**Case File Number PUD03552, PUDF03553 and ER30022**

**LPAB August 12, 2013**

**Attachment H: 6/4/08 Planning Commission Report with Findings**

| | |
|---|---|
| **Location:** | **Portion of site (Parcel B) bounded by Broadway, 23rd Street, Valley Street, and 24th Street (Parcel A is under construction).** |
| **Proposal:** | Amendment #2 to PUDF03553 to redesign building located on Valley Street, including new site planning, decreased building height and design changes, as well as demolition of historic façade. No change to land use densities/intensities, quantity of parking, access/egress points; Minor variance to allow reduction of open space consistent with S-17 zoning regulations |
| **Applicant:** | Signature Properties, Inc. (925) 463-1122 (Doug Park) |
| **Owner:** | Signature at Broadway Grand LLC. |
| **Planning Permits Required:** | 2nd Amendment to Final Development Plan, Minor Variance and Design Review. |
| **General Plan:** | Community Commercial |
| **Zoning:** | C-60 City Service Commercial Zone/ S-19 Broadway Auto Row Interim Study Combining Zone |
| **Environmental Determination:** | Addendum #2 to EIR. Addendum #1 adopted on September 27, 2006; Final EIR certified on December 1, 2004. |
| **Historic Status:** | Site includes five buildings considered historic resources under CEQA. |
| **Service Delivery District:** | II – North Oakland/North Hills |
| **City Council District:** | 3 – Nadel |
| **Finality of Decision** | Appealable to City Council |
| **For further information:** | Contact case planner **Catherine Payne** at **510-238-6168** or by e-mail at **cpayne@oaklandnet.com** |

## SUMMARY

The purpose of this report is to request Planning Commission approval of a proposed second amendment to the final development permit (FDP) for the Broadway-West Grand project (PUDF03553). The applicant proposes an amendment that would change the building design for Phases One and Two on Parcel B of this project from the design previously approved by the Planning Commission in December 2004 and amended in October 2006. The proposed amendment would also allow demolition of a historic façade that is currently planned to be retained onsite. The first phase of this project (Parcel A) is complete and occupied. The proposed changes would affect development of the first and second phases of development of Parcel B (a four-phase development project).

Include site map here.

## PROJECT SITE AND SURROUNDING AREA

The approximately 4.3-acre site is Parcel B of the approved "Broadway-West Grand" project, and is located on the block bounded by West Grand Avenue, Valley Street, 24th Street, and Broadway. The project site is comprised of the Negherbon Auto Center, surface vehicle lots, and a few older warehouse buildings. The site is located at the southern end of Broadway Auto Row and is surrounded by a mix of commercial and residential uses.

## BACKGROUND

Signature Properties has obtained land use entitlements (or project approvals) for a phased redevelopment of both Parcel A and Parcel B sites with up to 475 residential units, 40,000 square feet of ground-floor commercial space on West Grand Avenue and Broadway, and 675 structured parking spaces (545 residential and 130 commercial). Project approvals include a Planned Unit Development permit (PUD) approved by the Planning Commission in December 2004, and an amendment to Parcel B of the PUD in 2006. The project site consists of almost two entire blocks, which are designated Parcel A and Parcel B. Parcel A is the block bounded by West Grand Avenue, Broadway, Valley and 23rd Streets, and is built and occupied. Parcel B is the block bounded by West Grand Avenue, Broadway, Valley, 23rd and 24th Streets. The Parcel B block is planned for development and not yet under construction. Up to 13 existing buildings on the entire site would be demolished, but the facades of the two buildings at the corners of 23rd/Valley Streets and are currently planned to be retained and incorporated into the project development. Five historic resources are planned for demolition and two would have the facades preserved; none of the historic resources would be preserved in their entirety.

At this time, the applicant proposes a second revision to the PUD that would affect Parcel B. Specifically, the applicant proposes a redesign of a portion of Parcel B that would involve demolition of a historic façade at 440-448 23rd Street that, under the current approvals, is planned for retention.

Please see "Design and Related Issues" section below for review and comments by the public, the LPAB and the DRC.

## PROJECT DESCRIPTION

Signature Properties is proposing changes to the previously approved and amended FDP for Parcel B of the Broadway-West Grand project (the block bounded by West Grand Avenue, Valley Street, 24th Street, and Broadway). Development of Parcel A is completed and occupied. At this time, proposed changes include new site planning and architectural design and massing, as well as increased intensity of development on Parcel B. The evolution of land use entitlements for the project can be summarized as follows:

- *FDP*: The previously approved FDP for Parcel B includes 289 residential units, 8,500 square feet of ground-floor commercial space, and 474 parking spaces (409 residential

spaces, 65 commercial spaces); The maximum building height is 84 feet (seven stories). Many ground-floor units have entrances from the street. Vehicle access and loading berths are provided on 23rd and 24th Streets. The certified EIR analyzed a Parcel B project including up to 343 residential units, 18,700 square feet of commercial space, and 475 parking spaces;

- *Approved Amendment to FDP*: A previously approved amendment to the Parcel B project allows development of 367 residential units (including replacement of 16 existing apartments currently located on the site), 27,700 square feet of commercial space (including replacement of 9,000 square feet of existing commercial space currently located on the site), and 489 parking spaces. The maximum building height is 193 feet (16 stories), although the majority of the site would be occupied by four- to seven-story buildings. An addendum to the EIR was filed and approved by the Planning Commission that addressed the substantive changes to the project.
- *Proposed Second Amendment to FDP*: The currently proposed amendment to the Parcel B FDP includes redesign of Phases One and Two. This proposed amendment would not affect the two parcels located on Broadway. The redesign of Phases I and II includes a redesign of the building(s), as well as demolition of a historic façade that is currently planned for retention onsite. The building redesign generally maintains the site planning, massing, land use density and intensity, and style of the approved project. However, the proposed building type and layout are entirely different from the approved plan, as is the proposed demolition of a historic façade. The following is a list of the proposed project revisions:
    - *Building Type*: The current Phases I and II proposal is for two buildings to be developed as a single product: The site plan includes a five-level concrete parking garage located in the interior of the parcel (adjacent to the alley that connects 23rd to 24th Street) surrounded (or wrapped) on three sides by a four-story wood construction residential complex.
    - *Building Layout*: The proposed building layout would perform as a single building with an entry lobby on Valley Street and centralized group usable open space in three locations. Although there would be no change in the unit count, the proposed units are of different sizes and types than the approved project. The primary difference between the approved and proposed project is that the approved garage occupies a partially below-grade podium covering the site, and the proposed change consolidates the garage at the interior of the site and includes at-grade residential units located facing the three public streets (23rd, Valley and 24th Streets).
    - *Massing*: The approved and proposed project massing are similar to one another. However, the approved project includes two distinctly separate four-story buildings, whereas the proposed amendment appears as a single building with a distinct lobby on Valley Street separating two wings.
    - *Building Height*: The approved and proposed plans both include four story buildings although the height is decreased by approximately one foot across the site in the proposed amendment.
    - *Facades*: The proposed façades are stylistically similar to the approved façade design. The proposed amendment is a variation on the approved plan in terms of

style, windows, materials, recesses and projections. The primary façade change, discussed in detail below, is the proposed demolition of the historic façade at 440-448 23rd Street.

- *Points of Entry (access and egress)*: The project points of entry are the same between the approved project and the proposed amendment.
- *Historic Façade*: The approved project includes demolition of an historic building located at 440-448 23rd Street and retention of the façade of said building. At this time, the applicant proposes removal of the façade located at 440-448 23rd Street. 440-448 23rd Street is a historic resource with a local rating of Cb+2+ and was approved for demolition in the land use entitlements (although the façade was to remain). Demolition of this building was considered a significant and unavoidable impact at the time of EIR certification in December 2004.

## GENERAL PLAN ANALYSIS

The project site is located within the Community Commercial land use classification of the General Plan. This designation is intended to "identify, create, maintain, and enhance areas suitable for a wide variety of commercial and institutional operations along the City's major corridors and in shopping districts or centers" (LUTE, p. 150). The Community Commercial land use classification allows a maximum floor area ratio (FAR) of 5.0, and a maximum residential density of 166.67 units per net acre. The proposed residential density is 108 units per acre, well within the allowable General Plan residential density. The proposed FAR is 0.18, well within the allowable General Plan intensity for commercial development.

## ZONING ANALYSIS

The project is located in the C-40 Community Thoroughfare Commercial Zone and C-60 City Service Commercial Zone. However, it was previously determined that the C-40 zone is the best fit zone for the entire site, under the General Plan conformity guidelines (see December 1, 2004 Planning Commission report, attached), and the approved Planned Unit Development (PUD), including the Preliminary Development Permit (PDP) and the Final Development Permit (FDP), is subject to an Interim Use Permit to allow development consistent with the C-40 zone regulations across the entire Parcel B site. The proposed 0.18 FAR is within the allowable 3.3 FAR for the C-40 zone. The approved residential density of 1 unit per 415 square feet of lot area does exceed the C-40 zone allowable density of one unit per 450 square feet of lot area. The applicant received a Minor Conditional Use Permit (CUP) in conjunction with the first amendment to the FDP to allow this residential density, consistent with the provisions of the Oakland Municipal Code (OMC) section 17.106.040, allowing for increased density in high-rise development. In addition, the applicant previously received a minor variance from the driveway design standards to facilitate site access and egress.

**Zoning Regulation Comparison Table**

| Criteria | | Requirement Per PUD | Approved/ Proposed (Max) | Comment |
|---|---|---|---|---|
| Yard – Front* | | None required | 0' | Meets reg's. |
| Yard – Interior Lot Line Setback for Residential Facilities | | 12% lot width when opposite legally required living room windows/none | 0' (and not opposite required living room windows) | Meets reg's. |
| Height | | No maximum | 193' to the parapet | Meets reg's. |
| Usable Open Space | | 75 sf. private/unit; 150 sf. group/unit | 75 sf/unit (private and group) | Minor variance to allow reduced quantity of open space consistent with Parcel A. |
| Parking | Commercial | 1 space per 400 sf./over 3k sf.: 60 spaces; 1 loading per PUD | 122 spaces; 1 loading | Meets pkg. reg's. Meets PUD loading req's. |
| | Residential | 1 space / unit 1 loading per PUD | 367 spaces 1 loading | Meets pkg. reg's. Meets PUD loading req's. |
| Residential Density | | 1 unit / 450 sq. ft | 1 unit / 415 sq. ft (367 units) | Minor CUP to exceed zoning for highrise development (within General Plan) (OMC 17.106.040) (granted on 11/1/06) |
| FAR | | 3.3 (corner lot) 3.0 (interior lot) | .18 | Meets reg's. |

## ENVIRONMENTAL REVIEW

The Planning Commission certified an EIR for the existing PUD on December 1, 2004. Significant impacts identified in the Final EIR are discussed in detail below. Under the California Environmental Quality Act (CEQA) Guidelines Sections 15162 and 15164, an addendum can be prepared if changes or additions to a previously certified EIR are necessary but the project has not changed substantially, the circumstances under which the project would occur have not changed substantially, and no new information demonstrates that any potential environmental impacts would be substantially more severe than previously demonstrated. The EIR considered an envelope of development that included up to 343 residential units, 18,700 square feet of commercial space, and 475 parking spaces. The first approved amendment to the FDP included a net increase of eight (8) residential units and 14 parking spaces over the development envelope

considered in the EIR. Accordingly, an addendum to the EIR was prepared and filed that provided analysis of whether or not the change in the project description would result in any new or increased significant environmental impacts. In summary, the addendum to the EIR did not identify any new or increased environmental impacts related to the proposed changes to the project description.

Staff has determined that a second addendum shall be considered by the Planning Commission in association with the currently proposed amendment to the FDP. As noted above, under CEQA Guidelines Sections 15162 and 15164, an addendum can be prepared if changes or additions to a previously certified EIR are necessary but the project has not changed substantially, the circumstances under which the project would occur have not changed substantially, and no new information demonstrates that any potential environmental impacts would be substantially more severe than previously demonstrated. The proposed amendment does not substantially change the land use intensity, massing or site planning of the project in a way that would potentially result in new or increased environmental impacts beyond those analyzed in the certified EIR. The previously certified EIR considered the complete demolition of the historic resource, including the façade, and found it to be a significant unavoidable impact. Preservation of the façade was not mandated under the EIR. Removal of the façade would not increase the severity of the already identified significant unavoidable impact (see attached Addendum).

**DESIGN AND RELATED ISSUES**

*Review by LPAB and DRC*

On January 14, 2008, the Landmarks Preservation Advisory Committee (LPAB) considered a proposed amendment to the approved project that would include demolition of the façade at 440-448 23rd Street. The façade is part of a building rated Cb+2+ on the Oakland Cultural Heritage Survey (OCHS) ("C" for secondary importance, "b+" for major importance contingency, "2+" for contributes to area of secondary importance or API). The building (but not the façade) is approved for demolition under the existing entitlements, and demolition is considered a significant and unavoidable environmental impact in the certified Environmental Impact Report (EIR). Staff recommended a condition of approval requiring payment of $68,750 into the City of Oakland Façade Improvement Program in exchange for demolition of the façade. At that time, the LPAB passed a motion "that the proposed demolition of the façade in exchange for the donation be denied. Additional study, including actual cost and schedule of the demolition, impacts, and what other mitigations exist on site as well as within the City shall be undertaken."

During discussion of the agenda item on January 14, 2008, LPAB members made additional requests beyond the direction provided in their motion. Specifically, members of the LPAB felt that the proposed compensation of $68,750 was not commensurate with respect to the estimated five million dollars that would be saved the developer by demolishing the façade at 440-448 23rd Street. LPAB members requested more analysis regarding the five million dollar figure than what was provided by the project proponent. In addition, members asked the project proponent to consider alternative engineering solutions to preserve the façade. Finally, LPAB members

requested that the project proponent consider preservation of other historic structures on site that are currently planned for demolition (there are seven historic resources on site, and five are planned for demolition. The project proponent has not responded to these discussion items.

In response to the LPAB's motion, however, the applicant has met with members of the Oakland Heritage Alliance (OHA) twice and with the City of Oakland Redevelopment Agency (ORA). Although the meetings with OHA did not result in agreement regarding acceptable compensation for loss of the facade at 440-448 23rd Street, both parties report meeting in good faith. The ORA however, has expressed an immediate need for funding of the Fox Theater project (located on Telegraph Avenue between 18th and 19th Streets). The Fox Theater project, sponsored by the ORA, includes preservation and renovation of the historic theater. Staff believes that providing the ORA with funding for the Fox Theater historic preservation project constitutes possible compensation consistent with the request of the LPAB.

Based on these discussions, staff floated the following draft condition of approval for consideration by the Design Review Committee (DRC) at their meeting on April 23, 2008:

> Prior to issuance of demolition permit for the historic façade located at 440-448 23rd Street, the applicant must provide [*dollar amount to be determined*] to the Oakland Redevelopment Agency to be spent specifically on historic preservation of the Fox Theater; At the discretion of the ORA, the amount may be discounted by up to 33% if the applicant agrees to provide full payment within two months of the date of this approval.

The proposed condition of approval provides incentive to provide needed funds to the Fox Theater historic preservation project in a timely manner. The incentive is based on an interest rate of 10% per year, and assumes that demolition permits would not be issued for up to three years. In addition, the proposed condition of approval provides clarity as to where funding would be directed.

The DRC declined to comment on or provide direction regarding the draft condition of approval at their meeting on April 23, 2008.

The LPAB considered the proposed project revision again at their meeting on May 12, 2008. At that time, the LPAB recommended denial of the proposed amendment and stated the following:

> The Landmarks Preservation Advisory Board prefers to see the facade retained (as originally approved); therefore they do not accept the proposed amendment (to demolish the façade at 440-448 23rd Street). Should the Planning Commission not take the Board's advice to retain the façade at 440-448 23rd Street, the Board makes the following recommendations and findings:
>
> 1) The amount of the financial contribution for the Historic Preservation of the Fox Theater should be $216,000. The method used to arrive at this number is explained below.

The original amount that project staff proposed for the financial contribution is $68,000, calculated using a City of Oakland Façade Grant formula based on a façade's linear footage. The linear footage of the façade proposed for demolition, 440-448 23rd Street, is approximately 243 feet. This indicates the formula used was approximately $280/linear foot.
The applicant has stated that to retain this historic façade, the cost of the entire project would increase by $5,000,000. Since the applicant is saving $5,000,000 on the entire project, the linear footage for the financial contribution should be based on the entire linear footage of the project, approximately 772 feet.
Based on the entire project or 772 linear feet x $280/foot, the amount is approximately $216,000.

2) The proposed demolition of the façade at 440-448 23rd Street shall be subject to the following condition of approval: *A demolition permit for the historic façade located at 440-448 23rd Street shall not be issued until issuance of a building permit for the core and shell of the approved project.*

3) The Board finds that the proposed façade demolition does not require further environmental review with respect to historic resources and that reliance on the addendum is appropriate.

4) Based on the mitigation of a minimum contribution of $216,000 to the Fox Theater rehabilitation project, the Board finds that the project meets the criteria of Planning Code Section 136.050.C2, in that the public benefits of the proposed project outweigh the benefit of retaining the original structure.

Staff has received the following comments throughout consideration of the proposed revision to the PUD (staff response is indicated in indented, italicized bullets below each comment):

Community Comments:

- The City should uphold and enforce existing conditions of approval.
  - *To date, the applicant has complied with the conditions of approval that apply to the land use entitlements for the planned project. The applicant is requesting a revision to project approvals via the appropriate process, request for consideration of a revision to the PUD and consideration by the Planning Commission.*
- The "Garage District" is distinct and desirable. Loss of this façade would constitute a considerable loss to a unique district and to the thriving "Art Murmur" community there.
  - *Staff concurs and therefore recommends a condition of approval requiring compensation for the loss of the resource.*
- Any compensation should be to the Façade Improvement Program and not directly to a private developer.

  - *Staff proposes a condition of approval that would compensate the City for the loss of the resource: either to a City-sponsored project such as the Fox Theatre or to the Façade Improvement Program.*
- The existing historic façade is attractive and contributes to the aesthetic ambiance of the area.
  - *Staff concurs and therefore recommends a condition of approval requiring compensation for the loss of the resource.*
- This neighborhood should not be torn down.
  - *Staff proposes a condition of approval that would compensate the City for the loss of the resource. However, if the Planning Commission agrees that the façade at 440-448 23rd Street should remain, they may vote to deny the proposed amendment.*
- Building should be retained until any planned development is imminent.
  - *Staff proposed a condition of approval that would restrict issuance of a demolition permit for the historic façade located at 440-448 23rd Street until issuance of a building permit for the core and shell of the approved project.*
- Compensation should be for $216,000.
  - Staff can only recommend a condition of approval be applied to a project for which there is a nexus. Staff proposes compensation in the amount of $68,750, based on the most recently used formula for calculating a similar fee for the Courthouse Condominium project. However, any condition of approval can be applied to a project to which the project proponent agrees.

DRC comments:

- Project should include stoops from sidewalk to ground-floor units.
  - *The applicant previously revised the project design to exclude stoops. Based on the unit plans, stoops would not provide primary access to units and would not be subject to extensive use. The stoops would potentially provide opportunities for illicit activity and littering. The current proposal brings the first level of units closer to the sidewalk elevation and includes windows facing the public right-of-way. This provides actual transparency between the public and private realms, while not increasing the risk of crime for the neighborhood.*
- Project should retain east-west building separation. Valley Street façade is too long.
  - *The applicant has redesigned the main building entry from Valley Street and put more emphasis on the secondary building entries on Valley Street to reduce the apparent length of this elevation. The project is designed to internalize the project parking and provide maximum connectivity between the private and public realms (with the first level of units close to the sidewalk elevation); this scheme does not allow for an east-west building separation.*
- Garage should be wrapped on Private Access Easement as well as on street sides.
  - *The applicant has redesigned the façade of the garage fronting the private access easement to integrate the appearance with the surrounding residential building design and to reduce the stark appearance of the garage use. The private access easement functions as a visual corridor for the public but is only physically*

*accessible to the project (for private access). The redesigned garage façade is adequate for a back-of-property location adjacent to the Private Access Easement, where it will only be seen internally to the project.*

- Private access easement should appear and perform like a public street.
  - *The Private Access Easement was approved in 2006 as internal project access and a visual corridor from the public right-of-way. The applicant is not proposing any changes to this easement at this time.*
- Open space is well designed.
- Smaller units are desirable for singles and seniors.
- Access to units from garage is convenient.
- Valley Street façade at southern end is very formal and needs to be softened to provide more residential appearance.
  - *The applicant has redesigned the southern façade along Valley Street to include arched windows and smaller openings. This softens the appearance of the façade and provides a smaller, more residential scale appropriate to the land use.*
- Tower on Broadway should be redesigned to have 20' setback from street and be more slender.
  - *The tower on Broadway was approved in 2006. The applicant is not proposing any changes to the tower at this time.*
- DRC comments should be addressed prior to Planning Commission consideration.
  - *The applicant has elected to revise the project design in response to some of the comments provided by the DRC. The project application is complete and the applicant seeks a decision by the Planning Commission.*

*Design*

The design of Parcel B successfully breaks up the buildings and elevations by incorporating different materials and styles to make the different portions of the buildings appear as if they were constructed separately over a period of time. The proposed architectural styles include a combination of traditional and modern design elements, which is compatible with the mix of styles in the surrounding area. The proposed exterior building materials include stucco, brick veneer, balconies and shading devices, and a variety of window types. Proposed colors include a range of earth tones as well as muted red, orange, and yellow tones.

Staff generally believes that the proposed design is attractive, well modulated, and compatible with the surrounding area. In addition, staff believes that the adopted conditions of approval adequately address outstanding design issues such as refinement of exterior colors and materials, design of usable open space, window selection and details, and ground floor design and details.

The applicant also requests approval of a minor variance to allow less open space than is required in the underlying zoning district. The proposed open space is well-designed an modulated, complies with the S-17 zoning regulations that apply to the adjacent Parcel A development and Central Business District.

*Historic Façade*

The existing façade located at 440-448 23rd Street is a feature of a historic building. The EIR identified the demolition of the building, even whilst retaining the façade, as a significant impact that could not be mitigated to a less-than-significant level. The current proposal to remove the façade, when considered under the CEQA could not result in any worse impact than that previously analyzed. Therefore, this change to the project would not result in any need for supplemental environmental review under CEQA. However, staff does find that the change would constitute the loss of a historic feature beyond that which was previously approved. Therefore, staff believes that, should this change be approved, a condition of approval should be applied to the amendment requiring compensation for the irrevocable loss of the historic façade.

Staff previously recommended to the LPAB consideration of compensation in the amount of $68,750 for demolition of the historic façade, based on the most recently used formula for calculating a similar fee for the Courthouse Condominium project. Conditions of approval can only be applied to a project for which there is a nexus, or connection. Therefore, staff is not able at this time to provide any further guidance regarding the specific amount of compensation that a decision-making body may seek. However, any condition of approval can be applied to a project to which the project proponent agrees.

## RECOMMENDATION

Staff recommends that the Planning Commission:

1) Approve the Broadway-West Grand Mixed-Use Project EIR Addendum #2 (SCH No. 2004032052) subject to the attached finding.
2) Approve a minor variance to allow a reduced quantity of open space subject to the attached findings.
3) Approve the proposed second amendment to PUDF03553 subject to the attached findings and adopted conditions of approval, and adopt the following additional conditions of approval:
   a. *Condition 30*: Prior to issuance of demolition permit for the historic façade located at 440-448 23rd Street, the applicant shall provide a financial contribution of $68,750 *[or an amount to be determined by the Planning Commission and agreed upon by the applicant]* to the Oakland Redevelopment Agency to be spent specifically on historic preservation of the Fox Theater; Should the ORA elect not to accept this contribution, the contribution would be directed to the Façade Improvement Program.
   b. *Condition 31*: A demolition permit for the historic façade located at 440-448 23rd Street shall not be issued until issuance of a building permit for the core and shell of the approved project.

Prepared by:

Catherine Payne
Planner IV

Approved by:

GARY V. PATTON
Deputy Director, Planning & Zoning

**ATTACHMENTS:**

**A. PROJECT PLANS**

**B. STAFF REPORT DATED NOVEMBER 1, 2006**

**C. STAFF REPORT DATED DECEMBER 1, 2004 (INCLUDING EIR FOR PLANNING COMMISSIONERS; EIR AVAILABLE TO PUBLIC AT 250 FRANK OGAWA PLAZA, SUITE 3315 OR ONLINE HTTP://WWW.OAKLANDNET.COM/GOVERNMENT/CEDA/REVISED/PLANNINGZONING/MAJORPROJECTSSECTION/ENVIRONMENTALDOCUMENTS.HTML)**

**D. ADDENDUM #2**

**E. DESIGN REVIEW COMMITTEE REPORT, DATED APRIL 23, 2008**

**F. LPAB REPORTS, DATED MAY 12, 2008 AND JANUARY 14, 2008**

# ATTACHMENT A: PROJECT PLANS

# ATTACHMENT B: STAFF REPORT DATED NOVEMBER 1, 2006

# ATTACHMENT C: STAFF REPORT DATED DECEMBER 1, 2004

**(INCLUDING EIR FOR PLANNING COMMISSIONERS; EIR AVAILABLE TO PUBLIC AT 250 FRANK OGAWA PLAZA, SUITE 3315 OR ONLINE HTTP://WWW.OAKLANDNET.COM/GOVERNMENT/CEDA/REVISED/PLANNINGZONING/MAJORPROJECTSSECTION/ENVIRONMENTALDOCUMENTS.HTML)**

# ATTACHMENT D: EIR ADDENDUM #2

# ATTACHMENT E:
# DESIGN REVIEW COMMITTEE REPORT,
# DATED APRIL 23, 2008

# ATTACHMENT F:
# LPAB REPORTS,
# DATED MAY 12, 2008 AND JANUARY 14, 2008

## CONDITIONS OF APPROVAL

Project conditions of approval:
The amended Final Development Permit PUDF03553 is subject to these Conditions of Approval as directed by the City Planning Commission at the November 1, 2006 and June 4, 2008 meetings:

**1. Approved Use**

a. ***Ongoing***
This action by the City Planning Commission ("this Approval") includes the approvals set forth below. This Approval includes:

1. Amendment to Final Development Permit PUDF03553; and
2. A Conditional Use Permit for increased density in a highrise development consistent with the provisions of OMC Section 17.106.040; and
3. Design Review Approval; and
4. Variance for non-standard driveway width and separation.

***b. Ongoing.***
The project shall be constructed and operated in accordance with the authorized use as described in this staff report and the plans dated October 18, 2006 and as amended by the following conditions of approval. Any additional uses other than those approved with this permit, as described in the project description, will require a separate application and approval.

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

***a. Ongoing through project completion.***
These approvals shall become effective upon satisfactory compliance with these conditions. These approvals for the project site shall expire on November 1, 2008 unless actual construction of the Phase I of the project has begun under necessary permits by this date. Upon initiation of construction of prior phases, Phase II building permits shall be obtained by November 1, 2010, Phase III building permits shall be obtained by November 1, 2012, Phase IV building permits shall be obtained by November 1, 2014. Upon written request and payment of appropriate fees prior to the expiration of the approvals, the Zoning Administrator may grant a one-year extension of these dates for each phase, with additional extensions subject to approval by the Planning Commission.

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

i. A site security and safety plan to assure that grading and construction activities are adequately secured during off-work hours.
ii. A fire safety management plan for all phases of work, including provisions for access, water, and other protection measures during grading and construction activities.
iii. A construction period litter/debris control plan to ensure the site and surrounding area is kept free of litter and debris.

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

Final inspection and a certificate of occupancy for any unit or other structure within a phase, as set forth above, shall not be issued until (a) all landscaping and on and off-site improvements for that phase are completed in accordance with this Approval, or (b) until cash, an acceptably rated bond, a certificate of deposit, an irrevocable standby letter of credit or other form of security (collectively "security"), acceptable to the City Attorney, has been posted to cover all costs of any unfinished work related to landscaping and public improvements plus 25 percent within that phase, unless already secured by a subdivision improvement agreement approved by the City. For purposes of these Conditions of Approval, a certificate of occupancy shall mean a final certificate of occupancy, not temporary or conditional, except as the City determines may be necessary to test utilities and services prior to issuance of the final certificate of occupancy.

**3. Scope of This Approval**

***a. Ongoing.***

The project is approved pursuant to the Planning Code only and shall comply with all other applicable codes and requirements imposed by other affected departments, including but not limited to the Building Services Division and the Fire Marshal. Minor changes to the approvals may be approved administratively by the Planning Director; major changes to the approvals, shall be subject to review and approval by the City Planning Commission.

**4. Mitigation Monitoring and Reporting Program**

***a. Ongoing.***

The following mitigation measures shall be incorporated into the project. The measures are taken directly from the Environmental Impact Report (EIR), approved in December 2004, for the Broadway-West Grand Mixed-Use Project and modified per the EIR Addendum approved on October 4, 2006. For each measure, this Mitigation Monitoring and Reporting Program (MMRP) indicates the entity (generally, an agency or department within the City of Oakland) that is responsible for carrying out the measure ("Responsible Implementing Entity"); the actions necessary to ensure compliance with the applicable measure ("Monitoring Action(s)") and the entity responsible for

monitoring this compliance ("Monitoring Responsibility"); and the time frame during which monitoring must occur ("Monitoring Timeframe").

**B. Transportation, Circulation, and Parking**

**Impact B.2:** Traffic generated by the project would affect traffic levels of service at local intersections under future (2010) conditions.

**Mitigation Measure B.2:** The project sponsor shall contribute its fair share to alteration of the traffic signal cycle length and optimization of the traffic signal timing at the signalized intersection of West Grand Avenue / Telegraph Avenue. Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections that are part of signal systems on West Grand Avenue and Telegraph Avenue.

The project sponsor shall contribute its fair share toward the cost of optimization of all traffic signals on West Grand Avenue between San Pablo Avenue and Broadway, and on Telegraph Avenue between Broadway and West Grand Avenue. The project volumes would comprise about 0.6 percent of the total intersection a.m. peak-hour traffic volumes, and about 2.3 percent of the increase in traffic volume during the a.m. peak hour between existing conditions and 2010 volumes.

Given that the project sponsor is responsible for only a portion of this mitigation measure, implementation of this set of improvements will be funded fully by one or a combination of the following means:

a. Prior to project completion the project sponsor shall contribute to the City its fair share of the cost of signalization improvements to address cumulative impacts of the project. Prior to payment of the contributions the City will create a mechanism to receive the fair share contributions from the project sponsor. The City Public Works Agency shall implement the measures as necessary to address cumulative impacts of the project.

b. Prior to project completion the project sponsor shall fully fund the costs of the signalization improvements and shall be reimbursed through other fair-share contributions as future projects that exceed the City's thresholds of significance occur. Prior to the time the project sponsor provides these funds, the City and the project sponsor will create a mechanism for this reimbursement.

**Responsible Implementing Entity:** Oakland Public Works Agency, Traffic Engineering Division

**Monitoring Action(s):** Public Works Agency, Traffic Engineering Division to determine cost of signal optimization; Oakland Community and Economic Development Agency (CEDA), Planning Division to determine fair-share contribution to this cost and ensure that project sponsor funds this share.

**Monitoring Responsibility:** CEDA, Planning Division; Public Works Agency, Traffic Engineering Division

**Monitoring Timeframe:** Prior to issuance of certificate of occupancy for Parcel B (north of Grand Avenue).

**Impact B.3:** Traffic generated by the project would affect traffic levels of service at local intersections under cumulative (2025) conditions.

**Mitigation Measure B.3a:** The project sponsor shall contribute its fair share to alteration of the traffic signal cycle length and optimization of the traffic signal timing at the signalized intersection of West Grand Avenue / Telegraph Avenue. Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections that are part of signal systems on West Grand Avenue and Telegraph Avenue.

The project sponsor shall contribute its fair share toward the cost of optimization of all traffic signals on West Grand Avenue between San Pablo Avenue and Broadway, and on Telegraph Avenue between Broadway and West Grand Avenue. The project would comprise about 0.5 percent of the a.m. peak hour volume and 1.2 percent of the p.m. peak hour volume at the West Grand Avenue / Telegraph Avenue intersection in the Year 2025 cumulative conditions. The proposed project would contribute about 1.4 percent in the a.m. peak hour and 3.4 percent in the p.m. peak hour to the traffic volume increase between the existing and Year 2025 cumulative conditions.

Given that the project sponsor is responsible for only a portion of this mitigation measure, implementation of this set of improvements will be funded fully by one or a combination of the following means:

a. Prior to project completion the project sponsor shall contribute to the City its fair share of the cost of signalization improvements to address cumulative impacts of the project. Prior to payment of the contributions the City will create a mechanism to receive the fair share contributions from the project sponsor. The City Public Works Agency shall implement the measures as necessary to address cumulative impacts of the project.

b. Prior to project completion the project sponsor shall fully fund the costs of the signalization improvements and shall be reimbursed through other fair-share contributions as future projects that exceed the City's thresholds of significance occur. Prior to the time the project sponsor provides these funds, the City and the project sponsor will create a mechanism for this reimbursement.

**Responsible Implementing Entity:** Oakland Public Works Agency, Traffic Engineering Division

**Monitoring Action(s):** Public Works Agency, Traffic Engineering Division to determine cost of signal optimization; Oakland Community and Economic Development Agency (CEDA), Planning Division to determine fair-share contribution to this cost and ensure that project sponsor funds this share.

**Monitoring Responsibility:** CEDA, Planning Division; Public Works Agency, Traffic Engineering Division

**Monitoring Timeframe:** Prior to issuance of certificate of occupancy for Parcel B (north of Grand Avenue).

**Mitigation Measure B.3b:** The project sponsor shall contribute its fair share to alteration of the traffic signal cycle length, optimization of the traffic signal timing, and provision of protected left turn phases on the northbound and southbound approaches, at the signalized intersection of Broadway / West Grand Avenue. Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections that are part of signal system on West Grand Avenue.

The project sponsor shall contribute its fair share toward the cost of optimization of all traffic signals on West Grand Avenue between San Pablo Avenue and Broadway, and on Telegraph Avenue between Broadway and West Grand Avenue. The project volume would comprise about 1.1 percent of the p.m. peak hour intersection volume at the Broadway / West Grand Avenue intersection in the Year 2025 cumulative conditions. The proposed project would contribute about 4.2 percent of the cumulative traffic volume increase between the existing and Year 2025 cumulative conditions.

Given that the project sponsor is responsible for only a portion of this mitigation measure, implementation of this set of improvements will be funded fully by one or a combination of the following means:

a. Prior to project completion the project sponsor shall contribute to the City its fair share of the cost of signalization improvements to address cumulative impacts of the project. Prior to payment of the contributions the City will create a

mechanism to receive the fair share contributions from the project sponsor. The City Public Works Agency shall implement the measures as necessary to address cumulative impacts of the project.

b. Prior to project completion the project sponsor shall fully fund the costs of the signalization improvements and shall be reimbursed through other fair-share contributions as future projects that exceed the City's thresholds of significance occur. Prior to the time the project sponsor provides these funds, the City and the project sponsor will create a mechanism for this reimbursement.

**Responsible Implementing Entity:** Oakland Public Works Agency, Traffic Engineering Division

**Monitoring Action(s):** Public Works Agency, Traffic Engineering Division to determine cost of signal optimization; Oakland Community and Economic Development Agency (CEDA), Planning Division to determine fair-share contribution to this cost and ensure that project sponsor funds this share.

**Monitoring Responsibility:** CEDA, Planning Division; Public Works Agency, Traffic Engineering Division

**Monitoring Timeframe:** Prior to issuance of certificate of occupancy for Parcel B (north of Grand Avenue).

**Mitigation Measure B.3c:** The project sponsor shall contribute its fair share to installation of traffic signals at the unsignalized intersection of 24th Street / Telegraph Avenue. Installation of traffic signals shall include optimizing signal phasing and timing (i.e., allocation of green time for each intersection approach) in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.

The project sponsor shall contribute its fair share toward the cost of installation of the traffic signal. The project volume would comprise about 1.6 percent of the p.m. peak hour intersection volume at the 24$^{th}$ Street (westbound) / Telegraph Avenue intersection in the Year 2025 cumulative conditions. The proposed project would contribute about 4.8 percent of the cumulative traffic volume increase between the existing and Year 2025 cumulative conditions.

Given that the project sponsor is responsible for only a portion of this mitigation measure, implementation of this set of improvements will be funded fully by one or a combination of the following means:

a. Prior to project completion the project sponsor shall contribute to the City its fair share of the cost of signalization improvements to address cumulative impacts of

the project. Prior to payment of the contributions the City will create a mechanism to receive the fair share contributions from the project sponsor. The City Public Works Agency shall implement the measures as necessary to address cumulative impacts of the project.

b. Prior to project completion the project sponsor shall fully fund the costs of the signalization improvements and shall be reimbursed through other fair-share contributions as future projects that exceed the City's thresholds of significance occur. Prior to the time the project sponsor provides these funds, the City and the project sponsor will create a mechanism for this reimbursement.

**Responsible Implementing Entity:** Oakland Public Works Agency, Traffic Engineering Division

**Monitoring Action(s):** Public Works Agency, Traffic Engineering Division to determine cost of traffic signal installation; Oakland Community and Economic Development Agency (CEDA), Planning Division to determine fair-share contribution to this cost and ensure that project sponsor funds this share.

**Monitoring Responsibility:** CEDA, Planning Division; Public Works Agency, Traffic Engineering Division

**Monitoring Timeframe:** Prior to issuance of certificate of occupancy for Parcel B (north of Grand Avenue).

**Impact B.11:** Project construction would affect traffic flow and circulation, parking, and pedestrian safety.

**Mitigation Measure B.11:** The project sponsor and construction contractor shall meet with the Traffic Engineering Division of the Oakland Public Works Agency and other appropriate City of Oakland agencies to determine traffic management strategies to reduce, to the maximum extent feasible, traffic congestion and the effects of parking demand by construction workers during construction of this project and other nearby projects that could be simultaneously under construction. The project sponsor shall develop a construction management plan for review and approval by the City Traffic Engineering Division. The plan shall include at least the following items and requirements (a) a set of comprehensive traffic control measures, including truck scheduling to avoid peak traffic hours, detour signs and other warning devices as needed, lane closure procedures, and designated construction routes; (b) identification of any transit stop relocations, if necessary; (c) provisions for construction worker parking management to ensure no impacts to on-street parking; (d) identification of parking eliminations and any relocation of parking for employees and public parking during construction; (e) notification procedures for adjacent property owners and public safety personnel regarding deliveries, detours, and lane closures; (f) provisions for

accommodation of pedestrian flow; (g) location of construction staging areas for materials, equipment and vehicles; (h) identification of haul routes for movement of construction vehicles that would minimize impacts on vehicular and pedestrian traffic, circulation and safety; and provision for monitoring surface streets used for haul routes so that any damage and debris attributable to the haul trucks can be identified and corrected by the project sponsor ; and (i) a process for responding to, and tracking, complaints pertaining to construction activity, including identification of an onsite complaint manager.

**Responsible Implementing Entity:** Oakland Public Works Agency, Traffic Engineering Division

**Monitoring Action(s):** Public Works Agency, Traffic Engineering Division to meet with project sponsor to discuss construction-period traffic management and shall review and approve construction management plan submitted by project sponsor. Traffic Engineering Division shall notify Oakland Community and Economic Development Agency (CEDA), Planning Division, of acceptance of construction management plan when plan is determined adequate.

**Monitoring Responsibility:** CEDA, Planning Division; Public Works Agency, Traffic Engineering Division

**Monitoring Timeframe:** Prior to issuance of each demolition, grading, or building permit.

**C. Air Quality**

**Impact C.1:** Activities associated with demolition, site preparation and construction would generate short-term emissions of criteria pollutants, including suspended and inhalable particulate matter and equipment exhaust emissions.

**Mitigation Measure C.1a:** During construction, the project sponsor shall require the construction contractor to implement the following measures required as part of BAAQMD's basic dust control procedures required for sites of less than four acres. These include (a) water all active construction areas at least twice daily; (b) cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard; (c) pave , apply water three times daily or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites; (d) sweep daily (with water sweepers) of all paved access roads, parking areas and staging area at construction sites if visible soil material is observed; and (e) sweep daily (with water sweepers) if visible soil material is carried onto adjacent public streets.

**Responsible Implementing Entity:** Oakland Community and Economic Development Agency (CEDA), Building Services Division

**Monitoring Action(s):** CEDA, Building Services Division shall conduct spot-checks as deemed necessary throughout construction period.

**Monitoring Responsibility:** CEDA, Building Services Division

**Monitoring Timeframe:** Throughout the construction period.

**Mitigation Measure C.1b:** In accordance with standard City practices, to minimize water quality impacts, the project sponsor shall be required to comply with applicable standards and regulations of the City of Oakland. In addition, the following standard measures shall be implemented to avoid impacts related to stormwater or water quality: grading of unpaved areas shall be done in such a manner as to control surface drainage and redirect surface water away from areas of activity during excavation and construction, and the project shall be required to comply with provisions of the Clean Water Act, if applicable, with regard to preparing a storm water discharge plan.

**Responsible Implementing Entity:** Project Sponsor; Oakland Public Works Agency, Environmental Services Division

**Monitoring Action(s):** Environmental Services Division shall review final grading, excavation, and building plans to ensure compliance with applicable standards and regulations. Environmental Services Division shall conduct spot-checks as deemed necessary throughout construction period.

**Monitoring Responsibility:** Public Works Agency, Environmental Services Division

**Monitoring Timeframe:** Environmental Services Division shall review plans for compliance prior to issuance of any grading, excavation, or building permits. Environmental Services Division shall verify compliance with applicable rules and regulations throughout construction period.

Standard Conditions of Approval currently require equal or more stringent protections related to water quality than those identified above, as follows:

Condition 1: Prior to and during project demolition, grading and construction activities, the project shall comply with all City of Oakland Grading Permit requirements and all NPDES Permit requirements as follows:

*Grading Plan, Erosion and Sedimentation Control Plan, and Drainage Plan*

City of Oakland Municipal Code Chapter 13.16 and Section 15.04.780 require that the project applicant prepare a grading plan for the proposed project. Because during project construction the volume of the excavated fill material would exceed 50 cubic yards and involve depths of excavation that exceed five feet, the project sponsor must prepare a grading plan, erosion and sedimentation control plan, and drainage plan.

- The required grading plan shall include drainage, erosion, and sediment control measures and incorporate construction BMPs to prevent pollutants from entering the storm sewer to the maximum extent practicable.
- The grading plan shall discuss existing, temporary, and final drainage facilities. Erosion and sediment control must combine interim and permanent measures to minimize erosion, stormwater runoff, and sedimentation. Such measures, at a minimum, shall include provision of filter materials at the catch basin to prevent debris or dirt from flowing into the storm drain system. According to the City Public Works Agency, such filter materials shall be applied to batch basins within private areas. As proposed by the project, filter protection at catch basins and inlets will include filter fabric covering the grates, straw bales or wattles circling the inlet, or some combination of these and/or other measures.
- The plan shall specify that, after construction is complete, the sponsor shall ensure that the storm drain system shall be inspected and that the sponsor shall clear the system of any debris or sediment.
- Preparation and implementation of the grading plan would include preparation of the construction stormwater pollution prevention plan (SWPPP) (discussed below).

*NPDES Permit and Construction Stormwater Pollution Prevention Plan (SWPPP)*

The project sponsor shall apply for and comply with all requirements of the ACCWP NPDES General Construction Permit. As required by the permit:

- The sponsor shall prepare a SWPPP in coordination with a project's grading plan. The SWPPP shall describe erosion and sedimentation control measures as recommended in the California Stormwater Best Management Practice Handbook (Stormwater Quality Task Force, 2003).
- The project sponsor shall prepare the SWPPP and submit a notice of intent to the RWQCB prior to construction activities, as required by the RWQCB. Implementation of the SWPPP shall start with the commencement of construction and continue though the completion of the project.
- At a minimum, the SWPPP shall include a description of construction materials, practices, and equipment storage and maintenance; a list of pollutants likely to contact stormwater; site-specific erosion and sedimentation control practices; a list of provisions to eliminate or reduce discharge of materials to stormwater; best management practices (BMPs), and inspection and monitoring program.
- After construction is completed, the project sponsor shall submit a notice of termination to the RWQCB.

Condition 2: The project sponsor shall implement site design/landscape characteristics as feasible, which maximize infiltration (where appropriate), provide retention or detention, slow runoff, and minimize impervious land coverage, so that post-development pollutant loads from the site have been reduced to maximum extent possible. Where feasible, the project shall introduce measures to help reduce the rate and volume of stormwater runoff.

Condition 3: For projects which will discharge directly to water bodies listed as impaired (under section 303(d) of CWA), ensure that post-project runoff does not exceed pre-project levels for such pollutants through implementation of the control measures addressed in the NPDES C.3 provision, to the maximum extent practicable.**D. Noise**

**Impact D.1:** Construction activities would intermittently and temporarily generate noise levels above existing ambient levels in the project vicinity.

**Mitigation Measure D.1a:** The project sponsor shall require construction contractors to limit standard construction activities as required by the City Building Department. Such activities are generally limited to between 7:00 a.m. and 7:00 p.m. Monday through Friday, with pile driving and/or other extreme noise generating activities greater than 90 dBA limited to between 8:00 a.m. and 4:00 p.m. Monday through Friday, with no extreme noise generating activity permitted between 12:30 and 1:30 p.m. No construction activities shall be allowed on weekends until after the building is enclosed, without prior authorization of the Building Services Division, and no extreme noise generating activities shall be allowed on weekends and holidays.

**Responsible Implementing Entity:** Project Sponsor; Oakland Community and Economic Development Agency (CEDA), Building Services Division

**Monitoring Action(s):** Project sponsor shall prepare and submit for review and approval a site-specific construction noise control plan.

**Monitoring Responsibility:** CEDA, Building Services Division

**Monitoring Timeframe:** Review and approve noise control plan prior to the issuance of demolition, grading, excavation, or building permits. Monitor and respond to noise complaints throughout construction period.

**Mitigation Measure D.1b:** To reduce daytime noise impacts due to construction, the project sponsor shall require construction contractors to implement the following measures (a) Equipment and trucks used for project construction shall employ 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. 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 can lower noise levels from the exhaust by up to about 10 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.

**Responsible Implementing Entity:** Project Sponsor; Oakland Community and Economic Development Agency (CEDA), Building Services Division

**Monitoring Action(s):** Project sponsor shall prepare and submit for review and approval a site-specific construction noise control plan.

**Monitoring Responsibility:** CEDA, Building Services Division

**Monitoring Timeframe:** Review and approve noise control plan prior to the issuance of demolition, grading, excavation, or building permits. Monitor and respond to noise complaints throughout construction period.

> **Mitigation Measure D.1c:** To further mitigate potential other extreme noise generating construction impacts, a set of site-specific noise attenuation measures shall be completed under the supervision of a qualified acoustical consultant. Prior to commencing construction, a plan for such measures shall be submitted for review and approval by the City to ensure that maximum feasible noise attenuation will be achieved. These attenuation measures shall include as many of the following control strategies as feasible: (a) Erect temporary plywood noise barriers around the construction site, particularly along the western boundary along Valley Street to shield the adjacent multi-family residential buildings; (b) implement "quiet" pile-driving technology (such as pre-drilling of piles, the use of more than one pile-driver to shorten the total pile-driving duration), where feasible, in consideration of geotechnical and structural requirements and conditions; (c) use noise control blankets on the building structure as the building is erected to reduce noise emission from the site; (d) evaluate the feasibility of noise control at the receivers by temporarily improving the noise reduction capability of adjacent buildings; and (e) monitor the effectiveness of noise attenuation measures by taking noise measurements.

**Responsible Implementing Entity:** Project Sponsor; Oakland Community and Economic Development Agency (CEDA), Building Services Division

**Monitoring Action(s):** Project sponsor shall prepare and submit for review and approval a site-specific construction noise control plan.

**Monitoring Responsibility:** CEDA, Building Services Division

**Monitoring Timeframe:** Review and approve noise control plan prior to the issuance of demolition, grading, excavation, or building permits. Monitor and respond to noise complaints throughout construction period.

> **Mitigation Measure D.1d:** Along with the submission of construction documents, the project sponsor shall submit to the City Building Department a list of measures to respond to and track complaints pertaining to construction noise. These measures shall include: (a) a procedure for notifying the City Building Division staff and Oakland Police Department; (b) a plan for posting signs on-site pertaining to permitted construction days

and hours and complaint procedures and who to notify in the event of a problem; (c) a listing of telephone numbers (during regular construction hours and off-hours); (d) the designation of an on-site construction complaint manager for the project; (e) notification of neighbors within 300 feet of the project construction area at least 30 days in advance of pile-driving or other extreme noise-generating activities about the estimated duration of the activity; and (f) a preconstruction meeting shall be held with the job inspectors and the general contractor/on-site project manager to confirm that noise mitigation and practices (including construction hours, neighborhood notification, posted signs, etc.) are completed.

**Responsible Implementing Entity:** Project Sponsor; Oakland Community and Economic Development Agency (CEDA), Building Services Division

**Monitoring Action(s):** Project sponsor shall prepare and submit for review and approval a site-specific construction noise control plan.

**Monitoring Responsibility:** CEDA, Building Services Division

**Monitoring Timeframe:** Review and approve noise control plan prior to the issuance of demolition, grading, excavation, or building permits. Monitor and respond to noise complaints throughout construction period.

**E. Cultural Resources**

**Impact E.1:** Construction of the proposed project could cause substantial adverse changes to the significance of currently unknown cultural resources at the site, potentially including an archaeological resource pursuant to CEQA Guidelines Section 15064.5 or CEQA Section 21083.2(g), or the disturbance of any human remains, including those interred outside of formal cemeteries.

**Mitigation Measure E.1a:** An archival cultural resource evaluation shall be implemented prior to the start of construction or other ground-disturbing activities to identify whether historic or unique archaeological resources exist within the project site. The archival cultural resource evaluation, or "sensitivity study," shall be conducted by a cultural resource professional approved by the City who meets the Secretary of the Interior's Professional Qualifications Standards for Prehistoric and Historical Archaeology.

The purpose of the archival cultural resource evaluation is to: (1) identify documentation and studies to determine the presence and location of potentially significant archaeological deposits; (2) determine if such deposits meet the definition of a historical resource under CEQA Guidelines Section 15064.5 or a unique archaeological resource under CEQA Section 21083.2(g); (3) guide additional archaeological work, if warranted, to recover the information potential of such deposits; and (4) define an archaeological monitoring plan, potentially including pre-construction subsurface archaeological investigation if warranted.

If excavation is the only feasible means of data recovery, such excavation shall be in accord with the provisions of CEQA Guidelines Section 15126.4(b)(3)(C). Any additional archaeological work and or monitoring shall be pursuant to a plan approved by the City. If a pre-constructing testing program is deemed necessary by the qualified professional as a result of the archival study, it shall be guided by the archival study and shall use a combination of subsurface investigation methods (including backhoe trenching, auguring, and archaeological excavation units, as appropriate).

Representatives of established local Chinese-American organizations (including the Chinese Historical Society of America and the Oakland Asian Cultural Center) shall be invited to participate in a focused community review of the archival cultural resource evaluation prior to any subsequent recovery of potential resources or prior to the start of construction, whichever is earlier. The City shall consider the community comments in its review and approval of any plan for additional archaeological work or monitoring.

Should an archaeological artifact be discovered on-site during project construction, all activities within a 50-foot radius 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 sponsor and the qualified archaeologist shall meet to determine the appropriate avoidance measures or other appropriate mitigation, subject to approval by the City of Oakland, which shall assure implementation of appropriate mitigation 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.

If historic or unique archaeological resources associated with the Chinese community are identified within the project site and are further determined to be unique, the City shall consult with representatives of an established local Chinese-American organization(s) regarding the potential use of the archaeological findings for interpretive purposes.

**Responsible Implementing Entity:** Project Sponsor; Oakland Community and Economic Development Agency (CEDA), Planning Division

**Monitoring Action(s):** Project sponsor shall prepare and submit to Planning Division for review and approval an archival cultural resource evaluation. Project sponsor shall contact qualified archaeologist in the event that artifacts are discovered during construction. Archaeologist shall consult with Planning Division and with representatives of local Chinese-American community regarding any such discovery and shall undertake data recovery as warranted based on the nature of the discovery.

**Monitoring Responsibility:** CEDA, Planning Division

**Monitoring Timeframe:** Review and accept archival cultural resource evaluation prior to the start of any ground-disturbing activities. Direct data recovery, as applicable, in the event that artifacts are discovered during the construction period.

**Mitigation Measure E.1b:** In the event that human skeletal remains are uncovered at the project site during construction or ground-breaking activities, all work would immediately halt and the Alameda County Coroner would be contacted to evaluate the remains, and follow 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 will 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 will cease within a 50-foot radius 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.

**Responsible Implementing Entity:** Project Sponsor; Oakland Community and Economic Development Agency (CEDA), Planning Division; Alameda County Coroner; Native American Heritage Commission

**Monitoring Action(s):** Project sponsor shall contact coroner in the event that human remains are encountered. Agencies shall respond to any such discovery as applicable.

**Monitoring Responsibility:** CEDA, Planning Division; Alameda County Coroner; Native American Heritage Commission

**Monitoring Timeframe:** Throughout construction period.

**Impact E.2:** The proposed project may adversely affect unidentified paleontological resources at the site.

**Mitigation Measure E.2:** The project sponsor shall notify a qualified paleontologist of unanticipated discoveries, who 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. In the event of an unanticipated discovery of a breas, true, and/or trace fossil 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 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.

**Responsible Implementing Entity:** Project Sponsor; Oakland Community and Economic Development Agency (CEDA), Planning Division

**Monitoring Action(s):** Project sponsor shall contact qualified paleontologist in the event that fossils are discovered during construction. Paleontologist shall direct data recovery, as warranted based on the discovery.

**Monitoring Responsibility:** CEDA, Planning Division

**Monitoring Timeframe:** Direct data recovery, as applicable, in the event that fossils are discovered during the construction period.

**Impact E.3:** The project would result in demolition or substantial alteration of seven buildings that qualify as historic resources, as defined in Section 15064.5. These buildings include: 1) 2335 Broadway, 2) 2343 Broadway; 3) 2345 Broadway, 4) 2366-2398 Valley Street, 5) 439 23rd Street, 6) 440-448 23rd Street, and 7) 441-449 23rd Street.

**Mitigation Measure E.3a:** Record each of the seven affected historic resources in accordance with procedures of the Historic American Building Survey (HABS) through measured drawings, large-format photographs and written histories in a combined document, to be archived locally at the Oakland History Room (OHR) of the Oakland Public Library with copies to OCHS and the Northwest Information Center (NWIC). Portions of the metal facades on 2335-2345 Broadway shall be selectively demolished to determine if any original fabric from the 1920s exists behind them, as visual evidence suggests. If the selective demolition reveals sufficient evidence of historic fabric, all metal facades shall be carefully removed and all original facades photographed for the HABS documentation effort. If no original fabric exists, these buildings shall be photographed as they currently appear.

**Responsible Implementing Entity:** Project Sponsor; Oakland Community and Economic Development Agency (CEDA), Planning Division; Oakland Cultural Heritage Survey

**Monitoring Action(s):** Project sponsor shall contract with qualified architectural historian or preservation architect to prepare historical documentation and shall submit the documentation as specified in the mitigation measure.

**Monitoring Responsibility:** CEDA, Planning Division

**Monitoring Timeframe:** Verify that appropriate documentation has been prepared prior to the issuance of demolition permit(s).

**Mitigation Measure E.3b:** Prepare a history of the development of automobile sales and repair in Oakland, and the role played by the buildings on the project site in that history, that incorporates oral history, documentary research, and architectural information; this history could utilize non-written media and production techniques, including video photography. The resulting report, in brochure or other form, shall be made available at local libraries and museums.

**Responsible Implementing Entity:** Project Sponsor; Oakland Community and Economic Development Agency (CEDA), Planning Division; Oakland Cultural Heritage Survey

**Monitoring Action(s):** Project sponsor shall contract with qualified architectural historian or preservation architect to prepare historical documentation and shall submit the documentation as specified in the mitigation measure.

**Monitoring Responsibility:** CEDA, Planning Division

**Monitoring Timeframe:** Verify that appropriate documentation has been prepared prior to the issuance of demolition permit(s).

**Mitigation Measure E.3c:** Incorporate interpretive elements <u>including real historic material from the site where feasible</u>, such as signs and placards that describe the history of the area and the historic buildings to be demolished, into public areas and street frontages proposed as part of the project.

**Responsible Implementing Entity:** Project Sponsor; Oakland Community and Economic Development Agency (CEDA), Planning Division; Oakland Cultural Heritage Survey

**Monitoring Action(s):** Review building plans for evidence of incorporation of interpretative elements in the project design.

**Monitoring Responsibility:** CEDA, Planning Division

**Monitoring Timeframe:** Prior to the issuance of building permit(s).

**Mitigation Measure E.3d:** Salvage architectural elements from the historic buildings to be demolished, including hardware, doors, paneling, fixtures, and equipment, and incorporate these elements into new construction <u>on the project site</u> where feasible.

**Responsible Implementing Entity:** Project Sponsor; Oakland Community and Economic Development Agency (CEDA), Planning Division; Oakland Cultural Heritage Survey

**Monitoring Action(s):** Project sponsor shall contract with qualified architectural historian or preservation architect to conduct appropriate salvage of architectural elements and shall prepare report documenting same and addressing how elements will be incorporated for submittal to Planning Division.

**Monitoring Responsibility:** CEDA, Planning Division

**Monitoring Timeframe:** Verify that appropriate documentation has been prepared prior to the issuance of demolition permit(s).

> **Mitigation Measure E.3e:** Curate all materials, notes, and reports at the Oakland History Room, and submit copies to the NWIC.

**Responsible Implementing Entity:** Project Sponsor; Oakland Community and Economic Development Agency (CEDA), Planning Division

**Monitoring Action(s):** Project sponsor shall contract with qualified architectural historian or preservation architect to prepare historical documentation and shall submit the documentation as specified in the mitigation measure.

**Monitoring Responsibility:** CEDA, Planning Division

**Monitoring Timeframe:** Verify that appropriate documentation has been submitted to the Oakland History Room and the NWIC prior to the issuance of first occupancy permit(s).

> **Mitigation Measure E.3f:** Make any or all of the historic buildings proposed for demolition available at no cost to a qualified individual or organization that may wish to relocate one or more of the buildings to a nearby site consistent with the early automotive history of Oakland.

**Responsible Implementing Entity:** Project Sponsor; Oakland Community and Economic Development Agency (CEDA), Planning Division

**Monitoring Action(s):** Project sponsor shall contact Oakland Heritage Alliance regarding the availability for relocation of the historical resources on the project site. Sponsor shall also publish advertisement(s) or notice(s) regarding the availability at no cost (with new owner to pay relocation costs) for relocation of the buildings identified as historical resources that are proposed for demolition. Options for noticing include, but are not limited to, placement of at least one display ad in a newspaper of general circulation; placement of at least one display ad in at least three East Bay real estate publications; and/or placement of at least one display ad in a local historic preservation newsletter.

**Monitoring Responsibility:** CEDA, Planning Division

**Monitoring Timeframe:** Verify that appropriate contact and advertising has been prepared prior to the issuance of demolition permit(s).

> **Impact E.5:** The proposed project, in combination with cumulative development including new construction and other alterations to historic resources in the project vicinity, would result in cumulative impacts to historic resources.

> **Mitigation Measure E.5:** The project sponsor would contribute $125,000 to the City's Facade Improvement Fund for cumulative impacts on historic resources in downtown

Oakland and the vicinity. The amount of the contribution was determined by the Planning Director based on the average amount of façade improvement grant awarded ($25,000) by the Fund and the number of buildings that will be demolished by the project (5). Although the Facade Improvement Fund is not limited to historic buildings, the project's contribution would be earmarked especially for improving facades of buildings in the downtown area identified as historic resources according to the General Plan Historic Preservation Element or the Oakland Cultural Heritage Survey.

**Responsible Implementing Entity:** Oakland Community and Economic Development Agency (CEDA), Planning Division

**Monitoring Action(s):** CEDA, Planning Division to determine fair-share contribution and ensure that project sponsor funds this amount.

**Monitoring Responsibility:** CEDA, Planning Division; Oakland Cultural Heritage Survey

**Monitoring Timeframe:** Verify that agreed-upon fee has been paid prior to the issuance of demolition permit(s).

**F. Hazardous Materials**

**Impact F.1:** Disturbance and release of contaminated soil, groundwater, or building materials during demolition and construction phases of the project could expose construction workers, the public, or the environment to adverse conditions related to hazardous substance handling.

**Mitigation Measure F.1a:** A pre-demolition survey for asbestos-containing materials (ACMs) shall be performed prior to demolition of all structures to be demolished. The survey shall include sampling and analysis of suspected ACMs identified in the 1997 and 2000 Phase I investigations and areas that were previously not surveyed (439 23rd Street, 449 23rd Street, and 461 24th Street).

**Responsible Implementing Entity:** Project Sponsor; Oakland Public Works Agency, Environmental Services Division

**Monitoring Action(s):** Project sponsor shall contract with a qualified environmental professional to prepare ACM survey(s) and shall submit same to Public Works Agency, Environmental Services Division for review and acceptance. Environmental Services Division shall notify CEDA Planning Division and Building Services Division of its acceptance of the survey(s).

**Monitoring Responsibility:** Public Works Agency, Environmental Services Division.

**Monitoring Timeframe:** Prior to the issuance of demolition permit(s).

**Mitigation Measure F.1b:** An asbestos abatement plan developed by a state-certified asbestos consultant shall be prepared. All asbestos-containing materials (ACMs ) shall be

removed and appropriately disposed of in accordance with the asbestos abatement plan prior to demolition of the existing buildings in accordance with federal and State construction worker health and safety regulations, the regulations and notification requirements of the Bay Area Air Quality Management District (BAAQMD).

**Responsible Implementing Entity:** Project Sponsor; Oakland Public Works Agency, Environmental Services Division

**Monitoring Action(s):** Project sponsor shall contract with a qualified environmental professional to prepare an asbestos abatement plan, if deemed necessary by the consultant and by the Public Works Agency, Environmental Services Division. Environmental Services Division shall review the plan and shall notify CEDA Planning Division and Building Services Division of its acceptance of the plan(s).

**Monitoring Responsibility:** Public Works Agency, Environmental Services Division.

**Monitoring Timeframe:** Prior to the issuance of demolition permit(s).

**Mitigation Measure F.1c:** The applicant shall submit for review and approval written documentation that any asbestos-containing materials (ACMs ) have been removed from the project site prior to the start of any demolition activities. A licensed asbestos firm shall conduct the removal of ACMs in accordance with BAAQMD's Regulation 11 Rule 2.

**Responsible Implementing Entity:** Project Sponsor; Oakland Public Works Agency, Environmental Services Division

**Monitoring Action(s):** Project sponsor shall submit documentation specified in mitigation measure to Public Works Agency, Environmental Services Division. Environmental Services Division shall review the plan and shall notify CEDA Planning Division and Building Services Division of its acceptance of the documentation.

**Monitoring Responsibility:** Public Works Agency, Environmental Services Division.

**Monitoring Timeframe:** Prior to the issuance of demolition permit(s).

**Mitigation Measure F.1d:** The project sponsor shall implement a lead-based paint abatement plan, which shall include the following components: development of an abatement specification approved by a Certified Project Designer; a site Health and Safety Plan, as needed; containment of all work areas to prohibit off-site migration of paint chip debris; removal of all peeling and stratified lead-based paint on building surfaces and on non-building surfaces to the degree necessary to safely and properly complete demolition activities per the recommendations of the survey. The demolition contractor shall be identified as responsible for properly containing and disposing of intact lead-based paint on all equipment to be cut and/or removed during the demolition; appropriate removal of paint chips by vacuum or other approved method; collection,

segregation, and profiling waste for disposal determination; and appropriate disposal of all hazardous and non-hazardous waste.

**Responsible Implementing Entity:** Project Sponsor; Oakland Public Works Agency, Environmental Services Division

**Monitoring Action(s):** Project sponsor shall contract with a qualified environmental professional to prepare a lead-paint abatement plan, if deemed necessary by the consultant and by the Public Works Agency, Environmental Services Division. Environmental Services Division shall review the plan and shall notify CEDA Planning Division and Building Services Division of its acceptance of the plan(s).

**Monitoring Responsibility:** Public Works Agency, Environmental Services Division.

**Monitoring Timeframe:** Prior to the issuance of demolition permit(s).

**Mitigation Measure F.1e:** The applicant shall demonstrate to the satisfaction of the Fire Department, Office of Emergency Services, that the site has been investigated for the presence of lead and does not contain hazardous levels of lead.

**Responsible Implementing Entity:** Project Sponsor; Oakland Public Works Agency, Environmental Services Division

**Monitoring Action(s):** Project sponsor shall submit documentation specified in mitigation measure to Public Works Agency, Environmental Services Division, and to the Oakland Fire Department. Environmental Services Division and Fire Department shall review the plan and shall notify CEDA Planning Division and Building Services Division of their acceptance of the documentation.

**Monitoring Responsibility:** Public Works Agency, Environmental Services Division.

**Monitoring Timeframe:** Prior to the issuance of demolition, grading, excavation, and/or building permit(s), as applicable.

**Mitigation Measure F.1f:** In the event that electrical equipment or other PCB-containing materials are identified prior to demolition activities they shall be removed and disposed of by a licensed transportation and disposal facility in a Class I hazardous waste landfill.

**Responsible Implementing Entity:** Project Sponsor; Oakland Public Works Agency, Environmental Services Division

**Monitoring Action(s):** Project sponsor shall contract with a qualified environmental professional to assess the project site for the presence of PCBs and, if warranted by the assessment, to prepare an abatement plan for PCBs. This plan shall be submitted for review and acceptance by the Public Works Agency, Environmental Services Division. Environmental

Services Division shall review the plan and shall notify CEDA Planning Division and Building Services Division of its acceptance of the plans.

**Monitoring Responsibility:** Public Works Agency, Environmental Services Division.

**Monitoring Timeframe:** Prior to the issuance of demolition permit(s).

> **Mitigation Measure F.1g:** The underground storage tank present along the west side of Broadway shall be removed prior to construction activities in the immediate area. The Alameda County Local Oversight Program (LOP) shall be contacted to oversee removal and determine appropriate remediation measures. Removal of the UST shall require, as deemed necessary by the LOP, over-excavation and disposal of any impacted soil that may be associated with such tanks to a degree sufficient to the oversight agency. In the event that additional USTs are encountered the same procedures described above shall apply.

**Responsible Implementing Entity:** Project Sponsor; Oakland Public Works Agency, Environmental Services Division

**Monitoring Action(s):** Project sponsor shall contract with a qualified environmental professional to remove the underground storage tank. The qualified environmental professional shall submit to the Public Works Agency, Environmental Services Division, a removal plan prior to the start of work, and shall submit documentation of the tank removal upon completion. Environmental Services Division shall review the plan and shall notify CEDA Planning Division and Building Services Division of its acceptance of the documentation.

**Monitoring Responsibility:** Public Works Agency, Environmental Services Division.

**Monitoring Timeframe:** Prior to the issuance of demolition, grading, excavation, and/or building permit(s), as applicable.

> **Mitigation Measure F.1h:** The project applicant shall develop and implement a project-specific worker Health and Safety Plan that contains, at a minimum, a description of contamination; decontamination procedures, the nearest hospital, and emergency notification procedures.

**Responsible Implementing Entity:** Project Sponsor; Oakland Public Works Agency, Environmental Services Division

**Monitoring Action(s):** Project sponsor shall contract with a qualified environmental professional to prepare site-specific worker Health and Safety Plan. Environmental Services Division shall review the plan and shall notify CEDA Planning Division and Building Services Division of its acceptance of the plan.

**Monitoring Responsibility:** Public Works Agency, Environmental Services Division.

**Monitoring Timeframe:** Prior to the issuance of demolition, grading, excavation, and/or building permit(s), as applicable.

**Mitigation Measure F.1i:** The applicant shall provide written verification that the appropriate State, Federal, or County authorities have granted all required clearances and confirmed compliance with all applicable conditions imposed by said authorities, for all previous contamination at the site, if applicable.

**Responsible Implementing Entity:** Project Sponsor; Oakland Public Works Agency, Environmental Services Division

**Monitoring Action(s):** Project sponsor shall submit documentation specified in mitigation measure to Public Works Agency, Environmental Services Division. Environmental Services Division shall review the plan and shall notify CEDA Planning Division and Building Services Division of its acceptance of the documentation.

**Monitoring Responsibility:** Public Works Agency, Environmental Services Division.

**Monitoring Timeframe:** Prior to the issuance of demolition, grading, excavation, and/or building permit(s), as applicable.

**Impact F.2:** Improper disposal of contaminated soil components from the demolition and excavation phases of the project could expose construction workers, the public, or the environment to adverse conditions.

**Mitigation Measure F.2a:** The sponsor shall perform additional soluble lead analyses of soil prior to on-site reuse or off-site disposal to confirm the acceptability for reuse and/or classification of the soils as a California hazardous waste material. If the soils are classified as a California hazardous waste, the project sponsor shall dispose of the soils at a Class I disposal facility in California or an out of state non-RCRA facility permitted to accept wastes at concentrations of the excavated soils.

**Responsible Implementing Entity:** Project Sponsor; Oakland Public Works Agency, Environmental Services Division

**Monitoring Action(s):** Project sponsor shall contract with a qualified environmental professional to conduct sampling of soils excavated from the project site. The qualified environmental professional shall prepare recommendations for disposal of excavated soils as deemed necessary based on the results of sampling. The project sponsor shall submit to the Public Works Agency, Environmental Services Division, documentation regarding the handling of excavated soils. The Environmental Services Division shall notify the Community and Economic Development Agency, Planning Division, of its receipt and acceptance of the documentation.

**Monitoring Responsibility:** Public Works Agency, Environmental Services Division.

**Monitoring Timeframe:** Prior to the issuance of demolition, grading, excavation, and/or building permit(s), as applicable.

**Mitigation Measure F.2.b:** Soil generated by construction activities shall be stockpiled onsite in a safe and secure manner, and sampled prior to reuse or disposal at an appropriate facility. Specific sample procedures (i.e. frequency, etc.) for reuse and disposal shall be determined within a Soil Management Plan.

**Responsible Implementing Entity:** Project Sponsor; Oakland Public Works Agency, Environmental Services Division

**Monitoring Action(s):** Project sponsor shall contract with a qualified environmental professional to conduct sampling of soils excavated from the project site. The qualified environmental professional shall prepare recommendations for disposal of excavated soils as deemed necessary based on the results of sampling. The project sponsor shall submit to the Public Works Agency, Environmental Services Division, documentation regarding the handling of excavated soils. The Environmental Services Division shall notify the Community and Economic Development Agency, Planning Division, of its receipt and acceptance of the documentation.

**Monitoring Responsibility:** Public Works Agency, Environmental Services Division.

**Monitoring Timeframe:** Prior to the issuance of demolition, grading, excavation, and/or building permit(s), as applicable.

**Mitigation Measure F.2c:** Per the regulatory standards of the City Environmental Services Division of the Public Works Agency, the project sponsor shall sample the soil on the site to determine whether any further remediation is required. Based on the test results, the project sponsor shall submit any and all applicable documentation and plans required by the Regional Water Quality Control Board, the Alameda County Public Health Department, and the City's Fire Department, Office of Emergency Services, regarding remediation of any remaining contaminated soil and/or groundwater that may be identified on the site. These documents and plans shall be submitted to the Environmental Services Division, and shall demonstrate to the satisfaction of each agency with jurisdiction that all applicable standards and regulations have been met for the construction and site work to be undertaken pursuant to the permit. If warranted, the project sponsor must develop and submit for review by the Environmental Services Division a Soil and Groundwater Management Plan for construction and development activities at the site. The plan shall include, as required, any special health and safety precautions to mitigate worker exposure to contaminated soils, dust control measures to prevent the generation of dust that could migrate off-site, stormwater runoff controls to minimize migration of soils to storm drains, measures to ensure the proper treatment and disposal of groundwater during dewatering activities, steps for ensuring compliance with applicable state and federal regulations governing the transportation and disposal of

hazardous wastes, and general protocol for addressing any unexpected hazardous materials conditions in the subsurface encountered during construction.

**Responsible Implementing Entity:** Project Sponsor; Oakland Public Works Agency, Environmental Services Division; Regional Water Quality Control Board; Alameda County Public Health Department; and Oakland Fire Department.

**Monitoring Action(s):** Project sponsor shall contract with a qualified environmental professional to conduct sampling of soil and, if deemed necessary, groundwater on the project site. The qualified environmental professional shall prepare recommendations for disposal of excavated soils as deemed necessary based on the results of sampling. The project sponsor shall submit to the Public Works Agency, Environmental Services Division, and to other applicable agencies as described in the mitigation measure, documentation regarding the testing results. If deemed necessary by the Environmental Services Division, the project sponsor shall contract with a qualified environmental professional to prepare a Soil and Groundwater Management Plan. The Environmental Services Division shall notify the Community and Economic Development Agency, Planning Division, of its receipt and acceptance of the documentation, including, if required, the Soil and Groundwater Management Plan.

**Monitoring Responsibility:** Public Works Agency, Environmental Services Division.

**Monitoring Timeframe:** Prior to the issuance of demolition, grading, excavation, and/or building permit(s), as applicable.

**Impact F.3:** Hazardous materials used on-site during construction activities (i.e. solvents) could be released to the environment through improper handling or storage.

**Mitigation Measure F.3:** The use of construction best management practices shall be implemented as part of construction to minimize the potential negative effects to groundwater and soils. These shall include the following: follow manufacturer's recommendations on use, storage and disposal of chemical products used in construction; avoid overtopping construction equipment fuel gas tanks; during routine maintenance of construction equipment, properly contain and remove grease and oils; and properly dispose of discarded containers of fuels and other chemicals.

**Responsible Implementing Entity:** Project Sponsor; Oakland Public Works Agency, Environmental Services Division

**Monitoring Action(s):** Environmental Services Division shall conduct spot-checks as deemed necessary throughout construction period.

**Monitoring Responsibility:** Public Works Agency, Environmental Services Division

**Monitoring Timeframe:** Environmental Services Division shall verify compliance with applicable rules and regulations throughout construction period.

**5. Design Review Requirements**

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

The final design elements listed below shall be submitted for review and approval by the Planning Director prior to issuance of the building permit. The Planning Director may exercise his/her standard authority to refer the final design to the Design Review Committee or to the Planning Commission.

(i) Windows shall be articulated to provide a two-inch minimum recess from the building façade in order to create a sufficient shadow line and articulation. The final window schedules and details shall be submitted for review and approval. Windows shall be of high quality fiberglass, wood or metal exterior finish

(ii) The materials and installation methods shall be detailed to provide a high-quality, durable, and attractive building façade, particularly at the base of the buildings. Upon request, full-size material mock-ups shall be provided for all ground-floor finish materials, demonstrating three-dimensional trim wrap at corners. Final material selections and installation details for all exterior design elements including canopies, grilles, balconies, gates, etc. shall be submitted for review and approval.

(iii) The final colors must be submitted for review and approval.

(iv) Submission of final onsite landscape and streetscape plans.

**6. Modification of Conditions or Revocation**

***a. Ongoing.***

The City reserves the right, after notice and public hearing, to alter Conditions of Approval or revoke this conditional use permit if it is found that the approved facility is violating any of the Conditions of Approval or the provisions of the Zoning Regulations, or operates as or causes a public nuisance.

**7. Recording of Conditions of Approval and Mitigation Monitoring Plan**

***a. Prior to issuance of building permit or commencement of activity.***

The project sponsor shall execute and record with the Alameda County Recorder's Office a copy of these conditions of approval and the mitigation monitoring plan on a form approved by the Zoning Administrator. Proof of recordation shall be provided to the Zoning Administrator.

**8. Reproduction of Conditions and Mitigations on Building Plans**

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

These conditions of approval, including the Mitigation Monitoring Plan, shall be reproduced on page one of all plans submitted for a grading or building permit for this project.

**9. Indemnification**

***a. Ongoing.***

The project sponsor shall defend, indemnify, and hold harmless the City of Oakland, its agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Oakland, its agents, officers or employees to attack, set aside, void or annul, an approval by the City of Oakland, the Office of Planning and Building, Planning Commission, or City Council. The City shall promptly notify the project sponsor 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.

**10. Recycling Space Allocation Requirements**

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

The design, location and maintenance of recycling collection and storage areas shall comply with the provision of the Oakland City Planning Commission "Guidelines for the Development and Evaluation of Recycling Collection and Storage Areas", Policy 100-28 and with the recycling space requirements of the Planning Code. The recycling location and area shall be clearly delineated on the building permit plans.

**11. Lighting Plan**

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

A lighting plan for the exterior of the project shall be submitted for review and approval by the Planning Director. The lighting plan shall include the appearance and location of all exterior and lighting fixtures or standards, and said lighting shall be installed such that it is adequately shielded and does not cast glare onto adjacent properties.

**12. Landscape and Streetscape Plans**

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

The project sponsor shall submit a detailed landscaping plan to the Planning Director for review and approval prior to the issuance of any building permits. This plan shall include:

a. Details and specifications for landscaping features such as street furniture, rocks, and any water features.

b. Detailed irrigation plans, planting details such as species, location, number and sizes of the plant materials, and the specifications for planting.

c. Street tree planting specifications. Consistent street tree species must be provided on the street frontages with the species to be approved by the Office of Parks and Recreation.

**13. Meter Shielding.** ***Prior to issuance of building permits.***

The applicant shall submit for review and approval by the Planning and Zoning Division, plans showing to the extent feasible the location of any and all utility meters, transformers, and the like located within a box set within the building, located on a non-street facing elevation, or screened from view from any public right of way.

**14. Rooftop Utilities.**
***Prior to issuance of building permits.***
*The applicant shall submit plans to the Planning and Zoning Division that adequately demonstrate that rooftop utilities will be adequately concealed and/or consolidated.*

**15. Signage Plan and Signage Lighting**

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

The project sponsor shall submit a conceptual signage plan for the project for review and approval by the Planning Director.

**16. Water, Wastewater and Storm Sewer Service**

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

The project sponsor shall provide the necessary information to the Public Works Agency, Design and Construction Services Division to confirm the existing capacity of the water, wastewater and storm service systems that serve the project site and the projected project demand. The project sponsor shall be responsible for payment of the required installation or hookup fees to the affected service providers. The project sponsor shall also be responsible for payment of sewer and/or storm water improvement fees as required by the Public Works Agency.

**17. Special Inspector**

***a. Throughout construction***

The project sponsor may be required to pay for on-call special inspector(s) as needed during the times of most intense construction or as directed by the Building Official. Prior to issuance of the demolition permit, the project sponsor shall establish a deposit with the Building Services Division to fund a special inspector who shall be available as needed, as determined by the Building Official or the Planning Director.

**18. Litter Control**

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

A litter control plan that ensures that the premises and surrounding area are kept free of litter shall be submitted to and approved by the Zoning Administrator. The Plan shall include, but not be limited to:

- Distribution of proposed locations of litter receptacles on site and in the public right-of-way; and

- A management schedule for keeping the premises and surrounding area in a one-block radius free from litter originating from the operation of the future commercial activities; and
- Sweeping and trash collection of the premises, the public sidewalk, and the gutter area of the public street immediately adjacent to the project, as needed to keep the area free of litter.

**19. Exterior Pay Phones**

***a. On-going***

There shall be no exterior pay telephones located on the project site without obtaining a pay phone permit.

**20. Master Improvement Plan and Improvements in the Public Right-of-Way**

***a. Prior to Finalization of P-Job for First Phase of Project***

The project sponsor shall submit a detailed improvement plan prepared by a licensed Civil Engineer and streetscape plans prepared by a licensed Landscape Architect, with all conditions and requirements as set forth in these Conditions of Approval for the private property and the public rights of way, including but not limited to curbs, gutters, pedestrian ways, sewer laterals, storm drains, street trees, paving details, locations of transformers and other above ground utility structures, the design, specifications and locations of the water pumping facilities required by the East Bay Municipal Utility District (EBMUD), street lighting, on-street parking and accessibility improvements required to comply with all applicable City standards, including the approved landscape plans, the design of the pedestrian paths, and the street tree locations and planting specifications. This plan shall be reviewed and approved by the City Engineer and used as the confirmation of compliance with all phases of the project.

***b. Prior to receiving first occupancy permit.***

The applicant shall pay for and install public improvements which directly serve the project and pay for its pro-rata share of improvements required by mitigation measures.

**21. Electrical Facilities**

***a. Prior to installation***

All electrical and telephone facilities, fire alarm conduits, street light wiring, and similar facilities shall be placed underground. Electric and telephone facilities shall be installed in accordance with standard specifications of the servicing utilities. Street lighting and

fire alarm facilities shall be installed in accordance with the standard specifications of the Building Services Division.

**22. Waste Reduction and Recycling Plan**

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

The project sponsor shall submit a "Waste Reduction and Recycling Plan," and a plan to divert 50 percent of the solid waste generated by the construction and operation of the project, to the Public Works Agency for review and approval, pursuant to City of Oakland Ordinance No. 12253.

**23. Car Share Parking**

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

The project sponsor shall allocate a number of parking spaces in the project parking garage(s) to be determined by the Planning Director to be available for the City Carshare parking program.

**24. Parking Study and Management Plan**

a. Prior to issuance of a building permit, the project sponsor shall have a parking study prepared by an independent traffic engineer to demonstrate that the proposed layout and dimensions of the parking garage are functional and meet generally accepted standards, or what revisions are needed to meet such standards. This parking study shall be submitted for the review and approval by the Planning Director.

b. In light of the loss of on-street parking, the project applicant shall provide public parking within the two ground-floor garages to be located on the project site, as follows: The two garages (within Phases 3 & 4) would each contain approximately 30 spaces (for a total of 60 spaces at a minimum) available to the general public. The public parking management plan is as follows: (a) the garages shall be available to the public on a fee basis; (b) hours of operation shall minimally be from 7:00 am until 10:00 pm on weekdays, and 9:00 am until 12:00 am on weekends; (c) cars left in the garage after the hours of operation would either call an attendant to open the gate for a fee or pay the 24-hour rate when the garage opens the next day.

**25. Tree Removal Permit**

***Prior to issuance of the demolition or grading permit***

The project sponsor must obtain a tree removal permit for the three protected trees on-site from the Office of Parks and Recreation, and abide by the conditions of that permit, prior to construction.

**26. Pile driving and other extreme noise generators:**

a. If pile-driving and/or other extreme noise generating activities greater than 90 dba occur, they shall be limited to between 8:00 AM and 4:00 PM, Monday through Friday, with no extreme noise-generating activity permitted between 12:30 PM and 1:30 PM. No extreme noise-generating construction activities shall be allowed on Saturdays, Sundays, or holidays.

b. To further mitigate other extreme noise generating construction impacts, a set of site-specific noise attenuation measures shall be completed under the supervision of a qualified acoustical consultant. This noise reduction plan shall be submitted for review and approval by the City to ensure that maximum feasible noise attenuation is achieved. A third-party peer review, paid for by the applicant, shall be required to assist the City in evaluating the feasibility and effectiveness of the noise reduction plan submitted by the applicant. A community meeting shall be held after the peer review but prior to approval of a noise reduction plan by the City. As special inspection deposit shall be determined by the Building Official, and the deposit shall be submitted by the project sponsor concurrent with submittal of the noise reduction plan. These attenuation measures shall include as many of the following control strategies as feasible and shall be implemented prior to any required pile-driving activities:

i. Erect temporary plywood noise barriers around the construction site, to shield adjacent uses;

ii. Implement "quiet" pile driving technology (such as pre-drilling of piles, the use of more than one pile driver to shorten the total pile driving duration), where feasible, in consideration of geotechnical and structural requirements and conditions;

iii. Utilize noise control blankets on the building structure as the building is erected to reduce noise emission from the site;

iv. Evaluate the feasibility of noise control at the receivers by temporarily improving the noise reduction capability of adjacent buildings; and

v. Monitor the effectiveness of noise attenuation measures by taking noise measurements.

vi. A process with the following components shall be established for responding to and tracking complaints pertaining to pile-driving construction noise:

A. A procedure for notifying City Building Division staff and Oakland Police Department;

B. A list of telephone numbers (during regular construction hours and off-hours);

C. A plan for posting signs on-site pertaining to complaint procedures and who to notify in the event of a problem;

D. Designation of a construction complaint manager for the project; and

E. Notification of neighbors within 300 feet of the project construction area at least 30 days in advance of extreme noise generating activities.

i) The project sponsor shall research additional noise attenuating measures that can be reasonably implemented to reduce noise impacts to neighbors. The project sponsor shall prepare a plan for approval by the Planning Director prior to issuance of the demolition permit and shall be required to implement the approved plan. Pile driving for construction of the project is not allowed without application and approval to modify this use permit.

**27. Construction Site Project Manager.**
***Ongoing.***
The applicant shall ensure that a Project Manager is designated who will be responsible for responding to any complaints from the neighborhood about excessive noise or construction issues during construction periods, The Manager's telephone number (available on a 24-hour per day, on-call basis) and identification photograph shall be conspicuously posted at the construction site. The Manager shall determine the cause of complaints and shall take prompt action to correct the problem. The Planning and Zoning Division shall be informed who the Manager is prior to the issuance of the grading permit.

**28. Site Maintenance.**
***During all construction activities.***
The applicant shall ensure that debris and garbage is collected and removed from the site and surrounding area daily.

**29. Approved Plans on Site.**
***During all construction activities.***
At least one (1) copy of the approved above referenced plans that include the Approval Letter and Conditions of Approval for this project, shall be available for review at the job site at all times.

***30.*** **Prior to issuance of demolition permit for the historic façade located at 440-448 23rd Street.**
The applicant shall provide a financial contribution of $68,750 *[or an amount to be determined by the Planning Commission and agreed upon by the applicant]* to the Oakland Redevelopment Agency to be spent specifically on historic preservation of the Fox Theater; Should the ORA elect not to accept this contribution, it would be directed to the Façade Improvement Program.

***31.*** **Prior to issuance of demolition permit for the historic façade located at 440-448 23rd Street.**
A demolition permit for the historic façade located at 440-448 23rd Street shall not be issued until issuance of a building permit for the foundation and submittal of the core and shell building permit application and all applicable foundation and core and shell building permit application fees have been paid for the approved project.

***32.*** **Prior to issuance of first building permit.**
The applicant shall consider application of brick veneer to building base at location of historic façade for 440-448 23rd Street. Proposed base materials for this location shall be considered for administrative approval.

**APPROVED BY:**
City Planning Commission:_____(date) _____ ayes, noes, abstention (vote)
City Council:_____(date)_____(vote

# *CONDITIONS OF APPROVAL*

## FINDINGS

**Section 17.148.050 (Variance for Open Space Deficit):**

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

   The minor variance will allow an effective design solution which meets the intent of the zoning regulations by ensuring the appropriate amount and design of open space in the more densely developed areas immediately adjacent to the downtown.

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

   Strict compliance with the regulations would preclude an effective design solution as adequate provisions have been made to ensure that the intent of open space requirements will be met, even if the specific code requirements are not, especially in this densely developed area adjacent to the Central Business District.

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

   Granting the variances will not adversely affect the character, livability, or appropriate development of the abutting properties or the surrounding area. The intent of the zoning regulations will be met through the provision of adequate open space to serve the development.

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

   Although the project does not fully comply with the open space requirements, the intent of these requirements will be met. A minimum of 75 square feet of open space will be provided per dwelling unit, consistent with the S-17 zoning regulations that apply to adjacent properties.

**Section 17.136.050 (Design Review Criteria):**

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

   The proposed project will include several buildings that will be well related to the surrounding area in their setting, scale, bulk, height, materials, and textures. The surrounding area contains a mix of residential and commercial uses in buildings ranging in height from one to ten stories. The project's building heights, ranging from six to seven stories, will fit within the scale of the surrounding area. In addition, the architectural design, massing, and materials of the project will relate to the variety of styles in the surrounding area.

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

   The proposed project will enhance the character of this area of Oakland by redeveloping an underutilized site with attractively designed buildings that provide a mix of residential and neighborhood-serving commercial uses for the surrounding neighborhood.

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

   The project will not affect the topography or landscape of the area. The site is a flat, infill site.

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

   The proposed project will be located on a flat infill site and will not be situated on a hill.

5. **That 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.**

   The proposed project is consistent with the General Plan land use designations for the site as discussed above and elsewhere in this staff report. The project is consistent with the design goals and policies of the General Plan by providing infill mixed-use development in close proximity to mass transit. The project is also consistent with the existing and "best fit" zoning classifications for the site as previously discussed.

**17.136.050.C.2. That for demolition or removal: a. The affected structure or portion thereof is not considered irreplaceable in terms of its visual, cultural, or educational value to the area or community; or b. The structure or portion thereof is in such condition that it is not architecturally feasible to preserve or restore it, or c. Considering the economic feasibility of preserving or restoring the structure or portion thereof, and balancing the interest of the public in such preservation or restoration and the interest of the owner of the property in the utilization thereof, approval is required by considerations of equity.**

The proposed project would provide attractive, increased high-density housing near downtown and mass transit. The public benefit of attractive, environmentally sound and reasonably priced residential development near downtown Oakland can be considered to outweigh the benefit of retaining the historic façade should the costs of retention be passed on to the residents of the project.

**Section 17.140.060 (Planning Commission Action for Final Planned Unit Development):**

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

The proposed amendment to the Final Development Plan conforms to all applicable criteria and standards and is consistent with the Preliminary Development Plan for the project. The design is attractive and appropriate for the location.

**California Environmental Quality Act**

The City hereby finds and determines on the basis of substantial evidence in the record that the EIR combined with Addendums #1 and #2 fully analyze the potential environmental effects of the project and incorporates mitigation measures to substantially lessen or avoid any potentially significant impacts in accordance with CEQA. Addendums were prepared to analyze changes and additions to the previously certified EIR and consider new information and changed circumstances. However, in compliance with CEQA and the CEQA Guidelines, including without limitation Public Resource Code Section 21166 and CEQA Guideline Sections 15162 and 15164, the City has determined that there are no substantial changes proposed in the project, or the circumstances under which the project is undertaken, and there is no "new information of substantial importance" that would require major revisions of the EIR due to the involvement of new, significant environmental effects or a substantial increase in the severity of previously identified significant effects. Thus, no further environmental review is required.