

CONDITIONS OF APPROVAL

Modifications to the Conditions of Approval as directed by the City Planning Commission at the **September 3, 2003** meeting and by the Design Review Committee on **December 10, 2003** are indicated in underlined type for additions and ~~cross-out type~~ for deletions.

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 submitted August 15, 2003 and as amended by the following conditions. Any additional uses or facilities other than those approved with this permit, as described in the project description and approved plans, will require a separate application and approval.

2. Effective Date, Expiration, and Extensions

a. Ongoing.

This permit shall become effective upon satisfactory compliance with these conditions. This permit shall expire on September 3, 2005, 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 submitted no later than the expiration date, the Zoning Administrator may grant a one-year extension of this date, with additional extensions subject to approval by the City Planning Commission.

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, requirements, regulations, and guidelines 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.

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.*

The applicant 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 Zoning Division, Planning Commission, 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. Waste Reduction and Recycling

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

Prior to issuance of any building permits including the grading and/or demolition permit the project applicant will submit a demolition/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 demolition/construction waste 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.

PROJECT CONDITIONS

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

a. *Prior to certificate of occupancy*

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.

10. Parking Management Plan

a. *Prior to Certificate of Occupancy and On-going.*

The applicant shall establish an on-site parking management plan. The parking management plan shall include but not be limited to the following components and requirements:

- 1 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.

- 1 Acknowledgement that many and specific parking spaces are deficient in additional width. (Due to column or wall locations.)
- 1 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.
- 1 The management plan shall also stipulate that each unit shall be assigned a minimum of one off street parking space and that such space is included within the lease or ownership rights of the unit.
- 1 That a portion of the residential parking spaces may be used during off-peak hours for the commercial and live/work space in the project during designated hours.

This plan shall be reviewed and approved by the Planning Director prior to issuance of occupancy.

11. Street Improvement Requirements

a. Prior to issuance of a building or demolition permit

Improvement plans shall be submitted and approved 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 Director and the Public Works Agency will approve designs and specifications for the improvements. Improvements shall be completed prior to issuance of a certificate of occupancy.

PROJECT DESIGN CONDITIONS:

12. Final Design Review

a. Prior to issuance of building permit.

~~Once~~ As the design of the building is further detailed finalized, the design elements listed below shall be revised and shall be submitted for review and final approval by the Planning Director ~~Design Review Committee at a regular meeting~~ prior to issuance of the building permit. Only high quality materials compatible with the industrial character of the area will be approved. The Planning Director may exercise his/her standard authority to refer the design revisions to the DRC or to the Planning Commission.

~~a. Elevations details, and colors of the Second Street and Jackson Street facades.~~

~~b. Details regarding ground floor awnings.~~

c. More information regarding window materials, details, and installation specifications (framing material, glass, and mullions) and also of the window system and assembly, to confirm adequate thickness of components, overall quality, and a minimum 2" recess from the outside wall.

d. More detail regarding the ground floor finishes, and proportions to confirm high quality concrete, stone or other comparable materials that are durable in an urban environment.

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- e. Details of the roofing material.
- f. Final color and materials of all building materials.

Confirmation of the dimensional and installation requirements of a designated parking lift system (Klaus or equivalent) for a minimum of seven structured parking spaces. Confirmation shall also be submitted from the manufacturer of the minimum specifications required and whether the lifts can be retrofitted into an existing garage and if not, what physical and/or structural components are required during initial construction of the parking structure. Such requirements shall be incorporated into the final plans and specifications for the parking structure portion of the project.

These design details shall be reviewed and approved by the Director of Planning and Zoning prior to the issuance of a building permit.

13. Live/Work Areas

a. Ongoing

The live/work area on the ground floor of the project shall be designated as commercial space only, and shall so stipulate in the C, C, &R's or the future parcel map for the project.

14. Signage

a. Prior to issuance of a building permit

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

15. Landscape Plan

a. Prior to issuance of building permit

The applicant shall prepare a detailed landscaping plan, including paving material, for the project and shall submit such plans to the Planning & Zoning Director for review and approval prior to the issuance of a building permit. Street trees shall be provided with the review and approval of species, size at the time of planting, and placement, by appropriate City agencies, prior to submittal for the building permit material.

16. Irrigation Plan and landscape maintenance

a. Prior to issuance of building permit

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

b. Ongoing

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

17. Lighting Plan

a. Prior to issuance of building permit

A lighting plan for the project shall be submitted to and approved by the Director of Planning and Zoning, with referral to other departments or divisions as appropriate, and shall include the design and location of all lighting fixtures or standards; and said lighting shall be installed such that it is adequately shielded and does not cast glare onto adjacent properties, while providing sufficient lighting for safety and security purposes.

18. CarShare Program Requirement

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

The applicant shall execute an agreement with CarShare to provide a minimum of 1 car at the location approved by the Planning Director for the project and the surrounding area. Applicant shall provide the Planning Director with evidence that it has executed a participation or membership agreement for CarShare in accordance with the policies, rules, and regulations of the CarShare in effect from time to time. Applicant or the successor Home Owners Association shall remain a member of CarShare so long as CarShare or its successor or assignee is in fact operating CarShare.

19. Pile Driving (Unrelated to Geotechnical Concerns)

a. *Prior commencing pile driving*

If pile driving is undertaken for reasons unrelated to geotechnical concerns, the applicant shall specify such reasons in writing and City Planning Commission shall schedule a public hearing to discuss pile driving and its alternatives. The City Planning Commission must approve the use of pile driving unrelated to geotechnical concerns.

CONSTRUCTION PERIOD MANAGEMENT

20. Construction Period Parking and Traffic

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

The project sponsor 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 sponsor 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. In addition, the information shall include a construction-staging plan for any right-of-way used on Second and Madison Streets, or in the public-right-of-way along the Union Pacific Railroad tracks.
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.

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6. 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.
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 Condition No. 21, below.
10. Noise control measures as set forth in Condition No. 22, below.
11. A process for responding to, and tracking, complaints pertaining to construction activity, including the identification of an on-site complaint manager.

21. Air Quality

a. Prior to and during all construction activities, including demolition

Construction contractors shall implement a dust abatement program to reduce the contribution of project construction to local respirable particulate matter concentrations. Elements of this program shall include the following:

- 1 Watering of all active construction areas at least twice daily.
- 1 Cover all trucks hauling soil, sand, and other loose materials, or require all trucks to maintain at least two feet of freeboard.
- 1 Pave, apply water three times daily, or apply non-toxic soil stabilizers on all unpaved access roads, parking areas, and construction staging areas.
- 1 Sweep daily with water sweepers all paved access roads, parking areas, and staging areas at construction sites.
- 1 Sweep streets daily with water sweepers if visible soil material is carried onto adjacent public streets.

22. Noise

a. During construction

Standard construction activities shall be limited to between 7:00 a.m. and 7:00 p.m. Monday through Friday. No construction activities shall be allowed on Saturdays until after the building is enclosed and 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. No construction activity shall take place on Sundays and holidays.

b. Public Outreach

In order to reduce daytime noise impacts during construction, all construction contractors shall implement the following measures:

- 1 Signs shall be posted at the construction site that include permitted construction days and hours, a day and evening contact number for the noise enforcement manager and a day and evening contact number for the City in the event of problems.
- 1 An on-site complaint and enforcement manager shall be posted to respond to and track complaints.
- 1 A preconstruction meeting shall be held with the job inspectors and the general contractor/on-site manager to confirm the noise mitigation measures and practices are completed prior to the issuance of a building permit (including construction hours, neighborhood notification, posted signs, etc.).

c. Construction Equipment and Methods

In order to reduce daytime noise impacts during construction, all construction contractors shall implement the following measures:

- 1 Where feasible, the use of drilling methods shall be implemented instead of impact methods. When the use of impact tools (e.g., jack hammers, pavement breakers, and rock drills) is unavoidable for project construction, they shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed-air exhaust from pneumatically powered tools. 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 about 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 equipment whenever feasible.
- 1 Stationary noise (such as compressors) shall be located as far from adjacent uses as possible. If they must be located near adjacent uses, they should be muffled and enclosed within temporary sheds or insulation barriers or other measures shall be incorporated, to the extent feasible.
- 1 The project shall specify quieter equipment /methods of construction, to the extent feasible, since some of the options for constructing the project will have an impact on noise levels. For example, the use of bolted-on exterior cladding would be significantly quieter than an exterior shell that would require powder-actuated tools to “shoot” pins into concrete.

d. Pile Driving

If the project requires pile driving the applicant shall comply with the conditions below:

- 1 If pile driving and/or other extreme noise generating activities greater than 90 dBA occur, they shall be limited to between 8:00 a.m. and 4:00 p.m., Monday through Friday, with no extreme noise-generating activity permitted between 12:30 and 1:30 p.m. If required after meeting with local businesses, the applicant will further limit the hours of any pile driving to between 8:30 a.m. and 12:30 p.m. Monday through Friday. No extreme noise-generating construction activities shall be allowed on Saturday, Sundays, or legal holidays.
- 1 Develop a plan with site-specific noise attenuation measures under 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.

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A third-party peer review, paid for by the applicant, shall 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. These attenuation measures shall include as many of the following control strategies as feasible and shall be implemented prior to any required pile-driving and other extremely noisy activities:

- 1 Implement “quiet” pile-driving technology, where feasible, in consideration of geotechnical and structural requirements and conditions.
- 1 Erect temporary plywood noise barriers around the entire construction site;
- 1 Utilize noise control blankets on the building structure as it is erected to reduce noise emission from the site.
- 1 Utilize noise control blankets or temporary barriers in front of windows, doors or other openings at nearby businesses with the property owner’s permission.
- 1 Evaluate the feasibility of noise control at the receivers by temporarily improving the noise reduction capability of adjacent buildings.
- 1 Monitor the effectiveness of noise attenuation measures by taking noise measurements.
- 1 A process with the following components shall be established for responding to and tracking complaints pertaining to pile-driving construction noise.

ENVIRONMENTAL CONDITION:

23. State, Federal, or County Authority Environmental Approval

a. Prior to issuance of building permit

The applicant shall demonstrate, through written verification that required clearances have been granted and any applicable conditions have been met for previous contamination at the site from the appropriate State, Federal or County authorities or submit a Phase 1 and/or Phase II report for the existing buildings. The Planning Director shall review and provide a determination on the completeness of the reports.

7 ayes, 0 noes

APPROVED BY: City Planning Commission: September 3, 2003 (date) - **to approve**
(vote)

City Council: _____(date)_____ (vote)

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