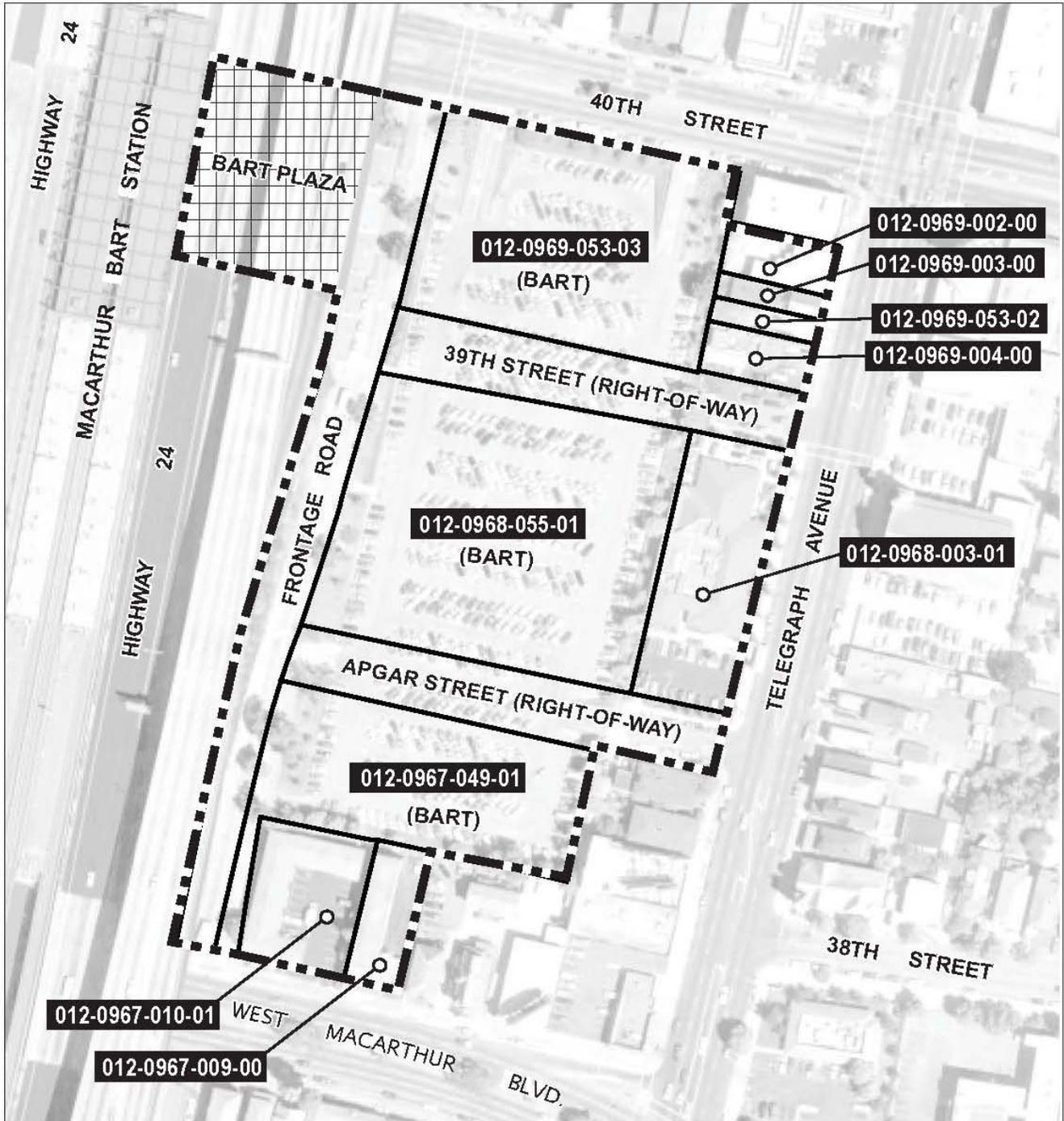


Location:	Multiple parcels immediately adjacent to the MacArthur BART Station; on the west side of Telegraph Avenue Street between 40th Street and West MacArthur Boulevard (see map on reverse and Table 2 below)
Assessors Parcel Numbers:	012-0969-053-03, 012-0968-055-01, 012-0967-049-01, 012-0969-002-00, 012-0969-003-00, 012-0969-053-02, 012-0969-004-00, 012-0968-003-01, 012-0967-009-00 & 012-0967-010-00
Proposal:	Demolition of existing structures and construction of the MacArthur Transit Village project: 5 new buildings containing 624 residential units, 42,500 square feet of commercial space (including 7,000 square feet of live/work and flex space), 5,000 square feet of child care/community space, a 300-space replacement parking garage for BART patrons, and approximately 680 parking spaces for the residential and commercial units (residential parking provided at a 1:1 ratio, 26 commercial spaces in building A parking garage and on-street parking spaces).
Applicant:	MacArthur Transit Community Partners (MTCP)
Contact Person	Joseph McCarthy (510) 273-2009
Owner:	Multiple property owners
Planning Permits Required:	Rezone (from C-28, Commercial Shopping Zone and R-70, High Density Residential Zone to S-15, Transit-Oriented Development Zone), Zoning Text Amendment relating to S-15 Open Space Requirements, Planned Unit Development (PUD) Permit, Design Review, Conditional Use Permit (CUP) to exceed parking requirements for residential uses and to allow off-street parking to serve non-residential land uses, and Tree Removal Permits for removal of 67 protected trees.
General Plan:	Neighborhood Center Mixed Use
Zoning:	C-28 (parcels on Telegraph Avenue and West MacArthur Boulevard), R-70 (BART parking lot parcels) and S-18 Mediated Design Review Combining Zone (entire site)
Environmental Determination:	A Draft Environmental Impact Report (EIR) was published on January 31, 2008; Final EIR published on May 23, 2008
Historic Status:	No CEQA historic resources are affected by the project; none of the existing buildings on-site are considered CEQA historic resources and none of the buildings on the project site are within, or are contributors to, a historic district.
Service Delivery District:	Service District 2
City Council District:	1
Date Filed:	October 5, 2007 (revised submittal; original submittal February 5, 2006)
Status:	Pending.
Action to be Taken:	Take public testimony and issue decisions/recommendations.
Staff Recommendation:	Approval subject to attached findings and conditions of approval
Finality of Decision:	Favorable (for approval) decisions/recommendations are automatically forwarded to the City Council for hearing and action. Unfavorable (for denial) decisions may be appealed to the City Council within ten (10) days.
For Further Information:	Contact the case planner, Charity Wagner , at (415) 730-6718 or by e-mail at clwagner@rrmdesign.com



SUMMARY

The project applicant, MacArthur Transit Community Partners (MTCP) proposes to demolish the existing BART surface parking lots and all existing buildings within the project site to allow for the construction of a new mixed-use, transit village development project. The transit village includes five new buildings that would accommodate 624 residential units, 42,500 square feet of neighborhood-serving retail and commercial uses (including 7,000 square feet of live/work units) a 5,000 square feet community center use and 300-space parking garage for BART patrons. The project requires certification of the MacArthur Transit Village Final EIR and approval of rezoning, text amendment to the S-15 Zone, a planned unit development (PUD) permit, a major conditional use permit, and design review.

The purpose of this meeting is to consider the application submitted by MTCP to the City in October 5, 2007 for the project summarized above. Based on public comments, the results of numerous public meetings with the community, the Design Review Committee and the Planning Commission hearings, staff has now prepared recommended actions for the Planning Commission to review and consider. These actions are listed below:

- (1) Certification of the Final Environmental Report including the adoption of required findings under the California Environmental Quality Act and the approval of the Mitigation Monitoring and Reporting Program.
- (2) Amendment to the S-15, Transit Oriented Development Zone. This is a staff-initiated Zoning Text Amendment to modify the minimum open space requirement in the S-15 Zone.
- (3) Rezoning of the project site from Commercial Shopping (C-28), High Density Residential (R-70) and Mediated Design Review Overlay (S-18) to Transit Oriented Development (S-15).
- (4) Approval of the Planned Unit Development Permit to allow development of more than 100,000 sq.ft. at a BART station. The PUD Permit also includes approval of the Preliminary Development Plan dated May 28, 2008, and the MacArthur Transit Village Design Guidelines.
- (5) Approval of a Major Conditional Use Permit to allow the proposed project to exceed the S-15 parking requirements for residential land uses and to provide off-street parking for non-residential land uses.
- (6) Approval of Preliminary Design Review of the Preliminary Development Plan.

Staff recommends approval of the project subject to the attached findings and conditions. The Commission's approval of these items is considered to be a recommendation to the City Council; if approved, the decisions/recommendations of the Planning Commission would be automatically forwarded to the City Council and Redevelopment Agency for hearing and action. These actions are currently scheduled for review by the CED Committee on June 24, 2008 and it is expected that the City Council will hold public hearings to consider the items on July 1, 2008 (first reading of ordinance) and July 15, 2008 (second reading of ordinance).

BACKGROUND

Since 1993, the City has been working with BART and the MacArthur BART Citizens Planning Committee ("CPC"), comprised of community residents and representatives of neighborhood organizations, in a planning process for the development of the MacArthur Transit Village. After the previously selected project developer, Creative Housing Associates, failed to perform under their Exclusive Negotiating Agreement ("ENA") with the Agency in 2003, the Agency and BART selected a new development team for this project in April 2004 through a competitive Request for Proposals

process. This development team, MacArthur Transit Community Partners, LLC (MTCP), is a limited liability company that consists of a partnership between McGrath Properties (formerly known as Aegis Equity Partners) and BUILD (BRIDGE Urban Infill Land Development, LLC).

The MacArthur BART Citizen's Planning Committee (CPC) was created to assist the City and BART in the development of the MacArthur BART station. The CPC is made up of community members that live in the neighborhood surrounding the BART Station. Since being chosen in April 2004, MacArthur Transit Community Partners (MTCP) has met regularly with the MacArthur BART CPC to discuss and receive comments on the development.

In early February 2006, MTCP submitted a development application to construct a mixed-use transit village including residential and commercial development with the majority of residential units located within two 20-to 22-story towers. Upon review of the application, it was determined that an Environmental Impact Report (EIR) was required. The City issued a Notice of Preparation (NOP) on February 16, 2006, for preparation of an EIR for the project including the tower development. As a result of community input, changes in market conditions and construction feasibility, MTCP re-submitted their development application in 2007 showing removal of the towers within the project. Upon review of the revised application materials, the City issued a revised NOP on June 13, 2007. Following is a partial list of both public meetings and community meetings since MTCP was selected by the Redevelopment Agency in 2004.

- November 15, 2004, MacArthur BART Citizen's Planning Committee
- May 18, 2005, MacArthur BART Citizen's Planning Committee
- November 9, 2005, MacArthur BART Citizen's Planning Committee
- February 16, 2006, Mosswood Park Neighbors
- February 22, 2006, MacArthur BART Citizen's Planning Committee
- March 15, 2006, Planning Commission EIR Scoping Meeting
- September 26, 2006, 38th Street Neighbors
- October 5, 2006, MacArthur BART Citizen's Planning Committee
- September 11, 2007, Mosswood Park Neighbors
- September 12, 2007, Beebe Memorial Church Members
- November 1, 2007, MacArthur/Broadway/San Pablo Redevelopment Project Area Committee
- November 5, 2007, 38th Street Neighbors
- November 12, 2007, West Street Watch
- December 12, 2007: Design Review Committee (review and comment on PDP)
- February 7, 2008, MacArthur BART Citizen's Planning Committee
- March 5, 2008, Planning Commission Meeting to take comments on Draft EIR
- April 17, 2008, Bicycle and Pedestrian Advisory Committee
- April 30, 2008, Planning Commission Workshop on community concerns

At the Planning Commission work shop on April 30, 2008, staff provided a brief overview of the requested project approval key community concerns (see Attachment B for the April 30, 2008 workshop staff report); the project sponsor gave a detailed overview of the project and walked the Commission through the project plans and vision for the project; and following presentations from staff and the project sponsor, six individuals provided public testimony. The majority of the public speakers were in favor of the proposed project, but several speakers expressed concerns with regard to proposed reduction in BART parking. In addition to parking, which was the most discussed topic at the workshop, the Commission and public speakers raised the following discussion topics:

- Support for increased density of residential development
- Support for increased bike access and bike parking
- Support for project expressed on behalf of Greenbelt Alliance
- Support for a strategy to encourage occupancy of ground floor commercial space at the existing building of 40th and Telegraph
- Appreciation of height adjacent to existing building at 40th and Telegraph and overall height of retail spaces
- Support for increased accessibility beyond bikes and pedestrians (i.e., increased Emery-Go-Round services)
- Concern regarding congestion of vehicles and bike safety at the intersection of West MacArthur, Frontage Road and BART Garage
- Concern for adequate parking to support proposed commercial uses, and existing commercial uses
- Concern of perceived success for transit villages

PROPERTY DESCRIPTION

The project site is located in North Oakland, within the area bounded by 40th Street, Telegraph Avenue, West MacArthur Boulevard, and State Route 24. The project site includes the BART parking lot, the BART plaza, Frontage Road between West MacArthur Boulevard and 40th Street, and seven privately owned parcels. The project area includes the majority of the block on Telegraph Avenue between West MacArthur Boulevard and 40th Street; however, several parcels within this block are not included within the project site (see map on page 2). Table 1 shows the parcels within the project site.

Table 1: Project Site Parcels

Address	Assessor Parcel Number	Current Use	Acreage (Acres)
532 39 th Street	012-0969-053-03	BART Parking	1.61
516 Apgar Street	012-0968-055-01	BART Parking	2.07
515 Apgar Street	012-0967-049-01	BART Parking	1.12
3921 Telegraph Avenue	012-0969-002-00	Braids By Betty	0.15
3915 Telegraph Avenue	012-0969-003-00	Chef Yu Restaurant	0.06
3911 Telegraph Avenue	012-0969-053-02	Abyssinia Market	0.06
3901 Telegraph Avenue	012-0969-004-00	Lee's Auto	0.11
3875 Telegraph Avenue	012-0968-003-01	Medical Offices	0.61
526 W. MacArthur Boulevard	012-0967-009-00	Hotel	0.20
544 W. MacArthur Boulevard	012-0967-010-00	Hotel	0.17
39 th Street, between Telegraph Ave. and Frontage Rd.	--	BART Parking	0.62
Apgar Street, between Telegraph Ave. and Frontage Rd.	--	BART Parking	0.60
Total Acres			7.38

There are a variety of land uses surrounding the site. Beebee Memorial Cathedral, commercial, and residential uses are located east across Telegraph Avenue from the project site. To the north of the project site, across 40th Street, are residential and commercial uses. Residential and commercial uses also extend further north of the project site along Telegraph Avenue. State Route 24, and the BART tracks, are located immediately west of the project site. A residential neighborhood that includes a mix of densities is located further west. The State Route 24/Interstate 580 interchange is located southwest of the project site. Commercial uses are located to the south of the project site, across West MacArthur Boulevard.

PROJECT DESCRIPTION

The proposed project would involve demolition of the existing structures and the construction of five buildings (labeled A-E on the project drawings, see Exhibit F) on the project site, including three mixed-use buildings with ground floor retail spaces and residential units on upper floors, one entirely residential building and one parking garage. The proposed project also includes construction of two new streets (Village Drive, a new public street and Internal Street, a new private street) and maintenance of the Frontage Road within the project area. Village Drive and Internal Street would provide access to new structures within the project, and increased access to the BART station.

Increased and enhanced access to the BART station is a key component of the proposed project. Village Drive, the main pedestrian and vehicular access to the project, is envisioned as a lively pedestrian street with shops and service uses that include outdoor displays and seating areas. The project also includes a new public plaza immediately east of the BART plaza and fare gates. The transit village plaza would include outdoor seating, landscaping, and other activity to provide a sense of arrival to the project, especially for BART patrons as they enter and exit the station. Internal Street, which provides access to a majority of the residential units, is envisioned as a neighborhood street. Residential units would front onto Internal Street with stoops and front porches.

Table 2 and the text below provide a summary of the proposed buildings and uses within the project. The project drawings for the proposal are attached to this report (see Exhibit F).

Table 2: Summary of Proposed Development

Building	Residential Units/Affordable Units	Live/Work Units	Retail SF ^b	Community SF	Building Height (Feet)	Number of Stories	Parking Spaces
A	213/7	3	23,500	--	50-85	4/6	242
B	132/5	2	5,000	--	55-80	6	134
C	189/6	3	9,000	5,000	55-70	5/6	189
D	90/90	--	--	--	45-65	5	91
E	--	--	5,000	--	68	6	324
Total	624/108	8	42,500¹	5,000	--	--	980²

¹ Retail area shown in table includes square footage of live/work units.

² Parking shown in table does not include the proposed on-street parking spaces.

Building A. Building A ranges in height from a four- to six-story building and is located in the northeast corner of the project site with frontage on 40th Street, Telegraph Avenue, and Village Drive. Building A is a mixed-use building with 23,500 square feet of commercial space located on the ground floor and 213 for-sale market-rate condominiums, and 7 for-sale below-market rate condominiums on the upper floors. Of the 23,500 square feet of commercial space, 3,000 square feet, would be “flex spaces” on Village Drive and 3,000 square feet of “flex space” on 40th Street. Flex spaces may be occupied by live/work

units, retail uses and/or community space for residents (i.e., gym or recreation room) in the buildings in which the flex space is located. Parking for Building A is provided in a two-level parking garage. The lower level of the parking garage is entirely below grade and the second level is above grade at the street level. The parking at the street level is wrapped by commercial area so the parking is not visible from the street. Access to the condominium units is provided by internal courtyards and vehicular access to the parking garage under Building A is provided by a driveway on Village Drive.

Building B. Building B is a six-story building located along the western edge of project site, south of Village Drive and adjacent to the shuttle access road with building frontage on Village Drive, Entry Drive and the proposed north/south internal street. Building B is a mixed-use building with 3,500 square feet of commercial space and 1,500 square feet of “flex space” on the ground floor, 132 for-sale market-rate condominiums and 5 below-market rate for-sale condominium units located throughout on all floors. Residential condominium units would be located on the upper floors of Building B and on the ground floor adjacent to the internal street. Parking for Building B is provided in a two-level parking garage. The lower level of the parking garage is entirely below grade and the second level is above grade at the street level. The parking provided at street level is wrapped by commercial area and residential units so the parking is not visible from Village Drive or Internal Street. The street level parking area is visible from Frontage Road, but will be screened by landscaping. Access to the condominium units is provided by internal courtyards and individual unit entrances that front onto the internal street. Front entrances with stoops and small porches are envisioned along the internal street frontage of Building B. Vehicular access to the parking garage under Building B is provided by a driveway on the internal street.

Building C. Building C is a five- and six-story building located along the eastern edge of the project site at the southwest corner of Telegraph Avenue and Village Drive. Building C is a mixed-use building with 6,500 square feet of commercial space and 2,500 square feet of “flex space” on the ground floor, 189 market rate condominiums and 5 below-market rate residential condominium units on the upper floors. Building C also includes 5,000 square feet of community-serving space located on the ground floor. The 5,000 square feet of community space is accompanied by a 2,000 square foot outdoor play area as the applicant is currently considering that a private childcare provider may occupy the community space. Residential condominium units would be located on the upper floors of Building C and on the ground floor adjacent to the internal street. Access to the condominium units is provided by internal courtyards and individual unit entrances that front onto the internal street. Parking for Building C is provided in a two-level parking garage. The lower level of the parking garage is entirely below grade and the second level is above grade at the street level. The parking provided at street level is wrapped by commercial area and residential units so the parking is not visible from the street. Vehicular access to the parking garage under Building C is provided by two driveways on the internal street.

Building D. Building D is a five-story building (with a below-podium parking garage) located along the western edge of the project site (directly south of Building B) with building frontage on the internal street and the Frontage Road. Building D is an entirely residential building with 90 for-rent, below-market-rate (affordable) apartment units. Building D would include a community room with a kitchen and shared laundry facilities for use by apartment tenants. Parking for Building D is provided in a single-level, below-grade parking garage. Access to the apartment units would be provided via internal courtyards and vehicular access to the parking garage under Building D is provided by a driveway on the internal street.

Building E. Building E is a six-story parking garage located at the southwest corner of the project site with frontage on West MacArthur Boulevard and Entry Drive. The garage would accommodate 300 parking spaces for BART patrons and the ground floor would include 5,000 square feet of commercial space. The commercial space would front onto West MacArthur Boulevard. Pedestrian access to Building E would be located on West MacArthur Boulevard, Entry Drive and the internal street. Vehicular access to the Building E would be provided by a two-way driveway on Entry Road which vehicles would access via West MacArthur Boulevard.

Site Access and Circulation. Several circulation improvements are proposed for the project site. Three internal roadways would be constructed as part of the proposed project: Frontage Road, Village Drive, and an internal north/south street off of Village Drive. New sidewalks, bicycle paths, and streetscape improvements would be constructed.

Frontage Road. The existing Frontage Road would be replaced, but remain in the same location as the existing Frontage Road, which is parallel to State Route 24, it extends from 40th Street to West MacArthur Boulevard. Frontage Road is a public street. Frontage Road is a two-way road for the segments between 40th Street and Village Drive and between West MacArthur Boulevard and the Parking Garage driveway. South of the Frontage Road/Village Drive intersection, and before the Parking Garage, vehicular access would be limited to emergency vehicle access, southbound shuttle operators, and building services. The majority of traffic at this section of Frontage Road would be shuttles traveling southbound between 40th Street and West MacArthur Boulevard. Additionally, the intersection of Frontage Road and West MacArthur Boulevard provides access to and from the Parking Garage (Building E) and vehicles can also access Frontage Road at the Village Drive intersection to exit onto 40th Street. Sidewalks would be provided along the west side of Frontage Road and bicycle lanes would be included on Frontage Road.

Village Drive. Village Drive would be a two-way, two-lane road between Telegraph Avenue and the Frontage Road. Village Drive would be a public street. It is anticipated that Village Drive would be open to vehicular traffic and pedestrian, as well as patrons who use kiss-and-ride. On-street parking and kiss-and-ride loading and unloading areas would be provided on Village Drive. Village Drive also includes large sidewalks because it is envisioned as the main pedestrian connection through the project site. Ground floor commercial and live-work units in Buildings A, B and C would be oriented to face Village Drive with pedestrian scale retail uses with outdoor seating areas and retail displays at the transit village plaza (across from the BART plaza) and on Telegraph Avenue.

Internal Street. An internal two-way street is proposed south of Village Drive. The internal street would provide vehicular access to Buildings B, C, and D. Internal Street would be a private street. The internal street is not a through street; a turn-around area is provided at the terminus of the street. On-street parking and sidewalks are proposed for both sides of the internal street at the southern edge of the project site. The internal street is envisioned as a residential street (no commercial space would front onto the internal street). Residential unit entrances (including stoops and small porches) would face onto the internal street. The primary pedestrian access to the internal street would be from Village Drive, but a pedestrian pathway located along the east elevation of the parking garage (Building E) would allow also pedestrians and bicyclists to access the internal street from West MacArthur Boulevard.

Parking. Parking for residential units would be provided at a 1 space per 1 unit ratio within each of the mixed-use and residential buildings. The S-15 zone requires only ½ space per unit and a CUP is required to exceed this amount. Approximately 30 parking spaces for commercial uses would be provided within the parking garage in Building A. The S-15 zone does not include specific parking ratios for commercial uses. Parking would be permitted on Village Drive and Internal Street and this street parking would be metered. Approximately 45 on-street parking would be available on the project site. Parking for BART patrons would be provided in the BART parking garage (Building E).

APPLICABLE POLICY DOCUMENT ANALYSIS

General Plan Analysis

The site is located in the Neighborhood Center Mixed Use land use designation of the Oakland General Plan. According to the General Plan, the intent and desired character of the NCMU designation is the following:

Intent: The Neighborhood Center Mixed Use classification is intended to identify, create, maintain and enhance mixed use neighborhood commercial centers. These centers are typically characterized by smaller scale pedestrian-oriented, continuous street frontage with a mix of retail, housing, office, active open space, eating and drinking places, personal and business services, and smaller scale educational, cultural or entertainment uses.

Desired Character and Uses: Future development within this classification should be commercial or mixed uses that are pedestrian-oriented and serve nearby neighborhoods, or urban residential with ground floor commercial.

The site is also designated as a “Transit-Oriented Development District” in the General Plan. Below is a description of the Transit-Oriented District designation:

Transit Oriented Districts (TODs) are designated to take advantage of the opportunities presented by Oakland’s eight region-serving BART stations and one location – Eastmont Town Center – served by multiple AC Transit lines. Many of these station locations, and the areas surrounding them, offer significant opportunities for compact, mixed-use types of development that include housing, business and other services. This strategy supports city and regional goals to foster sustainable development linking transit with higher density housing types downtown stations, for example, offer expansion opportunities for office, business, and housing development. Because each location offers unique possibilities, the TODs are discussed individually in the Transportation and Transit-Oriented Development section of the Policy Framework. Easy pedestrian, bicycle, and transit access, as well as a strong identity created through careful design and a mix of activity will be part of each transit-oriented district.

The Transportation and Transit-Oriented Development section includes the following description of the MacArthur BART Transit-Oriented District:

MacArthur BART is uniquely situated as the central hub and transfer point of the BART system, with trains arriving and departing to destinations around the Bay Area. Four major arterials that support local traffic and commerce are adjacent to the station – Telegraph Avenue, MacArthur Boulevard, 40th Street, and Martin Luther King Junior Way. As the central hub, MacArthur BART has been proposed as a Maximum Access Station, a designation that must complement the type and density of uses in the surrounding development area, now characterized by mixed housing types and neighborhood-serving retail uses. Proposals to open up the Station entrance on the Martin Luther King Jr. Way side of the site are also being explored by BART and citizens concerned about providing safe and convenient access for Martin Luther King Jr. Way businesses and residents. New development around the station should capitalize on its maximum access potential to create business and residential revitalization, enhance the safety of the neighborhood, provide secure parking, improve station access, and encourage pedestrian activity and the use of public transportation.

The project is consistent with the density provisions of the NCMU General Plan land use designation. The maximum residential density allowed under this designation is 125 units per gross acre.¹ At a total acreage of 7.38 acres (not including the BART plaza), the General Plan would allow a maximum of 923 residential units on the site. The proposal includes 624 residential units (85 du/gross acre). Staff has also reviewed the project for consistency with relevant policies in the Land Use and Transportation Element of the General Plan. Staff believes that the proposed project is consistent with the applicable policies of the General Plan. A General Plan Amendment is not required. Please refer to Table IV.B-1 of MacArthur Transit Village Draft EIR (pages 108 to 122) for a discussion about the proposed project, which will transform the existing BART surface parking lot into a mixed-use transit village neighborhood, and its relationship with these key policies. The DEIR discussion is incorporated herein by reference.

Zoning Analysis

The site is located in two different base zoning districts with one overlay zone covering the entire site. The BART parking lot parcels are located in the R-70 High Density Residential Zone and parcels fronting on Telegraph Avenue and West MacArthur Boulevard are located in the C-28 Commercial Shopping Zone. The entire site is located in the S-18 Mediated Design Review Combining Zone. The proposed density and mix of commercial and residential uses within the transit village is not consistent with the existing R-70 and C-28 Zones. The applicant proposes to rezone the entire site to the S-15 Transit Oriented Development Zone. The S-15 Zone is consistent with the General Plan designation (Neighborhood Center Mixed Use). A map depicting existing and proposed zoning is included in this report as Exhibit E.

The intent of the S-15 zone is the following:

[T]o create, preserve and enhance areas devoted primarily to serve multiple nodes of transportation and to feature high-density residential, commercial and mixed-use developments to encourage a balance of pedestrian-oriented activities, transit opportunities, and concentrated development; and encourage a safe and pleasant pedestrian environment near transit stations by allowing a mixture of residential, civic, commercial, and light industrial activities, allowing for amenities such as benches, kiosks, lighting, and outdoor cafes; and by limiting conflicts between vehicles and pedestrians, and is typically appropriate around transit centers such as Bay Area Rapid Transit District (BART) stations, AC Transit Centers and other transportation nodes. (OPC Sec. 17.100.010)

Staff believes the proposed rezoning best serves the public interest by meeting the following objectives of the zoning regulations:

- A. **To promote the achievement of the proposals of the Oakland Comprehensive Plan (Section 17.07.030A).** The proposed rezoning will facilitate implementation of the proposal for a mixed use transit-oriented development which furthers the objectives of the General Plan (formerly the Comprehensive Plan). The proposed project is a transit-oriented development adjacent to a BART station. The current zoning designations are designed for more traditional commercial and residential developments; therefore, the City finds the rezoning of the project site to S-15, Transit Oriented Development zone would best serve the public interest for redevelopment of the project site because the S-15 zone provides development regulations specific to creation and implementation of TOD projects.

¹ The General Plan specifies residential density as “principal units per gross acre.” Gross acreage includes all land in the neighborhood, including streets and parks.

The S-15 zone is consistent with the Neighborhood Center Mixed Use General Plan land use designation.

- B. To provide for desirable, appropriately located living areas in a variety of dwelling types and at a wide range of population densities, with adequate provision for sunlight, fresh air, and usable open space (Section 17.07.030D).** The proposed rezoning provides for residential and commercial mixed use development immediately adjacent to the existing MacArthur BART Station. The project includes both for-sale and for-rent affordable housing with a variety of unit types including studio units, 1-bedroom, 2-bedroom and 3-bedroom units to augment the city’s supply of multi-family affordable housing. The project is designed to maintain adequate provision sunlight and air, and usable open space consistent with urban development standards by providing open space areas consistent with the proposed S-15 open space requirements which are consistent with the S-17 open space requirements. Open space within the project will include open air courtyards and the plaza adjacent to Building A. Additionally, a setback of 5 feet is proposed between the upper floors of the new and existing building at the corner of Telegraph Avenue and 40th Street.

- C. To achieve excellence and originality of design in all future developments and to preserve the natural beauty of Oakland’s setting (Section 17.07.030G).** The proposal exhibits design excellence and originality through the efficient use of space, variety in architecture styles (to be further defined with Final Development Plans) and commitment to sustainable design through participation the LEED ND Pilot Program.

Staff also believes that the proposed text amendment to reduce open space standards in the S-15 zone best serves the public interest. The reduction in required open space would further the goals of TOD by increasing design flexibility for open space by removing the separate group and open space standard, and encourage increased density. The amendment would make the S-15 open space requirements consistent with the open space requirement currently applied to residential projects in the City’s Downtown Open Space Combining (S-17) Zone. The amendment would apply to all properties in the City zoned S-15, and there two other areas of the City zoned S-15: parcels around Fruitvale BART Station and parcels around West Oakland BART station. The proposed project, and other properties zoned S-15, are located in walking distance to parks in the neighborhood. Additionally, surveys of other cities standards for open space in TOD, and mixed-use zones demonstrated that other agencies have similar standards. For these reasons, the text amendment to reduce open space requirements in the S-15 to be consistent with the S-17 zone, would promote the objectives of the General Plan to encourage TOD development near transit stations and therefore best serve the public interest.

Redevelopment Plan Analysis

The project site is located within the Broadway/MacArthur/San Pablo Redevelopment Project Area. The land use designations in the Broadway/MacArthur/San Pablo Redevelopment Plan correspond to the land use designations contained in the General Plan. The project is consistent with the General Plan designation, and is therefore consistent with the Redevelopment Plan designation. The proposed project will further the Redevelopment Agency’s achievement of the following goals and objectives of the Broadway/MacArthur/ San Pablo Redevelopment Plan and its Five Year Implementation Plan:

- The MacArthur Transit Village Project will increase the stock of ownership housing and will provide affordable rental housing units in the Broadway/MacArthur/San Pablo Redevelopment Project Area;

- Development on the BART surface parking lot at the MacArthur BART Station will contribute to the Agency’s goals to concentrate infill development on underutilized properties within the Broadway/MacArthur/San Pablo Redevelopment Project Area;

- The public improvements that will be included as part of the MacArthur Transit Village Project will improve access to BART and to the other public transportation providers that serve the BART station from the surrounding community; and
- The MacArthur Transit Village Project, once developed, will enhance residential and commercial property values adjacent to the MacArthur BART Station, and will encourage efforts to alleviate economic and physical blight conditions in the area, including high business vacancy rates, vacant lots, and abandoned buildings, by enhancing the development potential and overall economic viability of neighboring properties.

ENVIRONMENTAL DETERMINATION

An Environmental Impact Report has been prepared for this project, and prior to action on the requested approvals, action must be taken to certify the Final EIR as an adequate environmental analysis of the project. The Draft EIR was published on January 31, 2008 and the 45-day public comment period ended on March 17, 2008. A total of 24 comment letters were received during the comment period: six were from governmental agencies, one was from a community organization, and 17 were from individuals. Oral and written comments on the Draft EIR were also received at the Planning Commission public hearing on March 5, 2008. The Response to Comments Document (which together with the Draft EIR make up the Final EIR) was published on May 23, 2008 includes written responses to all comments received. A summary of the analysis included and the impacts identified in the Draft EIR was previously provided to the Planning Commission in the report for the Draft EIR hearing on March 5, 2008 (see Attachment A). Detailed CEQA-related findings are contained in Exhibit A.

KEY ISSUES

The Planning Commission conducted a public hearing/workshop to discuss the proposed project on April 30, 2008. Six individuals presented public testimony on the merits of the proposal and the Commission provided direction to staff and the applicant on the key areas of community concern. The focus of the following key issues discussion is based on outstanding items that were not addressed or resolved at the April 30th meeting and items for which the Planning Commission requested additional information. The Commission may wish to review the April 30 workshop staff report (see Attachment B) for more detailed discussion of the community concerns.

Parking & TDM Program

The proposed project includes a parking reduction from 600 to 300 BART patron parking spaces. Members of the community have voiced concern with regard to the parking reduction and the amount of parking proposed for residents, visitors and commercial patrons of the project. The majority of comments that staff has received relate to concerns about the reduction of BART parking. Residents of the area have observed that under existing conditions (600 spaces) BART patron parking spills over into neighborhood streets and the amount of parking proposed will not be adequate to meet the parking demand of BART patrons.

At the Planning Commission workshop on April 30th, a few members of the Commission also expressed concern with respect the proposed parking arrangements for the project. Staff understands the concerns expressed from both the community and the Planning Commission, and has worked with the project sponsor to create a parking program for the proposed project that is both sensitive to the surrounding neighborhood and BART riders, as well as progressive and forward thinking for a transit village development. Key elements of the program are described below.

RPP Program

With regard to overflow of BART patrons parking within the surrounding neighborhood, the project sponsor has committed to fund \$150,000 towards initiating a Residential Permit Parking Program for an area ¼ mile around the station. If approved, the RPP Program would limit street parking to two hours for non-residents of the RPP Program area. However, it is difficult to ensure implementation of an RPP Program because the program requires a petition signed by 51 percent of the resident population in the proposed RPP area and is subject to City Council approval. Should the RPP Program be the desire of the resident population and the City Council, the project applicant has committed to funding the initial costs of an RPP Program (up to \$150,000) as part of the Conditions of Approval (see Condition No. 21).

TDM Program

The project sponsor is required to prepare and maintain a Traffic Demand Management (TDM) Program. The TDM Program is intended to serve two purposes: 1) fulfill CEQA mitigation measure requirements by providing implementation strategies to reduce vehicle trips from the project and 2) address planning concerns related to displaced BART parkers. The draft TDM Program, dated May 27, 2008, is included in this report as Exhibit C-2 and a summary of the recommended strategies are provided below.

There are currently 600 parking spaces within the surface parking lot at the BART station. In addition to these 600 parking spaces, recent surveys confirmed that approximately 200 BART patrons currently park in the neighborhood within ¼ mile radius around the station. As such, it is estimated that the parking space demand for the BART station is 800 spaces. The proposed project provides 300 BART parking spaces within the BART garage, and previous analysis indicates that approximately 51% who currently drive to BART would switch to another mode of transit rather than drive to another BART station or drive directly to their end destination. With a demand of 800 parking spaces, and an anticipated 50% of drivers that would switch to an alternate mode of transportation, there is a net demand of about 400 parking spaces and the proposed BART replacement garage will provide 300 spaces. To make-up for a potential shortfall of 100 spaces, the TDM Program recommends that the project provide an additional 210 parking spaces to make up for the gap of riders that would not switch travel modes. The 210 parking spaces would be provided by adding another level of parking to the BART garage (this additional level would be below grade), providing a parking attendant at the BART garage and/or securing 50 parking spaces within off-site parking lots within ¼ mile of the project site, or other alternative mechanisms as detailed in the TDM Program.

The TDM Program also includes the following measures to reduce vehicle trips from the project, which would in turn reduce the demand for parking at the site:

- Unbundle 10% of the parking for all market-rate residential units within project (for all phases, not just Building A)
- Unbundle parking for the affordable housing component, if feasible
- Offer lease back parking options for the project residents; the program will be managed by the HOA or entity approved by the HOA and will offer available parking to BART patrons, other than project residents, and commercial tenants
- Provide car share spaces in BART garage and within the proposed project
- Provide a marketing coordinator to distribute materials about transit programs to residents as part of the “move-in” packets
- Fund a one-time marketing campaign to educate neighborhood residents about alternative modes of transportation currently available to access BART station

- Facilitate discussions with BART, AC Transit and Emery-Go-Round to explore the potential for an additional shuttle stop or other transit service along 40th Street between the Emeryville Border and Telegraph Avenue
- Offer discounted transit passes to project residents
- Provide secure bike parking and bike repair area for residents
- Phase construction of parking within the project

The TDM Program also requires the project sponsor to submit a TDM monitoring plan at the beginning of each construction phase. The monitoring plan will gauge the effectiveness of the strategies and recommend modifications to improve the effectiveness of the program, including the option to increase the percentage of un-bundled parking and/or reduce on-site parking in future project phases if the demand for parking is decreased by the nature and location of the project as a transit village. Additionally, Condition No. 35 will ensure that the project sponsor coordinates with BART on the construction of the BART parking.

Design Guidelines

As mentioned at previous meetings with the Planning Commission and the Design Review Committee, the Preliminary Development Plan (PDP) does not include approval of architectural plans or elevations for future buildings. The PDP sets the stage for the project’s overall site planning, building bulk, mass and height. Detailed building elevations will be reviewed and approved by the Design Review Committee and Planning Commission as part of the Final Development Plans (FDPs). To ensure that the FDPs are consistent with the vision for the project, staff has worked with the project sponsor to prepare the MacArthur Transit Village Design Guidelines (see Exhibit C-3).

The MacArthur Transit Village Design Guidelines include design principles and design guidelines. The design guidelines are divided into five sections: Site Planning; Architectural Design including sub sections for Height, Bulk and Scale and Architectural Treatments; Public Space Improvements; Transit Plaza Design; and Sustainable Design.

The Design Guidelines are incorporated into the project through the Conditions of Approval as a design review requirement for future approvals (see Condition No. 25). Prior to approval of any Final Development Plans for the project, the Commission will need to make findings to determine that the FDP is consistent with the S-15 Zoning District, approved Preliminary Development Plan, and MacArthur Transit Village Design Guidelines.

The Design Guidelines emphasize architectural variability, encourage building form and style based on adjoining street frontages and uses, address street walls and their relationship to the pedestrian environment, support a variety of building heights in the project, promote sustainable design and specify the use of high quality materials. The Design Guidelines are intended to allow future architects to be able to apply different building technology and materials and provide for a wide variety of architectural treatments within the 15 year development time frame.

FDP Staging and Project Phasing

Development of the proposed project is anticipated in five phases over the course of 15 year time frame. As per the regulations of a Planned Unit Development Permit (PUD), the Commission has the authority to approve staging of Final Development Plans. Staff has worked with the project applicant to development an FDP Staging Plan and Project Construction Phasing Plan for purposes of the PUD. However, it should be noted that staff and the project sponsor are currently negotiating terms and conditions for a Development Agreement (DA) and the DA may modify the project phasing plan. It is anticipated that the

DA negotiations will be completed in the early summer, and the DA will be brought to the Commission for consideration and recommendation to the Council in late summer. The DA would then be considered by the City Council together with the Redevelopment Agency’s consideration of the Owner Participation Agreement between the Redevelopment Agency and the project sponsor. The FDP Staging and Project Phasing Plan shown in Table 3 below, and is incorporated into the project as Condition of Approval No. 2; however, the DA phasing plan will eventually supersede this condition.

Table 3: Summary of Proposed Development

FDP Stage	Description	FDP Submittal Date	Commence Construction Date
1	Construction of Building E, the replacement BART parking garage, site remediation, Internal Drive, the Frontage Road improvements, and the portion of Village Drive that extends from the Frontage Road to the Internal Drive.	Within 1 year from the date of this approval	2 years from date of Stage 1 FDP approval
2	Construction of Building D, consisting of a minimum of 90 below market rate rental units.	Within 3 years from the date of this approval	2 years from date of Stage 2 FDP approval
3	Construction of Building A, consisting of up to 240 ownership residential units and 26,000 square feet of commercial space. All street improvements, including the completion of Village Drive and any new traffic signals required by the project, will be completed in this phase. This phase will also include the completion of a public plaza directly across Frontage Road from the existing BART Plaza.	Within 4 years from the date of this approval	2 years from date of Stage 3 FDP approval
4	Construction of Building B, consisting of up to 150 ownership residential units and 5,500 square feet of commercial space.	Within 8 years from the date of this approval	2 years from date of Stage 4 FDP approval
5	Construction of Building C, consisting of up to 195 ownership residential units and 12,500 square feet of commercial space. This phase will also include the construction of a community center use on the ground floor of Building C.	Within 10 years from the date of this approval	2 years from date of Stage 5 FDP approval

Notes:

- 1) Provided that Stage 1 and 2 FDPs are approved in accordance with the above time frames, the Developer shall have the discretion to change which buildings (A, B, or C) are constructed in which Stages (3, 4 or 5) provided that the FDP submittal dates for these stages remain the same. All other modifications to FDP staging shall be subject to review and approval by the Planning Commission.
- 2) FDP Stages may be combined and reviewed prior to the outlined time frames. If each stage of FDP is not submitted/ completed within the time frames outlined above, the PDP shall be considered null and void.

Increased Density

At the April 30th Planning Commission workshop, there was some discussion of increasing the density of the project. With 624 units, the proposed project density is 85 per gross acre the project is under the maximum density prescribed by the Neighborhood Center Mixed Use General Plan land use designation of 125 per gross acre.

Staff has considered the concept of allowing the project to increase density as future phases of the project are developed and market conditions change, and has determined that the appropriate mechanism would be to modify the PDP should the project sponsor wish to increase density of the project. The project sponsor feels the proposed Preliminary Development Plan (624 units) is the best and most realistic option under current market conditions. The EIR for the project analyzed the development to include up to 675 units. To facilitate opportunities to increase density in the future, staff has included a Condition of Approval to allow the FDPs to include up to 675 units (vs. 624 proposed in the PDP) without modifying the PDP.

It should also be noted that the EIR did consider “planning project alternatives” within the Alternatives Chapter, which included options for development of a tower within the project and increased commercial development. The analysis of the planning project alternatives was included to provide the City and the project applicant with an analysis of the project impacts that may result through implementation of these alternative project designs. The detailed analysis of the Tower Alternative and the Increased Commercial Alternative would facilitate modifying the PDP, if requested, which, in turn, would require public noticing and a hearing before the Planning Commission.

Any additional dwelling units beyond 675 would require a modification to the PDP (see Condition No. 1). This is not to say that staff would not support increased density at the site, but there is concern that a major increase would warrant public review and community input and a modification to the PDP would be an appropriate mechanism to assure that staff, the Commission and the community have input on modifications requested by the project sponsor.

Parcel Acquisition

The project sponsor does not currently own or have site control of the all parcels within the project. The project sponsor is currently in the process of negotiating acquisition of the privately owned parcels with the assistance of the Redevelopment Agency. It is not currently anticipated that the use of eminent domain will be required to achieve site control. If the project sponsor and Agency are not successful in acquiring all parcels with the project, the project area may be decreased and Final Development Plans would be submitted showing the modified site area.

The project area also includes existing right-of-way of a portions of 39th Street and Apgar Street, which are developed as part of the BART surface parking lot (see map on page 2 of this report). Though the right-of-way is not currently utilized, staff cannot find evidence that the right-of-way has been officially abandoned. This right-of-way will be abandoned as part of the subdivision map processing for the proposed project.

LEED ND and Sustainable Design

The MacArthur Transit Village has been chosen to participate in the LEED ND Pilot Program. The LEED ND Pilot Program was created by the U.S. Green Building Council (USGBC), the Congress for New Urbanism, and the National Resources Defense Council to test national standards for sustainable neighborhood developments. Unlike other U.S. Green Building Council (USGBC) LEED programs, LEED ND places significant emphasis on the design elements that bring buildings together into a neighborhood focusing on pedestrian experience and encouraging social interaction. LEED ND credits are broken up into four categories: (1) Smart Location and Linkage (SLL), (2) Neighborhood Pattern and Design (NPD), (3) Green Construction and Technology, and (4) Innovation and Design Process. LEED certification provides independent, third-party verification that a development's location and design meet accepted high standards for environmentally responsible, sustainable, development. LEED provides four levels of LEED ND certification dependent on the total credits awarded to project: LEED-ND Certified: 40–49 points, LEED-ND Silver: 50–59 points, LEED-ND Gold: 60–79 points, and LEED-ND Platinum: 80–106 points.

The project sponsor has indicated that their preliminary evaluation rating, based on the credits they assume will be received, would score 78 points on the LEED ND rating scale and be recognized as a LEED ND-Gold project. Staff applauds the project sponsor for participating in the LEED ND Pilot Program, and as part of the MacArthur Transit Village Design Guidelines, the project is encouraged to pursue the accreditation for Platinum certification.

Grant Applications

The development team applied to the State Department of Housing and Community Development (HCD) for Proposition 1C Housing TOD and Infill program funds to assist with the infrastructure and affordable housing financing of the project. The project received the highest point score of all of the TOD program applications in the entire Bay Area and also scored well under the Infill program. As a result, the project has qualified for consideration of funding under both programs and will be notified by the State in June regarding potential funding awards.

Development Agreement

As previously mentioned within the discussion on FDP Staging and Project Phasing, the project sponsor and staff are continuing negotiations on a Development Agreement for this project. Staff anticipates that the DA will be brought to the Commission for consideration and recommendation to the Council in late summer. The DA would then be considered by the City Council together with the Redevelopment Agency's consideration of the Owner Participation Agreement between the Redevelopment Agency and the project sponsor.

Community benefits proposed by the project sponsor as part of the DA include: underpass improvements at West MacArthur and Highway 24 including lighting, street furniture and sidewalk improvements in effort to improve pedestrian connections from Martin Luther King Jr. Way to the BART station; and greenscape improvements on West MacArthur between the project boundary and Telegraph Avenue. It should also be noted that as part of the project term sheet previously negotiated with the Redevelopment Agency, the project includes the following benefits: development of affordable housing (17% of the total unit count); compliance with the Agency's Small/Local Business Enterprise, Local Employment, Apprenticeship, Prevailing Wage, First Source Hiring and Living Wage Programs; execution of a Project Labor Agreement; and payment of initial costs for implementation of a Residential Permit Parking (RPP) Program.

Project Sponsor Review of Proposed Conditions of Approval

City staff has discussed the proposed Conditions of Approval with the project applicant and the applicant generally agrees with all the conditions except one, Condition No. 40, Roof Top Gardens/Green Roofs. The text of this condition is included below for easy reference.

40. Green Roofs/Roof Top Gardens.

Prior to approval of Final Development Plan for Stages 2 through 5

As part of the submittal for each FDP application for each phase of FDP, except Stage 1 (BART parking garage), the project sponsor shall study the feasibility of methods to further reduce heat island effect and/or provide additional open space for resident use. Potential methods include but are not limited to green roofs, roof gardens, roof decks, open or partially enclosed private or common balconies. For purposes of this condition of approval, feasibility as defined above includes the consideration of proximity to the highway or streets, location above livable space, construction type, insurability, long term maintenance, HOA costs, and the use of space for other purposes. The feasibility study for implementing additional methods to further reduce heat island effect and/or provide additional open space for resident use shall be provided to Planning Staff as part of each FDP application. The intent of this condition is to further the sustainable elements of the project design and potentially provide more open space area for the project residents.

The project sponsor has indicated that they do not want to incorporate green roofs or rooftop gardens as they are concerned about increased liability, associated costs, and the ability to obtain insurance for the condominiums. They are particularly concerned about elements that would introduce water to the roof and result in leaking. As a result, the project sponsor requests that this condition be deleted.

Staff has included this condition as we believe it is appropriate to further the City's commitment to green and sustainable building practices particularly given the amount of City and State money that is anticipated to subsidize the project. If it is determined feasible, the implementation of this condition also has the potential to increase open space areas available to project residents. Staff appreciates and understands the project sponsor's concerns, but also anticipates that the market conditions/expectations and the technology associated with the installation of green roofs and rooftop gardens is likely to advance over the next several years. Considering these factors together with the project build-out schedule of 15 years with the first residential building be anticipated in three to four years, staff believes that it is appropriate to request the project sponsor to study the feasibility of incorporating green roofs or rooftop gardens into the project as part of each FDP that will be considered in the future. Recognizing that there are challenges associated with the installation of green roofs or rooftop gardens, the proposed condition only requires the project sponsor to provide green roofs and/or roof top gardens if they are determined to be feasible at the time that subsequent FDPs are being considered (excluding Stage 1 which is the BART Parking Garage). Staff recommends the condition be maintained for these reasons: 1) If feasible, activating roof tops within the project would potentially increase the sustainability and open space amenities of the project; and 2) The FDP Staging Plan extends the life of the PDP for 15 years, and technology related to green roofs and roof top gardens is expected to evolve during this period.

REQUESTED APPROVALS

This project, like many major projects in Oakland, will be processed through two phases of project approvals. This first phase of approvals includes the EIR, Rezone to S-15, Text Amendment relating to S-15 Open Space Requirement, Planned Unit Development (PUD) with Preliminary Development Plan (PDP), Conditional Use Permit (CUP) to exceed residential parking requirements and to allow off-street parking for non-residential land uses, Design Review and Tree Removals. The second phase of approvals would include the Final Development Plans and Vesting Tract Maps.

Certification of the MacArthur Transit Village EIR

The Planning Commission is asked to certify the EIR for the MacArthur Transit Village Project. Certification does not imply endorsement of the proposed project, nor that the permit application(s) for the project will be approved. Rather, in certifying the EIR, the Commission must generally find that:

- The discussion in the EIR represents a good faith effort to disclose all the City reasonably can regarding the physical impacts which may result from the project;
- There is an adequate consideration and evaluation of measures and changes to the project that would eliminate or lessen the potentially significant physical impacts associated with the project;
- The process for considering the EIR complied with all applicable provisions of CEQA and the Municipal Code; and
- The significant environmental issues raised in the comments received about the Draft EIR were adequately responded to in the Final EIR.

Specific findings required by CEQA to certify the EIR and to apply it to approval of the project are found in Exhibit A. Included in these findings are specific statements pertaining to the completeness of analysis and procedure under CEQA Guideline Section 15090, a rejection alternatives to the project due to infeasibility and statements of overriding consideration in compliance with CEQA Guideline Section 15093 for those significant impacts that were found to be unavoidable and could not be mitigated to a less-than-significant level. In reviewing these findings, the Planning Commission must determine that the CEQA alternatives to the project were deemed infeasible and that all significant impacts have been substantially decreased to a less-than-significant level through mitigation measures or conditions of approval. For those impacts that cannot be mitigated to a less-than-significant level (traffic), the Commission must find that other legal, social, technological and other benefits of the project outweigh these impacts.

Staff Recommendation: Staff believes that the findings that have been proposed in Exhibit A can be made and supported by substantial evidence in the record of the project. The Financial Feasibility Study included in this report as Attachment D represents a part of the evidence relied upon to make the findings.

Text Amendment to S-15, Transit Oriented Development Zone

The Planning Commission is asked to recommend approval by City Council for a text amendment to modify the minimum open space requirement in the S-15 Zone. The Zoning Text Amendment would reduce the minimum open space requirements in the S-15 Zone from 180 square feet per unit (150 sq.ft. group open space and 30 sq.ft. private open space) to 75 sq.ft. of open space, which would make it consistent with the open space requirement for residential projects in the City's Downtown Open Space Combining (S-17) Zone. The proposed modification of the text related to open space requirements in the S-15 zone is included in this report as Exhibit D.

The text amendment is a staff-initiated action. Staff's intent with this proposal is to reduce open space to further the goals of TOD by increasing design flexibility for open space by removing the separate group and open space standard, decreasing the overall requirement for open space to be consistent with what is required in the S-17 zone, and encourage increased density. The text amendment would apply to all properties zoned S-15. Currently, there are only two areas of the City that are zoned S-15: parcels adjacent to Fruitvale BART station and parcels adjacent to West Oakland BART station. Staff has surveyed other cities to determine how open space requirements are regulated in high density, TOD, and mixed-use zones within other agencies. The Cities of San Francisco, Berkeley and Emeryville apply a 40 to 80 square foot per unit requirement on new residential development in mixed-use, TOD and high-density zones. The proposed text amendment is intended to reduce the S-15 Zone requirements for open space to be consistent with the City's current standard for open space in downtown residential projects.

The Preliminary Development Plans show that the project would provide approximately 60,000 square feet of group open space (approximately 95 sq.ft. per unit) within court yards and the open space plaza. The project's open space would increase as the plans are more defined with the size and location of balconies.

Staff Recommendation: Staff believes that the proposed text amendment to reduce the open space requirement for residential projects in the City's Transit Oriented Development Zone so as to be consistent with the City's standard for residential projects in the Downtown (in the S-17 Zone) is appropriate; and therefore, recommends that the Planning Commission forward a recommendation for approval of the text amendment to the City Council.

Rezone from C-28/S-18 and R-70/S-18 to S-15

The Planning Commission is asked to recommend approval by City Council for rezoning of the project area from the current zoning designations to the City's Transit Oriented Development Zone (S-15). The

parcels that are currently developed with BART surface parking are zoned R-70, Residential High Density and the other parcels in the project area (with frontage on Telegraph and West MacArthur) are currently zoned C-28, Commercial Shopping Zone. Additionally, all of the parcels in the project area are currently located in the S-18, Mediated Design Review Overlay Zone. As part of the project, all parcels would be rezoned S-15, Transit-Oriented Development (TOD) Zone.

The project includes rezoning to the S-15 Zone because the current zoning would not allow the density or mix of land uses proposed project; the S-15 Zone is a “best fit” zone for the existing General Plan Land Use Designation of Neighborhood Center Mixed Use; the proposed project is a TOD project immediately adjacent to a BART station, and proposed zoning of S-15 is intended for TOD projects. The proposed project is consistent with the development standards of the S-15 Zone, with the exception of maximum permitted height and minimum required open space. As described within this report, the project includes a text amendment to modify the open space requirements in the S-15 Zone and a PUD bonus to permit an increase in the permitted building height.

Staff Recommendation: Staff believes that the rezoning of the project area from the current zones to the S-15, Transit Oriented Development Zone is appropriate for the reasons above mentioned; and therefore, recommends that the Planning Commission forward a recommendation for approval of the rezoning to the City Council.

Planned Unit Development Permit/Preliminary Development Plan

The Planning Commission is asked to recommend approval of a Planned Unit Development Permit (PUD) for the proposed project. PUD approval is requested because provisions of the S-15 Zone (Sections 17.97.030 and 17.97.200) require approval of a PUD to allow development involving a BART station and for projects of more than 100,000 sq.ft. The purpose of the PUD is to ensure orderly development and establish a vision for development of large projects. The PUD provisions require submittal of a Preliminary Development Plan (PDP). The PDP includes the proposal for site layout and design including circulation patterns, conceptual landscape designs and proposed building bulk, mass and height. The PDP does not represent final building design and architectural details for the proposed project; the Design Review Committee and Planning Commission consider these details as part of the Final Development Plan.

The MacArthur Transit Village PDP was reviewed and discussed at the Planning Commission workshop on April 30, 2008 and is included in this report as Exhibit F. The PDP includes site plans, elevations, floor plans, and landscaping plans for the proposed project as described on pages four to seven of this report. Prior to implementation of the proposed project, the applicant would be required to return to the Commission with Final Development Plans (FDP) that are consistent with the site layout, design and bulk, mass and height shown in the PDP package. Additionally, FDPs for the proposed project would be required to be consistent with the MacArthur Transit Village Design Guidelines, which are incorporated into the Conditions of Approval.

As previously mentioned, the proposed project complies with the development standards of the S-15 Zone, except for standards related to building height and minimum open space (see above for discussion of text amendment related to open space). The maximum building height in the S-15 Zone is 45 feet, or 55 feet provided one-foot of setback is provided for each one foot in height over 45 feet. As a bonus of establishing a PUD, the PUD provisions (Section 17.122.100 G) allow large projects to waive or modify the maximum building height to encourage integrated site design. Buildings within the proposed project range in height from 50 to 85 feet (see sheet A-1.0H of Exhibit F for a building height diagram) and are consistent with the bonus provisions of the PUD regulations.

Staff Recommendation: Staff believes that the findings that have been proposed in Exhibit B can be made and supported by substantial evidence in the record of the project. Therefore, staff recommends the Commission forward a positive recommendation to the City Council for approval of the PUD, subject to the attached Conditions of Approval.

Major Conditional Use Permit Related to Parking

The Planning Commission is asked to approve a Major Conditional Use Permit (CUP) related to parking within the project area. The S-15 Zone requires ½ parking space per unit and the proposed project includes 1 parking space per unit. Provisions of the parking code (Section 17.166.290 (5)) require a CUP to provide parking in excess of the S-15 Zone requirements.

Additionally, the S-15 does not require parking for commercial uses (Section 17.116.080) and the parking regulations (Section 17.166.290 (2)) requires a CUP to provide off-street parking for non-residential land uses. The proposed project includes approximately 25 off-street parking spaces within the parking garage in Building A. The proposed project requires a Major Conditional Use Permit to exceed the S-15 parking requirements for residential land uses and to provide off-street parking for non-residential land uses.

Staff Recommendation: Staff believes that the findings that have been proposed in Exhibit B can be made and supported by substantial evidence in the record of the project. The proposed parking ratio of 1 space per unit is appropriate at this location given that some of the units are family units (3 bedroom) and because of the opportunity to share the parking with the general public (including BART patrons). Additionally, the proposed project includes a TDM Program (described in detail within the key issues discussion of this report) to promote additional parking at the project site, both for BART riders and residents and visitors of the project. With the reduction in BART parking, and potential opportunity to share parking with the general public as outlined in the TDM Program, permitting an increase in parking for uses in the project is appropriate. Therefore, staff recommends the Commission forward a positive recommendation to the City Council for approval of the CUP, subject to the attached Conditions of Approval.

Preliminary Design Review

The Planning Commission is asked to approve Preliminary Design Review for the PDP package. This approval is limited to the building siting and bulk, mass and height of proposed structures. Detailed building design and architectural review would be considered with Final Development Plans. The Design Review Committee reviewed the proposed PDP package at their meeting on December 12, 2007 and they stated overall support for the preliminary development plans and felt that the conceptual project plans are moving in the right direction (the December 12, 2007 Design Review staff report is included in this report as Attachment C). As stated above, staff has worked with the project sponsor to prepare the MacArthur Transit Village Design Guidelines, which are incorporated into the Conditions of Approval, and would be a tool for staff to use to ensure that the FDP is consistent with the vision and design concepts of the PDP package.

Staff Recommendation: Staff believes that the findings that have been proposed in Exhibit B can be made and supported by substantial evidence in the record of the project. Therefore, staff recommends the Commission forward a positive recommendation to the City Council for approval of the Preliminary Design Review, subject to the attached Conditions of Approval.

CONCLUSION AND STAFF RECOMMENDATION

Staff recommends that the Planning Commission:

1) Open the public hearing, take public testimony on the proposed plan, recommended actions and other submitted information and reports; then close the hearing, deliberate on the matter and;

2) Then take the following actions:

- **Certify** the Environmental Impact Report and adopt the CEQA-related Findings (contained in Exhibit A).
- **Recommend Approval** to the City Council for the proposed amendment to the S-15 Zone related to minimum open space (contained in Exhibit D).
- **Recommend Approval** to the City Council for the proposed rezoning of the project area from the C-28/S-18 and R-70/S-18 Zones to the S-15 Zone (contained in Exhibit E).
- **Recommend Approval** to the City Council for the Planned Unit Development Permit, Major Conditional Use Permit and Preliminary Design Review, adopt the associated Findings (contained in Exhibit B), and subject the project to the Conditions of Approval and MMRP (contained in Exhibit C).

Prepared by:

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Deputy Director of Planning and Zoning

Approved for forwarding to the
Planning Commission:

Dan Lindheim
Director Community & Economic Development Agency

EXHIBITS:

Exhibit A: CEQA Findings

Exhibit B: Discretionary Permit Findings

Exhibit C: Conditions of Approval

Exhibit C-1: Mitigation Monitoring and Reporting Program (MMRP)

Exhibit C-2: MacArthur Transit Village TDM Program

- Exhibit C-3: MacArthur Transit Village Design Guidelines
- Exhibit C-4: Illustrative Map showing ¼ mile radius around project site for possible RPP program
- Exhibit D: Language of Text Amendment Regarding Open Space in the S-15 Zone
- Exhibit E: Map depicting rezoning of site to S-15 Zone
- Exhibit F: Preliminary Development Plan, dated received 28, 2008

ATTACHMENTS:

- Attachment A: March 5, 2008 Planning Commission Staff Report for hearing on Draft EIR
- Attachment B: April 30, 2008 Planning Commission Staff Report for Workshop on Project
- Attachment C: December 12, 2007 Design Review Committee Staff Report
- Attachment D: MacArthur Transit Village Financial Feasibility Study
- Attachment E: Project Correspondence received since April 30th Workshop

NOTE: The Final EIR (includes Draft EIR and Response to Comments Document) was previously provided to the Commission under separate cover.