD prior to the start of construction as well as posted on-site over the duration of construction.
- q) Install appropriate wind breaks at the construction site to minimize wind blown dust.

25. Construction Emissions

Prior to issuance of a demolition, grading or building permit

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

- a) Demonstrate compliance with Bay Area Air Quality Management District (BAAQMD) Regulation 2, Rule 1 (General Requirements) for all portable construction equipment subject to that rule. BAAQMD Regulation 2, Rule 1 provides the issuance of authorities to construct and permits to operate certain types of portable equipment used for construction purposes (e.g., gasoline or diesel-powered engines used in conjunction with power generation, pumps, compressors, and cranes) unless such equipment complies with all applicable requirements of the "CAPCOA" Portable Equipment Registration Rule" or with all applicable requirements of the

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Statewide Portable Equipment Registration Program. This exemption is provided in BAAQMD Rule 2-1-105.

- b) Perform low- NOx tune-ups on all diesel-powered construction equipment greater than 50 horsepower (no more than 30 days prior to the start of use of that equipment). Periodic tune-ups (every 90 days) shall be performed for such equipment used continuously during the construction period.

26. Days/Hours of Construction Operation

Ongoing throughout demolition, grading, and/or construction

The project applicant shall require construction contractors to limit standard construction activities as follows:

- a) Construction activities are limited to between 7:00 AM and 7:00 PM Monday through Friday, except that pile driving and/or other extreme noise generating activities greater than 90 dBA shall be limited to between 8:00 a.m. and 4:00 p.m. Monday through Friday.
- b) Any construction activity proposed to occur outside of the standard hours of 7:00 am to 7:00 pm Monday through Friday for special activities (such as concrete pouring which may require more continuous amounts of time) shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of resident's preferences for whether the activity is acceptable if the overall duration of construction is shortened and such construction activities shall only be allowed with the prior written authorization of the Building Services Division.
- c) Construction activity shall not occur on Saturdays, with the following possible exceptions:
 - i. Prior to the building being enclosed, requests for Saturday construction for special activities (such as concrete pouring which may require more continuous amounts of time), shall be evaluated on a case by case basis, with criteria including the proximity of residential uses and a consideration of resident's preferences for whether the activity is acceptable if the overall duration of construction is shortened. Such construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division.
 - ii. After the building is enclosed, requests for Saturday construction activities shall only be allowed on Saturdays with the prior written authorization of the Building Services Division, and only then within the interior of the building with the doors and windows closed.
- d) No extreme noise generating activities (greater than 90 dBA) shall be allowed on Saturdays, with no exceptions.
- e) No construction activity shall take place on Sundays or Federal holidays.
- f) Construction activities include but are not limited to: truck idling, moving equipment (including trucks, elevators, etc) or materials, deliveries, and construction meetings held on-site in a non-enclosed area.
- g) Applicant shall use temporary power poles instead of generators where feasible.

27. Noise Control

Ongoing throughout demolition, grading, and/or construction

To reduce noise impacts due to construction, the project applicant shall require construction contractors to implement a site-specific noise reduction program, subject to the Planning and Zoning

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

- a) Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible).
- b) Except as provided herein, Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered 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, if such jackets are commercially available and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever such procedures are available and consistent with construction procedures.
- c) Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or use other measures as determined by the City to provide equivalent noise reduction.
- d) The noisiest phases of construction shall be limited to less than 10 days at a time. Exceptions may be allowed if the City determines an extension is necessary and all available noise reduction controls are implemented.

28. Noise Complaint Procedures

Ongoing throughout demolition, grading, and/or construction

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

- a) A procedure and phone numbers for notifying the Building Services Division staff and Oakland Police Department; (during regular construction hours and off-hours);
- b) A sign posted on-site pertaining with permitted construction days and hours and complaint procedures and who to notify in the event of a problem. The sign shall also include a listing of both the City and construction contractor's telephone numbers (during regular construction hours and off-hours);
- c) The designation of an on-site construction complaint and enforcement manager for the project;
- d) Notification of neighbors and occupants within 300 feet of the project construction area at least 30 days in advance of extreme noise generating activities about the estimated duration of the activity; and
- e) A preconstruction meeting shall be held with the job inspectors and the general contractor/on-site project manager to confirm that noise measures and practices (including construction hours, neighborhood notification, posted signs, etc.) are completed.

29. Interior Noise

Prior to issuance of a building permit

If necessary to comply with the interior noise requirements of the City of Oakland's General Plan Noise Element and achieve an acceptable interior noise level, noise reduction in the form of sound-

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rated assemblies (i.e., windows, exterior doors, and walls) shall be incorporated into project building design, based upon recommendations of a qualified acoustical engineer and submitted to the Building Services Division for review and approval. Final recommendations for sound-rated assemblies will depend on the specific building designs and layout of buildings on the site and shall be determined during the design phase.

30. Operational Noise-General

Ongoing.

Noise levels from the activity, property, or any mechanical equipment on site shall comply with the performance standards of Section 17.120 of the Oakland Planning Code and Section 8.18 of the Oakland Municipal Code. If noise levels exceed these standards, the activity causing the noise shall be abated until appropriate noise reduction measures have been installed and compliance verified by the Planning and Zoning Division and Building Services.

31. Construction Management

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

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

- a) A set of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak traffic hours, detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes.
- b) Notification procedures for adjacent property owners and public safety personnel regarding when major deliveries, detours, and lane closures will occur.
- c) Location of construction staging areas for materials, equipment, and vehicles at an approved location.
- d) A process for responding to, and tracking, complaints pertaining to construction activity, including identification of an onsite complaint manager. The manager shall determine the cause of the complaints and shall take prompt action to correct the problem. Planning and Zoning shall be informed who the Manager is prior to the issuance of the first permit issued by Building Services.
- e) Provision for accommodation of pedestrian flow.
- f) Provision for parking management and spaces for all construction workers to ensure that construction workers do not park in on-street spaces.

32. Hazards Best Management Practices

Prior to commencement of demolition, grading, or construction

The project applicant and construction contractor shall ensure that construction of Best Management Practices (BMPs) are implemented as part of construction to minimize the potential negative effects to groundwater and soils. These shall include the following:

- a) Follow manufacture's recommendations on use, storage, and disposal of chemical products used in construction;
- b) Avoid overtopping construction equipment fuel gas tanks;
- c) During routine maintenance of construction equipment, properly contain and remove grease and oils;

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

33. Waste Reduction and Recycling

The project applicant will submit a Construction & Demolition Waste Reduction and Recycling Plan (WRRP) and an Operational Diversion Plan (ODP) for review and approval by the Public Works Agency.

Prior to issuance of demolition, grading, or building permit

Chapter 15.34 of the Oakland Municipal Code outlines requirements for reducing waste and optimizing construction and demolition (C&D) recycling. Affected projects include all new construction, renovations/alterations/modifications with construction values of \$50,000 or more (except R-3), and all demolition (including soft demo). The WRRP must specify the methods by which the development will divert C&D debris waste generated by the proposed project from landfill disposal in accordance with current City requirements. Current standards, FAQs, and forms are available at www.oaklandpw.com/Page39.aspx or in the Green Building Resource Center. After approval of the plan, the project applicant shall implement the plan.

Ongoing

The ODP will identify how the project complies with the Recycling Space Allocation Ordinance, (Chapter 17.118 of the Oakland Municipal Code), including capacity calculations, and specify the methods by which the development will meet the current diversion of solid waste generated by operation of the proposed project from landfill disposal in accordance with current City requirements. The proposed program shall be implemented and maintained for the duration of the proposed activity or facility. Changes to the plan may be re-submitted to the Environmental Services Division of the Public Works Agency for review and approval. Any incentive programs shall remain fully operational as long as residents and businesses exist at the project site.

34. Vibration

Prior to the issuance of a building permit

A qualified acoustical consultant shall be retained by the project applicant during the design phase of the project to comment on structural design as it relates to reducing groundborne vibration at the

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project site to 75VdB. If required in order to reduce groundborne vibration to acceptable levels the project applicant shall incorporate special building methods to reduce groundborne vibration being transmitted into project structures containing residential uses. Potential methods include the following:

- a) Isolation of foundation and footings using resilient elements such as rubber bearing pads or springs, such as a "spring isolation" system that consists of resilient spring support that can support the podium or residential foundations. The specific system shall be selected so that it can properly support the structural loads, and provide adequate filtering of ground-borne vibration to the residences above.
- b) Trenching, which involves excavating soil between the railway and the project so that the vibration path is interrupted, thereby reducing the vibration levels before they enter the project's structures. Since the reduction in vibration level is based on a ratio between trench depth and vibration wavelength, additional measurements shall be conducted to determine the vibration wavelengths affecting the project. Based on the resulting measurement findings, an adequate trench depth and, if required, suitable fill shall be identified (such as foamed styrene packing pellets (i.e., Styrofoam) or low-density polyethylene). Since trench depths required to reduce groundborne vibration generated by railway operations can be significant (e.g. greater than 30 feet), the project sponsor shall submit for City review and approval any trench proposal.

35. Lighting Plan

Prior to the issuance of an electrical or building permit

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

36. Archaeological Resources

Ongoing throughout demolition, grading, and/or construction

- a) Pursuant to CEQA Guidelines section 15064.5 (f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore, in the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist or paleontologist to assess the significance of the find. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified archaeologist would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Oakland. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and a report prepared by the qualified archaeologist according to current professional standards.
- b) In considering any suggested measure proposed by the consulting archaeologist in order to mitigate impacts to historical resources or unique archaeological resources, the project applicant shall determine whether avoidance is necessary and feasible in light of factors such as the nature of the find, project design, costs, and other considerations. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while measure for historical resources or unique archaeological resources is carried out.

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

37. **Human Remains**

Ongoing throughout demolition, grading, and/or construction

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

38. **Paleontological Resources**

Ongoing throughout demolition, grading, and/or construction

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

39. **Erosion and Sedimentation Control Plan**

Prior to any grading activities

- a) The project applicant shall obtain a grading permit if required by the Oakland Grading Regulations pursuant to Section 15.04.780 of the Oakland Municipal Code. The grading permit application shall include an erosion and sedimentation control plan for review and approval by the Building Services Division. The erosion and sedimentation control plan shall include all necessary measures to be taken to prevent excessive stormwater runoff or carrying by stormwater runoff of solid materials on to lands of adjacent property owners, public streets, or to creeks as a

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result of conditions created by grading operations. The plan shall include, but not be limited to, such measures as short-term erosion control planting, waterproof slope covering, check dams, interceptor ditches, benches, storm drains, dissipation structures, diversion dikes, retarding berms and barriers, devices to trap, store and filter out sediment, and stormwater retention basins. Off-site work by the project applicant may be necessary. The project applicant shall obtain permission or easements necessary for off-site work. There shall be a clear notation that the plan is subject to changes as changing conditions occur. Calculations of anticipated stormwater runoff and sediment volumes shall be included, if required by the Director of Development or designee. The plan shall specify that, after construction is complete, the project applicant shall ensure that the storm drain system shall be inspected and that the project applicant shall clear the system of any debris or sediment.

Ongoing throughout grading and construction activities

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

40. Geotechnical Report

Required as part of the submittal of a Final Map

- a) A site-specific, design level, Landslide or Liquefaction geotechnical investigation for each construction site within the project area shall be required as part of this project and submitted for review and approval by the Building Services Division. Specifically:
 - i. Each investigation shall include an analysis of expected ground motions at the site from identified faults. The analyses shall be in 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 identified faults.
 - ii. The investigations shall determine final design parameters for the walls, foundations, foundation slabs, surrounding related improvements, and infrastructure (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, shall be included in the final design, as approved by the City of Oakland.
 - iv. The geotechnical report shall include a map prepared by a land surveyor or civil engineer that shows all field work and location of the "No Build" zone. The map shall include a statement that the locations and limitations of the geologic features are accurate representations of said features as they exist on the ground, were placed on this map by the surveyor, the civil engineer or under their supervision, and are accurate to the best of their knowledge.
 - v. Recommendations that are applicable to foundation design, earthwork, and site preparation that were prepared prior to or during the project's design phase, shall be incorporated in the project.
 - vi. 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.

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vii. A peer review is required for the Geotechnical Report. Personnel reviewing the geologic report shall approve the report, reject it, or withhold approval pending the submission by the applicant or subdivider of further geologic and engineering studies to more adequately define active fault traces.

b) Tentative Tract or Parcel Map approvals shall require, but not be limited to, approval of the Geotechnical Report.

41. Fire Safety Phasing Plan

Prior to issuance of a demolition, grading, and/or construction and concurrent with any p-job submittal permit

The project applicant shall submit a separate fire safety phasing plan to the Planning and Zoning Division and Fire Services Division for their review and approval. The fire safety plan shall include all of the fire safety features incorporated into the project and the schedule for implementation of the features. Fire Services Division may require changes to the plan or may reject the plan if it does not adequately address fire hazards associated with the project as a whole or the individual phase.

42. Stormwater Pollution Prevention Plan (SWPPP)

Prior to and ongoing throughout demolition, grading, and/or construction activities

The project applicant must obtain coverage under the General Construction Activity Storm Water Permit (General Construction Permit) issued by the State Water Resources Control Board (SWRCB). The project applicant must file a notice of intent (NOI) with the SWRCB. The project applicant will be required to prepare a stormwater pollution prevention plan (SWPPP) and submit the plan for review and approval by the Building Services Division. At a minimum, the SWPPP shall include a description of construction materials, practices, and equipment storage and maintenance; a list of pollutants likely to contact stormwater; site-specific erosion and sedimentation control practices; a list of provisions to eliminate or reduce discharge of materials to stormwater; Best Management Practices (BMPs), and an inspection and monitoring program. Prior to the issuance of any construction-related permits, the project applicant shall submit to the Building Services Division a copy of the SWPPP and evidence of submittal of the NOI to the SWRCB. Implementation of the SWPPP shall start with the commencement of construction and continue through the completion of the project. After construction is completed, the project applicant shall submit a notice of termination to the SWRCB.

43. Post-Construction Stormwater Pollution Management Plan

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 Construction-Permit-Phase Stormwater Supplemental Form to 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 manage stormwater runoff and limit the discharge of pollutants in stormwater after construction of the project to the maximum extent practicable.

a) The post-construction stormwater pollution management plan shall include and identify the following:

- i. All proposed impervious surface on the site;
- ii. Anticipated directional flows of on-site stormwater runoff; and

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- iii. Site design measures to reduce the amount of impervious surface area and directly connected impervious surfaces; and
 - iv. Source control measures to limit the potential for stormwater pollution; and
 - v. Stormwater treatment measures to remove pollutants from stormwater runoff.
 - vi. Hydromodification management measures so that post project stormwater run-off does not exceed the flow and duration of pre-project run-off, if required under the NPDES permit.
- b) The following additional information shall be submitted with the post-construction stormwater pollution management plan:
- i. Detailed hydraulic sizing calculations for each stormwater treatment measure proposed; and
 - ii. 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 Planning and Zoning 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.

44. Maintenance Agreement for Stormwater Treatment Measures

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:

- i. 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
- ii. 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.

45. Regulatory Permits and Authorizations

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

Prior to construction within the floodway or floodplain, the project applicant shall obtain all necessary regulatory permits and authorizations from the Alameda County Flood Control and Water Conservation District and shall comply with all conditions issued by that agency.

46. Structures within a Floodplain

Conditions of Approval

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

- a) The project applicant shall retain the civil engineer of record to ensure that the project's development plans and design contain finished site grades and floor elevations that are elevated above the Base Flood Elevation (BFE) if established of a 100-year flood event.
- b) The project applicant shall submit final hydrological calculations that ensure that the structure will not interfere with the flow of water or increase flooding.

47. Stormwater and Sewer

Prior to completing the final design for the project's sewer service

- a) 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 responsible for the necessary stormwater and sanitary sewer infrastructure improvements to accommodate the proposed project. In addition, the applicant shall be required to pay additional fees to improve sanitary sewer infrastructure if required by the Sewer and Stormwater Division. 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 to offset sanitary sewer increases associated with the proposed project. To the maximum extent practicable, the applicant will be required to implement Best Management Practices to reduce the peak stormwater runoff from the project site. Additionally, the project applicant shall be responsible for payment of the required installation or hook-up fees to the affected service providers.
- b) Show the diameter of the existing main sewer flowing south from 38th Ave. (C-1.4). Provide invert elevation where the private sewer connected to ex. main sewer. Provide calculation showing that the main sewer have capacity to take the proposed sewer discharge assuming the existing main is flowing half full.
- c) Construction over the common sewer and within the sewer easement is not permitted.

48. Conditions and Restrictions & Homeowner's Association

Prior to the first certificate of occupancy.

The Covenants, Conditions and Restrictions (CC&Rs) for the approved units shall be submitted to the Planning and Zoning Division for review. The CC&Rs shall provide for the establishment of a non-profit homeowners association for maintenance and operation of all on-site sidewalks, pathways, common open space and all common landscaping, driveways, and other facilities, in accordance with approved plans. Membership in the association shall be made a condition of ownership. The developer shall be a member of such association until all units are sold.

49. Meter Shielding

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.

50. Air Quality Building Features (as reiterated from the project drawings and air quality analysis)

Prior to the issuance of a building permit

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The applicant shall submit building permit plans that show the following building features shown in the approved plans:

- c) Orientation of the buildings will remain so that the closest buildings face away from the freeway and the train tracks with all other buildings perpendicular to the freeway as shown in the PUD and FPUD plans.
- d) Inoperable windows will be located on the sides of the building that face the freeway and the train tracks.
- e) The project will include a noise buffering wall up to 30' high in some locations.
- f) No significant yards between the buffering wall and the buildings.
- g) Buildings will maintain positive pressure.
- h) The project will include a dual-filtration heating and ventilation system, for all the units including the townhomes, which will provide filtration on both the outside air intake and the return air grill, utilizing ASHRAE Dust Spot 85% (MERV 13) filters at both locations. Performance standards will include 1 air exchange per hour of fresh outside filtered air and 4 air changes per hour of recirculation.
- i) The applicant shall prepare an Operation and Maintenance Manual for the heating and ventilation system and the filter. The manual will include operating instructions and a maintenance and replacement schedule. This manual will be included in the CC&R's and distributed to maintenance staff.
- j) The applicant shall prepare a separate Homeowners Manual. The manual shall contain operating instructions and maintenance and replacement schedule for the heating and ventilation system and the filters.
- k) The applicant shall also disclose to the buyers of the air quality analysis dated May 21, 2008 findings.

51. Noise Building Features (as reiterated from the project drawings and noise analysis)

Prior to the issuance of a building permit

The applicant shall submit building permit plans that show the following building features shown in the approved plans:

- a) A minimum residential building and sound wall setback of 50' from the train line will be provided.
- b) The sound wall and noise barrier heights would be provided as shown in the Levy Design Architectural drawings.
- c) Building facades along the train line will have double-stud exterior wall assembly with an exterior finish consisting of fiber cement panel over plywood and gypsum board. The interior side would have two layers of gypsum board.
- d) Excluding the aforementioned facades along the train line, all other Building facades (facing or perpendicular) located within 100' of the train line would have staggered stud or resilient channel exterior wall assembly with the exterior finish consisting of a fiber cement panel over plywood and gypsum board. The interior side would have two layers of gypsum board.
- e) Sound rated windows and exterior doors as identified in Tab11 of the noise analysis dated April 15, 2008.
- f) An exterior-grade sound absorbing material having a minimum NRC rating of .60 will be provided at 50% of the wall areas forming courtyards in Area A dwellings.
- g) If within 500' of a freeway, Z duct construction is prohibited.
- h) The project applicant must ensure that the acoustical analysis includes ventilation system noise.
- i) Include performance testing of a sample unit to ensure compliance with the interior noise standards.

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- j) The owner of the property shall provide in the CC&R's a Statement of Disclosure on the lease or title to all new tenants or owners of the units acknowledging the noise generating activity and the single event noise occurrences.
- k) Quality control must be exercised in construction to ensure all air-gaps and penetrations of the building shell are controlled and sealed.

52. Status of a portion of Watling Street

Ongoing

The project applicant acknowledges that ownership of a portion of Watling Street (to the east of 40th Street) is currently in dispute. The project applicant has chosen at their own risk to proceed to the Planning Commission for a decision. The project applicant acknowledges, that should the dispute not be resolved in the City's favor, that the project may require changes to the site plan, the number of units, the location of improvements, etc. and that these changes may require a return to the Planning Commission for approval, pursuant to Condition of Approval #3 .

53. Pre-Construction Meeting with the Neighborhood

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

A preconstruction meeting shall be held with the immediate neighbors within 300' of the job site to discuss neighborhood notification, location of staging areas, major deliveries, detours and lane closures etc. Both Planning staff and the building coordinator shall attend this meeting.

54. Pre-construction Meeting with the City

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

A preconstruction meeting shall be held with the job inspectors and the general contractor/on-site project manager with the City's project building coordinator to confirm that conditions of approval that must be completed prior to issuance of a grading, demolition, or building permit have been completed (including pre-construction meeting with neighborhood, construction hours, neighborhood notification, posted signs, etc.). The project applicant shall coordinate and schedule this meeting with City staff.

APPROVED BY:

City Planning Commission: _____ (date) _____ (vote)

City Council: _____ (date) _____ (vote)

Applicant and/or Contractor Statement

I have read and accept responsibility for the Conditions of Approval, as approved by Planning Commission action on June 18, 2008. I agree to abide by and conform to these conditions, as well as to all provisions of the Oakland Zoning Code and Municipal Code pertaining to the project.

Signature of Owner/Applicant: _____ (date)

Signature of Contractor _____ (date)

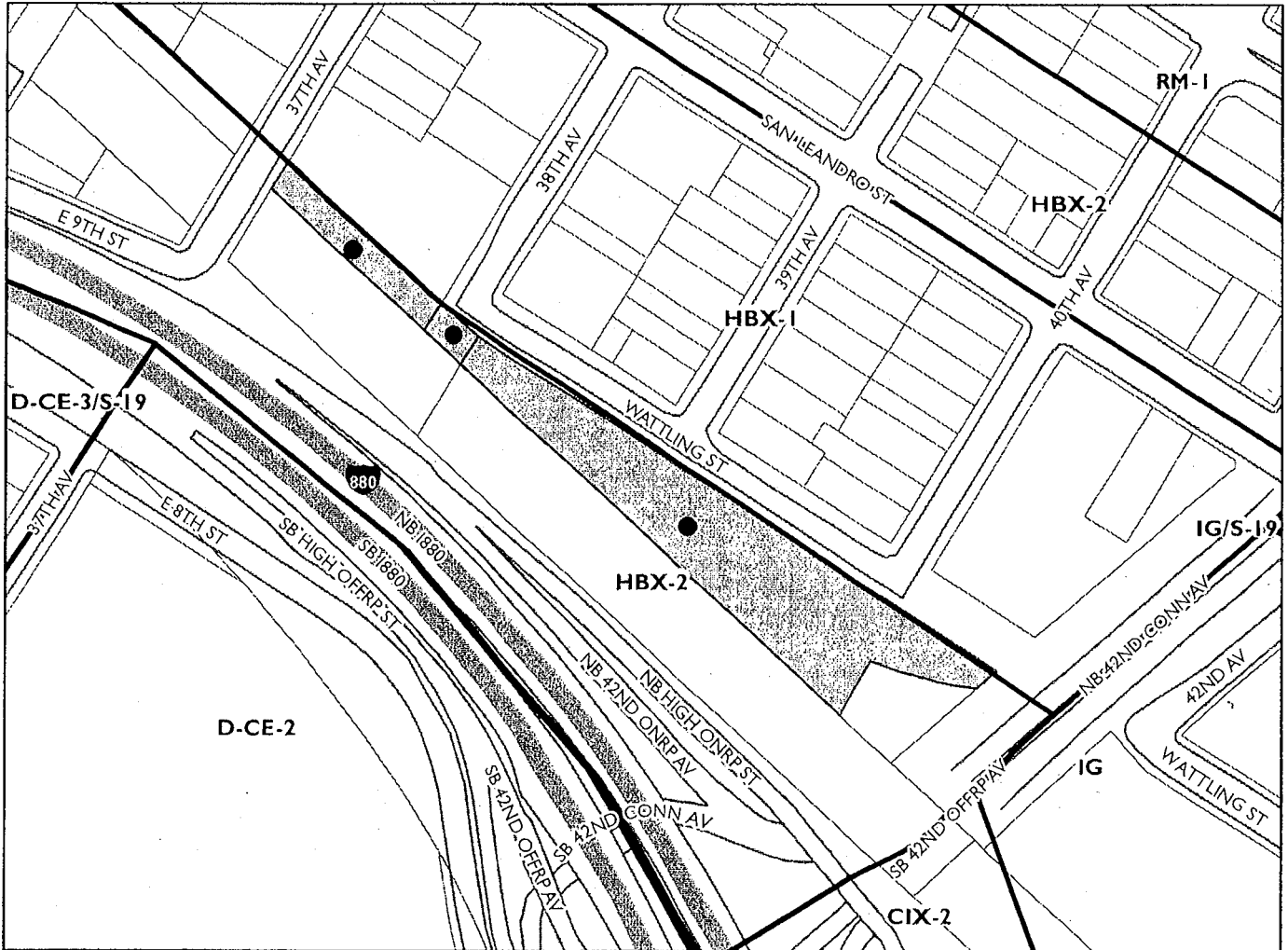
Location:	3927 Watling Street (APN: 033-2169-016-01; 033-2169-016-02; and 033-2170-003-00)
Proposal:	Extension of entitlements to construct a new phased multifamily residential development consisting of 18 condominium units and 60 attached single-family homes.
Applicant:	Philip Lesser
Phone Number:	(650) 346-2903
Owner:	Oak Partners LLC
Case File Number:	REV10-0021
Planning Permits Required:	Extension of the Preliminary Planned Unit Development for a phased project; Final Planned Unit Development Permit for all phases; Major Design Review for the construction of a new principal facility over 25,000 sq. ft. of new floor area; Minor Variances for courtyard dimensions and residential loading; Vesting Tentative Parcel Map for condominium purposes.
General Plan:	Housing and Business Mix
Zoning:	Existing and Current Zoning: HBX-2, Housing and Business Mix 2 Zone
Environmental Determination:	Projects consistent with a community plan, general plan or zoning (CEQA Guidelines Section 15183); Infill Exemption (CEQA Guidelines Section 15332)
Historic Status:	The project site is vacant and used for container storage.
Service Delivery District:	3
City Council district:	5
Status:	Planning Commission approval on June 18, 2008 (Case File PUD06-606; PUDF08-166; TPM9439). Revision for minor design changes approved administratively on January 18, 2011. Entitlements extended through December 31, 2015.
Staff Recommendation:	Decision based on staff report
Finality of Decision:	Appealable to City Council within 10 days
For further information:	Contact case planner Heather Klein at 510 238-3659 or by e-mail at hklein@oaklandnet.com.

SUMMARY

The Project applicant for the residential project at 3927 Watling Street has requested a one-year extension of the entitlements originally approved by the Planning Commission in 2008 with minor design changes approved administratively in 2011 (*Attachment A*). The Project applicant has taken advantage of the ministerial options for extensions, and the entitlements will expire on December 31, 2015. However, adopted Condition of Approval #2a allows for the Project applicant to request further extensions of the entitlements from the Planning Commission if an application is submitted prior to the expiration date. The Project applicant filed for an extension on November 20, 2015.

According to the Project applicant, construction documents have been generated and special studies required by the Conditions of Approval have been prepared. In addition, the Project applicant has received offers from developers to construct the project and will take advantage of the time extension opportunity in order to facilitate development of the approved project.

CITY OF OAKLAND PLANNING COMMISSION



0 125 250 500 750 1,000 Feet



Case File: REV100021
Applicant: Philip Lesser
Address: 3927 Wattling Street
Zone: HBX-2

The Project provides new housing units and infill development on underused, vacant parcels that are currently used as container storage. The project is clearly in conformance with the General Plan's goals and policies. Therefore, staff recommends that the Project's entitlements be extended for a one-year period.

BACKGROUND

On June 18, 2008, the Planning Commission approved a Preliminary Planned Unit Development Permit, a Final Development Permit and a Vesting Tentative Tract Map for the construction of 18 condominium units and 61 attached single-family homes on Wattling Street between 37th and 42nd Avenues (*Attachment B*). The Project also included construction of a triple-sided static billboard, which was not subject to the Planning Code or authorization by the Planning Commission.

A Franchise Agreement with Clear Channel Outdoor, Inc. was adopted by the Oakland City Council in November of 2008 per Resolution 81649 C.M.S. to construct a new two-sided billboard on the property due to the site's freeway visibility. In exchange, Clear Channel would remove 15 billboards around the City and one time contribution to the after-school 6-9 PM sports program at Cesar Chavez Education Center. The billboard was constructed in June of 2011.

In 2010, the Project Applicant submitted a Revision to the 2008 approvals to make minor modifications to the design of the Project, including (*Attachment C*):

- Loss of one unit
- Redesign of south-east corner of site to move units to rear of site with parking in front,
- Lower the townhome heights to create roof midpoints no higher than 30' from lowest point of mew,
- Set the exterior corridor 10' back from the property line where 9' was previously approved, and
- Revise the air rights legal description for the previously approved Billboard to be consistent with the Sign Relocation Agreement approved by the City Council.

From 2011 through 2015, the Oakland City Council passed Resolutions (81723, 83424, 83989, 84746 and 85305 C.M.S.) to allow automatic extensions of active land use entitlements due to the economic recession. The Project applicant took advantage of the 2012-2014 Resolutions. However, they did not take advantage of the 2015 Resolution. Instead, the Project applicant used the one-year administrative extension permitted per Condition of Approval #2a.

PROJECT DESCRIPTION

Extension Request

In conformance with adopted Condition of Approval #2a, the Project applicant submitted an application on November 20, 2015 requesting a one-year extension of the entitlements from the Planning Commission. As noted above in the *Background* section, the approved permit for this application is still active, but was set to expire on December 31, 2015. Unless the Planning

Commission approves a time extension request, the approved permit will expire, and the Project applicant will need to apply for a new PUD development permit.

Approved Project Use and Design

The proposed Project consists of 18 condominium units and 60 attached single-family townhomes. The architect's overall intent is to create a scheme that is consistent with the surrounding neighborhood development pattern, while lessening the impact imposed of the nearby railroad tracks and Interstate 880. The multi-family condo building at the northwest corner of the site seeks to act as a buffer and a transition piece between the industrial area and the more residential oriented area starting on 38th Ave. The single-family townhouses between 38th and 42nd Avenues are organized in a smaller street pattern in scale with the rest of the neighborhood with a row of townhouses creating a buffer from railroad and highway noise and views. The materials for the project include concrete block in a split face, stucco, trex-board, and fiber cement board and panels, with wire mesh fences and gates. The project proposes extensive hardscape and softscape elements throughout the development. At the time of the decision, the Planning Commission supported the use and design character for the site.

ZONING ANALYSIS

The Project was approved under the HBX-2 (Housing and Business Mix 2) Zone and the HBX-2 zoning for the site has not changed. Residential uses are still permitted in this area at the density and Floor Area Ratio proposed.

DISCUSSION

Staff received a comment letter noting concerns with illegal dumping, a change to the character of the neighborhood, and the lack of affordable housing.

There has been illegal dumping and blight complaints at the property in the past. However, all complaints have been investigated and the issues abated. The Project will likely reduce or eliminate these issues as a new residential community will occupy the site, new residents in the area will result in further "eyes" on the street, and the Project will install infrastructure such as sidewalks, street trees and landscaping beautifying the area.

As noted in the *Zoning Analysis* section above, the Project site is located within the Housing and Business Mix-2 Zone which envisions a mix of both of industrial, certain commercial and medium to high density residential development. This zone recognizes the equal importance of housing and business. Per the previous Findings for approval in 2008 and in 2010, the Project would create sub-neighborhoods on the site to relate to the Project's surroundings. The multi-family building acts as a buffer and transition between the industrial and residential areas. This building also relates more to the warehouses to the west. The single-family townhomes are well related in scale to the existing residential areas to the north. Again, the Project is clearly in conformance with the City's General Plan policies and intent for the site.

Finally, the City has prepared a Nexus Study and Implementation Strategy to analyze the implications of adopting impact fees for affordable housing, transportation, and capital improvements. Development impact fees are a commonly used method of collecting a proportional share of funds from new development for infrastructure improvements and other public facilities to offset the impact of new development. Several upcoming public hearings on the citywide impact fee proposal include:

- January 26, 2016 at 1:30 pm. before the Community & Economic Development Committee, and
- February 2, 2016 at 5:30 pm. before the City Council.

As such, the City is requesting that the extension be approved with an additional Condition of Approval that the Project shall be subject to the imposition of impact fees unless a vested right is obtained prior to the impact fee adoption date. The reasoning for this request includes the following:

- The Project has benefitted from previous City Council extension resolutions extending the Project entitlements.
- The last City Council resolution required applicants who accepted the extension to be subject to the imposition of impact fees unless a vested right has been obtained. This action effectively set the City Council's policy regarding further extensions of entitlements.
- Since the Project applicant did not accept the last City Council extension with this language, staff is requesting that the Planning Commission add this additional Condition of Approval to be consistent with the City Council's previous policy.

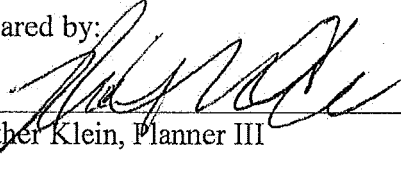
CONCLUSION AND RECOMMENDATIONS

As noted above, the Project is still in conformance with the General Plan's goals and policies and the Planning Code. Staff believes that the one-year extension would allow the applicant to successfully complete or transfer the rights to complete the approved, desirable project. At the same time, an additional year would ensure that the site does not remain underutilized for an excessive amount of time. Condition of Approval #2a permits the applicant to request additional extensions from the Planning Commission if needed to complete the Project.

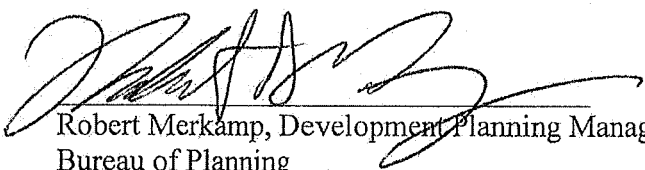
Therefore, staff recommends that the Planning Commission:

1. Approve the extension of Project approvals until December 31, 2016, subject to the previously approved Findings and Conditions of Approval and the additional Condition of Approval regarding the imposition of impact fees.

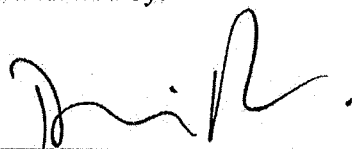
Prepared by:


Heather Klein, Planner III

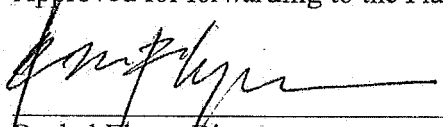
Reviewed by:


Robert Merkamp, Development Planning Manager
Bureau of Planning

Reviewed by:


Darin Ranelletti, Deputy Director
Bureau of Planning

Approved for forwarding to the Planning Commission:


Rachel Flynn, Director
Department of Planning & Building

ATTACHMENTS:

- A. Applicant's extension letter of request, dated December 18, 2015
- B. Staff Report (Excerpt), dated June 18, 2008
- C. Revision Approval Letter, dated January 18, 2011
- D. Public Comments

FINDINGS FOR APPROVAL

See Attachment B: PUD06-606 Staff Report and Attachment C: REV10-0021 Revision Approval Letter

ADDITIONAL CONDITION OF APPROVAL

The following condition of approval shall be added to the adopted conditions of approval for case file REV10-0021 upon extension of applicable entitlements beyond December 31, 2015:

The project approved under case file REV10-0021 shall be subject to, and Applicant shall agree to pay, any development impact fees that are eventually adopted by the City Council unless a vested right is obtained prior to the impact fee adoption date and such project is diligently pursued toward completion, as reasonably determined by the Planning Director or designee.

Findings and Additional Condition of Approval

RE: Wattling St. -- Entitlements Extension Request

Philip Lesser
December 18, 2015
12:19 PM

To: Heather Klein Cc: Robert Merkamp;

Heather Klein
City of Oakland
Bureau of Planning

Re: One-Year Extension of Entitlements for Case File REV10-0021; Wattling Street
APN's: 033-2169-016; 033-2169-016-2; 033-2170-003-00

Oak Partners, LLC hereby formally requests that the City of Oakland Planning Commission consider extending the time to obtain required building permit(s) for the above referenced project until December 31, 2016.

A secondary application check in the amount of \$1,327.99 payable to the City of Oakland will be mailed today to your attention.

Respectfully submitted,



Philip Lesser
for Oak Partners, LLC

555 Laurel Avenue
501
San Mateo CA 94401

ATTACHMENT A