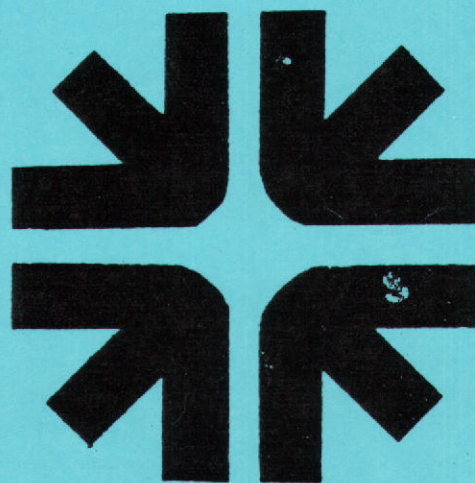


APPROVAL NOTEBOOK
CITY OF EMERYVILLE
JOINT REDEVELOPMENT AGENCY
CITY COUNCIL
KAISER FOUNDATION HOSPITALS, INC.
KAISER PERMANENTE
MEDICAL CENTER PROJECT
(PUD 93-1)
November 21, 1994



**Joint City Council/Redevelopment Agency Approval Notebook
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Attachment A
Draft Council Resolution Certifying
the Final Environmental Impact Report

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EMERYVILLE,
CALIFORNIA, CERTIFYING THE FINAL ENVIRONMENTAL IMPACT
REPORT FOR THE KAISER PERMANENTE MEDICAL CENTER**

THE CITY COUNCIL OF THE CITY OF EMERYVILLE DOES RESOLVE AS FOLLOWS:

Section 1: EIR Recitals.

1. Kaiser Foundation Hospitals submitted a request for approval of a concept plan in April 1993 to allow the development of the Kaiser Permanente Medical Center consisting of an approximately 1,563,000 square foot medical office complex and 3,600 parking spaces on the 30 acre site generally bounded by San Pablo Avenue, Park Avenue, Hollis Street, 45th Street, 53rd Street, and Doyle Street; and

2. In order to effectuate the Project, the City Council must approve certain General Plan amendments; a rezoning to Planned Unit Development/Commercial and approval of a preliminary development plan; a final development plan for the hospital building; and a development agreement. In addition, an amendment to the Redevelopment Plan for the Shellmound Park Redevelopment Project must be approved by the City Council and a Participation Agreement approved by both the City Council and Redevelopment Agency; and

3. In July 1993, the City of Emeryville Planning Department prepared an Initial Study for the proposed Kaiser Permanente Medical Center, to assess the probable environmental impacts of the Project; and

4. The Initial Study and a Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) were published and distributed to the public on July 13, 1993, informing the public that a public scoping session would be held at the City Council chambers on July 21, 1993, and that public comments would be received for a 30-day period following the release of the document; and

5. Responsible agencies received copies of the Initial Study/NOP via certified mail, a copy was provided to the Clerk of the County of Alameda for public posting, and in advance of the public scoping session, and notice was sent to a

citywide mailing list and published in the Public Notice section of the Oakland Tribune newspaper; and because one of the responsible agencies did not receive a copy of the Initial Study/NOP, the Initial Study/NOP was reissued to the State Clearinghouse for redistribution to state agencies.

6. To ensure that all interested parties and responsible agencies had sufficient time to respond to the Initial Study/NOP, the comment period was extended to September 16, 1993, resulting in a 66-day comment period; and

7. The scoping meeting was held before the Planning Commission on July 21, 1993 and following the close of the Initial Study/NOP comment period, the City's EIR consultant began preparation of the DEIR pursuant to the requirements of the California Environmental Quality Act (CEQA), and focused on issues raised in the written comments on the Initial Study/NOP and at the public scoping session; and

8. Beginning in June 1993, Kaiser Foundation Hospitals ("Kaiser") sponsored a series of monthly design workshops with members of the community to obtain input from and provide updates to the residents and businesses in the area with respect to urban design characteristics of the Project; and

9. At the July 22, 1993 Planning Commission meeting, Kaiser presented its current design plans for the proposed medical center and the City's urban design consultant presented the preliminary urban design guidelines for the Project site; and

10. At its August 26, 1993 meeting, the Planning Commission approved the Urban Design Guidelines for the Kaiser Permanente Medical Center; and

11. On May 6, 1994, the DEIR for the Kaiser Project was completed and circulated for public review and comment, was distributed to public agencies and persons requesting copies, and was made available for public review at the Golden Gate Public Library, the City of Emeryville Planning Department, and the Emeryville Fire Station and additional copies were made available through Rapid Repro Copy Center and Access Print in the City of Emeryville; and

12. A notice of the availability of the DEIR indicating that comments on the DEIR were due to the City of Emeryville by June 20, 1994, and that a public hearing would be held on June 2, 1994, on the DEIR, was published in the May 7, 1994, edition of the Oakland Tribune, was sent to individuals requesting such notice, and was provided to the Alameda County Clerk for posting; and

13. The Planning Commission held a public hearing on June 2, 1994, on the DEIR, at which opportunity was given for and public comment received on the DEIR; and

14. By the end of the initial public review period, the City of Emeryville received several requests to extend the public review period and in response to these requests, the City extended the public review and comment period an additional forty-five (45) days to August 4, 1994; and

15. Written comments were received from approximately one hundred (100) agencies, private and public associations and citizens during the public review period; and

16. After the close of the comment period, the Planning Department prepared the Response to Comments and Text Revisions document which contain all written and verbal comments received on the DEIR, responses to those comments and related text and figure changes to the DEIR, which combined with the DEIR and the Mitigation Monitoring and Reporting Program, constitutes the Final Environmental Impact Report; and

17. The Response to Comments and Text Revisions document was released for agency and public review on October 21, 1994, was made available at the City of Emeryville Planning Department, Rapid Repro Copy Center and Access Print in the City of Emeryville to all persons requesting copies, and was made available for public review at the Golden Gate Public Library, the Emeryville Police Department, and the City of Emeryville Planning Department; and

18. On October 21, 1994, the Response to Comments and Text Revision document and Notice of Public Hearing before the Emeryville Planning Commission on November 3, 1994, to consider the Response to Comments and Text Revisions document, the Mitigation Monitoring and Reporting Program, the proposed General Plan amendments, the Rezoning to Planned Unit Development/ Commercial, the Preliminary Development Plan for the Phase I Site and Future Expansion Site, the Final Development Plan for the hospital building on the Phase I Site, and the Development Agreement was delivered certified mail to all commenting agencies; and

19. Between October 21, 1994 and October 24, 1994, a Notice of Availability of the Response to Comments and Text Revisions document and Notice of the Public Hearing before the Emeryville Planning Commission on November 3, 1994, was delivered certified mail to individuals and organizations commenting on the DEIR; and

20. Between October 21, 1994 and October 24, 1994, a Notice of Availability of the Response to Comments and Text Revisions document and Notice of the Public Hearing before the Emeryville Planning Commission on November 3, 1994, was delivered regular mail to persons who have requested notices of public hearings in general or in particular to the proposed Kaiser Permanente Medical Center Project, to all property owners within the City of Emeryville, posted in the required posting places within the City of Emeryville, and provided to the Alameda County Clerk for posting; and

21. The Notice of Public Hearing before the Emeryville Planning Commission on November 3, 1994, was published in the October 24, 1994 edition of the Oakland Tribune; and

22. A Final Environmental Impact Report (FEIR) has been prepared by the City consisting of the DEIR, the comments received on the DEIR and the Responses to Comments and Text Revisions document containing all written and verbal comments received on the DEIR and responses thereto; and

23. The Planning Commission held a public hearing on November 3 and November 10, 1994, to consider the Project and a recommendation to the City Council on the request for certification of the FEIR, the request for approval of amendments to the General Plan, and request for approval of a rezone to Planned Unit Development/Commercial for the Phase I Site and Future Expansion Site, a Preliminary Development Plan for the Phase I Site and Future Expansion Site and a Final Development Plan for the hospital building of the Phase I Site; and request for the City to enter into a Development Agreement with the Project applicant to allow the development of the Kaiser Permanente Medical Center Project; and

24. After reviewing the information contained in the FEIR and the evidence and testimony on the adequacy of the FEIR, the Planning Commission adopted Planning Commission Resolution No. _____, Recommending Certification of the Environmental Impact Report for the Kaiser Permanente Medical Center; and

25. On November 21, the City Council and Redevelopment Agency of the City of Emeryville held a joint public hearing to consider the Kaiser Permanente Medical Center Project and the adequacy of the FEIR; and

26. During this hearing public testimony was taken from the Project applicants, Project consultants, City staff members and City consultants, as well as members of the general public; and

27. The City Council has reviewed and considered the information provided by those testifying, as well as the information provided in the FEIR, staff reports and supporting documentation and the recommendation of the Planning Commission; and

Section 2. Findings Concerning Adequacy of the Final EIR.

1. That the Final Environmental Impact Report prepared for the proposed Kaiser Permanente Medical Center has been prepared, publicized, circulated and reviewed in accordance with the California Environmental Quality Act (Cal. Pub.Res. Code sections 21000 et seq., "CEQA") and the State CEQA guidelines (Cal.Code Regs, Title 17, sections 15000 et seq., "CEQA Guidelines"), and the CEQA guidelines of the City of Emeryville.

2. That the FEIR constitutes an adequate, accurate, objective and complete Environmental Impact Report in compliance with all applicable legal standards.

3. That the FEIR contains a reasonable range of alternatives and that inclusion of the Fox Theater site in Oakland is not legally required as an alternative Project site. Moreover, evaluation of the Fox Theater site indicates that it is not a feasible alternative because it does not meet some of the basic objectives of the Project.

4. That recirculation of the FEIR is not required because the responses to comments provide clarification to the information contained in the DEIR and do not describe (1) a new substantial environmental impact resulting from the Project or from a new mitigation measure; (2) a substantial increase in an environmental impact, or (3) a feasible Project alternative or mitigation measure that clearly would lessen the environmental impacts of the Project that has not been adopted.

5. The City Council has independently reviewed and analyzed the FEIR and the FEIR reflects the independent judgment of the City Council, as required by Public Resources Code § 21082.1.

Section 3. Certification of FEIR.

1. The City Council of the City of Emeryville hereby certifies the FEIR for the Kaiser Permanente Medical Center as complete, adequate and in compliance with CEQA and state and local guidelines.

2. The City Council further certifies that it has reviewed and considered the information contained in the FEIR prior to taking action on the Project.

PASSED AND ADOPTED by the City Council of the City of Emeryville at a special meeting held on Monday, November 21, 1994, by the following vote:

AYES: _____

NOES: _____

EXCUSED: _____

ABSENT: _____

ABSTAINED: _____

MAYOR

ATTEST:

CITY CLERK

CITY ATTORNEY

Attachment B
Draft Council Resolution Making Findings and Adopting
Statement of Overriding Considerations

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EMERYVILLE, CALIFORNIA, MAKING FINDINGS CONCERNING MITIGATION MEASURES, ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM, MAKING FINDINGS CONCERNING ALTERNATIVES AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT FOR THE KAISER PERMANENTE MEDICAL CENTER PROJECT.

THE CITY COUNCIL OF THE CITY OF EMERYVILLE DOES RESOLVE AS FOLLOWS:

Section 1. Recitals Concerning Project Impacts

1. The City Council has certified that the Final EIR for the Kaiser Permanente Medical Center was completed in accordance with CEQA prior to adoption of this resolution; and
2. The Project consists of General Plan amendments, a rezoning to Planned Unit Development/Commercial and approval of a preliminary development plan, approval of a final development plan for the hospital building, approval of a development agreement, approval of an amendment to the Redevelopment Plan for the Shellmound Park Redevelopment Project which must be acted upon by the City Council and the approval of a Participation Agreement by both the City Council and the Redevelopment Agency. Therefore, in analyzing the environmental impacts of each discretionary approval, the City Council has examined the environmental impacts of approval of the Project as a whole; and
3. The City Council has independently reviewed and analyzed the EIR and considered the information contained therein and all comments, written and oral, received at the public hearing on the Final EIR prior to approving this resolution and acting on the proposed Project.

Section 2. Approval of Environmental Findings and Mitigation Measures.

1. The City Council adopts the Findings of Fact Concerning Mitigation Measures, Exhibit A; the Mitigation Monitoring Program, Exhibit B; the Findings of

Fact Concerning Alternatives, Exhibit C; and the Statement of Overriding Considerations, Exhibit D, all of which are attached hereto and incorporated by reference.

PASSED AND ADOPTED by the City Council of the City of Emeryville at a special meeting held on Monday, November 21, 1994, by the following vote:

AYES: _____

NOES: _____

ABSENT: _____

EXCUSED: _____

ABSTAINED: _____

MAYOR

ATTEST:

APPROVED AS TO FORM:

CITY CLERK

CITY ATTORNEY

Attachment B.1
Findings of Fact Regarding the Mitigation Measures

EXHIBIT A

FINDINGS OF FACT FOR THE KAISER PERMANENTE MEDICAL CENTER PROJECT

I. **PROJECT DESCRIPTION:** The "Project" is the proposed project as defined in the Draft EIR prepared for the Kaiser Permanente Medical Center Project. The project involves the development of a new Kaiser Permanente Medical Center on an approximately 30-acre site located in the City of Emeryville. The project site is generally bounded by 53rd Street on the north, Park Avenue on the south, San Pablo Avenue on the east, and Hollis Street on the west. The proposed medical center would include a hospital and medical office buildings, as well as a central utility plant, structured parking, open space areas, and general retail and office uses. The proposed project is expected to be constructed in phases over a three to thirty year time frame. Phase I of the medical center would be constructed on the portion of the site bound by San Pablo Avenue, Park Avenue, Hollis Street and 45th Street on the north and is expected to be completed by 1999. The Phase I site contains the old Del Monte cannery buildings, as well as other residential and commercial uses. Development planned for Phase I would involve approximately 1.94 million square feet of development including a hospital building, four medical office buildings, parking structures, and office and retail uses around the perimeter of the site (along San Pablo Avenue, Park Avenue and Hollis Street). Buildout of the project would include an additional 0.77 million square feet of development (for a total of 2.71 million square feet). Under buildout, additional development would occur on the Phase I site, as well as, on the "Future Expansion site" which is bounded by 45th Street on the south, Hollis Street on the west, 53rd Street on the north and the AC Transit maintenance yard and Emery Bay Village on the east. The Future Expansion site currently includes the Emeryville Business Center as well as other commercial and industrial uses. Development under buildout would include expansion of the hospital building (Phase I site) and construction of additional medical office buildings, general office and retail uses and a parking structure.

II. **THE FINAL EIR:** The Final EIR consists of the Draft EIR, Responses to Comments and Text Revisions document.

III. **THE RECORD:** The following information is incorporated by reference and made part of the record supporting these findings"

- a. The Draft EIR, Final EIR, and all documents relied upon or incorporated by reference.

- b. The Mitigation Monitoring and Reporting Program dated October, 1994.
- c. All testimony, documentary evidence and all correspondence submitted to or delivered to the City of Emeryville or the Emeryville Redevelopment Agency in connection with the Planning Commission public hearing of June 2, 1994, on the Draft EIR.
- d. Testimony, documentary evidence and all correspondence submitted to the City of Emeryville or the Emeryville Redevelopment Agency in connection with the Planning Commission public hearing of November 3, 1994.
- e. Testimony, documentary evidence and all correspondence submitted or delivered to the City of Emeryville or the Emeryville Redevelopment Agency in connection with the Planning Commission public hearing of November 10, 1994.
- f. Testimony, documentary evidence and all correspondence submitted to the City of Emeryville or the Emeryville Redevelopment Agency in connection with the joint public hearing of the City of Emeryville and the Emeryville Redevelopment Agency of November 21, 1994.
- g. All staff reports, memoranda, maps, slides, letters, minutes or meetings and other documents relied upon or prepared by City staff or consultants relating to the project
- h. These Findings and the Statement of Overriding Considerations adopted in connection with the project.

IV. FINDINGS AND STATEMENT OF FACTS SUPPORTING THE FINDINGS:

The Environmental Impact Report for the Kaiser Permanente Medical Center Project, prepared in compliance with the California Environmental Quality Act, evaluates the potentially significant and significant adverse environmental impacts which could result from adoption of the project. Pursuant to California Administrative Code Section 15091, the City is required to make certain findings with respect to these impacts. The required findings appear in the following sections of this document. This document lists all identified potentially significant and significant impacts of the project. Each of the remaining potentially significant and significant impacts is considered acceptable by the City based on a determination that the benefits of the project (listed in this document and in the Statement of Overriding

Considerations, Exhibit B) outweigh the risks of the potentially significant environmental effects of the project.

A. SIGNIFICANT OR POTENTIALLY SIGNIFICANT IMPACTS WHICH CAN BE AVOIDED AND MITIGATED TO A LESS THAN SIGNIFICANT LEVEL:

Finding - As authorized by Public Resources Code Section 21081 and Title 14, California Administrative Code Sections 15091, 15092, and 15093, the City finds that changes or alterations have been required in, or incorporated into, the Project which mitigate or avoid the significant environmental impacts listed below, as identified in the EIR.

These findings are supported by substantial evidence in the record of proceedings before the City as stated below. Each significant impact which can be reduced to a less-than-significant level is discussed below, and the appropriate mitigation measure stated, and adopted for implementation by approval of these Findings of Fact.

Impact LU-3

a. **Significant Impact:** The EIR found that development of Phase I of the medical center would result in a change in land use which would be generally compatible with the surrounding land uses in the immediate vicinity of the project. While the Phase I site is surrounded by a variety of land uses that do not from a planning perspective, reflect an established community, the residents in this area may perceive the proposed project as resulting in an adverse change to the land use character of the area. These residents may perceive that the project would physically disrupt or divide an established community. Therefore, Phase I of the proposed medical center would result in a potentially significant land use compatibility impact.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measures identified in the EIR and incorporated into the Project:

Mitigation LU-3.1: Kaiser shall implement the Kaiser Permanente Medical Center Urban Design Guidelines as adopted by the Emeryville Planning Commission on August 26, 1993. The requirements of the Urban Design guidelines have been incorporated into the project design. Incorporating the Urban Design guidelines into the Project will insure that the Project design is sensitive to and compatible with surrounding land uses, as further described on page 42 of the Draft EIR.

Mitigation LU-3.2: Kaiser shall implement the traffic, noise, and visual mitigation measures as described in Section II, C (pages 114-183), E (pages 211-214), and L (pages 287-291) which include additional mitigation measures not currently included in the project. As described on page 43 of the Draft EIR, incorporating these measures into the Project will lessen to the maximum extent feasible the Project's impacts on surrounding land uses.

c. **Finding:** The City finds that the above stated mitigation measures are incorporated into the project as a condition of approval. The City further finds that these mitigation measures are appropriate and reasonable and will substantially lessen or avoid the impacts described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact LU-4

a. **Significant Impact:** The EIR found that future expansion of the medical center would result in a change in land use on the Future Expansion site which would be generally compatible with the surrounding land uses in the immediate vicinity of the project. While the Phase I and Future Expansion sites are surrounded by land uses that are not part of an established community from a planning perspective, the surrounding residents may perceive the proposed project as resulting in an adverse change to the land use character of the area. These residents may perceive that the project would physically disrupt or divide an established community. Therefore, Future Expansion of the project would result in a potentially significant land use impact.

Mitigation

This impact will be mitigated with the following required mitigation measures identified in the EIR and incorporated into the Project:

Mitigation LU-4.1: Kaiser shall implement the Kaiser Permanente Medical Center Urban Design Guidelines as adopted by the Emeryville Planning Commission on August 26, 1993. The requirements of the Urban Design Guidelines have been incorporated into the project design. Incorporating the Urban Design guidelines into the Project will insure that the Project design is sensitive to and compatible with surrounding land uses, as further described on page 42 of the Draft EIR.

Mitigation LU-4.2: Kaiser shall implement the traffic, noise, and visual mitigation measures as described in Section II, C (pages 114-183), E

(pages 211-214) , and L (pages 287-291) which include additional mitigation measures not currently included in the project. As described on page 43 of the Draft EIR, incorporating these measures into the Project will lessen to the maximum extent feasible the Project's impacts on surrounding land uses.

c. **Finding:** The City finds that the above stated mitigation measures are incorporated into the project as a condition of approval. The City further finds that these mitigation measures are appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact LU-5

a. **Significant Impact:** The EIR found that the proposed amendment to General Plan Land Use Element Policy #5 would result in a potentially significant impact to brick buildings on the north side of Park Avenue outside the project site. Land Use Element Policy #5 pertains to the preservation of brick buildings along Park Avenue.

Mitigation

This impact will be mitigated with the following required mitigation measures identified in the EIR and incorporated into the Project:

Mitigation LU-5.1: The City of Emeryville shall limit the application of the text change to Land Use Element Policy #5 to the Del Monte site. This mitigation measure will ensure that the majority of the brick buildings on the north side of Park Avenue will be preserved, thereby reducing the impact to only the Del Monte building.

Mitigation LU-5.2: Kaiser shall use authentic brick building materials in the proposed "liner" building design compatible with the scale and character of the area, where feasible. This mitigation measure will ensure that the liner buildings are designed in a manner that is compatible with the other brick structures in the Project vicinity, especially along Park Avenue.

c. **Finding:** The City finds that the above stated mitigation measures are incorporated into the project as conditions of approval. The City further finds that these mitigation measures are appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen

the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact EH-1

a. **Significant Impact:** The EIR found that Phase I of the project would involve the acquisition of commercial properties, displacement of viable businesses and the Pepsico operations, and demolition of 10 structures which would be considered a significant impact. The displacement of the five businesses and Pepsico operations would result in a loss of 175 jobs on the Phase I site (including the Pepsico facility).

Mitigation

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation EH-1.1: Phase I would be required to conform to the Relocation Assistance Act and State Relocation Guidelines Requirements, as described on pages 63 through 67 of the Draft EIR. These requirements are intended to provide compensation and relocation benefits for displaced businesses and residents in redevelopment project areas.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact EH-3

a. **Significant Impact:** The EIR found that future expansion of the medical center would involve acquisition of four additional properties, displacement of 22 businesses, and demolition of six existing structures which would be considered a significant impact. The displacement of the 22 businesses would result in a corresponding loss of 120 manufacturing jobs on the Future Expansion site.

Mitigation

This impact will be mitigated with the following required mitigation measure

identified in the EIR and incorporated into the Project:

Mitigation EH-3.1: Future Expansion of the medical center would be required to conform to the Relocation Assistance Act and State Relocation Guidelines Requirements, as described on pages 63 through 67 of the Draft EIR. These requirements are intended to provide compensation and relocation benefits for displaced businesses and residents in redevelopment project areas.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact EH-5

a. **Significant Impact:** The EIR found that Phase I of the project would involve the acquisition of residential properties, displacement of 21 households and 37 residents, and demolition of 21 existing housing units on the Phase I site which would be considered a significant impact. Most of the housing units would be relocated to other locations within the City of Emeryville.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measures identified in the EIR and incorporated into the Project:

Mitigation EH-5.1: As with the business displacement impacts, Kaiser and the Emeryville Redevelopment Agency will be required by law to conform to the requirements of the Relocation Assistance Act and State Relocation Guidelines, for Phase I. These requirements will mitigate the above-described impacts by providing relocation assistance and benefits to residents that are displaced by the Project.

Mitigation EH-5.2: The Agency shall implement its replacement housing obligations under Redevelopment Law. Funding shall be provided by the project applicant as set forth in the Participation Agreement. This measure will reduce the above-described impact by replacing all housing units occupied by low-to moderate-income

households that are displaced by the Project within four years of their removal from the housing stock.

Mitigation EH-5.3: The Agency and Kaiser shall implement Kaiser's Housing Program. This program will be included as a mitigation measure in the Development Agreement, as described on pages 74 and 75 of the Draft EIR. This measure will further reduce the above-described impact by providing the Agency a source of low interest financing to construct new affordable and market rate housing within Emeryville.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact EH-7

a. **Significant Impact:** The EIR found that Future Expansion of the project would involve the acquisition of residential properties, displacement of 12 households and 22 residents, and demolition of 12 existing live/work units on the Future Expansion site which would be considered a significant impact. The live/work units would be relocated to other locations within the City of Emeryville.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measures identified in the EIR and incorporated into the Project:

Mitigation EH-7.1: As with the business displacement impacts, Kaiser and the Agency shall be required by law to conform to the requirements of the Relocation Assistance Act and State Relocation Guidelines, for Future Expansion. These requirements will mitigate the above-described impacts by providing relocation assistance and benefits to residents that are displaced by the Project.

Mitigation EH-7.2: The Emeryville Redevelopment Agency shall implement its replacement housing obligations under Redevelopment Law. Funding would be provided by the project applicant. This measure will reduce the above-described impact by replacing all housing units occupied by low-to moderate-income households that

are displaced by the Project within four years of their removal from the housing stock.

Mitigation EH-7.3: The Emeryville Redevelopment Agency and Kaiser shall implement Kaiser's Housing Program. This program will be included as a mitigation measure in the Development Agreement. This measure will further reduce the above-described impact by providing the Agency a source of low interest financing to construct new affordable and market rate housing within Emeryville.

c. **Finding:** The City finds that the above stated mitigation measures are incorporated into the project as conditions of approval. The City further finds that these mitigation measures are appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact EH-6

a. **Significant Impact:** The EIR found that the loss of 80 moderate income units would result in a significant impact because the retention of affordable housing is encouraged by Emeryville General Plan Housing Opportunities, Policy #7.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measures identified in the EIR and incorporated into the Project:

Mitigation EH-6.1: The Redevelopment Agency and Kaiser shall implement the Kaiser Housing Program. This program is included as part of the proposed project. As described on pages 74 and 75 of the Draft EIR, this measure will reduce the above-described impact by providing the Agency a source of low interest financing to construct new affordable and market rate housing within Emeryville.

Mitigation EH-6.2: The Redevelopment Agency and Kaiser shall pursue the development of housing at other locations in Emeryville. As described on pages 77 and 78 of the Draft EIR, this measure will reduce the above-described impact because it will require the Agency to pursue development of additional sites throughout the City where more than 400 dwelling units could be developed.

Mitigation EH-6.3: The Kaiser Housing Program shall fund the construction of affordable housing units. As described on pages 74 and 75 of the Draft EIR, this measure will reduce the above-described impact by providing the Agency a source of low interest financing to construct new affordable and market rate housing within Emeryville.

Mitigation EH-6.4: Funding from the Kaiser Housing Program shall be applied to the development of housing on the 25 sites identified by the Redevelopment Agency as having potential for future housing construction. As described on pages 74 and 75 of the Draft EIR, this measure will reduce the above-described impact by providing the Agency a source of low interest financing to construct new affordable and market rate housing within Emeryville.

Mitigation EH-6.5: The City of Emeryville Redevelopment Agency will be responsible for continuing to encourage developers to develop affordable housing on the 25 parcels identified as potential housing sites. As described on pages 77 and 78 of the Draft EIR, this measure will reduce the above-described impact because it will require the Agency to pursue development of additional sites throughout the City where more than 400 dwelling units could be developed.

Mitigation EH-6.6: The City of Emeryville will continue to encourage residential development in mixed-use areas, and infill housing at appropriate locations. This measure will reduce the above-described impact by increasing the likelihood that housing will be developed at other locations throughout Emeryville.

c. Finding: The City finds that the above stated mitigation measures are incorporated into the project as conditions of approval. The City further finds that these mitigation measures are appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-1

a. Significant Impact: The EIR found that the intersection of San Pablo Avenue/45th Street would operate at an unacceptable Level of Service "F" in the p.m. peak period which would be a significant impact.

b. Mitigation

This impact will be mitigated with the following required mitigation measure

identified in the EIR and incorporated into the Project:

Mitigation Cir-1.1: Kaiser shall add a third through lane in the northbound and southbound directions on San Pablo Avenue and an exclusive eastbound left turn lane on 45th Street. Incorporation of this measure would reduce the above-described impact from a level of service F to level of service D or better.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-2

a. **Significant Impact:** The EIR found that the San Pablo Avenue/Park Avenue intersection would operate at an unacceptable Level of Service "F" in the p.m. peak period which would be considered a significant impact.

Mitigation

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Cir-2.1: Kaiser shall add a third through lane in the northbound and southbound directions on San Pablo Avenue. Incorporation of this measure would reduce the above-described impact from a level of service F to level of service D or better.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-3

a. **Significant Impact:** The EIR found that the intersection of San Pablo Avenue/Adeline Street/W. MacArthur Boulevard would operate at an

unacceptable Level of Service "F" in the p.m. peak period which would be considered a significant impact.

b Mitigation

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Cir-3.1: Kaiser shall add a third through lane in the northbound and southbound directions, prohibit left turns in the northbound and southbound directions on San Pablo Avenue, and add an exclusive left turn lane in the westbound direction on Adeline Street. Incorporation of this measure would reduce the above-described impact from a level of service F to level of service D or better.

c Finding: The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-4

a Significant Impact: The EIR found that the intersection of Hollis Street/45th Street would operate at an unacceptable Level of Service "F" in the a.m. and p.m. peak periods which would be considered a significant impact.

b Mitigation

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Cir-4.1: Kaiser shall restripe 45th Street to provide an exclusive left turn lane in the westbound direction at Hollis Street, as well as the installation of a no parking zone on one side of 45th Street. Kaiser shall restripe Hollis to provide two through lanes on both approaches. Installation of a traffic signal will also be required at Hollis and 45th Streets. Incorporation of this measure would reduce the above-described impact from a level of service F to level of service D or better.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-5

a. **Significant Impact:** The EIR found that the intersection of San Pablo Avenue/40th Street would operate at an unacceptable Level of Service "F" in the p.m. peak period which would be a significant impact.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Cir-5.1: Kaiser shall add a third through lane in the northbound and southbound directions on San Pablo Avenue, as well as an eastbound shared through/right turn lane on 40th Street. Incorporation of this measure would reduce the above-described impact from a level of service F to level of service D or better.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-6

a. **Significant Impact:** The EIR found that the intersection of Powell Street/Doyle Street would operate at an unacceptable Level of Service in the p.m. peak period which would be considered a significant impact.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Cir-6.1: Kaiser shall install a traffic signal at the intersection of Powell Street/Doyle Street. Kaiser shall restripe Powell Street approaches to provide an exclusive left turn pocket in both directions at Doyle Street. Incorporation of this measure would reduce the above-described impact so that this intersection would operate at a level of service D or better.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-7

a. **Significant Impact:** The EIR found that the project traffic volumes would result in significant impacts to Hollis and Powell Streets.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Cir-7.1: Kaiser shall construct a two lane Horton-Landregan Connection, with turn lanes into the Chiron project, and a two lane Stanford Avenue Extension between Horton-Landregan and Hollis Street, with left and right turn lanes at the Hollis Street intersection. Incorporation of this measure would reduce the above-described impact so that this intersection would operate at a level of service D or better.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-11

a. **Significant Impact:** The EIR found that cumulative traffic would result in an unacceptable Level of Service in the a.m. peak period at the Adeline

Street/36th Street intersection which would be considered a significant impact.

b. Mitigation

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Cir-11.1: The City shall install a traffic signal at this intersection. Incorporation of this measure would reduce the above-described impact so that this intersection would operate at a level of service D or better.

c. Finding: The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-12

a. Significant Impact: The EIR found that cumulative traffic would result in an unacceptable Level of Service in the p.m. peak period at the Shellmound Street/Christie Avenue North intersection which would be considered a significant impact.

b. Mitigation

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Cir-12.1: The City shall restripe Christie Avenue to provide a shared through/right lane and a shared left/through lane in the southbound direction. Incorporation of this measure would reduce the above-described impact so that this intersection would operate at a level of service D or better.

c. Finding: The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other

benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-13

a. **Significant Impact:** The EIR found that Cumulative traffic would result in an unacceptable Level of Service in the p.m. peak period at the Peralta Street/36th Street intersection which would be considered a significant impact.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Cir-13.1: Kaiser shall install a traffic signal at this intersection. Incorporation of this measure would reduce the above-described impact so that this intersection would operate at a level of service D or better.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-14

a. **Significant Impact:** The EIR found that cumulative traffic would result in a significant impact at the Hollis Street/Yerba Buena Avenue/Mandela Parkway intersection in the p.m. peak period.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Cir-14.1: Kaiser shall install a traffic signal at this intersection. Incorporation of this measure would reduce the above-described impact so that this intersection would operate at a level of service D or better.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-15

a. **Significant Impact:** The EIR found that the intersection of San Pablo Avenue/36th Street would operate at an unacceptable Level of Service in the a.m. peak period which would be considered a significant impact.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Cir-15.1: Kaiser shall restripe San Pablo Avenue to provide a third through lane in the northbound and southbound directions. This mitigation will require a mandatory peak period parking restriction on San Pablo Avenue between 35th Street and 37th Street. Incorporation of this measure would reduce the above-described impact so that this intersection would operate at a level of service D or better.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-18

a. **Significant Impact:** The EIR found that the intersection of Hollis Street/Park Avenue would operate at an unacceptable Level of Service in the p.m. peak period, which would be considered a significant impact.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measure

identified in the EIR and incorporated into the Project:

Mitigation Cir-18.1: Kaiser shall add an exclusive left turn lane in the eastbound and westbound directions on Park Avenue and a second through lane in the northbound and southbound directions on Hollis Street. Incorporation of this measure would reduce the above-described impact so that this intersection would operate at a level of service D or better.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-19

a. **Significant Impact:** The EIR found that the intersection of Bay-Shellmound Street/Christie Avenue South would operate at an unacceptable Level of Service in the p.m. peak period, which would be considered a significant impact.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Cir-19.1: The City shall add a second exclusive left turn lane in the northbound direction on Bay Street-Shellmound at Christie Avenue South. Incorporation of this measure would reduce the above-described impact so that this intersection would operate at a level of service D or better.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-21

a. **Significant Impact:** The EIR found that the intersection of Adeline Street/40th Street would operate at an unacceptable Level of Service in the p.m. peak period which would be considered a significant impact.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Cir-21.1: Kaiser shall add an exclusive left turn lane in the northbound and southbound directions on Adeline Street. Incorporation of this measure would reduce the above-described impact so that this intersection would operate at a level of service D or better.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-22

a. **Significant Impact:** The EIR found that the intersection of Powell Street/I-80 Eastbound Ramp would operate at an unacceptable Level of Service in the p.m. peak period, which would be considered a significant impact.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Cir-22.1: Kaiser shall add a second exclusive left turn lane in the northbound direction on the off-ramp at Powell Street. Incorporation of this measure would reduce the above-described impact so that this intersection would operate at a level of service D or better.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further

finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-23

a. **Significant Impact:** The EIR found that the intersection of Bay Street/65th Street would operate at an unacceptable Level of Service in the p.m. peak period, which would be considered a significant impact.

Mitigation

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Cir-23.1: The City shall add an exclusive left turn lane in the eastbound and westbound directions on 65th Street as well as a second through lane in the northbound and southbound directions on Bay Street. Incorporation of this measure would reduce the above-described impact so that this intersection would operate at a level of service D or better.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-27

a. **Significant Impact:** The EIR found that the project would result in an impact with the closure of Watts Street in year 2000.

Mitigation

This impact will be mitigated with the following required mitigation measures identified in the EIR and incorporated into the Project:

Mitigation Cir-27.1: Kaiser and AC Transit shall enter into an agreement to construct a new entrance to the AC Transit maintenance

yard on 47th Street approximately 125 feet west of San Pablo Avenue. The existing driveway will serve exiting buses; OR

Mitigation Cir-27.2: Kaiser shall widen the existing driveway on 45th Street to allow for both ingress and egress at this location, and modify the existing curbline to provide a 45-foot radius at the northwest corner of the San Pablo Avenue/45th Street intersection.

The implementation of either of the above-described measures will reduce the impact by providing alternative ingress and egress which can accommodate AC Transit.

c. **Finding:** The City finds that the above stated mitigation measures are incorporated into the project as a condition of approval. The City further finds that either of these mitigation measures is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-26

a. **Significant Impact:** The EIR found that Future Expansion of the project would result in an impact to traffic circulation with the elimination of the Doyle-Haven Extension, due to the shift in traffic patterns which would result in significant impacts at several intersections.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Cir-26.1: Kaiser shall construct a two lane Haven Street Extension from 53rd Street to Powell Street, with three lanes provided only as needed at the junctions with major cross streets such as Powell Street and 53rd Street to serve as a major project access to the north. Incorporation of this measure would reduce impacts at several intersections which would otherwise occur as the result of the Future Expansion phase of the Project.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that

the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-35

a. **Significant Impact:** The EIR found that the project would result in a significant cumulative transit impact in the year 2000.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Cir-35.1: The project, as well as other local projects, shall contribute to a mass transit fund for use in developing local and regional transit capacity. Incorporation of this measure will reduce the impact by providing moneys to assist in the development of mass transit alternatives, including the City shuttle service.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-37

a. **Significant Impact:** The EIR found that the project would result in a significant cumulative transit impact in the year 2010.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Cir-37.1: The project, as well as other local projects, shall contribute to a mass transit fund for use in developing local and regional transit capacity. Incorporation of this measure will reduce the impact by providing moneys to assist in the development of mass transit alternatives, including the City shuttle service.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-40

a. **Significant Impact:** The EIR found that the project would result in impacts to the intersection of Park Avenue/Emery Street due to the location of the garage access points.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Cir-40.2: Kaiser shall pay for the installation of a traffic signal at the intersection of Park Avenue/Emery Street. As discussed on pages 168 through 171 of the Draft EIR, this measure will reduce site access impacts which result when a vehicle entering or exiting the site interferes with the movement of traffic on streets adjacent to the site.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as conditions of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-41

a. **Significant Impact:** The EIR found that the project would result in

impacts to the roadway pavement along Park Avenue and 45th Street.

b. Mitigation

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Cir-41.1: If needed, Kaiser shall overlay and improve the structural section on Park Avenue, from San Pablo Avenue to Halleck Street, and along the project frontage on 45th Street. As discussed on pages 168 through 171 of the Draft EIR, this measure will reduce site access impacts which result when a vehicle entering or exiting the site interferes with the movement of traffic on streets adjacent to the site.

c. Finding: The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-42

a. Significant Impact: The EIR found that the project would result in a significant site access impact at the garage on Hollis Street.

b. Mitigation

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Cir-42.1: Kaiser shall restrict the access driveway along Hollis Street at the garage to outbound movements only. Inbound traffic will access this garage via an access driveway located on the east side of the garage. Access will be via a driveway connecting to Haven Street. As discussed on pages 168 through 171 of the Draft EIR, this measure will reduce site access impacts which result when a vehicle entering or exiting the site interferes with the movement of traffic on streets adjacent to the site.

c. Finding: The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that

the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-43

a. **Significant Impact:** The EIR found that the absence of off-street truck loading facilities would result in significant site access impacts.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Cir-43.1: Kaiser shall provide off-street truck loading facilities. As discussed on pages 168 through 171 of the Draft EIR, this measure will reduce site access impacts which result when a vehicle entering or exiting the site interferes with the movement of traffic on streets adjacent to the site.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-44

a. **Significant Impact:** The EIR found that the project would result in a significant site access impact in the year 2010.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Cir-44.1: Kaiser shall restrict the Hollis Street access to exiting vehicles only and provide an entrance access on the east side of the garage. Access will be provided by a driveway connecting to 53rd Street. As discussed on pages 168 through 171 of the Draft EIR, this measure will reduce site access impacts which result when a vehicle

entering or exiting the site interferes with the movement of traffic on streets adjacent to the site.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-45

a. **Significant Impact:** The EIR found that Phase I of the project would result in significant pedestrian impacts at the periphery of the site due to potential conflicts with automobiles or trucks.

Mitigation

This impact will be mitigated with the following required mitigation measures identified in the EIR and incorporated into the Project:

Mitigation Cir-45.1: Kaiser shall provide audio and visual warning devices at the junction of all sidewalks with automobile or truck access to garages or loading areas along the periphery of the Phase I site. This measure would reduce the above-described impact below the threshold of significance set forth on page 171 of the Draft EIR.

Mitigation Cir-45.2: Kaiser shall meet all ADA requirements for all new pedestrian facilities constructed for the project. This measure would reduce the above-described impact below the threshold of significance set forth on page 171 of the Draft EIR.

c. **Finding:** The City finds that the above stated mitigation measures are incorporated into the project as conditions of approval. The City further finds that these mitigation measures are appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measures do not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-46

a. **Significant Impact:** The EIR found that significant pedestrian impacts

would occur at the crossing of 45th Street between the Phase I site and the Future Expansion site. Significant pedestrian impacts would occur at the San Pablo Avenue crossings at 47th Street and at the 47th Street crossing on the west side of San Pablo Avenue.

b. Mitigation

This impact will be mitigated with the following required mitigation measures identified in the EIR and incorporated into the Project:

Mitigation Cir-46.1: Kaiser shall provide pavement markings, signing, and other related traffic control devices to indicate the location of at-grade crossings for pedestrians along 45th Street. This measure would reduce the above-described impact below the threshold of significance set forth on page 171 of the Draft EIR.

Mitigation Cir-46.2: Kaiser shall provide pavement markings and signing to clearly indicate access locations for handicapped persons. This measure would reduce the above-described impact below the threshold of significance set forth on page 171 of the Draft EIR.

c. Finding: The City finds that the above stated mitigation measures are incorporated into the project as a conditions of approval. The City further finds that these mitigation measures are appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-47

a. Significant Impact: The EIR found that increased project generated traffic associated with buildout of the project and other cumulative development would cause significant pedestrian impacts at the crossings of San Pablo Avenue at 47th Street and the crossing of 47th Street on the west side of San Pablo Avenue.

b. Mitigation

This impact will be mitigated with the following required mitigation measures identified in the EIR and incorporated into the Project:

Mitigation Cir-47.1: Kaiser shall install pedestrian signal heads for pedestrians crossing 47th Street, and advance pedestrian warning signs on San Pablo Avenue. Due to the close proximity of the Future Expansion site to the nearby school and swim center, funding for this mitigation measure shall be the responsibility of Kaiser with buildout of the project. This measure would reduce the above-described impact below the threshold of significance set forth on page 171 of the Draft EIR.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-48

a. **Significant Impact:** The EIR found that Phase I of the project would result in significant bicycle impacts in the year 2000.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measures identified in the EIR and incorporated into the Project:

Mitigation Cir-48.1: Kaiser shall provide a continuous north-south Class I bike path along the Haven Street alignment through the project site, between Park Avenue and 45th Street. This measure would reduce the above-described impact by providing adequate bike facilities to serve the site, and reducing bicycle/automobile conflicts.

Mitigation Cir-48.2: Kaiser shall provide a Class II bike lane along Park Avenue, between San Pablo Avenue and Hollis Street. This measure would reduce the above-described impact by providing adequate bike facilities to serve the site, and reducing bicycle/automobile conflicts.

c. **Finding:** The City finds that the above stated mitigation measures are incorporated into the project as a conditions of approval. The City further finds that these mitigation measures are appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measures do not avoid or substantially lessen the impact described above, the environmental, economic, social and other

benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-49

a. **Significant Impact:** The EIR found that Phase I of the project would result in significant cumulative bicycle impacts in the year 2000.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Cir-49.1: Kaiser shall provide the Class I bike paths and Class II bike lanes in the vicinity of the Phase I site, as proposed in the General Plan (see Figure 14). In particular, Class I bike paths shall be provided along Halleck Street, between Sherwin Street and 53rd Street. Class II bike lanes shall also be installed along Park Avenue, between Hollis Street and Halleck Street, along 40th Street, between Adeline Street and Bay-Shellmound Street, and along Holden Street, between 40th Street and Park Avenue. This measure would reduce the above-described impact by providing adequate bike facilities to serve the site, and reducing bicycle/automobile conflicts.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-50

a. **Significant Impact:** The EIR found that Future Expansion of the project would result in significant bicycle impacts in the year 2010.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measures identified in the EIR and incorporated into the Project:

Mitigation Cir-50.1: Kaiser shall provide a continuous north-south Class I bike path along the Doyle-Haven Street Extension, between 45th Street and 53rd Street. This measure would reduce the above-described

impact by providing adequate bike facilities to serve the site, and reducing bicycle/automobile conflicts.

Mitigation Cir-50.2: Kaiser shall provide a Class II bike lane along 47th Street, between San Pablo Avenue and Doyle Street. This measure would reduce the above-described impact by providing adequate bike facilities to serve the site, and reducing bicycle/automobile conflicts.

c. **Finding:** The City finds that the above stated mitigation measures are incorporated into the project as conditions of approval. The City further finds that these mitigation measures are appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measures do not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-51

a. **Significant Impact:** The EIR found that Future Expansion of the project would result in significant cumulative bicycle impacts in the year 2010.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Cir-51.1: Kaiser shall provide the Class I bike paths and Class II bike lanes in the vicinity of the Phase I site, as proposed in the General Plan (see Figure 14). In particular, Class I bike paths shall be provided along the Doyle-Haven Street Extension, from 53rd Street to Stanford Avenue. Class II bike lanes shall also be installed along 47th Street, between Adeline Street and San Pablo Avenue, and along the Horton-Landregan Street Extension, between 40th Street and Stanford Avenue. This measure will reduce the above-described impact by providing adequate bike facilities to serve the site, and reducing bicycle/automobile conflicts.

c. **Finding:** The City finds that the above stated mitigation measures are incorporated into the project as conditions of approval. The City further finds that these mitigation measures are appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-52

a. **Significant Impact:** The EIR found that Phase I of the project would result in a significant street impact at Hollis Street and San Pablo Avenue during construction.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measures identified in the EIR and incorporated into the Project:

Mitigation Cir-52.1: Through travel lanes on Hollis Street or San Pablo Avenue shall not be closed for construction purposes. The access points for construction staging areas shall be located on Park Avenue or 45th Street, so as not to impact through traffic on either Hollis Street or San Pablo Avenue. This measure will reduce construction traffic impacts on normal traffic operations.

Mitigation Cir-52.2: The project applicant shall be required to repair (overlay or repair to structural section) streets damaged by truck traffic traveling to and from the work site, as determined by the City of Emeryville Department of Public Works. This measure will ensure that construction traffic-related street damage is repaired.

c. **Finding:** The City finds that the above stated mitigation measures are incorporated into the project as conditions of approval. The City further finds that these mitigation measures are appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measures do not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-53

a. **Significant Impact:** The EIR found that the project would result in a significant minor street impact at Park Avenue and 45th Street.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measures identified in the EIR and incorporated into the Project:

Mitigation Cir-53.1: Through travel lanes on 45th Street shall not be closed for construction purposes. This measure will reduce construction traffic impacts on normal traffic operations.

Mitigation Cir-53.2: The project applicant shall be required to repair (overlay or repair to structural section) streets damaged by truck traffic traveling to and from the work site, as determined by the City of Emeryville Department of Public Works. This measure will ensure that construction traffic-related street damage is repaired.

c. **Finding:** The City finds that the above stated mitigation measures are incorporated into the project as conditions of approval. The City further finds that these mitigation measures are appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measures do not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-54

a. **Significant Impact:** The EIR found that Phase I of the project could result in a significant neighborhood impact due to the routing of truck traffic through residential areas during construction.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Cir-54.1: Construction vehicles shall not be routed along residential streets in the project vicinity. This measure will reduce construction traffic impacts on normal traffic operations.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-55

a. **Significant Impact:** The EIR found that Phase I of the project would result in a significant construction parking impact with the provision of on-site parking for construction employees.

b. Mitigation

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Cir-55.1: Parking for construction workers shall be provided on the Phase I site to avoid impacts to existing on-street parking. This measure will reduce construction parking impacts on on-street parking facilities.

c. Finding: The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-56

a. Significant Impact: The EIR found that Phase I of the project would result in significant pedestrian impacts during construction due to the closure of pedestrian facilities.

b. Mitigation

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Cir-56.1: Pedestrian facilities shall be maintained along the project frontage on San Pablo Avenue, Hollis Street, Park Avenue, and 45th Street, except for periodic closures for utilities and new sidewalk work or public safety purposes. This measure will reduce impacts to pedestrian facilities resulting from construction of the project.

c. Finding: The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-58

a. **Significant Impact:** The EIR found that Future Expansion of the project would result in significant construction-related impacts to major and minor streets in the project vicinity, as well as impacts to pedestrian facilities and neighborhood intrusion.

Mitigation

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Cir-58: Implementation of the Phase I construction mitigation measures discussed above will reduce Future Expansion construction impacts to a less than significant level. Implementation of this measure will reduce impacts below the thresholds of significance set forth on page 177 of the Draft EIR.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact AQ-1

a. **Significant Impact:** The EIR found that the effects of construction activities would be increased dustfall and locally elevated levels of PM-10 downwind of construction activity for a total of 36 months for Phase I and 24 months for Future Expansion. Construction dust has the potential for creating a significant short-term air quality impact.

Mitigation

This impact will be mitigated with the following required mitigation measures identified in the EIR and incorporated into the Project:

Mitigation AQ-1.1: Construction standards shall be adopted requiring all contractors to reduce dust generation.

Mitigation AQ-1.2: Kaiser shall suspend earthmoving or other dust-producing activities during periods of high winds.

Mitigation AQ-1.3: Kaiser shall provide equipment and manpower for watering of all exposed or disturbed soil surfaces at least twice daily, including weekends and holidays. An appropriate dust palliative or suppressant, added to water before application, shall be utilized.

Mitigation AQ-1.4: Kaiser shall water or cover stockpiles of debris, soil, sand or other materials that can be blown by the wind.

Mitigation AQ-1.5: Kaiser shall sweep construction area and adjacent streets of all mud and debris, since this material can be pulverized and later resuspended by vehicle traffic.

Mitigation AQ-1.6: Kaiser shall limit the speed of all construction vehicles to 15 miles per hour while on site.

These measures will reduce the above-described impacts by reducing dust caused by construction activities.

c. **Finding:** The City finds that the above stated mitigation measures are incorporated into the project as conditions of approval. The City further finds that these mitigation measures are appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measures do not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact No-1

a. **Significant Impact:** The EIR found that Project-related traffic would generate increases of three decibels or greater at the medical office buildings on 45th Street. These increases would cause interior noise levels to exceed the 45 decibel interior noise threshold at the proposed medical office buildings on 45th Street, which would be considered a significant impact for both Phase I and the Future Expansion phase.

Mitigation

This impact will be mitigated with the following required mitigation measures identified in the EIR and incorporated into the Project:

Mitigation No-1.1: The design of the medical office buildings on 45th Street shall incorporate noise attenuation measures to reduce interior noise levels.

Mitigation No-1.2: The design of the hospital and medical office buildings shall incorporate other features to reduce the intensities with which the loud, intermittent noises from truck and bus passbys are heard in the interiors.

Mitigation No-1.3: The intakes of the ventilation system for the medical office buildings shall be designed to guard against the intrusion of traffic noise, especially along 45th Street adjacent to the AC Transit bus facility.

Mitigation No-1.4: The parking structures shall be designed to reduce noise exposures inside the parking garages.

Mitigation No-1.5: Prior to project approval (or the issuance of construction permits), the applicant shall provide an acoustical assessment to confirm that interior noise levels at the 45th Street medical office buildings will be within acceptable levels.

As described in the EIR, all of these measures will reduce the above-described impact by reducing the interior noise levels to or below the 45 decibel interior noise threshold.

c. **Finding:** The City finds that the above stated mitigation measures are incorporated into the project as conditions of approval. The City further finds that these mitigation measures are appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact No-2

a. **Significant Impact:** The EIR found that for Phase I, the outdoor activity areas on the hospital grounds would be exposed to noise levels in excess of the U.S. EPA's recommended noise threshold of 55 decibels for such uses which would be considered a potentially significant noise impact.

Mitigation

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation No-2.1: Prior to the issuance of construction permits, when building materials have been selected for the medical office buildings, and the design of the structures is confirmed, noise levels will be

monitored at the open space area on the Phase I site. If the noise levels exceed the 55 decibel threshold, Kaiser will be required to implement one or more of the following mitigation measures:

- Kaiser shall construct a solid fence around the perimeter of the open space area that provides sufficient attenuation to achieve the 55 decibel exterior noise level;
- Kaiser shall locate benches and seating areas in those portions of the open space area that are away from the noise source (i.e., away from the dropoff points off of Park Avenue and 45th Street);
- Kaiser shall install additional landscaping around the perimeter of the open space area to visually screen noise sources.

These measures will reduce the above-described impact by reducing open space noise levels below 55 decibels.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact No-3

a. **Significant Impact:** The EIR found that as with Phase I, the outdoor activity areas on the hospital grounds would be exposed to noise levels in excess of the U.S. EPA's recommended noise threshold of 55 decibels in the Future Expansion phase which would be considered a significant noise impact.

Mitigation

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation No-3: The mitigation measures implemented in Phase I would also be implemented on the Phase I site, in the Future Expansion phase, to mitigate noise levels at outdoor activity areas on

the hospital site. These measures will reduce the above-described impact by reducing open space noise levels below 55 decibels.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Geo-1

a. **Significant Impact:** The EIR found that the proposed project would be exposed to geologic hazards associated with a minor potential for differential settlement.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measures identified in the EIR and incorporated into the Project:

Mitigation Geo-1.1: The building foundations shall be designed to distribute the maximum anticipated loads in a manner that adequately addresses differential settlement.

Mitigation Geo-1.2: Exploratory borings and laboratory testing shall be conducted prior to foundation design. The foundation designs for the proposed buildings would address the characteristics of the existing soil and geotechnical conditions of the project site.

These measures will reduce the above-described impact by ensuring that proper geotechnical testing is done prior to design of building foundations, and that building foundations are designed to address the testing results.

c. **Finding:** The City finds that the above stated mitigation measures are incorporated into the project as conditions of approval. The City further finds that these mitigation measures are appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measures do not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Geo-2

a. **Significant Impact:** The EIR found that shallow groundwater conditions may affect the building design options for basements, elevator shafts, and other subsurface structures, which would result in a potentially significant impact.

Mitigation

This impact will be mitigated with the following required mitigation measures identified in the EIR and incorporated into the Project:

Mitigation Geo-2.1: Subsurface drainage and other appropriate waterproofing systems shall be utilized to control the effects of shallow groundwater on subsurface construction, if necessary.

Mitigation Geo-2.2 : Dewatering of the foundation excavation areas shall be required during subsurface construction-related activities, if necessary.

These measures will reduce the above-described impact by insuring that groundwater conditions are taken into account in construction of the project.

c. **Finding:** The City finds that the above stated mitigation measures are incorporated into the project as conditions of approval. The City further finds that these mitigation measures are appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measures do not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Geo-3

a. **Significant Impact:** The EIR found that geologic conditions on the project site related to potential liquefaction during a maximum credible earthquake could significantly impact the proposed medical center.

Mitigation

This impact will be mitigated with the following required mitigation measures identified in the EIR and incorporated into the Project:

Mitigation Geo-3.1: Prior to issuance of building permits, a site specific geotechnical and foundation investigation shall be prepared. The specific recommendations will be incorporated into the project design.

Mitigation Geo-3.2: Exploratory borings shall be conducted to define the depth and extent of sand and silt layers that may have the potential for liquefaction. If liquefaction potential is confirmed, mitigation measures will include those measures specified on pages 219 and 220 of the Draft EIR.

Mitigation Geo-3.3: Special structural design measures, including base isolation and extensive cross bracing of load-bearing walls shall be incorporated into the hospital design to ensure that the hospital remains functional under the most severe ground shaking effects that are anticipated.

Mitigation Geo-3.4: The project design shall adhere to applicable building and fire code standards for building design, construction, materials, and non-structural features, which will mitigate potential impacts.

Mitigation Geo-3.5: The report and building design submittal and review prescribed in the Hospital Seismic Safety Act will ensure that the hospital is designed to withstand anticipated seismic loads, and remain functional during and after an earthquake.

Mitigation Geo-3.6: Plan checking, permit issuance, and construction inspections conducted by State agencies, (Office of Statewide Health Planning and Development and California Department of Conservation, Division of Mines and Geology), will ensure that the proposed medical center is constructed in accordance with applicable codes.

All of these measures are intended to reduce the above-described impact by insuring that the project design avoids potential seismic hazards and liquefaction impacts due to geologic and seismic conditions on the project site.

c. **Finding:** The City finds that the above stated mitigation measures are incorporated into the project as conditions of approval. The City further finds that these mitigation measures are appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measures do not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Hydro-3

a. **Significant Impact:** The EIR found that future expansion of the medical center would result in potential grading or other physical impacts to the existing culvert under the Future Expansion site.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measures identified in the EIR and incorporated into the Project:

Mitigation Hydro-3.1: Field observations shall be conducted as part of the preparation of a grading and drainage plan to verify the location of the existing culvert under the Future Expansion site.

Mitigation Hydro-3.2: If necessary, the medical center shall be designed to avoid impacts to the existing culvert that crosses under the Future Expansion site.

These measures will reduce the above-described impact by insuring that the existing culvert under the Future Expansion site will not be affected by Future Expansion of the Project.

c. **Finding:** The City finds that the above stated mitigation measures are incorporated into the project as conditions of approval. The City further finds that these mitigation measures are appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measures do not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Hydro-4

a. **Significant Impact:** The EIR found that Phase I and Future Expansion of the proposed medical center would result in potentially significant short-term and long-term water quality impacts.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measures identified in the EIR and incorporated into the Project:

Mitigation Hydro-4.1: Phase I and Future Expansion of the medical center shall be required to conform to the Nonpoint Source Control Program.

Mitigation Hydro-4.2: To reduce water quality impacts during construction, Phase I and the Future Expansion phase for the proposed project shall include an erosion control plan as a part of the required Storm Water Pollution Prevention Plan (SWPPP), to be updated each year as construction changes.

Mitigation Hydro-4.3: To address long-term water quality impacts, the project applicant shall implement permanent (post-construction) controls, including, but not limited to, (1) directing stormwater flow from the project site into storm drains with sand filters, (2) minimizing irrigation runoff by installing drip irrigation systems, and (3) utilizing pervious concrete.

These mitigation measures will reduce the above-described impact by insuring that Kaiser conforms to legal requirements associated with water quality, both during construction and operation of the Project.

c. **Finding:** The City finds that the above stated mitigation measures are incorporated into the project as conditions of approval. The City further finds that these mitigation measures are appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measures do not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Soil-1

a. **Significant Impact:** The EIR found that proposed construction of Phase I of the project would result in a beneficial effect by remediating existing on-site contamination.

Mitigation

This impact will be mitigated with the following required mitigation measures identified in the EIR and incorporated into the Project:

Mitigation Soil-1.1: Soil and groundwater remediation will be conducted in accordance with federal, state, regional and local regulatory agency requirements.

Mitigation Soil-1.2: Closure plans will be prepared prior to the removal of any underground storage tanks. In addition, permits will be obtained from the Fire Marshall for the removal of the tanks, in accordance with the City of Emeryville regulations.

c. **Finding:** The City finds that the above stated mitigation measures are incorporated into the project as conditions of approval. The City further finds that these mitigation measures are appropriate and reasonable and will ensure the beneficial impact described above.

Impact Soil-2

a. **Significant Impact:** Proposed construction of the Future Expansion phase of the project will result in a beneficial effect by remediating existing on-site contamination. The remediation of soil and groundwater contamination will be conducted in accordance with federal, state, and local regulatory agency requirements.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Soil-2: As in Phase I, the Future Expansion phase will also require conformance to federal, state, regional, and local regulations. Therefore, mitigation measures Soil-1.1 and Soil-1.2 will also be implemented in the Future Expansion phase.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will ensure the beneficial impact described above.

Impact Haz-1

a. **Significant Impact:** The EIR found that the proposed Kaiser Permanente Medical Center would result in a potentially significant impact in the event of a hazardous materials incident associated with the use, storage, and disposal of hazardous materials.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Haz-1.1: Kaiser will develop and implement a Hazardous Materials Business Plan which is required for all businesses that handle and store hazardous materials. The measures contained in this Plan are described on page 239 of the EIR. These measures will reduce the above-described impact by insuring that Kaiser has in place appropriate

and legally required procedures for identifying and reporting hazardous materials incidents, hazardous materials training for employees and facility information regarding, among other things, hazardous materials storage areas.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as conditions of approval. The City further finds that these mitigation measures are appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Util-1

a. **Significant Impact:** The EIR found that Phase I and Future Expansion of the proposed medical center would result in potentially significant impacts to storm drainage facilities.

Mitigation

This impact will be mitigated with the following required mitigation measures identified in the EIR and incorporated into the Project:

Mitigation Util-1.1: Prior to construction, the project engineers will submit calculations of projected runoff flows to ensure that the project will not exceed sub-basin standards.

Mitigation Util-1.2: Streets and parking lots shall be graded to prevent ponding of water during and after construction. Street and curbs shall be designed to route surface runoff to existing storm drain inlets or to properly engineered new storm drains.

Mitigation Util-1.3: The existing storm drain system to Temescal Creek shall be retrofitted or replaced to assure a problem-free drainage system. Storm lines in Park Avenue, Hollis Street and on-site will be improved.

These measures are intended to mitigate the above described impact by insuring that appropriate upgrades are made to the storm drain system connecting to Temescal Creek, and that the project is designed to prevent ponding on the street and parking lots and to provide appropriate storm drainage.

c. **Finding:** The City finds that the above stated mitigation measures are incorporated into the project as conditions of approval. The City further finds that these mitigation measures are appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Util-2

a. **Significant Impact:** The EIR found that, although the existing sanitary sewer system provides adequate capacity, Phase I and Future Expansion of the proposed medical center would result in significant impacts to sanitary sewer facilities because of the age of the lines.

Mitigation

This impact will be mitigated with the following required mitigation measures identified in the EIR and incorporated into the Project:

Mitigation Util-2.1: All sanitary sewer lines that are installed by the project will provide adequate capacity to convey wastewater generated by the project.

Mitigation Util-2.2: Lines and all laterals will be replaced or reconstructed on Park Avenue from San Pablo to Halleck Street.

Mitigation Util-2.3: Lines and laterals on 45th Street from San Pablo Avenue to Doyle Street will be replaced or reconstructed.

Mitigation Util-2.4: Lines and laterals on Doyle Street from 45th Street to 47th Street will be replaced or reconstructed.

Mitigation Util-2.5: Lines and laterals near the spur track to Temescal Creek will be replaced or reconstructed.

These measures are intended to reduce the above-described impacts by insuring that sanitary sewer facilities provide adequate capacity and are in proper condition to handle sanitary sewer discharge from the Project.

c. **Finding:** The City finds that the above stated mitigation measures are incorporated into the project as conditions of approval. The City further finds that these mitigation measures are appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that

the above-stated mitigation measures do not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Util-3

a. **Significant Impact:** The EIR found that Phase I and Future Expansion of the proposed project will result in significant impacts to the provision of water services.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measures identified in the EIR and incorporated into the Project:

Mitigation Util-3.1: Each phase of the proposed project shall incorporate water conservation measures into the design of the proposed medical center buildings. The project shall incorporate the use of reclaimed wastewater, to the extent feasible, for landscaping irrigation and other appropriate uses.

Mitigation Util-3.2: Project site water lines will be extended to the existing lines in the project vicinity, as necessary, in a manner that ensures that an adequate water distribution system is available to serve the project.

Mitigation Util-3.3: Water line extensions shall be designed in accordance with East Bay Municipal Utility District (EBMUD) design standards.

These measures will reduce the above-described impacts by insuring that the Project is provided with adequate water service.

c. **Finding:** The City finds that the above stated mitigation measures are incorporated into the project as conditions of approval. The City further finds that these mitigation measures are appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measures do not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Util-4

a. **Significant Impact:** The EIR found that the project will result in a significant impact on solid waste facilities.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Util-4.1: Kaiser shall submit a waste reduction/recycling plan designed to achieve a minimum of 50 percent diversion/recycling of solid waste. This measure will reduce the above-described impact by reducing Kaiser's production of solid waste.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Util-5

a. **Impact:** The EIR found that the proposed project will not result in a significant impact on electric, natural gas, or telephone utilities. However, to ensure that the project does not result in a significant impact on electricity and natural gas services, the following mitigation will be implemented.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Util-5.1: The project will pay a Utility User Tax to offset the cost of providing electricity and natural gas services to the project.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will further ensure that this impact, which has been determined to be less-than significant, will be further reduced or avoided.

Impact Util-8

a. **Significant Impact:** The EIR found that the proposed medical center will result in a potentially significant impact on school facility capacity.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Util-8.1: Kaiser, as part of the development agreement, will contribute \$20,000 per year to the Emeryville Higher Education Fund or to another school fund that directly benefits the city's public school system. This measure will reduce the above-described impact by providing additional funds for the public school system.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact CR-1

a. **Significant Impact:** The EIR found that Phase I of the project will result in potentially significant impacts to subsurface prehistoric and historic resources that may be present within the Phase I site boundaries.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measures identified in the EIR and incorporated into the Project:

Mitigation CR-1.1: Additional archival research shall be conducted for the project area that focuses on the structures previously present in the project area in the 1850's, the residences and businesses in the area from 1880-1910, and the Chinese gambling facilities, restaurants, etc., in the 1920's. This archival information shall be used in the formulation of an archaeological testing program.

Mitigation CR-1.2: Kaiser shall formulate and implement an auguring program for the project site.

Mitigation CR-1.3: Kaiser shall formulate and implement a backhoe or other appropriate testing program in the southwest and northeastern quadrants of the Phase I site.

Mitigation CR-1.4: Kaiser shall conduct backhoe or other subsurface testing in the area of the former Emery home site and grounds to locate and identify potentially significant foundations, basement contents, trash and privy deposits, and other cultural materials.

Mitigation CR-1.5: Kaiser shall formulate and implement a general archaeological monitoring plan.

Mitigation CR-1.6: Kaiser shall maintain coordination between the archaeologist and other consultants, such as those involved in toxic testing and remediation, to avoid unnecessary destruction of data through unmonitored excavation for toxic remediation.

Mitigation CR-1.7: The spoils from the area excavated in 1992 at the corner of Hollis Street and Park Avenue shall be examined by an archaeologist for evidence of Gold Rush occupation or other cultural resources.

Mitigation CR-1.8: Under no circumstances shall the land owner, project sponsor, contractor, or other interested parties give permission to or tolerate artifact collection or excavation by anyone, other than a qualified archaeologist.

Mitigation CR-1.9: A security system shall be installed, if demolition or excavation activities reveal evidence of significant archaeological resources, including trash deposits.

Mitigation CR-1.10: Results of any testing procedures, monitoring, and other mitigation measures, shall be analyzed and presented in a report of findings by a qualified archaeologist.

These mitigation measures will reduce the above-described impact by insuring that Kaiser takes appropriate steps to identify any subsurface prehistoric and historic resources and insure that any such resources are appropriately documented or excavated prior to proceeding with the Project.

c. Finding: The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measures do not avoid or substantially lessen the

impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact CR-2

a. **Significant Impact:** The EIR found that Future Expansion of the project would result in potentially significant impacts to subsurface prehistoric and historic archaeological resources that may be present within the Future Expansion site boundaries.

Mitigation

This impact will be mitigated with the following required mitigation measures identified in the EIR and incorporated into the Project:

Mitigation CR-2: The mitigation measures outlined above for Phase I shall be implemented in the Future Expansion phase in order to mitigate potentially significant impacts to a less than significant level. These mitigation measures will reduce the above-described impact by insuring that Kaiser takes appropriate steps to identify any subsurface prehistoric and historic resources and insure that any such resources are appropriately documented or excavated prior to proceeding with the Project.

c. **Finding:** The City finds that the above stated mitigation measures are incorporated into the project as conditions of approval. The City further finds that these mitigation measures are appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measures do not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact CR-4

a. **Significant Impact:** The EIR found that Phase I of the project will result in a significant visual impact to the eligible Emeryville Industrial Historic District.

Mitigation

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation CR-4.1: The design of the massing and materials of the "liner" buildings on the Phase I site shall be compatible with the design and materials that characterize the surrounding historic structures. This measure will reduce the above-described impact by insuring that the project design is sensitive to surrounding historic structures.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impact described above. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Vis-1

a. **Impact:** The EIR found that Phase I of the proposed project would alter the visual character of the project site. Building heights would range from 50 to 125 feet which would result in minor obstructions to views for surrounding land uses. However, these impacts would not be considered significant since views of scenic features would not be impacted, and because a substantial demonstrable negative aesthetic effect would not occur.

b. **Mitigation**

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Vis-1.1: Implement the Kaiser Permanente Medical Center Urban Design Guidelines as adopted by the Emeryville Planning Commission on August 26, 1993. The requirements of the Urban Design Guidelines have been incorporated into the project design.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will ensure that this impact, which has already been determined to be less-than-significant, will be further reduced. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Vis-2

a. **Impact:** Future Expansion of the proposed medical center would alter the visual character of the project site. Building heights would range from 50 to 52 feet on the Future Expansion site which would result in minor obstructions to views for surrounding land uses. However, these impacts would not be considered significant since views of scenic features would not be impacted, and because the proposed urban intensities of development would not result in a substantial demonstrable negative aesthetic effect.

b. Mitigation

This impact will be mitigated with the following required mitigation measure identified in the EIR and incorporated into the Project:

Mitigation Vis-2.1: Implement the Kaiser Permanente Medical Center Urban Design Guidelines as adopted by the Emeryville Planning Commission on August 26, 1993. The requirements of the Urban Design Guidelines have been incorporated into the project design.

c. **Finding:** The City finds that the above stated mitigation measure is incorporated into the project as a condition of approval. The City further finds that this mitigation measure is appropriate and reasonable and will ensure that this impact, which has already been determined to be less-than-significant, will be further reduced. To the extent that the above-stated mitigation measure does not avoid or substantially lessen the impact described above, the environmental, economic, social and other benefits of the project override any such remaining impacts, as more fully stated in the Statement of Overriding Considerations.

B. SIGNIFICANT OR POTENTIALLY SIGNIFICANT IMPACTS WHICH CANNOT BE MITIGATED TO A LESS THAN SIGNIFICANT LEVEL BUT FOR WHICH THE MAGNITUDE OF THE IMPACT CAN BE REDUCED:

Finding - The City finds that, where feasible, the changes or alterations have been required in, or incorporated into, the Project which reduce the significant environmental impacts listed below as identified in the EIR. However, specific economic, social or other considerations make infeasible mitigation measures to reduce the following impacts to a less-than-significant level. In other instances, changes or alterations are within the responsibility or jurisdiction of another public agency and not the agency responsible for making the finding. These findings are supported by evidence in the record of the proceedings before the City including the draft and final EIR prepared for this project. All available, reasonably feasible mitigation measures identified in the EIR are employed to reduce the magnitude of impact.

Nonetheless, where feasible mitigation measures exist to reduce the magnitude of the impact, even if the reduction is not to a less than significant level, the City has agreed to employ such mitigation measures to the extent feasible.

Impact: Cir- San Pablo Avenue/Ashby Avenue

a. **Significant Impact:** The EIR found that the addition of project-related traffic would result in a significant impact at the intersection of San Pablo Avenue/Ashby Avenue. This intersection would operate at LOS F because of the heavy north-south traffic volumes, as well as the lack of an exclusive westbound left-turn lane on Ashby Avenue.

b. **Mitigation Measure:** Based on the City of Berkeley's Comment 91.5 to the Draft EIR, Berkeley staff suggest possible mitigation measures for this intersection. Ashby Avenue, immediately east of San Pablo Avenue, could be widened to provide an additional westbound left turn lane on Ashby Avenue. Although the provision of a westbound left-turn lane, as well as modifications to the signal timing, would not improve the intersection operations to a less than significant level of LOS D or better, these mitigations would, however, reduce project-related impacts (i.e., the service level would improve to better than year 2010 baseline conditions). A left-turn lane on Ashby Avenue would require a reduced sidewalk width and removal of existing landscaping in front of Walgreens and the Shell gas station. In order to further improve the service level at this intersection, an additional through lane is needed in both directions on San Pablo Avenue. The additional through lanes would require re-striping San Pablo Avenue from four to six lanes and prohibiting peak period parking. In addition, prohibiting parking along San Pablo Avenue may affect businesses along this roadway as these businesses rely on this on-street parking for their patrons.

c. **Facts in support of the Finding:** There are no economically, technologically or socially feasible mitigation measures to fully mitigate this impact. Imposition of the above measures is infeasible because of the impact that would occur to adjacent commercial businesses and because changes or alterations are within the responsibility of the City of Berkeley.

d. **Findings:** The City finds that there are no additional feasible mitigation measures or alternatives that the City could adopt at this time which would reduce this impact to a less than significant level. This impact, therefore, remains significant and unmitigatable. To the extent that this adverse impact will not be eliminated or lessened to a less than significant level, the City finds that specific economic, social or other considerations identified in the Statement of Overriding Considerations support approval of the Project despite unavoidable impacts.

Impact Cir- San Pablo Avenue/Alcatraz Avenue

- a. **Significant Impact:** The EIR found that the addition of project-related traffic would result in a significant impact at the intersection of San Pablo Avenue/Alcatraz Avenue. This intersection would operate at LOS F due to the traffic conflicts between the heavy northbound through movement and the southbound left turn movement from San Pablo Avenue to eastbound Alcatraz Avenue, as well as the heavy right turn traffic from westbound Alcatraz Avenue to northbound San Pablo Avenue.
- b. **Mitigation Measure:** In order to improve the service levels at this intersection in year 2010, the provision of additional through lanes in both directions of San Pablo Avenue and an exclusive westbound right turn lane on Alcatraz Avenue would be required. The additional through lanes on San Pablo Avenue would require re-striping San Pablo Avenue from four to six lanes and prohibiting peak period parking. Prohibiting parking along San Pablo Avenue may affect businesses along this roadway as these businesses rely on this on-street parking for their patrons. An exclusive westbound right turn lane on Alcatraz Avenue would require re-striping Alcatraz Avenue and prohibiting peak parking.
- c. **Facts in support of the Finding:** There are no economically, technologically or socially feasible mitigation measures to fully mitigate this impact. Imposition of the above measures is infeasible because of the impact that would occur to adjacent commercial businesses and because changes or alterations are within the responsibility of the City of Oakland.
- d. **Findings:** The City finds that there are no additional feasible mitigation measures or alternatives that the City could adopt at this time which would reduce this impact to a less than significant level. This impact, therefore, remains significant and unmitigatable. To the extent that this adverse impact will not be eliminated or lessened to a less than significant level, the City finds that specific economic, social or other considerations identified in the Statement of Overriding Considerations support approval of the Project despite unavoidable impacts.

Impact Cir- 7th Street/Ashby Avenue

- a. **Significant Impact:** The EIR found that the addition of project traffic would result in a significant impact at the intersection of 7th Street/Ashby Avenue. This intersection would operate at LOS F due to the split-phasing in the north-south approaches. Southbound traffic backs up into the adjacent downstream intersections.
- b. **Mitigation Measure:** Based on the City of Berkeley's Comment 91.S to the Draft EIR, Berkeley staff suggest possible mitigation measures for this

intersection. The northbound approach on 7th Street, between Folger Avenue and Ashby Avenue, could be widened to provide an additional through lane. The southbound approach on 7th Street, between Anthony Street and Ashby Avenue, could also be widened to provide an additional through lane. These mitigation measures would require the acquisition of additional right-of-way along 7th Street. The above mitigations, in conjunction with signal phasing modifications, would reduce project impacts to a less than significant level under year 2010 conditions.

c. **Facts in support of the Finding:** There are no economically, technologically or socially feasible mitigation measures to fully mitigate this impact. Imposition of the above measures is infeasible because of the impact that would occur to adjacent commercial businesses and because changes or alterations are within the responsibility of the City of Berkeley. This mitigation measure is within the City of Berkeley's jurisdiction and requires Berkeley's approval. Because the City of Emeryville lacks jurisdiction over this intersection, Emeryville would need to enter into a Memorandum of Understanding with the City of Berkeley in order to implement the mitigation. Therefore, the significant impact at this intersection cannot be mitigated without acquisition of right-of-way and the approval of the City of Berkeley, and is considered an unavoidable impact of the project.

d. **Findings:** The City finds that there are no additional feasible mitigation measures or alternatives that the City could adopt at this time which would reduce this impact to a less than significant level. This impact, therefore, remains significant and unmitigatable. To the extent that this adverse impact will not be eliminated or lessened to a less than significant level, the City finds that specific economic, social or other considerations identified in the Statement of Overriding Considerations support approval of the Project despite unavoidable impacts.

Impact Cir- Christie Avenue/Powell Street

a. **Significant Impact:** The EIR found that the addition of project-related traffic would result in a significant impact at the intersection of Christie Avenue/Powell Street. This intersection would operate at LOS F due to the heavy traffic destined to the I-80 ramps (i.e., the southbound right-turns from Christie Avenue to westbound Powell Street and the westbound through traffic on Powell Street).

b. **Mitigation Measure:** In order to improve the service level at this intersection from LOS F to LOS E, an additional through lane on the westbound approach of Powell Street, as well as a second exclusive left turn lane in the northbound direction on Christie Avenue would be required. In addition, this mitigation would also require the extension of the southbound right turn lane on Christie Avenue by approximately 250 feet and

modification of the existing traffic signal. These mitigation measures would require the acquisition of additional right-of-way along the west side of Christie Avenue and along the south side of Powell Street.

These mitigation measures would reduce project impacts (i.e., the service level would improve to 2010 baseline conditions), but not to a less than significant level. The improvements at this intersection are identified in the City's Capital Improvement Program (CIP). The traffic mitigation fees paid by this project may be used to fund these improvements.

c. **Facts in support of the Finding:** There are no economically, technologically or socially feasible mitigation measures to fully mitigate this impact. The addition of through lanes on Powell Street would not be feasible due to the constraint presented by the four lane Powell Street overpass immediately east of Christie Avenue. The provision of at grade separation at this intersection is deemed infeasible because it would be very costly and require the acquisition of a significant amount of right-of-way, which would impact adjacent commercial businesses. The restriction of movements at the intersection (i.e., east-west left turns, north-south through and right turns) would provide adequate capacity, but is not deemed feasible due to the impacts related to the accessibility of parcels and the movement of goods to commercial uses in the immediate vicinity.

d. **Findings:** The City finds that there are no additional feasible mitigation measures or alternatives that the City could adopt at this time which would reduce this impact to a less than significant level. This impact, therefore, remains significant and unmitigatable. To the extent that this adverse impact will not be eliminated or lessened to a less than significant level, the City finds that specific economic, social or other considerations identified in the Statement of Overriding Considerations support approval of the Project despite unavoidable impacts.

Impact Cir- Hollis Street/Powell Street (2000)

a. **Significant Impact:** The EIR found that the mitigation of future conditions in the year 2000 at the intersection of Hollis Street/Powell Street would require the restriction of movements at the intersection and the provision of additional lanes on Hollis Street.

b. **Mitigation Measure:** No feasible mitigation measure exists to reduce the impact to a less-than-significant level. The restriction of left turn movements in the eastbound and westbound directions on Powell Street would not be feasible due to the impacts related to the accessibility of parcels, the movement of goods to commercial and industrial uses in the immediate vicinity and the impacts of added traffic on parallel facilities such as Doyle Street. The provision of additional through lanes on Hollis Street would not

be a feasible short-term mitigation because it would require the acquisition of right-of-way and the demolition of buildings in the immediate vicinity of the intersection.

c. **Findings:** The City finds that there are no additional feasible mitigation measures or alternatives that the City could adopt at this time which would reduce this impact to a less than significant level. This impact, therefore, remains significant and unmitigatable. To the extent that this adverse impact will not be eliminated or lessened to a less than significant level, the City finds that specific economic, social or other considerations identified in the Statement of Overriding Considerations and these findings, support approval of the Project despite unavoidable impacts.

Impact Cir- San Pablo Avenue/40th Street

a. **Significant Impact:** The EIR found that the mitigation of future conditions at the intersection of San Pablo Avenue/40th Street would require widening of San Pablo Avenue to provide additional through lanes and turn lanes beyond those mitigations previously described for year 2000 baseline plus project scenario.

b. **Mitigation Measure:** No feasible mitigation measure exists to reduce the impact to a less-than-significant level.

c. **Facts in support of the Finding:** There are no economically, technologically or socially feasible mitigation measures to fully mitigate this impact. The provision of additional through and turning lanes on San Pablo Avenue would not be a feasible mitigation because it would require the acquisition of right-of-way and the demolition of commercial buildings in the immediate vicinity of the intersection.

d. **Findings:** The City finds that there are no additional feasible mitigation measures or alternatives that the City could adopt at this time which would reduce this impact to a less than significant level. This impact, therefore, remains significant and unmitigatable. To the extent that this adverse impact will not be eliminated or lessened to a less than significant level, the City finds that specific economic, social or other considerations identified in the Statement of Overriding Considerations support approval of the Project despite unavoidable impacts.

Impact Cir- Adeline Street/Market Street

a. **Significant Impact:** The EIR found this intersection would operate at LOS E due to the heavy northbound and southbound left-turns from Adeline Street. In order to improve the service level at this intersection from LOS E to LOS D for 2010 conditions, the provision of an additional left-turn lane in

the southbound direction on Adeline Street would be required.

b. Mitigation Measure: No feasible mitigation measure exists to reduce the impact to a less-than-significant level.

c. Facts in support of the Finding: There are no economically, technologically or socially feasible mitigation measures to fully mitigate this impact. This mitigation would not be feasible due to the impacts that would occur to the adjacent commercial businesses. This intersection is located within the City of Oakland. Because the City of Emeryville lacks jurisdiction over this intersection, Emeryville would need to enter into a Memorandum of Understanding with the City of Oakland in order to implement the mitigation. Therefore, the significant impact at this intersection cannot be mitigated without the approval of the City of Oakland, and is considered an unavoidable impact of the project. If the City of Oakland proceeds with improvements to this intersection, it shall notify the City of Emeryville and enter into a Memorandum of Understanding. Since Kaiser's fair share contribution toward funding these intersection improvements cannot be derived or implemented without input and approval from the City of Oakland, this agreement must be established prior to Emeryville assessing Kaiser for its fair share contribution toward funding the intersection improvements.

d. Findings: The City finds that there are no additional feasible mitigation measures or alternatives that the City could adopt at this time which would reduce this impact to a less than significant level. This impact, therefore, remains significant and unmitigatable. To the extent that this adverse impact will not be eliminated or lessened to a less than significant level, the City finds that specific economic, social or other considerations identified in the Statement of Overriding Considerations support approval of the Project despite unavoidable impacts.

Impact Cir- Telegraph Avenue/40th Street

a. Significant Impact: The EIR found that the addition of project-related traffic would result in a significant impact at the intersection of Telegraph Avenue/40th Street. This intersection would operate at LOS E due to the heavy eastbound left-turns onto northbound Telegraph Avenue. As described in the Draft EIR, the provision of a second left-turn lane in the eastbound direction on 40th Street would reduce project impacts (i.e., the service level would improve to 2010 baseline conditions). However, in order to improve the intersection operation to service level of D or better, the provision of additional through lanes in both directions of Telegraph Avenue would be required.

b. Mitigation Measure: No feasible mitigation measure exists to reduce

the impact to a less-than-significant level.

c. **Facts in support of the Finding:** There are no economically, technologically or socially feasible mitigation measures to fully mitigate this impact. This mitigation would not be feasible due to the impacts that would occur to the adjacent commercial businesses. This intersection is located outside the jurisdiction of Emeryville and within the City of Oakland's jurisdiction. Because the City of Emeryville lacks jurisdiction over this intersection, Emeryville would need to enter into a Memorandum of Understanding with the City of Oakland in order to implement the mitigation. Therefore, the significant impact at this intersection cannot be mitigated without the approval of the City of Oakland, and is considered an unavoidable impact of the project. If the City of Oakland proceeds with improvements to this intersection, it shall notify the City of Emeryville, and enter into a Memorandum of Understanding. Since Kaiser's fair share contribution toward funding these intersection improvements cannot be derived or implemented without input and approval from the City of Oakland, this agreement must be established prior to Emeryville assessing Kaiser for its fair share contribution towards funding the intersection improvements.

d. **Findings:** The City finds that there are no additional feasible mitigation measures or alternatives that the City could adopt at this time which would reduce this impact to a less than significant level. This impact, therefore, remains significant and unmitigatable. To the extent that this adverse impact will not be eliminated or lessened to a less than significant level, the City finds that specific economic, social or other considerations identified in the Statement of Overriding Considerations support approval of the Project despite unavoidable impacts.

Impact Cir- Telegraph Avenue/W. MacArthur Boulevard

a. **Significant Impact:** The EIR found that the addition of project-related traffic would result in a significant impact at the intersection of Telegraph Avenue/W. MacArthur Boulevard. This intersection would operate at LOS E due to the heavy left turns from southbound Telegraph Avenue to eastbound W. MacArthur Boulevard. In order to improve the service level at this intersection from LOS E to LOS D in year 2010, the provision of a second southbound left-turn lane on Telegraph Avenue would be required.

b. **Mitigation Measure:** No feasible mitigation measure exists to reduce the impact to a less-than-significant level.

c. **Facts in support of the Finding:** There are no economically, technologically or socially feasible mitigation measures to fully mitigate this impact. This mitigation would not be feasible due to the impacts that would

occur to the adjacent commercial businesses. This intersection is located outside the jurisdiction of Emeryville and within the City of Oakland's jurisdiction. Because the City of Emeryville lacks jurisdiction over this intersection, Emeryville would need to enter into a Memorandum of Understanding with the City of Oakland in order to implement the mitigation. The significant unavoidable impact at this intersection cannot be mitigated without the approval of the City of Oakland, and is considered an unavoidable impact of the project. If the City of Oakland proceeds with improvements to this intersection, it shall notify the City of Emeryville, and enter into a Memorandum of Understanding. Since Kaiser's fair share contribution toward funding these intersection improvements cannot be derived or implemented without input and approval from the City of Oakland, this agreement must be established prior to Emeryville assessing Kaiser for its fair share contribution towards funding the intersection improvements.

d. Findings: The City finds that there are no additional feasible mitigation measures or alternatives that the City could adopt at this time which would reduce this impact to a less than significant level. This impact, therefore, remains significant and unmitigatable. To the extent that this adverse impact will not be eliminated or lessened to a less than significant level, the City finds that specific economic, social or other considerations identified in the Statement of Overriding Considerations support approval of the Project despite unavoidable impacts.

Impact Cir- I-80 Westbound Hook-Ramp/West Frontage Road

a. Significant Impact: The EIR found that the mitigation of future conditions at the intersection of West Frontage Road/I-80 westbound ramps would require the widening of the frontage road to provide two additional through lanes.

b. Mitigation Measure: No feasible mitigation measure exists to reduce the impact to a less-than-significant level.

c. Facts in support of the Finding: There are no economically, technologically or socially feasible mitigation measures to fully mitigate this impact. The provision of additional through lanes would not be feasible due to the impacts that it would create to the existing shoreline between Powell Street and Ashby Avenue.

d. Findings: The City finds that there are no additional feasible mitigation measures or alternatives that the City could adopt at this time which would reduce this impact to a less than significant level. This impact, therefore, remains significant and unmitigatable. To the extent that this adverse impact will not be eliminated or lessened to a less than significant

level, the City finds that specific economic, social or other considerations identified in the Statement of Overriding Considerations support approval of the Project despite unavoidable impacts.

Impact Cir- Hollis Street/40th Street

a. **Significant Impact:** The EIR found that the mitigation of future conditions at the intersection of Hollis Street/40th Street would require the widening of Hollis Street to provide two additional through lanes.

b. **Mitigation Measure:** No feasible mitigation measure exists to reduce the impact to a less-than-significant level.

c. **Facts in support of the Finding:** There are no economically, technologically or socially feasible mitigation measures to fully mitigate this impact. The provision of additional through lanes on Hollis Street would not be a feasible mitigation because it would require the acquisition of right-of-way and the potential demolition of commercial and industrial buildings in the immediate vicinity of the intersection.

d. **Findings:** The City finds that there are no additional feasible mitigation measures or alternatives that the City could adopt at this time which would reduce this impact to a less than significant level. This impact, therefore, remains significant and unmitigatable. To the extent that this adverse impact will not be eliminated or lessened to a less than significant level, the City finds that specific economic, social or other considerations identified in the Statement of Overriding Considerations support approval of the Project despite unavoidable impacts.

Impact Cir- Adeline Street/Martin Luther King Jr. Way

a. **Significant Impact:** The EIR found that the addition of project-related traffic would result in a significant impact at the intersection of Adeline Street/Martin Luther King Jr. Way. This intersection would operate at LOS E due to the two-phase signal in the north-south direction which causes inefficient operations at this intersection, as well as heavy right-turn traffic from southbound Adeline Street. In order to improve the operation of this intersection to service level of D or better for year 2010 conditions, the provision of an signal phasing modifications would be required to allow for permitted left turns from northbound Martin Luther King Jr. Way to Adeline Street.

b. **Mitigation Measure:** No feasible mitigation measure exists to reduce the impact to a less-than-significant level.

c. **Facts in support of the Finding:** There are no economically,

technologically or socially feasible mitigation measures to fully mitigate this impact. This mitigation would not be feasible due to the impacts that would occur to the adjacent commercial businesses. This intersection is also located within the City of Berkeley, which has established a policy against widening any major arterials within their city limits. Because the City of Emeryville lacks jurisdiction over this intersection, Emeryville would need to enter into a Memorandum of Understanding with the City of Berkeley in order to implement the mitigation. Therefore, the significant impact at this intersection cannot be mitigated without approval of the City of Berkeley, and is considered an unavoidable impact of the project. If the City of Berkeley proceeds with signal modifications to this intersection, it shall notify the City of Emeryville, and enter into a Memorandum of Understanding. Since Kaiser's fair share contribution toward funding these intersection improvements cannot be derived or implemented without input and approval from the City of Berkeley, this agreement must be established prior to Emeryville assessing Kaiser for its fair share contribution towards funding the intersection improvements.

d. **Findings:** The City finds that there are no additional feasible mitigation measures or alternatives that the City could adopt at this time which would reduce this impact to a less than significant level. This impact, therefore, remains significant and unmitigatable. To the extent that this adverse impact will not be eliminated or lessened to a less than significant level, the City finds that specific economic, social or other considerations identified in the Statement of Overriding Considerations support approval of the Project despite unavoidable impacts.

Impact Cir- Market Street/40th Street

a. **Significant Impact:** The EIR found that the addition of project traffic would result in a significant impact at the intersection of Market Street/40th Street. This intersection would operate at LOS F due to the heavy northbound-southbound through traffic utilizing the shared left/through lane in both directions of Market Street. As described in the Draft EIR for 2010 conditions, the provision of exclusive left-turn lanes in the northbound and southbound directions on Market Street would be required to improve the service level at this intersection from LOS F to LOS D.

b. **Mitigation Measure:** No feasible mitigation measure exists to reduce the impact to a less-than-significant level.

c. **Facts in support of the Finding:** There are no economically, technologically or socially feasible mitigation measures to fully mitigate this impact. The above measures would require either the prohibition of parking or the widening of Market Street. Neither of these options would be feasible due to the impacts that would occur to the adjacent residential uses. This

intersection is located outside the jurisdiction of Emeryville and within the City of Oakland's jurisdiction. Because the City of Emeryville lacks jurisdiction over this intersection, Emeryville would need to enter into a Memorandum of Understanding with the City of Oakland in order to implement the mitigation. Therefore, the significant impact at this intersection cannot be mitigated without the approval of the City of Oakland, and is considered an unavoidable impact of the project. If the City of Oakland proceeds with improvements to this intersection, it shall notify the City of Emeryville, and enter into a Memorandum of Understanding. Since Kaiser's fair share contribution toward funding these intersection improvements cannot be derived or implemented without input and approval from the City of Oakland, this agreement must be established prior to Emeryville assessing Kaiser for its fair share contribution towards funding the intersection improvements.

d. **Findings:** The City finds that there are no additional feasible mitigation measures or alternatives that the City could adopt at this time which would reduce this impact to a less than significant level. This impact, therefore, remains significant and unmitigatable. To the extent that this adverse impact will not be eliminated or lessened to a less than significant level, the City finds that specific economic, social or other considerations identified in the Statement of Overriding Considerations support approval of the Project despite unavoidable impacts.

Impact Cir- Market Street/W. MacArthur Blvd.

a. **Significant Impact:** The EIR found that the addition of project traffic would result in a significant impact at the intersection of Market Street/W. MacArthur Boulevard. This intersection would operate at LOS F due to the heavy northbound-southbound through traffic utilizing the shared left/through lane in both directions of Market Street. The service level at this intersection would improve from LOS F to LOS D in year 2010 with the provision of exclusive left-turn lanes in the northbound and southbound directions of Market Street.

b. **Mitigation Measure:** No feasible mitigation measure exists to reduce the impact to a less-than-significant level.

c. **Facts in support of the Finding:** There are no economically, technologically or socially feasible mitigation measures to fully mitigate this impact. This intersection is located outside the jurisdiction of Emeryville. Because the City of Emeryville lacks jurisdiction over this intersection, Emeryville would need to enter into a Memorandum of Understanding with the City of Oakland in order to implement the mitigation. Therefore, the significant impact at this intersection cannot be mitigated without approval from the City of Oakland, and is considered an unavoidable impact of the

project. If the City of Oakland proceeds with improvements to this intersection, it shall notify the City of Emeryville, and enter into a Memorandum of Understanding. Since Kaiser's fair share contribution toward funding these intersection improvements cannot be derived or implemented without input and approval from the City of Oakland, this agreement must be established prior to Emeryville assessing Kaiser for its fair share contribution towards funding the intersection improvements.

d. **Findings:** The City finds that there are no additional feasible mitigation measures or alternatives that the City could adopt at this time which would reduce this impact to a less than significant level. This impact, therefore, remains significant and unmitigatable. To the extent that this adverse impact will not be eliminated or lessened to a less than significant level, the City finds that specific economic, social or other considerations identified in the Statement of Overriding Considerations support approval of the Project despite unavoidable impacts.

Impact Cir-8 (2000)

a. **Significant Impact:** The EIR found that the mitigation of future conditions at the intersection of San Pablo Avenue/Stanford Avenue would operate at an unacceptable Level of Service "F" in the p.m. peak period in the year 2000 which would be considered a significant impact.

b. **Mitigation Measures:**

Mitigation Cir-8.1: Kaiser should add an exclusive right turn lane in the eastbound direction and convert the existing eastbound through lane in the eastbound direction to a shared through/right lane.

Mitigation Cir-8.2: Kaiser should implement the Transportation System Management Program described on pages 132 of the Draft EIR.

Incorporation of the above mitigation measures would reduce the above-stated impact by improving the level of service to D or better with a volume-to-capacity (V/C) ratio of .88.

In addition, additional through lanes in both directions on San Pablo Avenue should be provided by restriping San Pablo Avenue from four to six lanes and by prohibiting peak period parking.

c. **Facts in support of the Finding:** Although the combined affect of the above mitigation measures would substantially lessen or avoid the impact described above, the changes or alterations required by the measures are within the responsibility and jurisdiction of City of Oakland, and not the City of Emeryville.

d. **Findings:** The City finds that changes or alterations required by the measures are within the responsibility and jurisdiction of City of Oakland, and not the City of Emeryville. The City of Oakland can or should adopt the above mitigations by entering into a memorandum of understanding with the City of Emeryville as set forth in the Mitigation Monitoring and Reporting Program. To the extent the City of Oakland does not implement the above measures, the environmental, economic, social and other benefits of the project override any remaining impacts, as more fully stated in the Statement of Overriding Considerations.

Impact Cir-9

a. **Significant Impact:** The EIR found that the intersection of San Pablo Avenue/35th Street would operate at an unacceptable Level of Service "E" in the p.m. peak period which would be considered a significant impact.

b. **Mitigation Measure:** Add a second left turn lane in the southbound direction.

c. **Facts in support of the Finding:** Although the above mitigation measure is economically, technologically or socially feasible, this intersection is located outside the jurisdiction of Emeryville and within the City of Oakland. Because the City of Emeryville lacks jurisdiction over this intersection, Emeryville would need to enter into a Memorandum of Understanding with the City of Oakland in order to implement the mitigation. Therefore, the significant impact at this intersection cannot be mitigated without approval from the City of Oakland, and is considered an unavoidable impact of the project. If the City of Oakland proceeds with improvements to this intersection, it shall notify the City of Emeryville, and enter into a Memorandum of Understanding. Since Kaiser's fair share contribution toward funding these intersection improvements cannot be derived or implemented without input and approval from the City of Oakland, this agreement must be established prior to Emeryville assessing Kaiser for its fair share contribution towards funding the intersection improvements.

d. **Findings:** The City finds that there are no additional feasible mitigation measures or alternatives that the City could adopt at this time which would reduce this impact to a less than significant level. This impact, therefore, remains significant and unmitigatable. To the extent that this adverse impact will not be eliminated or lessened to a less than significant level, the City finds that specific economic, social or other considerations identified in the Statement of Overriding Considerations support approval of the Project despite unavoidable impacts.

Impact Cir-10 (2000 Cumulative)

- a. **Significant Impact:** The EIR found that the intersection of Cypress Street Northbound/32nd Street would operate at an unacceptable Level of Service "E" in the year 2000 under cumulative conditions in the a.m. and p.m. peak periods which would be considered a significant impact.
- b. **Mitigation Measure:** No feasible mitigation measure exists for the above impact. Although the installation of a signal at Cypress/32nd Street would achieve an acceptable level of service at this intersection, the intersection does not meet signal warrants with year 2000 cumulative traffic according to Caltrans methodology. As a result, the installation of a signal is deferred to 2010 conditions when signal warrants are met. Therefore, the year 2000 cumulative impacts at Cypress/32nd Street remain significant and avoidable.
- c. **Finding:** The City finds that there are no additional feasible mitigation measures or alternatives that the City could adopt at this time which would reduce this impact to a less than significant level. This impact, therefore, remains significant and unavoidable. To the extent that this adverse impact will not be eliminated or lessened to a less than significant level, the City finds that specific economic, social or other considerations identified in the Statement of Overriding Considerations support approval of the Project despite unavoidable impacts.

Impact Cir-10 (2000 Project Impact)

- a. **Significant Impact:** The EIR found that the intersection of Cypress Street Northbound/32nd Street would operate at an unacceptable Level of Service "E" in the a.m. and p.m. peak periods which would be considered a significant impact.
- b. **Mitigation Measures:** Install a four-way stop sign control at this intersection. Install a stop sign on the northbound Cypress Street approach.
- c. **Facts in support of the Finding:** Although the above mitigation measure is economically, technologically or socially feasible, this intersection is located outside the jurisdiction of Emeryville and within the City of Oakland. Because the City of Emeryville lacks jurisdiction over this intersection, Emeryville would need to enter into a Memorandum of Understanding with the City of Oakland in order to implement the mitigation. Therefore, the significant impact at this intersection cannot be mitigated without approval from the City of Oakland, and is considered an unavoidable impact of the project. If the City of Oakland proceeds with improvements to this intersection, it shall notify the City of Emeryville, and enter into a Memorandum of Understanding. Since Kaiser's fair share

contribution toward funding these intersection improvements cannot be derived or implemented without input and approval from the City of Oakland, this agreement must be established prior to Emeryville assessing Kaiser for its fair share contribution towards funding the intersection improvements.

d. **Findings:** The City finds that there are no additional feasible mitigation measures or alternatives that the City could adopt at this time which would reduce this impact to a less than significant level. This impact, therefore, remains significant and unmitigatable. To the extent that this adverse impact will not be eliminated or lessened to a less than significant level, the City finds that specific economic, social or other considerations identified in the Statement of Overriding Considerations support approval of the Project despite unavoidable impacts.

Impact Cir-16

a. **Significant Impact:** The EIR found that the intersection of Hollis Street/65th Street would operate at an unacceptable Level of Service in the p.m. peak period, which would be considered a significant impact. This impact can be reduced by the following mitigation measure, but not to a less than significant level.

b. **Mitigation Measure:** Add an exclusive left turn lane on the eastbound and westbound 65th Street approaches to Hollis Street.

c. **Facts in support of the Finding:** This impact will be mitigated with the above required mitigation measures identified in the EIR and incorporated into the Project, but not to a less-than-significant level. There are no economically, technologically or socially feasible mitigation measures to fully mitigate this impact.

d. **Findings:** The City finds that there are no additional feasible mitigation measures or alternatives that the City could adopt at this time which would reduce this impact to a less than significant level. This impact, therefore, remains significant and unmitigatable. To the extent that this adverse impact will not be eliminated or lessened to a less than significant level, the City finds that specific economic, social or other considerations identified in the Statement of Overriding Considerations support approval of the Project despite unavoidable impacts.

Impact Cir-17

a. **Significant Impact:** The EIR found that the intersection of Powell Street/Hollis Street would operate at an unacceptable Level of Service in the a.m. and p.m. peak periods, which would be considered a significant impact.

The addition of project-related traffic would result in a significant impact at the intersection of Hollis Street/Powell Street. This intersection would operate at LOS F due to the heavy through volumes on the northbound approach of Hollis Street.

b. **Mitigation Measure:** Add an exclusive left turn lane in the southbound direction on Hollis Street and a shared through/left turn lane in the northbound direction on Hollis Street.

c. **Facts in support of the Finding:** This impact will be mitigated with the above required mitigation measures identified in the EIR and incorporated into the Project, but not to a less-than-significant level. There are no economically, technologically or socially feasible mitigation measures to fully mitigate this impact. While these mitigation measures would not improve the intersection operations to a less than significant level of LOS D or better, they would, however, mitigate project impacts (i.e., the service level would improve to 2010 baseline conditions). Implementation of these mitigations would involve the widening of Hollis Street which would require the acquisition of additional right-of-way along Hollis Street, north and south of Powell Street. The improvements at this intersection are identified in the City's Capital Improvement Program (CIP). The traffic mitigation fees paid by this project may be used to fund these improvements.

d. **Findings:** The City finds that there are no additional feasible mitigation measures or alternatives that the City could adopt at this time which would reduce this impact to a less than significant level. This impact, therefore, remains significant and unmitigatable. To the extent that this adverse impact will not be eliminated or lessened to a less than significant level, the City finds that specific economic, social or other considerations identified in the Statement of Overriding Considerations support approval of the Project despite unavoidable impacts.

Impact Cir-24 (2010 Project Impact)

a. **Significant Impact:** The EIR found that the intersection of Cypress Street Northbound/32nd Street would operate at an unacceptable Level of Service in the a.m. and p.m. peak periods, which would be considered a significant impact.

b. **Mitigation Measure:** Install a traffic signal at the intersection of Cypress Street northbound/ 32nd Street.

c. **Facts in support of the Finding:** Although the above mitigation is economically, technologically or socially feasible, this intersection is located outside the jurisdiction of Emeryville and within the City of Oakland. Because the City of Emeryville lacks jurisdiction over this intersection,

Emeryville would need to enter into a Memorandum of Understanding with the City of Oakland in order to implement the mitigation. Therefore, the significant impact at this intersection cannot be mitigated without approval from the City of Oakland, and is considered an unavoidable impact of the project. If the City of Oakland proceeds with improvements to this intersection, it shall notify the City of Emeryville, and enter into a Memorandum of Understanding. Since Kaiser's fair share contribution toward funding these intersection improvements cannot be derived or implemented without input and approval from the City of Oakland, this agreement must be established prior to Emeryville assessing Kaiser for its fair share contribution towards funding the intersection improvements.

d. **Findings:** The City finds that there are no additional feasible mitigation measures or alternatives that the City could adopt at this time which would reduce this impact to a less than significant level. This impact, therefore, remains significant and unmitigatable. To the extent that this adverse impact will not be eliminated or lessened to a less than significant level, the City finds that specific economic, social or other considerations identified in the Statement of Overriding Considerations support approval of the Project despite unavoidable impacts.

Impact Cir-25

a. **Significant Impact:** The EIR found that the intersection of Adeline Street/35th Street would operate at an unacceptable Level of Service in the p.m. peak period, which would be considered a significant cumulative impact.

b. **Mitigation Measure:** Install a traffic signal at the intersection of Adeline Street/35th Street.

c. **Facts in support of the Finding:** Although the above mitigation is economically, technologically or socially feasible, this intersection is located outside the jurisdiction of Emeryville and within the City of Oakland. Because the City of Emeryville lacks jurisdiction over this intersection, Emeryville would need to enter into a Memorandum of Understanding with the City of Oakland in order to implement the mitigation. Therefore, the significant impact at this intersection cannot be mitigated without approval from the City of Oakland, and is considered an unavoidable impact of the project. If the City of Oakland proceeds with improvements to this intersection, it shall notify the City of Emeryville, and enter into a Memorandum of Understanding. Since Kaiser's fair share contribution toward funding these intersection improvements cannot be derived or implemented without input and approval from the City of Oakland, this agreement must be established prior to Emeryville assessing Kaiser for its fair share contribution towards funding the intersection improvements.

d. **Findings:** The City finds that there are no additional feasible mitigation measures or alternatives that the City could adopt at this time which would reduce this impact to a less than significant level. This impact, therefore, remains significant and unmitigatable. To the extent that this adverse impact will not be eliminated or lessened to a less than significant level, the City finds that specific economic, social or other considerations identified in the Statement of Overriding Considerations support approval of the Project despite unavoidable impacts.

Impact AQ-5

a. **Significant Impact:** The EIR found that the proposed project would have a significant regional effect on ozone precursor emissions in both Phase I and Future Expansion.

b. **Mitigation Measures:**

AQ-5.1: Kaiser shall implement a Transportation Systems Management Program as part of the proposed project.

AQ-5.2: The project shall implement roadway and intersection improvements identified in the traffic analysis for both Phase I and Future Expansion that would relieve congestion at intersections impacted by project traffic.

c. **Facts in support of the Finding:** This impact will be mitigated with the above required mitigation measures identified in the EIR and incorporated into the Project, but not to a less-than-significant level. There are no economically, technologically or socially feasible mitigation measures to fully mitigate this impact. Although implementation of the above improvements could be expected to result in a marginal decrease in carbon monoxide concentration near the affected facility, such improvements provide little reduction in regional emissions.

d. **Findings:** The City finds that there are no additional feasible mitigation measures or alternatives that the City could adopt at this time which would reduce this impact to a less than significant level. This impact, therefore, remains significant and unmitigatable. To the extent that this adverse impact will not be eliminated or lessened to a less than significant level, the City finds that specific economic, social or other considerations identified in the Statement of Overriding Considerations support approval of the Project despite unavoidable impacts.

Impact AQ-7

a. **Significant Impact:** The EIR found that Phase I and Future Expansion of the project would result in a cumulative air quality impact due to increases in carbon monoxide levels of up to 0.5 parts per million at selected locations and due to the project's contribution to continued exceedance of regional pollutants such as hydrocarbons and oxides of nitrogen.

b. **Mitigation Measures:** Implementation of mitigation measures AQ-5.1 and AQ-5.2 in Phase I and Future Expansion would contribute to the attainment of emission standards as projected for the Bay Area Air Basin.

c. **Facts in support of the Finding:** This impact will be mitigated with the above required mitigation measures identified in the EIR and incorporated into the Project, but not to a less-than-significant level. There are no economically, technologically or socially feasible mitigation measures to fully mitigate this impact. Although implementation of the above improvements could be expected to result in a marginal decrease in carbon monoxide concentration near the affected facility, such improvements provide little reduction in regional emissions.

d. **Findings:** The City finds that there are no additional feasible mitigation measures or alternatives that the City could adopt at this time which would reduce this impact to a less than significant level. This impact, therefore, remains significant and unmitigatable. To the extent that this adverse impact will not be eliminated or lessened to a less than significant level, the City finds that specific economic, social or other considerations identified in the Statement of Overriding Considerations support approval of the Project despite unavoidable impacts.

Impact No-4

a. **Significant Impact:** The EIR found that Phase I and Future Expansion of the proposed project would result in a significant short-term construction noise impact. The project would also contribute to cumulative noise impacts generated during the simultaneous construction of more than one project within the vicinity of the proposed project site.

b. **Mitigation Measures:**

This impact will be reduced with the following required mitigation measures identified in the EIR and incorporated into the Project:

Mitigation No-4.1: A Construction Mitigation Plan shall be developed prior to construction approval.

Mitigation No-4.2: For construction on the Future Expansion site north of 45th Street, the Construction Mitigation Plan shall provide for the construction of temporary wooden noise barrier walls to shield residents at the Emery Bay Village from the noise emissions of stationary construction equipment wherever the use of barriers would be feasible.

Mitigation No-4.3: The plan shall also include a limitation on construction hours (i.e., 7:00 a.m. to 7:00 p.m.) and a similar limitation on the hours of truck deliveries.

Mitigation No-4.4: Under the Construction Mitigation Plan, contractors shall be required to use "new technology" power construction equipment with state-of-the-art noise shielding and muffling devices.

Mitigation No-4.5: As part of the Construction Mitigation Plan, the contractor shall schedule construction activities in shifts to avoid high noise levels caused by simultaneously operating several pieces of noise-generating equipment, to the extent feasible.

c. **Facts in support of the Finding:** This impact will be mitigated with the above required mitigation measures identified in the EIR and incorporated into the Project, but not to a less-than-significant level. There are no economically, technologically or socially feasible mitigation measures to fully mitigate this impact.

d. **Findings:** The City finds that there are no additional feasible mitigation measures or alternatives that the City could adopt at this time which would reduce this impact to a less than significant level. This impact, therefore, remains significant and unmitigatable. To the extent that this adverse impact will not be eliminated or lessened to a less than significant level, the City finds that specific economic, social or other considerations identified in the Statement of Overriding Considerations support approval of the Project despite unavoidable impacts.

Impact CR-3

a. **Significant Impact:** The EIR found that Phase I of the project would result in a significant unavoidable impact to the Del Monte Plant #35 building which is considered a historic resource individually eligible for National Register status.

b. **Mitigation Measures:**

CR-3.1: Kaiser shall preserve some or all of the Del Monte Plant #35

front elevation on Park Avenue, if feasible.

CR-3.2: Prior to demolition of all or part of Del Monte Plant #35, the building shall be documented according to Historic American Building Survey (HABS) standards.

c. **Facts in support of the Finding:** This impact will be mitigated with the above required mitigation measures identified in the EIR and incorporated into the Project, but not to a less-than-significant level. There are no economically, technologically or socially feasible mitigation measures to fully mitigate this impact.

d. **Findings:** The City finds that there are no additional feasible mitigation measures or alternatives that the City could adopt at this time which would reduce this impact to a less than significant level. This impact, therefore, remains significant and unmitigatable. To the extent that this adverse impact will not be eliminated or lessened to a less than significant level, the City finds that specific economic, social or other considerations identified in the Statement of Overriding Considerations support approval of the Project despite unavoidable impacts.

Impact CR-5

a. **Significant Impact:** The EIR found that Future Expansion of the project would result in a significant unavoidable impacts to two historic resources on the Future Expansion site.

b. **Mitigation Measures:**

CR-5.1: Future Expansion at an alternative location would avoid the demolition of the two buildings at the corner of Hollis and 45th Streets. This mitigation measure, however, cannot be implemented as the project is proposed. This mitigation measure will be reconsidered at the time of the Final Development Plan for the Future Expansion phase.

CR-5.2: The front facades of these buildings have an urban design value as part of this area of 1920s industrial buildings. By incorporating the facades of these buildings in the project, with the new buildings set back from the street, the project's significant effects will be reduced.

CR-5.3: Prior to demolition of all or part of the Hollis and 45th Street buildings, these buildings shall be documented according to Historic American Building Survey standards.

c. **Facts in support of the Finding:** This impact will be mitigated with the

above required mitigation measures identified in the EIR and incorporated into the Project, but not to a less-than-significant level. There are no economically, technologically or socially feasible mitigation measures to fully mitigate this impact. The architectural historian has determined, that given the nature of the project, reusing these buildings at their present locations or relocating them to a new site is infeasible. The infeasibility of incorporating the structures into the medical center is based upon the need for extensive renovation and the associated costs of such efforts, as well as the difficulty in converting these buildings to health care related uses. Additionally, relocating the structures has been determined infeasible because of the difficulty of physically moving these buildings.

d. **Findings:** The City finds that there are no additional feasible mitigation measures or alternatives that the City could adopt at this time which would reduce this impact to a less than significant level. This impact, therefore, remains significant and unmitigatable. To the extent that this adverse impact will not be eliminated or lessened to a less than significant level, the City finds that specific economic, social or other considerations identified in the Statement of Overriding Considerations support approval of the Project despite unavoidable impacts.

Impact - Loss of On-Street Parking

a. **Significant Impact:** The EIR found that several of the proposed mitigation measures would require mandatory peak period parking restrictions or the installation of "No Parking Zones" at on-street parking locations. The impacts associated with these parking restrictions would result in significant unavoidable impacts, as described on page 126 of the Draft EIR.

b. **Mitigation Measure:** No feasible mitigation measure exists for the above impact because the project does not propose to provide replacement parking.

c. **Facts in support of the Finding:** There are no economically, technologically or socially feasible mitigation measures to fully mitigate this impact.

d. **Findings:** The City finds that there are no additional feasible mitigation measures or alternatives that the City could adopt at this time which would reduce this impact to a less than significant level. This impact, therefore, remains significant and unmitigatable. To the extent that this adverse impact will not be eliminated or lessened to a less than significant level, the City finds that specific economic, social or other considerations identified in the Statement of Overriding Considerations support approval of the Project despite unavoidable impacts.

Attachment B.2
Mitigation Monitoring and Reporting Program

**PROPOSED
MITIGATION MONITORING
AND REPORTING PROGRAM**

KAISER PERMANENTE MEDICAL CENTER

NOVEMBER, 1994

**PROPOSED
MITIGATION MONITORING AND REPORTING PROGRAM**

INTRODUCTION

Section 21081.6 of the Public Resources Code states that, when making findings required by subdivision (a) of Section 21081, a lead agency shall adopt a reporting or monitoring program for "changes to the project which it has adopted or made a condition of project approval in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation (CEQA Statute 21081)."

The proposed Mitigation Monitoring and Reporting Program for the Kaiser Permanente Medical Center is organized in a manner similar to that of the Summary contained in the Draft EIR. For each mitigation measure listed in the Summary, the Mitigation Monitoring and Reporting Program contains the following items:

1. a statement of the mitigation measure;
2. identification of the party/parties responsible for implementing the measure;
3. an outline of the appropriate mitigation monitoring actions;
4. assignment of mitigation monitoring responsibility and scheduling for monitoring the mitigation measure implementation.

Impacts identified in the summary that are not significant and do not have corresponding mitigation measures are not replicated in this proposed Mitigation Monitoring and Reporting Program.

MITIGATION MEASURE MONITORING AND REPORTING PROGRAM

LAND USE (pp. 22-55)

Impacts to Surrounding Land Uses - Phase I

Mitigation LU-3.1

- Description of Measure:** Implement the Kaiser Permanente Medical Center Urban Design Guidelines as adopted by the Emeryville Planning Commission on August 26, 1993. The requirements of the Urban Design guidelines have been incorporated into the project design.
- Implementation Procedure:** The Preliminary and Final Development Plans submitted for Phase I will reflect the requirements of the Urban Design Guidelines as specified in the August 26, 1993 City of Emeryville Recommended Urban Design Guidelines for the Kaiser Permanente Medical Center in Emeryville.
- Monitoring and Reporting Action:** Review the Preliminary and Final Development Plans to confirm compliance with the Urban Design Guidelines.
- Monitoring Responsibility:** City of Emeryville Planning Commission to recommend approval to City Council.
- Monitoring Schedule:** Prior to approval of the Preliminary and Final Development Plans for Phase I by City Council.

Mitigation LU-3.2:

- Description of Measure:** Implement the traffic, noise, and visual mitigation measures as described in Section II, C (pages 114-183), E (pages 211-214), and L (pages 287-291) which include additional mitigation measures not currently included in the project.
- Implementation Procedure:** The Preliminary and Final Development Plans for Phase I will specify the location and design of mitigation measures Cir-1.1 to Cir-14, Cir-26A, Cir-35, Cir-40 to Cir-43, Cir-45, Cir-47 to Cir-49, Cir-52 to Cir-57, No-1 to No-2, and Vis-1. The mitigation features will be included as conditions of approval of the Preliminary and Final Development Plans.
- Monitoring and Reporting Action:** Include mitigation measures Cir-1.1 to Cir-14, Cir-26A, Cir-35, Cir-40 to Cir-43, Cir-45, Cir-47 to Cir-49, Cir-52 to Cir-57, No-1 to No-2, and Vis-1 as conditions of approval of the Preliminary and Final Development Plans. Refer to the monitoring and reporting actions for these mitigation measures provided below.
- Monitoring Responsibility:** City of Emeryville Planning Director

Monitoring Schedule: Concurrent with approval of the Preliminary and Final Development Plans for Phase I by City Council, as specified for each of the identified mitigation measures below.

Impacts to Surrounding Land Uses - Future Expansion

Mitigation LU-4.1

Description of Measure: Implement the Kaiser Permanente Medical Center Urban Design Guidelines as adopted by the Emeryville Planning Commission on August 26, 1993. The requirements of the Urban Design Guidelines have been incorporated into the project design.

Implementation Procedure: The Preliminary and Final Development Plans submitted for the Future Expansion phase will reflect the requirements of the Urban Design Guidelines as specified in the August 26, 1993 City of Emeryville Recommended Urban Design Guidelines for the Kaiser Permanente Medical Center in Emeryville.

Monitoring and Reporting Action: Review the Preliminary and Final Development Plans to confirm compliance with the Urban Design Guidelines.

Monitoring Responsibility: City of Emeryville Planning Commission to recommend approval to City Council.

Monitoring Schedule: Prior to approval of the Preliminary and Final Development Plans for Future Expansion by City Council.

Mitigation LU-4.2

Description of Measure: Implement the traffic, noise, and visual mitigation measures as described in Section II, C (pages 114-183), E (pages 211-214), and L (pages 287-291) which include additional mitigation measures not currently included in the project.

Implementation Procedure: The Preliminary and Final Development Plans for Future Expansion will specify the location and design of mitigation measures for Cir-15 to Cir-25, Cir-26B to Cir-34, Cir-36 to Cir-37, Cir-44, Cir-46, Cir-47B, Cir-50 to Cir-51, Cir-58 to Cir-59, No-1, No-3, No-4, and Vis-1. for traffic, noise, and visual impacts. The location and design will either be represented in the Preliminary and Final Development Plans through the project design or listed as Development Plan notes.

Monitoring and Reporting Action: Include mitigation measures Cir-1.1 to Cir-14, Cir-26A, Cir-35, Cir-40 to Cir-43, Cir-45, Cir-47 to Cir-49, Cir-52 to Cir-57, No-1 to No-2, and Vis-1 as conditions of approval of the Preliminary and Final Development Plans for Future Expansion. Refer to the monitoring and reporting actions for these mitigation measures provided below.

Monitoring Responsibility: City of Emeryville Planning Director

Monitoring Schedule: Prior to approval of the Preliminary and Final Development Plans for Future Expansion by City Council.

General Plan Amendment Impacts - Phase I and Future Expansion

Mitigation LU-5.1

Description of Measure: The City of Emeryville should limit the application of the text change to Land Use Element Policy #5 to the Del Monte site.

Implementation Procedure: The final language adopted for Policy #5 adopted by the City of Emeryville City Council will state that the proposed amendment only applies to the proposed project site.

Monitoring and Reporting Action: Review the final language for Policy #5 adopted by the City Council.

Monitoring Responsibility: City of Emeryville Planning Director

Monitoring Schedule: Prior to approval of the Preliminary and Final Development Plans for Phase I by the City Council.

Mitigation LU-5.2

Description of Measure: Use of authentic brick building materials should be incorporated into the proposed "liner" building design to be compatible with the scale and character of the area, where feasible.

Implementation Procedure: The Preliminary and Final Development Plans submitted for Phase I and Future Expansion will specify the use of brick building materials for the "liner" buildings.

Prior to demolition of the Del Monte Plant #35 building, Kaiser will consider the feasibility of using the bricks recovered from the building.

Monitoring and Reporting Action: Review the Preliminary and Final Development Plans to ensure that the "liner" buildings comply with this measure.

Monitoring Responsibility: City of Emeryville Planning Commission to recommend approval to City Council.

Monitoring Schedule: Prior to approval of the Preliminary and Final Development Plans for Future Expansion by City Council.

Ongoing monitoring to continue through construction of "liner" buildings to ensure bricks are incorporated into the proposed structures.

EMPLOYMENT AND HOUSING (pp. 56-85)

Employment Impacts - Acquisition, Displacement, and Demolition - Phase I

Mitigation EH-1.1

Description of Measure: Phase I would be required to conform to the Relocation Assistance Act and State Relocation Guidelines Requirements, as described on pages 63 through 67 of the Draft EIR.

Implementation Procedure: The State Relocation Assistance Act and State Relocation Guidelines set forth the process for implementing a Relocation Assistance Program; taking certain actions prior to proceeding with any activity that would result in displacement; preparing a relocation plan; and providing relocation payments to eligible displaced persons.

Redevelopment Agency's Replacement Housing Obligation

In accordance with Health and Safety Code §33413, the Emeryville Redevelopment Agency will satisfy its obligation to replace each dwelling unit housing persons and families of low and moderate income which is destroyed or removed from the housing market as a result of this project. Kaiser will provide funding to the Agency, subject to the limitations of the Disposition and Development Agreement (Participation Agreement) to assist the Agency in fulfilling its obligation pursuant to Health and Safety Code §33413. With this assistance, the Agency would replace each dwelling unit, housing persons, and families of low and moderate income which is destroyed or removed from the housing market as a result of the project within four years of such destruction or removal, and otherwise in accordance with the Replacement Housing Plan, adopted by the Redevelopment Agency.

The Agency will be responsible for fulfilling the Agency's replacement obligations, with Kaiser providing a portion of the funding to construct the replacement units. Under §33414 of the Health and Safety Code, all dwelling units that house families with very low, low, and moderate incomes must be replaced. However, only 75% of the replacement units must be affordable to families with comparable income levels, and the remaining 25% of such replacement units may be market rate. In accordance with these requirements, Kaiser's funding of these replacement units will be limited to a specified amount, depending upon the type of replacement unit required. The portion of funding to be provided by Kaiser was determined based on the Agency's estimate of the amount of funds necessary to make the replacement units affordable at the required income

levels. Any funds provided by Kaiser to fund fulfillment of the Agency's replacement housing obligations shall be in addition to, and shall not be counted as part of, the funds invested by Kaiser in the Kaiser Emeryville Housing Fund.

Relocation Plan

A *Relocation Plan for the Kaiser Permanente Medical Center Project* was adopted on October __, 1994, and is incorporated by reference into this Mitigation Monitoring and Reporting Program. The Relocation Plan addresses the following elements:

1. A description of the project area and specific project site;
2. An assessment of the relocation needs of all persons who may be displaced as a result of the project, including survey methods and results,
3. An assessment of the availability of comparable replacement housing and commercial space within Emeryville and nearby surrounding communities; and
4. The steps and procedures that the Redevelopment Agency will follow to ensure a satisfactory and thorough relocation program.

Monitoring and Reporting Action:

Implement the procedures outlined in the *Relocation Plan for the Kaiser Permanente Medical Center Project* in Phase I.

Monitoring Responsibility:

City of Emeryville Director of Economic Development and Housing

Monitoring Schedule:

Prior to proceeding with any activity in Phase I that would result in displacement of a business or residence, the City of Emeryville Redevelopment Agency will be required to implement a Relocation Assistance Program; implement the Relocation Plan; and provide relocation payments to eligible displaced persons.

Employment Impacts - Acquisition, Displacement, and Demolition - Future Expansion

Mitigation EH-3.1

Description of Measure:

Future Expansion of the medical center would be required to conform to the Relocation Assistance Act and State Relocation Guidelines Requirements, as described on pages 63 through 67 of the Draft EIR.

Implementation Procedure:

The State Relocation Assistance Act and State Relocation Guidelines set forth the process for implementing a Relocation

Assistance Program; taking certain actions prior to proceeding with any activity that would result in displacement; preparing a relocation plan; and providing relocation payments to eligible displaced persons.

Redevelopment Agency's Replacement Housing Obligation

In accordance with Health and Safety Code §33413, the Emeryville Redevelopment Agency will satisfy its obligation to replace each dwelling unit housing persons and families of low and moderate income which is destroyed or removed from the housing market as a result of this project, as described in Implementation Procedure EH-1.1. Kaiser will provide funding to the Agency, subject to the limitations of the Disposition and Development Agreement (Participation Agreement) to assist the Agency in fulfilling its obligation pursuant to Health and Safety Code §33413, as set forth in Implementation Procedure EH-1.1.

Relocation Plan

A *Relocation Plan for the Kaiser Permanente Medical Center Project* was adopted on October __, 1994, and is incorporated by reference into this Mitigation Monitoring and Reporting Program. The Relocation Plan addresses the following elements:

1. A description of the project area and specific project site;
2. An assessment of the relocation needs of all persons who may be displaced as a result of the project, including survey methods and results,
3. An assessment of the availability of comparable replacement housing and commercial space within Emeryville and nearby surrounding communities; and
4. The steps and procedures that the Redevelopment Agency will follow to ensure a satisfactory and thorough relocation program.

Monitoring and Reporting Action:

Implement the procedures outlined in the *Relocation Plan for the Kaiser Permanente Medical Center Project* in Future Expansion.

Monitoring Responsibility:

City of Emeryville Director of Economic Development and Housing

Monitoring Schedule:

Prior to proceeding with any activity in the Future Expansion phase that would result in displacement of a business or residence, the City of Emeryville Redevelopment Agency will be required to implement a Relocation Assistance Program;

implement the Relocation Plan; and provide relocation payments to eligible displaced persons.

Housing Impacts - Acquisition, Displacement, and Demolition - Phase I

Mitigation EH-5.1

- Description of Measure:** As with the business displacement impacts, Kaiser and the Emeryville Redevelopment Agency would be required by law to conform to the requirements of the Relocation Assistance Act and State Relocation Guidelines, for Phase I.
- Implementation Procedure:** Implement Implementation Procedure for Monitoring and Reporting measure EH-1.1.
- Monitoring and Reporting Action:** Implement the procedures outlined in the *Relocation Plan for the Kaiser Permanente Medical Center Project* in Phase I.
- Monitoring Responsibility:** City of Emeryville Director of Economic Development and Housing
- Monitoring Schedule:** Prior to proceeding with any activity in Phase I that would result in displacement of a residence, the City of Emeryville Redevelopment Agency will be required to implement a Relocation Assistance Program; implement the Relocation Plan; and provide relocation payments to eligible displaced persons.

Mitigation EH-5.2

- Description of Measure:** Implement Redevelopment Agency's replacement housing obligations under Redevelopment Law. These are requirements of Redevelopment Law and would be carried out by the City of Emeryville Redevelopment Agency. Funding would be provided by the project applicant, as set forth in the Disposition and Development Agreement (Participation Agreement).
- City to construct in-kind all housing units occupied by low- to moderate-income households. Seventy-five percent of the replacement units must be affordable at the same income level of the displaced households.
- Implementation Procedure:** Implement Implementation Procedures for Monitoring and Reporting measure EH-1.1.
- Monitoring and Reporting Action:** Implement the procedures outlined in the *Relocation Plan for the Kaiser Permanente Medical Center Project* in Phase I.
- Monitoring Responsibility:** City of Emeryville Director of Economic Development and Housing

Monitoring Schedule:

Prior to proceeding with any activity in Phase I that would result in displacement, the City of Emeryville Redevelopment Agency will be required to implement a Relocation Assistance Program; implement the Relocation Plan; and provide relocation payments to eligible displaced persons.

Within four years of the removal of the existing dwelling units, the Redevelopment Agency must construct all replacement housing units.

Mitigation EH-5.3

Description of Measure:

Implement Kaiser's Housing Program. This program will be included as a mitigation measure in the Development Agreement, as described on pages 74 and 75 if the Draft EIR.

Implementation Procedure:

Kaiser Housing Program (Kaiser-Emeryville Housing Fund)

In order to provide the Agency with a flexible source of funding to construct additional housing in Emeryville, Kaiser would lend up to \$15,000,000 to the Agency, at a below market interest rate over a term of 15 years, to fund the development of new affordable and market rate housing within Emeryville. Funds from the Kaiser-Emeryville Housing Fund will be made available during the Housing Fund Term in increments of \$3,000,000 at one time, which may be borrowed and repaid up to five times, for a maximum of \$15,000,000. The Agency will be able to combine the funds from the Kaiser-Emeryville Housing Fund with other sources of funds. The Agency would use these funds in cooperation with private for-profit or non-profit developers to develop housing developments in Emeryville.

Housing Development Criteria. The Agency would have the discretion to determine the types and sizes of the housing developments, with the goal of providing the maximum number of affordable housing units as reasonably possible, consistent with the General Plan Housing Element.

Funding Mechanism. The Agency and Kaiser would execute a loan agreement prior to the first advance of funds from the Housing Program. The Agency will notify Kaiser of the housing development that it selected to obtain funds from the Housing Program. Funding would be disbursed in accordance with the terms of the loan agreement. Kaiser would only be required to advance funds for purposes related to development (including, but not limited to, land acquisition, site preparation, hazardous substance remediation, engineering, architecture and planning, other customary soft costs, and hard construction costs) of the selected housing development.

Monitoring and Reporting Action:

The Kaiser Housing Program will be included in the Development Agreement. The Housing Program will describe the manner in which Kaiser will make the funds available to the Redevelopment Agency.

The City of Emeryville Redevelopment Agency, the Director of Economic Development and Housing, and City of Emeryville Planning Director would review each housing development proposal. Each housing developer would submit evidence to the City of Emeryville Redevelopment Agency that it has obtained conventional construction financing for the housing project.

The Director of Economic Development and Housing would prepare a report informing Kaiser of the selected development project and the criteria used in the selection process. This report would also identify those costs related to development for which Kaiser would be obligated to advance funds, prior to Kaiser lending the designated funds to the Agency for a given residential development.

The Director of Economic Development and Housing shall maintain a record of the total number of units actually constructed, in whole or in part, with funding from the Kaiser Housing Program. This record will be updated as new housing projects are built with funds from the Kaiser Housing Program.

Upon the first to occur of (i) the expiration of the Housing Fund, or (ii) the disbursement of the fifth investment increment, the Director of Economic Development and Housing will prepare a final report documenting each of the housing projects that were funded by the Housing Program and the total number of units available for moderate-income households, and establishing that the Housing Program has been completed. Pursuant to the Development Agreement, the City and the Agency shall execute and acknowledge a certificate of satisfaction of Kaiser's obligations in connection with the Kaiser Housing Program.

Monitoring Responsibility: City of Emeryville Director of Economic Development and Housing

Monitoring Schedule: Prior to proceeding with any activity in Phase I that would result in displacement of a residence, Kaiser will submit its Housing Program as set forth in the Development Agreement. All subsequent reports and documentation will be triggered at the time a developer participating in the Housing Program proposes a project.

Housing Impacts - Acquisition, Displacement, and Demolition - Future Expansion

Mitigation EH-7.1

- Description of Measure:** As with the business displacement impacts, Kaiser and the Emeryville Redevelopment Agency would be required by law to conform to the requirements of the Relocation Assistance Act and State Relocation Guidelines, for Future Expansion.
- Implementation Procedure:** Implement Implementation Procedure for Monitoring and Reporting measure EH-1.1.
- Monitoring and Reporting Action:** Implement the Redevelopment Agency's Replacement Housing Obligation requirements as set forth in Monitoring and Reporting Action EH-1.1 in the Future Expansion phase.
- Implement the procedures outlined in the *Relocation Plan for the Kaiser Permanente Medical Center Project* in the Future Expansion phase.
- Monitoring Responsibility:** City of Emeryville Director of Economic Development and Housing
- Monitoring Schedule:** Prior to proceeding with any activity in the Future Expansion phase that would result in displacement of residents, the City of Emeryville Redevelopment Agency will be required to implement a Relocation Assistance Program; implement the Relocation Plan; and provide relocation payments to eligible displaced persons.

Mitigation EH-7.2

- Description of Measure:** Implement Redevelopment Agency's replacement housing obligations under Redevelopment Law. These are requirements of Redevelopment Law and would be carried out by the City of Emeryville Redevelopment Agency. Funding would be provided by the project applicant, as set forth in the Participation Agreement.
- City to construct in-kind all housing units occupied by low- to moderate-income households. Seventy-five percent of the replacement units must be affordable at the same income level of the displaced households.
- Implementation Procedure:** Implement Implementation Procedures for Monitoring and Reporting measure EH-1.1.
- Monitoring and Reporting Action:** Implement the Redevelopment Agency's Replacement Housing Obligation requirements as set forth in Monitoring and Reporting Action EH-1.1 in the Future Expansion phase.

Implement the procedures outlined in the *Relocation Plan for the Kaiser Permanente Medical Center Project* in the Future Expansion phase.

Monitoring Responsibility: City of Emeryville Director of Economic Development and Housing

Monitoring Schedule: Prior to proceeding with any activity in the Future Expansion phase that would result in displacement, the City of Emeryville Redevelopment Agency will be required to implement a Relocation Assistance Program; implement the Relocation Plan; and provide relocation payments to eligible displaced persons.

Within four years of the removal of the existing dwelling units, the Redevelopment Agency must construct all replacement housing units.

Mitigation EH-7.3

Description of Measure: Implement Kaiser's Housing Program. This program will be included as a mitigation measure in the Development Agreement.

Implementation Procedure: Implement Implementation Procedures for Monitoring and Reporting measure EH-5.3.

Monitoring and Reporting Action: Implement Monitoring and Reporting Action specified in EH-5.3.

Monitoring Responsibility: City of Emeryville Director of Economic Development and Housing

Monitoring Schedule: Prior to proceeding with any activity in the Future Expansion phase that would result in displacement of residents, Kaiser will submit its Housing Program as set forth in the Development Agreement. All subsequent reports and documentation will be triggered at the time a developer participating in the Housing Program proposes a project.

Housing Impacts - Loss of Future Housing Opportunities - Phase I

Mitigation EH-6.1

Description of Measure: Implement the Kaiser Housing Program. This program is included as part of the proposed project.

Implementation Procedure: Implement Implementation Procedure for Monitoring and Reporting measure EH-5.3.

Monitoring and Reporting Action: Implement Monitoring and Reporting Action specified in EH-5.3.

Monitoring Responsibility: City of Emeryville Director of Economic Development and Housing

Monitoring Schedule: Prior to proceeding with demolition of the existing structures in Phase I, Kaiser will submit its Housing Program as set forth in the Development Agreement. All subsequent reports and documentation will be triggered at the time a developer participating in the Housing Program proposes a project.

Mitigation EH-6.2

Description of Measure: Pursue the development of housing at other locations in Emeryville.

Implementation Procedure: Report on the status of development and the use of Kaiser Housing Program funds towards development of the 25 additional sites throughout the City that have the potential for new residential development.

Monitoring and Reporting Action: City of Emeryville Redevelopment Agency to prepare an annual monitoring report on the status of new residential development on the 25 potential additional housing sites. This report will include the following elements:

1. Identification of the 25 sites; potential dwelling unit yield; potential for moderate income housing; and necessary approvals required to construct residential units.
2. Efforts by the Redevelopment Agency to facilitate new residential development on the sites.
3. Identification of any pending or approved residential projects on the 25 sites.
4. Identification of very low, low, and/or moderate income housing units on the 25 sites.
5. Identification of any pending or approved residential projects on other sites, including mixed-use sites, in the City.
6. Funding sources for the housing projects on these 25 sites.
7. Status report on the City's ability to meet its fair share housing requirements.

Monitoring Responsibility: City of Emeryville Redevelopment Agency

Monitoring Schedule: Prior to proceeding with demolition of the existing residential structures in Phase I, the Emeryville Redevelopment Agency will prepare the first summary report describing the status of new residential projects on the 25 potential additional housing sites.

This report will be submitted to the Emeryville Planning Department Director. All subsequent reports and documentation will be prepared on an annual basis.

Mitigation EH-6.3

- Description of Measure:** The Kaiser Housing Program should fund the construction of affordable housing units.
- Implementation Procedure:** Implement Implementation Procedure for Monitoring and Reporting measure EH-5.3.
- Monitoring and Reporting Action:** Implement Monitoring and Reporting Action specified in EH-5.3.
- Monitoring Responsibility:** City of Emeryville Director of Economic Development and Housing
- Monitoring Schedule:** Prior to proceeding with demolition of the existing structures in Phase I, Kaiser will submit its Housing Program plan to the City of Emeryville Redevelopment Agency for review and approval. All subsequent reports and documentation will be triggered at the time a developer participating in the Housing Program proposes a project.

Mitigation EH-6.4

- Description of Measure:** Funding from the Kaiser Housing Program should be applied to the development of housing on the 25 sites identified by the Redevelopment Agency as having the potential for future housing construction.
- Implementation Procedure:** Implement Implementation Procedure for Monitoring and Reporting measure EH-5.3.
- Monitoring and Reporting Action:** Implement Monitoring and Reporting Action specified in EH-5.3.
- Monitoring Responsibility:** City of Emeryville Redevelopment Agency
- Monitoring Schedule:** Prior to proceeding with demolition of the existing structures in Phase I, Kaiser will submit its Housing Program as set forth in the Development Agreement. All subsequent reports and documentation will be triggered at the time a developer participating in the Housing Program proposes a project.

Mitigation EH-6.5:

- Description of Measure:** The City of Emeryville Redevelopment Agency would be responsible for continuing to encourage developers to develop affordable housing on the 25 parcels identified as potential housing sites.

- Implementation Procedure:** Implement Implementation Procedure for Monitoring and Reporting measure EH-6.2.
- Monitoring and Reporting Action:** Implement Monitoring and Reporting Action specified in EH-6.2.
- Monitoring Responsibility:** City of Emeryville Redevelopment Agency
- Monitoring Schedule:** Prior to proceeding with demolition of the existing structures in Phase I, the Emeryville Redevelopment Agency will prepare the first summary report describing the status of new residential projects on the 25 potential additional housing sites. This report will be submitted to the Emeryville Planning Department Director. All subsequent reports and documentation will be prepared on an annual basis.

Mitigation: EH-6.6:

- Description of Measure:** The City of Emeryville would continue to encourage residential development in mixed-use areas, and infill housing at appropriate locations.
- Implementation Procedure:** Implement Implementation Procedure for Monitoring and Reporting measure EH-6.2.
- Monitoring and Reporting Action:** Implement Monitoring and Reporting Action specified in EH-6.2.
- Monitoring Responsibility:** City of Emeryville Director of Economic Development and Housing
- Monitoring Schedule:** Prior to proceeding with demolition of the existing structures in Phase I, the Emeryville Redevelopment Agency will prepare the first summary report describing the status of new residential projects on the 25 potential additional housing sites. This report will be submitted to the Emeryville Planning Department Director. All subsequent reports and documentation will be prepared on an annual basis.

TRANSPORTATION AND CIRCULATION (pp. 86-183)

Project Intersection Impacts, Year 2000 (Feasible in Emeryville)

Mitigation Cir-1.1

- Description of Measure:** For the San Pablo Avenue/45th Street intersection, add a third through lane in the northbound and southbound directions on San Pablo Avenue and an exclusive eastbound left turn lane on 45th Street.

Implementation Procedure: Kaiser will construct the improvements at the San Pablo Avenue/45th Street intersection prior to occupancy of the first building in Phase I. Kaiser will be reimbursed by future development for a portion of the cost of the identified mitigation measure.

Monitoring and Reporting Action: Kaiser to submit engineering and design plans for the intersection improvements for review and approval by the Director of Public Works. Upon approval, Kaiser will obtain the necessary approvals (i.e., grading permits, encroachment permits, etc.) to construct the identified improvements. Kaiser will then construct the identified mitigation.

Monitoring Responsibility: City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule: All improvements at this intersection will be completed prior to occupancy of the first building in Phase I.

Mitigation Cir-2.1

Description of Measure: For the San Pablo Avenue/Park Avenue intersection, add a third through lane in the northbound and southbound directions on San Pablo Avenue.

Implementation Procedure: Kaiser will construct the improvements at the San Pablo/Park Avenue intersection prior to occupancy of the first building in Phase I. Kaiser will be reimbursed by future development for a portion of the cost of the identified mitigation measure.

Monitoring and Reporting Action: Kaiser to submit engineering and design plans for the intersection improvements for review and approval by the Director of Public Works. Upon approval, Kaiser will obtain the necessary approvals (i.e., grading permits, encroachment permits, etc.) to construct the identified improvements. Kaiser will then construct the identified mitigation.

Monitoring Responsibility: City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule: All improvements at this intersection will be completed prior to occupancy of the first building in Phase I.

Mitigation Cir-3.1

Description of Measure: For the San Pablo Avenue/Adeline Street/W. MacArthur Boulevard intersection, add a third through lane in the northbound and southbound directions, prohibit left turns in the northbound and southbound directions on San Pablo Avenue, and add an exclusive left turn lane in the westbound direction on Adeline Street.

Implementation Procedure: Kaiser will construct the improvements at the San Pablo Avenue/ Adeline Street/W. MacArthur Boulevard intersection prior to occupancy of the first building in Phase I. Kaiser will be reimbursed by future development for a portion of the cost of the identified mitigation measure.

Monitoring and Reporting Action: Kaiser to submit engineering and design plans for the intersection improvements for review and approval by the Director of Public Works. Upon approval, Kaiser will obtain the necessary approvals (i.e., grading permits, encroachment permits, etc.) to construct the identified improvements. Kaiser will then construct the identified mitigation.

Monitoring Responsibility: City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule: All improvements at this intersection will be completed prior to occupancy of the first building in Phase I.

Mitigation Cir-4.1

Description of Measure: For the Hollis Street/45th Street intersection, restripe 45th Street to provide an exclusive left turn lane in the westbound direction at Hollis Street, as well as the installation of a no parking zone on one side of 45th Street. Restripe Hollis Street to provide two through lanes on both approaches. Installation of a traffic signal would also be required at Hollis and 45th Streets.

Implementation Procedure: Kaiser will construct the improvements at the Hollis Street/45th Street intersection prior to occupancy of the first building in Phase I. Kaiser will be reimbursed by future development for a portion of the cost of the identified mitigation measure.

Monitoring and Reporting Action: Kaiser to submit engineering and design plans for the intersection improvements for review and approval by the Director of Public Works. Upon approval, Kaiser will obtain the necessary approvals (i.e., grading permits, encroachment permits, etc.) to construct the identified improvements. Kaiser will then construct the identified mitigation.

Monitoring Responsibility: City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule: All improvements at this intersection will be completed prior to occupancy of the first building in Phase I.

Mitigation Cir-5.1

Description of Measure: For the San Pablo Avenue/40th Street intersection, add a third through lane in the northbound and southbound directions on San Pablo Avenue, as well as an eastbound shared through/right turn lane on 40th Street.

Implementation Procedure: Kaiser will construct the improvements at the San Pablo Avenue/40th Street intersection prior to occupancy of the first building in Phase I. Kaiser will be reimbursed by future development for a portion of the cost of the identified mitigation measure.

Monitoring and Reporting Action: Kaiser to submit engineering and design plans for the intersection improvements for review and approval by the Director of Public Works. Upon approval, Kaiser will obtain the necessary approvals (i.e., grading permits, encroachment permits, etc.) to construct the identified improvements. Kaiser will then construct the identified mitigation.

Monitoring Responsibility: City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule: All improvements at this intersection will be completed prior to occupancy of the first building in Phase I.

Mitigation Cir-6.1

Description of Measure: For the Powell Street/Doyle Street intersection, install a traffic signal at the intersection of Powell Street/Doyle Street. Restripe Powell Street approaches to provide an exclusive left turn pocket in both directions at Doyle Street.

Implementation Procedure: Within 30 days of the completion of the construction of the Horton-Landregan Connection improvements, Kaiser will conduct monitoring of the Powell/Doyle intersection to determine that the traffic volumes meet signal warrants (using Caltrans methodology). If signal warrants are met, Kaiser will install the signal at the Powell/Doyle intersection in Phase I. If the signal warrants are not met, then Kaiser will be required to install the signal in the Future Expansion phase as part of the Doyle-Haven Extension. Kaiser will be reimbursed by future development for up to 50% of the costs of the identified mitigation measure.

Monitoring and Reporting Action: Kaiser to submit engineering and design plans for the intersection improvements for review and approval by the Director of Public Works. Upon approval, Kaiser will obtain the necessary approvals (i.e., grading permits, encroachment permits, etc.) to construct the identified improvements. Kaiser will then construct the identified mitigation.

Monitoring Responsibility: City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule: All improvements at this intersection will be completed prior to occupancy of the first building in Phase I, if signal warrants at the Powell/Doyle Street intersection are met. If signal warrants are not met within 30 days of the completion of the Horton-Landregan Connection, then the signal will be installed as part

of the Doyle-Haven Extension improvements in the Future Expansion phase.

Mitigation Cir-7.1

- Description of Measure:** As a reliever route for Hollis and Powell Streets, construct a two lane Horton-Landregan Connection, with turn lanes into the Chiron project, and a two lane Stanford Avenue Extension between Horton-Landregan and Hollis Street, with left and right turn lanes at the Hollis Street intersection.
- Implementation Procedure:** Kaiser will construct the improvements prior to occupancy of the first building in Phase I. Kaiser will be reimbursed by future development for up to 50 percent of the costs of the identified mitigation measure.
- Monitoring and Reporting Action:** Kaiser to submit engineering and design plans for the intersection improvements for review and approval by the Director of Public Works. Upon approval, Kaiser will obtain the necessary approvals (i.e., grading permits, encroachment permits, etc.) to construct the identified improvements. Kaiser will then construct the identified mitigation.
- Monitoring Responsibility:** City of Emeryville Planning Department Director/Public Works Director
- Monitoring Schedule:** All improvements at this intersection will be completed prior to occupancy of the first building in Phase I.

Project Intersection Impacts, Year 2000 (Feasible Outside Emeryville)

Mitigation Cir-8.1

- Description of Measure:** For the San Pablo Avenue/Stanford Avenue intersection, add an exclusive right turn lane in the eastbound direction and convert the existing eastbound through lane in the eastbound direction to a shared through/right lane. In addition, additional through lanes in both directions on San Pablo Avenue would be provided by re-striping San Pablo Avenue from four to six lanes and by prohibiting peak period parking.
- Implementation Procedure:** Kaiser will pay its fair share costs of implementing the improvements at the San Pablo Avenue/Stanford Avenue intersection prior to occupancy of the first building in Phase I. Kaiser's fair share will be based upon the percentage of project

traffic through the intersection. The percentage contribution will be derived from either:

- 1) the City of Emeryville's traffic analysis conducted for the EIR; or
- 2) a subsequent traffic analysis prepared by the City prior to implementation of the identified intersection improvements; or
- 3) a traffic analysis prepared either by the City of Emeryville or the City of Oakland that is mutually agreed upon by both jurisdictions.

Monitoring and Reporting Action:

Execute the Memorandum of Understanding as described in the Monitoring Schedule.

Kaiser will pay its fair share contribution prior to occupancy of the first building in Phase I.

Monitoring Responsibility:

City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule:

If the City of Oakland proceeds with improvements to this intersection prior to the occupancy of the first building in Phase I, it should notify the City of Emeryville and enter into a Memorandum of Understanding. Since Kaiser's fair share contribution toward funding these intersection improvements cannot be derived or implemented without input and approval from the City of Oakland, this agreement must be established prior to the City of Emeryville's assessment of Kaiser for its fair share contribution towards funding the identified intersection improvements.

Mitigation Ctr-8.2

Description of Measure:

Implement a Transportation System Management Program which would be a condition of approval and would aim to reduce the potential number of vehicle trips generated by the project.

Implementation Procedure:

Kaiser to adopt the Transportation Systems Management Program (TSMP) hereby incorporated by reference, which would be a condition of approval to the Preliminary Development Plan and Final Development Plan. This TSMP describes the measures to be implemented to reduce single-occupant vehicle travel, a phased implementation schedule and the percentage reduction target for Phase I and the Future Expansion phase.

Monitoring and Reporting Action:

Kaiser to submit annual progress reports to the Emeryville Planning Director summarizing the TSMP measures that have

been implemented and the actual percentage reduction compared to the target reduction.

Monitoring Responsibility: City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule: Annually for the project's duration, as specified in the attached TSMP.

Mitigation Cir-9.1

Description of Measure: For the San Pablo Avenue/35th Street intersection, add a second left turn lane in the southbound direction.

Implementation Procedure: Kaiser will pay its fair share costs of implementing the improvements at the San Pablo Avenue/35th Street intersection prior to occupancy of the first building in Phase I. Kaiser's fair share will be based upon the percentage of project traffic through the intersection. The percentage contribution will be derived from either:

- 1) the City of Emeryville's traffic analysis conducted for the EIR; or
- 2) a subsequent traffic analysis prepared by the City prior to implementation of the identified intersection improvements; or
- 3) a traffic analysis prepared either by the City of Emeryville or the City of Oakland that is mutually agreed upon by both jurisdictions.

Monitoring and Reporting Action: Execute the Memorandum of Understanding as described in the Monitoring Schedule.

Kaiser will pay its fair share contribution prior to occupancy of the first building in Phase I.

Monitoring Responsibility: City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule: If the City of Oakland proceeds with improvements to this intersection prior to occupancy of the first building in Phase I, it should notify the City of Emeryville and enter into a Memorandum of Understanding. Since Kaiser's fair share contribution toward funding these intersection improvements cannot be derived or implemented without input and approval from the City of Oakland, this agreement must be established prior to Emeryville's assessment of Kaiser for its fair share contribution towards funding the intersection improvements.

Mitigation Cir-10.1

Description of Measure: At the Cypress Street Northbound/32nd Street intersection, install a four-way stop sign control at this intersection. This mitigation would require the installation of a stop sign on the northbound Cypress Street approach.

Implementation Procedure: Kaiser will pay its fair share costs of implementing the improvements at the Cypress Street Northbound/32nd Street intersection prior to occupancy of the first building in Phase I. Kaiser's fair share will be based upon the percentage of project traffic through the intersection. The percentage contribution will be derived from either:

- 1) the City of Emeryville's traffic analysis conducted for the EIR; or
- 2) a subsequent traffic analysis prepared by the City prior to implementation of the identified intersection improvements; or
- 3) a traffic analysis prepared either by the City of Emeryville or the City of Oakland that is mutually agreed upon by both jurisdictions.

Monitoring and Reporting Action: Execute the Memorandum of Understanding as described in the Monitoring Schedule.

Kaiser will pay its fair share contribution prior to occupancy of the first building in Phase I.

Monitoring Responsibility: City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule: If the City of Oakland proceeds with improvements to this intersection prior to occupancy of the first building in Phase I, it should notify the City of Emeryville and enter into a Memorandum of Understanding. Since Kaiser's fair share contribution toward funding these intersection improvements cannot be derived or implemented without input and approval from the City of Oakland, this agreement must be established prior to Emeryville's assessment of Kaiser for its fair share contribution towards funding the intersection improvements.

Cumulative Intersection Impacts, Year 2000 (Feasible in Emeryville)

Mitigation Cir-11.1

Description of Measure: At the Adeline Street/36th Street intersection, install a traffic signal at this intersection.

Implementation Procedure: Kaiser will pay its fair share costs of implementing the improvements at the Adeline/36th Street intersection prior to occupancy of the first building in Phase I. Kaiser's fair share will be based upon the percentage of project traffic through the intersection. The percentage contribution will be derived from either:

- 1) the City of Emeryville's traffic analysis conducted for the EIR; or
- 2) a subsequent traffic analysis prepared by the City prior to implementation of the identified intersection improvements.

Monitoring and Reporting Action:

Kaiser will pay its fair share contribution prior to occupancy of the first building in Phase I. The City shall cause the improvement to be constructed prior to occupancy of the first building in Phase I.

Monitoring Responsibility:

City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule:

The City of Emeryville will assess Kaiser for its fair share contribution towards funding the intersection improvements prior to occupancy of the first building in Phase I.

Mitigation Cir-12.1

Description of Measure:

For the Shellmound Street/Christie Avenue North intersection, restripe Christie Avenue to provide a shared through/right lane and a shared left/through lane in the southbound direction.

Implementation Procedure:

Kaiser will pay its fair share costs of implementing the improvements at the Shellmound Street/Christie Avenue intersection prior to occupancy of the first building in Phase I. Kaiser's fair share will be based upon the percentage of project traffic through the intersection. The percentage contribution will be derived from either:

- 1) the City of Emeryville's traffic analysis conducted for the EIR; or
- 2) a subsequent traffic analysis prepared by the City prior to implementation of the identified intersection improvements.

Monitoring and Reporting Action:

Kaiser will pay its fair share contribution prior to occupancy of the first building in Phase I. The City shall cause the improvement to be constructed prior to occupancy of the first building in Phase I.

Monitoring Responsibility: City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule: The City of Emeryville will assess Kaiser for its fair share contribution towards funding the intersection improvements prior to occupancy of the first building in Phase I.

Mitigation Cir-13.1

Description of Measure: At Peralta Street/36th Street, install a traffic signal at this intersection.

Implementation Procedure: Kaiser will construct the improvements at the Peralta Street/36th Street intersection prior to occupancy of the first building in Phase I. Kaiser will be reimbursed by future development for a portion of the cost of the identified mitigation measure.

Monitoring and Reporting Action: Kaiser to submit engineering and design plans for the intersection improvements for review and approval by the Director of Public Works. Upon approval, Kaiser will obtain the necessary approvals (i.e., grading permits, encroachment permits, etc.) to construct the identified improvements. Kaiser will then construct the identified mitigation.

Monitoring Responsibility: City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule: All improvements at this intersection will be completed prior to occupancy of the first building in Phase I.

Mitigation Cir-14.1

Description of Measure: At Hollis Street/Yerba Buena Avenue/Mandela Parkway, install a traffic signal at this intersection.

Implementation Procedure: Kaiser will construct the improvements at the Hollis/Yerba Buena Avenue/Mandela Parkway intersection prior to occupancy of the first building in Phase I. Kaiser will be reimbursed by future development for a portion of the cost of the identified mitigation measure.

Monitoring and Reporting Action: Kaiser to submit engineering and design plans for the intersection improvements for review and approval by the Director of Public Works. Upon approval, Kaiser will obtain the necessary approvals (i.e., grading permits, encroachment permits, etc.) to construct the identified improvements. Kaiser will then construct the identified mitigation.

Monitoring Responsibility: City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule: All improvements at this intersection will be completed prior to occupancy of the first building in Phase I.

Project Intersection Impacts and Mitigations, Year 2010 (Feasible in Emeryville)

Mitigation Cir-15.1

Description of Measure: At the San Pablo Avenue/36th Street intersection, restripe San Pablo Avenue to provide a third through lane in the northbound and southbound directions.

Implementation Procedure: Kaiser will construct the improvements at the San Pablo Avenue/36th Street intersection prior to occupancy of the first building in Phase I. Kaiser will be reimbursed by future development for a portion of the cost of the identified mitigation measure.

Monitoring and Reporting Action: Kaiser to submit engineering and design plans for the intersection improvements for review and approval by the Director of Public Works. Upon approval, Kaiser will obtain the necessary approvals (i.e., grading permits, encroachment permits, etc.) to construct the identified improvements. Kaiser will then construct the identified mitigation.

Monitoring Responsibility: City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule: All improvements at this intersection will be completed prior to occupancy of the first building in Phase I to coincide with the improvements to San Pablo Avenue.

Mitigation Cir-16.1

Description of Measure: For the Hollis Street/65th Street intersection, add an exclusive left turn lane on the eastbound and westbound 65th Street approaches to Hollis Street.

Implementation Procedure: Kaiser will pay its fair share costs of implementing the improvements at the Hollis/65th Street intersection prior to occupancy of the first building in the Future Expansion phase. Kaiser's fair share will be based upon the percentage of project traffic through the intersection. The percentage contribution will be derived from either:

- 1) the City of Emeryville's traffic analysis conducted for the EIR; or
- 2) a subsequent traffic analysis prepared by the City prior to implementation of the identified intersection improvements.

Monitoring and Reporting Action:

Kaiser will pay its fair share contribution prior to occupancy of the first building in the Future Expansion phase. The City of Emeryville shall cause the improvement to be constructed prior to occupancy of the first building in the Future Expansion phase.

Monitoring Responsibility:

City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule:

The City of Emeryville will assess Kaiser for its fair share contribution towards funding the intersection improvements prior to occupancy of the first building in the Future Expansion phase.

Mitigation Cir-17.1

Description of Measure:

For the intersection of Powell Street and Hollis, add an exclusive left turn lane in the southbound direction on Hollis Street and a shared through/left turn lane in the northbound direction on Hollis Street.

Implementation Procedure:

Kaiser will construct the improvements at the Powell Street and Hollis Street intersection prior to occupancy of the first building in the Future Expansion phase. Kaiser will be reimbursed by future development for a portion of the cost of the identified mitigation measure.

Monitoring and Reporting Action:

Kaiser to submit engineering and design plans for the intersection improvements for review and approval by the Director of Public Works. Upon approval, Kaiser will obtain the necessary approvals (i.e., grading permits, encroachment permits, etc.) to construct the identified improvements. Kaiser will then construct the identified mitigation.

Monitoring Responsibility:

City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule:

All improvements at this intersection will be completed prior to occupancy of the first building in the Future Expansion phase.

Mitigation Cir-18.1

Description of Measure:

For Hollis Street/Park Avenue, add an exclusive left turn lane in the eastbound and westbound directions on Park Avenue and a second through lane in the northbound and southbound directions on Hollis Street.

Implementation Procedure:

Kaiser will construct the improvements at the Hollis Street/Park Avenue intersection prior to occupancy of the first building in Future Expansion. Kaiser will be reimbursed by future development for a portion of the cost of the identified mitigation measure.

Monitoring and Reporting Action:

Kaiser to submit engineering and design plans for the intersection improvements for review and approval by the Director of Public Works. Upon approval, Kaiser will obtain the necessary approvals (i.e., grading permits, encroachment permits, etc.) to construct the identified improvements. Kaiser will then construct the identified mitigation.

Monitoring Responsibility:

City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule:

All improvements at this intersection will be completed prior to occupancy of the first building in the Future Expansion phase.

Mitigation Cir-19.1

Description of Measure:

At the Bay-Shellmound Street/Christie Avenue South intersection, add a second exclusive left turn lane in the northbound direction on Bay Street-Shellmound at Christie Avenue South.

Implementation Procedure:

Kaiser will pay its fair share costs of implementing the improvements at the Bay-Shellmound Street/Christie Avenue South intersection prior to occupancy of the first building in the Future Expansion phase. Kaiser's fair share will be based upon the percentage of project traffic through the intersection. The percentage contribution will be derived from either:

- 1) the City of Emeryville's traffic analysis conducted for the EIR; or
- 2) a subsequent traffic analysis prepared by the City prior to implementation of the identified intersection improvements.

Monitoring and Reporting Action:

Kaiser will pay its fair share contribution prior to occupancy of the first building in the Future Expansion phase. The City of Emeryville shall cause the improvement to be constructed prior to occupancy of the Future Expansion phase.

Monitoring Responsibility:

City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule:

The City of Emeryville will assess Kaiser for its fair share contribution towards funding the intersection improvements prior to occupancy of the first building in the Future Expansion phase.

Mitigation Cir-20.1

Description of Measure:

At the Hollis Street/45th Street intersection, restripe Hollis to provide two through lanes on both approaches. This measure has been combined with Cir-4.1.

Mitigation Cir-21.1

- Description of Measure:** At the Adeline Street/40th Street intersection, add an exclusive left turn lane in the northbound and southbound directions on Adeline Street.
- Implementation Procedure:** Kaiser will construct the improvements at the Adeline Street/40th Street intersection prior to occupancy of the first building in the Future Expansion phase. Kaiser will be reimbursed by future development for a portion of the cost of the identified mitigation measure.
- Monitoring and Reporting Action:** Kaiser to submit engineering and design plans for the intersection improvements for review and approval by the Director of Public Works. Upon approval, Kaiser will obtain the necessary approvals (i.e., grading permits, encroachment permits, etc.) to construct the identified improvements. Kaiser will then construct the identified mitigation.
- Monitoring Responsibility:** City of Emeryville Planning Department Director/Public Works Director
- Monitoring Schedule:** All improvements at this intersection will be completed prior to occupancy of the first building in the Future Expansion phase.

Project Intersection Impacts, Year 2010

Mitigation Cir-22.1

- Description of Measure:** At the Powell Street/I-80 Eastbound Ramp intersection, add a second exclusive left turn lane in the northbound direction on the off-ramp at Powell Street.
- Implementation Procedure:** Kaiser will construct the improvements at the Powell Street/I-80 Eastbound Ramp intersection prior to occupancy of the first building in the Future Expansion phase. Kaiser will be reimbursed by future development for a portion of the cost of the identified mitigation measure.
- Monitoring and Reporting Action:** Kaiser to submit engineering and design plans for the intersection improvements for review and approval by the Director of Public Works. Upon approval, Kaiser will obtain the necessary approvals (i.e., grading permits, encroachment permits, etc.) to construct the identified improvements. Kaiser will then construct the identified mitigation.
- Monitoring Responsibility:** City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule: All improvements at this intersection will be completed prior to occupancy of the first building in the Future Expansion phase.

Cumulative Intersection Impacts and Mitigations, Year 2010 (Feasible)

Mitigation Cir-23.1

Description of Measure: At the Bay Street/65th Street intersection, add an exclusive left turn lane in the eastbound and westbound directions on 65th Street as well as a second through lane in the northbound and southbound directions on Bay Street.

Implementation Procedure: Kaiser will pay its fair share costs of implementing the improvements at the Bay Street/65th Street intersection prior to occupancy of the first building in the Future Expansion phase. Kaiser's fair share will be based upon the percentage of project traffic through the intersection. The percentage contribution will be derived from either:

- 1) the City of Emeryville's traffic analysis conducted for the EIR; or
- 2) a subsequent traffic analysis prepared by the City prior to implementation of the identified intersection improvements.

Monitoring and Reporting Action: Kaiser will pay its fair share contribution prior to occupancy of the first building in the Future Expansion phase. The City of Emeryville shall cause the improvement to be constructed prior to occupancy of the first building in the Future Expansion phase.

Monitoring Responsibility: City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule: The City of Emeryville will assess Kaiser for its fair share contribution towards funding the intersection improvements prior to occupancy of the first building in the Future Expansion phase.

Project Intersection Impacts, Year 2010 (Feasible Outside Emeryville)

Mitigation Cir-24.1

Description of Measure: Install a traffic signal at the intersection of Cypress Street Northbound/32nd Street.

Implementation Procedure: Kaiser will pay its fair share costs of implementing the improvements at the Cypress Street Northbound/32nd Street intersection prior to occupancy of the first building in the Future Expansion phase. Kaiser's fair share will be based upon the

percentage of project traffic through the intersection. The percentage contribution will be derived from either:

- 1) the City of Emeryville's traffic analysis conducted for the EIR; or
- 2) a subsequent traffic analysis prepared by the City prior to implementation of the identified intersection improvements; or
- 3) a traffic analysis prepared either by the City of Emeryville or the City of Oakland that is mutually agreed upon by both jurisdictions.

Monitoring and Reporting Action:

Execute the Memorandum of Understanding as described in the Monitoring Schedule.

Kaiser will pay its fair share contribution prior to occupancy of the first building in the Future Expansion phase.

Monitoring Responsibility:

City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule:

If the City of Oakland proceeds with improvements to this intersection prior to occupancy of the first building in the Future Expansion phase, it should notify the City of Emeryville and enter into a Memorandum of Understanding. Since Kaiser's fair share contribution toward funding these intersection improvements cannot be derived or implemented without input and approval from the City of Oakland, this agreement must be established prior to Emeryville's assessment of Kaiser for its fair share contribution towards funding the identified intersection improvements.

Mitigation Cir-25.1

Description of Measure:

Install a traffic signal at the intersection of Adeline Street/35th Street.

Implementation Procedure:

Kaiser will pay its fair share costs of implementing the improvements at the Adeline Street/35th Street intersection prior to occupancy of the first building in the Future Expansion phase. Kaiser's fair share will be based upon the percentage of project traffic through the intersection. The percentage contribution will be derived from either:

- 1) the City of Emeryville's traffic analysis conducted for the EIR; or

- 2) a subsequent traffic analysis prepared by the City prior to implementation of the identified intersection improvements; or
- 3) a traffic analysis prepared either by the City of Emeryville or the City of Oakland that is mutually agreed upon by both jurisdictions.

Monitoring and Reporting Action:

Execute the Memorandum of Understanding as described in the Monitoring Schedule.

Kaiser will pay its fair share contribution prior to occupancy of the first building in the Future Expansion phase.

Monitoring Responsibility:

City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule:

If the City of Oakland proceeds with improvements to this intersection prior to occupancy of the first building in the Future Expansion phase, it should notify the City of Emeryville and enter into a Memorandum of Understanding. Since Kaiser's fair share contribution toward funding these intersection improvements cannot be derived or implemented without input and approval from the City of Oakland, this agreement must be established prior to Emeryville's assessment of Kaiser for its fair share contribution towards funding the identified intersection improvements.

Infeasible Cumulative Intersection Impacts and Mitigations.

The improvements identified in the Draft EIR on pages 130-132 and 151-153 are those improvements that would be required to achieve an acceptable level of service (i.e., LOS D or better) in conformance with the City's Level of Service Policy. The City's Level of Service Policy was the threshold used to determine whether or not the project fully mitigated a significant intersection impact to a less than significant level. In response to comments regarding the significant unavoidable traffic impacts associated with the project, other mitigation measures were considered for the following intersections. Upon further evaluation of these intersections, additional improvements were identified, as described below, that improved the levels of service, but not to an acceptable level. As a result, although the following improvements lessen the significant impact, they do not fully mitigate the impact to a less than significant level. Furthermore, most of these intersections are located outside of Emeryville's jurisdiction. Because Emeryville lacks jurisdiction over these intersections, the City cannot control the implementation of the identified improvements. As a result, the project was found to result in a significant unavoidable impact to these intersections. Because the City of Emeryville lacks jurisdiction over the intersections, Emeryville would need to enter into a Memorandum of Understanding with the City of Oakland or City of Berkeley in order to implement the mitigation. Two intersections are located in Emeryville and the identified improvements would involve the acquisition of significant right-of-way.

Mitigation - San Pablo/Ashby

Description of Measure: Ashby Avenue, immediately east of San Pablo Avenue, could be widened to provide an additional westbound left turn lane on Ashby Avenue. A left turn on Ashby Avenue would require a reduced sidewalk width and removal of existing landscaping in front of Walgreens and the Shell gas station. In order to further improve the service level at this intersection, an additional through lane is needed in both directions on San Pablo Avenue. The additional through lanes would require re-striping San Pablo Avenue from four to six lanes and prohibiting peak period parking.

Implementation Procedure: Kaiser will pay its fair share costs of implementing the improvements at the San Pablo Avenue/Ashby Avenue intersection prior to occupancy of the first building in Phase I. Kaiser's fair share will be based upon the percentage of project traffic through the intersection. The percentage contribution will be derived from either:

- 1) the City of Emeryville's traffic analysis conducted for the EIR; or
- 2) a subsequent traffic analysis prepared by the City prior to implementation of the identified intersection improvements; or
- 3) a traffic analysis prepared either by the City of Emeryville or the City of Berkeley that is mutually agreed upon by both jurisdictions.

Monitoring and Reporting Action: Execute the Memorandum of Understanding as described in the Monitoring Schedule.

Kaiser will pay its fair share contribution prior to occupancy of the first building in Phase I.

Monitoring Responsibility: City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule: If the City of Berkeley proceeds with improvements to this intersection prior to occupancy of the first building in Phase I, it should notify the City of Emeryville and enter into a Memorandum of Understanding. Since Kaiser's fair share contribution toward funding these intersection improvements cannot be derived or implemented without input and approval from the City of Berkeley, this agreement must be established prior to the City of Emeryville's assessment of Kaiser for its fair share contribution towards funding the intersection improvements.

Mitigation - San Pablo/Alcatraz

Description of Measure: In order to improve the service levels at this intersection in year 2010, the provision of additional through lanes in both directions of San Pablo Avenue and an exclusive westbound right turn lane on Alcatraz Avenue would be required.

Implementation Procedure: Kaiser will pay its fair share costs of implementing the improvements at the San Pablo Avenue/Alcatraz Avenue intersection prior to occupancy of the first building in Phase I. Kaiser's fair share will be based upon the percentage of project traffic through the intersection. The percentage contribution will be derived from either:

- 1) the City of Emeryville's traffic analysis conducted for the EIR; or
- 2) a subsequent traffic analysis prepared by the City prior to implementation of the identified intersection improvements; or
- 3) a traffic analysis prepared either by the City of Emeryville or the City of Oakland that is mutually agreed upon by both jurisdictions.

Monitoring and Reporting Action:

Execute the Memorandum of Understanding as described in the Monitoring Schedule.

Kaiser will pay its fair share contribution prior to occupancy of the first building in Phase I.

Monitoring Responsibility:

City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule:

If the City of Oakland proceeds with improvements to this intersection prior to occupancy of the first building in Phase I, it should notify the City of Emeryville and enter into a Memorandum of Understanding. Since Kaiser's fair share contribution toward funding these intersection improvements cannot be derived or implemented without input and approval from the City of Oakland, this agreement must be established prior to the City of Emeryville's assessment of Kaiser for its fair share contribution towards funding the intersection improvements.

Mitigation - 7th/Ashby Avenue

Description of Measure:

The northbound approach on 7th Street, between Folger Avenue and Ashby Avenue, could be widened to provide an additional through lane. The southbound approach on 7th Street, between Anthony Street and Ashby Avenue, could also be widened to

provide an additional through lane. These mitigation measures would require the acquisition of additional right-of-way along 7th Street and signal modifications.

Implementation Procedure: Kaiser will pay its fair share costs of implementing the improvements at the 7th/Ashby Avenue intersection prior to occupancy of the first building in Phase I. Kaiser's fair share will be based upon the percentage of project traffic through the intersection. The percentage contribution will be derived from either:

- 1) the City of Emeryville's traffic analysis conducted for the EIR; or
- 2) a subsequent traffic analysis prepared by the City prior to implementation of the identified intersection improvements; or
- 3) a traffic analysis prepared either by the City of Emeryville or the City of Berkeley that is mutually agreed upon by both jurisdictions.

Monitoring and Reporting Action:

Execute the Memorandum of Understanding as described in the Monitoring Schedule.

Kaiser will pay its fair share contribution prior to occupancy of the first building in Phase I.

Monitoring Responsibility:

City of Emeryville Planning Department Director/Public Works Department

Monitoring Schedule:

If the City of Berkeley proceeds with improvements to this intersection prior to occupancy of the first building in Phase I, it should notify the City of Emeryville and enter into a Memorandum of Understanding. Since Kaiser's fair share contribution toward funding these intersection improvements cannot be derived or implemented without input and approval from the City of Berkeley, this agreement must be established prior to the City of Emeryville's assessment of Kaiser for its fair share contribution towards funding the intersection improvements.

Mitigation - Christie/Powell

Description of Measure:

In order to improve the service level at this intersection from LOS F to LOS E, an additional through lane on the westbound approach of Powell Street, as well as a second exclusive left turn lane in the northbound direction on Christie Avenue would be required. In addition, this mitigation would also require the extension of the southbound right turn lane on Christie Avenue by approximately 250 feet and modification of the existing traffic

signal. These mitigation measures would require the acquisition of additional right-of-way along the west side of Christie Avenue and along the south side of Powell Street.

Implementation Procedure: Kaiser will construct the improvements at the Christie/Powell intersection prior to occupancy of the first building in Phase I. Kaiser will be reimbursed by future development for a portion of the cost of the identified mitigation measure.

Monitoring and Reporting Action: Kaiser to submit engineering and design plans for the intersection improvements for review and approval by the Director of Public Works. Upon approval, Kaiser will obtain the necessary approvals (i.e., grading permits, encroachment permits, etc.) to construct the identified improvements. Kaiser will then construct the identified mitigation.

Monitoring Responsibility: City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule: All improvements at this intersection will be completed prior to occupancy of the first building in Phase I.

Mitigation - Adeline/Martin Luther King Jr. Way

Description of Measure: In order to improve the operation of this intersection to service level of D or better for year 2010 conditions, the provision of a signal phasing modifications would be required to allow for permitted left turns from northbound Martin Luther King Jr. Way to Adeline Street.

Implementation Procedure: Kaiser will pay its fair share costs of implementing the improvements at the Adeline/Martin Luther King Jr. Way intersection prior to occupancy of the first building in the Future Expansion phase. Kaiser's fair share will be based upon the percentage of project traffic through the intersection. The percentage contribution will be derived from either:

- 1) the City of Emeryville's traffic analysis conducted for the EIR; or
- 2) a subsequent traffic analysis prepared by the City prior to implementation of the identified intersection improvements; or
- 3) a traffic analysis prepared either by the City of Emeryville or the City of Berkeley that is mutually agreed upon by both jurisdictions.

Monitoring and Reporting Action: Execute the Memorandum of Understanding as described in the Monitoring Schedule.

Kaiser will pay its fair share contribution prior to occupancy of the first building in the Future Expansion phase.

Monitoring Responsibility: City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule: If the City of Berkeley proceeds with improvements to this intersection prior to occupancy of the first building in the Future Expansion phase, it should notify the City of Emeryville and enter into a Memorandum of Understanding. Since Kaiser's fair share contribution toward funding these intersection improvements cannot be derived or implemented without input and approval from the City of Berkeley, this agreement must be established prior to the City of Emeryville's assessment of Kaiser for its fair share contribution towards funding the intersection improvements.

Mitigation - Adeline/Market

Description of Measure: In order to improve the service level at this intersection from LOS E to LOS D for 2010 conditions, the provision of an additional left-turn lane in the southbound direction on Adeline Street would be required.

Implementation Procedure: Kaiser will pay its fair share costs of implementing the improvements at the Adeline/Market intersection prior to occupancy of the first building in the Future Expansion phase. Kaiser's fair share will be based upon the percentage of project traffic through the intersection. The percentage contribution will be derived from either:

- 1) the City of Emeryville's traffic analysis conducted for the EIR; or
- 2) a subsequent traffic analysis prepared by the City prior to implementation of the identified intersection improvements; or
- 3) a traffic analysis prepared either by the City of Emeryville or the City of Oakland that is mutually agreed upon by both jurisdictions.

Monitoring and Reporting Action: Execute the Memorandum of Understanding as described in the Monitoring Schedule.

Kaiser will pay its fair share contribution prior to occupancy of the first building in the Future Expansion phase.

Monitoring Responsibility: City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule:

If the City of Oakland proceeds with improvements to this intersection prior to occupancy of the first building in the Future Expansion phase, it should notify the City of Emeryville and enter into a Memorandum of Understanding. Since Kaiser's fair share contribution toward funding these intersection improvements cannot be derived or implemented without input and approval from the City of Oakland, this agreement must be established prior to the City of Emeryville's assessment of Kaiser for its fair share contribution towards funding the intersection improvements.

Mitigation - Market/40th Street

Description of Measure:

As described in the Draft EIR for 2010 conditions, the provision of exclusive left-turn lanes in the northbound and southbound directions on Market Street would be required to improve the service level at this intersection from LOS F to LOS D.

Implementation Procedure:

Kaiser will pay its fair share costs of implementing the improvements at the Market/40th Street intersection prior to occupancy of the first building in the Future Expansion phase. Kaiser's fair share will be based upon the percentage of project traffic through the intersection. The percentage contribution will be derived from either:

- 1) the City of Emeryville's traffic analysis conducted for the EIR; or
- 2) a subsequent traffic analysis prepared by the City prior to implementation of the identified intersection improvements; or
- 3) a traffic analysis prepared either by the City of Emeryville or the City of Oakland that is mutually agreed upon by both jurisdictions.

Monitoring and Reporting Action:

Execute the Memorandum of Understanding as described in the Monitoring Schedule.

Kaiser will pay its fair share contribution prior to occupancy of the first building in the Future Expansion phase.

Monitoring Responsibility:

City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule:

If the City of Oakland proceeds with improvements to this intersection prior to occupancy of the first building in the Future Expansion phase, it should notify the City of Emeryville and enter into a Memorandum of Understanding. Since Kaiser's fair share contribution toward funding these intersection improvements cannot be derived or implemented without input

and approval from the City of Oakland, this agreement must be established prior to the City of Emeryville's assessment of Kaiser for its fair share contribution towards funding the intersection improvements.

Mitigation - Market/MacArthur Boulevard

Description of Measure: The service level at this intersection would improve from LOS F to LOS D in year 2010 with the provision of exclusive left-turn lanes in the northbound and southbound directions of Market Street.

Implementation Procedure: Kaiser will pay its fair share costs of implementing the improvements at the Market/MacArthur Boulevard intersection prior to occupancy of the first building in the Future Expansion phase. Kaiser's fair share will be based upon the percentage of project traffic through the intersection. The percentage contribution will be derived from either:

- 1) the City of Emeryville's traffic analysis conducted for the EIR; or
- 2) a subsequent traffic analysis prepared by the City prior to implementation of the identified intersection improvements; or
- 3) a traffic analysis prepared either by the City of Emeryville or the City of Oakland that is mutually agreed upon by both jurisdictions.

Monitoring and Reporting Action: Execute the Memorandum of Understanding as described in the Monitoring Schedule.

Kaiser will pay its fair share contribution prior to occupancy of the first building in the Future Expansion phase.

Monitoring Responsibility: City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule: If the City of Oakland proceeds with improvements to this intersection prior to occupancy of the first building in the Future Expansion phase, it should notify the City of Emeryville and enter into a Memorandum of Understanding. Since Kaiser's fair share contribution toward funding these intersection improvements cannot be derived or implemented without input and approval from the City of Oakland, this agreement must be established prior to the City of Emeryville's assessment of Kaiser for its fair share contribution towards funding the intersection improvements.

Mitigation - Telegraph/40th Street

- Description of Measure:** As described in the Draft EIR, the provision of a second left-turn lane in the eastbound direction on 40th Street would reduce project impacts (i.e., the service level would improve to 2010 baseline conditions). However, in order to improve the intersection operation to service level of D or better, the provision of additional through lanes in both directions of Telegraph Avenue would be required.
- Implementation Procedure:** Kaiser will pay its fair share costs of implementing the improvements at the Telegraph/40th Street intersection prior to occupancy of the first building in the Future Expansion phase. Kaiser's fair share will be based upon the percentage of project traffic through the intersection. The percentage contribution will be derived from either:
- 1) the City of Emeryville's traffic analysis conducted for the EIR; or
 - 2) a subsequent traffic analysis prepared by the City prior to implementation of the identified intersection improvements; or
 - 3) a traffic analysis prepared either by the City of Emeryville or the City of Oakland that is mutually agreed upon by both jurisdictions.
- Monitoring and Reporting Action:** Execute the Memorandum of Understanding as described in the Monitoring Schedule.
- Kaiser will pay its fair share contribution prior to occupancy of the first building in the Future Expansion phase.
- Monitoring Responsibility:** City of Emeryville Planning Department Director/Public Works Director
- Monitoring Schedule:** If the City of Oakland proceeds with improvements to this intersection prior to occupancy of the first building in the Future Expansion phase, it should notify the City of Emeryville and enter into a Memorandum of Understanding. Since Kaiser's fair share contribution toward funding these intersection improvements cannot be derived or implemented without input and approval from the City of Oakland, this agreement must be established prior to the City of Emeryville's assessment of Kaiser for its fair share contribution towards funding the intersection improvements.

Mitigation - Telegraph/MacArthur Boulevard

Description of Measure: In order to improve the service level at this intersection from LOS E to LOS D in year 2010, the provision of a second southbound left-turn lane on Telegraph Avenue would be required.

Implementation Procedure: Kaiser will pay its fair share costs of implementing the improvements at the Telegraph Avenue/MacArthur Boulevard intersection prior to occupancy of the first building in the Future Expansion phase. Kaiser's fair share will be based upon the percentage of project traffic through the intersection. The percentage contribution will be derived from either:

- 1) the City of Emeryville's traffic analysis conducted for the EIR; or
- 2) a subsequent traffic analysis prepared by the City prior to implementation of the identified intersection improvements; or
- 3) a traffic analysis prepared either by the City of Emeryville or the City of Oakland that is mutually agreed upon by both jurisdictions.

Monitoring and Reporting Action: Execute the Memorandum of Understanding as described in the Monitoring Schedule.

Kaiser will pay its fair share contribution prior to occupancy of the first building in the Future Expansion phase.

Monitoring Responsibility: City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule: If the City of Oakland proceeds with improvements to this intersection prior to occupancy of the first building in the Future Expansion phase, it should notify the City of Emeryville and enter into a Memorandum of Understanding. Since Kaiser's fair share contribution toward funding these intersection improvements cannot be derived or implemented without input and approval from the City of Oakland, this agreement must be established prior to Emeryville's assessment of Kaiser for its fair share contribution towards funding the intersection improvements.

Road Closure Impacts and Mitigations, Year 2000

Closure of Watts Street

Mitigation Cir-27.1

Description of Measure: Construct a new entrance to the AC Transit maintenance yard on 47th Street approximately 125 feet west of San Pablo Avenue. The existing driveway would serve exiting buses. **OR**

Mitigation Cir-27.2

Description of Measure: Widen the existing driveway on 45th Street to allow for both ingress and egress at this location, and modify the existing curbline to provide a 45-foot radius at the northwest corner of the San Pablo Avenue/45th Street intersection.

Implementation Procedure: Kaiser and AC Transit shall negotiate an agreement which establishes the responsibilities and schedule for these improvements.

Monitoring and Reporting Action: Kaiser to file an executed agreement with the Emeryville Planning Department.

Monitoring Responsibility: City of Emeryville Planning Department Director

Monitoring Schedule: Prior to the closure of Watts Street.

Road Closure Impacts and Mitigations, Year 2010

Abandonment of the Planned Haven Street Extension

Mitigation Cir-26.1

Description of Measure: Construct a two lane Haven Street Extension from 53rd Street to Powell Street, with three lanes provided only as needed at the junctions with major cross streets such as Powell Street and 53rd Street, to serve as a major project access to the north.

Implementation Procedure: Kaiser will construct the Powell Street/Doyle Street intersection improvements prior to occupancy of the first building in the Future Expansion phase. Kaiser will be reimbursed by future development for up to 50% of the costs of the identified mitigation measure.

Monitoring and Reporting Action: Kaiser to submit engineering and design plans for the intersection improvements for review and approval by the Director of Public Works. Upon approval, Kaiser will obtain the necessary approvals (i.e., grading permits, encroachment permits, etc.) to

construct the identified improvements. Kaiser will then construct the identified mitigation.

Monitoring Responsibility: City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule: All improvements at this intersection will be completed prior to occupancy of the first building in the Future Expansion phase.

Cumulative Transit Impacts, Year 2000

Mitigation Cir-35.1

Description of Measure: The project, as well as other local projects, should contribute to a mass transit fund (the Amtrak Amortization Fee) for use in developing local and regional transit capacity.

Implementation Procedure: Emeryville Planning Department to implement the Mass Transit Program. Kaiser to make contributions to the Mass Transit Program pursuant to the terms of the Development Agreement.

Monitoring and Reporting Action: Prepare an annual report describing the status of the Mass Transit Program services. This report should include the following components:

1. Types of mass transit services provided through the program.
2. Mass transit service routes, hours, and facilities.
3. Public agency and private participants involved in the Mass Transit Program.
4. Estimated ridership estimates on an annual basis for each type of mass transit service.

Monitoring Responsibility: City of Emeryville Public Works Director

Monitoring Schedule: Pursuant to the Development Agreement, Kaiser will contribute funds on an annual basis for 25 years.

Annual reports to be prepared during the life of the Mass Transit Program.

Cumulative Transit Impacts, Year 2010

Mitigation Cir-37.1

- Description of Measure:** The project, as well as other local projects, should contribute to a mass transit fund for use in developing local and regional transit capacity.
- Implementation Procedure:** Implement Implementation Procedure for Monitoring and Reporting Cir-35.1.
- Monitoring and Reporting Action:** Implement Monitoring and Reporting Action Cir-35.1.
- Monitoring Responsibility:** City of Emeryville Public Works Department Director/Public Works Director
- Monitoring Schedule:** Pursuant to the Development Agreement, Kaiser will contribute funds on an annual basis for 25 years.
- Annual reports to be prepared during the life of the Mass Transit Program.

Site Access Impacts, Year 2000

Mitigation Cir-40.2

- Description of Measure:** The installation of a traffic signal at the intersection of Park Avenue/Emery Street.
- Implementation Procedure:** Kaiser will install the signal at the Park Avenue/Emery Street intersection prior to occupancy of the first building in Phase I.
- Monitoring and Reporting Action:** Kaiser to submit engineering and design plans for the intersection improvements for review and approval by the Director of Public Works. Upon approval, Kaiser will obtain the necessary approvals (i.e., grading permits, encroachment permits, etc.) to construct the identified improvements. Kaiser will then construct the identified mitigation.
- Monitoring Responsibility:** City of Emeryville Planning Department Director/Public Works Director
- Monitoring Schedule:** All improvements at this intersection will be completed prior to occupancy of the first building in Phase I.

Mitigation Cir-41.1

- Description of Measure:** The structural section, if needed, on Park Avenue, from San Pablo Avenue to Halleck Street, and along the project frontage on 45th Street, shall be overlaid and improved.

Implementation Procedure: Kaiser will overlay and improve the identified roadway segments prior to occupancy of the first building in Phase I.

Monitoring and Reporting Action: Kaiser to submit engineering and design plans for the intersection improvements for review and approval by the Director of Public Works. Upon approval, Kaiser will obtain the necessary approvals (i.e., grading permits, encroachment permits, etc.) to construct the identified improvements. Kaiser will then construct the identified mitigation.

Monitoring Responsibility: City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule: All improvements at this intersection will be completed prior to occupancy of the first building in Phase I.

Mitigation Cir-42.1

Description of Measure: Restrict the access driveway along Hollis Street at the proposed Hollis Street garage to outbound movements only. Inbound traffic would access this garage via an access driveway located on the east side of the garage. Access would be via a driveway connecting to Haven Street.

Implementation Procedure: Indicate access restrictions on a Circulation Plan included in the Preliminary Development Plan for this portion of Phase I.

Monitoring and Reporting Action: Review Preliminary Development Plan to confirm compliance with access requirements specified in the traffic report.

Monitoring Responsibility: City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule: Prior to approval of the Preliminary Development Plan.

Mitigation Cir-43.1

Description of Measure: Provide off-street truck loading facilities.

Implementation Procedure: Indicate location of off-street truck loading facilities on site plan included in the Final Development Plan.

Monitoring and Reporting Action: Review Final Development Plan application to ensure compliance with access requirements specified in the traffic report.

Monitoring Responsibility: City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule: Prior to approval of the Final Development Plan.

Site Access Impacts, Year 2010

Mitigation Cir-44.1

- Description of Measure:** Restrict the Hollis Street access to exiting vehicles only and provide an entrance access on the east side of the Hollis Street garage. Access would be provided by a driveway connecting to 53rd Street.
- Implementation Procedure:** Indicate location of entrance access on the east side of the Hollis Street garage on the site plan included in the Final Development Plan.
- Monitoring and Reporting Action:** Review Final Development Plan to ensure compliance with access requirements specified in the traffic report.
- Monitoring Responsibility:** City of Emeryville Planning Department Director/Public Works Director
- Monitoring Schedule:** Prior to approval of the Final Development Plan for the Future Expansion phase.

Project Pedestrian Impacts, Year 2000

Mitigation Cir-45.1

- Description of Measure:** Provide audio and visual warning devices at the junction of all sidewalks with automobile or truck access to garages or loading areas along the periphery of the Phase I site.
- Implementation Procedure:** Audio and visual warning devices as specified by the Public Works Department shall be indicated in the construction documents at the junction of all sidewalk locations, auto or truck access along the periphery of the Phase I site.
- Monitoring and Reporting Action:** Review Site Improvement Plans and construction documents to ensure compliance with pedestrian access requirements specified in the traffic report.
- Monitoring Responsibility:** City of Emeryville Public Works Director
- Monitoring Schedule:** Prior to approval of the building permit for Phase I.

Mitigation Cir-45.2

- Description of Measure:** Meet all ADA requirements for all new pedestrian facilities constructed for the project.
- Implementation Procedure:** ADA design features as specified by the Public Works Department shall be indicated in the construction documents at

the junction of all sidewalk locations, auto or truck access along the periphery of the Phase I site.

Monitoring and Reporting Action:

Review Site Improvement Plans and construction documents to ensure compliance with pedestrian access requirements specified in the traffic report and to ensure that all facilities are designed to meet ADA requirements.

Monitoring Responsibility: City of Emeryville Public Works Director

Monitoring Schedule: Prior to approval of the building permit for Phase I.

Project Pedestrian Impacts, Year 2010

Mitigation Cir-46.1

Description of Measure: Provide pavement markings, signing, and other related traffic control devices to indicate the location of at-grade crossings for pedestrians along 45th Street.

Implementation Procedure: Follow procedure for Monitoring and Reporting Cir-45.1

Monitoring and Reporting Action: Implement Monitoring and Reporting Action Cir-45.1.

Monitoring Responsibility: City of Emeryville Public Works Director

Monitoring Schedule: Prior to approval of the building permit for Future Expansion.

Mitigation Cir-46.2

Description of Measure: Provide pavement markings and signing to clearly indicate access locations for handicapped persons at the San Pablo Avenue crossings at 47th Street and at the 47th Street crossing on the west side of San Pablo Avenue.

Implementation Procedure: Follow procedure for Monitoring and Reporting Cir-45.2.

Monitoring and Reporting Action: Implement Monitoring and Reporting Action Cir-45.2.

Monitoring Responsibility: City of Emeryville Public Works Director

Monitoring Schedule: Prior to approval of the building permit for Future Expansion.

Cumulative Pedestrian Impacts, Year 2010

Mitigation Cir-47.1

Description of Measure: Install pedestrian signal heads for pedestrians crossing 47th

Street and advance pedestrian warning signs on San Pablo Avenue.

Implementation Procedure: Follow procedure for Monitoring and Reporting Cir-45.1.

Monitoring and Reporting Action: Implement Monitoring and Reporting Action Cir-45.1.

Monitoring Responsibility: City of Emeryville Public Works Director

Monitoring Schedule: Prior to approval of the building permit for Future Expansion.

Bicycle Impacts, Year 2000

Mitigation Cir-48.1

Description of Measure: Provide a continuous north-south Class I bike path along the Haven Street alignment and through the project site, between Park Avenue and 45th Street, as further described in the traffic report attached as Appendix C in the EIR.

Implementation Procedure: Indicate location of Class I bike path along the Doyle-Haven Street Extension, between Park Avenue and 45th Street on the improvement plans for the Doyle-Haven Street Extension to the satisfaction of the Public Works Director, in Phase I.

Monitoring and Reporting Action: Review improvement plans for Doyle-Haven Street Extension to ensure compliance with the bicycle improvements specified in mitigation measure Cir-48.1.

Monitoring Responsibility: City of Emeryville Public Works Director

Monitoring Schedule: Prior to approval of occupancy of Phase I.

Mitigation Cir-48.2

Description of Measure: Provide a Class II bike lane along Park Avenue, between San Pablo Avenue and Hollis Street.

Implementation Procedure: Indicate location of Class II bike lane along Park Avenue, between San Pablo Avenue and Hollis Street on the improvement plans for Park Avenue to the satisfaction of the Public Works in Phase I.

Monitoring and Reporting Action: Review improvements plans for Park Avenue to ensure compliance with the bicycle improvements specified in mitigation measure Cir-49.1.

Monitoring Responsibility: City of Emeryville Public Works Director

Monitoring Schedule: Prior to approval of the Certificate of Occupancy for Phase I.

Cumulative Bicycle Impacts, Year 2000

Mitigation Cir-49.1

- Description of Measure:** Provide the Class I bike paths and Class II bike lanes in the vicinity of the Phase I site, as proposed in the General Plan (see Figure 14). In particular, Class I bike paths should be provided along Halleck Street, between Sherwin Street and 53rd Street. Class II bike lanes should also be installed along Park Avenue, between Hollis Street and Halleck Street, along 40th Street, between Adeline Street and Bay-Shellmound Street, and along Holden Street, between 40th Street and Park Avenue.
- Implementation Procedure:** Indicate the locations of the Class I bike paths and Class II bike lanes installed as part of the project on the improvement plans for each of the identified roadway segments to the satisfaction of the Public Works Director, in Phase I.
- Monitoring and Reporting Action:** Review improvement plans to ensure compliance with the bicycle improvements specified in mitigation measure Cir-49.1.
- Monitoring Responsibility:** City of Emeryville Public Works Director
- Monitoring Schedule:** Prior to approval of the Certificate of Occupancy for Phase I.

Bicycle Impacts, Year 2010

Mitigation Cir-50.1

- Description of Measure:** Provide a continuous north-south Class I bike path along the Doyle-Haven Street Extension, between 45th Street and 53rd Street in the Future Expansion phase.
- Implementation Procedure:** Indicate location of Class I bike path along the Doyle-Haven Street Extension, between Park Avenue and 53rd Street on the improvement plans for the Doyle-Haven Extension to the satisfaction of the Public Works Director in the Future Expansion phase.
- Monitoring and Reporting Action:** Review the improvement plans for the Doyle-Haven Extension to ensure compliance with the bicycle improvements specified in mitigation measure Cir-50.1.
- Monitoring Responsibility:** City of Emeryville Planning Department Director
- Monitoring Schedule:** Prior to approval of the Certificate of Occupancy for the Future Expansion phase.

Mitigation Cir-50.2

- Description of Measure:** Provide a Class II bike lane along 47th Street, between San Pablo Avenue and Doyle Street.
- Implementation Procedure:** Indicate location of Class II bike lane along 47th Street, between San Pablo Avenue and Doyle Street on the improvement plans for 47th Street to the satisfaction of the Public Works Director for Future Expansion.
- Monitoring and Reporting Action:** Review 47th Street improvement plans to ensure compliance with the bicycle improvements specified in mitigation measure Cir-50.2.
- Monitoring Responsibility:** City of Emeryville Public Works Director
- Monitoring Schedule:** Prior to approval of the Certificate of Occupancy for the Future Expansion phase.

Cumulative Bicycle Impacts, Year 2010

Mitigation Cir-51.1

- Description of Measure:** Provide the Class I bike paths and Class II bike lanes in the vicinity of the Phase I site, as proposed in the General Plan (see Figure 14). In particular, Class I bike paths should be provided along the Doyle-Haven Street Extension, from 53rd Street to Stanford Avenue. Class II bike lanes should also be installed along 47th Street, between Adeline Street and San Pablo Avenue, and along the Horton-Landregan Street Extension, between 40th Street and Stanford Avenue.
- Implementation Procedure:** Indicate the locations of the Class I bike paths and Class II bike lanes installed as part of the project on the improvement plans for each of the identified roadway segments in mitigation measure Cir-51.1. to the satisfaction of the Public Works Director, for Future Expansion.
- Monitoring and Reporting Action:** Review the improvement plans to ensure compliance with the bicycle improvements specified in mitigation measure Cir-51.1.
- Monitoring Responsibility:** City of Emeryville Public Works Director
- Monitoring Schedule:** Prior to approval of the Certificate of Occupancy for the Future Expansion phase.

Project Construction Impacts, Year 2000

Mitigation Cir-52.1

Description of Measure: Through travel lanes on Hollis Street or San Pablo Avenue should not be closed for construction purposes. The access points for construction staging areas should be located on Park Avenue or 45th Street, so as not to impact through traffic on either Hollis Street or San Pablo Avenue.

Implementation Procedure: Kaiser shall submit a Construction Staging and Traffic Handling Plan prior to commencing construction on the project site. The plan shall be reviewed and approved by the Emeryville Public Works Director. This plan will include the following elements that pertain to construction traffic, air quality and noise:

Construction Traffic Handling Plan

1. Identification of on-site areas where construction activities are proposed. These areas would be described with text or maps to depict the locations of construction activity in relation to the existing surrounding land uses.
2. Plans showing lane closures and traffic handling routes during construction.
3. Proposed construction vehicle transportation/haul route locations and number of construction vehicles estimated to arrive and depart from the project site along a given route. A map depicting the haul routes may accompany this section.
4. Time period of construction activities and frequency of construction traffic to and from the site.
5. A map indicating the locations of construction period parking facilities for construction workers.
6. Identification of project representative who would be available for residents/businesses to report complaints.
7. The method of correcting complaints within a specified time period.
8. A report evaluating the adequacy of existing roadway facilities for sustaining truck traffic. This report would evaluate the measures that need to be implemented to ensure that the roadways accommodate construction truck traffic.

9. Identification of the criteria used to establish that the street sections would be able to accommodate truck traffic, including identification of the method of making improvements or determining maximum loads.
10. The manner in which Kaiser will direct truck traffic away from residentially zoned areas.
11. A map indicating the rerouting of pedestrian facilities during periods of utility and new sidewalk work or for public safety purposes.

Construction Air Quality Element

1. Identification of on-site areas where construction activities are proposed. These areas would be described with text or maps to depict the locations of construction activity in relation to the existing surrounding land uses.
2. Proposed construction vehicle transportation/haul route locations and number of construction vehicles estimated to arrive and depart from the project site along a given route. A map depicting the haul routes may accompany this section.
3. Time period of construction activities and frequency of construction activity on the site and construction traffic to and from the site.
4. Identification of project representative who would be available for residents/businesses to report air quality complaints.
5. The method of correcting air quality complaints within a specified time period.
6. A list of the types of construction equipment used by project construction contractors.
7. Methods employed by contractors to control dust emissions during construction activity.
8. Identification of the dust palliative to be used during construction.
9. A description of the method for controlling debris, soil, sand or other materials that can be blown by the wind.
10. A description of the method for sweeping paved construction area and adjacent streets of all mud and debris.

11. Methods to ensure that speeds of all construction vehicles would be limited to 15 miles per hour while on site.

Construction Noise Element

1. Identification of on-site areas where construction activities are proposed. These areas would be described with text or maps to depict the locations of construction activity in relation to the existing surrounding land uses.
2. Time period of construction activities and frequency of construction activity on the site and construction traffic to and from the site.
3. Identification of project representative who would be available for residents/businesses to report noise complaints.
4. The method of correcting noise complaints within a specified time period.
5. Methods employed by contractors to control substantial elevated noise emissions during construction activity, including scheduling activities to avoid the simultaneous operation of noise-generating equipment where feasible.
6. A map depicting the location of temporary noise control barriers and a description of the types of materials which would be used in their construction.

In addition to developing the Construction Staging and Traffic Handling Plan, Kaiser will incorporate the relevant provisions of this plan into the contracts with each of the construction contractors.

Monitoring and Reporting Action:

Review and approve Construction Staging and Traffic Handling Plan, Construction Air Quality Element, and Noise Element.

Monitoring Responsibility:

City of Emeryville Public Works Director

Monitoring Schedule:

Prior to beginning construction on the Phase I site.

Mitigation Cir-52.2

Description of Measure:

The project applicant should be required to repair (overlay or repair to structural section) streets damaged by truck traffic travelling to and from the work site, as determined by the Emeryville Public Works Department.

Implementation Procedure:

Follow procedure for Monitoring and Reporting Measure Cir-52.1.

Monitoring and Reporting Action: Review and approve Construction Staging and Traffic Handling Plan, Construction Air Quality Element, and Noise Element.

Monitoring Responsibility: City of Emeryville Public Works Director

Monitoring Schedule: Prior to beginning construction on the Phase I site.

Mitigation Cir-53.1

Description of Measure: Through travel lanes on 45th Street should not be closed for construction purposes.

Implementation Procedure: Follow procedure for Monitoring and Reporting Measure Cir-52.1.

Monitoring and Reporting Action: Review and approve Construction Staging and Traffic Handling Plan, Construction Air Quality Element, and Noise Element.

Monitoring Responsibility: City of Emeryville Public Works Director

Monitoring Schedule: Prior to beginning construction on the Phase I site.

Mitigation Cir-53.2

Description of Measure: The project applicant should be required to repair (overlay or repair to structural section) streets damaged by truck traffic travelling to and from the work site, as determined by the City of Emeryville Public Works Department.

Implementation Procedure: Follow procedure for Monitoring and Reporting Measure Cir-52.1.

Monitoring and Reporting Action: Review and approve Construction Staging and Traffic Handling Plan, Construction Air Quality Element, and Noise Element.

Monitoring Responsibility: City of Emeryville Public Works Director

Monitoring Schedule: Prior to beginning construction on the Phase I site.

Mitigation Cir-54.1

Description of Measure: Construction vehicles shall not be routed along residentially zoned streets in the project vicinity.

Implementation Procedure: Follow procedure for Monitoring and Reporting Measure Cir-52.1.

Monitoring and Reporting Action: Review and approve Construction Staging and Traffic Handling Plan, Construction Air Quality Element, and Noise Element.

Monitoring Responsibility: City of Emeryville Public Works Director

Monitoring Schedule: Prior to beginning construction on the Phase I site.

Mitigation Cir-55.1

Description of Measure: Parking for construction workers should be provided on the Phase I site to avoid impacts to existing on-street parking.

Implementation Procedure: Follow procedure for Monitoring and Report Measure Cir-52.1.

Monitoring and Reporting Action: Review and approve Construction Staging and Traffic Handling Plan, Construction Air Quality Element, and Noise Element.

Monitoring Responsibility: City of Emeryville Public Works Director

Monitoring Schedule: Prior to beginning construction on the Phase I site.

Mitigation Cir-56.1

Description of Measure: Pedestrian facilities should be maintained along the project frontage on San Pablo Avenue, Hollis Street, Park Avenue, and 45th Street, except for periodic closures for utilities and new sidewalk work or public safety purposes.

Implementation Procedure: Follow procedure for Monitoring and Report Measure Cir-52.1.

Monitoring and Reporting Action: Review and approve Construction Staging and Traffic Handling Plan, Construction Air Quality Element, and Noise Element.

Monitoring Responsibility: City of Emeryville Public Works Director

Monitoring Schedule: Prior to beginning construction on the Phase I site.

Project Construction Impacts, Year 2010

Mitigation Cir-58

- Description of Measure:** Implementation of the Phase I construction mitigation measures discussed above would reduce Future Expansion construction impacts to major and minor streets, pedestrian facilities, and neighborhood intrusion in the project vicinity.
- Implementation Procedure:** Follow procedure for Monitoring and Report Measure Cir-52.1 in the Future Expansion phase.
- Monitoring and Reporting Action:** Review and approve Construction Staging and Traffic Handling Plan, Construction Air Quality Element, and Noise Element.
- Monitoring Responsibility:** City of Emeryville Public Works Director
- Monitoring Schedule:** Prior to beginning construction in the Future Expansion phase.

AIR QUALITY (pp. 184-199)

Construction Period Impacts - Phase I and Future Expansion

Mitigation AQ-1.1

- Description of Measure:** Construction standards should be adopted requiring all contractors to reduce dust generation.
- Implementation Procedure:** Kaiser would submit a Construction Staging and Traffic Handling Plan to establish methods for addressing construction-related impacts to adjacent properties and businesses, as described in the Implementation Procedure for Cir-52.1.
- Monitoring and Reporting Action:** Review Construction Staging and Traffic Handling Plan to determine that methods of addressing construction-related air quality impacts to adjacent properties and businesses are adequate.
- Periodically inspect construction activity.
- Monitoring Responsibility:** City of Emeryville Public Works Director
- Monitoring Schedule:** Prior to beginning construction on the project site.

Mitigation AQ-1.2

Description of Measure: Suspend earthmoving or other dust-producing activities during periods of high winds if dust generation is a nuisance.

Implementation Procedure: Follow procedure for Monitoring and Reporting measure AQ-1.1

Monitoring and Reporting Action: Review Construction Staging and Traffic Handling Plan to determine that methods of addressing construction-related air quality impacts to adjacent properties and businesses are adequate.

Periodically inspect construction activity.

Monitoring Responsibility: City of Emeryville Public Works Director

Monitoring Schedule: Prior to beginning construction on the project site.

Mitigation AQ-1.3

Description of Measure: Provide equipment and manpower for watering of all exposed or disturbed soil surfaces at least twice daily, including weekends and holidays. An appropriate dust palliative or suppressant, added to water before application, should be utilized.

Implementation Procedure: Follow procedure for Monitoring and Reporting measure AQ-1.1.

Monitoring and Reporting Action: Review Construction Staging and Traffic Handling Plan to determine that methods of addressing construction-related air quality impacts to adjacent properties and businesses are adequate.

Periodically inspect construction activity.

Monitoring Responsibility: City of Emeryville Public Works Director

Monitoring Schedule: Prior to beginning construction on the project site.

Mitigation AQ-1.4

Description of Measure: Water or cover stockpiles of debris, soil, sand or other materials that can be blown by the wind.

Implementation Procedure: Follow procedure for Monitoring and Reporting measure AQ-1.1.

Monitoring and Reporting Action:

Review Construction Staging and Traffic Handling Plan to determine that methods of addressing construction-related air quality impacts to adjacent properties and businesses are adequate.

Periodically inspect construction activity.

Monitoring Responsibility: City of Emeryville Public Works Director

Monitoring Schedule: Prior to beginning construction on the project site.

Mitigation AQ-1.5

Description of Measure: Sweep paved construction areas and adjacent streets of all mud and debris, since this material can be pulverized and later resuspended by vehicle traffic.

Implementation Procedure: Follow procedure for Monitoring and Reporting measure AQ-1.1.

Monitoring and Reporting Action:

Review Construction Staging and Traffic Handling Plan to determine that methods of addressing construction-related air quality impacts to adjacent properties and businesses are adequate.

Periodically inspect construction activity.

Monitoring Responsibility: City of Emeryville Public Works Director

Monitoring Schedule: Prior to beginning construction on the project site.

Mitigation AQ-1.6

Description of Measure: Limit the speed of all construction vehicles to 15 miles per hour while on site.

Implementation Procedure: Follow procedure for Monitoring and Reporting measure AQ-1.1.

Monitoring and Reporting Action:

Review Construction Staging and Traffic Handling Plan to determine that methods of addressing construction-related air quality impacts to adjacent properties and businesses are adequate.

Periodically inspect construction activity.

Monitoring Responsibility: City of Emeryville Public Works Director

Monitoring Schedule: Prior to beginning construction on the project site.

Regional Impacts - Phase I and Future Expansion

Mitigation AQ-5.1

Description of Measure: Kaiser would implement a Transportation Systems Management Program as part of the proposed project.

Implementation Procedure: Kaiser would adopt the Transportation Systems Management Program (TSMP) hereby incorporated by reference. This TSMP describes the measures to be implemented to reduce single-occupant vehicle travel, a phased implementation schedule and the percentage reduction target for Phase I and the Future Expansion phase.

Monitoring and Reporting Action: Kaiser would submit annual progress reports to the Emeryville Planning Director summarizing the TSMP measures that have been implemented and the actual percentage reduction compared to the target reduction.

Monitoring Responsibility: City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule: Annually for the project's duration.

Mitigation AQ-5.2

Description of Measure: The project would implement roadway and intersection improvements identified in the traffic analysis that would relieve congestion at intersections impacted by project traffic.

Implementation Procedure: Follow procedures for Monitoring and Reporting Cir-1.1 through Cir-59.

Monitoring and Reporting Action: Implement Monitoring and Reporting Actions specified in Cir-1.1 through Cir-59.

Monitoring Responsibility: City of Emeryville Planning Department Director/Public Works Director

Monitoring Schedule: Prior to occupancy of Phase I and of Future Expansion.

Cumulative Impacts - Phase I and Future Expansion

Mitigation AQ-7

- Description of Measure:** Implementation of mitigation measures AQ-5.1 and AQ-5.2 would contribute to the attainment of emission standards as projected for the Bay Area Air Basin.
- Implementation Procedure:** Implement Implementation Procedure for Monitoring and Reporting measures AQ-5.1 and AQ-5.2.
- Monitoring and Reporting Action:** Implement Monitoring and Reporting Actions specified in AQ-5.1 and AQ-5.2.
- Monitoring Responsibility:** City of Emeryville Planning Department Director
- Monitoring Schedule:** As specified in the monitoring schedules for AQ-5.1 and AQ-5.2.

NOISE (pp. 200-214)

Project-Generated Traffic Noise Impacts - Interior Areas - Phase I and Future Expansion

Mitigation No-1.1

- Description of Measure:** The design of the medical office buildings on 45th Street should incorporate noise attenuation measures to reduce interior noise levels.
- Implementation Procedure:** An acoustical engineer will determine building materials, window controls, and Sound Transmission Class ratings for the medical office buildings that will achieve acceptable interior noise levels. The building permit applications shall include a statement from a qualified acoustical engineer that all measures have been incorporated to reduce noise levels to acceptable levels.
- Monitoring and Reporting Action:** Prior to issuance of a Certificate of Occupancy for Phase I and the Future Expansion phase, the project acoustical engineer will submit an inspection/monitoring report to the Planning Director verifying that the building design, building materials, and window control measures have been constructed and installed in conformance with the Final Development Plan.
- Monitoring Responsibility:** City of Emeryville Planning Department Director and Building Inspector

Monitoring Schedule: Prior to approval of the Certificate of Occupancy for Phase I and the Future Expansion phase.

Mitigation No-1.2

Description of Measure: The design of the hospital and medical office buildings in Phase I and Future Expansion should incorporate other features to reduce the intensities with which the loud, intermittent noises from truck and bus passbys are heard in the interiors.

Implementation Procedure: An acoustical engineer will determine building materials, window controls, and Sound Transmission Class ratings for the hospital and medical office buildings that will reduce the intermittent noise level exposures. The building permit applications shall include a statement from a qualified acoustical engineer that all measures have been incorporated to reduce noise levels to acceptable levels.

Monitoring and Reporting Action: Prior to issuance of a Certificate of Occupancy for Phase I and Future Expansion, the project acoustical engineer will submit an inspection/monitoring report to the Planning Director verifying that the building design, building materials, and window control measures have been constructed and installed in conformance with the Final Development Plan.

Monitoring Responsibility: City of Emeryville Planning Department Director and Building Inspector

Monitoring Schedule: Prior to approval of the Certificate of Occupancy for Phase I and the Future Expansion phase.

Mitigation No-1.3

Description of Measure: The intakes of the ventilation system for the medical office buildings on the Phase I and Future Expansion sites should be designed to guard against the intrusion of traffic noise, especially along 45th Street adjacent to the AC Transit bus facility.

Implementation Procedure: An acoustical engineer will review the selected intakes of the ventilation system for the medical office buildings to ensure that they are designed in a manner that will limit noise intrusion. The building permit applications shall include a statement from a qualified acoustical engineer that all measures have been incorporated to reduce noise levels to acceptable levels.

Monitoring and Reporting Action: Prior to issuance of a Certificate of Occupancy for Phase I and Future Expansion, the project acoustical engineer will

submit an inspection/monitoring report to the Planning Director verifying that the building design and ventilation system have been constructed and installed in conformance with the Final Development Plan.

Monitoring Responsibility: City of Emeryville Planning Department Director and Building Inspector

Monitoring Schedule: Prior to approval of the Certificate of Occupancy for Phase I and the Future Expansion phase.

Mitigation No-1.4

Description of Measure: The parking structures should be designed to reduce noise exposures inside the parking garages on the Phase I and Future Expansion sites.

Implementation Procedure: An acoustical engineer will review the parking garages and building siting to ensure that they are designed in a manner that will limit noise intrusion. The building permit applications for Phase I and Future Expansion shall include a statement from a qualified acoustical engineer that all measures have been incorporated to reduce noise levels to acceptable levels.

Monitoring and Reporting Action:

Prior to issuance of a Certificate of Occupancy for Phase I and for Future Expansion, the project acoustical engineer will submit an inspection/monitoring report to the Planning Director verifying that the parking garages been constructed and installed in conformance with the Final Development Plan.

Monitoring Responsibility: City of Emeryville Planning Department Director and Building Inspector

Monitoring Schedule: Prior to approval of the Certificate of Occupancy for Phase I and the Future Expansion phase.

Mitigation No-1.5

Description of Measure: Prior to project approval (or the issuance of construction permits), the applicant should provide an acoustical assessment to confirm that interior noise levels at the 45th Street medical office buildings would be within acceptable levels.

Implementation Procedure: Follow Implementation Procedure for Monitoring and Reporting measure No-1.1.

Monitoring and Reporting Action:

Prior to issuance of a Certificate of Occupancy for Phase I and Future Expansion, the project acoustical engineer will submit an inspection/monitoring report to the Planning Director verifying that the building design, building materials, and window control measures have been constructed and installed in conformance with the Final Development Plan.

Monitoring Responsibility: City of Emeryville Planning Department Director and Building Inspector

Monitoring Schedule: Prior to approval of the Certificate of Occupancy for Phase I and the Future Expansion phase.

Project-Generated Traffic Noise Impacts - Outdoor Activity Areas - Phase I

Mitigation No-2.1

Description of Measure: Prior to the issuance of construction permits, when building materials have been selected for the medical office buildings, and the design of the structures is confirmed, noise levels will be monitored at the open space area on the Phase I site.

Implementation Procedure: After demolition of the existing structures on the Phase I site and prior to construction of Phase I of the medical center, Kaiser shall conduct monitoring of noise levels in the open space area on the Phase I site to establish the existing noise levels. Upon completion of the Phase I structures, and prior to occupancy, Kaiser shall conduct monitoring of the noise levels in the open space area to measure the attenuation provided by the buildings. If monitoring indicates that the noise levels in this open space area continue to exceed the 55 dB threshold, then one or more of the following mitigation measures would be implemented:

- o Construct a solid fence around the perimeter of the open space area that provides sufficient attenuation to achieve the U.S. EPA's recommended 55 dB exterior noise level.
- o Locate park benches and seating areas in those portions of the open space area that are situated away from the noise source (i.e., away from the dropoff points off of Park Avenue and 45th Street).
- o Install additional landscaping around the perimeter of the open space area to visually screen noise sources.

Monitoring and Reporting Action:

Prior to issuance of a Certificate of Occupancy, the project acoustical engineer will submit an inspection/monitoring report to the Planning Director verifying that acceptable noise levels have been achieved in the medical center outdoor activity area, and identifying the addition of any other noise control measures.

Planning Director or designated representative to inspect outdoor activity area if additional noise control measures installed on the site.

Monitoring Responsibility: City of Emeryville Planning Department Director

Monitoring Schedule: Prior to approval of the Certificate of Occupancy for Phase I.

Project-Generated Traffic Noise Impacts - Outdoor Activity Areas - Future Expansion

Mitigation No-3

Description of Measure: The mitigation measures implemented in Phase I would also be implemented on the Phase I site, in the Future Expansion phase, to mitigate noise levels at outdoor activity areas on the hospital site.

Implementation Procedure: Follow procedure for Monitoring and Reporting No-2.1.

Monitoring and Reporting Action: Implement Monitoring and Reporting Actions specified in No-2.1.

Monitoring Responsibility: City of Emeryville Planning Department Director

Monitoring Schedule: Prior to approval of the Certificate of Occupancy for the Future Expansion phase.

Construction Period Impacts - Phase I and Future Expansion

Mitigation No-4.1

Description of Measure: A Construction Mitigation Plan should be developed prior to construction approval.

Implementation Procedure: Kaiser would submit a Construction Staging and Traffic Handling Plan to establish methods for addressing construction-related impacts to adjacent properties and businesses, as described in the Implementation Procedure for Cir-52.1.

In addition to developing the Construction Staging and Traffic Handling Plan, Kaiser will incorporate the relevant provisions of this plan into the contracts with each of the construction contractors.

Monitoring and Reporting Action:

Review Construction Staging and Traffic Handling Plan to determine that methods of addressing construction-related noise impacts to adjacent properties and businesses are adequate.

Periodically inspect construction activity.

Monitoring Responsibility: City of Emeryville Planning Department Director

Monitoring Schedule: Prior to commencing construction on the Phase I and Future Expansion sites.

Mitigation No-4.2

Description of Measure: For construction on the Future Expansion site north of 45th Street, the Construction Mitigation Plan should provide for the construction of temporary wooden noise barrier walls to shield residents at the Emery Bay Village from the noise emissions of stationary construction equipment— wherever the use of barriers would be feasible.

Implementation Procedure: Implement Implementation Procedure for Monitoring and Reporting measure No-4.1 in the Future Expansion phase.

Monitoring and Reporting Action:

Review Construction Staging and Traffic Handling Plan to determine that methods of addressing construction-related noise impacts to adjacent properties and businesses are adequate.

Periodically inspect construction activity.

Monitoring Responsibility: City of Emeryville Planning Department Director

Monitoring Schedule: Prior to commencing construction on the Future Expansion site.

Mitigation No-4.3

Description of Measure: The plan should also include a limitation on construction hours (i.e., 7:00 a.m. to 7:00 p.m.) and a similar limitation on the hours of truck deliveries.

Implementation Procedure: Follow procedures for Monitoring and Reporting measure No-4.1.

Monitoring and Reporting Action: Review Construction Staging and Traffic Handling Plan to determine that methods of addressing construction-related noise impacts to adjacent properties and businesses are adequate.

Periodically inspect construction activity.

Monitoring Responsibility: City of Emeryville Planning Department Director

Monitoring Schedule: Prior to beginning construction on the Phase I and Future Expansion sites.

Mitigation No-4.4

Description of Measure: Under the Construction Mitigation Plan, contractors should be required to use "new technology" power construction equipment with state-of-the-art noise shielding and muffling devices.

Implementation Procedure: Follow procedures for Monitoring and Reporting measure No-4.1.

Monitoring and Reporting Action: Review Construction Staging and Traffic Handling Plan to determine that methods of addressing construction-related noise impacts to adjacent properties and businesses are adequate.

Periodically inspect construction activity.

Monitoring Responsibility: City of Emeryville Planning Department Director

Monitoring Schedule: Prior to commencing construction on the Phase I and Future Expansion sites.

Mitigation No-4.5

Description of Measure: As part of the Construction Mitigation Plan, the contractor should schedule construction activities in shifts to avoid high noise levels caused by simultaneously operating several pieces of noise-generating equipment, to the extent feasible.

Implementation Procedure: Follow procedures for Monitoring and Reporting measure No-4.1.

Monitoring and Reporting Action:

Review Construction Staging and Traffic Handling Plan to determine that methods of addressing construction-related noise impacts to adjacent properties and businesses are adequate.

Periodically inspect construction activity.

Monitoring Responsibility: City of Emeryville Planning Department Director

Monitoring Schedule: Prior to commencing construction on the Phase I and Future Expansion sites.

GEOLOGY AND SEISMICITY (pp. 215-220)

Geologic and Soils Impacts - Phase I and Future Expansion

Mitigation Geo-1.1

Description of Measure: The building foundations on the Phase I and Future Expansion sites should be designed to distribute the maximum anticipated loads in a manner that adequately addresses differential settlement.

Implementation Procedure: All mitigation measures will be implemented in accordance with the recommendations contained in the *Geologic/Seismic Hazards Evaluation* and the *Geotechnical Engineering Study for the New Hospital Building* for the Kaiser Permanente Medical Center prepared by Woodward-Clyde Consultants in August, 1994. Prior to approval of the building permits, any additional foundation and geotechnical reports will be submitted for review and approval to the Director of Public Works.

The project Geotechnical Engineer would observe and test the site grading and foundation construction, as necessary, to determine compliance with the recommendations of the geotechnical report. The Geotechnical Engineer would review each proposed building location to verify the appropriate building foundation type and depth, based upon the soil and geologic conditions after grading

Monitoring and Reporting Action:

Department of Public Works representatives will inspect the site to ensure that the mitigation is implemented in conformance with the recommendations of the required geologic and geotechnical investigation, and in accordance with the Uniform Building Code.

Monitoring Responsibility: City of Emeryville Public Works Department Director

Monitoring Schedule: Prior to approval of the Certificate of Occupancy for Phase I and the Future Expansion phase.

Mitigation Geo-1.2

Description of Measure: Exploratory borings and laboratory testing should be conducted prior to foundation design. The foundation designs for the proposed buildings would address the characteristics of the existing soil and geotechnical conditions of the project site.

Implementation Procedure: Follow procedures for Mitigation Measure Geo-1.1.

Monitoring and Reporting Action: Implement Monitoring and Reporting Actions in Geo-1.1.

Monitoring Responsibility: City of Emeryville Public Works Department Director

Monitoring Schedule: Prior to approval of the Certificate of Occupancy for Phase I and the Future Expansion phase.

Groundwater Impacts - Phase I and Future Expansion

Mitigation Geo-2.1

Description of Measure: Subsurface drainage and other appropriate waterproofing systems may be appropriate mitigation to control the effects of shallow groundwater on subsurface construction.

Implementation Procedure: All mitigation measures will be implemented in accordance with the recommendations contained in the *Geologic/Seismic Hazards Evaluation* and the *Geotechnical Engineering Study for the New Hospital Building* for the Kaiser Permanente Medical Center prepared by Woodward-Clyde Consultants in August, 1994. Prior to approval of the building permits, any reports identifying subsurface drainage and other appropriate waterproofing systems will be submitted for review and approval to the Director of Public Works.

The project Geotechnical Engineer would inspect the site groundwater conditions and waterproofing systems installed on the site, as necessary, to determine compliance with the recommendations of the geotechnical report.

Monitoring and Reporting Action: Department of Public Works representatives would inspect the site to ensure that the mitigation is implemented in

conformance with the recommendations of the required geologic and geotechnical investigation, and in accordance with the Uniform Building Code.

Monitoring Responsibility: City of Emeryville Public Works Department Director

Monitoring Schedule: Prior to approval of the Certificate of Occupancy for Phase I and the Future Expansion phase.

Mitigation Geo-2.2

Description of Measure: Dewatering of the foundation excavation areas may be required during subsurface construction-related activities on the Phase I and Future Expansion sites.

Implementation Procedure: Follow procedures for Mitigation Measure Geo-2.1.

Monitoring and Reporting Action: Implement Monitoring and Reporting Actions in Geo-2.1.

Monitoring Responsibility: City of Emeryville Public Works Department Director

Monitoring Schedule: Prior to approval of the Certificate of Occupancy for Phase I and the Future Expansion phase.

Seismic Hazards - Phase I and Future Expansion

Mitigation Geo-3.1

Description of Measure: Prior to issuance of building permits, a site specific geotechnical and foundation investigation should be prepared on the Phase I and Future Expansion sites. The specific recommendations would be incorporated into the project design.

Implementation Procedure: The *Geologic/Seismic Hazards Evaluation* and the *Geotechnical Engineering Study for the New Hospital Building* for the Kaiser Permanente Medical Center prepared by Woodward-Clyde Consultants in August, 1994 is on file with the City of Emeryville Planning Department, and is hereby incorporated by reference. With regard to seismic safety, the evaluation and study contain the results of exploration soil borings, cone penetration testing, and laboratory testing; a discussion seismic conditions and a seismic hazards analysis; and recommendations for addressing identified geotechnical conditions.

All mitigation measures will be implemented in accordance with the recommendations contained in the *Geologic/Seismic Hazards Evaluation* and the *Geotechnical Engineering Study for the New Hospital Building* for the Kaiser Permanente Medical Center prepared by Woodward-Clyde Consultants in August, 1994. Prior to approval of the building permits, any additional foundation and geotechnical reports will be submitted for review and approval to the Public Works Director.

The project Geotechnical Engineer would observe and test the site grading and foundation construction, as necessary, to determine compliance with the recommendations of the geotechnical report. The Geotechnical Engineer would review each proposed building location to verify the appropriate building foundation type and depth, based upon the soil and geologic conditions after grading.

Monitoring and Reporting Action:

Department of Public Works representatives will inspect the site to ensure that the mitigation is implemented in conformance with the recommendations of the required geologic and geotechnical investigation, and in accordance with the Uniform Building Code.

Monitoring Responsibility: City of Emeryville Public Works Department Director

Monitoring Schedule: Prior to approval of the Certificate of Occupancy for Phase I and the Future Expansion phase.

Mitigation Geo-3.2

Description of Measure: Exploratory borings should be conducted to define the depth and extent of sand and silt layers that may have the potential for liquefaction. If liquefaction potential is confirmed, mitigation measures would include:

- o the use of stone columns to dissipate high pore pressures, and/or
- o placement of the structures on piles which extend a sufficient depth below the base of any potentially liquefiable layers.

Implementation Procedure: Follow procedures for Mitigation Measure Geo-3.1.

Monitoring and Reporting Action:

Implement Monitoring and Reporting Actions in Geo-3.1.

Monitoring Responsibility: City of Emeryville Public Works Department Director

Monitoring Schedule: Prior to approval of the Certificate of Occupancy for Phase I and the Future Expansion phase.

Mitigation Geo-3.3

Description of Measure: Special structural design measures, including base isolation and extensive cross bracing of load-bearing walls should be incorporated into the hospital design on the Phase I site to ensure that the hospital remains functional under the most severe ground shaking effects that are anticipated.

Implementation Procedure: Follow procedures for Mitigation Measure Geo-3.1.

Monitoring and Reporting Action: Implement Monitoring and Reporting Actions in Geo-3.1.

Monitoring Responsibility: City of Emeryville Public Works Department Director

Monitoring Schedule: Prior to approval of the Certificate of Occupancy for the hospital.

Mitigation Geo-3.4

Description of Measure: The project design should adhere to applicable building and fire code standards for building design, construction, materials, and non-structural features, which would mitigate potential impacts.

Implementation Procedure: Follow procedures for Mitigation Measure Geo-1.1 and Geo-3.1.

Monitoring and Reporting Action: Implement Monitoring and Reporting Actions in Geo-1.1 and Geo-3.1.

Monitoring Responsibility: City of Emeryville Public Works Department Director

Monitoring Schedule: Prior to approval of the Certificate of Occupancy for Phase I and the Future Expansion phase.

Mitigation Geo-3.5

Description of Measure: The report and building design submittal and review prescribed in the Hospital Seismic Safety Act would ensure that the hospital is designed to withstand anticipated seismic loads, and remain functional during and after an earthquake.

Implementation Procedure: Follow procedure for Mitigation Measure Geo-1.1 and Geo-3.1.

Monitoring and Reporting Action: Implement Monitoring and Reporting Actions in Geo-1.1 and Geo-3.1.

Monitoring Responsibility: City of Emeryville Public Works Department Director

Monitoring Schedule: Prior to approval of the Certificate of Occupancy for the hospital in Phase I.

Mitigation Geo-3.6

Description of Measure: Plan checking, permit issuance, and construction inspections conducted by State agencies, (Office of Statewide Health Planning and Development and California Department of Conservation, Division of Mines and Geology), would ensure that the proposed medical center is constructed in accordance with applicable codes.

Implementation Procedure: Kaiser will arrange for the Office of Statewide Health Planning and Development and California Department of Conservation, Division of Mines and Geology to conduct plan checking, permit issuance, and construction inspections.

Monitoring and Reporting Action: Kaiser will be responsible for submitting reports/approvals issued by each of these State agencies to the Emeryville Planning Department.

Monitoring Responsibility: City of Emeryville Planning Department Director

Monitoring Schedule: Prior to approval of the Certificate of Occupancy for the hospital in Phase I.

FLOODING, DRAINAGE, AND WATER QUALITY (pp. 221-225)

Flooding and Drainage Impacts - Future Expansion

Mitigation Hydro-3.1

Description of Measure: Field observations should be conducted as part of the preparation of a grading and drainage plan to verify the location of the existing culvert under the Future Expansion site.

Implementation Procedure: Field observations will be conducted by the Project Engineer to verify the location of the existing culvert under the Future Expansion site and to confirm the existing and projected storm runoff flows. The Project Engineer will submit the results of the surveys to the Director of Public Works for review and approval.

Monitoring and Reporting Action:

Director of Public Works would review and approve the survey results. The Director would also review the Final Development Plan to ensure that the project has been designed in a manner that avoids or limits the impacts to the existing culvert. Any revisions to the Final Development Plan that occur as a result of the survey findings will be subject to the review and approval of the Public Works Director and Planning Director.

Monitoring Responsibility: City of Emeryville Public Works Department Director/
Planning Department Director

Monitoring Schedule: Prior to approval of the grading permit for Phase I and the Future Expansion phase.

Mitigation Hydro-3.2

Description of Measure: If necessary, the medical center should be designed to avoid impacts to the existing culvert that crosses under the Future Expansion site.

Implementation Procedure: Follow procedures for Monitoring and Reporting measure Hydro-3.1.

Monitoring and Reporting Action: Implement Monitoring and Reporting Action Hydro-3.1.

Monitoring Responsibility: City of Emeryville Public Works Director

Monitoring Schedule: Prior to approval of the grading permit for the Future Expansion phase.

Water Quality Impacts - Phase I and Future Expansion

Mitigation Hydro-4.1

Description of Measure: Phase I and Future Expansion of the medical center should be required to conform to the Nonpoint Source Control Program.

Implementation Procedure: To conform to the Nonpoint Source Control Program, the Project Engineer would prepare the following plans and forms: Erosion Control Plan, Grading and Drainage Plans, a National Pollutant Discharge Elimination System (NPDES) General Permit including, Notice of Intent to Construct application and a Storm Water Pollution Prevention Plan.

Mitigation Hydro-4.3

- Description of Measure:** To address long-term water quality impacts, the project applicant should implement permanent (post-construction) controls.
- Implementation Procedure:** Follow procedure for Monitoring and Reporting measure Hydro-4.1.
- Monitoring and Reporting Action:** Implement Monitoring and Reporting Action Hydro-4.1.
- Monitoring Responsibility:** City of Emeryville Public Works Director
- Monitoring Schedule:** Prior to approval of the grading permit for Phase I and the Future Expansion phase.

SOIL AND GROUNDWATER CONTAMINATION CLEANUP (pp. 226-230)

Potential Impacts of Medical Center Construction - Phase I

Mitigation Soil-1.1

- Description of Measure:** Soil and groundwater remediation would be conducted in accordance with federal, state, regional and local regulatory agency requirements.
- Implementation Procedure:** Soil remediation will be conducted by removing soils by truck to an off-site location for treatment or by treating the soil on-site in accordance with the remediation plans developed for each of the subject properties within the project area, and approved by the appropriate federal, state, regional, and local regulatory agencies.
- Groundwater contamination will be remediated by a "pump and treat" system. Water will be pumped from the ground into treatment units (i.e., canisters of granulated carbon) that will clean the water prior to discharge into the storm drainage or sanitary sewer system. Alternatively, if the concentration of pollutants is relatively low, East Bay Municipal Utility District may permit the groundwater to be discharged directly into the sanitary sewer.
- Monitoring and Reporting Action:** Kaiser will obtain documentation from the appropriate federal, state, regional, and local regulatory agencies that all remediation has been performed in accordance with their requirements, and in a manner sufficient to allow grading and construction activities on the site.

Monitoring Responsibility: City of Emeryville Planning Department Director

Monitoring Schedule: Prior to approval of the grading permit for Phase I.

Mitigation Soil-1.2

Description of Measure: Closure plans would be prepared prior to the removal of any underground storage tanks. In addition, permits would be obtained from the Fire Marshall for the removal of the tanks, in accordance with the City of Emeryville regulations.

Implementation Procedure: Prior to issuance of a grading permit for the project site, the Project Environmental Engineer will submit verification to the Director of Planning that the underground fuel tanks have been removed in conformance with the City of Emeryville regulations. The Project Environmental Engineer will submit a report indicating the results of any additional subsurface testing associated with the removal of the underground fuel storage tanks.

Monitoring and Reporting Action: Obtain verification that the removal of the underground fuel tanks conformed to the City of Emeryville regulations. Obtain the reports prepared for additional subsurface testing.

Monitoring Responsibility: City of Emeryville Planning Department Director

Monitoring Schedule: Prior to approval of the grading permit for Phase I.

Potential Impacts of Medical Center Construction - Future Expansion

Mitigation Soil-2

Description of Measure: As in Phase I, the Future Expansion phase would also require conformance to federal, state, regional, and local regulations. Therefore, mitigation measures Soil-1.1 and Soil-1.2 would also be implemented in the Future Expansion phase.

Implementation Procedure: Follow procedure for Monitoring and Reporting measures Soil-1.1 and Soil-1.2.

Monitoring and Reporting Action: Implement Monitoring and Reporting Action specified in Soil-1.1 and Soil-1.2.

Monitoring Responsibility: City of Emeryville Planning Department Director

Monitoring Schedule: Prior to approval of the grading permit for the Future Expansion phase.

HAZARDOUS MATERIALS STORAGE, USE, AND DISPOSAL (pp. 231-239)

Exposure to Hazardous Substances - Phase I and Future Expansion

Mitigation Haz-1.1

Description of Measure: Kaiser would develop and implement a Hazardous Materials Business Plan for Phase I and Future Expansion which is required for all businesses that handle and store hazardous materials.

Implementation Procedure: Kaiser would develop a Hazardous Materials Business Plan consisting of the following sections:

- o *Facility Information* including the number of employees, size of facility, size of the hazardous waste storage areas, and a site map.
- o *Emergency Response Plan and Procedures* that identify the procedures for reporting hazardous materials incidents and for notifying the appropriate party in the event of an accidental spill, release, or threatened release. In addition, this section would contain measures for containing and remediating hazardous materials spills or releases, evacuation measures, emergency response assistance, and medical assistance.
- o *Hazardous Materials Training for Employees* to ensure that all employees are familiar with the Hazardous Materials Business Plan and the procedures that should be implemented in the event of a hazardous materials incident.

Monitoring and Reporting Action:

The City of Emeryville Planning Department Director and Fire Chief would review and approve the Hazardous Materials Business Plan. The Planning Department Director and Fire Chief would review the Preliminary and Final Development Plans for Phase I and Future Expansion to verify that suitable facility design and construction for the storage of hazardous materials have been incorporated into the project.

Monitoring Responsibility: City of Emeryville Planning Department Director and Emeryville Fire Chief

Monitoring Schedule: Hazardous Materials Business Plan would be approved prior to approval of the Occupancy Permit for Phase I and the Future Expansion phase.

HAZARDOUS MATERIALS STORAGE, USE, AND DISPOSAL (pp. 231-239)

Exposure to Hazardous Substances - Phase I and Future Expansion

Mitigation Haz-1.1

Description of Measure: Kaiser would develop and implement a Hazardous Materials Business Plan for Phase I and Future Expansion which is required for all businesses that handle and store hazardous materials.

Implementation Procedure: Kaiser would develop a Hazardous Materials Business Plan consisting of the following sections:

- o *Facility Information* including the number of employees, size of facility, size of the hazardous waste storage areas, and a site map.
- o *Emergency Response Plan and Procedures* that identify the procedures for reporting hazardous materials incidents and for notifying the appropriate party in the event of an accidental spill, release, or threatened release. In addition, this section would contain measures for containing and remediating hazardous materials spills or releases, evacuation measures, emergency response assistance, and medical assistance.
- o *Hazardous Materials Training for Employees* to ensure that all employees are familiar with the Hazardous Materials Business Plan and the procedures that should be implemented in the event of a hazardous materials incident.

Monitoring and Reporting Action:

The City of Emeryville Planning Department Director and Fire Chief would review and approve the Hazardous Materials Business Plan. The Planning Department Director and Fire Chief would review the Preliminary and Final Development Plans for Phase I and Future Expansion to verify that suitable facility design and construction for the storage of hazardous materials have been incorporated into the project.

Monitoring Responsibility: City of Emeryville Planning Department Director and Emeryville Fire Chief

Monitoring Schedule: Hazardous Materials Business Plan would be approved prior to approval of the Occupancy Permit for Phase I and the Future Expansion phase.

Preliminary and Final Development Plans would be reviewed and approved prior to approval of the Preliminary and Final Development Plans for Phase I and Future Expansion.

UTILITIES AND URBAN SERVICES (pp. 240-257)

Storm Drainage Impacts - Phase I

Mitigation Util-1.1

Description of Measure: Prior to construction of Phase I, the project engineers would submit calculations of projected runoff flows to ensure that Phase I would not exceed sub-basin standards.

Implementation Procedure: Field observations and hydraulic calculations will be conducted by the Project Engineer to verify the projected storm runoff flows. The Project Engineer will submit the results of the surveys to the Director of Public Works for review and approval.

Monitoring and Reporting Action: Director of Public Works would review and approve the observations and calculations, and to confirm that the project would not exceed sub-basin standards.

Monitoring Responsibility: City of Emeryville Public Works Department Director/
Planning Department Director

Monitoring Schedule: Prior to approval of the grading permit for Phase I.

Mitigation Util-1.2

Description of Measure: Streets and parking lots should be graded to prevent ponding of water during and after construction in Phase I. Street and curbs should be designed to route surface runoff to existing storm drain inlets or to properly engineered new storm drains.

Implementation Procedure: The Project Engineer would prepare Grading and Drainage Plans that indicate the manner in which streets and parking lots would be graded to prevent ponding of water during and after construction. The Grading and Drainage Plans would also depict the design of street and curbs to route surface runoff to existing storm drain inlets or to properly engineered new storm drains.

Monitoring and Reporting Action: The Project Engineer would prepare final grading and drainage plans prior to obtaining a grading permit for each phase of development, subject to review and approval of the Public Works Director.

Monitoring Responsibility: City of Emeryville Public Works Department Director

Monitoring Schedule: Prior to approval of the grading permit for Phase I.

Mitigation Util-1.3

Description of Measure: The existing storm drain system to Temescal Creek should be retrofitted or replaced to assure a problem-free drainage system. Storm lines in Park Avenue, Hollis Street and on-site would be improved.

Implementation Procedure: The Project Engineer would prepare Grading and Drainage Plans that indicate the manner in which the existing storm drain system to Temescal Creek would be retrofitted or replaced to assure a problem-free drainage system. The Grading and Drainage Plans would also identify the storm lines in Park Avenue, Hollis Street and on-site that would be improved.

Monitoring and Reporting Action: Director of Public Works would review and approve the improvements to the storm drainage system.

Monitoring Responsibility: City of Emeryville Public Works Department Director

Monitoring Schedule: Prior to approval of the grading permit for Phase I.

Storm Drainage Impacts - Future Expansion

Mitigation Util-1.1 - Util-1.3

Description of Measure: Implement mitigation measures Util-1.1 to Util-1.3 in the Future Expansion phase.

Implementation Procedure: Follow procedures for Mitigation Monitoring and Reporting measures Util-1.1 to Util-1.3.

Monitoring and Reporting Action: Implement Monitoring and Reporting Actions Util-1.1 to Util-1.3.

Monitoring Responsibility: City of Emeryville Public Works Department Director/
Planning Department Director

Monitoring Schedule: Prior to approval of the grading permit for Future Expansion

Sanitary Sewer Service Impacts - Phase I

Mitigation Util-2.1

Description of Measure: All sanitary sewer lines that are installed by the project would provide adequate capacity to convey wastewater generated by the project.

Implementation Procedure: The Project Engineer would prepare Grading and Drainage Plans that identify the locations of all of the sanitary sewer lines that are replaced, reconstructed, or installed by the project, where necessary. These lines may include:

- o Lines and all laterals on Park Avenue from San Pablo to Halleck Street.
- o Lines and laterals on 45th Street from San Pablo Avenue to Doyle Street.
- o Lines and laterals on Doyle Street from 45th Street to 47th Street.
- o Lines and laterals near the spur track to Temescal Creek.

Monitoring and Reporting Action: Director of Public Works would review and approve the improvements to the sanitary sewer system and to confirm that the system provides adequate capacity to convey wastewater generated by the project.

Monitoring Responsibility: City of Emeryville Public Works Department Director

Monitoring Schedule: Prior to approval of the grading permit for Phase I.

Sanitary Sewer Service Impacts - Future Expansion

Mitigation Util-2.2

Description of Measure: Lines and all laterals would be replaced or reconstructed on Park Avenue from San Pablo to Halleck Street.

Implementation Procedure: Follow procedures for Monitoring and Reporting measure Util-2.1.

Monitoring and Reporting Action: Implement Monitoring and Reporting Action specified in Util-2.1.

Monitoring Responsibility: City of Emeryville Public Works Department Director

Monitoring Schedule: Prior to approval of the grading permit for the Future Expansion phase.

Mitigation Util-2.3

Description of Measure: Lines and laterals on 45th Street from San Pablo Avenue to Doyle Street would be replaced or reconstructed.

Implementation Procedure: Follow procedures for Monitoring and Reporting measure Util-2.1.

Monitoring and Reporting Action: Implement Monitoring and Reporting Action specified in Util-2.1.

Monitoring Responsibility: City of Emeryville Public Works Department Director

Monitoring Schedule: Prior to approval of the grading permit for the Future Expansion phase.

Mitigation Util-2.4

Description of Measure: Lines and laterals on Doyle Street from 45th Street to 47th Street would be replaced or reconstructed.

Implementation Procedure: Follow procedures for Monitoring and Reporting measure Util-2.1.

Monitoring and Reporting Action: Implement Monitoring and Reporting Action specified in Util-2.1.

Monitoring Responsibility: City of Emeryville Public Works Department Director

Monitoring Schedule: Prior to approval of the grading permit for the Future Expansion phase.

Mitigation Util-2.5

Description of Measure: Lines and laterals near the spur track to Temescal Creek would be replaced or reconstructed.

Implementation Procedure: Follow procedures for Monitoring and Reporting measure Util-2.1.

Monitoring and Reporting Action: Implement Monitoring and Reporting Action specified in Util-2.1.

Monitoring Responsibility: City of Emeryville Public Works Department Director

Monitoring Schedule: Prior to approval of the grading permit for the Future Expansion phase.

Water Service Impacts - Phase I

Mitigation Util-3.1

Description of Measure: The proposed project would incorporate water conservation measures into the design of the proposed medical center buildings. The project would incorporate the use of reclaimed wastewater to the extent feasible, for landscaping irrigation and other appropriate uses.

Implementation Procedure: The Final Development Plans will identify the water conservation measures that have been into the design of the proposed medical center buildings in Phase I. These measures include the installation of low-flow toilets, sinks, and showers; and the installation of drought-tolerant landscaping. With regard to the installation of drought-tolerant landscaping, a Landscape Plan would be prepared that depicts the types of plantings and irrigation system that would be installed.

Monitoring and Reporting Action: Planning Department Director would review and approve the proposed water conservation measures and the Landscape Plan for Phase I.

Monitoring Responsibility: City of Emeryville Planning Department Director

Monitoring Schedule: Prior to approval of the Final Development Plans for Phase I.

Mitigation Util-3.2

Description of Measure: Project site water lines would be extended to the existing lines in the project vicinity, as necessary, in a manner that ensures that an adequate water distribution system is available to serve Phase I of the project.

Implementation Procedure: The Project Engineer would prepare Grading and Drainage Plans that identify the locations of all of the water lines that are replaced, reconstructed, or installed by the project in Phase I.

Monitoring and Reporting Action: Director of Public Works to review and approve the improvements to the water distribution system and to confirm that the system provides adequate capacity to convey water to the project in Phase I.

Monitoring Responsibility: City of Emeryville Public Works Department Director/East Bay Municipal Utility District

Monitoring Schedule: Prior to approval of the grading permit for Phase I.

Mitigation Util-3.3

Description of Measure: Water line extensions shall be designed in accordance with the City of Emeryville and EBMUD design standards.

Implementation Procedure: Implement Implementation Procedure for Monitoring and Reporting measure Util-3.2.

Monitoring and Reporting Action: Implement Monitoring and Reporting Action specified in Util-3.2.

Monitoring Responsibility: City of Emeryville Public Works Department Director/East Bay Municipal Utility District

Monitoring Schedule: Prior to approval of the grading permit for Phase I.

Water Service Impacts - Future Expansion

Mitigation Util-3.1

Description of Measure: The proposed project would incorporate water conservation measures into the design of the proposed medical center buildings in the Future Expansion phase. The project would incorporate the use of reclaimed wastewater, to the extent feasible, for landscaping irrigation and other appropriate uses.

Implementation Procedure: The Final Development Plans will identify the water conservation measures that have been into the design of the proposed medical center buildings in the Future Expansion phase. These measures include the installation of low-flow toilets, sinks, and showers; and the installation of drought-tolerant landscaping. With regard to the installation of drought-tolerant landscaping, a Landscape Plan would be prepared that depicts the types of plantings and irrigation system that would be installed.

Monitoring and Reporting Action: Planning Department Director would review and approve the proposed water conservation measures and the Landscape Plan for Future Expansion.

Monitoring Responsibility: City of Emeryville Planning Department Director

Monitoring Schedule: Prior to approval of the Final Development Plans for the Future Expansion phase.

Mitigation Util-3.2

Description of Measure: Project site water lines would be extended to the existing lines in the project vicinity, as necessary, in a manner that ensures that an adequate water distribution system is available to serve the Future Expansion phase.

Implementation Procedure: The Project Engineer would prepare Grading and Drainage Plans that identify the locations of all of the water lines that are replaced, reconstructed, or installed by the project in the Future Expansion phase.

Monitoring and Reporting Action: Director of Public Works to review and approve the improvements to the water distribution system and to confirm that the system provides adequate capacity to convey water to the project in the Future Expansion phase.

Monitoring Responsibility: City of Emeryville Public Works Department Director/East Bay Municipal Utility District

Monitoring Schedule: Prior to approval of the grading permit for Future Expansion.

Mitigation Util-3.3

Description of Measure: Water line extensions shall be designed in accordance with the City of Emeryville and EBMUD design standards.

Implementation Procedure: Implement Implementation Procedure for Monitoring and Reporting measure Util-3.2.

Monitoring and Reporting Action: Implement Monitoring and Reporting Action specified in Util-3.2.

Monitoring Responsibility: City of Emeryville Public Works Department Director/East Bay Municipal Utility District

Monitoring Schedule: Prior to approval of the grading permit for Future Expansion.

Solid Waste Impacts - Phase I

Mitigation Util-4.1

Description of Measure: Submit a waste reduction/recycling plan designed to achieve a minimum of 50 percent diversion/recycling of solid waste.

Implementation Procedure: Prior to demolition activities on the Phase I site, Kaiser would prepare a Construction Waste Reduction and Recycling Plan that would describe the methods Kaiser construction contractors would implement to divert construction and demolition debris from requiring disposal.

For the medical center operations, Kaiser would prepare a Waste Reduction and Recycling Plan that would describe the methods Kaiser would implement in order to achieve a 50 percent rate for diversion/recycling of solid waste.

The Final Development Plans would identify the general locations of waste recycling collection facilities within the hospital and medical office buildings on the Phase I site.

Monitoring and Reporting Action:

The City of Emeryville's Waste Diversion Technical Assistance Program Director would review the Waste Reduction and Recycling Plan and Construction Waste Reduction and Recycling Plan to verify that they would be consistent with the City of Emeryville Source Reduction and Recycling Element.

Kaiser would submit annual monitoring reports, subject to review and approval by the Waste Diversion Technical Assistance Program Director, that would indicate the percentage of solid waste that was diverted/recycled for each year of the medical center operations.

Monitoring Responsibility: City of Emeryville Waste Diversion Technical Assistance Program Director

Monitoring Schedule: Prior to approval of the Occupancy Permit for Phase I.

Solid Waste Impacts - Future Expansion

Mitigation Util-4.1

Description of Measure: Submit a waste reduction/recycling plan designed to achieve a minimum of 50 percent diversion/recycling of solid waste in the Future Expansion phase.

Implementation Procedure: Prior to demolition activities in the Future Expansion phase, Kaiser would prepare a Construction Waste Reduction and Recycling Plan that would describe the methods Kaiser construction contractors would implement to divert construction and demolition debris from requiring disposal.

For the medical center operations, Kaiser would prepare a Waste Reduction and Recycling Plan that would describe the methods Kaiser would implement in order to achieve a 50 percent rate for diversion/recycling of solid waste.

The Final Development Plans would identify the general locations of waste recycling collection facilities within the hospital and medical office buildings for the Future Expansion phase.

Monitoring and Reporting Action:

The City of Emeryville's Waste Diversion Technical Assistance Program Director would review the Waste Reduction and Recycling Plan and Construction Waste Reduction and Recycling Plan to verify that they would be consistent with the City of Emeryville Source Reduction and Recycling Element.

Kaiser would submit annual monitoring reports, subject to review and approval by the Waste Diversion Technical Assistance Program Director, that would indicate the percentage of solid waste that was diverted/recycled for each year of the medical center operations.

Monitoring Responsibility: City of Emeryville Waste Diversion Technical Assistance Program Director

Monitoring Schedule: Prior to approval of the Occupancy Permit for Future Expansion.

Electric Power, Gas, and Telephone Services Impacts - Phase I and Future Expansion

Mitigation Util-5.1

Description of Measure: The project would pay a Utility User Tax to offset the cost of providing electricity and natural gas services to the project.

Implementation Procedure: Kaiser and the City of Emeryville, through the Development Agreement, would arrange the cost reimbursement procedures and schedule of funding.

Monitoring and Reporting Action: The City of Emeryville City Manager would review and approve the funding contribution arrangements.

Monitoring Responsibility: City of Emeryville City Manager

Monitoring Schedule: Prior to approval of the Final Development Plans for Phase I.

Schools Impacts - Phase I and Future Expansion

Mitigation Util-8.1

- Description of Measure:** Kaiser, as part of the development agreement negotiations, will contribute \$20,000 per year to the Emeryville Higher Education Fund or to another school fund that directly benefits the city's public school system.
- Implementation Procedure:** Kaiser and the City of Emeryville, through the Development Agreement, would arrange the cost reimbursement procedures and schedule of funding.
- Monitoring and Reporting Action:** The City of Emeryville City Manager would review and approve the funding contribution arrangements.
- Monitoring Responsibility:** City of Emeryville City Manager
- Monitoring Schedule:** Prior to approval of the Final Development Plans for Phase I.

HISTORIC AND CULTURAL RESOURCES (pp. 258-277)

Prehistoric and Historic Archaeological Resources Impacts - Phase I

Mitigation CR-1.1

- Description of Measure:** Additional archival research should be conducted for the project area that focuses on the structures previously present in the project area in the 1850s, the residences and businesses in the area from 1880-1910, and the Chinese gambling facilities, restaurants, etc., in the 1920s. This archival information shall be used in the formulation of an archaeological testing program.
- Implementation Procedure:** Kaiser shall retain a qualified archaeologist who will conduct subsequent archival research prior to developing the archaeological monitoring program described in CR-1.2. The archaeologist will then prepare a report summarizing the findings of the archival search, and will submit an archaeological testing plan.
- Monitoring and Reporting Action:** The Emeryville Planning Department Director will review the archival report prior and testing program prior to beginning construction on the Phase I site.
- Monitoring Responsibility:** City of Emeryville Planning Department Director
- Monitoring Schedule:** Prior to approval of the demolition permit for Phase I.

Mitigation CR-1.2

Description of Measure: Formulate and implement an auguring program for the project site.

Implementation Procedure: During construction and subsurface activities, a program of archaeological monitoring will be implemented for the specific locations identified in the mitigation measures, including areas of proposed soil and groundwater remediation. A report will be prepared documenting the proposed program of archaeological monitoring.

In the event of discovery, the qualified archaeological monitor will have the authority to relocate the equipment until the find is examined. If the find is determined to be significant, and merits formal recordation or data collection, time and funding will be provided by the developer to salvage the material. Any archaeologically important data recovered during monitoring shall be cleaned, catalogued, and analyzed, with the results presented by a qualified archaeologist in a report of findings which meets professional standards. This report will be submitted to the Director of Planning. Significant artifacts collected during monitoring shall be curated in an accepted collections facility. Prior to curation, security measures will be implemented to ensure that discovered resources are protected.

Monitoring and Reporting Action:

The Emeryville Planning Department Director will review the monitoring program report prior to Kaiser obtaining a demolition permit for Phase I. The Planning Director will review and approve the report of findings submitted by the archaeologist after monitoring has been completed.

Monitoring Responsibility: City of Emeryville Planning Director

Monitoring Schedule: Review monitoring program report prior to construction commencing on the Phase I site. Review subsequent reports upon submission by the archaeologist.

Mitigation CR-1.3

Description of Measure: Formulate and implement a backhoe or other appropriate testing program in the southwest and northeastern quadrants of the Phase I site.

Implementation Procedure: Follow procedures for Monitoring and Reporting measure CR-1.2.

Monitoring and Reporting Action: Implement Monitoring and Reporting Action specified in CR-1.2.

Monitoring Responsibility: City of Emeryville Planning Director

Monitoring Schedule: As specified in Monitoring and Reporting CR-1.2.

Mitigation CR-1.4

Description of Measure: Conduct backhoe or other subsurface testing in the area of the former Emery home site and grounds to locate and identify potentially significant foundations, basement contents, trash and privy deposits, and other cultural materials.

Implementation Procedure: Follow procedures for Monitoring and Reporting measure CR-1.2.

Monitoring and Reporting Action: Implement Monitoring and Reporting Action specified in CR-1.2.

Monitoring Responsibility: City of Emeryville Planning Director

Monitoring Schedule: As specified in Monitoring and Reporting CR-1.2.

Mitigation CR-1.5

Description of Measure: Formulate and implement a general archaeological monitoring plan.

Implementation Procedure: Follow procedures for Monitoring and Reporting measure CR-1.2.

Monitoring and Reporting Action: Implement Monitoring and Reporting Action specified in CR-1.2.

Monitoring Responsibility: City of Emeryville Planning Director

Monitoring Schedule: As specified in Monitoring and Reporting CR-1.2.

Mitigation CR-1.6:

Description of Measure: Maintain coordination between the archaeologist and other consultants, such as those involved in toxic testing and remediation, to avoid unnecessary destruction of data through unmonitored excavation for toxic remediation.

Implementation Procedure: Follow procedure for Monitoring and Reporting measure CR-1.2.

Monitoring and Reporting Action: Implement Monitoring and Reporting Action specified in CR-1.2.

Monitoring Responsibility: City of Emeryville Planning Director

Monitoring Schedule: As specified in Monitoring and Reporting CR-1.2.

Mitigation CR-1.7

Description of Measure: The spoils from the area excavated in 1992 at the corner of Hollis Street and Park Avenue should be examined by an archaeologist for evidence of Gold Rush occupation or other cultural resources.

Implementation Procedure: Follow procedure for Monitoring and Reporting measure CR-1.2.

Monitoring and Reporting Action: Implement Monitoring and Reporting Action specified in CR-1.2.

Monitoring Responsibility: City of Emeryville Planning Director

Monitoring Schedule: As specified in Monitoring and Reporting CR-1.2.

Mitigation CR-1.8

Description of Measure: Under no circumstances should the land owner, project sponsor, contractor, or other interested parties give permission to or tolerate artifact collection or excavation by anyone, other than a qualified archaeologist.

Implementation Procedure: Follow procedures for Monitoring and Reporting measure CR-1.2.

Monitoring and Reporting Action: Implement Monitoring and Reporting Action specified in CR-1.2.

Monitoring Responsibility: City of Emeryville Planning Director

Monitoring Schedule: As specified in Monitoring and Reporting measure CR-1.2.

Mitigation CR-1.9

- Description of Measure:** A security system should be installed, if demolition or excavation activities reveal evidence of significant archaeological resources, including trash deposits.
- Implementation Procedure:** Follow procedures for Monitoring and Reporting measure CR-1.2.
- Monitoring and Reporting Action:** Implement Monitoring and Reporting Action specified in CR-1.2.
- Monitoring Responsibility:** City of Emeryville Planning Director
- Monitoring Schedule:** As specified in Monitoring and Reporting measure CR-1.2.

Mitigation CR-1.10

- Description of Measure:** Results of any testing procedures, monitoring, and other mitigation measures, should be analyzed and presented in a report of findings by a qualified archaeologist.
- Implementation Procedure:** Follow procedures for Monitoring and Reporting measure CR-1.2.
- Monitoring and Reporting Action:** Implement Monitoring and Reporting Action specified in CR-1.2.
- Monitoring Responsibility:** City of Emeryville Planning Director
- Monitoring Schedule:** As specified in Monitoring and Reporting measure CR-1.2.

Prehistoric and Historic Archaeological Resources Impacts - Future Expansion

Mitigation CR-2

- Description of Measure:** The mitigation measures outlined above for Phase I should be implemented in the Future Expansion phase in order to mitigate potentially significant impacts to a less than significant level.
- Implementation Procedure:** Follow procedures for Monitoring and Reporting measures CR-1.1 and CR-1.2.
- Monitoring and Reporting Action:** Implement Monitoring and Reporting Action specified in CR-1.1 and CR-1.2.

Monitoring Responsibility: City of Emeryville Planning Director

Monitoring Schedule: As specified in Monitoring and Reporting measures CR-1.1 and CR-1.2 as applied to the Future Expansion phase.

Historic Resources Impacts - Phase I

Mitigation CR-3.1

Description of Measure: Incorporate some or all of the Del Monte Plant #35 front elevation on Park Avenue.

Implementation Procedure: The Preliminary and Final Development Plans submitted for Phase I will reflect the incorporation of any portion of the Del Monte Plant #35 building that has been included in the project.

Monitoring and Reporting Action: Review the Preliminary and Final Development Plans for compliance with this mitigation measure.

Monitoring Responsibility: City of Emeryville Planning Director

Monitoring Schedule: Prior to approval of the Preliminary and Final Development Plans for Phase I by City Council.

Mitigation CR-3.2

Description of Measure: Prior to demolition of all or part of Del Monte Plant #35, the building should be documented according to Historic American Building Survey (HABS) standards.

Implementation Procedure: Kaiser shall retain a qualified architectural historian to conduct a Historic American Building Survey (HABS) of the Del Monte Plant #35. The HABS would include archival quality, large format photographs of the exterior and interior of the building. Kaiser would be responsible for donating copies of the documentation with original photo negatives to a major public historical archive, such as the Bancroft Library at the University of California, Berkeley, or the Oakland History Room in the Oakland Main Library. Alternatively, the HABS documentation would be displayed on the project site.

Monitoring and Reporting Action: The architectural historian will submit a letter to the Planning Director indicating that the HABS was completed for the Del Monte Building, and stating the ultimate display location for the HABS.

Monitoring Responsibility: City of Emeryville Planning Director

Monitoring Schedule: Prior to approval of the demolition permit for the Del Monte Plant #35.

Mitigation CR-4.1

Description of Measure: The design of the massing and materials of the "liner" buildings on the Phase I site should be compatible with the design and materials that characterize the surrounding historic structures.

Implementation Procedure: The Preliminary and Final Development Plans submitted for Phase I will reflect that the design and materials of the "liner" buildings are compatible with the surrounding historic structures.

Monitoring and Reporting Action: Review the Preliminary and Final Development Plans for compliance with this mitigation measure.

Monitoring Responsibility: City of Emeryville Planning Director

Monitoring Schedule: Prior to approval of the Preliminary and Final Development Plans for Phase I by City Council.

Historic Resources Impacts - Future Expansion

Mitigation CR-5.1

Description of Measure: Future Expansion at an alternative location would avoid the demolition of the two buildings at the corner of Hollis and 45th Streets.

Finding: This measure cannot be implemented as the project is proposed. This mitigation measure will be reconsidered with the submittal of the Final Development Plan for the Future Expansion phase.

Mitigation CR-5.2

Description of Measure: The front facades of these buildings have an urban design value as part of this area of 1920s industrial buildings. By incorporating the facades of these buildings in the project, with the new buildings set back from the street, the project's significant effects would be reduced.

Implementation Procedure: The Final Development Plans submitted for the Future Expansion phase will reflect the preservation of any portion

of the 1266-1290 45th Street and 4512-4514 Hollis Street buildings that have been incorporated into the project.

Monitoring and Reporting Action: Review the Preliminary and Final Development Plans for compliance with this mitigation measure.

Monitoring Responsibility: City of Emeryville Planning Director

Monitoring Schedule: Prior to approval of the Preliminary and Final Development Plans for the Future Expansion phase by City Council.

Mitigation CR-5.3

Description of Measure: Prior to demolition of all or part of the Hollis and 45th Street buildings, these buildings should be documented according to Historic American Building Survey standards.

Implementation Procedure: Kaiser shall retain a qualified architectural historian to conduct a Historic American Building Survey (HABS) of the 1266-1290 45th Street and 4512-4514 Hollis Street buildings. The HABS would include archival quality, large format photographs of the exterior and interior of the building, and would be submitted to the City. Kaiser would be responsible for donating copies of the documentation with original photo negatives to a major public historical archive, such as the Bancroft Library at the University of California, Berkeley, or the Oakland History Room in the Oakland Main Library. Alternatively, the HABS documentation would be displayed on the project site.

Monitoring and Reporting Action: The architectural historian would submit a letter to the Planning Director indicating that the HABS was completed for the two buildings, and stating the ultimate display location for the HABS.

Monitoring Responsibility: City of Emeryville Planning Director

Monitoring Schedule: Prior to approval of the demolition permit for the 1266-1290 45th Street and 4512-4514 Hollis Street buildings in the Future Expansion phase.

URBAN DESIGN AND VISUAL RESOURCES (pp. 278-291)

Impacts to the Visual Character and Obstruction to Views - Phase I

Mitigation Vis-1.1

- Description of Measure:** Implement the Kaiser Permanente Medical Center Urban Design Guidelines as adopted by the Emeryville Planning Commission on August 26, 1993. The requirements of the Urban Design Guidelines have been incorporated into the project design.
- Implementation Procedure:** The Preliminary and Final Development Plans submitted for Phase I will reflect the requirements of the Urban Design Guidelines as specified in the August 26, 1993 City of Emeryville Recommended Urban Design Guidelines for the Kaiser Permanente Medical Center in Emeryville.
- Monitoring and Reporting Action:** Review the Preliminary and Final Development Plans for compliance with the Urban Design Guidelines.
- Monitoring Responsibility:** City of Emeryville Planning Commission to recommend approval to City Council.
- Monitoring Schedule:** Prior to approval of the Preliminary and Final Development Plans for Phase I by City Council.

Impacts to the Visual Character and Obstruction to Views - Future Expansion

Mitigation Vis-2.1

- Description of Measure:** Implement the Kaiser Permanente Medical Center Urban Design Guidelines as adopted by the Emeryville Planning Commission on August 26, 1993. The requirements of the Urban Design Guidelines have been incorporated into the project design.
- Implementation Procedure:** The Preliminary and Final Development Plans submitted for the Future Expansion phase will reflect the requirements of the Urban Design Guidelines as specified in the August 26, 1993 City of Emeryville Recommended Urban Design Guidelines for the Kaiser Permanente Medical Center in Emeryville.
- Monitoring and Reporting Action:** Review the Preliminary and Final Development Plans for compliance with the Urban Design Guidelines.

Monitoring Responsibility: City of Emeryville Planning Commission to recommend approval to City Council.

Monitoring Schedule: Prior to approval of the Preliminary and Final Development Plans for the Future Expansion phase by City Council.

Kaiser Permanente Emeryville Medical Center

Draft Recommendations

Transportation Systems Management Program

Revised September 22, 1994

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Kaiser Permanente Emeryville Medical Center

Transportation Systems Management Recommendations

Introduction

The proposed Kaiser Permanente Emeryville Medical Center will have an impact on transportation systems around the project site. The Draft Environmental Impact Report (DEIR) contains provisions for a Transportation System Management (TSM) Program for the project that would reduce freeway and roadway impacts. The DEIR projects a trip reduction rate of 15% resulting from TSM activities. This report contains recommendations that will meet or exceed the 15% reduction when fully implemented.

Kaiser Permanente (KP) is committed to minimizing the traffic impacts of the project. This document, prepared by KP transportation staff, outlines recommended elements of a comprehensive Transportation Systems Management program for the project, which will significantly reduce vehicle trips made by employees, physicians, members, visitors, volunteers, and others who will travel to the site.

KP's commitment to reducing vehicle trips through TSM is a regionwide effort, guided by the following excerpt of a policy adopted in April 1993.

"It is the policy of the Kaiser Permanente Medical Care Program of Northern California to operate a proactive and results-oriented transportation management program. This program applies trip reduction and clean air measures to all activities which result in motor vehicle trips."

A complete copy of the policy is provided as Attachment #2. KP has the resources and experience to design and implement a comprehensive trip reduction program for the Emeryville project. For a description of KP's programs now in place at the Oakland Medical Center, see Attachment #3.

Tailoring a Program for the Emeryville Project

The recommended TSM program features contained in this report are tailored to the opportunities and challenges of the Emeryville project. The key to successful TSM programming is to create the right *mix of strategies* for each site based on certain influencing factors.

Four influencing factors were considered in devising the recommended TSM program:

1. Site characteristics (surrounding density, transit availability, freeway access, level of congestion, parking cost and availability, etc.)

2. Employee characteristics (residential clusters, travel distance, access to transit/rail, work schedule, special transportation needs, etc.)
3. Management support (work hour flexibility, commitment to trip reduction, resource allocation, etc.)
4. Member/visitor characteristics (trip origin, distance, scheduling options, access to transit/rail, etc.)

The program is designed to be applied in a manner that results in the most trip reduction given unique site characteristics. Program elements can be focused on gaining the highest results when most needed. For example, the heaviest traffic is projected to occur during the Friday afternoon peak hours, therefore, alternative work hours for employees can emphasize trip reduction on Friday afternoons. KP will also capitalize on characteristics that represent opportunities, such as the fact that member trips occur predominantly outside the morning peak.

Parking characteristics are considered in the TSM program. Based on data from KP's medical centers with paid parking such as Oakland, the average duration for member parking is one hour and fifteen minutes. The average duration of employee parking is nine hours.

Working with the City and neighboring employers through a Transportation Management Association on promising programs such as a BART shuttle is an important part of KP's planned TSM activities.

Exceeding Mandatory Requirements

Some trip reduction activities are required by air quality and congestion management laws. The City of Emeryville has taken responsibility for implementing Regulation 13 of the Bay Area Air Quality Management District through a local ordinance. This and similar laws focus on reducing morning peak hour employee trips at large employment sites. KP's programs will extend well beyond these requirements, since trips made by members and visitors are a much higher percentage of total trips than employee commute trips. Therefore, the elements outlined in this document comprise a program that will mitigate trips which would not be required through employer mandates.

Mandated trip reduction targets escalate through 1998, and are expressed as the Average Vehicle Ridership (AVR). AVR is the number of employees and physicians who start work between 6:00 and 10:00 am Monday through Friday, divided by the number of vehicles those employees bring to the site. Peak hours for regulatory calculations are twice as long as peak hours used in the trip generation tables in the Draft EIR. Today, the Emeryville average AVR is approximately 1.08, which equates to 108 peak hour employees arriving per every 100 vehicles. The AVR target for 1998 and beyond is 1.35.

At project buildout, there will be an estimated 2,898 employees and physicians subject to the regulation (70% of the projected employee population of 4,140). At the average AVR, these employees would be responsible for 2,683 inbound vehicle trips during the morning (2,898 / 1.08). At the 1998 target of 1.35 AVR, vehicle trips would be reduced to 2,147 (2,898 / 1.35). This is a reduction of 536 inbound trips, 1,072 total daily trips (inbound and outbound), or 3.4% of the total 31,355 trips at buildout.

Recommendations and Expected Results

Attachment #1 contains a table and description of trip reduction strategies that will be considered by KP. The strategies are designed to work together to achieve trip reduction targets. It is not possible to accurately quantify the trip reduction impact of each strategy independently of the others, however, each strategy has been assigned a level of effectiveness and priority.

The market segments (customers) for KP's TSM program are:

- employee and physician commuters, arriving 6:00 to 10:00 am (regulated trip reduction)
- employee and physician commuters, arriving outside the morning peak
- employees and physicians making non-commute trips (to other KP facilities, lunch time travel, etc.)
- members and visitors traveling to the facility

KP transportation staff estimates that the combined impact of adopting all of the strategies will result in **total trip reduction of 15%**, or a reduction of 4,703 daily trips at buildout. The 15% includes the 3.4% trip reduction that will result from meeting regulatory targets, with non-mandatory efforts resulting in an additional 11.6% trip reduction.

KP can commit to 15% trip reduction for several reasons. First, the two most powerful tools in trip reduction are parking pricing, and financial incentives to use alternatives to the single-occupant car. The strength of these strategies is recognized in the Bay Area Air Quality Management District's Plan Guidance which shows that an employer can comply with Regulation 13 just by offering one or the other (along with a Guaranteed Ride Home program). Each of these elements reduce trips as separate strategies, and together they can account for a high level of trip reduction. These two strategies will be applied to members and visitors as well as to employees.

Second, trip reduction potential is greatly enhanced if the facility is designed in a way that makes the use of transportation alternatives easy, convenient and safe. KP's TSM program includes a number of design features (travel kiosks, bus and shuttle staging areas, shower facilities, etc.) that will attract individuals to carpooling, transit, walking, bicycling, and telecommuting. Again, many of these features are effective in eliminating both member and employee trips.

Third, on site services make it less necessary to have access to a car to go to and from the site, and to make trips during the day. A recent study showed that the most important on site amenities for trip reduction include banking services, a cafeteria, and postal services. KP's program includes these and other services will enhance trip reduction potential.

Closing

Kaiser Permanente can mitigate traffic congestion and air pollution impacts of the project through a comprehensive and well-implemented TSM program. By specifying program elements early in the project planning and approval stages, the facility can include certain design features that will enhance the use of transportation alternatives. Additionally, KP can inform transferring and newly hired employees and physicians of the TSM programs as they assess travel options, and members can be advised of their options as part of the outreach about the new facility. New members can be advised of transportation options as they are oriented to services at the facility.

Attachments

Potential Trip Reduction Strategies

Kaiser Permanente Proposed Emeryville Medical Center

Facility Features	Estimated Start Up Cost	Annual Operating Cost *	Trip Reduction Effectiveness	Priority
Bicycle Maintenance Area	\$1,000	\$500	Med	Med
Bicycle Parking	\$50,000	\$2000	Med	High
Building Orientation	in design	\$0	High	High
Bus and Shuttle Stops and Shelters	in design	\$0	High	High
Electric Charging Facilities	\$5 K	TBD	Low	Low
Shower Facilities	in design	TBD	High	High
Sidewalks/Pedestrian Pathways	in design	\$0	High	High
Teleconferencing Facilities	in design	TBD	High	High
Travel Kiosk (self-service)	\$15,000	\$1,200	High	High
TSM Staffed Information Center	in design	\$2,500	High	High
On Site Services				
On site services may include: Cafeteria - full service Kai-perm office (credit union)/ ATM svc. Employee Services (theater tickets, etc.) Fitness facility Postal services Sundry store, photo developing, cleaners, etc	TBD	TBD <i>Costs may be paid by vendor or shared by KP</i>	Med	Med
Communication/Partnerships				
Employee Transportation Task Force	\$1,000	\$1000	High	High
Community Transportation Task Force	\$1,000	\$1000	Med	High
Public Awareness Campaign	\$7,500	\$7,500	Med	High
Senior/Elder Advisory Group	\$1,000	\$1000	Med	High
Transportation Management Association	\$5,000	TBD	Med	High

* "Costs" are direct, nonpayroll expenses (except for TSM Coordinator staff positions)

Trip Reduction Strategies for Employees and Physicians	Estimated Start Up Cost	Annual Operating Cost	Trip Reduction Effectiveness	Priority
TSM Coordinator/Mgr (2 FTEs)	(recruit)	\$110,000 (incl ben)	High	High
Awards and Prizes	n/a	\$7,000	High	High
Bicycle Loaner Program	\$1,000	\$500	Med	Med
Carpool/Vanpool Ridematching & Assist.	\$200	\$1,000	High	High
Carpool discounted parking rates	\$0	\$1,000	High	High
Communication (LED displays, e-mail, etc.)	\$6,000	\$500	Med	High
Company Vehicles (dual fuel)	\$15 K/veh	\$.29/mi	High	High
Day Care	TBD	TBD	Med	High
Employee Orientations	\$1,000	\$2,000	High	High
Guaranteed Ride Home	\$200	\$5,000	High	High
Housing (apartment) Referrals	\$0	staff time only	Low	Low
Information Hotline (recorded message)	\$500	staff time only	High	High
Newsletter	\$0	\$5,000	Med	High
Part-time and On Call Scheduling	n/a	staff time only	High	Low
Telecommuting (KP buys hardware)	\$2,500/fte	\$500/fte	Med	Med
Teleconferencing	repeat	repeat	High	High
Transit Pass Sales (on-site)	\$0	staff time only	High	High
Transit Subsidies	\$250	\$30/rider/mo	High	High
Transportation Fairs and Special Events	n/a	\$5,000	Med	Med
Work Hours, Compressed Work Week **	\$0	\$0	High	High
Work Hours, Staggered **	\$0	\$0	Med	Med
Work Hours, Off Peak **	\$0	\$0	High	Med

**** Work hour alternatives will be considered to the extent that KP's operations and union relations allow.**

Trip Reduction Strategies for Members/Visitors	Estimated Start Up Cost	Annual Operating Cost	Trip Reduction Effectiveness	Priority
TSM Coordinator/Mgr (2 FTEs)	repeat	repeat	High	High
Advocacy for Increased Transit	staff time	staff time	High	High
Home Health Care/At Home Self Care	TBD	TBD	High	High
Information Hotline	repeat	repeat	High	High
Multiple Bookings for Appointments	TBD	TBD	High	High
Newsletter Articles in <i>PFH</i>	\$0	staff time only	Med	High
Off Peak/Weekend Appointments	TBD	\$0	High	Med
Off Peak Deliveries	TBD	\$0	Med	Med
Prescription Delivery	TBD	TBD	High	High
Quick Turnaround Products	TBD	TBD	High	Med
Transit Pass Sales (on-site, not subsidized)	\$100	staff time only	Med	High
Shuttles				
Shuttles to Transit, Rail, Oakland Medical Offices, Richmond Medical Center	\$50 K/veh	\$30/hour	High	High
Lunchtime Shuttles - shared with other Emeryville employers and developers	\$5 K	\$5 K	Med	Med
Member Shuttles (home pick up service)	\$50 K/veh	\$30/hour	Med	High
Parking Management				
Parking Fees	TBD	\$100/stall (recoverable)	High	High
Phased Parking Supply	n/a	n/a	High	High
Preferential Parking for Carpools/Vanpools	\$50/stall	\$5/stall	High	High

Estimated Totals**\$500,000****\$575,000**

These totals are for information only, and do not necessarily reflect the true costs of the program. Additional research and project planning is required to develop sound cost projections.

Facility Features

Bicycle Maintenance Area

An area can be provided to staff and members to make minor bike repairs, such as fixing a flat tire and adjusting brakes. The area would be equipped with a bike stand, tool kit, and air pump.

Bicycle Parking

Bicycle parking can be in the form of racks, lockers, enclosed storage pens, or indoor storage areas. Bicycle racks located in visible, high traffic areas can provide adequate short-term security for members and visitors who bicycle to the site. However, many bicyclists do not consider racks to offer adequate protection, and for this reason, bicycle lockers or other secure storage area is recommended for employee use. Provide bicycle parking equivalent to 1-5% of the total parking.

Building Orientation

Buildings should be located near main access streets with entrances oriented to transit stops to facilitate walking and transit. Whenever possible, locate parking behind buildings so pedestrians and transit riders do not have to cross large parking lots to reach their destination.

Bus and Shuttle Stops and Shelters

Safe, weather protected transit shelters will facilitate employee and member use of transit. Transit shelters should be clean, well lighted, and provide comfortable seating. Added features might include climate control (fan for summer, heater for winter) and a security phone or button. AC Transit should be involved in the location and design of transit stops and shelters. A transit bulb or turnout may be desirable.

Electric Charging Facilities

To encourage the use of low/zero emission vehicles, provide electric charging facilities in the parking areas.

Shower Facilities

Shower facilities can encourage staff to bike, walk or jog to the work site. Shower facilities should be accessible to all staff and include clothes lockers that can be used on a long term basis by regular bicyclists and walkers. In addition, desirable amenities include full length mirrors, hair dryers, soap and shampoo dispensers, and towel service. Provide showers equivalent to 1-2% of the employee population.

Facility Features (continued)

Sidewalks/Pedestrian Pathways

Sidewalks and pedestrian pathways should be functional and aesthetically pleasing. Pathways should be direct, not curved or perpendicular to travel patterns. Pedestrian paths should be well lighted and not hidden by landscaping. Pedestrian paths should be separated from traffic, but not removed from well-traveled areas.

Teleconferencing Facilities

By communicating via video/audio hookups, physicians and employees reduce the need for trips to meetings. Members can receive health education information on walking and bicycling as it relates to health. Health education for members can also incorporate teleconferencing, allowing members to seek education at the facility most convenient to them.

Travel Kiosk

A self-serve commute and travel information kiosk will provide staff and members with easy access to transit schedules and maps, bicycle maps, and carpooling information. This service can be modeled after the successful *Wayfinder* system now being installed at Oakland Medical Center. A commute center will consist of a display board surrounded with information racks. Commute information centers should be located in high traffic areas, such as near cafeterias and main entrances.

TSM Staffed Information Center

A staffed, full service TSM center can be the one-stop-shop for transportation information and service. It should be in a location that is easily accessed by staff and members, but also secure enough to provide a location for transit ticket sales.

On-Site Amenities and Services

A variety of on-site services are being considered for the Emeryville project, including:

Cafeteria - Full Service

A variety of pleasant, low cost dining options will reduce lunchtime driving and commute trips by reducing the need and desire for employees and physicians to drive off-site during lunch breaks. A full service cafeteria (with grill, salad bar, etc.) would provide options for staff, members, and the public. A gourmet coffee cart has proven popular at other medical centers, and could be located near an outdoor seating area.

Kai-perm Office/ATM

Employees who use the credit union must now travel to Oakland Regional Offices. These trips could be reduced by offering limited Kai-perm services at Emeryville. ATM machines would likely be well used by staff and members.

Employee Services

Kaiser Permanente's Employee Services sell theater tickets and conduct promotions. By offering these services on a regular schedule at Emeryville, trips to Regional Offices would be reduced.

Fitness Facility

On-site work out facilities should include aerobic equipment (stair steppers, treadmills, etc.), weight machines, and free weights. Aerobic classes could also offered. Outdoor work out facilities can include a volleyball/basketball court, a parcource or walking trail.

Postal Service

Allowing staff to mail stamped personal mail at Kaiser Permanente can reduce the need for staff to drive to postal facilities. In addition, providing the opportunity for employees and others to purchase stamps and mail packages on-site can also reduce vehicle trips. (The post office that is near the site today is moving, making this on-site service even more valuable.)

Other On-site Services

Expand the typical hospital gift shop to a sundry store that can offer more everyday items that staff and members need. This store could also be the focal point for many on-site services, such as photo developing, dry cleaning, etc. Other services could include automobile cleaning and maintenance, and food and grocery delivery. The effectiveness of on-site services in reducing vehicle trips may not be significant, but may be justified as an employee and member service. And many of these services can be available to the public.

Communication/Partnerships

Employee Task force

Identify Kaiser Permanente staff who would like to participate on a transportation task force. These employees and physicians would help identify issues, develop effective strategies, and assist with program implementation.

Community Transportation Task Force

Kaiser Permanente could sponsor/coordinate a transportation task force that would include Kaiser Permanente employees, neighboring employers, and members of the community. The task force would discuss transportation issues and propose strategies to address these issues.

Public Awareness Campaign

There are many opportunities to promote the use of transportation alternatives to citizens in the community. Kaiser Permanente could sponsor a media campaign, resident mailing, etc.

Senior/Elder Advisory Group

Seniors are a very important customer group for the project. Kaiser Permanente can enhance transportation services to seniors by working with interested members and representatives of organizations such as United Seniors of Alameda County. This advisory group can be modeled after a similar group in existence at the Oakland Medical Center.

Transportation Management Association

Kaiser Permanente could participate in a Transportation Management Association comprised of neighboring employers and the City of Emeryville. The TMA would work together to address commute related issues such as transit service, bike access, etc.

Trip Reduction Strategies for Employees and Physicians

TSM Manager and Coordinator

A full-time, on-site TSM manager will develop, implement, and monitor TSM activities at the new facility. The TSM coordinator (a second full time employee) will be responsible for providing staff, member, and visitor TSM services.

Awards and Prizes

Staff who use commute alternatives are eligible for awards and prize drawings. In addition, prizes can be offered for participation in promotional events, such as California Rideshare Week and Bike to Work Day.

Bicycle Loaner Program

Some employers offer loaner bikes to staff who wish to try bicycle commuting, but do not own an appropriate bicycle. At the end of the loan period the bike may be offered to the employee at a significantly discounted price.

Carpool/Vanpool Ridematching and Assistance

Maintain a computer database of Kaiser Permanente employees and physicians who are interested in sharing a ride to work. Staff who request carpooling information are given a match list with the names and work phone numbers of the staff who live closest to them and work the same hours. Staff are encouraged to register for carpool matching with frequent promotions and incentives.

Changes in tax and liability laws have made it less desirable for employers to own and operate employee vanpools. However, Kaiser Permanente could provide vanpool formation assistance and subsidize empty seats.

Carpool Discounted Parking

Provide a price differential for carpool parking. Carpoolers not only would share the cost of parking, but the discount would provide a further encouragement. Carpoolers would have to arrive at the site with all passengers present qualify for the discount.

Communication

To raise the level of awareness and participation in TSM programs, communication devices such as LED displays and electronic mail would inform people of special promotions and new services.

Company Vehicles

Company vehicles could be made available for employees and physicians to drive to off-site business meetings and to make home health visits. This encourages use of commute alternatives for the morning inbound trip. Kaiser Permanente may wish to purchase dual fuel company vehicles to reduce air pollutants.

Trip Reduction Strategies for Employees and Physicians (continued)

Day Care

Nearby quality day care can impact transportation in two ways. First, carpooling with a child counts toward AVR targets. Second, parents who do not need to make an out-of-the-way stop for child care can carpool with other adults to the work destination.

Employee Orientations

The commute program can be promoted to new employees at the monthly new-hire orientations. Individual follow up with new employees and physicians can help get them into the habit of using alternatives as soon as they begin their commute to the site.

Guaranteed Ride Home

Kaiser Permanente can arrange and pay for a taxi ride home for staff who use a commute alternative and are unable to take their normal commute arrangement due to personal emergency or unanticipated overtime. This program is in place at the Oakland Medical Center.

Housing (Apartment) Referrals

Maintain a list of apartments within walking distance and arrange for a discount for Kaiser Permanente employees.

Information Hotline

This is a recorded message that staff can call to request commute and travel information. Information provided includes shuttle services, carpool match lists, transit schedules, transit pass sales dates, and bicycle routes.

Newsletter

Publish commute and travel information and promotions on a monthly basis in a TSM newsletter.

Part-time and On-Call Scheduling

Schedule part-time employees for 2-3 full days per week instead of 4-5 half days. Minimize the use of on-call employees, since on-call employees are unlikely to use commute alternatives.

Telecommuting

Employees who do not have to be at the medical center every day to perform their jobs can work from home or a remote location. Medical records clerks and advice nurses are two examples of jobs that could incorporate telecommuting. Employees can perform work by linking to the mainframe, but not all workers need that access to successfully telecommute part time.

Teleconferencing

Repeat.

Trip Reduction Strategies for Employees and Physicians (continued)

Transit Pass Sales

Sell transit passes at the TSM Information Center.

Transit Subsidies

Partially or fully subsidize the cost of transit passes for employees and physicians. This subsidy coupled with parking pricing creates a formidable price differential between driving and transit.

Transportation Fairs and Promotional Events

Host events/fairs with commute related exhibits to provide information and promote the benefits of commute alternatives. Exhibitors can include AC Transit, bicycle organizations and retailers, the City of Emeryville, RIDES, and the American Lung Association.

Participate in the following events:

- Air District's Spare the Air campaign. Notify staff of Spare the Air days via parking lot signs and voicemail messages.
- California Rideshare week. Reward staff who used a commute alternative during California Rideshare Week with a small prize and register participants for a prize drawing.
- The American Lung Association's Clean Air Week. Educate staff about the health effects of automobile-related air pollution.
- Bike-to-Work Day. Host a bicycle fair with exhibits and information on bicycling. Profile bicycle commuters in newsletter articles. Hold a prize drawing for bicycle commuters.

Work hours, Compressed Work Week *

Currently, most full-time employees work 5 days per week. Employees could be given the option to work 4/40, 9/80, or 3/36 schedules to reduce the number of days per week the employee travels to the work site.

Work hours, Staggered *

Currently, employees arrive and depart the medical center in "waves" associated with the primary work shifts. Staggered work schedules could distribute traffic more evenly by having employees report at half-hour intervals.

Work hours, Off peak *

Currently, the majority of employees start work between the peak hours of 6:00-10:00 am. Employee shifts could be changed to start before and after these peak hours. Support services such as medical transcription and housekeeping could be scheduled for evening and night shifts.

** Work hour alternatives will be considered to the extent that KP's operations and union relations allow.*

Trip Reduction Strategies for Members/Visitors (continued)

Prescription Delivery

Prescription renewals could be delivered or mailed overnight to members (similar to the service available today at Oakland Medical Center). This service could be expanded to include delivery of other supplies.

Quick Turnaround Supplies

When member visits result in the prescription of a product, such a medicine, eyeglasses, crutches, etc., the product could be made available within a reasonable time frame to avoid the need for members to make a return trip.

Transit Pass Sales

Sell transit passes at the TSM Information Center.

Shuttles

Shuttles to Transit and Other KP Destinations

Kaiser Permanente operates a successful shuttle program for staff and members from the existing Oakland facility to MacArthur BART, and a similar service could be created for Emeryville. The shuttle program could also link Emeryville to the Oakland medical offices, and to Richmond Medical Center.

Shuttles to Lunchtime Destinations

Shuttle service could also be operated between the medical center and lunchtime destinations near Powell Street.

Member Shuttles

A service that may be of value to disabled and senior members would be a member home pick up and drop off service between the medical center and nearby residents. San Francisco Medical Center offers such a service now for members who live within a certain distance of the facility and who call by 9:30 am for a ride.

Parking Management

Parking Fees

One of the most powerful tools for reducing vehicle trips is to charge fees for parking. It is important to couple a pricing program with transportation alternatives and subsidies to create options for commuters. The existing facility charges employees and physicians \$25 per month for parking, and this amount is scheduled to increase to \$40 per month by 1995, then up to market rates in the following year. It is recommended that parking fees at Emeryville be set to the rate in effect at the Oakland facility at the time of the transition of staff, or to nearby market rates, whichever is greater.

Members can also be charged fees for parking. The existing facility offers 30 minutes of free parking, and \$0.50 for each half hour after that to a maximum of \$9.50. Again, whatever rates are in effect in Oakland at the time of the transition should be applied to Emeryville, unless market rates are greater.

The general public using the retail services at the site should also be charged for parking. Transit use will be encouraged for all trip purposes.

It will be necessary to limit off-site or neighborhood parking opportunities so that people won't park elsewhere to avoid paying the fees. Residential permit parking was put in place within one-quarter mile of the existing facility as a remedy to this problem.

Phased Parking Supply

Abundant, convenient parking encourages staff and members to drive alone. For this reason, Kaiser Permanente may wish to phase the construction of planned parking. This "parking reserve" could be added if future parking demands exceed supply.

Preferential Parking for Carpools/Vanpools

Designate the most convenient spaces for carpoolers and vanpoolers. Reserve 8-10% of total employee parking for carpool parking. Carpool parking enforcement is required. Enforcement equipment such as access gates and security cameras is recommended.

***KAISER*Rider**

Transportation Management Policy

Policy Statement

It is the policy of the Kaiser Permanente Medical Care Program of Northern California to operate a proactive and results-oriented transportation management program. This program applies trip reduction and clean air measures to all activities which result in motor vehicle trips.

Purpose

Kaiser Permanente is committed to reducing air pollutant emissions and vehicle traffic congestion, and to complying with any legally applicable transportation management programs. The purpose of this policy is to administer an effective regional transportation management program, while ensuring that each facility has the flexibility to respond to local issues and concerns.

Coverage

This policy applies to all three Kaiser Permanente organizations, their facilities, departments, employees, physicians, volunteers, members, patients, vendors and others.


Provisions

Kaiser Permanente operates a regional transportation management program. The regional transportation manager is responsible for planning and coordinating the regional transportation management program, supporting facility programs, and developing regional standards under this policy.

Each facility is responsible for designating a transportation systems management (TSM) coordinator, and for developing, implementing and monitoring an appropriate and effective transportation management plan and program. All measures implemented at a given facility are to be applied equitably. Measures and their application will vary by facility, and may vary by such factors as work assignment or shift.

David G. Pockell

Walter H. Caulfield, M.D.




Experience at the Existing Oakland Medical Center

KP's TSM program at the Oakland Medical Center is a successful effort to balance travel demand with system supply by reducing trips. Following are the components of the existing program:

- On-site, fully staffed TSM office, providing personal assistance to travelers
- Free shuttle for members and employees from BART to the medical center, and between medical center buildings
- Subsidized transit tickets (\$10 per employee per month)
- Weekly on-site transit ticket sales
- Parking fees for employees and physicians (currently \$25 per month; increasing to \$40 then to market rates in the future)
- Parking fees for visitors
- Personalized ridematching lists for forming carpools and vanpools
- Free and preferential parking for carpools of three or more
- Free parking for carpools of two
- Guaranteed ride home services for users of transportation alternatives
- Secured bicycle storage facility
- Shower facility for bicyclists/walkers
- Monthly \$50 drawing for bicyclists/walkers
- Residential permit parking program to restrict parking to residents only.

The above programs create significant incentives for individuals to use alternatives to driving alone to the medical center. The shuttles are highly utilized, and carpool and transit mode shares increased substantially as a result of the programs for alternatives.

Attachment B.3
Findings of Fact Concerning Alternatives

EXHIBIT C

FINDINGS OF FACT CONCERNING ALTERNATIVES

1. Introduction

CEQA and the CEQA Guidelines require that an EIR "[d]escribe a range of reasonable alternatives to the project, or to the location of the project, which could feasibly attain the basic objectives of the project . . ." CEQA Guidelines 15126(d). If a project alternative will substantially lessen the significant environmental effects of a proposed project, the decisionmaker should not approve the proposed project unless it determines that specific economic, social, or other considerations make the project alternative infeasible. CEQA § 21002, CEQA Guidelines § 15091(3). The findings with respect to the alternatives identified in the EIR are described in this section.

2. Reasonable Range of Alternatives

The EIR analyzed a reasonable range of alternatives. As described in the Staff Report and on page III-50 and III-51 of the Responses to Comments, these included the no-project alternative; two off-site alternatives, the MacArthur/Broadway site in downtown Oakland and the Bayfront site (a portion of which is located in Oakland); a partial off-site alternative that contemplated development of the future expansion phase on the AC Transit Site; and existing General Plan Alternatives; and a reduced scale alternative. The City also considered and rejected for further analysis two other alternatives. The Ryerson site was rejected because of geographic location, size, poor site configuration and other factors. The Laney College alternative in Oakland was rejected because Kaiser had already spent considerable time trying to locate the project there, but had been rejected by the Laney College Board of Trustees.

The City's decision not to include the Fox Theater site in downtown Oakland for analysis was reasonable, given that it had already analyzed a reasonable range of alternatives. In addition, the site does not meet some of the basic objectives of the Project, including the sponsor's need for flexibility to build the medical center in phases. Because of the small size of the site, the first phase of the medical facility would have to be constructed on most of the site, and a large portion of any additional construction would likely have to be added on to of the existing construction, entailing enormous costs and inefficiencies.

It was also appropriate not to include the site because its development would involve a number of other significant development constraints, as described on page III-52 of the Responses to Comments and in the Staff Report. Finally, as also described on page III-52 and in the Staff Report, analysis of the site indicates that it would not reduce the five significant unavoidable impacts of the project, and would, in fact, potentially result in new significant impacts.

3. Description of Alternatives and Findings

A. AC Transit Alternative

1. Brief Description

The AC Transit Site Alternative would consist of substituting the AC Transit maintenance site for the proposed future expansion site (area north of 45th Street of the proposed project). A conceptual site plan of the AC Transit Site Alternative is shown in Figure 29 of Section III of the Draft EIR. This alternative would include 260,000 square feet of medical office buildings for 175 physicians and providers and a parking structure of 1,110 parking spaces, as well as an open space area and public plaza. The Berkeley Farms facility would continue to occupy the strip of property along the San Pablo Avenue frontage of the alternative AC Transit expansion Site.

2. Comparison to Project Without Mitigation

A comparison of the impacts of the AC Transit Alternative with the potentially significant and insignificant impacts of the Project, without mitigation, is provided below.

a. Land Use

Development of the Project's Future Expansion on the AC Transit site would result in a more cohesive site plan for medical center operations than the Project by placing the future medical office buildings closer to the medical office buildings on the Phase I site. The resulting change in land use type and character would not be considered significant because AC Transit currently represents an incompatible use with the surrounding land uses. In addition, the expansion of the medical center on the AC Transit site would not conflict with the City's General Plan, because the medical center would replace an incompatible existing land use with a more compatible one. In addition, this alternative would not significantly disrupt the physical arrangement of the surrounding community. The alternative would also eliminate existing noise from the AC Transit tire maintenance facility. Finally, the alternative would include a landscaped area along the western side of the site to provide a buffer between the medical center and the Emery

Bay Village residential development located to the north, to insure a compatible land use interface between Emery Bay Village and the medical center.

b. Transportation

The AC Transit Alternative would result in similar impacts to local intersections as with the Project, except that the local intersection impacts would occur at the intersection of San Pablo Avenue and 47th Street. All of the mitigations required with the existing future expansion would be required with this alternative, in addition to one of two additional mitigations to reduce impacts along 47th Street.

c. Air Quality

This alternative would have the same traffic-generated air pollutant emissions as the proposed project. The overall traffic circulation patterns would not be different than the proposed project traffic circulation patterns and therefore the air pollution emissions would be the same for this alternative as for the Project. As with the Project, this alternative would exceed the BAAQMD significant thresholds for reactive organic gases and nitrogen oxides, resulting in a significant unavoidable regional air quality impact.

d. Noise

This alternative would eliminate the potential impact associated with the rerouting of AC Transit buses during construction because the AC Transit facility would be replaced with the proposed medical center uses. Otherwise, this alternative would not result in a significant noise impact.

e. Cultural Resources

As with the project, this alternative would result in a significant unavoidable cultural resources impact resulting from the demolition of the Del Monte Plan #35 on the Phase I site. However, this alternative would avoid impacts to two contributing structures on the Future Expansion site.

f. Geology

This alternative would have similar geologic and seismic impacts as the Project. These impacts could be mitigated to a less than significant level by incorporating recommendations of a site specific geotechnical study into the building design.

g. Hazardous Materials

This alternative would not result in any new of additional impacts related to the use, storage, or disposal of hazardous materials as compared to the proposed project.

h. Public Services and Utilities

This alternative would result in the same service demands as the Project. As with the Project, this alternative may require the extension and/or upgrading of existing stormwater, sewer and water lines.

i. Employment and Housing

This alternative would not result in any additional relocations beyond those on the Phase I site, since it would only be implemented in AC Transit vacates its present site on 45th Street and the site is available for the medical center. The alternative would avoid the acquisition and relocation of 11 live/work units and 19 viable businesses that would occur with the Future Expansion site. As with the Project, the alternative would result in a beneficial impact on employment growth.

j. Flooding, Drainage and Water Quality

As with the Project, this alternative would not result in impacts to water quality provided that best management practices required by the NPDES program are undertaken.

k. Soil and Groundwater Contamination and Cleanup

As with the Project, this alternative would require remediation of the project site in accordance with applicable regulations. If excavation and/or dewatering is necessary, contaminated groundwater would have to be discharged appropriately.

l. Urban Design and Visual Characteristics

Medical center uses on the AC Transit Site would not substantially deteriorate the visual character of the area or obstruct scenic views from areas surrounding the site. This alternative would not have a significant visual impact.

3. Findings

This alternative is hereby rejected for the following reasons:

a. Because the site is not available to the project applicant, the alternative presently is infeasible.

b. The mitigation measures incorporated into the Project will substantially mitigate or avoid most of the potentially significant environmental effects of the Project, except those potentially significant impacts which are described herein as unavoidable or irreversible, thereby diminishing or obviating the perceived mitigating or avoiding benefits of approving this alternative.

B. Oakland MacArthur Alternative

1. Brief Description

The Oakland MacArthur Broadway Site Alternative is located in the City of Oakland and would consist of constructing a new medical center on the block bounded by Interstate 580, Broadway, West MacArthur Boulevard and Piedmont Avenue (the MacArthur Broadway Center), and redeveloping six acres of the existing Kaiser property across West MacArthur Boulevard for parking and medical office uses. This alternative would require the demolition of the existing hospital building on the north side of MacArthur Boulevard and construction of a new medical office building and parking structure. The Oakland MacArthur Broadway Site Alternative would occupy a total of 13 acres, including six acres of the existing hospital site north of MacArthur Boulevard and the seven acre block on the south side of MacArthur Boulevard across from the existing hospital site. Several buildings at the existing Kaiser Permanente Medical Center would remain.

2. Comparison to Project Without Mitigation

A comparison of the impacts of this alternative with the potentially significant and insignificant impacts of the Project, without mitigation, is provided below.

a. Land Use

Development of this alternative would result in a greater level of development intensity, but would generally be compatible with the scale and intensity of the existing land uses on the site. The alternative would result in the relocation of all of the existing office and retail business in the MacArthur Broadway Center and the existing residential uses northwest of Piedmont Avenue and I-580. The impacts to businesses would be roughly comparable to the business relocations of the proposed project, while the alternative would result in fewer residential displacements and loss of existing housing stock.

b. Transportation

This alternative would increase vehicular traffic in the Broadway/MacArthur vicinity, and would affect intersections along MacArthur Boulevard, Broadway Avenue, Piedmont Avenue, and Interstate 580 on- and off-ramps. Level of service impacts may be potentially significant during peak periods. This alternative is comparable to the proposed project in terms of the provision of parking spaces.

c. Air Quality

This alternative would result in a similar increase in traffic generation, thus also resulting in a regional air quality impact.

d. Noise

This alternative would result in construction noise similar to that of the Project. Because the site is near Interstate 580, freeway noise would be a potentially significant impact to the hospital uses on the site.

e. Cultural Resources

This alternative would have a reduced effect on architecturally and historically significant structures compared to the proposed project, and would not be expected to result in a significant impact to cultural resources.

f. Geology

This alternative would have similar geologic and seismic impacts as the Project. These impacts could be mitigated to a less than significant level by incorporating recommendations of a site specific geotechnical study into the building design.

g. Hazardous Materials

This alternative would not result in any new or additional impacts related to the use, storage, or disposal of hazardous materials as compared to the proposed project.

h. Public Services and Utilities

This alternative would result in the same service demands as the proposed project. As with the Project, this alternative may require the extension and/or upgrading of existing stormwater, sewer, and water lines.

i. Employment and Housing

This alternative would result in similar demands for housing as with the Project. Under this alternative, the Project applicant would not necessarily implement a housing program similar to that required for the Project, which would eliminate the benefits of this program.

j. Flooding, Drainage and Water Quality

As with the Project, this alternative would not result in impacts to water quality provided that best management practices required by the NPDES program are undertaken.

k. Soil and Groundwater Contamination and Cleanup

As with the Project, this alternative site would probably require remediation in accordance with applicable regulations. If excavation and/or dewatering is necessary, contaminated groundwater would have to be discharged appropriately.

l. Urban Design and Visual Characteristics

This alternative would increase the amount of mid-rise structures in the area by addition two 10-story medical office buildings, an eight-story hospital and a 13-level parking structure. These buildings would potentially exceed allowable height limits and would create a noticeable visual change in the area. Unlike the Project, the height and intensity of these structures under this alternative would result in potentially significant visual impacts associated with the obstruction of views.

3. Findings

This alternative is hereby rejected for the following reasons:

a. This alternative would not achieve the project objective of providing health care education and services to the Emeryville community. This alternative also would not meet the project objective of improving blighted conditions on the proposed site.

b. Because the Project would be constructed on less land area, it would be required to be constructed at a greater height than the Project. This would reduce the Project sponsor's ability to construct the Project in phases.

c. The mitigation measures incorporated into the Project will substantially mitigate or avoid most of the potentially significant environmental effects of the Project, except those potentially significant impacts which are described herein as unavoidable or irreversible, thereby diminishing or obviating the perceived mitigating or avoiding benefits of approving this alternative.

d. As more fully discussed in the Statement of Overriding Considerations, many of the environmental, social, economic and other benefits derived from the Project would not be obtained if this alternative were adopted.

C. Bayfront Site Alternative

1. Brief Description

The Bayfront Site Alternative consists of developing the proposed project on an approximately 35 acre site located north of the I-580/I-80 interchange, between the railroad tracks to the east and the future Shellmound Avenue to the west. The southern sector of the Bayfront site is located in the corporate limits of the City of Oakland, whereas the majority of the site lies in the City of Emeryville. This alternative would consist of the same level of development as the proposed project including a hospital, medical office buildings, central plant, retail and office space, and the parking structures.

2. Comparison to Project Without Mitigation

A comparison of the impacts of this alternative with the potentially significant and insignificant impacts of the Project, without mitigation, is provided below.

a. Land Use

As with the Project, this alternative would require a General Plan Amendment from Mixed Use to Commercial. This alternative would also require implementation of Urban Design Guidelines similar to those being adopted as part of the Project.

b. Transportation

This alternative would generate the same amount of traffic as the Project and would generally result in similar overall traffic circulation impacts. However, this alternative would result in greater impacts at several of the intersections in the immediate vicinity of the Bayfront site, because of the site access constraints. As a result, this alternative would require

significant changes or additions to the existing transit system to provide adequate service to the site.

c. Air Quality

This alternative would result in higher vehicle emissions due to the potential for greater level of service impacts at the intersections described above. This alternative would result in the same regional air quality impact as the Project.

d. Noise

Because this alternative would be located adjacent to Interstate 80, freeway noise would be an additionally significant impact to the hospital uses on the site. However, this alternative would avoid the noise impacts to the proposed hospital associated with existing AC Transit operations.

e. Cultural Resources

This alternative would have a reduced effect on architecturally and historically significant structures compared to the Project, and would not be expected to result in a significant impact to cultural resources.

f. Geology

This alternative would have similar geologic and seismic impacts as the Project. These impacts could be mitigated to a less than significant level by incorporating recommendations of a site specific geotechnical study into the building design.

g. Hazardous Materials

This alternative would not result in any new or additional impacts related to the use, storage, or disposal of hazardous materials as compared to the Project.

h. Public Services and Utilities

This alternative would result in the same service demands as the proposed project. As with the Project, this alternative may require the extension and/or upgrading of existing stormwater, sewer, and water lines to serve the project.

i. **Employment and Housing**

This alternative would result in similar demands for housing as with the Project. Under this alternative, the Project applicant likely would implement a housing program similar to that required for the Project.

j. **Flooding, Drainage and Water Quality**

As with the Project, development of this alternative would not result in impacts to water quality provided that best management practices required by the NPDES program are undertaken.

k. **Soil and Groundwater Contamination and Cleanup**

As with the Project, this alternative would probably require site remediation in accordance with applicable regulations. If excavation and/or dewatering is necessary, contaminated groundwater would have to be discharged appropriately.

l. **Urban Design and Visual Characteristics**

This alternative would likely result in a positive visual impact, given the current visual character of the site. However, construction of mid-rise structures on this site would obstruct views to the bay from the commercial industrial properties located east of the site.

3. **Findings**

This alternative is hereby rejected for the following reasons:

a. This alternative does not meet the project objective of improving blighted conditions on the proposed project site.

b. The mitigation measures incorporated into the Project will substantially mitigate or avoid most of the potentially significant environmental effects of the Project, except those potentially significant impacts which are described herein as unavoidable or irreversible, thereby diminishing or obviating the perceived mitigating or avoiding benefits of approving this alternative.

c. As more fully discussed in the Statement of Overriding Considerations, many of the environmental, social, economic and other benefits derived from the Project would not be obtained if this alternative were adopted.

D. No Build Alternative

1. Brief Description

The No Build Alternative consists of maintaining the existing land uses on the site in their current condition. Of the property located with the Phase I site, approximately 17 acres of the 20 acre site would remain vacant (the Del Monte plant and the former fire station), or would become vacant in the next several years. The uses include a Standard Brands Paint retail outlet, three small restaurants, a Masonic Lodge and 21 residential units. The Future Expansion site land uses, which include warehouse, small light industrial, retail and service uses, and 11 live/work units are also assumed to remain intact.

2. Comparison to Project Without Mitigation

A comparison of the impacts of this alternative with the potentially significant and insignificant impacts of the Project, without mitigation, is provided below.

a. Land Use

This alternative would not eliminate existing blight on the Phase I site. It would not result in the demolition of existing businesses and residences, and would reduce the potential land use intensification and visual impacts associated with the project. The alternative would allow the site to remain available as a potential housing site.

b. Transportation

This alternative would avoid the impacts to other intersections in the project area that would result in additional vehicle trips to and from the project site resulting from the Project. This alternative also would avoid any impacts on existing bus operations at the AC Transit facility resulting from the closure of Watts Street.

c. Air Quality

This alternative would avoid the vehicular emissions associated with the Project. Regional air quality impacts associated with the increased vehicle trips associated with the Project also would be avoided.

d. Noise

This alternative would avoid the elevated noise levels associated with traffic generated by the Project.

e. **Cultural Resources**

This alternative would avoid the potential impacts to architecturally and historically significant resources associated with the Project.

f. **Geology**

This alternative would not result in the exposure of the medical center to soils, geologic and seismic hazards.

g. **Hazardous Materials**

This alternative would not involve the use, storage, or disposal of hazardous materials as compared to the Project.

h. **Public Services and Utilities**

This alternative would not increase the demand for public services and utilities.

i. **Employment and Housing**

This alternative would not result in an increase in employment, nor would it result in an increase in the demand for housing. Unlike the Project, this alternative would not involve implementation of a housing program, which would eliminate the benefits of this program.

j. **Flooding, Drainage and Water Quality**

This alternative would involve the same quantity of surface runoff as presently exists. However, the existing uses on the site are not currently subject to NPDES requirements described in the EIR. Therefore, this alternative does not ensure implementation of water quality control measures.

k. **Soil and Groundwater Contamination and Cleanup**

Under this alternative, remediation of soil and groundwater contamination on the Phase I site may not take place.

l. **Urban Design and Visual Characteristics**

This alternative would avoid alterations to the visual character of the Project site and therefore would not result in an increase in development

intensities on the Project site. However, this alternative also will not improve the blighted conditions on the Project site.

3. Findings

This alternative is hereby rejected for the following reasons:

a. This alternative would not achieve the Project objectives of improving the blighted conditions on the Project site, and providing health care education and services to the Emeryville community and Kaiser members in the Bay Area.

b. The mitigation measures incorporated into the Project will substantially mitigate or avoid most of the potentially significant environmental effects of the Project, except those potentially significant impacts which are described herein as unavoidable or irreversible, thereby diminishing or obviating the perceived mitigating or avoiding benefits of approving this alternative.

c. As more fully discussed in the Statement of Overriding Considerations, many of the environmental, social, economic and other benefits derived from the Project would not be obtained if this alternative were adopted.

E. Existing General Plan Alternative

1. Brief Description

The Existing General Plan Alternative consists of development in accordance with current General Plan designations for the site, which is Medium Density Residential, Commercial and Mixed Use. A development scenario was assumed for this alternative which would include the development of 400 housing units on the Phase I site, plus 20,000 square feet of retail and 25,000 square feet of office uses. The Future Expansion site would be assumed to contain the existing land uses, plus an additional 100,000 square feet of retail uses.

2. Comparison to Project Without Mitigation

A comparison of the impacts of this alternative with the potentially significant and insignificant impacts of the Project, without mitigation, is provided below.

a. Land Use

As with the Project, this alternative would displace the existing 21

residential units and 5 viable businesses on the Phase I site. No additional displacement would occur since the uses on the Future Expansion site would remain with this alternative. Development under this alternative likely would be more compatible with the existing architecture in the surrounding areas.

b. Transportation

This alternative would reduce traffic circulation impacts associated with the Project by generating approximately 80% less peak hour traffic. This alternative would result in the same impact to bus circulation at the AC Transit site because residential development assumes closure of Watts Street.

c. Air Quality

This alternative would result in a 75% reduction in project trip generation, thereby resulting in a corresponding decrease in air emissions and a smaller contribution to regional emissions.

d. Noise

This alternative would result in a potentially significant noise impact, as nighttime noise from AC Transit operations could disturb future residents on the Phase I site.

e. Cultural Resources

This alternative would result in impacts to architecturally and historically significant resources similar to those associated with the Project.

f. Geology

This alternative would have similar geologic and seismic impacts as the Project. These impacts could be mitigated to a less than significant level by incorporating recommendations of a site specific geotechnical study into the building design.

g. Hazardous Materials

Development of this alternative would not result in the use, storage, or disposal of hazardous materials.

h. Public Services and Utilities

Development of this alternative would result in increases in

demands for public services and utilities as compared to existing conditions. Residential development associated with this alternative would increase the demand for school, police and fire services.

i. Employment and Housing

This alternative would allow for construction of housing on the Project Site, thereby allowing the City to meet its fair share housing requirements. However, as described in the EIR, past efforts to construct housing on the Project Site have been unsuccessful.

j. Flooding, Drainage and Water Quality

As with the Project, development of this alternative would not result in impacts to water quality provided that best management practices required by the NPDES program are undertaken.

k. Soil and Groundwater Contamination and Cleanup

As with the Project, this alternative site would probably require remediation in accordance with applicable regulations. If excavation and/or dewatering is necessary, contaminated groundwater would have to be discharged appropriately.

l. Urban Design and Visual Characteristics

This alternative would result in development of two to four story structures compatible with the scale of surrounding structures.

3. Findings

This alternative is hereby rejected for the following reasons:

a. It would not achieve the project objective of providing health care education and services to the Emeryville community and Kaiser members in the Bay Area.

b. The mitigation measures incorporated into the Project will substantially mitigate or avoid most of the potentially significant environmental effects of the Project, except those potentially significant impacts which are described herein as unavoidable or irreversible, thereby diminishing or obviating the perceived mitigating or avoiding benefits of approving this alternative.

c. As more fully discussed in the Statement of Overriding Considerations, many of the environmental, social, economic and

other benefits derived from the Project would not be obtained if this alternative were adopted.

B. Smaller Project Alternative

1. Brief Description

The Smaller Project Alternative would consist of constructing only Phase I of the Project. Expansion of the medical center facilities would not occur on the Future Expansion site. Existing land uses on the Future Expansion site would not be removed or altered. Development of this alternative would include the hospital, medical office buildings, central plant, retail and office uses, and parking structures that are part of Phase I of the Project.

2. Comparison to Project Without Mitigation

As described in the EIR, the impacts associated with this alternative would be the same as those identified for Phase I of the Project. This alternative would avoid the adverse impacts associated with development of Future Expansion and the increased development on the Phase I site that would occur with the proposed project in the Future Expansion phase. The impacts that would be avoided with this alternative as described on page 328 of the DEIR.

3. Findings

This alternative is hereby rejected for the following reasons:

a. This alternative would only partially achieve the project objective of providing health care education and services to the Emeryville community. This alternative also would not meet the project sponsor's objective of providing appropriate flexibility for future expansion, which was one of the sponsor's primary criteria in selecting the Project site.

b. This alternative would not provide the level of benefits to the City of Emeryville associated with the Project, and would provide substantially lower revenues associated with the payment of fees to the City.

c. The mitigation measures incorporated into the Project will substantially mitigate or avoid most of the potentially significant environmental effects of the Project, except those potentially significant impacts which are described herein as unavoidable or irreversible, thereby diminishing or obviating the perceived mitigating or avoiding benefits of approving this alternative.

d. As more fully discussed in the Statement of Overriding Considerations, many of the environmental, social, economic and other benefits derived from the Project would not be obtained if this alternative were adopted.

Attachment B.4
Statement of Overriding Considerations

EXHIBIT D

STATEMENT OF OVERRIDING CONSIDERATIONS

Pursuant to Public Resources Code section 21081 and CEQA Guideline sections 15091 et seq., the City Council of the City of Emeryville adopts and makes the following statement of overriding regarding the remaining unavoidable impacts of the Project and the anticipated economic, social and other benefits of the Project.

A. Significant unavoidable impacts.

With reference to the above findings and in recognition of those facts which are included in the record, the City has determined that the Project would cause significant unavoidable impacts to traffic and circulation, air quality, historic architectural resources, on-street parking, and short-term and cumulative construction impacts, as disclosed in the Final EIR prepared for this Project. These impacts cannot be fully mitigated by changes or alterations to the Project.

1. Traffic and circulation. The Project would result in levels of service E or higher at six intersections by the year 2000. By the year 2010, buildout of the Project would result in significant unavoidable impacts at 16 intersections.

2. Air quality. Project emissions of ozone-precursor pollutants would exceed the Regional Air Quality Control Board's threshold criterion of 150 pounds/day. The Project would also contribute to cumulative increases in carbon monoxide and ozone-precursor emissions.

3. Historic architectural resources. The Project would result in the demolition of the Del Monte Plant #35, located on the Phase 1 site, which is individually eligible for the National Registry of Historic Places and is a contributing structure to the eligible Emeryville Historic District, as well as two historic resources located on the Future Expansion site which are contributing structures to that historic district.

4. On street parking. Approximately 140 on street parking spaces would be removed.

5. Short term and cumulative construction impacts. The Project would result in significant unavoidable construction noise impacts.

B. Overriding Considerations.

The City Council specifically adopts and makes this Statement of Overriding Considerations that, as part of the approval provisions, the Project has eliminated or substantially lessened all significant effects on the environment where feasible, and finds that the remaining unavoidable impacts of the Project are acceptable in light of the environmental, economic, social and other considerations set forth herein because the benefits of the Project outweigh the significant and adverse impacts of the Project. The Council finds that each of the overriding considerations set forth below constitutes a separate and independent ground for finding that the benefits of the Project outweigh its significant adverse environmental impacts and is an overriding consideration warranting approval of the Project. These matters are supported by evidence in the record that includes, but is not limited to, the documents referenced below.

C. Benefits of Proposed Project.

The City Council has considered the EIR, the proposed development agreement, the proposed participation agreement, the public record of proceedings on the proposed Project, including the fiscal report by Sedway & Associates, and other written materials presented to the City as well as oral and written testimony at all public hearings related to the Project, and does determine that implementation of the Project as specifically provided in the Project documents would result in the following substantial public benefits:

1. As stated in the City's 1993 General Plan Citywide Goals, the Project and its required mitigations will:
 - a. Provide services and facilities for Emeryville's citizens. Protect public health and safety and improve opportunities for education and cultural entertainment.
 - b. Encourage a land use pattern in which a variety of uses - residential, commercial and industrial - are intermingled in a compatible fashion, and which minimize potential threats to public health, safety and the environment.
 - c. Establish a circulation system allowing for the free movement of persons and goods to, from and within the city while avoiding an overaccommodation to vehicles at the expense of land use and pedestrian movement.
 - d. Improve the quality and livability of the city by seeking development visually sympathetic to its surroundings and urban character.

- e. Encourage land uses which strengthen the tax base while respecting the natural, scenic and historic resources of the city.
2. The Project will meet the objectives of the City in support to provide for the public health, safety and welfare by providing emergency medical services, health education and needed health care and related and senior-related services in the City and the greater East Bay community. As provided for in the development agreement related to the Project, Kaiser shall provide a health plan for Emeryville residents. The Association Plan that will be provided by Kaiser is a significant increase in benefits above the Individual Plans offered by Kaiser, and includes prescription drug coverage. The provision of this Association Plan membership to individuals residing in Emeryville is a unique community benefit.
3. As stated in the EIR, the Project will further the objectives of the Redevelopment Plan for the Shellmound Park Redevelopment Project Area, by encouraging the elimination of blight and the development of a cohesive pattern of new development as well as a circulation system. The Project would provide improvements to public facilities in Emeryville, and would mitigate environmental, social, and physical characteristics of blight, provide for beautification activities, and economic assistance.
4. The Project will provide the development of off-street parking and provision of safe pedestrian and bicycle circulation improvements.
5. The Project will encourage community identity by providing a coordinated integrated Project.
6. The Project will improve the economic climate within the Project Area by providing a range of jobs, and encourage the development of other isolated vacant and/or underdeveloped properties within the Project Area. As described in the EIR, the Project is expected to provide numerous employment opportunities. Phase 1 of the Project is expected to generate a total of approximately 2,895 jobs, consisting of 175 office and retail jobs and 2,720 service and support jobs affiliated with the hospital and medical center uses. Such service jobs would include health care professionals and administrators, as well as personnel in food service, housekeeping, groundskeeping,

maintenance and security. Analysis by Recht Hausrath and Associates predicts that, on a city-wide basis, Phase 1 would account for 14% of the total jobs in Emeryville in the year 2000. While this represents significant growth, the City believes this amount of growth will have a beneficial effect on its tax base. Phase 1 would also create construction employment opportunities for an average daily workforce of 220 workers over a four- to five-year time frame (full time equivalent).

Future Expansion after the year 2000 is expected to result in 1,245 additional jobs, consisting of approximately 15 retail jobs and 1,230 service jobs. The 1,245 jobs include 430 additional jobs on the Phase I Site and 815 jobs on the Future Expansion Site. City-wide, after the year 2000, Future Expansion of the Project is expected to account for 33% of the new jobs expected in Emeryville. In addition, Future Expansion would extend construction opportunities for an average daily workforce of 220 persons.

Buildout of the Project is expected to contribute a total of approximately 4,140 jobs. Approximately 115 of these jobs would occur in the retail industry, with the remaining 4,025 jobs in the medical industry. Data from Recht Hausrath and Associates indicates that by the year 2010, the Project would account for 17% of the total jobs in Emeryville.

7. The Project will create a more cohesive and unified community by strengthening the physical, social, and economic ties between medical, retail and other commercial, and residential land uses within and adjacent to the Project Area.
8. The Project will provide for the development of affordable housing. As described in detail in the Development Agreement and the Participation Agreement, generally Kaiser will lend up to \$15 million to the Emeryville Redevelopment Agency over a term of fifteen (15) years to fund the development of new affordable and market rate housing within Emeryville. In addition, subject to certain limitations provided in the Development Agreement and the Participation Agreement, Kaiser will provide funding for the fulfillment of the Agency's obligation pursuant to Health & Safety Code Section 33413 to replace each dwelling unit housing persons and families of low or moderate income which is destroyed or removed from the housing market as a result of the development of Phase I or the Phase I Expansion.

9. The Project will achieve a physical environment reflecting a high level of concern for architectural and urban design principles deemed important by the community and property owners. The proposed medical center is designed to be a cohesive mixed use Project that would be sensitive to the existing character of the surrounding neighborhood. The Project incorporates the Kaiser Permanente Medical Center Urban Design Guidelines, which were approved by the Planning Commission after extensive input from members of the community. During this process, local citizens were provided an opportunity to identify their concerns regarding the development intensity, architecture, and need for pedestrian-scaled development, and to contribute to the development of design guidelines that were intended to address their concerns. In response to those concerns, the Project was designed to achieve a similar scale and relationship between the Project and surrounding land uses and to establish compatibility with the neighborhood. In this regard, "liner" buildings containing pedestrian oriented uses would be constructed along the perimeter of the site separating the medical center from surrounding uses. Building set backs, building heights, open space, and a public plaza would be incorporated into the Project resulting in compatibility with surrounding land uses.
10. The Project will provide financial mechanisms by which the Agency can assist, complement, and coordinate public and private development, redevelopment, revitalization, and enhancement of the community. The Development Agreement provides that Kaiser will pay to the City certain annual fees and exactions, the amount of which will be calculated based on the approximate ratio of the square footage of Phase I and Phase I Expansion to the total square footage of buildout of the Project. Accordingly, eighty percent (80%) of the total fees payable for buildout of the Project is set forth in the Agreement. The annual fees, which are subject to certain credits and/or reductions as set forth in the Agreement, are as follows:
 - (a) Public Services Fee in the amount of \$400,000 per year commencing on the opening of the hospital for patient care (the "Initial Occupancy Date") and every twelve (12) months thereafter;
 - (b) Mass Transit Program Fee in the amount of \$80,000 per year commencing on the Initial Occupancy Date and continuing each year for a period not to exceed twenty-five (25) years;
 - (c) Senior Center Fee in the amount of \$50,000 per year commencing on the Initial Occupancy Date and every twelve (12) months thereafter;
 - (d) Low Income School Care Fee in the amount of \$40,000 per year commencing on the Initial

Occupancy Date and every twelve (12) months thereafter; and (e) school related fees in the amount of \$20,000 per year commencing on the Initial Occupancy Date and every twelve (12) months thereafter.

In addition, the Agreement provides that Kaiser will pay the following one-time fees, which are also calculated based on eighty percent (80%) of the fees required for buildout of the Project: (a) Art Fund Fee not to exceed \$720,000; (b) building permit and processing fees; (c) Traffic Impact Fee in the amount of \$336,000; (d) Public Safety Fee in the amount of \$320,000; (e) Small Business Retention Fee in the amount of \$240,000; and (f) planning fees related to the processing of the Project approvals through completion of construction of Phase I of the Project for staff related expenses up to \$270,000. Kaiser will also pay the City's utility user tax which is expected to generate approximately 80,000 in present dollars based on the City's current Utility Tax Rate of 5.5%, real property taxes on non-exempt operations, and sales taxes, as applicable, as well as its fair share of certain assessments in connection with the Bay Shellmound Assessment District.

At buildout, the cost revenue analysis prepared by Sedway & Associates concludes that the Project would likely yield \$1,042,000 in recurring annual revenue to the City's General Fund. the cost of providing services is estimated at \$238,500 annually, for a net surplus to the City of \$803,500 (in 1993 dollars). As discussed above, the Project is also anticipated to contribute significant one-time benefits to the City to be used for a variety of the services and programs.

11. Kaiser will implement various programs, including the following: (a) Education Initiative, which involves a collaboration with the Emeryville Unified School District; (b) Community Activities, which would include educational theater programs for the Emeryville Unified School District; (c) job information and recruitment through the medical center Human Resources Department; (d) Community Grants, which would provide funds to community agencies for a broad range of community services in the Northern California Region in accordance with existing Kaiser grant programs; (e) Health Education Center, which would be open to Emeryville residents and Health Plan members; and (f) Community Health Education, which would include classes for Kaiser members and the public.

12. The Phase I Site and the Future Expansion Site contain areas of known and suspected soil and groundwater contamination. Prior to construction of the Project, soil and groundwater contamination would be remediated in accordance with applicable regulations. Contaminated soil present on the Phase I Site and the Future Expansion Site would be remediated on site or excavated and hauled to an off-site location. Accordingly, the Project would result in this beneficial impact. If Kaiser is unable to remediate the contamination prior to construction, an evaluation will be conducted regarding the potential for volatile contaminants to migrate into the foundation of the buildings. If there is a significant risk posed by such volatilization, a vapor barrier will be installed into the foundations to mitigate the risks.

The City Council has weighed the above benefits of the proposed Project against its unavoidable environmental risks and adverse environmental effects identified in the EIR and hereby determines that those benefits outweigh the risks and adverse environmental effects and, therefore, further determines that these risks and adverse environmental effects are acceptable.

Attachment C
Draft Council Resolution Approving
the General Plan Amendment

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EMERYVILLE,
CALIFORNIA, ADOPTING AMENDMENTS TO THE CITY OF
EMERYVILLE GENERAL PLAN**

THE CITY COUNCIL OF THE CITY OF EMERYVILLE DOES RESOLVE AS FOLLOWS:

Section 1: General Plan Recitals.

1. The City has complied with the requirements of the Local Planning Law (Government Code section 65300 et seq.), the current State of California General Plan Guidelines, and the City's applicable ordinances and resolutions with respect to approval of the proposed General Plan Amendments; and
2. The Planning Commission held a public hearing on November 3, 1994 and continued on November 10, 1994, on the proposed Kaiser Permanente Medical Center Project ("Project" or "Kaiser Project"), including the proposed general plan amendments; and
3. On November 10, 1994, the Planning Commission recommended approval of the proposed amendments as amended by the November 3, 1994, staff report to the Planning Commission. Planning Commission Resolution No. 94-____; and
4. The City Council and the Emeryville Redevelopment Agency held a duly noticed public hearing on the proposed Kaiser Project on November 21, 1994; and
5. During the hearing, the City Council received testimony from the Project sponsor, Project consultants, City staff members and City consultants, as well as members of the general public; and
6. The City Council has considered the information provided by those testifying, as well as the information provided in the Final Environmental Impact Report, staff reports and supporting documentation; and
7. Prior to adopting the proposed General Plan Amendments, the City Council has adopted Resolution No. _____ ("CEQA Resolution"), Making Findings Concerning Mitigation Measures, Adopting a Mitigation Monitoring and Reporting Program, Making Findings Concerning Alternatives and Adopting a

Statement of Overriding Considerations in Accordance With the California Environmental Quality Act For the Kaiser Project.

8. The Council finds that mitigation measures have been imposed on and incorporated in the Kaiser Project which avoid or substantially lessen environmental impacts, that certain mitigation measures are within the responsibility and jurisdiction of another public agency and such changes can and should be adopted by such other agency, that specific economic, social and other considerations make infeasible the project alternatives that would avoid or substantially lessen the environmental impacts and that social, economic and other benefits outweigh the environmental impacts that cannot be fully mitigated.

Section 2. General Plan Findings

1. The proposed General Plan Amendments are in the public interest of the people of Emeryville and the surrounding region as set forth in more detail in the Statement of Overriding Considerations, Exhibit D to Resolution No. _____.

2. As determined by the Department of Housing and Community Development, the City's Housing Element currently complies with state law and the proposed amendments to the Housing Element will not affect that compliance.

3. During the past four years, the City has aggressively tried to attract residential and mixed use development to the site and has worked with at least four different developers. Efforts to develop the site for residential use have been unsuccessful and the City Council, therefore, determines that the site should be developed for another use.

4. Development of the Kaiser Project on the site will provide funds that will enhance the City's ability to facilitate housing for all income levels and achieve the affordable housing goals of the housing element.

5. The addition of a Health Care Element is consistent with the Citywide goal to provide services and facilities for Emeryville's citizens and to protect public health and safety.

6. The proposed changes in the circulation element operating in concert with other streets designated in the circulation element, particularly the Bay-Shellmound Extension which is currently under construction, will allow for free movement of persons and goods to, from and within the City while avoiding an over-accommodation to vehicles at the expense of land use and pedestrian movement.

7. The changes in the circulation element will accommodate the land uses and densities proposed in the Kaiser Project and elsewhere on the land use element.

8. The amendments to the Land Use Element and Circulation Element will encourage a balanced land use pattern in which a variety of uses are intermingled in a compatible fashion.

9. The amendments to the General Plan will improve the quality and livability of the city by allowing development to take place that is visually sympathetic with the surrounding community and the urban character of Emeryville. The amendments maintain a consistent scale with surrounding land uses and maintain compatibility with the neighborhood.

10. The amendments to the General Plan will encourage land uses that improve and strengthen the City's tax base and provide significant economic benefits through payment of fees and other fiscal programs while respecting the natural, scenic and historic resources of the city.

11. The amendments to the General Plan will allow blighted conditions to be remedied by stimulating investment in the area, improving public safety, expediting remediation of existing contamination and changing underutilized land uses.

Section 3. General Plan Decision

1. Based on the entire record before this City Council, including the findings set forth in this resolution and in the CEQA Resolution, No. __, the City Council adopts the amendments to the City of Emeryville General Plan as set forth in Exhibit A, attached hereto.

2. In connection therewith, the Council incorporates the findings, mitigation measures and mitigation monitoring program and statement of overriding considerations set forth in the CEQA Resolution.

3. The City Manager or his designee is hereby directed to file a Notice of Determination with the County Clerk of Alameda County and the Office of Planning and Research pursuant to the provisions of Section 15094 of the State CEQA guidelines.

PASSED AND ADOPTED by the City Council of the City of Emeryville at a special meeting held on Monday, November 21, 1994, by the following vote:

AYES: _____

NOES: _____

EXCUSED: _____

ABSENT: _____

ABSTAINED: _____

MAYOR

ATTEST:

CITY CLERK

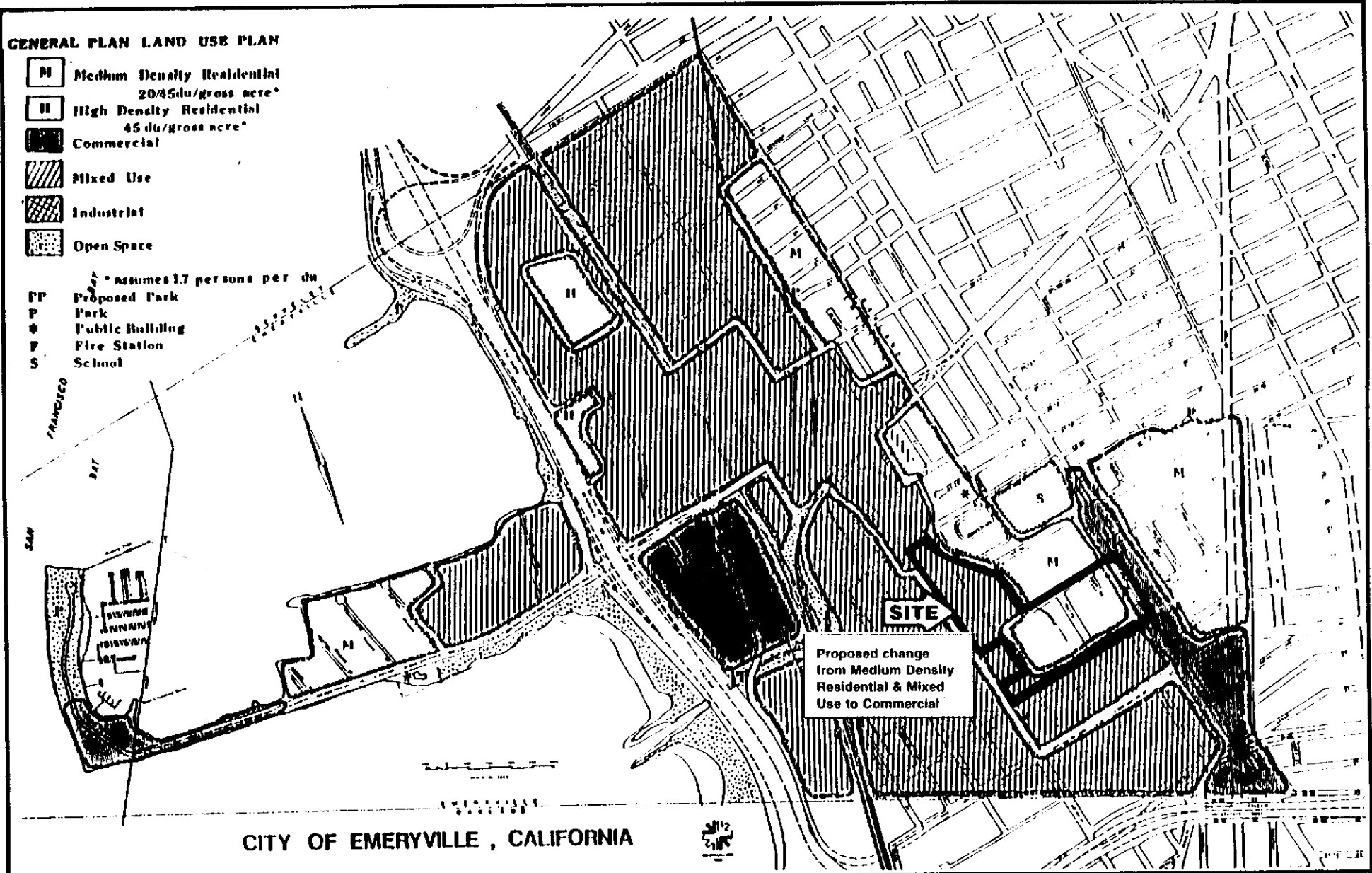
CITY ATTORNEY

Attachment C.1
Land Use Map Changes

GENERAL PLAN LAND USE PLAN

- M Medium Density Residential
20/45 du/gross acre*
- H High Density Residential
45 du/gross acre*
- Commercial
- Mixed Use
- Industrial
- Open Space

- * assumes 17 persons per du
- PP Proposed Park
 - P Park
 - PB Public Building
 - FS Fire Station
 - S School



CITY OF EMERYVILLE, CALIFORNIA



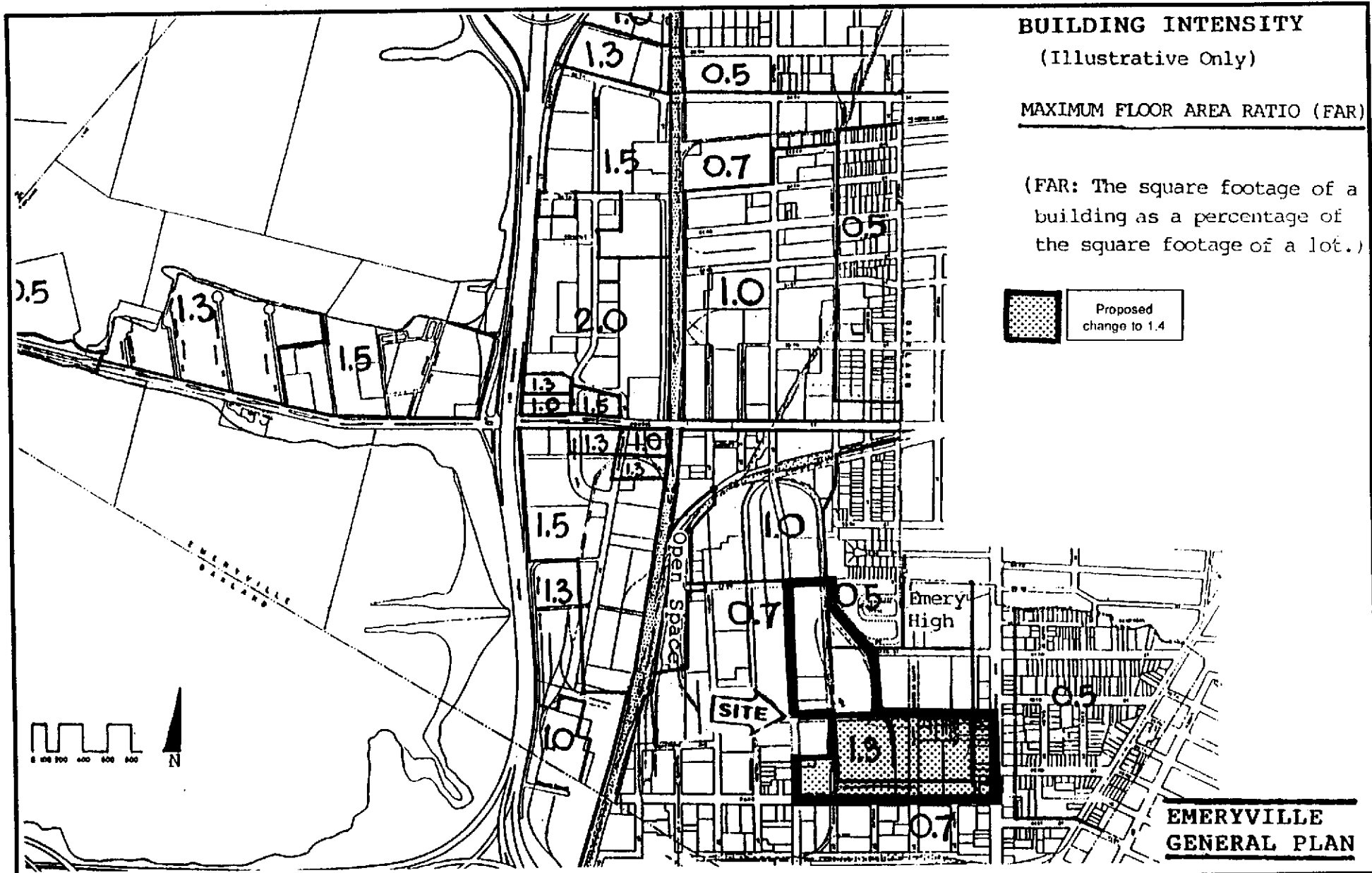
Kaiser Permanente Medical
Center Joint Redevelopment
Agency City Council
Staff Report

**PROPOSED CHANGES TO THE
GENERAL PLAN LAND USE PLAN**

Attachment C.1

November 21, 1994

Attachment C.2
Building Intensity Diagram



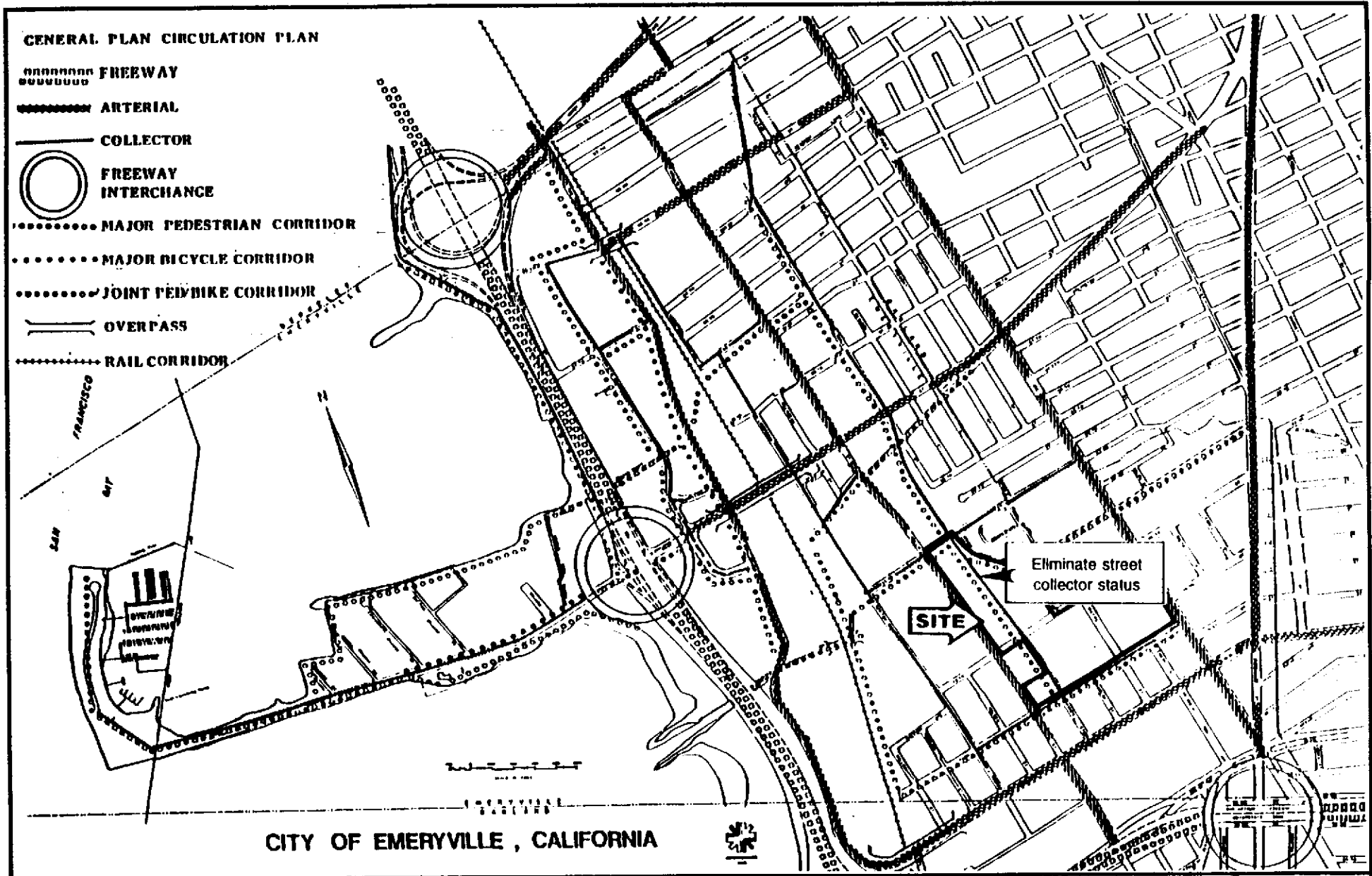
Kaiser Permanente Medical
Center Joint Redevelopment
Agency City Council
Staff Report

**PROPOSED CHANGES TO THE
GENERAL PLAN BUILDING INTENSITY**

Attachment C.2

November 21, 1994

Attachment C.3
Circulation Map Changes



Kaiser Permanente Medical
Center Joint Redevelopment
Agency City Council
Staff Report

**PROPOSED CHANGES TO THE
GENERAL PLAN CIRCULATION MAP**

Attachment C.3

November 21, 1994

Source: City of Emeryville General Plan

Attachment C.4
General Plan and Housing Element Text Changes

Proposed General Plan Text Changes

Community Development - Housing

The applicant proposes the following change to Page 5, Policy 4, relating to the demolition of existing housing:

- "4. The City shall discourage the demolition of housing in sound condition *unless such demolition is necessary or desirable for public health or welfare purposes*¹. If demolition is necessary, the City shall investigate means to secure replacement housing for displaced persons and families of lower or moderate income, preferably in the immediate vicinity. The project proponent could be required to construct the housing, or could be [required to] contribute fees into a fund for the purpose of constructing housing."

The applicant proposes the following change to Page 6, Policy 2, relating to creating new housing opportunities in mixed use areas:

- "2. The City shall encourage residential development in mixed use areas, particularly on large industrial sites, *provided that they are not need for other public or quasi public purposes.*"

The applicant proposes the following change to Page 6, Policy 3, relating to the use of under-used industrial areas:

- "3. The City shall facilitate the conversion of underused industrial area when appropriate for residential or live/work use *and not needed for other public or quasi public purposes*. Several sites have been identified (see discussion on potential land suitable for residential development). The City shall take a pro-active position in assuring that the necessary discretionary actions are taken to accommodate residential development on these sites, whether as exclusively residential projects or as mixed use projects. Further, the City shall maximize conditional use permit densities when appropriate to the surrounding neighborhood."

¹ Words appearing in bold italics are proposed additions to the General Plan text.

Community Development - Land Use

The applicant proposes the following change to Page 22, Policy 9, relating to commercial development:

- "9. The Land Use Plan establishes the general locations of commercial activities. These consist of office and general commercial activities ranging from small businesses serving local neighborhoods to regional retail and administrative offices *including hospitals, medical office buildings and related support facilities*. While both commercial activities will be located throughout the city except in residential districts, and the bulk of offices will be found in mixed-use districts, areas are established where they are to be the predominant use. Residential use, in addition to the primary commercial use of property, is strongly encouraged in these areas.

Building intensity for commercial uses shall be controlled by standards established in the zoning regulations. Controls may consist of building height limitation, setback and on-site parking requirements, and any other means such as floor area ratios (FAR: the square footage of a building as a percentage of the square footage of the lot)."

Community Development - Community Design

The applicant proposes the following changes to Page 25, Policy 5 of the General Plan:

- "5. The existing brick buildings along *the south side of Park Avenue* should be retained and restored to preserve and enhance the historic value of the street. The existing continuous street facade *on that side of Park Avenue* should be preserved."

Alternate wording proposed by staff:

"The existing brick buildings along *the south side of Park Avenue between San Pablo and Hollis Street and along Both sides of Park Avenue from Hollis Street to the SP Railroad* should be retained and restored to preserve and enhance the historic value of the street. The existing continuous street facade *along these portions of Park Avenue* should be preserved."

Public Health and Safety - Health Care

The applicant proposes the following additional section to be added to page 34, Public Health and Safety Element:

HEALTH CARE

Objective

- A. *Provide adequate health care services for Emeryville residents*

Policies

- 1. The City shall encourage the construction of new medical facilities designed to provide health care services to Emeryville and surrounding residents.*
- 2. New medical facilities should be encouraged to provide health related services to Emeryville residents including health education, senior related services, emergency care and other such programs and services that benefit the public.*

Proposed Housing Element Text Changes

Housing and Neighborhood Characteristics - Potential Land Available for Housing

The applicant proposes the following changes to Page 22, first paragraph, relating to large underutilized sites:

"In addition to these smaller residentially zoned in-fill sites, there are currently ~~six~~ *five* larger underutilized sites in which residential development is contemplated. The location of these sites is illustrated in Figure 2. Some of these sites may require a zone and general plan amendment or a use permit to accommodate housing. In fact, ~~three~~ *two* of the six underutilized parcels are currently undergoing planning review and are anticipated to contribute about ~~850~~ *450* to ~~1,000~~ *600* new units of housing in the next five years. Included ~~is~~ *are* the 40-acre Catellus site located on the southern border of the City which is anticipated to include 400 to 600 market-rate apartments; ~~the 16-acre Del Monte site in the South of Powell area which is projected to include about 400 condominium units;~~ and the 50-unit low-income senior project sponsored by the Redevelopment Agency, and developed by a non-profit housing developer for a parcel on San Pablo Avenue at 43rd Street. A second phase, adding an additional 25 units of market rate senior housing, is contemplated. ~~Developers studies for the Del Monte site have been submitted to Planning with approval anticipated to occur within the next year.~~ The Catellus site is under review by the City. A ~~fourth~~ *third* site, located directly east of the Emery Bay Club and Apartments is anticipated to be developed as Emery Bay Club and Apartments II with up to 270 units."

The applicant proposes the following changes to Page 25, Table 10, relating to infill sites:

TABLE 10
IN FILL LOTS IN CITY OF EMERYVILLE

All of the lots listed below are zoned R-M (Medium Density Residential), do not require zoning changes for residential development and have available public services and facilities.

NUMBER ON MAP (Figure 1)	SIZE	DENSITY ALLOWABLE	
		(permitted)	with conditional use permit
1	6420 sf	3 units	7 units
2	8543 sf	8 units	9 units
3	3745 sf	2 units	4 units
4	7000 sf	3 units	7 units
5	3566 sf	2 units	4 units
6	2146 sf	1 unit	2 units
7	3384 sf	2 units	4 units
8	4597 sf	2 units	4 units
9	2000 sf	1 unit	2 units
10	7500 sf	3 units	8 units
11	4540 sf	2 units	4 units
12	8123 sf	4 units	8 units
13	4300 sf	2 units	4 units
14	4000 sf	2 units	4 units
15	1795 sf	1 unit	2 units
Total Potential Units		38 35 units	73 65 units

The applicant proposes the following change to Page 26, Table 11, relating to underutilized parcels: See following page.

TABLE 11: Underutilized Parcels

SITES

	CATELLUS	DEL MONTE	EMERYVILLE	EBB & FLOW	ST. ALBAN'S (HOLIDAY INN)	CHRISTIE
SIZE, Sq. Ft. Total Parcel	1,743,469 (480,000 Housing)	522,720	75,000	196,850	91,476	300,234 (6 Parcels)
EXISTING ZONING	L1	RM/NC	OC	RM	MU	MU
PROPOSED ZONING	Change to RH	Change to MU	Obtain CUP	Change to RH	Allow higher density (Gen. Plan amend.)	No change needed
DENSITY (with existing zoning) (DU/Acre)	NONE	20	20	20	45	15
(with zone change)	45 60 w/CUP	15 w/CUP	45 w/CUP	45 w/CUP	60 w/CUP	60 w/CUP
# UNITS ALLOWED (with existing zoning)	NONE	20	NONE NEEDED	45	45	NONE NEEDED
with zone change	45 60 w/CUP	45 w/CUP	108 w/CUP	108 w/CUP	108 w/CUP	108 w/CUP
# UNITS ALLOWED (with existing zoning)	NONE	240	34	90	95	457
with zone change	503 671 w/CUP	540 w/CUP	77 w/CUP	203 w/CUP	126 w/CUP	610 w/CUP
PUBLIC SERVICES	Yes	Yes	Yes	Yes	Yes	Yes
TIME FRAME	Under Evaluation	Under Evaluation	Completion Date, 1992	Projected start date March 1992	Under Evaluation	N/A
# UNITS ANTICIPATED (AFFORDABLE)	400-600 (20% low/mod)	400 (20% low/mod)	75 (50 very low, 25 market rate)	170 (55, very low, 55 lower, 160 moderate)	300 (20% low/mod)	200 (3 parcels) (20% low/mod)
PROJECT STATUS	Pre-Application in	Preliminary plans under review	Completion mid-1992	Application in to Planning Commission	Application in to Planning Commission EIR underway	No formal proposal submitted to date

Other Housing Issues - ABAG Regional Housing Needs Determinations

The applicant proposes the following changes to Page 39, Paragraph 2 and tables, relating to affordable units:

"It is anticipated that within a five year period, the City can produce approximately ~~548~~ **468** affordable units, ~~exceeding the 505 affordable units required by ABAG.~~ These units, as well as planned market rate units, would break down as follows:

	ABAG Requirement	City Plans
Very Low Income	199	139 = 50 Emery Villa 5 Vacant Housing 54 Emery Bay II 30 Rental Rehabs
Lower Income	138	119 = 15 Vacant Housing 54 Emery Bay II 50 First Time Home
Moderate Income	168	290 210 = 50 First Time Home 80 Del Monte (20% of Total) 100 Catellus (20% of Total) 60 St. Albans (20% of Total)
SUBTOTAL	505	548 468
Above Moderate Income	260	960 640 = 320 for Del Monte 400 for Catellus 240 for St. Albans
TOTAL	765	1508 1108

By income category, the number of housing units that can be constructed, rehabilitated and conserved over a five-year period is as follows:

Quantified Objective	New Construction	Rehabilitation	Conservation
Very Low Income	109	30	125
Low Income	69	20	125
Moderate Income	240 160	0	0
Above Moderate	1122 802	0	0

Housing Objectives, Policies and Programs

The applicant proposes the following change to Page 53, Policy 4, relating to Housing Maintenance and Preservation:

- "4. The City shall discourage the demolition of housing in sound condition *unless such demolition is necessary or desirable for public health or welfare purposes*². If demolition is necessary, the City shall investigate means to secure replacement housing for displaced persons and families of lower- or moderate-income, preferably in the immediate vicinity. The project proponent could be required to construct the housing or could contribute fees to a fund for the purpose of constructing housing.

The applicant proposes the following change to Page 55, Policy 2, relating to Housing Opportunities:

- "2. The City shall encourage residential development in mixed-use areas, particularly on large industrial sites, *provided they are not needed for other public or quasi public purposes.*"

The applicant proposes the following change to Page 55, Policy 3, relating to Housing Opportunities:

- "3. The City shall facilitate the conversion of ~~underutilized or vacant~~ *underused* industrial areas when appropriate for residential or live/work use *and not needed for other public or quasi public purposes*. Several sites have been identified (see discussion on potential land suitable for residential development). The City shall take a pro-active position in assuring that the necessary discretionary actions are taken to accommodate residential development on these sites, whether as exclusively residential projects or as mixed use projects. Further, the City shall maximize conditional use permit densities when appropriate to the surrounding neighborhood."

² *Words appearing in bold italics are proposed additions to the General Plan text. Words appearing with strikeouts are proposed deletions to the text.*

Attachment D
Draft Council Ordinance Approving
the Redevelopment Plan Amendment

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EMERYVILLE, CALIFORNIA, AMENDING ORDINANCE NO. 87-07 APPROVING AND ADOPTING THE AMENDMENT TO THE REDEVELOPMENT PLAN FOR THE SHELLMOUND PARK REDEVELOPMENT PROJECT

WHEREAS, the City Council of the City of Emeryville (the "City Council") adopted Ordinance No. 87-07 on October 20, 1987, approving and adopting the Redevelopment Plan (the "Redevelopment Plan") for the Shellmound Park Redevelopment Project (the "Redevelopment Project"); and

WHEREAS, the Emeryville Redevelopment Agency (the "Agency") has been designated as the official redevelopment agency to carry out in the City of Emeryville the functions and requirements of the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 et seq.) and to implement the Redevelopment Plan; and

WHEREAS, in connection with a proposed development of an urban medical center within the Project Area (the "Proposed Medical Center Project"), the Agency has proposed an Amendment to the Redevelopment Plan for the Redevelopment Project (the "Amendment") in order to change certain land use designations within the Project Area, and make other land use textual changes for clarification purposes to the Redevelopment Plan; and

WHEREAS, the Planning Commission of the City of Emeryville (the "Planning Commission") has reviewed the Amendment and recommended the approval and adoption of the Amendment, together with its certification that the Amendment conforms to the General Plan of the City of Emeryville, as proposed to be amended prior to adoption of the Amendment; and

WHEREAS, in connection with the approvals required for the Proposed Medical Center Project, the City Council is the lead agency and the Agency is a responsible agency for the purposes of environmental review, and the City Council prepared a Final Environmental Impact Report on the Proposed Medical Center Project and the associated approvals required therefor, including the Amendment (the "Final EIR"); and

WHEREAS, the City Council has received from the Agency the proposed Amendment, together with the Report of the Agency on the Amendment; and

WHEREAS, the City Council and the Agency held a joint public hearing on November 21, 1994, on adoption of the Amendment and on certification and approval of the Final EIR in the City Council Chambers, 2449 Powell Street, 2nd Floor, Emeryville, California; and

WHEREAS, a notice of said hearing was duly and regularly published in the Oakland Tribune, a newspaper of general circulation in the City of Emeryville, once a week for three successive weeks prior to the date of said hearing, and a copy of said notice and affidavit of publication are on file with the City Clerk and the Agency; and

WHEREAS, copies of the notice of public hearing were mailed by first-class mail to the businesses and residents within the Project Area and to the last known address of each assessee of each parcel of land in the Project Area, as shown on the last equalized assessment roll of the County of Alameda; and

WHEREAS, copies of the notice of public hearing were mailed by certified mail with return receipt requested to the governing body of each taxing agency which receives taxes from property in the Project Area; and

WHEREAS, the City Council has considered the Report of the Agency and the report and recommendation of the Planning Commission, the Amendment and its economic feasibility, and the Final EIR, provided an opportunity for all persons to be heard, and has received and considered all evidence and testimony presented for or against any and all aspects of the Amendment; and

WHEREAS, prior to adopting the proposed Amendment, the City Council has adopted Resolution No. _____ (the "CEQA Resolution"), Making Findings Concerning Mitigation Measures, Adopting a Mitigation Monitoring and Reporting Program, Making Findings Concerning Alternatives and Adopting a State of Overriding Considerations in Accordance with the California Environmental Quality Act for the Proposed Medical Center Project; and

WHEREAS, the City Council finds that mitigation measures have been imposed on and incorporated in the Proposed Medical Center Project which avoid or substantially lessen environmental impacts, that certain mitigation measures are within the responsibility and jurisdiction of another public agency and such changes can and should be adopted by such other agency, that specific economic, social and

other considerations make infeasible the project alternatives that would avoid or substantially lessen the environmental impacts that cannot fully be mitigated;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EMERYVILLE DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. The purpose and intent of the City Council with respect to the Amendment is to: (1) change the land use designations of certain property in the Project Area from mixed use and medium-density residential to commercial, which will complement and implement the existing Redevelopment Plan; (2) clarify language related to a land use chart depicting the acreages for uses existing at the time of adoption of the Redevelopment Plan; and (3) make textual changes to the land use language in the Redevelopment Plan to confirm the permissibility of the wide range of medical center uses contemplated by the Proposed Medical Center Project.

Section 2. The City Council hereby specifically finds and determines that:

a. It is necessary and desirable to amend the Redevelopment Plan in the manner set forth in the Amendment in order to eliminate remaining blight which exists within the portion of the Project Area subject to the Amendment, the redevelopment of which is necessary to complete the redevelopment of the Project Area and carry out and implement the goals and objectives of the existing Redevelopment Plan. This finding is based on the fact that:

(1) the Amendment will provide for land use changes of certain property within the Project Area which will allow development to occur within the Project Area which is both economically sound and feasible;

(2) the Amendment will allow for the development of existing vacant and underutilized land within the Project Area and will provide adequate street and traffic circulation improvements and off-street parking;

(3) the Amendment will result in an increase in employment opportunities;

(4) the Amendment will provide additional commercial facilities and services;

(5) the Amendment will facilitate development which will result in the removal of unsafe and unhealthy toxic materials from the Project Area;

(6) the Agency has attempted to develop a portion of this area in accord with existing land uses and have found these uses to be neither economically sound or feasible; and

(7) the implementation of the Proposed Medical Center Project will result in both a replacement housing program and a housing loan program which will result in an increase in the number of affordable low and moderate income housing units within the community.

b. The Amendment will enable the existing Project Area to continue to be redeveloped in conformity with the Community Redevelopment Law and in the interests of the public peace, health, safety and welfare. This finding is based on the facts contained in Section 2 hereof and the following:

(1) the existing Redevelopment Plan provides that hospitals are a permitted use within any area of the Project Area, and the Amendment confirms the permissibility of the development of medical facilities in the Project Area.

(2) the Amendment will encourage the elimination of blight and the development of a cohesive pattern of new land use development and an improved circulation system; and

(3) the Amendment will cause the mitigation of environmental, social and physical characteristics of blight, beautification activities and economic assistance.

c. The adoption and carrying out of the Amendment is economically sound and feasible. This finding is based upon the fact that the Redevelopment Plan was found and determined to be economically sound and feasible at the time of its adoption, and the proposed Amendment does not change the financing authorized under the existing Redevelopment Plan. In addition, the Proposed Medical Center Project will provide for an enormous investment by the private sector in the Project Area including development of a medical center, additional traffic improvements, remediation of hazardous wastes, funds for the construction of replacement housing and an affordable housing loan program and various payments and programs which benefit the community.

d. The Amendment conforms to the General Plan of the City of Emeryville, including the Housing Element, which substantially complies with the requirements of Government Code Section 65580, et seq. This finding is based on

the report of the Planning Commission that the Amendment would be in conformance with the General Plan, including the Housing Element, as proposed to be amended prior to adoption of the Redevelopment Plan Amendment, and the subsequent approval of such amendment to the General Plan by the City Council on November 21, 1994, and the fact that the Housing Element currently complies with state law and the proposed amendment to the Housing approved as part of the amendment to the General Plan will not not affect that compliance.

e. The carrying out of the Amendment will promote the public peace, health, safety and welfare of the City of Emeryville and will effectuate the purposes and policies of the Community Redevelopment Law. This finding is based upon the fact that redevelopment, as contemplated by the Redevelopment Plan, as amended by the Amendment, will benefit the Project Area by correcting conditions of blight and by coordinating public and private actions to stimulate development and improve the economic, social and physical conditions of the Project Area. In addition, the construction of a new medical center, including a hospital, within the Project Area, the provision of space for health education, the provision of a health plan for the community, the provision of high quality employment opportunities, the significant economic benefits to the City and the remediation of contamination on the project site all demonstrate that the Amendment will promote the public peace, health, safety and welfare of the community.

f. The Agency has a feasible method and plan for the relocation of families and persons who may be displaced, temporarily or permanently, from housing facilities in the Project Area as a result of the Amendment. This finding is based upon the fact that a Relocation Plan for the displacement of families and persons who may be displaced from housing facilities within the Project Area as a result of the approval of this Amendment and the Proposed Medical Center Project, was adopted by Agency Resolution No. RD71-94 on October 18, 1994, and approved by City Council Resolution No. 94-172 on October 18, 1994 (the "Relocation Plan").

g. As to the displacement of persons that will be caused by the Amendment:

(1) There are, or are being provided, within the existing Project Area or within other areas not generally less desirable with regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and persons who might be displaced from the

Project Area as a result of the Amendment, decent, safe and sanitary dwellings equal in number to the number of and available to such displaced families and persons and reasonably accessible to their places of employment;

(2) Families and persons shall not be displaced prior to the adoption of a relocation plan pursuant to Sections 33411 and 33411.1 of the Community Redevelopment Law; and

(3) Dwelling units housing persons and families of low or moderate income shall not be removed or destroyed prior to the adoption of a replacement housing plan pursuant to Sections 33334.5, 33413 and 33413.5 of the Community Redevelopment Law.

These findings are based upon the following facts: (1) no person or family will be required to move from any dwelling unit in the Project Area until suitable replacement housing is available; (2) a Relocation Plan has been adopted and the survey of available housing within the Project Area or areas suitable as comparable replacement housing areas conducted as part of the Relocation Plan indicated there was or would be adequate comparable replacement housing available for persons displaced due to the Amendment; and (3) the Agency will implement the Replacement Housing Plan for the Proposed Medical Center Project adopted by Agency Resolution No. RD72-94 on October 18, 1994.

h. The elimination of blight and the redevelopment of the Project Area, as contemplated by the Amendment, could not be reasonably expected to be accomplished by private enterprise acting alone without the aid and assistance of the Agency. This finding is based upon the inability of individual developers to economically remove these blighting influences without public assistance; the inability of the private sector to both acquire and assemble parcels for economically feasible development and to provide public improvements, facilities and utilities; and the inadequacy of other governmental programs and financing mechanisms to eliminate blight, assemble land necessary for feasible development, provide necessary public improvements and facilities, and remedy hazardous wastes.

i. The Amendment will afford maximum opportunity, consistent with the sound needs of the City as a whole, for the redevelopment of the Project Area by private enterprise.

Section 3. The City Council is satisfied that permanent housing facilities will be available within three years from the time occupants of the Project Area are displaced as a result of this Amendment, if any, and that pending the development

of such facilities, there will be available to any such displaced occupants temporary housing facilities at rents comparable to those in the City of Emeryville at the time of their displacement. This finding is based on the facts contained in the Replacement Housing Plan and the Relocation Plan and the fact that no persons or families or low or moderate income shall be displaced from residences unless and until there is a suitable housing unit available and ready for occupancy by such displaced persons or families at rents comparable to those at the time of their displacement. Such housing units shall be suitable to the needs of such displaced persons or families and must be decent, safe, sanitary and otherwise standard dwellings. The Agency shall not displace any such persons or families until such housing units are available and ready for occupancy.

Section 4. The Council is satisfied that all written objections received before or at the noticed public hearing have been responded to in writing. In addition, written findings have been adopted in response to any and all written objections to the Amendment of an affected property owner or taxing entity which has been filed with the City Clerk either before or at the noticed public hearing.

Section 5. Based on the entire record before this City Council, including the findings set forth in this Ordinance and the CEQA Resolution No. _____, the Redevelopment Plan for the Redevelopment Project, as adopted by Ordinance No. 87-07, is hereby amended as set forth in the proposed "Amendment to the Redevelopment Plan for the Shellmound Park Redevelopment Project," attached hereto and incorporated herein and made a part hereof by reference. As so amended, the Redevelopment Plan is hereby incorporated by reference herein and designated as the official Redevelopment Plan for the Shellmound Park Redevelopment Project.

In connection therewith, the City Council incorporates the findings, mitigation measures and mitigation monitoring program and statement of overriding considerations set forth in the CEQA Resolution.

Section 6. The Executive Director of the Agency is hereby authorized to combine the Redevelopment Plan, as amended by this Amendment, into a single document, and said document, when filed with the City Clerk and the Secretary of the Agency, shall constitute the official Redevelopment Plan in place of the document currently constituting said Redevelopment Plan.

Section 7. In order to implement and facilitate the effectuation of the Amendment hereby approved, it may be necessary for the City Council to take

certain actions, and accordingly, this City Council hereby (a) pledges its cooperation in helping to carry out the Amendment; (b) requests the various officials departments, boards and agencies of the City having administrative responsibilities in the Project Area likewise to cooperate to such end and to exercise their respective functions and powers in a manner consistent with the redevelopment of the Project Area pursuant to the Amendment; (c) stands ready to consider and take appropriate action upon proposals and measures designed to effectuate the Amendment; and (d) declares its intention to undertake and complete any proceedings necessary to be carried out by the City under the provisions of the Amendment.

Section 8. Ordinance No. 87-07 is continued in full force and effect as amended by this Ordinance.

Section 9. The City Clerk is hereby directed to send a certified copy of this Ordinance to the Agency, whereupon the Agency is vested with the responsibility for carrying out the Redevelopment Plan as amended by the Amendment.

Section 10. The City Clerk is hereby directed to record with the County Recorder of Alameda County a notice of the approval and adoption of the Amendment pursuant to this Ordinance containing a statement that proceedings for the redevelopment of the Project Area pursuant to the Amendment have been instituted under the California Community Redevelopment Law.

Section 11. The City Manager or his designee is hereby directed to file a Notice of Determination with the County Clerk of Alameda County and the Office of Planning and Research pursuant to the provisions of Section 15094 of the State CEQA Guidelines.

Section 12. This Ordinance shall take effect thirty (30) days following its final passage. The City Clerk shall cause this Ordinance to be posted or published pursuant to the requirements of Government Code Section 36933.

Section 13. If any part of this Ordinance, or the Amendment which it approves, is held to be invalid for any reason, such decision shall not affect the validity of the remaining portion of this Ordinance or of the Amendment, and this City Council hereby declares that it would have passed the remainder of the Ordinance, or approved the remainder of the Amendment, if such invalid portion thereof had been deleted.

INTRODUCED AND FIRST READ at a special meeting held on _____
19____ and PASSED AND ADOPTED at a regular meeting held on _____
19____ by the following vote:

AYES: _____

NOES: _____

EXCUSED: _____

ABSENT: _____

ABSTAINED: _____

MAYOR

ATTEST:

APPROVED AS TO FORM:

CITY CLERK

CITY ATTORNEY

AMENDMENT TO THE REDEVELOPMENT PLAN FOR THE SHELLMOUND
PARK REDEVELOPMENT PROJECT

[Insert Amendment.]

Attachment D.1
Redevelopment Plan Amendments

AMENDMENT TO THE REDEVELOPMENT PLAN
FOR THE SHELLMOUND PARK REDEVELOPMENT PROJECT

- I. The Redevelopment Plan for the Shellmound Park Redevelopment Project is hereby amended to substitute in place of the existing Appendix II, Exhibit A, "Land Use Map," the "Amended Land Use Map," attached hereto as Exhibit A and incorporated herein by reference.
- II. The paragraph entitled "Land Use Characteristics of the Redevelopment Project Area" on Page 1-1.5 under Section I of the Redevelopment Plan is hereby amended to read as follows:

"The Redevelopment Project Area is comprised of 270(±) acres.

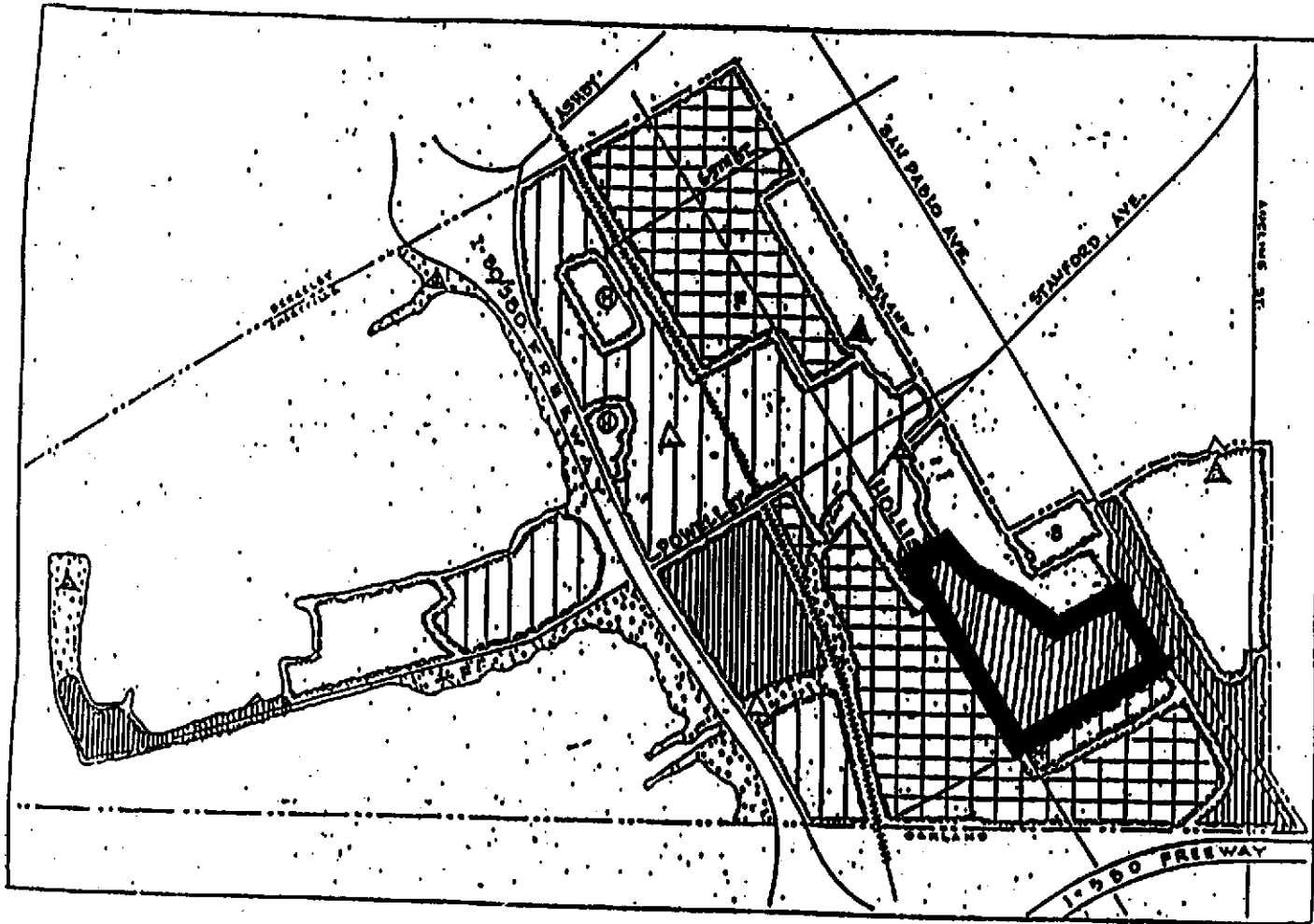
At the time of the establishment of the Redevelopment Project Area, the area represented the traditional industrial establishments, other business, and older residential activity centers of the community, and was approximately eighty percent (80%) developed. The Redevelopment Project Area, at the time of its establishment, had a land use distribution according to the following land use classifications:"

- III. Subparagraph 3 of Section 500.26 on page 2-5.5 under Section II of the Redevelopment Plan entitled "Other Semi-public, Institutional and Nonprofit Uses" is hereby amended to read as follows:












"In any area designated on the map attached hereto, the Agency is authorized to permit the establishment, development or enlargement of public, semi-public, institutional, or non-profit uses, including park and recreational facilities, libraries, medical facilities (including hospitals, medical office buildings, utility buildings, and a broad range of medical related services appropriate for a contemporary medical center), charitable institutions, and facilities of other similar associations or organizations. All such uses shall be developed according to the regulations, requirements, restrictions, and provisions of the Agency and shall conform as far as possible to the provisions of this Plan applicable to the uses in the specific area involved. The Agency may impose reasonable restrictions consistent with The General Plan as are necessary to protect the development and use of the Project Area."

EXHIBIT A

"AMENDED LAND USE MAP"



LAND USE PLAN

-  MEDIUM DENSITY RESIDENTIAL 20-45 du/acre
-  HIGH DENSITY RESIDENTIAL 45-60/acre
-  COMMERCIAL
-  MIXED USE
-  INDUSTRIAL
-  OPEN SPACE
-  PARK
-  PROPOSED PARK
-  PUBLIC BUILDING
-  FIRE STATION
-  SCHOOL

* Assumes 1.7 persons per DU.

1" = 100' N

Attachment E
Draft Council Resolution Approving
the Participation Agreement

CITY COUNCIL RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EMERYVILLE APPROVING AND AUTHORIZING THE EXECUTION OF A PARTICIPATION AGREEMENT BETWEEN THE EMERYVILLE REDEVELOPMENT AGENCY, THE CITY OF EMERYVILLE AND KAISER FOUNDATION HOSPITALS

WHEREAS, the Emeryville Redevelopment Agency (the "Agency") is carrying out the Redevelopment Plans (the "Redevelopment Plans") for the Emeryville Redevelopment Project and the Shellmound Park Redevelopment Project (the "Redevelopment Projects"); and

WHEREAS, the Agency has received a proposed Participation Agreement (the "PA") from Kaiser Foundation Hospitals (the "Participant") providing for the development of an urban medical center (the "Kaiser Project") on certain property within the Redevelopment Projects (the "Site") through the sale of certain real property within the Site by the Agency to the Participant (the "Disposition Property") and the provision by the Agency of certain public improvements necessary for development of the Kaiser Project (the "Public Improvements"); and

WHEREAS, the PA will result in the displacement of persons from the Shellmound Park Redevelopment Project and, therefore, a Relocation Plan was adopted by Agency Resolution No. RD71-94 on October 18, 1994, and approved by City Council Resolution No. 94-172 on October 18, 1994, pursuant to Section 33411 of the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 et seq.) and the state relocation law (Government Code Section 7260 et seq.); and

WHEREAS, the PA will result in the removal of low and moderate income dwelling units and, therefore, a Replacement Housing Plan was adopted by the Agency by Resolution No. RD72-94 on October 18, 1994, pursuant to Section 33413.5 of the Community Redevelopment Law; and

WHEREAS, the Community Redevelopment Law provides in Section 33431 that any sale or lease of Agency property may be made only after a public hearing of the Agency after publication of notice as provided by law; and

WHEREAS, pursuant to Section 33445 of the Community Redevelopment Law, an agency is authorized, with the consent of the legislative body to pay all or part of the value for and the cost of installation and construction of any building, facility, structure or other improvement which is publicly owned either within or without a project area if the legislative body determines that such buildings, facilities, structures or other improvements are of benefit to the project area or the immediate area in which the project is located, that no other reasonable means of financing such buildings, facilities, structures or other improvements are available to the community, and that such buildings, facilities, structures or other improvements will assist in the elimination of blighting conditions inside the project area and are consistent with the Implementation Plan to be adopted pursuant to Section 33490 of the Community Redevelopment Law; and

WHEREAS, notice of a joint public hearing by the City Council of the City of Emeryville (the "City Council") and the Agency on approval of the PA and the sale of the Disposition Property by the Agency to the Participant was published in the Oakland Tribune on November 7, 1994, and November 14, 1994; and

WHEREAS, the City Council and the Agency held a joint public hearing on November 21, 1994, in the City Council Chambers to consider and act on the sale of the Disposition Property and development of the Site pursuant to the PA; and

WHEREAS, prior to adopting the proposed PA, the City Council has adopted Resolution No. _____ (the "CEQA Resolution"), Making Findings Concerning Mitigation Measures, Adopting a Mitigation Monitoring and Reporting Program, Making Findings Concerning Alternatives and Adopting a State of Overriding Considerations in Accordance with the California Environmental Quality Act for the Kaiser Project; and

WHEREAS, the City Council finds that mitigation measures have been imposed on and incorporated in the Kaiser Project which avoid or substantially lessen environmental impacts, that certain mitigation measures are within the responsibility and jurisdiction of another public agency and such changes can and should be adopted by such other agency, that specific economic, social and other considerations make infeasible the project alternatives that would avoid or substantially lessen the environmental impacts that cannot fully be mitigated;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EMERYVILLE DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The City Council hereby finds and determines that the provision of the Public Improvements by the Agency for the development of the Site is necessary to effectuate the purposes of the Redevelopment Plans, that it is of benefit to the Project Areas, that no other reasonable means of financing the Public Improvements are available, and that the Public Improvements will assist in the elimination of blight within the Project Areas and are consistent with the implementation plan to be adopted by the Agency pursuant to Section 33490 of the Community Redevelopment Law, and the City Council has consented to and approved the undertaking by the Agency of the Public Improvements. These findings are supported by the following facts:

(a) The PA provides that, as specified in the Mitigation Monitoring Program, Participant will be required to construct or pay its fair share toward the construction of certain public improvements. For certain public improvements within the City, the Mitigation Monitoring Program provides that the City will cause the construction of these improvements and pay for or cause the Agency to pay for a portion of these improvements not paid for by Participant. In addition, the Agency will pay \$500,000 toward the funding of traffic improvements for the Horton/Landregan connector or the Hollis/Powell intersection as more particularly set forth in the Mitigation Monitoring Program. While the City and Agency will seek reimbursement for all or a portion of the funds expended from both private and public sources, the reimbursed amounts may not be sufficient to pay the full costs of the City and Agency obligations.

(b) The Public Improvements on which Agency funds may be used are in the City and are either in the Project Areas or are improvements to the roadways and intersections that primarily serve and affect the traffic circulation in the Project Areas.

(c) The Participant does not have additional funds available to pay for the Public Improvements due to its already high costs of developing the Kaiser Project on the Site, including the Participant's agreement to pay for the costs of implementing the Transportation System Management Program and constructing and paying its fair share of other roadway and intersection improvements identified in the Mitigation Monitoring Program adopted for the Kaiser Project; the City does not have sufficient funds to undertake the Public

Improvements; and there are no other public or private funds available to pay for the Public Improvements.

(d) The Public Improvements will assist in eliminating blight in the Project Areas because they will facilitate the development of the Kaiser Project which will cause the development of existing vacant and underutilized land, provide commercial and retail services to the occupants of the Project Areas, increase employment opportunities within the Project Areas, and cause the removal of unsafe and unhealthy toxic substances from the Project Areas.

(e) The Implementation Plan provides for Agency assistance to the Kaiser Project and these Public Improvements.

Section 2. The City Council hereby finds that in connection with any potential acquisition of real property by the Agency pursuant to the PA, adequate provisions have been made to be guided by the acquisition policies contained in Article 6 of the California Relocation Assistance and Real Property Acquisition Guidelines (the "Relocation and Acquisition Guidelines"), and that eligible persons will be informed of the pertinent benefits, policies and requirements of the Relocation and Acquisition Guidelines. This finding is based on the fact that the Agency has adopted the Relocation and Acquisition Guidelines in connection with the acquisition of real property and relocation of persons as its guidelines by Agency Resolution No. RD93-67 adopted on September 21, 1993, and the Agency will implement the acquisition policies as set forth in the Relocation and Acquisition Guidelines.

Section 3. Based on the entire record before this City Council, including the findings set forth in this resolution and in the CEQA Resolution No. _____, and subject to the adoption of the Amendment to the City General Plan and the Amendment to the Shellmound Park Redevelopment Plan by the City Council and the adoption of an Implementation Plan by the Agency, the City Council hereby approves and authorizes execution of the PA substantially in the form attached hereto, subject to any nonsubstantive revisions as the City Manager and City Attorney shall approve, by the Mayor and the City Clerk, and consents to and approves the undertaking by the Agency of the Public Improvements. Further the Mayor and City Clerk are hereby authorized and directed to execute the PA and to take such further actions and execute such necessary documents as are necessary to carry out the PA on behalf of the City Council, including but not limited to the execution of any deeds.

Section 4. In connection therewith, the City Council incorporates the findings, mitigation measures and mitigation monitoring program and statement of overriding considerations set forth in the CEQA Resolution.

Section 5. The City Manager or his designee is hereby directed to file a Notice of Determination with the County Clerk of Alameda County and the Office of Planning and Research pursuant to the provisions of Section 15096(i) of the State CEQA guidelines.

PASSED AND ADOPTED by the City Council of the City of Emeryville at a special meeting held on Monday, November 21, 1994, by the following vote:

AYES: _____

NOES: _____

EXCUSED: _____

ABSENT: _____

ABSTAINED: _____

MAYOR

ATTEST:

APPROVED AS TO FORM:

CITY CLERK

CITY ATTORNEY

Attachment E.1
The Participation Agreement

RED-LINED COPY
Underline Denotes Additions
^ Denotes Deletions

PARTICIPATION AGREEMENT

by and between

THE EMERYVILLE REDEVELOPMENT AGENCY,

THE CITY OF EMERYVILLE

and

KAISER FOUNDATION HOSPITALS

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- X. [§1000] TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY

Attachments

Attachment No. 1	Map of the Site
Attachment No. 2	Legal Description of the Site
Attachment No. 3	Schedule of Performance
Attachment No. 4	Scope of Development
Attachment No. 5	Form of Grant Deed
Attachment No. 6	Form of Certificate of Completion

PARTICIPATION AGREEMENT

THIS AGREEMENT is entered into as of the _____ day of _____, 1994, by and between the EMERYVILLE REDEVELOPMENT AGENCY (the "Agency"), the CITY OF EMERYVILLE (the "City") and KAISER FOUNDATION HOSPITALS (the "Participant"). The Agency, the City and the Participant agree as follows:

I. [§100] SUBJECT OF AGREEMENT

A. [§101] Purpose and Background of this Agreement

The purpose of this Agreement is to effectuate the Redevelopment Plan (the "Shellmound Redevelopment Plan") for the Shellmound Park Redevelopment Project (the "Shellmound Project") and, if applicable, as set forth in Section 102 of this Agreement, the Emeryville Redevelopment Plan (the "Emeryville Redevelopment Plan") for the Emeryville Redevelopment Project (the "Emeryville Project") by providing for the development of certain real property (the "Site") included within the boundaries of the Shellmound Project and, if applicable, the Emeryville Project.

The development of the Site pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City of Emeryville, California, and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

The following is a summary of the background and general provisions of this Agreement:

1. The Agency and Participant entered into an Agreement to Negotiate Exclusively dated July 9, 1993, as amended by a First Amendment to Agreement to Negotiate Exclusively dated June 10, 1994 (the "ERN") for development of the Site to include an urban medical center consisting of a hospital, medical office buildings and ancillary facilities, certain commercial/retail uses along San Pablo Avenue and parking improvements and structures (the "Project").
2. Pursuant to and during the term of the ERN the Participant:
 - a. Conducted various studies to determine the feasibility of the Project including, but not limited to, planning, engineering, marketing, environmental (including soils studies for toxics), traffic and relocation;

- b. Acquired certain portions in the first phase of development of the Site which it was able to acquire from property owners by negotiation (the "Phase I Participating Property") and notified and requested the Agency's assistance in acquiring the properties in the first phase that it was unable to acquire (the "Phase I Disposition Property");
- c. Submitted a Preliminary Development Plan to the City for development of the Site in two or more phases and a Final Development Plan for the first 520,000 square feet of the hospital on the Phase I Site;
- d. Applied for and paid fees for permits and approvals required for processing the development approvals for the development of the Phase I Site;
- e. Agreed to pay or reimburse the Agency for all costs related to the implementation of the ERN, including, but not limited to, appraisals for the portions of the Site the Participant is unable to acquire by negotiation (the "Disposition Property"), a relocation plan for persons who may be displaced from the Site due to development of the Project, a replacement housing plan for the low and moderate income residential units that may be removed from the Site due to development of the Project and the costs to implement the replacement housing plan, and processing an amendment to the Shellmound Redevelopment Plan;
- f. Advanced funds to the Agency for payment of Agency and City staff time and consultant services in connection with implementing the ERN, including, but not limited to, the costs of planning, acquisition, relocation, financial analyses and legal services;
- g. Agreed upon the general terms and conditions of a Development Agreement with the City pursuant to Government Code Section 65864, et seq. for the Phase I Site, as set forth in the City Development Agreement, attached hereto as Exhibit B of the Scope of Development (Attachment No. 4); and
- h. Negotiated the terms and conditions of this Agreement.

3. Also pursuant to and during the term of the ERN, the Agency obtained appraisals of the Phase I Disposition Property.
4. The Participant and Agency acknowledge and agree that an amendment to the General Plan and an amendment to the Shellmound Redevelopment Plan must become effective in order to effectuate this Agreement, and prior to conveyance of all or any portion of the Site by the Agency to the Participant.
5. Subject to the terms and conditions set forth in this Agreement, this Agreement provides for the acquisition, relocation and development of the Site in two or more phases; conveyance of the Disposition Property by the Agency to the Participant in two phases; the advance by the Participant of funds to the Agency for payment of the Agency's acquisition, relocation and other costs incurred in order to be able to convey the Disposition Property to the Participant; and the development of the Site by the Participant in two or more phases: the "Phase I Improvements" which at a minimum shall include the "Phase I Minimum Improvements," the "Phase I Expansion Improvements" and the "Future Expansion Improvements," which at a minimum shall include the "Future Expansion Minimum Improvements." as defined in the Scope of Development (Attachment No. 4).

B. §102] The Redevelopment Plans

As to the Phase I Site and the Future Expansion Site, as defined in Section 104 hereof, this Agreement is subject to the provisions of the Shellmound Redevelopment Plan which was approved and adopted on October 20, 1987, by the City Council of the City of Emeryville, by Ordinance No. 87-07, as amended in order to permit development of the Project on the Site. The Shellmound Redevelopment Plan, as it now exists, as it is amended to permit development of the Project on the Site, and as it may be subsequently amended pursuant to Section 206 and Section 802, is incorporated herein by reference and made a part hereof as though fully set forth herein. In addition, if the AC Transit Site, as described and defined in Section 104 hereof, is selected for the Project as an alternative to the Future Expansion Site, then this Agreement, as to the AC Transit Site only, is subject to the provisions of the Emeryville Redevelopment Plan which was approved and adopted on July 27, 1976, by the City Council of the City of Emeryville, by Ordinance No. 76-04. The Emeryville Redevelopment Plan, as it now exists, and as it may be subsequently amended pursuant to Section 802, is incorporated herein by reference and made a part hereof as though fully set forth herein.

The term "Redevelopment Plan," as used in this Agreement, shall mean the Shellmound Redevelopment Plan unless the AC Transit Site is selected for the future expansion of the Project, in which case the term "Redevelopment

Plan" shall mean the Shellmound Redevelopment Plan as to the Phase I Site, and the Emeryville Redevelopment Plan as to the AC Transit Site.

C. [§103] The Project Area

The Project Area is located in the City of Emeryville, California, and the exact boundaries thereof are specifically described in the Redevelopment Plan, as amended.

D. [§104] The Site

The Site is that portion of the Project Area shown on the Map of the Site (Attachment No. 1) and is more particularly described in the Legal Description of the Site (Attachment No. 2). The Site consists of two areas: the Phase I Site and the Future Expansion Site. The Phase I Site is the area upon which the first phase of development of the Project will occur and is comprised of certain real property owned by the Participant as of the date of execution of this Agreement by the Participant (the "Phase I Participating Property") and certain real property to be acquired by the Agency for conveyance to the Participant (the "Phase I Disposition Property"). The Future Expansion Site is the area upon which an expansion of the Project may, at the election of the Participant, occur (the "Future Expansion") and is comprised of certain real property to be acquired from third parties by the Participant or by the Agency for conveyance to the Participant. There is an alternative location for the Future Expansion Site generally known as the AC Transit Site being considered for the Future Expansion (the "AC Transit Site"). If the AC Transit Site is selected for the Future Expansion pursuant to Section 202 of this Agreement, then the Site shall thereafter be composed of and shall mean and include the Phase I Site and the AC Transit Site. The Phase I Participating Property, the Phase I Disposition Property, the Future Expansion Site and the AC Transit Site are separately described in Attachment No. 2.

The Agency acknowledges and agrees that one reason for selection of the Site by the Participant is the Participant's need for a 30-acre site in order to accommodate future expansion. The potential availability of both the Phase I Site and either the Future Expansion Site or AC Transit Site is an important consideration by the Participant in its decision to locate within the City of Emeryville. The Participant confronts a difficult planning environment in view of changes in the health care industry and, therefore, needs to have assurance that the Project can be expanded to meet member and community needs. Therefore, an additional purpose of this Agreement is to enable the Agency, City and Participant to plan and provide for development of the Site in a manner which will assure that the Participant will be able to construct the Future Expansion on the Site in accordance with the terms and conditions of this Agreement.

E. §105 Parties to this Agreement

1. §106 The Agency

The Agency is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 et seq.). The office of the Agency is located at 2200 Powell Street, Emeryville, California 94608. "Agency," as used in this Agreement, includes the Emeryville Redevelopment Agency and any assignee of or successor to its rights, powers and responsibilities.

2. §107 The City

The City is a municipal corporation. The office of the City is located at 2200 Powell Street, Emeryville, California 94608. "City," as used in this Agreement, includes the City of Emeryville and any assignee of or successor to its rights, powers and responsibilities.

3. §108 The Participant

The Participant is KAISER FOUNDATION HOSPITALS, a California nonprofit public benefit corporation. The Northern California Regional Headquarters of the Participant is located at 1950 Franklin Boulevard, Oakland, California 94612. Wherever the term "Participant" is used herein, such term shall include any permitted nominee, assignee or successor in interest as herein provided.

The qualifications and identity of the Participant are of particular concern to the Agency, and it is because of such qualifications and identity that the Agency has entered into this Agreement with the Participant. No voluntary or involuntary successor in interest of the Participant shall acquire any rights or powers under this Agreement without the prior written approval of the Agency. This Agreement may be terminated by the Agency pursuant to Section 611 hereof if there is any significant change (voluntary or involuntary) in the membership, management or control of the Participant prior to the completion of the development of the Phase I Site, as evidenced by the issuance of a Phase I Certificate of Completion, as defined in Section 413 hereof, or of the Future Expansion Site or AC Transit Site, as evidenced by the issuance of a Future Expansion Certificate of Completion, as defined in Section 413 hereof.

For the purposes of this Agreement, a permitted nominee, assignee or successor in interest may include an entity in which the Participant retains control of a majority of the ownership and operating control, and such permitted nominee shall not be deemed to be a significant change in the management or control of the Participant; provided the Agency approves such

entity, which approval shall only be withheld if the Agency determines that the requirements of this paragraph have not been met. Any assignment or transfer by Participant of all or any portion of its interests under this Agreement to any entity or entities that participate in what is commonly known as the Kaiser Permanente Medical Care Program (including, without limitation, Kaiser Foundation Health Plan, Inc., and the Permanente Medical Group, Inc.) shall not be deemed an assignment or transfer under this provision. The Agency shall approve a transfer or assignment after the completion of Phase I Minimum Improvements if the Agency finds that the successor in interest is and has been a substantial health care provider or network in Northern California which is able to demonstrate a reputation for quality comparable to Kaiser's and which has the capacity and resources to provide a comparable range of health care services at the Site, including, but not limited to, the obligations set forth in this Agreement and the City Development Agreement.

Prior to the issuance of the Phase I Certificate of Completion, the Participant shall not assign all or any part of this Agreement that is applicable to the Phase I Site without the prior written approval of the Agency. Prior to the issuance of the Future Expansion Certificate of Completion, the Participant shall not assign all or any part of this Agreement that is applicable to the Future Expansion Site or AC Transit Site without the prior written approval of the Agency.

The Participant qualifies as an owner participant within the meaning of the Community Redevelopment Law, the Redevelopment Plan and the Agency's Rules Governing Participation and Preferences by Property Owners and Business Occupants in the applicable Shellmound or Emeryville Project Area (the "Owner Participation Rules").

F. §109 Deposit

The Participant shall, prior to or simultaneously with the execution of this Agreement by the Agency, deliver to the Agency a deposit of cash or certified check satisfactory to the Agency in the amount of _____ DOLLARS (\$_____) (the "Deposit") as security for the performance of the obligations of the Participant to be performed prior to the return of the Deposit to the Participant or its retention by the Agency as liquidated damages.

In lieu of cash or certified check, the Deposit, at the option of the Participant, may in the form of:

1. Negotiable certificates of deposit issued by a federal or state bank; or
2. An unconditional and irrevocable letter of credit, in favor of the Agency, from a bank authorized to do business in California, in form and substance satisfactory to the Agency.

The Agency shall be under no obligation to pay or earn interest on the Deposit, but if interest is paid thereon, such interest shall become part of the Deposit.

Upon termination of this Agreement by the Agency, the Deposit may be retained by the Agency or returned to the Participant as provided in Section 611 hereof.

Upon termination of this Agreement by the Participant, the Deposit shall be returned to the Participant as provided in Section 610 hereof.

If the Participant is in default with respect to any provision of this Agreement, the Agency may, but shall have no obligation to, use the Deposit or any portion of the Deposit to cure such default or to compensate the Agency for any expense or damage sustained by the Agency and resulting from such default. If this Agreement has not been terminated as a result of such default, the Participant, on demand from the Agency, shall promptly restore such Deposit to the full amount required by this Section 109.

If this Agreement shall not have been previously cancelled or terminated, or the Deposit shall not have been returned to the Participant, the Agency shall return the Deposit to the Participant upon completion of the improvements and development of the Site for which a Phase I Certificate of Completion has been issued pursuant to Section 413 hereof.

II. [§200] ASSEMBLY OF THE PHASE I DISPOSITION PROPERTY AND FUTURE EXPANSION AREA

A. [§201] Agency's Acquisition of Phase I Disposition Property

Within the time set forth in the Schedule of Performance (Attachment No. 3) and after receipt by the Agency from the Participant of the Phase I Site Advance, as defined in Section 209 hereof, the Agency shall submit written offers to acquire the Phase I Disposition Property to the property owners. The offers shall be in the amount of the fair market value established by the Agency's appraisal.

The Agency agrees that if it is unable to acquire the Phase I Disposition Property or any portion thereof by negotiation, within the time set forth in the Schedule of Performance (Attachment No. 3), it shall consider the adoption of one or more Resolutions of Necessity for acquisition of the Phase I Disposition Property or applicable portions thereof by eminent domain. If the Agency elects to adopt one or more Resolutions of Necessity and has received the Phase I Advance described in Section 209 hereof, the Agency shall proceed promptly to acquire the Phase I Disposition Property by eminent domain. The Participant acknowledges that discretion is vested in the Agency to determine whether or not the statutory conditions set forth in Code of Civil Procedure Section 1245.230 are met in order to

entitle a governmental agency to adopt a resolution of necessity. Nothing in this Agreement shall obligate the Agency to make the findings required by Section 1245.230 or adopt the Resolutions of Necessity. If the Agency fails to adopt [^]all Resolutions of Necessity for all the Phase I Disposition Property, the exclusive remedy of the Participant shall be to terminate this Agreement pursuant to Section 610 hereof.

B. [§202] Determination and Assembly of the Future Expansion Area

Within the time set forth in the Schedule of Performance (Attachment No. 3), the Participant shall notify the Agency, in writing, of whether or not it wishes to proceed with acquisition of all or a portion of the Future Expansion Area.

As set forth in Section 104 hereof, the Future Expansion Site and the AC Transit Site are being considered for the Future Expansion. The Participant has submitted to the City a Preliminary Development Plan which includes plans for the Phase I Site and the Future Expansion Site, however the Participant's submittal and the City's acceptance of this Preliminary Development Plan does not constitute a final decision on the location of the Future Expansion. Instead, the Preliminary Development Plan includes the Future Expansion Site because at the time of approval of this Agreement, the Agency's ability to assemble the Future Expansion Site appeared to be more certain and because submittal of a Preliminary Development Plan upon a specific area has allowed the analysis in the Environmental Impact Report to be more specific and complete.

Prior to the time set forth in the Schedule of Performance (Attachment No. 3) for the selection of the area for the Future Expansion, the Agency and the Participant shall work together to analyze the feasibility, costs and advantages and disadvantages of the Future Expansion Site and the AC Transit Site, including, but not limited to: (a) a comparison of the respective MAI appraisals of both sites; and (b) the Agency's ability to acquire the AC Transit Site in a manner that is substantially comparable to the time period required for acquisition of the Future Expansion Site (the "Future Expansion Analyses"). Within the time set forth in the Schedule of Performance (Attachment No. 3), the Agency shall select the area for the Future Expansion (the "Future Expansion Area"). However, the Agency may only select the AC Transit Site if the following conditions are met: (a) the Agency can provide to the Participant evidence of its ability to expeditiously acquire the AC Transit Site; and (b) the estimated costs to the Participant of acquiring and developing the AC Transit Site, which estimate shall be based on the Future Expansion Analyses, does not exceed the costs to the Participant of acquiring and developing the Future Expansion Site by more than twenty-five percent (25%) (the "Maximum Future Expansion Participant Costs"). The Participant and the Agency agree that if the estimated costs to acquire and develop the AC Transit Site exceeds the Maximum Future Expansion Participant Costs, the Agency may provide assistance to the Participant in order to reduce the estimated costs to the Participant of acquiring and developing the AC Transit Site to an amount that will not exceed the Maximum

Future Expansion Participant Costs. If the Agency is: (a) unable to assure Participant that the AC Transit Site may be acquired in a manner that is substantially comparable to the time period required for acquisition of the Future Expansion Site; and (b) unable to provide the assistance necessary to reduce the Participant's cost of acquiring and developing the AC Transit Site to an amount that does not exceed the Maximum Future Expansion Participant Costs, the Future Expansion Site shall be designated as the area for the Future Expansion.

The Agency and Participant agree that if the Future Expansion Area is the Future Expansion Site and the Participant elects to develop only a portion of the Future Expansion Site, the portion of the Future Expansion Site to be assembled by the Participant and the Agency for development shall only include the parcels that border Hollis Street and shall not include the parcels of the area generally known as the Emeryville Business Center, and such area shall hereinafter mean the Future Expansion Area.

1. [§203] Acquisition by the Participant

Within the time set forth in the Schedule of Performance (Attachment No. 3), the Participant shall make good faith and diligent efforts to acquire any or all of the parcels comprising the Future Expansion Area from voluntary sellers through negotiation and shall notify the Agency in writing as to which parcels of the Future Expansion Area, if any, it has been able to acquire (the "Future Expansion Participating Property") and which, if any, it has been unable to acquire (the "Future Expansion Disposition Property"), and shall request that the Agency acquire the Future Expansion Disposition Property for conveyance to the Participant.

2. [§204] Acquisition by the Agency

a. [§205] Agency's Acquisition by Negotiation

Upon the Agency's receipt of the Participant's request that it acquire the Future Expansion Disposition Property and the Future Expansion Advance, as defined in Section 209 hereof, the Agency shall select an appraiser, obtain an appraisal of the Future Expansion Disposition Property and [^]submit written offers to acquire the Future Expansion Disposition Property. The proposed price contained in any Agency offer or counter-offer to purchase shall be subject to the Participant's reasonable approval, but in no event shall the offer be less than the appraised fair market value for such property. Notwithstanding the provisions of this paragraph, if the amount of the Participant's offer to purchase all or any portion of the Future Expansion Disposition Property was less than the fair market value established by the Agency's appraisal, the Participant shall be required to make an offer to the applicable property owner to acquire the property in the amount of the fair market value established by the Agency appraisal prior to the Agency proceeding with the acquisition of such property as set forth herein.

b. §206] Agency's Acquisition of Future Expansion Disposition Property by Eminent Domain Following Adoption of Resolutions of Necessity

If the Future Expansion Area is the Future Expansion Site and the Agency is unable to acquire all or any portions of the Future Expansion Disposition Property by voluntary acquisition, the Agency shall notify the Participant of, and conduct a public hearing to consider adoption of, one or more Resolutions of Necessity authorizing acquisition of all or any portions of the Future Expansion Disposition Property by the exercise of the power of eminent domain within the time set forth in the Schedule of Performance (Attachment No. 3). However, if the Participant's request to the Agency to acquire the Future Expansion Disposition Property is after 1999, the Agency's obligation under this Section 206 is conditioned upon the adoption of an amendment to the Shellmound Park Redevelopment Plan for the sole purpose of extending the Agency's power of eminent domain beyond this date. The Participant understands and acknowledges that the Agency [^]will not [^]assert authority to acquire the AC Transit Site by eminent domain; therefore, the provisions of this Section 206 do not apply to the Future Expansion Disposition Property if the Future Expansion Disposition Property is the AC Transit Site.

If the Agency adopts one or more Resolutions of Necessity for all or any portions of the Future Expansion Disposition Property and receives the Future Expansion Advance, the Agency shall proceed promptly to acquire such portions of the Future Expansion Disposition Property by eminent domain. The Participant acknowledges that discretion is vested in the Agency to determine whether or not the statutory conditions set forth in Code of Civil Procedure Section 1245.230 are met in order to entitle a governmental agency to adopt a resolution of necessity. Nothing in this Agreement shall obligate the Agency to make the findings required by Section 1245.230 or adopt the Resolutions of Necessity. If the Agency fails to adopt all the Resolutions of Necessity which are required to acquire all the Future Expansion Disposition Property, the exclusive remedy of the Participant shall be to terminate this Agreement pursuant to Section 610 hereof.

C. §207] Advance of Funds by the Participant

1. §208] Total Agency Acquisition Costs

For the purposes of this Agreement, "Total Agency Acquisition Costs" for each phase means:

- (a) The purchase price for the real property, improvements, fixtures and equipment of any and all portions of the applicable Phase I Disposition

Property or Future Expansion Disposition Property acquired by the Agency by direct purchase, together with all costs and expenses incident to such purchase, including, but not limited to, appraisals, title and escrow costs, attorneys' fees and negotiation costs;

- (b) All Agency costs and expenses of acquiring the applicable Phase I Disposition Property or Future Expansion Disposition Property or any portion thereof by eminent domain, including, but not limited to, costs of the type set forth under (a), above, filing fees, witness fees, court costs, deposits necessary to obtain orders of prejudgment possession, satisfaction of judgment, severance damages, loss of goodwill (whether or not the property is acquired by condemnation), pre-condemnation damages and attorneys' fees;
- (c) All Agency costs and expenses, if any, attributable to relocation of the occupants of the applicable Phase I Site or Future Expansion Area pursuant to California Government Code Section 7260, et seq., and applicable administrative regulations, and/or any applicable federal laws and regulations;
- (d) All Agency costs and expenses necessary to deliver title to the applicable Phase I Disposition Property or Future Expansion Disposition Property in the condition required by Section 305 of this Agreement;
- (e) All Agency costs and expenses of the escrow and title insurance for the applicable Phase I Disposition Property or Future Expansion Disposition Property; and
- (f) The Agency's reasonable direct administrative costs incurred in the performance of its obligation to acquire the applicable Phase I Disposition Property or Future Expansion Disposition Property, including, but not limited to: the cost of real estate acquisition, legal and relocation consultants attributable to the performance of said obligation ^.

For the Phase I Disposition Property, the Total Agency Acquisition Costs shall be reduced by the amount of costs already paid by the Participant pursuant to the ERN or any other agreement between the Agency and the Participant.

2. [§209] Participant's Advance of Total Agency Acquisition Costs

Within the times set forth in the Schedule of Performance (Attachment No. 3), the Participant shall make two advances, or cause to be made two advances, to the Agency in the manner hereinafter set forth: (a) an amount equal to the estimated Total Agency Acquisition Costs for the Phase I Disposition Property ^ (the "Phase I Advance"); and (b) an amount equal to the estimated Total Agency Acquisition Costs for the Future Expansion Disposition Property ^ (the "Future Expansion Advance"). The Phase I Advance and Future Expansion Advance shall be utilized by the Agency solely for the purposes of acquiring the respective Phase I Disposition Property or Future Expansion Disposition Property and relocating the occupants thereon, including, but not limited to, the purchase price for such real property.

Within the times set forth in the Schedule of Performance (Attachment No. 3) the Participant shall deliver to the Agency cash or a cashier's check payable to the Agency in the amount of the applicable Phase I Advance or Future Expansion Advance. The Agency shall deposit the applicable Phase I Advance or Future Expansion Advance in an interest-bearing account. Any amounts of the Phase I Advance or Future Expansion Advance remaining after payment of the applicable Total Agency Acquisition Costs, including any interest earned on the applicable Phase I Advance or Future Expansion Advance shall be returned to the Participant.

If the remaining balance in the applicable Phase I Advance or Future Expansion Advance is not sufficient to pay all of the applicable Total Agency Acquisition Costs pursuant to this Agreement, the Agency shall promptly notify the Participant in writing of the amount of additional funds required. Within thirty (30) days following receipt of such notice, the Participant shall augment the applicable Phase I Advance or Future Expansion Advance. The Agency shall have no obligation to acquire the applicable Phase I Disposition Property or Future Expansion Disposition Property unless and until the applicable Phase I Advance or Future Expansion Advance is augmented.

3. [§210] Disposition of Advance Funds in Event of Termination

If this Agreement is terminated pursuant to Sections 610 or 611, then, subject to any right of offset or retention, any balance in the applicable Phase I Advance or Future Expansion Advance account not needed by the Agency to pay its obligations theretofore incurred in connection with this Agreement or reasonably incurred thereafter in abandoning its obligations under this Agreement shall be

returned to the Participant, and any amounts which were deposited into court in connection with an action in eminent domain shall be repaid as rapidly as the release of said amounts from the court can reasonably be effected. The Agency will not draw further funds from the applicable Phase I Advance or Future Expansion Advance, except as set forth above, and will return whatever funds are recoverable.

Notwithstanding any other provision of this Agreement to the contrary, in the event the Agency abandons an action in eminent domain to acquire any portion of the applicable Phase I Disposition Property or Future Expansion Disposition Property due to the failure of the Participant to advance the applicable Total Agency Acquisition Costs in accordance with this Agreement, or due to the termination of this Agreement by the Agency for any of the reasons specified in Section 611, then the Participant shall pay to the Agency any and all costs associated with such abandonment, including, but not limited to, any fees, penalties or damages which may be awarded in favor of a condemnee against the Agency.

III. [§300] DISPOSITION OF THE DISPOSITION PROPERTY

A. [§301] Sale and Purchase

In accordance with and subject to all the terms, covenants and conditions of this Agreement, the Agency agrees to sell, and the Participant agrees to purchase for development, the Phase I Disposition Property and Future Expansion Disposition Property. The Phase I Disposition Property and the Future Expansion Disposition Property shall be conveyed to the Participant in two phases as set forth in the Schedule of Performance (Attachment No. 3). The purchase price for each phase shall be the sum of the Total Agency Acquisition Costs, as defined in Section 203 hereof, of the applicable Phase I Disposition Property or Future Expansion Disposition Property (the "Purchase Price").

B. [§302] Escrow

The Agency agrees to open an escrow for conveyance of the Phase I Disposition Property and conveyance of the Future Expansion Disposition Property with First American Title Company, or any other escrow company approved by the Agency and the Participant, as escrow agent (the "Escrow Agent") in Oakland, California, within the times established in the Schedule of Performance (Attachment No. 3). This Agreement constitutes the joint escrow instructions of the Agency and the Participant, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of each escrow. The Agency and the Participant shall provide such additional escrow instructions as may be appropriate to enable the Escrow Agent to comply with the terms of this Agreement. The Escrow Agent hereby is empowered to act under this Agreement, and, upon indicating its acceptance of the provisions of this Section 302 in writing, delivered to the Agency and to the Participant within five (5) days after the opening of the escrow, shall carry out its duties as Escrow Agent hereunder.

The Participant shall deposit with the Escrow Agent the Purchase Price for the applicable Phase I Disposition Property or Future Expansion Disposition Property in accordance with the provisions of Section 307 of this Agreement and the applicable Agreement to be Recorded Affecting Real Property described in Section 504 hereof.

The Participant shall pay in escrow to the Escrow Agent all fees, charges and costs promptly after the Escrow Agent has notified the Participant of the amount of such fees, charges and costs, but not later than the scheduled date for the close of escrow as set forth in the Schedule of Performance (Attachment No. 3).

The Agency shall timely and properly execute, acknowledge and deliver a **grant** deed conveying title to the applicable Phase I Disposition Property or Future Expansion Disposition Property to the Participant, together with an estoppel certificate certifying that the Participant has completed all acts (except deposit of the applicable Purchase Price) necessary to entitle the Participant to such conveyance, if such be the fact.

The Agency and the Participant shall each deposit in escrow such instruments as are reasonably required by the Escrow Agent or otherwise required to close the escrow and consummate the purchase of all of the applicable Phase I Disposition Property or Future Expansion Disposition Property in accordance with this Agreement.

Upon delivery of the applicable **grant** deed to the Escrow Agent by the Agency pursuant to Section 306 of this Agreement, the Escrow Agent shall record such deed when title can be vested in the Participant in accordance with the terms and provisions of this Agreement. The Escrow Agent shall buy, affix and cancel any transfer stamps required by law and pay any transfer tax required by law. Any insurance policies governing the Phase I Disposition Property or Future Expansion Disposition Property are not to be transferred.

The Escrow Agent is authorized and instructed to:

1. Pay and charge the Participant for all fees, charges and costs payable under this Section 302. Before such payments are made, the Escrow Agent shall notify the Participant of the total amount of the fees, charges and costs necessary to clear title and close the applicable escrow.
2. Disburse funds and deliver the applicable deed and other documents to the parties entitled thereto when the conditions of the applicable escrow have been fulfilled by the Agency and the Participant; and

3. Record any instruments delivered through the escrow, if necessary or proper, to vest title in the Participant in accordance with the terms and provisions of this Agreement.

All funds received in the escrow shall be deposited by the Escrow Agent with other escrow funds of the Escrow Agent in an interest bearing escrow account or accounts with any state or national bank doing business in the State of California. Such funds may be transferred to any other such escrow account or accounts. All disbursements shall be made by check of the Escrow Agent. All adjustments shall be made on the basis of a 30-day month. All such interest shall be credited to Participant.

If the escrow is not in condition to close before the time set forth in the Schedule of Performance (Attachment No. 3), either party who then shall have fully performed the acts to be performed before the conveyance of title may, in writing, terminate this Agreement in the manner set forth in Sections 610 or 611 hereof, as the case may be, and demand the return of its money, papers or documents. Thereupon all obligations and liabilities of the parties under this Agreement shall cease and terminate in the manner set forth in Sections 610 or 611 hereof, as the case may be. If neither the Agency nor the Participant shall have fully performed the acts to be performed before the time for conveyance established in the Schedule of Performance (Attachment No. 3), no termination or demand for return shall be recognized until ten (10) days after the Escrow Agent shall have mailed copies of such demand to the other party or parties at the address of its or their principal place or places of business. If any objections are raised within the 10-day period, the Escrow Agent is authorized to hold all money, papers and documents with respect to the applicable Phase I Disposition Property or Future Expansion Disposition Property until instructed in writing by both the Agency and the Participant or upon failure thereof by a court of competent jurisdiction. If no such demands are made, the escrow shall close as soon as possible. Nothing in this Section 302 shall be construed to impair or affect the rights or obligations of the Agency or the Participant to specific performance.

Any amendment of these escrow instructions shall be in writing and signed by both the Agency and the Participant. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

All communications from the Escrow Agent to the Agency or the Participant shall be directed to the addresses and in the manner established in Section 701 for notices, demands and communications between the Agency and the Participant.

The liability of the Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under Sections 302 to 308, both inclusive, of this Agreement.

Neither the Agency nor the Participant shall be liable for any real estate commissions or brokerage fees which may arise herefrom. The Agency and the Participant each represent that neither has engaged any broker, agent or finder in connection with the transactions contemplated by this Agreement.

C. §303] Conveyance of Title and Delivery of Possession

Provided that the Participant is not in default under this Agreement and all conditions precedent to such conveyance have occurred, and subject to any mutually agreed upon extensions of time, conveyance to the Participation of title to the applicable Phase I Disposition Property or Future Expansion Disposition Property shall be completed on or prior to the date specified in the Schedule of Performance (Attachment No. 3). The Agency and the Participant agree to perform all acts necessary to conveyance of title in sufficient time for title to be conveyed in accordance with the foregoing provisions.

Possession of the applicable Phase I Disposition Property or Future Expansion Disposition Property shall be delivered to the Participant concurrently with the conveyance of title, except that limited access may be permitted before conveyance of title as permitted in Section 312 of this Agreement. The Participant shall accept title and possession on or before said date.

Notwithstanding the provisions of this Agreement requiring the Agency to acquire title to the applicable Phase I Disposition Property or Future Expansion Disposition Property prior to the time set for conveyance in the Schedule of Performance (Attachment No. 3) and to deposit the applicable grant deed in escrow prior to such time, if, on or before the date set forth in the Schedule of Performance for conveyance of the applicable Phase I Disposition Property or Future Expansion Disposition Property the Agency has not obtained title to any portion of the applicable Disposition Property but has obtained a judicial order or orders authorizing the Agency to take possession thereof and has deposited said order in escrow, and:

1. The Agency delivers exclusive possession of the property involved to the Participant by a right of entry or other document reasonably approved by the Agency and the Participant as a means of effectuating this Agreement on or prior to the time set for conveyance thereof; and
2. All occupants have been relocated from the property involved; and

3. The right of possession which the Participant acquires from the Agency is such that the Title Company will issue a policy or policies of title insurance which will enable Participant to obtain financing for the development of the applicable phase pursuant to this Agreement; and
- c. The Agency diligently proceeds with any eminent domain actions which have not been concluded until a final judgment is rendered;

then neither party shall be entitled to terminate this Agreement under the provisions of Section 610 or 611, and the Participant shall accept such right of possession and shall proceed with the applicable phase of development of the Site in accordance with this Agreement. The escrow provided in Section 302 of this Agreement shall remain open with respect to such portion of the applicable Phase I Disposition Property or Future Expansion Disposition Property until the grant deed thereto can be recorded in accordance with Section 307 and this Section 303.

D. §304 Form of Deed

With respect to the Phase I Disposition Property or Future Expansion Disposition Property, or any portion thereof, the Agency shall convey to the Participant title in the condition provided in Section 305 of this Agreement by grant deed in substantially the form set forth in Attachment No. 5.

E. §305 Condition of Title

The Agency shall convey to the Participant fee simple title to each and every parcel of the applicable Phase I Disposition Property or Future Expansion Disposition Property, free and clear of all recorded liens, encumbrances, assessments, leases and taxes except as are consistent with this Agreement, provided, however, that the applicable Phase I Disposition Property or Future Expansion Disposition Property shall be subject to easements of record.

F. §306 Time for and Place of Delivery of Deed

The Agency shall deliver to the Escrow Agent the grant deed conveying all real property in a phase to the Participant within the time set forth in the Schedule of Performance (Attachment No. 3) provided that: (1) the Agency has obtained title (or possession pursuant to Section 303) to all of the property within the applicable phase; (2) the Participant has complied with all of the conditions precedent to conveyance as set forth in this Agreement, including the provisions of Section 313; and (3) Participant is not in default of any provisions of this Agreement.

G. [§307] Payment of the Purchase Price and Recordation of Deed

The Participant shall deposit the Purchase Price for the applicable Phase I Disposition Property or Future Expansion Disposition Property, less the applicable portion of the Phase I Advance or Future Expansion Advance made to the Agency for the purchase price of the applicable Phase I Disposition Property or Future Expansion Disposition Property, pursuant to Section 209 of this Agreement, and other sums required hereunder with the Escrow Agent prior to the date for conveyance thereof, provided that the Escrow Agent shall have notified the Participant in writing that the applicable grant deed, properly executed and acknowledged by the Agency, has been delivered to the Escrow Agent and that title is in condition to be conveyed in conformity with the provisions of Section 305. Upon the close of escrow, the Escrow Agent shall cause the grant deed to be recorded in the official land records for Alameda County, shall deliver the applicable Purchase Price, less the applicable portion of the Phase I Advance or Future Expansion Advance made to the Agency pursuant to Section 209 hereof, and other required sums to the Agency and shall deliver to the Participant a title insurance policy insuring title in conformity with Section 308 of this Agreement.

H. [§308] Title Insurance

Concurrently with recordation of the applicable grant deed, First American Title Company or some other title insurance company satisfactory to the Participant having equal or greater financial responsibility ("Title Company") shall provide and deliver to the Participant a title insurance policy issued by the Title Company insuring that the title is vested in the Participant in the condition required by Section 305 of this Agreement. The Title Company shall provide the Agency with a copy of the title insurance policy and the title insurance policy shall be in the amount of the purchase price paid by the Agency for acquisition of the applicable Phase I Disposition Property or Future Expansion Disposition Property.

Concurrently with the recording of each grant deed, the Title Company shall, if requested by the Participant, provide the Participant with an endorsement to insure the amount of the Participant's estimated development costs of the improvements to be constructed upon the applicable Phase I Disposition Property or Future Expansion Disposition Property.

The Participant shall pay for all premiums for title insurance coverage and special endorsements.

I. [§309] Taxes and Assessments

Ad valorem taxes and assessments, if any, on each and every parcel of the applicable Phase I Disposition Property or Future Expansion Disposition Property, and taxes upon this Agreement or any rights hereunder levied, assessed or imposed for any period commencing after the close of escrow for the Agency's

acquisition of the applicable Phase I Disposition Property or Future Expansion Disposition Property shall be paid by the Participant.

J. [§310] Conveyance Free of Possession

Except as otherwise provided in the Scope of Development (Attachment No. 4), the Phase I Disposition Property and Future Expansion Disposition Property shall be conveyed free of any possession or right of possession by any person except that of the Participant and the easements of record.

K. [§311] Inspections; Condition of the Disposition Property; Remediation

1. Inspections. Prior to execution of this Agreement by the parties and pursuant to the ERN, the Participant conducted Participant's own investigation of the Site, its physical condition, the soils and toxic conditions of the Site and all other matters which in Participant's judgment affect or influence the Participant's proposed use of the Site and the Participant's willingness to develop the Site pursuant to this Agreement. In Participant's reasonable judgment, the Participant determined that the physical condition of the Site is in material respects suitable for the use or uses proposed for development of the Site and is economically feasible for the Participant to develop the Site pursuant to this Agreement.

2. "As Is." The Agency shall provide Participant with all information of which it has actual knowledge concerning the physical condition of the Phase I Disposition Property and Future Expansion Disposition Property, including, without limitation, information about any Hazardous Materials, as defined below. Participant acknowledges and agrees that any portion of the Phase I Disposition Property or Future Expansion Disposition Property that it acquires from the Agency pursuant to this Agreement shall be purchased "as is," in its current physical condition, with no warranties, express or implied, as to the physical condition thereof, the presence or absence of any latent or patent condition thereon or therein, including, without limitation, any Hazardous Material thereon or therein, and any other matters affecting the Phase I Disposition Property or Future Expansion Disposition Property.

3. Indemnity. Participant agrees, from and after the date of execution of this Agreement by the Agency, to defend, indemnify, protect and hold harmless the Agency and its officers, employees, agents, attorneys, representatives, legal successors and assigns ("Indemnitees") from, regarding and against any and all liabilities, obligations, orders, decrees, judgments, liens, demands, actions, Environmental Response Actions (as defined herein), claims, losses, damages, fines, penalties, expenses, Environmental Response Costs (as defined herein) or costs of any kind or nature whatsoever, together with fees (including, without limitation, reasonable attorneys' fees and experts' and consultants' fees), whenever arising, except where caused in whole or in part by any of the Indemnitees, resulting from or

in connection with the actual or claimed generation, storage, handling, transportation, use, presence, placement, migration and/or release of Hazardous Materials (as defined herein) at, on, in, beneath or from the Phase I Disposition Property or Future Expansion Disposition Property that has been conveyed by Agency to Participant (sometimes herein collectively referred to as "Contamination"). The Participant's defense, indemnification, protection and hold harmless obligations herein shall include, without limitation, the duty to respond to any governmental inquiry, investigation, claim or demand regarding the Contamination at the Participant's sole cost.

4. Release and Waiver. The Participant hereby releases and waives all rights, causes of action and claims the Participant has or may have in the future against the Indemnitees arising out of or in connection with any Hazardous Materials (as defined herein) at, on, in, beneath or from the Phase I Disposition Property and Future Expansion Disposition Property. In furtherance of the intentions set forth herein, the Participant acknowledges that it is familiar with Section 1542 of the Civil Code of the State of California which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

The Participant hereby waives and relinquishes any right or benefit which it has or may have under Section 1542 of the Civil Code of the State of California or any similar provision of the statutory or nonstatutory law of any other applicable jurisdiction to the full extent that it may lawfully waive all such rights and benefits pertaining to the subject matter of this Section 311.

5. Definitions.

a. As used in this Agreement, the term "Environmental Response Actions" means any and all activities, data compilations, preparation of studies or reports, interaction with environmental regulatory agencies, obligations and undertakings associated with environmental investigations, removal activities, remediation activities or responses to inquiries and notice letters, as may be sought, engendered, initiated or required in connection with any local, state or federal governmental or private party claims, but not including any claims by the Participant.

b. As used in this Agreement, the term "Environmental Response Costs" means any and all costs associated with Environmental Response Actions including, without limitation, any and all fines, penalties and damages.

c. As used in this Agreement, the term "Hazardous Materials" means any substance, material or waste which is: (a) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste" or "restricted hazardous waste" under any provision of California law; (b) petroleum; (c) asbestos; (d) polychlorinated biphenyls; (e) radioactive materials; (f) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251 et seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317); (g) defined as a "hazardous substance" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903); or (h) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601).

6. Materiality. The Participant acknowledges and agrees that the defense, indemnification, protection and hold harmless obligations of the Participant for the benefit of the Agency set forth in this Agreement are a material element of the consideration to the Agency for the performance of its obligations under this Agreement and that the Agency would not have entered this Agreement unless the Participant's obligations were provided for herein.

7. Remediation. As more fully set forth in the Scope of Development (Attachment No. 4), the Agency agrees to assist Participant in the remediation of hazardous substances on, under and from the Site, by using its authority in Article 12.5 of Chapter 4 of Part 1 of the Community Redevelopment Law.

L. [§312] Preliminary Work by Participant

Prior to conveyance of title from the Agency, representatives of the Participant shall have the right of access to the applicable portions of the Phase I Disposition Property or Future Expansion Disposition Property that have been either acquired by the Agency or for which the Agency has obtained possession at all reasonable times for the purpose of performing all predevelopment activities necessary to carry out this Agreement.

The Participant shall hold the Agency harmless for any injury or damages arising out of any such preliminary work, access to or use of such property pursuant to this Section 312. The Participant shall have access to all data and information on the applicable Phase I Disposition Property and Future Expansion Disposition Property available to the Agency, but without warranty or representation by the Agency as to the completeness, correctness or validity of such data and information.

Any preliminary work undertaken on the Phase I Disposition Property or Future Expansion Disposition Property by the Participant prior to conveyance of

title thereto shall be done only after written consent of the Agency and at the sole expense of the Participant. The Participant shall save and protect the Agency against any claims resulting from such preliminary work, access or use of the Phase I Disposition Property or Future Expansion Disposition Property. Copies of data, surveys and tests obtained or made by the Participant on the Phase I Disposition Property or Future Expansion Disposition Property shall be filed with the Agency. Any such preliminary work by the Participant shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

M. [§313] Other Conditions Precedent to Conveyance

Prior to conveyance by Agency of title to the applicable Phase I Disposition Property or Future Expansion Disposition Property and within the times set forth in the Schedule of Performance (Attachment No. 3), the Participant shall: (a) submit to the Agency evidence reasonably satisfactory to the Agency that the Participant has the equity capital and, if necessary, commitments for mortgage financing necessary for development of the applicable Phase I Site or Future Expansion Area; and (b) submit to the Agency evidence that the Participant has received any required permits and approvals from the State of California and County of Alameda, including, but not limited to, the OSHPOD permit required by the state to build or operate the hospital on the Site and any approvals from state or county agencies of a cleanup plan for hazardous wastes on the applicable Phase I Site or Future Expansion Area.

IV. [§400] DEVELOPMENT OF THE SITE

A. [§401] Development of the Site

1. [§402] Scope of Development

The Site shall be developed in accordance with the Scope of Development (Attachment No. 4) within the time set forth in the Schedule of Performance (Attachment No. 3). All development of the Site shall be in accordance with the Preliminary Development Plan for the Site, the Final Development Plan for the first 520,000 square feet of development of the hospital on the Phase I Site approved by the City prior to execution of this Agreement, and any amendments to those plans, and all final development plans to be approved by the City for each additional phase of development of the Site. All final development plans and drawings shall be submitted by the Participant and approved by the City within the times set forth in the Schedule of Performance (Attachment No. 3), which approvals shall be obtained prior to the commencement of construction of the applicable phase of development as set forth in the Schedule of Performance (Attachment No. 3).

2. [\$403] Cost of Construction

All the costs of developing the Site and constructing all improvements thereon shall be borne by the Participant, except for those costs to be paid by the Agency, as set forth in Section IV.B. of the Scope of Development (Attachment No. 4).

3. [\$404] Construction Schedule

Participant shall develop the Phase I Site and construct the improvements thereon (the "Phase I Improvements" and, if applicable, the Phase I Expansion Improvements") and develop the Future Expansion Area and construct the improvements thereon (the "Future Expansion Improvements") within the times set forth in the Schedule of Performance (Attachment No. 3), or such reasonable extension of said dates as may be granted by the Agency or as provided in Section 704 of this Agreement. The parties understand and agree that the Phase I Expansion Improvements may be constructed at the same time or after the Phase I Improvements pursuant to the Schedule of Performance (Attachment No. 3).

During the period of construction, but not more frequently than once a month, the Participant shall submit to the Agency a written progress report of the construction when and as requested by the Agency. The report shall be in such form and detail as may reasonably be required by the Agency and shall include a reasonable number of construction photographs taken since the last report submitted by the Participant.

4. [\$405] Bodily Injury, Property Damage and Workers' Compensation Insurance

Prior to the commencement of construction on the Site or any portion thereof, the Participant shall furnish or cause to be furnished to the Agency duplicate originals or appropriate certificates of bodily injury and property damage insurance policies in the amount of at least \$1,000,000 for any persons, \$5,000,000 for any occurrence and \$500,000 property damage, naming the Agency and the City as additional or coinsureds. The Participant shall also furnish or cause to be furnished to the Agency evidence satisfactory to the Agency that any contractor with whom it has contracted for the performance of work on the Site carries workers' compensation insurance as required by law. The obligations set forth in this Section 405 shall remain in effect only until Certificates of Completion have been issued covering the entire Site as provided in Section 413. **Notwithstanding this Section 405, Participant shall have the right to self-insure the liabilities provided above after presenting Agency with information regarding its net worth and receiving the approval of the Agency.**

5. §406 City and Other Governmental Permits

Before the Participant commences any construction or development of any buildings, structures or other work of improvement upon the Site, the Participant shall, at its own expense, secure or cause to be secured any and all permits which may be required by the City or any other governmental entity affected by such construction, development or work. The Agency shall provide all assistance deemed appropriate by the Agency to the Participant in securing these permits.

6. §407 Rights of Access

For the purposes of assuring compliance with this Agreement, representatives of the Agency and the City shall have the right of access to the Site without charges or fees and at normal construction hours during the period of construction, for the purpose of inspecting the work being performed by Participant. Such representatives of the Agency or the City shall be those who are so identified in writing by the Executive Director of the Agency. The Agency shall indemnify and cause the City to indemnify the Participant and hold it harmless from any damage caused or liability arising out of this right to access.

7. §408 Local, State and Federal Laws

The Participant shall carry out the construction of the improvements on the Site in conformity with all applicable laws, including all applicable federal and state labor standards.

8. §409 Antidiscrimination During Construction

The Participant, for itself and its successors and assigns, agrees that in the construction of the improvements provided for in this Agreement, the Participant will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, ancestry or national origin.

B. §410 Taxes, Assessments, Encumbrances and Liens

The Participant shall pay when due all real estate taxes and assessments assessed and levied on the Site or any portion thereof. Prior to the issuance of all Certificates of Completion for the Site, the Participant shall not place or allow to be placed on the Site any mortgage, trust deed, encumbrance or lien unauthorized by this Agreement. The Participant shall remove or have removed any levy or attachment made on the Site (or any portion thereof), or shall assure the satisfaction thereof, within a reasonable time, but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit the Participant from contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to the Participant with respect thereto.

The Participant understands that under certain conditions its control of the Site or portion thereof under this Agreement may give rise to the imposition of a possessory interest tax on said property, and in such event, the Participant agrees to pay when due any such possessory interest tax.

C. [§411] Right of the Agency to Satisfy Liens on the Site

Prior to the issuance of a Certificate of Completion for construction and development, as described in Section 413, and after the Participant has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on the applicable portion of the Site, the Agency shall have the right to satisfy any such liens or encumbrances, provided, however, that nothing in this Agreement shall require the Participant to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Participant in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not result in the forfeiture or sale of any portion of the Site.

D. [§412] Restrictions Against Transfer of Site, the Building or Structures Thereon

Except as expressly permitted by this Agreement, the Participant shall not sell, transfer, convey, assign or lease the whole or any portion of the Site, or the buildings or improvements thereon without the prior written approval of the Agency, which is not covered by a Certificate of Completion issued by the Agency in accordance with Section 413. This restriction shall not apply subsequent to the issuance of the Certificate of Completion to any portion of the Site covered by a Certificate of Completion. This restriction shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Site or to prohibit or restrict the leasing of any part or parts of a building or structure when said improvements are completed.

In the absence of specific written agreement by the Agency, no such transfer, assignment or approval by the Agency shall be deemed to relieve the Participant or any other party from any obligations under this Agreement until completion of development as evidenced by the issuance of a Certificate of Completion therefor.

E. [§413] Certificates of Completion

Construction and development of the Site shall be in phases. Upon satisfactory completion of the Phase I Improvements, as defined in Section II.A. of the Scope of Development (Attachment No. 4), and Participant's request therefor, the Agency shall furnish Participant with a Phase I Certificate of Completion. Upon satisfactory completion of the Phase I Expansion Improvements, as defined in Section II.B. of the Scope of Development (Attachment No. 4), and Participant's

request therefor, the Agency shall furnish Participant with a Phase I Expansion Certificate of Completion. Upon satisfactory completion of the Future Expansion Improvements, as defined in Section II.C. of the Scope of Development (Attachment No. 4). and Participant's request therefor, the Agency shall furnish Participant with a Future Expansion Certificate of Completion. Each Certificate of Completion shall be in the form attached hereto as Attachment No. 6.

A Certificate of Completion shall be conclusive determination of satisfactory completion of the applicable phase of construction required by this Agreement upon the applicable portion of the Site and of full compliance with the terms hereof. After issuance of such Certificate of Completion, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the property covered by said Certificate of Completion shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement, except that such party shall be bound by any covenants contained in the deed, lease, mortgage, deed of trust, contract or other instrument of transfer in accordance with the provisions of Sections 409 and 501-504 of this Agreement. Except as otherwise provided herein, after the issuance of a Certificate of Completion for the applicable portion of the Site, neither the Agency, the City nor any other person shall have any rights, remedies or controls with respect to the property covered by the Certificate of Completion as a result of a default in or breach of any provision of this Agreement.

The Agency shall not unreasonably withhold any Certificate of Completion. If the Agency refuses or fails to furnish a Certificate of Completion for the applicable Phase I Improvements, Phase I Expansion Improvements or Future Expansion Improvements after written request from the Participant, the Agency shall, within ten (10) days of the next regularly scheduled Agency meeting after such written request, provide the Participant with a written statement of the reasons the Agency refused or failed to furnish the Certificate of Completion. The statement shall also contain the Agency's opinion of the action the Participant must take to obtain the Certificate of Completion. If the reason for such refusal is confined to the immediate unavailability of specific items or materials for landscaping, the Agency will issue its Certificate of Completion upon the posting of a bond by the Participant with the Agency in an amount representing a fair value of the work not yet completed. If the Agency shall have failed to provide such written statement within the 10-day period after such Agency meeting, the Participant shall be deemed entitled to the Certificate of Completion.

These Certificates of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Participant to any holder or a mortgage or any insurer of a mortgage securing money loaned to finance the improvements or any part thereof. These Certificates of Completion are not notices of completion as referred to in California Civil Code Section 3093.

V. [§500] USE OF THE SITE

A. [§501] Uses

Participant covenants and agrees for itself, its successors, its assigns and every successor in interest that during construction and thereafter, the Participant, its successors and assignees shall devote the Site to the uses specified in the Redevelopment Plan, the grant deeds of the Phase I Disposition Property and Future Expansion Disposition Property, the Agreements to be Recorded Affecting Real Property for the Phase I Participating Property and Future Expansion Participating Property described in Section 504 hereof, and this Agreement for the periods of time specified therein. The foregoing covenant shall run with the land.

B. [§502] Obligation to Refrain From Discrimination

The Participant covenants by and for itself and any successor in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Participant itself or any successor in interest claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site. The foregoing covenants shall run with the land.

C. [§503] Form of Nondiscrimination and Nonsegregation Clauses

The Participant shall refrain from restricting the rental, sale or lease of the Site on the basis of race, color, creed, religion, sex, marital status, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises herein conveyed, nor shall the grantee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or

occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

2. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein leased."

3. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land."

D. [§504] Effect and Duration of Covenants

The covenants contained in Section 501 of this Agreement shall remain in effect until the termination date of the applicable Redevelopment Plan. The covenants against discrimination contained in Sections 502 and 503 of this Agreement shall remain in effect in perpetuity. The covenants established in this Agreement, the grant deeds and the Agreements to be Recorded Affecting Real Property described hereinbelow, shall, without regard to technical classification and designation, be binding for the benefit and in favor of the Agency, its successors and assigns, the City and any successor in interest to the Site or any part thereof.

The Agency is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. This Agreement and the covenants shall run in favor of the Agency without regard to whether the Agency has been, remains or is an owner of any land or interest therein in the Site, any parcel or subparcel, or in the Project Area. The Agency shall have the right, if this Agreement or the covenants are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and the covenants may be entitled.

Agreements containing the covenants in this Agreement which are applicable to the Phase I Participating Property and the Future Expansion Participating Property including, but not limited to the covenants contained in Sections 501, 502, 503 and 804 of this Agreement, shall be prepared for execution by the Participant and recordation by the Agency (the "Agreements to be Recorded Affecting Real Property"). Prior to the close of escrow for conveyance of the applicable Phase I Disposition Property or Future Expansion Disposition Property, the Participant shall execute the applicable Agreement to be Recorded Affecting Real Property. The Agency shall record the applicable Agreement to be Recorded Affecting Real Property at the time of issuance of the applicable Certificate of Completion.

E. [\$505] Rights of Access -- Public Improvements and Facilities

The Agency, for itself and for the City and other public agencies, at their sole risk and expense, reserves the right to enter the Site or any part thereof at all reasonable times and with as little interference as possible for the purposes of construction, reconstruction, maintenance, repair or service of any public improvements or public facilities located on the Site. Any such entry shall be made only after reasonable notice to the Participant, and the Agency shall indemnify and hold the Participant harmless from any claims or liabilities pertaining to any entry. Any damage or injury to the Site resulting from such entry shall be promptly repaired at the sole expense of the public agency responsible for the entry.

VI. [\$600] DEFAULTS, REMEDIES AND TERMINATION

A. [\$601] Defaults -- General

1. Subject to the extensions of time set forth in Section 704, any failure by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay and shall

complete such cure, correction or remedy with reasonable diligence and during any period of curing shall be in default.

The injured party shall give written notice of default to the party in default specifying the default complained of by the injured party. Except as required to protect against further damages and except as otherwise expressly provided in Sections 607 and 608 of this Agreement, the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice. Failure or delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

Except as otherwise expressly provided in this Agreement, any failure or delay by the Participant or the Agency in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

B. [\$602] Legal Actions

1. [\$603] Institution of Legal Actions

Subject to any applicable cure period under Sections 610, 607 or 608, upon the occurrence of a default, the non-defaulting party shall have the right, in addition to any other rights or remedies, to institute any action at law or in equity to cure, correct, prevent or remedy any default, or to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Alameda, State of California, in an appropriate municipal court in that County or in the Federal District Court for the Northern District of the State of California.

2. [\$604] Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

3. [\$605] Acceptance of Service of Process

In the event that any legal action is commenced by the Participant against the Agency, service of process on the Agency shall be made by personal service upon the Executive Director of the Agency or in such other manner as may be provided by law.

In the event that any legal action is commenced by the Agency against the Participant, service of process on the Participant shall be made by

personal service upon the president or other corporate officer of the Participant or in such other manner as may be provided by law and shall be valid whether made within or without the State of California.

C. §606 Rights and Remedies are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

D. §607 Damages

If the Participant or the Agency defaults with regard to any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured or commenced to be cured by the defaulting party within ninety (90) days after service of the notice of default, the defaulting party shall be liable to the other party for any damages caused by such default.

E. §608 Specific Performance

If the Participant or the Agency defaults under any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not commenced to be cured by the defaulting party within forty-five (45) days of service of the notice of default, the nondefaulting party, at its option, may institute an action for specific performance of the terms of this Agreement.

F. §609 Remedies and Rights of Termination Prior to Conveyance of the Phase I Disposition Property and Future Expansion Disposition Property to the Participant

1. §610 Termination by the Participant

a. In the event that prior to conveyance of title to the Phase I Disposition Property to the Participant:

- (1) The Agency does not tender conveyance of the Phase I Disposition Property or possession thereof in the manner and condition and by the date provided in this Agreement, any such failure is not cured within thirty (30) days after written demand by the Participant; or

- (2) The Agency elects not to adopt a resolution of necessity (pursuant to Article 2 [commencing with Section 1245.210] of Chapter 4 of Title 7 of the California Code of Civil Procedure) to acquire any portion of the Phase I Disposition Property by eminent domain, it being understood that the Agency has reserved its discretion to approve or disapprove any such resolution of necessity and that the Participant's exclusive remedy for the failure of the Agency to adopt a resolution of necessity shall be the termination of this Agreement pursuant to this Section 610; or
- (3) The Amendment to the Shellmound Redevelopment Plan required for development of the Phase I Site pursuant to this Agreement does not become effective within the time set forth in the Schedule of Performance (Attachment No. 3); or
- (4) The Amendment to the General Plan required for development of the Site pursuant to this Agreement does not become effective within the time set forth in the Schedule of Performance (Attachment No. 3); or
- (5) The City Development Agreement for the Phase I Site does not become effective within the time set forth in the Schedule of Performance (Attachment No. 3);

then this Agreement may, at the option of the Participant, be terminated by written notice thereof to the Agency. Upon such termination, neither the Agency nor the Participant shall have any further rights against or liability to the other under this Agreement, and the Agency shall return the Deposit to the Participant as provided in Section 109.

b. In the event that prior to conveyance of title to the Future Expansion Disposition Property to the Participant:

- (1) The Participant elects not to proceed with the acquisition and development of the Future Expansion Area; or

- (2) The Agency does not tender conveyance of the Future Expansion Disposition Property or possession thereof in the manner and condition and by the date provided in this Agreement, any any such failure is not cured within thirty (30) days after written demand by the Participant; or
- (3) If the Future Expansion Site is selected as the Future Expansion Area, the Agency elects not to adopt a resolution of necessity (pursuant to Article 2 [commencing with Section 1245.210] of Chapter 4 of Title 7 of the California Code of Civil Procedure) to acquire any portion of the Future Expansion Disposition Property by eminent domain, it being understood that the Agency has reserved its discretion to approve or disapprove any such resolution of necessity and that the Participant's exclusive remedy for the failure of the Agency to adopt a resolution of necessity shall be the termination of this Agreement pursuant to this Section 610; or
- (4) If the AC Transit Site is selected as the Future Expansion Area and an amendment to the Emeryville General Plan is required to permit development of the AC Transit Site in accordance with this Agreement, and such amendment to the Emeryville General Plan does not become effective within the time set forth in the Schedule of Performance (Attachment No. 3); or
- (5) If the Participant doesn't notify the Agency it wishes to proceed with the Future Expansion Area by January 1, 1999, and the Future Expansion Area is the Future Expansion Site, and an amendment to the Shellmound Redevelopment Plan is required in order to effectuate this Agreement, and such amendment does not become effective within the time set forth in the Schedule of Performance (Attachment No. 3);

then this Agreement may, at the option of the Participant, be terminated by written notice thereof to the Agency. Upon such termination, neither the Agency nor the Participant shall have any further rights against or liability to the other under this Agreement.

2. §611 Termination by the Agency

a. In the event that prior to conveyance of title to the Phase I Disposition Property to the Participant:

- (1) The Participant fails to maintain the amount of the Deposit as required by Section 109 of this Agreement; or
- (2) The Participant fails to deliver the Phase I Advance to the Agency or to augment the Phase I Advance as required by Section 209 of this Agreement; or
- (3) The Participant transfers or assigns or attempts to transfer or assign this Agreement or any rights herein or in the Site or the buildings or improvements thereon in violation of this Agreement; or
- (4) There is any significant change in the ownership or identify of the Participant or the parties in control of the Participant or the degree thereof contrary to the provisions of Section 108 hereof; or
- (5) The Participant does not submit evidence that it has the necessary equity capital and, if necessary, mortgage financing for acquisition and development of the Phase I Site in satisfactory form and in the manner and by the date provided in this Agreement; or
- (6) The Participant does not submit construction plans and drawings for the Phase I Improvements as required by this Agreement; or
- (7) The Participant does not take title to the Phase I Disposition Property under tender of conveyance by the Agency pursuant to this Agreement; or

- (8) The Agency elects not to adopt a resolution of necessity (pursuant to Article 2 [commencing with Section 1245.210] of Chapter 4 of Title 7 of the California Code of Civil Procedure) to acquire any portion of the Phase I Disposition Property by eminent domain, it being understood that the Agency has reserved its discretion to approve or disapprove any such resolution of necessity and that the Participant's exclusive remedy for the failure of the Agency to adopt a resolution of necessity shall be the termination of this Agreement pursuant to this Section 610; or
- (9) The Amendment to the Shellmound Redevelopment Plan required for development of the Phase I Site pursuant to this Agreement does not become effective within the time set forth in the Schedule of Performance (Attachment No. 3); or
- (10) The Amendment to the General Plan required for development of the Site pursuant to this Agreement does not become effective within the time set forth in the Schedule of Performance (Attachment No. 3); or
- (11) The City Development Agreement for the Phase I Site does not become effective within the time set forth in the Schedule of Performance (Attachment No. 3); or
- (12) The Participant fails to meet the Replacement Housing Obligations set forth in Section V.B. of the Scope of Development (Attachment No. 4); or
- (13) The Participant is in breach or default with respect to any other obligation of the Participant under this Agreement^.

^

In the case of any default or failure referred to in subparagraphs (1), (2), (5), (6), (7), (12) or (13) of this Section **611, and such default or failure** shall not be cured within thirty (30) days after the date of written demand by the Agency, then this Agreement, and any rights of the Participant or any assignee or transferee in this Agreement pertaining thereto or arising therefrom with respect

to the Agency, may, at the option of the Agency, be terminated by the Agency by written notice thereof to the Participant.

b. In the event that prior to conveyance of title to the Future Expansion Disposition Property to the Participant:

- (1) The Participant fails to deliver the Future Expansion Advance to the Agency or to augment the Future Expansion Advance as required by Section 209 of this Agreement; or
- (2) The Participant transfers or assigns or attempts to transfer or assign this Agreement or any rights herein or in the Site or the buildings or improvements thereon in violation of this Agreement; or
- (3) There is any significant change in the ownership or identify of the Participant or the parties in control of the Participant or the degree thereof contrary to the provisions of Section 108 hereof; or
- (4) The Participant does not submit evidence that it has the necessary equity capital and, if necessary, mortgage financing for acquisition and development of the Future Expansion Area in satisfactory form and in the manner and by the date provided in this Agreement; or
- (5) The Participant does not submit construction plans and drawings for the Future Expansion Improvements as required by this Agreement; or
- (6) The Participant does not take title to the Future Expansion Disposition Property under tender of conveyance by the Agency pursuant to this Agreement; or
- (7) The Participant does not complete construction of the Phase I Minimum Improvements within the time set forth the in the Schedule of Performance (Attachment No. 3); or
- (8) If the Future Expansion Site is selected as the Future Expansion Area, the Agency elects not to adopt a resolution of necessity (pursuant to Article

2 [commencing with Section 1245.210] of Chapter 4 of Title 7 of the California Code of Civil Procedure) to acquire any portion of the Future Expansion Disposition Property by eminent domain, it being understood that the Agency has reserved its discretion to approve or disapprove any such resolution of necessity and that the Participant's exclusive remedy for the failure of the Agency to adopt a resolution of necessity shall be the termination of this Agreement pursuant to this Section 610; or

- (9) If the Participant doesn't notify the Agency it wishes to proceed with the Future Expansion Area by January 1, 1999, and the Future Expansion Area is the Future Expansion Site, and an amendment to the Shellmound Redevelopment Plan is required in order to effectuate this Agreement, and such amendment does not become effective within the time set forth in the Schedule of Performance (Attachment No. 3);
- (10) The Participant elects not to proceed with the acquisition and development of the Future Expansion Area; or
- (11) The Participant fails to meet the Replacement Housing Obligations and Other Housing Obligations set forth in Sections V.B. and V.C. of the Scope of Development (Attachment No. 4); or
- (12) The Participant is in breach or default with respect to any other obligation of the Participant under this Agreement[^].

^

In the case of any default of failure referred to in subparagraphs (1), (4), (5), (6), (7), (11) or (12) of this Section, **and such default or failure shall not be cured** within thirty (30) days after the date of written demand by the Agency, then this Agreement, and any rights of the Participant or any assignee or transferee in this Agreement pertaining thereto or arising therefrom with respect to the Agency, may, at the option of the Agency, be terminated by the Agency by written notice thereof to the Participant.

In the event of termination pursuant to subparagraphs (8), (9), (10) or (11) of subsection a. herein or subparagraphs (8), (9) or (10) of subsection b. herein, except for the Participant's Replacement Housing Obligations under Section V.B. of the Scope of Development (Attachment No. 4), neither the Agency nor the Participant shall have any further rights against or liability to the other under this Agreement. In addition, in the event of termination pursuant to subparagraphs (8), (9), (10) or (11) of subsection a. herein, the Agency shall return the Deposit to the Participant as provided in Section 109.

IN THE EVENT OF TERMINATION UNDER SUBPARAGRAPHS (1), (2), (3), (4), (5), (6), (7), (12) OR (13) OF SUBSECTION a. OF THIS SECTION 611, THE DEPOSIT MAY BE RETAINED BY THE AGENCY AS LIQUIDATED DAMAGES AND AS ITS PROPERTY WITHOUT ANY DEDUCTION, OFFSET OR RECOUPMENT WHATSOEVER. IF THE PARTICIPANT SHOULD DEFAULT UPON ITS OBLIGATIONS MAKING IT NECESSARY FOR THE AGENCY TO TERMINATE THIS AGREEMENT AND TO PROCURE ANOTHER PARTY OR PARTIES TO REDEVELOP THE SITE IN ACCORDANCE WITH THE REDEVELOPMENT PLAN, THEN THE DAMAGES SUFFERED BY THE AGENCY BY REASON THEREOF WOULD BE UNCERTAIN. SUCH DAMAGES WOULD INVOLVE SUCH VARIABLE FACTORS AS THE CONSIDERATION WHICH SUCH PARTY WOULD PAY FOR THE SITE; THE EXPENSES OF CONTINUING THE OWNERSHIP AND CONTROL OF THE PHASE I DISPOSITION PROPERTY; OF INTERESTING PARTIES AND NEGOTIATING WITH SUCH PARTIES; AND THE FAILURE OF THE AGENCY TO EFFECT ITS PURPOSES AND OBJECTIVES WITHIN A REASONABLE TIME, RESULTING IN ADDITIONAL IMMEASURABLE DAMAGE AND LOSS TO THE AGENCY AND THE COMMUNITY. IT IS IMPRACTICAL AND EXTREMELY DIFFICULT TO FIX THE AMOUNT OF SUCH DAMAGES TO THE AGENCY, BUT THE PARTIES ARE OF THE OPINION, UPON THE BASIS OF ALL INFORMATION AVAILABLE TO THEM, THAT SUCH DAMAGES WOULD APPROXIMATELY EQUAL THE AMOUNT OF THE DEPOSIT HELD BY THE AGENCY AT THE TIME OF THE DEFAULT OF THE PARTICIPANT, AND THE AMOUNT OF SUCH DEPOSIT SHALL BE PAID TO THE AGENCY UPON ANY SUCH OCCURRENCE AS THE TOTAL OF ALL LIQUIDATED DAMAGES FOR ANY AND ALL SUCH DEFAULTS AND NOT AS A PENALTY. IN THE EVENT THAT THIS PARAGRAPH SHOULD BE HELD TO BE VOID FOR ANY REASON, THE AGENCY SHALL BE ENTITLED TO THE FULL EXTENT OF DAMAGES OTHERWISE PROVIDED BY LAW.

THE PARTICIPANT AND THE AGENCY ACKNOWLEDGE AND AGREE THAT PAYMENT BY THE PARTICIPANT OF THE LIQUIDATED DAMAGES SET FORTH HEREIN DOES NOT RELIEVE THE PARTICIPANT FROM ITS REPLACEMENT HOUSING OBLIGATIONS SET FORTH IN SECTION V.B. OF THE SCOPE OF DEVELOPMENT (ATTACHMENT NO. 4).

THE PARTICIPANT AND THE AGENCY SPECIFICALLY
ACKNOWLEDGE THIS LIQUIDATED DAMAGES PROVISION BY THEIR
SIGNATURES HERE:

By: _____
Participant

By: _____
Agency

G. §612] Option to Repurchase, Reenter and Repossess

The Agency shall have the additional right at its option to repurchase, reenter and take possession of the applicable Phase I Disposition Property or Future Expansion Disposition Property, or such portion thereof, with all improvements thereon, if after conveyance of title to the applicable Phase I Disposition Property or Future Expansion Disposition Property and prior to the issuance of the applicable Certificate of Completion therefor, the Participant shall:

1. Fail to proceed with the construction of the improvements as required by this Agreement for a period of three (3) months after written notice thereof from the Agency; or
2. Abandon or substantially suspend construction of the improvements for a period of three (3) months after written notice of such abandonment or suspension from the Agency; or
3. Transfer or suffer any involuntary transfer of the Site or any part thereof in violation of this Agreement.

To exercise its right to repurchase, reenter and take possession with respect to the applicable Phase I Disposition Property or Future Expansion Disposition Property, the Agency shall pay to the Participant in cash an amount equal to:

1. The portions of the Total Agency Acquisition Costs described in subparagraphs (a), (b), (c), (d) and (e) of Section 208 of this Agreement paid to the Agency for the applicable Phase I Disposition Property or Future Expansion Disposition Property; plus
2. The costs incurred by the Participant for on-site labor and materials for the construction of the improvements existing on the applicable Phase I Disposition Property or Future Expansion Disposition Property at the time of the repurchase, reentry and repossession; less

3. Any gains or income withdrawn or made by the Participant from the applicable Phase I Disposition Property or Future Expansion Disposition Property or the improvements thereon.

In the event the Agency exercises its right to repurchase the Phase I Disposition Property, the Participant covenants and agrees that the Agency shall have the additional right to purchase the Phase I Participating Property from the Participant, as set forth in Section 804 hereof. In the event the Agency exercises its right to repurchase the Future Expansion Disposition Property, the Participant covenants and agrees that the Agency shall have the additional right to purchase the Future Expansion Participating Property from the Participant, as set forth in Section 804 hereof.

The grant deeds shall contain appropriate reference and provision to give effect to the Agency's right, as set forth in this Section 612 under specified circumstances prior to the issuance of the applicable Certificate of Completion, to repurchase, reenter and take possession of the applicable Phase I Disposition Property or Future Expansion Disposition Property with all improvements thereon and to terminate and revest in the Agency the applicable estate conveyed to the Participant.

H. [§613] Right of Reverter

The Agency shall have the additional right, at its option, to reenter and take possession of the applicable Phase I Disposition Property or Future Expansion Disposition Property with all improvements thereon and revest in the Agency the estate theretofore conveyed to the Participant, if after conveyance of title to the applicable Phase I Disposition Property or Future Expansion Disposition Property and prior to issuance of the applicable Certificate of Completion therefor, the Participant shall:

1. Fail to proceed with the construction of the improvements as required by this Agreement for a period of three (3) months after written notice thereof from the Agency;
2. Abandon or substantially suspend construction of the improvements for a period of three (3) months after written notice of such abandonment or suspension from the Agency; or
3. Transfer or suffer any involuntary transfer of the Site or any part thereof in violation of this Agreement.

Upon the revesting in the Agency of title to the applicable Phase I Disposition Property or Future Expansion Disposition Property or any part thereof as provided in this Section 613, the Agency shall, pursuant to its responsibilities under

state law, use its best efforts to resell the applicable Phase I Disposition Property or Future Expansion Disposition Property or part thereof as soon and in such manner as the Agency shall find feasible and consistent with the objectives of such law and of the Redevelopment Plan to a qualified and responsible party or parties (as determined by the Agency) who will assume the obligation of making or completing the improvements, or such other improvements in their stead, as shall be satisfactory to the Agency and in accordance with the uses specified for the applicable Phase I Disposition Property or Future Expansion Disposition Property or part thereof in the Redevelopment Plan. Upon such resale of the applicable Phase I Disposition Property or Future Expansion Disposition Property, the proceeds thereof shall be applied:

1. First, to reimburse the Agency on its own behalf or on behalf of the City for all costs and expenses incurred by the Agency, including, but not limited to, salaries to personnel in connection with the recapture, management and resale of the applicable Phase I Disposition Property or Future Expansion Disposition Property or part thereof (but less any income derived by the Agency from the applicable Phase I Disposition Property or Future Expansion Disposition Property or part thereof in connection with such management); all taxes, assessments and water and sewer charges with respect to the applicable Phase I Disposition Property or Future Expansion Disposition Property or part thereof; any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Participant; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the applicable Phase I Disposition Property or Future Expansion Disposition Property or part thereof; and any amounts otherwise owing the Agency by the Participant; and
2. Second, to reimburse the Participant up to the amount equal to the sum of: (a) the portions of the Total Agency Acquisition Costs described in subparagraphs (a), (b), (c), (d) and (e) of Section 208 of this Agreement paid to the Agency by the Participant for the applicable Phase I Disposition Property or Future Expansion Disposition Property (or allocable to the part thereof); plus (b) the costs incurred by the Participant for the development of the applicable Phase I Disposition Property or Future Expansion Disposition Property and for the improvements existing on the applicable Phase I Disposition Property or Future Expansion Disposition Property at the time of the reentry and repossession; less (c) any gains or income withdrawn or made by the Participant from the applicable Phase I Disposition Property or

Future Expansion Disposition Property or the improvements thereon.

Any balance remaining after such reimbursements shall be retained by the Agency as its property.

To the extent that the rights established in this Section involve a forfeiture, it must be strictly interpreted against the Agency, the party for whose benefit it is created. The rights established in this Section are to be interpreted in light of the fact that the Agency will convey the applicable Phase I Disposition Property or Future Expansion Disposition Property to the Participant for development and not for speculation in undeveloped land.

In the event the Agency exercises its right to reenter and take possession of the Phase I Disposition Property, the Participant covenants and agrees that the Agency shall have the additional right to purchase the Phase I Participating Property from the Participant, as set forth in Section 804 hereof. In the event the Agency exercises its right to reenter and take possession of the Future Expansion Disposition Property, the Participant covenants and agrees that the Agency shall have the additional right to purchase the Future Expansion Participating Property from the Participant, as set forth in Section 804 hereof.

The grant deeds shall contain appropriate reference and provision to give effect to the Agency's right, as set forth in this Section 613 under specified circumstances prior to the issuance of the applicable Certificate of Completion, to reenter and take possession of the applicable Phase I Disposition Property or Future Expansion Disposition Property with all improvements thereon and to terminate and revest in the Agency the applicable estate conveyed to the Participant.

VII. [§700] GENERAL PROVISIONS

A. [§701] Notices, Demands and Communications Between the Parties

Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed received upon personal delivery or upon delivery by facsimile to the party to whom the notice is directed or, if sent by mail, three (3) business days following its deposit in the United States mail, postage prepaid, certified mail, return receipt requested, or, if sent by Federal Express or other reliable overnight air courier, on the next business day following dispatch, and in any of such events addressed to Agency or Participant, as the case may be, at the addresses set forth below (or such other address as a party may specify by notice given pursuant to this Section 701):

Participant: Kaiser Foundation Hospitals
Real Estate Department
1950 Franklin Street, 12th Floor
Oakland, CA 94612-2998
Attention: Joe Colbath
Real Estate Area Manager

With a copy to:

Kaiser Foundation Hospitals
Regional Legal Department
1950 Franklin Street, 17th Floor
Oakland, CA 94612-2998
Attention: Indrajit Obeysekere, Esq.
Counsel

Agency: Emeryville Redevelopment Agency
2200 Powell Street
Emeryville, CA 94608
Attention: Kofi Bonner
Executive Director

With copies to:

City of Emeryville
2200 Powell Street
Emeryville, CA 94608
Attention: Mike Biddle, Esq.
City Attorney

McDonough, Holland & Allen
555 Capitol Mall, Suite 950
Sacramento, CA 95814
Attention: David F. Beatty, Esq.

B. §702 Conflicts of Interest

No member, official or employee of the Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

C. [§703] Nonliability of Agency Officials and Employees

No member, official or employee of the Agency shall be personally liable to the Participant in the event of any default or breach by the Agency or for any amount which may become due to the Participant or on any obligations under the terms of this Agreement.

D. [§704] Enforced Delay: Extension of Times of Performance

In addition to the specific provisions of this Agreement, performance by either party hereunder shall be excused during the period of any delay caused at any time by war; insurrection; strikes, lock-outs, picketing or other labor disputes; riots or civil commotion; floods, earthquakes, fires or other casualties or acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; adverse weather conditions; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts of another party; acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of the Agency or the City shall not excuse performance by the Agency); market conditions, including, but not limited to, interest rate increases or such financial events that cause such performance to be commercially impracticable; or any other cause beyond the reasonable control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. If, however, notice by the party claiming such extension is sent to the other party more than thirty (30) days after such party has actual notice of commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by the Agency and the Participant.

E. [§705] Inspection of Books and Records

The Agency has the right, upon not less than seventy-two (72) hours notice, at all reasonable times, to inspect the books and records of the Participant pertaining to the Site as pertinent to the purposes of this Agreement.

The Participant also has the right, upon not less than seventy-two (72) hours notice, at all reasonable times, to inspect the books and records of the Agency pertaining to the Site as pertinent to the purposes of this Agreement.

F. [§706] Plans and Data

Where the Participant does not proceed with the acquisition and development of the Site, and when this Agreement is terminated for any reason, the Participant shall deliver to the Agency any and all plans and data concerning the Site, and the Agency or any other person or entity designated by the Agency shall be

free to use such plans and data, including plans and data previously delivered to the Agency, for any reason whatsoever without cost or liability therefor to the Participant or any other person.

G. [§707] Defense of Litigation

In the event of litigation challenging the approval of this Agreement, the Amendments to the General Plan and Shellmound Redevelopment Plan proposed in conjunction with the Project, the Environmental Impact Report for the Project, or any of the related land use approvals, the Participant shall pay the Agency's and City's cost of defending such litigation. The parties agree to cooperate in defending such litigation and to the greatest extent feasible provide for a joint defense.

VIII. [§800] SPECIAL PROVISIONS

A. [§801] Pepsi Relocation Assurances

If the Agency acquires the property presently owned by New Century Beverage Company ("New Century") which is within the Phase I Site, the Agency agrees that:

1. New Century will be able to remain at their facility located at 1150 Park Avenue, Emeryville, California, until June 1, 1996, or any later date agreed to by the Participant and New Century in order to allow New Century to move or relocate to a new facility in Hayward, California; and
2. The Agency will acquire New Century's facility in such a manner that New Century will be provided with certain tax benefits allowed by law as set forth in Agency Resolution No. RD48-94, adopted on June 7, 1994.

B. [§802] Amendment of Redevelopment Plan

Pursuant to provisions of the applicable Redevelopment modification or amendment thereof, the Agency agrees that no amendment applicable Redevelopment Plan which changes the uses or development on the applicable portion of the Site, changes the restrictions or to the applicable portion of the Site or otherwise directly affect applicable portion of the Site shall be made or become effective without the written consent of the Participant. Amendments to the applicable Redevelopment Plan applying to other property in the applicable Project Area shall require the consent of the Participant.

C. [§803] Amendments to this Agreement

The Participant and the Agency agree to mutually consider reasonable requests for amendments to this Agreement which may be made by any of the parties hereto, provided such requests are consistent with this Agreement and would not substantially alter the basic business terms included herein.

D. [§804] Agency Right to Purchase Participating Property

The Participant and Agency agree that they have entered into this Agreement in order to effectuate the cohesive and coordinated development of the Phase I Site as a whole and the Future Expansion Area as a whole. Therefore, in the event the Agency exercises its repurchase or reverter rights under Section 612 or 613 of this Agreement, the Participant covenants and agrees and hereby grants to the Agency the additional right to purchase from the Participant the applicable Phase I Participating Property or Future Expansion Participating Property pursuant to the terms set forth herein.

1. Phase I Participating Property

In the event the Agency exercises its repurchase or reverter rights for the Phase I Disposition Property under Section 612 or 613 of this Agreement, the Agency shall have the additional right to purchase the Phase I Participating Property pursuant to the following terms:

- a. The term of this right shall commence on the date of execution of this Agreement by the Agency and shall terminate on the date the Phase I Certificate of Completion is issued.
- b. The purchase price to be paid by the Agency to the Participant for the Phase I Participating Property shall be equal to: (1) the amount of the purchase price paid by the Participant for the Phase I Participating Property; plus (2) the costs incurred by the Participant for site preparation and on-site labor and materials for the construction of any improvements constructed and paid for by the Participant on the Phase I Participating Property; less (3) any gains or income withdrawn or made by the Participant from the Phase I Participating Property or the improvements thereon.
- c. The Agency must notify the Participant in writing that it intends to exercise its right to purchase

hereunder within thirty (30) days of exercising its right to repurchase or revest in the Phase I Disposition Property.

2. Future Expansion Participating Property

In the event the Agency exercises its repurchase or revesting rights for the Future Expansion Disposition Property under Section 612 or 613 of this Agreement, the Agency shall have the additional right to purchase the Future Expansion Participating Property pursuant to the following terms:

- a. The term of this right shall commence on the date of execution of this Agreement by the Agency and shall terminate on the date the Future Expansion Certificate of Completion is issued.
- b. The purchase price to be paid by the Agency to the Participant for the Future Expansion Participating Property shall be equal to: (1) the amount of the purchase price paid by the Participant for the Future Expansion Participating Property; plus (2) the costs incurred by the Participant for site preparation and on-site labor and materials for the construction of any improvements constructed and paid for by the Participant on the Future Expansion Participating Property; less (3) any gains or income withdrawn or made by the Participant from the Future Expansion Participating Property or the improvements thereon.
- c. The Agency must notify the Participant in writing that it intends to exercise its right to purchase hereunder within thirty (30) days of exercising its right to repurchase or revest in the Future Expansion Disposition Property.

The Agency's right to purchase the Phase I Participating Property and Future Expansion Participating Property pursuant to this Section 804 shall be contained in the applicable Agreement to be Recorded Affecting Real Property described in Section 504 of this Agreement. **Nothing in this Section 804 shall limit the Agency's right to exercise its power of eminent domain if this Agreement is terminated.**

E. [§805] Parking for Hollis Bay Associates

A portion of the Site is currently owned by the Agency and ground leased to Hollis Bay Associates for parking purposes ("HBA Parking Lot"). The Participant agrees that if development of all or any portion of the Site requires the removal of the HBA Parking Lot, the Participant shall provide substitute ^ parking ^ by granting to Hollis Bay Associates a parking easement on and upon certain portions of the Site ^in accordance with the terms of that certain letter agreement between the Participant and Hollis Bay Associates dated November 4, 1994.

F. [§806] City Cooperation

Pursuant to Section 33344 of the Health and Safety Code, Section IX of the Emeryville Redevelopment Plan and Section 800.00 of the Shellmound Park Redevelopment Plan, the City shall assist and cooperate with the Agency in carrying out the Redevelopment Plan and this Agreement and to the extent authorized by law and after following all required procedures shall take all necessary actions to assure the continued fulfillment of the purposes of the Redevelopment Plans and this Agreement and, to the extent legally possible, shall not take actions which are inconsistent with the purposes of the Redevelopment Plans and this Agreement.

G. [§807] Initiatives

The Agency and the City acknowledge that community redevelopment and the provisions of this Agreement are matters of statewide concern. Accordingly, the Agency and the City agree that any local initiative that would prohibit or interfere with development of the Site in the manner and within the time periods contemplated by the Participant, the Agency and the City would be deemed to conflict with the Community Redevelopment Law and the City's local redevelopment plans being implemented thereunder.

IX. [§900] ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

A. This Agreement is executed in four (4) duplicate originals, each of which is deemed to be an original. This Agreement comprises pages 1 through ^49, inclusive, and Attachments 1 through 6, attached hereto and incorporated herein by reference, all of which constitute the entire understanding and agreement of the parties.

B. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

C. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Agency and the Participant, and all

amendments hereto must be in writing and signed by the appropriate authorities of the Agency and the Participant.

D. The waiver by either party of a breach of any provision of this Agreement shall not be deemed a waiver of any subsequent breach whether of the same or another provision of this Agreement.

X. [§1000] TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY

This Agreement, when executed by the Participant and delivered to the Agency, must be authorized, executed and delivered by the Agency within forty-five (45) days after the date of signature by the Participant or this Agreement shall be void, except to the extent that the Participant shall consent in writing to further extensions of time for the authorization, execution and delivery of this Agreement. The effective date of this Agreement shall be the date when this Agreement has been signed by the Agency.

EMERYVILLE REDEVELOPMENT AGENCY

By _____
Chairman

By _____
Secretary

"AGENCY"

CITY OF EMERYVILLE

By _____
Mayor

By _____
City Clerk

KAISER FOUNDATION HOSPITALS, a
California nonprofit public benefit
corporation

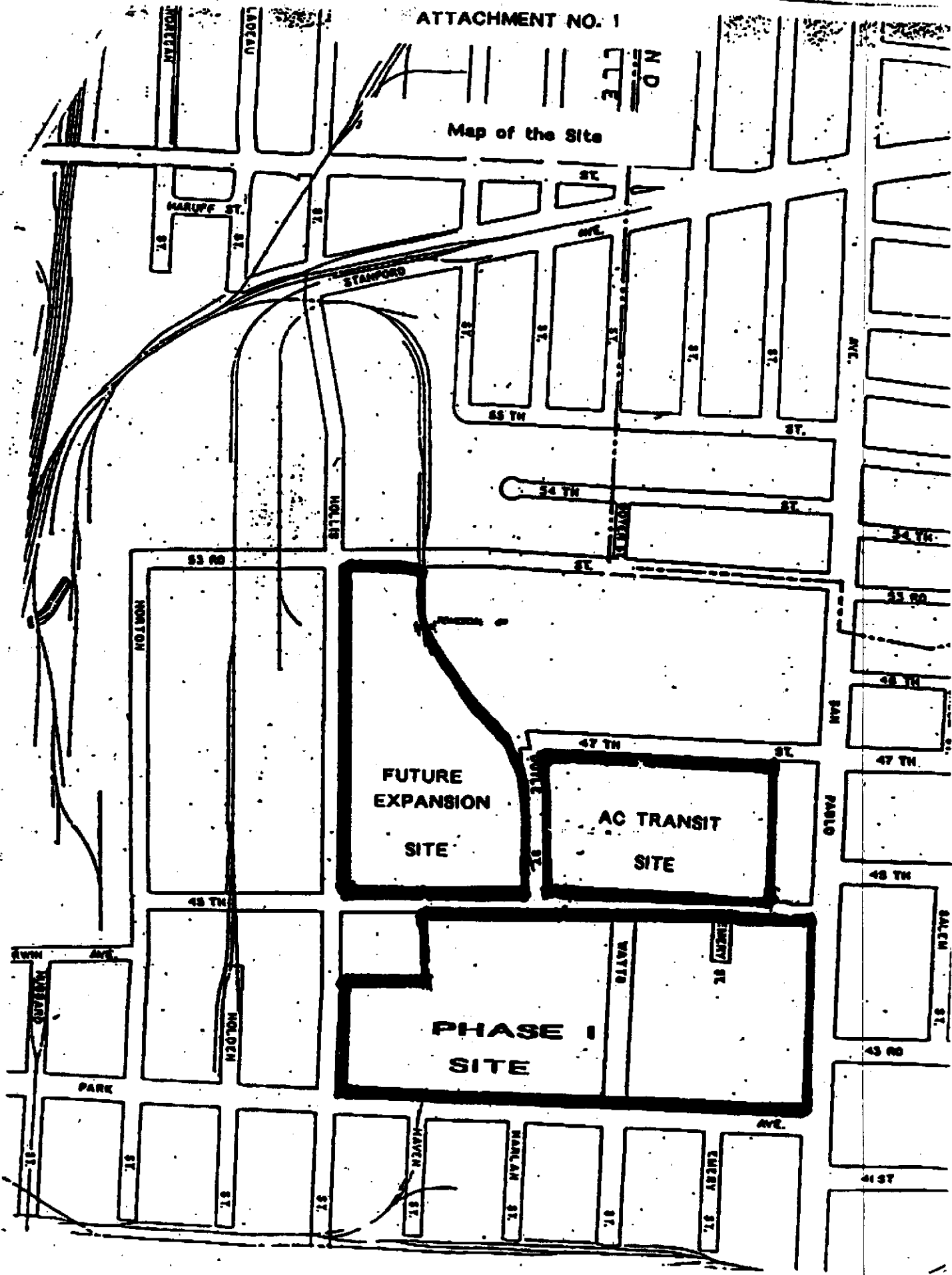
By _____

By _____

"PARTICIPANT"

ATTACHMENT NO. 1

Map of the Site



ATTACHMENT NO. 2

Legal Description of the Site

Phase I Participating Property

County of Alameda Assessor's Parcel Numbers 049-1027-002, 003, 004, 016-01, 020-01, 022-01 and 02, 028, 029, 030, 031, 032, 033 and 034; 049-1029-01, 03 and 04; 049-1031-003-01; 049-1031-004; and 049-1041-059.

Phase I Disposition Property

County of Alameda Assessor's Parcel Numbers 049-1027-017, 018, 019, 020-02, 021, 023-02 and 024, and those parcels along Watts Street between Park Avenue and 45th Street and along Emery Street, as described in Exhibit a attached to this Attachment No. 2 and incorporated herein by reference.

Future Expansion Site

County of Alameda Assessor's Parcel Numbers 049-1041-011-04, 012-02, 013, 022, 023-01 and 02, 032-01 and 041-03.

(However, if development will only occur on a portion of the Future Expansion Site, the legal description of the Future Expansion Site shall be as follows: County of Alameda Assessor's Parcel Numbers 049-1041-011-04, 012-02 and 013).

AC Transit Site

County of Alameda Assessor's Parcel Numbers 049-1178-003, 049-1179-001, 049-1180-001 and 002.

EXHIBIT A

Legal Description of Portion of Phase I Disposition Property

REAL PROPERTY in the City of Emeryville County of Alameda, State of California,
described as follows:

PARCEL ONE:

A portion of Emery Street lying within the "Map of a portion of The Coggeshall Tract lying West of San Pablo Avenue" filed May 14, 1883, Book 4, Page 13 of Maps, Alameda County Records, described as follows:

That portion of Emery Street lying South of the Southerly line of 45th Street and North of the Southerly boundary line of said tract.

PARCEL TWO:

Commencing, at the point of intersection of the Westerly line of Emery Street as said Emery Street is laid down delineated and as designated upon that certain, "Map of a portion of the Coggeshall Tract, South of San Pablo Avenue, Oakland Township," filed May 14th, 1883, in the Office of the County Recorder of said County of Alameda, with the Northerly boundary line of that certain piece of land firstly described in that certain Deed from Otis W. Engs, to The Realty Syndicate, a corporation, dated May 26th, 1903, and recorded August 5th, 1903, in Liber 888, of Deeds, at Page 476, in the Office of the County Recorder of said County of Alameda, and running thence along said Westerly line of said Emery Street if extended Southerly, South 14° 30' East Twenty-eight and 97/100 feet to the dividing line between Plots Numbers 6 and 38, as said Plots Numbers 6 and 38 are laid down and so designated upon that certain map entitled "Map of the Ranchos of Vicente & Domingo Peralta" etc, hereinafter referred to, thence along said dividing line between said Plots Numbers 6 and 38 North 70° East Thirty-eight and 80/100 feet to the Westerly boundary line of said piece or parcel of land, thence along said Westerly boundary line of said piece or parcel of land South 14° 30' East Twenty-eight and 755/1000 feet to the Northerly boundary line of that certain piece or parcel of land described in that certain Deed from the Realty Syndicate, a corporation, to P.W. Morehouse, dated December 14th, 1912, and recorded December 27th, 1912, in Liber 2104 of Deeds, at Page 203, in the Office of the County Recorder of said County of Alameda, thence along said Northerly boundary line of said piece or parcel of land North 75° 30' East Twenty-one and 38/100 feet to the Easterly line of said Emery Street if extended Southerly, thence along said Easterly line of Emery Street, if extended Southerly, North 14° 30' West Fifty-four feet to said Northerly boundary line of said piece or parcel of land firstly described in said Deed from said Otis W.

Attachment No. 2

Exhibit A

Page 1 of 2

Engs. to said The Realty Syndicate, a corporation, and thence along said Northerly boundary line South 75° 30' West Sixty feet to the point of commencement.

Being portions of Plots Numbers 6 and 38, "Map of the Ranchos of Vicente & Domingo Peralta filed January 21st, 1857, Book 19, Page 68 of Maps, Alameda County Records.

PARCEL THREE:

Commencing at a point on the dividing line between plots Numbers 6 and 38 as said Plots ar laid down and so designated upon that certain map entitled, "Map of the Ranchos of Vincente & Domingo peralta" etc., hereinafter referred to, distant thereon measured along said line North 70° East from the Eastern line of Watts Street three hundred (300) feet; thence South 14° 30' East twenty eight and 75/100 (28.75) feet; thence South 75° 30' West to the Western line of Emery Street extended; thence North 14° 30' West along said Western line of Emery Street extended to its intersection with said dividing line between said Plots Numbers 6 and 38 aforesaid; thence North 70° East along said dividing line between said Plots Numbers 6 and 38 to the point of commencement.

Being a portion of Plot Number 6, "Map of the Ranchos of Vincente & Domingo Peralta filed January 21st, 1857, Book 19, Page 68, Alameda County Records.

ATTACHMENT NO. 3

Schedule of Performance

<u>Action</u>	<u>Date</u>
1. <u>Deposit</u> . The Participant shall deliver the Deposit to the Agency. (§ 109)	Prior to or simultaneously with execution and delivery of this Agreement by the Participant to the Agency.
2. <u>Execution of Agreement by Agency and City</u> . The Agency <u>and City</u> shall hold a public hearing to authorize execution of this Agreement, and, if so authorized, shall execute and deliver this Agreement to the Participant. (§1000)	Within 45 days after the Participant delivers executed Agreement and Deposit to Agency.

PHASE I SITE

3. <u>Participant Phase I Advance</u> . The Participant shall deliver the Phase I Advance to the Agency. (§209)	Prior to the Agency submitting written offers to acquire all or any portion of the Phase I Disposition Property.
^ ^4. <u>Agency Acquisition of Phase I Disposition Property by Negotiation</u> . The Agency shall submit written offers to acquire the Phase I Disposition Property to the property owners. (§201)	<u>^As soon as possible after execution of this Agreement by the Agency, and not later than 10 days after the effective date of the Shellmound Redevelopment Plan Amendment.</u>
^5. <u>Opening of Escrow for Phase I Disposition Property</u> . The Agency shall open an escrow for conveyance of the Phase I Disposition Property to the Participant. (§302)	Within five days of <u>^acceptance of written offers to acquire the Phase I Disposition Property or five days prior to filing of an action for eminent domain.</u>

^6. Adoption of Resolution of Necessity for Phase I Disposition Property. The Agency shall conduct a public hearing to consider adoption of a Resolution of Necessity to acquire the Phase I Disposition Property by eminent domain. (§201)

At the first regular meeting of the Agency ^within 90 days after Agency's written offers to acquire have been delivered to property owners: provided the Shellmound Plan Amendment and General Plan become effective.

^7. If Applicable, Filing of Complaints--Eminent Domain. If applicable, the Agency shall file a complaint in eminent domain for acquisition of the Phase I Disposition Property, as applicable. (§201)

Promptly after adoption of the Resolutions of Necessity.

^8. Complete Acquisition of Phase I Disposition Property. The Agency shall proceed to complete acquisition of the Phase I Disposition Property by negotiation or, if applicable, eminent domain.

Promptly after acceptance of offers by the property owners or, if applicable, promptly after filing of complaints in eminent domain.

^9. Submission--Evidence of Meeting Additional Conditions Precedent to Conveyance. The Participant shall submit to the Agency for review and approval evidence of meeting the additional conditions precedent to conveyance (e.g., financing and OSHPOD and other State and County permits and approvals). (§313)

Prior to close of escrow.

^10. Approval--Evidence of Meeting Additional Conditions Precedent to Conveyance. The Agency shall approve or disapprove the Participant's evidence of meeting the additional conditions precedent to conveyance in Item ^9 above. (§313)

Within 15 days of submittal.

^11. Deposit of Purchase Price and Other Required Sums for the Phase I Disposition Property. The Participant shall deposit into escrow the Purchase Price (unless deposited into Court in Item ^7 above), and other required sums for conveyance of the Phase I Disposition Property.

Prior to the close of escrow, or as to the Purchase Price, at the time of filing complaints in eminent domain in Item ^7 above.

^12. Deposit of Grant Deed for Phase I Disposition Property. The Agency shall deposit the grant deed for the Phase I Disposition Property. (§306)

Prior to the close of escrow.

^13. Submission and Approval of Final Development Plan^ for Construction of the Hospital Building of the Phase I Minimum Improvements and Submittal of Other Plans. The Participant shall submit and obtain City approval of ^the Final Development Plan for construction ^ of the hospital building of the Phase I Minimum Improvements and submits applications for the landscaping and grading plans for the hospital building of the Phase I Minimum Improvements. (§402)

Prior to the close of escrow.

^14. Close of Escrow--Phase I Disposition Property. The Agency shall convey fee title to, and/or possession of, all of the Phase I Disposition Property to the Participant, and the Participant shall accept such conveyance and possession. (§306)

Within 30 days of Agency's obtaining fee title and/or possession and after all conditions precedent to close of escrow have been satisfied.

^15. Phase I Certificates of Insurance. The Participant shall furnish to the Agency duplicate originals or appropriate certificates of insurance for the ^ applicable Phase I Improvements or Phase I Expansion Improvements. (§405)

Prior to commencement of construction of the applicable Phase I Improvements or Phase I Expansion Improvements.

^16. Phase I Governmental Permits. The Participant shall secure all permits required by the City or other governmental agencies, including a building permit, for the applicable Phase I Improvements or Phase I Expansion Improvements. (§406)

Prior to commencement of construction of the applicable Phase I Improvements or Phase I Expansion Improvements.

^17. Commencement of Construction of the Phase I Improvements. The Participant shall commence construction of the applicable Phase I Improvements **or Phase I Expansion Improvements.** (§404)

After obtaining all approvals and permits required for development of the Phase I Improvements; but in no event later than the end of 2002 **for the Phase I Improvements and no later than January 10, 2010, for the Phase I Expansion Improvements.**

^18. Completion of Construction of the Phase I Improvements. The Participant shall complete construction of the applicable Phase I Improvements or Phase I Expansion Improvements. (§404)

^Not later than ^48 months after commencement.

^19. Issuance of Phase I Certificate of Completion. The Agency shall furnish the Participant with **^applicable Phase I Certificate of Completion or Phase I Expansion Certificate of Completion.** (§419)

Upon satisfactory completion of the **applicable Phase I Improvements or Phase I Expansion Improvements** and upon Participant's request therefor.

FUTURE EXPANSION AREA

^20. Participant Notification It Wishes to Proceed with Acquisition of the Future Expansion ^Area. Participant notifies Agency in writing it wishes to proceed with the **acquisition of Future Expansion ^Area or a portion thereof.** (§202)

After commencement of construction of all or any portion of the Phase I Minimum Improvements and no later than January **^10, 2003.**

^21. Completion of Future Expansion Analyses. Agency and Participant complete joint studies on feasibility, costs, etc. of acquiring and development Future Expansion Site and AC Transit Site, including appraisals of both the Future Expansion Site and the AC Transit Site. (§202)

Within 120 days of Participant's notification to Agency that it wishes to proceed with Future Expansion Improvements.

^22. Agency Selects Future Expansion Area. Agency selects Future Expansion Area, and if Agency selects AC Transit Site as the Future Expansion Area, determination is made by Agency and Participant that acquisition and development costs to Participant will not exceed Maximum Future Expansion Participant Costs. (§202)

Within 30 days of completion of the Future Expansion Analyses.

^23. Participant Acquisition of Future Expansion Area. The Participant shall commence to make good faith efforts to acquire the Future Expansion Area, or any portions thereof it is able to acquire, by negotiation. (§203)

Within **^60** days of Agency selection of the Future Expansion Area.

^24. Request to Acquire Future Expansion Disposition Property; Delivery of Future Expansion Advance The Participant shall request the Agency to acquire the Future Expansion Disposition Property and shall deliver the Future Expansion Advance to the Agency therefor. (§205 and 209)

Within 60 days following Item **^23**, above.

^25. Effective Date of Redevelopment Plan and General Plan Amendments. Any Redevelopment Plan or General Plan Amendments needed for acquisition of the Future Expansion Area or for development of the Future Expansion Improvements shall become effective.

Prior to the Agency making written offers to acquire the Future Expansion Disposition Property.

^26. Agency Acquisition of Future Expansion Disposition Property by Negotiation. The Agency shall submit written offers to acquire the Future Expansion Disposition Property to the property owners. (§205)

Within 30 days after the Participant's **^request to the Agency** **^** to acquire the Future Expansion Disposition Property **^in Item 25** above, and after receipt of the Participant's Future Expansion Advance.

^27. Opening of Escrow--Future Expansion Disposition Property. The Agency shall open an escrow for conveyance of the Future Expansion Disposition Property to the Participant. (§302)

Within **^5 days ^of acceptance of** written offers to acquire the Future Expansion Disposition Property and Agency's receipt of the Future Expansion Advance, **or 5 days prior to filing of an action for eminent domain.**

^28. If Applicable, Hearing on Adoption of Resolution of Necessity for Future Expansion Disposition Property. The Agency shall conduct a public hearing to consider adoption of a Resolution of Necessity to acquire the applicable portions of the Future Expansion Disposition Property by eminent domain. (§206)

At first regular meeting of Agency following 90 days after Agency's written offers to acquire have been delivered to property owners.

^29. If Applicable, Filing of Complaints--Eminent Domain. The Agency shall file a complaint in eminent domain for acquisition of the Future Expansion Disposition Property, to the extent applicable. (§206)

Promptly after adoption of the Resolutions of Necessity.

^30. Complete Acquisition of Future Expansion Disposition Property. The Agency shall proceed to complete acquisition of the Future Expansion Disposition Property by negotiation or, if applicable, by eminent domain.

Promptly after acceptance of offers by property owners or promptly after filing of complaints in eminent domain.

^31. Submission--Evidence of Meeting Additional Conditions Precedent to Conveyance. The Participant shall submit to the Agency for review and approval evidence of meeting the additional conditions precedent to conveyance (e.g., financing and State and County permits and approvals) required for development of the Future Expansion Area. (§313)

Prior to close of escrow.

^32. Approval--Evidence of Meeting Additional Conditions Precedent to Conveyance. The Agency shall approve or disapprove the Participant's evidence of meeting the additional conditions precedent to conveyance in Item ^31 above. (§313)

Within 15 days of submittal.

^33. Deposit of Purchase Price and Other Required Sums for the Future Expansion Disposition Property. The Participant shall deposit into escrow the Purchase Price (unless deposited in Court in Item ^29 above) and other required sums for the Agency's acquisition and conveyance of the Future Expansion Disposition Property. (§307)

Prior to the close of escrow or, ^as to the Purchase Price, at the time of filing the complaints in eminent domain in Item 29 above.

^34. Deposit of Grant Deed for Future Expansion Disposition Property. The Agency shall deposit the grant deed for the Future Expansion Disposition Property. (§306)

Prior to the close of escrow.

^35. Submission and Approval of Final Development Plan^ for Construction of the Future Expansion Minimum Improvements and Submittal of Other Plans. The Participant shall submit and obtain City approval of ^the Final Development Plan for construction^ of the Future Expansion Minimum Improvements and submits applications for the landscaping and grading plans for ^the Future Expansion Minimum Improvements. (§402)

Prior to the close of escrow.

^36. Close of Escrow--Future Expansion Disposition Property. The Agency shall convey fee title to, and/or possession of, all of the Future Expansion Disposition Property to the Participant, and the Participant shall accept such conveyance and possession. (§306)

Within 30 days of Agency's obtaining fee title and/or possession and after all conditions precedent to close of escrow have been satisfied.

^37. Future Expansion Certificates of Insurance. The Participant shall furnish to the Agency duplicate originals or appropriate certificates of insurance for the Future Expansion Area. (§405)

Prior to commencement of construction of the Future Expansion Improvements.

^38. Future Expansion Governmental Permits. The Participant shall secure all permits required by the City or other governmental agencies, including a building permit for the Future Expansion Improvements. (§406)

Prior to commencement of construction of the Future Expansion Improvements.

^39. Commencement of Construction of the Future Expansion Improvements. The Participant shall commence construction of the Future Expansion Improvements. (§404)

After obtaining all approvals and permits required for development of the Future Expansion Improvements but in no event later than January ^10, 2010.

^40. Completion of Construction of the Future Expansion Improvements. The Participant shall complete construction of the Future Expansion Improvements. (§404)

Not later than ^48 months after commencement.

^41. Issuance of Future Expansion Certificate of Completion. The Agency shall furnish the Participant with a Certificate of Completion for the Future Expansion Improvements. (§419)

Upon satisfactory completion of the Future Expansion Improvements and upon Participant's request therefor.

ATTACHMENT NO. 4

SCOPE OF DEVELOPMENT

I. GENERAL

The Participant agrees that the Site shall be developed and improved in two or more phases in accordance with the provisions of this Agreement; the Preliminary Development Plan for the Site submitted by the Participant pursuant to the ERN and approved by the City, attached hereto as Exhibit A; the Final Development Plan submitted by the Participant and approved by the City for the first 520,000 square feet of the hospital on the Phase I Site; the City Development Agreement, attached hereto as Exhibit B, for development of the Phase I Site and any City Development Agreement that may be approved by the City and the Participant for development of the Future Expansion Area; the plans, drawings and related documents approved or to be approved by the City; and the requirements made as a condition to any other State or County permits or approvals required, including, but not limited to the State OSHPOD permit and the State or County approvals of hazardous waste cleanup plans for the Site. The Participant, its supervising architect, engineer and contractor, shall work with Agency staff to coordinate the overall design, architecture and color of the improvements on the Site.

II. PARTICIPANT'S IMPROVEMENTS

A. Phase I Improvements

Within the time set forth in the Schedule of Performance (Attachment No. 3), the Participant may construct or cause to be constructed on the Phase I Site the following improvements (the "Phase I Improvements"):

1. A hospital of up to 650,000 square feet;
2. Up to 415,000 square feet of ancillary medical facilities, including medical office buildings;
3. Up to 25,000 square feet of general office uses;
4. A central utility plant to service the hospital and ancillary uses of up to 30,000 square feet;
5. Parking facilities and/or surface parking for up to 2,585 parking spaces; and

6. Up to 50,000 square feet of retail/commercial uses.

It is understood by the Agency, City and Participant that due to potential changes in health care delivery requirements mandated by the federal government, the Participant may not need to construct all of the above Phase I Improvements; however, at a minimum the Participant shall construct and the Phase I Improvements shall include 600,000 square feet of medical center facilities which shall include a hospital (the "Minimum Phase I Improvements").

B. Phase I Expansion Improvements

In addition, within the time set forth in the Schedule of Performance (Attachment No. 3), the Participant may construct on the Phase I Site the following additional improvements (the "Phase I Expansion Improvements"):

1. Up to an additional 115,000 square feet for expansion of the hospital;
2. Up to an additional 10,000 square feet for expansion of the central utility plant; and
3. Up to 150 additional parking spaces.

C. Future Expansion Improvements

If the Participant completes construction of the Minimum Phase I Improvements and proceeds with the acquisition and development of the Future Expansion Area, within the time set forth in the Schedule of Performance (Attachment No. 3), the Participant may construct or cause to be constructed on the Future Expansion Area the following improvements (the "Future Expansion Improvements"):

1. Up to 260,000 square feet of medical or other office uses;
2. Up to 7,500 square feet of retail/commercial uses; and
3. Up to 1,110 parking spaces.

If the Participant elects to proceed with the Future Expansion Improvements on the entire Future Expansion Area, the Participant shall construct and the Future Expansion Improvements shall at a minimum include 100,000 square feet of medical or other office uses and parking in accordance with City parking standards (the "Minimum Future Expansion Improvements").

If the Participant elects to only construct improvements on a portion of the Future Expansion Area, the Participant shall construct and the Minimum Future Expansion Improvements shall mean 50,000 square feet of medical or other office uses and parking in accordance with City parking standards.

The Phase I Improvements, the Phase I Expansion Improvements and the Future Expansion Improvements are collectively hereinafter referred to as the "Participant's Improvements."

D. Architecture and Design

The architecture and design of the Participant's Improvements shall be in accordance with the Preliminary Development Plan and final development plans approved by the City.

E. Landscaping

Landscaping of the Site shall be in accordance with the Preliminary Development Plan and final development plans approved by the City.

F. Signs

Except as otherwise specified in the City Development Agreement, all signs on the exterior of the buildings shall be in accordance with the Preliminary Development Plan and final development plans approved by the City.

G. Screening

Trash areas, fire standpipes and such other fire related mechanical devices, and rooftop equipment shall be screened in accordance with the Preliminary Development Plan and final development plans approved by the City.

H. Applicable Codes

The Participant's Improvements shall be constructed in accordance with the Uniform Building Code (with City modifications) and the Municipal Code.

III. **SITE CLEARANCE AND PREPARATION**

The Participant shall perform, or cause to be performed, at its sole cost and expense, the following work:

A. On-Site Demolition and Clearance

1. On the Site, demolish or salvage, clear, grub and remove (as may be needed and called for in the approved plans) all on-site buildings, pavements, walks, curbs, gutters and other improvements; and

2. Remove, plug and/or crush in place utilities, such as storm sewers, sanitary sewers, water systems, electrical overhead and underground systems and telephone and gas systems located on the Site, as may be required following any necessary relocation of the utilities.

B. Compaction, Finish Grading and Site Work

The Participant shall compact, finish grade and do such site preparation as is necessary for the construction of the Participant's Improvements on the Site.

IV. PUBLIC IMPROVEMENTS

A. Participant Obligations

^In addition to the Mass Transit Program Fee set forth in Section V, Participant has agreed to all of the traffic roadway and intersection improvement mitigation measures (the "Traffic Improvements") in the EIR, in accordance with and as more particularly described in the Mitigation Monitoring Program. The parties understand that these Traffic Improvements represent in excess of Participant's project-related mitigation measures and its fair share of all cumulative impacts arising from the Project. Participant also agrees to the following:

(1) Acceleration of Traffic Improvements.

Participant agrees that Traffic Improvements at a number of intersections will be completed prior to occupancy of the first building in Phase I, rather than upon occupancy of the first building in the Future Expansion, as recommended in the EIR. Participant agrees to accelerate the timing of the following Traffic Improvements irrespective of whether the development of the Future Expansion occurs and irrespective of the timing of the improvements that is set forth in the Mitigation Monitoring Program. The Traffic Improvements to be performed prior to the Phase I occupancy are listed below:

San Pablo Avenue/36th Street (Circulation Mitigation 15.1)

Hollis Street/Powell Street (Circulation Mitigation 17.1)

Hollis Street/Park Avenue (Circulation Mitigation 18.1)

In addition, Participant agrees to perform, prior to Phase I occupancy, the traffic mitigations to Christie Street/Powell Street previously identified in the draft EIR as infeasible.

(2) Obligation to construct Entire Traffic Improvement.

Participant agrees to construct Traffic Improvements for which either reimbursement will be Paid (the "Reimbursement Improvements") or no reimbursement will be paid to Participant, as set forth in the Mitigation Monitoring Program. In other instances, Participant will only be entitled to partial reimbursement from future development in an amount not to exceed fifty percent (50%) of the costs of the Traffic Improvement (the "Partial Reimbursement Improvements"). Participant agrees to construct the following Partial Reimbursement Improvements:

Hollis Street/53rd Street Intersection improvements consisting of (1) construction of a northbound and southbound thru lane on Hollis Street; (2) imposing a peak period parking restriction on Hollis Street between Powell Street and Park Avenue; (3) construction of eastbound and westbound exclusive left-turn lanes on 53rd Street; and (4) restriping of 53rd Street.

Powell Street/Doyle Street (Circulation Mitigation 6.1)

Horton/Landregan Connection (Circulation Mitigation 7.1)

Haven Street Extension (Circulation Mitigation 26.1)

(3) Obligation to Deposit Funding for Berkeley and Oakland Traffic Improvements.

Participant agrees to deposit in a separate interest bearing account with City its estimated fair share contribution calculated in accordance with the Mitigation Monitoring Program towards the Traffic Improvements in Oakland and Berkeley, prior to occupancy of the first building in Phase I, or the first building in the Future Expansion, as the case may be. The deposit shall not be refunded to Participant until a reasonable period of time has elapsed, not to exceed five (5) years for the deposit date, during which it is reasonable evident that such jurisdictions will not proceed with all necessary steps to implement such Traffic Improvements.

(4) Transportation Systems Management (TSM).

Participant agrees to implement its transportation systems management ("TSM") program as set forth in the Mitigation Monitoring Program.

(5) Reimbursement Terms.

The Mitigation Monitoring Program specifies that Participant is to be reimbursed from City by future development for a portion of the costs of specified Traffic Improvements ("Reimbursement Obligation"). Except as otherwise limited by this section or the Mitigation Monitoring Program (including the limitations applicable to the Partial Reimbursement Obligations), the City's Reimbursement Obligation to Kaiser shall be the total cost of the Reimbursement Improvement less Kaiser's fair share of the Reimbursement Improvement.

The Reimbursement Obligation shall apply only to "Major New Development," as hereinafter defined. Commencing with the effective date of this Agreement and continuing until January 1, 2010, the City agrees, in furtherance of its Reimbursement Obligation, to impose as part of the approval of any Major New Development or portion thereof, a Kaiser reimbursement fee which requires these Major New Developments to pay their fair share of the costs of applicable Reimbursement Improvements. The City also agrees to impose a Kaiser reimbursement fee on all phases of a multi-phased project where a latter phase of the project may occur after January 1, 2010, but where the approval of the first phase occurs prior to January 1, 2010. The City agrees to deposit all reimbursement sums collected in a separate account and within 30 days after receiving a Kaiser reimbursement fee, the City shall pay Kaiser the full amount. The City's Reimbursement Obligation is limited to amounts collected pursuant to this section and is not a general obligation of the City.

As used in this section only, "Major New Development" means a project, other than a housing project, greater than 50,000 square feet, that requires preparation of a traffic analysis either as part of any type of EIR or mitigated negative declaration, or a permit or approval where the traffic analysis demonstrates that the Major New Development's fair share of the costs of the Traffic Improvement is more than 5 percent of the total cost of the Traffic Improvement subject to reimbursement. The Major New Development's fair share of the Traffic Improvement shall be determined by the same methodology as Kaiser's fair share of the Traffic Improvement. Other reimbursement terms and conditions shall be pursuant to a reimbursement agreement to be entered into subsequent to the date of this Agreement.

(6) Fair Share.

In addition to its obligation to construct certain Traffic Improvements, Kaiser agrees to pay its fair share of the costs of certain Traffic Improvements as set forth in the Mitigation Monitoring Program. Kaiser's fair share, to be calculated pursuant to the Mitigation Monitoring Program, will be based

on Kaiser's contribution to the total increase in the p.m. peak hour trips per hour which is generated by the Project. For example, if there were 2000 existing trips per hour in the p.m. peak hour on the date of the EIR traffic analysis, the total number of new p.m. peak hour trips is 500 and the Project has generated 100 of these new p.m. peak hour trips, Kaiser would be required to pay 20 percent of the costs of the Traffic Improvements required by the increase in trips per hour in the p.m. peak hour.

B. Agency Obligations

For the roadway and intersection improvements within the City which are not required to be constructed by Participant, Agency agrees to pay the difference between the fair share amount contributed by Participant and the total cost of the roadway and intersection improvements and to construct or cause to be constructed those roadway and intersection improvements, all as more particularly set forth in the Mitigation Monitoring Program. Agency agrees to take any necessary actions to cause the reimbursement of Participant in accord with the Mitigation Monitoring Program. In addition, Agency agrees to pay \$500,000 toward the funding of traffic improvements for the Horton Landregan connector or toward the Hollis-Powell intersection as more particularly set forth in the Mitigation Monitoring Program.

The Agency's obligations under this Section IV.B. shall be required after receipt of the Participant's fair share of the cost of the public improvements and contemporaneously with the Participant's contribution of its fair share, but in no event later than the time specified in the Mitigation Monitoring Program approved for the Project.

V. ADDITIONAL PARTICIPANT OBLIGATIONS

A. Payment of City Fees

Pursuant to Sections 3.02 and 3.03 of the City Development Agreement for Phase I (Exhibit B), the Participant is required to pay the City certain annual fees and one time fees in order to mitigate the environmental effects of development of Phase I. The Participant understands and agrees that if the Participant elects to proceed with the Future Expansion Area, the Participant will be required to pay the City both annual fees and one-time fees. The terms and conditions for payment of these annual fees and one-time fees are set forth in Sections 3.02 and 3.03 of the City Development Agreement for Phase I (Exhibit B). The amounts of the annual fees and one time fees for the Future Expansion Area shall be as follows:

1. Annual Fees

- a. A Public Services Fee in the amount of \$100,000 per year commencing upon the the first date of occupancy of any portion of the Future Expansion Improvements (the "FEI Initial Occupancy Date"), and every twelve (12) months thereafter for the remaining term of the City Development Agreement, except that an upward adjustment shall be made every ten (10) years, as set forth in the Public Services Fee for the Phase I Site in the City Development Agreement.
- b. A Mass Transit Program Fee in the amount of \$20,000 per year commencing on the FEI Initial Occupancy Date and continuing every twelve (12) months thereafter for the remaining term of the City Development Agreement for a period not to exceed twenty-five (25) years. City agrees to impose a similar fee on "major new development," as defined below, within the City and, as new development occurs, to accordingly reduce Kaiser's Mass Transit Program Fee obligation on a prorata basis. For purposes of this provision, "major new development" shall mean new, non-residential development in excess of 50,000 square feet that involves preparation of any type of environmental impact report and owner participation agreement or disposition and development agreement. Notwithstanding the foregoing, if the City adopts an ordinance imposing a Mass Transit Program Fee, any reduction provided by this section shall be determined and provided in accordance with the provisions of such ordinance.
- c. A Senior Center Fee in the amount of \$12,500 per year commencing on the FEI Initial Occupancy Date and every twelve (12) months thereafter for the remaining term of the City Development Agreement.
- d. A Low-Income School Care Fee in the amount of \$10,000 a year commencing on the FEI Initial Occupancy Date and every twelve (12) months thereafter for the remaining term of the City Development Agreement.
- e. Two School-Related Fees in the aggregate amount of \$5,000 a year commencing on the FEI Initial Occupancy

Date and every twelve (12) months thereafter for the remaining term of the City Development Agreement. Half of this fee shall benefit the Emeryville Higher Education Fund and half this fee shall benefit the City public school system.

2. One-Time Fees

- a. An Art Fund Fee in the amount of \$180,000 for the purchase and installation of art within the Future Expansion Area at a cost equal to the amount of the Art Fund Fee, which shall be payable in installments prior to issuance of each certificate of occupancy for a part of the Future Expansion Improvements and which shall be calculated based on the square footage of the building that is covered by such certificate of occupancy in relation to the total Art Fund Fee to be paid.. However, in the event the Participant has not paid the entire amount of the Art Fund Fee by December 31, 2010, the Participant shall pay any remaining unpaid amount of the Art Fund Fee by such date.
- b. Building Permit and Processing Fees, including, but not limited to building permit fees, sewer connection fees and plumbing trap fees, in an amount to be established based on the City ordinances existing at the time of processing such permits and fees.
- c. A Traffic Impact Fee of \$84,000. Each installment of the Traffic Impact Fee shall be paid to the City prior to issuance of each certificate of occupancy for a part of the Future Expansion Improvements and shall be calculated based on the square footage of the building that is covered by such certificate of occupancy in relation to the total Traffic Impact Fee to be paid. However, in the event the Participant has not paid the entire amount of the Traffic Impact Fee by December 31, 2010, the Participant shall pay any remaining unpaid amount of the Traffic Impact Fee by such date. Any reduction or credits to the Traffic Impact Fee provided in paragraph 3 below shall not exceed \$79,800.

- d. A Public Safety Fee in the amount of \$80,000. The Participant shall pay the City this fee upon the issuance of the first building permit for the Future Expansion Area.
- e. A Small Business Retention Fee in the amount of \$60,000. The Participant shall pay the City this fee upon the issuance of the first building permit for the Future Expansion Area.
- f. A Planning Fee in an amount not to exceed \$67,500 to reimburse the City for certain fees related to the processing of the approvals for the Future Expansion Improvements. The terms and conditions of the Participant's reimbursement obligation herein shall be consistent with the terms and conditions of the Participant's reimbursement obligation for the planning fees for Phase I, as set forth in the Reimbursement Agreement between the Participant and the City.

3. Fee Reductions or Credits

The fees described in subparagraphs 1 and 2 above shall be subject to the same fee reduction and credit provisions as set forth in Section 6.13 of the City Development Agreement for the Phase I (Exhibit B).

B. Replacement Housing Obligations

The Participant shall be responsible for funding the Agency's obligation to replace each dwelling unit housing persons and families of low or moderate income which is destroyed or removed from the housing market as a result of the Project, within four (4) years of such destruction or removal in accordance with Health and Safety Code Section 33413, the Replacement Housing Plan adopted by the Agency on October 18, 1994, by Resolution No. RD72-94 and the terms and conditions set forth in Exhibit C attached hereto.

The Participant understands and agrees that once a dwelling unit housing persons and families of low or moderate income is destroyed or removed as a result of the Project, the Participant's obligations as set forth in this paragraph B to fund the replacement unit and ensure that it remain affordable for the length of time set forth in this paragraph B shall remain an obligation of the Participant for the periods required herein, and in the event of any termination of this Agreement or the City Development Agreement, the Participant's obligations herein shall survive any such termination and continue in full force and effect.

C. Other Housing Obligations

The Participant shall provide to the Agency up to \$15,000,000 for the purpose of constructing affordable housing within the City, pursuant to the terms and conditions set forth in Exhibit D attached hereto, in order to carryout the City's housing goals and the Agency's inclusionary housing requirements under Section 33413 of the Health and Safety Code.

VI. ADDITIONAL AGENCY AND PARTICIPANT OBLIGATIONS

In cooperation with Participant, Agency agrees to use its authority under Article 12.5 of Chapter 4 of the Community Redevelopment Law, commencing with Section 33459 of the Health and Safety Code, to request cleanup guidelines, prepare a remedial action plan, assist in the implementation of the remedial action plan and attempt to recover from responsible parties amounts for which those responsible parties are liable. The goal of the Agency and the Participant shall be to gain approval by the Regional Water Quality Control Board of a remedial action plan, clean up the Site in accordance with that plan, and gain the immunities provided for in Section 33459.3 of the Health and Safety Code. Prior to the Agency commencing work, Agency and Participant shall mutually agree on a scope of work to implement this goal and the entities or persons to prepare the remedial action plan and take other actions pursuant to this section. The Participant shall pay for or reimburse the Agency for all costs incurred by the Agency in implementing its mutually agreed upon obligations under this Section VI. At any time, Participant may notify Agency in writing that it does not wish to pursue the protections under Article 12.5 of Chapter 4 of the Community Redevelopment Law and instruct the Agency to cease work on its obligations under this section. Participant shall not be obligated to reimburse the Agency for actions taken by the Agency pursuant to this section unless these actions are required to be taken by the Agency to complete work already started. In this situation, the Agency shall take all reasonable steps to terminate its activities under this section.

Exhibit A

Preliminary Development Plan

[To be Inserted.]

Attachment No. 4
Exhibit A

EMY/KaiserPA

11/18/94

Exhibit B

City Development Agreement

[To be Inserted.]

Exhibit C

Replacement of Housing Removed by Project

The Participant shall provide funding for fulfillment of the Agency's obligation pursuant to Health and Safety Code Section 33413 to replace each dwelling unit housing persons and families of low or moderate income which is destroyed or removed from the housing market as a result of the Project, within four (4) years of such destruction or removal, and otherwise in accordance with the Replacement Housing Plan, adopted by the Agency pursuant to Resolution No. RD72-94, on October 18, 1994 (the "Agency's Replacement Obligation").

The parties acknowledge that the Replacement Housing Plan addresses replacement of dwelling units that may be destroyed on the Future Expansion Site as well as the Phase I Site. However, the Participant's obligation to provide funding for the Agency's Replacement Obligation pursuant to Section 3.11 of the City Development Agreement and this Exhibit C is limited at this time to the replacement of dwelling units displaced on the Phase I Site.

Fulfillment of the Agency's Replacement Obligation shall be undertaken by the Agency, with the Participant providing a portion of the funding to construct the replacement units, subject to the maximum amounts provided below. The Participant shall receive an interest in the project(s) constituting the replacement housing commensurate with its investment of funds therein, which interest may be an equity interest or that of a subordinate lender, and which may represent a long-term investment in such project(s). Notwithstanding the foregoing, in no event will the Participant have any involvement in ongoing property management of any replacement housing.

The Participant shall provide its portion of the funding for the replacement housing at such time as the Participant and the Agency have mutually agreed upon a project or projects which will contain replacement housing units, but in any event, in sufficient time for the Agency to meet the requirement of completing construction of the required replacement units within four (4) years after destruction or removal of the units being replaced. Notwithstanding the foregoing, in no event will the Participant be obligated to provide any funding for the Agency's Replacement Obligation prior to destruction or removal of the units to be replaced.

Under Section 33414 of the Health and Safety Code, all dwelling units housing families with very low, low and moderate incomes must be replaced; however, only seventy-five percent (75%) of the replacement units must be affordable to families with comparable income levels, and the remaining twenty-

five percent (25%) of such replacement units may be market rate units. The Participant's obligation to provide the funding described in Section 3.11 of the City Development Agreement and this Exhibit C for the Agency's Replacement Obligation shall be limited in accordance with the following schedule (based on the type of unit being replaced and the assumption that twenty-five percent (25%) of the replacement units shall be market rate units):

<u>Type of Replacement Unit</u>	<u>Maximum Participant Funding Obligation</u>
Very Low or Low Income	\$70,000 per unit
Moderate Income	\$30,000 per unit
Market Rate	\$10,000 per unit

Notwithstanding the limitation on the Participant's obligation to provide funding, the Agency may construct the combination of unit types it deems appropriate, subject to compliance with applicable law.

Any funds provided by the Participant to fund fulfillment of the Agency's replacement housing obligation pursuant to Section 3.11 of the City Development Agreement and this Exhibit C shall be in addition to, and shall not be counted as part of, the funds invested by the Participant in the Kaiser-Emeryville Housing Fund (described in Section 3.10 of the City Development Agreement and Exhibit D of Attachment No. 4 of this Agreement).

Exhibit D

Kaiser-Emeryville Housing Fund

As part of the mitigation for the Project, the Participant and the Agency have agreed to implement the Kaiser-Emeryville Housing Fund. The provisions of the Kaiser-Emeryville Housing Fund, which are included in the City Development Agreement, are set forth below.

(1) Introduction.

The parties understand that a portion of the Phase I Site was designated for residential purposes in the General Plan prior to the General Plan Amendment. In particular, the Del Monte Site had been identified in the City's housing element as a potential site for moderate and above-moderate income housing. The parties acknowledge that during the past four years the City has aggressively marketed the Phase I Site to residential and mixed-use developers. City staff worked with at least four different developers to pursue the development of housing on the Phase I Site. The City pursued the development of the Project only after each of the proposed housing projects were not developed. To facilitate the City's goals of constructing affordable housing, the Participant agrees to establish the "Kaiser-Emeryville Housing Fund" as described below, to provide a unique source of funding to the Agency of up to \$15,000,000 at below-market interest rates for construction of affordable and market rate housing in Emeryville.

(2) Program Overview.

The Agency has established a strong track record in leveraging funds in innovative and creative ways to facilitate the construction of market rate and affordable housing in Emeryville, in cooperation with the private sector and other government funding sources (such as the federal government). Recent examples of the Agency's successes include:

- (a) Emery Villa -- The Agency leveraged approximately \$1.1 million of Agency-raised funds with approximately \$3.4 million of funds from other sources to build 50 units which are affordable to senior citizens with very low income.
- (b) Emery Bay Club and Apartments II -- The Agency leveraged \$4 million of proceeds from an Agency bond offering with \$21 million from other sources to build a 260 unit mixed income rental project. Twenty percent of the units are affordable to very

low income households and another twenty percent of the units are affordable to low income households.

- (c) Triangle Court -- A substandard and dilapidated 14-unit apartment complex was reconstructed to produce 20 units of quality family housing, all of which are restricted to very low and low income households for a period of 59 years. The total project cost was approximately \$2.3 million dollars, combining funds from the federal HOME program, a housing increment bond offering by the Agency and private financing. In addition, six of the rehabilitated units have received Section 8 eligibility.

In order to provide the Agency with a flexible source of funding to construct additional housing in Emeryville, the Participant agrees to lend up to \$15,000,000 to the Agency over a term of fifteen (15) years (the "Housing Fund Term") commencing on the Housing Commencement Date (as defined below) to fund the development of new affordable and market rate housing within Emeryville. Funds from the Kaiser-Emeryville Housing Fund will be made available during the Housing Fund Term in increments of up to \$3,000,000 at one time, which may be borrowed and repaid up to five (5) times, for a maximum of \$15,000,000. The Agency will have the flexibility to combine funds from the Kaiser-Emeryville Housing Fund with other sources of funds, and to use such funds in cooperation with private for-profit or nonprofit developers to develop a series of housing developments in Emeryville.

As used herein, the "Housing Commencement Date" shall mean that date on which the Participant has received all necessary approvals from the applicable governmental agencies for commencement of the Project, including, without limitation, the Project Approvals, as defined in the City Development Agreement and either (i) all relevant statutes of limitation for challenge to the Project have expired with no litigation being filed related to the Project, or (ii) if litigation is filed related to the Project, any such litigation, including any appeals related thereto, has been resolved and all appropriate actions related to such litigation have been taken such that the Participant may proceed with the Project without further approval, delay or additional litigation. Notwithstanding the foregoing, if the Participant actually commences construction of the Project prior to the resolution of any such litigation, the Housing Commencement Date shall be the date the Participant actually commences such construction; provided, however, that if construction of the Project is commenced but is subsequently halted as a result of any such litigation, then the Participant's obligation to fund any Investment Increment (as defined below) other than any Investment Increment for which the initial disbursement of funds has already been made shall be suspended during any period when construction is halted as a result of such litigation. Nothing in the

preceding sentence is intended to suspend the Participant's obligation to provide funding for the Agency's Replacement Obligation pursuant to (and as defined in) Section 3.11 of the City's Development Agreement and Exhibit C of Attachment No. 4 of this Agreement shall continue notwithstanding any halting of construction as a result of such litigation.

(3) Housing Development Criteria.

The funds borrowed by the Agency from the Kaiser-Emeryville Housing Fund shall be used only for the development of residential housing projects in the City of Emeryville ("Housing Developments"). The Agency shall have the discretion to determine the types and sizes of the Housing Developments, with the goal of providing the maximum number of affordable housing units as reasonably possible, consistent with the housing element of the General Plan and the Community Redevelopment Law.

(4) Funding Mechanism.

Prior to the first advance of funds from the Kaiser-Emeryville Housing Fund, the Agency and the Participant shall execute a loan agreement, which shall be acceptable to the Agency and the Participant, in the discretion of each of them. The loan agreement shall contain terms consistent with the terms hereof, and other customary and reasonable terms for a credit facility of this nature necessary to protect the Participant's investment of funds, including, but not limited to, conditions to advances, financial covenants and events of default. Funding from the Kaiser-Emeryville Housing Fund shall be available during the Housing Fund Term in up to five (5) increments of up to \$3,000,000 each (each an "Investment Increment").

When the Agency first identifies a Housing Development for which it wishes to use funds from the Kaiser-Emeryville Housing Fund, it shall notify the Participant of such Housing Development and the amount of funds to be used from the Kaiser-Emeryville Housing Fund for such Housing Development, up to a maximum of \$3,000,000, and deliver to the Participant a promissory note in the amount of \$3,000,000, in a form to be agreed upon and attached as an exhibit to the loan agreement. The Agency may draw on such note in multiple disbursements upon ten (10) days' advance notice to the Participant (subject to a maximum of one disbursement per month) to fund such Housing Development. If such Housing Development will require less than \$3,000,000 of funds from the Kaiser-Emeryville Housing Fund, the Agency may, while such note is outstanding, identify and notify the Participant of additional Housing Development(s) to be funded from the same \$3,000,000 Investment Increment, provided that the total amount of funds to be available from any single Investment Increment shall not exceed \$3,000,000. For

example, if the first Housing Development identified for funding from an Investment Increment will require only \$2,000,000 of funds from the Kaiser-Emeryville Housing Fund, an additional Housing Development could be designated by the Agency to be part of the same Investment Increment, provided that such additional Housing Development required no more than \$1,000,000 of funds from the Kaiser-Emeryville Housing Fund.

Funding will be available under only one Investment Increment at a time (i.e., each \$3,000,000 note must be repaid in full before borrowing will be available under the next Investment Increment). After one Investment Increment has been repaid in full, the Participant shall return the promissory note applicable to such Investment Increment to the Agency, marked "paid in full." Thereafter, to begin borrowing under the next Investment Increment, the Agency will deliver another \$3,000,000 promissory note to the Participant and identify the Housing Development(s) to be funded from such Investment Increment and the amount(s) to be funded from the Kaiser-Emeryville Housing Fund therefor.

Each promissory note will bear interest at a rate which is 1.05 percent below the "prime rate" as published from time to time in the Wall Street Journal, subject to adjustments as such "prime rate" is adjusted. The maturity date of each promissory note will be fifteen (15) years after the Housing Commencement Date. No payments of interest or principal will be due prior to maturity, provided that any unpaid interest will be compounded annually, and prepayments, in whole or in part, will be permitted at any time.

Each request for disbursement from the Kaiser-Emeryville Housing Fund shall identify the purpose for which such funds are to be used, and the Participant shall not be obligated to advance funds for any purpose other than for the development (including, but not limited to, land acquisition, site preparation, hazardous substance remediation, engineering, architecture and planning, other customary soft costs, and hard construction costs) of Housing Developments identified by the Agency for the applicable Investment Increment.

(5) Obligation of the Agency to Repay Loans.

The obligation to repay all borrowings from the Participant under the Kaiser-Emeryville Housing Fund shall be a general, unsecured obligation of the Agency. In the event of the Agency's failure to repay any amounts borrowed from the Participant under the Kaiser-Emeryville Housing Fund upon maturity of the applicable promissory note, the Participant shall have the right to offset amounts owed to it by the Agency under such promissory note against its obligation to pay the Public Service Fee provided under Section 3.02 of the City's Development Agreement.

(6) Subordination to Bond Financing.

The Participant agrees to subordinate its right to receive repayment (but not its right of offset provided in subsection (4), above) of borrowings under the Kaiser-Emeryville Housing Fund to repayment of the Agency's borrowings under tax-exempt bond financings. Notwithstanding the foregoing, the terms of each such subordination shall permit repayment of borrowings under the Kaiser-Emeryville Housing Fund at any time when the Agency is not in default under any such bond financing.

(7) Legal Requirements.

The Participant may create a special-purpose subsidiary through which its funding of the Kaiser-Emeryville Housing Fund may be channeled. If a special-purpose subsidiary is used, the Participant will guarantee such subsidiary's funding obligations under the Kaiser-Emeryville Housing Fund.

(8) Certificate of Compliance.

Upon the first to occur of (i) the expiration of the Housing Fund Term, so long as the Participant has satisfied its obligations to the Agency in connection with the Kaiser-Emeryville Housing Fund as provided under Section 3.10 of the City's Development Agreement and this Exhibit D, or (ii) the disbursement by the Participant of all funds available for advance under the fifth (5th) Investment Increment, the City and the Agency shall execute and acknowledge a certificate of satisfaction of the Participant's obligations in connection with the Kaiser-Emeryville Housing Fund in recordable form, which may be recorded in the Official Records of Alameda County by the Participant, to give notice of the satisfaction of such obligations. The failure of the Agency to borrow the full \$3,000,000 available in any Investment Increment or to borrow less than five (5) Investment Increments before the expiration of the Housing Fund Term shall not constitute the failure of the Participant to satisfy its obligations in connection with the Kaiser-Emeryville Housing Fund, and shall not obligate the Participant to extend the Housing Fund Term or make borrowings under more than five (5) Investment Increments available to the Agency.

ATTACHMENT NO. 5

FORM OF GRANT DEED

Recording Requested by:

Emeryville Redevelopment Agency

After Recordation, Mail to:

GRANT DEED

For valuable consideration, the receipt of which is hereby acknowledged,

THE EMERYVILLE REDEVELOPMENT AGENCY, a public body, corporate and politic, of the State of California (herein called "Grantor"), acting to carry out the Redevelopment Plan (herein called "Redevelopment Plan") for the Shellmound Park Redevelopment Project [*or, if applicable, for the Emeryville Redevelopment Project*], under the Community Redevelopment Law of the State of California, hereby grants to KAISER FOUNDATION HOSPITALS, a California nonprofit public benefit corporation (herein called "Grantee"), the real property (the "Site") legally described in the document attached hereto, labeled Exhibit A, and incorporated herein by this reference.

1. The Site is conveyed subject to the Redevelopment Plan and pursuant to a Participation Agreement (the "PA") entered into by and between the Grantor and the Grantee and dated _____. The Site is also conveyed subject to easements of record.

2. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that during construction and thereafter, the Grantee shall not use the Site for other than the uses specified in the Redevelopment Plan.

3. Prior to the issuance of a Certificate of Completion by the Grantor as provided in the PA, the Grantee shall not, except as permitted by the PA, sell, transfer, convey, assign or lease the whole or any part of the Site without the prior

written approval of the Grantor. This prohibition shall not apply subsequent to the issuance of the Certificate of Completion with respect to the improvements upon the Site. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Site or to prohibit or restrict the leasing of any part or parts of a building or structure when said improvements are completed.

4. Subject to the provisions of Section 612 of the PA, the Grantor shall have the additional right, at its option, to repurchase, reenter and take possession of the Site hereby conveyed, or such portion thereof, with all improvements thereon, if after conveyance of title and prior to issuance of a Certificate of Completion of construction upon the Site, the Grantee or successor in interest shall:

- a. Fail to proceed with the construction of the improvements as required by the PA for a period of three (3) months after written notice thereof from the Grantor; or
- b. Abandon or substantially suspend construction of the improvements for a period of three (3) months after written notice of such abandonment or suspension from the Grantor; or
- c. Transfer or suffer any involuntary transfer of the Site, or any part thereof, in violation of the PA.

5. Subject to the provisions of Section 613 of the PA, the Grantor shall have the right, at its option, to reenter and take possession of the Site hereby conveyed, or such portion thereof, with all improvements thereon, and revert in the Grantor the estate conveyed to the Grantee, if after conveyance of title and prior to issuance of a Certificate of Completion of construction upon the Site, the Grantee or successor in interest shall:

- a. Fail to proceed with the construction of the improvements as required by the PA for a period of three (3) months after written notice thereof from the Grantor; or
- b. Abandon or substantially suspend construction of the improvements for a period of three (3) months after written notice of such abandonment or suspension from the Grantor; or
- c. Transfer, or suffer any involuntary transfer of the Site, or any part thereof, in violation of the PA.

6. The Grantee covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group

of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Grantee itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Site.

All deeds, leases or contracts made relative to the Site, the improvements thereon or any part thereof, shall contain or be subject to substantially the following nondiscrimination clauses:

a. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

b. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the land herein leased."

- c. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the land."

7. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument permitted by the PA; provided, however, that any successor of Grantee to the Site shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

8. Except as otherwise provided, the covenants contained in paragraph 2 of this Grant Deed shall remain in effect until the termination date of the Redevelopment Plan. The covenants against discrimination contained in paragraph 6 of this Grant Deed shall remain in perpetuity. The covenants contained in paragraphs 3, 4 and 5 shall remain in effect until issuance of a Certificate of Completion pursuant to Section 413 of the PA.

9. The covenants contained in paragraphs 2, 3, 4, 5 and 6 of this Grant Deed shall be binding for the benefit of the Grantor, its successors and assigns, the City of Emeryville and any successor in interest to the Site or any part thereof, and such covenants shall run in favor of the Grantor and such aforementioned parties for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. The Grantor and such aforementioned parties, in the event of any breach of any such covenants, shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach. The covenants contained in this Grant Deed shall be for the benefit of and shall be enforceable only by the Grantor, its successors and such aforementioned parties.

10. In the event of any express conflict between this Grant Deed or the PA, the provisions of this Grant Deed shall control.

11. Any amendments to the Redevelopment Plan which change the uses or development permitted on the Site or change the restrictions or controls that apply to the Site or otherwise affect the Site shall require the written consent of the Grantee. Amendments to the Redevelopment Plan applying to other property in the Project Area shall not require the consent of the Grantee.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers thereunto duly authorized, this ___ day of _____, 19__.

EMERYVILLE REDEVELOPMENT AGENCY
"GRANTOR"

By _____
Chairman

By _____
Secretary

APPROVED:

By _____
Counsel for Grantor

The provisions of this Grant Deed are hereby approved and accepted.

KAISER FOUNDATION HOSPITALS, a
California nonprofit, public benefit
corporation "GRANTEE"

By _____

Exhibit A

Legal Description of the Site

[To be Inserted.]

ATTACHMENT NO. 6

Form of Certificate of Completion

Recorded at the Request of:

When Recorded, Mail to:

PHASE I SITE CERTIFICATE OF COMPLETION

In implementation of the Redevelopment Plan (the "Redevelopment Plan") for the Shellmound Park Redevelopment Project (the "Project"), the Emeryville Redevelopment Agency (the "Agency") entered into a Participation Agreement with Kaiser Foundation Hospitals (the "Participant"), dated _____, providing for the development of certain real property (the "Site") included within the boundaries of the Project. The Site, comprised of property which was already owned by the Participant (the "Phase I Participating Property") and property which was acquired by the Agency and sold to the Participant (the "Phase I Disposition Property") (collectively, hereinafter referred to as "Phase I"), is more particularly described in Exhibit A, attached hereto and incorporated by reference herein.

The Agency hereby certifies that construction and development of the improvements pertaining to the Phase I Site by the Participant has been satisfactorily completed as required by and in full compliance with the terms and provisions of the Participation Agreement relating to the commencement and completion of construction on the Phase I Site by the Participant.

This Certificate of Completion shall not be deemed or construed to constitute evidence of, compliance with or satisfaction of any obligation of the Participant to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the construction of improvements on the Phase I Site. This Certificate of Completion is not a notice of completion as referred to in Section 3093 of the California Civil Code.

IN WITNESS WHEREOF, the Agency has executed this Certificate of Completion this _____ day of _____, 19__.

EMERYVILLE REDEVELOPMENT AGENCY

By _____
Chairman

[Attach Notarization]

Exhibit A

Legal Description of the Phase I Site

[To Be Inserted.]

Attachment F
Draft Redevelopment Agency Resolution Making Findings,
Imposing Mitigations Measures, and Adopting
Overriding Considerations and Mitigation
Monitoring Program on the Project

RESOLUTION NO. _____

A RESOLUTION OF THE EMERYVILLE REDEVELOPMENT AGENCY MAKING FINDINGS CONCERNING MITIGATION MEASURES, ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM, MAKING FINDINGS CONCERNING ALTERNATIVES AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT FOR THE KAISER PERMANENTE MEDICAL CENTER PROJECT

WHEREAS, Kaiser Foundation Hospitals has requested various approvals from the City Council of the City of Emeryville (the "City Council") and the Emeryville Redevelopment Agency (the "Agency") for the development of an urban medical center (the "Project") within the Shellmound Park Redevelopment Project and possibly the Emeryville Redevelopment Project; and

WHEREAS, two of the approvals necessary in order to effectuate the development of the Kaiser Permanente Medical Center Project are the approval of an amendment to the Redevelopment Plan (the "Redevelopment Plan") for the Shellmound Park Redevelopment Project (the "Redevelopment Project") and the approval of a Participation Agreement (the "PA") by the City Council and the Agency; and

WHEREAS, the Agency has prepared a proposed PA for the Project and has prepared and submitted to the City Council a proposed amendment (the "Amendment") to the Redevelopment Plan which would provide for the land use changes needed to permit development of the Project within the Redevelopment Project Area; and

WHEREAS, the Agency is responsible for carrying out the Redevelopment Plan for the Redevelopment Project and the PA; and

WHEREAS, since the City Council is the first to act on the various approvals for the Project, the City Council is the lead agency and the Agency is a responsible agency for the purposes of environmental review; and

WHEREAS, the City Council prepared a Draft Environmental Impact Report on the Project (the "Draft EIR") pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), the Guidelines for Implementation of the California Environmental Quality Act (14 Cal. Code Regs.

Section 15000 et seq., hereinafter the "State CEQA Guidelines") and the City of Emeryville environmental guidelines adopted pursuant thereto; and

WHEREAS, a Notice of Completion of the Draft EIR was filed with the Office of Planning and Research on May 6, 1994, and a public notice of the availability of the Draft EIR was posted at the proposed site of the Project and the three public sites within the City of Emeryville designated by the City Council for posting of notices and published in the Oakland Tribune on May 7, 1994; and

WHEREAS, (a) copies of the Draft EIR were distributed to the State Clearinghouse and to those public agencies which have jurisdiction by law with respect to the Project and to other interested persons and agencies, and the comments of such persons and agencies were sought; (b) a copy of the Draft EIR was made available for public review at the Golden Gate Public Library, the City of Emeryville Planning Department and the Emeryville Fire Station; and (c) additional copies of the Draft EIR were made available through Rapid Repro Copy Center and Access Print in the City of Emeryville; and

WHEREAS, a Final Environmental Impact Report has been prepared by the City consisting of the Draft EIR, the comments received on the Draft EIR and the Responses to Comments and Text Revisions document containing all written and verbal comments received on the Draft EIR and responses thereto; and

WHEREAS, a joint public hearing was held by the Agency and the City Council on November 21, 1994, on the Final EIR, following notice duly and regularly given as required by law, and all interested persons expressing a desire to comment thereon or object thereto having been heard, and said Final EIR and all comments and responses thereto were considered; and

WHEREAS, a Final Environmental Impact Report for the Project was certified by the City Council on November 21, 1994, by Resolution No. _____;

NOW, THEREFORE, THE EMERYVILLE REDEVELOPMENT AGENCY DOES RESOLVE AS FOLLOWS:

Section 1. The Agency adopts the Findings of Fact Concerning Mitigation Measures, Exhibit A; the Mitigation Monitoring Program, Exhibit B; the Findings of Fact Concerning Alternatives, Exhibit C; and the Statement of Overriding Considerations, Exhibit D, all of which are attached hereto and incorporated herein by reference; and

PASSED AND ADOPTED by the Emeryville Redevelopment Agency at a special meeting held on Monday, November 21, 1994, by the following vote:

AYES: _____

NOES: _____

EXCUSED: _____

ABSENT: _____

ABSTAINED: _____

CHAIRMAN

ATTEST:

APPROVED AS TO FORM:

SECRETARY

AGENCY COUNSEL

FOR EXHIBITS A, B, C AND D - SEE CITY COUNCIL RESOLUTION
MAKING MAKING FINDINGS AND IMPOSING MITIGATION
MEASURES IN ACCORDANCE WITH THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT FOR THE KAISER
PERMANENTE MEDICAL CENTER PROJECT, ADOPTING A
MITIGATION MONITORING AND REPORTING PROGRAM, AND
ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS

Attachment F.1
Findings of Fact Regarding the Mitigation Measures
(Incorporated by Reference - See Attachment B.1)

Attachment F.2
**Mitigation Monitoring and Reporting Program (Incorporated
by Reference - See Attachment B.2)**

Attachment F.3
Findings of Fact Concerning Alternatives (Incorporated by
Reference - See Attachment B.3)

Attachment F.4
Statement of Overriding Considerations (Incorporated by
Reference - See Attachment B.3)

Attachment G
Draft Redevelopment Agency Resolution Approving the
Participation Agreement

A RESOLUTION OF THE EMERYVILLE REDEVELOPMENT AGENCY APPROVING AND AUTHORIZING THE EXECUTION OF A PARTICIPATION AGREEMENT BETWEEN THE EMERYVILLE REDEVELOPMENT AGENCY, THE CITY OF EMERYVILLE AND KAISER FOUNDATION HOSPITALS

WHEREAS, the Emeryville Redevelopment Agency (the "Agency") is carrying out the Redevelopment Plans (the "Redevelopment Plans") for the Emeryville Redevelopment Project and the Shellmound Park Redevelopment Project (the "Redevelopment Projects"); and

WHEREAS, the Agency has received a proposed Participation Agreement (the "PA") from Kaiser Foundation Hospitals (the "Participant") providing for the development of an urban medical center (the "Kaiser Project") on certain property within the Redevelopment Projects (the "Site") through the sale of certain real property within the Site by the Agency to the Participant (the "Disposition Property") and the provision by the Agency of certain public improvements necessary for development of the Kaiser Project (the "Public Improvements"); and

WHEREAS, the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 et seq.) provides in Section 33431 that any sale or lease of Agency property may be made only after a public hearing of the Agency after publication of notice as provided by law; and

WHEREAS, the PA will result in the displacement of persons from the Shellmound Park Redevelopment Project and, therefore, a Relocation Plan was adopted by Agency Resolution No. RD71-94 on October 18, 1994, and approved by City Council Resolution No. 94-172 on October 18, 1994, pursuant to Section 33411 of the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 et seq.) and the state relocation law (Government Code Section 7260 et seq.); and

WHEREAS, the PA will result in the removal of low and moderate income dwelling units and, therefore, a Replacement Housing Plan was adopted by the Agency by Resolution No. RD72-94 on October 18, 1994, pursuant to Section 33413.5 of the Community Redevelopment Law; and

WHEREAS, pursuant to Section 33445 of the Community Redevelopment Law, an agency is authorized, with the consent of the legislative body to pay all or part of the value for and the cost of installation and construction of any building, facility, structure or other improvement which is publicly owned either within or without a project area if the legislative body determines that the buildings, facilities, structures or other improvements are of benefit to the project area or the immediate area in which the project is located, that no other reasonable means of financing the buildings, facilities, structures or other improvements are available to the community, and that such buildings, facilities, structures or other improvements will assist in the elimination of blighting conditions inside the project area and are consistent with the Implementation Plan to be adopted pursuant to Section 33490 of the Community Redevelopment Law; and

WHEREAS, notice of a joint public hearing by the City Council of the City of Emeryville (the "City Council") and the Agency on approval of the PA and the sale of the Disposition Property by the Agency to the Participant was published in the Oakland Tribune on November 7, 1994, and November 14, 1994; and

WHEREAS, the City Council and the Agency held a joint public hearing on November 21, 1994, in the City Council Chambers to consider and act on the sale of the Disposition Property and development of the Site pursuant to the PA; and

WHEREAS, prior to adopting the proposed PA, the Agency has adopted Resolution No. _____ ("CEQA Resolution"), Making Findings Concerning Mitigation Measures, Adopting a Mitigation Monitoring and Reporting Program, Making Findings Concerning Alternatives and Adopting a Statement of Overriding Considerations in Accordance with the California Environmental Quality Act for the Kaiser Project; and

WHEREAS, the Agency finds that mitigation measures have been imposed on and incorporated in the Kaiser Project which avoid or substantially lessen environmental impacts, that certain mitigation measures are within the responsibility and jurisdiction of another public agency and such changes can and should be adopted by such other agency, that specific economic, social and other considerations make infeasible the project alternatives that would avoid or substantially lessen the environmental impacts that cannot fully be mitigated;

NOW, THEREFORE, THE EMERYVILLE REDEVELOPMENT AGENCY DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The Agency hereby finds and determines that the provision of the Public Improvements by the Agency for development of the Site is necessary to effectuate the purposes of the Redevelopment Plans, that it is of benefit to the Project Areas, that no other reasonable means of financing the Public Improvements are available, that the Public Improvements will assist in the elimination of blight within the Project Areas and are consistent with the implementation plan to be adopted by the Agency pursuant to Section 33490 of the Community Redevelopment Law, and the City Council has consented to and approved the undertaking by the Agency of the Public Improvements. These findings are supported by the following facts:

(a) The PA provides that, as specified in the Mitigation Monitoring Program, Participant will be required to construct or pay its fair share toward the construction of certain public improvements. For certain public improvements within the City, the Mitigation Monitoring Program provides that the City will cause the construction of these improvements and pay for or cause the Agency to pay for a portion of these improvements not paid for by Participant. In addition, the Agency will pay \$500,000 toward the funding of traffic improvements for the Horton/Landregan connector or the Hollis/Powell intersection as more particularly set forth in the Mitigation Monitoring Program. While the City and Agency will seek reimbursement for all or a portion of the funds expended from both private and public sources, the reimbursed amounts may not be sufficient to pay the full costs of the City and Agency obligations.

(b) The Public Improvements on which Agency funds may be used are in the City and are either in the Project Areas or are improvements to the roadways and intersections that primarily serve and affect the traffic circulation in the Project Areas.

(c) The Participant does not have additional funds available to pay for the Public Improvements due to its already high costs of developing the Kaiser Project on the Site, including the Participant's agreement to pay for the costs of implementing the Transportation System Management Program and constructing and paying its fair share of other roadway and intersection improvements identified in the Mitigation Monitoring Program adopted for the Kaiser Project; the City does not have sufficient funds to undertake the Public

Improvements; and there are no other public or private funds available to pay for the Public Improvements.

(d) The Public Improvements will assist in eliminating blight in the Project Areas because they will facilitate the development of the Kaiser Project which will cause the development of existing vacant and underutilized land, provide commercial and retail services to the occupants of the Project Areas, increase employment opportunities within the Project Areas, and cause the removal of unsafe and unhealthy toxic substances from the Project Areas.

(e) The Implementation Plan provides for Agency assistance to the Kaiser Project and these Public Improvements.

(f) The City Council adopted Resolution No. _____ on November 21, 1994, consenting to and approving the undertaking by the Agency of the Public Improvements.

Section 2. The Agency hereby finds that in connection with any potential acquisition of real property pursuant to the PA, adequate provisions have been made to be guided by the acquisition policies contained in Article 6 of the California Relocation Assistance and Real Property Acquisition Guidelines (the "Relocation and Acquisition Guidelines"), and that eligible persons will be informed of the pertinent benefits, policies and requirements of the Relocation and Acquisition Guidelines. This finding is based on the fact that the Agency has adopted the Relocation and Acquisition Guidelines in connection with the acquisition of real property and relocation of persons as its guidelines by Agency Resolution No. RD93-67 adopted on September 21, 1993, and the Agency will implement the acquisition policies as set forth in the Relocation and Acquisition Guidelines.

Section 3. Based on the entire record before this Agency, including the findings set forth in this resolution and in the CEQA Resolution No. _____ and subject to the adoption of the Amendment to the City General Plan and the Amendment to the Shellmound Park Redevelopment Plan by the City Council and the adoption of an Implementation Plan by the Agency, the Agency hereby approves and authorizes: (a) execution of the PA substantially in the form attached hereto, subject to any nonsubstantive revisions as the Executive Director of the Agency and Agency Special Counsel shall approve; and (b) the sale of the Disposition Property. Further the Chairman and Secretary of the Agency are hereby authorized and directed to execute the PA and to take such further actions and execute such necessary documents as are necessary to carry

out the PA on behalf of the Agency, including but not limited to the acquisition of property and the execution of any deeds.

Section 4. In connection therewith, the Agency incorporates the findings, mitigation measures and mitigation monitoring program and statement of overriding considerations set forth in the CEQA Resolution.

Section 5. The Executive Director or his designee is hereby directed to file a Notice of Determination with the County Clerk of Alameda County and the Office of Planning and Research pursuant to the provisions of Section 15096(l) of the State CEQA guidelines.

PASSED AND ADOPTED by the Emeryville Redevelopment Agency at a special meeting held on Monday, November 21, 1994, by the following vote:

AYES: _____

NOES: _____

EXCUSED: _____

ABSENT: _____

ABSTAINED: _____

CHAIRMAN

ATTEST:

APPROVED AS TO FORM:

SECRETARY

AGENCY COUNSEL

FOR THE PARTICIPATION AGREEMENT - SEE CITY
COUNCIL RESOLUTION APPROVING AND
AUTHORIZING EXECUTION OF THE PARTICIPATION
AGREEMENT BETWEEN THE EMERYVILLE
REDEVELOPMENT AGENCY, THE CITY OF EMERYVILLE
AND KAISER FOUNDATION HOSPITALS

Attachment H
Draft Council Ordinance Approving the Rezoning to Planned
Unit Development and Approving the Preliminary
Development Plan

ORDINANCE NO. 94-

Kaiser Permanente Medical Center Planned Unit Development/Commercial

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EMERYVILLE APPROVING THE PRELIMINARY DEVELOPMENT PLAN FOR THE KAISER PERMANENTE MEDICAL CENTER PROJECT THEREBY REZONING THE PHASE I SITE AND FUTURE EXPANSION SITE TO PLANNED UNIT DEVELOPMENT/COMMERCIAL. PHASE I SITE: GENERALLY BOUNDED BY PARK AVENUE, 45TH STREET, HOLLIS STREET AND SAN PABLO AVENUE (KNOWN MORE SPECIFICALLY AS ASSESSOR'S PARCEL NUMBERS 049-1027-002, -003, -004, -016-01, -017, -018,-019, -020-01&02, -021, -022-01&02, -023-02, -024,-028,-029, -030, -031, -032, -033, & -034; 049-1029-001-3&4; 049-1031-003-01, &-004; 049-1041-059); FUTURE EXPANSION SITE: GENERALLY BOUNDED BY 45TH STREET, 53RD STREET, HOLLIS STREET, DOYLE STREET AND THE EMERY BAY VILLAGE COMPLEX (KNOWN MORE SPECIFICALLY AS ASSESSOR'S PARCEL NUMBERS 049-1041-011-04, -012-02, -013, -022, -023-01&02, -032-01, -041-03).

WHEREAS, the City of Emeryville has received an application from Kaiser Foundation Hospitals, a California non-profit public benefit corporation ("Kaiser"), to construct the Kaiser Permanente Medical Center on the above property within the City of Emeryville (the "Project"); and

WHEREAS, the project includes a request for the approval of a Preliminary Development Plan, dated October 1994 and amended November 9, 1994, thereby rezoning the Phase I Site and Future Expansion Site to Planned Unit Development/Commercial. The Preliminary Development Plan includes a revision to the building intensity restriction on the Phase I Site from an FAR of 1.3 and 0.7 to 1.4, as well as to the building height restrictions on the Phase I Site and Future Expansion Site from 40 feet and 50 feet to a range of 50 feet to 125 feet; and

WHEREAS, a Draft Environmental Impact Report for the Project has been published and circulated in compliance with the California Environmental Quality Act (CEQA); and

WHEREAS, after conducting a public hearing on the Project on November 3, 1994 and continued to November 10, 1994, the Planning Commission adopted resolutions recommending that the City Council certify the EIR, adopt Mitigation Measures, a Mitigation Monitoring and Reporting Program and a Statement of Overriding Considerations, approve the proposed amendment to the General Plan, approve the Planned Unit Development for the Phase I Site and Future Expansion Site, approve the Final Development Plan for the hospital building located on the Phase I Site, and approve a Development Agreement with Kaiser for the Phase I Site of the Project; and

WHEREAS, the City Council has reviewed and considered the Planning Commission's recommendations, the project application and all related materials; and

WHEREAS, the City Council has adopted Resolution No. ___ certifying the Environmental Impact Report for the Project; and

WHEREAS, the City Council has adopted Resolution No. ___ Making Findings Concerning Mitigation Measures, Adopting a Mitigation Monitoring and Reporting Program, Making Findings Concerning Alternatives and Adopting a Statement of Overriding Considerations in accordance with the California Environmental Quality Act for the Project; and

WHEREAS, the City Council has adopted Resolution No. ___ adopting amendments to the City of Emeryville General Plan; and

WHEREAS, the City Council has adopted Ordinance No. ___, amending Ordinance No. 87-07 and approving and adopting the Amendment to the Redevelopment Plan for the Shellmound Park Redevelopment Project; and

WHEREAS, the City Council has adopted Resolution No. ___, approving and authorizing the execution of a Participation Agreement between the Emeryville Redevelopment Agency, the City of Emeryville and Kaiser; and

WHEREAS, the Emeryville Redevelopment Agency has adopted Resolution No. ___, Making Findings Concerning Mitigation Measures, Adopting a Mitigation Monitoring and Reporting Program, Making Findings Concerning Alternatives and Adopting a Statement of Overriding Considerations in accordance with the California Environmental Quality Act for the Project; and

WHEREAS, the Emeryville Redevelopment Agency has adopted Resolution No. ___ approving and authorizing the execution of a Participation Agreement between the Agency, the City of Emeryville and Kaiser; and

WHEREAS, prior to approving the Preliminary Development Plan for the Project and thereby rezoning the Phase I Site and Future Expansion Site to Planned Unit Development/Commercial, the City Council has adopted Resolution No. ___ ("CEQA Resolution"); and

WHEREAS, the City Council of the City of Emeryville finds that mitigation measures have been imposed on and incorporated in the Project which avoid or substantially lessen environmental impacts, that certain mitigation measures are within the responsibility and jurisdiction of another public agency and such mitigation measures should be adopted by such other agency, that specific economic, social and other considerations make infeasible the project alternatives that would avoid or substantially lessen the environmental impacts and that social, economic and other benefits outweigh the environmental impacts that cannot be fully mitigated; now, therefore, be it

RESOLVED, that after holding a public hearing on the Preliminary Development Plan for the Project, which will thereby rezone the Phase I Site and Future Expansion Site to Planned Unit Development/Commercial and revise the building intensity and building height restrictions as set forth in the Preliminary Development Plan, and having considered the entire record before this Council, including the findings set forth in the staff report, this Ordinance, and in the CEQA Resolution, and having further reviewed the Preliminary Development Plan for conformity with

the General Plan, as amended by City Council Resolution No. _____, the City Council of the City of Emeryville hereby finds as follows:

1. The rezoning of the Phase I Site and the Future Expansion Site to Planned Unit Development/Commercial, as set forth in the Preliminary Development Plan dated October 1994 and amended November 9, 1994, is consistent with and conforms to the goals, objectives and policies of the City of Emeryville General Plan, as amended by City Council Resolution No. _____, and helps to implement several of the general goals of the General Plan relating to the provision of public facilities, the protection of public health, the development of a variety of uses in a compatible way, the development of visually appealing projects which are sensitive to the urban character of the City and to strengthen the tax base with uses that respect the City's natural, scenic and historic uses; and
2. The Phase I Site and the Future Expansion Site are suitable for this regional medical center, which includes hospital, medical offices and commercial uses, in terms of access to the Site, the size of the Site, and its relationship to similar or related uses; and
3. The rezoning of Phase I Site and Future Expansion Site to Planned Unit Development/Commercial as set forth in the Preliminary Development Plan dated October 1994 and amended November 9, 1994, is not detrimental to the use of land in any of the adjacent zones; and
4. The Preliminary Development Plan dated October 1994 and amended November 9, 1994, provides for a cohesive, integrated, well-planned development which will contribute to the general well being of the surrounding neighborhood or community. The project is designed to reduce the potential for land use incompatibility with the surrounding lower intensity land uses. Building setbacks, building heights, open space, "liner" buildings and a public plaza that result in compatibility with the surrounding land uses have been incorporated into the project design to assure compatibility; and
5. The project site provides for sufficient access (i.e., automobile, pedestrian and transit) to the hospital, medical office buildings, liner buildings, open space and public plaza. The project site provides sufficient space for Phase I of the project and sufficient acreage nearby to respond to future demand for health care services in the region. The proposed medical facility will be complementary to other commercial uses proposed on site and to other industrial, commercial and residential uses in the neighborhood.
6. The location, size, design and operating characteristics of the proposed medical center will be substantially compatible with and will not be materially detrimental to the neighborhood character. The PUD establishes specific levels of building intensity and building heights that will apply to the Project.
7. The Preliminary Development Plan is consistent with the Kaiser Permanente Medical Center Urban Design Guidelines which were adopted by the City of Emeryville Planning Commission on August 26, 1993, and found to be consistent with the Zoning Ordinance and with the relevant San Pablo Avenue Revitalization Plan guidelines.

8. The Preliminary Development Plan shows a commitment to the development of a high quality, aesthetically pleasing project with respect to landscaping and grading. Final details of the grading and landscaping plan will be reviewed by City staff to insure that grading and landscaping is developmentally consistent with the high quality established by the Preliminary Development Plan.
9. The Planned Unit Development will be developed to allow originality as evidenced by the liner buildings for commercial uses, the extensive landscaping and open space areas, and the introduction of the "Urban Frame" along Park Avenue. Nevertheless, this originality will not have a significant adverse impact on the environmental quality or value of improved and unimproved property in the area nor will this originality prevent appropriate development and use of the improved and unimproved property in the area.
10. As more specifically set forth in the Preliminary Development Plan, the Planned Unit Development has been designed to include extensive landscaping and open space, parking areas which are visually screened with liner buildings, pedestrian walks and bicycle paths, signage and illumination that will enhance the environmental quality of the Phase I Site and Future Expansion Site.
11. In connection therewith, the City Council incorporates the Findings, Mitigation Measures and Mitigation Monitoring and Reporting Program and Statement of Overriding Considerations set forth in the CEQA Resolution; and, be it

FURTHER RESOLVED, that the City Council of the City of Emeryville Does Hereby Ordain As Follows:

SECTION ONE. APPROVING THE PRELIMINARY DEVELOPMENT PLAN DATED OCTOBER 1994 AND AMENDED NOVEMBER 9, 1994, FOR THE KAISER PERMANENTE MEDICAL CENTER PROJECT. The Preliminary Development Plan dated October 1994 and amended November 9, 1994, copies of which are attached hereto as Exhibit A, for the Kaiser Permanente Medical Center Project is hereby approved, subject to the conditions of approval dated November 21, 1994 for PUD 93-1. By approving said Preliminary Development Plan, the Phase I Site and Future Expansion Site is hereby rezoned to Planned Unit Development/Commercial and the Zoning District Map of the City of Emeryville's Zoning Ordinance is hereby amended as shown on Exhibit B attached hereto. Furthermore, the uses, building intensity, building height, setbacks, landscaping, buffering, screening, off-street parking and loading, signage, illumination and basic guidelines for development in this Planned Unit Development/Commercial zoning district shall be governed by the Preliminary Development Plan attached as Exhibit A.

SECTION TWO. SEVERABILITY. The City Council hereby declares that every section, paragraph, clause, and phrase of this Ordinance is severable. If, for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, clauses, or phrases.

SECTION THREE. CEQA. The City Council of the City of Emeryville hereby directs the City Manager or his designee to file a Notice of Determination with the County Clerk of Alameda County and the Office of Planning and Research pursuant to the provisions of Section 15094 of the State CEQA guidelines

SECTION FOUR. EFFECTIVE DATE AND POSTING OF THE ORDINANCE. The Ordinance shall take effect thirty (30) days following its final passage. The City Clerk shall cause this Ordinance to be posted or published pursuant to the requirements of Government Code Section 36933.

SECTION FIVE. CODIFICATION. Exhibit B as referenced in Section One of this Ordinance shall be codified in the Emeryville Municipal Code. The remainder of Section One and Sections Two, Three Four and Five shall NOT be so codified.

INTRODUCED AND FIRST READ at a _____ meeting held on _____, _____, _____ and **PASSED AND ADOPTED** at a regular meeting held on _____, _____, _____ by the following vote:

AYES: _____

NOES: _____

ABSENT: _____

EXCUSED: _____

ABSTAINED: _____

MAYOR

ATTEST:

APPROVED AS TO FORM:

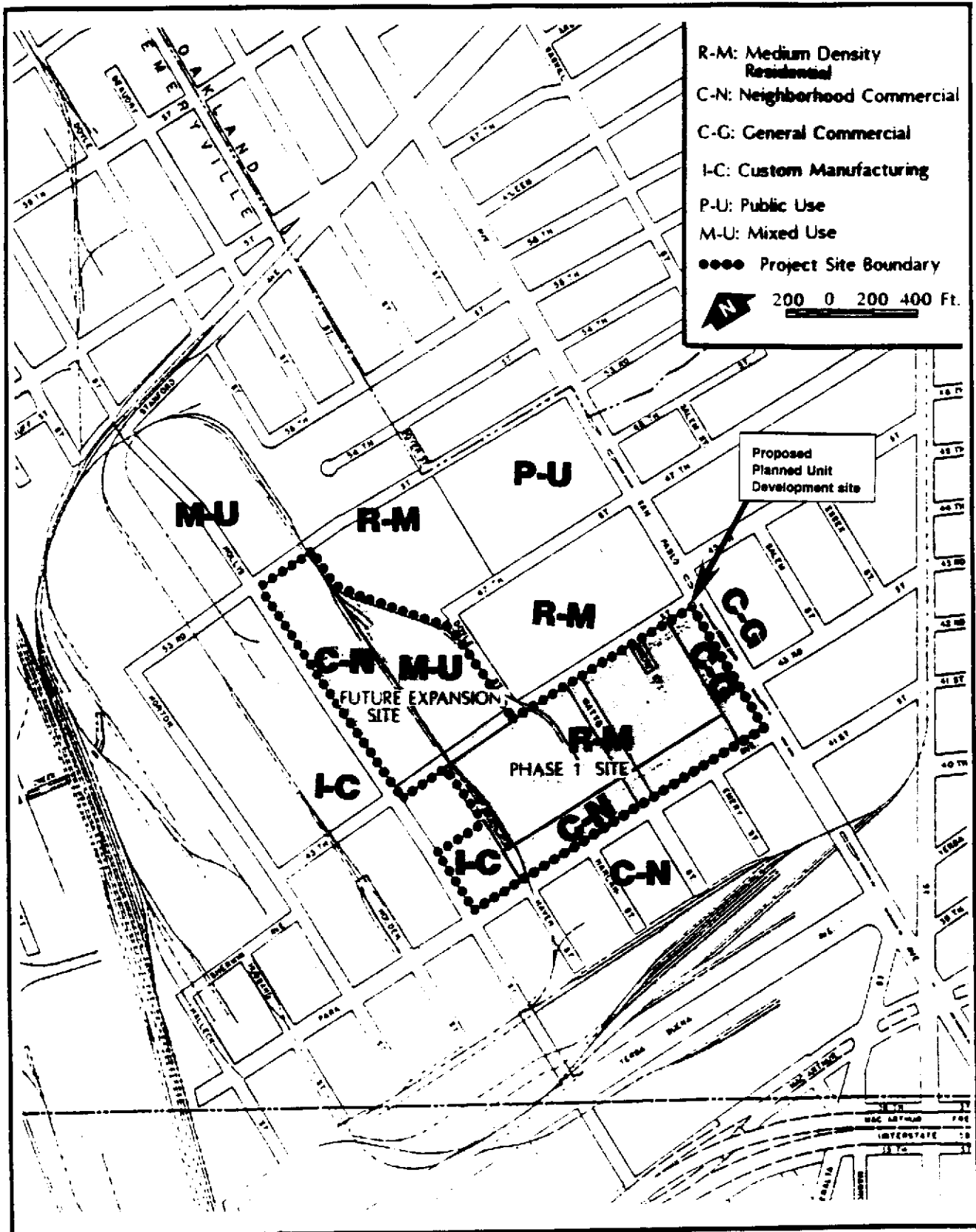
CITY CLERK

Michael G. Biddle

CITY ATTORNEY

Exhibit A
**Preliminary Development Plan (Incorporated by Reference -
Sent Previously with Planning Commission Staff Report
Under Separate Cover) & the Corrections to the Preliminary
Development Plan Dated 11/9/94**

Exhibit B
Figure of Proposed Zoning Changes



<p>Kaiser Permanente Medical Center Joint Redevelopment Agency City Council Staff Report</p>	<p>PROPOSED ZONING CHANGES</p>	<p>Exhibit B</p> <p>November 21, 1994</p>
--	---------------------------------------	--

Source: David J. Powers & Associates, based on City of Emeryville Zoning Map, 1993.

Exhibit C
Conditions of Approval

DRAFT
KAISER MEDICAL CENTER PROJECT
RECOMMENDED¹ CONDITIONS OF APPROVAL

November 21 ~~November 3~~, 1994
PUD 93-1

I. COMPLIANCE WITH APPROVED PLANS

1. The project shall comply with the Preliminary Development Plan dated October 1994, as amended November 9, 1994 and the Final Development Plan for Phase IA (hospital portion of Phase I) dated October 1994, except as hereinafter modified. ~~A Final Development Plan for the remaining portions of the Phase I site shall be submitted within 1 year. A Final Development Plan for the Future Expansion Site shall be submitted within two years. An extension of these time periods may be approved by the Emeryville Planning Director.~~
2. The applicant shall be responsible for assuring that any successor in interest in the property is informed of the terms and conditions of this zoning approval.
3. A revised site plan, elevations and landscape plan shall be prepared if the siting and uses for a portion of the facility are proposed to be changed or substantially different. Such plans shall be submitted to the City of Emeryville Planning ~~Director~~ Commission for review and approval prior to issuance of building permits. Minor deviations from the original plan shall ~~also~~ be submitted for review and approval to the Emeryville Planning Director.
- ~~4. Construction shall commence within one (1) year following approval of each Final Development Plan, and shall be substantially completed two (2) years thereafter. For purpose of compliance with this condition, "commencement of construction" shall be defined as the pouring or construction of a substantial portion of the building foundation structures.~~
- 4.5. Failure to comply with any of the conditions of approval or limitations set forth in these Conditions of Approval shall be cause for the revocation of this approval.

Fees

- 5.6. ~~Prior to issuance of building permits. T~~he project applicant shall pay all applicable fees pursuant to the requirements of the Development Agreement,

¹ Underlined words have been added per Planning Commission approval.

~~Participation Agreement and City of Emeryville Ordinances such as traffic mitigation fees, sewer connection fees and building permit fees.~~

~~7. Prior to issuance of building occupancy permits, the project applicant shall comply with the City of Emeryville Percent for Art Ordinance by complying with the requirements of the Participation Agreement.~~

II. PRELIMINARY DEVELOPMENT PLAN (Phase I and Future Expansion Phase)

~~6.8.~~ The portion of the Phase I site located west of San Pablo Avenue and east of the alignment of Emery Street shall be revised as follows:

- a. The liner buildings around the parking structure along San Pablo Avenue shall be designed so that a continuous row of liner buildings is created along San Pablo Avenue, leaving expansion areas for the liner uses along the Park Avenue and 45th Street edges of the parking structure.
- b. The possible provision of a ~~A visual and pedestrian corridor to~~ shall be provided from San Pablo Avenue to the inner courtyard west of Emery Street. shall be discussed and developed between the applicant and the Planning Director and brought before the Planning Commission for review and recommendation to the Emeryville City Council prior to the Council's consideration of a Final development Plan for this portion of the Phase I Site. ~~The design of the visual and pedestrian corridor shall provide a gateway to the Kaiser project from San Pablo Avenue. The visual and pedestrian corridor shall be a minimum of 30 feet wide with landscape or hardscape elements to provide an attractive walkway for people entering the project.~~

~~The Preliminary Development Plan for this portion of the Phase I site shall be revised and submitted to the Emeryville Planning Director for review and approval prior to submitting a Final Development Plan for this portion of the Phase I site.~~

Liner Buildings

~~7.9.~~ Materials used for the liner buildings along San Pablo Avenue and 45th Street shall reflect the character of the surrounding area. All brick work shall utilize authentic red (a type of brick that is visually similar to the authentic bricks used on the existing buildings in the area).

The architectural design of the liner buildings shall be varied along the length of San Pablo Avenue such as alternating bays or other features. Roof lines shall also be varied along the San Pablo frontage to provide an interesting visual character.

- ~~8.10~~- Liner buildings located along Park Avenue shall incorporate authentic brickwork into the facades to be visually compatible with other buildings along Park Avenue.
- ~~9.11~~- Liner buildings at the corner of Park Avenue and Hollis Street shall be designed to incorporate three dimensional elements which break up large surfaces and create visual play of light and shadow such as cornices at the roof and at the top of the ground floor; piers at corners, structural bays, and windows set into the wall surface. The use of elements such as brick, terra cotta, paned windows and industrial style fixtures and canopies are encouraged. Individual storefronts or sections shall present an individual expression to maximize interest along the street and give each building a unique identity. Storefronts shall be as continuous as possible to maximize visual interest and convenience for the pedestrian shopper.

Central Courtyard

- ~~10.12~~- The design and landscaping of the central courtyard shall reflect the urban character of the site. Use of hardscape elements (sculptures, fountains, etc.) shall be used where feasible. Landscaping shall minimize "hidden" areas and provide good visibility throughout the courtyard to improve security. The central courtyard shall be opened to the public during daylight hours, but closed at night for security. The design of the central courtyard shall be submitted to the Emeryville Planning Commission for review and recommendation to the Emeryville City Council ~~reviewed and approved by the Emeryville Planning Director~~ prior to the City Council's consideration of a approval of the Final Development Plan for this portion of the Phase I site. The method for closing the courtyard during nighttime hours shall be reviewed and approved by the Emeryville Police Department prior to approval of the Final Development Plan for this portion of the Phase I site.

Hospital Open Space (Park Avenue)

- ~~13.11~~- The open space/pedestrian area in front of the hospital building along Park Avenue shall be designed to provide additional areas for people to gather. This could be provided by creating additional pockets in the landscape wall along the hospital building frontage. A suggested design for this area is provided in Figure 1.

~~The Preliminary Development Plan for design of this portion of the Phase I site shall be revised and submitted to the Emeryville Planning Director Commission for review and recommendation to the City Council approval prior to the City Council's consideration of submitting a Final Development Plan for this portion of the Phase I site.~~

~~14.12.~~ The Urban Frame along Park Avenue shall be redesigned so that the solid panels in the frame are a maximum of 3 feet high to provide areas for siting or landscaping. The Urban Frame shall also be redesigned to include additional variation in expression. Alternating the sizes of openings or use of different cap elements may be used to provide this variation. The design of this portion of the Phase I site shall be submitted to the Emeryville Planning Commission for review and recommendation to the City Council prior to the City Council's consideration of a Final Development Plan for this portion of the Phase I Site. ~~Prior to issuance of building permits for the hospital, applicant shall submit a revised design for review and approval by the Planning Director.~~

III. FINAL DEVELOPMENT PLAN (Phase IA - Hospital Portion of the Phase I site)

~~15.13.~~ Materials and colors shall be submitted for the hospital building for review and approval by the Emeryville Planning Director prior to issuance of building permits from OSHPOD for the hospital building.

~~16.14.~~ Detailed Civil Plans shall be prepared for the hospital portion of the site indicating all water, sewer, drainage and street improvements necessary to support construction of the Hospital. These plans shall be submitted for review and approval to the Emeryville Public Works Director prior to issuance of building permits from OSHPOD for the hospital building.

~~17.15.~~ Detailed landscaping plans shall be submitted for all landscaped areas surrounding the hospital building. The plans shall include lighting details, sculpture, fountains, and hardscape features. The types and number of each plant shall be included. The landscape materials shall utilize drought tolerant species to reduce water consumption. Prior to issuance of building permits from OSHPOD, applicant shall submit a detailed landscaping and irrigation plan for review and approval by the Planning Director. Said plan shall include a combination of trees, shrubs and groundcover. All landscaping improvements for Phase IA shall be installed prior to occupancy of the hospital.

~~18.16.~~ A detailed grading plan shall be submitted for review and approval to the Emeryville Public Works Director prior to issuance of a grading permit for the

Phase IA portion of the site.

IV. MITIGATION OF ENVIRONMENTAL IMPACTS

~~19-17.~~ The applicant shall be responsible for compliance with all mitigation measures adopted as part of the Final Environmental Impact Report for the project. Implementation of the mitigation measures shall be adhered to in accordance with the Mitigation Monitoring and Reporting Plan approved as part of the project. The Mitigation Monitoring and Reporting Plan identifies the time frame and responsible party for implementation and monitoring of each mitigation measures adopted by the Emeryville City Council. Overall responsibility for monitoring compliance with the mitigation measures will be the responsibility of the City of Emeryville Planning Director.

V. ON-SITE IMPROVEMENTS

The following conditions of approval pertain to necessary on-site improvements for the project in addition to the conditions discussed above.

~~20-18.~~ Prior to issuance of building permits, the applicant shall submit the following for review and approval by the appropriate City Public Works/Planning and Building Departments:

- a. A site drainage plan and calculations for the total watershed area, including off-site areas, that may affect the existing downstream drainage facilities.
- b. A site lighting plan including calculations which shall provide for no less than 0.6 foot candles of illumination on the entire surface of parking and pedestrian areas. The lighting plans around the building, sculptures, fountains and landscaping shall be designed to create and attractive safe and distinguishing night architecture to encourage the evening activities in and around the hospital.
- c. Information on existing pavement conditions.
- d. Details on driveway widths and locations.
- e. Detailed sewer plans.
- f. Detailed grading plan.

Undergrounding of Utilities

- ~~21-19.~~ The project applicant shall submit precise plans showing all new on-site electrical service, transformers, water monitoring wells and communication lines for approval of the Emeryville Planning Director prior to the sooner of issuance of building permits or recordation of the Final Subdivision Map.
- ~~22-20.~~ Details on provision of electrical service to the site, including location of transformers and all connections, shall be provided to the Emeryville Public Works/Building and Planning Department for review and approval prior to the sooner of issuance of building permits or recordation of the Final Subdivision Map.
- ~~23-21.~~ All easements for sewer, electrical lines and other facilities located on the project site shall be clearly depicted on the Final Subdivision Map prior to recordation.

Parking, Loading and Circulation

- ~~24-22.~~ Prior to issuance of building permits, the applicant shall submit plans for the parking areas for review and approval of the City of Emeryville Public Works Department. Prior to occupancy, all necessary parking area improvements shall be completed to the satisfaction of the City of Emeryville Public Works Department.
- ~~25-23.~~ Prior to issuance of building permits, the applicant shall submit parking lot directional signing and pavement marking details for review and approval by the Emeryville Planning Director. Prior to occupancy, all approved signs shall be installed.
- ~~26-24.~~ Prior to issuance of building permits, the applicant shall submit a revised site plan which shows the precise location and dimensions of all parking spaces for persons who are disabled and compact spaces.

Grading

- ~~27-25.~~ No grading shall occur without a valid grading permit issued by the Emeryville Public Works Department.
- ~~28-26.~~ If grading shall occur within the period of October 15 through April 15 it shall comply with an erosion control plan approved by the Emeryville Public Works Department.
- ~~29-27.~~ The applicant shall post and maintain at least four signs distributed throughout the job site identifying a responsible contact person and a 24-hour

telephone number to call to resolve problems with noise, dust, or other construction-related issues. This sign shall be approved by the Emeryville Planning Director prior to issuance of a grading permit.

~~30-28.~~ The finish floor elevation shall be at least 1 foot above the floodway near the lowest elevation of the project.

VI. MAINTENANCE

~~31-29.~~ The project applicant shall properly maintain the site and keep the site free of litter, debris, ~~and~~ weeds and graffiti.

~~32-30.~~ The project applicant shall remove any graffiti from building walls and fences within 72 hours with identical color paint.

~~33-31.~~ The project applicant shall maintain all landscaping improvements in a healthy, growing condition at all times. Landscaped areas shall be irrigated by an automatic sprinkler system designed to reduce water usage. The type, nature and amount of landscaping shall remain at all times in substantial conformance with submitted plans and the landscape requirements of the Emeryville Zoning Code.

~~34-32.~~ The applicant shall provide copies of proposed Covenants, Conditions and Restrictions (CC&Rs), if any, or equivalent agreements to the Emeryville Planning Director. The CC&Rs shall provide for management of the project. Said management shall be responsible for the operation and maintenance of common areas including parking, driveways, landscaping, lighting, project identification signs, on-site security, and similar matters of tenant concern. A copy of the CC&Rs shall be submitted for review and approval by the Emeryville Planning Director prior to the issuance of certificate of occupancy for the first building on the site.

~~35-33.~~ The project applicant shall comply with National Pollutant Discharge Elimination System (NPDES) General Permit requirements. The applicant shall apply for coverage under the general permit prior to issuance of a grading permit. Application for coverage will include filing a Notice of Intent and associated fees with the State Water Resources Control Board, development and implementation of a Storm Water Pollution Prevention Plan (SWPPP), and development and implementation of a monitoring program and reporting plan.

VII. CONSTRUCTION PROVISIONS

~~36-34.~~ Construction on the exterior of the buildings shall not commence prior to 7:00 a.m. and shall cease by 6:00 p.m. unless an extension is granted by the

VIII. GENERAL CONDITIONS

- ~~37.35.~~ All final building plans and selection of materials and colors shall be approved by the Emeryville Planning Director prior to issuance of any building permit.
- ~~38.~~ ~~The approved Preliminary Development Plan, including but not limited to all Conditions of Approval and the Mitigation Monitoring and Reporting Program, shall be set forth, by the applicant in an agreement, in a form satisfactory to the City Attorney of Emeryville. The approved Preliminary Development Plan, including but not limited to, all Conditions of Approval and the Mitigation Monitoring and Reporting Program shall run with the land, and shall be binding upon the applicant, its heirs, assigns and successors in interest. With respect to each parcel, if at the time of issuance of a certificate of occupancy, one or more Conditions of Approval remain unsatisfied or otherwise have continuing effect.~~
- ~~39.36.~~ All subsequent applications and plans, including those for related zoning, subdivision, grading, tree removal, and building permits shall be consistent with the Preliminary Development Plan. The City of Emeryville's rights and obligations with regard to approving these subsequent applications are set forth in the Development Agreement. ~~The City of Emeryville shall retain all discretionary rights, in approving any and all of these subsequent applications and plans subject to California law.~~
- ~~40.37.~~ a. The applicant, its assignees, and successors-in-interest shall defend, hold harmless, and indemnify the City of Emeryville, its offices, agents, and employees (the "Indemnified Parties") against all claims, demands, and judgements or other forms of legal and/or equitable relief, which may or shall result from any legal challenge or referendum filed and prosecuted to overturn, set-aside, stay or otherwise rescind any or all final approvals of the Preliminary Development Plan or Final Development Plan (the "Development Plans"), other zoning approvals granted pursuant to the Development Plans, certification of the attendant EIR, approval of the Statement of Overriding Considerations, and granting of any ministerial permit issued in accordance with the Development Plans or Subdivision Maps, provided the applicant, its assignees, and successors-in-interest are willing to construct the Project. The hold harmless and indemnification obligation set forth in this section shall not obligate the applicant, its assignees, and successors-in-interest to hold harmless and indemnify the Indemnified Parties against any judgement for damages. The applicant shall pay for all direct and indirect costs associated with any action herein. Direct and indirect

costs as used herein shall mean but not be limited to attorney's fees, expert witness fees, and court costs. The Indemnified Parties shall promptly notify the applicant, its assignees, and successors-in-interest of any claim, demand, or legal actions that may create a claim for indemnification under this Section.

- b. The applicant, its assignees, and successors-in-interest shall defend, hold harmless, and indemnify the Indemnified Parties and their insurers against all claims, demands, and judgements for damages or other forms of legal and/or equitable relief, which may or shall result from the applicant's construction and/or maintenance of the public improvements set forth in ~~the~~ Final Map or Final Development Plan, provided that the defense, hold harmless and indemnification obligation set forth in this section shall only apply to judgements for damages or other forms of legal and/or equitable relief where the harm to the complaining party either occurs prior to the time that the public improvement is accepted by the City of Emeryville, under whose jurisdiction the public improvement lies, that is the subject of the claim, demand or judgement, or where such harm is caused by a hidden defect in a public improvement which has been accepted, but not altered by the ~~respective~~ City. The applicant shall pay for all direct and indirect costs associated with any action herein. Direct and indirect costs as used herein shall mean but not be limited to attorney's fees, expert witness fees and court costs. The Indemnified Parties shall promptly notify the applicant, its assignees, and successors-in-interest of any claim, demand, or legal actions that may create a claim for indemnification under this Section.

THE FOLLOWING CONDITIONS HAVE BEEN ADDED SINCE PLANNING COMMISSION REVIEW IN ORDER TO RESPOND TO COMMENTS RECEIVED FROM AC TRANSIT AT THE MEETING ON 11/10/94.

38. All windows in the facade of the medical office buildings and hospital facing 45th Street will be double glazed or otherwise treated in a manner to minimize noise and glare from AC Transit's facility. The Preliminary Development Plan and Final Development Plan presently contemplate double glazing.
39. The opening of intake vents for the ventilation systems for the medical office buildings and the hospital shall conform to the Preliminary Development Plan and Final Development Plan, which shows appropriate venting on the hospital and medical office rooftops.

40. Within 30 days after all Statute of limitations have expired to challenge the approval of the Project, Kaiser shall establish a committee consisting of members of its administrative staff to work with AC Transit to identify and address issues which may arise between these neighboring properties.
41. All parking garages will be open to the non-member public, on a fee basis. The amount of the fee may be adjusted from time to time by the applicant, based on its operational considerations.
42. With regard to mitigation measure CIR-41.1, the applicant or the City of Emeryville will submit plans for the overlay and improvement of 45th Street to AC Transit for review and comment.
43. The applicant or the City of Emeryville will provide AC Transit an opportunity to review and comment on the Construction Staging and Traffic Handling Plan.

Attachment I
Draft Council Resolution Approving
the Final Development Plan

RESOLUTION NO.

Kaiser Permanente Medical Center Project

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EMERYVILLE
APPROVING THE FINAL DEVELOPMENT PLAN FOR THE HOSPITAL BUILDING
LOCATED ON THE PHASE I SITE OF THE KAISER PERMANENTE MEDICAL
CENTER PROJECT.**

WHEREAS, the City of Emeryville has received an application for Final Development Plan Review from Kaiser Foundation Hospitals, a California non-profit public benefit corporation ("Kaiser") to construct a hospital on the Phase I Site of the Kaiser Permanente Medical Center Project (the "Project"); and

WHEREAS, a Draft Environmental Impact Report for the Project has been published and circulated in compliance with the California Environmental Quality Act (CEQA); and

WHEREAS, after conducting a public hearing on the Project on November 3, 1994 and continued to November 10, 1994, the Planning Commission adopted resolutions recommending that the City Council certify the EIR, adopt Mitigation Measures, a Mitigation Monitoring and Reporting Program and a Statement of Overriding Considerations, approve the proposed amendment to the General Plan, approve the Planned Unit Development for the Phase I Site and Future Expansion Site, approve the Final Development Plan for the hospital building located on the Phase I Site, and approve a Development Agreement with Kaiser for the Phase I Site of the Project; and

WHEREAS, the City Council has reviewed and considered the Planning Commission's recommendations, the project application and all related materials; and

WHEREAS, the City Council has adopted Resolution No. ___ certifying the Environmental Impact Report for the Project; and

WHEREAS, the City Council has adopted Resolution No. ___ Making Findings Concerning Mitigation Measures, Adopting a Mitigation Monitoring and Reporting Program, Making Findings Concerning Alternatives and Adopting a Statement of Overriding Considerations in accordance with the California Environmental Quality Act for the Project; and

WHEREAS, the City Council has adopted Resolution No. _____ adopting amendments to the City of Emeryville General Plan; and

WHEREAS, the City Council has adopted Ordinance No. ___, amending Ordinance No. 87-07 and approving and adopting the Amendment to the Redevelopment Plan for the Shellmound Park Redevelopment Project; and

WHEREAS, the City Council has adopted Resolution No. ____, approving and authorizing the execution of a Participation Agreement between the Emeryville Redevelopment Agency, the City of Emeryville and Kaiser; and

WHEREAS, the Emeryville Redevelopment Agency has adopted Resolution No. ____, Making Findings Concerning Mitigation Measures, adopting a Mitigation Monitoring and Reporting Program, Making Findings Concerning Alternatives and Adopting a Statement of Overriding Considerations in accordance with the California Environmental Quality Act for the Project; and

WHEREAS, the Emeryville Redevelopment Agency has adopted Resolution No. ____ approving and authorizing the execution of a Participation Agreement between the Agency, the City of Emeryville and Kaiser; and

WHEREAS, the City Council has adopted Ordinance No. ____ approving the Preliminary Development Plan for the Project, dated October, 1994 and amended November 9, 1994, thereby rezoning the Phase I Site and Future Expansion Site to Planned Unit Development/Commercial; and

WHEREAS, the City Council has adopted Ordinance No. ____ approving a Development Agreement between the City of Emeryville and Kaiser for Phase I of the Project and authorizing the City Manager to execute the Development Agreement on behalf of the City of Emeryville; and

WHEREAS, prior to approving the Final Development Plan for the Hospital Building located on the Phase I Site, the City Council has adopted Resolution No. ____ ("CEQA Resolution"), Making Findings Concerning Mitigation Measures, Adopting a Mitigation Monitoring and Reporting Program, Making Findings Concerning Alternatives and Adopting a Statement of Overriding Considerations in Accordance With the California Environmental Quality Act for the Project; and

WHEREAS, the City Council of the City of Emeryville finds that mitigation measures have been imposed on and incorporated in the Project which avoid or substantially lessen environmental impacts, that certain mitigation measures are within the responsibility and jurisdiction of another public agency and such mitigation measures should be adopted by such other agency, that specific economic, social and other considerations make infeasible the project alternatives that would avoid or substantially lessen the environmental impacts and that social, economic and other benefits outweigh the environmental impacts that cannot be fully mitigated; now, therefore be it

RESOLVED, that after holding a public hearing on the Final Development Plan and having considered the entire record before this Council, including the findings set forth in the staff report, this resolution, and in the CEQA Resolution, and having further reviewed the Final Development Plan for conformity with the General Plan, as amended by City Council Resolution No. ____, and for substantial conformity with the Preliminary Development Plan, dated October, 1994 and amended November 9, 1994, as approved by City Council Ordinance No. ____, the City Council of the City of Emeryville hereby finds as follows:

1. The Final Development Plan, dated October 1994, for the hospital building located on the Phase I Site of the Project conforms to the City of Emeryville General Plan as amended by City Council Resolution No. ____; and
2. The Final Development Plan, dated October 1994, for the hospital building located on the Phase I Site of the Project substantially conforms with the Preliminary Development Plan, dated October 1994 and amended November 9, 1994, as approved by City Council Ordinance No. ____; and
3. In connection therewith, the City Council incorporates the Findings, Mitigation Measures and Mitigation Monitoring and Reporting Program and Statement of Overriding Considerations set forth in the CEQA Resolution; and be it

FURTHER RESOLVED, that the City Council of the City of Emeryville hereby approves the Final Development Plan, dated October 1994, for the hospital building located on the Phase I Site of the Project (Phase IA) subject to the conditions of approval dated November 21, 1994 for PUD 93-1; and be it

FURTHER RESOLVED, that the City Council of the City of Emeryville hereby directs the City Manager or his designee to file a Notice of Determination with the County Clerk of Alameda County and the Office of Planning and Research pursuant to the provisions of Section 15094 of the State CEQA guidelines.

ADOPTED by the City Council of the City of Emeryville at a regular meeting held _____, _____, by the following vote:

AYES: _____

NOES: _____ **ABSTAIN:** _____

ABSENT: _____ **EXCUSED:** _____

MAYOR

ATTEST:

APPROVED AS TO FORM:

CITY CLERK

Michael G. Brubley

CITY ATTORNEY

Exhibit A
Final Development Plan for Phase IA (Incorporated by
Reference - Sent Previously with Planning Commission Staff
Report Under Separate Cover)

Exhibit B
Conditions of Approval (Incorporated by Reference - See
Attachment H.3)

Attachment J
Draft City Council Ordinance Approving
the Development Agreement

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EMERYVILLE, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF EMERYVILLE AND KAISER FOUNDATION HOSPITALS FOR PHASE I OF THE KAISER PERMANENTE MEDICAL CENTER PROJECT AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE DEVELOPMENT AGREEMENT ON BEHALF OF THE CITY OF EMERYVILLE

WHEREAS, pursuant to Government Code Section 65864, et seq., the City Council of the City of Emeryville (the "City Council") and Kaiser Foundation Hospitals (the "Developer") wish to enter into a Development Agreement for the proposed development of an urban medical center (the "Proposed Kaiser Permanente Medical Center Project"); and

WHEREAS, prior to adopting the proposed Development Agreement, the City Council has adopted Resolution No. _____ ("CEQA Resolution"), Making Findings Concerning Mitigation Measures, Adopting a Mitigation Monitoring and Reporting Program, Making Findings Concerning Alternatives and Adopting a Statement of Overriding Considerations in Accordance with the California Environmental Quality Act for the Proposed Kaiser Permanente Medical Center Project; and

WHEREAS, the City Council finds that mitigation measures have been imposed on and incorporated in the Proposed Kaiser Permanente Medical Center Project which avoid or substantially lessen environmental impacts, that certain mitigation measures are within the responsibility and jurisdiction of another public agency and such changes can and should be adopted by such other agency, that specific economic, social and other considerations make infeasible the project alternatives that would avoid or substantially lessen the environmental impacts and that social, economic and other benefits outweigh the environmental impacts that cannot be fully mitigated;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EMERYVILLE, AS FOLLOWS:

Section 1. This Ordinance incorporates, and by this reference makes a part hereof, that certain Development Agreement,, substantially in the form on file with the City Clerk (the "Development Agreement"), by and between the City of Emeryville and Kaiser Foundation Hospitals (the "Developer"), relative to the proposed development of an urban medical center (the "Proposed Kaiser Permanente Medical Center Project") on certain real property consisting of

approximately nineteen (19) acres located in the City of Emeryville in the area bounded generally by 45th Street on the north, Park Avenue on the south, San Pablo Avenue on the east and Hollis Street on the west (excluding the property located at 4240 Hollis Street), as shown on the "Map of the Project Site," attached hereto.

Section 2. This Ordinance is adopted under the authority of Government Code Section 65864, et seq. and pursuant to the provisions of City Council Ordinance No. 92.03 establishing procedures and requirements for consideration of development agreements pursuant to Government Code Section 65864, et seq. (the "Procedural Resolution").

Section 3. Pursuant to Section 9-4.94.10 of the Emeryville Municipal Code, the City Council hereby finds and determines that the Development Agreement is consistent with the General Plan of the City of Emeryville. This finding is based upon Resolution No. ____ adopted by the City Council on November 21, 1994, amending the General Plan of the City of Emeryville.

Section 4. The Development Agreement is in the public interest. This finding is based on the fact that the Development Agreement will provide for a new medical center, including a hospital, and parking and traffic improvements within the City, as well as the provision of space for health education, the provision of a health plan to the community, the provision of high quality employment opportunities, the provision of affordable housing, the remediation of contamination on the Project Site and other economic benefits to the City for transit services, school and senior center services or facilities.

Section 5. Based on the findings set forth in this Ordinance, the CEQA Resolution No. _____, and the evidence in the Staff Report, the City Council hereby approves the Development Agreement, substantially in the form on file with the City Clerk, subject to such minor and clarifying changes consistent with the terms thereof as may be approved by the City Attorney prior to execution thereof.

In connection therewith, the Council incorporates the findings, mitigation measures and mitigation monitoring program and statement of overriding considerations set forth in the CEQA Resolution.

Section 6. The City Manager is hereby authorized and directed to execute the Development Agreement on behalf of the City of Emeryville.

Section 7. The City Manager and the Community Development Director are hereby authorized and directed to perform all acts to be performed by the City in the administration of the Development Agreement pursuant to the terms of the Development Agreement, including but not limited to conducting periodic reviews, approval of certain time extensions and transfers and assignments and the execution and issuance of an estoppel certificate as authorized therein. The City Manager and

Community Development Director are further authorized and directed to perform all other acts, enter into all other agreements and execute all other documents necessary or convenient to carry out the purposes of this Ordinance and the Development Agreement.

Section 8. The City Manager or his designee is hereby directed to file a Notice of Determination with the County Clerk of Alameda County and the Office of Planning and Research pursuant to the provisions of Section 15094 of the State CEQA guidelines.

Section 9. This Ordinance shall take effect thirty (30) days following its final passage. The City Clerk shall cause this Ordinance to be posted or published pursuant to the requirements of Government Code Section 36933.

Section 10. Within ten (10) days after the date upon which the City Manager executes the Development Agreement on behalf of the City, the City Clerk shall record the Development Agreement and this Ordinance with the County Recorder of the County of Alameda.

Section 11. If any part of this Ordinance, or the Development Agreement which it approves, is held to be invalid for any reason, such decision shall not affect the validity of the remaining portion of this Ordinance or of the Amendment, and this City Council hereby declares that it would have passed the remainder of the Ordinance, or approved the remainder of the Amendment, if such invalid portion thereof had been deleted.

INTRODUCED AND FIRST READ at a special meeting held on _____
19____, and PASSED AND ADOPTED at a regular meeting held on _____
19____, by the following vote:

AYES: _____

NOES: _____

EXCUSED: _____

ABSENT: _____

ABSTAINED: _____

MAYOR

ATTEST:

APPROVED AS TO FORM:

CITY CLERK

CITY ATTORNEY

MAP OF THE PROJECT SITE

[INSERT MAP OF THE PHASE I SITE ONLY.]

Attachment G.1
Participation Agreement (Incorporated by Reference - See
Attachment E.1)

PROJECT DESCRIPTION

The proposed Kaiser Permanente Medical Center in Emeryville (the "Project") will be one of the finest health care institutions in the Bay Area. The hospital itself will offer the full range of state-of-the-art clinical diagnostic and treatment services for inpatients and outpatients, providing primary care in all medical specialties. The medical center also provides specialized tertiary services to Kaiser members in the greater Bay Area.

The location of the medical office buildings and the hospital on one campus reflects Kaiser Permanente's long established practice of stressing outpatient care and the cost effectiveness of sharing expensive diagnostic and treatment facilities between outpatient and inpatient care. A Health Education Center will be available to the entire community. This center will have audio-visual educational materials, a library, and a health care products store. The center will also provide a broad array of educational programs both days and evenings.

Location. The medical center project site's central location and proximity to major freeways and other transportation arteries, make it ideally situated to provide convenient health care services to Kaiser members in the regional service area.

INITIAL DEVELOPMENT TIMELINE

Phase One. Site preparation will begin in 1995 with construction of the first phase of the hospital to begin in early 1996 and to be completed in mid-1999. The construction of the medical office buildings will also be completed by 1999. A more detailed overview of Phase 1 follows:

- **Hospital.** Phase 1 of the hospital could be up to 650,000 square feet, five stories in height and could support up to 375 beds. The initial portion of Phase 1 is planned to be approximately 520,000 square feet, five stories in height, and will support up to 292 beds. The hospital will include nursing units, clinical support departments and administrative support. The hospital will operate 24 hours a day.
- **Medical Office Buildings.** The initial development of the medical office buildings will be a complex of several buildings, three to five stories each, plus an equipment penthouse. Total area of the medical office buildings to be constructed during Phase 1 will be approximately 415,000 square feet. The buildings will accommodate up to 275 physicians and other health care providers.
- **Central Utility Plant.** The central utility plant is likely to be a three story building of approximately 30,000 square feet in size.
- **"Liner" Buildings.** Retail and office uses are proposed to be located at the perimeter of the site along Hollis Street, Park Avenue, San Pablo Avenue and portions of 45th Street. These buildings will line the parking structures and medical office buildings. They will provide up to 75,000 square feet of pedestrian oriented uses which could include small food markets, restaurants, apparel stores, specialty stores and business offices.
- **Parking.** Combination of surface and structured parking for approximately 2,600 cars will be provided in Phase 1.

FUTURE CAMPUS DEVELOPMENT

Based on future membership growth and needs, the final buildout of the medical center is likely to involve approximately 522,500 additional square feet (bringing the campus to approximately 1,562,500 square feet). The final buildout will be constructed in phases and will involve the following:

- **Hospital.** Buildout of the hospital will likely involve up to an additional 115,000 square feet (bringing the hospital total to approximately 765,000 square feet). This may occur in several phases as addition to the hospital are made to respond to functional needs over time. Ancillary departments

KAISER EMERYVILLE MEDICAL CENTER

as addition to the hospital are made to respond to functional needs over time. Ancillary departments or beds may be added (to a maximum of 450 beds).

- **Medical Office Buildings.** By buildout, additional medical office buildings could be constructed to add up to approximately 260,000 square feet, bringing the total to approximately 675,000. The number of physicians/providers to be accommodated by the medical office building could increase to a maximum of 450.
- **Central Utility Plant.** By buildout, the central utility plant may be expanded (from approximately 30,000 square feet to 40,000 square feet) to accommodate additional development.
- **"Liner" Buildings.** Approximately 7,500 additional square feet of pedestrian oriented space could be included along the street edges of the campus buildout.
- **Parking.** By buildout, space will be available for approximately 3,600-cars.

ARCHITECTURAL DESIGN CONCEPT

The architectural design of the medical center campus will respond to the character of the existing neighborhood as much as possible. In particular, this will occur at the pedestrian level around the perimeter of the site. As directed in the Urban Design Guidelines, two-story liner buildings are proposed at the sidewalk edge along most of the site perimeter, with the taller parking structure and medical office buildings set behind. The four to five-story hospital is set back from the sidewalk edge along Park Avenue and 45th Street. At these locations, two-story "Urban Frames" are introduced at the sidewalk edge to continue the facade presented by the liner buildings. This will define the street edge, and will be in scale with brick warehouse buildings located across Park Avenue. The architecture of the liner buildings and the "urban frame" in front of the hospital building, will resemble the industrial character of the buildings located in this area of Emeryville. Brick materials, in simple masses, and exposed structural frames are proposed for the liner buildings and the urban frame. The facade of the liner building is proposed as an "armature" composed of these simple brick masses and structural frames. The functions which then locate within this frame can articulate and personalize their particular frame as needed.

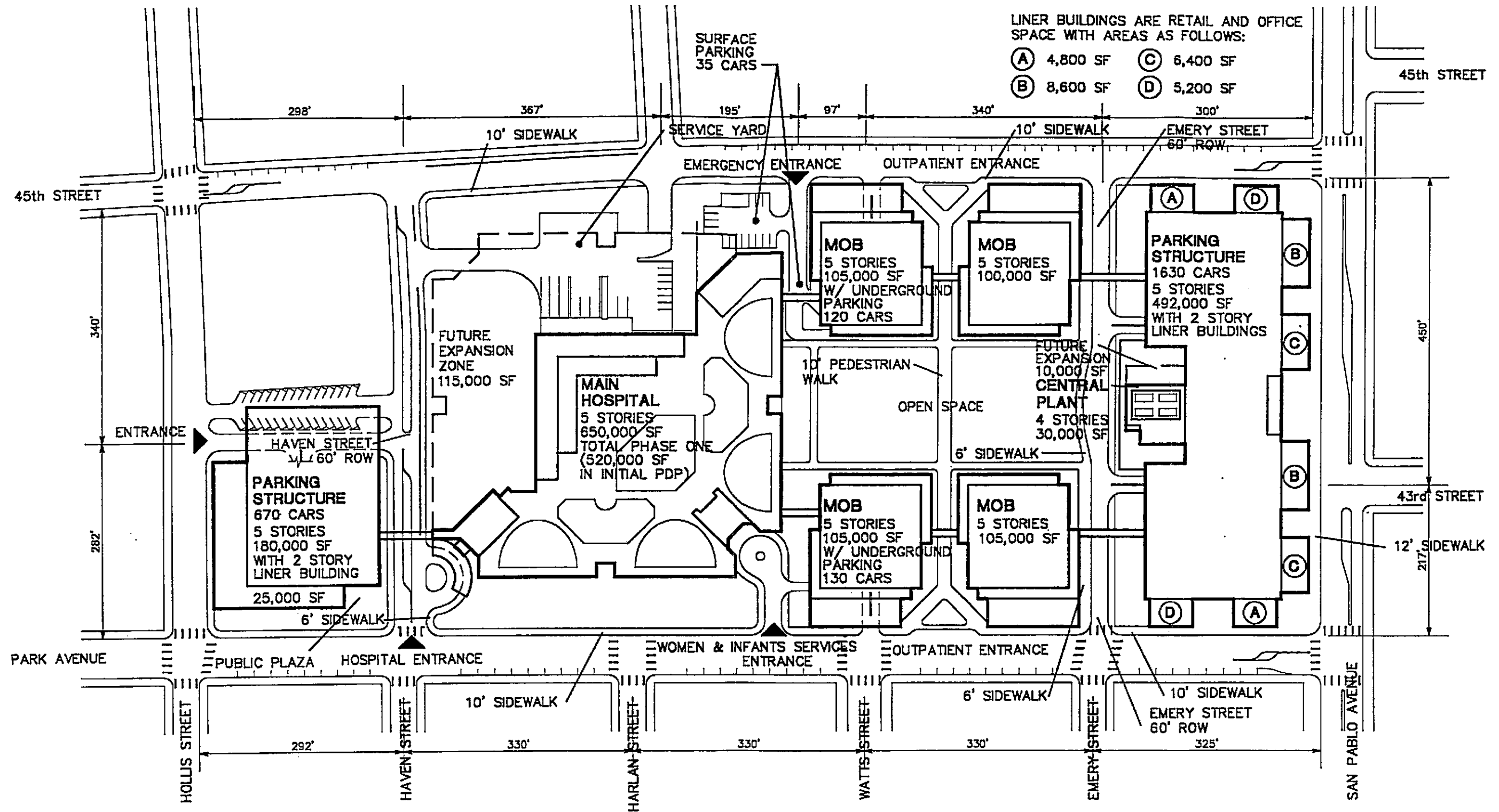
The architecture of the hospital building and medical office buildings is simple, and also tries to mimic the existing neighborhood character. The exterior materials will be primarily a stucco type material with large punched openings for the windows. Exterior structural braces will be exposed on the hospital buildings. These buildings will be primarily a light neutral color. Corrugated surfaces, in small areas, will add interest to the buildings. These corrugated surfaces also resemble materials used in the neighborhood. The facades of the parking structure, along San Pablo and Hollis behind the liner buildings, will be articulated so that it appears as several buildings instead of one continuous structure.

LANDSCAPE DESIGN CONCEPT

The proposed Kaiser Medical Center shall project an image of welcome and be an integral part of the Emeryville/East Bay community. To the extent possible, the site landscaping design will provide for mixed use, as well as accommodations for Kaiser's staff and patients.

The site/landscape improvements for the new Kaiser campus provide the interface that will connect the campus to the surrounding Emeryville community. These components need to respect both the history of Emeryville and its future. Materials such as brick, concrete, steel and precast stone will link Emeryville's industrial past with its future. Sculpture, historic fragments and other public art elements will be designed and selected as integral components of the landscape design.

The landscape treatment will seek to reinforce the urban character of the site and the buildings. At the same time, the landscape will define the transition from large building to a human scale.

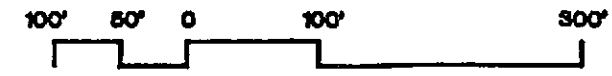


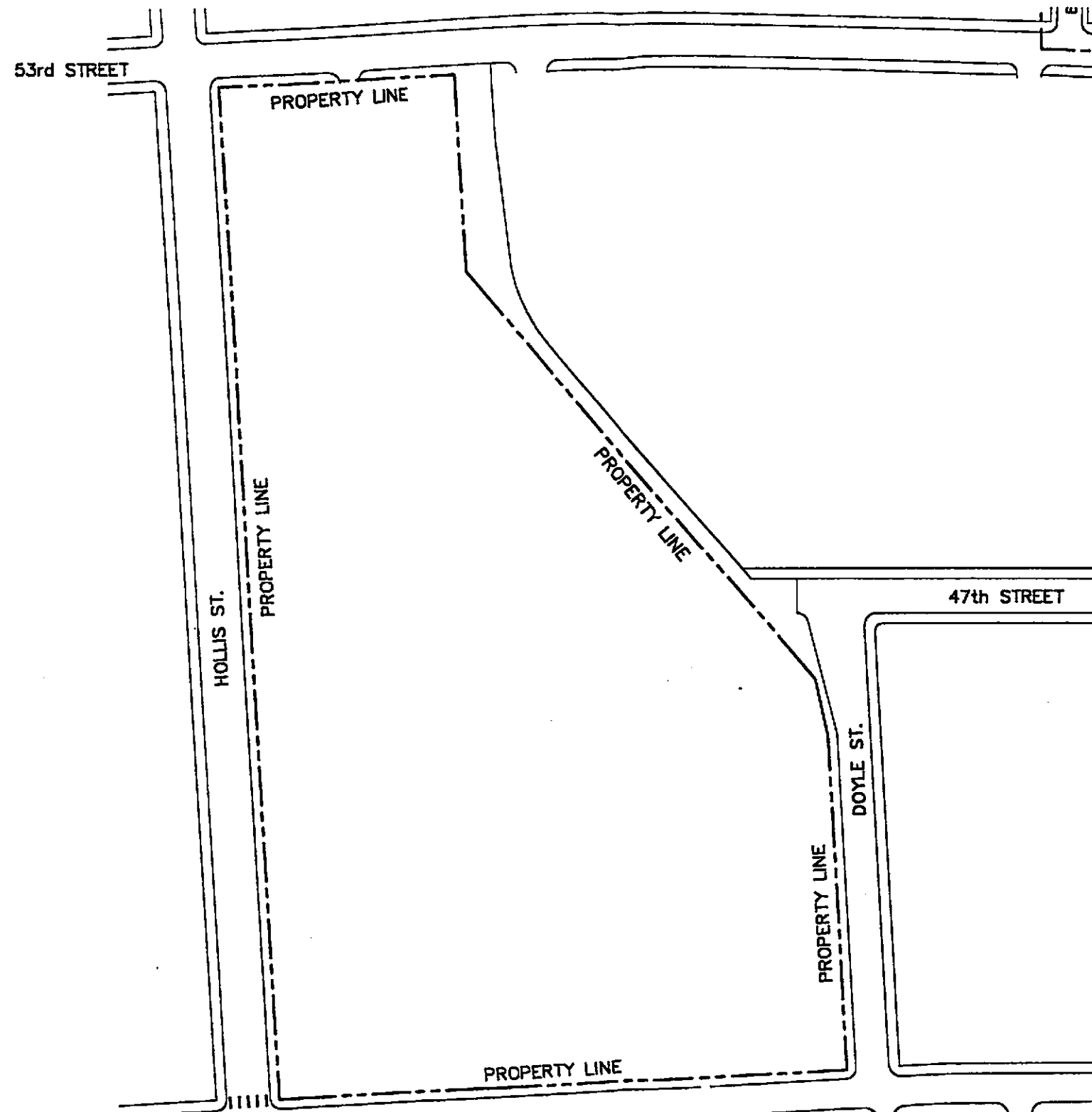
PRELIMINARY DEVELOPMENT PLAN
KAISER PERMANENTE MEDICAL CENTER - EMERYVILLE
SITE PLAN - STREETS AND SIDEWALKS/ BUILDING SIZES
PHASE ONE

NOTE: ALL LOCATIONS AND DIMENSIONS ARE PRELIMINARY AND APPROXIMATE



SMP / DMJM
 9 NOVEMBER 1984





PRELIMINARY DEVELOPMENT PLAN
KAISER PERMANENTE MEDICAL CENTER - EMERYVILLE
SITE PLAN - BOUNDARIES FUTURE PHASE



SMP / DMJM
9 NOVEMBER 1994



Attachment J.1
Development Agreement

DEVELOPMENT AGREEMENT
BETWEEN
KAISER FOUNDATION HOSPITALS
AND
CITY OF EMERYVILLE

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RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Kaiser Foundation Hospitals
Legal Department
1950 Franklin Street, 17th Floor
Oakland, California 94612-2998
Attention: Indrajit Obeysekere, Esq.

(Space Above This Line Reserved For Recorder's Use)

**DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF EMERYVILLE
AND
KAISER FOUNDATION HOSPITALS**

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into as of _____, 199_, between KAISER FOUNDATION HOSPITALS, a California non-profit public benefit corporation, ("Kaiser") and the CITY OF EMERYVILLE, a municipal corporation ("City") pursuant to California Government Code § 65864 et seq.

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California enacted California Government Code § 65864 et seq. (the "Development Agreement Statute"), which authorizes City to enter into an agreement with any person having a legal or equitable interest in real property regarding the development of such property and establishing certain development rights therein.

B. Pursuant to California Government Code § 65865, City has adopted rules and regulations establishing procedures and requirements for consideration of development agreements, which procedures and requirements are contained in City's Ordinance No. 92-03. This Development Agreement has been processed, considered and executed in accordance with those City rules and regulations.

C. Kaiser has a legal and/or equitable interest in certain real property consisting of approximately nineteen (19) acres located in the City in the area bounded generally by 45th Street on the north, Park Avenue on the south, San Pablo Avenue on the east and Hollis Street on the west (excluding the property located at 4240 Hollis Street), as diagrammed in Exhibit A-2 attached hereto, and more particularly described in Exhibit A-1 attached hereto (the "Project Site").

D. Kaiser, the Agency and the City have entered into a Participation Agreement (the "PA") covering the Project Site, in addition to other property, which was adopted by City and Agency immediately prior to the City Council's consideration of this Agreement. Kaiser has acquired substantial portions of the Project Site, as shown on Exhibit A-2. The remaining parcels shall automatically vest under this Agreement at such time as Kaiser acquires equitable or legal interest in such parcels. This Agreement shall not encumber such parcels until such time as Kaiser acquires such a legal or equitable interest.

E. Kaiser intends to develop the Project Site as a medical center with a hospital, medical office buildings, central utility buildings, parking facilities and related uses, as well as various general retail and office uses, all as described in Section 1.01 below (collectively, the "Project").

F. The parties acknowledge that Kaiser intends, after the year 2003, to develop additional medical facilities on property located adjacent to the Project Site, which medical facilities are more particularly described in Section 1.02 below ("Future Expansion"), and that there are two alternative sites under consideration for such Future Expansion, the "AC Transit Site" and the "Future Expansion Site." The "AC Transit Site" shall mean that property that is bounded generally by 47th Street on the north, 45th Street on the south, Doyle Street on the west, and San Pablo Avenue on the east. The "Future Expansion Site" shall mean that property that is bounded generally by Hollis Avenue on the west, 45th Street on the south, 53rd Street on the north, and Doyle Street on the east. The "Preliminary Development Plan," as defined below, prepared for the Project and Future Expansion both contemplate development of the Future Expansion on the Future Expansion Site as the availability of the AC Transit Site is unknown at this time, however, this "EIR," as defined below analyzed both the Future Expansion and the AC Transit Site so that the AC Transit Site could be considered in lieu of the Future Expansion Site if the AC Transit Site becomes available.

AGREEMENT

NOW, THEREFORE, in consideration of the premises, covenants and provisions set forth herein, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1. THE PROJECT AND PROJECT APPROVAL PROCESS

Section 1.01. The Project. The parties acknowledge that Kaiser intends that the Project will consist of development of the following improvements on the Project Site: a hospital of approximately 765,000 square feet, medical office buildings totaling approximately 415,000 square feet, a utility building of approximately 40,000 square feet, parking structures and/or surface parking sufficient to provide 2,625 parking spaces, approximately 25,000 square feet of general office uses, and approximately 50,000 square feet of retail/commercial uses, as described in the Project Approvals (as defined below) and the Subsequent Approvals (as defined below), and all off-site improvements to be constructed in connection therewith.

Section 1.02. Project Phasing. The Project is expected to be built in phases in response to the health service needs of existing and future Kaiser members. "Phase 1" shall mean the first phase of development of the Project on the Project Site, including construction of a hospital building of approximately 650,000 square feet, medical office buildings of approximately 415,000 square feet, retail and commercial space of approximately 50,000 square feet, a central utility plant of approximately 30,000 square feet, facilities and/or surface parking to provide approximately 2,585 parking spaces, and approximately 25,000 square feet of general office uses. The "Phase 1 Expansion" shall mean the construction on the Project Site of an additional approximately 115,000 square feet of hospital uses, an additional approximately 10,000 square feet for the central utility plant, and facilities and/or surface parking sufficient to provide an additional 150 parking spaces. "Future Expansion" shall mean the construction on the Future Expansion Site of additional medical office buildings totaling approximately 260,000 square feet, additional retail/commercial uses totaling approximately 7,500 square feet and facilities and/or surface parking sufficient to provide an additional approximately 1,110 parking spaces. Phase 1, Phase 1 Expansion and Future Expansion shall be referred to collectively herein as "Buildout." At Buildout, development shall include the construction of a hospital of approximately 765,000 square feet, medical office buildings

G. The Project Site is located within the Shellmound Park Redevelopment Project Area and is subject to the Redevelopment Plan for the Shellmound Park Redevelopment Project Area (the "Redevelopment Plan"), which was adopted by the Agency in October 1987, and amended by the Agency on

H. City has determined that the Project presents certain public benefits and opportunities which are advanced by City and Kaiser entering into this Agreement. This Agreement will, among other things, (1) reduce uncertainties in planning and provide for the orderly development of the Project, (2) mitigate many significant environmental impacts, (3) provide emergency medical services, health education, and needed health care related and senior-related services in the City and the greater East Bay community, (4) provide public services, (5) strengthen the City's economic base and present a county-wide stable employment base with a variety of high-quality long term jobs, in addition to shorter term construction jobs, (6) provide for and generate substantial revenues for the City in the form of one time and annual fees and exactions and other fiscal benefits documented in a fiscal report by Sedway & Associates, (7) provide funds in furtherance of affordable housing opportunities, (8) eliminate existing blight, stimulate investment, and revitalize San Pablo Avenue, (9) expedite remediation of existing site contamination, (10) improve public safety in the vicinity of the Project by providing a secure and well lighted medical center, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

I. In exchange for the benefits to City described in the preceding Recital, together with the other public benefits that will result from the development of the Project, Kaiser will receive by this Agreement assurance that it may proceed with the Project in accordance with the "Applicable Law" (defined below), and therefore desires to enter into this Agreement.

totaling approximately 675,000 square feet, a utility building of approximately 40,000 square feet, parking structures and/or surface parking sufficient to provide 3,845 parking spaces, approximately 25,000 square feet of general office uses, and approximately 57,500 square feet of retail/commercial uses, and all off-site improvements to be constructed in connection therewith. Kaiser shall have the right to proceed with any portion of the Phase 1 Expansion prior to completion of Phase 1.

Section 1.03. Project Approvals. In addition to this Agreement, Kaiser has applied for and obtained various environmental and land use approvals, entitlements, and permits relating to the development of the Project which include, without limitation, the approvals described below, together with all conditions of such approvals. For purposes of this Agreement, the term "Project Approvals" shall mean all of the approvals described in this Section 1.03 except the Redevelopment Plan Amendment and the PA, each as defined below.

(1) EIR. The environmental impacts of the Project and Future Expansion, including the Project Approvals and the Subsequent Approvals (defined below) and numerous alternatives to the Project and its location, have properly been reviewed and assessed by City pursuant to the California Environmental Quality Act, Public Resources Code Section 21000 et seq., the "CEQA Guidelines"; California Code of Regulations Title 14, Section 15000 et seq., and City's local guidelines promulgated thereunder (hereinafter collectively referred to as "CEQA"). On , 1994, pursuant to CEQA and in accordance with the recommendation of the Planning Commission for the City of Emeryville (the "Planning Commission"), the City Council certified a final environmental impact report covering the Project and Future Expansion (the "EIR"). As required by CEQA, the City adopted written findings and a mitigation monitoring program (the "Mitigation Monitoring Program") prior to approving the Project Approvals.

(2) General Plan Amendment. A Following review and recommendation by the City Planning Commission and after a duly noticed public hearing and certification of the EIR, the City Council, by Resolution , approved amendments to the Emeryville General Plan (the "General Plan Amendment").

(3) Redevelopment Plan Amendment. A Following review and recommendation by the City Planning Commission, City Council certification of the EIR, and adoption of the General Plan Amendment, the City Council at a duly noticed public hearing, adopted Ordinance No. , approving amendments to the Redevelopment Plan (the "Redevelopment Plan Amendment").

(4) PUD Zoning, Preliminary Development Plan, and Final Development Plan. Following City Planning Commission review and recommendation, certification of the EIR and adoption of the General Plan Amendment at a duly noticed public hearing, the City Council adopted City Ordinance No. _____, rezoning the Project Site to City's Planned Unit Development zoning district (the "PUD Zoning"), approving a Preliminary Development Plan for the Project and Future Expansion (the "Preliminary Development Plan") and a Final Development Plan covering the entire hospital portion of the Project Site, (the "Final Development Plan").

(5) Participation Agreement. Following a duly noticed public hearing, the Emeryville Redevelopment Agency (the "Agency") and the City adopted Resolution No. _____ approving and authorizing the execution of the PA. Following a duly noticed public hearing, the City Council adopted Resolution No. _____ approving and authorizing the execution of the PA.

Section 1.04. Adoption of Development Agreement.
On _____, 1994, following a duly noticed public hearing, the Planning Commission adopted Resolution No. _____ recommending that the City Council approve this Agreement. Following City Council certification of the EIR, adoption or approval of the General Plan Amendment, the PUD Zoning, the Preliminary Development Plan, and the Final Development Plan covering the hospital, the City Council at a duly noticed public hearing adopted Ordinance No. _____, approving and authorizing the execution of this Agreement.

Section 1.05. Subsequent Approvals. Kaiser agrees that certain other land use approvals, entitlements, and permits other than the Project Approvals are necessary or desirable for the Project (collectively, the "Subsequent Approvals"). In particular, as addressed in the EIR, the parties contemplate that Kaiser, following issuance of the Project Approvals, will seek approvals for final development plans, vesting maps, street abandonments and amendments to this Agreement. The Subsequent Approvals may also include, without limitation, the following: amendments of the Project Approvals, design review approvals, improvement agreements, use permits, grading permits, building permits, lot line adjustments, sewer and water connection permits, certificates of occupancy, subdivision maps, preliminary and final development plans, rezonings, development agreements, landscaping plans, street abandonments, encroachment permits, resubdivisions, and any amendments to, or repealing of, any of the foregoing. Subsequent Approvals shall not include any approvals applicable to the Future Expansion.

ARTICLE 2. EFFECTIVE DATE AND TERM

Section 2.01. Effective Date. This Agreement shall become effective upon the date the ordinance approving this Agreement becomes effective (the "Effective Date").

Section 2.02. Term. The term of this Agreement (the "Term") shall commence upon the Effective Date and continue for a period of thirty (30) years.

ARTICLE 3. OBLIGATIONS OF KAISER

Section 3.01. Obligations of Kaiser Generally. The parties acknowledge and agree that the agreements by City to perform and abide by the covenants and obligations of City set forth in this Agreement is a material consideration for Kaiser's agreement to perform and abide by its long term covenants and obligations, as set forth herein. The parties acknowledge that many of Kaiser's long term obligations set forth in this Agreement are in addition to Kaiser's agreement to perform all the mitigation measures identified in the Mitigation Monitoring Program. Kaiser agreed to the following obligations in furtherance of its historical community oriented approach with communities in which it sites its facilities and in consideration for the long term assurances provided by this Agreement.

Section 3.02. Annual Fees Paid By Kaiser. As a material consideration for the long term assurances and vested rights provided by this Agreement, Kaiser shall pay certain annual fees and exactions to City all as described below. The parties acknowledge that the amount of the fees described below is calculated based on the approximate ratio of the square footage of Phase I and Phase I Expansion to the total square footage of Buildout, such that eighty percent (80%) of the total annual fees payable for Buildout is set forth in this Agreement, and the other twenty percent (20%) of the annual fees payable for Buildout, which is associated with Future Expansion, is set forth elsewhere in the Project Approvals. In addition, such fees shall be subject to certain credits/reductions as provided in Section 6.13 below.

In its sole discretion, Kaiser shall be entitled to make one or more lump sum payments to satisfy its obligation with respect to the Mass Transit Program Fee and the Senior Center Fee, each as described below. Any such payments shall be calculated on the basis of the present value of such payments using the 30 year Treasury Bill Rate then in effect as a discount rate.

(1) Public Services Fee. Kaiser shall pay City a Public Services Fee in the amount of \$400,000 per year commencing upon the opening of the hospital for patient care (the "Initial Occupancy Date"), and every twelve (12) months thereafter during the Term. The Public Services Fee is intended as a contribution by Kaiser to cover a broad range of existing and future public needs, services and facilities to improve, enhance and maintain the health, safety and general welfare of the City, including but not limited to police, fire and emergency services and the development of infrastructure. The Public Services Fee shall remain fixed for ten (10) years from the anniversary date of the Initial Occupancy Date and shall be adjusted upwards every ten (10) years thereafter throughout the Term of this Agreement by twenty percent (20%) over the Public Services Fee in effect for the preceding ten (10) year period.

(2) Mass Transit Program Fee. Kaiser shall pay City a Mass Transit Program Fee in an initial amount of \$80,000 a year commencing on the Initial Occupancy Date and continuing each year during the Term thereafter for a period not to exceed twenty-five (25) years. City agrees to impose a similar fee on "major new development", as defined below, within the City and, as new development occurs, to accordingly reduce Kaiser's Mass Transit Program Fee obligation on a pro rata basis. For purposes of this provision, "major new development" shall mean new non-residential development in excess of 50,000 square feet that involves preparation of any type of Environmental Impact Report or mitigated negative declaration and Owner Participation Agreement or Disposition and Development Agreement. Notwithstanding the foregoing, if the City adopts an ordinance imposing a Mass Transit Program Fee, any reduction provided by this section shall be determined and provided in accordance with the provisions of such ordinance.

(3) Senior Center Fee. Kaiser shall pay to City a Senior Center Fee in the amount of \$50,000 a year commencing on the Initial Occupancy Date and every twelve (12) months thereafter during the Term. The Senior Center Fee shall remain fixed throughout the Term.

(4) Low-Income School Care Fee. Kaiser shall pay to City a Low-Income School Care Fee in the amount of \$40,000 a year commencing on the Initial Occupancy Date and every twelve (12) months thereafter during the Term. The Low Income School Care Fee shall remain fixed throughout the Term of this Agreement.

(5) School Related Fees. Kaiser shall pay to City two School Related Fees in the aggregate amount of \$20,000 a year commencing on the Initial Occupancy Date and every twelve (12) months thereafter during the Term. The School Related Fees shall remain fixed throughout the Term of this Agreement. Kaiser shall pay \$10,000 of the School Related Fees to benefit the Emeryville Higher Education Fund, with the other \$10,000 to be paid to this fund or to another public school fund that directly benefits the City public school system. The parties understand that the Emeryville School District currently has excess capacity and leases portions of its school facilities to third parties.

Section 3.03. One-Time Fees Paid by Kaiser. In addition to the annual fees described above, Kaiser shall pay the following one-time fees. Such fees also are calculated based on 80% of the fees required for Buildout, as described in Section 3.02 above.

(1) Art Fund. Kaiser shall pay to City a total Art Fund Fee of \$720,000 for art to be located within the Project. In lieu of all or portions of the Art Fund Fee, Kaiser may elect to directly purchase and install art within portions of the Project Site accessible by the general public. If Kaiser elects to purchase and install art for the Project Site, it shall provide reasonable documentation that art of an equal value has been purchased and placed within the Project Site. Kaiser shall retain the sole right to select all art and artists to be located within the Project Site. Each installment of the Art Fund Fee shall be paid prior to issuance of each certificate of occupancy for a part of the Project, and shall be calculated based on the square footage of the building that is covered by such certificate of occupancy, in relation to the total Art Fund Fee to be paid. In the event that Kaiser has not paid the entire amount of the Art Fund Fee by December 31, 2003, Kaiser shall pay any remaining unpaid amount by such date.

(2) Building Permit and Processing Fees. Kaiser shall pay to City building permit fees in accordance with the City's existing building permit ordinance, but excluding any portion of the Hospital or other facilities subject to State of California Office of Statewide Health Planning and Development (OSHPD) review. The parties understand that medical equipment and fixtures are not customarily included in a building permit application. The City's formulas for calculating such fees shall not be changed during the Term of this Agreement except that as applied against the Project the City shall be permitted to increase such fees by not more than 25% between the Effective Date and the year 2000, and by not more than an additional 20% between the year 2000 and the year 2003. Any

such increases must be authorized by City ordinance and applied uniformly without discrimination by user or use, and must be based on the estimated reasonable cost to City for performing the work for which the building permit is paid, as permitted pursuant to Government Code Section 66014. In addition to the foregoing, Kaiser shall pay a sewer connection fee and plumbing trap fees in accordance with the City's existing ordinances.

(3) Traffic Impact Fee. Kaiser shall pay City Traffic Impact Fees of \$336,000. Each installment of the Traffic Impact Fee shall be paid to City prior to issuance of each certificate of occupancy for a part of the Project, and shall be calculated based on the square footage of building that is covered by such certificate of occupancy, in relation to the total Traffic Impact Fee to be paid. Any fee reduction or credits to the Traffic Impact Fee provided in Section 6.13 shall not exceed \$320,000. In the event Kaiser has not paid the entire amount of the Traffic Impact Fee by December 31, 2003, Kaiser shall pay any remaining unpaid amount by such date.

(4) Public Safety Fee. Kaiser shall pay a Public Safety Fee in an amount equal to \$320,000, for acquisition of emergency equipment for the City and capital improvements to public safety facilities. Kaiser shall pay to the City the Public Safety Fee upon the issuance of the first building permit for the Project.

(5) Small Business Retention Fee. Kaiser shall pay a Small Business Retention Fee in the amount of \$240,000. The Small Business Retention Fee shall be used first to create inducements to retain the businesses in Emeryville that may be displaced by the Project. Kaiser shall pay to the City the Small Business Retention Fee upon the issuance of the first building permit for the Project.

(6) Planning Fees. Kaiser shall reimburse City for certain fees related to the processing of the Project Approvals through completion of construction for Phase 1 for staff-related expenses, in an amount not to exceed \$270,000. The terms and conditions of this reimbursement obligation are more particularly set forth in that Reimbursement Agreement entered into between Kaiser and the City.

Section 3.04. Taxes To Be Paid By Kaiser. Kaiser shall also pay the City's Utility User Tax, Real Property taxes on non-exempt operations, and sales taxes, as applicable. The parties understand that these taxes will change during the Term.

(1) Real Property Taxes. It is anticipated that Kaiser shall pay real property taxes on certain of its non-tax exempt operations, as determined by the Alameda County Assessor.

(2) Sales Taxes. It is anticipated that Kaiser shall pay sales tax on applicable retail sales.

(3) Utility User Taxes. Kaiser shall pay to City a Utility User Tax, based on the City's rate in effect at the time of payment. (The Utility User Tax is expected to generate approximately Eighty Thousand Dollars (\$80,000) in present dollars based on the City's current Utility Tax Rate of 5.5%.) This tax shall be based on the Project's annual usage and shall commence upon the Initial Occupancy Date. Increases in the assessed rate shall be passed on to Kaiser, provided that such increases are properly authorized by ordinance and are assessed uniformly, without discrimination by user or use.

Section 3.05. Assessments To Be Paid By Kaiser. Kaiser shall pay to the County Assessor upon acquisition of portions of the Project Site, its fair share of certain assessments in connection with the Bay Shellmound Assessment District. This District was formed to provide funding for the Bay-Shellmound Street improvements. The District assessment consists of two assessments, as follows:

(1) Bay Shellmound Contingent Assessment. Kaiser shall pay the Contingent Assessment portion of the Bay Shellmound assessment pursuant to the procedures of the Contingent Assessment Ordinance of the Bay-Shellmound Street. The parties understand that Kaiser is required to pay its fair share of this Contingent Assessment with a one time payment.

(2) Basic Shellmound Assessment. Kaiser shall pay its fair share of the Basic Shellmound Assessment over a twenty-five (25) year period pursuant to the terms of the applicable assessment bond. The parties understand that the formula for calculating the above assessments shall not be recomputed or otherwise changed in a manner that would increase the current assessments.

Section 3.06. Traffic and Circulation Improvements; Partial Reimbursement. In addition to the Mass Transit Program Fee set forth in Section 3.02, Kaiser has agreed to all of the traffic roadway and intersection improvement mitigation measures (the "Traffic Improvements") in the Project DEIR and EIR, in accordance with and as more particularly described in the Mitigation Monitoring Program. The parties understand that these Traffic Improvements represent in excess of Kaiser's project-related mitigation

measures and its fair share of all cumulative impacts arising from the Project. Kaiser has also agreed to the following, in accordance with the Mitigation Monitoring Program or this Agreement:

(1) Acceleration of Traffic Improvements.

Kaiser agrees that Traffic Improvements at a number of intersections will be completed prior to occupancy of the first building in Phase I, rather than upon occupancy of the first building in the Future Expansion, as recommended in the DEIR. Kaiser agrees to accelerate the timing of the following Traffic Improvements irrespective of whether the development of the Future Expansion occurs and not withstanding the timing obligations for the Traffic Improvements set forth in the Mitigation Monitoring Program. The Traffic Improvements to be performed prior to the Phase I occupancy are listed below:

San Pablo Avenue/36th Street (Circulation Mitigation 15.1)

Hollis Street/Powell Street (Circulation Mitigation 17.1)

Hollis Street/Park Avenue (Circulation Mitigation 18.1)

In addition, Kaiser agrees to perform, prior to Phase I occupancy, the traffic mitigations to Christie Street/Powell Street previously identified in the DEIR as infeasible.

(2) Obligation to Construct Entire Traffic Improvement. Kaiser agrees to construct Traffic Improvements for which either reimbursement will be paid or no reimbursement will be paid to Kaiser, as set forth in the Mitigation Monitoring Program. In other instances, Kaiser will only be entitled to partial reimbursement from future development in an amount not to exceed fifty percent (50%) of the costs of the Traffic Improvement (the "Partial Reimbursement Improvements"). Kaiser agrees to construct the following Partial Reimbursement Improvements:

Hollis Street/53rd Street Intersection improvements consisting of (1) construction of a northbound and southbound thru lane on Hollis Street; (2) imposing a peak period parking restriction on Hollis Street between Powell Street and Park Avenue; (3) construction of eastbound and westbound exclusive left-turn lanes on 53rd Street; and (4) restriping of 53rd Street.

Powell Street/Doyle Street (Circulation Mitigation 6.1)

Horton/Landregan Connection (Circulation Mitigation
7.1)

Haven Street Extension (Circulation Mitigation
26.1)

(3) Obligation to Deposit Funding for Berkeley and Oakland Traffic Improvements. Kaiser agrees to deposit in a separate interest bearing account with City its estimated fair share contribution calculated in accordance with the Mitigation Monitoring Program towards the Traffic Improvements in Oakland and Berkeley, prior to occupancy of the first building in Phase I, or the first building in the Future Expansion, as the case may be. The deposit shall not be refunded to Kaiser until a reasonable period of time has elapsed, not to exceed five (5) years from the deposit date, during which it is reasonably evident that such jurisdictions will not proceed with all necessary steps to implement such Traffic Improvements.

(4) Transportation Systems Management (TSM). Kaiser agrees to implement its transportation systems management ("TSM") program as set forth in the Mitigation Monitoring Program.

(5) Reimbursement Terms. The Mitigation Monitoring Program specifies that Kaiser is to be reimbursed from City by future development for a portion of the costs of specified Traffic Improvements ("Reimbursement Obligation"). Except as otherwise limited by this Section 3.06 or the Mitigation Monitoring Program (including the limitations applicable to the Partial Reimbursement Obligations), the City's Reimbursement Obligation to Kaiser shall be the total cost of the Traffic Improvement less Kaiser's fair share of the Traffic Improvement.

The Reimbursement Obligation shall apply only to "Major New Development," as hereinafter defined. Commencing with the effective date of this Agreement and continuing until January 1, 2010, the City agrees, in furtherance of its Reimbursement Obligation, to impose as part of the approval of any Major New Development or portion thereof, a Kaiser reimbursement fee which requires these Major New Developments to pay their fair share of the costs of applicable Traffic Improvements subject to reimbursement. The City also agrees to impose a Kaiser reimbursement fee on all phases of a multi-phased project where a latter phase of the project may occur after January 1, 2010, but where the approval of the first phase occurs prior to January 1, 2010. The City agrees to deposit all reimbursement sums collected in a separate account and within 30 days after receiving a Kaiser reimbursement fee, the City shall pay Kaiser the full

amount. The City's Reimbursement Obligation is limited to amounts collected pursuant to this Section 3.06 and is not a general obligation of the City.

As used in this section only, "Major New Development" means a project, other than a housing project, greater than 50,000 square feet, that requires preparation of a traffic analysis either as part of any type of EIR or mitigated negative declaration, or a permit or approval where the traffic analysis demonstrates that the Major New Development's fair share of the costs of the Traffic Improvement is more than 5 percent of the total cost of the Traffic Improvement subject to reimbursement. The Major New Development's fair share of the Traffic Improvement shall be determined by the same methodology as Kaiser's fair share of the Traffic Improvement. Other reimbursement terms and conditions shall be pursuant to a reimbursement agreement to be entered into subsequent to the date of this Agreement.

(6) Fair Share. At a minimum, Kaiser agrees to construct or pay its fair share of the cost of the Traffic Improvements as set forth in the Mitigation Monitoring Program. Kaiser's fair share, to be calculated pursuant to the Mitigation Monitoring Program, will be based on Kaiser's contribution to the total increase in the p.m. peak hour trips per hour which is generated by the Project. For example, if there were 2000 existing trips per hour in the p.m. peak hour on the date of the EIR traffic analysis, the total number of new p.m. peak hour trips is 500 per hour and the Project has generated 100 of these new p.m. peak hour trips per hour, Kaiser would be required to pay 20 percent of the costs of the Traffic Improvements required by the increase in trips per hour in the p.m. peak hour.

Section 3.07. San Pablo Revitalization - Construction of Pedestrian Oriented Retail Buildings. In response to community design input and the City's Urban Design Guidelines, and as provided in this Section 3.07, Kaiser shall incorporate into the Project lower intensity, ground level pedestrian oriented commercial retail "liner" buildings (collectively, the "Liners") along the street frontages of the parking structure on San Pablo Avenue (the "San Pablo Avenue Liners"), the medical office buildings on Park Avenue (the "Park Avenue Liners"), the parking structure on Hollis and Park Avenue (the "Hollis and Park Liners") and the parking structure on 45th Street (the "45th Street Liners"). The Liners associated with Phase 1 are expected to include up to 50,000 square feet of retail/commercial and up to 25,000 square feet of general offices. Kaiser may use portions of the Liners as temporary lodging for interns and physicians, subject to design approval by the City, and provided that any such lodging in the San Pablo Avenue Liners shall be limited to the upper

floors. Upon request by the City, Kaiser agrees to lease up to 25,000 square feet of space in the Hollis and Park Liners to City at fair market value and other terms to be reasonably negotiated between the parties. The parties understand that the Liners should provide visual, land use, and economic benefits to the City and Kaiser.

To further enhance the success of the Liners, Kaiser shall submit to the City for review and comment, at least one month prior to the issuance of the first building permit for construction of Phase I, a marketing plan for the Liners. Accordingly, the City and Kaiser shall confer on an ongoing basis regarding Kaiser's marketing efforts and strategy for the Liners and Kaiser shall consider the City's recommendations in its ongoing marketing efforts. Further, Kaiser shall use its best efforts to market the Liners through use of the marketing plan and real estate brokers.

Notwithstanding the foregoing, the parties understand that vacant liner buildings will not further the provision of visual, land use and economic benefits to the City and Kaiser. Accordingly, Kaiser will not be required to commence construction of any of the Liners until the building permit is issued for the particular building or structure on which the Liner is to front, as more particularly identified in the Preliminary Development Plan. In addition, with respect to the 45th Street Liners, Kaiser also shall not be required to commence construction of the 45th Street Liners until lease commitments on market terms exist for at least sixty percent (60%) of the space to be constructed. In the event that Kaiser determines that it has not obtained such lease commitments for 60% of the space to be constructed on or before the issuance of the building permit for the building on which the 45th Street Liner would front, and Kaiser determines that it will have to delay construction or not construct the 45th Street Liners, Kaiser shall meet with the City to discuss any financial or marketing strategies that the City might suggest that would allow Kaiser to construct the 45th Street Liners notwithstanding Kaiser's inability to obtain such lease commitments; provided, however, that Kaiser shall have no obligation to accept any such strategy that the City may propose.

Section 3.08. Emeryville Health Plan. Kaiser agrees to provide a health plan for Emeryville residents as described in Exhibit E, attached. This Health Plan may change from time to time in accordance with changes in health care.

Section 3.09. Community Programs. Kaiser agrees to implement the following programs, which shall be for the benefit of residents of Emeryville, West Oakland and West Berkeley:

- (1) Education Initiative. Kaiser will work collaboratively with the Emeryville Unified School District in a multifaceted program which will include such programs as:
 - (a) job shadowing experiences for students in clinical and administrative support departments for career exploration;
 - (b) mentoring program with medical center staff and individual students; and
 - (c) summer youth employment program. In addition, Kaiser will work with the Berkeley Biotech Academy to further the programs stated above.
- (2) Community Activities. Kaiser will provide educational theater programs free of charge to the Emeryville Unified School District. Examples of these programs are (1) "Professor Bodywise" (Health and safety education for elementary schools); (2) "Nightmare on Puberty Street" (Social and physical changes of puberty presented to middle schools); and (3) "Secrets" (HIV/AIDs education for high schools).
- (3) Job Information and Recruitment. Kaiser will provide job information and recruitment through the medical center Human Resources Department.
- (4) Community Grants. Kaiser will provide grants to community agencies to fund a broad range of community services in the Northern California Region in accordance with existing Kaiser grant programs. Examples of community agencies that have benefitted from such grants include:
 - (a) Support group for adult rape survivors;
 - (b) Child abuse treatment program in a community clinic; and
 - (c) Design and production of infant calendar for health education.

- (5) Health Education Center. Kaiser will provide a Health Education Center at the medical center campus which will be open to Emeryville residents and Health Plan members. The Health Education Center will consist of a health products store, audiovisual presentations, health education information and a library.
- (6) Community Health Education. Kaiser will provide health education classes for both Kaiser members and the public either free or for a nominal fee. Examples of such programs include: patient education programs, such as Better Breathers Program; prenatal/women's health programs, such as Baby Care and Toddler Programs; weight management programs; smoking cessation programs; health promotion programs/services, such as Acupressure Class, Assertiveness Training, and Fitness Evaluation and Exercise Workshop; teen health programs, such as "Growing Up Male" and "Growing Up Female"; and children's health/parenting programs, such as First Aid, Asthma Education, and New Parent Support Group.

Section 3.10. Kaiser-Emeryville Housing Fund. Kaiser shall fulfill its obligations under the Kaiser-Emeryville Housing Fund as described in Exhibit C attached hereto and made a part hereof.

Section 3.11. Replacement of Housing Removed by Project. Kaiser shall fulfill its obligations with respect to the Agency's Replacement Housing Obligation as described in Exhibit D attached hereto and made a part hereof.

Section 3.12. Minimum Project. The parties acknowledge that, as a result of the potential for changes in health care delivery requirements mandated by the federal government, Kaiser's need to construct the Project may change. Notwithstanding this possibility, in order to assure the City that the Project Site will be developed with a medical center use within a reasonable time period, Kaiser agrees to commence construction on the Project Site of approximately 600,000 square feet of medical center development, which shall include a hospital (together, the "Minimum Project"), by the end of the year 2002. If Kaiser has not commenced construction of Phase I by June 1, 1996, Kaiser shall submit a status report to the City on or before such date indicating the reasons why it has not commenced construction and its anticipated construction commencement date. Such status report shall be submitted annually thereafter for the next three (3) years unless such

construction is commenced. Construction of the Minimum Project would require Kaiser to submit and receive appropriate amendments to the Project Approvals and Subsequent Approvals. Should Kaiser fail to construct the Minimum Project as required by this Agreement, the City's sole remedy shall be to terminate this Agreement in accordance with Article 9. In addition, in the event that prior to the end of the year 2002, Kaiser submits a formal application to the City of Oakland or the City of Berkeley to construct the Minimum Project in either such city, the City shall have the option to terminate this Agreement in accordance with Article 9. The dates set forth in this Section 3.12 shall be extended by the period of time during which (i) a development moratorium is in effect (including, but not limited to, a water or sewer moratorium or water and sewer moratorium) or (ii) the actions of other public agencies that regulate land use, development, or the provision of services to the land that prevents, prohibits or delays the construction of the Project or (iii) the period during which a lawsuit involving any of the Project Approvals or permits is pending.

ARTICLE 4. OBLIGATIONS OF CITY

Section 4.01. Obligations of City Generally. The parties acknowledge and agree that the agreements by Kaiser to perform and abide by its covenants and obligations set forth in this Agreement, including Kaiser's decision to process the siting of the Project in the City, is a material consideration for City's agreement to perform and abide by the long term covenants and obligations of City, as set forth herein.

Section 4.02. Protection of Vested Rights. To the maximum extent permitted by law, City shall take any and all actions as may be necessary or appropriate to ensure that the vested rights provided by this Agreement can be enjoyed by Kaiser and to prevent any City Law, as defined in Section 6.05, from invalidating or prevailing over all or any part of this Agreement. City shall cooperate with Kaiser and shall undertake such actions as may be necessary to ensure this Agreement remains in full force and effect. City shall not support, adopt, or enact any City Law, or take any other action which would violate the express provisions or intent of the Project Approvals or the Subsequent Approvals.

Section 4.03. Availability of Public Services. To the maximum extent permitted by law and consistent with its authority, City shall assist Kaiser in reserving such capacity for sewer and water services as may be necessary to serve the Project. The minimum water capacity to be reserved for Buildout of the Project shall be the greater of

(i) 327,704 gallons per day or (ii) the amount specified in the EIR. The minimum sewer capacity to be reserved for Buildout of the Project shall be (i) 294,934 gallons per day or (ii) the amount specified in the EIR. This capacity shall be assured for the Term at a cost to be applied uniformly without discrimination as to user or use.

For the Traffic Improvements within the City which are not required to be constructed by Kaiser, City shall use its best efforts to ensure that Agency pays the difference between the fair share amount contributed by Kaiser and the total cost of the Traffic Improvements and constructs or causes to be constructed those Traffic Improvements, all as more particularly set forth in the Mitigation Monitoring Program. In furtherance of the City's circulation element and to improve traffic circulation by additional north-south Arterials, the City shall use its best efforts to ensure that the Agency contributes \$500,000 towards the funding of traffic improvements for the Horton Landregan connector or towards the Hollis-Powell intersection.

Section 4.04. Street Abandonment. In accordance with Applicable Law, City shall take all necessary steps in order to abandon streets, change setbacks, and close Haven and Watts Streets as provided in the Project Approvals.

Section 4.05. Kaiser's Right to Rebuild. The City agrees that Kaiser may renovate or rebuild the Project within the Term of this Agreement should it become necessary due to natural disaster, changes in seismic requirements, or should the buildings located within the Project become functionally outdated, within Kaiser's sole discretion, due to changes in medical technology. Any such renovation or rebuilding shall be subject to the square footage and height limitations vested by this Agreement, and shall comply with the Project Approvals, the building codes existing at the time of such rebuilding or reconstruction, and the requirements of CEQA.

Section 4.06. City's Obligations with Respect to Housing. The City shall to use its best efforts to ensure that the Agency fulfills its obligations under the Kaiser-Emeryville Housing Fund, as described in Exhibit C and the PA. In addition, the City shall use its best efforts to ensure that the Agency complies with its replacement housing obligations as further described in Exhibit D and the PA.

ARTICLE 5. COOPERATION-IMPLEMENTATION

Section 5.01. Processing Application for Subsequent Approvals. By approving the General Plan Amendment, the Redevelopment Plan Amendment, the DDA, the

PUD Zoning, the Preliminary Development Plan, the Final Development Plan on the hospital and this Agreement, City has made a final policy decision that the Project is in the best interests of the public health, safety and general welfare. Accordingly, City shall not use its discretionary authority in considering any application for a Subsequent Approval to change the policy decisions reflected by the Project Approvals or otherwise to prevent or delay development of the Project or limit Kaiser's right to develop the Project as set forth in the Project Approvals. Instead, the Subsequent Approvals shall be deemed to be tools to implement those final policy decisions and shall be issued by City so long as they comply with this Agreement and Applicable Law and are not inconsistent with the Project Approvals as set forth below.

Section 5.02. Timely Submittals By Kaiser. Kaiser acknowledges that City cannot expedite processing Subsequent Approvals until Kaiser submits complete applications on a timely basis. Kaiser shall use its best efforts to (i) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (ii) cause Kaiser's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other necessary required materials. It is the express intent of Kaiser and City to cooperate and diligently work to obtain any and all Subsequent Approvals.

Section 5.03. Timely Processing By City. Kaiser has informed the City that processing delays on a project of this size can delay Kaiser's ability to provide service to its members and increase overall health care costs. Upon submission by Kaiser of all appropriate applications and processing fees for any Subsequent Approval, City shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval application including, without limitation, (i) providing at Kaiser's expense and subject to Kaiser's request and prior approval, reasonable overtime staff assistance and/or staff consultants for planning and processing of each Subsequent Approval application; (ii) if legally required, providing notice and holding public hearings; and (iii) acting on any such Subsequent Approval application. City shall ensure that adequate staff is available, and shall authorize overtime staff assistance as may be necessary, to timely process such Subsequent Approval application.

Section 5.04. Review of Subsequent Approvals. City may deny an application for a Subsequent Approval only if such application does not comply with this Agreement or Applicable Law or does not substantially comply with the

Project Approvals (provided, however, that inconsistency with the Project Approvals shall not constitute grounds for denial of a Subsequent Approval which is requested by Kaiser as an amendment to that Project Approval). City may approve an application for such a Subsequent Approval subject to any conditions necessary to bring the Subsequent Approval into compliance with this Agreement or Applicable Law, or is necessary to make the Subsequent Approval consistent with the Project Approvals. If City denies any application for a Subsequent Approval, City must specify in writing the reasons for such denial and may suggest a modification which would be approved. Any such specified modifications must be consistent with this Agreement, Applicable Law and the Project Approvals, and City shall approve the application if it is subsequently resubmitted for City review and addresses the reason for the denial in a manner that is consistent with this Agreement, Applicable Law and the Project Approvals.

Section 5.05. Understandings on Specific Subsequent Approvals. City acknowledges that timing factors related to the complexities of Kaiser acquiring the entire Project Site precluded City from acting on certain Subsequent Approvals as of the Effective Date, including a vesting parcel or subdivision map covering all or portions of the Project Site. In addition to the other general covenants concerning processing of Subsequent Approvals set forth in this Agreement, upon (1) Kaiser's acquisition of any or all of the parcels necessary to process these Subsequent Approvals (as determined by Kaiser) and (2) submission by Kaiser of all appropriate applications and processing fees covering such Subsequent Approvals, City shall, to the maximum extent permitted by law, promptly and diligently commence and complete all steps (including noticing and public hearings) necessary to act on these contemplated Subsequent Approval applications. City shall, to the maximum extent permitted by law not use its discretionary authority in considering these Subsequent Approval applications to revisit or frustrate the policy decisions or material terms reflected by the Project Approvals.

Section 5.06. Other Government Permits. At Kaiser's sole discretion and in accordance with Kaiser's construction schedule, Kaiser shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Project. City shall cooperate with Kaiser in its efforts to obtain such permits and approvals and shall, from time to time at the request of Kaiser, use its best efforts to enter into binding agreements with any such entity as may be necessary to ensure the timely availability of such permits and approvals.

Section 5.07. Assessment Districts or Other Funding Mechanisms.

a. The parties understand and agree that as of the Effective Date the assessments from the Bay Shellmound Assessment District, as described in Section 3.05, are the only City assessments. City is unaware of any pending efforts to initiate, or consider applications for new or increased assessments covering the Project Site, or any portion thereof.

b. City understands that long term assurances by City concerning fees, taxes and assessments were a material consideration for Kaiser agreeing to process the siting of the Project in the City and to pay long term fees, taxes and assessments described in this Agreement. City shall retain the ability to initiate or process applications for the formation of new assessment districts covering all or any portion of the Project Site. Notwithstanding the foregoing, Kaiser retains all its rights to oppose the formation or proposed assessment of any new assessment district or increased assessment. In the event an assessment district is lawfully formed to provide funding for services, improvements, maintenance or facilities which are substantially the same as those services, improvements, maintenance or facilities being funded by the fees or assessments to be paid by Kaiser under the Project Approvals or this Agreement, such fees or assessments to be paid by Kaiser shall be subject to reduction/credit in an amount equal to Kaiser's new or increased assessment under the assessment district. Alternatively, the new assessment district shall reduce/credit Kaiser's new assessment in an amount equal to such fees or assessments to be paid by Kaiser under the Project Approvals or this Agreement.

c. At the request of Kaiser, City shall cooperate in the formation of assessment districts, community facilities districts, tax-exempt financing mechanisms, or other funding mechanisms related to traffic, sewer, water or other infrastructure improvements (including, without limitation, design, acquisition and construction costs) within the Project Site. City shall diligently and expeditiously process applications by Kaiser necessary to establish funding mechanisms so long as (i) the application complies with law, (ii) is consistent with City's standards, and (iii) provides for a lien to value ratio and other financial terms that are reasonably acceptable to City, and which will result in no commitment of City funds. City shall diligently seek to sell any bonds to be issued and secured by such assessments upon the best terms reasonably available in the marketplace. Kaiser may initiate improvement and assessment proceedings utilizing

assessment mechanisms authorized under the law of the State of California where the property subject to assessment the "Assessed Property" provides primary security for payment of the assessments. Kaiser may initiate such assessment proceedings with respect to a portion of the Assessed Property to provide financing for design or construction of improvements for such portion. City shall allocate shortfalls or cost overruns in the same manner as the special taxes or assessments for construction of improvements (as opposed to assessments for maintenance) are allocated in the community facilities district or other financing mechanism so that each lot and/or parcel within the benefitted area shall bear its appropriate share of the burden thereof as determined by City and construction or acquisition of needed improvements shall not be prevented or delayed.

ARTICLE 6. STANDARDS, LAWS AND PROCEDURES GOVERNING THE PROJECT

Section 6.01. Vested Right to Develop. Kaiser shall have a vested right to develop the Project on the Project Site in accordance with the terms and conditions of this Agreement. Nothing in this section shall be deemed to eliminate or diminish the requirement of Kaiser to obtain any required Subsequent Approvals.

Section 6.02. Permitted Uses Vested By This Agreement. The permitted uses of the Project Site; the density and intensity of use of the Project Site; the maximum height, bulk and size of proposed buildings; provisions for reservation or dedication of land for public purposes and the general location of public improvements; the general location of public utilities; and other terms and conditions of development applicable to the Project, shall be as set forth in the Project Approvals and, as and when they are issued (but not in limitation of any right to develop as set forth in the Project Approvals), the Subsequent Approvals. Permitted uses shall include, without limitation, a full service, 24-hour care hospital, medical utility buildings, utility buildings, retail, commercial and office uses, laboratory facilities, emergency facilities, microwave antennae and a full array of health, medical and related services. Notwithstanding any restrictions on signage provided by local ordinance, Kaiser shall be permitted to display its "Kaiser Permanente" emblem on the Project Site in a manner that is consistent with its other medical centers.

Section 6.03. Applicable Law. The rules, regulations, official policies, standards and specifications applicable to the Project (the "Applicable Law") shall be

those set forth in this Agreement and the Project Approvals, and, with respect to matters not addressed by this Agreement or the Project Approvals, those rules, regulations, official policies, standards and specifications (including City ordinances and resolutions) governing permitted uses, building locations, timing of construction, densities, design, heights, fees, exactions, and taxes in force and effect on the Effective Date of this Agreement.

Section 6.04. Uniform Codes. City may apply to the Project Site, (excepting the hospital and related structures regulated by OSHPD) at any time during the Term, then current Uniform Building Code and other uniform construction codes, and City's then current design and construction standards for road and storm drain facilities, provided any such uniform code or standard has been adopted and uniformly applied by City on a citywide basis and provided that no such code or standard is adopted for the purpose of preventing or otherwise limiting construction of all or any part of the Project.

Section 6.05. No Conflicting Enactments. City shall not impose on the Project (whether by action of the City Council or by initiative, referendum or other means) any ordinance, resolution, rule, regulation, standard, directive, condition or other measure (each, individually, a "City Law") that is in conflict with Applicable Law or this Agreement or that reduces the development rights or assurances provided by this Agreement. The parties acknowledge that the Development Agreement Statute provides that this Agreement shall not prevent the City, in subsequent actions applicable to the Project Site from applying new rules, regulations and policies which do not conflict with the Applicable law or this Agreement. Without limiting the generality of the foregoing, and except as provided in Section 6.04, any City Law shall be deemed to conflict with Applicable Law or this Agreement or reduce the development rights provided hereby if it would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which applies to or affects the Project:

a. Limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the square footage, floor area ratio, height of buildings, or number of proposed buildings or other improvements;

b. Change any land use designation or permitted use of the Project Site;

c. Limit or control the availability of public utilities, services or facilities or any privileges or rights to public utilities, services, or facilities (for example, water rights, water connections or sewage capacity rights, sewer connections, etc.) for the Project;

d. Limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner;

e. Limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations included in the Project Approvals or the Subsequent Approvals (as and when they are issued);

f. Apply to the Project any City Law otherwise allowed by this Agreement that is not uniformly applied on a City-wide basis to all substantially similar types of medical or office development projects and project sites;

g. Result in Kaiser having to substantially delay construction of the Project or require the issuance of additional permits or approvals by the City other than those required by Applicable Law; or

h. Substantially increase the cost of constructing or developing the Project or any portion thereof.

i. Establish, enact, increase or impose against the Project or Project Site any fees, taxes (including without limitation general, special and excise taxes) assessments, liens or other monetary obligations (including generating demolition permit fees, encroachment permit and grading permit fees) other than those specifically permitted by this Agreement or other connection fees imposed by third party utilities.

j. Impose against the Project any condition, dedication or other exaction not specifically authorized by Applicable Law; or

k. Limit the processing or procuring of applications and approvals of Subsequent Approvals.

Section 6.06. Initiatives and Referenda.

a. If any City Law is enacted or imposed by initiative or referendum, or by the City Council directly or indirectly in connection with any proposed initiative or referendum, which City Law would conflict with Applicable Law or this Agreement or reduce the development rights provided by this Agreement, such Law shall not apply to the Project.

b. Without limiting the generality of any of the foregoing, no moratorium or other limitation (whether relating to the rate, timing, phasing or sequencing of development) affecting subdivision maps, building permits or other entitlements to use that are approved or to be approved, issued or granted within the City, or portions of the City, shall apply to the Project.

c. To the maximum extent permitted by law, City shall prevent any City Law from invalidating or prevailing over all or any part of this Agreement, and City shall cooperate with Kaiser and shall undertake such actions as may be necessary to ensure this Agreement remains in full force and effect.

d. City shall not support, adopt or enact any City Law, or take any other action which would violate the express provisions or spirit and intent of this Agreement, the Project Approvals or the Subsequent Approvals.

e. Kaiser reserves the right to challenge in court any City Law that would conflict with Applicable Law or this Agreement or reduce the development rights provided by this Agreement.

Section 6.07. Environmental Mitigation. The parties understand that the EIR was intended to be used in connection with each of the Project Approvals and Subsequent Approvals needed for the Project. Consistent with the CEQA policies and requirements applicable to either Master EIR or tiered EIR's, City agrees to use the EIR in connection with the processing of any Subsequent Approval to the maximum extent allowed by law and not to impose on the Project any mitigation measures or other conditions of approval other than those specifically imposed by the Project Approvals and the Mitigation Monitoring Program or specifically required by Applicable law. In addition, to the extent consistent with CEQA's policies and requirements applicable to either Master EIR's or tiered EIR's, the City agrees to use the EIR in connection with the processing of approvals related to Future Expansion to the maximum extent allowed by law.

Section 6.08. Life of Subdivision Maps, Development Approvals, and Permits. The term of this Agreement and any subdivision map or other Project Approval or Subsequent Approval shall automatically be extended as provided under California Government Code Section 66452.6(a) or 65863.9. Notwithstanding the foregoing, the vested rights associated with any vesting tentative map (but not the term of such map) shall terminate upon the expiration of the Term. The term of this Agreement and any subdivision map or other Project Approval or Subsequent Approval shall not include any period of time during which a development moratorium (including, but not limited to, a water or sewer moratorium or water and sewer moratorium) or the actions of other public agencies that regulate land use, development, or the provision of services to the land, that prevents, prohibits or delays the construction of the Project or a lawsuit involving any such development approvals or permits is pending. Execution of this Agreement is intended to extend the term of those portions of the Preliminary Development Plan related to Phase 1 through the year 2000, those portions of the Preliminary Development Plan related to Phase 1 Expansion through the year 2003, and those portions of the Preliminary Development related to Buildout through the Term of this Agreement.

Section 6.09. State and Federal Law. As provided in California Government Code § 65869.5, this Agreement shall not preclude the application to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in state or federal laws or regulations ("Changes in the Law"). In the event Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in the Law, and City and Kaiser shall take such action as may be required pursuant to Article 5 (Cooperation-Implementation) and Section 9.05 (Enforced Delay; Extension of Time of Performance) of this Agreement.

Section 6.10. Timing of Project Construction and Completion. Except as provided in Sections 3.11 and 3.12 above, there is no requirement that Kaiser initiate or complete development of the Project or any particular phase of the Project within any particular period, and City shall not impose such a requirement on any Subsequent Approval. Kaiser shall be able to develop in accordance with Kaiser's own time schedule as such schedule may exist from time to time. The parties have made certain assumptions for CEQA analysis as to the rate and phasing of the Project. However, the parties understand that Kaiser's time schedule depends upon numerous factors which are not within the control of Kaiser such as health care reform, competition,

member growth rates and similar factors. In particular, and not in limitation of any of the foregoing, since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo, 37 Cal. 3d 465 (1984), that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, the parties hereto desire to avoid such a result by acknowledging that Kaiser shall have the right to develop the Project in such order and at such rate and at such times as Kaiser deems appropriate within the exercise of its subjective business judgment.

Section 6.11. Exempting Fees Imposed by Outside Agencies. The City agrees to exclude Kaiser from any and all collection agreements regarding fees, including, but not limited to, development impact fees, which other public agencies request the City to impose at City's discretion on the Project or the Project Site after the Effective Date through the year 2000. This section shall not prohibit the City from imposing on Kaiser any fee or obligation that is imposed by a regional agency in accordance with state or federal obligations and implemented by the City in cooperation with such regional agency.

Section 6.12. Intent Regarding Potential Loss of Tax Exempt Status. The intent of the parties is that the Annual Recurring Fees and Exactions set forth in Section 3.02 are intended in part to recapture the City's loss of property tax revenue by virtue of Kaiser's tax exempt status. If Kaiser loses its tax exempt status, the parties agree to work together to reduce Kaiser's property tax obligations such that the combined total of Kaiser's annual property tax liability and Kaiser's annual payments under Section 3.02 does not exceed Kaiser's newly established annual property tax liability before any such reductions.

The solutions that the parties agree to consider shall include the following:

(1) An option for the City or Agency to acquire the land and/or improvements with a leaseback to Kaiser;

(2) Agency may buy down land with Agency funds for the benefit of Kaiser in a manner that shall ensure that there be no net increase to Kaiser;

(3) Agency or City may assume Kaiser's property tax obligation in consideration for Kaiser's payment of annual fees and exactions.

In the event of a dispute concerning this Section 6.12, the parties agree to proceed to binding arbitration. Any controversy or claim arising out of or relating to this Section 6.12 shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules in effect on the Effective Date, unless modified herein, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. All costs of conducting such arbitration shall be paid by Kaiser. Kaiser and the City agree that arbitration shall be conducted by a panel of three (3) arbitrators all of whom shall possess significant experience in land use matters and development agreement interpretation. Kaiser and the City shall each appoint one (1) arbitrator to the panel. The third arbitrator shall be appointed by a neutral third party to be agreed upon by Kaiser and the City. Kaiser and the City agree that the arbitrators may prescribe any lawful remedy with respect to disputes arising out of this Section 6.12.

Section 6.13. Fee Reductions or Credits. The parties intend that the fees described in Sections 3.02 and 3.03 will be in lieu of any exactions, taxes or assessments generally intended to address similar uses or purposes, and that Kaiser shall not be required to pay two times for any such exaction, fee or assessment. Accordingly, the fees described in Section 3.02 and Sections 3.03(1), (3), (4) and (5) shall be subject to reductions/credits in an amount equal to Kaiser's actual cost of complying with any such lawfully imposed exaction, tax, or assessment generally intended to address similar uses or purposes, whether imposed on the Project, the Project Site, the Project Approvals or the Subsequent Approvals. Notwithstanding the foregoing, no such reduction/credit shall be provided as a result of any assessment that arises from an assessment district requested by Kaiser under Section 5.07(c).

In addition to the foregoing, the Mass Transit Program Fee described in Section 3.02(2) and the Traffic Impact Fee described in Section 3.03(3) shall be subject to reductions/credits in an amount equal to Kaiser's actual costs of complying with any other mass transit or traffic mitigation measure imposed on the Project (excluding the Kaiser Shuttle). With respect to the Traffic Impact Fee, the reduction/credits shall only apply to traffic improvements identified in the City's Traffic Impact Fee Ordinance and only to the extent set forth in Section 3.03(3).

Section 6.14. Compliance with Participation Agreement. Kaiser and City shall be subject to, with the Agency, and shall comply with the provisions of the Participation Agreement, as the same may be amended from time to time in accordance with the provisions thereof.

ARTICLE 7. AMENDMENT

Section 7.01. Amendment of Project and Subsequent Approvals. Any Project Approval or Subsequent Approval may, from time to time, be amended or modified in the following manner.

(1) Administrative Amendments. Upon the written request of Kaiser for an amendment or modification to a Project Approval or Subsequent Approval, the Planning Director or his/her designee shall determine: (i) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (ii) whether the requested amendment or modification is consistent with this Agreement and Applicable Law. If the Director of the Emeryville Department of City Planning (the "Planning Director") or his/her designee finds that the proposed amendment or modification is both minor and consistent with this Agreement and Applicable Law, the amendment shall be determined to be an "Administrative Amendment," and the Planning Director or his designee may approve the Administrative Amendment without notice and public hearing. Without limiting the generality of the foregoing, lot line adjustments, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location of structures that do not substantially alter the design concepts of the Project, variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project, and minor adjustments to the Project Site diagram or Project Site legal description shall be deemed to be minor amendments or modifications.

(2) Non-Administrative Amendments. Any request of Kaiser for an amendment or modification to a Project Approval or Subsequent Approval which is determined not to be an Administrative Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Law and this Agreement.

Section 7.02. Amendment Of This Agreement. This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the parties hereto or their successors in interest, as follows:

(1) Insubstantial Amendments. Any amendment to this Agreement which does not relate to (i) the Term, (ii) permitted uses of the Project Site, (iii) provisions for the reservation or dedication of land, (iv) conditions, terms, restrictions or requirements for subsequent

discretionary actions, or (v) monetary contributions by Kaiser, shall not require a public hearing before the parties may execute an amendment to this Agreement. Such amendment may be approved by City resolution.

(2) Amendment Exemptions. No amendment of a Project Approval or Subsequent Approval, or a Subsequent Approval shall require an amendment to this Agreement. Instead, any such matter automatically shall be deemed to be incorporated into the Project and vested under this Agreement. Similarly, upon Kaiser's acquisition of legal or equitable interests in previously unacquired portions of the Project Site, Kaiser shall notify City in writing, whereupon such parcels shall automatically be incorporated into, and vested under, this Agreement.

ARTICLE 8. COOPERATION IN THE EVENT OF LEGAL CHALLENGE

In the event of any administrative, legal or equitable action or other proceeding instituted by any person not a party to this Agreement challenging the validity of any provision of this Agreement or any Project Approval or Subsequent Approval, the parties shall cooperate in defending such action or proceeding. The parties shall use best efforts to select mutually agreeable legal counsel to defend such action, and Kaiser shall pay compensation for such legal counsel; provided, however, that such compensation shall include only compensation paid to counsel not otherwise employed as City staff and shall exclude, without limitation, City Attorney time and overhead costs and other City staff overhead costs and normal day-to-day business expenses incurred by City. Kaiser's obligation to pay for legal counsel shall not extend to fees incurred on appeal unless otherwise authorized by Kaiser. In the event City and Kaiser are unable to select mutually agreeable legal counsel to defend such action or proceeding, each party may select its own legal counsel at its own expense.

ARTICLE 9. DEFAULT; REMEDIES; TERMINATION

Section 9.01. Defaults. Any failure by either party to perform any term or provision of this Agreement, which failure continues uncured for a period of sixty (60) days following written notice of such failure from the other party (unless such period is extended by written mutual consent), shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 60-day

period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 60-day period. Upon the occurrence of a default under this Agreement, the non-defaulting party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured, then no default shall exist and the noticing party shall take no further action.

Section 9.02. Termination. If City elects to consider terminating this Agreement due to a material default of Kaiser, then City shall give a notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council in the manner set forth in Cal. Gov't Code §§ 65865, 65867, and 65868. If the City Council determines that a material default has occurred and is continuing, and elects to terminate this Agreement, City shall give written notice of termination of this Agreement to Kaiser by certified mail and this Agreement shall be terminated thereby; provided, however, that Kaiser reserves any and all rights it may have to challenge in court City's termination of this Agreement.

Section 9.03. Periodic Review.

(1) Conducting the Periodic Review.

Throughout the Term of this Agreement, at least once every twelve (12) months following the execution of this Agreement, City shall review the extent of good-faith compliance by Kaiser with the terms of this Agreement. This review (the "Periodic Review") shall be conducted by the Planning Director or his/her designee and shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code Section 65865.1.

(2) Notice. At least ten (10) days prior to the Periodic Review, and in the manner prescribed in Article 13 of this Agreement, City shall deposit in the mail to Kaiser a copy of any staff reports and documents to be used or relied upon in conducting the review and, to the extent practical, related exhibits concerning Kaiser's performance hereunder. Kaiser shall be permitted an opportunity to respond to City's evaluation of Kaiser's performance, either orally at a public hearing or in a written statement, at Kaiser's election. Such response shall be made to the Planning Director.

(3) Good Faith Compliance. During the Periodic Review, the Planning Director shall review Kaiser's good-faith compliance with the terms of this Agreement. At the conclusion of the Periodic Review, the Planning Director shall make written findings and determinations, on the basis

of substantial evidence, as to whether or not Kaiser has complied in good faith with the terms and conditions of this Agreement. The decision of the Planning Director shall be appealable to the City Council. If the Planning Director finds and determines that Kaiser has not complied with such terms and conditions, the Planning Director may recommend to the City Council that it terminate or modify this Agreement by giving notice of its intention to do so, in the manner set forth in California Government Code Sections 65867 and 65868. The costs incurred by City in connection with the Periodic Review process described herein shall be shared equally by Kaiser and City.

(4) Failure to Properly Conduct Periodic Review. If City fails, during any calendar year, to either (i) conduct the Periodic Review or (ii) notify Kaiser in writing of City's determination, pursuant to an Periodic Review, as to Kaiser's compliance with the terms of this Agreement and such failure remains uncured as of December 31 of any year during the term of this Agreement, such failure shall be deemed an approval by City of Kaiser's compliance with the terms of this Agreement.

(5) Written Notice of Compliance. With respect to any year for which Kaiser has been determined or deemed to have complied with this Agreement, City shall, within thirty (30) days following request by the Kaiser, provide Kaiser with a written notice of compliance, in recordable form, duly executed and acknowledged by City. Kaiser shall have the right, in Kaiser's sole discretion, to record such notice of compliance.

Section 9.04. Default by City or Kaiser. In the event City or Kaiser defaults under the terms of this Agreement, City or Kaiser shall have all rights and remedies provided herein or under law.

Section 9.05. Enforced Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, neither party shall be deemed to be in default where delays in performance or failures to perform are due to war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environmental regulations, judicial decisions, or similar basis for excused performance which is not within the reasonable control of the party to be excused. Litigation attacking the validity of this Agreement or any of the Project Approvals or Subsequent Approvals, or any permit, ordinance, entitlement or other action of a governmental agency other than City necessary for the development of the

Project pursuant to this Agreement, or Kaiser's inability to obtain materials, power or public facilities (such as water or sewer service) to the Project, shall be deemed to create an excusable delay as to Kaiser. Upon the request of either party hereto, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

Section 9.06. Legal Action. Either party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, recover damages for any default, enforce by specific performance the obligations and rights of the parties hereto, or to obtain any remedies consistent with the purpose of this Agreement.

Section 9.07. California Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

Section 9.08. Attorneys' Fees. In any legal action or other proceeding brought by either party to enforce or interpret a provision of this Agreement, the prevailing party is entitled to reasonable attorneys' fees and any other costs incurred in that proceeding in addition to any other relief to which it is entitled. If a legal action is brought by a third party, Article 8 (Cooperation in the Event of a Legal Challenge) and Article 10 (Hold Harmless) of this Agreement shall apply.

ARTICLE 10. HOLD HARMLESS

Kaiser shall hold City and its elected and appointed officers, agents, employees, and representatives harmless from claims, costs, and liabilities for any personal injury, death, or property damage which is a result of the construction of the Project, or of operations performed under this Agreement by Kaiser or by Kaiser's contractors, subcontractors, agents or employees, whether such operations were performed by Kaiser or any of Kaiser's contractors, subcontractors, agents or employees. Nothing in this section shall be construed to mean that Kaiser shall hold City harmless from any claims of personal injury, death or property damage arising from, or alleged to arise from, any act, failure to act, on the part of City, its elected and appointed representatives, offices, agents and employees.

ARTICLE 11. NO AGENCY, JOINT VENTURE OR PARTNERSHIP

It is specifically understood and agreed to between the parties hereto that: (i) the subject development is a private development; (ii) City has no interest or responsibilities for, or duty to, third parties concerning any improvements until such time, and only until such time, that City accepts the same pursuant to the provisions of this Agreement or in connection with the various Project Approvals or Subsequent Approvals; (iii) Kaiser shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of Kaiser under the Project Approvals, Subsequent Approvals and this Agreement; and (iv) City and Kaiser hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Kaiser and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Kaiser.

ARTICLE 12. MISCELLANEOUS

Section 12.01. Incorporation of Recitals and Introductory Paragraph. The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.

Section 12.02. Enforceability. City and Kaiser agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter enacted or adopted (whether by ordinance, resolution, initiative, or any other means) in any applicable general plan, specific Plan, zoning ordinance, subdivision ordinance, or any other land use ordinance or building ordinance, resolution or other rule, regulation or policy adopted by City that changes, alters or amends the rules, regulations and policies applicable to the development of the Project Site at the time of the approval of this Agreement as provided by California Government Code Section 65866.

Section 12.03. Findings. City hereby finds and determines that execution of this Agreement furthers public health, safety and general welfare and that the provisions of this Agreement are consistent with the General Plan.

Section 12.04. Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid,

void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, either City or Kaiser may (in their sole and absolute discretion) terminate this Agreement by providing written notice of such termination to the other party.

Section 12.05. Other Necessary Acts. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out the Project Approvals, Subsequent Approvals and this Agreement and to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

Section 12.06. Construction. Each reference in this Agreement to this Agreement or any of the Project Approvals or Subsequent Approvals shall be deemed to refer to the Agreement, Project Approval or Subsequent Approval as it may be amended from time to time, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for both City and Kaiser, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

Section 12.07. Other Miscellaneous Terms. The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive. If there is more than one signer of this Agreement, the signer obligations are joint and several.

Section 12.08. Covenants Running with the Land. All of the provisions contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of the Project, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to applicable laws including, without limitation, California Civil Code § 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Project and is binding upon the owner of all or a portion of the Project and each successive owner during its ownership of such property.

Section 12.09. Waiver of Condemnation Right.

Under state law, Kaiser has certain limited abilities to condemn properties immediately adjacent to hospitals. Kaiser agrees to waive this right and not use its power of eminent domain for the Project.

ARTICLE 13. NOTICES

Any notice or communication required hereunder between City or Kaiser must be in writing, and may be given either personally or by registered or certified mail (return receipt requested). If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

If to City, to:

Gaye Quinn
Planning Director
City of Emeryville
2200 Powell Street, 12th Floor
Emeryville, CA 94608

With Copies to:

Michael Biddle, Esq.
City Attorney
City of Emeryville
2200 Powell Street, 12th Floor
Emeryville, CA 94608

Kofi Bonner
Director
Emeryville Redevelopment Agency
2200 Powell Street, 12th Floor
Emeryville, CA 94608

Director of Public Works
City of Emeryville
2200 Powell Street, 12th Floor
Emeryville, CA 94608

If to Kaiser, to:

Kaiser Foundation Hospitals
Legal Department
1950 Franklin Street, 17th Floor
Oakland, CA 94612-2998
Attention: Indrajit Obeysekere, Esq.

Kaiser Foundation Hospitals
Real Estate Department
1950 Franklin Street, 17th Floor
Oakland, CA 94612-2998
Attention: Joe Colbath

With Copies to:

Morrison & Foerster
P.O. Box 8130
101 Ygnacio Valley Road, Suite 450
Walnut Creek, California 94596
Attention: David A. Gold, Esq.

ARTICLE 14. ASSIGNMENT, TRANSFER AND NOTICE

Section 14.01. Assignment of Interests, Rights and Obligations. Subsequent to the completion of Phase 1 as evidenced by receipt of a Certificate of Completion pursuant to the PA, Kaiser shall have the right to assign or transfer all or any portion of its interests, rights or obligations under this Agreement, the Project Approvals, and the Subsequent Approvals to third parties acquiring an interest or estate in the Project or Project Site, or any portion thereof including, without limitation, purchasers or long-term ground lessees of individual lots, parcels, or any lots, homes or facilities comprising a portion of the Project, provided that any such assignee demonstrates to the City that it is capable of fulfilling Kaiser's obligations under this Agreement. If all or any portion of the Project or Project Site is so transferred by Kaiser to any person or entity, the transferee shall succeed to all of Kaiser's rights under this Agreement, insofar as they relate to the transferred property, and the transferee shall automatically assume all obligations of Kaiser, past, present and future, insofar as they relate to such transferred property. Any assignment or transfer by Kaiser of all or any portion of its interests under this Agreement, the Project Approvals,

and the subsequent Approvals to any entity or entities that participate in what is commonly known as the Kaiser Permanente Medical Care Program (including without limitation, Kaiser Foundation Health Plan, Inc., a California nonprofit public benefit corporation, and The Permanente Medical Group, Inc.) shall not be deemed an assignment or transfer under this provision.

Section 14.02. Liabilities Upon Transfer. Kaiser shall be free from any and all liabilities accruing on or after the date of any assignment or transfer of Kaiser's rights hereunder with respect to that portion of the Project so assigned or transferred by Kaiser. No breach or default hereunder by any person succeeding to any portion of Kaiser's interest in this Agreement shall be attributed to Kaiser, nor may Kaiser's rights hereunder be cancelled or diminished in any way by any breach or default by any such person.

ARTICLE 15. NOTICE OF COMPLIANCE

Section 15.01. Generally. Within thirty (30) days following any written request which Kaiser may make from time to time, City shall execute and deliver to Kaiser a written "Notice of Compliance," in recordable form, duly executed and acknowledged by City, that certifies:

(1) This Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications;

(2) There are no current uncured defaults under this Agreement or specifying the dates and nature of any such default;

(3) Any other reasonable information requested by Kaiser. The failure to deliver such a statement within such time shall constitute a conclusive presumption against City that this Agreement is in full force and effect without modification except as may be represented by Kaiser and that there are no uncured defaults in the performance of Kaiser, except as may be represented by the Kaiser. Kaiser shall have the right at Kaiser's sole discretion, to record the Notice of Compliance.

ARTICLE 16. ENTIRE AGREEMENT, COUNTERPARTS AND EXHIBITS

This Agreement is executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of _____ (____) pages, ___ notary acknowledgment pages, and _____ (____) exhibits which constitute in full, the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of City and the Kaiser. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

- | | |
|--------------------|--|
| Exhibit A | Project Site Diagram |
| Exhibit A-1 | Project Site Description |
| <u>Exhibit A-2</u> | <u>Portions of Project Site
Acquired by Kaiser</u> |
| Exhibit B | Ordinance No. ____. |
| Exhibit C | Kaiser Emeryville Housing
Fund |
| Exhibit D | Replacement of Housing
Removed by Project |
| Exhibit E | Emeryville Health Plan |

ARTICLE 17. RECORDATION OF DEVELOPMENT AGREEMENT

Pursuant to California Government Code § 65868.5, no later than ten (10) days after City enters into this Agreement, the City Clerk shall record an executed copy of this Agreement in the Official Records of Alameda County.

IN WITNESS WHEREOF, this Agreement has been entered into between Kaiser and City as of the day and year first above written.

CITY OF EMERYVILLE

By: _____

Its: _____

APPROVED AS TO FORM:

City Attorney

KAISER FOUNDATION HOSPITALS, a California
Nonprofit public benefit corporation

By: _____

Its: _____

MAP OF THE PROJECT SITE

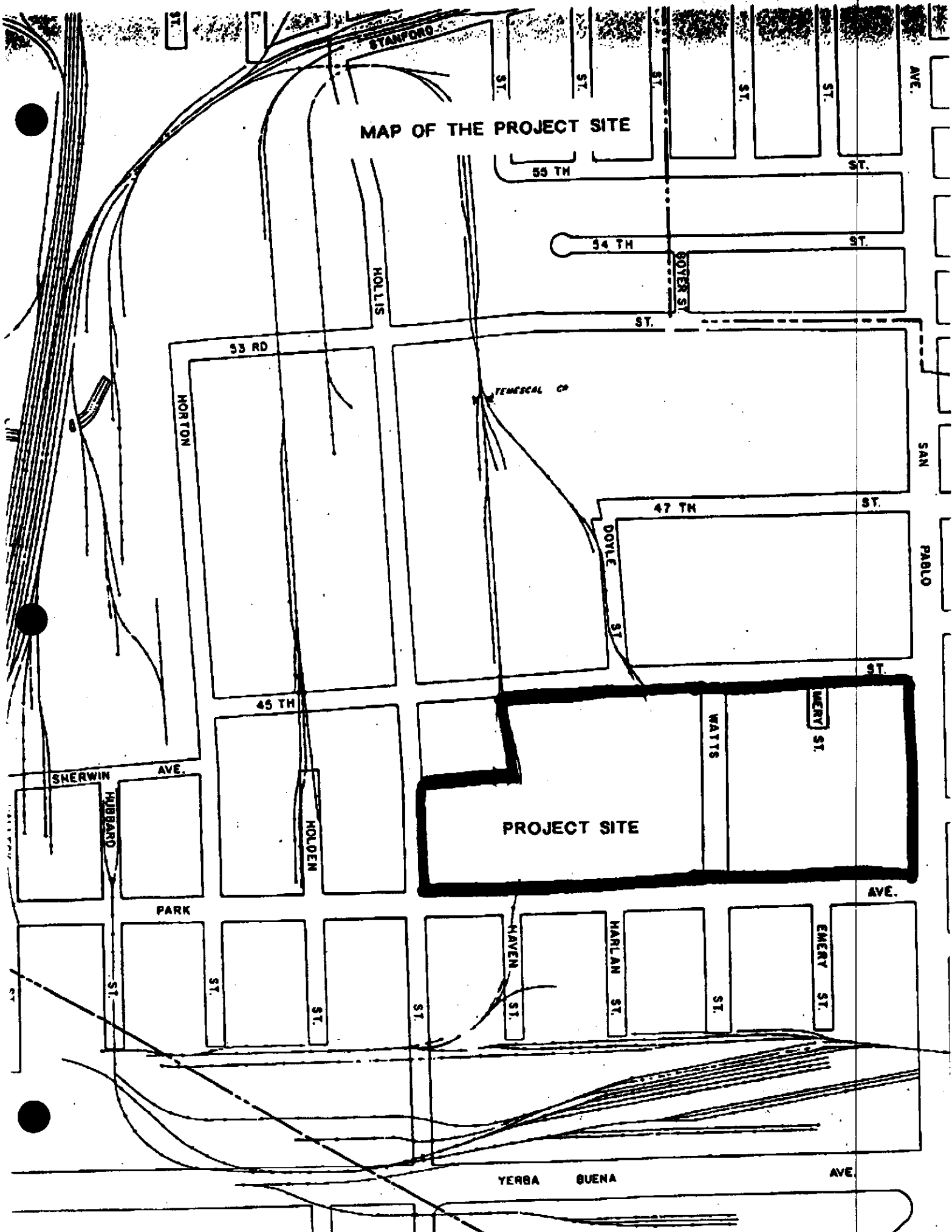


EXHIBIT A-1

Project Site Description

EXHIBIT A-2

Portions of Project Site Acquired By Kaiser

EXHIBIT B

Ordinance Adopting Development Agreement

EXHIBIT C

Kaiser-Emeryville Housing Fund

As part of the mitigation for the Project, Kaiser and the Agency have agreed to implement the Kaiser-Emeryville Housing Fund. The provisions of the Kaiser-Emeryville Housing fund, which are included in the PA, are set forth below.

(1) Introduction.

The parties understand that a portion of the Project Site was designated for residential purposes in the General Plan prior to the General Plan Amendment. In particular, the Del Monte Site had been identified in the City's housing element as a potential site for moderate and above-moderate income housing. The parties acknowledge that during the past four years the City has aggressively marketed the Project Site to residential and mixed use developers. City staff worked with at least four different developers to pursue the development of housing on the Project Site. The City pursued the development of the Project only after each of the proposed housing projects were not developed. To facilitate the City's goals of constructing affordable housing, Kaiser agrees to establish the "Kaiser-Emeryville Housing Fund" as described below, to provide a unique source of funding to the Agency of up to \$15,000,000 at below-market interest rates for construction of affordable and market rate housing in Emeryville.

(2) Program Overview. The Agency has established a strong track record in leveraging funds in innovative and creative ways to facilitate the construction of market rate and affordable housing in Emeryville, in cooperation with the private sector and other government funding sources (such as the federal government). Recent examples of the Agency's successes include:

(a) Emery Villa - The Agency leveraged approximately \$1.1 million of Agency-raised funds with approximately \$3.4 million of funds from other sources to build 50 units which are affordable to senior citizens with very low income.

(b) Emery Bay Club and Apartments II - The Agency leveraged \$4 million of proceeds from an Agency bond offering with \$21 million from other sources to build a 260 unit mixed income rental project. Twenty percent of the units are affordable to very low income households and

another twenty percent of the units are affordable to low income households.

(c) Triangle Court - A substandard and dilapidated 14-unit apartment complex was reconstructed to produce 20 units of quality family housing, all of which are restricted to very low and low income households for a period of 59 years. The total project cost was approximately \$2.3 million dollars, combining funds from the federal HOME program, a housing increment bond offering by the Agency, and private financing. In addition, 6 of the rehabilitated units have received Section 8 eligibility.

In order to provide the Agency with a flexible source of funding to construct additional housing in Emeryville, Kaiser agrees to lend up to \$15,000,000 to the Agency over a term of fifteen (15) years (the "Housing Fund Term") commencing on the Housing Commencement Date (as defined below), to fund the development of new affordable and market rate housing within Emeryville. Funds from the Kaiser-Emeryville Housing Fund will be made available during the Housing Fund Term in increments of up to \$3,000,000 at one time, which may be borrowed and repaid up to five (5) times, for a maximum of \$15,000,000. The Agency will have the flexibility to combine funds from the Kaiser-Emeryville Housing Fund with other sources of funds, and to use such funds in cooperation with private for-profit or non-profit developers to develop a series of housing developments in Emeryville.

As used herein, the "Housing Commencement Date" shall mean that date on which Kaiser has received all necessary approvals from the applicable governmental agencies for commencement of the Project, including, without limitation, the Project Approvals, and either (i) all relevant statutes of limitation for challenge to the Project have expired with no litigation being filed related to the Project, or (ii) if litigation is filed related to the Project, any such litigation, including any appeals related thereto, has been resolved and all appropriate actions related to such litigation have been taken such that Kaiser may proceed with the Project without further approval, delay or additional litigation. Notwithstanding the foregoing, if Kaiser actually commences construction of the Project prior to the resolution of any such litigation, the Housing Commencement Date shall be the date Kaiser actually commences such construction; provided, however, that if construction of the Project is commenced, but is subsequently halted as a result of any such litigation, then Kaiser's obligation to fund any Investment Increment (as defined below) other than any Investment Increment for which

the initial disbursement of funds has already been made shall be suspended during any period when construction is halted as a result of such litigation. Nothing in the preceding sentence is intended to suspend Kaiser's obligation to provide funding for the Agency's Replacement Obligation pursuant to (and as defined in) Section 3.11 and Exhibit D, below, and once construction of the Project is commenced, such obligation to provide funding pursuant to Section 3.11 and Exhibit D shall continue notwithstanding any halting of construction as a result of such litigation.

(3) Housing Development Criteria. The funds borrowed by the Agency from the Kaiser-Emeryville Housing Fund shall be used only for the development of residential housing projects in the City of Emeryville ("Housing Developments"). The Agency shall have the discretion to determine the types and sizes of the Housing Developments, with the goal of providing the maximum number of affordable housing units as reasonably possible, consistent with the housing element of the General Plan and the Community Redevelopment Law.

(4) Funding Mechanism. Prior to the first advance of funds from the Kaiser-Emeryville Housing Fund, the Agency and Kaiser shall execute a loan agreement, which shall be acceptable to the Agency and Kaiser, in the discretion of each of them. The loan agreement shall contain terms consistent with the terms hereof, and other customary and reasonable terms for a credit facility of this nature necessary to protect Kaiser's investment of funds, including, but not limited to, conditions to advances, financial covenants, and events of default. Funding from the Kaiser-Emeryville Housing Fund shall be available during the Housing Fund Term in up to five (5) increments of up to \$3,000,000 each (each an "Investment Increment").

When the Agency first identifies a Housing Development for which it wishes to use funds from the Kaiser-Emeryville Housing Fund, it shall notify Kaiser of such Housing Development and the amount of funds to be used from the Kaiser-Emeryville Housing Fund for such Housing Development, up to a maximum of \$3,000,000, and deliver to Kaiser a promissory note in the amount of \$3,000,000, in a form to be agreed upon and attached as an exhibit to the loan agreement. The Agency may draw on such note in multiple disbursements upon ten (10) days' advance notice to Kaiser (subject to a maximum of one disbursement per month) to fund such Housing Development. If such Housing Development will require less than \$3,000,000 of funds from the Kaiser-Emeryville Housing Fund, the Agency may, while such note is outstanding, identify and notify Kaiser of additional Housing Development(s) to be funded from the same \$3,000,000 Investment Increment, provided that the total

amount of funds to be available from any single Investment Increment shall not exceed \$3,000,000. For example, if the first Housing Development identified for funding from a Investment Increment will require only \$2,000,000 of funds from the Kaiser-Emeryville Housing Fund, an additional Housing Development could be designated by the Agency to be part of the same Investment Increment, provided that such additional Housing Development required no more than \$1,000,000 of funds from the Kaiser-Emeryville Housing Fund.

Funding will be available under only one Investment Increment at a time (i.e., each \$3,000,000 note must be repaid in full before borrowing will be available under the next Investment Increment). After one Investment Increment has been repaid in full, Kaiser shall return the promissory note applicable to such Investment Increment to the Agency, marked "paid in full." Thereafter, to begin borrowing under the next Investment Increment, the Agency will deliver another \$3,000,000 promissory note to Kaiser, and identify the Housing Development(s) to be funded from such Investment Increment and the amount(s) to be funded from the Kaiser-Emeryville Housing Fund therefor.

Each promissory note will bear interest at a rate which is 1.05 percent below the "prime rate" as published from time to time in the Wall Street Journal, subject to adjustments as such "prime rate" is adjusted. The maturity date of each promissory note will be fifteen (15) years after the Housing Commencement Date. No payments of interest or principal will be due prior to maturity, provided that any unpaid interest will be compounded annually, and prepayments, in whole or in part, will be permitted at any time.

Each request for disbursement from the Kaiser-Emeryville Housing Fund shall identify the purpose for which such funds are to be used, and Kaiser shall not be obligated to advance funds for any purpose other than for the development (including, but not limited to, land acquisition, site preparation, hazardous substance remediation, engineering, architecture and planning, other customary soft costs, and hard construction costs) of Housing Developments identified by the Agency for the applicable Investment Increment.

(5) Obligation of the Agency to Repay Loans. The obligation to repay all borrowings from Kaiser under the Kaiser-Emeryville Housing Fund shall be a general, unsecured obligation of the Agency. In the event of the Agency's failure to repay any amounts borrowed from Kaiser under the Kaiser-Emeryville Housing Fund upon maturity of the applicable promissory note, Kaiser shall have the right to offset amounts owed to it by the Agency under such

promissory note against its obligation to pay the Public Service Fee provided under Section 3.02 of the Development Agreement.

(6) Subordination to Bond Financing. Kaiser agrees to subordinate its right to receive repayment (but not its right of offset provided in subsection (4), above) of borrowings under the Kaiser-Emeryville Housing Fund to repayment of the Agency's borrowings under tax-exempt bond financings. Notwithstanding the foregoing, the terms of each such subordination shall permit repayment of borrowings under the Kaiser-Emeryville Housing Fund at any time when the Agency is not in default under any such bond financing.

(7) Legal Requirements. Kaiser may create a special-purpose subsidiary through which its funding of the Kaiser-Emeryville Housing Fund may be channeled. If a special-purpose subsidiary is used, Kaiser will guaranty such subsidiary's funding obligations under the Kaiser-Emeryville Housing Fund.

(8) Certificate of Compliance. Upon the first to occur of (i) the expiration of the Housing Fund Term, so long as Kaiser has satisfied its obligations to the Agency in connection with the Kaiser-Emeryville Housing Fund as provided under Section 3.10 and this Exhibit C, or (ii) the disbursement by Kaiser of all funds available for advance under the fifth (5th) Investment Increment, the City and the Agency shall execute and acknowledge a certificate of satisfaction of Kaiser's obligations in connection with the Kaiser-Emeryville Housing Fund in recordable form, which may be recorded in the Official Records of Alameda County by Kaiser, to give notice of the satisfaction of such obligations. The failure of the Agency to borrow the full \$3,000,000 available in any Investment Increment or to borrow less than five (5) Investment Increments before the expiration of the Housing Fund Term shall not constitute the failure of Kaiser to satisfy its obligations in connection with the Kaiser-Emeryville Housing Fund, and shall not obligate Kaiser to extend the Housing Fund Term or make borrowings under more than five (5) Investment Increments available to the Agency.

EXHIBIT D

Replacement of Housing Removed by Project

Kaiser shall provide funding for fulfillment of the Agency's obligation pursuant to Health and Safety Code Section 33413 to replace each dwelling unit housing persons and families of low or moderate income which is destroyed or removed from the housing market as a result of the Project, within four (4) years of such destruction or removal, and otherwise in accordance with the Replacement Housing Plan, adopted by the Agency pursuant to Resolution No. _____, on October 18, 1994 (the "Agency's Replacement Obligation").

The parties acknowledge that the Replacement Housing Plan addresses replacement of dwelling units that may be destroyed on the Future Expansion Site as well as the Project Site. However, Kaiser's obligation to provide funding for the Agency's Replacement Obligation pursuant to Section 3.11 and this Exhibit D is limited at this time to the replacement of dwelling units displaced on the Project Site.

Fulfillment of the Agency's Replacement Obligation shall be undertaken by the Agency, with Kaiser providing a portion of the funding to construct the replacement units, subject to the maximum amounts provided below. Kaiser shall receive an interest in the project(s) constituting the replacement housing commensurate with its investment of funds therein, which interest may be an equity interest or that of a subordinate lender, and which may represent a long-term investment in such project(s). Notwithstanding the foregoing, in no event will Kaiser have any involvement in on-going property management of any replacement housing.

Kaiser shall provide its portion of the funding for the replacement housing at such time as Kaiser and the Agency have mutually agreed upon a project or projects which will contain replacement housing units, but in any event in sufficient time for the Agency to meet the requirement of completing construction of the required replacement units within four (4) years after destruction or removal of the units being replaced. Notwithstanding the foregoing, in no event will Kaiser be obligated to provide any funding for the Agency's Replacement Obligation prior to destruction or removal of the units to be replaced.

Under Section 33414 of the Health and Safety Code, all dwelling units housing families with very low, low and moderate incomes must be replaced, however, only seventy-five percent (75%) of the replacement units must be affordable to families with comparable income levels, and

the remaining twenty-five percent (25%) of such replacement units may be market rate units. Kaiser's obligation to provide the funding described in Section 3.11 and this Exhibit D for the Agency's Replacement Obligation shall be limited in accordance with the following schedule (based on the type of unit being replaced and the assumption that 25% of the replacement units shall be market rate units):

<u>Type of Replacement Unit</u>	<u>Maximum Kaiser Funding Obligation</u>
Very Low or Low Income	\$70,000 per unit
Moderate Income	\$30,000 per unit
Market Rate	\$10,000 per unit

Notwithstanding the limitation on Kaiser's obligation to provide funding, the Agency may construct the combination of unit types it deems appropriate, subject to compliance with applicable law.

Any funds provided by Kaiser to fund fulfillment of the Agency's replacement housing obligation pursuant to Section 3.11 and this Exhibit D, shall be in addition to, and shall not be counted as part of, the funds invested by Kaiser in the Kaiser-Emeryville Housing Fund (described in Section 3.10 and Exhibit C above).

EXHIBIT E

Emeryville Health Plan

Association Plan Membership

In addition to our Individual Plan and Group Plan memberships (which have certain restrictions), Kaiser is prepared to offer to all residents of Emeryville our Association Plan. The Association Plan is a significant upgrade in benefits over our Individual Plans. We add prescription drug coverage to association membership (not available to Individual Plan members) in order to provide added value to those who subscribe through an association. We are prepared to promote our Association Plans to all individuals and associations in Emeryville. The extension of Association Plan membership to individuals residing in Emeryville is a unique community benefit that Kaiser has not offered any other Bay Area city.