Location:	**Uptown Apartments, parcels 1, 2 and 3; located within area generally bounded by Thomas Berkley Way (20th Street) to the north, Telegraph Avenue to the east, 19th Street to the south, and San Pablo Avenue to the west; APNs: 008-0716-052-00, -054-00, and -056-00.**
Proposal:	Condominium map for the 665 units of the recently constructed project known as "Uptown Apartments" to divide ownership-interest into two major groups: for market rate units; and for affordable units (all units will remain rental).
Project sponsor:	FC Oakland, Inc. (415) 593-4225
Owner:	City of Oakland Redevelopment Agency
Case File Number(s):	TTM8046 (related to PUDF05047, PUD05037, TTM7616, GP05105, RZ05106, CMV05197, ER03-0007, and ZP090114)
Planning Permits Required:	Tentative Tract Map to create parcels for tax identification purposes, only, under Oakland Municipal Code Title 16, Subdivisions.
General Plan:	Central Business District
Zoning:	CBD-P; CBD-R
Environmental Determination:	No subsequent or supplemental EIR required (CEQA Guidelines, Section 15162(a));
Historic Status:	Not historic.
Service Delivery District:	I –Downtown/West Oakland/Harbor
City Council District:	3 - Nadel
Status:	Building permits finaled in 2007, 2008 and 2009
Action to be Taken:	Consider approval of Tentative Tract Map.
Finality of Decision:	Appealable to City Council within 10 days of decision
For further information:	Contact case planner **Catherine Payne** at **(510) 238-6168** or by email at **cpayne@oaklandnet.com**

SUMMARY

The proposed Uptown Apartments condominium tract map would distinguish affordable units from market-rate dwelling units for the purposes of investment tax identification, only. Condominium maps involving five or more residential units require Planning Commission approval of a Tentative Tract Map (TTM) pursuant to the Oakland Municipal Code Title 16, Subdivisions. The proposed project segregates the affordable dwelling units from the market-rate dwelling units to allow investors to invest only in one or the other type of product and to clarify the different tax structures for each type of product. Existing limitations on the Uptown Apartments, including the terms of the adopted Uptown Redevelopment Project Ground Lease between the Redevelopment Agency of the City of Oakland, the City of Oakland and Uptown Housing Partners LP, effective as of October 25, 2005, other agreements between the Redevelopment Agency and the applicant, and recommended conditions of approval ensure that no unit could be inhabited and or sold individually by an owner/investor (i.e., all units will remain as rental) for a period of 55 years. Therefore, The subdivider has fulfilled all of the subdivision regulation requirements necessary for this condominium tract map. Therefore, staff recommends approval of this TTM.

LOCATION PLAN HERE.

In addition, staff recommends that the Planning Commission find that the proposed project is not considered a condominium "conversion," within the meaning of the Subdivision Map Act and the City's Condominium Conversion Ordinance, because it will not authorize removal of any rental units from the housing stock and will not allow any rental units to be transferred for condominium uses; therefore, the map is not subject to the requirements for condominium conversions set forth in the Subdivision Map Act (including, without limitation, Government Code § 66427, *et seq.*) and Oakland Municipal Code 16.36.

PROPERTY DESCRIPTION

The Uptown Apartments is the residential portion of the larger Uptown Project, which encompasses a 6.34-acre area of downtown Oakland (generally bounded by San Pablo Avenue to the west, Thomas L. Berkley Way to the north, Telegraph Avenue to the east and 19th Street to the south). The Uptown Apartments includes 665 residential units and 9,000 square feet of commercial space on three parcels located on three City blocks.

PROJECT DESCRIPTION

The proposed Uptown Apartments TTM would divide the property and create new legal parcels solely for the purpose of distinguishing affordable units from market-rate dwelling units for investment tax identification. The proposed TTM would create six parcels in three existing buildings (two parcels in each building); in each building, one parcel would contain the affordable residential units, and the other parcels would contain the market-rate residential units. The purpose of the map is to allow financial investment into either the affordable or the market-rate units, thereby protecting the unique tax structures (and benefits) of each type of investment for this development and supporting the provision of affordable housing units at the Uptown Apartments.

Based on the terms of the "Uptown Redevelopment Project Ground Lease between the Redevelopment Agency of the City of Oakland, the City of Oakland and Uptown Housing Partners LP" (Ground Lease), the residential units at the Uptown Apartments are restricted to rental housing for a period of 55 years effective as of October 25, 2005. In addition, the "Regulatory Agreement and Declaration of Restrictive Covenants by and among the Redevelopment Agency of the City of Oakland, Wells Fargo Bank, National Association and Uptown Housing Partners" (Regulatory Bond Agreement), effective as of October 1, 2005, and recorded in the Alameda County official records, Recorder's Series No. 2005466478) restricts the entire 665 unit Uptown Apartments project as rental property for a term of 55 years. Specifically, the Bond Regulatory Agreement provides that the project shall be owned, operated and managed as a "qualified residential rental project" (as defined in Section 142(d) of the Internal Revue Code) for a period of 55 years.

As a result, the proposed condominium tract map would not result in rental housing being removed from the market and should not be considered a "conversion" of units from rental to condominium uses.

GENERAL PLAN ANALYSIS

The General Plan designation for the Uptown Apartments site is Central Business District, which is intended as a high-density mixed-use urban center. The General Plan states that the desired character and uses in the district include a mix of large-scale offices, commercial, urban (high-rise) residential, institutional, open space, cultural, educational, arts, entertainment, service, community facilities, and visitor uses. The existing residential, commercial and park uses are consistent with the General Plan and would not change as a result of the proposed TTM.

ZONING ANALYSIS

The proposed tract map is located in the newly adopted CBD-P and CBD-R zoning districts. The CBD-P district is intended to create, maintain, and enhance areas of the CBD for ground-level, pedestrian-oriented, active storefront uses; upper story spaces are intended to be available for a wide range of office and residential activities. The CBD-R district is intended to create, maintain, and enhance areas of the Central Business District appropriate for residential development with small-scaled compatible ground-level commercial uses. No physical alterations that would trigger development standard review are proposed.

SUBDIVISION REGULATION ANALYSIS

The proposed condominium tract map is subject to the regulations contained in Oakland Municipal Code Title 16, Subdivisions (subdivision regulations). The City of Oakland subdivision regulations protect rental housing supply by requiring that "conversion" rights be obtained for condominium projects involving five or more units throughout the City. The application under consideration would create a condominium map for an existing rental product. However, the application does not meet the definition of a "conversion" and therefore is not obligated to comply with the conversion rights requirements noted above.

A "conversion" is defined in OMC Title 16 as a "proposed change in the type of ownership of a parcel or parcels of land, together with the existing attached structures, from residential rental realty to a stock cooperative project containing five or more dwelling units, a condominium project, or a Community Apartment project, regardless of whether substantial improvements have been made to such structures." (OMC 16.36.010) The proposed TTM would segregate the low-income units from the market-rate units in separate legal leasehold condominiums for financing purposes only (so that a tax credit investor could invest solely in the low income units). The TTM would establish two condominium "pods", an "Affordable Housing Condominium" and a "Market Rate and Moderate Income Condominium" for each of the three site parcels, for a total of six condominiums "pods", of which all units would remain rental. The Affordable Housing Condominium would contain 133 existing low-income rental units and an undivided half-interest in the shared building infrastructure. The Market Rate and Moderate Income Condominium would contain 532 existing market-rate and moderate-income rental units and an undivided half-interest in the shared building infrastructure. All existing rental units would remain residential rental realty and will not be available for sale. This obligation is

mandated by the "Ground Lease between the City of Oakland, the Oakland Redevelopment Agency and the Uptown Housing Partners LP", which restricts the residential units at the project site to rental housing only for a period of 55 years effective on October 24, 2005. In addition, the Uptown Apartments is subject to a Regulatory Agreement and Declaration of Restrictive Covenants that also requires all units to remain rental for a term of 55 years.

ENVIRONMENTAL DETERMINATION

The proposed condominium is part of the Uptown Project that is subject to a certified Environmental Impact Report (EIR). In this case, the proposed condominium involves no physical changes, and does not require a subsequent or supplemental EIR as it does not meet the findings for a further environmental review specified in CEQA Guidelines Section 15162(a). Specifically: (1) the proposed condominium does not include substantial changes to the Uptown Project that would involve new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (2) there are no changes in circumstances under which the project is being undertaken that would involve new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (3) there is no new information indicating that the condominium would have new environmental impacts or more severe impacts than previously analyzed, nor is there new information demonstrating that mitigation measures previously found to be infeasible are now feasible or mitigation measures which are considerably different from those analyzed in the previous EIR would substantially reduce any significant impacts but the Applicant declines to adopt such measures. Therefore, no subsequent or supplemental EIR is required.

ISSUES AND IMPACTS

Condominium Map

The proposed TTM would have only one result: segregation of the affordable units from the market-rate residential units in the Uptown Apartments for investment purposes, only. Because of the unique features of the Uptown Apartments (the product is required to remain rental for a term of 55 years beginning in 2005, as explained above), the proposed TTM would not create individual unit ownership opportunities typically resulting from a condominium map. The proposed TTM would not take rental units off the market, nor would it result in the displacement of any current tenants of the Uptown Apartments. As such, the proposed condominium TTM does not meet the definition of "conversion" and need not comply with the requirements of the City of Oakland's Condominium Conversion Ordinance (contained in OMC 16.36).

Purpose of Condominium Map

The applicant seeks approval of the proposed TTM for financing purposes, only. The proposed TTM would allow investors to specifically invest in affordable and/or market rate residential uses and to thereby comply with the requirements of the Internal Revenue Service (IRS). Admission of a low-income housing tax credit investor is an integral part of the financing plan

for the Uptown Apartments. A tax credit investor would invest equity capital in order to receive the low-income housing tax credits that the Uptown Apartments is entitled to claim by virtue of the existence of the 133 low-income restricted units included in the product.

Only 20 percent of the Uptown Apartment units generate low-income housing tax credits and, because of that relatively low ratio of affordable-to-market rate units, they cannot effectively deliver low-income tax credits to a third-party investor. The IRS has issued a letter ruling that allows for a tax structure that enables the grouping for tax purposes of the rent-restricted units into one or more separate condominiums, thus creating one or more 100-percent rent restricted parcels within one project. The proposed condominium TTM described in this report would allow the Applicant to create this necessary investment feature and thereby ensure provision of the affordable units.

Tenant Displacement and Assistance

As stated above, due to the unique features of the Uptown Apartments (the product is required to remain rental for a term of 55 years beginning in 2005, as described above), the proposed TTM would not create individual unit ownership opportunities typically resulting from a condominium map. The proposed TTM would not take rental units off the market, nor would it result in the displacement of any current tenants of the Uptown Apartments. As such, the proposed condominium TTM does not meet the definition of "conversion" and need not comply with the requirements of the City of Oakland's Condominium Conversion Ordinance (contained in OMC 16.36 or the Subdivision Map Act (including, without limitation, Government Code § 66427, e*t seq.*). Accordingly, the applicant has not provided, and does not propose to provide tenant displacement and assistance program notification to current tenants, as they would not be displaced or affected in any way by the proposed TTM. Similarly, because no units would be removed from the rental market, the project would not create a negative impact on the City's rental housing supply and, therefore, would not be required to provide replacement units under OMC 16.36.070. It should be noted that the 55 year requirement for the project units to remain in rental housing (contained in the Ground Lease and the Regulatory Bond Agreement) far exceeds the requirement for replacement units under the Condominium Conversion Ordinance, which specifies that conversion rights may be generated for units that are restricted to rental uses for a period of not less than seven years.

Loss of Residential Rental Real Estate

As stated above, due to the unique features of the Uptown Apartments (the product is required to remain rental for a term of 55 years beginning in 2005, as described above), the proposed TTM would not create individual unit ownership opportunities typically resulting from a condominium map. The proposed TTM would not take rental units off the market, nor would it result in the displacement of any current tenants of the Uptown Apartments.

CONCLUSION

The proposed Uptown Apartments condominium TTM would distinguish affordable from market-rate dwelling units for the purposes of investment tax identification, only. Existing limitations on the Uptown Apartments, including the terms of the adopted Ground Lease and, the Regulatory Bond Agreement ensure that no unit could be sold individually to an owner/investor. Therefore, the proposed project is not considered a condominium conversion and is not subject to the conversion requirements included in the Subdivision Map Act and Oakland Municipal Code 16.36. The subdivider has fulfilled all of the subdivision regulation requirements necessary for the proposed TTM. Therefore, staff recommends approval of this TTM.

RECOMMENDATIONS:

1. Affirm staff's environmental determination that no subsequent or supplemental EIR is required, consistent with CEQA Guidelines Section 15162;

2. Confirm that the Tentative Tract Map is not subject to the requirements for condominium conversions set forth in Oakland Municipal Code 16.36; and

3. Approve the Tentative Tract Map subject to the attached findings and conditions of approval.

Prepared by:

Catherine Payne
Planner III

Approved by:

SCOTT MILLER
Zoning Manager

ERIC ANGSTADT
Deputy Director, CEDA

ATTACHMENT:

Tentative Tract Map

CONDITIONS OF APPROVAL

Tentative Tract Map 8046 is approved subject to the following conditions of approval. In the event of a failure to comply with any prescribed condition of approval, the Planning Commission may revoke the approval.

1. Approved Use

Ongoing

a) The project shall be constructed and operated in accordance with the authorized use as described in the application materials and staff report, and the plans dated April 19, 2010 and submitted on May 1, 2010, 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 the approved plans, will require a separate application and approval. Any deviation from the approved drawings, Conditions of Approval or use shall required prior written approval from the Director of City Planning or designee.

b) This action by the City Planning Commission ("this Approval") includes the approvals set forth below**.** This Approval includes: TTM8046, a subdivision for leasehold condominium purposes for the Uptown apartments (APNs 008-0716-053, -055, and -057), under Municipal Code Title 16 Subdivisions.

2. Effective Date, Expiration, Extensions and Extinguishment

Ongoing

A Tract Map shall be filed with the City Engineer within two (2) years from the date of approval of the Tentative Tract Map, or within such additional time as may be granted by the Advisory Agency. Failure to file a Tract Map within these time limits shall nullify the previous approval or conditional approval of the Tentative Tract Map.

3. Scope of This Approval; Major and Minor Changes

Ongoing

The project is approved pursuant to the City of Oakland Subdivision Regulations, only. Minor changes to approved plans may be approved administratively by the Director of City Planning or designee. Major changes to the approved plans shall be reviewed by the Director of City Planning or designee to determine whether such changes require submittal and approval of a revision to the approved project by the approving body or a new, completely independent permit.

4. Conformance with other Requirements

Prior to issuance of a demolition, grading, P-job, or other construction related permit

The project applicant shall comply with all other applicable federal, state, regional and/or local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Building Services Division, the City's Fire Marshal, and the City's Public Works Agency. Compliance with other applicable requirements may require changes

to the approved use and/or plans. These changes shall be processed in accordance with the procedures contained in Condition of Approval 3.

5. <u>Conformance to Approved Plans; Modification of Conditions or Revocation</u>
Ongoing

a) Site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60-90 days of approval, unless an earlier date is specified elsewhere.

b) Violation of any term, Condition of Approval or project description relating to the Approvals is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approvals or alter these Conditions of Approval if it is found that there is violation of any of the Conditions of Approval or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement actions. The project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Conditions of Approval.

6. <u>Signed Copy of the Conditions of Approval</u>
With submittal of a demolition, grading, and building permit

A copy of the approval letter and Conditions of Approval shall be signed by the property owner, notarized, and submitted with each set of permit plans to the appropriate City agency for this project.

7. <u>Indemnification</u>
Ongoing

a) To the maximum extent permitted by law, the applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and its respective agents, officers, and employees (hereafter collectively called City) from any liability, damages, claim, judgment, loss (direct or indirect)action, causes of action, or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul, (1) an approval by the City relating to a development-related application or subdivision or (2) implementation of an approved development-related project. The City may elect, in its sole discretion, to participate in the defense of said Action and the applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.

b) Within ten (10) calendar days of the filing of any Action as specified in subsection A above, the applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Letter of Agreement shall survive termination, extinguishment or invalidation of

the approval. Failure to timely execute the Letter Agreement does not relieve the applicant of any of the obligations contained in this condition or other requirements or conditions of approval that may be imposed by the City.

8. Compliance with Conditions of Approval

Ongoing

The project applicant shall be responsible for compliance with the recommendations in any submitted and approved technical report and all the Conditions of Approval set forth below at its sole cost and expense, and subject to review and approval of the City of Oakland.

9. Severability

Ongoing

Approval of the project would not have been granted but for the applicability and validity of each and every one of the specified conditions, and if one or more of such conditions is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid conditions consistent with achieving the same purpose and intent of such Approval.

10. Units to Remain Rental

Ongoing

Consistent with the terms of the "Uptown Redevelopment Project Ground Lease between the Redevelopment Agency of the City of Oakland, the City of Oakland and Uptown Housing Partners LP" (effective October 25, 2005, and recorded on October 28, 2005), the "Regulatory Agreement and Declaration of Restrictive Covenants by and among the Redevelopment Agency of the City of Oakland, Wells Fargo Bank, National Association and Uptown Housing Partners, LP" (effective as of October 1, 2005, and recorded on October 28, 2005), the entire Uptown Apartments affected by this Tentative Tract Map shall remain in rental housing status for a term of not less than fifty-five (55) years beginning on October 1, 2005.

11. Compliance with Oakland Municipal Code and Subdivision Map Act

Ongoing

At such time as the applicant can and does legally seek conversion of rental units to individual ownership units, the applicant shall comply with all contemporary regulations regarding such conversions contained in the Oakland Municipal Code and the Subdivision Map Act, and/or any other adopted regulations affecting condominium conversions in Oakland effective at such time.

12. Engineering Services Division Conditions of Approval

a. Show location of the City of Oakland monuments used to establish the basis of bearing and the property lines. Provide identification numbers for City of Oakland monuments.

b. Show location of existing and proposed drainage, sanitary sewer, water supply, and other utility facilities for each lot. Provide separate utility meters for each condominium.

c. The groundlessee and the property owner shall both sign the final map.

d. Parcel 1, Parcel 2, and Parcel 3 each have a property line at a specific elevation. These elevations are shown on Tract Map 7616. The reference on the Tentative Map appears to refer to these elevations but does not make specific reference to the fact that these are property lines. Please clarify on the final map.

e. Show location, purpose, and width of all existing and proposed easements.

f. Revise title to read "Three Lot Subdivision for Commercial Condominium Purposes – Two Commercial Condominiums per Lot".

FINDINGS

California Government Code §66474 (Chapter 4, Subdivision Map Act)

A legislative body of a city or county 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 Section 65451.

The project site is designated in the Oakland Land Use and Transportation Element Central Business District land use classification. This classification is characterized by multi-story buildings with ground-floor commercial uses and above-ground floor multi-family residential and office uses. The existing project is consistent with the Oakland Land Use and Transportation Element General Plan land use classification. The change in investment structure does not change the use of the existing project.

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

The project site is designated in the Oakland Land Use and Transportation Element Central Business District land use classification. This classification is characterized by multi-story buildings with ground-floor commercial uses and above-ground floor multi-family residential and office uses. The existing project is consistent with the Oakland Land Use and Transportation Element General Plan land use classification. The change in investment structure does not change the use of the existing project.

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

The proposed map would not alter the existing physical development of the site.

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

The proposed map would not affect the existing physical development of the overall site.

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

The subject property does not contain any notable fish or wildlife habitat, and is surrounded by developed properties.

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

The subject property is not known to contain any environmental hazards such as contaminated soils or other toxic substances that would be disturbed and threaten public health. 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.

g. **That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.**

No such easements exist on the subject property.

h. 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.
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.
C. All applicable requirements of the zoning regulations shall be met.
D. Lots shall be equal or larger in measure than the prevalent size of existing lots in the surrounding
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.

As a one lot subdivision for condominium purposes, no actual lot configuration changes are proposed.