

**Location:** Corner of Piedmont Ave. & W. MacArthur Blvd. – *a portion of the Kaiser Permanente Oakland Medical Center, Phase 2 site, which is located on the full block between Broadway and Piedmont Ave., and between I-580 and West MacArthur Blvd. (APN: 012-0940-001-03)*

**Proposal:** Revised Plans pursuant to an Appeal of a Zoning Approval of an Interim Landscape Plan, including landscape, streetscape enhancements and lighting, and temporary façade improvements, in accordance with Condition of Approval #25 for the original hospital renovations project approved under Case #DR07-496).

**Status:** The Appeal of the original Zoning Approval was presented to the Planning Commission at a public hearing on November 20, 2013; the item was continued with direction to Kaiser to work with the Appellants to develop a revised plan providing greater public access to the site. This hearing is to consider the plan revisions submitted on January 29, 2014, with refinements submitted on February 7, 2014 resulting from those efforts.

**Contact Person/Phone Number:** Sarah Cohen, et al - Appellant, Representing Richmond Blvd. (Oak Glen Park) Neighbors (510)414-6005

**Owner:** Kaiser Foundation Hospitals

**Case File Number:** A13-273 (related to DR13-177 and DR07-496)

**Planning Permits Required:** Regular Design Review under D-KP Zone for Interim Landscape Plan

**General Plan:** Institutional

**Zoning:** D-KP-2 - Kaiser Permanente Oakland Medical Center

**Environmental Determination:** An EIR for the Kaiser Permanente OMC Master Plan was prepared by the City of Oakland. That EIR was certified by the Oakland Planning Commission on June 6, 2006. The current project is generally consistent with that analyzed in the previously certified EIR. No additional environmental review is required. As a further separate and independent basis, this action is also exempt from CEQA pursuant to CEQA Guidelines 15301 and 15183.

**Historic Status:** Not a Potential Designated Historic Property; Survey Rating: F3

**Service Delivery District:** 2

**City Council District:** 3

**Date Filed:** September 23, 2013 (original); January 31, 2014 (revised), February 7, 2014 (refinements).

**Staff Recommendation:** Deny the Appeal, and approve the project based on the revised Interim Landscape Plan.

**Action to be Taken:** Decision regarding Appeal

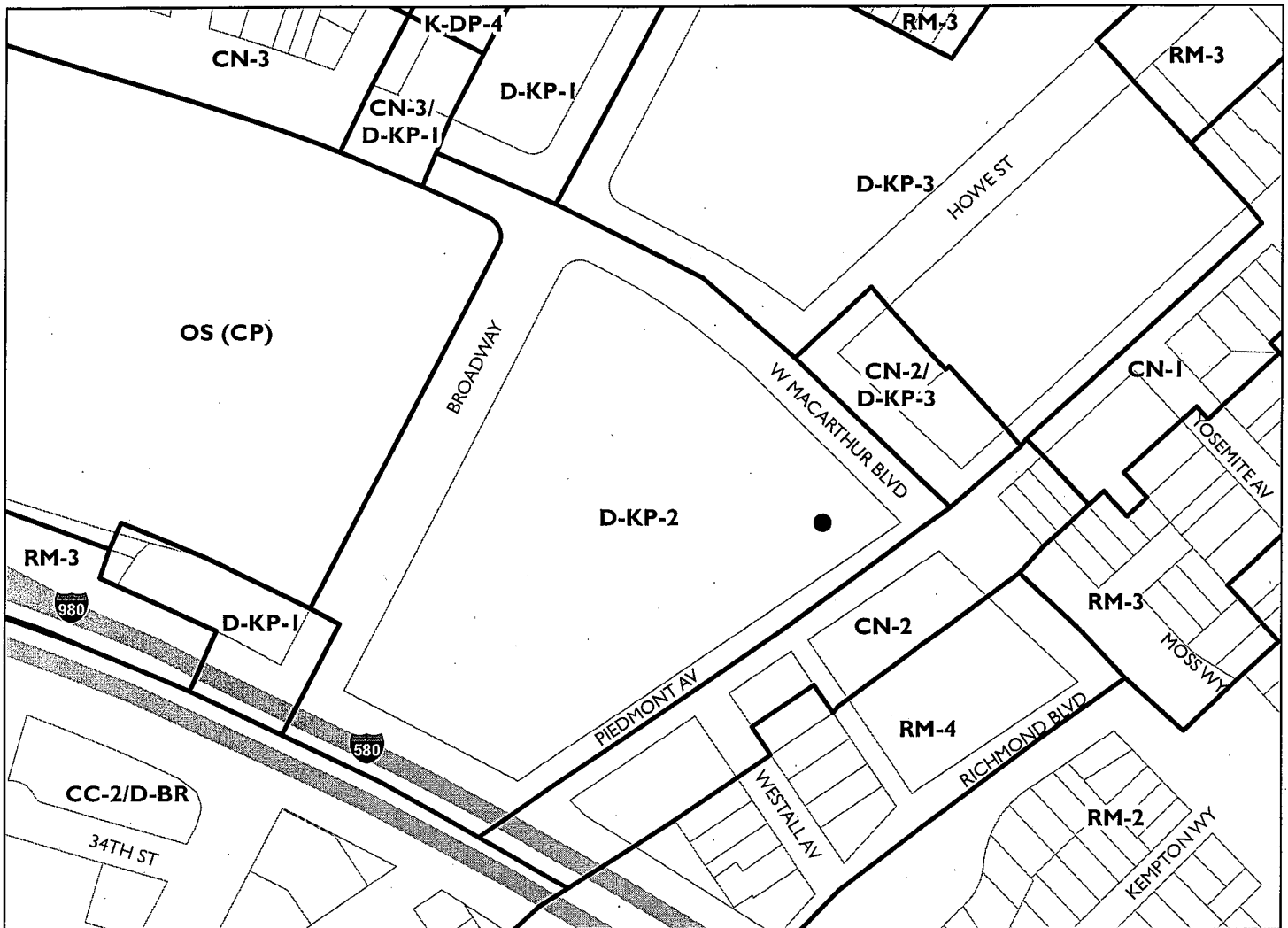
**Finality of Decision:** Final, not administratively appealable

**For More Information:** Contact Case Planner, Ann Clevenger, at (510)238-6980 or [aclevenger@oaklandnet.com](mailto:aclevenger@oaklandnet.com)

**SUMMARY**

On November 20, 2013, the Planning Commission heard an appeal of the Zoning Manager's Decision to approve an Interim Landscape Plan, submitted by Kaiser Permanente ("Applicant"), for the corner of their

# CITY OF OAKLAND PLANNING COMMISSION



0 125 250 500 750 1,000 Feet



Case File: A13273 (related to DR13177 and DR07496)  
Appellant: Sarah Cohen, et al - Representing Richmond Boulevard  
(Oak Glen Park) Neighbors  
Address: Block bounded by Broadway, Piedmont Avenue,  
W MacArthur Boulevard and I-580  
Zone: D-KP-2

site located at W. MacArthur Boulevard and Piedmont Avenue (Attachment "A"). The Plan was submitted in accordance with Condition of Approval (#25) which was attached to the approval in November, 2008, of Phase 2 of its Oakland Medical Center (OMC) renovations project. The Condition was designed to trigger a requirement for the temporary treatment of the corner of the Phase 2 site in the event of a delay in construction of the Medical Office Building (MOB) approved with the Phase 2 development plans to be constructed on that corner. The temporary/interim landscaping-related treatments would be removed when construction of the MOB building commences. The appeal issues related primarily to a proposed fence near the perimeter of the site, which would preclude public access to the majority of the site. After hearing presentations and public testimony, the Planning Commission continued the item and directed Kaiser to work with the Appellant(s) to develop a compromise design that would allow more public access to the site, activate the street and appear more attractive (Attachment "C"). Since the November 20, 2013, hearing on the appeal, Kaiser has held four meetings with the community, and on January 29, 2014, they submitted revised plans for the Interim Landscape Plan and other temporary improvements to the site, with refinements submitted on February 7, 2014 (Attachment "B"). The revised plans were Noticed on February 3, 2014. As of this writing, no comments have been received. Staff will provide an update at the Planning Commission hearing (Attachment "D").

Staff finds that the revised Interim/temporary Landscape Plan meets the applicable findings (Attachment "E"). Since the action to be taken by the Planning Commission is a decision on the Appeal of the original proposal, Staff therefore recommends that the Planning Commission: (a) deny the appeal of the original Interim Landscape Plan, and concurrently, (b) approve the revised Interim Landscape Plan as submitted.

## **PROPERTY DESCRIPTION**

The Kaiser Oakland Medical Center (OMC) Phase 2 site is located on a full block, consisting of approximately 7.3 acres, and bounded by Broadway (to the west), Piedmont Ave. (to the east), W. MacArthur Blvd. (to the north), and I-580 (to the south). The project site is a triangular 35,430 s.f. portion of this block, comprised of the Piedmont Ave. and W. MacArthur Blvd. street frontages at two sides, and its third side bounded by the new Hospital building interior to the site. The site is flat, with the exception of an approximately 40-foot wide "layback" area along the length of the east wall of the hospital building. This area contains a berm that slopes down 20 feet in elevation, at a 2:1 slope, to meet the basement level of the hospital building. This layback area was created in order to facilitate the future construction of the MOB building which is designed to abut the east face of the hospital building. Accordingly, the east-facing wall of the hospital building is currently exposed.

## **PROJECT DESCRIPTION**

The original Interim Landscape Plan, that was the subject of the appeal, included plantings of trees, shrubs and groundcover, a 7-foot metal fence near the perimeter of the site, plantings between the fence and sidewalk, and proposed painting treatment for the east-facing facade of the hospital building that would mimic the other building facades.

The revised Interim Landscape Plan includes a greater number and variety of trees, shrubs and groundcover, two distinct outdoor plaza spaces, a fence to be located very near the top of the layback

area for safety and security, and a revised treatment for the east-facing wall of the hospital building. Trees and shrubs are selected to mediate scale between the buildings to the west, provide seasonal variety and continuity with other campus plantings, and be relatively fast-growing due to the temporary nature of the open space. The two outdoor plaza areas are designed as a larger and a smaller oval-shaped hardscape, furnished with seating elements, and are connected to each other and to the abutting streets with pedestrian pathways. The fence will be 8-feet tall, with a horizontally-oriented metal and wire mesh design, and finished in colors that would help integrate the fence into the natural landscape. Its proposed curvilinear layout and proposed planting with vines will further help to integrate it with the surrounding landscape. The revised treatment for the east wall of the hospital building includes a three-toned painted "nature graphic", which will be more naturalistic in appearance, aesthetically attractive, and well-integrated with the landscape.

## **BACKGROUND**

When the Kaiser OMC Phase 2 project was approved in November, 2008, there was some discussion that the MOB building proposed for the corner of the site, at W. MacArthur Blvd. and Piedmont Ave., was not subject to the same time constraints as the patient service buildings, and there could be a delay in its construction. A condition of approval (Condition of Approval #25) was therefore included in the project approval, which was designed to trigger a requirement for the temporary treatment of the MOB building site in the event of a delay in the building's construction. The condition called for temporary landscaping, lighting, security, and treatment of the east-facing wall of the hospital podium building which would be rendered temporarily exposed. The temporary/interim landscaping-related treatments would be removed when construction of the MOB building commences. Another part of the condition called for an enhanced landscaping connection to Mosswood Park, which has already been addressed.

On June 18, 2013, Kaiser submitted an application for Design Review for an Interim Landscape Plan for the area of their future MOB site in accordance with Condition of Approval #25 of the Phase 2 project approval.

That plan included plantings within the subject area, including trees, shrubs and groundcover, an 8' tall open metal fence to be located between 4' and 7' from the edge of the sidewalk along Piedmont Ave., and treatment of the east-facing facade of the hospital building, to be painted in colors and patterns that resemble the other building facades. That Plan was reviewed, found to meet the Condition of Approval and other applicable requirements, and approved. On September 23, 2013, an Appeal was filed by Sarah Cohen, representing "Richmond Blvd. (Oak Glen Park) Neighbors".

As previously mentioned, the appeal was heard at the November 20, 2013, the Planning Commission meeting. The issues related primarily to a proposed fence near the perimeter of the site, which would have enclosed most of the site and precluded public access to the majority of the site. After hearing presentations and public testimony, the Planning Commission continued the item and directed Kaiser to work with the Appellant(s) to develop a compromise design that would allow more public access to the site and activate the street.

Since the first appeal hearing, Kaiser has held four meetings with the community, and on January 29, 2014, submitted a revised Interim Landscape Plan and other temporary improvements to the site, with refinements

submitted on February 7, 2014. The revised plans provide much greater public access to the site, enhanced open spaces, and a more naturalistic painting scheme for the east-facing wall of the hospital building (see detailed description under PROJECT DESCRIPTION section above).

Staff has reviewed the revised plans and finds that the proposal meets the required Design Review findings.

## **GENERAL PLAN AND ZONING ANALYSIS**

The site is located in the "Institutional" General Plan Land Use Area, and the "D-KP-2" (Kaiser Permanente Oakland Medical Center Commercial District 2) Zone. Staff finds that the revised Interim Landscape Plan conforms with the applicable General Plan and Zoning requirements, as well as with the approved Kaiser Permanente OMC Master Plan and related approval and conditions of approval (including Condition of Approval #25) for the Phase 2 project as approved by the City Planning Commission in 2008 (see Revised Design Review Findings and Conditions of Approval attached to this Report, Attachments "E" and "F").

## **ENVIRONMENTAL DETERMINATION**

An EIR for the Kaiser Permanente OMC Master Plan was prepared by the City of Oakland. That EIR was certified by the Oakland Planning Commission on June 6, 2006. The current project is substantially consistent with that analyzed in the Master Plan EIR. No additional environmental review is required. As a further separate and independent basis, this action is also exempt from CEQA pursuant to CEQA Guidelines 15301 and 15183.


## **CONCLUSIONS**

Staff finds that the revised Interim Landscape Plan meets the 2008 Planning Commission Condition of Approval #25 and the required Regular Design Review findings, and is consistent with the Goals, Policies and Objectives of the Kaiser Permanente Master Plan.

## **RECOMMENDATIONS**

- 1) Deny the Appeal of the original Interim Landscape Plan, and approve the project as revised, including the Design Review permit for the Interim Landscape Plan and its environmental determination.
- 2) Reaffirm that the Interim Landscape Plan is, in fact, intended to be a temporary solution for the site of Kaiser's future Medical Office Building, on its own property, and Kaiser has a right to construct the previously-approved Medical Office Building on the site in the future, pursuant to the Phase 2 approval and provided any and all applicable required permits are obtained.

Prepared by:



ANN CLEVINGER

Planner III

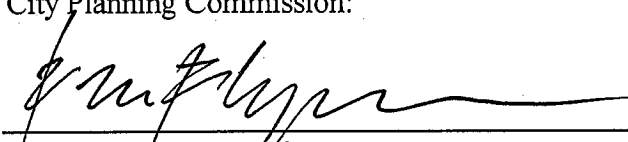
Approved by:



SCOTT MILLER

Zoning Manager

Approved for forwarding to the  
City Planning Commission:



RACHEL FLYNN, Director

Department of Planning and Building

**ATTACHMENTS:**

- A. Staff Report for Appeal (first hearing), dated November 20, 2013
- B. Revised Interim Landscape Plan, dated January 29, 2014
- C. Minutes of the November 20, 2013 City Planning Commission Meeting
- D. Public Comment letters
- E. Revised Design Review findings
- F. Revised Conditions of Approval

**Location:** Corner of Piedmont Ave. & W. MacArthur Blvd. – a portion of the Kaiser Permanente Oakland Medical Center, Phase 2 site, which is located on the full block between Broadway and Piedmont Ave., and between I-580 and West MacArthur Blvd. (APN: 012-0940-001-03)

**Proposal:** Appeal of a Zoning Approval of an Interim Landscape Plan, including landscape, streetscape enhancements and lighting, and temporary façade improvements, in accordance with Condition of Approval #25 for the original hospital renovations project approved under Case #DR07-496).

**Contact Person/Phone Number:** Sarah Cohen, et al - Appellant, Representing Richmond Blvd. (Oak Glen Park) Neighbors (510)414-6005

**Owner:** Kaiser Foundation Hospitals

**Case File Number:** A13273 (related to DR13-177 and DR07-496)

**Planning Permits Required:** Regular Design Review under D-KP Zone for Interim Landscape Plan

**General Plan:** Institutional

**Zoning:** D-KP-2 - Kaiser Permanente Oakland Medical Center

**Environmental Determination:** An EIR for the Kaiser Permanente OMC Master Plan was prepared by the City of Oakland. That EIR was certified by the Oakland Planning Commission on June 6, 2006. The current project is generally consistent with that analyzed in the previously certified EIR. No additional environmental review is required. As a further separate and independent basis, this action is also exempt from CEQA pursuant to CEQA Guidelines 15301 and 15183.

**Historic Status:** Not a Potential Designated Historic Property; Survey Rating: F3

**Service Delivery District:** 2

**City Council District:** 3

**Date Filed:** September 23, 2013

**Staff Recommendation:** Deny Appeal and uphold Zoning Manager's approval of the Interim Landscape Plan,

**Action to be Taken:** Decision regarding Appeal Request

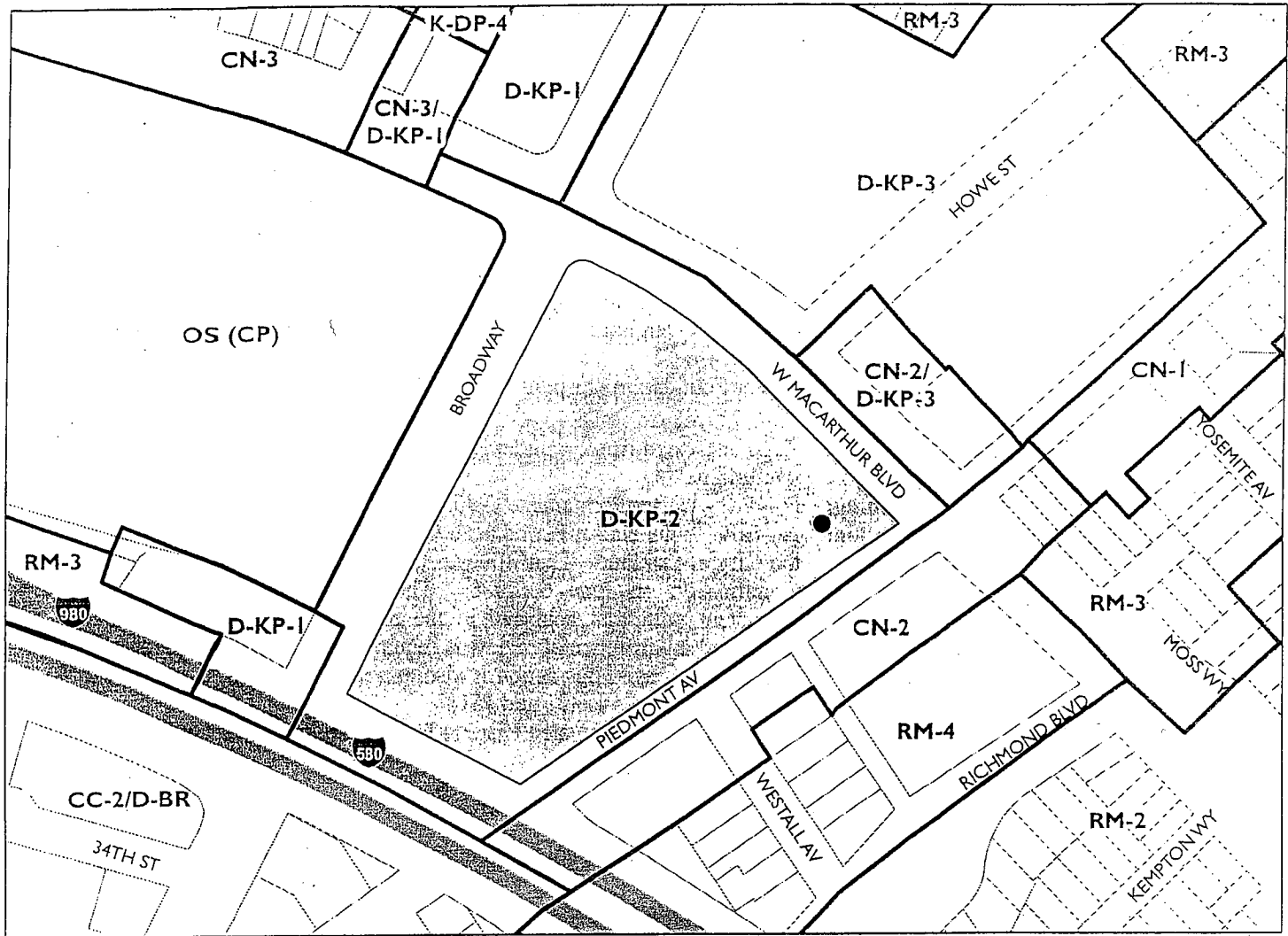
**Finality of Decision:** Final, not administratively appealable

**For More Information:** Contact Case Planner, Ann Clevenger, at (510)238-6980 or [aclevenger@oaklandnet.com](mailto:aclevenger@oaklandnet.com)

## SUMMARY

An Appeal was filed on September 23, 2013 (Attachment "A"), regarding the Zoning Manager's Decision on September 12, 2013 (Attachment "B"), to approve an Interim Landscape Plan submitted by Kaiser Permanente, including landscaping, streetscape enhancements lighting and temporary façade improvements (Attachment "C"), in accordance with Condition of Approval #25 for the second phase of its hospital renovations project that was approved in November, 2008 (Staff Report - Attachment "D", [Attachment G, therein]). This condition was designed to trigger an interim plan for the corner of the Phase 2 site in the event of a delay in construction of the new Medical Office Building (MOB) to be located at the

# CITY OF OAKLAND PLANNING COMMISSION



Case File: A13273 (related to DR13177 and DR07496)  
Appellant: Sarah Cohen, et al - Representing Richmond Boulevard  
(Oak Glen Park) Neighbors  
Address: Block bounded by Broadway, Piedmont Avenue,  
W MacArthur Boulevard and I-580  
Zone: D-KP-2

corner of W. MacArthur Blvd and Piedmont Ave., between the new hospital building and Piedmont Ave. Staff recommends the Planning Commission deny the appeal and uphold the Zoning Manager's approval of the Interim Landscape Plan.

Essentially, Appellants now seek to impose a new condition – namely, publicly accessible open space -- on a project that was previously approved in 2008. At that time, the Planning Commission did not impose such a requirement. Rather, the Commission merely required (as Condition #25) “an interim improvement plans for the landscaping, lighting and security of that undeveloped portion of the Phase 2 site. . . . includ[ing], but . . . not limited to landscaping and streetscape enhancements, temporary façade improvement to the Hospital exterior walls, additional lighting and signage.” Staff believes Condition #25 is satisfied with the submitted Interim Landscape Plan. Because Condition #25 was adopted as part of the Phase 2 plans, and the Phase 2 plans were found to be consistent with the Master Plan and Zoning, the condition itself is therefore consistent with the Master Plan and Zoning. Likewise, because the Interim Landscape Plan is consistent with Condition #25, it too is consistent with the Master Plan and Zoning.

## **PROPERTY DESCRIPTION**

The Kaiser OMC Phase 2 site is located on the full block, consisting of approximately 7.3 acres, between Piedmont Ave. & Broadway to its east and west, and between W. MacArthur Blvd. and I-580 to its north and south. The site of this interim landscape plan project is that of the future MOB site, which is 35,430 s.f. in area, at the corner of Piedmont Ave. and W. MacArthur Blvd., (between the new Hospital building and Piedmont Ave.).

## **PROJECT DESCRIPTION**

On June 18, 2013, Kaiser submitted an application for Design Review for an Interim Landscape Plan in accordance with Condition of Approval #25 for the Phase 2 project. The interim plans for the future footprint area of the future Medical Office Building include generous plantings, including trees, shrubs and groundcover extending to the edge of the public sidewalks. While not a requirement of the Condition, an 8 foot tall open metal fence was originally proposed to enclose the landscaped area, to be located between 4 and 7 feet from the edge of the sidewalk along Piedmont Ave. in a zig-zagging design, and at least 3 feet from the sidewalk at W. MacArthur Boulevard where the fence layout steps to accommodate previously-designed and approved public open spaces along that street frontage. The east-facing facade of the hospital building, which will remain exposed until the new MOB building is built, is proposed to be painted in colors and patterns that resemble its other facades. Lighting and security measures are included, as well as a plan for the landscaped walkways that serve as a (public) pedestrian connection from Piedmont Avenue to Mosswood Park. The Administrative Decision, dated September 12, 2013, approved the interim project and included a project-specific condition limiting the height of the fence to 7 feet.

## BACKGROUND

The Kaiser Permanente Oakland Medical Center Master Plan ("Master Plan") was approved by the Oakland City Council in 2006, after review and recommendation of the Planning Commission. The Master Plan describes the phased replacement of their previous Oakland Medical Center with an expanded and improved campus consisting of approximately 1.76 million square feet on approximately 19.5 acres, to be completed by approximately 2020. The approved Master Plan includes Goals, Objectives, Principles and Design Guidelines.

Phase 1 includes construction of the Broadway Medical Office Building and parking garage.

Phase 2 of the Hospital site is approximately 7.3 acres and includes the full block between Broadway and Piedmont Ave., and between I-580 and West MacArthur Boulevard. Its components include: the demolition of all buildings on the site, construction of a new parking garage, Central Utility Plant (CUP), Hospital and Hospital Support Building (HSB), new Medical Office Building (MOB), and landscaping and streetscape improvements. Kaiser would relocate the hospital and medical office uses that occupied the former hospital building at the opposite side of MacArthur Blvd. to these new facilities. It was discussed in previous Staff Reports that, unlike the other buildings in Phase 2, the new MOB facility is not considered an acute care facility and therefore is not regulated by the Office of Statewide Health Planning and Development (OSHDP); its construction would instead comply with City of Oakland building code standards. Because this second component of Phase 2 would be constructed separately from, and following completion of the Hospital Building, a Condition of Approval was included in the Phase 2 project approval triggering a requirement for an Interim landscaping, lighting and security plan for that undeveloped portion of the Phase 2 site if the MOB was not constructed by a date certain.

Phase 3 includes demolition of the existing hospital building and facilities.

### Summary of Prior Approval and Actions

On June 6, 2006, the Planning Commission recommended approval of the Master Plan, its EIR and other requested entitlements, with modifications and conditions.

On June 27, 2006, the City Council certified the Kaiser Oakland Medical Center Master Plan, its EIR, and approved a General Plan Amendment and Redevelopment Plan Amendment.

On July 18, 2006, the City Council approved the rezoning and the Kaiser Oakland Medical Center Master Plan.

On November 1, 2006, the Planning Commission approved the Design Review approval for the Phase 1 Broadway Medical Office Building and parking garage.

Between September, 2007, and August, 2008, Kaiser held a series of seven community workshops to inform the community about the Phase 2 Hospital plans and related improvements, solicit their input, and seek consensus on a number of design issues.

On May 28, 2008, the Design Review Committee of the Planning Commission was presented with a status report and preliminary designs for the proposed new Phase 2 Hospital project. The Committee reviewed the proposed building design, heard public comments and determined that the design was ready for consideration by the full Planning Commission. The Staff Report discussed that the critical part of Phase 2 is the need to complete construction of the Hospital building by 2013 in order to comply with the state seismic safety requirements of SB1953). Kaiser expressed their intention to begin construction of the MOB, which is not an OSHPD-regulated facility and therefore not subject to the same time constraints, immediately following completion of the Hospital building. Staff noted that, should unforeseen circumstances arise that may delay the construction of the MOB, the "interior" wall between the Hospital building and the MOB (facing Piedmont Ave.) would be left exposed for a period of time; also, it is uncertain how much internal courtyard and landscaping and Piedmont Ave. frontage landscaping would occur prior to completion of the MOB. Staff therefore suggested a condition of Design Review approval be considered that would obligate Kaiser to prepare an interim design plan for the MOB portion of the site which addresses the appearance of the exterior Hospital wall and landscaping, should any delay in construction occur. If Kaiser were to delay construction of the MOB, this interim design plan would be subject to additional Design Review Approval.

Also contained in the Staff Report were findings that the project substantially conformed to the Kaiser OMC Master Plan, including Master Plan Guideline 7.3.6, regarding a pedestrian path connecting Piedmont Avenue to Mosswood Park through the Phase 2 property (later referenced in Condition of Approval #25). Other comments and concerns were raised including: pedestrian experience and street activation along Broadway; building articulation and expression, particularly at the key corners; neighborhood scale of design along Piedmont, materials and color, interim design, lights and logos and skybridge (see May 28, 2008, Staff Report on file).

On September 3, 2008, the Planning Commission reviewed the Phase 2 design, including Kaiser's design responses to the issues identified at the Design Review Committee hearing and Staff's recommended Conditions of Approval. The Staff Report included findings that the design is consistent with the Design Review Criteria, the Oakland General Plan and the principles and guidelines of the Kaiser OMC Master Plan. Staff also included recommended Conditions of Approval for the project.

On November 19, 2008, the Planning Commission approved Phase 2 design as modified by Kaiser to address the issues raised on September 3, 2008. The Planning Commission further approved modified Conditions of Approval, including but not limited to Condition #25, which states:

*"In the event that Kaiser determines construction of the Medical Office Building (that portion of Phase 2 located nearest to the MacArthur Boulevard/Piedmont Avenue intersection) will not "commence in earnest" within 120 days from issuance by the California Department of Health of a license to operate the new hospital, then Kaiser shall submit interim improvement plans for the landscaping, lighting and security of that undeveloped portion of the Phase 2 site. Such interim improvement plans shall be submitted to the City within 120 days after the California Department of Health issues its license to operate the new hospital.*

*Interim improvements shall include, but are not limited to landscaping and streetscape enhancements, temporary façade improvement to the Hospital exterior walls, additional lighting*

*and signage, and other appropriate amenities for the pedestrian path connecting between Piedmont and Mosswood Park.*

*These interim improvements shall be subject to Regular Design Review approval pursuant to Section 17.XX.060(D) of the Kaiser Permanent Oakland Medical Center (KX) Zone regulations as contained in the Oakland Municipal Code.*

*Kaiser shall "commence in earnest with construction of these interim site improvements within 1 year of approval of the Design Review application."*

The November 19, 2008, approval of the Phase 2 project was not appealed.

On April 16, 2013, Staff met with Kaiser to discuss their intent to delay the MOB building and submit plans for the interim improvements including trees, shrubs and groundcovers, lighting, and security features, as well as treatment of the east-facing façade of the hospital building that would be temporarily exposed, in accordance with Condition of Approval #25 stated above. Included in that discussion was the fact that there would be a steep downsloping berm, sloping from the ground (street-level) elevation of the MOB, down approximately 20-feet to the below-ground level of the hospital building along its east-facing side. This below grade level wall is temporarily exposed, until such time the MOB structure is built and leaves a steep drop-off in elevation at the site that needs to be secured. It was discussed that overall site would need to be secured due to these safety concerns and concerns about criminal activity which are a known problem in this immediate area.

On April 25, 2013, Kaiser hosted a community meeting where the interim landscape plan was presented. The plan included landscaping, streetscape enhancements and lighting, temporary façade improvements to the Hospital exterior walls, additional lighting and signage, and other appropriate amenities for the pedestrian path connecting between Piedmont Ave. and Mosswood Park in accordance with Condition of Approval #25. The meeting was attended by Staff. Comments from the community members were generally complimentary of the proposed landscaping; however, objections were raised regarding a proposed fence surrounding the landscaped area and the inaccessibility of that landscaped area to the public. The Kaiser Security Director explained that security was an issue due to criminal activity in the neighborhood. There was discussion among the Kaiser representatives and the community members about criminal activity in general, as well as other "undesirable/problematic" activity coming from the nearby bar, and drug dealing at the nearby gas station. (Indeed, in a subsequent community meeting on Wednesday, November 13, 2013, many neighbors expressed concerns about recent shootings in the area, at least one of which occurred across the street from the subject site),

On June 18, 2013, Kaiser submitted to the City a formal application for Design Review for the Interim Landscape Plan, including the elements as presented to the public described above.

Specifically, the plans for the site of the future Medical Office Building show numerous plantings within the subject area, including trees, shrubs and groundcover extending to the edge of the public sidewalks. An 8' tall open metal fence was originally proposed, to be located between 4' and 7' from the edge of the sidewalk along Piedmont Ave. in a zig-zagging design. The east-facing facade of the hospital building, which will be exposed until the new MOB building is built, is proposed to be painted in colors and patterns that resemble its other facades.

On June 28, 2013, the Planning Department issued public notice for the project, with a comment deadline of July 18, 2013. Many comments were received, predominantly in opposition to the proposed fence and lack of public access to the landscaped area (Attachment "E").

On July 25, 2013, Kaiser hosted another community meeting where the plan was discussed, and objections to the fence and the inaccessibility of the landscaped area to the public were once again raised. The reason for lighting within the fenced area was also questioned. Kaiser representatives explained that the fence and lighting were being proposed for safety reasons and to prevent trespassing on their property and resulting liability issues.

On July 30, 2013, Staff held a meeting with several interested community members, at their request. At that meeting, several concerns were raised, mostly regarding the fence proposed to enclose the landscaped area. A letter was presented to Staff with a list of requests, including the following: Kaiser should consider design alternatives that do not require fencing off the area; if the area is to be fenced, the fence should not exceed 6 feet in height, it should be located a minimum of 8 feet from the edge of the nearest paved walking surface, placed behind the perimeter trees so the trees serve as a buffer between the pedestrians and the fence; the fence shall not be obstructed by vining plants that block the view of the area inside, and the fenced area should be made accessible to the public between dawn and dusk, 7 days a week.

Staff found that the proposal met the required Design Review findings, as detailed in the attached decision letter, and approved the project on September 12, 2013, with a Condition of Approval (#21) limiting the fence height to 7'-0" maximum (in lieu of the requested 8' high fence).

On September 23, 2013, an Appeal was filed by Sarah Cohen, representing "Richmond Blvd. (Oak Glen Park) Neighbors".

## **APPEAL ISSUES**

### **Appellants' Contentions:**

The "Summary" objection relates to the approval of a 7' tall perimeter fence, to be laid out in a zig-zagging fashion, ranging from 3-7 feet from the edge of the sidewalk along the Piedmont Avenue frontage and which fences off the corner of MacArthur and Piedmont from public access and use. The Appellant asserts that the fencing off of that corner is "unwelcome, breaches the spirit of the OMC Master Plan, and Phase 2 Conditions of Approval, and violates community trust". Specifically, the Appellant states that Staff is in error and abused its discretion by disregarding the Kaiser Permanente Oakland Medical Center Master Plan for the project. The Appellant asserts that there is "no evidence as to how the proposal conforms to the Master Plan" and with regard to Staff's comment that the fence is intended for security purposes, "there is no evidence as to what Kaiser's security concerns are, the degree or extent to which those [as yet unstated] concerns are justified or even fact-based, or in what manner the proposed fence is designed to address them." The Appellant pointed out that those opposed to the fence would like to see a more creative design solution than a fence; alternatively, Kaiser should set the fence farther back, develop open space with the fenced area, and permit public access and use

during the daylight hours. The Appellant further claims that a precedent was set by Kaiser with its Serenity Garden at the Phase 1 site.

#### Staff's Response:

The Oakland City Council approved the Kaiser Oakland Medical Center Master Plan on July 18, 2006. The Master Plan speaks to goals and policies that would be reflected (refined) through future approved development plans. At the time of the Master Plan approval, a building was anticipated to populate this corner (and not an interim use). In 2008, at the time of the City Planning Commission's approval of the Phase 2 plans, findings were made that the Phase 2 project substantially conformed to the Master Plan and its Policies and Guidelines, and Conditions of Approval were attached. Condition of Approval #25 provided the mechanism for an interim landscape use to be requested if the MOB were not timely constructed. Staff believes Condition #25 is satisfied with the submitted Interim Landscape Plan. Because Condition #25 was adopted as part of the Phase 2 plans, and the Phase 2 plans were found to be consistent with the Master Plan and Zoning, the condition itself is therefore consistent with the Master Plan and Zoning. Likewise, because the Interim Landscape Plan is consistent with Condition #25, it too is consistent with the Master Plan and Zoning.

Kaiser has raised the issue of security concerns as part of their application and in meetings, citing criminal activity in the neighborhood, and general security concerns relating to hospitals, and the concern about liability should anything happen on their property. Further, the perimeter of the proposed fence is inside of the foot print of the future (approved) MOB building, and provides an even wider landscaped buffer adjacent to the sidewalk than the approved MOB building. Finally, Condition of Approval #25 included the requirement for lighting and security measures; it neither required nor recommended that the area would become a public park, or otherwise accessible to the public, either on a temporary or permanent basis. If the Planning Commission wanted an interim public park or otherwise publicly accessible area it should have expressly stated such in the condition of approval. It did not do so. Essentially, Appellants now seek to impose a new condition – namely, publicly accessible open space -- on a project that was previously approved in 2008. The requirement for enhancements to the pedestrian connection through the Phase 2 site to Mosswood Park, provided as a public amenity, was included in the Condition.

#### Appellants' Contentions:

*Design Review Criterion #1 is not met:*

*"The proposal will help achieve a group of facilities that are well related to one another and which, when taken together, will result in a well-composed design... with consideration given to the relation of the proposal to the total setting as seen from key points in the surrounding area."*

Appellant states "[t]he City erred in its findings that (a) while the City stated that Condition of Approval #25 is attached to the Master Plan, and the findings are not based on consideration of the Master Plan;(b) that a fenced-off corner relates well to and complements the overall OMC development. Fences and fenced-off areas closed off to the public are not and never have been a part of the design plans. In fact, the Serenity Garden established the opposite precedent of promoting open space with public access and use.";(c) that the interim plan should be read in conjunction with Condition of Approval #26 which

requires Kaiser to make "best faith efforts" to incorporate ground floor uses in the MOB and HSB that "activate the public street consistent with Guideline 2.1.4 of the Master Plan, particularly at the MacArthur/Piedmont corner". Further, street activation efforts should not be required only after the MOB and HSB are built but during this interim plan period of time; (d) the City's findings regarding the security issue are not based on substantial evidence and therefore are in error; (e) the City's findings that the proposal was revised to locate the fence farther way from the sidewalk "for greater visual relief" and plantings both inside and outside the fence would "diminish its visibility" are an implicit acknowledgement that neither a fence nor a fenced-off area is a positive design element for the subject corner.

**Staff Response:**

- (a) The Interim Landscape Plan project is the result of a Condition of Approval (#25) attached to the Phase 2 approval, intended to address a potential delay in the construction of the MOB building. The Condition, therefore, provided for temporary improvements, rather than a permanent part, of the Phase 2 development project which included the MOB building at the subject site. As a temporary use, the Interim project is, by nature, different from the development analyzed and approved in the Master Plan. Nonetheless, the Regular Design Review process provided for in the Condition requires that findings be made regarding a project's conformance with the Master Plan. Staff acknowledges that this procedure includes a required finding, under Criterion #3, that the project conforms to the Oakland General Plan, and with any applicable design review guidelines or criteria or development control map adopted by the Planning Commission or City Council, and that the project is in substantial conformance with the Kaiser OMC Master Plan. Staff's findings for Design Review Criterion #1 and #2 discuss in greater detail the merits of the various elements of the project and together these findings support the findings in Criterion #3 that the project conforms to the Master Plan.
- (b) Appellant's assertion that Staff stated "a fenced off corner" relates well to the overall OMC development is a mischaracterization of the finding. Staff's finding discusses, among other things, a generous landscape plan, lighting, façade treatment for the hospital building, and enhanced landscaping, walkway and lighting features at the connection through the site from Piedmont Ave. to Mosswood Park, and pointed out the plan is intended to be temporary in nature. In addition, the referenced Serenity Garden, a small fenced and landscaped area located at the Phase 1 site, is an amenity located at the Phase 1 Medical Office Building and Cancer Center that was part of that plan and is open to the employees and patients, and is accessible to the public via the building lobby. Staff finds no evidence, however, and does not agree, with the Appellant's assertion that the existence of the Serenity Garden establishes a precedent for the subject MOB/Interim Landscape Plan site. Finally, Staff agrees with the statement that a fenced area was "never a part of the design plans". The approved design plans for the Phase 2 project include the MOB building at this corner, and as discussed elsewhere in this report, the Phase 2 project approval included Condition of Approval #25 which was the basis for this interim project.

- (c) Staff disagrees that the interim plan should be read in conjunction with Condition of Approval #26 which requires Kaiser to make “best faith efforts” to incorporate ground floor uses in the MOB and HSB that “activate the public street consistent with Guideline 2.1.4 of the Master Plan, particularly at the MacArthur/Piedmont corner” As stated, this Condition discusses requirements specific in the MOB building itself, which is not the subject of this project. Nonetheless, Staff’s findings of a generous landscape plan, complete with trees, shrubs, groundcovers and hardscapes, a metal fence, and lighting at the corner of Piedmont Ave.,” and, “held back at the intersection of Piedmont Ave and W. MacArthur Blvd. to provide of approximately 5,000 s.f. of open space amenity accessible to the public, including benches, landscaping and lighting,” is a solution that relates well to the overall development, do not present a conflict with Condition of Approval #26, which will be applied to the MOB building, and support the Master Plan’s goals and objectives.
- (d) Per Condition of Approval #25, “*Kaiser shall submit interim improvement plans for the landscaping, lighting and security of that undeveloped portion of the Phase 2 site...*” While a fence was not a requirement, nor was a fence precluded), measures for securing the site were a part of the requirement. Staff made findings that the plan, including lighting and a fence, met this requirement.
- (e) Staff’s discussion of the revision to locate the fence farther way from the sidewalk and in a zig-zag configuration “for greater visual relief” and plantings both inside and outside the fence would “diminish its visibility” was an acknowledgement by Staff that this design represents an improvement over the original design, which located the fence in a straight-line configuration at the edge of the sidewalk (which essentially “outlined” the footprint of the future MOB building). As revised, the fence will be better integrated with the landscape and will provide more opportunities for landscaping near the sidewalk.

### Appellants’ Contentions:

#### *Design Review Criterion #2 is not met:*

*“That the proposed design will be of a quality and character which harmonizes with, and serves to protect the value of, private and public investments in the area.”*

Appellant states that: (a) the City is in error because the City did not make independent findings to support the second criterion; and, (b) the proposal does not protect the value of the neighborhood investment in the area, but rather diminishes it. A fenced off area sends the wrong message, does not add value in terms of property values, aesthetics or opportunities for open space.

### Staff Response:

- (a) In its findings supporting Criterion #2, Staff reiterated some of its findings already made that supported Criterion #1 because they were relevant to both findings, specifically those regarding the overall quality of the design (including a generous amount of trees, shrubs and groundcover, as well as the wall treatment for the east wall of the hospital building, and enhanced public

pedestrian connection through the site to Mosswood Park”), and reference findings in Criterion #1, which also discussed the quality of materials and design of the landscaping, lighting and fence, and

- (b) Staff would again refer to the purpose of Condition of Approval #25, which was to address the potential issue of a delay in the construction of the MOB building at the corner of W. MacArthur Blvd. and Piedmont Ave. at the Phase 2 site. See also discussion in the “Background” section of this Report, specifically those portions of the Summary of Prior Approval and Actions”, discussing the May 28, 2008, through November 19, 2008, Planning Commission meetings, where the concerns of the potential for an unfinished site and exposed “interior” wall of the hospital building were discussed, resulting in the referenced Condition.

### **Appellants’ Contentions:**

#### ***Design Review Criterion #3 is not met:***

*“Proposed design conforms in all significant respect with the Oakland General plan and with any applicable design review guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council.”*

Appellant states that the City’s findings that the proposed plan conforms to the Master Plan are untrue, and represents an error and abuse of discretion because it does not give consideration or analysis to the Master Plan design goals, objectives, principles and guidelines. Appellant cites Goal #1 (*“To ensure that the Oakland Medical Center will be architecturally and functionally integrated, and that the Oakland Medical Center will be compatible with the existing neighborhoods”*), Goal #3 (*“To provide positive physical connections between the Oakland Medical Center and the neighborhoods”*), and Goal #5 (*“To promote good urban design so as to provide street character and activity”*), as well as Objectives, Principles and Guidelines designed to support the Goals that refer to definition of street edges and activation of pedestrian activity along Broadway, MacArthur Boulevard and Piedmont Avenue, walkable environment, inviting outdoor spaces, and unique design elements for each district, and Guidelines that discuss active uses at the ground level, and streetscape improvement along Piedmont Avenue between W. MacArthur Boulevard and Broadway (may include widened sidewalks, landscaped medians and planter strips, permanent streetscape furniture, improved bus stops/shelters and improved street lighting).

### **Staff’s Response:**

Staff believes Condition #25 is satisfied with the submitted Interim Landscape Plan. Because Condition #25 was adopted as part of the Phase 2 plans, and the Phase 2 plans were found to be consistent with the Master Plan and Zoning, the condition itself is therefore consistent with the Master Plan and Zoning. Likewise, because the Interim Landscape Plan is consistent with Condition #25, it too is consistent with the Master Plan and Zoning. At the time of the City Planning Commission’s approval of the Phase 2 plans,

findings were made supporting the conformity of the Phase 2 project with the Oakland General Plan ("Institutional" Land Use Classification) and Zoning (D-KP – Kaiser Oakland Medical Center zoning district), the Kaiser OMC Master Plan Guiding Principles, and the Kaiser OMC Master Plan, Phase 2 Design Guidelines. These findings are included in the body of the November 19, 2008, and the September 3, 2008 Staff Report and detailed in Attachment D of the November 19, 2008, Staff Report, and support the stated Goals of the Master Plan. References were made in Design Review Finding #3 therein to the Phase 2 project's conformance with the following:

- Principle 1.1, Guideline 1.1.2 refers to the massing of buildings ("Massing of the buildings should relate to each other in scale, and work together to help define a coherent street edge along Broadway, MacArthur Boulevard and Piedmont Avenue.")

In the Phase 2 project approval, Staff found that: *the architecture and design elements of Phase 2 relate well in terms of building design, materials, landscaping, lighting and signage to the Phase 1 Broadway Medical Office Building. These Phase 2 buildings further establish a coherent street edge along Broadway and MacArthur Boulevard, and will enhance the area and provide a continuation of a new attractive campus.*

The Interim Landscape Plan does not impact building massing or already-designed and approved street edges, including street trees, wide sidewalks and landscaped public open spaces such as that already planned for the corner of Piedmont Ave. and W. MacArthur Blvd. Rather, the delay in the construction of the MOB building results in a new large (approx. 35,000 s.f.) temporary open space on the planned building site, and the Interim Landscape Plan, with its generous amount of trees, shrubs and groundcover, and landscaped spaces along the interior of the abutting sidewalks, provides an attractively designed, fully landscaped interim solution for this site.

- Principle 2.1, refers to the creation of street fronts that promote pedestrian activity, Guideline 2.1.2 and 2.1.4 discuss utilization of setbacks that promote streetscape activities or to provide public open space, and that the MacArthur and Piedmont corner should have ground floor active uses that are visible from the public streets.

Principle 2.2 refers to creation of a walkable environment, and

Guideline 2.2.1 refers to open spaces and sidewalks should provide safe pedestrian environments.

Principle 4.2 refers to creation of inviting outdoor spaces, and

Guidelines 4.2.1, 4.2.2 and 4.2.6 refer to provision of gather spaces that relate to the public street and provides with natural light, incorporation of outdoor spaces, plaza and courts in to the campus site plan and provision of landscape and street furniture along stress and public spaces to encourage pedestrian activity.

In the Phase 2 project approval, Staff found that: *the Landscape Plan includes several landscape features that help to create a pleasant pedestrian experience in and around the entire Phase 2 site. Building setbacks promote streetscape activities and provide public open space along MacArthur Boulevard and Piedmont Avenue;*

Staff further found (for the Phase 2 project) that, *Sidewalks that surround the Phase 2 site on Broadway, MacArthur and Piedmont are generous in width, at a minimum of 10 feet. Pedestrian-oriented outdoor spaces on the ground floor include a prominent public space at the MacArthur/Piedmont corner; a landscaped pedestrian pathway that traverses from Piedmont Avenue through the site and ultimately connecting to Mosswood Park; a landscaped edge along Piedmont from MacArthur to Broadway; a pedestrian plaza with street trees and wide sidewalks along the MacArthur frontage; and two open courtyards within the hospital building. New street trees and other landscaping will also be planted along the Broadway, MacArthur and Piedmont street frontages, and in the Broadway and MacArthur center medians. Open space and sidewalks around the Phase 2 site provide for safe pedestrian environments; street furniture, pedestrian improvements, landscaping and other site amenities are accommodated along Broadway, Piedmont and MacArthur.*

The Interim Landscape Plan does not eliminate the 10 foot sidewalks, but rather provides for additional landscaping enhancements adjacent to the sidewalks at least on an interim basis, and creates an attractively landscaped open space. The landscaped pedestrian pathway already provided through the OMC site, providing a connection for pedestrians from Piedmont Avenue to the existing public park (Mosswood Park), with a signalized crosswalk across Broadway, remains in place as well as the previously-approved pedestrian plaza at the corner of Piedmont Avenue and W. MacArthur Boulevard. The two open courtyards inside the hospital building remain, and street furniture and other site amenities along all the street edges.

- Principles and Guidelines related to Objective #7 – (Each sub-district within the OMC campus should have unique design elements that address specific location issues) encourage active type uses at the ground level, potentially along Broadway and MacArthur and at the MacArthur/Piedmont corner, and public improvements should include streetscape improvements along Piedmont Avenue.

In the Phase 2 project approval, Staff found that *outdoor garden seating areas are provided at each of the main corners on MacArthur, and the pedestrian connection with a substantial landscaped buffer area provided at the Emergency Department entrance off of Piedmont, and noted that the landscaped pedestrian pathway from Piedmont connects via a new, signalized pedestrian crossing of Broadway to Mosswood Park.*

The Interim Landscape Plan preserves the unique design elements of the Phase 2 project as detailed in the original findings, including the referenced MacArthur/Piedmont corner and public improvements including streetscape improvements (10-foot wide sidewalks and street trees along Piedmont Avenue, outdoor garden seating areas at the corner of Piedmont Avenue and MacArthur). Staff believes that until the time the MOB building is constructed, the Interim Landscape Plan provides an additional unique and attractive open space at the corner of the Phase 2 site.

Staff believes that Condition of Approval #25 address a specific situation for a site that was (and is) intended to be developed, and notwithstanding, nothing in the Plan approved on September 12, 2013, for

the interim landscaping in the location of the future Medical Office Building site (and the treatments to the exterior hospital building wall facing Piedmont Avenue, and the pedestrian connection to Mosswood Park), results in any conflict with any of the public amenities already approved as part of the Phase 2 plans. Staff further believes that findings have been made to demonstrate substantial conformance of the Interim Plan with the Master Plan.

## GENERAL PLAN AND ZONING ANALYSIS

For reasons contained in the preceding section, the Interim Landscape Plan results in no conflict with, and is substantially consistent, with the already approved Master Plan and Zoning.

## RESPONSE TO KAISER'S NOVEMBER 8, 2013 LETTER RE: HEIGHT OF FENCE

Kaiser submitted a letter dated November 8, 2013, responding to the Appeal (Attachment "F"). In that letter, Kaiser asserts that it has a right to build a fence up to eight feet in height:

"(3) It should be noted that under the City's Fence Ordinance, fences up to 8 feet in height are allowed as of right in commercial districts and through a non-appealable administrative approval process pursuant to Section 17.101D.060.C[f]. Kaiser was not required to include the fence in the interim improvements proposal but did so in order to present a single package of improvements for approval. Kaiser believes that applying more stringent review requirements to our fence is fundamentally unfair."

Staff's disagrees with Kaiser's assertions for the following reasons: (a) the site is zoned KP-2, Kaiser Permanente Oakland Medical Center District – 2" This is a zone specifically designated for the OMC redevelopment project, and is not considered a Commercial Zone; (b) Small Project Design Review does not apply because the fence is part of the Interim Landscape Plan, provided for by Condition of Approval #25 and for which the Regular Design Review process was prescribed, including its security features, which in this case includes a fence; and (c) Kaiser never appealed the Zoning Manager's determination that the fence be limited to 7 feet in height and they cannot now claim the City had no authority to do so. In short, the fence is part of the Interim Landscape Plan and is subject to Regular Design Review. Kaiser has no right to construct a fence of any height in the subject area without first obtaining Regular Design Review approval from the City.

## CLARIFICATIONS TO SEPTEMBER 12, 2013 DECISION LETTER

In a letter to Staff dated November 12, 2013, Appellant seeks clarification of the following items in the Staff's Approval letter of September 12, 2013:

1. Staff clarifies that the subject site is located at the southeast corner of MacArthur Boulevard and Piedmont Avenue.
2. Condition of Approval #21 in the September 12, 2013, approval letter limits the fence height to a maximum of 7 feet. It was called out in that statement because it is a project-specific condition that requires a specified revision (as opposed to the standard conditions of approval #1-#20).

3. Staff sometimes attaches comment letters to decision letters as a courtesy, however, they inadvertently omitted from the copy but they are part of the record and remain available in the project file.

## **ENVIRONMENTAL DETERMINATION**

An EIR for the Kaiser Permanente OMC Master Plan was prepared by the City of Oakland. That EIR was certified by the Oakland Planning Commission on June 6, 2006. The current project is substantially consistent with that analyzed in the Master Plan EIR. No additional environmental review is required. As a further separate and independent basis, this action is also exempt from CEQA pursuant to CEQA Guidelines 15301 and 15183.

## **CONCLUSIONS**

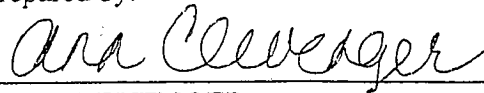
Essentially, Appellants now seek to impose a new condition – namely, publicly accessible open space -- on a project that was previously approved in 2008. At that time, the Planning Commission did not impose such a requirement. Rather, the Commission merely required (as Condition #25) “an interim improvement plans for the landscaping, lighting and security of that undeveloped portion of the Phase 2 site. . . . includ[ing], but . . . not limited to landscaping and streetscape enhancements, temporary façade improvement to the Hospital exterior walls, additional lighting and signage.” Staff believes Condition #25 is satisfied with the submitted Interim Landscape Plan. Because Condition #25 was adopted as part of the Phase 2 plans, and the Phase 2 plans were found to be consistent with the Master Plan and Zoning, the condition itself is therefore consistent with the Master Plan and Zoning. Likewise, because the Interim Landscape Plan is consistent with Condition #25, it too is consistent with the Master Plan and Zoning.

Accordingly, the September 12, 2013, Zoning Manager’s decision to approve the Interim Landscape Plan meets the 2008 Planning Commission Condition of Approval #25 and the required Regular Design Review findings, is within Staff’s discretion, is appropriate and supported by substantial evidence.

## **RECOMMENDATIONS**

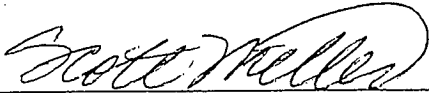
- 1) Deny the Appeal, thereby affirming Staff’s approval of the Design Review permit for the Interim Landscape Plan and its environmental determination.
- 2) Confirm that Kaiser has no right to construct a fence of any height in the subject area without first obtaining Regular Design Review approval from the City.

Prepared by:



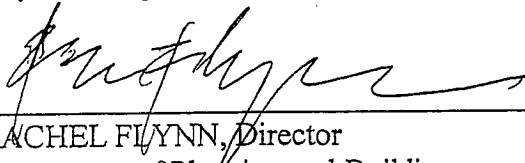
ANN CLEVINGER  
Planner III

Approved by:



SCOTT MILLER  
Zoning Manager

Approved for forwarding to the  
City Planning Commission:



RACHEL FLYNN, Director  
Department of Planning and Building

**ATTACHMENTS:**

- A. Appeal, dated September 23, 2013 (w/Exhibits, including: Kaiser OMC Master Plan; D-KP "Kaiser Permanente Oakland Medical Center District Zones Regulations", and Notes presented to the City at July 13, 2013 Meeting)
- B. Planning Department Decision Letter, dated September 12, 2013
- C. Application for Interim Landscape Plan, dated June 18, 2013
- D. November 19, 2008, Planning Commission Staff Report (w/Exhibits including September 3, 2008 Planning Commission Staff Report, Findings, and Conditions of Approval)
- E. Public Comment letters
- F. Kaiser Letter of Response to Appeal, dated November 8, 2013

## CITY OF OAKLAND JUSTIFICATION FOR GRANTING NON-RESIDENTIAL DESIGN REVIEW

*Design Review is intended to ensure high quality attractive designs that will compliment and benefit the surrounding neighborhood and city as a whole. Design Review is primarily focused on site planning and the exterior appearance of structures. This can include things such as architectural style; design quality; building materials; building mass and bulk; façade articulation; landscaping; preservation of sunlight, views, and privacy; screening of parking and loading areas; and other design related issues. Design Review approval can only be granted if all of the following findings can be made.*

**Please indicate the way in which the proposal meets the following required criteria. Attach additional sheets if necessary.**

1. The proposal will help achieve or maintain a group of facilities which are well related to one another and which, when taken together, will result in a well-composed design, with consideration given to site, landscape, bulk, height, arrangement, texture, materials, colors, and appurtenances; the relation of these factors to other facilities in the vicinity; and the relation of the proposal to the total setting as seen from key points in the surrounding area. Only elements of design which have some significant relationship to outside appearance shall be considered:

This proposal will provide an integrated landscaped design and façade treatment for the north east portion of the KPOMC PH2 project site. The east wall to the hospital podium is a temporary structure that will accommodate the future medical building construction. The goal is to provide a graphic pattern that becomes a backdrop to the activities and spaces of the Interim Open Space design and be a benefit to the community. In coordination with the Interim Open Space design, a three tone painted "nature graphic" will visually break up the expanse of the wall surface and provide a complimentary organic pattern to the Interim Open Space design. Landscape elements have been chosen to provide consistency with other on-site and off-site trees, provide a geometrically considered landscape visual arrangement which will provide scale and landscape texture against the adjacent Hospital elevation.

2. The proposed design will be of a quality and character which harmonizes with, and serves to protect the value of, private and public investments in the area:

A landscape set back and irregular fence line have been provided to provide a wider path and visual interest along Piedmont Avenue. Colorful planting will be provided along the base of the fence line, a pedestrian walkway which shortens the corner from West MacArthur to Piedmont will provide a more comfortable means of travel at the corner. Kaiser has elected to provide an emergency call button at this location to provide added security at this corner.

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

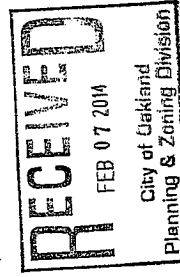
This proposed design conforms in all respects to the Oakland General Plan and with any applicable district plan or development control map which has been adopted by the City Council. The 2<sup>nd</sup> phase of the Kaiser Permanente OMC Master Plan approved on July 18, 2006, provided for approximately 1.06 million square foot of hospital, hospital support building and medical office building ("MOB"), in addition to parking and central utility plant. Design Review Case No. DR07496 acknowledged that construction of the MOB on this site might not commence in earnest within 120 days after the hospital is licensed by the State. Therefore, Conditions of Approval, Condition No. 25, imposed a requirement that the Applicant furnish temporary landscaping solely for the interim period prior to construction of the MOB. (Attachment G: KPOMC Phase 2 Hospital Project, Conditions of Approval - Design Review, 11-19-08.) The proposed design is provided solely to satisfy Condition No. 25 on a temporary basis and shall not be interpreted to limit or diminish any right of Applicant to construct the MOB. The proposed design for interim landscaping conforms in all respects to the Oakland General Plan and with any applicable district plan or development control map which has been adopted by the City Council.



KAISER PERMANENTE

# OAKLAND MEDICAL CENTER INTERIM MOB LANDSCAPE

City of Oakland Planning Department Administrative Review  
February 6, 2014



## CONTENTS

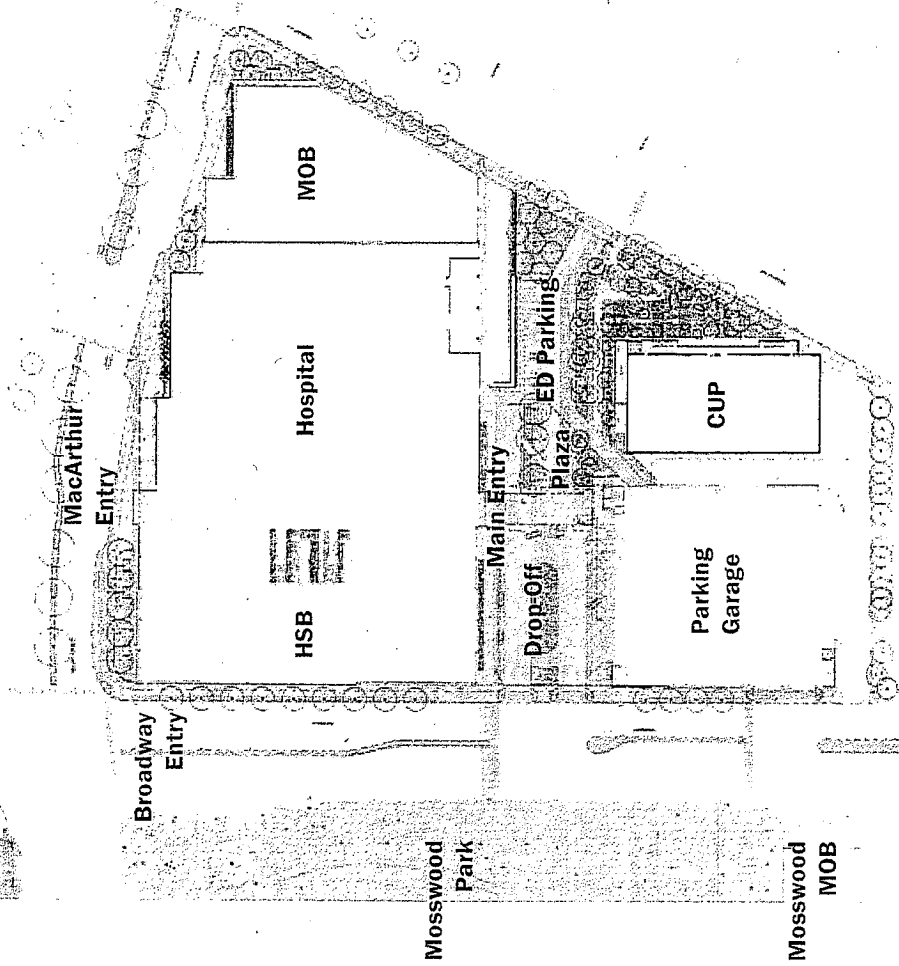
- SITE PLAN FROM THE APPROVED PLANNING COMMISSION DESIGN REVIEW, NOVEMBER 19, 2008
- MOSSWOOD LINK. PEDESTRIAN CONNECTION BETWEEN PIEDMONT AND BROADWAY
- ILLUSTRATIVE LANDSCAPE PLAN
- LANDSCAPE DIMENSION PLAN
- SCHEMATIC SITE SECTION
- SCHEMATIC FENCE ELEVATION
- SCHEMATIC FENCE PERSPECTIVE/ELEVATION w/ PLANTING
- SCHEMATIC RENDERING FROM MAIN PLAZA
- SCHEMATIC SKETCH FROM MACARTHUR/PIEDMONT CORNER
- PRELIMINARY SITE MATERIALS AND FURNISHINGS
- PRELIMINARY SITE FIXTURES AND FURNISHINGS
- PLANT MATERIAL PALETTE
- HOSPITAL PODIUM ELEVATIONS

WALTERS AND NEWMAN ARCHITECTS  
ARCHITECTS  
1000 BROADWAY, SUITE 2000  
NEW YORK, NY 10003  
TEL: 212 512 1000  
WWW.WALTERSANDNEWMAN.COM

WALTERS AND NEWMAN ARCHITECTS  
ARCHITECTS  
1000 BROADWAY, SUITE 2000  
NEW YORK, NY 10003  
TEL: 212 512 1000  
WWW.WALTERSANDNEWMAN.COM

Phase 1

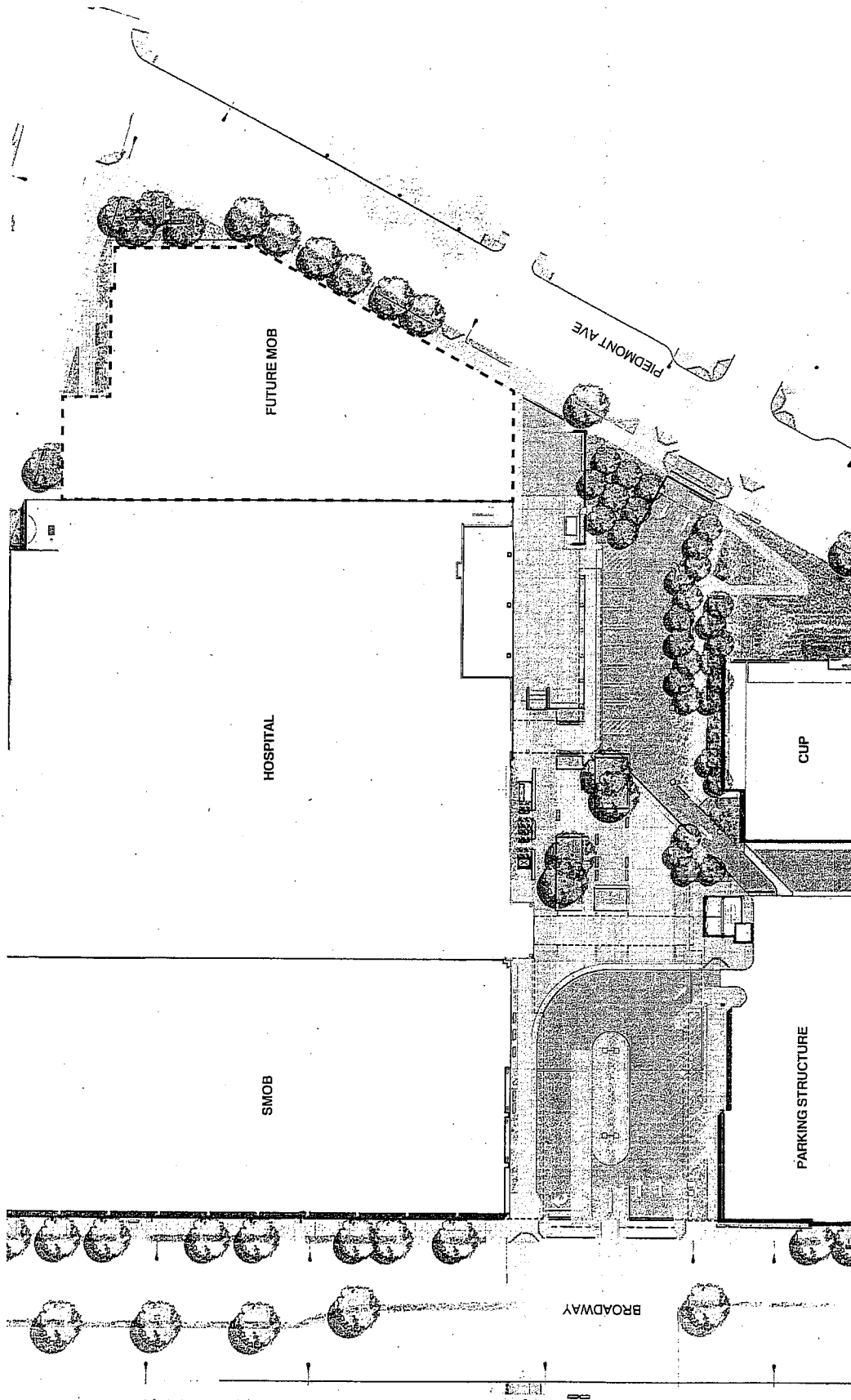
Existing Hospital



31 SITE PLAN FROM THE APPROVED PLANNING COMMISSION DESIGN REVIEW, NOVEMBER 19, 2008

WELLS CAMERON ARCHITECTS, INC.  
 1000 10TH AVENUE, SUITE 100  
 DENVER, CO 80202

THE ARCHITECT  
 1115 10TH AVENUE, SUITE 100  
 DENVER, CO 80202



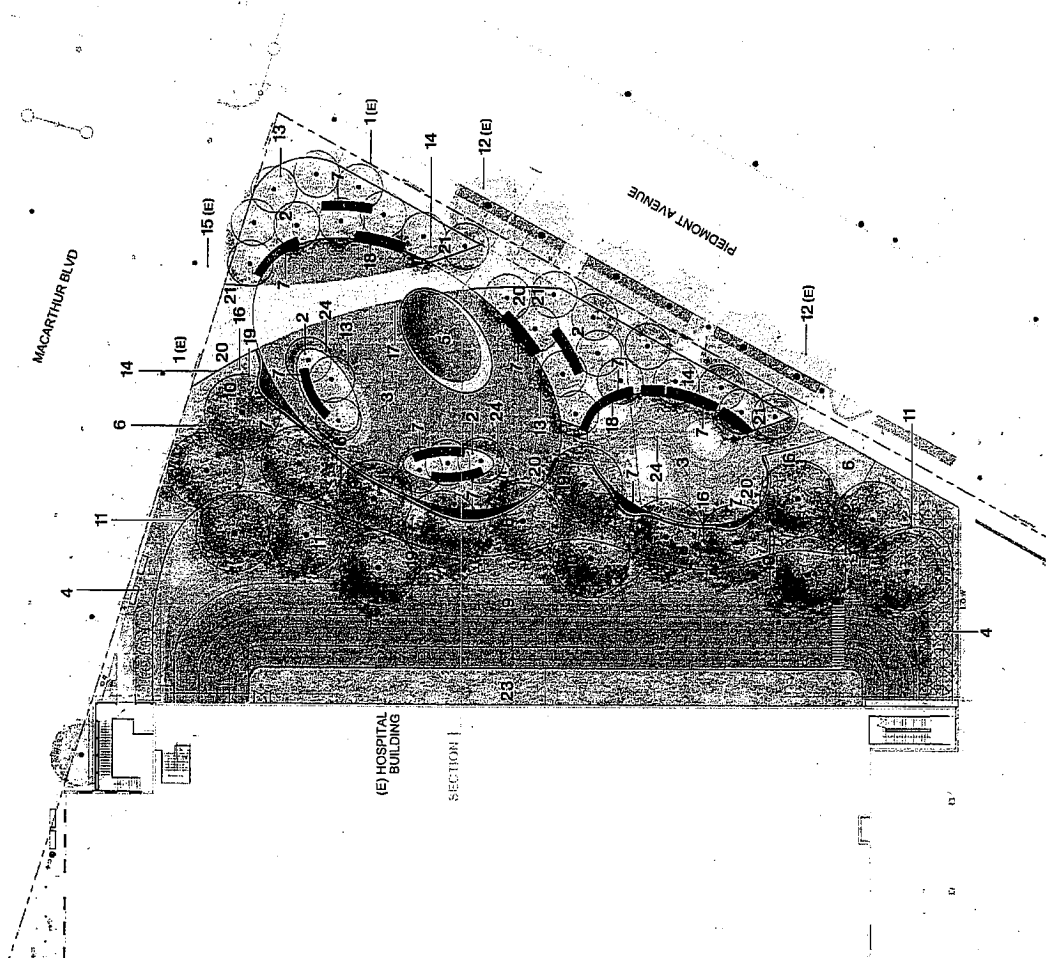
41 MOSSWOOD LINK: PEDESTRIAN CONNECTION BETWEEN PIEDMONT AND BROADWAY

ARCHITECT: LANDSCAPE ARCHITECT  
 PROJECT: MOSSWOOD LINK  
 DATE: 10/10/2014

11/15

# LEGEND

- 1 EXISTING CITY SIDEWALK
- 2 DG PAVING (FLUSH)
- 3 HARDSCAPE PLAZA w/ CONCRETE PAVING
- 4 SCREENING SHRUBS
- 5 PLANTED BERM (FESCUE MEADOW MIX) w/ CONC. CURB
- 6 LOW SHRUBS
- 7 CIP CONCRETE SEAT WALLS w/ WOOD ELEMENTS
- 8 PERENNIAL PLANTING
- 9 'LAYBACK AREA' w/ LOW SHRUB PLANTING
- 10 TREES w/ UNDERSTORY PLANTING
- 11 SAFETY FENCE - 8' HIGH
- 12 EXISTING STREET TREES
- 13 TREES IN OPEN GROVE w/ DG UNDERSTORY
- 14 BIKE PARKING LOCATION
- 15 EXISTING BUS SHELTER
- 16 LED POLE LIGHTS
- 17 LED BOLLARD LIGHTS
- 18 LED UNDER-BENCH LIGHTS
- 19 SECURITY CAMERA POLES
- 20 EMERGENCY CALL STATION
- 21 TRASH RECEPTACLES
- 22 GRAVEL MAINTENANCE PATH
- 23 GRAVEL MAINTENANCE BAND
- 24 CONCRETE JOINT PATTERN (FLUSH)



51 ILLUSTRATIVE LANDSCAPE PLAN

ALL PLANTING TO BE INSTALLED BY THE  
LANDSCAPE ARCHITECT'S FIRM (LAF) IN  
CONJUNCTION WITH THE CIVIL ENGINEER (CE)

DATE: 10/1/2010

BY: [Signature]

FOR: [Signature]

PROJECT: [Signature]

LOCATION: [Signature]

SCALE: [Signature]

DATE: [Signature]

BY: [Signature]

FOR: [Signature]

PROJECT: [Signature]

LOCATION: [Signature]

SCALE: [Signature]

MACARTHUR BLVD

PEDMONT AVENUE

(E) HOSPITAL  
BUILDING

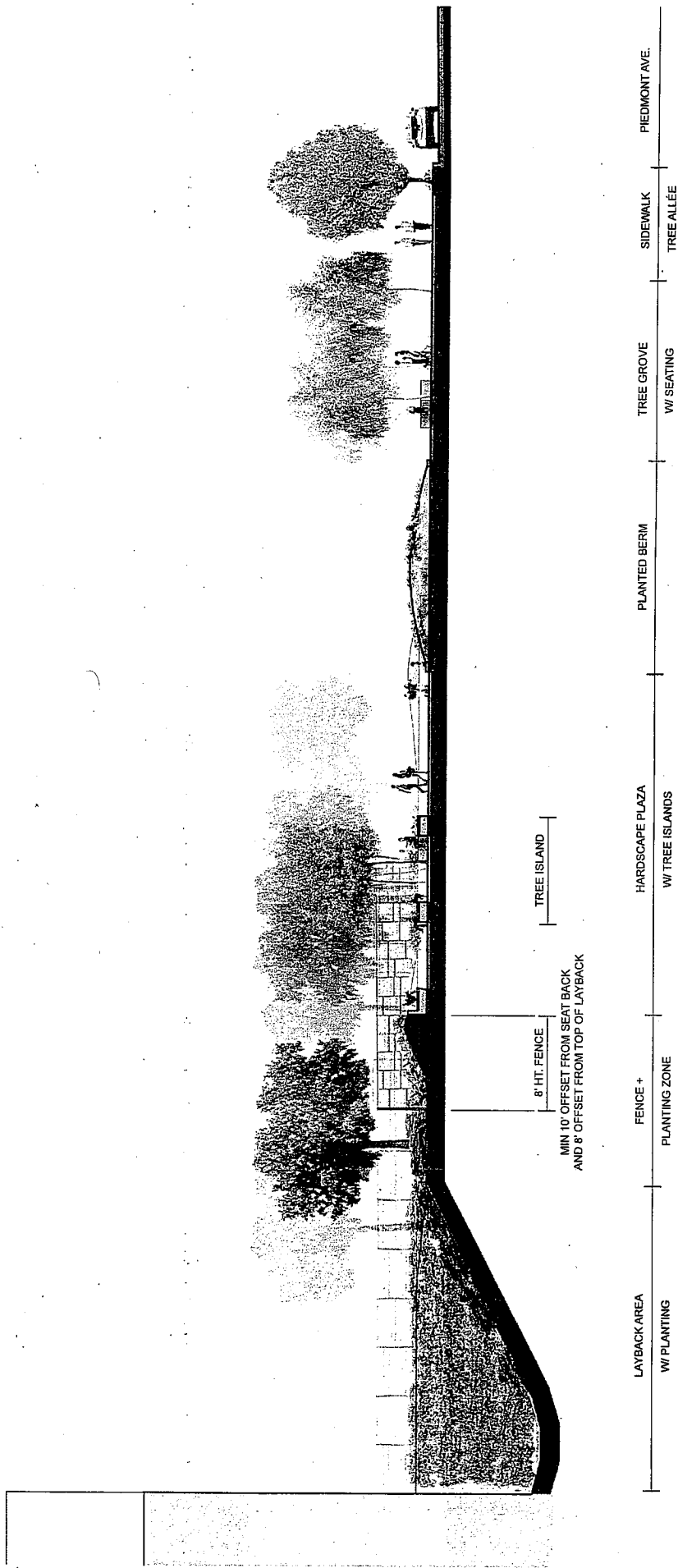


61 LANDSCAPE DIMENSION PLAN

DESIGNED BY: [illegible]  
DRAWN BY: [illegible]  
CHECKED BY: [illegible]  
DATE: [illegible]

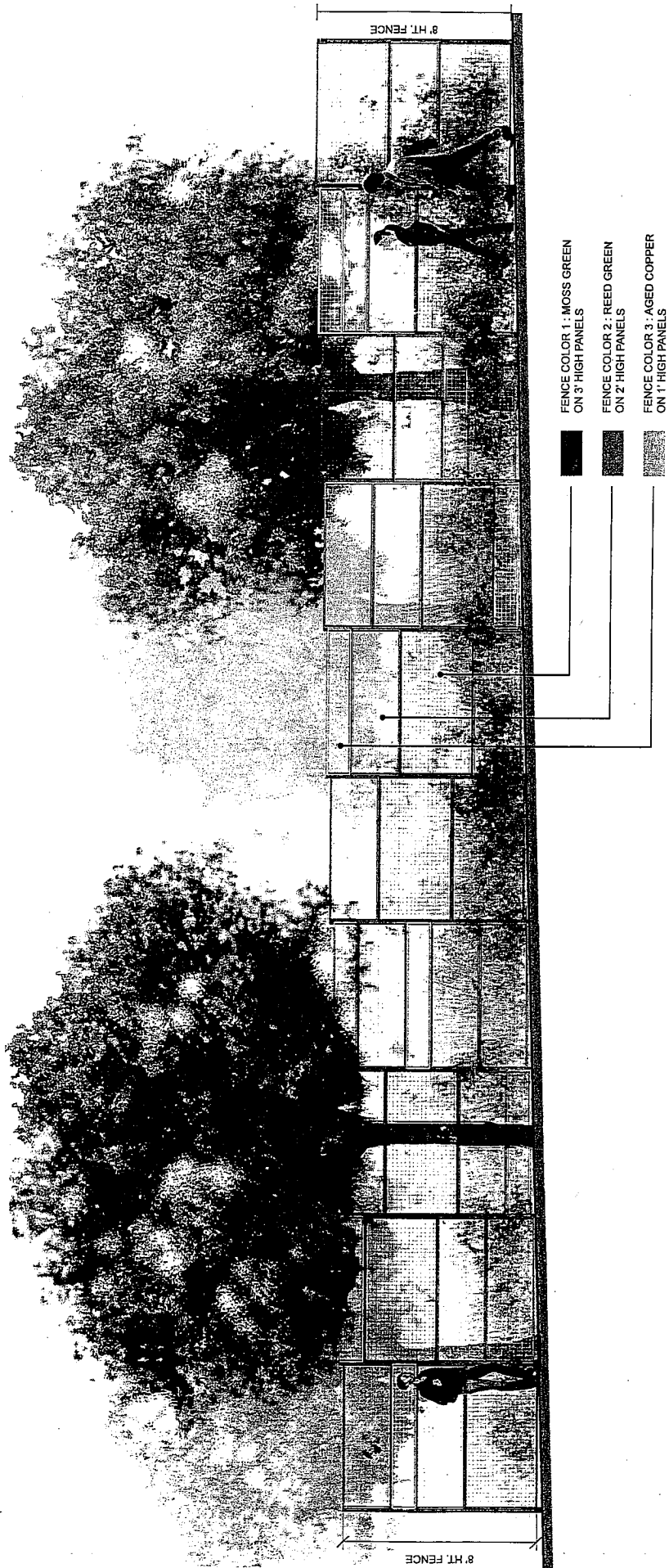
REVISIONS: [illegible]

DATE: [illegible]  
BY: [illegible]



71 SCHEMATIC SITE SECTION

0 8 16  
 FEET  
 V.S. = 1.0"  
 INTERFERENCE WITH ADJACENT PROPERTY



SI) SCHEMATIC FENCE ELEVATION - ON SLOPE

DESIGNED BY: LANDMARK DESIGN, LLC  
 1001 W. 10TH AVENUE, SUITE 100  
 DENVER, CO 80202  
 PHONE: (303) 733-1111  
 FAX: (303) 733-1112  
 WWW.LANDMARKDESIGN.COM

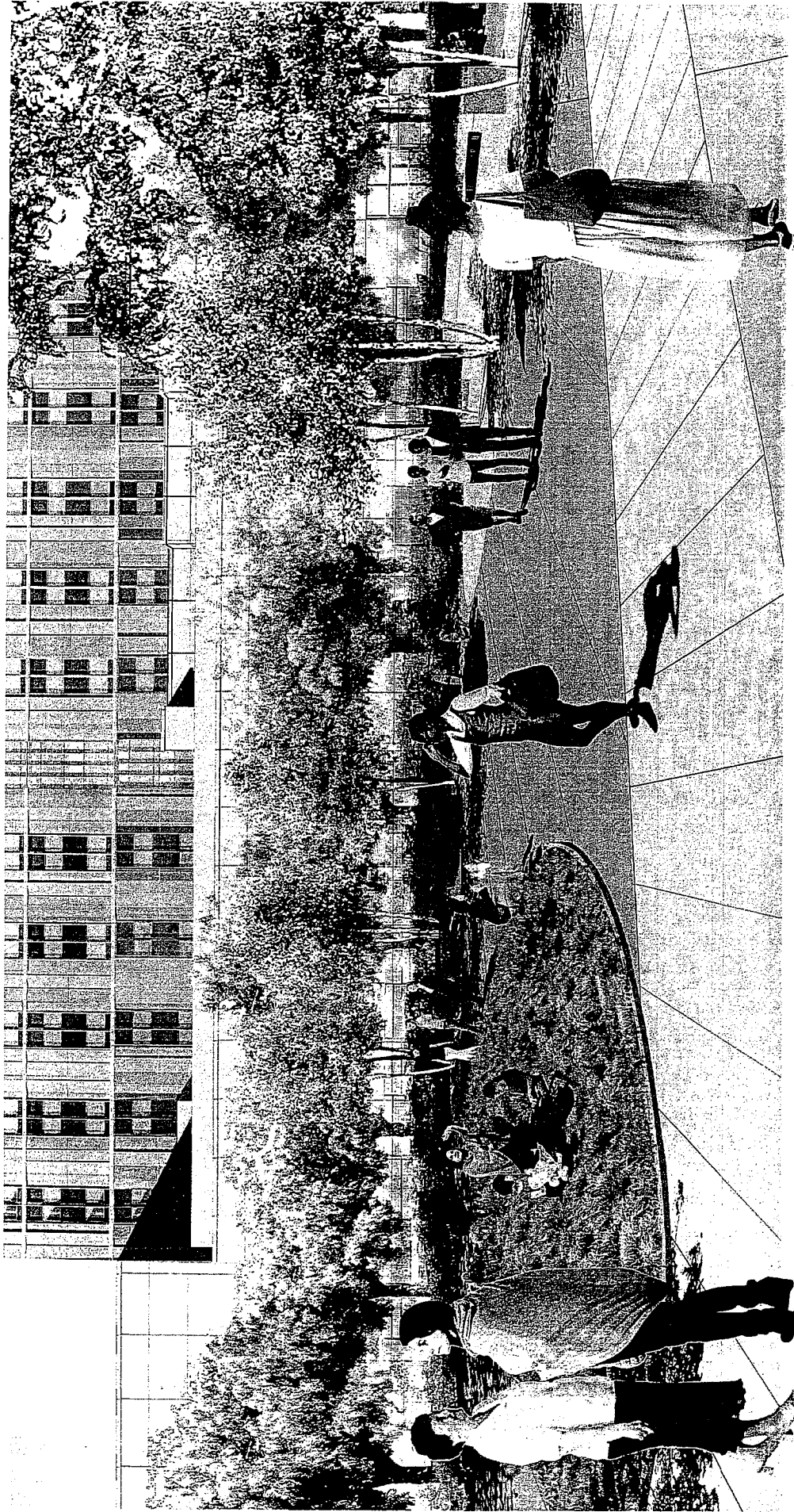
LANDMARK DESIGN, LLC  
 1001 W. 10TH AVENUE, SUITE 100  
 DENVER, CO 80202  
 PHONE: (303) 733-1111  
 FAX: (303) 733-1112  
 WWW.LANDMARKDESIGN.COM



## 9 | SCHEMATIC FENCE PERSPECTIVE/ELEVATION AND PLANTING

THE UNIVERSITY OF CHICAGO  
LIBRARY  
540 EAST 58TH STREET  
CHICAGO, ILL. 60637

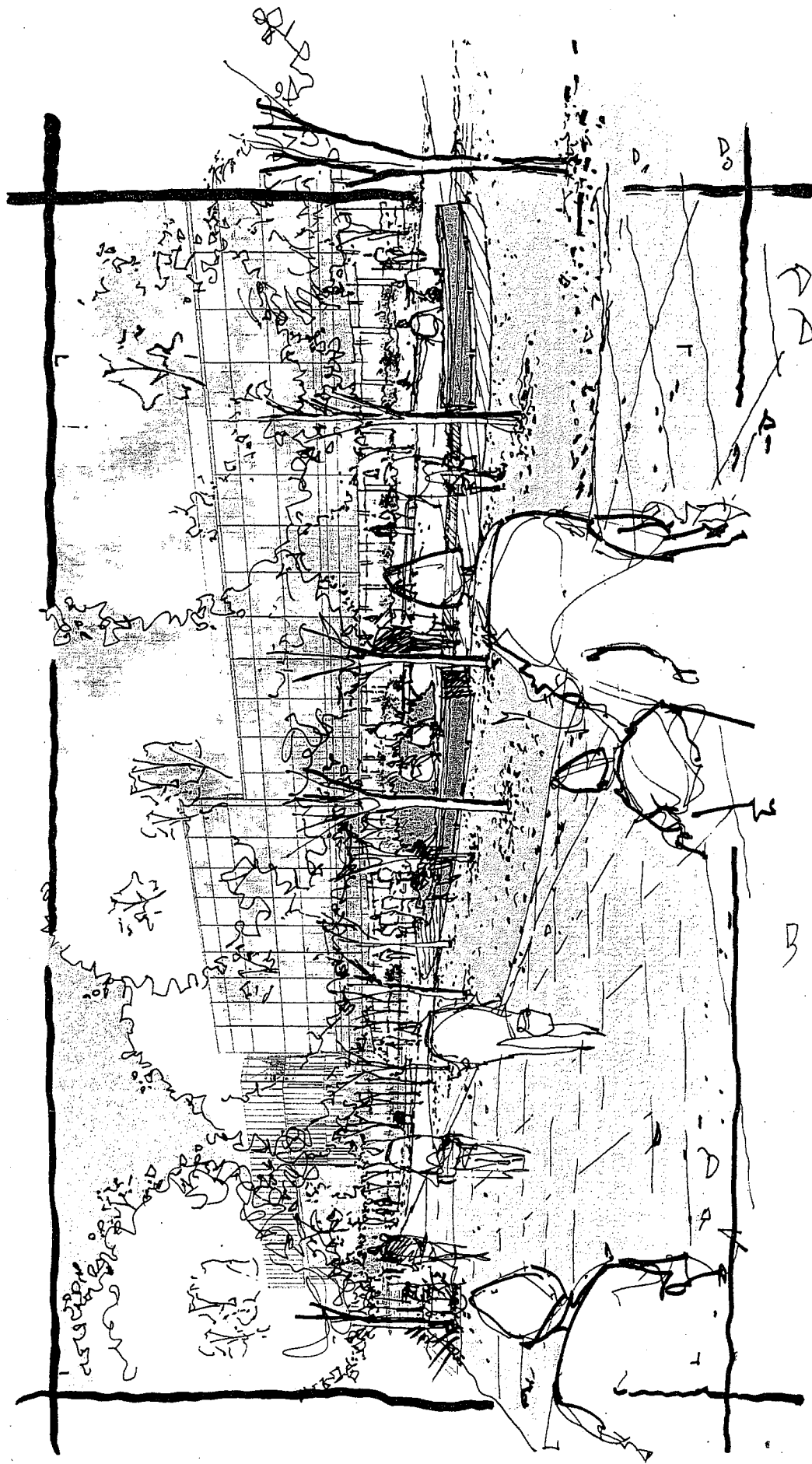
viii



10) SCHEMATIC RENDERING FROM MAIN PLAZA

KAREN GOLDENBERG, ARCHITECT  
 1000 WEST 10TH AVE, SUITE 100  
 DENVER, CO 80202

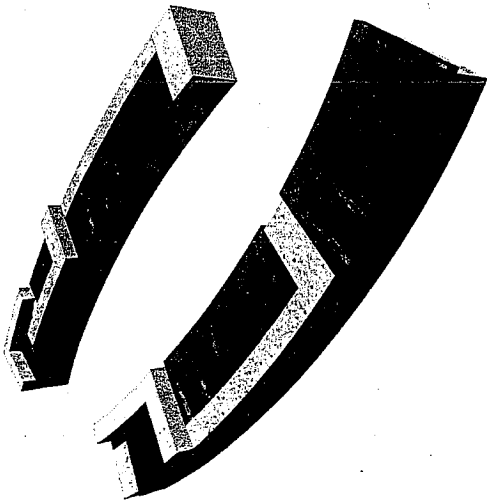
PAUL GOLDENBERG  
 1000 WEST 10TH AVE, SUITE 100  
 DENVER, CO 80202



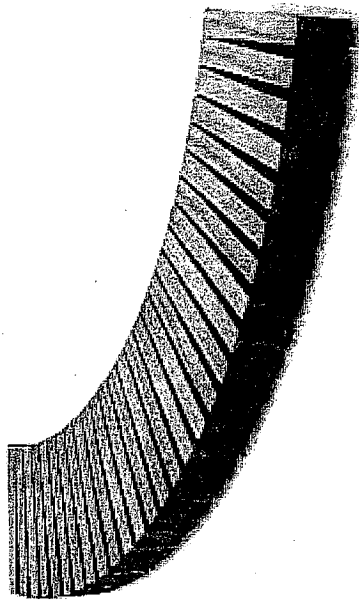
41] SCHEMATIC SKETCH FROM MACARTHUR PIEDMONT CORNER

RECEIVED  
 NATIONAL ARCHIVES  
 COLLEGE PARK, MARYLAND  
 JAN 10 1964

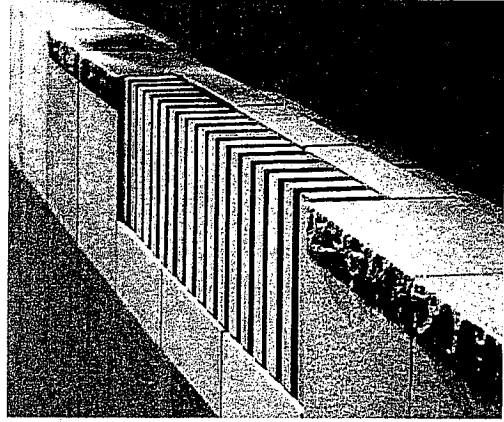
RECEIVED  
 NATIONAL ARCHIVES  
 COLLEGE PARK, MARYLAND  
 JAN 10 1964



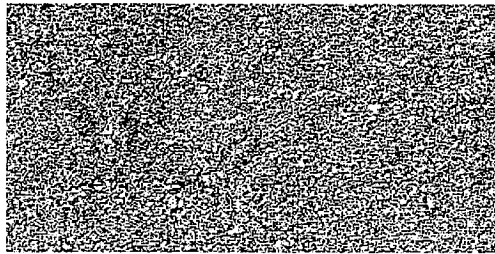
CAST-IN-PLACE CONCRETE SEAT WALLS w/ WOOD



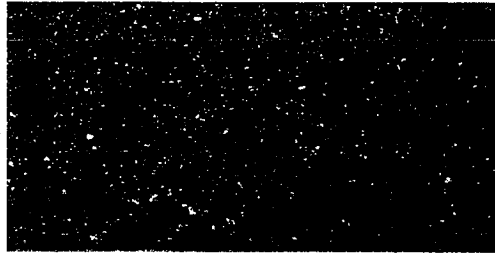
WOOD SEATS w/ RADIUS EDGE



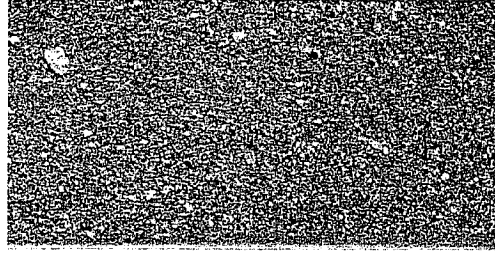
WOOD IN CONCRETE SEAT WALLS



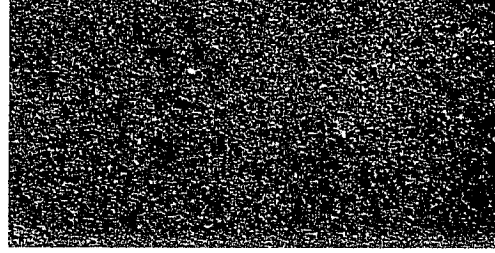
DECOMPOSED GRANITE  
BENEATH TREE GROVE



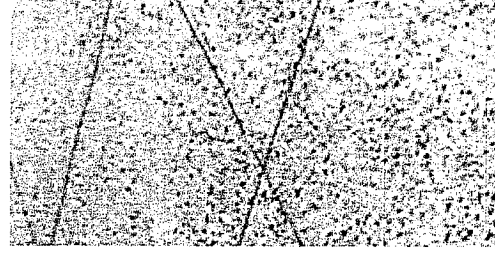
CONCRETE COLOR 1  
CONCRETE COLORS



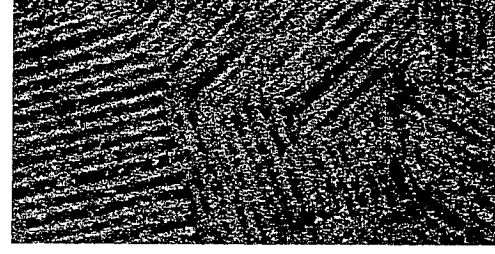
CONCRETE COLOR 2



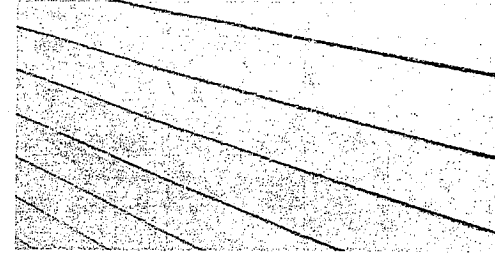
CONCRETE COLOR 3



CONCRETE FINISH 1  
CONCRETE FINISHES



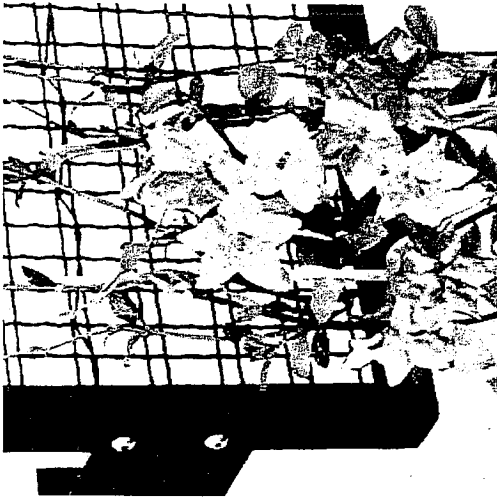
CONCRETE FINISH 2



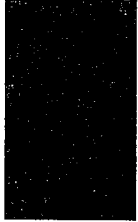
CONCRETE FINISH 3 (PATHWAY)

12) PRELIMINARY SITE MATERIALS AND FURNISHINGS





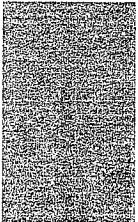
FENCE PANEL DETAIL



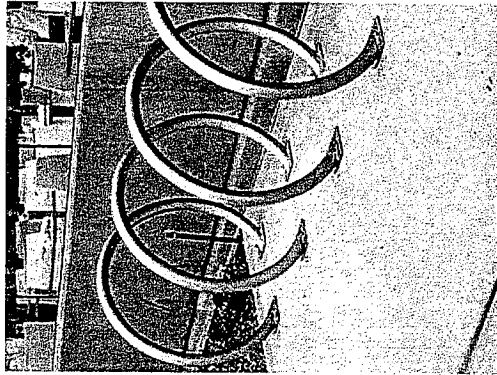
FENCE COLOR 1: MOSS GREEN



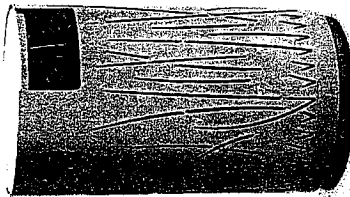
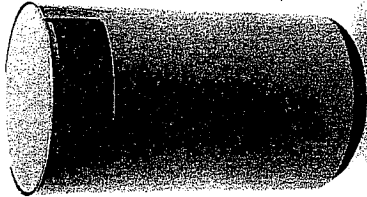
FENCE COLOR 2: REED GREEN



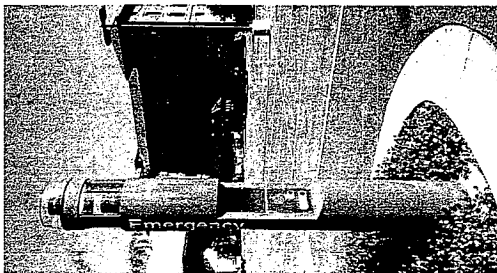
FENCE COLOR 3: AGED COPPER



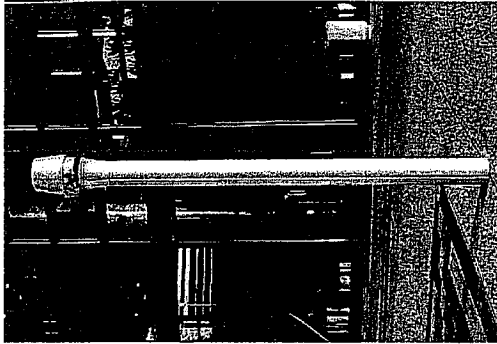
BIKE RACK (CAMPUS STANDARD)



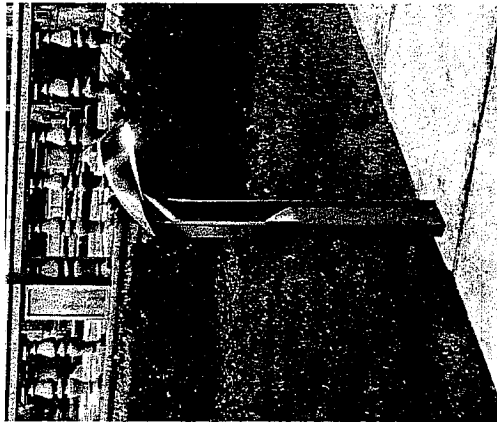
RECEPTACLE PAIR FOR TRASH AND RECYCLING (CAMPUS STANDARD)



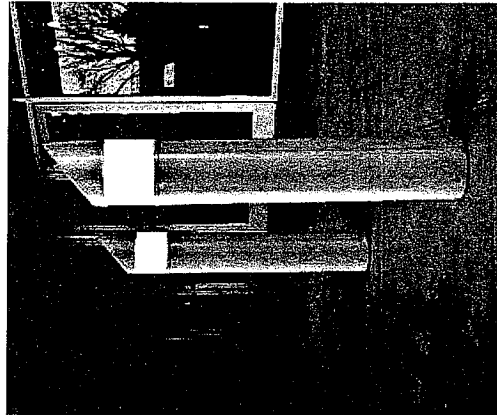
EMERGENCY CALL STATION



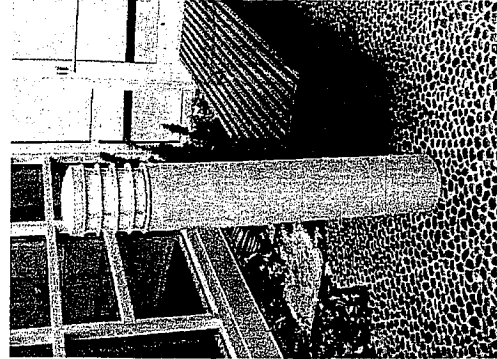
12' HIGH POLE LIGHT (CAMPUS STANDARD)



BOLLARD LIGHT  
(REPRESENTS DESIGN INTENT)



BOLLARD LIGHT ALTERNATE 1



BOLLARD LIGHT ALTERNATE 2

# 13) PRELIMINARY SITE FEATURES AND FURNISHINGS

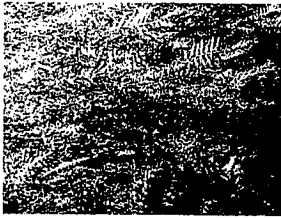
ROCKFORD INTERNATIONAL CENTER  
INTERIOR AND LANDSCAPE ARCHITECTURE  
P.O. BOX 1000  
ROCKFORD, ILL. 61101

ARCHITECT  
JULIE L. LEE, AIA  
JULIE LEE ARCHITECTS, P.C.

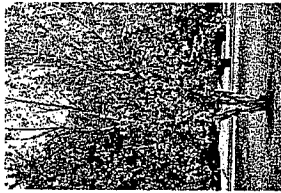
Trees



California Pepper  
*Schinus molle*

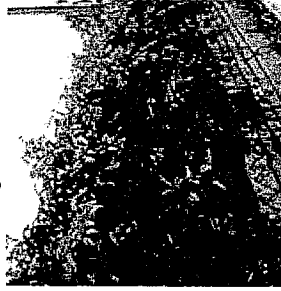


Silver Birch, single stem  
*Betula pendula*



River Birch, multi-stemmed  
*Betula nigra 'Heritage'*

Vine Planting

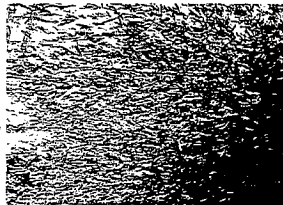


Red Trumpet Vine  
*Dioscorea buccinatoria*



Potato Vine  
*Solanum laxum*

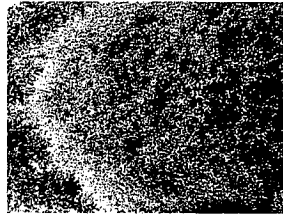
Screening shrubs



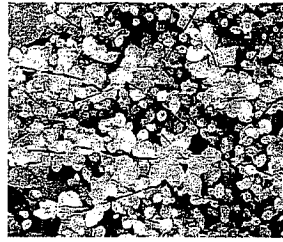
Hopseed Bush  
*Dodonaea viscosa*



Munstead Lavender  
*Lavandula angustifolia*

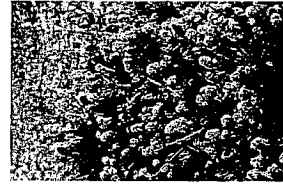


Pileosporum  
*Ptilosporum tenuifolium 'Silver Sheen'*

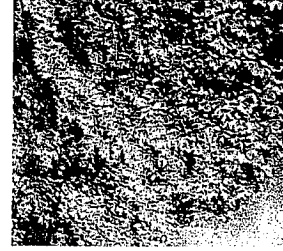


Yankee Point Lilac  
*Ceanothus griseus horizontalis 'Yankee Point'*

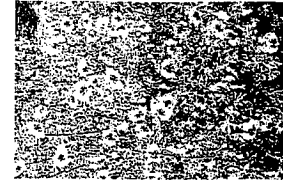
Low groundcover shrubs



Coffeeberry  
*Rhamnus californica 'Mound San Bruno'*



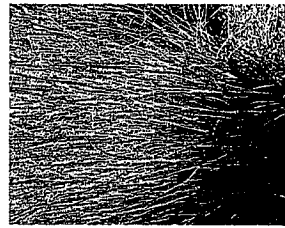
Lavalera  
*Lavalera maritima*



Showy Penstemon  
*Penstemon spectabilis*



Feather Reed Grass  
*Calamagrostis acutiflora 'Karl Foerster'*



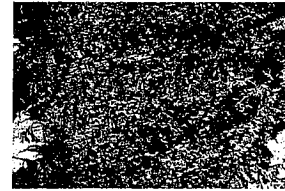
Deer Grass  
*Muhlenbergia rigens*



Native Low-mow festuca mix



White Rockrose  
*Cistus ladanifer*



California Fuchsia  
*Epilobium canum*



Footlight Lily  
*Dietes*



Showy Penstemon  
*Penstemon spectabilis*

14 PLANT MATERIAL PALETTE

MAINTENANCE AND PLANTING  
INTERIM AND FINAL PLANTING REVIEW  
REVISION 01/2011

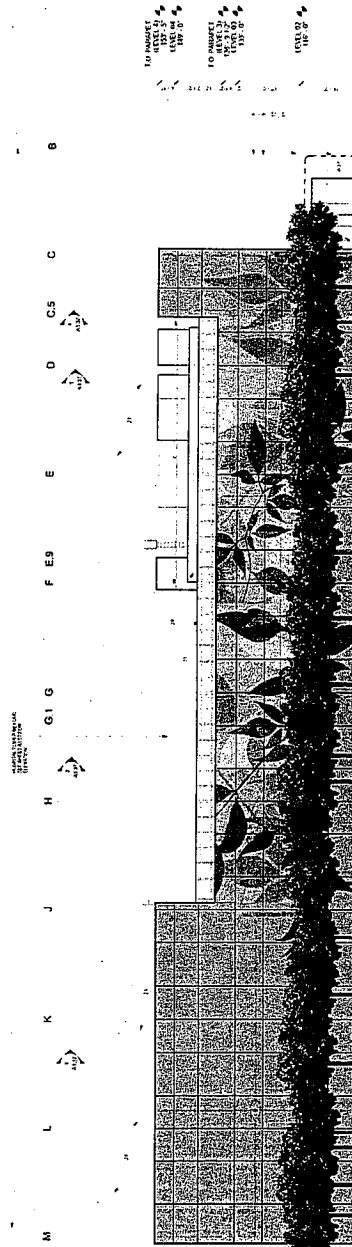
14 PLANT MATERIAL PALETTE  
REVISION 01/2011

Field Paint

Accent Dark

Accent Light

### Paint Color Swatches

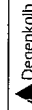


East

### Hospital Podium Elevations

02.07.14

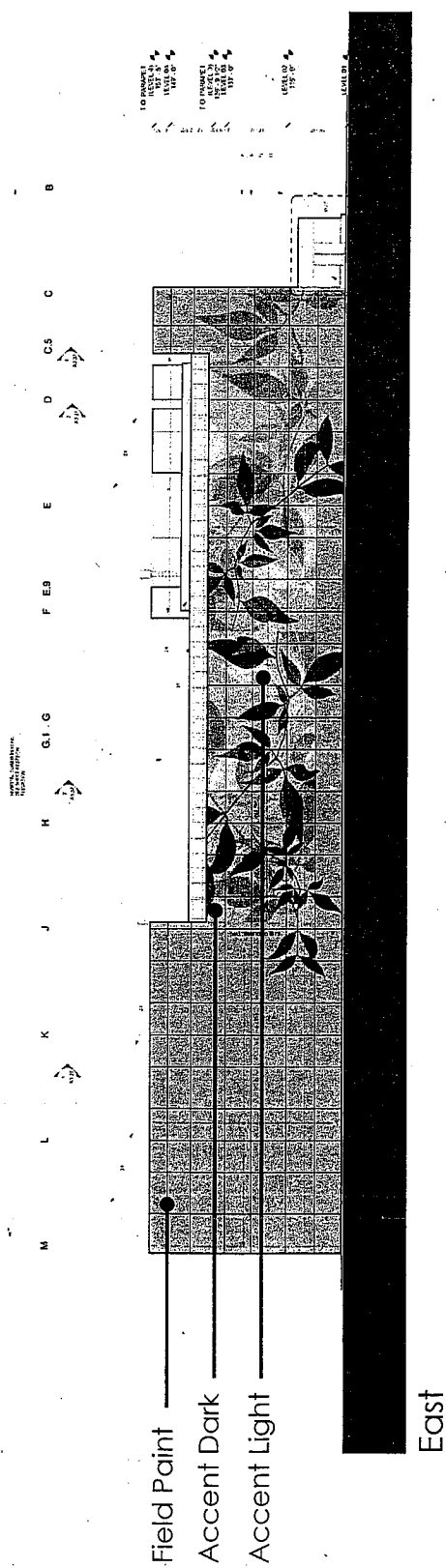
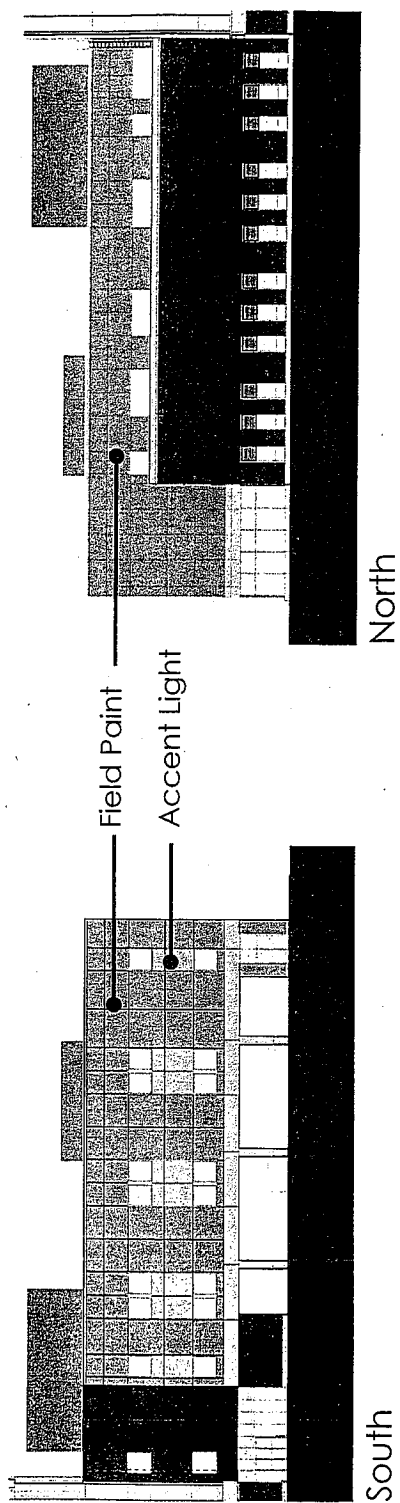
nbbj



FAHRSCHULE



KAISER PERMANENTE®  
Oakland Medical center



## Hospital Podium Elevations



Oakland Medical center



**nbbj**

 **Degenkolb**  
C. Degenkolb & Co. KG  
Postfach 10 15 50 • 42699 Solingen  
Tel. 0212 24 24 24 • Fax 0212 24 24 24  
Telefax 0212 24 24 24 • Telex 7 203 100  
Telegraph 7 203 100 • Teletext 7 203 100

**1.5 EDITIONS INC.**  
10000 15th Ave. S.E.  
Bellevue, WA 98006  
Tel. 206 461 1000 • Fax 206 461 1001  
Telefax 206 461 1002 • Telex 7 203 100

**APPEALS**

<b>3.</b>	<b>Location:</b>	A portion of the Kaiser Permanente Oakland Medical Center, Phase 2 site –the Phase 2 site is on the full block between Broadway and Piedmont Ave., and between I-580 and West MacArthur Blvd.; this project is a portion of the site located at the corner of Piedmont Ave. & W. MacArthur Blvd. (APN: 012-0940-001-03)
	<b>Proposal:</b>	Appeal of a Zoning Approval of an Interim Landscape Plan, including landscape, streetscape enhancements and lighting, and temporary façade improvements, in accordance with Condition of Approval #25 for the original hospital renovations project approved under Case #DR07-496).
	<b>Contact Person/Phone Number:</b>	Sarah Cohen, et al - Appellant, Representing Richmond Blvd. (Oak Glen Park) Neighbors (510)414-6005
	<b>Owner:</b>	Kaiser Foundation Hospitals
	<b>Case File Number:</b>	A13273 (related to DR13177 and DR07496)
	<b>Planning Permits Required:</b>	Appeal of a Zoning Approval of an Interim Landscape Plan and other improvements related to the renovation of an existing hospital, for the corner of MacArthur Blvd, and Piedmont Ave.
	<b>General Plan:</b>	Institutional
	<b>Zoning:</b>	D-KP - 2 Kaiser Permanente Oakland Medical Center
	<b>Environmental Determination:</b>	An EIR for the Kaiser Permanente OMC Master Plan was prepared by the City of Oakland. That EIR was certified by the Oakland Planning Commission on June 6, 2006, and its certification confirmed by the City Council on June 27, 2006. The current project is generally consistent with that analyzed in the Master Plan EIR. No additional environmental review is required.
	<b>Historic Status:</b>	Not a Potential Designated Historic Property; Survey Rating: F3
	<b>Service Delivery District:</b>	2
	<b>City Council District:</b>	3
	<b>Date Filed:</b>	September 23, 2013.
	<b>Staff Recommendation:</b>	Deny Appeal
	<b>Action to be Taken:</b>	Decision regarding Appeal Request
	<b>Finality of Decision:</b>	Final, not administratively appealable
	<b>For More Information:</b>	Contact Case Planner, Ann Clevenger, at (510)238-6980 or <a href="mailto:aclevenger@oaklandnet.com">aclevenger@oaklandnet.com</a>

Staff Member Ann Clevenger gave a presentation.

Chair Pattillo asked staff the following questions:

On the top of page 6, what does “Regular Design Review” mean in that sentence.

Have you seen a legible plan of the proposed improvement, if so, why wasn’t it included in the Planning



Commission packet?

Ms. Clevenger explained that a "regular" design review is an administrative level of approval which requires public notification and approval is decided by the Planning Division staff.

Mr. Miller informed Chair Pattillo that a set of legible plans were included in her packet.

Commissioner Coleman stated that the report states "although it's not specifically required", there is an implication that landscape and public access requires actual accessibility which is the feeling he gets from reading all of this material and it's not mentioned anywhere in the plan, which isn't a negative or positive. He isn't sure how to address this.

Mr. Miller explained that staff's position in reading that condition and applying it to the master plan provisions and the design review criteria is that, if in 2008 the Planning Commission at that time, if the intent for this interim landscaped area to be publically accessible beyond what they've already shown. It should've been specifically placed into that condition because, presumably, Kaiser at the time in 2008 would've voiced opposition about that condition.

Commissioner Coleman stated that his interpretation was the total opposite of Mr. Miller's explanation. He read the conclusion on page 15 which states, "the commission merely required as condition 45, an interim improvement plan for the landscaping lighting and security of the undeveloped portion of the phase II site, including, but not limited to landscape and streetscape enhancements temporary facade improvement to the hospital exterior walls additional lighting and signage". This doesn't exclude or include public accessibility.

Mr. Miller acknowledged that each individual may interpret condition #25 differently.

Commissioner Weinstein asked if staff's interpretation of condition #25 is that the condition itself in the interim plan must comply with the general plan or, more specifically that the content of the plan implied within that condition must meet the requirements of the general plan.

Ms. Clevenger responded stating that the plan was required to be reviewed under the regular design review process and the regular design review process in the Kaiser Permanente zoning regulation states that it must conform to the master plan. Staff's findings were that the plan does conform to the condition and the master plan.

Mr. Miller further explained that yes, it does need to meet the master plan as well as the regular design review criteria.

**Appellants:** Kate Dobbins, Sarah Cohen, Lucia Wong, Laura Arazi gave an argument.

**Applicant:** Michael Lane gave a rebuttal to the appellant's argument.

Commissioner Bonilla asked staff if the City of Oakland has any proprietary interest in the project land. If Kaiser owns the project land, reassurance that they can build isn't needed because it's their right. That's not



what's at stake here at tonight's meeting. There are laws in the United States that protect private property so, this should not be a concern. His concern is that the neighbors in the surrounding areas have the right to express their concerns about accessibility. Kaiser has a good reputation of providing good services, stable employment and good benefits. He doesn't understand Kaiser's resistance and rigidity about having this fenced off from the public area. He feels that security is enhanced through job creation, training, accessibility to resources, educational opportunities, etc. not by placing 7 feet or higher fencing around the property. There should be a compromise in terms of accessibility, and property rights shouldn't be an issue where Kaiser needs reassurance from the Planning Commission when they own the project land.

Mr. Miller confirmed that Kaiser does own the project land.

Mr. Lane responded stating that acknowledges there is a concern, warranted or not. He stated that he didn't foresee having this discussion at tonight's meeting at the time an interim condition was approved in 2008. If Commissioner Bonilla feels that it's not necessary to get reassurance from the Planning Commission it may work both ways and informing Kaiser that they have the right to build on their property doesn't hurt either. This is an interim condition that was a carefully crafted agreement that went through an extremely thorough review in 2008. It's built on itself and they are starting to make changes, this is essentially a new condition. They won't argue the points on technicalities, they want to make this work and in return of making this work, the Planning Commission acknowledges that they can build on this land.

Commissioner Bonilla reiterated that this is Kaiser's property in which they have the right to build there. He received numerous comments from the various neighborhood associations and nowhere in their communications does it state that the public space be open indefinitely for the foreseeable future. They understand it's an interim condition, but they would like access once it's landscaped. The streetscape will attract people and he doesn't understand the resistance and rigidity on this. The security concerns may be addressed with having security guards on the premises or other security measures in place. Again, the issue isn't getting reassurance from the Planning Commission for Kaiser to build on their own property.

Commissioner Weinstein asked what the difference is in the square footage between this proposal and the previous one.

Mr. Lane responded stating that in the original proposal Kaiser made 6,800 square feet available. The current proposal is estimated at 5,600 square feet in addition to the 6,800 square feet.

Vice Chair Moore asked the following questions:

How does Kaiser perceive the difference between maintaining security services and the landscaping on the private and public sides of the fence?

Presumably the paving and whatever landscaping there is on the public side of the fence would be designed to handle more traffic.

Does Kaiser have a heightened responsibility for security on the private side of the fence if it were open to the public vs. the fence being pulled back?



Mr. Lane gave the following responses:

There may not be a huge difference. He assumes there will be different uses on the public side of the fence which will require more maintenance than on the private side of the fence.

It is Kaiser's responsibility to maintain the public side of the fence as well.

It depends on which is more manageable for Kaiser. If access is prevented on the sloped area and provide access to the area on the sidewalk and the corner, it can be incorporated into their regular maintenance routine.

Commissioner Coleman stated that he understands Kaiser's desire of preventing public access to the sloped area. Is it possible to move the fence inside of the arc of trees so that a significant part of the site would be available? This will still protect the slope, provide an amazing amount of open space and more parkland.

Mr. Lane responded stating that Commissioner Coleman's idea will be considered.

Commissioner Nagraj asked if Kaiser received legal expert advice stating if they open a space that is privately owned, it could compromise future development even though they have full property ownership and entitlement rights or is this a fear of Kaiser's.

Mr. Lane responded stating that Kaiser received legal advice stating that they negotiated an agreement in 2008 that opening up this fence is a new condition that should not be imposed on them which they are not arguing that issue at tonight's meeting.

**Speakers:** Joe Chojnacki, Dan La Forte, Anne Janks, Valerie Winemiller, Lucia Wong, George Horton, Jennifer Rose, Josh Harkinson, Lynette McElhaney, Julie Waters, Andre Jones, Dan Kalb.

Mr. Miller gave the following three options for the Planning Commission to consider:

Accept Kaiser's compromise or urge them to further revise the plan to move the fence back, which will formally replace denying the appeal with approving a revised project.

Continue the hearing to allow Kaiser, neighbors and staff to further negotiate.

Approve the appeal outright, and adopt a plan that Kaiser disagrees with. This option would be done by a straw vote at tonight's meeting and would need to be brought back to a formal Planning Commission meeting for findings to be made in that regard. Mr. Miller also explained that a fourth option was considered by denying the appeal and accept staff's plan, but the staff's plan isn't an option since Kaiser submitted a compromise.

**Planning Commission Questions, Comments and Concerns:**



Vice Chair Moore thanked everyone for attending tonight's meeting. The intention for the MOB building was for the overall project, Phase II to activate Piedmont Avenue and make a pedestrian connection from the upper part of Piedmont Avenue to Broadway. This is how the interim plan should be reviewed and it accomplishes the same thing that the original plan didn't. The neighbor's request to open it up during daytime hours was a reasonable request to begin with and he had hoped the neighbors and Kaiser would've worked this issue out by now. He previously asked at tonight's meeting about maintaining the private and public sides of the fence and if it was open to the public for a reason. He wonders why there is resistance from Kaiser to move the fence all of the way in. The only real reason he can think of is Kaiser is protecting their entitlement to build on their property which they wouldn't lose especially if this remains an interim plan. He didn't see anywhere in the condition that mentioned a fence, but it did mention security which is perceived to be an addition to crime based on concerns raised at tonight's meeting. Whatever landscaping, paving or planting occurs outside of the fence, if it is moved back would need to be addressed, but at the same time, this plan with the decomposed granite may not be the appropriate thing to move forward with if it's outside of the fenced area. He is supportive of moving the fence to the top of the berm which should not have been that big of an issue to begin with. If Kaiser feels they need assurance from the Planning Commission to build on their property he is willing to assist them with figuring out a way to do so. The undercrossing still needs to be addressed.

Chair Pattillo thought about asking Kaiser to move the fence to the top of the slope, but she feels it's a moot point. Mr. Miller gave three options the Planning Commission could take such as: accept, deny or deny the appeal with conditions. This will involve them collectively designing the space on the dais in order to define the conditions that Kaiser would be bound to, which isn't a good idea. She feels Kaiser made a very generous proposal and is willing to give up one half of the space which is more than expected. If they've agreed to a lot so far, she doesn't see why they wouldn't agree to moving the fence to the top of the slope. She feels the only option is to continue this hearing to allow Kaiser the opportunity to reexamine their design thoughts for this space. She noted that, the discussion is moving the fence to the top of the slope thereby, making the vast majority of the area accessible. She also heard many times, there is a need to activate the space in which those two things don't go together. What is being reviewed is a very passive, pastoral, soft green space with almost no hard surface paving. By simply moving the fence will not address the need to animate the space, it needs to be redesigned. She would like bring that up for discussion if there is consensus to continue this before considering many other possibilities.

Commissioner Coleman stated that continuing this hearing is an excellent proposal. When he previously asked Kaiser if they were willing to move the fence back behind the arc of trees, there was general support from both sides. He agrees with Chair Pattillo that the Planning Commission is unable to design that at tonight's meeting. He feels that drawing the line leaves some awkward places on the property and as stated, this doesn't activate the space at all. As reluctant as he is to continue this hearing, he feels it's necessary because they won't get any answers tonight. He suggested that Kaiser be asked to please redesign the space return so they can review it again.

Commissioner Weinstein stated that she also agrees with continuing this hearing. She heeds caution that this doesn't become an argument about placement of the fence, but that it's reviewed as the entire space. The ultimate goals and intentions of the master plan is to activate the space and make it pedestrian friendly. There are a lot of landscaping and design solutions that can accomplish that, but she doesn't feel that moving the fence one way or the other will accomplish that. She feels that a new landscape plan is needed



that allows them to review the amount of open space and all of the elements that is involved in a landscaping plan. She concurs with her fellow Planning Commissioners that the in the neighbors communication, did they assume the interim landscaped area was permanent. In terms future, some of it is about public perception. Kaiser may be concerned that in 15 years, there may be different neighbors that may not be concerned when the garden is no longer there. There are ways to deal with that, not only within the landscaping plan, but how you market the name and brand of this park that will inform neighbors that this is a temporary space.

Commissioner Bonilla concurs with his fellow Planning Commissioners about the intent is to activate. If this means redesigning to meet that purpose than it should be taken into consideration and followed through. He feels that this hearing should be continued which will allow Kaiser and the neighbors to meet and work out their differences.

Commissioner Nagraj stated he appreciates everyone attending this meeting and the appellant's communication engagement which is the most communication he has received so far. He also commended Kaiser's great work in the community and how much he appreciates it. He feels that a lot of progress was made at tonight's meeting and supports continuing this hearing. He agrees with his fellow Planning Commissioners that they are not the best parties to decide on this matter, it will take Kaiser and the neighbors to work on a solution that is equally beneficial.

Chair Pattillo asked the community to please keep in mind that this is an interim open space improvement. She suggested that Kaiser construct a different design that is comparable in value to what was shown to them this evening and not to expect a full blown park design such as; tot lots, concrete walls, etc. There are 8 benches, a few plants and some paving, which a little more paving may be needed using temporal material like decomposed granite opposed to concrete or brick paving.

Mr. Miller reminded the Planning Commission that if they choose to continue this item, they may want to continue it to a date certain. He asked that Kaiser give a particular date or a special meeting may be proposed if necessary.

Chair Pattillo asked Kaiser if they would like to continue this hearing until after January 1, 2014 or is it possible that they vote to have staff work with Kaiser on a date certain.

Mr. Miller stated that yes, the Planning Commission could vote to continue this hearing to an indefinite date and staff will send a 17 day re-notice to the interested parties.

Vice Chair Moore asked if it would be simpler to uphold the appeal and return it to staff.

Mr. Miller explained if the appeal is approved, it would be a straw vote and would have to come back with findings anyway and isn't very beneficial. He also suggested that Kaiser could withdraw their approved application and start all over again in concert with the neighbors to develop a new plan to formally resubmit to staff to make a decision that all is in agreement with and won't result in an appeal to be brought before the Planning Commission. That leaves the discussion open, but input should be received from Kaiser and the neighbors on that approach. The Planning Commission may still continue this hearing to an indefinite



date, and Kaiser could make the decision to withdraw their application and start from square one and still continue that process.

Commissioner Weinstein's concern is, if the negotiations between Kaiser and the neighbors don't result in an agreeable solution for both parties, and the City approves the design. Will the residents be allowed to appeal the review again?

Mr. Miller responded stating that if the hearing is continued to an indefinite date, the option for the residents to continue with the appeal is there.

City Attorney Mark Wald further explained that if there is no agreement, it will come back to the Planning Commission. If there is an agreement, it would be to withdraw the appeal, submit an application that everyone agrees with and there wouldn't be any further appeal. This is an option that's open with a continuance that doesn't need to be decided today.

Commissioner Nagraj stated that the continuance option would be preferable from how he understands it. If there is a disagreement, the appellants won't have to pay to appeal again.

Mr. Wald responded stating that Commissioner Nagraj is correct, the appeal would automatically be brought back before the Planning Commission.

Vice Chair Moore made a motion to continue this appeal to an indefinite date and direct Kaiser to work with the appellants and staff to work out a compromised plan, seconded by Commissioner Bonilla.

Action on the matter: Continuance approved 6 ayes, 0 noes.

#### Approval of Minutes

Chair Pattillo made a correction to the October 16, 2013 meeting Minutes on page 7, 2<sup>nd</sup> paragraph this states that "she is disappointed about the lack of retail on Broadway in the plan". She stated that her comments were that she was disappointed about the lack of retail shown on Broadway, not in the plan.

Commissioner Bonilla made a motion to approve with revisions, seconded by Commissioner Coleman.

Action on the matter: Approved with revisions 6 ayes, 0 noes.

#### ADJOURNMENT

Meeting adjourned at approximately 10:30 P.M.

SCOTT MILLER  
Zoning Manager  
Planning and Zoning Division

NEXT MEETING: December 6, 2013

# **ATTACHMENT “D”**

## **PUBLIC COMMENTS**

## Clevenger, Ann

---

**From:** Mark Lightfoot <marklightfoot@comcast.net>  
**Sent:** Thursday, February 13, 2014 9:07 AM  
**To:** Pattillo, Chris; jahazielbonillaoaklandpc@gmail.com; Coleman, Michael; Moore, Jim; nagrajplanning@gmail.com; EW.Oakland@gmail.com  
**Cc:** McElhaney, Lynette; Wald, Zachary; Kalb, Dan; Bolotina, Olga; At Large; Chan, Ada; Miller, Scott; Clevenger, Ann; Wald, Mark; Parker, Barbara; Flynn, Rachel  
**Subject:** I Support

Dear Oakland Planning Commissioners.

I am writing to lend my unqualified support to the Richmond Blvd. appellants regarding the following issues:

First, through a technicality of Kaiser's application process that is not worth going into here, the planning department is urging that the Oakland Planning Commission officially deny their appeal in order to approve the new design. they strongly object to having the procedural history for this planning case recorded in this revisionist way, and are lobbying the commission to find a way to grant their neighborhood appeal while still approving the new design. Please urge the commissioners to figure out a way to grant their appeal.

Second, they are asking the planning commission to direct city staff to work with Kaiser to find a way to refund them the cost of the filing fee for the appeal, almost \$1,400. It is unconscionable that the city charges such high fees of small neighborhood groups that are fighting for the public interest. These high fees stifle citizen participation in city planning and development issues and essentially favor developers and wealthier neighborhoods over low-income ones. Please urge the commission to direct staff to figure out a way to refund their filing fee.

Mark Lightfoot  
510-917-7466

**Clevenger, Ann**

---

**From:** Lucia Hwang <luciahwang@yahoo.com>  
**Sent:** Wednesday, February 12, 2014 9:56 AM  
**To:** Pattillo, Chris; jahazielbonillaoaklandpc@gmail.com; Coleman, Michael; Moore, Jim; nagrajplanning@gmail.com; EW.Oakland@gmail.com  
**Cc:** McElhaney, Lynette; Wald, Zachary; Kalb, Dan; Bolotina, Olga; At Large; Chan, Ada; Miller, Scott; Clevenger, Ann; Wald, Mark; Parker, Barbara; Flynn, Rachel; Lorri Arazi; Kate Dobbins; Sarah Cohen  
**Subject:** Resend of letter regarding Kaiser Interim Landscape Plan, Case File No. A13273 (related to DR13177 and DR07496)

Dear commissioners,

For your reading convenience, we are resending our recent letter with the two attachments cut and pasted into the body of this email.

Sincerely,

Lucia Hwang

-----

### Letter to the Planning Commission et al

As you may know, the Piedmont and West MacArthur corner of the new Oakland Medical Center complex has been completely redesigned by Kaiser Permanente in collaboration with the community after neighbors last fall appealed approval of the original plan and waged a vigorous and successful campaign in support of allowing public access to and activating that site in accordance with the Kaiser Permanente Oakland Medical Center Master Plan. This new design, a large, interim tree-filled plaza, is slated to come before the Oakland Planning Commission for approval at its Feb. 19, 2014, regular meeting.

While we, the appellants, are pleased with the new design, we are writing to object to how the Planning Department and – we are told – the City Attorney's office is recommending that the procedural history for this case be recorded. They argue that because the new design in effect replaces the original submission, the Planning Commission should deny our neighborhood appeal in order to approve the new design.

We realize that the Planning Commission delayed a vote on our appeal in order to allow the neighbors an opportunity to negotiate a better design with Kaiser and to avoid another potential appeal process on a separate application in case a compromise could not be reached.

Nonetheless, we believe that an officially recorded "denial" action on our appeal not only fails to reflect the reality of what happened (the success of the appellants in pushing Kaiser to develop a new design that activates the corner and conforms to the Master Plan), but allows too great an opportunity for a revisionist history to be told by Kaiser that erases or minimizes the struggle by community activists in achieving this superior design. Without a detailed reading of the case file, a person researching what

happened with development of this corner may very well interpret the new design and the Planning Commission's denial of our appeal as simply a result of Kaiser "changing its mind" or Kaiser's own initiative. Kaiser is a large corporation with great influence in Oakland, and it will seek to tell the history of its development activities in a way that portrays Kaiser in the most favorable light.

For the sake of Oakland history and future neighborhood activism in Oakland planning and development, we respectfully propose the following:

- Grant the appeal with respect to the original interim landscape design in that the Planning Commission did not approve the original design and the original design was changed in its entirety based on agreement reached between Kaiser and the appellants.

**Rationale:** The Planning Department's approval of the original design failed to ensure conformity with the goals and objectives of the Master Plan, as required by the Planning Code.

Had we not filed the appeal, the corner at Piedmont Avenue and MacArthur Boulevard would, at this very moment, be under lock and key with a towering fence along the perimeter of the property, looming over pedestrians. Our appeal now allows this corner to flourish.

The new design opens and activates the corner with a tree-studded set of plazas and other public amenities. Unlike the original design, the new design conforms to the goals and objectives of the Master Plan for this critical intersection, which connects Upper Piedmont Avenue with the burgeoning development to the south along Broadway. That Kaiser achieved a suitable new design for the corner does not negate the fact that Kaiser was moved to do so only by virtue of our appeal.

From the citizen activist's perspective, it is absurd to achieve everything we sought through the appeal, only to learn that the record would reflect that our appeal was denied, or had "failed."

Thus, the appeal was in effect and for all intents and purposes granted, as the record should so reflect.

- Incorporate, as part of the official record on your vote, the attached Stipulations.

**Rationale:** It is said that those who cannot learn from history are doomed to repeat it.

It is important that the official record accurately reflect the history of these proceedings. Years down the road, some other neighborhood may want to learn from the process that achieved this good result for Oakland. Regardless of the procedural disposition ultimately voted on, the attached Stipulations will provide the historical context necessary to understand your vote.

- Urge Kaiser and the Planning Department to agree to reimburse the appellants the cost of the filing fee for the appeal.

**Rationale:** We, the appellants, invested substantial time and money to get this issue in front of the Planning Commission. Our appeal was made necessary only because Kaiser

stubbornly refused to listen to community concerns about its original design to fence off the subject corner and by the Planning Department's failure to police the Kaiser Permanente Oakland Medical Center Master Plan.

Scott Miller informed us that had Kaiser agreed to negotiate a new design with us prior to the Planning Commission meeting on November 20, 2013, our filing fee would have been reimbursed. Kaiser informed us at the November 20, 2013, meeting that Kaiser's initial unwillingness to negotiate with us was mistaken.

We have asked Kaiser directly to reimburse us, but Kaiser has refused.

To deny the appellants reimbursement of the filing fee is to penalize the community for Kaiser's mistaken initial entrenchment on the issue and the Planning Department's refusal to do its job in enforcing the Master Plan.

Scott Miller's representation that our filing fee would have been reimbursed had the appeal not reached the Planning Commission demonstrates two things.

*First*, appeal costs are subject to reimbursement under certain conditions. *Second*, the Planning Department has the discretion to grant a request for reimbursement.

We did not bring the appeal to oppose Kaiser or to impose our personal design preferences on the subject corner. We brought the appeal on behalf of the City as champions of the Master Plan and in the public interest.

Neighboring cities use a fee structure that recognizes the difference between appeals brought by community groups and those brought for purely private gain. Attorneys' fee-shifting statutes in civil law recognize such a distinction as well.

The Planning Department's reimbursement policy should do the same and reward communities who have been successful on behalf of the public interest.

We ask that you urge the Planning Department to make arrangements with Kaiser to reimburse the appellants the filing fee. Our total costs in time and money far exceed the amount of the fee, but reimbursement of at least the cost of the filing fee would be a fine gesture of good will.

Sincerely,

Kate Dobbins, Lorri Arazi, Lucia Hwang and Sarah Cohen  
Appellants on behalf of the Richmond Boulevard Neighborhood

-----  
Stipulations

- 1) Kaiser's original interim landscape design proposed to fence off the Southeast corner at Piedmont Avenue and MacArthur Boulevard. This design was presented at a regular community meeting in April 2013.
- 2) At this, and the following meeting in July 2013, the community voiced opposition to the proposal. Kaiser responded that the design was non-negotiable.
- 3) Subsequently, the Planning Department approved Kaiser's original design with one modification, i.e., requiring Kaiser to bring down the height of the fence from 8 to 7 feet, asserting that fencing off the area from public access was justified by the need for security.
- 4) The Richmond Boulevard Neighborhood appealed the Planning Department's approval because Kaiser's original design was not in substantial conformity with the Kaiser Permanente Oakland Medical Center Master Plan, which requires that the subject corner be put to active use.
- 5) The Planning Department recommended that the Planning Commission deny our appeal on November 20, 2013, at a regular meeting of the Planning Commission.
- 6) Because Kaiser represented, at the November 20, 2013, meeting, that it was willing to work with the appellants to achieve a new design, the Planning Commission voted to continue the hearing to a date uncertain to allow for a period of negotiations between Kaiser and the appellant.
- 7) In December 2013 and January 2014, the appellants and Kaiser met four times and exchanged drawings, ideas and proposals.
- 8) The new design that resulted from the negotiations bears no resemblance to the original design. In the new design, that corner is no longer fenced off from the public but instead provides an open, landscaped set of plazas for programmed uses, such as a farmers' market, outdoor exercise classes and health fairs, and seating areas for gathering, eating and resting.
- 9) The new design was made possible only by, and is a direct result of, the Richmond Boulevard Neighborhood appeal.
- 10) The Planning Commission's official recognition of the merits of our appeal underscores the importance of engaging community and neighborhood stakeholders in the development and planning processes.

## Clevenger, Ann

---

**From:** Sarah Lynne Cohen <slcohen@att.net>  
**Sent:** Wednesday, February 12, 2014 12:45 AM  
**To:** Pattillo, Chris; jahazielbonillaoaklandpc@gmail.com; Coleman, Michael; Moore, Jim; nagrajplanning@gmail.com; EW.Oakland@gmail.com  
**Cc:** McElhaney, Lynette; Wald, Zachary; Kalb, Dan; Bolotina, Olga; At Large; Chan, Ada; Miller, Scott; Clevenger, Ann; Wald, Mark; Parker, Barbara; Flynn, Rachel; Lorri Arazi; Lucia Hwang; kate dobbins  
**Subject:** Kaiser Interim Landscape Plan, Case File No. A13273 (related to DR13177 and DR07496)  
**Attachments:** Kaiser Letter to the Planning Commission et al - FINAL.docx; Kaiser Stipulations-FINAL.docx; ATT745205.txt

Dear Planning Commissioners,

Attached please find a letter submitted by the Richmond Boulevard Neighborhood appellants in response to the Planning Department staff recommendation to deny our appeal in the above-referenced matter. Also included is an attachment to the letter entitled Stipulations.

This matter is set to be heard at a regular meeting of the Planning Commission on February 19, 2014. If you have questions about our letter, please let us know.

Sincerely,

Kate Dobbins, Lorri Arazi, Lucia Hwang and Sarah Cohen Appellants on behalf of the Richmond Boulevard Neighborhood

## Letter to the Planning Commission et al

As you may know, the Piedmont and West MacArthur corner of the new Oakland Medical Center complex has been completely redesigned by Kaiser Permanente in collaboration with the community after neighbors last fall appealed approval of the original plan and waged a vigorous and successful campaign in support of allowing public access to and activating that site in accordance with the Kaiser Permanente Oakland Medical Center Master Plan. This new design, a large, interim tree-filled plaza, is slated to come before the Oakland Planning Commission for approval at its Feb. 19, 2014, regular meeting.

While we, the appellants, are pleased with the new design, we are writing to object to how the Planning Department and – we are told – the City Attorney's office is recommending that the procedural history for this case be recorded. They argue that because the new design in effect replaces the original submission, the Planning Commission should deny our neighborhood appeal in order to approve the new design.

We realize that the Planning Commission delayed a vote on our appeal in order to allow the neighbors an opportunity to negotiate a better design with Kaiser and to avoid another potential appeal process on a separate application in case a compromise could not be reached.

Nonetheless, we believe that an officially recorded "denial" action on our appeal not only fails to reflect the reality of what happened (the success of the appellants in pushing Kaiser to develop a new design that activates the corner and conforms to the Master Plan), but allows too great an opportunity for a revisionist history to be told by Kaiser that erases or minimizes the struggle by community activists in achieving this superior design. Without a detailed reading of the case file, a person researching what happened with development of this corner may very well interpret the new design and the Planning Commission's denial of our appeal as simply a result of Kaiser "changing its mind" or Kaiser's own initiative. Kaiser is a large corporation with great influence in Oakland, and it will seek to tell the history of its development activities in a way that portrays Kaiser in the most favorable light.

For the sake of Oakland history and future neighborhood activism in Oakland planning and development, we respectfully propose the following:

- Grant the appeal with respect to the original interim landscape design in that the Planning Commission did not approve the original design and the original design was changed in its entirety based on agreement reached between Kaiser and the appellants.

**Rationale:** The Planning Department's approval of the original design failed to ensure conformity with the goals and objectives of the Master Plan, as required by the Planning Code.

Had we not filed the appeal, the corner at Piedmont Avenue and MacArthur Boulevard would, at this very moment, be under lock and key with a towering fence along the perimeter of the property, looming over pedestrians. Our appeal now allows this corner to flourish.

The new design opens and activates the corner with a tree-studded set of plazas and other public amenities. Unlike the original design, the new design conforms to the goals and objectives of the Master Plan for this critical intersection, which connects Upper Piedmont Avenue with the burgeoning development to the south along Broadway. That Kaiser achieved a suitable new design for the corner does not negate the fact that Kaiser was moved to do so only by virtue of our appeal.

From the citizen activist's perspective, it is absurd to achieve everything we sought through the appeal, only to learn that the record would reflect that our appeal was denied, or had "failed."

Thus, the appeal was in effect and for all intents and purposes granted, as the record should so reflect.

- Incorporate, as part of the official record on your vote, the attached Stipulations.

**Rationale:** It is said that those who cannot learn from history are doomed to repeat it.

It is important that the official record accurately reflect the history of these proceedings. Years down the road, some other neighborhood may want to learn from the process that achieved this good result for Oakland. Regardless of the procedural disposition ultimately voted on, the attached Stipulations will provide the historical context necessary to understand your vote.

- Urge Kaiser and the Planning Department to agree to reimburse the appellants the cost of the filing fee for the appeal.

**Rationale:** We, the appellants, invested substantial time and money to get this issue in front of the Planning Commission. Our appeal was made necessary only because Kaiser stubbornly refused to listen to community concerns about its original design to fence off the subject corner and by the Planning Department's failure to police the Kaiser Permanente Oakland Medical Center Master Plan.

Scott Miller informed us that had Kaiser agreed to negotiate a new design with us prior to the Planning Commission meeting on November 20, 2013, our filing fee would have been reimbursed. Kaiser informed us at the November 20, 2013, meeting that Kaiser's initial unwillingness to negotiate with us was mistaken.

We have asked Kaiser directly to reimburse us, but Kaiser has refused.

To deny the appellants reimbursement of the filing fee is to penalize the community for Kaiser's mistaken initial entrenchment on the issue and the Planning Department's refusal to do its job in enforcing the Master Plan.

Scott Miller's representation that our filing fee would have been reimbursed had the appeal not reached the Planning Commission demonstrates two things.

*First*, appeal costs are subject to reimbursement under certain conditions. *Second*, the Planning Department has the discretion to grant a request for reimbursement.

We did not bring the appeal to oppose Kaiser or to impose our personal design preferences on the subject corner. We brought the appeal on behalf of the City as champions of the Master Plan and in the public interest.

Neighboring cities use a fee structure that recognizes the difference between appeals brought by community groups and those brought for purely private gain. Attorneys' fee-shifting statutes in civil law recognize such a distinction as well.

The Planning Department's reimbursement policy should do the same and reward communities who have been successful on behalf of the public interest.

We ask that you urge the Planning Department to make arrangements with Kaiser to reimburse the appellants the filing fee. Our total costs in time and money far exceed the amount of the fee, but reimbursement of at least the cost of the filing fee would be a fine gesture of good will.

Sincerely,

Kate Dobbins, Lorri Arazi, Lucia Hwang and Sarah Cohen  
Appellants on behalf of the Richmond Boulevard Neighborhood

## Stipulations

- 1) Kaiser's original interim landscape design proposed to fence off the Southeast corner at Piedmont Avenue and MacArthur Boulevard. This design was presented at a regular community meeting in April 2013.
- 2) At this, and the following meeting in July 2013, the community voiced opposition to the proposal. Kaiser responded that the design was non-negotiable.
- 3) Subsequently, the Planning Department approved Kaiser's original design with one modification, i.e., requiring Kaiser to bring down the height of the fence from 8 to 7 feet, asserting that fencing off the area from public access was justified by the need for security.
- 4) The Richmond Boulevard Neighborhood appealed the Planning Department's approval because Kaiser's original design was not in substantial conformity with the Kaiser Permanente Oakland Medical Center Master Plan, which requires that the subject corner be put to active use.
- 5) The Planning Department recommended that the Planning Commission deny our appeal on November 20, 2013, at a regular meeting of the Planning Commission.
- 6) Because Kaiser represented, at the November 20, 2013, meeting, that it was willing to work with the appellants to achieve a new design, the Planning Commission voted to continue the hearing to a date uncertain to allow for a period of negotiations between Kaiser and the appellant.
- 7) In December 2013 and January 2014, the appellants and Kaiser met four times and exchanged drawings, ideas and proposals.
- 8) The new design that resulted from the negotiations bears no resemblance to the original design. In the new design, that corner is no longer fenced off from the public but instead provides an open, landscaped set of plazas for programmed uses, such as a farmers' market, outdoor exercise classes and health fairs, and seating areas for gathering, eating and resting.
- 9) The new design was made possible only by, and is a direct result of, the Richmond Boulevard Neighborhood appeal.
- 10) The Planning Commission's official recognition of the merits of our appeal underscores the importance of engaging community and neighborhood stakeholders in the development and planning processes.

## **DESIGN REVIEW FINDINGS (REVISED)**

### **SECTION 17.136.050(B) – REGULAR DESIGN REVIEW (Non-Residential) - Findings Required:**

The findings required to grant approval of the (revised) application are found at Section 17.136.050(B) of the Oakland Planning Code. The required findings, and the reasons the proposal satisfies these findings (in **bold**), subject to conditions of approval, are as follows:

1. That the proposal will help achieve or maintain a group of facilities which are well related to one another and which, when taken together, will result in a well-composed design, with consideration given to site, landscape, bulk, height, arrangement, texture, materials, colors, and appurtenances; the relation of these factors to other facilities in the vicinity; and the relation of the proposal to the total setting as seen from key points in the surrounding area. Only elements of design which have some significant relationship to outside appearance shall be considered, except as otherwise provided in Section 17.136.060;

**The revised Interim Landscape Plan includes a variety of trees, shrubs and groundcover, two publicly-accessible outdoor plaza spaces, a fence to be located at the top of the layback for safety and security, and a revised painting design/treatment for the east-facing wall of the hospital building.**

**The two outdoor plaza areas are designed as a larger and a smaller oval hardscape areas, including planted berms and furnished with seating elements. The plaza areas are surrounded by groves of trees, and are connected to each other and to the abutting streets with pedestrian pathways. Trees and shrubs were selected to mediate scale between the buildings to the west, provide seasonal variety and continuity with other campus plantings, and be relatively fast-growing due to the temporary nature of the open space. The proposed layback security fence is 8 feet tall, designed with a horizontally-oriented metal and wire mesh design, with finish colors and vine planting that would help integrate the fence into the natural landscape. Its proposed curvilinear layout and proposed planting with vines will further help to integrate it with the natural landscape. The revised interim treatment for the exposed east wall of the hospital podium includes a three-toned painted "nature graphic", which will serve as an aesthetically attractive backdrop for the landscaped areas.**

**Staff finds that the proposed Interim Landscape Plan, as well as the proposed treatment of the hospital building's facade, will be well-related, and complement, the overall OMC development and the surrounding area with specific regard to landscaping, materials, colors and other amenities.**

2. That the proposed design will be of a quality and character which harmonizes with, and serves to protect the value of, private and public investments in the area;

**As detailed in Finding #1 above, the proposed interim landscaping, lighting, and security plan, including a generous amount of trees, shrubs and groundcover, as well as the treatment of the east wall of the hospital building, are of a quality and character which harmonize with and protect the value of the private and public investments in the area.**

3. That the proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council.

**The site is located in the "Institutional" General Plan Land Use Area, and the "D-KP-2" (Kaiser Permanente Oakland Medical Center Commercial District 2) Zone. The proposed Interim Landscape Plan, as revised, conforms with the applicable General Plan and Zoning District, as well as with the approved Kaiser Permanente OMC Master Plan and related Condition of Approval #25 for the Phase 2 project as approved by the City Planning Commission in 2008.**

## **CONDITIONS OF APPROVAL (REVISED)**

The proposal is hereby approved subject to the following Conditions of Approval:

### **STANDARD CONDITIONS:**

#### **1. Approved Use**

##### ***Ongoing***

- a) The project shall be constructed and operated in accordance with the authorized use as described in the application materials, and the plans submitted January 29, 2014, with further refinements submitted February 7, 2014, 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 require prior written approval from the Director of City Planning or designee.
- b) This action by the Director of City Planning ("this Approval") includes the approvals set forth below. This Approval includes: To install interim landscaping, streetscape enhancements and lighting at the corner of MacArthur Blvd. and Piedmont Ave., and temporary façade improvements to the east wall of the hospital building, at the Kaiser Permanente Oakland Medical Center Phase 2 site.

#### **2. Effective Date, Expiration, Extensions and Extinguishment**

##### ***Ongoing***

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

#### **3. Scope of This Approval; Major and Minor Changes**

##### ***Ongoing***

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

#### **4. Conformance with other Requirements**

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

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

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

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

### ***Ongoing***

- a) Site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60-90 days of approval, unless an earlier date is specified elsewhere.
- b) The City of Oakland reserves the right at any time during construction to require certification by a licensed professional that the as-built project conforms to all applicable zoning requirements, including but not limited to approved maximum heights and minimum setbacks. Failure to construct the project in accordance with approved plans may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension or other corrective action.
- c) Violation of any term, Conditions or project description relating to the Approvals is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approvals or alter these Conditions if it is found that there is violation of any of the Conditions or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement actions.

## **6. Signed Copy of the Conditions**

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

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

## **7. Indemnification**

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

**8. Compliance with Conditions of Approval**

***Ongoing***

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

**9. Severability**

***Ongoing***

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

**10. Job Site Plans**

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

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

**11. Landscape Maintenance.**

***Ongoing***

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

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

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

- a) The project applicant shall submit Public Improvement Plans to Building Services Division for adjacent public rights-of-way (ROW) showing all proposed improvements and compliance with the conditions and City requirements including but not limited to curbs, gutters, sewer laterals, storm drains, street trees, paving details, locations of transformers and other above ground utility structures, the design specifications and locations of facilities required by the East Bay Municipal Utility District (EBMUD), street lighting, on-street parking and accessibility improvements compliant with applicable standards and any other improvements or requirements for the project as provided for in this Approval. Encroachment permits shall be obtained as necessary for any applicable improvements- located within the public ROW.
- b) Review and confirmation of the street trees by the City's Tree Services Division is required as part of this condition.
- c) The Planning and Zoning Division and the Public Works Agency will review and approve designs and specifications for the improvements. Improvements shall be completed prior to the issuance of the final building permit.
- d) The Fire Services Division will review and approve fire crew and apparatus access, water supply availability and distribution to current codes and standards.

### **13. 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.

### **14. 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.

### **15. Noise Control**

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

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

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

## **16. 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.**

## **17. 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.

## **18. Archaeological Resources**

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

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

## **19. 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.

## **20. 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.