

Location:	200-228 Broadway and 419-447 3rd Street (see map on the reverse) (APN: 001-0141-002-01, 001-0141-005-01,
Assessors Parcel Number:	001-0141-003-00, 001-0141-006, and 001-0141-011-00)
Proposal:	Revisions to project case file number CMDV02-0033 approved on June 12, 2002. The revisions include demolition of an additional commercial building (200 Broadway) and modifications to: <ol style="list-style-type: none"> 1. Proposed facades; 2. Total lot area (+3,750 sq. ft.); 3. Number of units (+19); 4. Open Space; 5. Parking; and 6. Other related changes.
Applicant:	Walter Cohen
Contact Person / Phone Number:	Walter Cohen / (415) 221-2534
Owners:	PPD 222 Broadway I, LLC & Chen Lu
Planning Permits Required:	Approval of a Major Conditional Use Permit (for parking, loading, and driveways within 75' of the front lot line), Variance permit for width of parking spaces, and design review were granted at the June 12, 2002 Planning Commission meeting. Tentative Parcel Map approval is also requested.
	The proposed changes require additional Design Review approval for new construction and a new Variance permit for loading (CUP for facilities within 75 feet of front line and variance for width of parking spaces are still valid).
General Plan:	RD &E-2; Retail Dining Entertainment, Phase 2 (Estuary Policy Plan)
Zoning:	C-45 Community Shopping Commercial Zone / S-4 Design Review Combining Zone
Environmental Determination:	Addendum has been prepared to previously certified EIR
Historic Status:	No CEQA historic resources on the project site nor is the site located in a historic district.
Service Delivery District:	Downtown Metro
City Council district	3
Date Filed:	August 23, 2005
Staff Recommendation	Decision based on staff report
Finality of Decision:	Appealable to City Council within 10 days
For further information:	Contact case planner Heather Klein at 510 238-3659 or by e-mail at hklein@oaklandnet.com .

SUMMARY

On June 12, 2002 the Planning Commission approved a Major Conditional Use Permit, Minor Variance, and Design Review application, as well as certifying the Final Environmental Impact Report for a mixed-use office/residential building or a primarily residential building on a .72 acre site at the corner of 2nd Street and Broadway. The Jack London Neighborhood Association filed an appeal of the project which was denied by the City Council on July 23, 2002. A lawsuit was filed against the project, alleging that parking was improperly excluded from calculating Floor-Area-Ratio (FAR), which was settled on

(Contains map showing the project site and general vicinity)

December 9, 2002, leaving the approvals intact. The project’s land use approvals became effective on that date and were previously extended by the Commission on September 7, 2005 and are still valid and in effect.

On August 23, 2005 the project sponsor submitted a new application to modify the exterior design, total lot area, the unit count, and other facilities related to the increase in unit count such as the amount of open space, parking, the and floor plans.

The purpose of this report is to provide information and seek approval for a project proposing a building of approximately the same massing and bulk as the previously approved building located on the same site. The project is bounded by 2nd Street, 3rd Street, and Broadway in Jack London. Plans for the new project show 134 for-sale condominium units on 10 floors; ground floor commercial space fronting onto 2nd Street, 3rd Street, and Broadway; 5 floors of naturally ventilated parking. The proposed materials include pre-cast concrete panels, composite metal panels, and glass.

Below is a table that outlines the changes from the previously approved project.

Change	Previously Approved Project (Residential Alternative)	Proposed Residential Project
Design and Materials	Exterior Design	New Exterior Design
Lot Area	31,250 sq. ft.	35,140 sq. ft. (Includes an additional parcel of +3,750 sq. ft.)
Total Building Square Footage	354,750 sq. ft.	341,852 sq. ft.
Residential Square Footage	218, 750 sq. ft.	212,127 sq. ft. (New Floor plans)
Retail Square Footage	11,000 sq. ft.	11,197 sq. ft.
Parking Spaces	229	240
Number of Units	115	134
Open Space	17,250 sq. ft.	26,652 sq. ft.
Height	186’	181’-6” (186’ to the elevator shaft)

The proposed project requires additional Design Review and Tentative Parcel Map approval as well as a Variance permit for loading. Additional discussion of these issues is provided later in the ZONING ANALYSIS Section.

The EIR for the previously approved project identified significant and unavoidable impacts related to transportation including parking demand (for an office/residential project alternative which is no longer being considered and also parking is no longer considered a CEQA impact), unacceptable level of service along the State Route 260 Corridor between 6th and Jackson and 7th and Harrison; and the addition of project traffic to the baseline at 5th and Jackson. Neither of these impacts are now significant and unavoidable (refer to the *Environmental Review* section for further discussion). Other previously identified impacts that can be mitigated to less than significant levels with mitigation measures include impacts on cultural resources, traffic, public services and utilities, air quality, noise, aesthetics, and hazardous materials.

SITE DESCRIPTION

Existing Conditions

The project site is located in the Lower Broadway portion of the Jack London Square area of Downtown and occupies about two-thirds of the block bounded by Broadway, Franklin, Second and Third Streets. The site is 0.81 acres (35,140 square feet). The building at 228 Broadway/447 3rd Street is a PDHP with a survey rating of C2+. The building at 200 Broadway is a PDHP with a survey rating of Dc2+. The site is located within the Lower Broadway District, an area rated by the OCHS as an Area of Secondary Importance (ASI). The Second and Third Street sides of the site are immediately adjacent to one and two-story buildings of the Produce Market District, an area actively used as a wholesale produce market that has been deemed eligible for the National Register of Historic Places and rated as an Area of Primary Importance (API) by the Oakland Cultural Heritage Survey (OCHS).

Surrounding Area

This area of Lower Broadway contains predominantly commercial uses including County office buildings, general office uses, retail, restaurants, and hotel uses in buildings ranging from one to five stories in height. Broadway functions as the main pedestrian and vehicular connection between Downtown Oakland and the Jack London waterfront area. The site is less than one-quarter mile from Interstate 980, and from the waterfront of Jack London Square and the Oakland Estuary. Additionally, the site is located nine blocks from the 12th Street BART station, 12 blocks from the Lake Merritt BART station and over seven AC Transit routes are adjacent to, or in the vicinity of, the project site.

PROJECT BACKGROUND

An Environmental Impact Report (EIR) for either a mixed-use office/residential development (115 residential units, 57,750 sq. ft. of office space, 11,000 sq. ft of commercial space and parking for 229 cars) or a primarily residential building (115 residential units, 11,000 sq. ft. of commercial space and parking for 229 cars) was certified by the Planning Commission on June 12, 2002. This approval also included the Major Conditional Use Permit, Minor Variance, and Design Review entitlements. The Jack London Neighborhood Association filed an appeal of the project which was denied by the City Council on July 23, 2002. A lawsuit was filed against the project which was settled on December 9, 2002, leaving the land use approvals intact. The project's land use approvals became effective on that date and were previously extended by the Commission on September 7, 2005 and are still valid and in effect. If the Commission approves the current project, the approval for the previously approved mixed-use office/residential alternative will be extinguished and the previous approvals for the primary residential alternative will be revised.

PROJECT DESCRIPTION

The project proposes the construction of a 16-story building (186'-6" tall to the elevator shaft) on a corner site bounded by 2nd Street, 3rd Street, and Broadway. Plans show the building built directly to the property lines except a 10' setback is shown on the 5th floor along 2nd Street and a portion of Broadway and a 15-61' setback is proposed along 3rd Street and the interior side setback.

The building construction type will be concrete and is "urban" in architectural style. The intent of the proposed design was to stay within the previously approved building bulk and mass and to provide a solid background frame with lighter-feeling projecting elements. The base consists of the retail, and building service levels on the Broadway elevation. The retail, garage/loading entrances, and a green wall are at the base on the 2nd Street and 3rd Street facades. The building frame is composed of pre-cast concrete with glass and composite metal panel bays. This mass is broken up through the use of deeply, recessed

windows, and projecting glass balconies in different proportions. The corner is very distinctive with wrap-around glass windows. At the Franklin Street façade, architectural CMU block wall with a split face or scored buff tone integral color will be above adjacent buildings.

The ground floor plan shows the main residential entrance/lobby to the high-rise tower at the corner of 3rd Street and Broadway; 11,197 sq. ft. of ground floor retail; 25 stalls parking; and the garage and loading entrances. The ground floor retail spaces are located along 3rd Street (650 sq. ft.) and along Broadway turning onto 2nd Street (10,408 sq. ft.) These spaces will provide 257 linear feet of retail and will offer 25' clear heights. Metal canopies shade the storefront windows. The 2nd level plans show 55 parking stalls and the clear height of the retail. The 3rd story plans show 45 parking stalls, a fitness center, a club room, and rental or building service space. The 4th story plans show 58 parking stalls and the clear height for the rental or building service space. The 5th floor plan shows 33 parking spaces, tenant storage, the sales office, and a 10-17' landscaped area at the corner of Broadway and 2nd Street. The 6th level is the beginning of the residential levels. This floor shows 15 units and a large landscape pool deck. Levels 7-14 contain only the high-rise units with approximately 15 units per floor. Level 15 and 16 contain 8, 2-story penthouse units. The units are a combination of one bedroom units that range from 740 to 1,123 sq. ft. and two bedroom units that range from 1,061 to 1,346 sq. ft.

Group open space is provided through 5,800 sq. ft. landscaped courtyard on the 5th floor and a 6,300 sq. ft. pool deck on the 6th floor. Additional private open space totaling (19,746 sq. ft.) is provided through balconies located on the exterior facades. Gray slate dimensional stone will extend outside to the sidewalk area bounded by lobby.

GENERAL PLAN ANALYSIS

Land Use and Transportation Element of the General Plan

The General Plan designation for the project site is Retail Dining Entertainment, Phase 2 (RD & E-2) per the Estuary Policy Plan (EPP). The maximum residential density provided in the RD & E-2 category is 125 dwelling units per gross acre or 166 dwelling units per net acre. The .81 acre project site could support a maximum of 134 units. The 134-unit project meets the maximum allowable density. The RD & E-2 designation has a maximum Floor Area Ratio (FAR) of 7.0 while the project is only proposing a commercial FAR of 6.5.

The EPP states the *intent* of the RD & E-2 designation is to “enhance and intensify Lower Broadway as an active pedestrian-oriented entertainment district that can help create stronger activity and pedestrian linkages with Downtown Oakland, Old Oakland, and Chinatown.” The EPP states that the *desired character* of future development in the area should be primarily retail, restaurant, entertainment, hotel, upper level office, cultural, parks, public open space, and any other use that is complimentary to active public oriented ground level uses.”

The following General Plan Land Use and Transportation Policies and Objectives apply to the proposed project:

Objective LU-1: Provide for a broad mixture of activities within the Estuary area. **The project would provide a mixture of ground floor commercial, upper level commercial or building service space, and 134 residential units. This mix of commercial and residential units is compatible with the General Plan designation. Residential uses are often seen as a compatible component of retail, dining, and entertainment area. Residents living close to retail, dining and entertainment businesses are often seen as providing a “built-in” clientele for businesses. People living nearby who can walk to businesses; provide regular patronage to stores, restaurants, and entertainment venues and**

consider the businesses part of their neighborhood are often seen as vital components of successful retail, dining, and entertainment areas.

Objective LU-3: Expand opportunities and enhance the attractiveness of the Estuary as a place to live. **The project will construct 134 residential units within the district.**

Objective LU-4: Develop the Estuary area in a way that enhances the City's long term economic development. **As stated above, the project is providing a mix of commercial and residential units. The ground floor is attractively designed with 11,000 sq. ft. of commercial space mostly located along Broadway and 2nd Street. In addition, a small commercial space is located on 3rd Street adjacent to the residential lobby. The 3rd floor plans show 3 large spaces that could be available for commercial use. The construction of new residential units will support the Jack London neighborhood economy and especially the Broadway and 2nd Street businesses.**

Policy JL-1: Reinforce retail, dining, and entertainment uses along the waterfront, and extend these uses along Broadway to create a regional entertainment destination. **The EPP sets forth a vision for redevelopment and intensification of Lower Broadway which would continue the development along the Broadway corridor and the central spine of Downtown to the Embarcadero, effectively linking the waterfront to central Downtown. The project is providing 11,000 sq. ft. of commercial space at a key location on Broadway and 2nd. This space could be used for destination retail, dining, or entertainment purposes.**

The proposed project meets the referenced objectives, the general intent of the RD & E-2 land use designation, and is a good fit for this area.

Historic Preservation Element of the General Plan

The original project in the DEIR included the building located at 200 Broadway. This parcel was later removed from the mixed use and residential alternatives certified in the FEIR. The current project again proposes the demolition of this building rated as a Potentially Designated Historic Property by the Oakland Cultural Heritage Survey with a rating of Dc2+. The rating indicates that the building is a potentially designated historic property of minor importance and a contributor to an Area of Secondary Importance. However, there are no CEQA historic resources on the project site nor is the site located in a historic district. The City's Historic Preservation Element of the General Plan requires the City to make certain findings when a decision on a development project will result in the demolition of a Potentially Designated Historic Property. According to Policy 3.5 in the Historic Preservation Element, the Planning Commission must make *one* of three findings when a discretionary approval will result in the demolition of a PDHP. The policy states:

Policy 3.5: Historic Preservation and Discretionary Permit Approvals. For any project involving complete demolition of Potential Designated Historic Properties requiring discretionary City permits, the City must make a finding that:

- (1) the design quality of the proposed project is at least equal to that of the original structure and is compatible with the character of the neighborhood; or
- (2) the public benefits of the proposed project outweigh the benefit of retaining the original structure; or

- (3) the existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.

Staff believes that the Planning Commission is able to make Finding 3 as detailed in the “Findings” section of this report. For discussion of the design of the proposed building, refer to the “Design Review” section of this report.

ZONING ANALYSIS

Density

The project site is zoned C-45, Community Shopping Commercial Zone. The maximum residential density is set forth in the R-80 regulations, pursuant to Section 17.106.030, which states that “for mixed use projects in the CBD and Jack London the allowable intensity of development may be measured according to the maximum FAR allowed by the zone without a separate residential density calculation, provided that the maximum number of units pursuant to the residential density allowed by the General Plan is not exceeded.” Staff did not compute a separate residential density calculation due to the project meeting the Estuary Policy Plan density. According to the C-45 zone the maximum FAR is 7.00, except that this ratio may be exceeded by ten percent on any corner lot, pursuant to Section 17.56.150. Staff has calculated an FAR of 6.5 for the proposed project.

The following table depicts the project’s comparison to the C-45 development standards:

Zoning Regulation Comparison Table

Criteria	Requirement	Proposed	Comment
-----------------	--------------------	-----------------	----------------

		C-45		
Yard – Front		0’*	0’	Meets the C-45 requirements.
Yard- Corner Lot Line		0’	0’	Meets the C-45 requirements.
Yard – Interior Lot Line		0’	0’	Meets the C-45 requirements.
Height		No maximum	174’-6” to the roof and 181’-6” to the elevator shaft enclosure	Meets the C-45 requirements.
Usable Group Open Space		150 sq. ft. / unit = 20,100 sq. ft.	6,906 sq. ft. of group open space and 19,746 sq. ft. ** of private open space = 26,652 sq. ft.	Meets the C-45 requirements.
Parking	Commercial	1 space / 400 sq. ft. = 28 spaces	27 spaces	Meets the C-45 requirements.
	Residential	1 space / unit = 134 spaces***	213 spaces	Meets C-45 requirements and the Jack London parking demand.
Loading		Residential floor area between 150,000 and 449,999 sq. ft. =2 berths Commercial floor area between 10,000 and 24,999 sq. ft. = 1 berth Total =3 berths	2 berths	Does not meet the C-45 requirements. Variance required.
FAR		7.7****	6.5	Meets the C-45 requirements.

Table Notes:

* According to the definition of a front yard, the project site is a thorough lot which has 2 front yards and therefore no rear yard.

** Per Section 17.126.020, each square foot of private usable open space conforming to the provisions of Section 17.126.040 shall be considered equivalent to two square feet of required group usable open space and may be so substituted.

*** Jack London Area (JLD) parking space demand is 1.16 spaces per unit.

**** The maximum permitted floor-area ratio is 7.00, except that this ratio may be exceeded by ten percent on any corner lot.

The criteria for review and approval of this facility at this location includes the following: the criteria for Variances in Section 17.148.050, the Design Review Criteria in Section 17.136.070, and the TPM findings in Section 16.24.040 and 16.08.030. All applicable criteria are analyzed and appropriate findings are made in the *FINDINGS* Section of this report.

KEY ISSUES

Design Review

Staff presented the project before the Design Review Committee on November 16, 2005. The Committee's comments were minimal. They agreed that inclusion of the previous mitigation measures into the current project design is an improvement. Several members of the public spoke about the demolition of the existing buildings and the loss of the small businesses in that location.

Staff has no additional major design issues regarding the project. All typical minor issues can be handled administratively.

Environmental Determination and Environmental Findings

An Environmental Impact Report was certified by the Planning Commission on June 12, 2002 and recertified by the City Council (during appeal) on July 23, 2002. A lawsuit was filed against the project which was settled on December 9, 2002. The project's land use approvals became effective on that date and are still valid and in effect pursuant to an extension granted by the Planning Commission on September 7, 2005. The previously project included two alternatives: a mixed-use building containing 115 residential units, 57,750 sq. ft. of office space, 11,000 sq. ft. of commercial space or a primarily residential building containing 115 residential units and 11,000 sq. ft. of commercial space. The previously certified EIR is available to the public at the Planning and Zoning division office. After an EIR has been prepared and certified for a project, later project approvals or changes must be evaluated to determine whether the circumstances requiring preparation of a subsequent or supplemental EIR are present, as specified in Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 and 15163. Absent one or more of the circumstances requiring a subsequent or supplemental EIR, no further CEQA actions are required. Here, as explained below and in the attached addendum, none of the factors requiring further environmental review have been met and the previously certified EIR can be relied upon to approve the current project.

The EIR for the previously approved project identified significant and unavoidable impacts related to transportation including parking demand (for an office/residential project alternative which is no longer being considered and also parking which is no longer considered a CEQA impact), unacceptable level of service along the State Route 260 Corridor between 6th and Jackson and 7th and Harrison; and the addition of project traffic to the baseline at 5th and Jackson. According to the additional analysis provided in the Addendum, neither of the other two previously identified impacts are now considered two significant and unavoidable. Both of these impacts were analyzed in the Oak to Ninth EIR. That DEIR concluded that the intersection of 5th and Jackson is now operating at a LOS B and will continue to operate at a B through 2025. The 210-228 Broadway EIR concluded that the project would increase the delay at this intersection in the 2005 and 2020 cumulative conditions to an LOS F. Since this is no longer an impact with the review of new data, this impact is now less than significant and no mitigation is required. The traffic analysis for the Addendum also concluded that the project would not result in an unacceptable LOS along the State Route 260 Corridor between 6th and Jackson and 7th and Harrison. A statement of overriding considerations was already adopted as part of the previous project and EIR approval and no mitigation measures were included for the project. Therefore, this impact will be reduced to a less than significant level. Other previously identified impacts that can be mitigated to less than significant levels with mitigation measures include impacts on cultural resources, traffic, public services and utilities, air quality,

noise, aesthetics, and hazardous materials. These mitigation measures are included within the attached Conditions of Approval/Mitigation Monitoring Plan. Refer to Conditions #20 and #36. Several of the mitigation measures are no longer applicable and these have been included in the report and the Conditions of Approval but in strike-out type. Moreover, a number of previously identified mitigation measures relating to construction air quality, noise, archeological resources, waste recycling, construction parking and staging, stormwater capacity, and lighting are more properly now considered by the City to be standard (uniformly applied) conditions of approval, but remain mitigation measures here for convenience and simplicity.

Significant, Unavoidable Impacts Identified in the Previously Certified EIR:

The EIR identified three significant unavoidable impacts from the mixed-use project and two resulting from the primarily residential project that could not be mitigated to a less than significant level despite the implementation of all feasible mitigation measures. No further significant unavoidable impacts have been identified, nor has staff identified feasible mitigation measures to further lessen or avoid these impacts. On the contrary, as required by CEQA, the Planning Commission previously adopted a “Statement of Overriding Considerations” explaining why the benefits of the proposed project outweigh those unavoidable significant adverse impacts resulting from the project (Impacts 3C-1, 3C-6 and 3C-7 from the EIR). The impacts previously identified as significant and unavoidable in the EIR are summarized as follows.

Transportation

Impact 3C-1 (page 3C26 of the DEIR) -The proposed project would result in a deficit of parking spaces compared to demand (on a project and cumulative basis). This impact applied to only the mixed-use project; not the primarily-residential project and thus is not applicable here. In addition, the City no longer considers parking shortfalls to be significant environmental impacts.

Impact 3C-6: (page 3C30 of the DEIR) –The proposed project would contribute to an unacceptable level of service during the peak hour along the SR 260 Corridor between the intersection of 7th and Harrison and the 6th and Jackson northbound on-ramp to I-880. The Oak to Ninth DEIR did not analyze this intersection. However, this intersection was analyzed as part of the Jack London certified EIR. The network assumptions included: 1) Direct access ramps from the I-880 northbound and I-980 westbound into the Webster tube were maintained in the 200-228 DEIR analysis, but removed from the roadway network as part of the subsequent JLS DEIR analyses; 2) An off-ramp from I-880 southbound to Martin Luther King, Jr. Way and the closure of 6th Street ramp connecting Jackson Street to Broadway were added for the JLS study; and 3) Additionally, the assumptions for the I-880 Broadway-Jackson corridor, including 7th/Harrison, 7th/Jackson, and 6th/Jackson differed among the analyses. Based on these assumptions, the project does not contribute 5% to the delay and therefore this impact is no longer considered significant and unavoidable.

Impact 3C-7: (page 3C31-32 of the DEIR) –The proposed project would add project-related traffic to the 2005 baseline conditions at Jackson Street and 5 Street. The Oak to Ninth DEIR analyzed this intersection and found that the LOS in the existing and future cumulative conditions would not fall below a LOS B. Therefore, this impact is no longer considered significant and unavoidable and no further mitigation is required.

Significant Impacts Which May be Mitigated to a Less Than Significant Level

The EIR identified several impacts and mitigation measures, which can be incorporated to lessen or eliminate impacts from the project. These are summarized as follows and have been included as conditions of approval or have been incorporated as part of the application that is before the Commission:

Impact 3A-4: (pages 3A12-14 of the DEIR) – Consistency with other land use and planning considerations; compatibility with existing land use. (Mitigation: Implement mitigation measures 3F-3, 3G-1, and #G-2).

Impact 3B-3: (page 3B27 of the DEIR) – Implement an archeological resources treatment plan. (Mitigation: Develop an archeological resources treatment).

Impact 3C-2: (page 3C28-29 of the DEIR) – Circulation impacts resulting from additional truck trips during construction and construction parking. (Mitigation: Develop and implement a Traffic Control Plan).

Impact 3C-9: (page 3C32-33 of the DEIR) –Increase demand for bicycle parking in the Jack London area. (Mitigation: Provide bicycle parking).

Impact 3D-3: (page 3D11-12 of the DEIR) –Increase in solid waste generation. (Mitigation: Prepare a construction waste diversion plan).

Impact 3D-5: (page 3D12-13 of the DEIR) –Increase in wastewater use and disposal. (Mitigation: Prior to completing the final design, confirmation of the city’s surrounding sewer system capacity and state of repair shall be completed.)

Impact 3D-6: (page 3D13-14 of the DEIR) – Increased demand for electricity and natural gas supplies. (Mitigation: Developer will be required to utilize green building practices in construction.)

Impact 3E-1: (page 3E7-8 of the DEIR) –Temporary increase in construction-related emissions during grading and construction activities. (Mitigation: Implement dust and vehicular emissions control measures.)

Impact 3F-1: (page 3F7-8 of the DEIR) - Exposure of existing noise-sensitive land uses to noise from construction activities. (Mitigation: Employ noise reducing construction practices for pile driving).

Impact 3F-3: (page 3F11 of the DEIR) - Exposure of onsite, noise-sensitive land uses to increased traffic noise. (Mitigation: Comply with the California Building Code)

Impact 3G-3: (page 3G6-8 of the DEIR) - Substantially degrade the visual quality of the project site and its surroundings. (Mitigation: Modify the building massing to improve compatibility with the surroundings.)–This mitigation measure is already incorporated into the new design.

Impact 3G-4: Potential creation of excessive light and glare. (Mitigation: Develop and implement an exterior lighting plan reviewed and approved by the City.

CONCLUSIONS

In summary, the Planning Commission believed that the previous project 1) advanced the goals of the General Plan Land Use and Transportation Element; 2) provided a new use for a site containing predominantly a surface parking lot; 3) redeveloped and revitalized a portion of the lower Broadway area; 4) provided new housing opportunities in the Jack London area; 5) provided a mixed-use project with ground

floor retail uses; and 6) was designed so that the ground floors will be a high-quality when they approved the project.

The current proposal seeks to revise the previously approval. The modifications would include the addition of a new parcel, 19 more units, and exterior facades. The project is still in conformance with the General Plan goals and policies. The variance for loading is warranted is not anticipated to create adverse impacts, pursuant to the attached Findings and Conditions of Approval.

Based on the analysis contained in this report, the Addendum and elsewhere within the administrative record, staff believes that the revised project would provide an appropriate mix of land uses at this location and an appropriate and attractively designed urban infill project. Thus, staff recommends that the Commission:

RECOMMENDATIONS:

1. Adopt Environmental Determination Findings pursuant to CEQA Section 21166 and CEQA Guidelines Section 15162 and 15163 that none of the circumstances requiring preparation of a subsequent or supplemental EIR are present and that no further environmental review is required;
2. Approve the revisions to the project (previous residential alternative) including the Variance and Design Review, as well as the Tentative Parcel Map request subject to the Conditions of Approval and the previously approved Mitigation Monitoring Program, based on the attached findings.
3. Extinguish the land use approvals for the previously approved mixed-use office/residential alternative.

Prepared by:

Heather Klein
Planner II, Major Projects

Approved for forwarding to the
City Planning Commission:

Claudia Cappio
Director of Development

Gary Patton
Major Projects Manager
Deputy Director of Development

ATTACHMENTS:

- A. Plans and Elevations
- B. Addendum to the previously certified EIR
- C. TPM comments from David Mog of Engineering Services on September 28, 2005 and Philip Basada on January 5, 2006.

FINDINGS FOR APPROVAL:

The proposed project meets the required findings under Planning Code Section 17.148.050 (Variances findings); Section 17.136.070.A (Residential Design Review findings including the additional criterion for Higher Residential Density Projects), findings per Policy 3.5 of the Historic Preservation Element; TPM findings per Section 16.24.040 and 16.08.030, and findings pursuant to CEQA Guidelines Sections 15162 and 15163. Required findings are shown in bold type; explanations as to why these findings can be made are in normal type. Required findings are shown in bold type below and are also contained within other sections of this report and the administrative record; explanations as to why these findings can be made are in normal type. The CUP for facilities within 75 feet of front line and variance for width of parking spaces, associated with the previously approved residential alternative, are still valid.

Section 17.148.050(A) Minor Variance Findings for loading

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

Loading: Pursuant to Section 17.116.120, two loading berths are required for residential use with floor area between 150,000 and 449,999 sq. ft. In addition, a loading berth is also required for commercial space between 10,000 and 24,999 sq. ft of floor area. The project is providing two loading berths on site. Since the building would contain 2 loading berths, staff believes that a variance for the additional loading berth can be supported. It is expected that two berths will be acceptable since the project will entail the construction of condominiums and not for-sale units. These units will not result in the need for a fulltime designated loading berth for residential since the units are not expected to turn over often. During the times when an owner is not moving in/out, 2 berths would be available for a “destination” commercial tenant. A condition of approval is recommended for establishment of a parking management plan that would avoid conflicts between the residential and commercial loading activities. An example provision could include residential loading only on weekends or after normal business hours. Staff recommends such an approach and the City has used it in other downtown locations with success. Strict compliance would preclude operational efficiency within the garage and the floor plan.

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

Loading: The intent of the loading berth regulation was to provide designated off-street spaces for loading. If the project were to comply with the additional loading berth requirement, ground floor retail or parking spaces would need to be removed. Replacement of the removed parking would increase the building height which would not be acceptable to the surrounding residents. A designated loading berth would be available for the destination commercial tenant. Two loading berths are not necessarily needed since the units are for-sale condominiums. Therefore, residents are not expected to move in and out of the units on a frequent basis. Staff believes that the site plan maximizes the functionality of the project site and granting the loading berth variance would provide an effective design solution for the project.

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

Loading: The lack of a designated loading space on-site is not expected to cause significant traffic or circulation problems in the vicinity and is not expected to adversely affect the character or livability of the neighborhood. As stated above, loading would be used to accommodate residents moving in and out of the units. Since these units will not be rental, loading is expected to occur infrequently and by moving vans. Staff has required as a condition of approval that a parking management plan be established to coordinate the loading activities within the 2 proposed berths.

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

The variance is necessary and can be supported since the project is providing adequate provisions for loading both of residential and commercial uses. The project effectively develops what would have been an underutilized Downtown site. Compliance with this zoning requirement would adversely affect the operational efficiency of the ground floor plan and commercial space. The variance for residential loading will not be detrimental to the adjacent properties as described above. The variances do not constitute special privilege but rather meet the intent of the zoning regulations by supporting an appropriate design and internal configuration that facilitates the construction of this development.

Section 17.136.070A (Residential Facilities Design Review Findings)

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

The project combines retail, residential units, and structured parking in one building. The building has a large mass; however, the bulkiness and scale are broken down to relate more sensitively to the adjacent neighborhood development. The building frame is composed of pre-cast concrete with glass and composite metal panel bays. This mass is broken up through the use of deeply, recessed windows, and projecting glass balconies in different proportions. The corner is very distinctive with wrap-around glass windows. At the Franklin Street façade, architectural CMU block wall with a split face or scored buff tone integral color will be above adjacent buildings. At the corner of 3rd and Broadway, a tower element links the components of the building together, provides some visual drama, and serves as the focal point for the project.

The building frame is composed of pre-cast concrete with glass and composite metal panel bays. This mass is broken up through the use of deeply, recessed windows, and projecting glass balconies in different proportions. The corner is very distinctive with wrap-around glass windows. At the Franklin Street façade, architectural CMU block wall with a split face or scored buff tone integral color will be above adjacent buildings.

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

The project will be high-quality both in terms of design and construction. The building relates

appropriately to the surrounding area, and the design reinforces the desirable architectural characteristics of surrounding buildings and is sensitive to topography and landscape. The project has been designed to create active public-oriented ground level uses, to retain the most valuable characteristics of the surrounding area, and to strengthen the attractiveness of the Lower Broadway community.

3. That the proposed design will be sensitive to the topography and landscape;

The proposed project site is flat and contains no notable landscaping. Therefore, the project will have no affect on the existing topography or landscape.

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

See response #3

5. That the proposed design conforms in all significant respects with the Oakland Comprehensive Plan and with any applicable district plan or development control map which has been adopted by City Council.

The proposed project is consistent with the General Plan land use designation for the site, with the Variance findings and the Design Review Criteria as discussed in more detail throughout the report.

Additional Criterion for Higher Residential Density Projects:

That the proposal will provide for its residents sufficient sunlight, privacy, and quiet, and in general, a convenient, attractive, and functional living environment, with consideration given to site planning, building and room orientation, circulation, and similar relevant factors.

The proposed project provides sufficient sunlight, privacy, and quiet for the residents. The plans show adequate usable open space with a large landscaped courtyard on the 6th level, private patios, and penthouse decks. The units are oriented along a double loaded corridor each with a view to the outside for adequate light. The project will need to meet the new Title 24 requirements as far as noise issues with the adjacency of the Lower Broadway entertainment District. Overall the site planning will provide a convenient, attractive, and functional living environment near public transportation, Jack London and the waterfront, Chinatown, Old Oakland, and Upper Broadway.

Policy 3.5 of the Historic Preservation Element (Alterations to Historic Resources findings)

Policy 3.5 of the Historic Preservation Element states that for additions or alterations to Potential Designated Historic Properties (PDHPs) requiring discretionary City permits, the City will make a finding that:

- 1. the design matches or is compatible with, but not necessarily identical to, the property's existing or historical design; or**
- 2. the proposed design comprehensively modifies and is at least equal in quality to the existing design and is compatible with the character of the neighborhood; or**
- 3. the existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.**

The project is proposing the demolition of a Potentially Designated Historic Property at 200 Broadway. The two-story wood-frame commercial structure is an early 20th century building built in 1907. This property has a rating by the Oakland Cultural Heritage Survey (OCHS) of Dc2+[D, Minor Importance; c, potential rating if restored or renovated; in an Area of Secondary Importance (ASI); + a contributor]. The demolition of this building is not considered to be a significant impact for CEQA purposes. The demolition of the building meets Policy 3.5 finding number 3. The building does not meet the criteria for individual listing on the National Register of Historic Places, because it appears to lack sufficient design distinction and historical associations. It is not a City of Oakland landmark. Thus, the building is undistinguished and does not warrant retention. The surrounding area is a mix of small commercial buildings, potential historic properties, high-rise buildings, surface parking lots, and recently approved projects. There is no identifiable neighborhood character or style. However, the proposed design relates appropriately to the surrounding area and the design reinforces the desirable architectural characteristics of surrounding buildings. The project has been designed to create active public-oriented ground level uses, to retain the most valuable characteristics of the surrounding area, and to strengthen the attractiveness of the Lower Broadway community. Thus, the project is compatible with the character of the neighborhood.

16.24.040 Lot Design Standards

Lot design shall be consistent with the provisions of Section 16.04.010, Purpose, and the following provisions:

A No lot shall be created without frontage on a public street, as defined by Section 16.04.030, except:

- 1. Lots created in conjunction with approved private access easements;**
- 2. A single lot with frontage on a public street by means of a vehicular access corridor provided that in all cases the corridor shall have a minimum width of twenty (20) feet and shall not exceed three hundred (300) feet in length. Provided further, the corridor shall be a portion of the lot it serves, except that its area (square footage) shall not be included in computing the minimum lot area requirements of the zoning district.**

The parcel has street frontages Broadway, 2nd Street, and 3rd Street.

B. The side lines of lots shall run at right angles or radially to the street upon which the lot fronts, except where impractical by reason of unusual topography.

The side lot lines of the proposed parcel run at right angles to the street on which they front.

C. All applicable requirements of the zoning regulations shall be met.

The proposed parcel conforms to the zoning regulations of the C-45 Community Shopping Commercial Zone subject to the Variances that were granted as part of the overall project approval (Case File Number CMDV02-0033) and as part of the Variances granted for this approval.

D. Lots shall be equal or larger in measure than the prevalent size of existing lots in the surrounding area except:

- 1. Where the area is still considered acreage;**

2. Where a deliberate change in the character of the area has been initiated by the adoption of a specific plan, a change in zone, a development control map, or a planned unit development.

The proposed parcel will be subdivided for condominium purposes.

E. Lots shall be designed in a manner to preserve and enhance natural out-croppings of rock, specimen trees or group of trees, creeks or other amenities.

The proposed project is located on a site with existing structures and parking lots. There are no natural features on the site.

16.08.030 - TENTATIVE MAP FINDINGS (Pursuant also to California Government Code §66474 (Chapter 4, Subdivision Map Act)

The Advisory Agency shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, if it makes any of the following findings:

A. That the proposed map is not consistent with applicable general and specific plans as specified in the State Government Code Section 65451.

The proposed lot merger and subsequent condominium subdivision is consistent with the RD &E-2; Retail Dining Entertainment, Phase 2 General Plan Land Use Designation per the Estuary Policy Plan.

B. That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.

The proposed lot merger and subsequent condominium subdivision is consistent with the RD &E-2; Retail Dining Entertainment, Phase 2 General Plan Land Use Designation per the Estuary Policy Plan.

C. That the site is not physically suitable for the type of development.

The site is flat, in an urban area, and future development can be easily accommodated.

D. That the site is not physically suitable for the proposed density of development.

The location and orientation of the parcel is physically suitable for the proposed development considering that the site is flat and devoid of natural features. The proposed parcel creates an adequate and appropriate density of development.

E. That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

The subject property is located in an urban area and is surrounded by developed commercial and mixed use properties.

F. That the design of the subdivision or type of improvements is likely to cause serious public health problems.

The condominium subdivision is not expected to cause serious public health problems. In addition, the proposed development would be served by public water and sewer service, and would therefore not require the use of on-site sewage disposal or domestic water well.

Findings pursuant to CEQA Section 21166 and CEQA Guidelines Sections 15162 and 15163

An Environmental Impact Report was certified by the Planning Commission on June 12, 2002 and recertified by the City Council (on appeal) July 23, 2002. The project included two alternatives: a mixed-use building containing 115 residential units, 57,750 sq. ft. of office space, 11,000sf of commercial space or a primarily residential building containing 115 residential units, 11,000 sq. ft. of commercial space. The previously certified EIR is available to the public at the Planning and Zoning division office.

The current proposal has been reviewed in light of certified EIR and the analysis contained within the EIR. The Planning Commission hereby finds that none of the circumstances requiring preparation of a subsequent or supplemental EIR (as specified in CEQA Section 21166 and CEQA Guidelines 15162 and 15163) are present. Specifically, the Planning Commission finds:

1 and 2) The current proposal does not involve substantial changes that would require major revisions to the previously certified EIR. None of the proposed project changes would involve new significant environmental effects or a substantial increase in the severity of previously identified significant effects. No new significant impacts will result from the revised project and no impacts previously identified as significant will be made more severe. The mixed-use alternative analyzed dwelling units, 100,000 sq. ft. office, 8,000 sq. ft. of retail, and 290 parking spaces. The residential alternative analyzed a project with 115 units, 10,645 sq. ft. of retail, and 229 parking spaces. The proposed project exhibits the same bulk, massing, scale, height, and materials as the mixed-use and residential alternatives studied in the EIR. The inclusion of an additional parcel, 19 units, and other changes related to the increase in units is less intensive than the mixed-use project analyzed in the EIR and will not substantially increase the severity of the previously identified impacts. Furthermore, the new design actually reduces previously identified impacts that were considered mitigatable.

3) Substantial changes have not occurred with respect to the circumstances under which the project is undertaken. The project analyzed in the EIR included a mixed-use alternative that included 109 units and 100,000 sq. ft. of office. The proposed project's location, use and massing are essentially the same as that analyzed in the EIR. Comparatively the project is a reduction in use and scale, with no office use and larger setbacks that address the historic produce district. Therefore, it can be determined that the EIR analyzed a more intensive project than what is proposed.

4) No new information of substantial importance (as specified in the CEQA Guidelines section 15162 (a) (3)) that was not known or could not reasonably have been known at the time the EIR was certified shows any evidence that

- (a) the project will have one or more significant effects not discussed in the EIR;
- (b) significant effects previously examined will be substantially more severe than shown in the EIR;
- (c) mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project but are declined by the project proponent; or
- (d) mitigation measures or alternatives that are considerably different from those analyzed in the EIR would substantially reduce one or more significant effects of the project but are declined by the project proponent. No new information has been presented that would require a subsequent EIR to be prepared.

Pursuant to Section (e) the agency shall specify the location and custodian of the documents. Pursuant to Public Resources Code §15091, the Oakland Community and Economic Development Agency, Planning Division, is the custodian of the documents and other material which constitute the record of proceedings upon which this decision is based, and such documents and other material are located at 250 Frank Ogawa Plaza, Suite 3315; Oakland, CA.

**CONDITIONS OF APPROVAL and
MITIGATION MONITORING & REPORTING PROGRAM**

STANDARD CONDITIONS

1. Approved Use.

a. Ongoing.

The project shall be constructed and operated in accordance with the authorized use as described in this staff report and the plans dated November 16, 2005 and as amended by the following conditions. Any additional uses other than those approved with this permit, as described in the project description, will require a separate application and approval.

2. Effective Date, Expiration, Extensions and Extinguishment

a. Ongoing.

This permit shall become effective upon satisfactory compliance with these conditions. **This permit shall expire on January 18, 2008** unless actual construction or alteration, or actual commencement of the authorized activities in the case of a permit not involving construction or alteration, has begun under necessary permits by this date. Upon written request and payment of appropriate fees, the Zoning Administrator may grant a one-year extension of this date, with additional extensions subject to approval by the City Planning Commission. The land use approvals for the previously approved mixed-use office/residential alternative are hereby extinguished..

3. Scope of This Approval; Major and Minor Changes

a. Ongoing.

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

Changes to approved plans that would amend the Tentative Map shall be submitted to and approved by the Zoning Administrator prior to recordation of the Parcel Map. The project is approved pursuant to the Subdivision Regulations of the Municipal Code only and shall comply with all other applicable codes, requirements, regulations and guidelines, including but not limited to those imposed by the City's Building Services Division and the City's Fire Marshal. The proposal shall specifically comply with the conditions required by Philip Basada of the Fire Prevention Bureau per the attached memorandum, dated January 5, 2006 and with the items outlined in the attached letter from David Mog of Engineering Services on September 28, 2005.

4. Modification of Conditions or Revocation

a. Ongoing.

The City Planning Commission reserves the right, after notice and public hearing, to alter Conditions of Approval or revoke this conditional use permit if it is found that the approved use or facility is violating any of the Conditions of Approval, any applicable codes, requirements, regulation, guideline or causing a public nuisance.

5. Recording of Conditions of Approval

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

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

6. Reproduction of Conditions on Building Plans

a. Prior to issuance of building permit.

These conditions of approval shall be reproduced on page one of any plans submitted for a building permit for this project.

7. Indemnification

a. Ongoing.

- a. Within ten (10) business days of the filing of a claim, action or proceeding that is subject to this provision, the applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes this condition of approval.

The applicant shall defend (with counsel reasonably acceptable to the City), indemnify, and hold harmless the City of Oakland, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and their respective agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Oakland, Oakland Redevelopment Agency, Oakland City Planning Commission and their respective agents, officers or employees to attack, set aside, void or annul, an approval by the City of Oakland, the Planning and Zoning Division, Oakland City Planning Commission, the City of Oakland Redevelopment Agency or City Council relating to this project. The City shall promptly notify the applicant of any claim, action or proceeding and the City shall cooperate fully in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding.

8. Litter Control

a. Prior to issuance of building permit

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

- Distribution of proposed locations of litter receptacles on site and in the public right of way. The design and location of litter receptacles shall be consistent and coordinated with the City's street furniture program.
- A management schedule for keeping the premises and surrounding area free from litter originating from the operation of the commercial activities; and
- Daily sweeping and trash collection of the premises, the public sidewalk and the gutter area of the public street immediately adjacent to the project.

9. Electrical Facilities

a. Prior to installation.

All new electric and telephone facilities, fire alarm conduits, streetlight wiring, and similar facilities shall be placed underground. Electric and telephone facilities shall be installed in accordance with standard specifications of the servicing utilities. Street lighting and fire alarm facilities shall be installed in accordance with the standard specifications of the Building Services Department.

10. Improvements in the Public Right-of-Way

a. Prior to issuance of building permit for work in the public right-of-way

The applicant shall submit Public Improvement Plans for adjacent public rights-of-way showing all proposed improvements and compliance with conditions of approval and City requirements including but not limited to curbs, gutters, sewer laterals, storm drains, street trees, paving details, locations of transformers and other above ground utility structures, the design specifications locations of facilities required by the East Bay Municipal Utility District (EBMUD), and accessibility improvements compliant with applicable standards and any other improvements or requirements for the project as provided for in this approval. Encroachment permits shall be obtained as necessary for any applicable improvements.

The applicant shall submit public improvement plans that that comply City specifications including the installation of the downtown historic street lights on at least the San Pablo Avenue frontage. Review and confirmation of the street trees by the City's Parks and Recreation Division is required as part of this condition.

The Planning and Zoning Division and the Public Works Agency will review and approve designs and specifications for the improvements. Improvements shall be completed prior to the issuance of certificate of occupancy.

SPECIFIC PROJECT CONDITIONS

11. Tree Removal Permit

a. Prior to receiving building permit

The applicant must secure a tree removal permit, and abide by the conditions of that permit, prior to removal of any trees located on the project site or in the public right-of-way adjacent to the project.

12. Final Design Review

a. Prior to issuance of building permit.

As the design development of the building proceeds, the design elements listed below shall be revised and shall be submitted for review and approval by the Planning Director prior to issuance of the building permit. Only high quality materials will be approved. The Planning Director may exercise his/her standard authority to refer the design revisions to an appointed sub-committee of the Planning Commission or to the Planning Commission.

- a. The applicant shall submit the final materials and colors for staff's review.
- b. Provide staff with an updated materials board which includes a full-scale mock up of the panels and the depth of the reveals and construction joints. The applicant will also submit a full-scale mock up of the way the materials turn the corners of the building and these will be of substantial thickness as determined by staff.
- c. Provide details or "cut-sheet" of the garage and service doors for staff review of the base of the building along all three street facades including but not limited to the storefronts and awnings, green wall screen over the parking garage, the entries to the parking garage, doors for the loading docks. High quality, durable materials such as stone, brick and tile (excluding EFIS and Drivit) shall be used on the ground floor, from the sidewalk up to at least the height of the awnings. The details shall ensure that the base of the building is contextual and complimentary to buildings located along Broadway and in the Produce District.
- d. The applicant shall ensure that the vines and planting used to screen the parking will be mature plants (at least 15 gallon); are in an amount acceptable to cover the openings, and will be chosen with the amount of light conditions and variation in color in mind. Staff will

review the landscape and planting plan for these items. The applicant shall submit details of where the planters will be located, and these will not be visible on the outside of the façade. The applicant will ensure that the vines are woven into the trellis structure prior to occupancy and not just attached to the outside. The applicant will include in the CC&R's that the planters be irrigated and that any plants that do not survive will be removed within an acceptable period of time (1 month) and will be replaced in kind and also woven into the trellis. Provide staff with a sample of the trellis for review.

- e. The applicant will submit information that affirms that any metal treatment used on the building will be coated or sealed to prevent rusting.
- f. The applicant must provide staff with cut sheets for the all windows and details showing the window profiles which includes the aluminum panels. The applicant shall provide a minimum 2" window recess. Any punched window openings shall have a minimum 3" recess from the plane of the immediately adjacent façade.
- g. Elevation facing Franklin Street: Add detail to the blank façade which faces Franklin Street where windows and other openings are prohibited (because the lower floors of the proposed building are located on the property line). Add detail such as scoring, recesses, color change and patterning to articulate and give scale to the blank portions of this façade. This will be submitted to staff for review.
- h. Enclose all rooftop mechanical equipment. Design the enclosure and select its color to be integral with the overall architectural design
- i. The applicant shall submit the locations of any exterior mechanical equipment including generators and vaults. These locations will be approved by the staff and will be adequately screened and buffered from view.
- j. At the pedestrian level, the building's awnings will correspond to those in the adjacent Produce District.

13. Covenants, Conditions, and Restrictions & Homeowner's Association

a. Prior to recordation of the Final Map

The Covenants, Conditions and Restrictions (CC&Rs) for the units shall be submitted to the Planning and Zoning Division for review. The CC&Rs shall provide for the establishment of a non-profit homeowners association for the maintenance and operation of all on-site sidewalks, pathways, common open space and all common landscaping, driveways, and other facilities, in accordance with approved plans. Membership in the association shall be made a condition of ownership. The developer shall be a member of such association until all units are sold. The Covenants, Conditions and Restrictions (CC&Rs) for the units shall be submitted to the Planning and Zoning Division for review to affirm that they include the provisions listed here.

- a. Acknowledgement that many and specific parking spaces are deficient in additional width. (Due to column or wall locations.)
- b. Require purchasers to acknowledge that maneuverability of several of the parking spaces within the garage may be affected by the location of columns or walls and that due care and caution should be used.
- c. Include that the planters for the garage trellis be irrigated and that any plants that do not survive will be removed within an acceptable period of time (1 month) and will be replaced in kind and also woven into the trellis.

14. Master Signage Program

a. Prior to sign permit

The project applicant shall submit a master signage plan for review per the Planning and Zoning regulations, including but not limited to location, dimensions, materials and colors.

15. Irrigation Plan and Landscape Maintenance

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

An irrigation plan shall be prepared by a licensed landscape architect or other qualified person and submitted in conjunction with the demolition, grading, or a building permit submittal. All landscape and irrigation shall be installed prior to final demolition, grading, or a building permit inspection.

b. *Ongoing*

All project landscaping shall be permanently maintained in a neat, safe, and healthy condition.

16. Reduced Water Usage

a. *Prior to issuance of the building permits for the mechanical system*

The project sponsor shall confer with East Bay Municipal Utility District (EBMUD) to examine incorporating water saving techniques such as dual piping for recycled water into the final design of the mixed-use project.

17. Bus Shelter

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

The project sponsor shall fund the furnishing, installation, maintenance, repair and replacement of a new bus shelter to be located on the public sidewalk on the Broadway frontage of the project site. This shall be coordinated with the City of Oakland Public Works Agency. This shelter shall be in addition to those shelters provided by Clear Channel Adshel through the City's Street Furniture program but shall be of the same exact type and design. This shelter shall contain only public service information and shall not contain advertising panels unless Adshel requires the shelter to contain advertising, in which case, another shelter in the program will be without advertising.

18. Securing Acknowledgement from Future Residents of the Nature of Adjacent and Nearby Land Uses

a. *Ongoing*

The project sponsor shall ensure that future residents sign a notice acknowledging that they are aware of and accept the possible noise levels related to the nighttime entertainment district and produce district located adjacent to the project site.

19. Compliance with Historic Preservation Policy 3.7 (*Property Relocation Rather than Demolition*)

a. *Prior to issuance of the demolition permit*

The project sponsor shall advertise the availability of the building located at 228 Broadway for relocation, in a newspaper with general circulation and post a sign on the building advertising the availability. The building shall be made available at no cost. The project sponsor shall not be responsible for the cost of moving the building. The project sponsor shall make the building available for relocation for a reasonable period.

20. Controlling surface drainage throughout Construction

a. *Ongoing throughout construction*

The unpaved areas of the project site shall be graded to control surface drainage and redirect surface water away from public streets and sidewalks during demolition, excavation and construction.

21. Pre-construction Meeting with the Neighborhood

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

A preconstruction meeting shall be held with the immediate neighbors within 300' of the job site and the Jack London Neighborhood Association to discuss neighborhood notification, location of staging areas, major deliveries, detours and lane closures etc. Both Planning staff and the building coordinator shall attend this meeting.

22. Pre-construction Meeting with the City

a. Prior to issuance of a grading, demolition, or building permit.

A preconstruction meeting shall be held with the job inspectors and the general contractor/on-site project manager with the City's project building coordinator to confirm that conditions of approval that must be completed prior to issuance of a grading, demolition, or building permit have been completed (including pre-construction meeting with neighborhood, construction hours, neighborhood notification, posted signs, etc.). The applicant shall coordinate and schedule this meeting with City staff.

23. Mitigation Monitoring and Reporting Program

a. Ongoing.

The following mitigation measures shall be incorporated into the project. The measures are taken from the environmental impact report and have been revised to provide more specificity and reflect current City policy. For each measure, this Mitigation Monitoring and Reporting Program (MMRP) indicates the entity (generally, an agency or department within the City of Oakland) that is responsible for carrying out the measure ("Responsible Implementing Entity"); the actions necessary to ensure compliance with the applicable measure ("Monitoring Action(s)") and the entity responsible for monitoring this compliance ("Monitoring Responsibility"); and the time frame during which monitoring must occur ("Monitoring Timeframe"). Changes from the original Mitigation Monitoring and Reporting Program are indicated in underlined type.

MITIGATION MONITORING AND REPORTING PLAN

**24. Develop and implement an archaeological resources treatment plan.
(Mitigation Measure 3B-1)**

The project sponsor shall submit for review and approval and then implement an Archaeological Resources Treatment Plan that includes a site-specific history based on archival research, a prediction of the types of resources that might be identified, and a research design that will identify important questions that the archaeological resources may address. In addition, the plan will include an archaeological excavation program to identify the presence or absence of archaeological deposits and evaluate the significance of those deposits based on their ability to address important questions defined in the research design. The excavation program defined in the plan will also allow for the retrieval of important archaeological data from the site between the time of demolition and when the project is constructed.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Planning and Zoning Division and Building Services Division.

Monitoring Timeframe: Approval of the Plan shall be completed prior to issuance of the demolition and/or grading permit. Implementation of the Plan shall be ongoing during demolition, grading and trenching operations.

Note: Conditions 25 and 26 (Mitigation Measures 3.C-1a and 3c-1b are deleted because they only applied to the mixed-use office/residential project and not the residential alternative.

25. Implement a Transportation Demand Management (TDM) plan intended to reduce parking demand to the maximum feasible extent.

~~(Mitigation Measure 3C-1a) This condition of approval/mitigation measure is applicable to the Revised Mixed Use project, not the Primarily Residential project.~~

~~The project sponsor shall develop, and submit for review and approval, a Transportation Demand Management Plan to reduce the parking demand to the maximum feasible extent. The plan shall be approved by the City prior to issuance of the certificate of occupancy. Additionally, the plan shall be reviewed by a professional traffic engineer 1 year after certification of occupancy is issued, with funding provided by the project sponsor. The review, along with the recommendations to revise the plan's effectiveness, shall be submitted to the City for its review and approval. The following measures shall be considered in the TDM plan:~~

- ~~1. Assign only one specific (numbered, perhaps) parking space to each unit, and prohibit residents from parking in any space except their own.~~
- ~~2. Inform residents that there is limited metered, time limited parking on street for several blocks around the project location, and indicate that they are therefore strongly discouraged from owning more than one automobile that they might wish to park at or near the project.~~
- ~~3. Provide current transit information to residents, either by direct delivery or at a convenient location, such as a kiosk near the elevators.~~
- ~~4. The mitigation measures associated with resident parking should be accomplished via the usual sales documentation (e.g., "CCR's" or homeowner's association contracts) for the units.~~
- ~~5. The project applicant will implement a shuttle service that will operate during a.m. and p.m. peak periods and provide direct links between the Lake Merritt and 12th Street BART stations and the project site.~~
- ~~6. Provide tenants with general information about parking in the area. Specifically, leases should include as statement informing tenants that, as is typical in most urban downtown areas, parking is extremely scarce and that employees are advised to use public transit instead of personal automobiles in getting to and from the project site.~~
- ~~7. Provide specific information about transit. To provide information about transit, the building management and/or on-site security staff should maintain a reasonable current supply of AC Transit, BART, and ferry schedules. Additionally, at least once per year, perhaps as par of normal correspondence between management and lessees, the building management should reiterate its recommendation for tenants to take transit to the site.~~
- ~~8. Designate 10% of the office related parking spaces for carpool parking only. The building management should be responsible for designing a method of enforcing the carpool parking.~~
- ~~9. Implement a valet parking system during daytime weekday use.~~
- ~~10. Price parking within leases or by other means to help limit the number of tenants who drive to the site.~~
- ~~11. AC Transit should review the plan prior to its approval by the City.~~

- ~~12. The plan should provide transit tickets and passes to building occupants at a free or reduced rate.~~
- ~~13. Require the applicant to provide funds to support transit service which would be the most responsive and cost effective for residents and employees in the building. This could be a new service or an augmentation of an existing service. The transit services to be provided by these funds should be determined by the City, in consultation with AC Transit, BART, and the Port.~~
- ~~14. The applicant should make information available to residents about carsharing programs, such as City Carshare. It may be appropriate to establish a City Carshare pod at the site.~~

~~**Monitoring Responsibility:** City of Oakland, Community and Economic Development Agency (CEDA), Planning and Zoning Division and Traffic Engineering Division.~~

~~**Monitoring Timeframe:** Approval of the Plan shall be completed prior to issuance of the certificate of occupancy for the office portion of the Revised Mixed Use project. Submittal of a report reviewing the effectiveness of the plan is required fourteen months after issuance of the certificate of occupancy. Implementation of the TDM Plan is ongoing throughout operation of the building.~~

26. Implement a Shared Parking Management System

~~(Mitigation Measure 3C-1b) This condition of approval/mitigation measure is applicable to the Revised Mixed Use project, not the Primarily Residential project.~~

~~The project sponsor shall develop and submit for review and approval, and then implement a Shared Parking Management System. Shared Parking is defined as parking space that can be used to serve two or more individual land uses without conflict or encroachment (Urban Land Institute 1987). Because peak demand for residential parking occurs during the overnight period, there could be opportunities for the project to reduce its total demand by implementing shared parking operations. A shared parking management plan shall be established for the project, under which a user of the project's commercial spaces could use a parking space during the day, and a resident could use that same space during the evening/night when the commercial uses are closed, then the total parking demand of 304 spaces, and resulting shortfall of 75 spaces, would be reduced.~~

~~**Monitoring Responsibility:** City of Oakland, Community and Economic Development Agency (CEDA), Planning and Zoning Division and Traffic Engineering Division.~~

~~**Monitoring Timeframe:** Approval of the Plan for the Shared Parking Management System shall be completed prior to issuance of the certificate of occupancy for the Revised Mixed Use project. Implementation of the Shared Parking Management Plan is ongoing throughout operation of the building.~~

27. Implement a Traffic Control Plan

(Mitigation Measure 3C-2)

The project applicant shall prepare and implement a Traffic Control Plan (TCP) to reduce, to the maximum feasible extent, traffic congestion; the impacts of construction vehicles on regional and local roadways; the effects of parking demand by construction workers during construction of this project; and other nearby projects that could be simultaneously under construction. The building coordinator must attend this meeting. The TCP will address items including but not limited to: construction truck routes, street closures, parking for construction workers and staff, access to the

project site; and lane closures or parking restrictions that may require coordination with and/or approval by the City and Caltrans. The TCP will be submitted to Traffic Engineering and Parking Division of the Oakland Public Works Agency (PWA) and other appropriate City of Oakland agencies for review and approval prior to the issuance of any building, demolition or grading permits. In addition, as determined by City staff, the project applicant will be responsible for repairing any damage to the pavement that is caused by construction vehicles and for restoring the pavement to pre-construction conditions. Construction traffic will be restricted to designated truck routes within the City. The TCP will include a signage program for all truck routes serving the site during construction. A signage program is a plan that details the location and types of truck route signs that would be installed during construction to direct trucks to and from the site. Construction-related vehicle trips will be restricted to daytime hours and, to the extent feasible, will be minimized during the a.m. and p.m. peak hours.

As part of the TCP to be approved prior to the issuance of any building, demolition or grading permits, the contractor and applicant will identify the locations of the off-site parking space to be used during the construction of the project. The project applicant shall provide off-street parking for construction workers and staff throughout all phases of construction. If there is insufficient parking available within walking distance of the site for construction workers at the time construction is scheduled to begin, the project applicant shall provide a shuttle bus or other appropriate system to transfer construction workers and staff between the satellite parking areas and the construction site.

Furthermore, the TCP will include:

- 1) A set of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak traffic hours, detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes. In addition, the information shall include a construction-staging plan for any right-of-way.
- 2) Notification procedures for adjacent property owners and public safety personnel regarding when major deliveries, detours and lane closures will occur.
- 3) Provision for accommodation of pedestrian flow.
- 4) Location of construction staging areas.
- 5) Provisions for monitoring surface streets used for haul routes so that any damage to the street paving and debris attributable to the haul trucks can be identified and corrected.
- 6) A temporary construction fence to contain debris and material and to secure the site.
- 7) Provisions for removal of trash generated by project construction activity. The applicant shall ensure that debris and garbage is collected and removed from the site daily.
- 8) At least one copy of the approved above referenced plans that include the Approval Letter and the Conditions of approval for this project shall be available for review at the job at all times.

- 9) All work shall apply the “Best Management Practices” (BMPs) for the construction industry, including BMPs for dust, erosion, and sedimentation abatement per Section 15.04 of the Oakland Municipal Code, as well as all specific construction-related conditions of approval attached to this project.
- 10) Dust control measures as set forth in Mitigation Measure 29, below.
- 11) Noise control measures as set forth in Mitigation Measure No. 30-31, below.
- 12) A process for responding to, and tracking, complaints pertaining to construction activity, including the identification of an on-site complaint manager. The manager shall determine the cause of the complaints and shall take prompt action to correct the problem. The Planning and Zoning Division shall be informed who the Manager is prior to the issuance of the grading permit

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Planning and Zoning Division and Traffic Engineering Division.

Monitoring Timeframe: Approval of the Plan shall be completed prior to issuance of any building permits for the site, including grading and demolition permits. Plan implementation is ongoing throughout construction.

Note: This Condition #28 (Mitigation Measure 3C-4) was deleted since the more recent Oak to Ninth EIR and the 200-228 Broadway Addendum concluded that the Level of Service at this intersection was a B and would continue to be a B in the cumulative condition. Therefore, this impact is now considered less than significant.

~~**28. Assist with modifying the Signal Timing at 5th and Jackson Streets
(Mitigation Measure 3C-4)**~~

~~The project sponsor shall work with Caltrans and coordinate with the City of Oakland to modify the traffic signal phasing/ timing during the p.m. peak periods at 5th and Jackson Streets, to provide an advance phase for southbound traffic (i.e., allowing left turns to be made without conflict with opposing northbound traffic), and to optimize the amount of Green time per signal phase. The project sponsor shall fund its fair share of this measure.~~

~~**Monitoring Responsibility:** City of Oakland, Community and Economic Development Agency (CEDA), Planning and Zoning Division and Traffic Engineering Division.~~

~~**Monitoring Timeframe:** Payment of a fair share of this measure shall be complete prior to issuance of the certificate of occupancy.~~

**29. Provide Bicycle Parking on the project site
(Mitigation Measure 3C-5)**

The project sponsor will create an adequate number of short and long-term bicycle parking spaces, as determined by the City, in locations both on-site and in the public sidewalk adjacent to the project.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Planning and Zoning Division and Traffic Engineering Division.

Monitoring Timeframe: Approval of the location of the bike parking shall be completed prior to issuance of the building permit for the core and shell of the building. Installation of the bike parking must be complete before issuance of the certificate of occupancy.

**30. Divert Construction Waste and Operational Waste
(Mitigation Measures 3D-1 and 3D-2)**

Prior to issuance of any building permits including the grading and/or demolition permit or, the project applicant will submit a construction waste diversion plan and operational waste reduction plan for review and approval by the Public Works Agency. The plan will specify the methods by which the development will make a good faith effort to divert 50% of the construction waste, including demolition materials, generated by the proposed project from landfill disposal. After approval of the plan, the project applicant will implement the plan. The operational diversion plan will specify the methods by which the development will make a good faith effort to divert 50% of the solid waste generated by operation of the proposed project from landfill disposal. After approval of the plan, the project applicant will implement the plan.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Planning and Zoning Division and Environmental Services Division of Public Works.

Monitoring Timeframe: Approval of the Plan is required prior to issuance of any building permit including the demolition or grading permits. Implementation of the plan is ongoing throughout construction and during operation of the building.

**31. Sewer and Stormwater Capacity
(Mitigation Measures 3D-3)**

Prior to completing the final design for the project's sewer service, confirmation of the City's surrounding stormwater and sanitary sewer system capacity and state of repair shall be completed by a qualified civil engineer with funding from the project sponsor. The project sponsor shall be required to pay mitigation fees to improve stormwater and sanitary sewer infrastructure if required by the City. Improvements to the existing sanitary sewer collection system shall specifically include, but are not limited to, mechanisms to control or minimize increases in infiltration/inflow associated with the proposed project. Additionally, the project sponsor shall be responsible for payment of the required installation or hook-up fees to the affected service providers.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Planning and Zoning Division, Building Services Division and Design and Construction Division of Public Works Agency.

Monitoring Timeframe: Submit report on the capacity and state of repair of the existing storm and sanitary system prior to issuance of the permit for work in the public right-of-way (the P-Job permit). Fees, if required, shall be paid as determined by the Building Official, and must be paid prior to issuance of the certificate of occupancy.

**32. Utilize "Green Building" Practices
(Mitigation Measures 3D-4)**

The project developer will be required to utilize "Green Building" practices in constructing the project. Before the issuance of building permits, the project developer shall submit to City staff the green building provisions that would be incorporated into the proposed project's construction. The

project developer shall then meet with City staff to review these provisions. The project developer shall modify the proposed measures, if, following this review, there are other, more cost effective measures which can feasibly be done for comparable cost as those initially proposed. Prior to construction, the final list of green building measures shall be provided to the City for information. Proposed measure will include the following elements:

1. The project developer shall implement the following measures with the construction of the structures covered by this approval so that the owners can install roof-mounted photovoltaic systems in the future:

- a. Electrical conduit and cable shall be installed from the roof/attic areas to the buildings' main electrical panels.
- b. Roof trusses shall be "engineered" to handle an additional load of five pounds (5 lbs.) per sf beyond that anticipated for roofing.
- c. An area shall be provided near the electrical panel for the "inverter" required to convert the direct current output from the photovoltaic panels to alternating current.
- d. A bi-directional electrical meter shall be installed.

These measures shall be shown on the building permit plan set submitted to the Planning Director for review and approval before issuance of the first building permit.

- 2. The residential units shall be constructed to encourage telecommuting by providing as an option telecommunications infrastructure consistent with state-of-the-art methods, e.g., cabling for DSL service, wiring for total room access, etc. The project developer shall submit with the building permit application those measures included in the residential construction for review and approval by the Planning Director before issuance of the first building permit.
- 3. Only natural gas burning fireplaces or USEPA-approved wood/pellet burning stoves shall be permitted in the proposed residential units.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Planning and Zoning Division and Building Services Division.

Monitoring Timeframe: Prior to issuance of the building permit, other than the demolition and grading permit.

**33. Implement dust and vehicle emissions control measures.
(Mitigation Measures 3E-1)**

The project sponsor will implement and maintain the following basic control measures to control dust emissions during construction:

- a. Water all active construction areas at least twice daily, or more as required to control dust.
- b. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard.

- c. Pave, apply water daily to, or apply (nontoxic) soil stabilizers on, all unpaved access roads, parking areas, and staging areas at construction sites.
- d. Sweep (with water sweepers) all paved access roads, parking areas, and staging areas at construction sites, as needed.
- e. Sweep adjacent public rights of way and streets (with water sweepers) daily if soil or debris is visible on adjacent public streets, as needed.
- f. Hydroseed or apply (nontoxic) soil stabilizers to inactive construction areas (previously graded areas that will be inactive for 10 days or more).
- g. Enclose, cover, water twice daily to, or apply (nontoxic) soil binders to exposed stockpiles (dirt and sand).
- h. Install sandbags or other erosion control measures to prevent silt runoff to public roadways, as needed.
- i. Cover stockpiles of debris, soils, or other material if blown by the wind;
- j. Replant vegetation in disturbed areas as quickly as possible.
- k. Idling of internal combustion engines shall, to the greatest extent feasible, be held to an absolute minimum.
- j. Construction equipment shall be properly maintained and tuned to minimize exhaust emissions.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Building Services Division.

Monitoring Timeframe: Ongoing throughout demolition, grading and all phases of construction.

**34. Employ noise-reducing construction practices for pile driving or other extreme noise-generating activity (90 dBA or above)
(Mitigation Measures 3F-1)**

To reduce pile-driving construction noise impacts, construction contractors shall implement the following measures:

- a. ~~Pile driving or other extreme noise generating activity (90 dBA or above) shall be limited to between 8:00 a.m. to 4:00 p.m., Monday through Friday, with no pile driving or other extreme noise generating activity permitted between 12:30 and 1:30 p.m., or other mid-day hour as established and noticed. Pile driving on Saturdays will be evaluated on a case by case basis, with criteria including the proximity of residential uses and a survey of residents and businesses preferences for whether Saturday activity is acceptable if the overall duration of the pile driving is shortened. At least 30 days written notice to surrounding residents and businesses (minimum of 300 foot radius) shall be provided of proposed pile-driving activity and its estimated duration.~~
- b. To further mitigate potential pile-driving and/or other extreme noise generating construction impacts, site-specific noise attenuation measures shall be further developed into a noise reduction

plan to ensure that the maximum feasible noise attenuation is achieved (feasibility shall be as defined by CEQA). This plan shall be submitted to the City for review and approval and then implemented under the supervision of a qualified acoustical consultant. This plan shall be based on the final design of the project. A third-party peer review, paid for by the applicant, shall be required to assist the City in evaluating the feasibility and effectiveness of the noise reduction plan submitted by the applicant. A community meeting shall be held after the peer review but prior to approval of a noise reduction plan by the City. A special inspection deposit is required to ensure compliance with the noise reduction plan. The amount of the deposit shall be determined by the Building Official, and the deposit shall be submitted by the project sponsor concurrent with submittal of the noise reduction plan. The noise reduction plan shall include as many of the following control strategies as feasible, but not be limited to, ~~an evaluation of the following measures~~ and shall be implemented prior to any required pile driving activities.

1. Implement “Quiet” pile-driving technology, where feasible, considering geotechnical, structural requirements, and other conditions.
2. Erect temporary plywood noise barriers around the entire construction site.
3. Utilize noise control blankets on the proposed building structure as it is erected to reduce noise emission from the site.
4. Evaluate the feasibility of temporarily improving the noise reduction capability of adjacent or nearby buildings, by the use of sound blankets for example, if acceptable to adjacent or nearby users.
5. Monitor the effectiveness of noise attenuation shall be evaluated by taking noise measurements during construction.
6. A process with the following components shall be established for responding to and tracking complaints pertaining to pile-driving construction noise, including:
 - a. A procedure for notifying City Building Division staff and Oakland Police Department;
 - b. A list of telephone numbers (during regular construction hours and off-hours);
 - c. A plan for posting signs on-site pertaining to complaint procedures and who to notify in the event of a problem;
 - d. Designation of a construction complaint manager for the project; and
 - e. Notification of neighbors within 300 feet of the project construction area at least 30 days in advance of pile-driving activities.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Planning and Zoning Division and Building Services Division.

Monitoring Timeframe: Submittal of Noise Reduction Plan is required prior to issuance of any building permit, including grading and demolition permits. Implementation of the Plan is ongoing throughout construction when extreme noise generating activities (90dBa and above) are underway.

- 35. Employ standard noise-reducing construction practices.
(Mitigation Measures 3F-2)**

To reduce construction noise impacts, construction contractors shall implement the following measures:

- a. Posted signs at the construction site will include permitted construction days and hours, a day and evening contact number for the job site and a day and evening contact number for the City in the event of problems.
- b. ~~On an as needed basis, a rotating stand-by system for building inspection staff to respond to complaints during off hours and weekends will be established. The staff will be available by pager.~~ The project sponsor shall be required to pay for the staff time of the on-call special inspector(s) as stipulated by the prevailing labor management agreement, or as directed by the Building Official. Prior to issuing any construction-related permits (including demolition and grading permits), the project sponsor shall establish a deposit, in an amount determined by the Building Official, with the Building Services Division to fund a special inspector who shall be available as needed, as determined by the Building Official or the Planning Director. If the deposited amount proves to be insufficient, then within five (5) calendar days of a written request from the Building Official/Planning Director to provide additional funding, the project sponsor shall deposit said amount with the Building Services Division.
- c. An on-site complaint and enforcement manager will be designated to respond to and track complaints. A pre-construction meeting with the job inspectors and the general contractor/on-site project manager will be held, to confirm that noise mitigation measures and practices are completed prior to the issuance of a demolition, grading or building permit (including construction hours, neighborhood notification, posted signs, etc).
- d. Construction hours will be limited to be between 7:00 a.m. to 7:00 p.m., Monday through Friday. No construction activities shall be allowed on Saturdays until after the building is enclosed without prior authorization of the Building Services and Planning Divisions of the Community and Economic Development Agency, and then only within the interior of the building with the doors and windows closed. Saturday construction activity prior to the building being enclosed shall be evaluated on a case by case basis, with criteria including the proximity of residential and business uses and a survey of residents and business preferences for whether Saturday activity is acceptable if the overall duration of construction is shortened. No construction activity shall take place on Sundays or federal holidays. For clarification, no construction includes but is not limited to: truck idling, moving equipment (including trucks, elevators, etc) or materials, deliveries, and construction meetings either on or off-site.
- e. Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g. improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures, and acoustically attenuating shields, or shrouds) wherever feasible.
- f. Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. However where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used. External jackets on the tools themselves shall be used, where feasible. Quieter procedures, such as drills instead of impact equipment, shall be used where feasible.

- g. Stationary noise sources shall be located as far from sensitive receptors as possible, and they shall be muffled and enclosed within temporary sheds, or insulation barriers or other measures shall be incorporated to the extent feasible.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Building Services Division.

Monitoring Timeframe: Ongoing throughout construction.

**36. Comply with the California Building Code regarding Noise levels within Residential Units.
(Mitigation Measures 3F-3)**

The project applicant will comply with the California Noise Insulation Standards by implementing the following measures:

- a. As part of the final building plans submitted for the Building Permit, the project applicant shall incorporate special acoustical treatment in the building design to reduce interior noise in occupied dwelling units to 45 Ldn or less. Treatments may include, but are not limited to, use of acoustically rated windows, and specialized building materials and construction methods. If windows must be closed to achieve this decibel rating, the dwelling units will be provided with forced fresh-air ventilation.
- b. The project applicant will retain a qualified acoustical consultant to evaluate and recommend specific acoustical and building layout treatments to reduce noise at outdoor activity areas to 60 Ldn or less. Treatments could include, but are not limited to, placement of primary building structures or other noise barriers between outdoor activity areas and major roadways in the area.
- c. As part of the building permit application, the project applicant will specify and confirm the specific treatments to be incorporated into the project design to achieve the exterior and interior standards. The project applicant will incorporate the recommended acoustical treatments into the project design and construction of the building and prepare a report demonstrating that exterior and interior goals of 60 Ldn and 45 Ldn, respectively, have been achieved.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Building Services Division.

Monitoring Timeframe: Prior to issuance of the building permit for the shell (façade) of the building.

Note: Condition #37 (Mitigation Measure 3-c-1) was deleted because the current project has been redesigned to address this issue.

**37. ~~Modify the building massing to improve its compatibility with surroundings.
(Mitigation Measures 3G-1)~~**

~~Height and Massing: The building design shall be revised to incorporate a stepback along the Broadway, 2nd, and 3rd Street frontage of the building (other than at the corner of Broadway and 3rd Street) so that the height of the building mass at the street property lines is approximately 35' - 40' in height. Above this height, the building mass would step back enough to visually separate the high-rise tower from the low-rise base.~~

~~**Monitoring Responsibility:** City of Oakland, Community and Economic Development Agency (CEDA), Planning and Zoning Division.~~

~~**Monitoring Timeframe:** Prior to issuance of the building permit for the Core (structure) of the building.~~

**38. Develop and implement an exterior lighting plan reviewed and approved by the City.
(Mitigation Measures 3G-2)**

The project applicant will submit a plan for exterior lighting and any lighting for the parking garage that is visible from the exterior of the building for review and approval by the City, with referral to other City departments as appropriate. The plan shall include the design and location of all lighting fixtures or standards. The plan shall indicate lighting fixtures that are adequately shielded to a point below the light bulb and reflector. The plan will provide for the selection and location of fixtures that will prevent unnecessary glare to sensitive receptors. The project applicant will also submit choices of exterior building materials, colors, and glazing selections to City for review and approval. The project applicant will avoid using reflective glass. All lighting shall be architecturally integrated into the site.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Planning and Zoning Division.

Monitoring Timeframe: Prior to issuance of the building permit for the shell (façade) of the building.

**39. Confirm the absence of petroleum related chemicals in the soil.
(Mitigation Measure 3I-1a)**

The project applicant shall take reasonable steps to confirm the absence of petroleum-related chemicals. If petroleum-related chemicals are present, the project applicant shall consult with the Alameda County Health Department and/or other applicable regulatory agencies regarding the potential residual petroleum-impacted soil and groundwater related to the historic foundry use and shall implement the following measures as required. If petroleum related chemicals are present, then prior to development, the project applicant would have to demonstrate to the Alameda County Health Department (ACHD) that a sufficient level of investigation has previously been completed. This could, at a minimum, include preparation of a comprehensive summary report that details each of the past soil and groundwater studies. Depending on the response of the ACHD and its position regarding the project site, the project applicant could be required to perform additional studies to fill any outstanding data gaps. Based on the decision of the ACHD, the project applicant could be required to perform a health-based risk assessment to address potential vapor hazards. The risk assessment would establish appropriate site-specific cleanup levels for petroleum hydrocarbons in soil or groundwater, or provide the basis for design of appropriate structural mitigation measures.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Planning and Zoning Division and Environmental Services Division.

Monitoring Timeframe: Prior to issuance of any building permit including grading and demolition permits.

**40. Implement an environmental site health and safety plan if petroleum-related chemicals are present
(Mitigation Measure 3I-1b)**

If petroleum-related chemicals are present, then the project sponsor shall prepare and implement an environmental site health and safety plan, to address worker safety hazards that may arise during construction activities related to petroleum-related chemicals. If petroleum-related chemicals are present, the contractor would be required to comply with all applicable OSHA regulations regarding worker safety, consistent with standard City practices. The OSHA-specified method of compliance would depend on the severity of impact to soil or groundwater. Appropriate measures could include a vapor monitoring program, eye protection, and specific handling instructions.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Building Services Division.

Monitoring Timeframe: Safety Plan approved prior to issuance of any building permit including grading and demolition permits and implemented throughout construction.

41. Comply with all applicable regulatory agency requirements regarding the storage and transportation of hydrocarbon-impacted soil and groundwater. (Mitigation Measure 3I-1c)

If petroleum-related chemicals are present, then in accordance with standard practices, the project applicant shall comply with all applicable regulatory agency requirements, including those set forth by Alameda County and the California DTSC regulations regarding hydrocarbon-impacted soil and groundwater. Soil generated by construction activities would be stockpiled onsite and sampled prior to disposal at an appropriate facility or potential reuse at the project site. Groundwater generated during construction dewatering would be contained and transported offsite for disposal at an appropriate facility, or treated prior to discharge into the sanitary sewer to levels acceptable to the East Bay Municipal Utilities District.

Monitoring Responsibility: City of Oakland, Community and Economic Development Agency (CEDA), Building Services Division and Environmental Services Division.

Monitoring Timeframe: Ongoing throughout grading, and during phases of construction that involve the hydrocarbon-impacted soil and groundwater.

Tentative Parcel Map Conditions

42. Project Approval

a. Ongoing

Development of the project is subject to approval pursuant to Case File CMDV05-487 and the conditions made part of that approval.

43. Recordation of the Final Map for Approved Project

a. For condominium purposes the final map shall be recorded prior to the certificate of occupancy for the 134 units pursuant to Case File REV05-013. The applicant shall discuss the recordation with Building Services, as this department may have a different timeframe for final map submittal.

APPROVED BY: City Planning Commission: _____ (date) _____ (vote)
City Council: _____ (date) _____ (vote)