



350 FRANK OGAWA PLAZA
5TH FLOOR
OAKLAND, CA 94612
510.251.8210
WWW.UP-PARTNERS.COM

MEMORANDUM

DATE: OCTOBER 25, 2010

TO:
Catherine Payne
Planner III
CEDA Planning and Zoning Division

FROM:
Lynette Dias, AICP
Principal

RE: CEQA Compliance for MacArthur BART Transit Village Phase I FDP and Phase 1 Vesting Tentative Map

In accordance with the Conditions of Approval for the MacArthur Bart Transit Village Preliminary Planned Unit Development and the terms of the Development Agreement, the City is in receipt of an application for a Final Development Permit for Phase I (Phase I FDP), the parking structure, and a Vesting Tentative Map (VTM) for a portion of the site. The key purpose of this review is to determine whether the environmental effects of the Phase I FDP and VTM are adequately analyzed in the 2008 Certified Environmental Impact Report (EIR) prepared for the project. **As described below, each of these approvals were considered in the EIR and as proposed would not result in new or more severe environmental impacts beyond those identified in the EIR. As a result, the City does not need to prepare a Subsequent or Supplemental EIR to satisfy the environmental review requirements of CEQA. This memorandum comprises adequate environmental documentation of the proposed Phase I FDP and VTM.**

The discussion below summarizes the following items: (1) overview of project approvals and environmental review; (2) relationship of the proposed Phase 1 FDP and VTM with the approved Preliminary PUD/PDP and the project analyzed in the EIR; and (3) findings that the FDP and VTM fall within the scope of the EIR and do not trigger the conditions described in CEQA Guidelines Section 15162 calling for preparation of a subsequent or supplemental environmental review.

Project Approvals and Environmental Review

The City has taken several actions to review and plan for the future development of the MacArthur BART Transit Village. These include, without limitation: (1) certified an EIR, (SCH

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No. 2006022075) on July 1, 2008; (2) approved Ordinance No. 12883 C.M.S. amending Section 17.97.170 of the Oakland Planning Code related to the minimum usable open space requirements in the S-15 zone and rezoning the Project Site to S-15 Transit-Oriented Development Zone on July 1, 2008; (3) adopted and approved a Preliminary Planned Unit Development (Preliminary PUD/PDP) permit on July 1, 2008 to allow development of 624 to 675 residential units, 42,500 square feet of neighborhood-serving retail and commercial uses (including 7,000 square feet of live/work units), a 5,000 square feet community center use, and parking garage for BART patrons ; (4) adopted and approved a major conditional use permit to exceed parking requirements and to allow off-street parking for non-residential uses on July 1, 2008; (5) approved preliminary design review for the Preliminary PUD/PDP on July 1, 2008; and (6) approved Ordinance No. 12959 C.M.S on July 21, 2009 enacting a Development Agreement.

The Development Agreement and Preliminary PUD/PDP, which were both considered in the EIR, anticipate that the City will timely consider and possibly grant additional future approvals, including, without limitation, Final PUD (FDP) permits for each of the Project Phases, a vesting tentative map, final design review, tree removal, and conditional use permits.

Relationship of Phase I FDP and VTM to approved Preliminary PUD/PDP and certified EIR

The Phase I FDP and VTM applications dated October 26, 2010 have been reviewed and found to be in substantial conformance with: (1) the project evaluated in the EIR, (2) the approved Preliminary PUD/PDP and its Conditions of Approval, and (3) the terms of the Development Agreement. A summary of the relationship of these approvals relative to the Preliminary PUD/PDP approval and the certified EIR is provided below.

Relationship to approved Preliminary PUD/PDP

The attached Substantial Conformance with the PDP Approval Memo, dated October 26, 2010, regarding the Phase I FDP 's and the VTM's substantial conformance with the existing Preliminary PUD/PDP approval, details the clarifying and implementing project refinements that have been incorporated into the Phase I FDP and VTM submittal.

The analysis concludes that in all fundamental respects the project approved in the Preliminary PUD/PDP remains the same. The memo finds that there are no new or changed uses; no new facilities; no change in the overall residential unit count; no change in the amount of retail/commercial space; no change in community space; no change in the height or bulk controls; no change in the community benefits; no change in the project site; and no change in project phasing. The changes related to the BART garage and the site plan adjustments and refinements resulting from the larger garage (e.g., parcel adjustment, realignment of Internal Street) are related to implementation of the terms of the Draft TDMP included in the Preliminary PUD/PDP approval. The changes related to widening the streets and the resulting removal of the street parking on Internal Street are related to requirements imposed by City departments. The realignment of Village Drive is not precluded by any specific COA or Design Guideline. Additionally, none of the changes would violate the Development Agreement. The memo further concludes that the facts described in the memo and summarized above support a finding by the

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City that the Phase I FDP and VTM, including the refinements summarized above and described in the attached memo, substantially conform to the Preliminary PUD/PDP and no Preliminary PUD/PDP amendment is required.

Relationship to EIR

The Phase I FDP and VTM are within the scope of the project evaluated in the EIR and would not trigger any new significant or significantly greater impacts. The MacArthur Transit Village project analyzed in the certified EIR consisted of a new BART parking garage; improvements to the BART Plaza; up to 675 residential units (both market-rate and affordable); up to 44,000 square feet of commercial space (including live/work units); 5,000 square feet of community center or childcare space; approximately 1,000 structured parking spaces, including the 300 space BART parking garage; approximately 30-45 on-street parking spaces, pedestrian and bicycle friendly internal streets and walkways; improvements to the Frontage Road; a new internal street, Village Drive, located between Frontage Road and Telegraph Avenue; two new traffic signals at the intersections of Village Drive/Telegraph Avenue and West MacArthur Boulevard/Frontage Road; a rezoning of the Project site to S-15, and a text amendment to the S-15 zone. Multiple FDPs and subdivision maps were contemplated in the EIR (See Draft EIR, pages 72-74) to implement the Preliminary PUD/PDP.

The currently proposed development would provide up to 675 multi-family residential units, 42,500 square feet of commercial space and a 483 space parking garage. Key project refinements that are reflected in the Phase I FDP and VTM and described in the Preliminary PUD/PDP conformance memo include:

- BART Garage - increasing the parking capacity of the BART garage and associated site plan changes
- Internal Street - shifting alignment 40 feet to west, widening to street from 20 feet to 26 feet, eliminating on-street parking, widening pedestrian walkway, and adding an EVA connection to West MacArthur Boulevard
- Realigning Village Drive to line up with 39th Street

Fehr & Peers evaluated each of these transportation related refinements and confirmed that the refinements would not cause new significant impacts or a substantial increase in the severity of previously identified impacts, and the mitigation measures proposed in the EIR would continue to be valid (see Fehr & Peers Memo date October 8, 2010). The proposed changes would also not trigger any impact changes within the other environmental topics evaluated in the EIR.

Conclusion

As discussed above, the proposed Phase I FDP and VTM applications were considered in the EIR as they are in conformance with the approved Preliminary PUD/PDP. The refinements incorporated into the applications represent no change in development intensity or significant physical changes on the MacArthur Transit Village site from the project analyzed in the EIR. Therefore, these changes would not result in new or more significant impacts (or require new or significantly altered mitigation measures) beyond those already identified in the EIR. The EIR is adequate and no subsequent or supplemental environmental review.

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The following discussion summarizes the reasons why no supplemental or subsequent CEQA review is necessary pursuant to *CEQA Guidelines* Section 15162 and the City can rely on the previously certified EIR.

Substantial Changes to the Project. The refinements to the project are minor and necessary to implement the Conditions of Approval of the Preliminary PUD/PDP as discussed in the Preliminary PUD/PDP substantial conformance memo and Traffic Memo. These changes would **not** result in new significant environmental impacts or a substantial increase in the severity of impacts already identified in the 2008 EIR. Therefore, the proposed changes to the project are considered *minor* refinements, not *substantial* changes.

Project Circumstances. Since certification of the EIR, conditions in and around the MacArthur Transit Village have not changed and thus implementation of the project (including the proposed refinements) would **not** result in new significant environmental effects or a substantial increase in the severity of environmental effects already identified in the 2008 EIR. No substantial changes in noise levels, air quality, traffic, or other conditions have occurred within and around the project site since certification of the EIR.

New Information. No new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the 2008 EIR was certified, has been identified which is expected to result in: 1) new significant environmental effects or a substantial increase in the severity of environmental effects already identified in the EIR; or 2) mitigation measures or alternatives which were previously determined not to be feasible would in fact be feasible, or which are considerably different from those recommended in the 2008 EIR, and which would substantially reduce significant effects of the project, but the project applicant declines to adopt them.

As described previously, changes to the proposed project would not result in significant environmental effects (including effects that would be substantially more severe than impacts identified in the 2008 EIR). Existing regulations (including City General Plan policies and ordinances in the Municipal Code) and mitigation measures included in the 2008 EIR would be adequate to reduce the impacts resulting from implementation of changes to the proposed project to less-than-significant levels.



MEMORANDUM

Date: October 8, 2010
To: Catherine Payne, City of Oakland
From: Sam Tabibnia
Subject: *MacArthur Transit Village Project – Comparison of the Current Development Plan and the Certified EIR*

WC10-2717

Fehr & Peers has reviewed the latest site plan for the proposed MacArthur Transit Village dated June 30, 2010. Several elements in the most recent development plan have been modified since the *MacArthur Transit Village Draft EIR* (January 2008) was certified to implement various conditions of approval, mitigation measures, and City imposed requirements. Fehr & Peers completed a new analysis to determine if the proposed modifications could result in new significant impacts, or a substantial increase in the severity of previously identified impacts, and if the mitigation measures recommended in the EIR would continue to be valid.

The proposed Final Development Plan (FDP) would provide up to the same amount of residential units, and the same commercial space for the Transit Village as analyzed in the certified EIR. Access for the Transit Village and the BART Station would continue to be provided by Village Drive from both Telegraph Avenue and 40th Street. Access for the BART Garage would continue to be provided through Frontage Road at MacArthur Boulevard.

Although the overall project has not changed considerably, Fehr & Peers evaluated the potential impacts of the following project modifications on access and circulation for automobiles, buses, bicycles, pedestrians, and emergency vehicles:

- Realignment of intersection of Village Drive on Telegraph Avenue about 60 feet to the north.
- Increase in the number of parking spaces in the BART Garage from 300 spaces to about 483 spaces.
- Widening of the pedestrian path between Internal Street and West MacArthur Boulevard, which also accommodates emergency vehicle access.
- Removal of 18 on-street parking spaces on Internal Street

Based on our analysis, the proposed modifications would not change the conclusions of the EIR. The proposed modifications would not cause new significant impacts, or a substantial increase in the severity of previously identified impact, and the mitigation measures proposed in the EIR would continue to be valid.

The rest of this memorandum describes the evaluation of the modifications listed above.

PROJECT DESCRIPTION

The MacArthur Transit Village project analyzed in the certified EIR consisted of 675 multi-family residential units and 49,000 square feet of commercial space. The currently proposed development would provide up to 675 multi-family residential units and 42,500 square feet of commercial space. The proposed development is estimated to generate fewer automobile trips and is expected to result in fewer significant impacts or reduce the magnitude of off-site traffic impacts identified in the EIR.

Similar to the project analyzed in the certified EIR, access for the Transit Village and the BART Station would continue to be provided by Village Drive from both Telegraph Avenue and 40th Street. Access for the BART Garage would continue to be provided through Frontage Road at MacArthur Boulevard. Thus, the proposed development would not modify access for automobiles, bicycles, pedestrians, buses, and emergency vehicles accessing the site. Therefore, the proposed development would not cause any additional impacts than identified in the EIR; the mitigation measures recommended in the EIR would continue to be valid.

REALIGNMENT OF VILLAGE DRIVE

In comparison to the EIR analysis, the latest design plans for the project would realign the intersection of Village Drive on Telegraph Avenue about 60 feet to the north, closer to the Telegraph Avenue/40th Street intersection. Fehr & Peers analyzed traffic operations, including intersection delay and Level of Service (LOS), at the two intersections most directly affected by the proposed realignment: Telegraph Avenue/40th Street and Telegraph Avenue/Village Drive.

Table 1 summarizes intersection delay and LOS at these two intersections under the scenarios studied in the EIR for both the EIR analysis and the new analysis with Village Drive realigned about 60 feet north. The Synchro traffic analysis files previously developed for the EIR were modified by moving the Telegraph Avenue/Village Drive intersection north by 60 feet. The analysis was completed for AM and PM peak hours under Existing Plus Project, Cumulative Year 2015 Baseline Plus Project, and Cumulative Year 2030 Baseline Plus Project conditions.

As shown in Table 1, both intersections would continue to operate at the same LOS with a slight increase in overall intersection delay if Village Drive is realigned north by 60 feet. The EIR identified a significant impact at the Telegraph Avenue/40th Street intersection (Impact TRANS-6) under Cumulative Year 2030 Baseline Plus Project conditions. Mitigation Measure TRANS-6, consisting of providing protected/permitted left-turn phasing on the eastbound and westbound 40th Street approaches, changing signal cycle lengths, and optimizing signal timing at the intersection, would mitigate the impact to a less-than-significant level. As shown in Table 1, this impact would continue to be significant if Village Drive is moved and the proposed mitigation measure would continue to mitigate the impact.

TABLE 1 INTERSECTION LOS SUMMARY									
Scenario	Peak Hour	EIR Analysis ¹				Village Drive Realigned ²			
		Telegraph Ave. / 40 th St.		Telegraph Ave. / Village Drive		Telegraph Ave. / 40 th St.		Telegraph Ave. / Village Drive	
		Delay	LOS	Delay	LOS	Delay	LOS	Delay	LOS
Existing Plus Project	AM	18.9	B	15.7	B	18.9	B	16.2	B
	PM	25.7	C	8.1	A	25.7	C	8.1	A
Cumulative Year 2015 Baseline Plus Project	AM	26.4	C	10.1	B	26.3	C	14.1	B
	PM	42.3	D	17.2	B	42.0	D	17.6	B
Cumulative Year 2030 Baseline Plus Project	AM	82.8	F	15.5	B	82.5	F	16.1	B
	PM	90.5	F	16.8	B	90.9	F	17.1	B
Cumulative Year 2030 Baseline Plus Project Mitigated	AM	54.5	D	9.3	A	54.6	D	9.4	A
	PM	53.5	D	8.3	A	53.4	D	8.2	A

Notes: **Bold** values denote significant impacts.
 1. Based on *MacArthur Transit Village Project Draft Environmental Impact Report*, January 2008.
 2. Village Drive moved north by 60 feet. All other analysis parameters same as the EIR analysis.
 Source: Fehr & Peers, 2008 and 2010.

Based on our analysis, the proposed realignment of Village Drive would not cause any new impacts, or a substantial increase in the severity of previously identified impacts, at the two studied intersections. The previously identified impact at Telegraph Avenue/40th Street intersection would continue to be significant and the mitigation measure identified in the EIR would continue to mitigate the impact. Thus, the proposed changes would remain consistent with the findings of the certified project EIR.

INCREASE IN THE NUMBER OF PARKING SPACES IN THE BART GARAGE

The current MacArthur BART Station parking lot provides 618 parking spaces. The project as analyzed in the EIR would have reduced the number of parking spaces to about 300 spaces. Although the project would have reduced the number of parking spaces available for BART riders by 318 spaces, the traffic impact analysis conservatively assumed that the BART parking garage would continue to generate the same amount of AM and PM peak hour vehicle trips as existing conditions in order to present a "worst case" analysis (Draft EIR pages 172 and 173). However, all BART generated trips were reassigned to the new garage to account for the existing BART parking lot driveways that would be eliminated.

The current FDP would increase the number of parking spaces in the BART garage to 483 spaces (including 33 spaces dedicated to non-BART uses). The BART garage would continue to provide fewer spaces than current conditions. Thus, the EIR analysis and findings, which were based on the current number of parking spaces for BART riders, would continue to be valid, and

the proposed modifications would not cause new significant impacts or a substantial increase in the severity of the previously identified impacts.

WIDENING OF PEDESTRIAN PATH BETWEEN INTERNAL STREET AND WEST MACARTHUR BOULEVARD

Internal Street would remain a cul-de-sac. Due to the redesign of the BART Garage, the current FDP would widen the pedestrian path connecting Internal Street and West MacArthur Boulevard to 26 feet. This would allow the pedestrian path to also serve as emergency vehicle access. Movable bollard would limit vehicular access on the pedestrian path.

The proposed pedestrian path widening would improve pedestrian connection to the south and enhance emergency access for the project. It would not cause any new impacts, or a substantial increase in the severity of previously identified impacts,

REMOVAL OF ON-STREET PARKING ON INTERNAL STREET

The EIR analysis assumed that Village Drive and Internal Street combined would provide up to 45 on-street parking spaces. These spaces would primarily be used by shoppers for the commercial component of the project and visitors to the residential component of the project. The current FDP proposes to remove 18 on-street parking spaces on Internal Street to provide adequate width to accommodate the Fire Services Department requirements. However, The redesigned BART garage would provide 33 spaces dedicated for non-BART uses which would replace the 18 parking spaces removed on Internal Street. Thus, the current FDP would result in 15 additional short-term parking spaces.

Although the EIR analyzed parking as a non-CEQA issue, it identified parking deficit for short term parkers (i.e., visitor and guest parking). The current FDP would provide more short-term parking spaces than the project analyzed for the EIR. However, the project would continue to have a deficit for short-term parking. Although the magnitude of the deficit would be reduced.

CONCLUSIONS

Based on our evaluation as documented above, the proposed modifications would not change the conclusions of the EIR. The proposed modifications would not cause new impacts, or a substantial increase in the severity of previously identified impacts, and the mitigation measures proposed in the EIR would continue to be valid.

Please contact us with questions or comments.