

Location:	2538 Telegraph Avenue (APNs 009-0683-021-01 and 009-0683-024-00).
Proposal:	Construction of an 7-story, mixed-use building containing up to 97 residential units and 8,800 square feet of retail on the ground floor. Incorporates parking garage with 116 parking spaces.
Project sponsor:	2538 Telegraph, LLC.
Owner:	2538 Telegraph, LLC
Case File Number(s):	CMDV05-511
Planning Permits Required:	Major Conditional Use Permit for large-scale development over 100,000 square feet of new floor area; Interim Conditional Use Permit for increased density; Parking variances for commercial deficit and reduced dimensional standards; Design Review (PMW and TPM to be processed administratively at a later date)
General Plan:	Community Commercial
Zoning:	C-45 Community Shopping Commercial Zone; C-60 City Service Commercial Zone
Environmental Determination:	Infill exemption, CEQA Section 15332.
Historic Status:	Not historic: Not a PDHP; OCHS Rating*2-; Upper Telegraph Avenue non-contributor
Service Delivery District:	2
City Council District:	3-Nadel
Status:	Design Review on November 16, 2005 before DRC
Action to be Taken:	Consider approval of Major CUP.
Finality of Decision:	Appealable to City Council within 10 days
For further information:	Contact case planner Catherine Payne at (510) 238-6168 or by email at lwerner@oaklandnet.com

SUMMARY

The purpose of this report is to recommend approval of the proposed residential mixed-use project located at 2538 Telegraph Avenue in the Northgate and Korea Town neighborhoods. The proposal under consideration (referred to as 2538 Telegraph) would redevelop an underutilized site in a developing neighborhood. 2538 Telegraph is a seven-story building that would include the following components:

- Up to 97 residential units and associated open space;
- 116 parking spaces and one loading berth;
- Up to 8,800 square feet of ground-floor retail (commercial) space;

Site plan here.

The Design Review Committee previously reviewed the 2538 Telegraph proposal on November 16, 2005. A community meeting was held by the applicant on December 15, 2005.

BACKGROUND

Design Review Committee

The Design Review Committee (DRC) reviewed the 2538 Telegraph project at their regularly scheduled meeting on November 16, 2005. DRC comments are summarized and addressed later in this report.

Community Participation

The applicant held a community meeting on December 15, 2005. Attendees were generally supportive of the proposed land uses, density and design. However, concern was expressed regarding the ability of existing zoning regulations to both ensure high quality development and preserve the diverse and affordable character of the neighborhood.

PROPERTY DESCRIPTION AND SURROUNDING AREA

Existing Conditions

The project site is located on the east side of the 2500 block of Telegraph Avenue. A portion of the site is occupied by a vacant 2-story commercial building fronting Telegraph Avenue (2538 Telegraph Avenue), and a vacant surface parking lot on 26th Street (437-26th Street). The site is underutilized.

Surrounding Area

The project area is transitional from a land use perspective. The surrounding area is occupied by a mix of residential, retail, light industrial and parking uses. Ground-floor retail uses (with residential floors above) are located along both sides of Telegraph Avenue, and single-family residential houses (including many Victorian homes) and parking lots are located on 26th Street. The renovated Sears Building residential complex is located directly across Telegraph Avenue from the proposed project site. A metal plating establishment is located on the same blockface of Telegraph Avenue as the proposed project—this business involves the use of hazardous materials, the use of which are controlled by state and federal regulations. Telegraph Avenue is a major arterial street that connects downtown Oakland to Berkeley, and Interstate 980 is located less than two blocks to the west of the site.

PROJECT DESCRIPTION

The project includes construction of a 7-story (approximately 80' tall) building on the corner of Telegraph Avenue and 26th Street. The building would include 97 residential units, 8,800 square feet of ground-floor retail uses fronting Telegraph Avenue (and wrapping around the corner to 26th Street) and 116 parking spaces. The building generally has no setback along the street-

facing property lines, and has building setbacks, but no setbacks, from the interior lot lines. The proposed building would be a concrete structure with a contemporary architectural style. The architectural style includes visually dramatic building recesses and solid planes that form a variety of vertical and horizontal rectilinear shapes and volumes. The horizontal base of the building houses the retail and garage uses. The middle and cap of the building include the residential uses.

Parking is provided in three levels within the building envelope, accessed from 26th Street. Usable open space is provided in both courtyards and balconies. Plans indicate new street trees along the Telegraph Avenue and 26th Street project frontages.

GENERAL PLAN ANALYSIS

The General Plan designation for the project site is Community Commercial (CC). The maximum residential density provided in the CC category is 166.67 dwelling units per gross acre or 261 dwelling units per net acre. The 27,517 square-foot project site could support a maximum of 164 units. The 97-unit project on the site is well under the maximum allowable density. The .63 acre project site has a maximum Floor Area Ratio (FAR) of 5.0 (137,585 square feet) while the project is only proposing a commercial FAR of .06 (8,800 square feet).

The General Plan states the *intent* of the CC designation is to “identify, create, maintain, and enhance areas suitable for a wide variety of commercial and institutional operations along the City’s major corridors and in shopping districts and centers.” The General Plan states that the *desired character* of future development in the area should include “the addition of urban residential development and compatible mixed use development.” The proposed residential mixed-use project is consistent with the intent and desired character specified for the General Plan land use designation in which it would be located.

Land Use and Transportation Element of the General Plan

The General Plan Land Use and Transportation Element (LUTE) includes the following specific policies (identified in bold text) that are applicable to the 2538 Telegraph project (analysis of how the project supports the policies is provided in indented, italicized text:

Objective N1: Provide for healthy, vital, and accessible commercial areas that help meet local consumer needs in the neighborhoods.

The project includes retail space along Telegraph Avenue, in support of and adding to existing, concentrated commercial activity along the Telegraph Avenue corridor. The project includes high-density residential development that will take advantage of the close proximity to goods and services.

Objective N3: Encourage the construction, conservation, and enhancement of housing resources in order to meet the current and future needs of the Oakland community.

The project includes high-density residential development that will expand Oakland's housing supply.

Objective N6: Encourage a mix of housing costs, unit sizes, types, and ownership structures.

The project includes high-density condominium residential development that varies from the single-family residential development throughout much of Oakland.

Objective N8: Direct urban density and mixed use housing development to locate near transit or commercial corridors, transit stations, the Downtown, waterfront, underutilized properties where residential uses do not presently exist but may be appropriate, areas where this type of development already exists and is compatible with desired neighborhood character, and other suitable locations.

This residential mixed-use project is located on Telegraph Avenue, a major arterial street and commercial corridor in Oakland.

Objective N9: Promote a strong sense of community within the city of Oakland, and support and enhance the district character of different areas of the city, while promoting linkages between them.

The proposed project is architecturally distinct and will contribute to the rich architectural diversity of the surrounding neighborhood. It is a high quality project that will promote the image of the Northgate and Korea Town area.

Objective T2: Provide mixed use, transit-oriented development that encourages public transit use and increases pedestrian and bicycle trips at major transportation nodes.

The proposed project is conveniently located on Telegraph Avenue and near the downtown area. The location of the project will encourage the use of alternative modes of transportation.

ZONING ANALYSIS

The project site is located in both the C-45 and C-60 zoning districts. Specifically, the western portion of the site (fronting Telegraph) is zoned C-45, and the eastern portion of the site (mid-block) is zoned C-60. The maximum residential density is set forth in the R-80 regulations, and allows one dwelling unit for every 300 square feet of site area. The project site is 27,517 square feet, and allows for the development of up to 92 dwelling units. The proposed project, with 97 units, exceeds the zoning regulations; however, as noted above, the project is within the General Plan density requirements and will therefore be subject to an Interim Conditional Use Permit. The proposed 8,800 square feet of commercial space has a .06 FAR and is within the allowable 7.7 FAR for this site.

The following table depicts the project's comparison to both the C-45 and C-60 development standards:

Zoning Regulation Comparison Table

Criteria		Requirement C-45/C-60	Proposed	Comment
Yard – Front*		0'	0'	Meets reg's.
Yard – Interior Lot Line Setback for Residential Facilities		12% lot width when opposite legally required living room windows/none	0' (and not opposite required living room windows)	Meets reg's.
Height		No maximum	90' to the parapet	Meets reg's.
Usable Open Space		75 sq. ft. per unit or 150 sq. ft. when provided as group usable open space	Over 7,275 sf. private usable open space	Exceeds reg's.
Parking	Commercial	1 space per 450 sf./	19 spaces	Need 20 spaces (deficit of one space); Variance
	Residential	1 space / unit 1 loading	97 spaces 1 loading	Meets reg's; Variance from dimensional std's.
Residential Density		1 unit / 300 sq. ft	97 units	92 units allowed; Interim CUP to exceed zoning (within General Plan)
FAR		7.7 (corner lot)	.06	Meets reg's. Only applies to commercial use in C-45 district.

ENVIRONMENTAL REVIEW

Based on the size and location of the project site, as well as the findings of the traffic report, staff has concluded that the project satisfies the infill exemption allowed under CEQA Section 15332. The infill exemption criteria follow with a brief summary of staff's analysis included in bold text:

- a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations;
As demonstrated in the General Plan Analysis section of this report, the application is consistent with all applicable General Plan policies and the Community Commercial designation. The Zoning Analysis and Required Findings sections demonstrate that, with approval of the CUPs and Variances, the project is consistent with the Planning Code.
- b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses;
The project occupies approximately one-half acre. The site is located within a developed neighborhood in Oakland and is currently occupied by one

- commercial building and a surface parking lot. The project is surrounded by commercial, manufacturing and urban residential land uses.**
- c) The project site has no value as habitat for endangered, rare or threatened species;
The project site hosts no known endangered, rare, or threatened species and is currently occupied by buildings and paved parking areas.
- d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality;
A traffic study was completed for this project (attached). Traffic impacts from the project were reviewed at several intersections within proximity to the project site. The report's findings indicate that all intersections would operate at a LOS E or better even in the cumulative 2010 and 2025 conditions. In addition, the trips associated with the project would generate fewer than the 2,000 vehicle trips per day that the Bay Area Air Quality Management District (BAAQMD) considers the normal minimum traffic volume that should require a detailed air quality analysis. There may, however, be minimal localized and temporary impacts to air quality during demolition and construction, as well as temporary noise impacts. The applicant is required to comply with all applicable City regulations and operation procedures as part of the issuance of building and/or grading permits, including standard dust control measures. Standard and uniformly applied construction noise conditions of approval have been imposed for this project. Further, the proposed residential units would be required to comply with the California Code of Regulations Title 24 noise insulation standards.
- e) The site can be adequately served by all required utilities and public services.
The project site is located in a highly urbanized area within Oakland. The site is occupied by a building currently served by utility and public services.

KEY ISSUES

The proposed 2538 Telegraph project would increase residential and retail land uses in a developing area of Oakland. This project represents a positive land use addition to the area. The proposed contemporary style and high-quality materials would also be an asset to the area, providing a unique and architecturally sophisticated statement in an up-and-coming neighborhood. The size and scale of the project provide a sense of density and community presence in this underdeveloped area.

Outstanding Issues:

- *Variances and Conditional Use Permits:* This project is subject to a variance from parking dimensional standards and from the quantity of required commercial parking spaces as well as conditional use permits related to the size of the project and for density exceeding the zoning regulations:
 - *Parking:*

- **Parking Quantity:** The project includes 116 parking spaces to accommodate 97 residential units and 8,800 square feet of retail space. The project provides one parking space for each residential unit, consistent with the zoning regulations; however, the C-45 district requires one parking space for every 450 square feet of retail space. The proposed project falls short by one parking space (providing 19 spaces for the 8,800 square feet of proposed retail uses).
 - Staff supports the variance because of the abundance of available on-street parking in the area and the limited amount of retail space. The retail space will likely serve local residents (including occupants of the project) and not be a regional destination.
- **Dimensional Standards:** The applicant requests a variance to design the parking facilities to the S-12 overlay district standards. These standards provide for a larger ratio of compact to standard size spaces and provide for smaller parking stall and related dimensions than do the City's standard regulations.
 - Staff supports the variance with a condition of approval requiring a limitation of use put on the project restricting standard size vehicles from compact spaces.
- **Loading:** Pursuant to Section 17.116.120, one loading berth is required for residential use with floor area between 50,000--149,999 sq. ft. (although the project square footage exceeds 149,999 square feet, the residential portion is under that amount). The project has been redesigned to provide one loading space per staff recommendation.
 - Staff supports the redesign.
- **Density:** As discussed above, the proposed residential density exceeds the zoning regulations, yet is within the General Plan density limits and would be subject to an Interim CUP.
 - Staff supports the proposed project density. The project represents an opportunity to provide new, landmark architecture and introduce new community to an area that has not historically been an attractive development opportunity. This project will work with other recent projects in the area to enhance the residential community in the area and provide an audience for existing and future commercial development consistent with the intent of the General Plan.
- **Usable Open Space:** The project currently provides adequate private and group usable open space to meet the zoning requirements. However, some of the private usable open space is provided by balconies that overhang the public right-of-way (ROW) by four feet or less. These balconies would be subject to a Major Encroachment Permit, a discretionary permit issued by the City Council.
 - Staff supports the balcony design and recommends supporting an encroachment permit application. The balconies are well-designed

features that work to integrate the public and private experience of the project. This is a rare and desirable feature for projects of this size.

- *Height and Massing:* The proposed seven-story, 173,000 square-foot project would represent a significant presence in this sporadically developed area. The area includes numerous single-family homes, surface parking lots and one- to two- story commercial buildings. Upon completion, the building would potentially be in contrast to smaller buildings and development in the surrounding area. However, the intent for this area is to increase density and commercial development and viability. This project represents the type of future developments foreseen in the General Plan and is consistent with the future intent for the area.
 - Staff supports the height and massing of the project as an early example of fulfilling the intent of the Community Commercial General Plan land use designation.
- *Northern Façade:* The eastern end of the northern façade of the building (along 26th Street, mid-block) marks the location of the parking garage within the building. At the time of DRC review, this naturally ventilated feature had a very plain, utilitarian presence with slanted openings to the sloped garage ramps. Although this is not the most important façade of the building, the appearance of the garage detracted from the overall architectural style and language of the project. Staff recommended advising the applicant to explore screening devices that would further contribute to the architectural sophistication of the building, and not necessarily hide the garage, and would further play off the rectilinear shapes and forms of the building and harmonize with the architectural languages.
 - The applicant has revised the design of the northern façade to respond to staff and DRC concerns. The garage openings are now screened with framed metal mesh that plays off the rectilinear forms and volumes of the building design. Staff supports the redesign.
- *Architectural Style:* The proposed project is a uniquely contemporary architectural design that is different from the eclectic architectural styles of the area (ranging from the art-deco Sears building to nearby Victorian houses and apartment buildings, and 1960's era commercial development).
 - Staff supports the architectural style of the proposed project. This project will be an instant, high-quality architectural landmark that will bring positive attention to the area and provide variety to other architectural gems in the area. The project will enrich the neighborhood.
- *Public Right-of-Way:* The proposed project includes the provision of street trees spaced 25 feet (on center) along the project frontage on 26th Street and Telegraph Avenue.

- Staff recommends that any improvements in the public right-of-way be consistent with (and not hinder) development of the “Telegraph Avenue Pedestrian Streetscape Improvements Project” (July 2005). The plan indicates street trees along Telegraph Avenue as well as a possible pedestrian bulb-out into Telegraph Avenue. Staff recommends that the applicant pursue these improvements in concert with Public Works Agency implementation of the streetscape improvements. At a minimum, the final improvement plans shall include street trees that are consistent with the plan.
- *Additional Issues Raised by DRC:* The DRC was generally supportive of the project. However, the committee did address the issues discussed above and identified additional design-related issues, as follows.:
 - *Color and Verticality:* The applicant provided color samples and colored elevations using a series of cool-hued, intensely saturated blues and grays. The DRC did not support these cool colors and recommended a warmer, more vibrant color palate.
 - Staff recommends approving a condition of approval requiring staff review and approval of the final color palate prior to issuance of building permit. Staff believes that a less saturated and warmer color palate will also contribute to a sense of verticality for the project. Vertical shadow on the building recesses would provide more visual complexity and verticality and would emphasize the vertical building components.
 - *Design Details:* The DRC expressed concern about how the floating cement board panels would be attached to the building structure. The DRC and applicant expressed a preference for a smooth finished appearance.
 - Staff recommends approving a condition of approval that requires staff review and approval of the cement board attachment detail prior to issuance of a building permit. The number of connections should be minimized and the connection detail should be clean in appearance.

RECOMMENDATION

Staff believes that the proposed project has been well designed and has substantially addressed the issues that have been raised throughout the review process. The project will redevelop an underutilized site in a developing neighborhood with desirable high-density residential and commercial land uses and an architectural landmark.

Based on the analysis contained within this report, the 2538 Telegraph Traffic Study, and elsewhere within the administrative record, staff believes that the proposed project is appropriate in this

location and is an attractively designed mixed-use project. The proposed project will further the overall objectives of the General Plan. Thus, staff recommends that the Planning Commission:

1. Affirm staff's environmental determination for an Infill exemption under CEQA section 15332, based on the information contained in this report and throughout the administrative record; and
2. Approve the CUPs, variance and design review, based upon the attached findings and subject to the attached conditions of approval; and
3. Recommend approval of an encroachment permit to allow balconies to overhang the public right-of-way for up to four feet.

Prepared by:

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Planner IV

Approved for forwarding to the City Planning
Commission:

GARY PATTON
Deputy Director of Planning and Zoning
Major Projects Manager

CLAUDIA CAPPIO
Director of Development

ATTACHMENTS

- A. Project Plans and Elevations
- B. Traffic Study
- C. Design Review Committee Report dated November 16, 2005 and attachments

FINDINGS FOR APPROVAL

The 2538 Telegraph proposal meets the required findings under Oakland Planning Code Sections 17.136.070 (Design Review Criteria), 17.134.050 (Conditional Use Permit Criteria), and 17.148.050 (Variance Criteria), as set forth below. Required findings are shown in **bold** type; explanations as to why these findings can be made are in normal type. The project's conformance with the following findings is not limited to the discussion below, but is also included in all discussions in this report and elsewhere in the record.

Section 17.136.070 (Design Review Criteria):

- 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 proposed project is a mid-rise seven-story building. The building will relate well to the surrounding area in terms of setting, scale, bulk, height, materials and textures. The surrounding area contains a mix of residential and commercial uses in buildings ranging in height and type.

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

The development of the mixed-use project will enhance the desirability of this part of Oakland by adding new housing units and neighborhood-serving commercial space. The design of the proposed project is attractive and will serve to enhance the character of this area of Oakland.

- 3. That the proposed design will be sensitive to the topography and landscape of the area.**

The project will not affect the topography or landscape of the area. The site is an underutilized, flat, infill site. Street trees are proposed along the street frontages.

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

The proposed project will be located on a flat infill site and will not on a hill.

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

The proposed project is consistent with the General Plan land use designations for the site as discussed above and elsewhere in this staff report. The project is consistent with the design goals and policies of the General Plan by providing high density, well designed housing in a location with good access to transit and services. The project is generally consistent with the Planning Code as previously discussed.

Section 17.134.050 Conditional Use Permit

The findings below apply to the following Conditional Use Permits (CUP): A CUP is required for a project of over one acre in size (Section 17.134.020), and for projects that exceed the Planning Code density but fall within the General Plan allowable density.

- A. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.**

The location, size, design, and operating characteristics of the proposed project will be compatible with the surrounding area, which contains a mix of residential and commercial uses. The proposed seven-story building is an appropriate scale and height for the location. The design of the building is attractive and complements the design, scale and character of other buildings in the area. The project site is located in an urban infill area, therefore, utilities and service systems are available to serve the proposed project.

- B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant.**

The location, design, and site planning of the proposed project will provide a convenient and functional living environment. The primarily residential nature of the proposed project is compatible with existing and anticipated development in the surrounding area. The massing and design of the project is appropriate for the location and setting in an area with a wide range of land uses and building scale, as well as close proximity to an arterial street with concentrated yet underutilized commercial uses.

- C. That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region.**

CONDITIONS OF APPROVAL

The proposed project will add up to 97 new residential units to Oakland's housing stock and will replace underutilized land uses that are in poor condition. Providing in-fill, transit-oriented development is a key goal of the General Plan. The General Plan envisions fairly high density housing in this area which would be achieved on this site by mid-rise residential development. Additionally, this project may be a catalyst for additional mixed-use development in the vicinity which would further enhance and revitalize the basic community functions of this area.

D. That the proposal conforms to all applicable design review criteria set forth in the design review procedure at Section 17.136.070.

The proposed project conforms to all applicable design review criteria (see Section 17.136.070 below).

E. That the proposal conforms in all significant respects with the Oakland Comprehensive Plan and with any other applicable plan or development control map which has been adopted by the City Council.

The proposed project conforms to numerous policies of the General Plan related to creating new transit-oriented development, as specified in this staff report. The project complies with the intent of the subject land use classifications by providing a range of residential, recreation, and commercial uses. The project is also consistent with the existing zoning classifications for the site, upon the granting of conditional use permits and variances.

Section 17.148.050 (Variance Criteria):

- 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.**

The minor variances will allow an effective design solution which meets the intent of the zoning regulations by ensuring that adequate parking and loading areas are provided to serve the proposed project. Meeting all of the parking and loading requirements would entail expanding the size of the parking garage. This, in turn, would substantially reduce the size of many units and would make the project financially infeasible according to the

project sponsor. Moreover, provision of more parking will be contrary to the City's Transit First Policy.

- 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.**

Strict compliance with the regulations would preclude an effective design solution as adequate provisions have been made to ensure that the intent of the parking and loading requirements will be met, even if the specific code requirements are not, especially in this transit rich area with ample on-street parking.

- 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.**

Granting the variances will not adversely affect the character, livability, or appropriate development of the abutting properties or the surrounding area. The intent of the zoning regulations will be met through the provision of adequate off-street parking to serve the building in this transit rich area.

- 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.**

Although the project does not fully comply with the parking and loading requirements, the intent of these requirements will be met in this transit rich area. Adequate parking and loading spaces are provided to serve the residential units, and sufficient on- and off-street parking spaces are available in the immediate vicinity to serve the small amount of neighborhood-serving commercial space.

CONDITIONS OF APPROVAL

**2538 Telegraph Avenue
CMD05-511**

1. Approved Use

a. Ongoing

This action by the City Planning Commission (“this Approval”) includes the approvals set forth below. This Approval includes:

1. Approval of a Conditional Use Permit (“CUP”) for the 2538 Telegraph Project as set forth in the Project Plans, and as modified by these Conditions of Approval under Section 17. 140 of the Oakland Planning Code.
2. Approval of Design Review under Section 17.136 of the Oakland Planning Code.

b. Ongoing.

The project shall be constructed and operated in accordance with the authorized uses as described in this staff report and the attached plans and as amended by the following conditions of approval. 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, and Extensions

a. Ongoing through project completion.

These approvals shall become effective upon satisfactory compliance with these conditions. The approvals for the 2538 Telegraph Project shall expire on January 4, 2008 unless actual construction has begun under required permits by this date. Upon written request and payment of appropriate fees prior to the expiration of the approvals, the Zoning Administrator may grant a one-year extension of this date, with additional extensions subject to approval by the Planning Commission.

b. Prior to issuance of building permit

The project sponsor shall submit a Construction Phasing and Management Plan, incorporating all applicable conditions of approval contained herein. The plan shall also include the following additional measures and standards:

- a. A site security and safety plan to assure that grading and construction activities are adequately secured during off-work hours.
- b. A fire safety management plan for all phases of work, including provisions for access, water, and other protection measures during grading and construction activities.

- c. A plan to provide temporary access to any leasable space during active construction activities, including path of travel, securing the active construction areas and parking, if relevant.
- d. A construction litter/debris control plan to ensure the site and surrounding area is kept free of litter and debris.
- e. A traffic management plan (to be submitted to and reviewed by the Public Works Agency Transportation Services Division), which shall include, without limitations, provisions for off-site parking for construction contractors and staff.

c. Prior to issuance of certificate of occupancy.

Final inspection and a certificate of occupancy for any unit or other structure within a phase, as set forth above, shall not be issued until (a) all landscaping and on and off-site improvements for that phase are completed in accordance with this Approval, or (b) until cash, an acceptably rated bond, a certificate of deposit, an irrevocable standby letter of credit or other form of security (collectively “security”), acceptable to the City Attorney, has been posted to cover all costs of any unfinished work related to landscaping and public improvements plus 25 percent within that phase, unless already secured by a subdivision improvement agreement approved by the City. For purposes of these Conditions of Approval, a certificate of occupancy shall mean a final certificate of occupancy, not temporary or conditional, except as the City determines may be necessary to test utilities and services prior to issuance of the final certificate of occupancy.

3. Scope of This Approval

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, Public Works Agency, and the Fire Marshal. Minor changes to the approvals may be approved administratively by the Planning Director; major changes to the approvals shall be subject to review and approval by the City Planning Commission.

5. Design Review Requirements

Prior to issuance of building permit.

The final design elements listed below shall be submitted for review and approval by the Planning Director prior to issuance of the building permit. The Planning Director may exercise his/her standard authority to refer the final design to the Design Review Committee.

- Submission of sections, materials and color selection of the ground and top floor facades to confirm a strong base and cap prior to issuance of building permits, and to accommodate any refinements to the improved design solution.
- Submission of the following material information for administrative review and approval prior to issuance of building permits:
 - Window and trim schedules: In addition, applicant to provide product information sheet, including photographic facsimile or actual window sample, for each proposed window type. Given the form and rhythm of the buildings, the quality of the windows will be important.
 - Color and material samples for all exterior finishes in minimum dimensions of one square foot. Colors should be in warm hues, and the color intensity should not inhibit the appearance of shadows on building recesses. Connection details shall be provided for all exterior cladding, and are subject to review and approval.
 - Provide product information sheets, including photographic facsimile or actual sample of balconies and railings, screening devices, awnings or other sun shade devices, and exterior lighting fixtures.
 - Project signage and signage lighting;
 - Full scale mock-up of all ground-floor finish materials demonstrating three-dimensional trim wrap at corners.
- Submission of final landscape plans prior to submittal for public improvement permit (P-job).

6. Bicycle Accommodations:

Consistent with the provisions of the Bicycle Master Plan Element of the City of Oakland General Plan (adopted on July 20, 1999), and unless determined by the Planning Director to be infeasible, provide on-site one short-term bicycle parking space for every 10,000 square feet of leasable commercial space, and one long-term bicycle parking space for every 3,000 square feet of leasable commercial space. In addition, provide one long-term bicycle parking space for every four residential units, preferably provided in lockers or cages and located near residential entry points, as well as one short-term space for every fifteen residential units. All short-term spaces may be provided in the public right-of-way, subject to approval by the Public Works Agency.

7. Parking Study

Prior to issuance of a building permit, the project sponsor shall have a parking study prepared by an independent traffic engineer to demonstrate that the proposed layout and dimensions of the parking garage are functional and meet generally accepted standards, or what revisions are needed to meet such standards. This parking study shall be submitted for the review and approval by the Planning Director.

8. Modification of Conditions or Revocation

a. Ongoing.

The City reserves the right, after notice and public hearing, to revoke the approvals or alter Conditions of Approval if it is found that the approved facility is violating any of the Conditions of Approval or the provisions of the Planning Code, or operates as or causes a public nuisance.

9. Recording of Conditions of Approval

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

The project sponsor 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.

10. Reproduction of

a. Prior to issuance of building permit.

These conditions of approval shall be reproduced on page one of all plans submitted for all construction-related permits for this project.

11. Indemnification

a. Ongoing.

The project sponsor shall defend, indemnify, and hold harmless the City of Oakland, its agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Oakland, its agents, officers or employees to attack, set aside, void or annul, an approval by the City of Oakland, the Office of Planning and Building, Planning Commission, or City Council. The City shall promptly notify the project sponsor 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.

12. Recycling Space Allocation Requirements

a. Prior to issuance of building permit

The design, location and maintenance of recycling collection and storage areas shall substantially comply with the provision of the Oakland City Planning Commission "Guidelines for the Development and Evaluation of Recycling Collection and Storage Areas", Policy 100-28 and with the recycling space requirements of the Planning Code. The recycling location and area shall be clearly delineated on the plans.

13. Lighting Plan

a. Prior to issuance of building permit

An exterior lighting plan shall be submitted for review and approval by the Planning Director. The lighting plan shall include the design and location of all exterior lighting fixtures or standards, and said lighting shall be installed such that it is adequately shielded and does not cast glare onto adjacent properties.

14. Landscaping Plans

a. Prior to issuance of building permit.

The project sponsor shall submit a detailed landscaping plan to the Planning Director for review and approval prior to the issuance of any building permits. This plan shall include:

- a. Details and specifications for other landscaping features such as street furniture, rocks, paving treatments, and any water features. In particular, the paving treatment for the sidewalks will need to be further developed and will also need to be reviewed by the Public Works Agency.
- b. Detailed irrigation plans, planting details such as location, number and sizes of the plant materials, and the specifications for planting.
- c. Street tree planting specifications. The street trees must be approved by the Office of Parks and Recreation.

15. Meter Shielding.

Prior to issuance of building permits.

The applicant shall submit for review and approval by the Planning and Zoning Division, plans showing the location of any and all utility meters, transformers, and the like located within a box set within the building, located on a non-street facing elevation, or screened from view from any public right of way.

16. Rooftop Utilities.

Prior to issuance of building permits.

The applicant shall submit plans to the Planning and Zoning Division that adequately demonstrate that rooftop utilities will be adequately concealed and/or consolidated.

17. Water, Wastewater and Storm Sewer Service

Prior to issuance of building permit

The project sponsor shall provide the necessary information to the Public Works Agency, Design and Construction Services Division to reconfirm the existing capacity of the water, wastewater and storm service systems that serve the project site and the projected project demand. The project sponsor shall be responsible for payment of the required installation or hookup fees to the affected service providers. The project sponsor shall also be responsible for payment of sewer and/or storm water improvement fees as required by the Public Works Agency.

18. Litter Control

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. 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; and
- A management schedule for keeping the premises and surrounding area in a one-block radius free from litter originating from the operation of the future commercial activities; and
- Sweeping and trash collection of the premises, the public sidewalk, and the gutter area of the public street immediately adjacent to the project, as needed to keep the area free of litter.

19. Exterior Pay Phones

On-going

There shall be no exterior pay telephones located on the project site without obtaining a pay phone permit.

20. Electrical Facilities

Prior to Installation

All electrical and telephone facilities, fire alarm conduits, street light 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 Division.

21. Tree Removal Permit

Prior to issuance of the demolition or grading permit

The project sponsor must obtain a tree removal permit, and/or tree protection permit as needed, from the Office of Parks and Recreation, and abide by the conditions of that permit, prior to construction adjacent to, or removal of, any protected trees located on the project site or in the public right-of-way adjacent to the project site.

22. Subdivision Maps

Prior to issuance of first construction-related permit

The project sponsor shall seek approvals for, obtain approvals and record an approved Tentative Parcel Map and Final Map prior to issuance of first construction-related permit.

23. Waste Reduction and Recycling Plan

Prior to issuance of building permit

The project sponsor shall submit a “Waste Reduction and Recycling Plan,” and a plan to divert 50 percent of the solid waste generated by the construction and operation of the project, to the Public Works Agency for review and approval, pursuant to City of Oakland Ordinance No. 12253.

24. Special Inspector

Throughout construction

The project sponsor may be required to pay for on-call special inspector(s) as needed or as directed by the Building Official. Prior to issuance of a building permit, the project sponsor shall establish a deposit 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.

25. Construction Staging and Phasing Plan

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

The project applicant and construction contractor shall meet with the Traffic Engineering and Parking Division of the Oakland Public Works Agency (PWA) and other appropriate City of Oakland agencies to determine traffic management strategies to reduce traffic congestion and the effects of parking demand, to the maximum feasible extent, by construction workers during construction of this project and other nearby projects that could be simultaneously under construction.

The project applicant shall submit a construction management and staging plan to the Building Services Division with the application for the first building permit for the project for review and approval. The plan shall include at least the following items and requirements:

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.
2. Provision for parking management and spaces for all construction workers to ensure that construction workers do not park in on-street spaces.
3. Notification procedures for adjacent property owners and public safety personnel regarding when major deliveries, detours and lane closures will occur.
4. Provision for accommodation of pedestrian flow.
5. Location of construction staging areas.
6. Provisions for monitoring surface streets used for haul routes so that any damage and debris attributable to the haul trucks can be identified and corrected.
7. A temporary construction fence to contain debris and material and to secure the site.
8. Provisions for removal of trash generated by project construction activity.

9. Dust control measures as set forth in these conditions of approval.
10. Noise control measures as set forth in these conditions of approval.
11. A process for responding to, and tracking, complaints pertaining to construction activity, including the identification of an on-site complaint manager.

26. Dust Control Measures.

During all construction activities.

Dust control measures shall be instituted and maintained during construction to minimize air quality impacts. The measures shall include:

1. Watering all active construction areas as necessary to control dust;
2. Covering stockpiles of debris, soils or other material if blown by the wind;
3. Sweeping adjacent public rights of way and streets daily if visible soil material or debris is carried onto these areas.
4. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard;
5. Hydroseed or apply non-toxic soil stabilizers to inactive construction areas;
6. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.); and
7. Install sandbags or other erosion control measures to prevent silt runoff onto public roadways.

27. Construction Related Noise Control. [THESE ARE NOT THE CONDITIONS APPROVED BY THE CITY COUNCIL—YOU SHOULD INCLUDE ALL FOUR OF THE DETAILED CONDITIONS]

During all construction activities.

To reduce daytime noise impacts due to construction, to the maximum feasible extent, the City shall require the applicant to develop a site-specific noise reduction program, subject to city review and approval, which includes the following measures:

- a) Signs shall be posted at the construction site that 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) An on-site complaint and enforcement manager shall be posted to respond to and track complaints.
- c) A preconstruction meeting shall be held with the job inspectors and the general contractor/on-site project manager to confirm that noise mitigation and practices are

completed prior to the issuance of a building permit (including construction hours, neighborhood notification, posted signs, etc.).

d) 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).

e) 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; this muffler can lower noise levels from the exhaust by up to a bout 10 dBA. External jackets on the tools themselves shall be used where feasible, which could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever feasible.

f) 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.

g) Pile driving and other extreme noise generators:

a. To further mitigate other extreme noise generating construction impacts, a set of site-specific noise attenuation measures shall be completed under the supervision of a qualified acoustical consultant. This noise reduction plan shall be submitted for review and approval by the City to ensure that maximum feasible noise attenuation is achieved. 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. As special inspection 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. These attenuation measures shall include as many of the following control strategies as feasible and shall be implemented prior to any required pile-driving activities:

- i. Erect temporary plywood noise barriers around the construction site, to shield adjacent uses;
- ii. Implement “quiet” pile driving technology (such as pre-drilling of piles, the use of more than one pile driver to shorten the total pile driving duration), where feasible, in consideration of geotechnical and structural requirements and conditions;

- iii. Utilize noise control blankets on the building structure as the building is erected to reduce noise emission from the site;
- iv. Evaluate the feasibility of noise control at the receivers by temporarily improving the noise reduction capability of adjacent buildings; and
- v. Monitor the effectiveness of noise attenuation measures by taking noise measurements.
- vi. A process with the following components shall be established for responding to and tracking complaints pertaining to pile-driving construction noise:
 - 1. A procedure for notifying City Building Division staff and Oakland Police Department;
 - 2. A list of telephone numbers (during regular construction hours and off-hours);
 - 3. A plan for posting signs on-site pertaining to complaint procedures and who to notify in the event of a problem;
 - 4. Designation of a construction complaint manager for the project; and
 - 5. Notification of neighbors within 300 feet of the project construction area at least 30 days in advance of extreme noise generating activities.
- h) The project sponsor shall research additional noise attenuating measures that can be reasonably implemented to reduce noise impacts to neighbors. The project sponsor shall prepare a plan for approval by the Planning Director prior to issuance of the demolition permit and shall be required to implement the approved plan. Pile driving for construction of the project is not allowed without application and approval to modify this use permit.

28. Construction Site Project Manager.

Ongoing.

The applicant shall ensure that a Project Manager is designated who will be responsible for responding to any complaints from the neighborhood about excessive noise or construction issues during construction periods, The Manager's home telephone number and identification photograph shall be conspicuously posted at the construction site. The Manager shall determine the cause of 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.

29. Neighbor Noticing of Access Obstructions.

During all construction activities.

Construction vehicles, materials and other equipment shall not block the road so that neighbors would be adversely affected from getting to and from their properties. The applicant shall ensure that immediately adjacent property owners are notified in writing no less than 48 hours before any major delivery, hauling, detours, or lane closures related to the project's construction activities occur.

30. Site Maintenance.

During all construction activities.

The applicant shall ensure that debris and garbage is collected and removed from the site and surrounding area daily.

31. Approved Plans on Site.

During all construction activities.

At least one (1) copy of the approved above referenced plans that include the Approval Letter and Conditions of Approval for this project, shall be available for review at the job site at all times.

32. Best Management Practices.

During all construction activities.

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.

33. State, Federal, or County Authority Environmental Approval.

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

The applicant shall provide to the Planning and Zoning Division, written verification that the appropriate State, Federal or County authorities have granted all required clearances and confirmed compliance with all applicable conditions imposed by said authorities, for all previous contamination at the site.

34. Hazardous Materials Assessment and Reporting Program.

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

The applicant shall provide evidence from the City's Fire Department, Office of Emergency Services, indicating compliance with the City of Oakland Hazardous Material Assessment and Reporting Program, pursuant to City Ordinance No. 12323.

35. Soil Management Plan.

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

The applicant shall submit all applicable documentation and plans required by the Regional Water Quality Control Board, the Alameda County Public Health Department, and the City's Fire Department, Office of Emergency Services, regarding remediation of any contaminated soil and groundwater identified on the site. These documents and

plans shall be submitted to the Planning and Zoning Division, and shall demonstrate to the satisfaction of each agency with jurisdiction that all applicable standards and regulations have been met for the construction and site work to be undertaken pursuant to the permit.

36. Asbestos Removal.

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

The applicant shall submit for review and approval by the Planning and Zoning Division, written documentation that any asbestos containing materials (ACMs) have been removed from the project site prior to the start of any demolition activities. A licensed asbestos abatement firm in accordance with the BAAQMD's Regulation 11 shall conduct the removal of ACMs, Rule 2.

37. Lead Investigation and Removal.

Prior to issuance of any demolition, grading or building permits.

The applicant shall demonstrate to the satisfaction of the Office of Fire Department, Office of Emergency Services, that the site has been investigated for the presence of lead and does not contain hazardous levels of lead.

38. Cultural Resources found during Site Work and Construction.

Prior to issuance of any grading permits and throughout construction.

In accordance with the California Environmental Quality Act (CEQA) Section 15064.5, if the applicant discover any previously unidentified cultural resources during any onsite or offsite construction phase of the proposed project, the project applicant is required to cease work in the immediate area until such time as a qualified archaeologist and the City of Oakland can assess the significance of the find and make mitigation recommendations, if warranted. To achieve this goal, the contractor shall instruct the construction personnel on the project as to the potential for discovery of archeological, pre-historic, historic cultural, or human remains. The contractor shall ensure that all construction personnel understands the need for proper and timely reporting of such finds, and the consequences of any failure to report them. Any recommendations of the qualified archeologist shall be implemented prior to resumption of work in the affected area.

39. Public Improvements Plan (General).

Prior to issuance of a building permit.

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), street lighting, on-street parking 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 Planning and Zoning Division, Building Services Division and the Public Works Agency will review and approve designs and specifications for the improvements. Improvements shall be completed prior to issuance of certificate of occupancy.

40. Street Trees.

Prior to issuance of building permit.

The applicant shall provide street trees consistent with the Telegraph Avenue Pedestrian Streetscape Improvements Project, with review and approval of species, size at time of planting, and placement in the right-of-way, subject to review and approval by the Office of Parks and Recreation and Building Services.

41. Payment for Public Improvements.

Prior to receiving first occupancy permit.

The applicant shall pay for and install public improvements made necessary by the project.

42. Master Signage Plan.

Prior to issuance of sign permit.

The applicant shall submit a Master Signage Plan for review and approval by the Planning and Zoning Division, showing areas of all proposed signage and establishing parameters for each tenant signage. Other than a project identification sign and directory, the only exterior signs permitted shall be for ground floor tenants.

APPROVED BY:

City Planning Commission: January 4, 2006 (date) _____ ayes,
noes (vote)