

Project Location:	500 Kirkham and 1255 7 th Streets. The site is also bounded by Union and 5 th Streets, and is located one block east of the West Oakland BART Station.
Assessor's Parcel Number:	004 004900800, 004 004900900, 004 004901000 & 004 005101802.
Proposal:	Extension request of entitlements approved by the Planning Commission in 2019 for a Planned Unit Development Permit and Phased Final Development Plan, which included Conditional Use Permit; Regular Design Review; and Vesting Tentative Tract Map Subdivision. The approved project is for the construction of 1,032 residential units (including 85 very low-income affordable units), approximately 35,000 square feet of retail & commercial flex space, 59 parking spaces, and privately maintained but publicly accessible dog park, playground area, and pedestrian pathways. The final project will be phased as follows: Phase 1 includes all horizontal improvements, including a temporary parking lot, and construction of Building 1, a 84-foot high mid-rise; Phase 2 includes vertical development of Building 2, an 84-foot high mid-rise; and Phase 3, a vertical development of Building 3, a 338-foot high-rise & street-level 59 space parking garage accessed from Union Street. The approved Planning permit will expire within two-years of project approval, by August 21, 2021, absent any extensions.
Project Applicant & Property Owner/ Telephone:	Patrick Kennedy, 500 Kirkham LLC / (415) 701-7000
Case File Number:	PLN17428; PUDF07-PUDF01; PUDF07-PUDF02 & PUDF07-PUDF03
Planning Permits Required:	Condition of Approval #2 for Case File Number PLN17428 states that extensions of the Final Development Plan (FDP) shall be processed in the same manner as the original application with the same procedural requirements and shall be considered by the Planning Commission. The applicant is requesting an additional three-year extension from expiration of the permit granted by the Planning Commission.
General Plan: Specific Plan:	Community Commercial; West Oakland Specific Plan (WOSP)
Zoning:	S-15W Transit-Oriented Development Zone
Environmental Determination:	A detailed CEQA (California Environmental Quality Act) Analysis was prepared for this project and concluded that the development satisfied each of the following CEQA Guidelines: (A) 15164 - Addendum to EIRs; (B) 15183 - Projects Consistent with a Community Plan, General Plan, or Zoning; and (C) 15168- Program EIRs and Redevelopment Projects; and (D) 15183.3- Qualified Infill Projects.
Property Historic Status:	Non-Historic Property
City Council District:	3 / Lynette McElhane
Action to be Taken:	Decision based on staff report
Staff Recommendation:	Consider the extension and subject the project to original conditions due to Vesting Tentative Tract Map.
For Further Information:	Contact Case Planner, Mike Rivera at (510) 238-6417, or by email at mriviera@oaklandca.gov

PROJECT SUMMARY

The proposed project is a request to extend the land use entitlements for the 500 Kirkham Project (“Project”). The applicant requests a three-year extension of the approved Planned Unit Development (PUD) Permit and Final Development Plan (FDP) for the Project. The entitlements currently expire in August 2021. If approved, the proposed extension would result in expiration of the entitlements in August, 2024.

The applicant’s request for an additional three-year extension is based on economic uncertainty due to the impacts caused by the COVID-19 pandemic. The applicant indicates that investing and lending have become difficult, and the rise of construction cost is making the project difficult to build. The applicant also points out that, to secure financing for a complex project of this large size and to secure construction permits, financial institutions require assurance that project entitlements will not expire within a year. The applicant asks the Planning Commission to consider and approve this extension so the entitled development can secure financing.

PROJECT BACKGROUND SUMMARY

On August 21, 2019, the Planning Commission approved a PUD and FDP Planning permit (PLN17428) to construct a three-phased mixed-use development consisting of two 84-foot-tall and one 338-foot-tall buildings that will include 947 market-rate and 85 affordable residential units, 35,000 square feet of ground floor commercial uses, private courtyards, upper terraces and a rooftop. The project approval included on-site and off-site improvements such as new public pedestrian pathways, playground, dog park, a Class-4 bike lane and bus lane on 7th Street including a road-diet on 5th Street. The approved Planning permit would expire within two-years from the original approval date of August 21, 2021.

Following the approval of the project by the Planning Commission in August 2019, the applicant filed for building permits in October 2019 to construct one of the three-phased mixed-use residential and commercial buildings, an 84-foot tall mid-rise (Building 1). Concurrently with filing of permits for Building 1, the applicant also filed for building permits for all horizontal improvements as part of Phase 1. Because of the complexity of the project and extensive review of multiple permits, the building permit for Phase 1 is still under review by the City.

The applicant most recently applied for a Development Agreement (DA) in January 2020 to extend the entitlements until 2029, and to extend the Final Development Plans (FDPs), currently all set to expire in 2021, until 2025 for Building 2 and 2029 for Building 3. Staff is currently processing this DA application.

PROJECT DESCRIPTION

The approved project is a three-phased development to construct 1,032 market-rate and affordable housing that will contain a mix of one-to five-bedroom residential units, ground-floor retail uses and flex commercial spaces. Overall, the project included the following:

- **Phase 1** is for the construction of all street and horizontal improvements including pedestrian pathways, a playground, dog park, bike lane and bus lane on 7th Street and a road diet on 5th Street. Phase 1 also includes the construction of vertical Building 1 (mid-rise) and a temporary 59-space surface residential parking lot on the site for Building 3.
- **Phase 2** is for the construction of vertical Building 2 (mid-rise).
- **Phase 3** is for the construction of vertical Building 3 (high-rise) (which includes the 59-space street-level residential parking garage accessed from Union Street). To provide for parking while Phase 3 is under construction, the applicant has secured the right to lease a surface parking area

across 5th Street. The 59-space temporary parking lot will be reserved for the project residents, and will then be terminated after the parking garage in Building 3 is completed.

In addition to the approved Planning permit PLN17428, the Planning Commission approved the CEQA Analysis that was prepared for this project. The Planning Commission made the findings and concluded that the project satisfied each of the CEQA Guidelines under Sections 15164, 15183, 15168 and 15183.3. Pursuant to CEQA Guidelines, Sections 15162 and 15163, no further environmental review is required because the extension request does not include any new changes or modifications to the approved Planning permit PLN17428.

PROPOSED EXTENSION ANALYSIS

Existing Entitlements:

In August 2019, the project was entitled and conditioned to obtain building permits within two-years from the original approval date. Consistent with the terms of the entitlements, in October 2019, the applicant filed for building permits for Phase 1 to construct Building 1 and make associated horizontal improvements. The applicant has not filed building permits for Phase 2 and Phase 3 at this time. The expiration date of the original approved two-year land use entitlements will be on August 21, 2021 absent any granted extensions or approval of the requested DA.

Current City Administrator Order

The applicant submitted the extension request currently under consideration prior to issuance of City Administrator Order #6, (CAO Order #6) issued on July 27, 2020, which grants an automatic two-year extension on all project entitlements that had not expired as of March 9, 2020 and are set to expire on or before August 1, 2022 (**Attachment A**). Since the applicant would be able to take advantage of this ministerial two-year extension, the applicant's current request would grant one additional year to allow for a total three-year extension. As a result, should the proposed 3-year extension be approved, the entitlements would expire on August 21, 2024.

STAFF ANALYSIS AND RECOMMENDATION

The City of Oakland is currently negotiating a Development Agreement (DA) with the applicant that could allow for extension of the entitlements for up to 10 years in exchange for providing community benefits. As noted earlier in this report, the applicant is requesting extension of the entitlements through the DA. The City is sensitive to the financial challenges faced by developers in the best of times and of course during a historic pandemic such as COVID-19. For this reason, CAO Order #6 provides the applicant with significant relief from current time limitations during this period while the city is negotiating the DA, specifically extending the land use entitlements for this project by two years, to August 21, 2023.

Historically, the Planning Commission has typically only granted one-year extensions. However, the 500 Kirkham request is, effectively, a request for a one-year extension since it would only extend the entitlements one year beyond the two-year extension possible under City Administrator Order #6. Therefore, during these unusual and unprecedented times, staff is not opposed to granting an applicant with a large entitled housing project a three-year extension that encompasses the CAO Order #6's ministerial two-year extension, plus an additional year. This would provide the applicant with additional time to commit required funding to deliver this approved project. A three-year (in total) extension would extend the land use entitlements for this project by three years, to August 21, 2024.

Because of these multiple extension options, Staff recommends that the Planning Commission approve either:

1. A two-year extension of the project approval, which would effectively extend the project entitlements until **August 21, 2023**, consistent with the automatic two-year extension set forth in City Administrator Order No. 6, subject to the previously approved conditions of approval under Planning permit PLN17478, including the revision to Condition #2 to reflect the two-year extension; *or*
2. A three-year extension of the project approval, which would effectively extend the project entitlements until **August 21, 2024** (one year beyond the ministerial two-year extension set forth in CAO Order No. 6), subject to the previously approved conditions of approval under Planning permit PLN17478, including a revision to Condition #2 to reflect the three-year extension.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

CEQA COMPLIANCE FINDINGS

- I. Introduction: These findings are made pursuant to the California Environmental Quality Act (Public Resources Code section 21000 et seq.; “CEQA”) and the CEQA Guidelines (Cal. Code Regulations title 14, section 15000 et seq.; “CEQA Guidelines”) by the Planning Commission in connection with the environmental analysis of the effects of implementation of the 500 Kirkham-Mixed Use project, as more fully described elsewhere in this Staff Report and in the City of Oakland (“City”) CEQA Analysis document entitled “500 Kirkham CEQA Analysis” dated April 2019 (“CEQA Analysis”) (the “Project”). The City is the lead agency for purposes of compliance with the requirements of CEQA. These CEQA findings are attached and incorporated by reference into each and every decision associated with approval of the Project and are based on substantial evidence in the entire administrative record.
- II. Applicability/Adoption of Previous CEQA Documents
 - A. Adoption of General Plan Land Use and Transportation Element (LUTE) and Certification of the 1998 LUTE EIR: The City finds and determines that (a) the Oakland City Council on March 24, 1998 adopted Resolution No. 74129 C.M.S. which adopted the General Plan Land Use and Transportation Element, made appropriate CEQA findings, including certification of the 1998 LUTE Environmental Impact Report (“EIR”); and (b) the LUTE satisfies the description of “Community Plan” set out in Public Resources Code section 21083.3(e) and in CEQA Guidelines section 15183, as well the description of “Planning Level Document” set out in Public Resources Code section 21094.5 and in CEQA Guidelines section 15183.3. The City Council, in adopting the LUTE following a public hearing, approved applicable mitigation measures which are largely the same as those identified in the other Program EIRs prepared after the 1998 LUTE EIR, either as mitigation measures or as a part of newer Standard Conditions of Approval (“SCAs”) which constitute uniformly applied development policies or standards (together with other City development regulations) and determined that the mitigation measures set out in the 1998 LUTE EIR, would substantially mitigate the impacts of the LUTE and future projects thereunder. While approved after certification of the 1998 LUTE EIR, growth and potential effects of the development of the Project would have been considered in the cumulative growth projections factored into the LUTE EIR analysis.
- III. CEQA Analysis Document: The CEQA Analysis and all of its findings, determinations and information is hereby incorporated by reference as if fully set forth herein. The CEQA Analysis

concluded that the Project satisfies each of the following CEQA provisions, qualifying the Project for four separate CEQA exemptions as summarized below and provides substantial evidence to support the following findings.

The City hereby finds that, as set forth below and as part of the CEQA Analysis, the Project is exempt from any additional CEQA Analysis under Public Resources Code Section 21166 (CEQA Guidelines §15162 and §15164), under Public Resources Code Section 21083.3 (CEQA Guidelines §15183), under Public Resources Code Section 21094.5 (CEQA Guidelines §15183.3) thus no additional environmental analysis beyond the CEQA Analysis is necessary, and no exceptions to the CEQA categorical exemptions under CEQA Guidelines §15300.2 apply. The specific statutory exemptions and the categorical exemption are discussed below in more detail.

- A. CEQA Analysis-Addendum; Public Resources Code Section 21166 (CEQA Guidelines §15162 and §15164): The City finds and determines that the CEQA Analysis constitutes an Addendum to the 2014 WOSP (West Oakland Specific Plan) EIR and that no additional environmental analysis of the Project beyond that contained in the 2014 EIR is necessary. The City further finds that no substantial changes are proposed in the Project that would require major revisions to the 2014 EIR because of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; no substantial changes occur with respect to the circumstances under which the Project will be undertaken which will require major revisions of the 2014 EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and there is no new information of substantial importance not known and which could not have been known with the exercise of reasonable diligence as of the time of certification of the 2014 EIR showing that the Project will have one or more significant effects not discussed in the 2014 EIR; significant effects previously examined will be substantially more severe than shown in the 2014 EIR, mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Project; or mitigation measures or alternatives which are considerably different from those analyzed in the 2014 EIR would substantially reduce one or more significant effects on the environment.
- B. Projects Consistent with a Community Plan, General Plan, or Zoning; Public Resources Code Section 21083.3 (CEQA Guidelines §15183): The City finds and determines that, for the reasons set out below and in the CEQA Analysis, streamlining under CEQA Guidelines §15183 applies to the Project. No further environmental analysis is required because the Project is consistent with the development density and land use characteristics established by existing zoning and General Plan policies for which an EIR was certified, and all of the Project's effects on the environment were adequately analyzed and mitigation measures provided in the 1998 LUTE EIR for the overall project (collectively called "Previous CEQA Documents"); there are no significant effects on the environment which are peculiar to the Project or to the parcel upon which it is located not addressed and mitigated in the Previous CEQA Documents; and there is no new information showing that any of the effects shall be more significant than described in the Previous CEQA Documents.

As set out in detail in the attached CEQA Analysis, the City finds that, pursuant to CEQA Guidelines section 15183 and Public Resources Code section 21083.3, the Project is consistent with the development density analyzed in the Previous CEQA Documents and that there are no environmental effects of the Project peculiar to the Project or the Project Site which were not analyzed as significant effects in the Previous CEQA Documents or that will not be substantially mitigated by the imposition of the City's SCAs, nor are there potentially significant off-site impacts and cumulative impacts not discussed in the Previous CEQA Documents or that will not be substantially mitigated by the imposition of the City's SCAs; nor are any of the previously

identified significant effects which, as a result of substantial information not known at the time of certification of the Previous CEQA Documents, are now determined to present a more severe adverse impact than discussed in the Previous CEQA Documents. As such, no further analysis of the environmental effects of the Project is required.

- C. Streamlining for In-Fill Projects; Public Resources Code Section 21094.5 (CEQA Guidelines §15183.3): The City finds and determines that, for the reasons set forth below and in the CEQA Analysis, Streamlining for In-Fill Projects applies to the Project and no further environmental analysis is required since the Project meets the criteria under CEQA Guidelines §15183.3, and all the Project's effects on the environment were adequately analyzed and mitigation measures provided in the Previous CEQA Documents; the Project will cause no new specific effects not addressed in the Previous CEQA Documents that are specific to the Project or the Project Site; and there is no substantial new information showing that the adverse environmental effects of the Project are more significant than described in the Previous CEQA Documents.

The City finds that, pursuant to CEQA Guidelines section 15183.3, the CEQA Analysis contains in Attachment A, a written analysis consistent with Appendix M to the CEQA Guidelines examining whether the Project will cause any effects that require additional review under CEQA. The contents of Attachment A documents that the Project is located in an urban area satisfying the requirements of CEQA Guidelines §15183.3(a), satisfies the applicable performance standards set forth in Appendix M to the CEQA Guidelines, and is consistent with the General Plan land use designation, density, building intensity and applicable policies satisfying the requirements of CEQA Guidelines §15183.3(c). It also explains how the effects of the Project were analyzed in the Previous CEQA Documents; and indicates that the Project incorporates all applicable mitigation measures and SCAs from the Previous CEQA Documents. Attachment A also determines that the Project will cause no new specific effects not analyzed in the Previous CEQA Documents; determines that there is no substantial new information showing that the adverse environmental effects of the Project are more significant than described in the Previous CEQA Documents, determines that the Project will not cause new specific effects or more significant effects, and documents how uniformly applicable development policies or standards (including, without limitation, the SCAs) will mitigate environmental effects of the Project. Based upon the CEQA Analysis and other substantial evidence in the record, the City finds and determines that no further environmental analysis of the effects of the Project is required.

- D. Program EIRs and Redevelopment Projects (CEQA Guidelines §15168 and § 15180): The City finds and determines that for the reasons set forth below and in the CEQA Analysis, that the 2003 Redevelopment Plan EIR applies to the Project and no further environmental analysis is required since all the Project's effects on the environment were adequately analyzed and mitigation measures provided in the 2003 Redevelopment Plan EIR; the Project will cause no new specific effects not addressed in the 2003 Redevelopment Plan EIR that are specific to the Project or the Project Site; and there is no substantial new information showing that the adverse environmental effects of the Project are more significant than described in the 2003 Redevelopment Plan EIR.

- IV. Severability: The City finds that all three CEQA provisions discussed and determined to be applicable in Section III above are separately and independently applicable to the consideration of the Project and should any of the three be determined not to be so applicable, such determinations shall have no effect on the validity of these findings and the approval of the 500 Kirkham Project on any of the other grounds.

- V. Incorporation by Reference of Statement of Overriding Considerations: Each of the Previous CEQA Documents identified significant and unavoidable impacts.¹ The 1998 LUTE EIR identified six areas of environmental effects of the LUTE that presented significant and unavoidable impacts. Because the Project may contribute to some significant and unavoidable impacts identified in the Previous CEQA Documents identified above, but a Subsequent and/or Supplemental EIR is not required in accordance with CEQA Guidelines sections 15162, 15163, 15164, 15168, 15180, 15183 and 15183.3, a Statement of Overriding Considerations is not legally required. Nevertheless, in the interest of being conservative, the Statements of Overriding Consideration for the 1998 LUTE EIR, adopted by the City Council on March 24, 1998, via Resolution No. 74129 C.M.S are all hereby incorporated by reference as if fully set forth herein.

¹ If these or any other findings inaccurately identify or fail to list a significant and unavoidable impact identified in the analysis, findings and conclusions of the 1988 LUTE EIR or their administrative records as a whole, the identification of that impact and any mitigation measure or SCA required to be implemented as part of the Project is not affected.

CONCLUSION AND RECOMMENDATIONS

Staff recommends that the Planning Commission:

1. Affirm staff's Environmental Determination of the CEQA Findings: (A) 15164 - Addendum to EIRs; (B) 15183 - Projects Consistent with a Community Plan, General Plan, or Zoning; (C) 15168- Program EIRs and Redevelopment Projects; and (D) 15183.3- Qualified Infill Projects which were originally adopted by the Planning Commission on August 21, 2019; and
2. Approve either:
 - a. a two-year extension of the project approval, which would effectively extend the project entitlements until **August 21, 2023**, consistent with the automatic two-year extension set forth in CAO Order No. 6, subject to the previously approved conditions of approval under Planning permit PLN17478, including the revision to Condition #2 to reflect the two-year extension; or
 - b. a three-year extension of the project approval, which would effectively extend the project entitlements until **August 21, 2024** (one year beyond the automatic two-year extension set forth in CAO Order No. 6), subject to the previously approved conditions of approval under Planning permit PLN17478, including a revision to Condition #2 to reflect the three-year extension.

Prepared by:

Mike Rivera/m@r

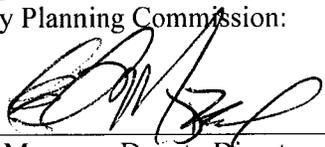
Mike Rivera
Planner II
Bureau of Planning

Reviewed by:

Catherine Payne

Catherine Payne
Acting Development Planning Manager
Bureau of Planning

Approved for forwarding to the
City Planning Commission:



Ed Manasse, Deputy Director,
Bureau of Planning

ATTACHMENTS:

- A. City Administrator Order No. 6
- B. Applicant's letter of request
- C. Proposed Revision to Conditions of Approval (including revision to reflect proposed extension)
 - 1. Option 2.A (two-year extension)
 - 2. Option 2.B (three-year extension)
- D. Approved Project Design Plans

ATTACHMENT C.1

PROPOSED REVISED CONDITIONS OF APPROVAL (OPTION 2.A)

1. **Extension of previous conditions of approval and mitigation**

Ongoing.

The project shall meet all the “Conditions of Approval” or “Conditions”, mitigation measures, and any other requirements that accompanied the original August 21, 2019 approval of the project by the Planning Commission.

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

This Approval shall become effective immediately, unless the Approval is appealable, in which case the Approval shall become effective in ten (10) calendar days unless an appeal is filed. Unless a different termination date is prescribed, this Approval shall expire **two** years from the Approval date, or from the date of the final decision in the event of an appeal, unless within such period a complete building permit is issued for all three development phases by the Building Department or the authorized activities have commenced in the case of a permit not involving construction or alteration. All of the building permits for new building construction shall be issued by the Building Department within **two** years from the issuance of the FDP **extension** approval and by the following dates:

- Phase 1 (all horizontal improvements, and Building 1): August **19 21, 2021 2023**
- Phase 2 (Building 2): August **19, 21 2021 2023**
- Phase 3 (Building 3): August **19, 21 2021 2023**

If litigation is filed challenging this Approval, or its implementation, then the time period stated above for obtaining necessary permits for construction or alteration and/or commencement of authorized activities is automatically extended for the duration of the litigation.

All other modifications, including extensions or revisions of the final development plan, and stage development schedule, shall be processed in the same manner as the original application and shall be subject to the same procedural requirements, and shall be considered by the Planning Commission.

ATTACHMENT C.2

PROPOSED REVISED CONDITIONS OF APPROVAL (OPTION 2.B)

**1. Extension of previous conditions of approval and mitigation
*Ongoing.***

The project shall meet all the “Conditions of Approval” or “Conditions”, mitigation measures, and any other requirements that accompanied the original August 21, 2019 approval of the project by the Planning Commission.

2. Effective Date, Expiration, Extensions and Extinguishment

This Approval shall become effective immediately, unless the Approval is appealable, in which case the Approval shall become effective in ten (10) calendar days unless an appeal is filed. Unless a different termination date is prescribed, this Approval shall expire ~~two~~ **three**-years from the Approval date, or from the date of the final decision in the event of an appeal, unless within such period a complete building permit is issued for all three development phases by the Building Department or the authorized activities have commenced in the case of a permit not involving construction or alteration. All of the building permits for new building construction shall be issued by the Building Department within ~~two~~ **three**-years from the issuance of the FDP **extension** approval and by the following dates:

- Phase 1 (all horizontal improvements, and Building 1): August ~~19 21, 2021~~ **2024**
- Phase 2 (Building 2): August ~~19, 21 2021~~ **2024**
- Phase 3 (Building 3): August ~~19, 21 2021~~ **2024**

If litigation is filed challenging this Approval, or its implementation, then the time period stated above for obtaining necessary permits for construction or alteration and/or commencement of authorized activities is automatically extended for the duration of the litigation.

All other modifications, including extensions or revisions of the final development plan, and stage development schedule, shall be processed in the same manner as the original application and shall be subject to the same procedural requirements, and shall be considered by the Planning Commission.

Signature: *Catherine Payne*

Email: cpayne@oaklandca.gov

500 Kirkham. Extension. SRPC 08 19 20. signed

Final Audit Report

2020-08-12

Created:	2020-08-12
By:	Mike Rivera (MRivera@oaklandca.gov)
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