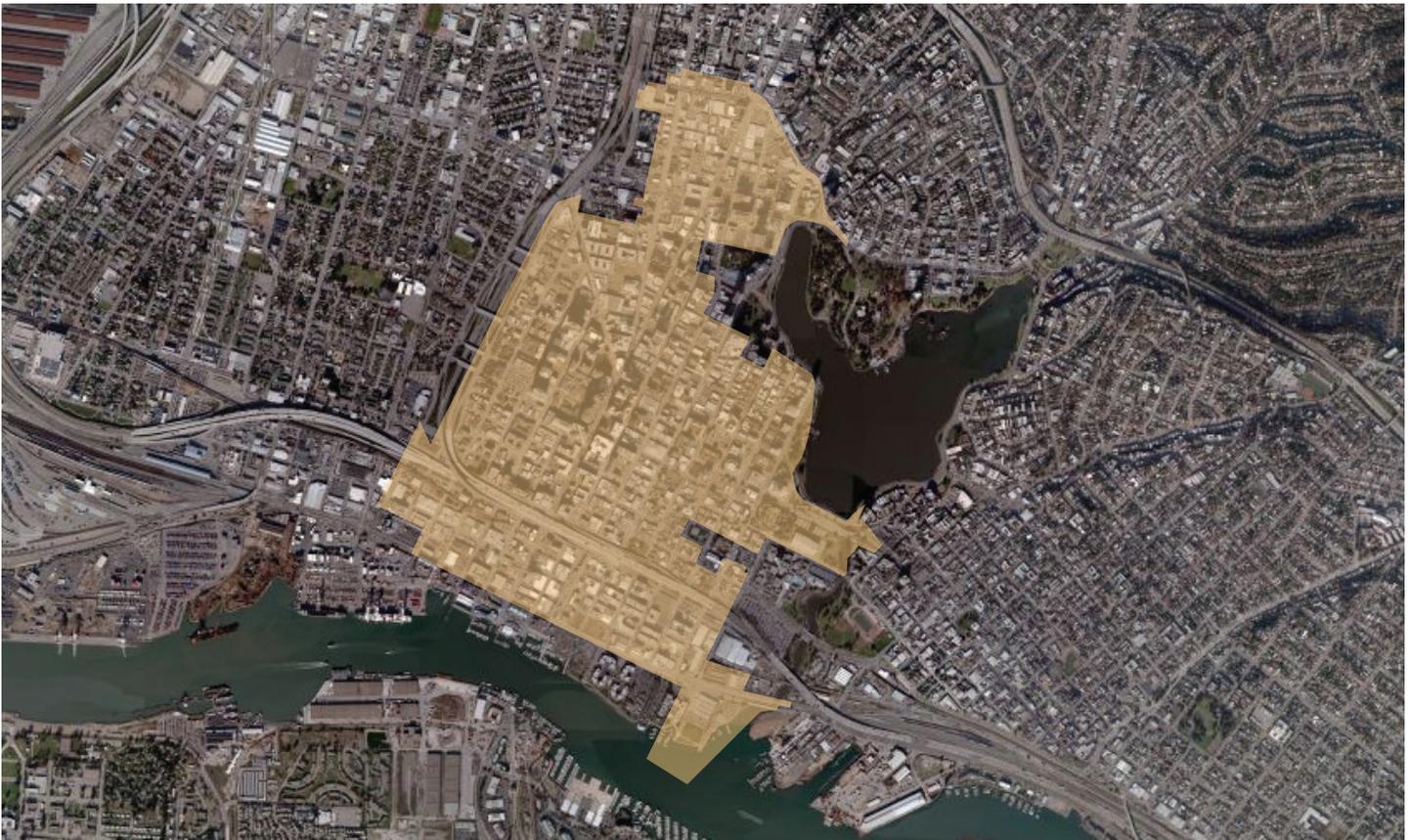


PROPOSED AMENDMENTS TO THE CENTRAL DISTRICT URBAN RENEWAL PLAN

Responses to Comments and
Final Environmental Impact Report
SCH No. 2010102024

Prepared for
The City of Oakland

June 2011



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CHAPTER 1

Introduction

1.1 CEQA Process

An Environmental Impact Report (EIR) is an informational document prepared by a Lead Agency (in this case, the City of Oakland) that contains environmental analysis for public review and for agency decision-makers to use in their consideration of development proposals. On March 18, 2011, the City of Oakland (Lead Agency) released for public review a Draft EIR (or DEIR) for the Proposed Amendments to the Central District Urban Renewal Plan (ER10-0003), the project. The 45-day public review and comment period on the DEIR began on Friday, March 18, 2011, and the City of Oakland Planning Commission held a public hearing on the DEIR on April 6, 2011. The Landmarks Preservation Advisory Board (LPAB) also held a public hearing on April 11, 2011. The public review and comment period ended at 4:00 p.m. Monday, May 2, 2011.

This Responses to Comments document, together with the DEIR and its Appendices, constitute the Final EIR (or FEIR) for the project. Due to its length, the text of the DEIR is not included with this Response to Comments document; however, it is included by reference as part of the Final EIR.

The Oakland City Planning Commission will consider the Final EIR before approving or denying the Proposed Amendments. Before the Lead Agency may approve the Proposed Amendments, it must certify that the Final EIR adequately discloses the environmental effects of the Proposed Amendments, that the Final EIR has been completed in conformance with the California Environmental Quality Act (CEQA), and that the decision-making body of the Lead Agency independently reviewed and considered the information contained in the Final EIR. Certification of the Final EIR would indicate the City's determination that the Final EIR adequately evaluates the environmental impacts that could be associated with the Proposed Amendments.

The City of Oakland has prepared this document pursuant to CEQA Guidelines Section 15132 which specifies the following (and which also applies to Draft and Final EIRs):

“The Final EIR shall consist of:

- (a) The DEIR or a revision of that draft.
- (b) Comments and recommendations received on the DEIR either verbatim or in a summary.
- (c) A list of persons, organizations, and public agencies commenting on the DEIR.

- (d) The response of the Lead Agency to significant environmental points raised in review and consultation process.
- (e) Any other information added by the Lead Agency.”

This Final EIR incorporates comments from public agencies and the general public and contains the Lead Agency’s responses to those comments.

1.2 New Information in the Final EIR

If *significant new information* is added to an EIR after notice of public review has been given, but before final certification of the EIR, the lead agency must issue a new notice and recirculate the EIR for further comments and consultation. (*Laurel Heights Improvement Association v. Regents of the University of California*, 6 Cal 4th 112, (1993).) None of the corrections or clarifications to the DEIR identified in this document constitute *significant new information* pursuant to Section 15088.5 of the CEQA Guidelines. As a result, a recirculation of the DEIR is not required.

Specifically, the new information, corrections or clarifications presented in this document do not disclose that:

- A new significant environmental impact would result from the project or from a new mitigation measure (or standard condition) proposed to be implemented;
- A substantial increase in the severity of an environmental impact would result unless mitigation measures (or standard conditions) are adopted that reduce the impact to a level of insignificance;
- A feasible project alternative or mitigation measure (or standard condition) considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project’s proponents decline to adopt it; or
- The DEIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (CEQA Guidelines Section 15088.5)

Information presented in the DEIR and this document support the City’s determination that recirculation of the DEIR is not required.

1.3 Organization of this Final EIR

This Final EIR contains information about the Proposed Amendments, supplemental environmental information, and comments and responses to comments raised during the public review and comment period on the DEIR. Following this introductory chapter, the document is organized as described below.

- Chapter 2, *Project Summary*, summarizes the Proposed Amendments as presented in the DEIR as the City of Oakland has not made any changes to the Proposed Amendments since publication of the DEIR.
- Chapter 3, *Changes to the DEIR*, contains text changes and corrections to the DEIR initiated by the Lead Agency or resulting from comments received on the DEIR.
- Chapter 4, *Commenters on the DEIR*, lists all agencies, organizations and individuals that submitted written comments on the DEIR during the public review and comment period, and/or that commented at the Planning Commission Public Hearing and/or the Landmarks Preservation Advisory Board Public Hearing on the DEIR.
- Chapter 5, *Written Comments and Responses to Written Comments Received on the DEIR*, contains each of the comment letters received on the DEIR and presents individual responses to the specific comments raised in each letter.
- Chapter 6, *Comments and Responses to Comments Made at the Public Hearings on the DEIR*, includes transcripts of the Planning Commission and the Landmarks Preservation Advisory Board Public Hearings on the DEIR and presents responses to the specific comments received.
- Appendix A, *Findings Required for the Demolition of Historic Properties*, contains the findings required to be met to approve an application to demolish a historic structure in the City of Oakland.

CHAPTER 2

Project Summary

The City and the Redevelopment Agency of the City of Oakland (“Agency” or “Redevelopment Agency”) propose two amendments (“Proposed Amendments”) to the Central District Urban Renewal Plan (“Redevelopment Plan”).

The two Proposed Amendments would amend the Redevelopment Plan in three ways:

1. Extend the duration of the Redevelopment Plan from 2012 to 2023 and extend the time period that the Redevelopment Agency can receive tax increment funds from 2022 to 2033, as allowed by Senate Bill 211 (codified at Health and Safety Code Section 33333.10 et seq.) and by Health and Safety Code Section 33331.5.
2. Increase the cap on the receipt of tax increment revenue to account for the proposed time extension, as the Redevelopment Agency is anticipated to exceed its existing cap if the time extension is adopted.
3. Renew the Agency’s authority for use of eminent domain in the Project Area.

Redevelopment activities facilitated by the Proposed Amendments would generally remain similar to those currently being implemented, and the EIR will analyze the effects of changes in the environment resulting from implementation of an additional 11 years of redevelopment activities and tax increment funding. Implementation of the Proposed Amendments would provide a series of multiple, coordinated actions (e.g., tools, programs, and funding) to eliminate blight and facilitate revitalization and growth in the Project Area. The redevelopment activities also would support additional low- and moderate- income housing. Implementation of actions defined in the existing Redevelopment Plan and the Proposed Amendments could result in the rehabilitation, reconstruction, or alteration of buildings, housing, public infrastructure, and other physical changes to the environment.

Based on preliminary direction received from the City of Oakland, it was determined that a project-level EIR would be the appropriate document to analyze the potential environmental effects of the Proposed Amendments under CEQA. This EIR addresses all environmental topics identified in the City of Oakland’s CEQA Thresholds/Criteria of Significance document.

2.1 Project Site and Vicinity

The Project Area is in the City’s Central Business District and is located in the western part of the City of Oakland, in Alameda County, California. The Project Area is generally bounded by the

Embarcadero to the south¹, Fallon Street and Lake Merritt to the east, 28th Street and Bay Place to the north, and Interstate 980 (I-980) to the west. The Project Area encompasses Downtown Oakland and Jack London Square, and the Chinatown, Victorian Row/Old Oakland and Uptown neighborhoods.

The Project Area covers approximately 828 acres most of which is in the City's Central Business District and is made up of high density, mixed use urban development along with retail and pedestrian-oriented streetscapes. The area south of Interstate 880 (I-880) is in the Estuary Plan Area and has commercial and industrial development; and a small portion adjacent to I-980 is in the Community Commercial and Urban Residential and has mixed commercial, light industrial and high density residential development.

The majority of the Project Area is within the City's Chinatown/Central general planning area. This area is one of the oldest areas of the City. Buildings in this area date from the late 1800s. Three transit-oriented districts (12th Street/Oakland City Center, 19th Street, and Lake Merritt BART stations) are within the Project Area.

2.2 Proposed Amendments

For purposes of this EIR, the proposed CEQA Project is the activities associated with implementation of the Proposed Amendments to the Redevelopment Plan. This EIR analyzes the environmental impacts of the CEQA Project.

The Redevelopment Plan does not contain specific development proposals for individual sites, nor does it mandate particular actions the Redevelopment Agency will take with regard to specific projects. Thus, the activities associated with implementation of Proposed Amendments include a broad list of potential programs and projects and strategies intended to reduce blight, and a funding mechanism via tax increment financing. These potential programs and projects are consistent with the adopted Oakland General Plan and are intended to enhance the Central District's function, appearance, and economic vitality in ways that would not otherwise be available.

The first of the Proposed Amendments analyzed in this EIR is the proposed 17th Amendment to the Redevelopment Plan. It would amend the Plan in three ways. First, the 17th Amendment would extend the duration of the Redevelopment Plan from 2012 to 2022 and extend the time period that the Redevelopment Agency can receive tax increment funds from 2022 to 2032, as allowed by Senate Bill (SB) 211 (codified at Health and Safety Code Section 33333.10 et seq.). Under California Redevelopment Law, an extension of the Redevelopment Plan requires findings, among other things, that significant blight remains in the Project Area and that the blight cannot be eliminated without extending the effectiveness of the Plan and the receipt of property taxes. For this time extension, remaining areas of blight and "necessary and essential parcels" in the Central District must be mapped.

¹ For purposes of this EIR, and following Oakland convention, Broadway runs north-south, and MacArthur Boulevard and streets parallel to it run east-west.

Second, the 17th Amendment would increase the cap on the receipt of tax increment revenue to account for the proposed time extensions, as the Redevelopment Agency is anticipated to exceed its existing cap if the time extension is adopted. The Redevelopment Plan includes a cumulative cap on receipt of tax increment revenues, set at \$1.34 billion. The Agency is close to reaching this cap and will exceed it if the SB 211 time extension is adopted (since additional revenues will accrue during the extended time). A plan amendment is required to raise the cap, which also requires findings that significant blight remains in the Project Area and that this blight cannot be eliminated without increasing the cap. The amendment also requires an analysis of the cost of projects required to eradicate this blight and the relationship between this cost and the increase in the cap. The Agency has not determined what the new tax increment cap will be and will determine the new amount based on the analysis to be completed by Seifel Consulting, Inc., separate from this EIR.

Third, the 17th Amendment would renew the Redevelopment Agency's authority to use eminent domain in the Project Area. The Agency's eminent domain authority within the Central District expired on June 12, 2009. Under Redevelopment Law, such an extension also requires findings based on substantial evidence that significant blight remains in the Project Area and that this blight cannot be eliminated without the use of eminent domain, if necessary.

The second Proposed Amendment analyzed in this EIR is the proposed 18th Amendment to further extend the Redevelopment Plan duration from 2022 to 2023 and extend the time period that the Redevelopment Agency can receive tax increment funds from 2032 to 2033, as allowed by Health and Safety Code Section 33331.5. Under that statute, when an agency has made its required payments to the County's Supplemental Educational Revenue Augmentation Fund (SERAF), it may amend its plan to extend its plan limits by one year without having to comply with other provisions of Redevelopment Law governing plan amendments. No blight findings or other analysis is required by California Redevelopment Law for a SERAF time extension.

Overall, the redevelopment projects and programs to be facilitated by the Proposed Amendments would generally remain similar to those currently being implemented under the existing Redevelopment Plan. This Program EIR analyzes the impacts that would be expected to occur with implementation of the Redevelopment Plan, as amended, over an approximately 11-year period, or by the year 2023. Under current time limits, the Redevelopment Plan will expire on June 12, 2012, and the ability of the Agency to receive tax increment revenue will expire 10 years thereafter. As allowed by SB 211 (Health and Safety Code Section 33333.10 et seq.) and Health and Safety Code Section 33331.5, the Agency is extending these two time limits for an additional 11 years.

CHAPTER 3

Changes to the DEIR

The changes presented in this chapter are initiated by the City of Oakland (Lead Agency) staff or by comments received on the DEIR. Changes include corrections, revisions or clarifications to information presented in the DEIR. Throughout this chapter, newly added text is shown in double underline format, and deleted text is shown in ~~strikeout format~~. For changes specifically initiated by comments received on the DEIR, an alpha-numeric designator for the comment is indicated in brackets.

In Section 3.1 of this chapter, changes are listed generally in the order in which they would appear in the DEIR document. A revised Summary Table of Impacts, Mitigation Measures, Standard Conditions, and Residual Impacts, which shows proposed final text as modified from the DEIR, is presented at the end of this chapter.

As indicated in Chapter 1 (Introduction), the entirety of the Final EIR for the Proposed Amendments to the Central District Urban Renewal Plan consists of the DEIR and its Appendices and this Response to Comments document. Thus, the DEIR changes presented in this chapter (including the revised Summary Table of Impacts, Mitigation Measures, Standard Conditions, and Residual Impacts) incorporate and supersede original text in the DEIR.

3.1 List of Acronyms and Abbreviations

The following change is made to page vi of the DEIR (*deleted text is in strikeout type, and new text is double underlined*):

EBMUD East Bay Municipal ~~Utilities~~ Utility District

3.2 Project Description (Section 3)

The following change is made to Section 3.1.1, *Project Description, Overview of the Existing Redevelopment Plan*, on page 3-1 of the DEIR, second paragraph, second sentence (*new text is double underlined*):

These activities could include some or all of the following: assembly of blighted and underutilized properties into sites suitable for new sustainable or rehabbed sustainable development.

3.3 Greenhouse Gases and Climate Change (Section 4.6)

The following change is made to Section 4.6.1 *Physical Setting for GHG Emissions and Climate Change, Potential Effects of Climate Change on State of California*, on page 4.6-7 of the DEIR (*deleted text is in strikeout type, and new text is double underlined*):

Water purveyors, such as the East Bay Municipal ~~Utilities~~ Utility District (EBMUD), are required by state law to prepare Urban Water Management Plans (UWMPs) (discussed below, under Regulatory Context for Greenhouse Gas Emissions and Climate Change) that consider climatic variations and corresponding impacts on long-term water supplies (California Water Code, Section 10631[c]).

3.4 Hydrology and Water Quality (Section 4.8)

The following change is made to Section 4.8.3 *Impacts and Mitigation Measures, Impact HYD-3*, on page 4.8-20 of the DEIR (*deleted text is in strikeout type, and new text is double underlined*):

The East Bay Municipal ~~Utilities~~ Utility District has four reservoirs located north of the Project Area.

The following change is made to Section 4.8.3 *Impacts and Mitigation Measures, Impact HYD-5*, on page 4.8-21 of the DEIR (*deleted text is in strikeout type, and new text is double underlined*):

Also, potable water is supplied to the Project Area through imported surface water by the East Bay Municipal ~~Utilities~~ Utility District.

3.5 Utilities and Service Systems (Section 4.14)

The following change is made to Section 4.14.1 *Environmental Setting, Water Service, Water Supply System*, on page 4.14-1 of the DEIR (*deleted text is in strikeout type, and new text is double underlined*):

The East Bay Municipal ~~Utilities~~ Utility District (EBMUD) is a publicly owned water utility supplying water and wastewater treatment for parts of western Alameda and Contra Costa Counties, including the Project Area.

The following text is added to the end of the discussion of Section 4.14.1 *Environmental Setting, Water Service, Water Demand* on page 4.14-2 of the DEIR (*deleted text is in strikeout type, and new text is double underlined*):

Redevelopment projects within the project area will be subject to the following general requirements:

EBMUD's Central Pressure Zone, with a service elevation between 0 and 100 feet, serves the project area. Main extensions that may be required any specific development projects to provide adequate domestic water supply, fire flows, and system redundancy will be at the project sponsor's expense. Pipeline and fire hydrant relocations and replacements due to modifications of existing streets, and off-site pipeline improvements, also at the project sponsor's expense, may be required depending on EBMUD metering requirements and fire flow requirements set by the local fire department. When the development plans are finalized, all project sponsor's should contact EBMUD's New Business Office and request a water service estimate to determine costs and conditions of providing water service to the development. Engineering and installation of new and relocated pipeline and services requires substantial lead-time, which should be provided for in the project sponsor's development schedule.

EBMUD has informed the City, and individual project applicants should be aware, that EBMUD will not inspect, install or maintain pipeline in contaminated soil or groundwater (if groundwater is present at any time during the year at the depth piping is to be installed) that must be handled as a hazardous waste or that may pose a health and safety risk to construction or maintenance personnel wearing Level D personal protective equipment. Nor will EBMUD install piping in areas where groundwater contaminant concentrations exceed specified limits for discharge to sanitary sewer systems or sewage treatment plants. Applicants for EBMUD services requiring excavation in contaminated areas must submit copies of existing information regarding soil and groundwater quality within or adjacent to the project boundary.

In addition, individual project applicants must provide a legally sufficient, complete and specific written remedial plan establishing the methodology, planning and design of all necessary systems for the removal, treatment, and disposal of all identified contaminated soil and/or groundwater. EBMUD will not design the installation of pipelines until such time as soil and groundwater quality data and remediation plans are received and reviewed and will not install pipelines until remediation has been carried out and documentation of the effectiveness of the remediation has been received and reviewed. If no soil or groundwater quality data exists or the information supplied by the applicant is insufficient EBMUD may require the applicant to perform sampling and analysis to characterize the soil being excavated and groundwater that may be encountered during excavation or perform such sampling and analysis itself at the applicant's expense.

Water Recycling

EBMUD's Policy 8.01 requires that customers use non-potable water, including recycled water, for non-domestic purposes when it is of adequate quality and quantity, available at reasonable cost, not detrimental to public health and not injurious to plant, fish and wildlife to offset demand on EBMUD's limited potable water supply. The project area falls within and around the main recycled water pipeline infrastructure of the EBMUD's East Bayshore Recycled Water Project service area. Redevelopment projects within the project area present several opportunities for recycled water uses ranging from landscape irrigation,

toilet flushing and other non-potable commercial and industrial uses. EBMUD recommends that the City and project sponsors maintain continued coordination and consultation with EBMUD as they plan and implement specific projects that are part of the redevelopment plan regarding the feasibility of providing recycled water for appropriate non-potable uses.

Water Conservation

Individual projects may present opportunities to incorporate water conservation measures. The project sponsor should be aware that Section 31 of the EBMUD's Water Service Regulations requires that water service shall not be furnished for new or expanded service unless all the applicable water-efficiency measures described in the regulation are installed at the project sponsor's expense.

The following change is made to Section 4.14.1 *Environmental Setting, Water Service, Water Supply Projects* on page 4.14-3 of the DEIR (*deleted text is in strikeout type, and new text is double underlined*):

Regional Desalinization

~~In partnership with Contra Costa Water District (CCWD), the San Francisco Public Utilities Commission (SFPUC), and the Santa Clara Valley Water District (SCVWD), EBMUD is exploring a Bay Area Regional Desalinization Project, which would produce 71 mgd, of which 20 mgd would be allocated to EBMUD. Three desalinization plants would be constructed—one in San Francisco, one in Oakland, and one in East Contra Costa on the shore of the Suisun Bay. The plants would provide intermittent dry-year supplemental supply, depending on the specific agreement between partner agencies.~~

Bay Area Regional Desalination Project

The Bay Area's four largest water agencies, Contra Costa Water District, East Bay Municipal Utility District, San Francisco Public Utilities Commission, and Santa Clara Valley Water District are jointly exploring developing regional desalination facilities that would benefit the 5.4 million Bay Area residents and businesses served by these agencies. This project would provide an additional water source, diversify the area's water supply, and foster long-term regional sustainability. The project could consist of one or more desalination facilities, with an ultimate total capacity of up to 65 mgd. The four partner agencies are focusing on optimizing technologies that minimize power requirements and environmental effects.

CHAPTER 4

Commenters on the DEIR

4.1 Agencies, Organizations and Individuals Commenting in Writing

The following lists correspondence received from public agencies, organizations, and individuals, generally in the order it was received by the City of Oakland. Within each chronological listing, correspondence is listed alphabetically.

PUBLIC AGENCIES AND ORGANIZATIONS		
Designator	Agency / Signatory Name	Correspondence Dated
A	East Bay Municipal Utility District (EBMUD), William R. Kirkpatrick, Manager of Water Distribution Planning	4/27/11
B	Oakland Heritage Alliance (Dea Bacchetti and Naomi Schiff)	5/2/11
C	City of Oakland Landmarks Preservation Advisory Board	5/5/11

4.2 Commenters at the Planning Commission Public Hearing

The following lists persons who provided verbal comments at the Public Hearing on the DEIR, held at the April 6, 2011, meeting of the Oakland Planning Commission. Speakers are listed generally in order of presentation.

Public Speakers (Listed in Order of Presentation)	Planning Commissioners
<ul style="list-style-type: none">• Sanjiv Handa, East Bay News Service	<ul style="list-style-type: none">• Commissioner Galvez• Commissioner Zayas-Mart• Commissioner Truong (Chair)

4.3 Commenters at the Landmarks Preservation Advisory Board Regular Meeting

The following lists persons who provided verbal comments at the Landmarks Preservation Advisory Board Meeting, held on the April 11, 2011. Speakers are listed generally in order of presentation.

Public Speakers (Listed in Order of Presentation)	Board Members
<ul style="list-style-type: none">• Naomi Schiff, Oakland Heritage Alliance	<ul style="list-style-type: none">• Daniel Schulman, Board Member• Anna Naruta, Board Member• Delphine Prevost (Vice-Chair)• Christopher Andrews, Board Member

CHAPTER 5

Comments and Responses to Written Comments Received on the DEIR

This chapter includes copies of the written comments received by hand-delivered mail or electronic mail during the public review period on the DEIR. Specific responses to the individual comments in each correspondence follow each letter or email. Consistent with the list of commenters presented in Chapter 4, correspondence received from public agencies is presented first, followed by those received from organizations and individuals.

Each correspondence is identified by an alpha designator (e.g., “Letter A”). Specific comments within each correspondence are identified by an alphanumeric designator that reflects the alphabetic correspondence designator and the numeric sequence of the specific comment within the correspondence (e.g., “A-1” for the first comment in Letter A). The set of responses immediately follows the correspondence.

Responses may also reference a response to a comment presented in Chapter 6 (Comments and Responses to Comments Received at the Public Hearings on the DEIR).

Responses specifically focus on comments that pertain to the adequacy of the analysis in the DEIR or other aspects pertinent to the environmental analysis of the proposed project pursuant to CEQA. Comments that address topics beyond the purview of the DEIR or CEQA are noted as such for the public record. Where comments and/or responses have warranted changes to the text of the DEIR, these changes appear as part of the specific response and are repeated in Chapter 3 (Changes to the DEIR), where they are listed generally in order of where the revision would appear in the DEIR document.



April 27, 2011



Ulla-Britt Jonsson, Planner II
City of Oakland Strategic Planning Division
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

Re: Notice of Availability of a Draft Environmental Impact Report for the Proposed
Amendments to the City of Oakland Central District Urban Renewal Plan
(Case No. ER10-003)

Dear Ms. Jonsson:

East Bay Municipal Utility District (EBMUD) appreciates the opportunity to comment on the Draft Environmental Impact Report (EIR) for the Proposed Amendments to the City of Oakland (City) Central District Urban Renewal Plan. EBMUD has the following comments.

GENERAL

EBMUD's response to the Notice of Preparation, dated November 4, 2010 (included in Appendix A of the Draft EIR) regarding Water Service and Water Recycling still apply to the project. A-1

Page vi, under List of Acronyms and Abbreviations, please correct the EBMUD acronym to East Bay Municipal Utilities *Utility* District. The correction needs to be made to this page and throughout the Draft EIR document. A-2

Page 4.14-3, the information on Regional Desalination Project is outdated. Please revise the project description per the enclosed Bay Area Regional Desalination Project Fact Sheet. A-3

If you have any questions concerning this response, please contact David J. Rehnstrom, Senior Civil Engineer, Water Service Planning at (510) 287-1365.

Sincerely,

William R. Kirkpatrick
Manager of Water Distribution Planning

WRK:AMW:sb
sb11_066.doc

Enclosure

5.1 Letter A Response – East Bay Municipal Utility District

A-1: New text is added to the end of the discussion of Section 4.14.1 *Environmental Setting, Water Service, Water Demand* on page 4.14-2 of the DEIR (*new text is double underlined*):

Redevelopment projects within the project area will be subject to the following general requirements:

EBMUD's Central Pressure Zone, with a service elevation between 0 and 100 feet, serves the project area. Main extensions that may be required any specific development projects to provide adequate domestic water supply, fire flows, and system redundancy will be at the project sponsor's expense. Pipeline and fire hydrant relocations and replacements due to modifications of existing streets, and off-site pipeline improvements, also at the project sponsor's expense, may be required depending on EBMUD metering requirements and fire flow requirements set by the local fire department. When the development plans are finalized, all project sponsor's should contact EBMUD's New Business Office and request a water service estimate to determine costs and conditions of providing water service to the development. Engineering and installation of new and relocated pipeline and services requires substantial lead-time, which should be provided for in the project sponsor's development schedule.

EBMUD has informed the City, and individual project applicants should be aware, that EBMUD will not inspect, install or maintain pipeline in contaminated soil or groundwater (if groundwater is present at any time during the year at the depth piping is to be installed) that must be handled as a hazardous waste or that may pose a health and safety risk to construction or maintenance personnel wearing Level D personal protective equipment. Nor will EBMUD install piping in areas where groundwater contaminant concentrations exceed specified limits for discharge to sanitary sewer systems or sewage treatment plants. Applicants for EBMUD services requiring excavation in contaminated areas must submit copies of existing information regarding soil and groundwater quality within or adjacent to the project boundary.

In addition, individual project applicants must provide a legally sufficient, complete and specific written remedial plan establishing the methodology, planning and design of all necessary systems for the removal, treatment, and disposal of all identified contaminated soil and/or groundwater. EBMUD will not design the installation of pipelines until such time as soil and groundwater quality data and remediation plans are received and reviewed and will not install pipelines until remediation has been carried out and documentation of the effectiveness of the remediation has been received and reviewed. If no soil or groundwater quality data exists or the

information supplied by the applicant is insufficient EBMUD may require the applicant to perform sampling and analysis to characterize the soil being excavated and groundwater that may be encountered during excavation or perform such sampling and analysis itself at the applicant's expense.

Water Recycling

EBMUD's Policy 8.01 requires that customers use non-potable water, including recycled water, for non-domestic purposes when it is of adequate quality and quantity, available at reasonable cost, not detrimental to public health and not injurious to plant, fish and wildlife to offset demand on EBMUD's limited potable water supply. The project area falls within and around the main recycled water pipeline infrastructure of the EBMUD's East Bayshore Recycled Water Project service area. Redevelopment projects within the project area present several opportunities for recycled water uses ranging from landscape irrigation, toilet flushing and other non-potable commercial and industrial uses. EBMUD recommends that the City and project sponsors maintain continued coordination and consultation with EBMUD as they plan and implement specific projects that are part of the redevelopment plan regarding the feasibility of providing recycled water for appropriate non-potable uses.

Water Conservation

Individual projects may present opportunities to incorporate water conservation measures. The project sponsor should be aware that Section 31 of the EBMUD's Water Service Regulations requires that water service shall not be furnished for new or expanded service unless all the applicable water-efficiency measures described in the regulation are installed at the project sponsor's expense.

A-2: The DEIR is corrected as follows.

The following change is made to page vi of the DEIR (*deleted text is in strikeout type, and new text is double underlined*):

EBMUD East Bay Municipal ~~Utilities~~ Utility District

The following change is made to Section 4.6.1 *Physical Setting for GHG Emissions and Climate Change, Potential Effects of Climate Change on State of California*, on page 4.6-7 of the DEIR (*deleted text is in strikeout type, and new text is double underlined*):

Water purveyors, such as the East Bay Municipal ~~Utilities~~ Utility District (EBMUD), are required by state law to prepare Urban Water Management Plans (UWMPs) (discussed below, under Regulatory Context for Greenhouse Gas Emissions and Climate Change) that consider climatic variations and corresponding impacts on long-term water supplies (California Water Code, Section 10631[c]).

The following change is made to Section 4.8.3 *Impacts and Mitigation Measures, Impact HYD-3*, on page 4.8-20 of the DEIR (*deleted text is in strikeout type, and new text is double underlined*):

The East Bay Municipal ~~Utilities~~ Utility District has four reservoirs located north of the Project Area.

The following change is made to Section 4.8.3 *Impacts and Mitigation Measures, Impact HYD-5*, on page 4.8-21 of the DEIR (*deleted text is in strikeout type, and new text is double underlined*):

Also, potable water is supplied to the Project Area through imported surface water by the East Bay Municipal ~~Utilities~~ Utility District.

The following change is made to Section 4.14.1 *Water Service, Water Supply System*, on page 4.14-1 of the DEIR (*deleted text is in strikeout type, and new text is double underlined*):

The East Bay Municipal ~~Utilities~~ Utility District (EBMUD) is a publicly owned water utility supplying water and wastewater treatment for parts of western Alameda and Contra Cost Counties, including the Project Area.

- A-3: The following change is made to Section 4.14.1 *Environmental Setting, Water Service, Water Supply Projects* on page 4.14-3 of the DEIR (*deleted text is in strikeout type, and new text is double underlined*):

Regional Desalinization

~~In partnership with Contra Costa Water District (CCWD), the San Francisco Public Utilities Commission (SFPUC), and the Santa Clara Valley Water District (SCVWD), EBMUD is exploring a Bay Area Regional Desalinization Project, which would produce 71 mgd, of which 20 mgd would be allocated to EBMUD. Three desalinization plants would be constructed—one in San Francisco, one in Oakland, and one in East Contra Costa on the shore of the Suisun Bay. The plants would provide intermittent dry year supplemental supply, depending on the specific agreement between partner agencies.~~

Bay Area Regional Desalination Project

The Bay Area's four largest water agencies, Contra Costa Water District, East Bay Municipal Utility District, San Francisco Public Utilities Commission, and Santa Clara Valley Water District are jointly exploring developing regional desalination facilities that would benefit the 5.4 million Bay Area residents and businesses served by these agencies. This project would provide an additional water source, diversify the area's water supply, and foster long-term regional sustainability. The project could consist of one or more desalination facilities, with an ultimate total capacity of up to 65 mgd. The four partner agencies are focusing on optimizing technologies that minimize power requirements and environmental effects.

over. These lights are characteristic of historic areas in older cities, and should be treated as potential assets--not merely liabilities.

↑ B-3
| cont.

Page II-17: Age alone should not be the definition of a seismically vulnerable building. Please supply a full discussion of the appropriate use of the California State Historic Building Code in addressing seismic and other structural deficiencies with relation to modern UBC standards. Many of the buildings in the central district could make use of this code in conjunction with improvements to achieve quake-resistant buildings. In the 1989 quake, some more modern buildings fared less well than older ones. Because reuse of buildings is greener than wholesale demolition, and because historic buildings help market the central city's uniqueness and identity to businesses and residents, a more nuanced discussion is required in this section of the DEIR. Redevelopment approaches might include a fuller program of assistance to owners of historic properties, including assistance in the proper use of historic building code, and perhaps fostering coordinated efforts between life safety, zoning, planning, and historic staff to make the process efficient for property owners.

B-4

Page II-33: The so-called obsolescence of commercial spaces seems to be based on a suburban model of retail design. A reworking of this passage should take into account some of the successful models of building adaptations for retail, including Oakland's College Avenue, Grand Lake, Park Blvd, and Temescal neighborhoods, among others, as well as the increasingly vibrant arts area around 23rd/Telegraph, reusing buildings in interesting ways. Other cities may also provide excellent examples of how adaptive reuse may allow a new generation of businesses to inhabit older structures.

B-5

Page II-35: The discussion of the warehouse district and produce market areas completely ignores their great historic value. These areas should be reevaluated with an eye to how historic tax credits, adaptive reuse, and celebration of their unique qualities might add property value, increase their potential reuses, and make them a central attraction, particularly in view of the lackluster recent developments at the Port of Oakland retail area adjoining. The argument cannot be made that new structures in the area have been more successful than old ones.

B-6

Page II-50: The "excess of bars" strikes us as just plain odd, given that CEDA appears to have been encouraging development of bars and similar businesses all over the area in question. One might be tempted to criticize the prejudices of the city staff in preferring some types of bars over others. We have appreciated the dedication of some city personnel (on their off hours) patronizing alcohol-serving businesses in the area in question! If bars are a problem, why is CEDA encouraging the proliferation of drinking establishments? This is a contradiction that might better be left out of the final EIR, and a rationale that will not hold up.

B-7

Page III-1 and following: Where is a discussion about how affordable housing projects can upgrade or adaptively reuse residential and commercial buildings of historic value? Such adaptive reuse holds great potential in the area in question, yet there is no discussion of the synergies possible when making use of historic tax credits in combination with incentives for housing development. Such programs generated an enormous number of units in blighted areas

B-8
↓

of downtown Los Angeles, as an example. We are attaching a promotional email received just today from a prominent affordable housing architect, as an example.

↑ B-8
| cont.

[On page 298 of the PDF]

Page III-5: We earnestly hope that the Broadway-Valdez project is not mostly characterized in terms of parking demand. Please also address the re-use of historic buildings, the environmentally progressive use of the area, and the avoidance of deleterious impacts to the surrounding residential neighborhoods and natural resources, while still achieving economic goals. There has been substantial public resistance to the idea of creating many thousands of parking spaces in the area, from a land use, planning, environmental, traffic, affordable housing, and liveability point of view.

B-9

SURFACE PARKING LOTS ARE A FORM OF BLIGHT

The primary example of blighted property in the central district is the existence of too many surface parking lots. These should be discussed as a category of underutilization that could benefit from redevelopment energies and funding and which should be a main focus of blight-reduction focus. Under no circumstances should Redevelopment incentivize the creation of further surface parking lots.

B-10

We appreciate the opportunity to comment, and look forward to the final EIR.

Sincerely,

Dea Bacchetti
President

Naomi Schiff
Boardmember

Attachment: Email from Pyatok Architects, received May 2, 2011

Received today, May 2, 2011: Due to the difficulty of resaving email into an appendix, we have removed some of the many links, and truncated the below text.

From: "Mike Pyatok" <Mike_Pyatok@mail.vresp.com>

Subject: Rehab or Replace?

Date: Mon, 02 May 2011 15:26:20 +0000

Pyatok Architects designs award-winning buildings for families, students, and seniors in affordable and market-rate developments.

REHAB OR REPLACE?

The Altenheim

<http://www.pyatok.com/portfolio/Altenheim.html>

Swan's Marketplace

<http://www.pyatok.com/portfolio/swans.html>

Lord Tennyson

<http://www.pyatok.com/portfolio/lordtennyson.html>

As funding for new affordable housing developments continues to be scarce, our nonprofit clients are reminding us that rehabilitation remains a viable and, at times, better approach to creating affordable homes. In fact, rehabilitating urban properties is one of the best ways for affordable housing developers to meet their triple bottom line by adding economic, social, and environmental value to every project they do.

Preservation

Historically, rehabilitation has been thought of as "preservation" - preserving distinctive architectural works and culturally notable places. Our recent work at The Altenheim in Oakland is an example of this – preserving and enriching a senior campus originally built in 1908. Pyatok's improvements in 2005 for Citizen's Housing Corporation conscientiously preserved the 100-year-old character of the buildings, inside and out, while preparing it for another century of service to the neighborhood.

Revitalization

Today, developers and city redevelopment agencies see rehabilitation as an economic boon to neighborhoods for three reasons. First, rehabbing a structure usually costs less than demolishing a project and starting from scratch. Second, rehabbing is usually faster than rebuilding, allowing the property to earn income sooner than a new

development would. Third, restoring existing properties revitalizes not just those buildings but the surrounding neighborhood as a whole, as neighbors celebrate the transformation by investing in their own properties with renewed enthusiasm..

The city of Hayward, CA has seen this kind of impact at the Lord Tennyson development. Originally constructed in the late 1960s, Volunteers of America renovated the entire 15-acre, 252-unit complex from top to bottom with the help of Pyatok Architects. From energy-saving windows to upgraded electrical systems, new roofing and a new community building, Lord Tennyson became a source of pride for the neighborhood and an example of how what was old can become newly valuable and valued.

Sustainability

Looking forward, a primary reason to rehabilitate rather than rebuild is sustainability. Saving resources, reducing energy use, and creating healthier living environments are critical goals for developing the cities of the near-future. Rehabbing properties reaches these goals in three ways. Often, it increases the housing density of an area and uses valuable land more efficiently than before

(The Altheim doubled its capacity to 174 units). Rehabbing existing structures mean less waste and embodied energy going to landfills, less raw materials needed for a project, and less construction energy needed to build it. And upgrading energy and water systems, plus reducing a development's environmental impact, means creating greener neighborhoods overall.

Pyatok Architects has a long history of revitalizing places by rehabilitating housing and mixed-use developments. From our work on the first AIDS housing in the 1980s to the historic Swan's Marketplace in 2000 to our recent finishing touches on The Altheim, we have helped enrich the economic, social and environmental value of every rehabilitation project we work on.

Additional Rehab Projects

The Gateway: 140 units (Mid-Peninsula Housing Corp.)

Santana Apartments: 50 units (OCHI)

West Oakland Scattered Sites: 20 units (Jubilee West)

St. Vincent's Day Home: 5,200 sf (St. Vincent's)

Somerset Gardens: 200 units (Kings County Housing Authority)

Peter Claver: 35 units for AIDS homeless (Catholic Charities)

Sigma Kai Fraternity House: 75 beds

MOHR Housing: 140 units

Potrero Square: 58 units (Minnesota Development Company)

Group Home for Parolees: 30 beds (Allied Fellowship)

The Dollar Building: 30 lofts (Silberman)

Pyatok Architects

1611 Telegraph Ave.

Suite 200

Oakland, California 94612

5.2 Letter B Responses – Oakland Heritage Alliance

B-1: To the extent that structures are historic under CEQA, such structures in the Plan Area would be protected in keeping with the City of Oakland’s Historic Preservation Element, General Plan Policies, Planning Code, and Standard Conditions of Approval and Uniformly Applied Development Standards Imposed as Standard Conditions of Approval as noted on pages 4.4-10 through 4.4-21 of the DEIR. As described and discussed in those pages, the City recognizes the contribution and importance of such features to the character, livability and sense of place to areas in the City, and seeks to protect and preserve historic structures and details.

The following comments B-2 through B-10 do not address the adequacy of the analysis or information in the DEIR. However, in certain cases the comments address topics relevant to the DEIR and responses to those comments are provided.

B-2: The comment addresses the Preliminary Report and not the adequacy of the DEIR on topics addressed within the scope of CEQA. The DEIR does not have a discussion regarding “Obsolete Design.”

B-3: The comment addresses the Preliminary Report and not the adequacy of the DEIR on topics addressed within the scope of CEQA. Re-use of sidewalk lights while desirable, is not always possible, given the following circumstances:

The age, original installation method and advanced deterioration of these sidewalk lights make re-use difficult and/or impractical. The original units may be salvageable, but their reuse is questionable from a waterproofing standpoint.

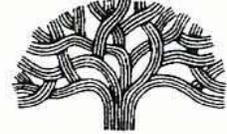
Property owners that elect to retrofit their basement vaults are required to take a loan for construction which is due and payable upon resale. Their willingness to incorporate new sidewalk lights is entirely their decision and would likely add to their project costs. Currently, there are four buildings with sidewalk lights in the Basement Backfill and Repair Project Area.

1. *457-17th Street*: Owner has elected to backfill the Telegraph frontage where one sidewalk light exists.
2. *1636 Telegraph*: Owner plans to retrofit along Telegraph frontage of building. Sidewalk light may be salvageable but reuse difficult from a waterproofing standpoint. We will discuss with owner their desire to incorporate new sidewalk light at this location.
3. *1618-20 Telegraph*: Owner plans to retrofit along Telegraph frontage of building. Sidewalk light may be salvageable, but reuse difficult from a waterproofing standpoint. We will discuss with owner their desire to incorporate a new sidewalk light at this location.

4. *1611 Telegraph*: Owner has not indicated a design direction as of yet, but retrofit is likely due to need to continue operation of basement parking area. There are multiple sidewalk lights along this buildings frontage, which are significantly deteriorated. Sidewalk light may be salvageable, but reuse difficult from a waterproofing standpoint. We will discuss with owner their desire to incorporate new sidewalk light at these locations.

- B-4: The comment addresses the Preliminary Report, however, as described in detail in Section 4.5.2, *Geology, Soils and Geohazards, Regulatory Setting*, on pages 4.5-11 through 4.5-17 of the DEIR, the State and City have stringent requirements for seismic safety of buildings. To the extent that a building is also determined to be historic, the regulations described in Section 4.4.2, *Cultural Resources, Regulatory Setting*, on pages 4.4-10 through 4.4-21 of the DEIR, would apply to any improvements for seismic safety.
- B-5: The comment addresses the Preliminary Report, however, as described in Mitigation Measure CUL-1 on pages 4.4-29 through 4.4-31 of the DEIR, the City advocates adaptive reuse of historic properties as feasible.
- B-6: The comment addresses the Preliminary Report, however, the Estuary Policy Plan which governs the southern waterfront portion of the Project Area and is discussed on page 4.9-9 of the DEIR, seeks to “preserve and rehabilitate” the Produce Market and “preserve and adaptively reuse” the Warehouse District. The DEIR does not make the statement that “new structures in the area have been more successful than old ones.”
- B-7: The comment addresses the Preliminary Report and not the adequacy of the DEIR on topics addressed within the scope of CEQA. The DEIR does not have a discussion on the “excess of bars” which is not a CEQA topic.
- B-8: The comment addresses the Preliminary Report, however, as described in Mitigation Measure CUL-1 on pages 4.4-29 through 4.4-31 of the DEIR, the City advocates adaptive reuse of historic properties as feasible.
- B-9: The comment addresses the Preliminary Report, however, the Proposed Amendments to the Central District Redevelopment could facilitate the Broadway/Valdez development project as shown in Table 3-1 on page 3-3 of the DEIR, and is considered in the analysis throughout the DEIR. The DEIR does not characterize the Broadway/Valdez project in terms of parking demand, which does not relate to the environmental analysis in the DEIR.
- B-10: The comment addresses the Preliminary Report, however, as stated on page 3-2 of the DEIR, for purposes of CEQA, the project is the activities associated with implementation of the Proposed Amendments to the Central District Redevelopment Plan. The activities are listed in Table 3-1 on pages 3-3 and 3-4. Further, as stated on page 3-4, “The Redevelopment Plan does not contain specific development proposals for individual sites, nor does it mandate particular actions the Redevelopment Agency will take with regard to specific projects. Thus, the activities associated with implementation of Proposed

Amendments include a broad list of potential programs and projects and strategies intended to reduce blight, and a funding mechanism via increment financing.” The comments regarding “incentivizing this creation of further surface lots” do not relate to the environmental analysis contained in the DEIR. Nonetheless, the DEIR does not state that the project would “incentivize the creation of further surface parking lots.”



CITY OF OAKLAND

250 FRANK H. OGAWA PLAZA, SUITE 3315 • OAKLAND, CALIFORNIA 94612-2032

Community and Economic Development Agency
Planning & Zoning Services Division
Landmarks Preservation Advisory Board

(510) 238-3941
FAX 510) 238-6538
TDD (510) 839-6451

May 2, 2011

Ulla-Britt Jonsson
City of Oakland Strategic Planning Division
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

Dear Ms. Jonsson,

At its regular meeting of April 11, 2011, the Oakland Landmarks Preservation Advisory Board held a public hearing on the Draft Environmental Impact Report for the proposed Central District Redevelopment Area Plan amendments. The Board heard staff responses to its scoping comments of November 2010, heard public comment, and passed a motion of additions and corrections to be made in the Final EIR.

The Board requested the following in the Final EIR. Note that some comments are requests for expansion or clarification of previous responses in the DEIR or the April 11 staff report that only partially addressed the Board’s concerns from the scoping session.

Inclusion of the statutory definition of blight (as opposed to the broad general definition in the EIR, and information about the blight study. Preservation of historic buildings prevents and eliminates blight. Rather than accepting a loose and inclusive definition of blight, the Board’s demolition findings (see Planning Code Section 17.136.075) require proof that a building’s condition actually justifies demolition.

C-1

Examples of how eminent domain has been used in Oakland and its economic impact. Past experience suggests that the threat of eminent domain may cause uncertainty and stagnation, especially among small businesses.

C-2

Acknowledgement of historic features other than buildings, such as street furniture and period signs. Features like the Latham Fountain, jewelry store, clock at 17th and Broadway, sidewalk lights, cement makers’ stamps, distinctive paving, etc., should not be overlooked in streetscape projects.

C-3

Inclusion of the recently adopted *Regulations for Demolition or Removal of Designated Historic Properties and Potentially Designated Historic Properties* (Planning Code Section 17.136.075), which is based on Historic Preservation Element Policies 3.5 and 3.8 and is essentially equivalent to Mitigation CUL-1.

C-4

Clarification under Impact CUL-2 (p. 4.4-32) that Standard Condition of Approval 52 is not always adequate to insure that impact to archaeological resources is less than significant. Analysis for potential archaeological remains includes conducting a sensitivity analysis, and, where impacts to potential legally significant archaeological remains cannot be avoided, to design and implement data recovery and treatment plans for those areas. Additional mitigations may be required. C-5

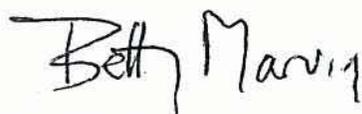
Correction of the implication on page 4.4-22 that a site is free of archaeological remains if the records search at the Northwest Information Center indicates that no reports have been filed. C-6

Mention of human remains and shellmound found under City Center during BART construction. C-7

Emphasis on the statement that future projects in the geographic area of this programmatic EIR will still undergo separate environmental and planning review and additional mitigations may be required. C-8

The Board further decided to transmit the record of the November scoping session as formal comments on the DEIR so that the questions asked therein would receive formal and complete responses on record in the FEIR.

Respectfully submitted,



Betty Marvin
Historic Preservation Planner
(510) 238-6879
bmarvin@oaklandnet.com

for

Joann Pavlinec
Landmarks Board Secretary
(510) 238-6344
jpavlinec@oaklandnet.com

Attachments:

Landmarks Preservation Advisory Board minutes of November 8, 2010, pages 6-11

Memorandum, LPAB Comments –Scoping Session for the Central District Redevelopment Project Area Plan, November 19, 2010

MEMORANDUM

TO: City of Oakland Planning Commissioners

FROM: Joann Pavlinec, Secretary – Landmarks Preservation Advisory Board (LPAB)

SUBJECT: **LPAB Comments - Scoping Session for the
Central District Redevelopment Project Area Plan**

DATE: November 19, 2010

At their November 8, 2010 meeting, the Landmarks Preservation Advisory Board (LPAB) provided the following comments on information and analysis that should be contained in the Draft Environmental Impact Report for the Central District Redevelopment Project Area Plan.

The Chair summarized the Board’s discussion, comments and recommendations as follows:

- | | |
|--|----------|
| 1) Include introductory or explanatory remarks of what a programmatic EIR is, and examples of eminent domain, so that the reader can better understand the document. |
C-9 |
| 2) Articulate the City’s commitment to and the importance of historic preservation and rehabilitation of not only buildings, but neighborhoods, cultural sites and landscapes, as an integral part of the Project Area’s development objectives, and as a way to enhance the Project Area. This should include the rehabilitation of a historic resource(s) as a way to mitigate blight. |
C-10 |
| 3) Clearly spell out definitions and methodologies of the blight study, and any other studies/reports that are necessary as part of EIR, consistent with State law. |
C-11 |
| 4) Provide a detailed analysis of cultural, historical and archeological resources in the Project Area. | |
| a. Describe the architectural and historic context, that is, the significant aspects and patterns of development that characterize historic neighborhoods located within the Project Area to become the foundation for decisions made about how to treat historic resources that might be negatively and/or positively impacted by the redevelopment plan. |
C-12 |
| b. Include photos and examples of each neighborhood that would aid in understanding the architectural historic characteristics of those neighborhoods. |
C-13 |
| c. Provide maps of the area that clearly indicate the historic resources, including but not limited to all historic structures and districts, local and national landmarks and Potentially Designated Historic Properties (PDHPs). |
C-14 |
| d. Provide maps of all the historic resources, as outlined above, that might be impacted in the Project Area including the projects that are |
C-15 |

Memorandum to Planning Commission -
LPAB Comments - Scoping Session for the
Central District Redevelopment Project Area Plan
November 19, 2010

- mentioned in the current Central District Urban Renewal Plan such as Broadway/Valdez, Lake Merritt, streetscape projects and basement backfill and repair projects.
- 5) Include all applicable polices of the Historic Preservation Element that apply to the Redevelopment Plan.
 - 6) Include actions, tools, programs and funding sources to eliminate blight in a manner consistent with Historic Preservation Element Policy 3.12, which addresses Substandard or Public Nuisance Properties - adding special acquisition and rehabilitation efforts for existing and Potential Designated Historic Properties for resale and rehabilitation. The HPE provides approaches for implementation of the Policy 3.12.
 - 7) Include local hiring preference for projects within the Project Area.

↑ C-15
cont.
| C-16
| C-17
| C-18

Reason for supporting this alternative has to do with belief that the proposal is a radical and alteration to a historic district that is out of scale to the district. Doesn't have to be two high rise towers to meet the goals of the proposal and to still respect the historic district. Stated that comment will be in the minutes.

Naruta noted that the Board is requesting analysis of the project on the district as the DEIR is not adequate in this area.

Staff listed additional Board comments:

- o To separate the interpretive program from the financial contribution;
- o Better renderings on how the project fits into the neighborhood and environment, specifically with renderings including the API historic buildings and the freeway; and
- o Include the number of HABS documentation on buildings of this architectural style within the Chinatown API.

Prevost: Indicated that HABS is a broader issue.

Naruta: Would still like to know numbers.

Muller seconded: Motion passed unanimously.

2)	<p>Location: Central District Redevelopment Project Area, an approximately 828-acre area in downtown Oakland generally bounded by I-980, Lake Merritt, 27th Street, and the Embarcadero</p> <p>Proposal: Scoping Session for a Draft Environmental Impact Report (DEIR) to receive comments, pertaining to historic and/or and cultural resources issues that should be addressed in the forthcoming DEIR for proposed amendments to the Central District Redevelopment Area Plan.</p> <p>Applicant: City of Oakland Redevelopment Agency</p> <p>Contact Person/Phone Number: Blair Miller, Redevelopment Project Manager (510) 238-2055</p> <p>Case File Number: ER10-0003</p> <p>Planning Permits Required: <i>To Be Determined</i></p> <p>General Plan: Central Business District, Urban Open Space District, Institutional District, Urban Residential District.</p> <p>Estuary Plan: Off-Price Retail District, Retail Dining Entertainment 1 and 2 Districts, Produce Market District, Mixed Use District, Waterfront Warehouse District, Planned Waterfront Development 1 District.</p>
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Zoning:	CBD-R, Central Business District-Residential Zone, CBD-P, Central Business District-Pedestrian Retail Commercial Zone, CBD-C, Central Business District-General Commercial Zone, CBD-X, Central Business District-Mixed Commercial Zone, S-2, Civic Center Zone, S-4, Design Review Combining Zone, S-7, Preservation Combining Zone, S-12, Residential Parking Combining Zone, S-19, Health and Safety Protection Overlay Zone, OS (SU), Open Space Special Use Park Zone, OS (NP), Open Space Neighborhood Park Zone, OS (RSP), Open Space Region-Serving Park Zone, OS (LP), Open Space Linear Park Zone, OS (RCA), Open Space Resource Conservation Area Zone, C-25, Office Commercial Zone, C-30, District Thoroughfare Commercial Zone, C-40, Community Thoroughfare Commercial Zone, C-45, Community Shopping Commercial Zone, C-55, Central Core Commercial Zone, C-60, City Service Commercial Zone, D-BR, Broadway Retail Frontage Interim Combining District Zone, R-90, Downtown Apartment Residential Zone, M-20, Light Industrial Zone, M-30, General Industrial Zone, CIX-1, Commercial Industrial Mix 1 Zone.
Environmental Determination:	An Environmental Impact Report (EIR) will be prepared for the proposed amendments.
Historic Status:	Redevelopment Project Area includes numerous buildings, districts, sites, and structures that are listed on or eligible for National, California, and Local Registers of Historic Resources and thus are considered CEQA Historic Resources
Service Delivery District:	1, 2, Metro
City Council District:	2, 3
Status:	The Notice of Preparation was published and distributed on October 15, 2010, with comments due no later than November 15, 2010.
Action to be Taken:	Receive public and Board comments about what information and analysis should be included in the Draft Environmental Impact Report
For Further Information:	Contact case planner Ulla-Britt Jonsson at (510) 238-3322 or by email at ujonsson@oaklandnet.com

Planner Thornton gave the staff report.

Muller: Inquired as to what cultural impacts that a proposal like this might even have?

Staff Thornton explained that this is a programmatic EIR where things are looked at in a very conceptual basis. For example the project would analyze the expected redevelopment activities that would occur and then analyze on a conceptual basis the extent to which historic resources might be impacted. The type of information that would be included in a programmatic EIR are a listing of the historical resources within the project area, an analysis of they how they might be effected by extending the eminent domain activities or extending the ceiling on tax increment financing.

C-19

Muller: You mentioned that redevelopment money could be used to foster improvements or repair of historic properties, so that's an advantage. I would want to be sure that the document discusses what could be done and how it would be helpful.

C-20

Garry: Recommendations that should be included in the draft EIR

- Identify all historic structures, district and cultural sites as well as PDHPs that might be impacted by the projects that are mentioned such as Broadway/Valdez and Lake Merritt, streetscape projects and basement backfill and repair.
- Include maps that clearly indicate the historic resources.
- Include photos and examples of each neighborhood that would aid in understanding the architectural historic characteristics of those neighborhoods.

C-21

C-22

C-23

- Describe the architectural and historic context, that is, the significant aspects and patterns of development that characterize historic neighborhoods located within the CBD, to become the foundation for decisions made about how to treat historic projects that might be negatively and positively impacted by the redevelopment program. C-24
- Include specific policies of the Historic Preservation Element (HPE) that are applicable to redevelopment projects. C-25
- Articulate and outline potential problems in achieving compatibility between existing historic resources and proposed development, including streetscape developments, to determine what would be an appropriate streetscape treatment in a particular historic cultural context. C-26
- Include amendments to the plan that would provide a series of multiple coordinated actions, tools, programs and funding to eliminate blight and recommend how this could be done in a way that it is consistent with the HPE Policy 3.12. which addresses Historic Preservation and Substandard Nuisance Properties. The HPE does have language that speaks to blight. C-27
- Include a thoughtful statement in the EIR about the City’s commitment to and the importance of historic preservation and rehabilitation toward the CBD’s development objectives. There is currently one bullet item, but that is inadequate to really articulate why it is important and what the commitment is. C-28

Biggs: When I hear eminent domain my hackles go up. Include language and descriptions of the whole process and a few cases in general. What’s the process like and how does a property become a property of the City. What are some good success stories of eminent domain?

Patrick Lane: Two examples of eminent domain are the Uptown project where over 40 parcels were acquired. In the end it was required to do eminent domain with only three owners. The Bermuda, a structure damaged in the 89 earthquake, is another good example. Nothing was done to it for years. The agency got it and it is now being used. Lane also explained the process of eminent domain. C-29

Biggs: Provide background as to what eminent domain is and use case studies to illustrate it so that people reading the document understand what it is.

Public Speakers:

Naomi Schiff: As a veteran of the Uptown project, one of the problems is that it can remove a lot of small locally owned business from an area, in favor of encouraging large national businesses who have bigger financing to come in. It is not a great tool but can see where sometimes it is useful. We might look to phrase the eminent domain such that eminent domain may not be used for the removal of historic buildings. You can make restrictions on eminent domain. In west Oakland eminent domain was not used in residential property. This Board might want to have a recommendation. The CBD is the single richest depository of historic buildings in Oakland. There is some danger there. In the Broadway Valdez area there are areas that one might look at as blighted or as extremely valuable buildings. It is the job of this board to advocate for those historic buildings. Eminent domain is really expensive. Uptown cost \$68 million and the numbers get really large. It should be used as a last resort. It should really be a last resort in the case of a historic building. The definition of blight is important. In another blight study in this City, fantastic Victorian buildings were shown as blight, when all they needed was paint. The definition of blight needs to be refined to accommodate the reuse of historic buildings which is the greenest approach as well as the historic and culturally sensitive approach, particularly in Chinatown as well as Broadway Valdez which do not now have a lot of large scale buildings and are filled with residential occupancy. Concerned about how this will be approached since many want to build a Macy’s in the Broadway/Valdez and Macy’s is going downhill fast. I have had my office in the Uptown area for years and there was a problem with leasability because it was a redevelopment area threatened by eminent domain. In 25 years the businesses went down from 40 to 60 to 0 - and where did they go? I worry about when you define something as blight and threaten it with eminent domain whether you aren’t shooting yourself in the foot just in case the great Macy’s doesn’t happen. Extremely concerned as to how it will be used. Redevelopment really helped the Fox and built housing in Oakland. But we need to look at how we are using it and to make sure we are not using blight and eminent domain as a way to get rid of historic resources. C-30
C-31
C-32
C-33

Michael Stangl: My concern is eminent domain. This 10 year application would allow eminent domain in a large area of Oakland. It is supposed to be used when a project is for the public good and the owner won't sell. We are not really establishing this. It is for the whole area. Don't we need proof that the project is for the public good and there is someone who won't sell? Are there parameters to stop it from being used in the whole process of developing the Valdez triangle? At the Planning Commission we heard a lot about it being very broad from surface parking lots to older buildings with peeling paint. With the right brush you can cover almost any building in the area.

C-34

Naruta: Blight is a folk term. The current document was initially developed in 1969. Therefore the definitions of blight are outdated. It doesn't have any particular definition. In the 1930s it was being used to refer to the ethnicity of the occupants. So it's time to define it. Give us the 12 bullet points. Talk directly about the conditions you need. Want to see consideration of the impacts of the extension of eminent domain on not just on historic properties, but on the economic health of the city. We have often seen the natural reaction when people know their area is subject to eminent domain and know the effects on small business investment. In the document renewal plan, dealing with land acquisition and disposition, it lays out different acquisition and activity areas - City Center Project, Victorian Row, Chinatown Project, and the Uptown area. The four areas all explicitly say the properties may be acquired by negotiation or eminent domain except the Victorian Row project. That is inconsistent and should be explained. Consideration of historic properties and below ground resources, archeological sites, should be reviewed in EIR. The Northwest Information Center should be visited for review of cataloged archeological projects. Don't want to drop eminent domain not being used in west Oakland for residential properties. Provide more analysis about bringing Section 500 in line with the document and the findings for demolition of historic properties.

C-35

Muller: Does not understand bottom of page 2 of staff report. Under CA Redevelopment law, extension requires findings that significant blight remains in the area. So we can't do this without saying we have blight.

Staff Thornton: There will be a blight study prepared. It will relate to how redevelopment law defines blight because there are different definitions. The blight study will define what blight exists with respect to the CA Redevelopment Law. The EIR process is one avenue that the city will be considering but there will also be a process on the plan itself. There will be opportunities to comment on the Redevelopment Plan and whether it should be adopted by the Redevelopment Agency.

C-36

Prevost: In order to obtain funding, we have to demonstrate blight and we will do a blight study. So the blight study is what the city uses to substantiate the extension? When will it be done?

C-37

Lane: We are beginning it now.

Prevost : How do we secure money?

Lane: Once we do the extension, it includes a new limit to increase the amount of tax increment we can get and the length of time we can collect.

C-38

Prevost: Would like to see a map that identifies the blight and overlays it with historic structures. If 90% of blight is historic structures, we will have issues.

C-39

Lane: State law requires mapping in a certain way: blighted areas, areas that are needed to correct blight areas, adjacent structures and not blighted areas.

Naruta: Under Senate Bill 211 Health and Safety Code Section 33333.10 – how old is that law? Is it current?

Lane: It is a statutory law in the 90s about the length of redeveloped plans. So, this is a law that allows the 10 year extension of an older plan.

C-40

Naruta: So are we putting a little oxygen into the old laws?

Lane: The requirements for blight are that you have to show physical and economic blight, do a survey of all the parcels and then some types of analysis including blight, parking lots and vacant lots.

C-41

Naruta: So those are blight.

Lane: Yes. Also includes flag lots, smaller lots and irregular lots that are difficult to develop.

Naruta: Those are all in California law?

Lane: The law is not clear, but those are things that have been done over time.

Naruta: How will we know that we are describing the legal prescribed methodology?

C-42

Because blight is confusing. It's law, so it must be defined

Lane: It is vague, more about what's been used for the 40 years. The legal requirement is to show blight.

Naruta: There has to be a methodology.

Lane: For economic development, it could be high vacancies.

Naruta: I don't know anymore about what blight means.

Lane: High crime could be one for economic blight. There will be other documents.

Naruta: So I would like to see the methodology spelled out with reference to state law so that we know why we are making the decisions we are making.

Lane: That will be the blight report. We should have that here.

Naruta: How much of the City needs to be cleared to change the crime rate?

Muller: You are assuming that the only reason we're doing this is to preserve the tool of eminent domain and I don't think that is true. We're doing this to preserve the tool to take the tax increment money that comes in due to redevelopment and use that to cause more development and removal of things that might be called blight. Eminent domain is just a tool that might be used, but in most cases would not be used to make things happen.

Lane: We need a number of tools including tax increment and eminent domain, but the agency will no longer have powers to do amendments to existing development agreements. In the City Center where they started digging and the area behind APL building, we have agreements. We have agreements for the future on the last phase of the Uptown project. After the end of the plan we cannot do new agreements or amend the existing ones. So to continue these projects we need to extend the plan.

Naruta: On the flip side, I don't want people pointing at the Board claiming it did not do its due diligence with respect to blight.

Prevost: You will be looking for definitions, methodologies and data that don't exist as defined by law, but have evolved over time as a matter of practice. We run into this all the time and end up using a standard of practice to define vagueness in laws. When there is a change in thinking then we amend our practices and guidelines. For example, CEQA guidelines have been changed over time. If that is the case, Board Member Naruta will not get what she is looking for. I think you are looking for 'tell me why crime should be an event be on the list.'

Naruta: When we did the findings for demolition, we spelled out items that could be blight (conditions), instead of just using the word blight. For example, the following could define blight conditions: a structural engineer's report, the Building Official's statement that the building is a threat to health and safety, an analysis of the economic viability of the building and strategies to make it economically viable. So, it shouldn't be hard to define.

Prevost: We developed a better definition of blight in the demolition findings. So the direction to staff, our direction, for those properties within the CBD that are historic or potentially historic, we would like those definitions that we worked on as a board to be addressed for those buildings. If you state that it is a blighted historic building, how do the demolition findings work? Just because it hasn't been painted for 30 years would not be sufficient to define blight, from the Board's perspective. Look at the specifics we have provided to define when a structure is beyond rescue, i.e. blighted, and analyze those.

Lane: What we're doing is defining areas where we can spend our money in the future. Are you defining historic buildings as areas where you cannot use the façade program? We need to define blight to use the façade program.

Naruta: So my request is that you define your terms and methodology, and those definitions go in every document involved in the redevelopment plan process.

Prevost: A Board Member requested that eminent domain cannot be used on residential property. We also made comments on how eminent domain scares away local business. This appears to be outside of our scope.

Lane: Anytime we use eminent domain, it would be a long drawn out process and involve an EIR. Anytime there is a historic resource we would come back to the LAPB.

Naruta: The draft EIR should show small business growth or loss in periods of eminent domain and figures on those occasions when eminent domain has been used. When eminent domain has been used, what has the offer been to small business owners and what were the final total payouts? On 20th Street the owners did not get enough money to establish in another location.

Staff Thornton: Some of the responses to your comments might not be appropriate to put in an EIR because of the scope and nature of the EIR, but could be put into a staff report.

Muller: You told the story of the Bermuda building, severely damaged in Loma Prieta earthquake which ended up sitting vacant for more than ten years. The owner wouldn't sell, fix or tear it down. The neighbors were upset and it

C-42
cont.

C-43

C-44

C-45

C-46

C-47

was truly a blight and it took a long time, but the City finally was able to take the building by eminent domain and get it demolished.

Biggs: As a Mitigation Measure for eminent domain, the City should place high preference on local design talent to build whatever is to be redeveloped.

Prevost summarized the Board's comments:

- 1) be very clear and spell out the definitions and methodologies of the blight study or any other studies that are necessary as part of this EIR, consistent with the state law;
- 2) include a detailed analysis of cultural and archeological resources in that area;
- 3) provide maps and photos of the area;
- 4) identify all of the historic structures and the districts within the central district including but not limited to landmarks, national and city, PDHPs, and so forth;
- 5) as part of the cultural resource analysis, include a discussion of the context of these historic resources, not only their current context, but how their content might be changed in light of redevelopment;
- 6) include clear identification of the applicable polices, specific sections of the HPE that would apply to projects within this area;
- 7) include some introductory or explanatory remarks about the background of the nature of this work, not only what a programmatic EIR does and does not do, but examples of eminent domain, so that the reader can deal with the EIR;
- 8) articulate and reinforce the City's commitment to and the importance of historic rehabilitation as it relates to advancing the CBD redevelopment (role of preservation in this should be articulated) as a carefully worded objective of the redevelopment plan (i.e., the restoration of a historic building is a way to mitigate blight); include not just buildings, but neighborhoods, cultural sites and landscapes; include historic preservation is an integral part of making something better.

Biggs: Include local hiring preference within a certain radius of the project site

MOTION by **Biggs** to incorporate all of the comments just listed, seconded by Garry. Motion **PASSED** unanimously.

↑ C-47
| cont.
| C-48

C-49

<p>3.</p>	<p>Location: Joaquin Miller Abbey - Joaquin Miller Park Proposal: Landmark Design Review of six interpretive signs per Condition of Approval of LM09-017 Design Review on March 9, 2009 Applicant: City of Oakland Case File Number: LMD09-017 Historic Status: City of Oakland Landmark LM74-335/Listed on the National Register of Historic Places General Plan: Urban Open Space Zoning: Open Space/Region-Serving Park [OS(RSP)] Environmental Determination: Exempt per Sections 15331 of the State CEQA Guidelines - Historical Resource Restoration/Rehabilitation; 15301 Existing Facilities; and 15183 Projects consistent with the General Plan or Zoning. Service Delivery District: 4 City Council District: 4-Jean Quan Action to be taken: Per staff report For Further Information: Contact case planner Joann Pavlinec at (510)238-6344 or by e-mail at jpavlinec@oaklandnet.com</p>
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Staff Pavlinec gave the report.
 Sue Piper, Aid to Jean Quan, gave background on the development of the interpretive program to the Board.

5.3 Letter C Responses – Landmarks Preservation Advisory Board

C-1: The comment does not address the adequacy of the DEIR on topics addressed within the scope of CEQA. However, for clarification, Section 33031 of the California Community Redevelopment Law contained in the Health and Safety Code describes blight as follows:

- 33031.** (a) This subdivision describes physical conditions that cause blight:
- (1) Buildings in which it is unsafe or unhealthy for persons to live or work. These conditions may be caused by serious building code violations, serious dilapidation and deterioration caused by long-term neglect, construction that is vulnerable to serious damage from seismic or geologic hazards, and faulty or inadequate water or sewer utilities.
 - (2) Conditions that prevent or substantially hinder the viable use or capacity of buildings or lots. These conditions may be caused by buildings of substandard, defective, or obsolete design or construction given the present general plan, zoning, or other development standards.
 - (3) Adjacent or nearby incompatible land uses that prevent the development of those parcels or other portions of the project area.
 - (4) The existence of subdivided lots that are in multiple ownership and whose physical development has been impaired by their irregular shapes and inadequate sizes, given present general plan and zoning standards and present market conditions.
- (b) This subdivision describes economic conditions that cause blight:
- (1) Depreciated or stagnant property values.
 - (2) Impaired property values, due in significant part, to hazardous wastes on property where the agency may be eligible to use its authority as specified in Article 12.5 (commencing with Section 33459).
 - (3) Abnormally high business vacancies, abnormally low lease rates, or an abnormally high number of abandoned buildings.
 - (4) A serious lack of necessary commercial facilities that are normally found in neighborhoods, including grocery stores, drug stores, and banks and other lending institutions.
 - (5) Serious residential overcrowding that has resulted in significant public health or safety problems. As used in this paragraph, “overcrowding” means exceeding the standard referenced in Article 5 (commencing with Section 32) of Chapter 1 of Title 25 of the California Code of Regulations.
 - (6) An excess of bars, liquor stores, or adult-oriented businesses that has resulted in significant public health, safety, or welfare problems.

- (7) A high crime rate that constitutes a serious threat to the public safety and welfare.

Also, under Section 33030(c), blight also includes (1) inadequate public improvements; (2) inadequate water or sewer utilities, or (3) housing constructed as a government-owned project that was constructed before January 1, 1960.

- C-2: The comment does not address the adequacy of the DEIR on topics addressed within the scope of CEQA. However, during the last 20 years, the Redevelopment Agency used eminent domain for the following three projects in the Central District Redevelopment Project Area:

The Bermuda Building – The Bermuda Building was an earthquake-damaged building that sat vacant and deteriorating for almost nine years after the Loma Prieta earthquake before the Agency used eminent domain to take the site in 1998 in order to have the building torn down and the site redeveloped. The building was demolished in 2004. A new 215,000-square-foot office tower with ground floor retail now occupies the site.

The Uptown Project – The Agency acquired 55 parcels in the Uptown Area: 46 through negotiated purchases and nine, from five property owners, through eminent domain in 2002 and 2005. The nine parcels included parking lots, dilapidated single room occupancy residential hotels and auto-related uses. These properties exhibited some of the most blighted conditions in the area and were the main reason for the Agency wanting to redevelop the area to more economically productive uses. Most of the sites were redeveloped in Phase 1 of the Uptown Project, which included 665 residential rental units (25 percent affordable units) and retail on Telegraph Avenue.

Market Square – The Agency owned Housewives Market for years before deciding to redevelop the site as a residential mixed-use project. The Market occupied three-quarters of the site and the Agency needed to use eminent domain to acquire the remaining three parcels on the block. The parcels included a grocery store, garment factory and storage facility in old dilapidated structures. The block was redeveloped as 174 residential units and 28 work-live units at least three of which were required to be retail. This was the last phase of a three block redevelopment project that included Swans Market and Old Town Square.

The surrounding areas to the above project sites have flourished after the Agency used eminent domain, including the establishment of many new small businesses on Telegraph Avenue, San Pablo Avenue, and Broadway.

- C-3: To the extent that structures are historic under CEQA, such structures in the Project Area would be protected in accordance with the City of Oakland's Historic Preservation Element, General Plan Policies, Planning Code, and Standard Conditions of Approval and Uniformly Applied Development Standards Imposed as Standard Conditions of Approval as noted on pages 4.4-9 through 4.4-21 of the DEIR and, as applicable, by Mitigation Measure CUL-1. As described and discussed in those pages, the City

recognizes the contribution and importance of such features to the City, and seeks to protect and preserve those historic structures and features.

C-4: The demolition or removal of designated historic properties (Section 17.136.075 of the Planning Code) is included and discussed on page 4.4-19 of the DEIR. Different findings are required for the demolition of three categories of historic structures:

- **Category I** includes any Landmark; Heritage Property; property rated “A” or “B” by the Oakland Cultural Heritage Survey; or Preservation Study List Property. This category excludes any property that falls into Category II.
- **Category II** includes properties in an S-7 or S-20 zone or an Area of Primary Importance. Any building, including those that do not contribute to the historic quality of the district, fall into this category.
- **Category III** includes properties rated “C” by the OCHS or contributors to an Area of Secondary Importance. This category excludes any property that falls into Category II.

The findings in their entirety are included in Appendix A to this Responses to Comments and Final EIR document. As stated in the Planning Code, all demolition findings must be prepared by an independent third party consultant or be peer reviewed.

C-5: As discussed on page 4.4-32 of the DEIR, during the City’s project-level review of individual development project proposals, the City may require “as warranted based on specific characteristics obtained through the project-specific review” additional approaches such as an Archeological Research Design and Treatment Plan (ARDTP), to design and implement data recovery and treatment plans for sensitive areas.

C-6: As stated on page 4.4-22, the Northwest Information Center (NWIC) record search was conducted to “(1) determine whether *known* cultural resources had been recorded within or adjacent to the Project Area; (2) *assess the likelihood of unrecorded* cultural resources based on historical references and the distribution of nearby sites; and (3) develop a context for the identification and preliminary evaluation of cultural resources.” (Emphasis added.) The DEIR does not imply that a site is free of archaeological remains if the records search at the NWIC indicates no reports have been filed. Project specific review may require additional archaeological review, such as a comprehensive sensitivity study, and based on results may require further archaeological design and treatment plan, prior to any ground disturbing activity.

C-7: According to a 1970 publication (Henn, W.G., and Robert E. Schenk, *An Archaeological Analysis of Skeletal Material Excavated from the Civic Center of BART*, Robert E. Schenk Memorial Archives of California Archaeology No. 11, San Francisco, 1970), in 1969 when the BART tunnels at Civic Center were dug, an isolated human skeleton dating to 3690 ± 250 B.C. was uncovered 75 feet below street level. While this specific finding is not cited in the Draft EIR, the Draft EIR acknowledges throughout, the high

probability that human remains may exist in the Project vicinity based on previous reports and surveys conducted. See specifically the last sentence in the first paragraph on DEIR page 4.4-23, the first paragraph following Impact CUL-2 on DEIR page 4.4-31, the second sentence on DEIR page 4.4-32, and the first sentence under Impact CUL-4 on DEIR page 4.4-33. Based on the information discussed in the historic setting (starting on DEIR page 4.4-3) and study results, both confirmed and unconfirmed (starting on DEIR page 4.4-22), the Draft EIR identifies appropriate standard conditions of approval to address at a program level the potential effects that specific future development in the Project Area could have to human remains and archaeological resources. The statement regarding human remains previously found specifically during BART excavation does not change the program-level impact or adequacy of SCAs 52 and 53 to address potential adverse effects to human remains.

- C-8: Page 1-2 of the DEIR states “if the EIR for a redevelopment plan is a Program EIR, subsequent activities in the program will be subject to the review required by Section 15168.” Further, “a program-level document also simplifies the task of preparing subsequent environmental documents for those activities that are facilitated by the Proposed Amendments but the details of which are currently unknown.” Projects would have a separate project-specific environmental review where necessary and appropriate. Demolition of historic resources is a significant impact under CEQA. Any such activity also would be subject to all City regulations protecting historic resources.

LPAB Comments from November 8, 2010 Scoping Session for the EIR

- C-9: The term and use of Programmatic EIR is explained in Section 1.2 *Introduction, Environmental Review*, on page 1-2 of the DEIR. Also see response to Comment C-8.

Examples of how the City has used eminent domain in the past 20 years are explained in the response to Comment C-2, above.

- C-10: The City’s commitment to protect historical resources is outlined in Section 4.4.2, *Cultural Resources, Regulatory Setting, Local Plans and Policies*, on pages 4.4-9 through 4.4-21 of the DEIR. As discussed therein, historical resources in the City are protected by policies in the Historic Preservation Element of the General Plan, specific regulations governing historic properties in the Planning Code, and specific Standard Conditions of Approval and Uniformly Applied Development Standards imposed as Standard Conditions of Approval.

Mitigation Measure CUL-1, on page 4.4-29 of the DEIR, specifically outlines steps for the avoidance, adaptive reuse, or appropriate relocation of historically significant structures within the Project Area.

Furthermore, the sixth objective of the Central District Redevelopment Project Area plan is the “Restoration of historically significant structures within the Project Area.”

C-11: Blight is defined and discussed throughout Section 3.1, *Project Description*, of the DEIR. The description of blight as called out in Section 33031 of the California Community Redevelopment Law contained in the Health and Safety Code is included in the response to Comment C-1, above. The blight study, a component of the Preliminary Report, includes the methodology of assessing existing conditions and blight in the Project Area.

The following change is made to Section 3.1.1, *Project Description, Overview of the Existing Redevelopment Plan*, on page 3-1 of the DEIR, second paragraph, second sentence (*deleted text is in strikeout type, and new text is double underlined*):

These activities could include some or all of the following: assembly of blighted and underutilized properties into sites suitable for new sustainable or rehabbed sustainable development.

C-12: The Historic Setting for the Project Area is described on pages 4.4-3 through 4.4-5 of the DEIR. The Historic Preservation Element of the General Plan guides the patterns of development that characterize historic neighborhoods for the City of Oakland including the Project Area. While the DEIR does not reproduce the entire Historic Preservation Element, it provides the goals and policies that would govern the activities of the Proposed Amendments to the Central District Redevelopment Plan on pages 4.4-9 through 4.4-18. Policies in the Historic Preservation Element that are directly related to the Proposed Amendments include Policies 3.1, 3.4, and 3.12:

Policy 3.1: Avoid or Minimize Adverse Historic Preservation Impacts Related to Discretionary City Actions: the City will make all reasonable efforts to avoid or minimize adverse effects on the Character-Defining Elements of existing or Potential Designated Historic Properties which could result from private or public projects requiring discretionary City actions.

Policy 3.4: City Acquisition for Historic Preservation where necessary: where all other means of preservation have been exhausted, the City will consider acquiring, by eminent domain if necessary, existing or Potential Designated Historic Properties, or portions thereof, in order to preserve them. Such acquisition may be in fee, as conservation easements, or a combination thereof.

Policy 3.12: Historic Preservation and Substandard or Public Nuisance Properties: before requiring vacation or demolition, the City will take all reasonable actions to repair or rehabilitate existing or Potential Designated Historic Properties which have been determined to be substandard or public nuisances under the Oakland Dangerous Buildings Code, the Oakland Housing Code, the Blight Ordinance, the Earthquake Repair Ordinance, or any other City code or ordinance. In cases where such properties are already vacant or an immediate hazard, such repair or rehabilitation will occur expeditiously to prevent future deterioration or to abate the immediate hazard.

C-13: The Central District contains numerous historic neighborhoods. To include photographs and examples of each neighborhood in the DEIR would be a major undertaking that

would not contribute to the program level analysis of historic resources under CEQA. Mitigation Measure CUL-1 on page 4.4-29 of the DEIR includes multiple measures and approaches that would reduce impacts to designated and currently unevaluated historic properties in the Project Area by activities facilitated by the Proposed Amendments.

- C-14: Because the Project Area covers a large area, it is not feasible to identify every historic resource contained therein, because eligibility changes with each passing year, status of buildings change, and assessor's parcel numbers can change. Therefore, Figure 4.4-1, *Local Register and Potential Designated Historic Properties*, on page 4.4-24 of the DEIR is provided only to illustrate the concentration of historic properties in the Project Area.
- C-15: The programs supported by the Proposed Amendments are not on a set schedule. As mentioned in the response to Comment C-14, above, because eligibility changes with each passing year, status of buildings change, and assessor's parcel numbers can change, it is not feasible to identify all the historic resources that may be impacted by the Proposed Amendments in this program-level DEIR. As these programs come up for implementation, they will be reviewed by the City's OCHS staff and LPAB staff who will determine the appropriate steps that should be taken to protect and preserve historic resources that may be impacted. Major projects, such as the Broadway/Valdez project, would be subject to a separate project-level CEQA review. These project-level CEQA reviews would identify historic resources that may be impacted by the project.
- C-16: Applicable policies of the Historic Preservation Element that apply to the Redevelopment Plan are Policies 3.1, 3.4, and 3.12. Also see response to Comment C-12, above.
- C-17: Section 3.2, *Project Description*, on pages 3-2 through 3-8, describes in detail the projects and programs that are funded by the Proposed Amendments and the methods of funding.

All activities funded by the Proposed Amendments would be subject to the City's policies governing historic preservation as outlined in Section 4.4.2, Cultural Resources, Regulatory Setting, on pages 4.4-6 through 4.4-21 of the DEIR. Also see responses to Comments C-12 and C-16, above.

- C-18: The comment does not address the adequacy of the DEIR on topics addressed within the scope of CEQA. The City of Oakland has developed and implemented various policies that are aimed to stimulate economic development through the support and empowerment of the local community. These programs include the following:
- 20% Local and Small Local For Profit and Not for Profit Business Enterprise Program
 - 50% Local Employment Program (LEP)
 - 15% Oakland Apprenticeship Programs.

Contractors who participate in the City or Agency' sponsored development projects must comply with Oakland's Local Hire Compliance Ordinance.

C-19: Board Member Muller inquired as to what cultural impacts the Proposed Amendments may have. Staff correctly responded that as a Programmatic EIR, this document would analyze impacts at a conceptual level. The DEIR analyzes the impacts of the Proposed Amendments in Section 4.4.4, *Cultural Resources, Impacts and Mitigation Measures*, on pages 4.4-27 through 4.4-34. The *Approach to Analysis* is outlined at the top of page 4.4-28.

C-20: Board Member Muller requested that the DEIR discuss how redevelopment funds could be used to foster improvements or repair of historic properties. Although CEQA does not directly address this question, Section 3.2, *Project Description*, on pages 3-2 through 3-8 describes the projects and program that are funded by the Proposed Amendments and indirectly, through the various programs supported by the Proposed Amendments, could foster the improvements or repair of historic properties in the Project Area.

Over the years, there have been several important historic rehabilitation efforts in the Project Area that have relied on substantial funding from the Agency. These projects include the following buildings:

- Fox Theater
- Rotunda
- Swans Market
- The Hotel Oakland
- The Oaks Hotel
- The Tribune Tower
- Preservation Park
- The San Pablo Hotel
- The Harrison Hotel
- The Paramount Theater
- The Touraine Hotel

Moreover, the Façade Improvement Program provides financial assistance to property owners of historic buildings throughout the Project Area to rehabilitate the exteriors of their property.

C-21: The Historic Setting for the Project Area is described on pages 4.4-3 through 4.4-5 of the DEIR. The Historic Preservation Element of the General Plan guides the patterns of development that characterize historic neighborhoods for the City of Oakland including the Project Area. While the DEIR does not reproduce the entire Historic Preservation Element, it provides a list of many of the goals and policies that would govern the activities of the Proposed Amendments to the Central District Redevelopment Plan on pages 4.4-9 through 4.4-18.

C-22: It is not feasible to identify with specificity in this Program EIR, every historic resource contained within the Project Area, because eligibility changes with each passing year, status of buildings change, and assessor's parcel numbers can change. Figure 4.4-1, *Local Register and Potential Designated Historic Properties*, on page 4.4-24 of the DEIR is provided only to illustrate the concentration of historic properties in the Project Area.

- C-23: The Central District contains numerous historic neighborhoods. To include photographs and examples of each neighborhood in the DEIR would be a major undertaking that would not substantially contribute to the program level analysis of historic resources under CEQA. Mitigation Measure CUL-1 on page 4.4-29 of the DEIR includes multiple measures and approaches that would reduce impacts to designated and currently unevaluated historic properties in the Project Area by activities facilitated by the Proposed Amendments. In addition, as part of Planning application submittals, the applicant is required to submit photographs of the 10 closest properties. Planning application review also includes site visits and research of other available materials regarding historic properties and districts. When applicants are making changes to potential designated historic properties, even changes such as window and siding changes, the City's historic planner is brought into the review process.
- C-24: The Historic Setting for the Project Area is described on pages 4.4-3 through 4.4-5 of the DEIR. The Historic Preservation Element of the General Plan guides the patterns of development that characterize historic neighborhoods for the City of Oakland including the Project Area. While the DEIR does not reproduce the entire Historic Preservation Element, it provides a list of many of the goals and policies that would govern the activities of the Proposed Amendments to the Central District Redevelopment Plan on pages 4.4-9 through 4.4-18.
- C-25: Applicable policies of the Historic Preservation Element that apply to the Redevelopment Plan are Policies 3.1, 3.4, and 3.12. Also see response to Comment C-12, above.
- C-26: To attempt to articulate and outline in the Program EIR, the potential problems in achieving compatibility between existing historic resources and proposed development at this time would be speculative. As programs and projects come up for implementation they will be subject to review by OCHS staff and LPAB staff who would determine the appropriate steps that should be taken in keeping with the goals and objectives of the City's Historic Preservation Element.
- C-27: Section 3.2, *Project Description*, on pages 3-2 through 3-8, describes in detail the projects and programs that are funded by the Proposed Amendments and the methods of funding.
- Activities funded by the Proposed Amendments would be subject to the City's policies governing historic preservation as outlined in Section 4.4.2, Cultural Resources, Regulatory Setting, on pages 4.4-6 through 4.4-21 of the DEIR.
- C-28: The City's commitment to protect historical resources is outlined in Section 4.4.2, *Cultural Resources, Regulatory Setting, Local Plans and Policies*, on pages 4.4-9 through 4.4-21 of the DEIR. As discussed therein, historical resources in the City are protected by policies in the Historic Preservation Element of the General Plan, specific regulations governing historic properties in the Planning Code, and specific Standard Conditions of

Approval and Uniformly Applied Development Standards imposed as Standard Conditions of Approval.

Mitigation Measure CUL-1, on page 4.4-29 of the DEIR, specifically outlines steps for the avoidance, adaptive reuse, or appropriate relocation of historically significant structures within the Project Area.

- C-29: Board Member Biggs requested that language and descriptions of eminent domain including a few cases where eminent domain has been used. The use of eminent domain is not, in and of itself, an environmental impact. Because the relevant CEQA analysis regarding eminent domain in the DEIR focuses on potential impacts to historical resources, Staff responded with two examples: the Uptown Project where out of the 40 parcels were acquired, only three parcels required the use of eminent domain, and the Bermuda building, a structure that was damaged in the 1989 earthquake and left abandoned, which the city was able to acquire through eminent domain and rehabilitate. See also response to Comment C-2, above, for another example of the successful use of eminent domain. The City has used eminent domain for three projects in the last 20 years.

Eminent domain is defined in the Section 1.1, *Project Overview*, on page 1-1 of the DEIR.

- C-30: This comment does not pertain to the environmental analysis in the DEIR. Public Speaker Naomi Schiff stated that eminent domain is a useful tool, but also stated that it can remove a lot of small locally owned businesses in favor of large national businesses.
- C-31: Public Speaker Naomi Schiff suggested that perhaps the Board might want to place limitations on eminent domain to prevent it being used on historic buildings. She sees it as the job of this Board to advocate for those historic buildings.

The DEIR identifies Mitigation Measure CUL-1a which requires the “Avoidance of Historically Significant Structures” to avoid or reduce potential environmental impacts to historic resources to less than significant (see Section 4.4, *Cultural Resources*, on pages 4.4-29 through 4.4-31 of the DEIR). The Public Speaker’s suggestion is not required to reduce potential environmental project impacts, but is a specific approach that aligns with Mitigation Measure CUL-1a.

- C-32: This comment does not pertain to the environmental analysis in the DEIR. Public Speaker Schiff requested that the definition of blight be refined to accommodate the reuse of historic buildings. The City is bound by the statutory definition of blight which reproduced in its entirety in the response to Comment C-1, above.
- C-33: This comment does not pertain to the environmental analysis in the DEIR. Public Speaker Schiff expressed concern that the City was using blight and eminent domain as a way to get rid of historic resources. In the last 20 years, the City has used eminent domain in only three projects. All three project have been successful in eliminating blight and

- encouraging new small businesses in the surrounding area. See also response to Comment C-2, above.
- C-34: The taking of properties under eminent domain is subject to specific regulations and review under California Redevelopment Law. The City has prepared a Preliminary Report which includes a blight study for the Proposed Amendments to the Central District Redevelopment Plan. This report will provide more information and identify blighted areas within the Project Area.
- C-35: The response to Comment C-1 provides the statutory definition of blight. Section 4.4, *Cultural Resources*, on pages 4.4-1 through 4.4-35 of the DEIR analyzes the impacts on historic properties and archaeological resources in the Project Area. The Northwest Information Center was consulted for known archaeological resources in the Project Area and the results are discussed in Section 4.4.3, *Cultural Resources, Study Results*, on pages 4.4-22 and 4.4-23 of the DEIR. Mitigation Measure CUL-1 provides a stepped approach for dealing with impacts to historic properties.
- C-36: As stated in Section 1.4, *Introduction, Redevelopment Law Requirements for Adoption of the Proposed Amendments*, on page 1-4 of the DEIR, a Preliminary Report, which includes a blight study, will be prepared by the City and submitted for review by the City Council and other governmental bodies, affected taxing entities, community leaders and the public.
- C-37: The blight study is a component of the Preliminary Report. The Preliminary Report is a background document for all affected entities in the process to consider the proposed Plan Amendment. Specifically, the Preliminary Plan includes a survey and analysis of the significant physical and economic blight conditions remaining in the Central District Redevelopment Project Area. The documentation of blight is based on the blight definitions provided in Section 33031 of the California Community Redevelopment Law. The Preliminary Report, including the blight survey, was published in March of 2011, and the document is currently under review by various taxing entities that would be affected by the Proposed Amendments. The document is available for review on the City of Oakland's website.
- C-38: The Proposed Amendments are described in detail in Section 3.2.1, *Project Description, Proposed Amendments*, on pages 3-2 through 3-6 of the DEIR.
- C-39: Identification of blighted properties is not pertinent to the CEQA analysis and is therefore not provided in the DEIR. The Preliminary Report, which will be prepared by the City, will identify blighted areas in the Project Area.
- C-40: In 2001, the California Legislature adopted Senate Bill No. 211 ("SB 211") which allows, under specified circumstances, redevelopment agencies to amend a redevelopment plan adopted before December 31, 1993 (the Central District Urban Renewal Plan was adopted on June 12, 1969), to extend for up to an additional ten years, the time limit on the

- effectiveness of the plan and/or the time limit on receiving tax increment and repaying indebtedness if the project area still contained blight that could not be eliminated by the original time limit on the effectiveness of the plan for the redevelopment project area. The proposed 17th amendment to the Central District Urban Renewal Plan would be adopted pursuant to the provisions of SB 211.
- C-41: Blight is described in Section 33031 of the California Community Redevelopment Law and is reproduced in the response to Comment C-1, above.
- C-42: The Preliminary Report, which will include a blight study, will provide detailed descriptions of blighted areas in the Project Area.
- C-43: The comment does not pertain to the CEQA discussion in the DEIR. As stated above, the Preliminary Report will contain a blight study for the Project Area.
- C-44: Definitions of terms and the methodology that the City will use to facilitate the Proposed Amendments are provided in Section 1.1, *Introduction, Project Overview*, on pages 1-1 through 1-2 of the DEIR, and Section 3.2.1, *Project Description, Proposed Amendments*, on pages 3-2 through 3-6 of the DEIR. The blight study, a component of the Preliminary Report, includes the methodology for assessing existing conditions and blight in the Project Area.
- C-45: In the event the City has to use eminent domain, project-specific CEQA review would be required.
- C-46: The comment does not address the adequacy of the DEIR on topics addressed within the scope of CEQA. The City has used eminent domain in three instances in the past 20 years. As described in the response to Comment C-2, above, those projects have resulted in the successful establishment of several small businesses in the neighboring area.
- C-47: The comment does not address the adequacy of the DEIR on topics addressed within the scope of CEQA. The Bermuda Building was an earthquake-damaged building that sat vacant and deteriorating for almost nine years after the Loma Prieta earthquake before the Agency used eminent domain to take the site in 1998 in order to have the building torn down and the site redeveloped. The building was demolished in 2004. A new 215,000-square-foot office tower with ground floor retail now occupies the site.
- C-48: The comment does not address the adequacy of the DEIR on topics addressed within the scope of CEQA. The City of Oakland has developed and implemented various policies that are aimed to stimulate economic development through the support and empowerment of the local community. These programs include the following:
- 20% Local and Small Local For Profit and Not for Profit Business Enterprise Program
 - 50% Local Employment Program (LEP)

- 15% Oakland Apprenticeship Programs.

Contractors who participate in the City's development project must comply with Oakland's Local Hire Compliance Ordinance.

C-49: This comment summarizes all the comments that have been responded to, above.

CHAPTER 6

Comments and Responses to Comments Made at the Public Hearings on the DEIR

The Planning Commission held a Public Hearing on the DEIR on April 6, 2011, and the Landmarks Preservation Advisory Board held a Public Hearing on the DEIR on April 11, 2011. This chapter presents the transcript of each Public Hearing, followed by the responses to each speaker's comments. Reference may be made to individual written comment presented in Chapter 5, Written Comments and Responses to Written Comments Received on the DEIR.

As in Chapter 5, responses presented in this chapter specifically focus on comments that pertain to the adequacy of the analysis in the DEIR or other aspects pertinent to the environmental analysis of the proposed project pursuant to CEQA. Comments that address topics beyond the purview of the DEIR or CEQA are noted as such for the public record and may be taken into consideration by the Planning Commission and the City Council prior to acting on the EIR or the proposed project.

6.1 Planning Commission Public Hearing Comments

The transcript that follows only includes that portion of the Public Hearing that is relevant to the DEIR. Proceedings of the full Planning Commission meeting that includes discussion not pertinent to the public hearing on the Proposed Amendments to the Central District Urban Renewal Plan DEIR is available for review at the City of Oakland Planning and Zoning Division.

**Central District Redevelopment Plan Amendments
Planning Commission Public Hearing
April 6, 2011**

City Planning Commission Agenda Item No. 7

Agenda: <http://www2.oaklandnet.com/oakca/groups/ceda/documents/agenda/oak026959.pdf>

City Staff

Ulla-Britt Jonsson, Planner, Community and Economic Development Agency
Patrick Lane, Central District Project Manager, Redevelopment Agency

Consultants

Reema Mahamood, Managing Associate, Environmental Science Associates

Members of the Public:

Sanjiv Handa

Planning Commission:

Chair Viet Truong
Vice Chair Sandra Gálvez
Commissioner Madeleine Zayas-Mart

Presentation

City Planner Ulla-Britt Jonsson presented the Central District Redevelopment Plan Amendments EIR to the Planning Commission.

Commission Questions

Vice Chair Gálvez: I have a couple of questions, as usual. One is, I was curious, so the housing base has already been established and then the affordable housing rate that's in the Draft EIR is based on that. Does that number change? So for example if more housing ends up getting built than is what is currently planned, will the number of affordable housing units go up as well? Than the, whatever it was, the two hundred, five hundred and something that were in here?

Patrick Lane: Yes it will, it's a fifteen percent requirement.

PH-1
↓

Vice Chair Gálvez: So regardless, it could end up being less than what is in here as well if the number of market rate units that get built are less.

Patrick Lane: Yes, the Agency's actually supposed to make sure that fifteen percent of the housing built within a ten year period during the implementation of the plan is affordable.

Vice Chair Gálvez: And does it only have to be fifteen percent, or can it be higher than fifteen percent?

Patrick Lane: Fifteen percent is the requirement by state law.

Vice Chair Gálvez: Is the minimum.

Patrick Lane: It's the minimum. It has to be at least fifteen percent.

Vice Chair Gálvez: Okay. The other question I have is related to sea level rise. I was curious... I've been active in SB 375 so I'm in the regional work related to SB 375. So I was curious as to how the determination is made whether or not that's an impact or not. I see that it's been determined it's not an impact, yet BAAQMD and others are stating that we should be planning on the higher thresholds. So I'm just curious what the threshold— how much sea level rise does there have to be before it's considered, you know, significant, that we need to deal with.

Reema Mahamood: Reema Mahamood with ESA. I can't answer that with numbers specifically, but in general terms, the new maps that have been provided now show that there is a chance that there is going to be sea level rise in the area. So we did take that into account and we've discussed it. It's not a problem in the project area mainly because it's only the area by the Embarcadero that's affected. So does that give you an idea of



PH-1
cont.



PH-2

Vice Chair Gálvez: So does it only become a problem if it affects the entire area? Or if a part of it...I was more curious just to how we define that it's significant or not because I was reading that here we're saying that we should plan for the highest rate of increase yet we're saying it's not significant, so I was curious when do we think it's high enough that it's considered significant and we need to mitigate it.

Reema Mahamood: Well it depends on the elevation of the area that's currently there, and I believe right now the area by the Embarcadero is the lowest portion of the project area that would be affected by it. But the rest of it is at a higher elevation. So... And what's in the area also needs to be taken into effect. There are no sensitive uses down there, residences.

Ulla-Britt Jonsson: Any new development in the area would have to adjust to the current standards, the current Environmental Qual... So since anything that is built that has to go before the California... has to conform to CEQA, then that would be on an individual project-by-project basis.

Vice Chair Gálvez: I see, okay, thank you.

Chair Truong: I have a question for staff. With the ongoing debate at the state-level around redevelopment, what happens if Redevelopment is eliminated, what happens to this project?

Patrick Lane: If the Governor's proposal goes forward, this would be basically ended. And at this point we're not sure what's going on, there seems to be basically moving backwards and they froze the number of redevelopment proposals that were related to affordable housing and other things and they actually started discussing them again. So it's unclear whether they actually think they're actually going to vote for that proposal or not.



PH-2
cont.

PH-3

Chair Truong: We also have two large plans happening within this vicinity. The Lake Merritt Area Plan and the Broadway Valdez. How are those processes interacting with this, or is going to be impacted by this at all?

Patrick Lane: This proposal takes into account those things somewhat. To the extent known, Valdez was a little bit more developed, and we kind of are specific on the projects there. There were a number of projects from the Lake Merritt one that were already on the books, so we know what they are. And we've taken all those projects into account with the program level EIR.

Chair Truong: So would the funding for those two projects be different and what happens within those projects vary depending on whether or not this is approved in an extension of the TIF funds?

Patrick Lane: In particular, the Broadway Valdez area is anticipating a high level of retail which would require particularly parking garages and infrastructure developments. So there's been some thought that we actually will be putting quite a bit of our money in that.

Chair Truong: So if this moves forward, it gets adopted...

Patrick Lane: There would be funds for that.

Chair Truong: ...there would be more funds for it.

Patrick Lane: Yes, there would be funds for that. If it doesn't move forward, there probably will not.

Public Comment

Sanjiv Handa: For the record, Sanjiv Handa, East Bay News Service. First and foremost, keep in mind that when the previous governor, Arnold Schwarzenegger, proposed eliminating



PH-4



PH-5

redevelopment agencies, all the Republicans were in support. Now, not a single Republican has yet to cast a vote of support. And let me tell you, it's not about redevelopment. It's about redistricting, and it's about some other political issues that are down the line. And people are trying to make deals. Whether it's this year or next year or five years from now, redevelopment is going to go away, because it has been one of the biggest boondoggles and waste of money that the last two generations of Americans have seen in California. The Legislative Analyst has a report you should read about the impact of redevelopment. That's not to say there have not been worthwhile redevelopment projects, not to say there has not been job creation. But what you hear of course is the propaganda from cities and redevelopment agencies about what they have achieved. They do not look at the opportunity cost and what's the other side of it as if that money had been used more productive ways. The Legislative Analyst knows that the job creation would have been a lot bigger if California had been getting a lot more revenues. And the schools, transit districts and others would be getting the money that the City of Oakland and other cities pocket. When the proposal came up, there were the big ten cities. It is now down to the big eight because two of the ten found out that they were actually better off eliminating redevelopment agencies because their general fund would have more money. And if the redevelopment agencies are eliminated, Oakland's general fund will benefit to the tune of fifteen million or more a year in additional revenue. The Oakland schools will get more than forty million dollars a year in additional pass-through money. BART will more money, AC Transit will get more money, special districts like East Bay MUD will get more money. So it's not a simple matter of believing the propaganda that has been put out. And yes there's going to be litigation there's going to be a lot of discussions. As far as this project area goes, keep in mind that the most important thing about redevelopment is supposed to be elimination of blight. Take the last twenty years of spending by Oakland, show me two blocks, any two blocks other than the hundred million dollars that were spent subsidizing the Fox Theater and the Uptown area, where there has actually been



PH-5
cont.

PH-6

an improvement, more garbage, more trash and more blight, everywhere including downtown.

Thank you.

↑ PH-6
cont.

Commissioner Comments

Commissioner Zayas-Mart: I'm pretty happy with the inclusion of air quality, cultural, noise and transportation/circulation impacts are pretty up there on my list.

┆ PH-7

Chair Truong: I'll add just two more things. I want to have a more extensive study about how this might impact both the Broadway/Valdez and the Lake Merritt Area Plan, both of which are important projects. I'd like to know a little bit more about how that might be impacted by this.

┆ PH-8

Also there's a good snippet about jobs in VI-4, which is great, happy to see it, but I'd love to see actually a little bit more study about it, open that up a little bit more so we know maybe even more details around where is the growth, how it's going to get impacted, how's that's going to dovetail with the housing, how that'd be matched up. I do see some language also, just finally, about the affordable housing matching up to the population growth, and I think that's great that we addressed that briefly, but I'd love to see even more study about it, what that looks like projecting out. Those are my top concerns. Seeing that we have none other I think we're ready to close this item.

┆ PH-9

6.2 Responses to Planning Commission Public Hearing Comments

Planning Commission Comments

Vice Chair Gálvez

PH-1: Under the Proposed Amendments, at least 15 percent of all housing developments in the Project Area would be required to be affordable to persons and families of low or moderate-income. This requirement would apply to the Project Area and would have to be met over a 10-year period.

PH-2: Sea level rise is discussed on pages 4.8-5, 4.8-7 through 4.8-8, and 4.8-20 of the DEIR. As stated in the DEIR, sea level rise is difficult to project. Based on the most widely accepted studies, a reasonable range of low, medium and high estimates of future potential sea level rise that would likely occur has been devised. The San Francisco Bay Conservation and Development Commission (BCDC) and the State of California recommend using the high end of the range as guidance to local and state agencies planning for sea level rise. FEMA will continue to update its flood hazard mapping over time as necessary to reflect changes in sea levels. The safety measures built into the General Plan policies in the Safety Element, Standard Conditions of Approval related to construction within the 100-year flood zones, and adaptive management measures to sea level rise would ensure that potential impacts to low-lying areas of the Project Area would be less than significant.

PH-3: This comment does not address the adequacy of the DEIR on topics addressed within the scope of CEQA. However, in the event if the Governor's proposal to discontinue Redevelopment goes forward, the Proposed Amendments and the activities facilitated by the Proposed Amendments would not happen.

PH-4: The Lake Merritt Area Plan was considered in the Housing Element. While it is not a part of the Proposed Amendments, this project was considered in the cumulative discussions in the DEIR. The Broadway-Valdez project is a part of the Proposed Amendments and was specifically considered in this DEIR.

In the event Redevelopment is discontinued, both of these projects may continue to move forward, but without redevelopment funds.

Public Hearing Commenter

Sanjiv Handa, East Bay News Service

PH-5: The comment does not address the adequacy of the DEIR on topics addressed within the scope of CEQA. The City will consider this input prior to taking action on the EIR and the Proposed Amendments.

PH-6: This comment does not address the adequacy of the DEIR on topics addressed within the scope of CEQA. The commenter requests examples of areas where redevelopment has made an improvement in the elimination of blight. As detailed in the response to Comment Letter C, Comment C-2, the City has successfully improved the Bermuda Building, the Uptown Project, and Market Square. As a result of these improvements, many small new businesses on Telegraph Avenue, San Pablo Avenue, and Broadway have been established.

Planning Commission Discussion

Commissioner Zayas-Mart

PH-7: The comment expresses satisfaction with the inclusion of air quality, cultural, noise and transportation/circulation impacts in the DEIR.

Commissioner Truong, Chair

PH-8: The Broadway/Valdez project would be supported in part by the Proposed Amendments and therefore, as part of the CEQA project, has been included in the analysis throughout the DEIR. In addition, because it is a major project with several components as indicated in Table 3-1 on page 3-3 of the DEIR, it will be subject to project-specific CEQA review.

The Lake Merritt Area Plan would not be supported by the Proposed Amendments and therefore, is not part of the CEQA project. However, it is analyzed in the DEIR as part of the cumulative analysis and is listed in Appendix B of the DEIR. The Lake Merritt Area Plan would also be subject to its own CEQA review and was included in the Housing Element EIR.

PH-9: Section 4.11.2, *Population, Housing, and Employment, Contributions to Downtown and Citywide Growth from Proposed Amendments*, on pages 4.11-11 through 4.11-17 of the DEIR discusses the potential housing and population growth as well as projected employment, with the Proposed Amendments.

6.3 Landmarks Preservation Advisory Board Public Hearing Comments

The summary transcript that follows only includes that portion of the Public Hearing that is relevant to the DEIR. Proceedings of the full Landmarks Preservation Advisory Board meeting that includes discussion not pertinent to the public forum on the DEIR is available for review at the City of Oakland.

Central District Redevelopment Plan Amendments
Landmarks Preservation Advisory Board Public Hearing
April 11, 2011

LPAB Commission Agenda Item No. 2

Agenda: <http://www2.oaklandnet.com/oakca/groups/ceda/documents/agenda/oak027121.pdf>

Public Commenters:

Naomi Schiff

Landmarks Board Commenters:

Vice-Chair Delphine Prévost

Board Member Daniel Schulman

Board Member Anna Naruta, PhD

Staff:

Ulla-Britt Jonsson

Betty Marvin, Oakland Cultural Heritage Survey

Joann Pavlinec, Secretary

Public Comment

Ms. Schiff: I'm it, Naomi Schiff. Oakland Heritage Alliance has not slogged through this entire thing yet, but we will before the end of comment and we will put in a letter. I did just want to make a pitch for the kind of things that aren't actually buildings but are street-furniture-like objects. I can give you some examples. The clock at 17th and Broadway, not currently there, but being rehabilitated right now. The fountain, the Latham Square fountain that, it should be called out in this, and I don't know if it is or not, but I do think the Landmarks Board should make a pitch for real care to shreds of public furniture amenities and architecture that may not actually be privately owned, or if privately owned, may not actually be within the building envelope. And that it would be good in contemplating streetscape improvements to try and get things that are a little bit in keeping with whatever they adjoin, so that we don't end up with Walnut Creek-esque sidewalks in front of some historic building. It would be nice to do our ADA, and our wonderful transit and everything but have some idea about style. And I only mention this because I was here



LH-1

the last time they redid the sidewalks and so we know that it is possible to do something that is a little bit weird and incongruous, and in that case, slippery when wet. So I will put in a letter, I will send copies to you folks once we have some consensus with Oakland Heritage Alliance. I really appreciate the work that the Planning Department has done, and it really has been a sea change over the last thirty years as they came to not only value but encourage the reuse of historic buildings. And compared to when I got here, this is really a refreshing and wonderful attitude and I hope that it will persist. Thank you.

↑
LH-1
cont.

Board Comments

Board Member Schulman: I have a comment for staff. It's a comment about street furniture was interesting. I'm not really sure though where that would fit within an EIR, could staff maybe say how that would work within a EIR structure?

Ms. Jonsson: So if by street furniture, you're talking about street improvements as part of redevelopment, it would be part of what you would consider street improvements.

Board Member Schulman: Well I think Ms. Schiff's examples are not street improvements per se, but existing furniture that has historic interest, such as the fountain, and the clock, and I don't [know] maybe there are some street light lamps, or some things that are along those lines that are part of the fabric of Oakland, that are furniture, so they're not completely permanent, so if we don't look out and protect them, they may disappear.

↑
LH-2
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Ms. Jonsson: I would imagine that if they were part of what would constitute blight and the redevelopment agency would consider this as part of their program for improvements in the downtown area, then that would be considered part of the Program EIR. And then it would then have to do through whatever regulations for development or streetscape improvements that it would be required to go through. Does that answer your question?

Comment Letter LH

Board Member Schulman: Not, not really. Maybe staff. I'm sorry you kind of actually came it from a hundred eighty degrees opposite (inaudible).



LH-2
cont.

Ms. Marvin: Well the Latham Fountain is a designated landmark. So it is in fact on the map which I notice is advertised as an attachment to this staff report but is not here. I worked with the planning interns just before their internship period ended and this was one of their heroic accomplishments was the cultural resources map. Cause things like the Latham Fountain and the clock and the very interesting sidewalk light, skylights for the basements right embedded in the sidewalks on Telegraph near 18th that were studied in connection with the 20th Street transit center. Things like that don't have parcel numbers, so you can't bring them up in GIS. So it's one of these things that gets looked if it gets looked at, case by case. Latham Fountain we put on the map by hand because it's a known landmark. The other things were kind of below that level, but they've been a challenge and an intriguing thing to the survey since forever.



LH-3

Board Member Schulman: So perhaps I would ...a separate, not necessarily a survey but an inventory of important street furniture and include that as some type of table within the EIR so that we at least know to look at and be concerned about these things...(inaudible)...possibly be helpful.

Ms. Jonsson: I guess I have a question of you. The redevelopment plan amendment has to do with for instance bringing in funding so that you can make improvements in the redevelopment area for certain kinds of things. So my question to you is, are you recommending that we make improvements to certain street furniture as part of the programmatic EIR... at the amendment of the redevelopment plan?

Board Member Schulman: I think the issue, and maybe my fellow board members can speak to this, but a lot of our initial comments were with the character of what's meant by the term



LH-4

improvement. Where in past in you know the traditional bad view of redevelopment is improvements getting rid of what exists and putting in something new. A lot of our comments focused on rehabilitating and repairing existing historic landmark, and trying to, landmarks and other buildings of interest. I think the idea here is mainly one to extend this to street furniture because a lot of it is part of the fabric and so by improvements we don't want an improvement be to get rid of street furniture and replace it with something else or not replace it at all, but to rehabilitate, repair and maintain existing street furniture.



LH-4
cont.

Ms. Jonsson: Okay. Thank you.

Board Member Naruta: So these could be added to table, what currently in the Draft EIR is Table 4.4-2, Selected Historical Resources in the Project Area. And they would fit very neatly in there and then they would at least have a placeholder as we move forward.



LH-5

Ms. Jonsson: I'm not sure that would be the appropriate place for them.

Board Member Naruta: Alright, well our general feedback as regards the street furniture is that we want to respond to the public comments today and make sure that historic street furniture is kept in the reckoning of historical resources in the project area as this moves forward.

Ms. Jonsson: Right, duly noted. Thank you.

Board Member Schulman: Ms. Schiff, can I ask a quick question? What's your sense of the number of these items, how far do you think it goes beyond the two we just ... (inaudible).



LH-6

Ms. Schiff: Well I was just trying to think about that. And the map is on this copy here and I was looking at it. I think that there probably are two levels of it, some things are kind of the built-in kind of thing like the streetlight, the lights, basement lights, skylights, and we've already lost a lot of them so it would be worth mentioning those. I think it would make very good sense for this

board to recommend that there just be a list of what these elements are. Some of them are probably owned by the City but the City is not always the best caretaker of these things. And it would also give them some presence in the EIR such that when funding did become available for restoration these things don't just completely fall out of consideration. So I think it would be well worth it. I notice that there are some City-owned things in here, for example, the fire alarm building, which has some interesting gadgetry in it, is in the API next to Lake Merritt. I think that you have in the Cultural Resources staff somebody who knows way more than I do about where all these things are and that it wouldn't take too much effort to inventory at least the obvious ones with the understanding that there might be one or two things that would escape. But I think there are a few things that it would be really good to list, pay attention to, make note of, and include because they, you know... The classic example that's not in downtown is the entry pillars in a lot of our old developments, which nobody ever knows whether they're private or public and who owns them and then a car hits them and then you can never figure out how to fix it. It's stuff like that, and in fact the clock at seventeenth and Broadway was hit multiple times and damaged by buses and trucks. So we have experience of this and it is really hard to then get them repaired and put back in action. So I do think it'd be worth including some kind of inventory, thank you.



LH-6
cont.

Vice-Chair Prévost: Betty, did have something you wanted to add?

--- SHIFTING FROM WORD-FOR-WORD TRANSCRIPTION TO SUMMARY---

Ms. Marvin: An inventory is overly ambitious and pseudo-definitive. I think that a category of things to look out for, at the big end of things you have the clock and the fountain, but there is also another category of things to look for such as maker's stamps in the sidewalk (WPA, etc.). Look out for these categories of things in ground-disturbing activities and improvements. Give some examples of what's in the category. With a list it's too mechanical about what's out and what's in.



LH-7

Comment Letter LH

Board Member Schulman: Category idea is a good one, especially if it includes a few archetypal examples.

↑ LH-7
cont.

Board Member Andrews: Expressed appreciation for cultural resources in DEIR. Will the remarkable vintage signage in downtown Oakland be included?

Ms. Jonsson: When applicants or property apply for façade improvements, they have to go through the Planning Division; the Planning Division working with the façade improvement program ensures that the integrity of historic signs is preserved. So that’s what would happen if redevelopment money was used for something like that.

LH-8

Board Member Naruta: Information requested at the scoping meeting in November not adequately provided. Seeks more information, more detail in responses. Moves that minutes of the November meeting be sent as part of comments on the DEIR. For eminent domain, requests examples of how eminent domain has been used in Oakland, and the economic impact of those cases. Requests that definition of blight be clarified, and that the California statutory definition be used. (A lack of commercial services such as banks and stores (constitute a) hindrance to business investment. She argues that a lack of commercial services such as banks and stores could be an incentive to business investment.) It was also interesting to find out that once the redevelopment agency has made required payments to the County Supplemental Educational Revenue Augmentation Fund, it can amend the plan to extend plan limits by one year without having to do some of the other provisions, so it looks like there’s a lot of options for moving forward. That’s not part of the motion.

LH-9

Board Member Schulman: We may ask staff where the definition of blight in the staff report came from, and why we don’t have one that’s more in tune with the statutory definition.

LH-10

Ms. Jonsson: The definition for blight came from the DEIR.



Comment Letter LH

Vice-Chair Prévost: Our issue was that the definition of blight in the DEIR was inadequate.

↑ LH-10
cont.

Board Member Naruta: Advises that the minutes from the November meeting be appended to the LPAB’s comment letter so that that discussion will be responded to in the Final EIR.

Vice-Chair Prévost: The responses to the comments from our November scoping meeting are inadequate, and LPAB needs to make clear how they are inadequate. The only new thing she heard tonight relates to street furniture and streetscape, and the categorization of those.

LH-11

Board Member Naruta: I think comments raised during scoping are under a different regulatory framework than comments on the DEIR. Is that correct?

Ms. Jonsson: I would have to get back to you.

Vice-Chair Prévost: It is correct that comments on the DEIR are responded to in writing in the FEIR.

Board Member Naruta: Wants to raise issue with proposed mitigation statements. Impact CUL-1, the impact on cultural resources taken as a group, and then there’s Mitigation CUL-1. Suggests that language for this mitigation be drawn from /equivalent to the document the City released immediately prior to this DEIR: Findings for Demolition of Historic Properties (was vetted by LPAB, Planning Commission, City Council). Mitigation Measure CUL-2,

LH-12

Archaeological Resources, on page 4.4-32, there is a statement there that SCA-52 is adequate for all known and as-yet undiscovered archaeological resources that are documented or may exist on the project area, and that’s not correct. That’s a misunderstanding of what you’ve looked at when you’ve searched the Northwest Info files and what standard mitigations are for archaeological resources that are known or that are high likelihoods. That’s another document with vetted language that is being worked through, so that would be something you would draw on moving

LH-13

forward. CUL-2 is incorrect and SCA-52 is not adequate. Statement made for archaeological resources, page 4.4-22, section 4.4. in general. There’s an erroneous impression that if the Northwest Information Center (NWIC) was searched and a document on site was not found, then the area is clear of archaeological remains; that is not correct, that just means a report has not been filed on anything in the area. I’m not sure why there’s hedging in the document about the discovery of human remains in the shellmound underneath CityCenter when BART went through, but there’s documented shellmounds and burials in the project area. So part of the motion is that section 4.4, Cultural Resources is inadequate and needs modifications along those lines, and that there is existing and in-process City language that can be obeyed there.

LH-13
cont.

Also suggests that LPAB add language to support the statement that future projects would also undergo environmental review, as additional mitigations may be necessary. Page 4.4-28.

LH-14

And the category of things to look for in ground-disturbing activities that would include street features ranging from the fountain to unique and historic sidewalk stamps.

LH-15

Ms. Pavlinec: The motion is that the document is inadequate, and there were several specific areas pointed out to support that statement, and I have those in the notes, and in addition to those areas where it’s inadequate or requires further responses, there is the issue of street furniture and other items such as Latham Fountain and sidewalk stamps, that need to somehow be recognized in the document.

Board Member Shulman: Does the street furniture incorporate Chris Andrews’ comment about historic signage?

Board Member Andrews: Historic signage is usually on private property.

Vice-Chair Prévost: Well we’re definitely looking at that even if it’s on private property.

LH-16

Board Member Shulman: In the past, it's come up when new buildings obscure historic signs, so even if it's on private property, it may be addressed in the EIR.

↑ LH-16
cont.

(Motion seconded and approved unanimously.)

6.4 Responses to Landmarks Preservation Advisory Board Public Hearing Comments

Public Forum Commenters

Naomi Schiff, Oakland Heritage Alliance

LH-1: To the extent that structures are historic under CEQA, such structures in the Project Area would be protected in keeping with the City of Oakland's Historic Preservation Element, General Plan Policies, Planning Code, and Standard Conditions of Approval and Uniformly Applied Development Standards Imposed as Standard Conditions of Approval as noted on pages 4.4-9 through 4.4-21 of the DEIR and, as applicable CUL-1 and CUL-5. As described and discussed in those pages, the City recognizes the contribution and importance of such features to the character, livability and sense of place to areas in the City, and seeks to protect and preserve historic structures and details.

Board Discussion

Board Member Schulman

LH-2: As stated in the response to Comment LH-1, above, to the extent that structures are historic under CEQA, such structures in the Project Area would be protected in keeping with the City of Oakland's Historic Preservation Element, General Plan Policies, Planning Code, and Standard Conditions of Approval and Uniformly Applied Development Standards Imposed as Standard Conditions of Approval as noted on pages 4.4-9 through 4.4-21 of the DEIR and, as applicable, CUL-1 and CUL-5.

LH-3: Historic structures such as street furniture, sidewalk lights, and basement skylights are difficult to inventory because they don't have specific parcel numbers. However, to the extent that they are considered historic under CEQA, such features would be protected when projects that have the potential to impact them are reviewed by OCHS staff. See also response to Comment LH-1, above.

LH-4: To the extent that these features are considered historic under CEQA, they will be subject to the same City regulations protecting historic buildings. See also response to Comment LH-1, above.

Board Member Naruta

LH-5: Please see responses to Comments LH-3 and LH-4, above.

Public Speaker, Naomi Schiff

LH-6: Please see response to Comment LH-3, above.

Board Member Schulman

LH-7: Please see responses to Comments LH-3 and LH-4, above.

Board Member Andrews

LH-8: The City's façade improvements program requires all projects to go through the Planning process. This process would include review by the OCHS staff to ensure that the integrity of historic signs is preserved.

Board Member Naruta

LH-9: Responses to the comments made at the November 2010 Scoping Meeting are addressed in Comment Letter C in Chapter 5 of this document.

Board Member Schulman

LH-10: Section 33031 of the California Community Redevelopment Law contained in the Health and Safety Code (January 2001), describes blight as follows:

- 33031.** (a) This subdivision describes physical conditions that cause blight:
- (1) Buildings in which it is unsafe or unhealthy for persons to live or work. These conditions may be caused by serious building code violations, serious dilapidation and deterioration caused by long-term neglect, construction that is vulnerable to serious damage from seismic or geologic hazards, and faulty or inadequate water or sewer utilities.
 - (2) Conditions that prevent or substantially hinder the viable use or capacity of buildings or lots. These conditions may be caused by buildings of substandard, defective, or obsolete design or construction given the present general plan, zoning, or other development standards.
 - (3) Adjacent or nearby incompatible land uses that prevent the development of those parcels or other portions of the project area.
 - (4) The existence of subdivided lots that are in multiple ownership and whose physical development has been impaired by their irregular shapes and inadequate sizes, given present general plan and zoning standards and present market conditions.
- (b) This subdivision describes economic conditions that cause blight:
- (1) Depreciated or stagnant property values.
 - (2) Impaired property values, due in significant part, to hazardous wastes on property where the agency may be eligible to use its authority as specified in Article 12.5 (commencing with Section 33459).
 - (3) Abnormally high business vacancies, abnormally low lease rates, or an abnormally high number of abandoned buildings.

- (4) A serious lack of necessary commercial facilities that are normally found in neighborhoods, including grocery stores, drug stores, and banks and other lending institutions.
- (5) Serious residential overcrowding that has resulted in significant public health or safety problems. As used in this paragraph, "overcrowding" means exceeding the standard referenced in Article 5 (commencing with Section 32) of Chapter 1 of Title 25 of the California Code of Regulations.
- (6) An excess of bars, liquor stores, or adult-oriented businesses that has resulted in significant public health, safety, or welfare problems.
- (7) A high crime rate that constitutes a serious threat to the public safety and welfare.

Board Member Naruta

LH-11: Responses to the comments made at the November 2010 Scoping Meeting are addressed in Comment Letter C in Chapter 5 of this document.

Comments raised during the Scoping Session and comments made on the DEIR are under the same regulatory framework. They are subject to the California Environmental Quality Act, Article 7, EIR Process, Public Review of Draft EIR.

LH-12: Mitigation CUL-1 is based on the mitigation measures for the Housing Element EIR which is the most recent program-level EIR completed by the City.

LH-13: As stated on page 4.4-22, the Northwest Information Center (NWIC) record search was conducted to “(1) determine whether known cultural resources had been recorded within or adjacent to the Project Area; (2) assess the likelihood of unrecorded cultural resources based on historical references and the distribution of nearby sites; and (3) develop a context for the identification and preliminary evaluation of cultural resources.” (Emphasis added.) The DEIR does not imply that a site is free of archaeological remains if the records search at the NWIC indicates no reports have been filed. In addition, project specific review of any project that may be facilitated by the Proposed Amendments may require additional archaeological review depending on the specific site and records information assessed for an individual project. For example, in addition to the requirements specified in the standard conditions of approval the analysis may determine that additional measures, such as a comprehensive sensitivity study, and based on the results of such study may require preparation and implementation of an Archaeological Research Design and Treatment plan, prior to any ground disturbing activity.

LH-14: Page 1-2 of the DEIR states “if the EIR for a redevelopment plan is a Program EIR, subsequent activities in the program will be subject to the review required by Section 15168.” Further, “a program-level document also simplifies the task of preparing subsequent environmental documents for those activities that are facilitated by the

Proposed Amendments but the details of which are currently unknown.” Projects would have a separate project-specific CEQA environmental review where necessary and appropriate. Demolition of historic resources is a significant impact under CEQA. Any such activity also would be subject to all City regulations protecting historic resources.

LH-15: See Responses to Comments LH-3 and LH-4, above.

LH-16: The City’s façade improvements program requires all projects to go through the Planning process. This process would include review by the OCHS staff to ensure that the integrity of historic signs is preserved.

APPENDIX A

Findings Required for the Demolition of Historic Properties

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Category I

FINDINGS REQUIRED FOR THE DEMOLITION OF HISTORIC PROPERTIES

This handout contains the findings required to be met to approve a Regular Design Review application to demolish a historic structure in the City of Oakland. These findings are required by Section 17.136.075 of the Planning Code. All other regulations, including analysis required under the California Environmental Quality Act, apply.

The handout also describes the items required to be submitted with the design review application. The goal of the required submittals is to assist staff in evaluating whether a project meets the findings required to demolish a building. The submittals may consist of economic and financial analyses, informational reports, and/or “discussion points” required to be addressed within a design or historic analysis of a project. The submittals are not criteria for whether a demolition can or cannot occur; they are only the information required by the City to make a determination as to whether an application meets the required findings for demolition. Further, the required submittals are not meant to discourage either contemporary or historicist architecture in new construction. The Planning Director can, from time to time, make modifications to the required submittals if they are consistent with the intent of the proposed requirements.

All reports required for the demolition findings must be prepared by independent third party consultants or be peer reviewed. Reports will be paid for by the applicant and consultant shall be approved by, and report to, the City. All applicable discussion points shall be taken into account when making a finding. If a point is not applicable, the analysis shall state why. Any submittal may also include attributes that support the demolition proposal and/or the replacement project.

A complete application for demolition of historic property includes following:

- A completed application for Regular Design Review.
- A description of how a project meets the findings described in this form.
- The required submittals described in this form.
- A complete application for the replacement project, including plans designed by a licensed architect.

Different findings are required for the demolition of three categories of historic structures::

- **Category I** includes any Landmark; Heritage Property; property rated “A” or “B” by the Oakland Cultural Heritage Survey; or Preservation Study List Property. This category excludes any property that falls into Category II.
- **Category II** includes properties in an S-7 or S-20 zone or an Area of Primary Importance. Any building, including those that do not contribute to the historic quality of the district, fall into this category.
- **Category III** includes properties rated “C” by the Oakland Cultural Heritage Survey or contributors to an Area of Secondary Importance. This category excludes any property that falls into Category II.

Please call the Oakland Cultural Heritage Survey at (510)238-6879 to determine if a property falls into any of the three categories described above.



CITY OF OAKLAND

DEMOLITION FINDINGS FOR

CATEGORY I HISTORIC PROPERTIES

The following findings are required to be met to demolish a Category I Historic Structure. This category includes any Landmark; Heritage Property; property rated “A” or “B” by the Oakland Cultural Heritage Survey; or Preservation Study List Property. This category excludes any properties contained in Category II, such as buildings that contribute to the historic quality of an Area of Primary Importance, S-7 zone, or S-20 zone.

A proposal to demolish a Category I historic resource must meet Finding 1 or Finding 2 and also meet both Findings 3 and 4, below. Please indicate how the proposed demolition meets the required findings and include all the applicable required submittal materials for the corresponding findings.

Finding 1: The existing property has no reasonable use or cannot generate a reasonable economic return and the development replacing it will provide such use or generate such return.

Finding 1 submittal requirements:

1. *Building Use – Economic Viability.* The applicant shall submit a market analysis prepared by an architect, developer, real estate consultant, appraiser, or other real estate professional with extensive experience in both real estate and historic rehabilitation that demonstrates all of the following:
 - a. The current use does not generate a reasonable economic return (may include market report of like uses and building scale in the same or similar neighborhood);
 - b. That appropriate and reasonable alternate uses in the building could not generate a future reasonable economic return;
 - c. That alterations or additions to the existing building could not make the current or future use generate a reasonable economic return; and
 - d. Potential Federal Tax Credits, Mills Act Contracts, Façade Grants, Transfer of Development Rights or other funding sources are not feasible to bridge the gap identified above.
2. *Building Soundness.* The applicant shall submit a report from a licensed engineer or architect with extensive experience in rehabilitation as to the structural soundness of the property and its suitability for rehabilitation. The soundness report shall be based on the requirements contained in the Soundness Report Requirements, attached.
3. *Building Maintenance History.* The applicant shall submit a cost estimate report prepared by a qualified cost estimator with extensive experience in rehabilitation, analyzing any building neglect contributing to any deterioration;
 - a. Is the building free of a history of serious, continuing code violations?
 - b. Has the building been maintained and stabilized?

Long term deferred maintenance and/or a history of continuing code violations not addressed by the owner, or other proper person having legal custody of the structure or building shall constitute a violation and will not be considered as a part of the economic infeasibility analysis bottom line.

4. *Existing Building Appraised Value.* All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing, or ownership of the property;
 - a. Any listing of the property for sale or rent price asked, and offers received, if any, within the previous two years; and
 - b. Existing Building/Property Appraisal (current within the last six months):
 - i. Estimated market value of the property in its current condition under best practices management;
 - ii. After repair of construction deficiencies as defined in the Soundness Report Requirements, attached;
 - iii. After repair of construction deficiencies and maintenance as defined in the Soundness Report Requirements, attached;
 - iv. After any changes recommended by the Historic Preservation Staff/LPAB;
 - v. After completion of the proposed demolition or removal; and
 - vi. After completion of the replacement proposal.

5. *Public Benefits.* A public benefits analysis report shall be prepared and take into consideration the educational, cultural, social, equity, and economic benefits of the historic building and the proposed building. Some issues that shall be considered include, but are not limited to:
 - a. The benefits to the City's tourism industry;
 - b. The benefits to owners of other commercial and residential property owners and renters in the area;
 - c. The services provided to the community, including social services;
 - d. Housing and jobs opportunities;
 - e. Civic, community, and neighborhood identity;
 - f. Cultural heritage and the image of the City and local neighborhood; and
 - g. Educational opportunities and cultural benefits regarding architectural and local history.

6. *Optional Submittal: Sustainability - Life Cycle Assessment Criteria.* The applicant may wish to submit a Life Cycle Assessment Report to demonstrate the quality of the replacement proposal and of the existing building as described below. Demonstration that the durability and expected life of the new proposal's quality of construction, materials and craftsmanship, including the cost of demolition or deconstruction of the historic resource, exceeds the value of the embodied energy of the building's existing materials, durability of materials, quality of construction, level of craftsmanship, cost to repair construction deficiencies and maintenance.

Finding 2: The property constitutes a hazard and is economically infeasible to rehabilitate on its present site. For this finding, a hazard constitutes a threat to health and safety that is not imminent.

Finding 2 submittal requirements:

1. A declaration from the Building Official or the City Council that the structure to be demolished is a threat to the public health and safety although such threat is not immediate.
2. A report from a licensed engineer or architect with extensive experience in rehabilitation as to the structural soundness of the property and its suitability for rehabilitation. The soundness report shall be based on the requirements contained in the Soundness Report Requirements, attached.
3. A building maintenance history report.

Based on these reports, the other submittals contained in Finding 1 may be required.

Finding 3: The design quality of the replacement facility is equal/superior to that of the existing facility. Analysis prepared by a historic architect or professional with equivalent experience.

Finding 3 submittal requirements:

A report shall be submitted that addresses whether the proposal demonstrates equal or superior quality with respect to:

1. A clearly identifiable visual or design value. For instance, does the replacement proposal express its present character as strongly as the historic design expressed its past?
2. Durability, quality, and design value of surface materials. Durable and quality materials include, but are not limited to: stone, granite, marble, concrete, highest quality and detailed glass curtain wall, terra cotta or other materials appropriate to the design style of the building or context of the neighborhood. In terms of design value, are materials in the replacement building used to enhance the architectural design elements of the building instead of used solely for the sake of variety?
3. Significant enhancement of the visual interest of the surrounding area;
4. High quality detailing;
5. Composition. A well composed building integrates all aspects of the building (materials, façade patterns, proportions, openings, forms, massing, detailing, etc.) into its overall character and design.
6. Site setting, neighborhood, and streetscape contexts;
7. Incorporating “especially fine” construction details, methods, or structural materials. These include those that successfully address challenging structural problems, contribute significantly to the building’s overall design quality, exhibit fine craftsmanship, or are visible design elements;
8. The replacement building’s reflection of the time it was designed, not merely a caricature of the demolished building;
9. The replacement building’s contemporary interpretation of the demolished building’s elements in terms of the cultural, historic, economic, or technological trends of its time.

Finding 4: It is economically, functionally architecturally, or structurally infeasible to incorporate the historic building into the proposed development.

Finding 4 submittal requirements:

A report shall be submitted that addresses the following discussion points:

1. Could alternations or additions to the existing building make the current or a future use generate a reasonable economic return and/or architecturally/structurally accommodate the proposed uses?
2. Do preservation alternatives exist which can achieve at least the same level of non-preservation benefits?
3. Include discussion of potential economic benefits of a rehabilitated or reused cultural resource, including how building or district character might affect property values, attract commercial economic development, and increase City tax revenues.



CITY OF OAKLAND

SOUNDNESS REPORT REQUIREMENTS

Applicants proposing the demolition of any Category I or Category II resource that contributes to an Area of Primary Importance, S-7 zone, or S-20 zone require a report to determine the soundness of the historic building. This attachment explains what should be included in the soundness report.

Soundness reports are required to be produced by licensed design or construction professionals (architects, engineers, and contractors) or by certified specifiers, construction cost estimators or building inspectors. The author of the report must be a disinterested third party that is not involved in the development's ownership, design or construction. Professionals who prepare such reports must be familiar with the City's demolition regulations and knowledgeable about construction assemblies, processes and cost.

Authors of Soundness Reports should focus on the concept that "soundness" is an economic measure of a building, not an issue of structural compliance with the current Building Code. Further, they should distinguish costs to upgrade elements that were original construction deficiencies from those elements needing repair due to deferred maintenance, as explained below.

Without a determination that the structure is unsound, the recommendation of approval to demolish is more difficult to make. In this case, the applicant may be advised to consider a project that alters, rather than demolishes, the existing structure.

Definitions

Soundness is an economic measure of the feasibility of repairing construction deficiencies. It compares an estimate of construction-repair cost called the upgrade cost to an estimate called the replacement cost.

Hazard is defined the same as it is in the Demolition Findings, Category I and Category II, Finding 2. For this finding, a hazard constitutes a threat to health and safety that is not imminent.

Replacement cost is defined as the current cost to construct structures exactly the size of those proposed for demolition. The current costs are determined by the most recent City of Oakland Building Services Construction Valuation For Building Permits¹.

Unsound structure is a structure where the primary upgrade cost construction deficiencies exceeds 50 percent of its replacement cost or the primary *plus* secondary upgrade cost exceeds 75 percent.

Primary upgrade cost is an estimate of the cost to make the existing structure 'usable.' This is the cost to bring a construction deficient structure into compliance with the minimum standards of the Building Code in effect at the time of its construction, with certain retroactive life-safety exceptions.

¹ Market value based on the current costs of labor, materials, related fees, and any entrepreneurial profit or incentive.

Programmatic shortcomings of the existing structure have no bearing on the upgrade cost. Costs such as adding floor space in an addition, to increasing headroom in a basement or attic, or to installing interior upgrades, cannot be included, nor can certain “soft costs” and site improvements listed below. Bringing the structure into compliance with current seismic requirements of the Building Code is not an allowable expense, even though it may be prudent or desirable for the public good, or even if required by the Building Code for the scope of repair work. Routine, repetitive maintenance costs are also excluded. Contractor’s profit, overhead, and permit costs may be included, but Architects’ and Engineers’ design fees, and allowances for construction contingencies may not.

Secondary upgrade cost is an estimate of the cost of functional repairs attributable to lack of maintenance. For instance, a significant roof leak that went unrepaired for a sufficient length of time to cause mildewed gypsum board and rotted structural members is a secondary upgrade cost. Replacement of a building component because it is not pristine or modern does not qualify as a secondary upgrade cost unless the component does not meet required functional standards and/or is a hazard. For example, the replacement of rusted ductwork on a heating system that can maintain the temperature requirement does not qualify as a secondary upgrade cost nor is the replacement of a functional and safe knob and tubing wiring system. The cost to replace a pull-out fuse box that is not a hazard with a new circuit breaker panel cannot be included as an secondary upgrade cost, even if it is part of the proposed work.

Further examples items that cannot be included in the secondary upgrade cost calculation are:

- Replacement of roof flashing, step flashing, coping, gravel stops, and diverters. These are excluded from the calculation because these items can be replaced as part of the re-roofing process, and, in that sense, are maintenance items. Replacement of corroded galvanized sheet metal head flashing over doors and windows might be considered a cost allowed at the 75 percent level if it is clear that the corrosion resulted from lack of painting or other improper maintenance.
- Window replacements. The Building Code requires that windows, like all elements of structure, be maintained and repaired. Replacement of windows meeting the code requirements at the time of their installation cannot be included in 75 percent cost calculation. For instance, replacing single-glazed windows installed in 1972, before Title 24 energy requirements, with double-glazed, energy efficient windows would not be an allowed in the 75 percent cost calculation. Repair of leaky or aged windows may be included at the 75 percent threshold to the extent that it is demonstrable that the repair is necessitated by poor maintenance.
- Stair replacement or removal. Removal and replacement of existing stairs without legal headroom can be included as a primary upgrade cost only if the stairs are a means of egress required by the Building Code. If the stairs are not part of a required exit system, but provide access to a room or garage, their replacement to meet current headroom requirements or rise and run ratios cannot be included. Wooden exterior stairs have a finite life, and their periodic replacement is considered a maintenance issue. Only if it can be documented that improper construction led to the early loss of the stairs could their replacement be included in upgrade costs for soundness determination.

Examples of what are and are not considered primary and secondary upgrade costs

For general guidelines for what is considered a primary and secondary upgrade cost, see the description in the three lists below. Also note that, in general, the code requires that buildings be maintained in accordance with the codes in effect at the time of their original construction. Please note that some of the concepts addressed in these standards are not detailed, and can only be determined upon review of specific cases by competent professional persons.

Work that could be included in the 50 percent threshold (the primary cost):

- Building Permit Application cost.
- Correcting lack of flashing or proper weather protection if not originally installed.
- Installing adequate weather protection and ventilation to prevent dampness in rooms if not originally constructed.
- Provision of garbage and rubbish storage and removal facilities if not originally constructed.
- Eliminating structural hazards in foundation due to structural inadequacies.
- Eliminated structural hazards in flooring or floor supports, such as defective members, or flooring or supports of insufficient size to safely carry the imposed loads.
- Correcting vertical walls or partitions which lean or are buckled due to defective materials or which are insufficient in size to carry loads.
- Eliminating structural hazards in ceilings, roofs, or other horizontal members, such as sagging or splitting, due to defective materials or insufficient size.
- Eliminating structural hazards in fireplaces and chimneys, such as listing, bulging or settlement due to defective materials or due to insufficient size or strength.
- Upgrading electrical wiring which does not conform to the regulations in effect at the time of installation.
- Upgrading plumbing materials and fixtures that were not installed in accordance with regulations in effect at the time of installation.
- Providing exiting in accordance with the code in effect at the time of construction.
- Correction of improper roof, surface or sub-surface drainage if not originally installed
- Correction of structural pest infestation (termites, beetles, dry rot, etc.) to extent attributable to original construction deficiencies, (e.g., insufficient earth-wood separation).
- Contractor's profit and overhead, not to exceed 18 percent of construction subtotal, if unit costs used for repair items do not include Profit and Overhead.

Work that could be included in the cost estimate for the the 75 percent threshold (the primary plus secondary upgrade costs):

- Repair of fire-resistive construction and fire protection systems if required at the time of construction, including plaster and sheet rock where fire separation is required, and smoke detectors, fire sprinklers, and fire alarms when required.
- Repairs as need to provide at least one properly operating water closet, lavatory, and bathtub or shower.
- Repair of a sinks not operating properly.
- Provision of kitchen appliances, when provided by owner, in good working condition, excluding minor damage.
- Repair if needed of water heated to provide at least 8 gallons of hot water storage.

- Both hot and cold running water to plumbing fixtures.
- Repair to a sewage connection disposal system, if not working.
- Repair heating facilities to permit heat to habitable rooms, if not working.
- Repair ventilation equipment, such as bathroom fans, where operable windows are not provided, if not working.
- Provision of operable windows in habitable rooms (certain exceptions may apply).
- Repair of electrical wiring if not maintained in a safe condition.
- Repair of plumbing materials and fixtures if not maintained in good condition.
- Correcting vertical walls or partitions which lean or are buckled due to deterioration.
- Eliminating structural hazards in ceilings, roofs, or other horizontal members due to deterioration.
- Eliminating structural hazards in fireplaces and chimneys, such as listing, bulging or settlement due to deterioration.
- Eliminating chronic, severe mold and mildew.
- Repairing proper weather protection, including exterior coverings such as paint and roof coverings and windows and doors due to lack of maintenance.
- Repairing deteriorated, crumbling or loose plaster, gypsum board and floor finishes due to faulty, poorly maintained weather protection.
- Contractor's profit and overhead, not to exceed 18 percent of construction subtotal, if unit costs used for repair items do not include profit and overhead.

Work that is excluded from both the 50 percent and 75 percent thresholds (the primary and secondary upgrade costs):

- Architects' fees, Engineers' fees and other design fees.
- Construction contingency allowance.
- Addition of floor space, or increasing headroom or other programmatic requirements that are not required standards as part of the original structure.
- Adding electrical receptacles where not necessary;
- Installation of a higher capacity electrical service, unless the existing is a hazard.
- Finish upgrades, such as new cabinetry, countertops, tile, stonework and other interior finishes;
- Site work, such as repairs to walkways, driveways, decks on grade, and retaining walls not part of the building foundation.
- Landscape and irrigation work.
- Removal of fire hazards, such as buildup of combustible waste and vegetation.
- Removal of accumulation of weeds, vegetation, trash, junk, debris, garbage, stagnant water.
- Elimination of insect, vermin or rodent infestation.
- Other routine, repetitive maintenance costs.

Content of soundness report

The Soundness Report should begin with a thorough description of the building in question: its age, size (e.g., footprint area, height, number of stories, square footage), roof form, roofing material, construction type, foundation and floor system, exterior siding, interior wall finish, and a description of repairs, maintenance, and any remodeling or additions. Documentation supporting the previous should be included in an appendix, using copies of the building permit history of the building.

Next, the replacement cost should be calculated using the definitions described above. Both the 50 and the 75 percent threshold should be computed and noted.

The 50 percent upgrade cost (the primary cost) should be described next, with line item descriptions of each element qualifying for upgrade (those due to initial construction deficiencies), followed by the unit cost, the unit multiplier, and the total cost for that element. If the sum of these cost items does not exceed 50 percent of the replacement cost, than a 75 percent upgrade cost (secondary plus primary upgrade cost) can be detailed, including the previous upgrade items and adding in costs for repair of qualifying items deteriorated due to deferred maintenance, presented in a similar format.

Generalities and assertions unsupported by professional, detailed justification, or by photographic evidence or other documentation will undermine the essential credibility of the report. Replacement of many structural assemblies and mechanical systems is justified only if the existing elements are hazards. Careful and thorough demonstration of the hazardous condition is required, to justify including the replacement in the upgrade cost estimate.

Copies of any pest report, if such work is needed, and any other documentation supporting the conclusions of the soundness report, should be provided. Pest control work should be carefully analyzed to determine which portions of work and cost are applicable to the 50 percent (primary upgrade cost) threshold and which to the 75 percent (primary plus secondary upgrade cost) threshold.

Clear and well-labeled photographs of the façade, and close-ups that document elements needing upgrade work, are essential to support assertions that the elements in question qualify for inclusion in the upgrade cost.

A factual summary of the findings is a useful conclusion to the document.

How will the City decide whether to approve the demolition application?

The Soundness Report will be reviewed and considered in conjunction with all other required submittals by the Findings for Demolition of Local Register Historic Properties. All of these reports will be reviewed by the appropriate advisory group(s) and decision maker(s). A replacement project, if any, must also meet the Demolition Findings.

Because a finding that a building is unsound makes approval of the demolition more probable, and because some costs included in the soundness report represent a subjective professional judgment, there may be a temptation to inflate the upgrade cost estimate, by including costs of elements that do not require repair or by exaggerating the cost of repairs, or by suggesting seismic or other structural upgrades beyond the scope of the requirements. Resist this temptation. Presentation of soundness reports with inflated upgrade costs or low replacement costs may lead to denial of the related demolition permits, or require a peer review, paid for by the applicant.

If the Soundness Report is credible and demonstrates that the structure in question is sound/not sound, the report findings will be taken into consideration, along with other required submittals by the Findings

for Demolition of Local Register Historic Properties, for evaluation and determination of demolition approval, when reviewed by Landmarks Preservation Advisory Board and the Planning Commission.

Category II

FINDINGS REQUIRED FOR THE DEMOLITION OF HISTORIC PROPERTIES

This handout contains the findings required to be met to approve a Regular Design Review application to demolish a historic structure in the City of Oakland. These findings are required by Section 17.136.075 of the Planning Code. All other regulations, including analysis required under the California Environmental Quality Act, apply.

The handout also describes the items required to be submitted with the design review application. The goal of the required submittals is to assist staff in evaluating whether a project meets the findings required to demolish a building. The submittals may consist of economic and financial analyses, informational reports, and/or “discussion points” required to be addressed within a design or historic analysis of a project. The submittals are not criteria for whether a demolition can or cannot occur; they are only the information required by the City to make a determination as to whether an application meets the required findings for demolition. Further, the required submittals are not meant to discourage either contemporary or historicist architecture in new construction. The Planning Director can, from time to time, make modifications to the required submittals if they are consistent with the intent of the proposed requirements.

All reports required for the demolition findings must be prepared by independent third party consultants or be peer reviewed. Reports will be paid for by the applicant and consultant shall be approved by, and report to, the City. All applicable discussion points shall be taken into account when making a finding. If a point is not applicable, the analysis shall state why. Any submittal may also include attributes that support the demolition proposal and/or the replacement project.

A complete application for demolition of historic property includes following:

- A completed application for Regular Design Review.
- A description of how a project meets the findings described in this form.
- The required submittals described in this form.
- A complete application for the replacement project, including plans designed by a licensed architect.

Different findings are required for the demolition of three categories of historic structures:

- **Category I** includes any Landmark; Heritage Property; property rated “A” or “B” by the Oakland Cultural Heritage Survey; or Preservation Study List Property. This category excludes any property that falls into Category II.
- **Category II** includes properties in an S-7 or S-20 zone or an Area of Primary Importance. Any building, including those that do not contribute to the historic quality of the district, fall into this category.
- **Category III** includes properties rated “C” by the Oakland Cultural Heritage Survey or contributors to an Area of Secondary Importance. This category excludes any property that falls into Category II.

Please call the Oakland Cultural Heritage Survey at (510)238-6879 to determine if a property falls into any of the three categories described above.



CITY OF OAKLAND

DEMOLITION FINDINGS FOR

CATEGORY II HISTORIC PROPERTIES

The following findings are required to be met to demolish a Category II Historic Structure. This category includes any property in the S-7 or S-20 zone or in an historic neighborhood defined as an “Area of Primary Importance” by the Oakland Cultural Survey. The demolition of any building, including those that do not contribute to the historic district, fall into this category.

Finding 1 or Finding 2 plus Findings 4, 5 and 6, below, must be met to demolish a Category II Historic Resource that contributes to a historic district. Findings 3, 4, and 5 are required to be met to demolish a noncontributing property. Please indicate how the proposed demolition meets the required findings and include all the applicable submittal materials for the corresponding findings.

Finding 1 (contributing properties): The existing property has no reasonable use or cannot generate a reasonable economic return and that the development replacing it will provide such use or generate such return.

Finding 1 submittal requirements:

1. *Building Use – Economic Viability.* The applicant shall submit a market analysis prepared by an architect, developer, real estate consultant, appraiser, or other real estate professional with extensive experience in both real estate and historic rehabilitation that demonstrates all of the following:
 - a. The current use does not generate a reasonable economic return (may include market report of like uses and building scale in the same or similar neighborhood);
 - b. That appropriate and reasonable alternate uses in the building could not generate a future reasonable economic return;
 - c. That alterations or additions to the existing building could not make the current or future use generate a reasonable economic return; and
 - d. Potential Federal Tax Credits, Mills Act Contracts, Façade Grants, Transfer of Development Rights or other funding sources are not feasible to bridge the gap identified above.
2. *Building Soundness.* The applicant shall submit a report from a licensed engineer or architect with extensive experience in rehabilitation as to the structural soundness of the property and its suitability for rehabilitation. The soundness report shall be based on the requirements contained in the Soundness Report Requirements, attached.
3. *Building Maintenance History.* The applicant shall submit a building maintenance history. The report shall also answer the following questions:
 - a. What is the cost to repair any code violations?
 - b. Is the building free of a history of serious, continuing code violations?
 - c. Has the building been properly maintained and stabilized?

Long term deferred maintenance and/or a history of continuing code violations not addressed by the owner, or other proper person having legal custody of the structure or building shall constitute a

violation and will not be considered as a part of the bottom line of the economic viability report (see submittal requirement #1).

4. *Existing Building Appraised Value.* All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing, or ownership of the property;
 - a. Any listing of the property for sale or rent price asked, and offers received, if any, within the previous two years; and
 - b. Existing Building/Property Appraisal (current within the last six months):
 - i. Estimated market value of the property in its current condition under best practices management;
 - ii. After repair of construction deficiencies as defined in the Soundness Report Requirements, attached;
 - iii. After repair of construction deficiencies and maintenance as defined in the Soundness Report Requirements, attached;
 - iv. After any changes recommended by the Historic Preservation Staff/LPAB;
 - v. After completion of the proposed demolition or removal; and
 - vi. After completion of the replacement proposal.
5. *Public Benefits.* A public benefits analysis report shall be prepared and take into consideration the educational, cultural, social, equity, and economic benefits of the historic building and the proposed building. Some issues that shall be considered include, but are not limited to:
 - a. The benefits to the City's tourism industry;
 - b. The benefits to owners of other commercial and residential property owners and renters in the area;
 - c. The services provided to the community, including social services;
 - d. Housing and jobs opportunities;
 - e. Civic, community, and neighborhood identity;
 - f. Cultural heritage and the image of the City and local neighborhood; and
 - g. Educational opportunities and cultural benefits regarding architectural and local history.
6. *Optional Submittal: Sustainability - Life Cycle Assessment Criteria.* The applicant may wish to submit a Life Cycle Assessment Report to demonstrate the quality of the replacement proposal and of the existing building as described below. Demonstration that the durability and expected life of the new proposal's quality of construction, materials and craftsmanship, including the cost of demolition or deconstruction of the historic resource, exceeds the value of the embodied energy of the building's existing materials, durability of materials, quality of construction, level of craftsmanship, cost to repair construction deficiencies and maintenance.

Finding 2 (contributing properties): The property constitutes a hazard and is economically infeasible to rehabilitate on its present site. For this finding, a hazard constitutes a threat to health and safety that is not imminent.

Finding 2 submittal requirements:

1. A declaration from the Building Official or the City Council that the structure to be demolished is a threat to the public health and safety although such threat is not immediate.
2. A report from a licensed engineer or architect with extensive experience in rehabilitation as to the structural soundness of the property and its suitability for rehabilitation. The soundness report shall be based on the requirements contained in the Soundness Report Requirements, attached.
 - a. Is the building free of a history of serious, continuing code violations?

3. The applicant shall submit a building maintenance history. The report shall answer the following questions:
 - a. What is the cost to repair any code violations?
 - b. Is the building free of a history of serious, continuing code violations?
 - c. Has the building been properly maintained and stabilized?

Long term deferred maintenance and/or a history of continuing code violations not addressed by the owner, or other proper person having legal custody of the structure or building shall constitute a violation and will not be considered as a part of the bottom line of the economic viability report
Based on these reports, the other submittals contained in Finding 1 may be required.

Finding 3 (noncontributing properties): The existing facility is either: (a) seriously deteriorated or a hazard, or (b) the existing design is undistinguished and does not warrant retention. For this finding, a hazard constitutes a threat to health and safety that is not imminent.

Finding 3 submittal requirements:

Same as submittal findings as Finding 1, but demolition or removal is also permitted if either:

- For (a): A declaration from the Building Official or the City Council that the structure to be demolished is a threat to the public health and safety although such threat is not immediate or a public nuisance; or
- For (b): The Property is determined to be “of no particular interest” by the Oakland Cultural Heritage Survey. If the property is so rated due to alterations, reversal of the historic architectural integrity is not economically or physically feasible (as determined under Local Register Properties (ii), (iii) and (iv)).

Finding 4 (all properties): The design quality of the replacement facility is equal/superior to that of the existing facility.

Finding 4 submittal requirements:

A report shall be submitted that addresses whether the proposal demonstrates equal or superior quality with respect to:

1. A clearly identifiable visual or design value. For instance, does the replacement proposal express its present character as strongly as the historic design expressed its past?
2. Durability, quality, and design value of surface materials. Durable and quality materials include, but are not limited to: stone, granite, marble, concrete, highest quality and detailed glass curtain wall, terra cotta or other materials appropriate to the design style of the building or context of the neighborhood. In terms of design value, are materials in the replacement building used to enhance the architectural design elements of the building instead of used solely for the sake of variety?
3. Significant enhancement of the visual interest of the surrounding area;
4. High quality detailing;
5. Composition. A well composed building integrates all aspects of the building (materials, façade patterns, proportions, openings, forms, massing, detailing, etc.) into its overall character and design.
6. Site setting, neighborhood, and streetscape contexts;

7. Incorporating “especially fine” construction details, methods, or structural materials. These include those that successfully address challenging structural problems, contribute significantly to the building’s overall design quality, exhibit fine craftsmanship, or are visible design elements;
8. The replacement building’s reflection of the time it was designed, not merely a caricature of the demolished building;
9. The replacement building’s contemporary interpretation of the demolished building’s elements in terms of the cultural, historic, economic, or technological trends of its time.

Finding 5 (all properties): For all properties in a district: the design of the replacement project is compatible with the character of the preservation district, and there is no erosion of design quality at the replacement project site and in the surrounding area. This includes, but is not necessarily limited to, the following additional findings:

1. **The replacement project is compatible with the district in terms of massing, siting, rhythm, composition, patterns of openings, quality of material, and intensity of detailing;**
2. **New street frontage with forms that reflect the widths and rhythm of the facades on the street and entrances that reflect the patterns on the street;**
3. **The replacement project provides high visual interest that either reflects the level and quality of visual interest of the district contributors or otherwise enhances the visual interest of the district;**
4. **If the design contrasts the new to the historic character, the replacement project enriches the historic character of the district;**
5. **Is consistent with the visual cohesiveness of the district. For the purpose of this item, visual cohesiveness is the architectural character, the sum of all visual aspects, features, and materials that defines the district. A new structure contributes to the visual cohesiveness of a district if it relates to the design characteristics of a historic district while also conveying its own time. New construction may do so by drawing upon some basic building features, such as the way in which a building is located on its site, the manner in which it relates to the street, its basic mass, form, direction or orientation (horizontal vs. vertical), recesses and projections, quality of materials, patterns of openings and level of detailing. When a combination of some these design variables are arranged in a new building to relate to those seen traditionally in the area, but integral to the design and character of the proposed new construction, visual cohesiveness results; and**
6. **The replacement project will not cause the district to lose its current historic status.**

Finding 5 submittal requirements:

Analysis of the findings prepared by a historic architect or professional with equivalent experience. Other discussion points include the following:

1. The proposed design not only protects the integrity and aesthetic quality of the historic district but enhances and enlivens the historic fabric at the same time respecting and recognizing the district or due to circumstances discussed in the analysis, the project has been designed as a background project to the district (i.e., a simplified version of a period revival style).
2. The new building’s contemporary interpretation of the demolished building’s elements in terms of the cultural, historic, economic, or technological trends of its time.
3. If a replacement project conveys an authenticity of its own time, it is compatible with the authenticity of the existing historic district.
4. The compatibility of the design of the replacement proposal with the district without being merely a compilation of façade features that are common to district or a caricature of the buildings in the district.

Finding 6 (contributing properties): It is economically, functionally architecturally, or structurally infeasible to incorporate the historic building into the proposed development.

Finding 6 submittal requirements:

A report shall be submitted that addresses the following discussion points:

1. Could alternations or additions to the existing building make the current or a future use generate a reasonable economic return and/or architecturally/structurally accommodate the proposed uses?
2. Do preservation alternatives exist which can achieve at least the same level of non-preservation benefits?
3. Include discussion of potential economic benefits of a rehabilitated or reused cultural resource, including how building or district character might affect property values, attract commercial economic development, and increase City tax revenues.



CITY OF OAKLAND

SOUNDNESS REPORT REQUIREMENTS

Applicants proposing the demolition of any Category I or Category II resource that contributes to an Area of Primary Importance, S-7 zone, or S-20 zone require a report to determine the soundness of the historic building. This attachment explains what should be included in the soundness report.

Soundness reports are required to be produced by licensed design or construction professionals (architects, engineers, and contractors) or by certified specifiers, construction cost estimators or building inspectors. The author of the report must be a disinterested third party that is not involved in the development's ownership, design or construction. Professionals who prepare such reports must be familiar with the City's demolition regulations and knowledgeable about construction assemblies, processes and cost.

Authors of Soundness Reports should focus on the concept that "soundness" is an economic measure of a building, not an issue of structural compliance with the current Building Code. Further, they should distinguish costs to upgrade elements that were original construction deficiencies from those elements needing repair due to deferred maintenance, as explained below.

Without a determination that the structure is unsound, the recommendation of approval to demolish is more difficult to make. In this case, the applicant may be advised to consider a project that alters, rather than demolishes, the existing structure.

Definitions

Soundness is an economic measure of the feasibility of repairing construction deficiencies. It compares an estimate of construction-repair cost called the upgrade cost to an estimate called the replacement cost.

Hazard is defined the same as it is in the Demolition Findings, Category I and Category II, Finding 2. For this finding, a hazard constitutes a threat to health and safety that is not imminent.

Replacement cost is defined as the current cost to construct structures exactly the size of those proposed for demolition. The current costs are determined by the most recent City of Oakland Building Services Construction Valuation For Building Permits¹.

Unsound structure is a structure where the primary upgrade cost construction deficiencies exceeds 50 percent of its replacement cost or the primary *plus* secondary upgrade cost exceeds 75 percent.

Primary upgrade cost is an estimate of the cost to make the existing structure 'usable.' This is the cost to bring a construction deficient structure into compliance with the minimum standards of the Building Code in effect at the time of its construction, with certain retroactive life-safety exceptions. Programmatic shortcomings of the existing structure have no bearing on the upgrade cost. Costs such as

¹ Market value based on the current costs of labor, materials, related fees, and any entrepreneurial profit or incentive.

adding floor space in an addition, to increasing headroom in a basement or attic, or to installing interior upgrades, cannot be included, nor can certain “soft costs” and site improvements listed below. Bringing the structure into compliance with current seismic requirements of the Building Code is not an allowable expense, even though it may be prudent or desirable for the public good, or even if required by the Building Code for the scope of repair work. Routine, repetitive maintenance costs are also excluded. Contractor’s profit, overhead, and permit costs may be included, but Architects’ and Engineers’ design fees, and allowances for construction contingencies may not.

Secondary upgrade cost is an estimate of the cost of functional repairs attributable to lack of maintenance. For instance, a significant roof leak that went unrepaired for a sufficient length of time to cause mildewed gypsum board and rotted structural members is a secondary upgrade cost. Replacement of a building component because it is not pristine or modern does not qualify as a secondary upgrade cost unless the component does not meet required functional standards and/or is a hazard. For example, the replacement of rusted ductwork on a heating system that can maintain the temperature requirement does not qualify as a secondary upgrade cost nor is the replacement of a functional and safe knob and tubing wiring system. The cost to replace a pull-out fuse box that is not a hazard with a new circuit breaker panel cannot be included as an secondary upgrade cost, even if it is part of the proposed work.

Further examples items that cannot be included in the secondary upgrade cost calculation are:

- Replacement of roof flashing, step flashing, coping, gravel stops, and diverters. These are excluded from the calculation because these items can be replaced as part of the re-roofing process, and, in that sense, are maintenance items. Replacement of corroded galvanized sheet metal head flashing over doors and windows might be considered a cost allowed at the 75 percent level if it is clear that the corrosion resulted from lack of painting or other improper maintenance.
- Window replacements. The Building Code requires that windows, like all elements of structure, be maintained and repaired. Replacement of windows meeting the code requirements at the time of their installation cannot be included in 75 percent cost calculation. For instance, replacing single-glazed windows installed in 1972, before Title 24 energy requirements, with double-glazed, energy efficient windows would not be an allowed in the 75 percent cost calculation. Repair of leaky or aged windows may be included at the 75 percent threshold to the extent that it is demonstrable that the repair is necessitated by poor maintenance.
- Stair replacement or removal. Removal and replacement of existing stairs without legal headroom can be included as a primary upgrade cost only if the stairs are a means of egress required by the Building Code. If the stairs are not part of a required exit system, but provide access to a room or garage, their replacement to meet current headroom requirements or rise and run ratios cannot be included. Wooden exterior stairs have a finite life, and their periodic replacement is considered a maintenance issue. Only if it can be documented that improper construction led to the early loss of the stairs could their replacement be included in upgrade costs for soundness determination.

Examples of what are and are not considered primary and secondary upgrade costs

For general guidelines for what is considered a primary and secondary upgrade cost, see the description in the three lists below. Also note that, in general, the code requires that buildings be maintained in accordance with the codes in effect at the time of their original construction. Please note that some of the concepts addressed in these standards are not detailed, and can only be determined upon review of specific cases by competent professional persons.

Work that could be included in the 50 percent threshold (the primary cost):

- Building Permit Application cost.
- Correcting lack of flashing or proper weather protection if not originally installed.
- Installing adequate weather protection and ventilation to prevent dampness in rooms if not originally constructed.
- Provision of garbage and rubbish storage and removal facilities if not originally constructed.
- Eliminating structural hazards in foundation due to structural inadequacies.
- Eliminated structural hazards in flooring or floor supports, such as defective members, or flooring or supports of insufficient size to safely carry the imposed loads.
- Correcting vertical walls or partitions which lean or are buckled due to defective materials or which are insufficient in size to carry loads.
- Eliminating structural hazards in ceilings, roofs, or other horizontal members, such as sagging or splitting, due to defective materials or insufficient size.
- Eliminating structural hazards in fireplaces and chimneys, such as listing, bulging or settlement due to defective materials or due to insufficient size or strength.
- Upgrading electrical wiring which does not conform to the regulations in effect at the time of installation.
- Upgrading plumbing materials and fixtures that were not installed in accordance with regulations in effect at the time of installation.
- Providing exiting in accordance with the code in effect at the time of construction.
- Correction of improper roof, surface or sub-surface drainage if not originally installed
- Correction of structural pest infestation (termites, beetles, dry rot, etc.) to extent attributable to original construction deficiencies, (e.g., insufficient earth-wood separation).
- Contractor's profit and overhead, not to exceed 18 percent of construction subtotal, if unit costs used for repair items do not include Profit and Overhead.

Work that could be included in the cost estimate for the the 75 percent threshold (the primary plus secondary upgrade costs):

- Repair of fire-resistive construction and fire protection systems if required at the time of construction, including plaster and sheet rock where fire separation is required, and smoke detectors, fire sprinklers, and fire alarms when required.
- Repairs as need to provide at least one properly operating water closet, lavatory, and bathtub or shower.
- Repair of a sinks not operating properly.
- Provision of kitchen appliances, when provided by owner, in good working condition, excluding minor damage.
- Repair if needed of water heated to provide at least 8 gallons of hot water storage.
- Both hot and cold running water to plumbing fixtures.

- Repair to a sewage connection disposal system, if not working.
- Repair heating facilities to permit heat to habitable rooms, if not working.
- Repair ventilation equipment, such as bathroom fans, where operable windows are not provided, if not working.
- Provision of operable windows in habitable rooms (certain exceptions may apply).
- Repair of electrical wiring if not maintained in a safe condition.
- Repair of plumbing materials and fixtures if not maintained in good condition.
- Correcting vertical walls or partitions which lean or are buckled due to deterioration.
- Eliminating structural hazards in ceilings, roofs, or other horizontal members due to deterioration.
- Eliminating structural hazards in fireplaces and chimneys, such as listing, bulging or settlement due to deterioration.
- Eliminating chronic, severe mold and mildew.
- Repairing proper weather protection, including exterior coverings such as paint and roof coverings and windows and doors due to lack of maintenance.
- Repairing deteriorated, crumbling or loose plaster, gypsum board and floor finishes due to faulty, poorly maintained weather protection.
- Contractor's profit and overhead, not to exceed 18 percent of construction subtotal, if unit costs used for repair items do not include profit and overhead.

Work that is excluded from both the 50 percent and 75 percent thresholds (the primary and secondary upgrade costs):

- Architects' fees, Engineers' fees and other design fees.
- Construction contingency allowance.
- Addition of floor space, or increasing headroom or other programmatic requirements that are not required standards as part of the original structure.
- Adding electrical receptacles where not necessary;
- Installation of a higher capacity electrical service, unless the existing is a hazard.
- Finish upgrades, such as new cabinetry, countertops, tile, stonework and other interior finishes;
- Site work, such as repairs to walkways, driveways, decks on grade, and retaining walls not part of the building foundation.
- Landscape and irrigation work.
- Removal of fire hazards, such as buildup of combustible waste and vegetation.
- Removal of accumulation of weeds, vegetation, trash, junk, debris, garbage, stagnant water.
- Elimination of insect, vermin or rodent infestation.
- Other routine, repetitive maintenance costs.

Content of soundness report

The Soundness Report should begin with a thorough description of the building in question: its age, size (e.g., footprint area, height, number of stories, square footage), roof form, roofing material, construction type, foundation and floor system, exterior siding, interior wall finish, and a description of repairs, maintenance, and any remodeling or additions. Documentation supporting the previous should be included in an appendix, using copies of the building permit history of the building.

Next, the replacement cost should be calculated using the definitions described above. Both the 50 and the 75 percent threshold should be computed and noted.

The 50 percent upgrade cost (the primary cost) should be described next, with line item descriptions of each element qualifying for upgrade (those due to initial construction deficiencies), followed by the unit cost, the unit multiplier, and the total cost for that element. If the sum of these cost items does not exceed 50 percent of the replacement cost, than a 75 percent upgrade cost (secondary plus primary upgrade cost) can be detailed, including the previous upgrade items and adding in costs for repair of qualifying items deteriorated due to deferred maintenance, presented in a similar format.

Generalities and assertions unsupported by professional, detailed justification, or by photographic evidence or other documentation will undermine the essential credibility of the report. Replacement of many structural assemblies and mechanical systems is justified only if the existing elements are hazards. Careful and thorough demonstration of the hazardous condition is required, to justify including the replacement in the upgrade cost estimate.

Copies of any pest report, if such work is needed, and any other documentation supporting the conclusions of the soundness report, should be provided. Pest control work should be carefully analyzed to determine which portions of work and cost are applicable to the 50 percent (primary upgrade cost) threshold and which to the 75 percent (primary plus secondary upgrade cost) threshold.

Clear and well-labeled photographs of the façade, and close-ups that document elements needing upgrade work, are essential to support assertions that the elements in question qualify for inclusion in the upgrade cost.

A factual summary of the findings is a useful conclusion to the document.

How will the City decide whether to approve the demolition application?

The Soundness Report will be reviewed and considered in conjunction with all other required submittals by the Findings for Demolition of Local Register Historic Properties. All of these reports will be reviewed by the appropriate advisory group(s) and decision maker(s). A replacement project, if any, must also meet the Demolition Findings.

Because a finding that a building is unsound makes approval of the demolition more probable, and because some costs included in the soundness report represent a subjective professional judgment, there may be a temptation to inflate the upgrade cost estimate, by including costs of elements that do not require repair or by exaggerating the cost of repairs, or by suggesting seismic or other structural upgrades beyond the scope of the requirements. Resist this temptation. Presentation of soundness reports with inflated upgrade costs or low replacement costs may lead to denial of the related demolition permits, or require a peer review, paid for by the applicant.

If the Soundness Report is credible and demonstrates that the structure in question is sound/not sound, the report findings will be taken into consideration, along with other required submittals by the Findings for Demolition of Local Register Historic Properties, for evaluation and determination of demolition approval, when reviewed by Landmarks Preservation Advisory Board and the Planning Commission.

Category III

FINDINGS REQUIRED FOR THE DEMOLITION OF HISTORIC PROPERTIES

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The handout also describes the items required to be submitted with the design review application. The goal of the required submittals is to assist staff in evaluating whether a project meets the findings required to demolish a building. The submittals may consist of economic and financial analyses, informational reports, and/or “discussion points” required to be addressed within a design or historic analysis of a project. The submittals are not criteria for whether a demolition can or cannot occur; they are only the information required by the City to make a determination as to whether an application meets the required findings for demolition. Further, the required submittals are not meant to discourage either contemporary or historicist architecture in new construction. The Planning Director can, from time to time, make modifications to the required submittals if they are consistent with the intent of the proposed requirements.

All reports required for the demolition findings must be prepared by independent third party consultants or be peer reviewed. Reports will be paid for by the applicant and consultant shall be approved by, and report to, the City. All applicable discussion points shall be taken into account when making a finding. If a point is not applicable, the analysis shall state why. Any submittal may also include attributes that support the demolition proposal and/or the replacement project.

A complete application for demolition of historic property includes following:

- A completed application for Regular Design Review.
- A description of how a project meets the findings described in this form.
- The required submittals described in this form.
- A complete application for the replacement project, including plans designed by a licensed architect.

Different findings are required for the demolition of three categories of historic structures::

- **Category I** includes any Landmark; Heritage Property; property rated “A” or “B” by the Oakland Cultural Heritage Survey; or Preservation Study List Property. This category excludes any property that falls into Category II.
- **Category II** includes properties in an S-7 or S-20 zone or an Area of Primary Importance. Any building, including those that do not contribute to the historic quality of the district, fall into this category.
- **Category III** includes properties rated “C” by the Oakland Cultural Heritage Survey or contributors to an Area of Secondary Importance. This category excludes any property that falls into Category II.

Please call the Oakland Cultural Heritage Survey at (510)238-6879 to determine if a property falls into any of the three categories described above.



CITY OF OAKLAND

DEMOLITION FINDINGS FOR

CATEGORY III HISTORIC PROPERTIES

The following findings are required to be met to demolish a Category III Historic Structure. This category includes properties rated “C” or that are contributors to an Area of Secondary Importance as defined by the Oakland Cultural Heritage Survey. This category excludes any properties contained in Category II, such as buildings that contribute to an Area of Primary Importance, S-7 zone, or S-20 zone.

A proposal to demolish a Category III historic resource must meet one of the three of the findings described below. Please indicate how the proposed demolition meets the required finding(s) and include all the applicable corresponding submittal materials.

The submittals and discussion points for Category III are for guidance to the applicant and staff. These submittal requirements may be modified on a case-by-case basis by the Planning Director depending on the content of a particular proposal.

Finding 1: The design quality of the proposed replacement project is at least equal to that of the original structure and the proposed replacement project is compatible with the character of the neighborhood.

Finding 1 submittal requirements:

Analysis of 'equal quality' and compatibility prepared by historic architect, or professional with equivalent experience. This analysis should include:

1. A discussion of design quality in terms of: visual or design value; quality of surface materials; quality of detailing; composition; construction detail; and architectural integrity.
 2. For proposals in an ASI, the analysis should compare the integrity of the ASI with the proposal to the integrity of the ASI with the structure proposed for demolition. This analysis should include a discussion of consistency with street frontage patterns, fenestration patterns, contribution to the visual quality of the district, and cohesiveness of the district.
 3. A discussion of the historic significance of structure proposed for demolition.
 4. A discussion of whether incorporation of the historic structure into the proposal will result in a project that has a design quality that is least equal or better than the original structure.
-

Finding 2: The public benefits of the proposed replacement project outweigh the benefit of retaining the original structure.

Finding 2 submittal requirements:

The analysis should include a discussion of the benefits of the replacement structure and the existing historic structure, prepared by appropriate qualified consultants such an economist, realtor with experience in evaluating both new and historic structures. The analysis should include a discussion of the following topics, as applicable:

1. Civic, community, and neighborhood identity;

2. The economy, including the City's tourism industry and the local commercial district. This includes the number of post construction jobs provided.
 3. The services provided to the community, including social services;
 4. Fulfilling the intent of (1) the Land Use and Transportation Element of the General Plan for the area and (2) other General Plan policies, as applicable.
 5. Housing opportunities;
 6. Cultural heritage and the image of the City and local neighborhood; and
 7. Educational opportunities and cultural resources regarding architectural and local history.
-

Finding 3: The existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.

Finding 3 submittal requirements:

1. The submittal shall include an analysis, to be reviewed by the Oakland Cultural Heritage Survey, to determine if the building is "of no particular interest" as defined by the Historic Preservation Element survey evaluation methods and criteria. If the applicant submits a claim that the structure proposed for demolition is of "no particular interest", then the applicant may provide material such as photos, written analysis or expert opinion that provides evidence that the building should be so rated.
2. Analysis of 'compatibility with the neighborhood' prepared by historic architect (see discussion point 2. for Finding 1, above).