Oakland City Planning Commission STAFF REPORT

Case File Number: REV100016 (PUD05335) **February 16, 2011**

Project Title:	**Revisions to Arcadia Park Residential Project**
Location:	**98th Avenue @ San Leandro Street (854 – 92nd Avenue; 860 – 92nd Avenue; and 999 – 98th Avenue) (see map on reverse)**
Assessor's Parcel Numbers:	Various (044-5078- and 044-5080-)
Proposal:	Modify access to a previously approved residential development (currently under construction), specifically restricting access to the site at "F" Street, "G" Street, and Ellington Way.
Applicant:	Arcadia Park Owners Association
Contact Person/Phone Number:	Arcadia Park Owners Association / (510) 830-7411
Owner:	Pulte Homes
Planning Permits Required:	Revision to a previously approved Planned Unit Development
General Plan:	Housing and Business Mix
Zoning:	R-30 One-Family Residential Zone (portion of site) and R-50 Medium Density Residential Zone (portion of site)
Environmental Determination:	An Environmental Impact Report (EIR) was prepared and certified for the residential project in 2005. No further environmental review is required for the proposed revisions.
Historic Status:	No rating
Service Delivery District:	6
City Council District:	7
Date Filed:	Revisions filed July 23, 2010
Status:	The project was previously approved in 2005 and is currently under construction. The decision on the proposed revisions to the project is currently pending.
Action to be Taken:	Decision on application
Staff Recommendation:	Approval subject to recommended findings and conditions
Finality of Decision:	Appealable to City Council
For Further Information:	Contact the case planner, **Darin Ranelletti**, at **(510) 238-3663** or by e-mail at **dranelletti@oaklandnet.com**.

SUMMARY

In 2005 the City approved the Arcadia Park Residential Project located at 98th Avenue and San Leandro Street to redevelop a former 27-acre industrial site with 365 residential units. The project required approval of a General Plan Amendment, Rezoning, and Planned Unit Development (PUD) permit, along with various other planning- and zoning-related permits and approvals. The project is currently under construction. In 2009 in response to economic conditions and site ownership issues, the developer of the project, Pulte Homes, obtained approval from the City to modify the project primarily to reduce the size of the project to 17 acres and modify the mix of housing types within the development. The overall number of residential units was reduced to 164.

The current proposal by the Arcadia Park Owners Association was submitted in response to security concerns and involves restricting access to the new development at three of the new streets contained within the project. Staff recommends approval of the proposal subject to a number of as conditions discussed below.

CITY OF OAKLAND PLANNING COMMISSION

0 125 250 500 750 1,000 Feet

Case File: REV10-0016 (PUD05-335)
Applicant: Arcadia Park Owners Association
Address: 98th Avenue @ San Leandro Street
(854 & 860 - 92nd Ave; and 999 - 98th Ave)
Zone: R-30, R-50

PROPERTY DESCRIPTION

The project site is located near the corner of 98th Avenue and San Leandro Street in East Oakland. The site is approximately 17 acres in size and is relatively flat. The site is the former location of the Fleischmann's Yeast factory that was constructed in 1935 and demolished in 2003. The Arcadia Park Residential Project was approved for the site in 2005 and is currently under construction. Out of a planned total of 164 residential units, 122 units are complete and 106 units are occupied.

The site is surrounded to the north, south, and west by industrial uses. To the east are residential uses.

PROJECT DESCRIPTION

In 2005 the City approved the Arcadia Park project on the site. As stated above, the project is currently under construction.

Previous (2009) Revisions

In 2009 in response to economic conditions, site ownership issues, and security concerns, the project developer, Pulte Homes, submitted an application to make the following modifications to the development:

1. Reduce the land area to be developed;
2. Reduce the number of proposed residential units;
3. Modify the mixture of proposed housing types;
4. Modify the proposed parks and open space;
5. Relocate the proposed private community center;
6. Modify the proposed street layout; and
7. Modify access to the site.

At that time the Planning Commission approved modifications 1 through 5 above but was not prepared to issue a decision concerning modifications 6 and 7. The applicant agreed to limit the request to modifications 1 through 5 and pursue modifications 6 and 7 at a later date.

Current (2011) Revisions

The current proposal by the Arcadia Park Owners Association is in response to security concerns and involves restricting access to the new development at three of the new streets contained within the project. The current proposal generally matches the street modifications proposed by Pulte Homes in 2009. The project drawings for the current proposed modifications are attached to this report (see Attachment A).

Two of the three originally proposed vehicular access points to the site from 92nd Avenue (at "F" Street and at "G" Street) would be eliminated and replaced with landscaped areas. A new eight-foot-tall wooden fence and pedestrian gate would be constructed at "F" Street and a new eight-foot-tall concrete wall would be constructed at "G" Street. Vehicular access at the third access point from 92nd Avenue (at Ellington Way) would be controlled with a security gate. The security gate would allow only project residents to enter the site and would allow the general public to exit the site.

GENERAL PLAN ANALYSIS

When the Arcadia Park project was originally previously approved in 2005, the General Plan land use designation for the site was changed from General Industrial/Transportation to Housing and Business Mix. At that time, the Planning Commission and City Council found that the General Plan Amendment was consistent with the overall objectives of the General Plan. All of the General Plan-related findings made when the project was approved in 2005 would still apply to the revised project (see Attachment B).

ZONING ANALYSIS

The original project approval in 2005 involved rezoning the site from the M-30 General Industrial Zone to the R-30 One-Family Residential Zone (applied to an area containing large-lot single-family homes) and R-50 Medium Density Residential Zone (applied to an area containing small-lot single-family homes and townhomes). At that time, the Planning Commission and City Council found that the rezoning was consistent with the overall objectives of the Zoning Regulations. Staff believes that the proposed revised project remains consistent with the overall objectives of the Zoning Regulations. The revised project would remain consistent with the zoning at the site.

ENVIRONMENTAL DETERMINATION

In 2005 the Planning Commission certified an environmental impact report (EIR) for the project pursuant to the California Environmental Quality Act (CEQA) and the City's environmental review regulations.[1] The certification was later affirmed by the City Council. According to the CEQA Guidelines, when an EIR has been certified for a project, no Subsequent or Supplemental EIR is required unless the lead agency determines one or more of the following:

1. Substantial changes are proposed in the project which require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

2. Substantial changes occur with respect to the circumstances under which the project is undertaken which require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

3. New information of substantial importance is known, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete, which involves new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Since none of the above situations apply to the proposed project revisions, further environmental review for the project is not required. There have been no substantial changes to the circumstances surrounding the project and no new information of substantial importance exists. Changes are proposed to the project but the proposed changes do not require a revision to the previous EIR because they would not result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects. The density of the revised project is substantially less than the density of the project analyzed under the certified EIR. The transfer of vehicle trips to other access points in the project would not result in new significant environmental effects not previously analyzed in the previous EIR because

[1] The previously certified EIR is available at the City Planning office located at 250 Frank H. Ogawa Plaza, Suite 3315.

(a) the transportation impact analysis in the EIR did not assume any project trips would utilize "F" Street and "G" Street and (b) the overall number of residential units in the project would decrease from 365 to 164 (a reduction of approximately 55 percent). The project would generate significantly fewer vehicle trips than what was analyzed in the previous EIR so the resulting transportation effects of the project would be substantially less than what were identified in the EIR.

KEY ISSUES AND IMPACTS

According to the applicant[2], project occupants and potential homebuyers have expressed concerns about how the project's connectivity to the surrounding neighborhood has resulted in the project being less secure and more attractive to crime. The applicant has stated that occupied and unoccupied homes have been burglarized and that vehicles from outside the project have sped through the project site. The applicant is interested in reducing the level of street connectivity with the surrounding neighborhood in order to further restrict access to the project site and increase safety for project residents.

Originally, the project included street connections to 92nd Avenue at three access points—at "F" Street, at "G" Street, and via a new street in the project named Ellington Way. The applicant proposes to close off the "F" Street connection with a new eight-foot-tall wooden fence and pedestrian gate, close off the "G" Street connection with a new eight-foot-tall concrete wall, and install an automatic vehicle gate on Ellington Way that would allow only project residents to enter the site and would allow the general public to exit the site. The closures at "F" Street and "G" Street would be accompanied by landscaped areas. The originally proposed pedestrian access point at Elmhurst Avenue and the two vehicle and pedestrian access points to 98th Avenue would remain unchanged.

Staff has discussed the security concerns and the proposed project revisions with the applicant and the Oakland Police Department. The Police Department believes that the proposed revisions may deter some criminals from entering the project to commit crime but will do little to deter determined criminals who will enter the project via 98th Avenue or climb over the proposed fence, wall, or gate from 92nd Avenue. Both staff and the applicant believe that the greatest benefit of the proposed revisions would be increasing the *perception* of security in the development, thereby increasing the level of comfort for residents and potential homebuyers.

Generally, staff favors increased street connectivity between neighborhoods and discourages isolating individual development projects (particularly when a project, like Arcadia Park, has the potential to contribute to the revitalization of an existing adjacent neighborhood). Staff also believes it is important for new development projects to be successful and attractive to homebuyers so that the City realizes the potential social and economic benefits of the project; the City benefits little from an undesirable development unable to attract and/or retain homebuyers. In this case, the City must balance the interest of promoting connected neighborhoods and the interest of promoting successful development. If the street closures are denied and the project remains heavily connected to the surrounding neighborhood, it's possible that crime at the site would continue and the project would be less desirable to residents and homebuyers with the possibility that the project would not be fully occupied or would be fully occupied but with a high rate of homeowner turnover. Alternatively, if the project site is completely walled off from the surrounding community with only one access point, a scenario supported by some current project residents according to the applicant, the project would be isolated from the surrounding neighborhood and there would be little beneficial "spillover" from the project into the surrounding neighborhood. One of the motivations for City approval of the project originally was to direct

[2] The term "applicant" is used to refer to both the project developer, Pulte Homes, and the Arcadia Park Owners Association. The Arcadia Park Owners Association is listed as the applicant on this application while Pulte Homes is the current owner of the streets currently under consideration and is supporting the Association in the application.

development and investment in a way such that the development would benefit the surrounding neighborhood. Consistent with this goal, the streets in the development are public and the public has legal access to the new parks in the project.

Staff Proposal

Staff has spent considerable time evaluating the proposal and discussing the proposal and other options with the Police Department and the applicant. Staff has developed a compromise proposal with the goal of improving the perception of safety in the neighborhood while limiting the negative impacts of restricting access. The current staff proposal is the same as the staff proposal from 2009 except where noted.

Providing public access to the site at Ellington Way and "F" and "G" Streets is not a prerequisite for a successful project or for the successful functioning of the larger neighborhood. None of the three streets would be considered important travel ways through the community; removing access would not divide the larger community or unreasonably block access to important destinations. Adequate public vehicular access to the site would remain via two access points on nearby 98th Avenue and adequate pedestrian access to the site would remain at the two access points on 98th Avenue and at "F" Street and Elmhurst Avenue.

The staff proposal consists of the following scenarios for the proposed street closures (as reflected in the recommended conditions of approval contained in Attachment C):

- "F" Street Closure: The applicant is proposing an eight-foot-tall wooden fence at "F" Street with a pedestrian gate. Staff believes it is appropriate to provide pedestrian access through this gate because the existing properties on "F" Street outside the project site contain residential uses that would benefit from having convenient access to the publicly-accessible parks and open spaces in the project. However, staff believes the fence and gate should be reduced in height to three and one-half feet to match the height of the proposed pedestrian gate at Elmhurst Avenue so that the gate is less visually intimidating and allows visibility through the gate to deter criminal activity on either side of the fence. An eight-foot-tall fence is unnecessary because, according to the Police Department, a determined criminal would be able to climb over an eight-foot-tall fence. Also, the fence should be constructed of more durable materials, like the steel fence proposed at Elmhurst Avenue, in order to withstand vandalism and general wear and tear.

- "G" Street Closure: The applicant is proposing an eight-foot-tall concrete wall at "G" Street (with no pedestrian gate). Staff believes it is not necessary to provide pedestrian access to "G" Street at this time because currently the existing properties on "G" Street outside the project site contain industrial uses where there would be little benefit of connectivity with the project site. However, it is possible that the industrial uses will convert to residential use at some point in the future. At that time, it would be appropriate to provide a lower fence and pedestrian gate similar to the recommended "F" Street fence and gate in order to increase connectivity between "G" Street and the project site. Staff recommends that the applicant be required to record a notice that would put the public, including Arcadia Park residents, on notice that the proposed eight-foot-tall wall may be removed at a future date. The concrete wall would be located in a public access easement that would give control of the wall to the City with the intent that the City could require a future developer of the "G" Street properties to replace the concrete wall with a lower fence and pedestrian gate.

- Ellington Way Gate: The applicant is proposing to install an automatic vehicle gate on Ellington Way within the project site that would be operable by project residents (and not the general

public). Ellington Way has been offered to the City as dedicated public right-of-way. Since the applicant would not be able to install a gate to restrict access on a public right-of-way, the offer of dedication would need to be rescinded by the applicant so that the "panhandle" portion of Ellington Way reverts to private use. Staff recommends that the gate meet the following requirements, subject to review and approval of the City:

1. The gate shall exhibit a high-degree of design and material quality.
2. The gate shall be accessible to the Oakland Fire Department, Oakland Police Department, and other emergency vehicles.
3. The gate shall restrict both vehicle access and pedestrian access.
4. At the gate there shall be a sign posted and visible from 92nd Avenue that identifies Ellington Way as a private entrance and that the public entrance to Arcadia Park is on 98th Avenue.
5. Except as noted above in item 2, the gate shall only allow vehicles and pedestrians to exit the site heading towards 92nd Avenue. The gate shall automatically open for all vehicles and manually for all pedestrians, including residents and the general public, exiting the site. The gate shall not operate for vehicles or pedestrians associated with the residents or the general public entering the site from 92nd Avenue. This element differs from staff's proposal in 2009 where staff proposed allowing residents to enter the site from Ellington Way as proposed by the applicant. Upon further consideration, staff now believes it is more equitable to restrict resident and general public movement in the same manner.
6. The gate shall be located near 92nd Avenue to prevent vehicles from needing to turnaround on Ellington Way at the gate if approaching the site from 92nd Avenue. There shall be sufficient queuing space between the gate and 92nd Avenue so that vehicles at the gate do not extend into the public right-of-way of 92nd Avenue.
7. Legal public access over the northern "panhandle" portion of Ellington Way must be removed so that the proposed gate is not restricting legal public access to the site. The applicant shall secure approval from the City of a mechanism, such as a real estate instrument, to rescind the offer of dedication of public right-of-way over this portion of Ellington Way, or take other legally appropriate actions, so that it remains private. The private portion of Ellington Way shall provide the same rights to the project residents and to the adjacent property to the northwest of the site (850 92nd Avenue; APN 044-4989-009-02) in the event that the adjacent property is redeveloped with residential lots that front onto Ellington Way. The beneficiaries of the private portion of Ellington Way shall be responsible for the operation, maintenance, repair, replacement, and/or reconstruction of the roadway and gate and provide for City review and approval an appropriate mechanism to ensure this obligation is met. The City shall not be responsible for the operation, maintenance, repair, replacement, and/or reconstruction of the roadway or gate.

Alternatives to Applicant Proposal and Staff Proposal

As stated above, staff has spent considerable time evaluating the proposal and discussing the proposal and other options with the Police Department and the applicant. Staff has developed the above compromise proposal with the goal of improving the perception of safety in the neighborhood while limiting the negative impacts of restricting access. If the Planning Commission does not believe the applicant's proposal or staff's proposal is acceptable, staff has identified the following two additional alternatives:

- Alternative 1 (More Restrictive than Applicant Proposal and Staff Proposal): If the Planning Commission does not believe the applicant's proposal or staff's proposal are sufficient in terms

of addressing security concerns at the site, the Commission could consider an alternative that further restricts access to the site beyond the restrictions in the applicant and staff proposals. This alternative would involve the applicant's proposal for a fence at "F" Street, a wall at "G" Street, and a gate at Ellington and could also include additional measures to restrict site access such as installing gates operable only to project residents at the access points on 98th Avenue (at Armstrong Drive and Blake Drive) and replacing the proposed three and one-half foot tall unlocked gate at Elmhurst Avenue with a taller and gateless wall or fence. Some project residents have expressed a desire for this level of restriction. Staff is concerned that under this alternative the project would be further isolated from the surrounding neighborhood and there would be little beneficial "spillover" from the project into the surrounding neighborhood. Since the public has access to the streets and parks in the development, these facilities would need to revert to private use in order to allow gating of the entire project.

- Alternative 2 (Less Restrictive than Applicant Proposal and Staff Proposal): If the Planning Commission believes the applicant's proposal and staff's proposal are too restrictive in terms of access and connectivity with the surrounding neighborhood, the Commission could consider an alternative that would provide less access restrictions to the site than in the applicant and staff proposals. Staff has considered site design measures to increase security that would not involve restricting access to the site. For example, traffic calming devices (such as speed humps and/or other physical street modifications) could be employed along the straight and lengthy section of Ellington Way to reduce vehicle speeding and a real or artificial guard shack could be located at one or more of the entrances to the development to deter criminal activity. This alternative would maintain beneficial connectivity to the surrounding neighborhood but staff acknowledges that the alternative would likely not be as effective in deterring crime as the other alternative and proposals discussed above and would likely not be supported by many project residents who would feel that this alternative would be insufficient in terms of addressing security concerns.

CONCLUSION

Although the proposed revisions to the project may appear less desirable than the previously approved project in terms of connectivity to the surrounding neighborhood, staff believes that some level of enhanced security at the site may be necessary and appropriate in order to encourage the success of the development. Staff recommends that the Planning Commission approve the proposed revisions with staff's proposed modifications to the proposal as described above and in the recommended conditions of approval.

RECOMMENDATIONS:

1. Affirm staff's environmental determination.
2. Approve the proposed revisions to the Planned Unit Development (PUD) Permit subject to the attached findings and conditions.

Prepared by:

Darin Ranelletti
Planner III

Approved by:

SCOTT MILLER
Zoning Manager

Approved for forwarding to the
Planning Commission:

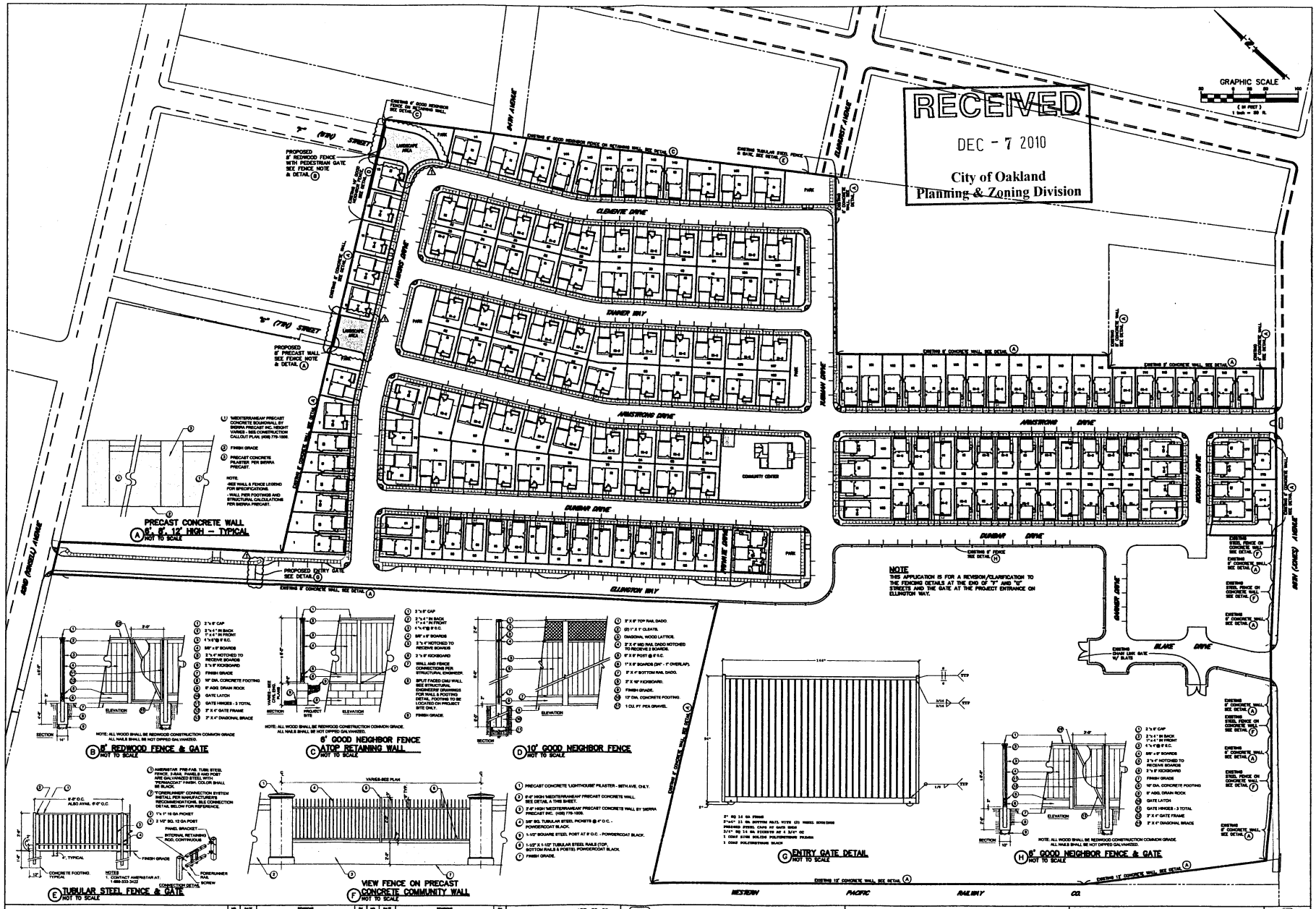
ERIC ANGSTADT
Deputy Director
Community and Economic Development Agency

ATTACHMENTS:

A. Project Drawings (dated November 17, 2010; received December 7, 2010)
B. Recommended Approval Findings for Revised Project
C. Recommended Conditions of Approval for Revised Project

ATTACHMENT A

Project Drawings (dated November 17, 2010; received December 7, 2010)


RECEIVED
DEC - 7 2010
City of Oakland
Planning & Zoning Division
GRAPHIC SCALE
CLEMENTE DRIVE
DANER WAY
ARMSTRONG DRIVE
DUNBAR DRIVE
ELLINGTON WAY
BLAKE DRIVE
COMMUNITY CENTER
PARK
NOTE
THIS APPLICATION IS FOR A REVISION/CLARIFICATION TO THE FENCING DETAILS AT THE END OF "F" AND "G" STREETS AND THE GATE AT THE PROJECT ENTRANCE ON ELLINGTON WAY.
PRECAST CONCRETE WALL
6', 8', 12' HIGH – TYPICAL
NOT TO SCALE
8' REDWOOD FENCE & GATE
NOT TO SCALE
8' GOOD NEIGHBOR FENCE
ATOP RETAINING WALL
NOT TO SCALE
10' GOOD NEIGHBOR FENCE
NOT TO SCALE
TUBULAR STEEL FENCE & GATE
NOT TO SCALE
VIEW FENCE ON PRECAST
CONCRETE COMMUNITY WALL
NOT TO SCALE
ENTRY GATE DETAIL
NOT TO SCALE
8' GOOD NEIGHBOR FENCE & GATE
NOT TO SCALE
WESTERN PACIFIC RAILWAY CO.
Civil Engineering Associates
Civil Engineers • Planners • Surveyors
2300 North First Street, Suite 250
San Jose, CA 95131
T: (408) 435-1000
PROPOSED SITE PLAN
ARCADIA PARK
OAKLAND CALIFORNIA
PREPARED FOR:
Pulte Homes
6210 Stoneridge Mall Road, 5th Floor
Pleasanton, California 94588
Phone 925/249-3000 Fax 925/485-0291
C1
job no. 04-125

ATTACHMENT B

Recommended Approval Findings for Revised Project

ARCADIA PARK RESIDENTIAL PROJECT
CASE NO. REV100016 (PUD05335)

APPROVAL FINDINGS FOR REVISED PROJECT
(FEBRUARY 16, 2011)

The following findings are made to approve the revised project. The basis to approve the revised project is not limited to the findings contained herein, but also includes the information contained in the August 5, 2009, and February 16, 2011, Planning Commission staff reports and the adopted conditions of approval.

PLANNED UNIT DEVELOPMENT (PUD) PERMIT FINDINGS (SEC. 17.140.080)

Note: The Planning Commission affirms the original findings adopted in 2005, as amended in 2009, with no modifications.

A. That the location, design, size, and uses are consistent with the Oakland Comprehensive Plan and with any other applicable plan, development control map, or ordinance adopted by the City Council.

Under the current General Plan (formerly the Comprehensive Plan) land use designation for the site, General Industrial/Transportation, the proposal is not consistent with the General Plan because the project consists of a residential development. The proposal involves amending the General Plan land use designation to Housing and Business Mix to facilitate the proposal. The proposal is consistent with the following policies of the General Plan:

Policy N3.1: Facilitating Housing Construction. Facilitating the construction of housing units should be considered a high priority for the City of Oakland. (Land Use and Transportation Element)

Policy N3.2: Encouraging Infill Development. In order to facilitate the construction of needed housing units, infill development that consistent with the General Plan should take place throughout the City of Oakland. (Land Use and Transportation Element)

Policy N5.2: Buffering Residential Areas. Residential areas should be buffered and reinforced from conflicting uses though the establishment of performance-based regulations, the removal of non-conforming uses, and other tools. (Land Use and Transportation Element)

Policy N6.1: Mixing Housing Types. The City will generally be supportive of a mix of projects that provide a variety of housing types, unit sizes, and lot sizes which are available to households with a range of incomes. (Land Use and Transportation Element)

Policy N6.2: Increased Home Ownership. Housing developments that increase home ownership opportunities for households of all incomes are desirable. (Land Use and Transportation Element)

Policy 1.7: Regional Housing Needs. The City of Oakland will strive to meet its fair share of housing needed in the region. (Housing Element)

Policy 7.3: Infill Development. Continue to direct development toward existing communities and encourage infill development at densities consistent with the surrounding communities. (Housing Element)

Policy 7.4: Compact Building Design. Work with developers to construct new housing that reduces the footprint of new construction, preserves green spaces, and supports the use of public transit. (Housing Element)

B. That the location, design, and size are such that the development can be well integrated with its surroundings, and, in the case of a departure in character from surrounding uses, that the location and design will adequately reduce the impact of the development.

The development will be well integrated with the surrounding area. The design of the proposal is consistent with the design of the adjacent residential neighborhood. The street layout of the proposal is designed to provide multiple pedestrian connections to extend the existing street network of the surrounding residential area, multiple vehicular access points to the surrounding neighborhood are provided, and, in the event that adjacent industrial properties convert to other uses requiring new streets, the project's street layout is designed to extend into the adjacent industrial properties in the future. The proposal is a departure of character from the previous industrial use of the site and the existing uses on the surrounding industrial properties but all potential impacts of the proposal will be mitigated to a less than significant impact except for traffic impacts.

Traffic generated by the project will result in significant and unavoidable impacts related to traffic congestion on major streets. However, with or without the project, cumulative congestion on major streets is still at unacceptable levels; any redevelopment of the site at similar densities to the proposal would result in unacceptable traffic congestion. Reducing the density of the proposal to a level where the project's contribution to the cumulative traffic congestion on major streets is less than significant is considered infeasible because it would not as effectively implement the housing policies of the General Plan as discussed below under the findings made pursuant to the California Environmental Quality Act (CEQA).

C. That the location, design, size, and uses are such that traffic generated by the development can be accommodated safely and without congestion on major streets and will avoid traversing other local streets.

The proposal is designed to minimize potential traffic safety impacts resulting from conflicts between the surrounding traffic and traffic generated by the project though the use of traffic control devices.

Traffic generated by the project will result in significant and unavoidable impacts related to traffic congestion on major streets. However, with or without the project, cumulative congestion on major streets is still at unacceptable levels; any redevelopment of the site at similar densities to the proposal would result in unacceptable traffic congestion. Reducing the density of the proposal to a level where the project's contribution to the cumulative traffic congestion on major streets is less than significant is considered infeasible because it would not as effectively implement the housing policies of the General Plan as discussed under the findings made pursuant to the California Environmental Quality Act (CEQA).

D. That the location, design, size, and uses are such that the residents or establishments to be accommodated will be adequately served by existing or proposed facilities and services.

The development will be adequately served by facilities and services. Utilities to serve the project are proximal to the site and are of sufficient capacity to adequately serve the development or, in the cases of deficiencies, are proposed to be upgraded. Public facilities to serve the development are located near the site and public services to serve the site will be adequately funded by the project.

E. That the location, design, size, and uses will result in an attractive, healthful, efficient, and stable environment for living, shopping, or working, the beneficial effects of which environment could not otherwise be achieved under the zoning regulations.

The development will result in an attractive, healthful, efficient, and stable environment for living. The project is well-designed with high-quality materials and promotes a healthy environment with generous areas devoted for open space. The project is an efficient use of land because the development is compact in size.

The efficiency of the project realized through its compact designed could not be achieved under the normal zoning regulations.

F. That the development will be well integrated into its setting, will not require excessive earth moving or destroy desirable natural features, will not be visually obtrusive and will harmonize with surrounding areas and facilities, will not substantially harm major views for surrounding residents, and will provide sufficient buffering in the form of spatial separation, vegetation, topographic features, or other devices.

The development is designed to respond well to its setting. The street, block, and unit layout is designed to provide maximum benefit to the residents of the development while limiting impacts to the surrounding area. No significant natural features or views exist at the site. The proposal will be of similar character to the surrounding residential area and will be buffered from industrial uses in the surrounding area though the use of spatial separation and screening devices.

1. Although the revisions to the project would result in fewer townhome units in the project, the project would still be consistent with the General Plan policy encouraging a mixture of housing types (Policy N6.1, "Mixing Housing Types") because the revised project would still contain a mixture of large-lot single-family homes, small-lot single-family homes, and townhome units.

2. The revised project will remain well integrated into the surrounding area. The revised street layout of the project will provide multiple pedestrian connections to the surrounding residential neighborhood.

ATTACHMENT C

Recommended Conditions of Approval for Revised Project

ARCADIA PARK RESIDENTIAL PROJECT
CASE NO. REV100016 (PUD05335)

CONDITIONS OF APPROVAL FOR REVISED PROJECT
(FEBRUARY 16, 2011)

Note: Revisions to the previous 2005 conditions of approval, as amended in 2009, are identified below. New language is <u>underlined</u> and deleted language is ~~struck-out~~.

PART 1: STANDARD CONDITIONS OF 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, the ~~**August 5, 2009,**~~ Planning Commission staff report<u>s</u>, and the <u>project</u> plans ~~**received on July 24, 2009**~~, and as amended by the following conditions. Any additional uses or facilities other than those approved with these permits, 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:
      i. **Revisions to a previously approved Planned Unit Development (PUD) permit (case no. ~~REV09-007~~REV100016~~); and~~**
      ~~**ii. Approval of a Vesting Tentative Parcel Map (case no. TPM-8017).**~~

2. **Effective Date, Expiration, Extensions and Extinguishment**
   Ongoing
   Unless a different termination date is prescribed, this Approval shall expire in **two calendar years** from the Approval date, unless within such period all necessary permits for construction or alteration have been issued, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit for this project may invalidate this Approval if the said extension period has also expired.

3. **Scope of This Approval; Major and Minor Changes**
   Ongoing
   The project is approved pursuant to the Oakland Planning Code 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 construction-related permit
   a) 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.

   b) The applicant shall submit approved building plans for project-specific needs related to fire protection to the Fire Services Division for review and approval, including, but not limited to automatic extinguishing systems, water supply improvements and hydrants, fire department access, and vegetation management for preventing fires and soil erosion.

5. **Conformance to Approved Plans; Modification of Conditions or Revocation**
   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) The City of Oakland reserves the right at any time during construction to require certification by a licensed professional that the as-built project conforms to all applicable zoning requirements, including but not limited to approved maximum heights and minimum setbacks. Failure to construct the project in accordance with approved plans may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension or other corrective action.

   c) Violation of any term, Condition of Approval, Mitigation Measure 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 Approvals or Mitigation Measures if it is found that there is violation of any of the Conditions of Approval, Mitigation Measures 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. **Signed Copy of the Conditions of Approval and Mitigation Measures**
   With submittal of a construction-related permit
   A copy of the Approval letter and Conditions of Approval and Mitigation Measures 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. **Indemnification**
   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 of 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 of 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 and all the applicable adopted Mitigation Measures 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 of Approval and Mitigation Measures, and if one or more of such Conditions of Approval or Mitigation Measures is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid Conditions of Approval and/or Mitigation Measures consistent with achieving the same purpose and intent of such Approval.

10. Job Site Plans
Ongoing throughout demolition, grading, and/or construction
At least one (1) copy of the stamped approved plans, along with the Approval letter, Conditions of Approval and Mitigation Measures, shall be available for review at the job site at all times.

11. Special Inspector/Inspections, Independent Technical Review, Project Coordination and Management
Prior to issuance of a construction-related permit
The project applicant may be required to pay for on-call third-party special inspector(s)/inspections as needed during the times of extensive or specialized plan-check review or construction. The project applicant may also be required to cover the full costs of independent technical review and other types of peer review, monitoring and inspection, including without limitation, third party plan check fees, including inspections of violations of Conditions of Approval. The project applicant shall establish a deposit with the Building Services Division, as directed by the Building Official, Director of City Planning or designee. The deposit shall be established within a reasonable time period after the request is made by the City.

12. Required Landscape Plan for New Construction and Certain Additions to Residential Facilities
Prior to issuance of a construction-related permit
Submittal and approval of a landscape plan for the entire site is required. The landscape plan and the plant materials installed pursuant to the approved plan shall conform with all provisions of Chapter 17.124 of the Oakland Planning Code, including the following:

a) Landscape plan shall include a detailed planting schedule showing the proposed location, sizes, quantities, and specific common botanical names of plant species.
b) Landscape plan shall incorporate pest-resistant and drought-tolerant landscaping practices.

c) All landscape plans shall show proposed methods of irrigation. The methods shall ensure adequate irrigation of all plant materials for at least one growing season.

13. Assurance of Landscaping Completion

Prior to final zoning inspection of the building permit

The trees, shrubs and landscape materials required by the Conditions of Approval attached to this project shall be planted before the certificate of occupancy will be issued; or a bond, cash, deposit, or letter of credit, acceptable to the City, shall be provided for the planting of the required landscaping. The amount of such bond, cash, deposit, or letter of credit shall equal the greater of two thousand five hundred dollars ($2,500.00) or the estimated cost of the required landscaping, based on a licensed contractor's bid.

14. Landscape Maintenance

Ongoing

All required planting shall be permanently maintained in good growing condition and, whenever necessary, replaced with new plant materials to ensure continued compliance with applicable landscaping requirements. All required fences, walls and irrigation systems shall be permanently maintained in good condition and, whenever necessary, repaired or replaced.

15. Underground Utilities

Prior to issuance of a construction-related permit

The project applicant shall submit plans for review and approval by the Building Services Division and the Public Works Agency, and other relevant agencies as appropriate, that show all new electric and telephone facilities; fire alarm conduits; street light wiring; and other wiring, conduits, and similar facilities placed underground. The new facilities shall be placed underground along the project applicant's street frontage and from the project applicant's structures to the point of service. The plans shall show all electric, telephone, water service, fire water service, cable, and fire alarm facilities installed in accordance with standard specifications of the serving utilities.

16. Improvements in the Public Right-of-Way (General)

Prior to the issuance of a construction-related permit

a) The project applicant shall submit public improvement plans to the Building Services Division for adjacent public rights-of-way (ROW) showing all proposed improvements and compliance with the Conditions of Approval and Mitigation Measures 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 and 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 located within the public ROW.

b) Review and confirmation of the street trees by the City's Tree Services Division is required as part of this Condition of Approval.

c) The Planning and Zoning Division and Building Services Division will review and approve designs and specifications for the improvements. Improvements shall be completed prior to the final inspection for the building permit.

d) The Fire Services Division will review and approve fire crew and apparatus access, water supply availability and distribution to current codes and standards.

17. Improvements in the Public Right-of Way (Specific)

Approved prior to the issuance of a grading or building permit

Final building and public improvement plans submitted to the Building Services Division shall include the following components:

a) Remove and replace any existing driveway that will not be used for access to the property with new concrete sidewalk, curb and gutter.
b) Reconstruct drainage facility to current City standard if needed.
c) Provide separation between sanitary sewer and water lines to comply with current City of Oakland and Alameda County Health Department standards if needed.
d) Remove and replace deficient concrete sidewalk, curb and gutter along property frontage.
e) Provide adequate fire department access and water supply, including, but not limited to currently adopted fire codes and standards.

18. Payment for Public Improvements

Prior to final inspection of the building permit

The project applicant shall pay for and install public improvements made necessary by the project including damage caused by construction activity.

19. Compliance Matrix

Prior to issuance of a construction-related permit

The project applicant shall submit to the Planning and Zoning Division and the Building Services Division a Conditions of Approval/Mitigation Measures compliance matrix that lists each Condition of Approval and Mitigation Measure, the City agency or division responsible for review, and how/when the project applicant has met or intends to meet the Conditions of Approval and Mitigation Measures. The applicant will sign the Conditions of Approval attached to the Approval letter and submit that with the compliance matrix for review and approval. The compliance matrix shall be organized per step in the plan-check/construction process unless another format is acceptable to the Planning and Zoning Division and the Building Services Division. The project applicant shall update the compliance matrix and provide it with each item submittal.

20. Construction Management Plan

Prior to issuance of a construction-related permit

The project applicant shall submit to the Planning and Zoning Division and the Building Services Division for review and approval a construction management plan that identifies the Conditions of Approval and Mitigation Measures related to construction impacts of the project and explains how the project applicant will comply with these construction-related Conditions of Approval and Mitigation Measures.

21. Waste Reduction and Recycling

Required prior to issuance of a building or demolition permit

The applicant may be required to complete and submit a "Waste Reduction and Recycling Plan," and a plan to divert 50 percent of the solid waste generated by the operation of the project, to the Public Works Agency for review and approval, pursuant to City of Oakland Ordinance No. 12253. Contact the City of Oakland Environmental Services Division of the Public Works Agency for more information.

22. Recycling Space Allocation Requirements

Required prior to issuance of building permit

The design, location, and maintenance of recycling collection and storage areas must 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. A minimum of two cubic feet of storage and collection area shall be provided for each dwelling unit.

PART 2: PROJECT-SPECIFIC CONDITIONS OF APPROVAL

23. Rezoning, General Plan Amendment, and Redevelopment Plan

Required prior to approval becoming effective

This approval shall not become effective unless the Zoning Map, General Plan Land Use Map, and Land Use Map of the Coliseum Area Redevelopment Plan are amended by the City Council as proposed. The City Council has the authority to consider and revise as appropriate (accept, reject or modify) the adjudicatory land use decisions of the City Planning Commission (including variances, conditional use permit, and planned unit development permit), regardless of whether an appeal to the City Council is filed challenging such adjudicatory land use decisions.

24. Mitigation Monitoring and Reporting Program

Required at various times as stated

All environmental mitigation measures shall be implemented as conditions of approval in accordance with the attached Mitigation Monitoring and Reporting Program.

25. Streets

Required at the time of Parcel Map approval

All the streets in the development shall be offered for dedication to the City as public streets, except as provided for in these conditions. In the event that the City Council does not accept the streets for dedication, public access easements shall be recorded over all streets in the development.

26. Parks and Open Space

Required at the time of Parcel Map approval

All common areas and open space in the development, excluding dedicated public streets, shall be privately owned and maintained by the homeowners association. Public access easements shall be recorded over lots A, B, C, D, E, F, H, J, and K, which are to be reserved for park and recreation use. Public access shall be provided to the park and open space area of Lot G but is not required for the proposed community center on Lot G which is to remain private. No public access is required for Lot I.

Concurrent with the submittal for the site improvement plans

The applicant shall submit a common area landscaping plan for approval by the Planning and Zoning Division. The landscaping plan shall show the proposed landscaping for all common areas in the development and shall contain the following:

1) Landscaping details, such as planting types, sizes, and quantities, surfaces, landscape features and structures, and all perimeter fencing and walls.

2) Irrigation details.

3) Lots A, B, C, D, E, F, H, J, K and the publicly-accessible portion of Lot G are to be designed for park and recreation use.

4) Lot I is to be designed as a landscaped areas not to be occupied.

5) Lot C shall contain a pedestrian walkway connected to the public sidewalk on Elmhurst Avenue.

6) Linear parks shall be designed so that individual park spaces to be used by similar age groups are clustered near one another to discourage children from crossing multiple streets when traveling to and from park areas.

7) Proposed landscaping in all open spaces shall be designed to maintain clear lines of sight into the interior of the space from nearby residences and streets.

8) Proposed landscaping shall be primarily drought-tolerant.

9) A public kiosk or similar community notice board shall be placed in one of the parks located near the center of the development. This kiosk is to be used for displaying community-related information and shall be maintained and managed by the homeowners association. A portion of the kiosk shall be reserved for use by the homeowners association. The remainder of the kiosk shall be reserved for use by the general public. Rules adopted by the homeowners association to regulate the use of the public portion of the kiosk shall be reviewed and approved by the Planning and Zoning Division. The location and design of the kiosk shall be included on the landscaping plan.

10) A historical marker shall be located in one of the parks. The marker shall provide information to the general public on the history of the site. The location, design, and contents of the marker shall be included on the landscaping plan.

Required prior to occupancy

The applicant shall submit the following for review and approval by the Planning and Zoning Division:

1) Landscaping maintenance plan.
2) Park rules for the use of park spaces.
3) Enforcement plan for enforcing the park rules.

Ongoing

Landscaping maintenance and the enforcement of park rules are the responsibility of the homeowners association. Landscaping shall be maintained in a healthy condition.

27. Perimeter Walls

Concurrent with the submittal for the site improvement plans

The design of all walls proposed for the perimeter of the site shall be reviewed and approved by the Planning and Zoning Division. The wall proposed for the perimeter of the site along 98th Avenue shall be no more than 6 feet in height. This wall shall be designed with high-quality materials and finishes and landscaping at the base of the wall, and shall be designed to provide for privacy for the residents of the project while maintaining visual transparency and visual interest. The wall proposed for the perimeter of the site where the project abuts industrially zoned properties shall be 8 feet in height, except along the boundary of the railway right-of-way to the west of the site where the wall shall be 12 feet in height. This wall shall be designed with high-quality materials and finishes and landscaping at the base of the wall, and shall be designed to provide for noise insulation between the site and adjacent properties while maintaining visual interest.

28. Stormwater Management

Concurrent with the submittal for the site improvement plans

The drawings submitted with the site improvement plans shall contain a stormwater management plan to be reviewed and approved by the Building Services Division and Planning and Zoning Division that contains the following information:

1) Post-construction on-site stormwater treatment measures, site design measures, and stormwater pollution source control measures to reduce the discharge of stormwater pollutants to the maximum extent practicable in accordance with Provision C.3 of the Alameda Countywide Clean Water Program's National Pollutant Discharge Elimination System (NPDES) permit.

2) Post-construction stormwater controls to reduce the volume and velocity of stormwater runoff to the maximum extent practicable. Stormwater shall be retained on-site in compliance with the City's stormwater regulations.

Prior to the approval of site improvement plans

The applicant shall file a Notice of Intent with the Regional Water Quality Control Board, San Francisco Region, to obtain coverage under the General Construction Activity Stormwater Permit. The applicant will be required to prepare a Stormwater Pollution Prevention Plan (SWPPP) that identifies appropriate construction-related best management practices (BMPs) to reduce stormwater pollution during construction.

Prior to occupancy

The applicant shall enter into an agreement with the City, in accordance with Provision C.3 of the Alameda Countywide Clean Water Program's NPDES permit, which provides, in part, for the project sponsor (i) accepting responsibility for the adequate operation and maintenance of any post-construction on-site stormwater treatment measures being incorporated into the project until the responsibility is legally transferred to another entity; and (ii) permitting access to the post-construction on-site stormwater treatment measures by representatives of the City, the local vector control district, and staff of the Regional Water Quality Control Board, San Francisco Region, for the purpose of verifying the operation and maintenance of the post-construction on-site stormwater

treatment measures. The agreement shall be recorded at the County Recorder's Office at the project sponsor's expense.

29. Architectural Design

Concurrent with the submittal for building permits

The drawings submitted for a building permit shall contain the following information to be reviewed and approved by the Planning and Zoning Division:

1) Window trim, measuring a minimum one inch thick by three inches wide, is required around all windows on all elevations of all buildings.

2) Measures shall be taken to reduce the visual impact of all garages. Each garage shall be designed with glazing along the top portion of the garage door, shall be recessed a minimum of eight inches from the surrounding building wall surface, and shall incorporate architectural detailing, such as trim or a trellis.

3) All driveways shall be paved with decorative paving materials or bands to reduce their visual impact.

30. Lot Landscaping

Concurrent with the submittal for building permits

The drawings submitted for a building permit shall contain a landscaping plan for the landscaping of each lot to be reviewed and approved by the Planning and Zoning Division. The landscaping plan shall contain the following information:

1) Landscaping details, such as proposed planting types, sizes, and quantities and proposed fencing.

2) The landscaping plan shall cover the entire front yard area of the lot.

3) Irrigation details.

4) The proposed landscaping shall be primarily drought-tolerant.

31. Homeowners Association

Prior to occupancy

A homeowners association (HOA) is required for the development. The proposed covenants, codes and restrictions (CC&Rs) for the HOA shall be reviewed and approved by the Planning and Zoning Division. The CC&Rs, or other equivalent instrument, shall clearly identify, at a minimum, the maintenance and enforcement responsibilities of the homeowners. The applicant shall submit to the City for review and approval by the Planning and Zoning Division of revised CC&Rs that are consistent with the revised project.

32. Noise Covenant

Required at the time of Final Map approval

A noise covenant shall be provided for the proposed residential lots that abut the property located at 1025 98th Avenue (i.e., Lots 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, and 113) acknowledging that the current business operating on the abutting property (i.e., Pacific Paper Tube) has the right to continue its current operational characteristics. A second noise covenant shall be provided for the proposed residential lots located adjacent to the property located at 850 92nd Avenue acknowledging that the current business operating at 850 92nd Avenue (i.e., Fast Lane Transportation) has the right to continue its current operational characteristics. The language of the covenants and the specific lots subject to the second noise covenant shall be submitted to the Director of Development for approval prior to the recordation of the Final Map.

33. Easements Over Land Not to be Developed

To be included on the Parcel Map

The Parcel Map shall show all easements over Lots 182 and 183 that are necessary to serve the project.

34. Fire Apparatus Access

Prior to issuance of a construction-related permit

The applicant shall secure approval from the City of a plan that either (a) proposes to modify the existing raised traffic islands located at the intersection of Armstrong Avenue and 98th Avenue to provide for acceptable fire apparatus access to the site or (b) demonstrates that acceptable fire apparatus access to the site exists without modification of the existing raised traffic islands located at the intersection of Armstrong Avenue and 98th Avenue.

35. Lot Line Adjustment

Prior to issuance of a construction-related permit

The applicant shall secure approval from the City of the proposed future lot line adjustments shown on the vesting tentative parcel map. The lot line adjustments shall be recorded prior to issuance of construction-related permits for the affected lots.

36. Ellington Way Lighting Plan

Prior to issuance of a construction-related permit

The applicant shall secure approval from the Director of City Planning of a lighting plan for Ellington Way to ensure that the street is illuminated in a manner to deter criminal activity.

Additional Conditions of Approval Added in Conjunction with Revisions Approved on February 16, 2011:

37. "F" Street Fence/Lot J

Prior to issuance of a construction-related permit

The applicant shall secure approval from the Director of City Planning for the design of the proposed fence located where "F" Street abuts Lot J. The design of the fence shall be similar to the fence and gate proposed at the point where Elmhurst Avenue abuts Lot C. The fence shall be restricted in height to three and one-half feet, be constructed of durable materials, and include an unlocked pedestrian gate.

38. "G" Street Wall/Lot K

Prior to issuance of a construction-related permit

The applicant shall secure approval from the Director of City Planning for the design of the proposed wall located where "G" Street abuts Lot K. The wall shall exhibit a high-degree of design and material quality.

Prior to issuance of a construction-related permit

The applicant shall secure approval from the Director of City Planning of a real estate declaration or notice, or other functionally equivalent recordable real estate document, that states that the City has the authority to remove the wall and alter the improvements and landscaping at Lot K at any time. The intent of this condition is to provide to the City the authority to remove the wall, either by the City acting directly to remove the wall or by the City requiring a developer to remove the wall via a condition of approval, and replace the wall with a lower fence and pedestrian gate like the one required above in Condition of Approval 37 at "F" Street when and if all the properties fronting on "G" Street are converted to residential use so that pedestrians may travel from "G" Street into the project. The real estate document must be recorded against all the lots in the project prior to construction.

39. Ellington Way Gate

Prior to issuance of a construction-related permit and ongoing

The applicant shall secure approval from the Director of City Planning of a plan concerning the status and gate proposed for Ellington Way. The gate and Ellington Way shall comply with the following requirements:

1) The gate shall exhibit a high-degree of design and material quality.

2) The gate shall be accessible to the Oakland Fire Department, Oakland Police Department, and other emergency vehicles.
3) The gate shall restrict both vehicle access and pedestrian access.
4) At the gate there shall be a sign posted and visible from 92nd Avenue that identifies Ellington Way as a private entrance and that the public entrance to Arcadia Park is on 98th Avenue.
5) Except as noted above in item 2, the gate shall only allow vehicles and pedestrians to exit the site heading towards 92nd Avenue. The gate shall automatically open for all vehicles and manually for all pedestrians, including residents and the general public, exiting the site. The gate shall not operate for vehicles or pedestrians associated with the residents or the general public entering the site from 92nd Avenue.
6) The gate shall be located near 92nd Avenue to prevent vehicles from needing to turnaround on Ellington Way at the gate if approaching the site from 92nd Avenue. There shall be sufficient queuing space between the gate and 92nd Avenue so that vehicles at the gate do not extend into the public right-of-way of 92nd Avenue.
7) Legal public access over the northern "panhandle" portion of Ellington Way must be removed so that the proposed gate is not restricting legal public access to the site. The applicant shall secure approval from the City of a mechanism, such as a real estate instrument, to rescind the offer of dedication of public right-of-way over this portion of Ellington Way, or take other legally appropriate actions, so that it remains private. The private portion of Ellington Way shall provide the same rights to the project residents and to the adjacent property to the northwest of the site (850 92nd Avenue; APN 044-4989-009-02) in the event that the adjacent property is redeveloped with residential lots that front onto Ellington Way. The beneficiaries of the private portion of Ellington Way shall be responsible for the operation, maintenance, repair, replacement, and/or reconstruction of the roadway and gate and provide for City review and approval an appropriate mechanism to ensure this obligation is met. The City shall not be responsible for the operation, maintenance, repair, replacement, and/or reconstruction of the roadway or gate.